California Association of Health and Education Linked Professions
Joint Powers Authority (CAHELP JPA)
DESERT/MOUNTAIN SELPA STEERING and FINANCE COMMITTEE MEETING
October 16, 2020 – 9:00 a.m.
Desert Mountain Educational Service Center, 17800 Highway 18, Apple Valley CA 92307

AGENDA

NOTICE: This meeting will be held virtually only. If members of the public wish to participate in the meeting and/or make public comment, please follow the instructions below to participate telephonically:

PARTICIPATE BY PHONE:
Dial Access Number: 1-415-655-0003
When prompted - enter Access Code: 133 386 6403
Follow directions as a Participant; an Attendee I.D. is not required to participate.

If you wish to make a public comment at this meeting, prior to the meeting please submit a request to address the Steering and Finance Committee to the recording secretary via fax at 1-760-242-5363 or email jamie.adkins@cahelp.org. Please include your name, contact information and which item you want to address.

Reasonable Accommodation: if you wish to request reasonable accommodation to participate in the meeting telephonically, please contact the recording secretary (via contact information noted above) at least 48 hours prior to the meeting.

1.0 CALL TO ORDER

2.0 ROLL CALL

3.0 PUBLIC PARTICIPATION

The public is encouraged to participate in the deliberation of the Desert/Mountain SELPA Steering and Finance Committee. 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 SELPA Steering Committee" to the Recording Secretary and adhere to the provisions described therein.

4.0 ADOPTION OF THE AGENDA

4.1 **BE IT RESOLVED** that the October 16, 2020 Desert/Mountain SELPA Steering and Finance Committee Meeting Agenda be approved as presented.

5.0 CONSENT ITEMS

It is recommended that the Steering and Finance Committee 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 the following Consent Items be approved as presented:

AGENDA

5.1.1 Approve the September 11, 2020 Desert/Mountain SELPA Steering and Finance Committee Meeting Minutes.

6.0 CHIEF EXECUTIVE OFFICER AND STAFF REPORTS

6.1 Legislative Updates

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

6.2 Form D/M 140 Student Appointment of Educational Representative

Jenae Holtz will provide clarification on the intent of Form D/M 140 Student Appointment of Educational Representative Form.

6.3 WestEd Report

Jenae Holtz will give a summary of the West Ed Report and the implications for special education, SELPAs and LEAs.

6.4 Desert Mountain Operations Updates

Rich Frederick will present Desert Mountain Operations Updates.

6.5 Desert/Mountain Children's Center Client Services Reports

Linda Llamas will present the D/M Children's Center Client Services monthly reports.

6.6 Professional Learning Summary and Updates

Heidi Chavez will present the D/M SELPA's Professional Learning Summary and updates.

6.7 Resolution Support Services Summary

Kathleen Peters will present the D/M SELPA's Resolution Support Services Summary and update.

6.8 Office of Administrative Hearings COVID-19 Decisions

Kathleen Peters will review Office of Administrative Hearings (OAH) COVID-19 decisions.

6.9 New Federal Guidance on Provision of Services

Kathleen Peters will present new federal guidance on Provisions of Services.

AGENDA

6.10 Postsecondary Transition Services Manual

Adrienne Shepherd-Myles will present updates to the Postsecondary Transition Services Manual.

6.11 Prevention and Intervention Updates

Kami Murphy will present Prevention and Intervention updates.

6.12 Compliance Update

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

6.13 Nonpublic School/Nonpublic Agency Update

Peggy Dunn will provide a nonpublic school/nonpublic agency update.

6.14 October 2020 State Testing Update

Linda Rodriguez will provide the October 2020 State Testing Update.

7.0 FINANCE COMMITTEE REPORTS

8.0 INFORMATION ITEMS

8.1 Monthly Audiological Services Reports

8.2 Monthly Occupational & Physical Therapy Services Reports

8.3 Monthly Nonpublic School/Agency Placement Report

8.4 Upcoming Professional Learning Opportunities

9.0 STEERING COMMITTEE MEMBERS COMMENTS / REPORTS

10.0 CEO COMMENTS

11.0 MATTERS BROUGHT BY THE PUBLIC

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

AGENDA

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

Persons wishing to make complaints against Desert/Mountain SELPA Steering and Finance Committee personnel must have filed an appropriate complaint form prior to the meeting.

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

12.0 DIRECTORS' TRAINING

Jack Clarke, Esq Partner with the law firm of Best, Best, and Krieger will present Legal Guidance for Difficult IEP's during COVID.

13.0 ADJOURNMENT

The next regular meeting of the Desert/Mountain SELPA Steering and Finance Committee will be held on Friday, November 20, 2020, at 9:00 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.

California Association of Health and Education Linked Professions
Joint Powers Authority (CAHELP JPA)
DESERT/MOUNTAIN SELPA STEERING and FINANCE COMMITTEE MEETING
September 11, 2020 – 9:00 a.m. Virtual Via Teleconference
Desert Mountain Educational Service Center, 17800 Highway 18, Apple Valley CA 92307

MINUTES

D/M SELPA MEMBERS PRESENT:
Academy for Academic Excellence – Marcelo Congo, Samantha Gonzalez, David Gruber, Adelanto SD – Michael Baird, Alicia Johnson, Apple Valley USD – Renee Castillo, David Wheeler, Baker Valley USD – Cecil Edwards, Bear Valley USD – Lucinda Newton, Desert/Mountain Operations (SBCSS) – Rich Frederick, Excelsior Charter Schools – Marie Silva, Health Sciences – Julie Kroener, Helendale SD – Michael Esposito, Hesperia USD – Matt Fedders, Teri McCollum, Lucerne Valley SD – Vici Miller, Needles USD – Jayme Casas, Jim Rolls, Jamie Wiesner, Oro Grande SD – Nelda Colvin, LaDay Smith, Silver Valley USD – Cheri Rigdon, Snowline JUSD – Robert Chacon, Lori Delgado, Trona JUSD – Christine Laird, Austin Matzaganian, Victor Elementary SD – Tanya Benitez, and Victor Valley UHSD – Margaret Akinnusi, Rama Bassham.

CAHELP, SELPA, & DMCC STAFF PRESENT:
Jamie Adkins, Guille Burgos, Ariel Clark, Craig Cleveland, Danielle Cote, Tara Deavitt, Lindsey Devor, Peggy Dunn, Adrien Faamausili, Thomas Flores, Marina Gallegos, Bonnie Garcia, Renee Garcia, Colette Garland, Cheryl Goldberg-Diaz, Derek Hale, Jenae Holtz, Linda Llamas, Maurica Manibusan, Robin McMullen, Angela Mgbeke, Kami Murphy, Lisa Nash, Sheila Parisian, Kathleen Peters, Karina Quezada, Daria Raines, Linda Rodriguez, Veronica Rousseau, Natalie Sedano, Jessica Soto, Pamela Strigglers, Jennifer Sutton, Athena Vernon, and Charis Washington.

1.0 CALL TO ORDER

The regular meeting of the California Association of Health and Education Linked Professions Joint Powers Authority (CAHELP JPA) Desert/Mountain SELPA Steering Committee Meeting was called to order by Jenae Holtz, at 9:00 a.m., at the Desert/Mountain Educational Service Center, Apple Valley.

2.0 ROLL CALL

3.0 PUBLIC PARTICIPATION

None.

4.0 ADOPTION OF THE AGENDA

4.1 **BE IT RESOLVED** that a motion was made by Matt Fedders, seconded by Lori Delgado, to approve the September 11, 2020 Desert/Mountain SELPA Steering and Finance Committee Meeting Agenda as presented. A vote was taken and the following carried 18:0: Ayes Akinnusi, Baird, Benitez, Colvin, Congo, Delgado, Edwards, Esposito, Fedders, Frederick, Kroener, Laird, Miller, Newton, Rigdon, Silva, Wheeler, and Wiesner. Nays: None, Abstentions: None.

5.0 PRESENTATIONS

5.1 Department of Behavioral Health Community Crisis Response Team

Clinical Supervisor Beverly Jones with Department of Behavioral Health, High Desert Community

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Crisis Response Team. She shared the Community Crisis Response Team (CCRT) has three regions of service with their hours of operation being 7:00 a.m.-10:00 p.m. every day of the year. The team provides mental health assessments while assisting law enforcement and schools. They also respond to critical incidents and provide community assistance. CCRT is certified to write holds for 5150 for adults and 5585 for minors. They prefer to stabilize and provide resources over writing holds but will do so when the criteria are met. Beverly continued that they normally provide transportation for mental health services but are not able to do so currently due to COVID-19. CCRT responds to calls when there is a mental health component to assist with stabilization and providing mental health assessments. Currently assessments are done via Web Ex or by phone then recommendations are provided to parents or guardians who then help the child receive the mental health services that are needed.

Jenae Holtz shared that Desert/Mountain Children's Center (DMCC) is an arm of DBH with several contracts. Linda Llamas has put in place that if a referral needs a higher level of assessment or wrap around services, DMCC will triage the case and connect the child with appropriate services.

Beverly said if a child is aggressive, fighting, throwing things, or trying to leave the property, law enforcement should be called as well. CCRT has a hands-off policy but they will respond to try to stabilize the student.

Beverly confirmed that CCRT does serve people of all ages and may not be able to respond quickly to a new call. If that occurs, an estimated time of arrival should be provided to give the person making the call the option to contact law enforcement or another resource.

6.0 INFORMATION/ACTION

6.1 Desert/Mountain SELPA Emergency Circumstances Consideration Form **(ACTION)**

Forms used in the operations of special education programs within the Desert/Mountain 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 SELPA Steering Committee for consideration and approval.

After discussion, the following changes were agreed to:

- form will be titled Emergency Circumstances Consideration Form,
- in the last sentence of the introduction "would" will be changed to "could",
- all sections, except Special Education and Related Services, will include Not Applicable box,

- in bottom section "Behavior Support" will be changed to "Individualized Emergency Services Plan",

- last paragraph referring to Individualized Emergency Services Plan and not Distance Learning, final paragraph will start at "The Individualized Emergency Services Plan does not constitute…".

- bottom box will be worded "How will LEA provide behavior support?"

Kathleen clarified CDE determined that two documents are needed, one being the Emergency Circumstances Consideration Form to be part of the IEP. This document will not require a parent signature. This form will not be part of the IEP but in the Additional Documents section of Web IEP. In the case of another emergency, a second document is needed to be sent to the parents/guardians stating how FAPE is being offered during the emergency time.

Sheila Parisian provided additional clarification stating this form specifies the means of delivery and how instruction and services could be provided during a time of emergency. This form will quantify services by specifying the frequency and duration of services. This form will be part of the IEP and will require a parent/guardian signature. She said this is how the parents/guardians and the IEP team will decide on the provisions of FAPE in case of an emergency.

Kathleen confirmed that an LEA will not be held accountable for a box checked on the Emergency Circumstances Consideration Form if they are not able to provide it during an emergency. The form is to discuss with parents what could happen and not specifics.

Jenae Holtz shared that this is a protection for LEAs and is notifying parents that in case of an emergency, the LEA will do whatever they can to provide services for the students. What will be provided to the students will depend on the specifics of the emergency on the day it is called. If it is not possible to provide services due to the type of emergency, the law requiring these forms will assist in protecting LEAs.

6.1.1 **BE IT RESOLVED** that a motion was made by Michael Esposito, seconded by Cheri Rigdon, to approve the Desert/Mountain SELPA Emergency Circumstances Consideration Form with the proposed changes. A vote was taken and the following carried 18:0: Ayes Akinnusi, Baird, Benitez, Colvin, Congo, Delgado, Edwards, Esposito, Fedders, Frederick, Kroener, Laird, Miller, Newton, Rigdon, Silva, Wheeler, and Wiesner. Nays: None, Abstentions: None.

7.0 CONSENT ITEMS

It is recommended that the Steering and Finance Committee 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 a motion was made by Marie Silva, seconded by Cecil Edwards, to approve the following Consent Item as presented. A vote was taken and the following carried: 18:0: Ayes Akinnusi, Baird, Benitez, Colvin, Congo, Delgado, Edwards, Esposito, Fedders, Frederick, Kroener, Laird, Miller, Newton, Rigdon, Silva, Wheeler, and Wiesner. Nays: None, Abstentions: None.

7.1.1 Approve the August 21, 2020 Desert/Mountain SELPA Steering and Finance Committee Meeting Minutes.

8.0 CHIEF EXECUTIVE OFFICER AND STAFF REPORTS

8.1 Legislative Updates

Jenae Holtz presented the latest legislative updates. Jenae said that D/M SELPA is a member of Coalition for Adequate Funding for Special Education that has recently provided information on SB 820. She read as of July 1, 2020, SB 820 makes the provision of SB 117 inoperative that allows the CDE to consider days following a school's closure due to COVID-19 as days between a pupils' regular school session, until the school reopens and regular session convenes when determining compliance with special education timelines and service provision as this provision did not waive any federal timelines. Jenae shard the concern is that the retroactive change could be problematic for local educational agencies (LEA) that relied on this flexibility since July 1, 2020. She reported the coalition is working with special education advocates to address the issue and trying to influence legislation. Jenae continued that the bill also clarifies that educationally related mental health services funds may be used for all mental-health related services for pupils with or without an Individualize Education Plan (IEP). Jenae reported CAHELP uses this funding for residential placement and DMCC services.

Jenae reported an updated Frequently Asked Questions (FAQ) pertaining to small cohorts was emailed to the directors earlier in the day. With that update, there is some leniency allowing the total number of the cohort to equal sixteen. That may be a composition of 14 students and two adults or it could be a combination students and adults based on student need and not exceeding 16 total in the cohort. She continued the FAQ also clarifies which students can be served in cohorts and it is an LEA and school level decision. The decision should be based on the needs of the students with students with disabilities should be prioritized for receiving targeted supports and services, as well as English learners. Jenae cited on a call earlier in the week, Public Health Department stated if an LEA is serving preschool in morning and afternoon cohorts, the adults are able to serve both cohorts.

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Jenae Holtz stated that many of the legislative bills were not passed due to timelines. She said that of the ones not passed, there are a few that are likely to be presented again with changes including Senate Bill (SB) 614, Assembly Bill (AB) 1203, AB 1384, and AB 3097.

8.2 Potential Class Action Litigation for Failure to Provide Free Appropriate Public Education (FAPE) During COVID-19

Jenae Holtz stated because the California lawsuit is civil, it prevents D/M SELPA from assisting if an LEA is served. D/M SELPA will provide supports but the LEA's Risk Management must take the lead. Kathleen Peters will provide more information later in the meeting.

8.3 DocuSign Implementation and Demonstration

Jenae Holtz called on Colette Garland to provide an update on DocuSign implementation as well as a DocuSign demonstration. Colette reported that activation emails were sent. She said there will be two phases in DocuSign implementation with phase one being a separate module from Web IEP and phase two being fully integrated into Web IEP. Users that will be initiating a DocuSign envelope will need to activate under the CAHELP account even if they have a second account. The CAHELP account will have the correct templates that are anchored in the correct location of Web IEP. Colette said that not everyone needs a DocuSign account, just the users that will initiate an envelope, which is known as a DS Sender. Signature boxes that are not needed can be deleted so additional space is not used. The Management System Information Representative refers to LEA staff, not Colette Garland or Terri Nelson. Once the documents are completed, the parent receives the documents via email and can sign on a computer or on a cell phone. Once the completed and signed IEP is received in email, Colette asked for the school staff to load it as PDF in Web IEP and close it as Complete. She said this is critical so there are not numerous IEPs inaccurately showing as Pending, In Progress, or Not Signed. This is required during phase one because Web IEP and DocuSign are not yet fully integrated. Colette said Web IEP needs to be finalized so the finalized, completed IEPs can go in CALPADs portal then to the state. She said instructions were emailed to the MIS contacts but there have been adjustments made due to duplicate accounts. Some district staff have regular district accounts, and some have D/M SELPA accounts. Colette said when users log in, they will need to switch their account to the California Association of Health and Education Linked Professions (CAHELP) at the top left side of the screen. She shared the directions will be revised and include screen shots then emailed to the MIS users and to the special education directors. Colette reported a helpdesk email is being set up for her and Terri Nelson to manage but currently all emails are going to Colette for response. After discussion, it was agreed that the signing order will be removed as well as the parent initials being required in every section of the signature page. Colette share that DocuSign will be added to Web IEP trainings. Colette asked to be contacted if any staff have not received the informational email from her.

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8.4 Audiological Assessments and Hearing/Vision Screenings

Rich Frederick reported that Pacific Hearing is requesting permission to return to the district sites with their trailer for in-person audiological assessments. He said the parents will need to provide transportation because schools are not in session. Pacific Hearing will follow proper cleaning protocols between students as well as social distancing protocols. Rich said students in deaf and hard of hearing classes can participate in their district's testing dates or they can wait until schools reopen to be tested at least one time. Rich continued that districts that have reopened with the waiver should expect assessments to be done in the typical fashion.

Jenae Holtz said if an LEA does not want Pacific Hearing to bring the van to the site, they must let Rich know. She continued that the assessment timelines continue and by allowing Pacific Hearing to assess at the district sites, the parents do not have to travel to Rancho Cucamonga to the actual clinic.

8.5 Desert Mountain Operations Updates

Rich Frederick presented Desert Mountain Operations (DMOPS) Updates. He reported with Lucerne Valley district opening with the waiver, DMOPS was able to bring back their elementary classroom and small cohorts for high school. Next, they will be working to bring back students in small cohorts at Bear Valley USD. Rich continued that DMOPS wants to be involved from the beginning of bringing students back to ensure the department can support the LEAs and move along together in the process. Rich said employee associations are working with DMOPS and there is language in the distance learning Memorandum of Understanding (MOU) that allow staff to work with the districts plans.

8.6 Desert/Mountain Children's Center Client Services Reports

Linda Llamas presented the D/M Children's Center Client Services monthly reports. She said the reports were emailed September 10, 2020 for July and August. Linda advised the email was encrypted and from Keri Downing. She said they expect there to be several corrections based on the August report and asked for corrections to be emailed to her or Keri Downing and noted that the document is an Excel spreadsheet which is how the reports will continue to be distributed. Linda asked to be notified if an LEA contact person has changed.

8.7 Assembly Bill 1767 Pupil Suicide Prevention Policies Requirements

Linda Llamas provided information on Assembly Bill 1767: Pupil Suicide Prevention Policies requirements. She stated that in October 2019, AB 1767 was published and requires LEAs to have policies on suicide prevention that specifically address the needs of high risk groups identified in the bill to be in place effective at the beginning of the 2020 school year. Linda said AB 1767 works with AB 2246 that was enacted in 2017 ensuring there is a policy for younger students. To assist with staff training that is required in both bills, DMCC offers the following trainings: Youth Mental Health First Aid (7-12 grades) and Raising Awareness to Suicide Prevention for

Elementary Aged Children (K-6 grades). Linda asked to be contacted with any questions and to request trainings which can be done virtually.

Vici Miller thanked Linda and Guille Robles. She said students were brought back to campus and able to keep the clinicians they had bonded with which helped with the transition. Vici shared that the district, the school board, parents, and teachers have noticed and appreciate the work that DMCC does.

8.8 Professional Learning Summary and Update

Jenae Holtz presented the D/M SELPA's Professional Learning Summary and update. She said since July 2020, ninety-eight participants were involved in virtual on-site trainings and 204 participants in virtual regional trainings. Jenae said if trainings are needed to please submit a request that can include if specific times are needed to accommodate staff schedules.

Jenae highlighted the flyer for this year's Directors' Trainings stating the trainings will be virtual. The trainings will begin at 11:00a.m with a working lunch and are open to all staff that would benefit on the specific topics. The first training will be held on October 16, 2020 with the topic of Legal Guidance for Difficult IEP's During COVID.

Jenae Holtz reported Community Advisory Committee meetings will be held virtually this year with the first meeting scheduled for October 15, 2020 with flyers to be emailed next week. She encouraged the committee members to get parents involved and encourage them to join via Zoom. Jenae said the business meeting with the LEA representatives will be from 5:00p.m-5: 30p.m with the presentation from 5: 30p.m-6:30p.m. Jenae reminded the committee members that each LEA must have a representative present. The first presentation topic is Transition Planning presented by Adrienne Shepherd-Myles.

8.9 Resolution Support Services Summary and Update

Kathleen Peters presented the D/M SELPA's Resolution Support Services Summary and update. She reported there have been seven cases filed this year with one possibly going to hearing. Kathleen also reported no filings have been received since August 13, 2020 which is unusual but believes that as COVID-19 cases are received and addressed in other regions, there will be a rapid increase in filings. She said in our region, COVID-19 is being seen as an add on to bigger concerns with IEPS, assessments, timelines, etc. Kathleen encouraged the committee members to be mindful when reviewing IEPs.

8.10 Office of Administrative Hearings COVID-19 Decisions

Kathleen Peters reviewed Office of Administrative Hearings COVID-19 decisions. Kathleen reported on two California cases from Pleasanton and Los Angeles sharing a PowerPoint from Atkinson, Andelson, Loya, Ruud & Romo. She said the small cohort information in the

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PowerPoint is outdated based on recent information received. The total number of students cannot exceed fourteen but there can be more than two adults not to exceed 16 total.

Kathleen shared the Pleasanton case was based on Stay Put with the parent asking if the district was correct in denying in-person services. The parent did not want the Stay Put in the classroom as she understood that the classroom was now in the home. The parent did not agree with the stoppage of 1:1 services. OAH found parent was correct in that the student had the right to remain in a comparable program and continue to receive intensive services. The remedy was not for compensatory education but for the LEA to provide 1:1 licensed vocational nurse, speech therapy, physical therapy, and vision services. OAH acknowledged the LEA might not have qualified staff and approved services to be provided by a nonpublic agency.

Kathleen then shared the Los Angeles case was pertaining to a student that was not able to receive transition services that were needed. The parents were aware that the timeline for receiving transition services was running out due to the student's age and the student still had much learning to do. The parents asked for weekly participation in-person community-based instruction/vocational training. The student's instruction time had fallen significantly and was non-interactive virtual community instruction. OAH found the district was wrong and in the most recent IEP, did not invite community services agencies that could be providing transition services during COVID-19 such as the regional center and Department of Rehabilitation. This reflected a denial of FAPE. The remedy was LAUSD had to provide one hour each of group speech and language, provide 40 hours of postsecondary transition counseling by an appropriately credentialed counselor of the parents' choice, and assist the parent in coordinating with the regional center and Department of Rehabilitation. Kathleen stressed the importance of bringing in outside resources when making decisions for transition services.

Kathleen reported that regarding Senate Bill (SB) 820, California Educational Code has revised requirements allowing that live instruction during distance learning can be recorded by the LEA without the requirement of teacher or principal consent. Kathleen advised the committee members to work with employee groups and teachers. She continued that parents cannot record the classes without the consent of the teacher or principal.

Kathleen reported there are two class actions filed against districts due to COVID-19 implementation of IEPs. The first one was filed in New York case against the nation but was put aside. One reason is that Individuals with Disabilities Education Act (IDEA) is individual protections. The second reason is that a New York attorney does not have jurisdiction across the country. Kathleen shared the case filed in California is against the governor and California Department of Education (CDE) along with some individuals. They are working to file against every district in the state though it is not clear if charter schools have been included. The class action states the governor's order did not require districts to hold IEPs leaving it too vague for CDE to make decisions and that the CDE decisions allowed schools to not comply with IEPs which violates due process rights and denial of FAPE. The action requests a temporary restraining order against the CDE, State Superintendent Thurman, State Board of Education, Health and Human

Services, and Department of Public Health. The action continues the governor misused executive power which was not lawful or faithful. The CDE is responsible for ensuring that the state and schools follow the law and with COVID-19 closures, they did not do so when giving LEAs options. The action states assessments should have taken place to determine if distance learning would be appropriate for all students. The action states the governor did not have the right to change placement without assessment and the CDE's vague directive allowed districts to not reassess students before changes in service were made. Kathleen stated this action is being watched closely. She continued that because the action is filed in civil court under the Americans with Disabilities Act, it is not under the Office of Administrative Hearings so it is not a case that SELPA can defend an LEA. Kathleen stated SELPA will provide due process supports but the individual LEA risk management groups will take the lead. Kathleen asked for her or Jenae Holtz to be notified immediately if served.

Jenae Holtz said that since the beginning, there have been many unknowns and frustration at the lack of direction from the state. The state is relying on each LEA to determine how to handle the situation.

Kathleen shared that the Emergency Circumstances Consideration Form and it's follow up form are addressing the issues that are in the lawsuit.

Jenae continued that in early conversations with legal counsel, the discussion was around the emergency situation not allowing LEAs to provide FAPE. She concluded that information will be provided as it is received.

8.11 Prevention and Intervention Update

Kami Murphy presented Prevention and Intervention Updates. She shared the calendar of trainings for School Mental Health and Social Emotional Learning to Support the Safe Reopening of Schools. Kami said the trainings are virtual and in collaboration with DMCC.

Kami shared that the Prevention and Intervention team is excited to be part of the California Community Cares celebration. The date of the celebration is still pending but it will be at the end of October or early November. Kami said it will be a virtual celebration that will last an hour or less. She encouraged all LEAs to participate in the celebration to support the schools that are being recognized.

8.12 Compliance Update

Peggy Dunn presented an update on compliance items from the California Department of Education (CDE) including supports for the disproportionate review. She shared there is a Mega Letter Zoom meeting on September 17, 2020 at 10:00am-12:00pm call. The call will review all compliance activities from the January 2020 letter to present. Peggy let the committee know that registration is required, and the registration access code is MEGA.

Peggy said that the final copy of the Disproportionate Student List is to be submitted to Colette Garland so she can provide Web IEP access to the Focused Monitoring and Technical Assistance (FMTA) consultant.

Colette Garland asked for any LEA that has not received the DocuSign activation email to contact her. Colette stated CALPADS EOY3 and EOY4 are completed and certified along with Personnel Data Reports.

Colette said the AutoBridge system will be launching so the data will go directly from Web IEP to Web DA automatically for more "real-time" reports. She said there is Web IEP/DocuSign training video and Zoom question and answer session on OMS for registration.

8.13 Nonpublic School/Nonpublic Agency Update

Peggy Dunn provided the nonpublic school/nonpublic agency update. She reported that Desert View and Bright Futures Academy continue to function on the distance learning model. She shared that Desert View is at capacity but asked for referrals to continue to be submitted as registration changes regularly.

8.14 Crisis Prevention Institute Training

Danielle Cote presented information pertaining to Crisis Prevention Institute (CPI) training. She said the trainings will be done in online modules. The modules must be completed before the October 15, 2020 virtual Q&A session at 2:30 p.m.

Danielle also shared Disengagement and Physical Intervention training will be offered possibly at the end of October or early November. As an alternative, on October 27 at 1:00pm-2:15pm, a de-escalation training will be offered that is similar to CPI but focuses on mindset and prevention. There will be a flyer to follow.

9.0 FINANCE COMMITTEE REPORTS

Marina Gallegos reported Excess Cost Report was emailed to the LEA's and is due by September 15, 2020. She added the Maintenance of Effort reports are due on October 15, 2020. Marina stated there are some issues with the Pupil Count Report, but it will be distributed soon. She asked to be contacted with any questions.

10.0 INFORMATION ITEMS

10.1 Monthly Occupational & Physical Therapy Services Reports

10.2 Monthly Nonpublic School/Agency Placement Report

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10.3 Upcoming Professional Learning Opportunities

Adrien Faamausili shared Arts Integration: Leveraging the Art of Learning will be offered October 14-15, 2020, 3:30pm-4:30pm on both days. Participants will learn strategies to adapt lesson plans for remote learning. He said the flyer will be emailed next week.

11.0 STEERING COMMITTEE MEMBERS COMMENTS / REPORTS

12.0 CEO COMMENTS

Jenae Holtz reported there is a lawsuit against Presence Learning. The agency has been found guilty of falsification of records and not providing services at the level documented and charged for. She wants the LEAs that use Presence Learning to be aware.

Jenae encouraged the committee to reflect on September 11 and to remember those that lost their lives nineteen years ago.

13.0 MATTERS BROUGHT BY THE PUBLIC

None.

14.0 ADJOURNMENT

Having no further busines to discuss, a motion was made by Matt Fedders, seconded by Alicia Johnson, to adjourn the meeting. A vote was taken and the following carried: 18:0: Ayes Akinnusi, Baird, Benitez, Colvin, Congo, Delgado, Edwards, Esposito, Fedders, Frederick, Kroener, Laird, Miller, Newton, Rigdon, Silva, Wheeler, and Wiesner. Nays: None, Abstentions: None.

The next regular meeting of the Desert/Mountain SELPA Steering and Finance Committee will be held on Friday, October 16, 2020, at 9:00 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.

SELPA Administrators October Legislative Update

Alice Kessler, Lighthouse Public Affairs

Erin Evans, Lighthouse Public Affairs

Legislative Calendar

- September 30th was the last day for the Governor to sign or veto bills passed by the Legislature
- Bills enacted on or before October 1st will take effect on January 1, 2021 unless they have an emergency clause
- November 3rd General Election
- New members sworn in on December 7, 2020 – bills may be introduced

Carry-over Issues from 2020 Session

- Liability (2 issues)
  - General/COVID-19-related lawsuits
    - AB 1384 (O'Donnell) likely to be re-introduced
    - The liability protections afforded under the proposed law would have applied to any claims for injury or damages alleged to have been sustained throughout the COVID-19 pandemic or within twelve months following the end of the declaration of a State of Emergency, whichever is later
  - Special Education-related liability
    - Administrative Law Judges are holding LEAs accountable to pre-COVID-19 obligations to provide FAPE and ordering compensatory education. A wave of litigation is expected.
    - We are brainstorming possible solutions with other advocates

Oversight Hearings

- Senate Special Committee on Pandemic Emergency Response
  - Sent letter to the Governor with various priorities related to the pandemic that need to be addressed
  - Among them was “a plan on how California school districts will be meeting our obligations to special education students under IDEA”
  - The committee is holding oversight hearings on various topics
  - SELPA Administrators signed onto a response letter organized by CASBO and co-signed by several educational associations. This will hopefully be an avenue to continue liability discussions.

Potential Bill Ideas for 2021

- Reforming the Infant Funding Formula – CDE encouraging a legislative fix
- COVID Related Litigation/Compensatory Education
- AB 1172 clean-up
- Still uncertain whether there will be restraints on number or scope of bills next year, and whether legislative proceedings will be in-person or remote

Statewide Collaboration

- Legislative Committee has connected Elizabeth Estes to Lighthouse Public Affairs/GRR (Erin Evans-Fudem and Alice Kessler).
- Elizabeth Estes provided a legal consultation regarding the impending issues surrounding COVID litigation and compensatory education claims.
- Lighthouse GRR staff coordinated with the Education Management Group (EMG) and Elizabeth Estes provided that legal context: the problems/looming issues as well as some potential avenues for solutions. We will continue to work through this group and leverage this collaboration.
- Next steps: clearly defining the problem and potential solutions and going to state leaders (Governor's office)

Priority Setting/Legislative Platform Discussion – Next State SELPA

- Legislative Priorities Activity
  - Legislative Committee will be collaborating with CAFSE to discuss priorities and align to leverage our efforts.

- Legislative Platform Review

- Any other priorities or needs from the Association and field?

***Come to November meeting with your ideas around legislative priorities and/or reach out to legislative committee. We will complete our annual priorities activities in our November and/or December Meetings. ***

Questions?

SELPA Tracked Bills
10/1/2020

A-CHAPTERED

AB 76 **(Committee on Budget) Education finance: apportionments.**
Current Text: Chaptered: 6/26/2020 html pdf
Introduced: 12/3/2018
Last Amend: 6/10/2020
Status: 6/26/2020-Approved by the Governor. Chaptered by Secretary of State - Chapter 5, Statutes of 2020.
Summary: Current law requires the Controller to draw warrants on the State Treasury throughout each year in specified amounts for purposes of apportioning funding to school districts, county offices of education, and charter schools.This bill, commencing with the 2019–20 fiscal year, would require the warrants scheduled to be drawn in June to instead be drawn in July of the same calendar year.

Position

AB 736 **(Irwin D) Employee classification: professional classification: specified educational employees.**
Current Text: Chaptered: 9/10/2020 html pdf
Introduced: 2/19/2019
Last Amend: 8/7/2020
Status: 9/9/2020-Approved by the Governor. Chaptered by Secretary of State - Chapter 44, Statutes of 2020.
Summary: Current law, Wage Order No. 4-2001 of the Industrial Welfare Commission, applies to people employed in professional, technical, clerical, mechanical, and similar occupations and addresses wages, hours, and working conditions. The wage order exempts specified persons, including a person who is employed in a professional capacity whose duties meet certain requirements from various portions of the order. Current law, Wage Order No. 5-2001 of the Industrial Welfare Commission, applies to persons employed in the public housekeeping industry, addresses wages, hours, and working conditions, and also exempts employees in administrative, executive, or professional capacities if their duties meet certain requirements. This bill would require that an employee employed to provide instruction for a course or laboratory at an independent institution of higher education, as defined, be classified as employed in a professional capacity, and therefore exempt from the wage and hour provisions of Wage Order No. 4-2001, or those of Wage Order No. 5-2001, as well as specified provisions of the Labor Code, if that person meets specified criteria, including being employed in a professional capacity as prescribed, being paid on a salary basis, and receiving one of alternative minimum compensations.

Position

AB 1350 **(Gonzalez D) Retroactive grant of high school diplomas: COVID-19 crisis.**
Current Text: Chaptered: 9/11/2020 html pdf
Introduced: 2/22/2019
Last Amend: 8/1/2020
Status: 9/11/2020-Approved by the Governor. Chaptered by Secretary of State - Chapter 66, Statutes of 2020.
Summary: Would authorize a high school district, unified district, county office of education, or the governing body of a charter school to retroactively grant a high school diploma to a person who was in their senior year of high school during the 2019–20 school year; in good academic standing and on track to graduate at the end of the 2019–20 school year, as of March 1, 2020; and unable to complete the statewide graduation requirements as a result of the COVID-19 crisis.

Position
Watch

AB 1859 **(Santiago D) School district employees: merit system: appointments.**
Current Text: Chaptered: 9/11/2020 html pdf
Introduced: 1/7/2020
Last Amend: 8/1/2020
Status: 9/11/2020-Approved by the Governor. Chaptered by Secretary of State - Chapter 67, Statutes of 2020.
Summary: Current law requires, with certain exceptions, vacancies in the classified service of a school district that has adopted the merit system to be filled by appointments made from the eligible

applicants having the first 3 ranks on the eligibility list who are ready and willing to accept the position. In a school district with a pupil population over 400,000, current law authorizes, until December 31, 2020, an appointment to specified classifications of positions to be made from other than the first 3 ranks on the eligibility list if one or more of specified criteria are required for successful job performance of the position to be filled, in which case existing law requires the appointment to be made from among the highest 3 ranks of eligible candidates on the list who meet the special requirements and are ready and willing to accept the position. Current law requires a school district that makes an appointment pursuant to this provision to study the effectiveness of the selection method, the vacancy rates for each class, and the length of time to hire for each class, and to submit a report of its findings to any affected labor union.This bill would extend the operation of the latter provisions from December 31, 2020, until January 1, 2027, and apply those provisions to the Los Angeles Unified School District instead of a school district with a pupil population over 400,000.

Position

AB 2257 **(Gonzalez D) Worker classification: employees and independent contractors: occupations: professional services.**

Current Text: Chaptered: 9/4/2020 html pdf

Introduced: 2/13/2020

Last Amend: 8/25/2020

Status: 9/4/2020-Approved by the Governor. Chaptered by Secretary of State - Chapter 38, Statutes of 2020.

Summary: Current law exempts specified occupations and business relationships from the application of the ABC test as described. Current law, instead, provides that these exempt relationships are governed by the multifactor test previously adopted in the case of S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341. Existing exemptions include persons providing professional services under specified circumstances, including certain services provided by still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists. This bill would revise and recast these provisions. The bill would additionally exempt certain occupations in connection with creating, marketing, promoting, or distributing sound recordings or musical compositions.

Position

ACR 178 **(Rubio, Blanca D) School Breakfast Week.**

Current Text: Chaptered: 6/25/2020 html pdf

Introduced: 2/25/2020

Status: 6/18/2020-Chaptered by Secretary of State- Chapter 29, Statutes of 2020

Summary: This measure would proclaim March 2, 2020, to March 6, 2020, inclusive, as School Breakfast Week.

Position

A-DEAD

AB 760 **(Cooper D) Education finance: local control funding formula: pupil transportation: cost-of-living adjustment and add-on.**

Current Text: Amended: 1/6/2020 html pdf

Introduced: 2/19/2019

Last Amend: 1/6/2020

Status: 2/3/2020-From committee: Filed with the Chief Clerk pursuant to Joint Rule 56.

Summary: Current law establishes a public school financing system that requires state funding for county superintendents of schools, school districts, and charter schools to be calculated pursuant to a local control funding formula, and requires funds received for specified pupil transportation programs to be included as part of the formula. This bill would, commencing with the 2020–21 fiscal year, require the amount of funds received for those pupil transportation programs to be adjusted by a specified cost-of-living calculation, and would require the Superintendent of Public Instruction to compute an add-on to the total sum of a county superintendent of schools', school district's, or charter school's base, supplemental, and concentration grants in accordance with a certain formula to incrementally equalize pupil transportation program funding to 90% of the approved cost expenditures of the county superintendent of schools', school district's, and charter school's pupil transportation programs.

Position

AB 1021 **(Frazier D) Pupils with exceptional needs: individualized education programs.**
Current Text: Amended: 1/6/2020 html pdf
Introduced: 2/21/2019
Last Amend: 1/6/2020
Status: 2/3/2020-From committee: Filed with the Chief Clerk pursuant to Joint Rule 56.
Summary: Current law requires local educational agencies to identify, locate, and assess individuals with exceptional needs and to provide those individuals with a free appropriate public education in the least restrictive environment, with special education and related services as reflected in an individualized education program. Current law requires a local educational agency to initiate and conduct meetings for the purposes of developing, reviewing, and revising the individualized education program of each individual with exceptional needs. Current law requires a local educational agency to give a parent or guardian a copy of the individualized education program, at no cost to the parent or guardian. This bill would additionally require the local educational agency, at least 72 hours before the individualized education program meeting, to make available to the parent or guardian a preliminary draft of the individualized education program in electronic form and to mail to the parent or guardian a hard copy of that preliminary draft, at no cost to the parent or guardian, as provided.

Position
Watch

AB 1834 **(Weber D) Education finance: local control funding formula: supplemental and concentration grants.**
Current Text: Introduced: 1/6/2020 html pdf
Introduced: 1/6/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 1/17/2020)
Summary: Would require the State Department of Education to develop, on or before January 1, 2021, a tracking mechanism for school districts, county offices of education, and charter schools to use to report the types of services on which they spend their supplemental and concentration grant funds. The bill would require each local educational agency, commencing July 1, 2021, to annually report to the department the types of services on which it spends its supplemental and concentration grant funds using the tracking mechanism developed by the department.

Position

AB 1856 **(Frazier D) Pupils with exceptional needs: individualized education programs: emergency safety procedures.**
Current Text: Introduced: 1/7/2020 html pdf
Introduced: 1/7/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 1/17/2020)
Summary: Would require the individualized education program for a pupil with exceptional needs to include a description of the procedures in place to ensure the pupil's safety in an emergency, including any necessary accommodations. The bill would require a local educational agency, as defined, to create and maintain an Inclusive School Emergency Plan and would require that those safety procedures be included in the Inclusive School Emergency Plan for any pupil whose parent provides written consent in compliance with specified federal law. The bill would require a physical copy of the Inclusive School Emergency Plan to be kept at every schoolsite under the jurisdiction of the local educational agency and would require the Inclusive School Emergency Plan to be maintained and used in compliance with all applicable state and federal privacy laws.

Position

AB 1914 **(O'Donnell D) Special education: inclusive education.**
Current Text: Introduced: 1/9/2020 html pdf
Introduced: 1/9/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 1/17/2020)
Summary: Would establish the Supporting Inclusive Practices project, to be administered by the State Department of Education through the provision of grant funds, upon appropriation, to department-designated lead local educational agencies, as defined. The bill would require the project to have certain goals, including increasing opportunities for pupils with disabilities to meaningfully participate in general education. The bill would require the department, in awarding grant funds, to prioritize local educational agencies that are identified as not meeting specified standards pursuant to federal and state law. The bill would require a local educational agency that receives a grant to provide the department with specified data. The bill would require, on or before June 30 of each year until any and all funds appropriated for these purposes have been expended, the project to submit a report to the Superintendent of Public Instruction, as provided.

Position
Support

AB 1928 **(Kiley R) Employment standards: independent contractors and employees.**
Current Text: Introduced: 1/15/2020 html pdf
Introduced: 1/15/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was A. L. & E. on 2/14/2020)
Summary: Currentlaw establishes that, for purposes 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 is 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. This test is commonly known as the "ABC" test. Current law charges the Labor Commissioner with the enforcement of labor laws, including worker classification. Current law exempts specified occupations and business relationships from the application of Dynamex and these provisions. Current law instead provides that these exempt relationships are governed by the test adopted in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d (Borello). This bill would repeal those existing provisions and instead require a determination of whether a person is an employee or an independent contractor to be based on the specific multifactor test set forth in Borello, including whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired, and other identified factors. The bill would make related, conforming changes.

Position

AB 1944 **(Quirk-Silva D) Foster care payments: reasonable travel reimbursement for school.**
Current Text: Introduced: 1/16/2020 html pdf
Introduced: 1/16/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was HUM. S. on 1/30/2020)
Summary: Current law establishes the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, under which counties provide to foster care providers a per-child, per-month rate, established by the State Department of Social Services, for the care and supervision of the child or nonminor dependent placed with the provider. Current law requires that foster care providers be reimbursed for the costs of reasonable travel for the child to remain in the school in which the child was enrolled at the time of placement. Current law also requires counties to provide payment to an emergency caregiver who is not yet a foster care provider on behalf of a child or nonminor dependent placed in the home of the caregiver that is equivalent to that per-child, per-month rate. This bill would additionally require a county to provide to those emergency caregivers a payment to cover the cost of reasonable travel for the child to remain in the school in which the child or nonminor dependent is enrolled at the time of placement.

Position

AB 1956 **(Quirk-Silva D) Special education: braille instructional aide: notice of teacher credentialing programs.**
Current Text: Amended: 3/2/2020 html pdf
Introduced: 1/17/2020
Last Amend: 3/2/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. ED. on 3/2/2020)
Summary: Current law establishes the California Classified School Employee Teacher Credentialing Program as a grant program for purposes of encouraging classified school employees to enroll in teacher training programs and to provide instructional service as teachers in the public schools, as specified. This bill would require a local educational agency to provide a braille instructional aide with information regarding the California Classified School Employee Teacher Credentialing Program.

Position

AB 1995 **(Rivas, Luz D) Pupil nutrition: reduced-price meals.**
Current Text: Introduced: 1/27/2020 html pdf
Introduced: 1/27/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/6/2020)
Summary: Would require a school district or county superintendent of schools maintaining a kindergarten or any of grades 1 to 12, inclusive, to provide a pupil, eligible to receive a reduced-priced meal, that meal free of charge. By creating a new duty on a school district or a county superintendent of schools, the bill would create a state-mandated program. To comply with the above, the bill would authorize a school district or county office of education to use funds made available through any

federal, to the extent allowed, or state program relating to the provision of meals to pupils, as provided.

Position

AB 2018 **(Gabriel D) Pupil mental health: model referral protocols.**
Current Text: Introduced: 1/29/2020 html pdf
Introduced: 1/29/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/14/2020)
Summary: Would require the State Department of Education to develop model referral protocols, as provided, for addressing pupil mental health concerns. The bill would require the department to consult with various entities in developing the protocols, including current classroom teachers and administrators. The bill would require the department to post the model referral protocols on its internet website. The bill would make these provisions contingent upon funds being appropriated for its purpose in the annual Budget Act or other legislation, or state, federal, or private funds being allocated for this purpose.

Position

AB 2024 **(Holden D) Developmental disabilities: provider rates.**
Current Text: Introduced: 1/29/2020 html pdf
Introduced: 1/29/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(8). (Last location was A. APPR. SUSPENSE FILE on 6/2/2020)
Summary: Under current law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is responsible for providing various services and supports to persons with developmental disabilities, and for ensuring the appropriateness and quality of those services and supports. Current law authorizes the department to contract with regional centers to provide these services and supports. Current law sets forth the department's and the regional center's authority to establish provider rates and prohibits certain provider rate increases. This bill would require certain provider rates to be increased by 3.33% for each $1 increase in the state minimum wage, or by a prorated percentage for an increase that is not a whole number.

Position

AB 2034 **(Dahle, Megan R) School districts: frontier school district.**
Current Text: Introduced: 1/30/2020 html pdf
Introduced: 1/30/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. ED. on 2/14/2020)
Summary: Current law establishes the Education Code and sets forth general provisions, rules of construction, and definitions that govern its construction.This bill, for purposes of the Education Code, would define "frontier school district" to mean a school district that meets certain attendance or population criteria.

Position

AB 2056 **(Garcia, Eduardo D) Special education programs: Family Empowerment Centers on Disability.**
Current Text: Introduced: 2/3/2020 html pdf
Introduced: 2/3/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/14/2020)
Summary: Would revise and recast the provisions related to Family Empowerment Centers on Disability, including requiring the department to give priority to grant applicants in those of the 32 regions in the state that do not have a center, increasing the minimum base rate for each center awarded a grant from $150,000 to $237,000 commencing with the start of the fiscal year after a center has been established in each of the 32 regions, and, commencing with the 2023–24 fiscal year, providing for an annual cost-of-living adjustment of the grant amount, as specified. The bill would also increase the base amount to be made available annually to the council from $150,000 to $237,000.

Position
Support

AB 2075 **(Kiley R) Worker status: independent contractors: hiring entity liability.**
Current Text: Amended: 3/12/2020 html pdf
Introduced: 2/5/2020
Last Amend: 3/12/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was A. RLS. on

3/16/2020)
Summary: Would, until January 1, 2021, prohibit the application of the ABC test to determine the liability of a hiring entity for damages, injunctive relief, or civil penalties based upon the classification of workers as independent contractors, and instead would require that employer liability to be based upon the multifactor test set forth in the case of Borello. The bill would provide that its provisions apply retroactively, as specified.

Position

AB 2099 **(Calderon D) Mental Health Student Services Act.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/5/2020
Last Amend: 5/4/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. ED. on 4/24/2020)
Summary: Current law establishes the Mental Health Student Services Act as a mental health partnership competitive grant program for the purpose of establishing mental health partnerships between a county's mental health or behavioral health departments and school districts, charter schools, and the county office of education within the county. This bill would require a school district, charter school, or county office of education awarded a grant under the program to ensure that an individual hired with grant funds to provide mental health services to children and youth holds a current and valid license from the Board of Behavioral Sciences, as specified.

Position

AB 2110 **(Chu D) School safety: hate- and bias-related events.**
Current Text: Amended: 3/9/2020 html pdf
Introduced: 2/6/2020
Last Amend: 3/9/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/20/2020)
Summary: Would require the State Department of Education, in consultation with the Department of Justice and relevant experts in the field, including physical, developmental, and intellectual disability experts, mental health experts, and civil rights groups, to create training materials and guidelines on how to prevent, recognize, and respond to hate- and bias-related events in schools, for use in the training of school administrators and staff. The bill would require these training materials and guidelines to be made available on the department's internet website, and would require the department to provide an electronic notification of the availability of the training materials and guidelines to all schools that serve kindergarten or any of grades 1 to 12, inclusive.

Position

AB 2116 **(Levine D) Pupil health: seizure disorders.**
Current Text: Introduced: 2/6/2020 html pdf
Introduced: 2/6/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/20/2020)
Summary: Would, commencing January 1, 2022, require the governing board or governing body of a local educational agency, as defined, to have at each school under its jurisdiction at least one school employee who has received specified training relating to seizure recognition, treatment, and response. The bill would require a school, as defined, to provide training to school personnel with direct contact and supervision of pupils on recognizing the signs and symptoms of seizures and the appropriate steps for seizure first aid. The bill would authorize a school nurse or other designated school personnel who has received the training described above to administer, or a pupil to self-administer, seizure rescue medication or medication prescribed to treat seizure disorder symptoms, if certain conditions and requirements are met.

Position

AB 2123 **(Chau D) Accessibility: internet website.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/6/2020
Last Amend: 5/4/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was JUD. on 2/20/2020)
Summary: Current law establishes in state government the California Commission on Disability Access which is required to provide information regarding preventing or minimizing problems of compliance by California businesses by providing educational services, including outreach efforts, and by preparing and hosting on its internet website a Guide to Compliance with State Laws and Regulations Regarding

Disability Access Requirements. This bill would specify that statutory damages based upon the inaccessibility of internet website under these provisions shall only be recovered against an entity, as defined, if the internet website fails to provide equally effective communication or facilitate full and equal enjoyment of the entity's goods and services to the public.

Position

AB 2127 **(O'Donnell D) School property: location and facility details.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/10/2020
Last Amend: 5/4/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/20/2020)
Summary: Current law requires the schoolsite council of a school to write and develop the comprehensive school safety plan relevant to the needs and resources of that particular school, in consultation with a representative from a law enforcement agency, a fire department, and other first responder entities. Current law requires a petition to establish a charter school to include, among other things, a reasonably comprehensive description of the procedures that the charter school will follow to ensure the health and safety of pupils and staff, including requiring the development and annual update of a school safety plan that includes certain safety topics and procedures. This bill, commencing with the 2022–23 school year, would require a county office of education, school district, and charter school to provide, and to update annually as needed, certain information to the State Department of Education for each school facility, schoolsite, or school property owned or leased by the local educational agency.

Position

AB 2132 **(Irwin D) School safety: crisis intervention and targeted violence prevention program.**
Current Text: Amended: 3/12/2020 html pdf
Introduced: 2/10/2020
Last Amend: 3/12/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/12/2020)
Summary: Would require the governing board of a school district, on or before August 1, 2021, to adopt policies for the establishment of a crisis intervention and targeted violence prevention program that assists in the identification and assessment of individuals who may be experiencing a crisis or whose behavior may indicate a threat to the health and safety of themselves, pupils, school staff, or other community members, and that provides referrals to appropriate services.

Position

AB 2133 **(Irwin D) School safety: confidential crisis help systems.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/10/2020
Last Amend: 5/4/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 4/24/2020)
Summary: Would require, on or before January 1, 2023, the Office of Emergency Services, in collaboration with the Coordinated School Health and Safety Office of the State Department of Education, to implement and maintain a statewide confidential crisis help system for purposes of the identification and early intervention of individuals who may be experiencing crisis or whose behavior may indicate a threat to the health and safety of themselves, pupils, school staff, or other community members. The bill would require, on or before January 1, 2022, the Office of Emergency Services, in collaboration with the Coordinated School Health and Safety Office, to develop standards and guidelines for the operation and use of the statewide confidential crisis help system.

Position

AB 2162 **(O'Donnell D) School facilities: indoor air quality.**
Current Text: Introduced: 2/11/2020 html pdf
Introduced: 2/11/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/20/2020)
Summary: Would require a school district to ensure that school facilities meet the minimum requirements of regulations enacted by the Occupational Safety and Health Standards Board that govern the quality of air provided to employees in places of employment. The bill would require school districts to use contractors who have been certified by a nationally recognized organization for the inspection, maintenance, and repair of heating, ventilation, and air-conditioning systems.

Position

AB 2171 **(Rubio, Blanca D) Teachers credentialing: beginning teacher induction programs.**
Current Text: Introduced: 2/11/2020 html pdf
Introduced: 2/11/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. ED. on 2/20/2020)
Summary: Would, commencing with hiring for the 2021–22 school year, and each school year thereafter, prohibit a school district, county office of education, or charter school from charging a fee to a beginning teacher to participate in a beginning teacher induction program that is approved by the commission and the Superintendent of Public Instruction, and would define a beginning teacher for purposes of that provision to include a teacher with a preliminary multiple or single subject teaching credential, or a preliminary education specialist credential.
Position

AB 2181 **(Weber D) Teachers: Uplift Teaching Corps Act of 2020.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/11/2020
Last Amend: 5/4/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 4/24/2020)
Summary: Would enact the Uplift Teaching Corps Act of 2020 that would establish the Uplift Teaching Corps Grant Program, to be administered by the Commission on Teacher Credentialing, to provide one-time competitive grants to school districts, county offices of education, and charter schools to establish new or expand existing teacher-based residency programs for purposes of recruiting and retaining prospective resident teachers with high degrees of instructional and cultural competence to teach in high-needs schools, as provided. The bill would make the operation of these provisions contingent upon an appropriation in the annual Budget Act or other statute for these purposes.
Position

AB 2211 **(Rubio, Blanca D) School breakfast: instructional minutes.**
Current Text: Introduced: 2/12/2020 html pdf
Introduced: 2/12/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/20/2020)
Summary: Would require time spent by a pupil in kindergarten or any of grades 1 to 12, inclusive, consuming breakfast provided through a school breakfast program at a school district, county office of education, or charter school to be considered instructional minutes that generate average daily attendance for purposes of computing any apportionments of state funding if the pupil consumes the breakfast in the pupil's classroom and educational activities are provided to the pupil while the pupil is consuming the breakfast. The bill would authorize the department to adopt guidelines and regulations prescribing standards for implementing that requirement.
Position

AB 2221 **(Garcia, Cristina D) Pupil Support Training Program.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/12/2020
Last Amend: 5/4/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/24/2020)
Summary: Would, subject to an appropriation by the Legislature for its purposes, establish the Pupil Peer Support Training Program. The bill would require the Superintendent of Public Instruction to develop an application process and administration plan for the selection of grant recipients under the program before January 1, 2021.
Position

AB 2259 **(Fong R) Interscholastic athletic programs: emergency action plans: heat stroke.**
Current Text: Amended: 3/12/2020 html pdf
Introduced: 2/13/2020
Last Amend: 3/12/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. ED. on 3/12/2020)
Summary: If a school district or charter school elects to offer any interscholastic athletic program, current law requires the governing entity of the school district or charter school to ensure that there is a written emergency action plan in place that describes the location and procedures to be followed in the event of sudden cardiac arrest or other medical emergencies related to the athletic program's

activities or events. This bill would require the written emergency action plan to also include the location and procedures to be followed in the event of heat stroke related to the athletic program's activities or events.

Position

AB 2263 **(Weber D) Special education: nonpublic, nonsectarian schools or agencies: change in certification status: parental notification.**
Current Text: Introduced: 2/14/2020 html pdf
Introduced: 2/14/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. ED. on 2/24/2020)
Summary: Would require a contracting local educational agency, within 14 days of becoming aware of any change to the certification status of a nonpublic, nonsectarian school or agency, to inform parents and guardians of pupils who attend the nonpublic, nonsectarian school or agency of the change in certification status, as provided.

Position

AB 2268 **(Grayson D) California state preschool programs: eligibility.**
Current Text: Introduced: 2/14/2020 html pdf
Introduced: 2/14/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/14/2020)
Summary: Current law requires the Superintendent of Public Instruction to administer all California state preschool programs, which include, but are not limited to, part-day age and developmentally appropriate programs designed to facilitate the transition to kindergarten for 3- and 4-year-old children in educational development, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development. This bill would make a nonsubstantive change to that provision.

Position

AB 2289 **(Nazarian D) Mental Health Services Fund.**
Current Text: Introduced: 2/14/2020 html pdf
Introduced: 2/14/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/14/2020)
Summary: Current law, the Mental Health Services Act, an initiative measure enacted by the voters as Proposition 63 at the November 2, 2004, statewide general election, funds a system of county mental health plans for the provision of mental health services, as specified. The act establishes the Mental Health Services Fund, which is continuously appropriated to, and administered by, the State Department of Health Care Services to fund specified county mental health programs.This bill would make technical, nonsubstantive changes to those provisions.

Position

AB 2291 **(Medina D) Special education funding.**
Current Text: Introduced: 2/14/2020 html pdf
Introduced: 2/14/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/24/2020)
Summary: Current law establishes a public school financing system that requires state funding for county superintendents of schools, school districts, and charter schools to be calculated pursuant to a local control funding formula. Current law requires the Superintendent of Public Instruction to determine the amount of funding to be provided for each special education local plan area in accordance with specified calculations. Current law requires the Superintendent, for the 2013–14 fiscal year, to compute an equalization adjustment for each special education local plan area for purposes of increasing the funding rates for special education local plan areas with funding rates below the 90th percentile, as specified. This bill would increase that percentile to the 95th percentile and would require the Superintendent to compute that equalization adjustment commencing with the first fiscal year after funds are apportioned pursuant to a specified formula and for each fiscal year thereafter in which an equalization appropriation is made, as specified.

Position
Support

AB 2315 **(Weber D) Teacher Residency Grant Program.**
Current Text: Introduced: 2/14/2020 html pdf
Introduced: 2/14/2020

Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/14/2020)
Summary: Current law establishes the Teacher Residency Grant Program as a one-time competitive grant program, administered by the Commission on Teacher Credentialing, for the recruitment and retention of teachers, as specified.This bill would express the intent of the Legislature to later enact legislation that would make changes to the Teacher Residency Grant Program.

Position

AB 2366 **(Chu D) Pupil health: Trauma, Grief, and Loss Pilot Program.**
Current Text: Introduced: 2/18/2020 html pdf
Introduced: 2/18/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/2/2020)
Summary: Would, subject to moneys being appropriated by the Legislature for the purposes of the bill, establish the Trauma, Grief, and Loss Pilot Program, to be administered by the State Department of Education. The bill would authorize school districts, county offices of education, and charter schools maintaining grades 9 to 12, inclusive, that meet certain criteria to apply to the department for a one-time multiyear pilot program grant award for the 2021–22 to the 2025–26 school year, inclusive.

Position

AB 2378 **(Cooper D) Public Employees' Retirement System: postretirement death benefit.**
Current Text: Introduced: 2/18/2020 html pdf
Introduced: 2/18/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was P.E. & R. on 2/24/2020)
Summary: Would authorize the Board of Administration of the Public Employees' Retirement System, beginning on or after January 1, 2021, to adjust the death benefit amounts following each actuarial valuation to reflect changes in the All Urban California Consumer Price Index, as specified. By authorizing the board to increase contributions deposited in the Public Employees' Retirement Fund, this bill would make an appropriation.

Position

AB 2394 **(Cooper D) Public Employees' Retirement System: allowances: cost of living adjustment.**
Current Text: Introduced: 2/18/2020 html pdf
Introduced: 2/18/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was P.E. & R. on 2/24/2020)
Summary: The Public Employees' Retirement Law establishes the Public Employees' Retirement System, which provides a defined benefit to members of the system, based on final compensation, credited service, and age at retirement, subject to certain variations. Existing law generally provides that retirement allowances are adjusted annually to reflect increases in the cost of living in relation to the consumer price index, as defined. This bill would change the definition of "consumer price index," effective January 1, 2021, to instead refer to the California Consumer Price Index for All Urban Consumers for all items, as determined by the Department of Industrial Relations.

Position

AB 2396 **(O'Donnell D) Local government: local educational agencies: ethics and governance training.**
Current Text: Introduced: 2/18/2020 html pdf
Introduced: 2/18/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/12/2020)
Summary: Current law requires all local agency officials to receive training in ethics, at specified intervals, if the local agency provides any type of compensation, salary, or stipend to those officials. Current law defines "local agency," for these purposes, to mean a city, county, city and county, charter city, charter county, charter city and county, or special district. Existing law also defines "local agency official" to include members of local agency legislative bodies or elected local agency officials who receive any type of compensation, salary, or stipend or reimbursement in the performance of official duties, as specified. This bill would include a school district, county office of education, and charter school in the definition of "local agency."

Position

AB 2420 **(Rubio, Blanca D) Special education: individualized education programs: transition services.**
Current Text: Introduced: 2/19/2020 html pdf

Introduced: 2/19/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/24/2020)
Summary: Current law requires, beginning not later than the first individualized education program to be in effect when a pupil with exceptional needs is 16 years of age, or younger if determined appropriate by the individualized education program team, and updated annually thereafter, the individualized education program to include appropriate measurable postsecondary goals and transition services, as defined, needed to assist the pupil in reaching those goals. Current law requires a local educational agency, to the extent appropriate, with the consent of the parents or the individual with exceptional needs who has reached the age of majority, to invite to an individualized education program team meeting a representative of any participating agency that is likely to be responsible for providing or paying for transition services. This bill would instead require an individualized education program to include measurable postsecondary goals and transition services beginning when an individual with exceptional needs is 6 years of age or in grade 1, whichever is applicable first, or sooner at the parent's request.

Position

AB 2472 **(Jones-Sawyer D) Public schools: accountability: county superintendents of schools.**
Current Text: Introduced: 2/19/2020 html pdf
Introduced: 2/19/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/24/2020)
Summary: Under current law, county superintendents of schools superintend the schools of that county, maintain responsibility for the fiscal oversight of each school district in that county, and visit and examine each school in the county at reasonable intervals to observe its operation and learn of its problems. This bill would recast and revise the duties of the county superintendent. The bill would require the Superintendent of Public Instruction to identify a list of schools pursuant to a specified procedure based on the schools identified for comprehensive support and improvement and additional targeted support and improvement or as low-performing pursuant to specified federal laws, and submit a report as to the state of those schools.

Position

AB 2500 **(McCarty D) Transitional kindergarten: average daily attendance.**
Current Text: Introduced: 2/19/2020 html pdf
Introduced: 2/19/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/24/2020)
Summary: Current law requires, in the 2014–15 school year and each school year thereafter, and as a condition of receipt of apportionments for pupils in a transitional kindergarten program, a child who will have their 5th birthday between September 2 and December 2 to be admitted to a transitional kindergarten program maintained by a school district or charter school. Existing law authorizes, for the 2015–16 school year, and each school year thereafter, a school district or charter school to admit a child to a transitional kindergarten program who will have their 5th birthday after December 2 but during that same school year, as provided. Current law prohibits a pupil admitted to a transitional kindergarten who has their birthday after December 2 from generating average daily attendance or being included in the enrollment or unduplicated pupil count until the pupil has attained their 5th birthday, as provided. This bill would delete the provision that prohibits a pupil admitted to a transitional kindergarten who has their birthday after December 2 from generating average daily attendance or being included in the enrollment or unduplicated pupil count, as provided.

Position

AB 2516 **(Reyes D) Teachers: professional development: bilingual and dual language grant programs.**
Current Text: Introduced: 2/19/2020 html pdf
Introduced: 2/19/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/27/2020)
Summary: Current law establishes the Bilingual Teacher Professional Development Program, administered by the State Department of Education in consultation with the Commission on Teacher Credentialing, for teachers seeking to provide instruction in bilingual and multilingual settings. Current law requires the department to issue a minimum of 5 grants to applicants through a competitive process and to allocate grant funding to eligible local educational agencies for purposes of providing professional development services to teachers or paraprofessionals. Current law provides that a teacher or paraprofessional is eligible for professional development services funded by a grant if the teacher possesses a teaching credential or an education specialist credential authorizing the holder to teach pupils with exceptional needs and the teacher possesses an authorization to teach English learners or seeks that authorization, and meets other specified requirements, as provided. This bill would delete the requirement that the department issue a minimum of 5 grants.

Position

AB 2575 **(Fong R) Teacher Residency Grant Program.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was HIGHER ED. on 3/12/2020)
Summary: Would appropriate $10,000,000 from the General Fund to the Commission on Teacher Credentialing to award grants under the Teacher Residency Grant Program. The bill would require the commission to give priority consideration to applicants that partner with the California Community Colleges, the California State University, the University of California, or a county office of education, or that are located in a county with a high percentage of provisionally credentialed teachers.

Position

AB 2590 **(Gipson D) School districts: local authority.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/20/2020)
Summary: Current law authorizes the governing board of a school district to initiate and carry on any program, activity, or to act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which school districts are established.This bill would make nonsubstantive changes to that provision.

Position

AB 2636 **(Quirk-Silva D) Pupil assessment: prohibition on voluntary assessments.**
Current Text: Amended: 3/9/2020 html pdf
Introduced: 2/20/2020
Last Amend: 3/9/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. ED. on 3/9/2020)
Summary: Would prohibit a county office of education, school district, state special school, or direct-funded charter school from requiring the administration of additional standardized pupil assessments beyond what is required by the state or federal government.

Position

AB 2646 **(Levine D) Education finance: supplemental education funding.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/2/2020)
Summary: Would require a local educational agency to receive as supplemental education funding the difference between what the local educational agency would have received under the local control funding formula based on the number of pupils enrolled for an academic semester or quarter, as applicable, and what the local educational agency received under the local control funding formula based on average daily attendance for that fiscal year. In order for a local educational agency to be eligible for supplemental educational funding, the bill would require the local educational agency to report to the Superintendent at the start of each academic semester or quarter, as applicable, the number of pupils enrolled for the academic semester or quarter. The bill would condition implementation of these provisions upon the appropriation of funds for these purposes in the annual Budget Act or other statute.

Position

AB 2648 **(Holden D) Speech language pathologists.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was B.&P. on 3/12/2020)
Summary: The Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act defines the practice of speech-language pathology to include the application of instrumental procedures for specified purposes relating to the development and disorders of speech, voice, language, or swallowing. Current law specifies that instrumental procedures are the use of rigid and flexible endoscopes to observe specified areas of the throat for specified purposes, including collecting data. Current law prohibits the construction of the provisions on the application of instrumental

procedures as a diagnosis and imposes a requirement that any abnormalities be referred to a physician and surgeon. This bill would add to the above-specified provisions on instrumental procedures a statement that the passage of those instruments without the presence of a physician and surgeon is subject to the existing prohibition on construing those provisions as a diagnosis and the requirement to refer abnormalities to a physician and surgeon.

Position

AB 2651 **(Dahle, Megan R) School finance: necessary small schools.**
Current Text: Amended: 5/11/2020 html pdf
Introduced: 2/20/2020
Last Amend: 5/11/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(8). (Last location was A. APPR. SUSPENSE FILE on 6/2/2020)
Summary: Current law requires, for each school district that includes a necessary small school, as defined, in the current or prior fiscal year, the Superintendent of Public Instruction to compute a specified funding allocation for each necessary small school in the school district. Current law requires that funding allocation to be the greater of either the amount calculated based on prior year average daily attendance or the amount calculated based on current year average daily attendance, as provided. This bill would instead require the Superintendent to make that funding allocation for each school district that includes a necessary small school in the current fiscal year or either of the 2 most recent prior fiscal years.

Position

AB 2668 **(Quirk-Silva D) Integrated School-Based Behavioral Health Partnership Program.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/20/2020
Last Amend: 5/4/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/12/2020)
Summary: Would establish the Integrated School-Based Behavioral Health Partnership Program to provide early intervention for, and access to, behavioral health services for pupils. The bill would authorize a county behavioral health agency and the governing board or governing body of a local educational agency to agree to collaborate on and implement an integrated school-based behavioral health partnership program and to develop a memorandum of understanding outlining the requirements for the partnership program. The bill would require a county behavioral health agency to provide, through its own staff or through its network of contracted community-based organizations, one or more behavioral health professionals that meet specified licensing requirements to serve pupils with serious emotional disturbances or substance use disorders, or who are at risk of developing a serious behavioral health condition.

Position

AB 2670 **(Weber D) Pupil discipline: restraint and seclusion: reporting.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/2/2020)
Summary: Current law requires a local educational agency that meets a specified federal definition to collect and, no later than 3 months after the end of a school year, report to the State Department of Education annually on the use of behavioral restraints and seclusion for pupils enrolled in or served by the local educational agency for all or part of the prior school year, as specified. This bill would require those local educational agencies to post that report on their internet websites annually. Because the bill would impose a new requirement on those local educational agencies, the bill would impose a state-mandated local program.

Position

AB 2682 **(Medina D) Certificated school employees: probationary employees.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. ED. on 3/12/2020)
Summary: Would require a certificated employee of a school district or a county superintendent of schools, regardless of the average daily attendance of the school district or county superintendent of schools, who completes 2 consecutive school years and is so reelected to become and be classified as a permanent employee.

Position

AB 2684 **(Rubio, Blanca D) School employee credentialing: occupational therapy and physical therapy services: workgroup.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/2/2020)
Summary: Would require the Commission on Teacher Credentialing to convene a workgroup, as provided, to consider whether the development of a services credential with a specialization in occupational therapy or physical therapy services is warranted. The bill would require the workgroup to provide a report on its findings to the commission on or before July 1, 2021.

Position

AB 2685 **(Weber D) Education finance: local control funding formula: supplemental grants: lowest performing pupil subgroup or subgroups.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/2/2020)
Summary: Would, commencing with the 2021–22 fiscal year, adjust the definition of "unduplicated pupils" to include pupils who are included in the lowest performing subgroup or subgroups, as defined, based on the most recently available mathematics or language arts results on the California Assessment of Student Performance and Progress, as specified. The bill would require the Superintendent of Public Instruction to annually identify the lowest performing pupil subgroup or subgroups. The bill would require that implementation of these provisions be contingent upon the appropriation of funds for these purposes in the annual Budget Act or other statute.

Position

AB 2709 **(Weber D) Full-day kindergarten.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/2/2020)
Summary: Would require, commencing with the 2023–24 school year, schools in school districts offering kindergarten and charter schools serving pupils in early primary grades to implement at least 1 full-day kindergarten program, thereby imposing a state-mandated local program. The bill would provide that a minimum schoolday for full-day kindergarten is the same number of minutes per schoolday that is offered to pupils in 1st grade.

Position

AB 2710 **(Kalra D) Teacher credentialing: special education.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/20/2020)
Summary: Would declare the intent of the Legislature that the commission and the State Department of Education implement pathways for credentialed general education teachers to obtain an authorization to teach special education pupils with mild or moderate disabilities.

Position

AB 2743 **(McCarty D) California School Employee Housing Assistance Pilot Program.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was H. & C.D. on 3/12/2020)
Summary: Current law, the Teacher Housing Act of 2016, authorizes a school district to establish and implement programs that address the housing needs of teachers and school district employees who face challenges in securing affordable housing, as provided. This bill, upon appropriation in the annual Budget Act, would require HCD, in collaboration with the State Department of Education, to administer a competitive grant program to provide planning grants of up to $100,000 each to up to 10 qualified school districts, as defined, that partner with a developer to provide affordable school employee rental housing, as defined, to be used for specified purposes in connection with an affordable school employee rental housing project.

Position

AB 2750 **(Bigelow R) Worker status: independent contractors.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/20/2020)
Summary: Current law charges the Labor Commissioner with the enforcement of labor laws, including worker classification. Existing law exempts specified occupations and business relationships from the application of the "ABC" test. Current law, instead, provides that these exempt relationships are governed by the multifactor test previously established in the case of S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341. This bill would make nonsubstantive changes to these provisions.

Position

AB 2755 **(Levine D) Housing: teachers and local agency employees.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/20/2020)
Summary: Would state the intent of the Legislature to enact legislation that would expand affordable housing opportunities for teachers and other local educational agency employees through the Teacher Housing Act of 2016.

Position

AB 2798 **(Maienschein D) Pupil mental health issues: early identification: in-service training.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/12/2020)
Summary: Would require each school district, county office of education, and charter school to provide in-service training to certificated employees and classified staff on the early identification of pupil mental health issues, as provided.

Position

AB 2803 **(Weber D) School districts: novice teachers: placements.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/20/2020)
Summary: Would express the intent of the Legislature to enact legislation that would prohibit a school district from assigning novice teachers to fill more than 10% of the teaching positions at a particular school.

Position

AB 2813 **(Jones-Sawyer D) Pupil health: mental health care.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/20/2020)
Summary: Would state the intent of the Legislature to enact legislation that would increase access to mental health care for pupils in kindergarten and grades 1 to 12, inclusive.

Position

AB 2863 **(Frazier D) Special education funding.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/5/2020)
Summary: Current law establishes the special education early intervention preschool grant, which requires the Superintendent of Public Instruction, in any year moneys are appropriated for this purpose, to allocate grant funding to school districts for preschool children with exceptional needs, as provided. Current law, for the 2020–21 fiscal year, prohibits the Superintendent from making certain computations for special education funding unless the Superintendent receives a joint notification from

the Director of Finance, or the director's designee, and the chairperson and vice chairperson of the Joint Legislative Budget Committee, or their designees, that determines certain statutory changes designed to improve the academic outcomes of individuals with exceptional needs has occurred. This bill would extend the above-described prohibition to the 2021–22 fiscal year.

Position

AB 2867 **(Kiley R) Pupil assessments: statewide data.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/21/2020)
Summary: Would state the intent of the Legislature to enact legislation that would require the department to make statewide pupil growth data publicly available.

Position

AB 2893 **(McCarty D) Early childhood education: State Department of Education: resources, plans, and an informational web page.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/5/2020)
Summary: Would require the State Department of Education to, among other things, and subject to funding being provided for these purposes, develop and implement a proactive one-time, 3-year, outreach, capacity building, training and technical assistance plan, disseminate information regarding training and technical assistance events, training, and resources, as specified, and create, and make publicly accessible, no later than July 1, 2021, and annually update, a web page on its internet website that includes specified information relating to the operation of early learning and care programs, as provided.

Position

AB 2894 **(McCarty D) General plans: early childhood education facilities.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was L. GOV. on 3/5/2020)
Summary: Would require, upon the next revision of the land use element on or after January 1, 2022, the land use to be revised and updated to address the need for early childhood facilities. The bill would require the update and revision to include, among other things, information regarding the location and capacity of existing early childhood education facilities and the barriers to locating and increasing the capacity of existing and any needed future early childhood education facilities. The bill would require the element include a set of goals, policies, and objectives based on that information and a set of feasible implementation measures designed to carry out those goals, policies, and objectives.

Position

AB 2912 **(Gray D) Medi-Cal specialty mental health services.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was HEALTH on 3/5/2020)
Summary: Would require, on or before January 1, 2022, the State Department of Health Care Services, in consultation with specified groups, including representatives from the County Welfare Directors Association of California, to identify all forms currently used by each county mental health plan contractor for purposes of determining eligibility and reimbursement for specialty mental health services provided under the Early and Periodic Screening, Diagnostic, and Treatment Program, and to develop standard forms for the intake of, assessment of, and the treatment planning for, Medi-Cal beneficiaries who are eligible for those services to be used by all counties.

Position

AB 3002 **(Rivas, Robert D) Teachers: teacher shortage and diversity programs: evaluation.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/5/2020)
Summary: Would require the Commission on Teacher Credentialing to conduct an annual evaluation of

all investments in addressing teacher shortages and teacher diversity, including, among others, the Teacher Residency Grant Program and the Local Solutions Grant Program, to determine the effectiveness of these programs in recruiting, developing support systems for, and retaining special education, bilingual education, and STEM teachers and teachers of color, and, with respect to this evaluation, would require the commission to annually provide a report to the Department of Finance and the appropriate fiscal and policy committees of the Legislature. The bill would specify various topics and types of data that would be required to be included in the annual evaluation.

Position

AB 3018 **(Brough R) State educational entities: Educational Innovation and Planning Commission.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/5/2020)
Summary: Current law establishes the Educational Innovation and Planning Commission to assist the State Board of Education and the State Department of Education in the planning, development, and improvement of educational programs, to evaluate all programs and projects assisted by federal funds provided pursuant to a repealed federal program, and to advise the department on the state plan for the use of those unavailable federal funds, as specified. Current law requires the commission to submit projects it recommends to the state board for approval and the state board is required to allocate and reserve those unavailable federal funds for various educational projects, as specified. This bill would repeal those provisions and thereby eliminate the commission.

Position

AB 3032 **(Rodriguez D) County superintendents of schools: reports.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/21/2020)
Summary: Under existing law, county superintendents of schools have numerous duties and responsibilities relating to the implementation and application of state laws and regulations to school districts and county offices of education, including the duty to submit reports that are required by the Superintendent of Public Instruction. This bill would make nonsubstantive changes to that provision

Position

AB 3063 **(Garcia, Eduardo D) Pupil and school employee health: trauma-informed care: grant program.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/21/2020
Last Amend: 5/4/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 4/24/2020)
Summary: Would appropriate $6,000,000 from the General Fund to the State Department of Education for the administration of a grant program for purposes of improving the capacity of local educational agencies to provide culturally focused trauma-informed training to pupils and school staff. The bill would require a local educational agency that applies for a grant to identify a nonprofit organization that will provide culturally focused trauma-informed training to the local educational agency's pupils and school staff and a culturally focused wellness plan that the local educational agency will implement with the grant funds received, as provided.

Position

AB 3076 **(Rubio, Blanca D) School employees: exercise of control over pupils.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. ED. on 4/24/2020)
Summary: Current law requires teachers in the public schools to hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess. Current law provides that teachers, vice principals, principals, and other certificated employees of a school district are not subject to criminal prosecution or criminal penalties for the exercise, during the performance of their duties, of the same degree of physical control over a pupil that a parent would be legally privileged to exercise, as specified. This bill, notwithstanding that provision, would prohibit school employees from compelling pupils to sign documents that are intended to bind or otherwise affect the behavior, disciplinary status, or treatment of that pupil.

Position

AB 3106 **(Limón D) School accountability: California Longitudinal Pupil Achievement Data System.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/21/2020
Last Amend: 5/4/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 4/24/2020)
Summary: Current law establishes the California Longitudinal Pupil Achievement Data System (CALPADS), which is maintained by the State Department of Education and consists of pupil data regarding demographics, program participation, enrollment, and statewide assessments. Existing law requires a local educational agency to retain individual pupil records for pupils who take certain state assessments, including, among other records, a unique pupil identification number, as provided. This bill would require the department to rebuild CALPADS so that the system allows for input from a variety of sources.
Position

AB 3120 **(O'Donnell D) Pupil instruction: instructional time requirements.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/21/2020
Last Amend: 5/4/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 4/24/2020)
Summary: Current law requires the withholding of apportionments and the imposition of fiscal penalties for school districts and county offices of education that fail to comply with the requirements for at least a minimum number of days of instruction in a school year. This bill would make a local educational agency, as defined to include a school district, county office of education, and charter school, exempt from these provisions if it adds instructional minutes to existing instructional days in compliance with a specified procedure or if the local educational agency can demonstrate that it could not meet the instructional day requirements due to specified circumstances.
Position

AB 3199 **(Kiley R) Greenhouse Gas Reduction Fund: High Speed Rail Authority: assessment: K–12 education: transfer and loan.**
Current Text: Amended: 6/1/2020 html pdf
Introduced: 2/21/2020
Last Amend: 6/1/2020
Status: 6/19/2020-Failed Deadline pursuant to Rule 61(b)(11). (Last location was A. ED)
Summary: Current law requires all moneys, except for fines and penalties, collected by the State Air Resources Board from the auction or sale of allowances as part of a market-based compliance mechanism to be deposited in the Greenhouse Gas Reduction Fund. Current law continuously appropriates 25% of the annual proceeds of the fund to the High-Speed Rail Authority for certain purposes. This bill would suspend the appropriation to the High-Speed Rail Authority for the 2020–21 and 2021–22 fiscal years and would require the transfer of those amounts from moneys collected by the state board to the General Fund. The bill would specify that the transferred amounts shall be available, upon appropriation, to support K–12 education and to offset any funding reduction for K–12 education.
Position

AB 3218 **(Quirk-Silva D) Homeless children and youths: reporting.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/9/2020)
Summary: Would require a local educational agency, as defined to include a school district, county office of education, charter school, or special education local plan area, to establish homeless education program policies that are consistent with specified state laws, and would further require the local educational agency to update these policies at intervals not exceeding 3 years. The bill would require local educational agencies to provide training at least annually on designated subjects to its classified and certificated employees who work with pupils, as specified.
Position

AB 3237 **(Maienschein D) Classified school employees: part-time assignments.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. P.E. & R. on

3/9/2020)
Summary: Currentlaw requires the governing board of a school district to employ persons for positions not requiring certification qualifications. Current law requires the governing board of a school district to classify those employees and positions and requires that they be known as the classified service. This billo would require a classified employee who works a minimum of 30 minutes per day in excess of the employee's part-time assignment for a period of 20 working days or more in a school year to have their basic assignment changed to reflect the longer hours. The bill would also make nonsubstantive changes to this provision.

Position

AB 3247 **(Gabriel D) Teacher credentialing.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/21/2020)
Summary: Current law establishes the Commission on Teacher Credentialing and requires the commission, among other duties, to establish standards for the issuance and renewal of credentials, certificates, and permits. Current law establishes the periods for which a credential is valid.This bill would make nonsubstantive changes to the latter provision.

Position

AB 3255 **(Mullin D) State educational agencies.**
Current Text: Introduced: 2/21/2020 html pdf
Introduced: 2/21/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. PRINT on 2/21/2020)
Summary: Current law establishes the State Board of Education to consist of 10 members appointed by the Governor with the advice and consent of 2/3 of the Senate. Current law also establishes the State Department of Education in state government, and vests the department with specified powers and duties relating to the state's public school system.This bill would state the intent of the Legislature to enact future legislation relating to state educational agencies.

Position

AB 3303 **(Cooper D) Local educational agencies: home-to-school transportation: transportation network companies: driver requirements.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/21/2020
Last Amend: 5/4/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was A. ED. on 4/24/2020)
Summary: Would, If a local educational agency elects to have a transportation network company provide home-to-school transportation pursuant to a contract entered into on or after January 1, 2021, this bill would require the local educational agency to ensure that the contract is in compliance with established standards for the use of personal services contracts in school districts for all services currently or customarily performed by classified school employees to achieve cost savings and that the transportation network company's drivers meet all of the same requirements that apply to school bus drivers.

Position

ACA 19 **(Kiley R) Right to Earn a Living Act.**
Current Text: Introduced: 1/15/2020 html pdf
Introduced: 1/15/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was A. PRINT on 1/15/2020)
Summary: The California Constitution grants many rights to persons, including the right to speak and write freely, as specified, and to be free from cruel and unusual punishment. Current statutory law requires that a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor, for specified purposes, 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, both under the contract for the performance of the work and in fact, 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 of the same nature as that involved in the work performed.This measure, "The Right to Earn a Living Act," would require determinations of whether a person is an employee or an independent contractor to be made using a specified multifactor test that differs from the test described above.

Position

ACR 172 **(Low D) Student Mental Health Week.**
Current Text: Introduced: 2/19/2020 html pdf
Introduced: 2/19/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was A. RLS. on 3/2/2020)
Summary: This measure would declare the week of May 4, 2020, to May 8, 2020, as Student Mental Health Week.

Position

ACR 188 **(Chau D) World Autism Awareness Day.**
Current Text: Introduced: 3/12/2020 html pdf
Introduced: 3/12/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was A. PRINT on 3/12/2020)
Summary: This measure would recognize and proclaim April 2, 2020, as World Autism Awareness Day to show support for autism awareness.

Position

HR 90 **(Frazier D) Relative to Developmental Disabilities Awareness Month.**
Current Text: Introduced: 3/12/2020 html pdf
Introduced: 3/12/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was A. PRINT on 3/12/2020)
Summary: This measure would resolve that the Assembly recognizes the month of March 2020 as Developmental Disabilities Awareness Month, commends the efforts of the individuals and organizations that have worked diligently to increase awareness and acceptance of people with developmental disabilities, and celebrates and supports the diversity of the human condition, particularly individuals who experience developmental disabilities.

Position

SB 97 **(Committee on Budget and Fiscal Review) Education finance: apportionments.**
Current Text: Amended: 6/10/2020 html pdf
Introduced: 1/10/2019
Last Amend: 6/10/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was A. BUDGET on 6/18/2020)
Summary: Current law requires the Controller to draw warrants on the State Treasury throughout each year in specified amounts for purposes of apportioning funding to school districts, county offices of education, and charter schools. This bill, commencing with the 2019–20 fiscal year, would require the warrants scheduled to be drawn in June to instead be drawn in July of the same calendar year.

Position
Watch

SB 614 **(Rubio D) Teacher credentialing: reading instruction.**
Current Text: Amended: 8/10/2020 html pdf
Introduced: 2/22/2019
Last Amend: 8/10/2020
Status: 8/21/2020-Failed Deadline pursuant to Rule 61(b)(15). (Last location was A. APPR. SUSPENSE FILE on 8/18/2020)
Summary: Current law requires the Commission on Teacher Credentialing to develop, adopt, and administer a reading instruction competence assessment consisting of one or more instruments to measure an individual's knowledge, skill, and ability relative to effective reading instruction, as provided. Current law requires the requirements for the issuance of the preliminary multiple subject teaching credential to include successful passage of one of specified components of the reading instruction competence assessment. This bill would additionally authorize the passage of a combination of those specified components, as approved by the commission, or the completion of specified coursework that meets the commission's standards, to meet that requirement, and would extend these requirements to the issuance of a preliminary education specialist credential. The bill would make the requirements relating to the reading instruction competence assessment, as revised by this bill, inoperative on July 1, 2024.

Position
Watch

A-VETOED

AB 1835 **(Weber D) Education finance: local control funding formula: supplemental and concentration grants.**
Current Text: Vetoed: 9/30/2020 html pdf
Introduced: 1/6/2020
Status: 9/30/2020-Vetoed by the Governor
Summary: Would require each school district, county office of education, and charter school to identify unspent supplemental and concentration grant funds by annually reconciling and reporting to the department its estimated and actual spending of those moneys. The bill would require unspent funds identified pursuant to these provisions to continue to be required to be expended to increase and improve services for unduplicated pupils, and would require each local educational agency to report the amounts of unspent funds identified in its local control and accountability plan.

Position

S-CHAPTERED

SB 117 **(Committee on Budget and Fiscal Review) Education finance: average daily attendance and timeline waivers: protective equipment and cleaning appropriation: COVID–19.**
Current Text: Chaptered: 3/17/2020 html pdf
Introduced: 1/10/2019
Last Amend: 3/16/2020
Status: 3/17/2020-Chaptered by Secretary of State- Chapter 3, Statutes of 2020
Summary: Current law requires the governing board of a school district to report to the Superintendent of Public Instruction during each fiscal year the average daily attendance of the school district for all full school months, and describes the period between July 1 and April 15, inclusive, as the "second period" report for the second principal apportionment. Current law requires a county superintendent of schools to report the average daily attendance for the school and classes maintained by the county superintendent and the average daily attendance for the county school tuition fund. For local educational agencies that comply with Executive Order N–26–20, this bill would specify that for purposes of attendance claimed for apportionment purposes pursuant to the provision described above, for the 2019–20 school year average daily attendance reported to the State Department of Education for the second period and the annual period for local educational agencies only includes all full school months from July 1, 2019, to February 29, 2020, inclusive.

Position

SB 820 **(Committee on Budget and Fiscal Review) Education finance.**
Current Text: Chaptered: 9/18/2020 html pdf
Introduced: 1/10/2020
Last Amend: 8/27/2020
Status: 9/18/2020-Approved by the Governor. Chaptered by Secretary of State. Chapter 110, Statutes of 2020.
Summary: Current law requires the State Department of Education to develop, on or before December 31, 2021, a standardized English language teacher observation protocol for use by teachers in evaluating a pupil's English language proficiency. Existing law requires a local educational agency to assess the English language development of each pupil in order to determine the pupil's level of proficiency. Current law requires that assessment to be conducted annually during a 4-month period after January 1. This bill would extend the date for completion of the English language teacher observation protocol until December 31, 2022. The bill would extend the time period for conducting the English language development assessment in the 2020–21 school year by 45 calendar days and would require a local educational agency to screen new pupils at the time of enrollment to informally determine English learner status.

Position
Watch

S-DEAD

AB 117 **(Ting D) Education finance: average daily attendance and timeline waivers: protective equipment and cleaning appropriation: COVID –19.**

Current Text: Amended: 3/16/2020 html pdf

Introduced: 12/3/2018

Last Amend: 3/16/2020

Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was S. BUDGET & F.R. on 4/24/2019)

Summary: Current law requires the governing board of a school district to report to the Superintendent of Public Instruction during each fiscal year the average daily attendance of the school district for all full school months, and describes the period between July 1 and April 15, inclusive, as the "second period" report for the second principal apportionment. Current law requires a county superintendent of schools to report the average daily attendance for the school and classes maintained by the county superintendent and the average daily attendance for the county school tuition fund. For local educational agencies that comply with Executive Order N–26–20, this bill would specify that for purposes of attendance claimed for apportionment purposes pursuant to the provision described above, for the 2019–20 school year average daily attendance reported to the State Department of Education for the second period and the annual period for local educational agencies only includes all full school months from July 1, 2019, to February 29, 2020, inclusive.

Position

AB 123 **(McCarty D) Early childhood education: childcare and development programs.**

Current Text: Amended: 8/1/2020 html pdf

Introduced: 12/3/2018

Last Amend: 8/1/2020

Status: 8/21/2020-Failed Deadline pursuant to Rule 61(b)(15). (Last location was S. APPR. SUSPENSE FILE on 8/13/2020)

Summary: The Child Care and Development Services Act, administered by the State Department of Education, requires the Superintendent of Public Instruction to administer childcare and development programs that offer a full range of services to eligible children from infancy to 13 years of age, inclusive. The act requires that families meet specified requirements to be eligible for federal- and state-subsidized childcare and development services. This bill would extend eligibility to a family in which a member of that family has been certified as fully eligible to receive CalFresh or Medi-Cal benefits. The bill would require a parent to provide documentation of current enrollment in CalFresh or Medi-Cal, unless the contractor providing childcare and development services has, and elects to use, other means of obtaining verification of that enrollment.

Position

AB 216 **(Weber D) School safety: Pupil and Staff Safety Pilot Program.**

Current Text: Amended: 1/7/2020 html pdf

Introduced: 1/15/2019

Last Amend: 1/7/2020

Status: 8/18/2020-Failed Deadline pursuant to Rule 61(b)(13). (Last location was S. ED. on 6/23/2020)

Summary: Would establish the Pupil and Staff Safety Pilot Program to be administered through the "Scale Up MTSS Statewide" (SUMS) project, in consultation with the State Department of Education. The program would authorize local educational agencies, as defined, to apply for pilot program funds for the purpose of training staff who have contact or interaction with pupils on deescalation techniques and alternatives to physical restraint and seclusion of pupils. The bill would require a local educational agency that provides training pursuant to the pilot program to report on the training to the administrator of the SUMS project and the Superintendent of Public Instruction, as specified.

Position

Watch

AB 398 **(Chu D) COVID-19 Local Government and School Recovery and Relief Act.**

Current Text: Amended: 6/17/2020 html pdf

Introduced: 2/6/2019

Last Amend: 6/17/2020

Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was S. GOV. & F. on 7/1/2020)

Summary: Current law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges. Current law establishes the California Department of Tax and Fee Administration in the Government Operations Agency to administer various statutory taxes

and fees, as provided. Current law provides that the Controller shall superintend the fiscal concerns of the state. This bill would, on and after January 1, 2021, but before January 1, 2026, impose a tax on a large business, defined as a for-profit, private entity that has more than 500 employees that perform any part of their duties within the state, at the rate of $275 per employee. The bill would require the California Department of Tax and Fee Administration to administer the tax and collect the tax pursuant to the Fee Collection Procedures Law.

Position

AB 875 **(Wicks D) Pupil support services: COVID-19 Support Services and Resiliency for Children Program.**

Current Text: Amended: 7/2/2020 html pdf

Introduced: 2/20/2019

Last Amend: 7/2/2020

Status: 8/18/2020-Failed Deadline pursuant to Rule 61(b)(13). (Last location was S. ED. on 7/2/2020)

Summary: Would establish the COVID-19 Support Services and Resiliency for Children Program, under which the Superintendent would be required to award grants to qualifying entities, defined to include schools, local educational agencies, and consortia that meet specified criteria, to pay the costs of planning and operating programs that provide support services related to COVID-19 to pupils and their families. The bill would require grants to be awarded for no more than $500,000 each and to be matched by the grantee with $1 for each $2 awarded, as specified.

Position

AB 1203 **(Bonta D) Local educational agencies: home-to-school transportation: transportation network companies: contracting requirements.**

Current Text: Amended: 7/2/2020 html pdf

Introduced: 2/21/2019

Last Amend: 7/2/2020

Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was S. ED. on 7/27/2020)

Summary: Would prohibit a school district, county office of education, or charter school from contracting with a transportation network company for home-to-school transportation, and would prohibit payment from being made to a transportation network company for those services, unless specified requirements are met, including, among others, that the contractor certifies that each driver who will perform home-to-school transportation pursuant to the contract meets specified requirements

Position

AB 1384 **(O'Donnell D) Local educational agencies: liability for COVID-19-related injuries.**

Current Text: Amended: 7/29/2020 html pdf

Introduced: 2/22/2019

Last Amend: 7/29/2020

Status: 8/18/2020-Failed Deadline pursuant to Rule 61(b)(13). (Last location was S. JUD. on 6/29/2020)

Summary: Would require, during the COVID-19 pandemic, as defined, the governing board of a local educational agency, as defined, or its designee, to establish health and safety policies and procedures for operating programs and facilities in a manner consistent with applicable federal, state, and local requirements and COVID-19-related guidelines published by the State Department of Public Health. The bill would require the governing boards of local educational agencies, or their designees, to ensure that reasonable efforts are undertaken to implement those policies and procedures.

Position

Watch

AB 1725 **(Carrillo D) Before and after school programs: maximum grant amounts.**

Current Text: Amended: 7/7/2020 html pdf

Introduced: 2/22/2019

Last Amend: 7/7/2020

Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was S. ED. on 7/7/2020)

Summary: The After School Education and Safety Program Act of 2002, an initiative statute approved by the voters as Proposition 49 at the November 5, 2002, statewide general election, establishes the After School Education and Safety (ASES) Program under which participating public schools receive grants to operate before and after school programs serving pupils in kindergarten or any of grades 1 to 9, inclusive. The act provides that each school establishing a program pursuant to the act is eligible to receive a renewable 3-year grant for after school programs, as provided. The act prohibits an after school grant from exceeding $112,500 for each regular school year for each elementary school or

$150,000 for each regular school year for each middle or junior high school. This bill would repeal the maximum grant amounts for the ASES and High School ASSETs programs and the minimum grant amount for the 21st Century Community Learning Centers program.

Position

AB 1837 **(Smith D) School safety: emergency response team.**
Current Text: Amended: 6/4/2020 html pdf
Introduced: 1/6/2020
Last Amend: 6/4/2020
Status: 8/18/2020-Failed Deadline pursuant to Rule 61(b)(13). (Last location was S. ED. on 7/1/2020)
Summary: Current law requires school districts and county offices of education to be responsible for the overall development of a comprehensive school safety plan for its schools operating kindergarten or any of grades 1 to 12, inclusive. This bill would require the Superintendent of Public Instruction, subject to an appropriation, to establish an emergency response team in the State Department of Education to serve as a liaison and provide guidance and support to school districts, county offices of education, and charter schools, as provided. The bill would require the emergency response team to guide the process for, and facilitate expedited processing of, requests for allowance of attendance due to specified emergency conditions, and to coordinate with the State Department of Public Health and other federal, state, and local agencies, as applicable.

Position

AB 1982 **(Cunningham R) Teacher credentialing: basic skills proficiency test: exemption.**
Current Text: Amended: 5/11/2020 html pdf
Introduced: 1/23/2020
Last Amend: 5/11/2020
Status: 8/18/2020-Failed Deadline pursuant to Rule 61(b)(13). (Last location was S. ED. on 7/1/2020)
Summary: Current law prohibits the Commission on Teacher Credentialing from issuing initially a credential, permit, certificate, or renewal of an emergency credential to a person to serve in the public schools unless the person has demonstrated proficiency in basic reading, writing, and mathematics skills in the English language by passing the state basic skills proficiency test. Current law exempts specified applicants from this basic skills proficiency test requirement, as specified. This bill would, until December 31, 2023, exempt from the basic skills proficiency test requirement an applicant who earns at least a letter grade of B in qualifying coursework, as defined, determined by a credential preparation program or the commission, as specified, to sufficiently serve as an alternative indicator of proficiency in basic reading, writing, and mathematics skills in the English language.

Position

AB 2052 **(O'Donnell D) Pupil instruction: instructional time requirements.**
Current Text: Amended: 6/4/2020 html pdf
Introduced: 2/3/2020
Last Amend: 6/4/2020
Status: 8/18/2020-Failed Deadline pursuant to Rule 61(b)(13). (Last location was S. ED. on 6/23/2020)
Summary: Current law requires a school district, other than one newly formed, to maintain the regular school days of the district for at least 175 days to receive any apportionment based on average daily attendance from the State School Fund, and imposes penalties for failing to maintain that requirement, except as specified. Existing law authorizes a school district, county office of education, or charter school to reduce the equivalent of up to 5 days of instruction or the equivalent number of instructional minutes in certain circumstances without incurring fiscal penalties. Existing law authorizes local educational agencies that are prevented by fire, flood, earthquake, epidemic, or order of a military officer in certain circumstances to receive as their apportionment an estimated amount intended to equal what the amount would have been absent the events that prevented the schools from opening.This bill, commencing with the 2021–22 school year, would exempt a local educational agency, as defined to include a school district, county office of education, and charter school, from these provisions if it adds instructional minutes to existing instructional days in an equivalent of no more than 15 instructional days within that same school year and in compliance with a specified procedure and if the local educational agency can demonstrate that it could not meet the instructional day requirements due to specified circumstances.

Position
Watch
Notes 1: SELPA requested amendments

AB 2126 **(O'Donnell D) Temporary school closures: notification: survey.**
Current Text: Amended: 7/23/2020 html pdf

Introduced: 2/10/2020
Last Amend: 7/23/2020
Status: 8/21/2020-Failed Deadline pursuant to Rule 61(b)(15). (Last location was S. APPR. SUSPENSE FILE on 8/13/2020)
Summary: Would require the State Department of Education to develop and implement an internet website and a web-based application for the purpose of collecting information from a county office of education, school district, or charter school about temporary school closures, as specified. The bill would require the department to have the internet website and web-based application operative no later than July 1, 2021. The bill would require a county superintendent of schools, superintendent of a school district, or charter school administrator to notify the department through the internet website or web-based application of all temporary school closures each day the school is closed.

Position

AB 2485 **(Kalra D) Teacher credentialing: subject matter competence.**
Current Text: Amended: 7/7/2020 html pdf
Introduced: 2/19/2020
Last Amend: 7/7/2020
Status: 8/18/2020-Failed Deadline pursuant to Rule 61(b)(13). (Last location was S. ED. on 7/1/2020)
Summary: Current law specifies the minimum requirements for the preliminary multiple or single subject teaching credential, including a subject matter competence requirement demonstrated by either completion of a subject matter program that has been approved by the Commission on Teacher Credentialing or passage of a subject matter examination. This bill would authorize a candidate for the preliminary multiple or single subject teaching credential to demonstrate subject matter competence by completing higher education coursework in the subject matters related to the content area of the credential, as provided. The bill would require the commission to adopt regulations for this purpose and would prohibit a program of professional preparation from verifying a candidate's subject matter competence in this manner until those regulations are adopted.

Position

AB 2541 **(Medina D) Teacher preparation programs: regionally accredited institutions.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/19/2020
Last Amend: 5/4/2020
Status: 8/18/2020-Failed Deadline pursuant to Rule 61(b)(13). (Last location was S. ED. on 6/23/2020)
Summary: Current law requires the Commission on Teacher Credentialing to, among other duties, establish standards for the issuance and renewal of credentials, certificates, and permits. Under existing law, the commission establishes standards for teacher preparation programs at postsecondary educational institutions. This bill would define "regionally accredited," as that term is applied to institutions of higher education with teacher preparation programs, as either an institution that has been approved or recognized by the Accrediting Commission for Senior Colleges and Universities, the Western Association of Schools and Colleges, or by a comparable accrediting agency serving another region within the United States, or an institution of higher education that held preaccreditation status at the time the degree of an applicant for a credential was conferred, if that institution achieved full regional accreditation status within 5 years of earning preaccreditation status.

Position

AB 2581 **(Reyes D) Early childhood development: interagency workgroup.**
Current Text: Amended: 6/4/2020 html pdf
Introduced: 2/20/2020
Last Amend: 6/4/2020
Status: 8/18/2020-Failed Deadline pursuant to Rule 61(b)(13). (Last location was S. ED. on 7/1/2020)
Summary: Upon appropriation by the Legislature for the purpose of transferring early childhood development programs to a single entity, this bill would establish an administering entity or entities for early childhood development programs. The bill would require the administering entity or entities to establish an interagency workgroup comprised of specified individuals, including the Deputy Superintendent of Public Instruction and representatives from various state departments, such as the State Department of Public Health and the State Department of Health Care Services, to perform specified duties, including establishing a memorandum of understanding between the departments outlining the joint authority for the promulgation of regulations for the coordination and alignment of services relating to early childhood care and learning, and annually submitting a report on its work to the Governor, the Superintendent of Public Instruction, and the Legislature. The bill would state related findings, declarations, and intents of the Legislature.

Position

AB 2626 **(Bauer-Kahan D) Digital divide: distance learning: California Research Bureau: communications technology grant program.**
Current Text: Amended: 7/7/2020 html pdf
Introduced: 2/20/2020
Last Amend: 7/7/2020
Status: 8/18/2020-Failed Deadline pursuant to Rule 61(b)(13). (Last location was S. ED. on 7/1/2020)
Summary: Current law establishes the California State Library, which includes the California Research Bureau, as a division within the State Department of Education. This bill would require the California Research Bureau to conduct research on ways to close the digital divide through policies, including, but not limited to, tax policies, that reduce the upfront costs of devices and communications technology purchased by local educational agencies to provide students with equitable access to distance learning.

Position

AB 3097 **(Frazier D) Special education: nonpublic, nonsectarian schools or agencies.**
Current Text: Amended: 5/4/2020 html pdf
Introduced: 2/21/2020
Last Amend: 5/4/2020
Status: 8/18/2020-Failed Deadline pursuant to Rule 61(b)(13). (Last location was S. ED. on 6/23/2020)
Summary: Current law authorizes a master contract for special education and related services provided by a nonpublic, nonsectarian school or agency only if the school or agency has been certified as meeting specified standards. Commencing with the 2020–21 school year, current law requires a local educational agency that enters into a master contract with a nonpublic, nonsectarian school to conduct at least one onsite monitoring visit during each school year to the nonpublic, nonsectarian school at which the local educational agency has a pupil attending and with which it maintains a master contract. Commencing with the 2020–21 school year, this bill would authorize a local educational agency that enters into such a master contract to conduct a single onsite monitoring visit to monitor multiple pupils that the local educational agency has placed in a nonpublic, nonsecretarian school.

Position
Watch

SB 796 **(Leyva D) School and community college employees: absences due to illness or accident.**
Current Text: Amended: 2/19/2020 html pdf
Introduced: 1/6/2020
Last Amend: 2/19/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was S. ED. on 1/15/2020)
Summary: Would require a certificated or classified school employee, and an academic or classified community college employee, who exhausts all available sick leave and continues to be absent from duties on account of illness or accident for an additional period of 5 months to receive the employee's full salary during those 5 months. The bill would make numerous related conforming and clarifying changes.

Position

SB 805 **(Portantino D) School employees: leaves of absence: emergencies and mandatory evacuation orders.**
Current Text: Amended: 5/19/2020 html pdf
Introduced: 1/8/2020
Last Amend: 5/19/2020
Status: 6/19/2020-Failed Deadline pursuant to Rule 61(b)(8). (Last location was S. APPR. SUSPENSE FILE on 6/9/2020)
Summary: Would prohibit the governing board of a school district from requiring an employee of the school district who is employed in a position requiring certification qualifications or a classified employee to use sick, vacation, or other paid leave if the school is forced to close because of a mandatory evacuation order or certain emergencies, or if the employee is unable to report to work because they reside in an area that is subject to an evacuation order or affected by certain emergencies, and would require the governing board of the school district to ensure the employee is provided their regular pay for any days missed. The bill would require the governing board of a school district to adopt rules and regulations requiring and prescribing the manner by which employees shall prove their inability to report to work because they reside in an area that is subject to a mandatory evacuation order or affected by certain emergencies.

Position

SB 881 **(Jones R) Worker status: independent contractors: musicians and music industry professionals.**
Current Text: Introduced: 1/23/2020 html pdf
Introduced: 1/23/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was L., P.E. & R. on 2/6/2020)
Summary: Current law, as established in the case of Dynamex Operations W. v. Superior Court (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. Current law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of specified wage orders. Current law exempts specified occupations and business relationships from the application of Dynamex and these provisions. Existing law instead provides that these exempt relationships are governed by the test adopted in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341. This bill would expand the above-described exemptions to also include a musician or music industry professional, except as specified.
Position

SB 887 **(Wilk R) School districts: governing boards.**
Current Text: Introduced: 1/23/2020 html pdf
Introduced: 1/23/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was S. RLS. on 1/23/2020)
Summary: Current law establishes the system of public elementary and secondary schools in this state, and provides for their funding and governance. Current law establishes school districts throughout the state to administer the public elementary and secondary schools within their respective jurisdictions. Current law requires that every school district be under the control of a board of school trustees or a board of education and requires the governing board of each school district to prescribe and enforce rules not inconsistent with the law, or with the rules prescribed by the State Board of Education, for its own government. This bill would make nonsubstantive changes to the latter provision.
Position

SB 920 **(Beall D) Persons with disabilities: terminology.**
Current Text: Amended: 3/30/2020 html pdf
Introduced: 2/4/2020
Last Amend: 3/30/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was S. HUM. S. on 2/12/2020)
Summary: Current law, prohibits, and prescribes heightened penalties for, the commission of specified offenses of abuse committed against an elder or dependent person or dependent adult. Existing law also mandates reporting of known or suspected cases of elder and dependent adult abuse. Current law defines the terms "dependent person" and "dependent adult" for purposes of these provisions.This bill would change those terms in selected statutes to "person with a disability" and "adult with a disability" and would state the intent of the Legislature that those terms be changed in the remaining provisions of law that use them as those statutes are amended in the future.
Position

SB 943 **(Chang R) Paid family leave: COVID-19.**
Current Text: Amended: 5/19/2020 html pdf
Introduced: 2/10/2020
Last Amend: 5/19/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was S. APPR. SUSPENSE FILE on 6/9/2020)
Summary: Current law establishes within the state disability insurance program a family temporary disability insurance program, also known as the Paid Family Leave program, for the provision of wage replacement benefits to workers who take time off work to care for a seriously ill family member or to bond with a minor child within one year of birth or placement, as specified. This bill would, until December 31, 2020, also authorize wage replacement benefits to specified workers who take time off work to care for a child or other family member, including a child or adult with disabilities, for whom the employee is responsible for providing care if that person's school or place of care has been closed, or the care provider of that person is unavailable, due to the COVID-19 virus outbreak.

Position

SB 959 **(Hurtado D) Educational equity: immigration and citizenship status.**
Current Text: Amended: 3/16/2020 html pdf
Introduced: 2/10/2020
Last Amend: 3/16/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/20/2020)
Summary: Current law requires the superintendent of a school district, the superintendent of a county office of education, and the principal of a charter school, as applicable, to report to the respective governing board or body of the local educational agency in a timely manner any requests for information or access to a schoolsite by an officer or employee of a law enforcement agency for the purpose of enforcing the immigration laws in a manner that ensures the confidentiality and privacy of any potentially identifying information. Current law requires the governing board or body of a local educational agency to perform specified actions relating to pupils and immigration status, including, among others, providing information to parents and guardians, as appropriate, regarding their children's right to a free public education, regardless of immigration status or religious beliefs. This bill, for purposes of those provisions, would define "pupil" to mean a child enrolled in a childcare and development program, as defined, transitional kindergarten, kindergarten, or any of grades 1 to 12, inclusive, that is administered or operated by a local educational agency.

Position

SB 997 **(Borgeas R) Worker status: employees and independent contractors.**
Current Text: Amended: 6/10/2020 html pdf
Introduced: 2/13/2020
Last Amend: 6/10/2020
Status: 6/26/2020-Failed Deadline pursuant to Rule 61(b)(11). (Last location was S. L., P.E. & R.)
Summary: Current law provides that the addition of the ABC test to the Labor Code 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. Current law also provides that insofar as the application of the above exemptions would relieve an employer from liability, those provisions apply retroactively to existing claims and actions to the maximum extent permitted by law. Current law provides that, notwithstanding the above retroactivity language, other provisions of this law apply to work performed on or after January 1, 2020. This bill would delete the above language providing that the addition of the ABC test to the Labor Code does not constitute a change in, but is declaratory of, existing law.

Position

SB 1005 **(Morrell R) Local educational agencies: confidentiality agreements: child predators.**
Current Text: Amended: 4/3/2020 html pdf
Introduced: 2/13/2020
Last Amend: 4/3/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was S. ED. on 5/11/2020)
Summary: Would, on or after January 1, 2021, prohibit local educational agencies, and officers and employees of local educational agencies, from entering into, or extending or renewing, confidentiality agreements, as defined, with child predators. The bill would also prohibit those officers and employees from favorably recommending, or otherwise facilitating or promoting, the employment of a child predator by another local educational agency. The bill would define child predators for its purposes as persons who have been convicted of child abuse or neglect, as described, convicted of a sex offense, as defined, perpetrated upon a person under 18 years of age at the time of the offense, or suspended or terminated from employment by the local educational agency because the agency has determined that the person's behavior was inappropriate in its effect on a pupil or pupils.

Position

SB 1019 **(McGuire D) Short-term residential therapeutic programs: postdischarge plan.**
Current Text: Amended: 3/25/2020 html pdf
Introduced: 2/14/2020
Last Amend: 3/25/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was S. RLS. on 2/14/2020)
Summary: Current law requires a county probation agency to prepare a case plan for minor wards placed in foster care, and requires a county social worker to create a case plan for foster youth. Current law requires the case plan to include prescribed components, If a short-term residential

therapeutic program placement is selected for a minor or child, existing law requires the case plan to indicate the needs of the minor or child that necessitate this placement, the plan for transitioning the minor or child to a less restrictive environment, and the projected timeline by which the minor or child will be transitioned to a less restrictive environment. This bill would, prior to discharge from a short-term residential therapeutic program, require the case plan to include a postdischarge plan for the provision of services and supports for the minor and their placement family for at least 6 months after discharge that considers and identifies resources for the minor's mental health needs, wraparound services, and peer supports, among other things.

Position

SB 1039 **(Galgiani D) Independent workers.**
Current Text: Introduced: 2/14/2020 html pdf
Introduced: 2/14/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was S. RLS. on 2/14/2020)
Summary: Current law establishes that, for purposes 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 is 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. This test is commonly known as the "ABC" test. Current law charges the Labor Commissioner with the enforcement of labor laws, including worker classification. This bill, known as "The Independent Worker Rights Act of 2020," would set forth legislative findings regarding the intent of the Legislature to develop a modern policy framework that facilitates independent work for those who voluntarily choose it by creating a third classification of workers with basic rights and protections relative to work opportunities, including minimum wage and occupational accident coverage.

Position

SB 1075 **(Gonzalez, Lena D) Transitional kindergarten: admission.**
Current Text: Introduced: 2/18/2020 html pdf
Introduced: 2/18/2020
Status: 6/5/2020-Failed Deadline pursuant to Rule 61(b)(6). (Last location was S. ED. on 2/27/2020)
Summary: Would authorize a school district or charter school to also admit into a transitional kindergarten program in the current school year a child who will have their 5th birthday on any day from July 1 to August 31, inclusive, of the following school year, subject to those same conditions.

Position

SB 1081 **(Chang R) School districts: organization.**
Current Text: Introduced: 2/19/2020 html pdf
Introduced: 2/19/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was S. RLS. on 2/19/2020)
Summary: Current law provides that there is in each county, except a county which is also a city and county, a county committee on school district organization. Current law specifies the membership of the committee and procedures for vacancies on the committee.This bill would make nonsubstantive changes to the provisions relating to committee vacancies.

Position

SB 1091 **(Portantino D) School safety: mandatory interagency cross-reporting.**
Current Text: Introduced: 2/19/2020 html pdf
Introduced: 2/19/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 5/12/2020)
Summary: The Interagency School Safety Demonstration Act of 1985 establishes the School/Law Enforcement Partnership, composed of the Superintendent of Public Instruction and the Attorney General, and requires the partnership to establish a statewide school safety cadre for the purpose of facilitating interagency coordination and collaboration to reduce, among other things, school crime. This bill would require the partnership to develop a process and framework that would require mandatory interagency cross-reporting between school districts, county offices of education, and law enforcement agencies of threats of serious school crimes, including, but not necessarily limited to, school shootings, hate crimes, vandalism, drug and alcohol use, gang membership, and gang violence, that would trigger

immediate intervention.

Position

SB 1119 **(Morrell R) Pupil enrollment: Statewide Open Enrollment Act.**
Current Text: Introduced: 2/19/2020 html pdf
Introduced: 2/19/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 2/27/2020)
Summary: Would enact the Statewide Open Enrollment Act, which would require a person subject to compulsory education to be admitted to a school in any school district, without regard to residency or school district boundaries. The bill would prohibit a school district from restricting pupils residing within the school district's boundaries from enrollment in a school in another school district and would prohibit a school district from restricting pupils residing outside the school district's boundaries from enrollment in a school in the school district, except as specified.

Position

SB 1125 **(Portantino D) Local educational agencies: educational programs.**
Current Text: Introduced: 2/19/2020 html pdf
Introduced: 2/19/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 5/12/2020)
Summary: Would require the State Department of Education to review funding for all after school programs offered in the state, including, but not limited to, the After School Education and Safety Program and programs supported by federal funding, and to, by regulation, provide flexibility to school districts to use funds provided for after school programs for before school programs if that flexibility is not prohibited by the After School Education and Safety Program Act of 2002, an initiative statute approved by the voters at the November 5, 2002, statewide general election as Proposition 49, or federal law.

Position

SB 1150 **(Nielsen R) CalHome Program: loans: federally declared disaster.**
Current Text: Amended: 3/25/2020 html pdf
Introduced: 2/20/2020
Last Amend: 3/25/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was S. RLS. on 2/20/2020)
Summary: Current law establishes the CalHome Program, administered by the Department of Housing and Community Development, to enable low- and very low income households to become or remain homeowners. Current law authorizes the department to use funds for specified expenses, among other things, incurred on home ownership development projects and permanent financing for mutual housing or cooperative developments. This bill would authorize the department to provide financial assistance in the form of a secured forgivable loan to an individual household to rehabilitate, repair, or replace housing in a community where 7.5% of the total housing stock was destroyed in a federally declared disaster. By expanding the uses of a continuously appropriated fund, the bill would make an appropriation.This bill contains other related provisions.

Position

SB 1153 **(Rubio D) Elementary education: kindergarten.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/5/2020)
Summary: Current law requires a school district maintaining a kindergarten to admit a child who will have their 5th birthday on or before September 1 of the school year. Current law also requires that a child who will have their 6th birthday on or before September 1 of the school year to be admitted to the first grade of an elementary school. This bill, beginning with the 2021–22 school year, would require a child to have completed one year of kindergarten before that child may be admitted to the first grade, thereby imposing a state-mandated local program.

Position

SB 1174 **(Portantino D) Special education: dyslexia testing.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020

Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/5/2020)
Summary: Would require, on or before June 30, 2021, the State Board of Education to identify at least one assessment or series of assessments to be used by a local educational agency, as defined, to screen pupils for risk of dyslexia, as provided. The bill would require, beginning in the 2021–22 school year, and annually thereafter, a local educational agency serving pupils in any of the grades kindergarten to grade 2, inclusive, to screen each pupil in those grades for dyslexia.

Position

SB 1176 **(Rubio D) Criminal records: school volunteers.**
Current Text: Amended: 4/1/2020 html pdf
Introduced: 2/20/2020
Last Amend: 4/1/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was PUB. S. on 5/11/2020)
Summary: Current law requires the Department of Justice to maintain an index of all reports of child abuse and severe neglect submitted by agencies mandated to make those reports, known as the Child Abuse Central Index. This bill would authorize specified schools to submit to the department fingerprint images and related information of nonteaching parent volunteer candidates for the purpose of obtaining information as to the existence and nature of any record of child abuse investigations contained in the Child Abuse Central Index, state- or federal-level convictions, or state- or federal-level arrests for which the department establishes that the applicant was released on bail or on their own recognizance pending trial.

Position

SB 1204 **(Jones R) Homeless children and youths: local educational agencies: collaboration.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/5/2020)
Summary: Would require a local educational agency, as defined to include a school district, county office of education, charter school, or special education local plan area, to collaborate with other organizations that provide services to homeless children and youths to enhance the identification of, and the provision of services to, those children and youths. The bill would require these collaborations to include, but not necessarily be limited to, working with organizations that provide counseling services, social welfare services, meal services, and housing services.

Position

SB 1214 **(Portantino D) School accountability: local control funding formula: expenditures.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/5/2020)
Summary: Current law establishes a public school financing system that requires state funding for county superintendents of schools, school districts, and charter schools to be calculated pursuant to a local control funding formula, as specified. Current law requires funding pursuant to the local control funding formula to include, in addition to a base grant, supplemental and concentration grant add-ons that are based on the percentage of unduplicated pupils, defined as pupils who are English learners, foster youth, or eligible for free or reduced-price meals, served by the county superintendent of schools, school district, or charter school. Current law requires the State Board of Education to adopt regulations, on or before January 31, 2014, that govern the expenditure of funds apportioned pursuant to the supplemental and concentration grant add-ons. This bill would require the state board to update those regulations on or before March 31, 2021.

Position

SB 1236 **(Stern D) Worker status: independent contractors.**
Current Text: Introduced: 2/20/2020 html pdf
Introduced: 2/20/2020
Status: 8/31/2020-Failed Deadline pursuant to Rule 61(b)(18). (Last location was S. RLS. on 2/20/2020)
Summary: Current statutory law establishes that, for purposes 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 is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is not an employee under the ABC test. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification. Current law exempts specified occupations and business relationships from the application of the ABC

test described above. Current law, instead, provides that these exempt relationships are governed by the multifactor test previously established in the case of S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341. This bill would make nonsubstantive changes to these provisions.

Position

SB 1269 **(Allen D) School safety: bias-related discrimination, harassment, intimidation, and bullying: model handout.**

Current Text: Introduced: 2/21/2020 html pdf

Introduced: 2/21/2020

Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 3/5/2020)

Summary: The Safe Place to Learn Act requires the State Department of Education to develop, and post on its internet websites, a model handout describing specified rights of pupils and obligations relating to educational equity and the policies addressing bias-related discrimination, harassment, intimidation, and bullying in schools.This bill would require the department to periodically review and update the model handout to ensure the availability of relevant and recent information.

Position

SB 1369 **(Wilk R) Pupil mental health: emergency services.**

Current Text: Introduced: 2/21/2020 html pdf

Introduced: 2/21/2020

Status: 5/29/2020-Failed Deadline pursuant to Rule 61(b)(5). (Last location was ED. on 5/12/2020)

Summary: Would establish within the State Department of Education the Emergency Program for Pupil Mental Health. The bill, subject to an appropriation by the Legislature, would require the department to establish and operate a grant program to provide funding to local educational agencies to provide mental health services following a qualifying event, either natural or manmade, that is likely to cause sustained and ongoing pupil trauma, as provided. The bill would specify that qualifying events include, among others, an act of school violence on a school campus. The bill would establish criteria for grant eligibility.

Position

Total Measures: 134
Total Tracking Forms: 134

CLIENT NEWS BRIEF

The Effect of SB 820 on the Recording of Distance Learning

October 2020
Number 70

As school districts and county offices of education across California prepared to open their schools in a virtual distance learning format, electronic recording of remote instruction sessions became a topic of interest in labor negotiations. Existing law on the issue did not contemplate distance learning and the needs of students using a remote platform.

On August 22, 2020, the Legislature released the August budget trailer bills, which made a number of major changes concerning coronavirus-related legislation. One of the two August budget trailer bills, Senate Bill 820 (SB 820), provides additional guidance on the recording of instruction during distance learning. The Legislature passed SB 820 on Monday, August 31, 2020, and it was signed into law by Governor Newsom on September 18, 2020.

Prior Legal Framework

Prior to SB 820 there was minimal statutory guidance on recording classroom instruction in the distance learning environment. As distance learning became a requirement for many school districts in the counties most impacted by the effects of COVID-19, some labor unions relied on Education Code section 51512 to argue that video or audio recording of instruction without the consent of the teacher and school principal is prohibited. Section 51512, which has been in the Education Code for many years, prohibits the use of electronic listening or recording devices in the classroom without the prior consent of the teacher and principal of the school. A violation of this section by someone other than a student is punishable as a misdemeanor, while any violation by a student is subject to appropriate disciplinary action.

Although this statute seemed to explicitly prohibit recordings without consent *in the classroom*, its application outside of the regular in-person classroom setting, such as in the virtual classrooms made necessary by distance learning, remained unclear. Moreover, when the Legislature enacted Education Code section 51512 in 1976, it did not contemplate the integral role recording might play in the virtual format necessitated by a global pandemic.

Use of Video and Ability to Record Distance Learning

The language of SB 820 revises Education Code section 43503, which was enacted as part of Senate Bill 98 earlier this summer, and provides much needed clarity on the ability to both use video during remote learning and also to record instruction. While SB 98 authorized the use of video during distance learning, it was unclear whether recording such videos required consent or not. Education Code section 43503(d)(1) now effectively eliminates arguments against the recording of instruction for distance learning purposes, regardless of Education Code section 51512. School districts and county offices of education may now record distance learning sessions, and rightfully maintain and distribute recordings for such purpose. This would allow, for example, students who are absent from a distance learning session to access the lessons they missed.

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Recordings by Third Parties

The new language does make a notable distinction by prohibiting all *other* recordings without teacher and principal consent. Education Code section 43503(d)(2) would prevent third party recordings, such as those created by parents and students. Should these third parties want to record distance learning lessons, they must obtain consent from teachers and principals prior to doing so.

Takeaways

As a result of SB 820, school districts and county offices of education may require teachers to record distance learning instruction, without the teacher's or school principal's permission. Such recordings, however, may only be made for distance learning purposes.

Importantly, SB 820 reaffirmed existing law that provides any recording of instruction by third parties, including parents and students, is not permitted without the consent of the teacher and principal.

In light of these changes, school districts may need to revisit any existing memorandum of understanding with a teachers' union that included considerations regarding recording of distance learning instruction.

SB 820 did not directly address any potential student privacy concerns that might arise in the context of recorded virtual classrooms. For example, issues related to student images or records included in requests for digital copies of recorded instruction, or use of recordings in disciplinary matters, should be sent to legal counsel for careful analysis.

For questions about the labor and employment or student privacy implications of SB 820, or to discuss any legal matters pertaining to public agencies, 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.

6.2 Form DM 140 Student Appointment of Educational Representative

Verbal report, no materials

Special Education Funding

Three Critical Moves State Policymakers Can Make to Maintain Funding and Bolster Performance

by Sara Doutre (WestEd) & Tammy Kolbe (University of Vermont)

Funding special education takes up a large share of many states' education budgets. So, when state finances are tight, it is not surprising that policymakers may look for options to limit or reduce the state's share of special education spending. However, unlike general education funds, which are typically unrestricted, state funding for special education operates in the context of a unique regulatory framework designed to protect the rights of students with disabilities. State and local education agencies are compelled by federal law to maintain funding levels and ensure a free and appropriate public education for students with disabilities. These rights cannot be waived, even in the midst of a fiscal crisis.

Special education requirements create what may feel like an impossible task for state policymakers: balancing the need to ensure supports and services for students with disabilities with the need to bring the education budget in line with reduced state revenues.

Existing policy templates and budget models, however, are unlikely to produce the results state policymakers seek. Put simply, states cannot "cut" their way out of the current situation, nor will one-time recovery funds or federal waivers provide lasting relief. Instead, this brief provides guidance for states to pursue systemic reforms aimed at unifying and integrating programs that serve students with diverse learning needs, including students with and without disabilities, and developing new approaches for funding those integrated systems of support.

The brief draws on (1) the authors' experiences assisting multiple states to revise special education funding and student support systems, (2) a review of the research literature and relevant state policies, and

KEY TAKEAWAYS

1. **Reaffirm the state's commitment to educating students with disabilities.**
2. **Use state policy to promote early intervention and coordinated service delivery.**
3. **Leverage flexibility in how federal and state special education funds are used.**

About This Series

The National Conference of State Legislatures (NCSL) has partnered with WestEd to publish a series of briefs summarizing the evidence and research on common school finance issues that arise during an economic downturn. Specifically, with the onset of an economic downturn, states face the prospect of reduced tax revenue available to fund public services, including public education. This series of briefs leverages what we know from evidence and research to present approaches that state policymakers may take to address these funding realities while supporting public education.

(3) lessons learned from budget and policy reforms created during the Great Recession and in response to education stimulus funds. The following sections describe three critical moves that state policymakers can make now to ensure that students with disabilities' needs continue to be met and that levels of support are maintained, while setting a course for increasing the reach and efficiency of special education funds.

Reaffirm the state's commitment to educating students with disabilities.

When budgets are tight, educators might alter programs and practices in ways that limit access to special education or curtail services. State policymakers may also be tempted to change the state's special education funding formula or other policies in an effort to disincentivize identifying more students for special education.[1]

However, policies that put up unnecessary barriers or create such disincentives are ineffective strategies for closing budget gaps and put the state at risk of falling out of compliance with federal laws and regulations. Failure to comply with federal law, including the requirement to maintain financial support for special education (MFS), can trigger serious financial penalties, which ultimately can worsen, rather than improve, the state's financial circumstances. States and districts may not, directly or indirectly, arbitrarily limit the number of students who receive special education services.

Rather, as a first step, now is the time for each state to reaffirm its commitment to providing comprehensive supports to students, including identifying and serving students with disabilities. To do so in a time of budget cuts, policymakers can focus on improving systems, cross-sector collaboration, and asset sharing.

Use state policy to promote early intervention and coordinated service delivery.

Current dollars reflect current practice. Accordingly, meaningful changes to special education spending start with examining how the current system allocates resources, operates programs, and provides services.

Maintaining funding without making changes to existing policy and practice may negatively impact special education services for students with disabilities.[2] Reducing funding may result in states running afoul of the federal MFS requirements.[3] Rather than considering maintaining funds or reducing funds as the only options, state policymakers can focus on reforming their education system's effectiveness and efficiency. Such reform requires transformational work that includes ensuring that students with disabilities are seen as general education students first and that they receive the full benefit of the general education program, allowing special education funding to be targeted to the deficits that are truly due to disability. Policy and practice reforms that promote this priority include the following:

1 DeMatthews, D. E., & Knight, D. S. (2019). The Texas special education cap: Exploration into the statewide delay and denial of support to students with disabilities. *Education Policy Analysis Archives, 27*(2). http://dx.doi.org/10.14507/epaa.27.3793

2 Needham, C., & Houck, E. A. (2019). The inequities of special education funding in North Carolina. *Journal of Education Finance, 45*(1), 1–22. https://www.muse.jhu.edu/article/747802

3 Kolbe, T. (2019). *Funding special education: Charting a path that confronts complexity and crafts coherence*. National Education Policy Center. http://nepc.colorado.edu/publication/special-ed

» **Reinforce policy frameworks that promote early intervention and multi-tiered systems of support in schools**.

Implementing educational support systems is among the most influential practices for increasing student achievement and improving schools.[4] State policy can be used to emphasize local implementation of comprehensive, differentiated student support systems — such as response to intervention (RTI) and multi-tiered systems of support (MTSS) — that provide a continuum of academic and non-academic supports to students with and without disabilities,[5] and early intervention[6] for struggling students.

» **Encourage student-focused systems of support.**

Increasingly, policymakers and educators recognize that separate educational programs for students with disabilities may not be in the students' best interest, nor are separate programs an effective or efficient use of scarce educational resources.[7] Students with disabilities fall into multiple categories and levels of need. For example, states report to the U.S. Department of Education (ED) that 11 percent of students with disabilities in the United States also qualify as English language learners; in some states, the proportion is higher than 25 percent.[8] In many cases, students have needs unrelated to their disability and, alternatively, students without any identified disability may benefit from the supports and services that special education programs provide. Student-focused systems of support assign services to children based on need rather than program eligibility and allow for a range of services, from those spanning multiple programs over long time periods to discrete academic interventions for short durations.

Rather than providing students with services from multiple and largely siloed programs or providers, state policy can encourage student-focused systems of support that are aligned holistically with student needs.

Leverage flexibility in how federal and state special education funds are used.

Efforts to implement coordinated and flexible service delivery models that encourage student-focused systems of support and MTSS frameworks can clash with federal and state policies that restrict how special

4 Hattie, J. (2008). *Visible learning*. Routledge.

5 Choi, J. H., McCart, A. B., & Sailor, W. (2020). Achievement of students with IEPs and associated relationships with an inclusive MTSS framework. *The Journal of Special Education*. doi:10.1177/0022466919897408; Sailor, W., McCart, A. B., & Choi, J. H. (2018). Reconceptualizing inclusive education through multi-tiered system of support. *Inclusion, 6*, 2–18. doi:10.1352/2326-6988-6.1.3

6 Guralnick, M. J. (2011). Why early intervention works: A systems perspective. *Infants & Young Children, 24*, 6–28.

7 Choi, J. H., Meisenheimer, J. M., McCart, A. B., & Sailor, W. (2017). Improving learning for all students through equity-based inclusive reform practices: Effectiveness of a fully integrated schoolwide model on student reading and math achievement. *Remedial and Special Education, 38*(1), 28–41. https://doi.org/10.1177/0741932516644054

8 Data retrieved on May 3, 2020, from https://www2.ed.gov/programs/osepidea/618-data/state-level-data-files/index.html

education funding and funding for other students with different learning needs can be used.[9]

Contrary to popular belief, states have the opportunity to leverage federal and state funding for special student programs, including special education, within the broader funding system for comprehensive education programs. States have the following three distinct opportunities to both remain in compliance with federal regulations and apply flexibility and leverage policies toward improving systems:

» **Allocate funds for broader use in supporting students.**

States determine not only the amount of state funds made available for special education but also how those funds will be divided among school districts and other agencies. Without increasing or decreasing the overall amount of state funding made available for special education, states can prioritize comprehensive systems by considering the basis on which funds are divided and whether that division reflects the increasingly complex needs of students, including students for whom the state is funding interventions under multiple programs.

One of the strongest arguments against revisiting the allocation of state special education funds is based in the MFS requirement: "A state must not reduce the total amount of state financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year" (*34 CFR 300.163(a)*). However, ED guidance confirms states have flexibility in defining supports "made available" for special education and related services,[10] and states may consider including funds made available to ensure that those services are provided in a coordinated system as part of the excess cost of educating students with disabilities.

To reduce potential harm to students with disabilities, the MFS requirement is meant to ensure that consistent funding is set aside for special education, but MFS does not require states to limit the use of those state funds allocated for special education to the same narrow use that is required for federal IDEA funding. States may want to first consider increasing flexibility in the use of funds currently counted as made available in order to avoid unnecessarily increasing the threshold for the MFS requirement by counting additional funds toward the requirement.

» **Integrate funding distribution and planning policies.**

In addition to deciding how funds will be allocated and divided, states establish mechanisms for distributing funds to local agencies responsible for education programs. Distributing different kinds of funds through separate systems reinforces segregated administration of programs in districts and schools. In many states, funds distribution is also

9 Ciolfi, A., & Ryan, J. (2011, Winter). Race and response-to-intervention in special education. *Howard Law Journal, 54*(303); Sparks, S. D. (2011, February 28). Districts must walk a fine line to fund RTI programs. *Education Week*. https://www.edweek.org/ew/articles/2011/03/02/22rti-bureaucracy.h30.html

10 Office of Special Education and Related Services. (2009). *Maintenance of state financial support under the Individuals with Disabilities Education Act*. U.S. Department of Education. https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/osep10-05maintenanceoffinancialsupport.pdf

dependent on the submission of a plan establishing eligibility for programmatic funds and describing how those funds will be used; coordinating or consolidating those criteria and plans is another way that state policy and procedures can be updated to prioritize coordination across programs for integrated systems of support.

In addition to directing the coordination of state funds, states can provide supports to districts and incentives for schools that consolidate funds under federal programs (e.g., programs for students identified as English learners, students living in poverty, students with disabilities) through establishing consolidated plans with a common cost objective for all students.

» **Establish and reinforce expectations for expenditures.**

The third opportunity available to policymakers is to reconsider restrictions on or requirements for the use of funds. States have broad flexibility in stipulating the requirements for how state funding is used, but many states have incorporated, in whole or in part, federal requirements into their own regulations, including requirements that strongly limit how state special education funding can be used. To allow a more holistic approach to serving struggling students, revisions that create more flexibility in using state funds can be expanded and broadened; reporting requirements for how funding is used can be revised concurrently to reduce barriers to consolidating funds across federal and state sources.

States do not need to adopt restrictive federal definitions and allowable-use contingencies for state funding. In addition, states can provide clear guidance on flexibilities in federal funds and can remove administrative hurdles placed on districts for taking advantage of those flexibilities, including clarifying for districts and schools what "incidental benefit" is and clarifying how students who are not found to be students with disabilities but do demonstrate similar needs may benefit from programs funded through federal and state special education allocations.

Crafting coherence

In this time of budget crisis, any effort that attempts to curtail existing spending without making changes both to practice and to funding policy amounts to tinkering at the fiscal margin. Rather, charting a new course will entail that state policymakers rethink existing policy frameworks for allocating and distributing state funding. Instead of staying the course with what now consists of multiple, separate programs, state policymakers can establish expectations and procedures for coordinating the use of state funding and coordinating the support provided to struggling students, those with and without disabilities.

States may benefit from looking for ways to reform policy and practice, repackage resources, and reform the funding systems that pay for these resources to facilitate change, but providing flexibility in how state and federal funding can be used is not likely to go far enough to promote systems change in schools. By matching funding policies with policies that promote early intervention and integrated service delivery, policymakers can also provide guidance to and expectations for local educators to take advantage of flexibilities and redesign their service delivery systems.

About the Authors

Sara Doutre leads special education accountability and finance work as a Senior Program Associate at WestEd, specializing in general supervision and resource allocation systems to improve outcomes for students with disabilities. Previously, she monitored state programs and developed guidance at the U.S. Department of Education's Office of Special Education Programs. Doutre is completing a PhD in sociobehavioral epidemiology at Utah State University and is a cofounder of the Consortium for Research on Special Education Costs & Funding.

Tammy Kolbe is an Associate Professor of Educational Leadership and Policy Studies at the University of Vermont. Her research focuses on state PK16 education funding, particularly for students with disabilities, and cost-effectiveness of educational policies and programs. She frequently works with states on issues related to special education funding and policy and has been an expert witness in state-level school finance court cases. She is a current member of the editorial board for the *Journal of Education Finance* and a cofounder of the Consortium for Research on Special Education Costs & Funding.

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The University of Vermont's College of Education and Social Services engages in teaching, research, and policy development to promote and enhance inclusive education for students with disabilities.

California Special Education Funding System Study:

Executive Summary

A DESCRIPTIVE ANALYSIS OF SPECIAL EDUCATION FUNDING IN CALIFORNIA

Jason Willis, Sara Menlove Doutre, Kelsey Krausen, Tyson Barrett, Tye Ripma, and Ruthie Caparas

October 2020

WestEd

Acknowledgments

The research summarized in this paper was made possible by the generosity of the Stuart Foundation and the Dirk and Charlene Kabcenell Foundation. The WestEd research team is appreciative of their financial support and thought partnership on this project. This study was not conducted using state funds.

In this paper, we build on decades of prior work by policymakers, practitioners, and researchers who also sought to understand and improve California's special education finance system. We are also grateful for the many special education local plan area (SELPA) administrators who voluntarily responded to our lengthy survey to inform this study and the Education Commission of the States, which conducted a review of state high-cost pools across the country to aid in the study. This study also benefited from interviews with and input from current and retired lobbyists, researchers, practitioners, legislators, and advocates who, currently and at different points across the last 40 years, are and have been working to improve special education funding in California.

Collectively, these contributors represent hundreds of years of special education experience, policymaking, implementation, and advocacy. We could not have done this work alone, and we are grateful for the tireless efforts of California's special education leaders and their generous contributions to this work.

Executive Summary

In 2013, the state of California ushered in a new era of education funding, accountability, and support under the Local Control Funding Formula (LCFF). The move to the LCFF dissolved most separate funding streams (often referred to as categorical programs) in favor of an integrated system that includes flexible funding for several underserved student groups, including students experiencing socioeconomic disadvantages, those who are English learners, and those who are in the foster care system (EC § 42238.02). Funding for a few categorical programs was left unaltered, including funding for students with disabilities. However, students with disabilities were included in the accountability components of the LCFF, including each LEA's local control and accountability plan (LCAP) and the California School Dashboard.

Over the past five years, in the wake of reports from the Special Education Task Force (2015) and the Public Policy Institute of California (Hill et al., 2016), policymakers, stakeholders, and researchers have debated the strengths and weaknesses of the current special education funding system. Currently, special education is one of the few remaining separate, categorical funding streams to support the education of California students. Five years after the move to the LCFF, the complex funding system for special education remains separate as the state continues to strive toward greater alignment not only in its funding system, but also in the programmatic systems for improving educational services and outcomes for all California students.

California serves more than 725,000 students with disabilities (approximately 11.7 percent of the K–12 population) and invests roughly $12 billion in federal, state, and local dollars annually in special education (California Department of Education, n.d.). State special education funding accounts for approximately 28 percent of the total, with local education agency (LEA) unrestricted funds accounting for the majority (61 percent) of special education spending. States and districts are required, by federal law, to provide a comprehensive, individualized education program (IEP) for each student with a disability (34 CFR § 300.320). However, federal funding accounts for only about 11 percent of the spending on special education, leaving the remaining spending to state and local funding.

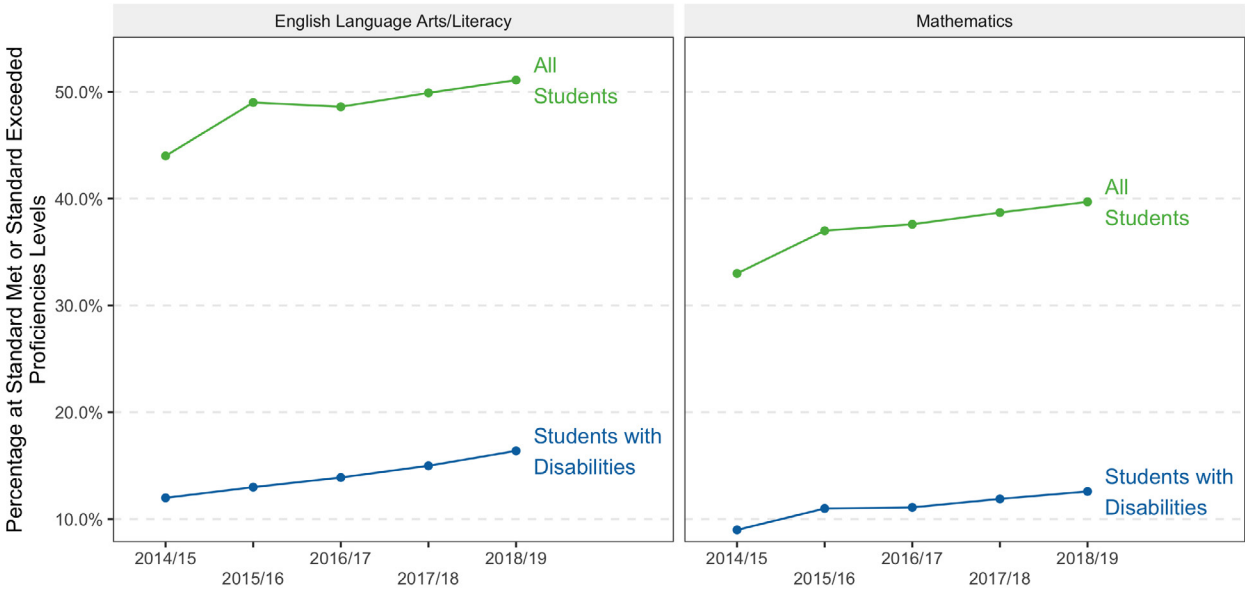
Given this investment, the stakes are too high to change the system without a clear understanding of the current system and a thorough investigation of possible improvements. This report accomplishes the first of these tasks, detailing the current special education funding system in California, its history, and the role of the state and intermediaries in the distribution and use of those resources. This executive summary provides the major findings of that review and analysis, further detailed in the main report.

California's Students With Disabilities

In California, as in other states, many students who qualify for special education are also members of other underserved student populations, including, for example, students experiencing socioeconomic disadvantages, those who are English learners, and those who are in the foster care system. California is not the only state to explore the creation of a more coherent, inclusive educational system that gives local leaders the flexibility to use funding on early identification and intervention based on students' learning needs. Yet, this report's findings echo prior findings that the state's special education funding system operates in parallel to the general education funding system.

California's students with disabilities consistently underperform on standardized assessments. Persistent achievement gaps between students with disabilities and their peers without disabilities suggest that more work is needed to create inclusive, equitable educational systems that ensure all students succeed and thrive.

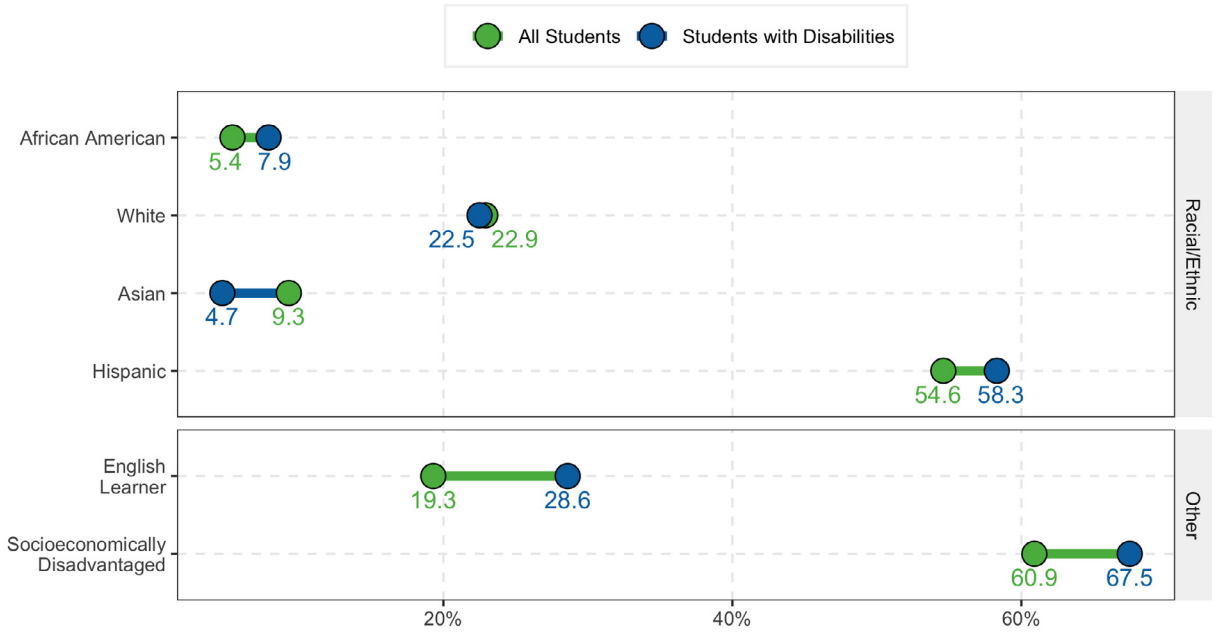
Figure E-1. Trend in achievement gaps for English language arts / literacy and mathematics across all grades between 2014/15 and 2018/19



Note. Data from U.S. Department of Education (n.d.); U.S. Office of Special Education Programs (n.d.)

Students with disabilities have other needs that are addressed through different and separate programs and funding streams. The most disproportionate identification rates for special education are found among English learner students, who represent 19.3 percent of all students, but represent 28.6 percent of students with disabilities, and socioeconomically disadvantaged students, who represent 60.9 percent of all students, but represent 67.5 percent of students with disabilities.

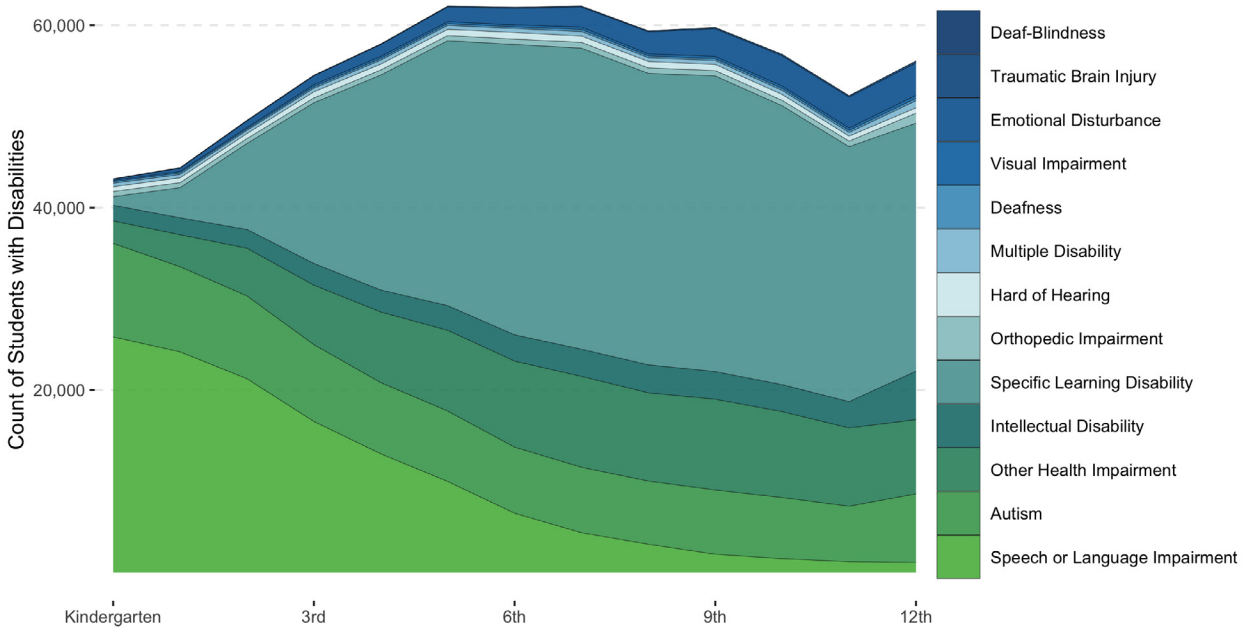
Figure E-2. Disproportionate identification of California students with disabilities (disproportionality), 2018/19 school year



Note. Data from DataQuest Enrollment Data, 2018/19 (CDE, n.d.).

The type and proportion of students identified with disabilities vary considerably by LEA and by grade level. LEAs, including charter LEAs, report rates of students with disabilities ranging between 0 and 36 percent of total enrollment. For the early grades, speech or language impairments constitute the vast majority of identified disabilities. However, by grades five and six, specific learning disabilities constitute the majority, with speech or language impairments becoming a much smaller proportion of identified disabilities. It is also during this period, around grades five and six, that the number of students with disabilities peaks, with more than 60,000 students identified per grade.

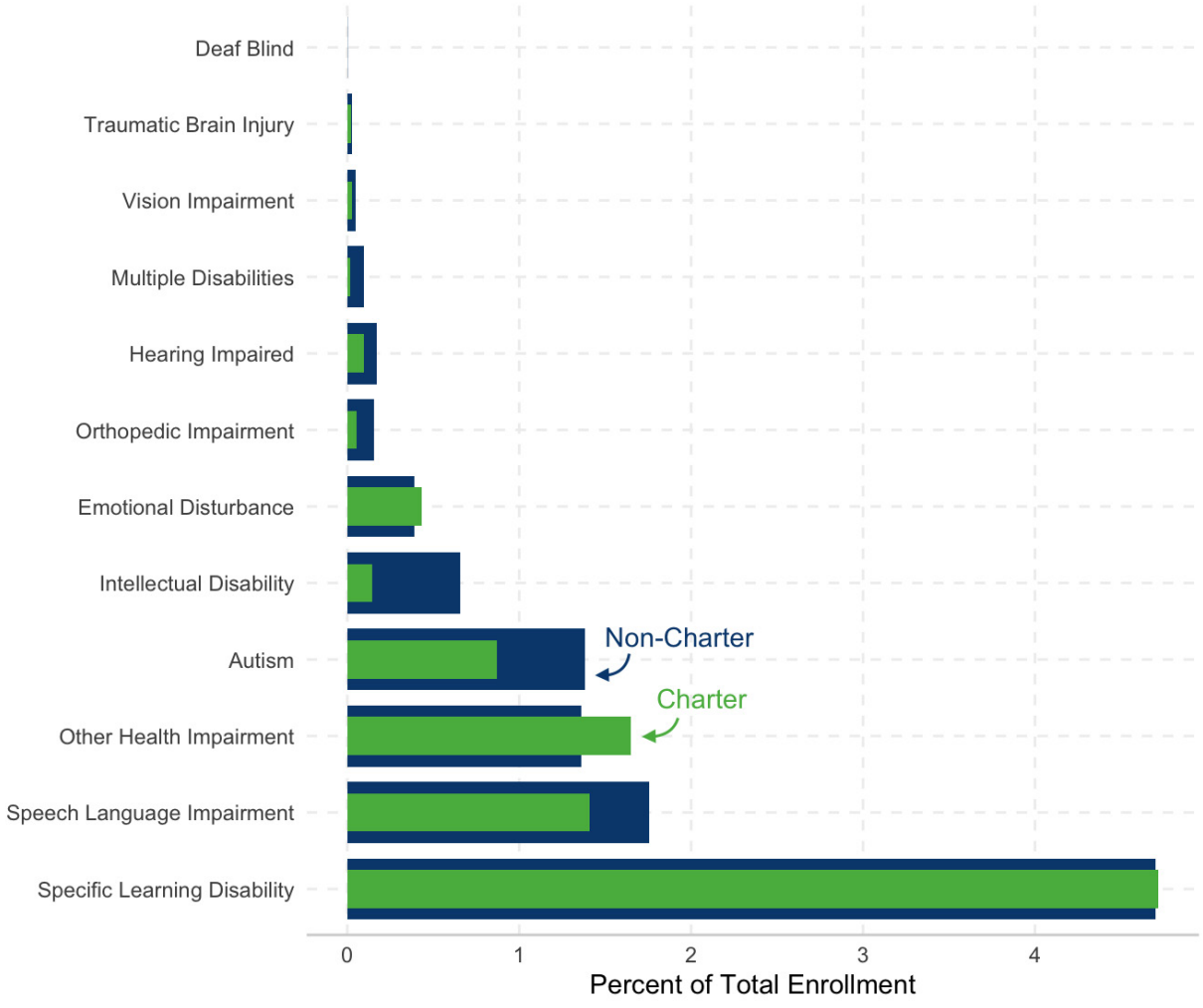
Figure E-3. Disability category by grade in California K–12 schools, 2018/19 school year



Note. Data from DataQuest 2018/19 Special education enrollment by age and disability statewide report (CDE, 2020a).

Charter school LEAs serve a different profile of students with disabilities than do traditional LEAs. On average, charter schools that are LEAs for purposes of special education enroll fewer students with disabilities than do traditional LEAs — 9.4 percent of enrollment for charter LEAs, compared with 10.7 percent of enrollment for traditional LEAs. Compared with traditional school districts, charter LEAs also serve smaller proportions of students identified in the other disability categories, including autism, intellectual disability, and multiple disabilities.

Figure E-4. Percent of all students with disabilities, disability category by non-charter and charter LEAs for purposes of special education in California K–12 schools, 2018/19 school year

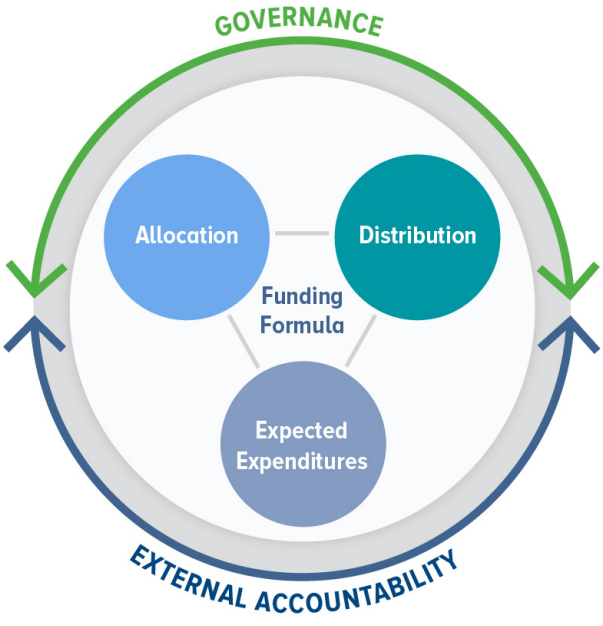


Note. Data from DataQuest 2018/19 Special education enrollment by age and disability statewide report (CDE, 2020a). Non-charter LEAs include charter schools that are schools of the LEA for purposes of special education. See appendix F of main report for details on this distinction.

Special Education Funding Policy

The education funding framework presented in this report includes five key components around which policymakers make decisions that impact funding and practice. At the center of the framework is the *funding formula*, with three components: **allocation** (how amounts of funding are calculated), **distribution** (directing the funds to specific entities), and **expected expenditures** (requirements for or restrictions on how funds will be spent). State policymakers also make decisions that affect the authority of local **governance** of the funds and reflect **external accountability** placed by the state or federal government for the use of funds.

Figure E-5. Framework for education funding policymaking



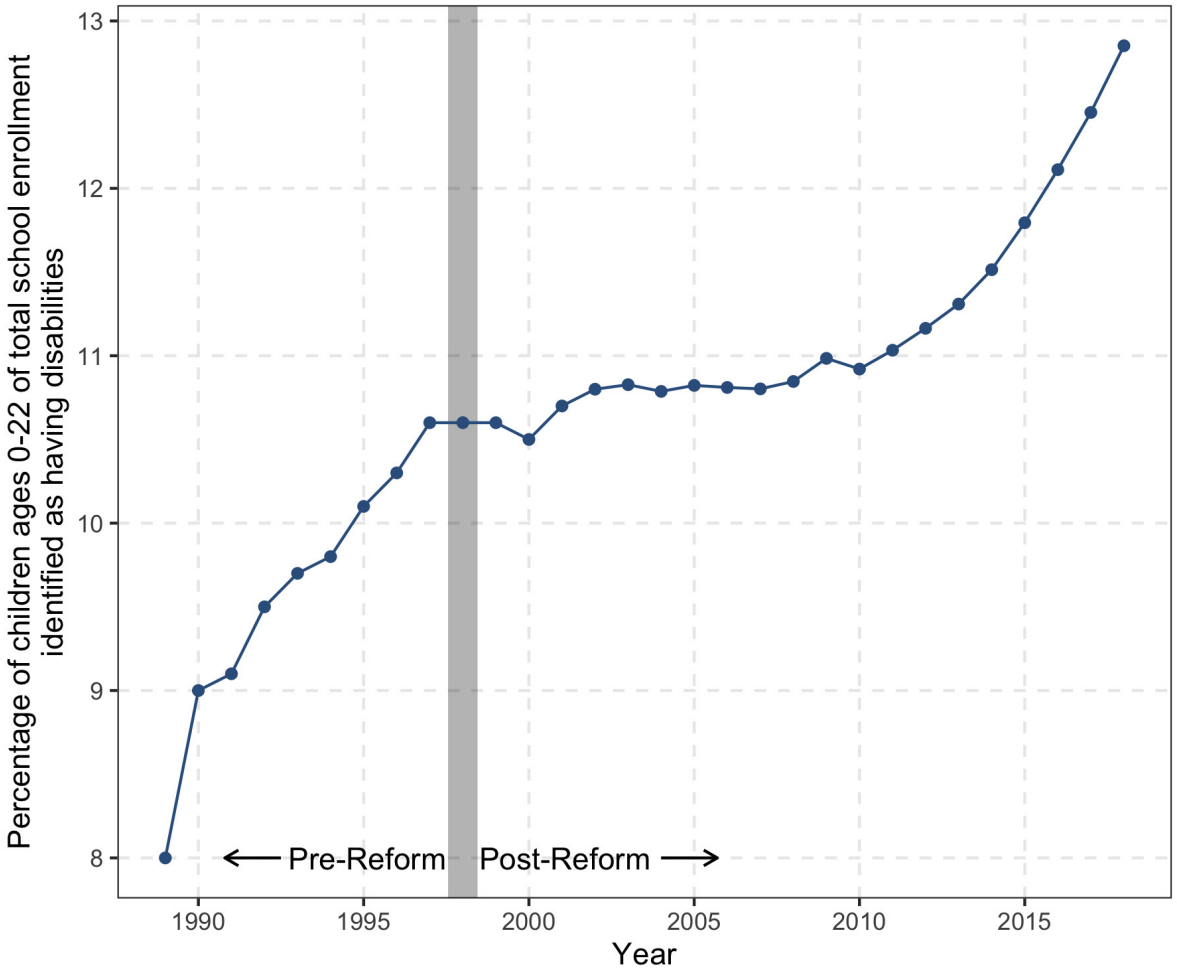
California's Special Education Funding System

In California, special education and general education planning, governance, funding, and reporting are separate and siloed. California allocates funds for special education separately from all other education funds and distributes them to different entities. The planning and reporting processes and governance structure for special education are also different and separate from those used for general education. Although students with lower-incidence disabilities can benefit from economies of scale created by regional entities, the majority of students with disabilities (almost 57 percent) are taught in general education

classrooms for at least 80 percent of the school day, reflecting the importance of coordinating general education and special education programs and systems.

The immediate stabilization of identification rates for students with disabilities under AB 602 did not produce the policies' intended outcomes, which included long-term stabilization of identification rates and long-term containment of costs. To reduce complexity and eliminate any incentives in the funding formula to overidentify students with disabilities, in 1998 California switched from a funding model, J-50, that allocated funding based on services provided to and placements of students with disabilities, to AB 602, a funding model that allocated funds based on overall attendance of all students. Following the 1998 shift to AB 602, California's statewide disability identification rate stabilized for about a decade. However, since 2010, identification rates have again climbed steeply.

Figure E-6. California identification rates prior to and after the shift to AB 602



Data from Kwak (2010) and from DataQuest Enrollment Data, 2002/03 through 2018/19 (CDE, n.d.).

California's special education funding allocation approach is not purely census-based. Although California's AB 602 base funding is calculated using attendance rates for all students, the formula allocates varying amounts of per-student funding for each special education local plan area (SELPA), based on varying historical SELPA costs for services provided under J-50. In 2019/20, per-student funding ranged from $557 to more than $900 per student, due to rates determined using the J-50 formula (CDE, 2020d). The state also allocates supplementary funding streams based on counts of students in specific disability categories (low-incidence funding) and students in more restrictive settings (out-of-home care funding and high-cost pools). Although some argue that systems differentiating funding based on need incentivizes overidentification, systems that do not differentiate funding based on the number of students with disabilities or their education needs offer a different fiscal incentive. In the latter type of system, LEAs have a fiscal incentive to find as few students eligible for special education as possible and to place those who are identified into the least costly placements (Dhuey & Lipscomb, 2013).

California distributes special education funding through SELPAs, giving the state relatively little influence over the amounts of funding received by most LEAs — specifically, members of multi-LEA SELPAs (representing more than 95 percent of LEAs), including charter LEAs. Primarily composed of local LEA superintendents, each multi-LEA SELPA's governing board establishes its own unique funding formula to allocate and distribute the funding it receives from the state to member LEAs in the SELPA based on local needs. Consequently, in California's current system, any change in how the state determines allocations of funds to LEAs may not directly influence how funds flow to LEAs unless changes are also made in how those funds are distributed by the state or in the requirements for how multi-LEA SELPA governing boards allocate and distribute funds.

California's approach to distributing special education funds exclusively to and through SELPAs is uncommon. More frequently, LEA membership in a regional entity or education service agency (ESA) is voluntary, and state special education funds are distributed directly to LEAs. Many states align the distribution of funds and responsibility for meeting the Individuals with Disabilities Education Act (IDEA) requirements; that is, they distribute funds to the entities that are held responsible for fulfilling IDEA requirements. In one other state where ESAs do receive funds directly — Michigan — the ESAs are also solely responsible for the fiscal and programmatic requirements of IDEA and have taxing authority for the regions where they are located.

In California, it is unclear which of the many entities with responsibilities for special education are legally responsible for special education. California's education code does not clearly delineate special education responsibilities among the California Department of Education (CDE), county offices of education, SELPAs, and LEAs.

California's statewide high-cost pools to support LEAs that have high-cost special education students are among the lowest-funded pools in the nation. California funds

its total high-cost pool (available through its two statewide pools) at $9 per student with a disability. New York and Pennsylvania invest $2,278 and $37 per student with a disability, respectively. In California, SELPA directors reported that the benefit of having the state high-cost pools is outweighed by the paperwork requirements for requesting reimbursement, especially given the low amount of reimbursement compared with program costs.

Many multi-LEA SELPAs offer high-cost or risk pools, some with purposes similar to the state's high-cost pools. Although the state has two high-cost pools, one of which is available only to small SELPAs, many multi-LEA SELPAs report administering their own high-cost pools.

Role of Multi-LEA SELPAs in California Special Education Funding

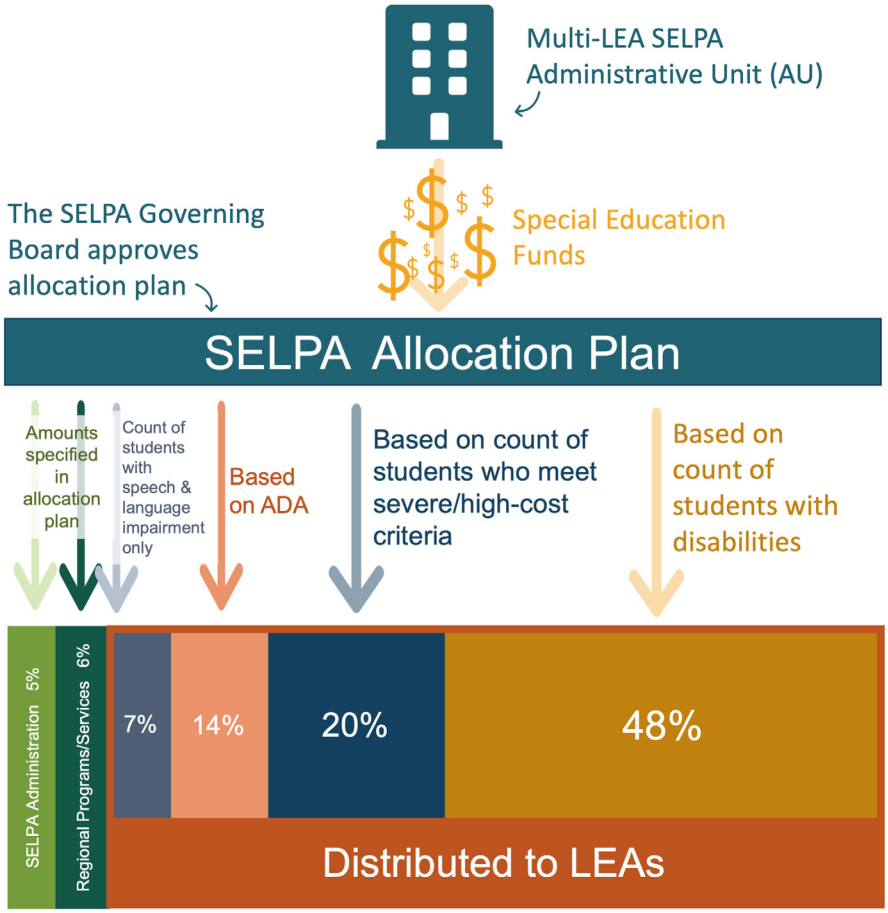
More than 90 percent of California LEAs, including all charter LEAs, belong to a multi-LEA SELPA. Multi-LEA SELPAs are intended to ensure that smaller LEAs have sufficient resources to meet programmatic requirements by pooling resources for multiple LEAs to create economies of scale. SELPAs are responsible for coordinating regional special education programs and services and for allocating, distributing, and determining expected expenditures for funding to LEAs.

Multi-LEA SELPAs serve as an extension of the CDE (e.g., for data collection and oversight) and also of LEAs (e.g., for coordinating resources for, and sometimes directly providing, special education programs). Despite having responsibilities similar to both the state and LEAs, multi-LEA SELPAs do not have the same external accountability structures as either an LEA or the state.

SELPA governing boards determine how funds are allocated for, distributed to, and expended by LEAs. After state funds are distributed to a SELPA, the SELPA's governing board, made up primarily of member LEA superintendents or their designees, allocates state funding to member LEAs, using the SELPA's allocation plan. These governing boards have wide latitude on whether and how to allocate and distribute funds to member LEAs and can change the state's funding formula (e.g., by using the actual count of students rather than ADA to allocate funds to LEAs, or by holding funds from LEAs to provide specific services). The intermediary role of SELPA governing boards in making funding decisions for their member LEAs could potentially make it challenging for the state to communicate programmatic priorities to its LEAs through its own allocation, distribution, and expected expenditures.

Funds are allocated by multi-LEA SELPA governing boards based on SELPA and LEA member needs and priorities, using myriad formulas, including many types of student weights. Consistent with the degree of autonomy these boards have, the study team found wide variation in SELPAs' funding formulas. The particular combination of approaches differs by SELPA and, in some instances, differs by funding stream (e.g., out-of-home care funds) within a given SELPA.

Figure E-7. An example of a multi-LEA SELPA's special education funding formula



Note. Data from an individual SELPA allocation plan.

SELPA allocation plan reporting is complex and nonstandard, resulting in an inability to connect policy intention and the allocation and distribution of resources at the local level. Although some plans describe the SELPA's current funding system in detail (e.g., providing the percentage of AB 602 base funds used to fund SELPA administrative costs) and connect funding decisions to student needs, others provide no details as to how decisions were made about the amount of funding distributed or the methods used to calculate amounts for each LEA. However, the state has since taken steps to address the lack of consistent, clear reporting on how multi-LEA SELPAs allocate and distribute funding.

Conclusion

Findings from this descriptive study and a review of current research on state special education funding systems suggest that there are implications for California's funding system for students with disabilities. In the next part of this study, the WestEd study team will use the framework for education funding policymaking and key findings from this report to detail those implications and provide a series of options to continue to refine and improve the California funding systems for students with disabilities. The options will be supported by primary research, extant research on state special education funding systems, and documentation of the potential benefits and drawbacks.

The presentation of these options will be done in the context of the current economic and fiscal realities of California brought on by the COVID-19 pandemic. To do so, the options presented will include considerations for changes that do and do not require additional investments in funding. The next report will also look at how these changes — across the components of the education funding policymaking framework — may be implemented over different periods of time.

The implications and recommendations report may include the following options:

Allocation

- Recommendations for allocating additional, supplemental one-time or ongoing funding that is differentiated based on student needs, including special education need and/or other need (e.g., socioeconomically disadvantaged students, English learners)
- Recommendations for adjusting future base allocations in addition to equalizing the base per-child amount

Distribution

- For supplemental one-time and ongoing funds, considerations for whether all or some funds should be distributed to different combinations of regional and local entities

Expected Expenditure

- Strengthening existing or developing additional mechanisms, such as high-cost pools and supplemental funding streams, to create economies of scale for high-need special education students and high-cost programs
- Modifying some or all of the rules around limitations on special education spending to further encourage planning with general education

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6.4 Desert Mountain Operations Update
Verbal report, no materials

Desert / Mountain Children's Center
17800 Highway 18
Apple Valley, CA 92307-1219

P 760-552-6700
F 760-946-0819
W www.dmchildrenscenter.org

MEMORANDUM

DATE: October 14, 2020

TO: Special Education Directors

FROM: Linda Llamas, Director

SUBJECT: Desert/Mountain Children's Center Client Reports

Attached are the opened and closed cases for the following services:

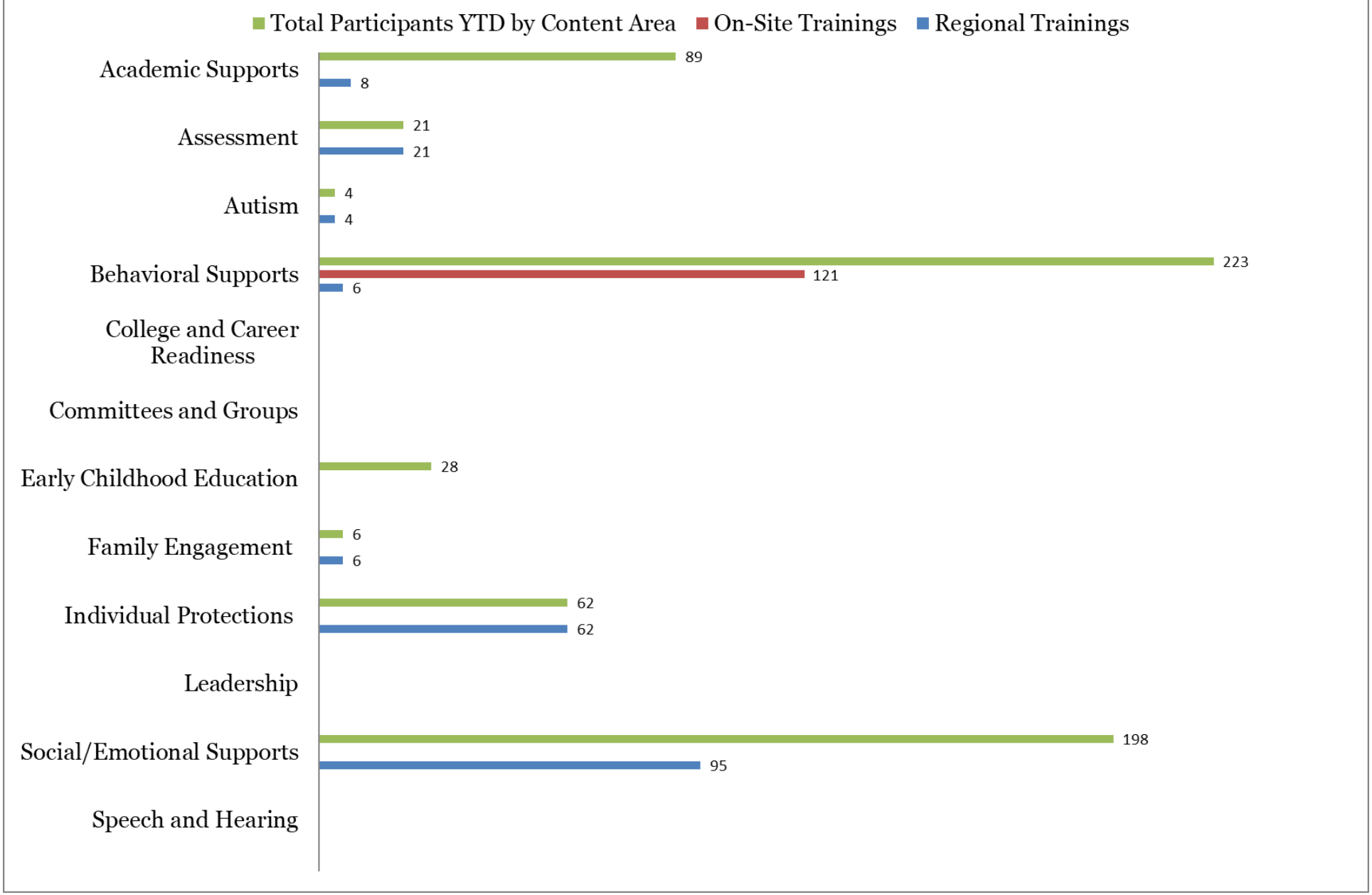
- Screening, Assessment, Referral and Treatment (SART)
- Early Identification Intervention Services (EIIS)
- School-Age Treatment Services (SATS)
- Student Assistance Program (SAP)
- Speech and occupational therapy

If you should have any questions, please contact me at (760) 955-3606 or by email at linda.llamas@cahelp.org

D/M SELPA PROFESSIONAL LEARNING PARTICIPATION SUMMARY

SEPTEMBER 2020 - 323 PARTICIPANTS

631 YEAR-TO-DATE PARTICIPANTS



Desert/Mountain SELPA
Due Process Summary
July 1, 2020 - October 16, 2020

DISTRICT														CASE ACTIVITY FOR CURRENT YEAR				
	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	Total		D /W	Resolution	Mediation	Settled	Hearing
Adelanto SD	2	0	3	6	5.5	2.5	5	3	3.5	3	1.5	35		0	1	0	0.5	0
Apple Valley USD	1.33	0	0	2	1	1.5	1.5	0	3.5	10	1	21.83		1	0	0	0	0
Baker USD	0	0	0	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Barstow USD	1	0	0	0	0	1	3.5	0	2	0	0	7.5		0	0	0	0	0
Bear Valley USD	0	1	0	0	0	0	1	2	0	0	0	4		0	0	0	0	0
Helendale SD	0	0	0	0	0	0	0	1	0	0	0	1		0	0	0	0	0
Hesperia USD	1	5.5	4	3	5	7.5	7	6	7	17.5	3	66.5		0	1	0	2	0
Lucerne Valley USD	4	0	1	2	1	1	2	0	1.5	0	0	12.5		0	0	0	0	0
Needles USD	0	0	0	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Oro Grande SD	0	0	0	0	0	0	0	0	0	2	0	2		0	0	0	0	0
Silver Valley USD	0	1	0	0	0	0	0	0	0	0	0	1		0	0	0	0	0
Snowline USD	0	2	1	1	5	4.5	6.5	2	8.5	7	0	37.5		0	0	0	0	0
Trona USD	0	0	0	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Victor Elementary SD	1	1	1	4.33	3.33	1.83	2.5	6.5	0	7	1	22.5		0	0	0	1	0
Victor Valley Union High SD	0	2	4	3.33	4.3	7.83	4	4	8.5	6.5	2.5	41.5		0	0	0	2.5	0
Academy for Academic Excellenc	1.33	0	0	4	2	0	1	2	1	1	0	12.33			0	0	0	0
CA Charter Academy	0	0	0	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Desert/Mountain OPS	0.34	0.5	1	1.33	0.83	4.33	3	1.5	3	2	0	17.83		0	0	0	0	0
Excelsior Education Center	0	0	0	0	0	0	0	0	0.5	2	0	2.5		0	0	0	0	0
Health Sciences HS & MS	0	0	0	0	0	0	0	0	1	1		2		0	0	0	0	0
SELPA-WIDE TOTALS	**12**	**13**	**15**	**33**	**27.96**	**33**	**37**	**28**	**40**	***59**	**9**	**287.5**		**1**	**2**	**0**	**6**	**0**

Districts showing a value of .50 above indicates that the district is a co-respondent with another district.

*Number accounts for High Tech High but has exited from CAHELP. Actual count for 2019-20 is 67.

Desert/Mountain SELPA
Due Process Activity Summary
July 1, 2020 – October 16, 2020

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
1. Apple Valley Case No. 2020070137	1. Appropriate services, goals, placement, accommodations 2. Failure to implement IEP as written 3. Denial of Home instruction 4. Failure to timely assess and review evaluations 5. Failure to provide accommodations for cheer tryouts	0703/20	~~07/13/20~~ ~~07/16/20~~ 08/14/20	~~08/27/20~~	~~08/17/2020~~ ~~09/21/20~~	~~08/25~~ ~~8/27/2020~~ ~~09/29~~ ~~10/01/20~~	Resolution unsuccessful. Parent demands placement of daughter on cheer team, reimbursement for private/city cheer team participation, compensatory ed, Spanish class letter grade change. Parent agreed to mediation then withdrew. Preparing for hearing. 8/26/20 parent withdrew from mediation. Prepare for hearing. 9/26/20 case dismissed by parent. CLOSED
2. Hesperia USD Case No. 2020070579	1. Appropriate placement and program 2. Statutorily appropriate LAS assessment	07/17/20	~~7/31/20~~ 08/17/20	09/08/20	10/26/20	11/03- 11/15/20	08/26/20 settlement agreement for DMCC ERMHS, IEE-speech; service increases to speech and occupational therapy. Comp. education: speech, counseling, tutoring. CLOSED
3. VVUHSD Case No. 2020070920	1. Appropriate placement and program 2. Failure to make progress 3. Failure to provide ABA aide at parent request 4. Minimal services during COVID 19	07/29/20	08/11/20		09/11/20	09/22- 09/24/20	08/28/20 settlement agreement for comp. education: tutoring, speech language, occupational therapy. CLOSED
4. Hesperia Case No. 2020070962	1. Appropriate program in LAS, Fine Motor, Behavior 2. Statutorial appropriate LAS assessment and psycho ed assessment	07/30/20	~~08/07/2020~~ 08/18/20	09/17/20	09/11/20	~~09/22~~ ~~09/24/20~~ 10/20- 10/22/20	08/27/20 settlement agreement for IEEs: speech language, FBA, Psycho-Ed. IEP additions: increase in speech language, occupational therapy. Comp. education: tutoring, speech. CLOSED

Desert/Mountain SELPA
Due Process Activity Summary
July 1, 2020 – October 16, 2020

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
5. VVUHSD 2020080045	Child Find 1.Severe depression 2. Hospitalized 4x 3. Failing classes	08/05/20	8/18/20		09/14/20	09/22- 09/24/20	Seeking identification as SPED in order to cover residential placement. Student in medical RTC in Whittier. Upon release, VVUHSD to commence assessment. Settlement 08/27/20 - CLOSED
6. Victor Elem SD 2020080331	Child Find 1.Failure to assess	08/12/20	09/02/20		09/28/20	10/06- 10/08/20	Student had 504 in Victor Elem SD; VVUHSD found eligible for special education. Seeking comp. education. Settlement 9/24/20 - CLOSED
7. Adelanto SD & VVUHSD 2020080427	Denial of FAPE 1. Health plan 2. Academic 3. Complete assessment	08/13/20	08/25/20		09/25/20	10/06- 10/08/20	09/28/20 settlement agreement; fund IEE – Psycho ed; IEP to modify goals, health plan, and implementation with parent; comp. education; CLOSED
8. Hesperia USD 2020090471	Denial of FAPE 1. Failure to assess in all areas 2. Failure to offer SLP, ERMHS 3. Failure to provide appropriate SAI 4. Lack of appropriate goals 5. Failure to implement IEP	09/16/20	10/05/20		11/02/20	11/10- 12/2020	Awaiting resolution
9. Adelanto 2020090691	Denial of FAPE 1. Inappropriate program & placement 2. Inaccurate MD 3. Failure to provide FBA 4. No services Feb 2020-May 2020	09/22/20	09/29/20	10/07/20		10/20- 10/22/20 Expedited 11/17- 11/19/20 Regular	LEA retracting MD; requesting to dismiss expedited status; gathering DLP data for expedited mediation or regular resolution;

Desert /Mountain SELPA
Legal Expense Summary
As of October 16, 2020

2000-2001	$39,301.51
2001-2002	$97,094.90
2002-2003	$37,695.13
2003-2004	$100,013.02
2004-2005	$136,514.09
2005-2006	$191,605.08
2006-2007	$140,793.00
2007-2008	$171,614.04
2008-2009	$263,390.71
2009-2010	$114,076.96
2010-2011	$293,578.50
2011-2012	$567,958.10
2012-2013	$321,646.04
2013-2014	$250,372.65
2014-2015	$297,277.76
2015-2016	$204,756.26
2016-2017	$233,130.03
2017-2018	$247,459.52
2018-2019	$314,479.71
2019-2020	$475,930.79
2020-2021	$58,357.40

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019101130

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

DECISION

SEPTEMBER 25, 2020

On October 28, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student naming Los Angeles Unified School District, referred to as Los Angeles. OAH initially continued this matter on November 20, 2019. On February 6, 2020, Los Angeles filed its response. On July 13, 2020, OAH granted Los Angeles' motion to dismiss Issues 2 and 3 for lack of jurisdiction.

Administrative Law Judge Jennifer Kelly heard this matter by videoconference in California on July 28 and 29, 2020.

David W. German and Omar Qureshi, Attorneys at Law, represented Student. Student's parent attended all hearing days. Patrick Balucan, Attorney at Law, represented Los Angeles. Eli Griffen, Legal Intern, Office of the General Counsel, attended all hearings days. Eric Young, Specialist, Office of Special Education attended all hearing days on Los Angeles' behalf.

At the parties' request, OAH continued the matter to August 17, 2020, for written closing briefs. The parties timely filed their closing briefs, the record was closed, and the matter was submitted on August 17, 2020.

ISSUE

- Did Los Angeles deny Student a free appropriate public education by abusing Student during the 2019-2020 school year causing Student psychological and physical harm and denying him educational opportunity?

JURISDICTION

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

- all children with disabilities have available to them a 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

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student filed the due process complaint and therefore had the burden of proof in this matter. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was five years old and entering kindergarten at the time of hearing. Student resided with Parent within Los Angeles' geographic boundaries at all relevant times. Student was eligible for special education services under the category of speech and language impairment.

ISSUE 1: DID LOS ANGELES DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION BY ABUSING STUDENT DURING THE 2019-2020 SCHOOL YEAR CAUSING STUDENT PSYCHOLOGICAL AND PHYSICAL HARM AND DENYING HIM EDUCATIONAL OPPORTUNITY?

Student contended Los Angeles denied Student a FAPE by abusing Student during the 2019-2020 school year. More specifically, Student contended that on one occasion his teacher forced him to nap outside the classroom on a dirty rug and on another occasion violently shook Student. Student contended these actions were harmful and caused Student to suffer post-traumatic stress disorder and denied him educational opportunity.

Los Angeles contended during the 2019-2020 school year it offered Student a FAPE. Los Angeles denied all allegations of mistreatment and argued to the extent any prohibited interventions were used, it completed an appropriate investigation and determined the allegations were insufficient to warrant removal of the teacher from the classroom. Los Angeles further contended it provided Student speech and language services under his individualized education program during the 2019-2020 school year or was always willing do so, and that Student failed to meet his burden of proving he failed to make progress towards his speech and language goals.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction

specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(3); 34 C.F.R. § 300.39; Ed. Code, § 56033.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefitting from special education. (20 U.S.C. § 1401(26)(A).)

Parents and school personnel must develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56033, 56032, 56341, 56345, subd. (a) and 56363, subd. (a); 34 C.F.R. § 300.501.) In general, the IEP 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 achieving the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. § 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

Once the IEP is consented to, a district must provide the special education and related services listed in the IEP. (34 C.F.R. § 300.323(c).) A child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

LIMITED SCOPE OF OAH JURISDICTION

A complaint brought under the IDEA must seek redress for a school district's failure to provide FAPE. The same conduct by the parties may violate other statutes or give rise to liability under common law. Accordingly, the Administrative Law Judge must examine the substance of the complaint to determine if the claim falls within the protections of the IDEA. (*Fry v. Napoleon Community Schools* (2017) [137 S.Ct. 743, 197 L.Ed. 2d 46.].)

OAH does not have jurisdiction to decide claims based on section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), section 1983 of title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51). Although an IDEA claim is frequently combined with a claim under section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, the IDEA does not allow for tort money damages as its purpose is to provide educational services, not compensation for personal injury. (*C.O. v. Portland Public. Schools* (9th Cir. 2012) 679 F.3d 1162, 1167 [damages play no part in IDEA's comprehensive enforcement scheme].). OAH does not have jurisdiction to decide claims based upon criminal, contract, or tort law. OAH previously dismissed Issue 2 and Issue 3 for lack of jurisdiction.

Issue 1 alleges Los Angeles denied Student a FAPE by abusing Student, resulting in physical and psychological injures and denying him educational opportunity. The complaint seeks compensatory educational programming, services and supports. In determining whether Student seeks relief for the denial of FAPE, the Administrative Law Judge must look to the gravamen of the complaint. (*Fry*, *supra*, 137 S.Ct. at pp. 746-748.)

Student alleged he was the subject of abuse. The IDEA and the California Education Code do not define the term "abuse," and OAH must have subject matter jurisdiction over the cases before it. However, the California Education Codes defines 'prohibited interventions' as actions designed to or likely to cause physical pain, subject the student to verbal abuse, ridicule or humiliation, or preclude adequate supervision. (Ed. Code, § 56521.2, subd. (a)(1), (4) & (7).) This Decision will address whether the alleged acts of "abuse," were "prohibited interventions" as defined by the Education Code.

The Supreme Court held in *Fry* that seeking relief available under the IDEA means the complaint seeks relief for the denial of a FAPE. (*Fry, supra*, 137 S. Ct. at p. 752.) In deciding whether a complaint seeks relief for a denial of a FAPE, courts look at the gravamen of a complaint, "setting aside any attempts at artful pleading." (*Id.* at p. 755.) The Supreme Court suggested the following questions to determine "whether the gravamen of a complaint" concerns the denial of a FAPE: (1) could the claim be brought if the alleged conduct occurred at a public facility that was *not* a school?; and (2) "could an adult . . . have pressed essentially the same grievance?" (*Fry*, *supra*, 137 S.Ct. at p. 756 (emphasis in original).). "[W]hen the answer[s] [are] no, then the complaint probably does concern a FAPE, even if it does not explicitly say so; for the FAPE requirement is all that explains why only a child in the school setting (not an adult in that setting or a child in some other) has a viable claim." (*Id.*)

Student could not have brought the claim alleged in Issue 1 against a public facility that was not a school, nor could an adult employee or visitor present the same grievance, because the relief sought is educational in nature, namely compensatory educational programming and supports to remedy his purported educational loss. (*Fry*, *supra*, 137 S. Ct. at p. 756 [claims are based on the IEP when issue is adequacy of special

education].) The complaint also requests monetary damages stemming from the alleged deprivation of FAPE, presumably for the purpose of exhaustion of administrative remedies. (*Paul G. v. Monterey Peninsula Unified School District* (9th Cir. 2019) 933 F.3d 1096, 1102 [affirming district court's granting of motion to dismiss for failure to exhaust administrative remedies.])

This Decision makes no findings of fact regarding whether Student suffered any physical injuries or psychological injuries for which Student may have remedies under non-IDEA law or common law.

Issue 1 seeks redress for a denial of FAPE and compensatory education for Student's loss of educational opportunity, which fall within the core guarantee of the IDEA. (*Fry, supra,* 137 S.Ct. at p. 746.) Accordingly, OAH has jurisdiction to adjudicate whether Los Angeles denied Student a FAPE regarding Student being allegedly forced to spend outside on a dirty rug and the September 25, 2019 shaking incident that constituted improper aversive behavioral techniques, as alleged in paragraphs seven through nine in Student's complaint. Whether these incidents constituted abuse that caused psychological and physical harm is not controlling whether those incidents denied Student a FAPE based on the IDEA and applicable California law. As the parties fully litigated whether these incidents, regardless how the incidents are labeled, denied Student a FAPE, OAH can decide if Los Angeles' actions in these incidents denied Student a FAPE. (See *M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2006) 858 F.3d 1189, 1196.)

STUDENT'S EDUCATIONAL PROGRAM

Student was referred by the South-Central Los Angeles Regional Center for an initial comprehensive assessment to determine if Student qualified for special education services. Los Angeles conducted a preschool team assessment of Student and report in April 2018.

Student's initial IEP was developed on May 19, 2018 when Student was four years old and attending the Ozzie Goren Head Start program. Los Angeles found Student eligible for special education due to a qualifying speech and language impairment. The IEP team recommended Student receive 120 minutes per month of speech and language services by a speech and language pathologist to address his articulation goal, and 120 minutes per month of early child itinerant teacher services to support his language goals. Head Start Integrated was Los Angeles' special education program that supported children with IEPs enrolled in designated classrooms. Special education staff were assigned to implement the goals of a child's IEP.

Student continued to attend pre-school at Ozzie Goren during the 2018-2019 school year. Student received the speech and language services designated in the May 19, 2018 IEP through Head Start Integrated. Student's annual IEP team meeting was held on May 23, 2019. The IEP team determined Student remained eligible for special education under the category of speech and language impairment. Student met his goal of producing two to three-word sentences and modeling and cueing and was able to verbally express himself. Student had not yet achieved his articulation goal in the initial May 19, 2018 IEP. The IEP team developed new goals for Student in the areas of articulation and use of language. The IEP team noted Student sometimes chose not to participate in his speech and language sessions and walked away from the instructor. The IEP team recommended accommodations for Student, including structured choice,

props and pictures, and multiple opportunities to practice sounds, words and oral movement through selected books, music and instructional materials. The IEP team suggested facilitated peer interaction to support Student's use of language, as well as daily structured language activities facilitated by an adult to engage in questions, answers, and conversations.

For the 2019-2020 school year, the IEP team offered placement in the general education classroom at Ozzie Goren with 120 minutes per month of speech and language services to address Student's articulation goal and 120 minutes per month of early childhood itinerant teacher services to address Student's language goal. Parent consented to all components of the IEP.

STUDENT'S SIX-WEEKS AT 54TH STREET ELEMENTARY

Student's IEP team identified Ozzie Goren as Student's school of attendance for the 2019-2020 school year in the May 23, 2019 IEP. However, Parent enrolled him at 54th Street Elementary School, referred to as 54th Street Elementary. Parent enrolled Student in the Expanded Transitional Kindergarten class for children turning five years of age between December 3d and June 30th.

The 2019-2020 school year began on August 19, 2019, and all students reported to class on August 20, 2019. Student's first day of school was August 20, 2019. His last day at 54th Street Elementary was September 25, 2019; less than 6 weeks later. On one occasion between September 3d and 16, 2019, Student was allegedly left outside his classroom to nap. On September 25, 2019, Student's teacher allegedly shook his shoulders. Student's Grandparent took him home, and he did not return to 54th Street Elementary. Parent enrolled Student in Ozzie Goren on November 13, 2019.

Student's class at 54th Street Elementary was taught by Roberta Brandt. The class had approximately 24 students. At hearing, the evidence was undisputed the class was required to have had two classroom aides, but due to personnel changes and hiring issues no aides were assigned to the classroom. Brandt made requests to school administration at the beginning of the 2019-2020 school year for more help in the classroom.

Brandt had been employed by Los Angeles Unified for approximately 33 years. She had worked as an Expanded Transitional Kindergarten teacher at 54th Street Elementary for the past five years. She held a bachelor's degree in elementary education and a multi-subject cleared teaching credential. Prior to working as an Expanded Transitional Kindergarten teacher, Brandt taught in a school language readiness program for approximately 22 years. Over the past five years, Brandt had approximately three students in her class with IEPs. Brandt was aware Student had an IEP and qualified for special education services under the category of speech and language impairment. Brandt had no background in special education and had not received formal behavioral intervention training.

Brandt recalled that at the start of the of the school year Student was delightful, bright, curious and quiet, but approximately three weeks into the school year, Student's behavior drastically changed. Student refused to participate in group activities, screamed and ran around the room, failed to follow directions, and became aggressive. Student pushed and hit other children, tried to choke a classmate, and used a toy shovel to hit another child.

Brandt relayed her concerns about Student to principal Haywood Thompson. Thompson instructed Brandt to consult with school psychologist Veronica Ricci. Ricci observed Student in the classroom on two or three occasions. Ricci's first observation

occurred the week of September 9, 2019. Ricci observed Student's speech delays and communicated to Brandt some of the group language activities used in the classroom were too language-heavy for Student. Ricci recommended Brandt provide alternative activities for Student. Brandt attempted a variety of behavioral interventions, including sitting Student next to her during reading time and letting him hold a heart shaped pillow. By September 16, 2019, the fifth week of school, Student engaged in four to six disruptive incidents daily, particularly during naptime. Student was disruptive, loud and refused to stay on his mat.

Grandparent took Student to and from school each day and volunteered in Brandt's classroom two or three times during the six-week period Student attended 54th Street Elementary. Grandparent regularly communicated with Brandt during this period. Grandparent recalled that other than Brandt telling him Student moved around a lot and had difficulty maintaining attention during circle time, Brandt did not express any serious concerns about Student's behavior.

Parent had a detailed recollection of the facts and her testimony was sincere and earnest. She recounted during the first two weeks of school Student was excited to go to school. Student enjoyed playing with puzzles and blocks. Brandt told Parent that Student played well with his classmates and was a leader during story time.

Sometime around the week of September 9, 2019, the third week of school, Brandt called Parent and suggested she find a different program for Student. Brandt explained the class was too large and Student would do better in a smaller class. Parent recounted she was working full-time and relied upon Grandparent to take Student to and from school, and therefore it was not possible to change schools. Brandt called

Parent on two additional occasions in mid-September and reiterated Student would do better in a smaller classroom. Brandt explained she was not experienced teaching children with speech and language impairments. Parent explained it was not possible for Student to change schools.

STUDENT'S UNSUPERVISED NAPTIME

An intervention that precludes adequate supervision of the child is prohibited. (Ed. Code, § 56521.2, subd. (a)(7).)

As part of his daily routine, Thompson walked through the kindergarten yard and passed by Student's classroom. Sometime during the first two weeks in September 2019 Thompson found Student sleeping by himself on a rug outside the front of Student's classroom.

Thompson had been the principal at 54th Street Elementary for six years. He had worked for Los Angeles Unified for 34 years. He previously worked as an assistant principal, a general education teacher, a special education teacher and a resource specialist.

Thompson had known Brandt for approximately seventeen years. Thompson and Brandt previously worked together at another school. Thompson hired Brandt to work at 54th Street Elementary starting the 2015-2016 school year.

Thompson believed it was inappropriate for Student to sleep on the rug because it was dirty and unsanitary. Thompson picked up Student, found his shoes and took him to the Principal's office to finish his nap on the couch.

Thompson provided an unclear and sometimes contradictory explanation about this event. Thompson initially recounted when he picked up Student the door to the classroom was closed, and Brandt opened the door when she heard Student protesting being moved and remarked Student had voluntarily elected to sleep outside. Thompson did not question Brandt at that time why she permitted Student to sleep alone outside on the rug. He proceeded to take Student to his office to sleep on his couch.

Thompson later changed his testimony and provided a different account, recalling the door was open when he picked-up Student, and he observed Brandt walking back and forth from within the classroom to the front door and checking on Student. When questioned further, he admitted he did not know if Brandt was checking on Student. Thompson offered no explanation why he took Student to his office, rather than returning him to Student's classroom, nor why he did so without first communicating his intention to Brandt.

Thompson did not discuss this event with Brandt or take any corrective action. His explanation for not doing so was because he believed Brandt was "having a rough time" with Student's behavior and was overwhelmed because of the lack of aides to support her in the classroom. Thompson appeared evasive when questioned about whether he had received complaints from other parents or teachers about Brandt's treatment of children. He initially testified he could not recall if he had received any complaints, but then changed his testimony and said there "might" have been complaints about Brandt experiencing frustration because she did not have classroom support.

Thompson's inconsistencies in his testimony about the details of this event negatively impacted his credibility. Thompson's second version of the facts claiming the classroom door was "open" and Brandt was supervising Student was not believable because Thompson hesitated, appeared nervous and changed his testimony. Thompson's response to the question about complaints about Brandt was equivocal and Thompson appeared reluctant to answer this question. Thompson's changing explanation of the facts and evasive answers affected his overall credibility and the weight given to his testimony on this issue.

At the time, Thompson did not discuss his actions or what he had witnessed with Student's Parent or Grandparent, or anyone else.

Brandt initially could not recall this incident, but then conceded it was possible she "might" have asked an adult volunteer in the classroom to take Student outside for a break if he was being disruptive to the other children. Brandt was visibly upset during her testimony. Brandt's testimony seemed rehearsed and guarded, particularly when it concerned her conduct towards Student. Brandt's inability to remember this event was not credible, particularly given the fact the principal intervened and removed Student from her classroom area.

Brandt changed her testimony and stated she "vaguely" recalled the event when Student was being disruptive during naptime and left her classroom with Thompson. Brandt did not recall any other details. She reasoned her memory was poor because it had been around ten months since Student had been in her classroom and she was overwhelmed due to the lack of support in her classroom, despite her repeated requests to Thompson. Brandt's testimony was not convincing because she changed her testimony regarding her memory and recollection of the event. Further, it seems unlikely Brandt would have forgotten the details of this incident when she later was

removed from the classroom for approximately two weeks while Los Angeles investigated the appropriateness of her treatment of Student regarding this and other incidents. Brandt's memory difficulties and multiple inconsistencies negatively affected her overall credibility.

None of the witnesses could recall the exact date of Student's unsupervised nap. However, Thompson recalled at the time of the event he knew Brandt was "frustrated" with Student's behavior and the lack of classroom support. Brandt recounted Student's behavior changed around the third week of school and problems often exhibited during naptime, and Student engaged in four to six negative behaviors each day by September 16, 2019. Brandt recalled she told Thompson about her concerns concerning Student's negative behavior around the third week of school. Therefore, the testimony of Thompson and Brandt was consistent with the nap incident taking place sometime between September 3d through 16, 2019.

The preponderance of the evidence established that on one occasion between September 3d and 16, 2019, Los Angeles failed to adequately supervise Student by allowing him to spend his naptime unattended outside the classroom, a prohibited intervention which deprived him of educational opportunity. (Ed. Code, §56521.2, subd. (a)(7).)

SEPTEMBER 25, 2019 INCIDENT

Schools are prohibited from authorizing, ordering or consenting to interventions designed or likely to cause physical pain. (Ed. Code, § 56521.2, subd. (a)(1).) Schools further are prohibited from using methods and procedures to eliminate a student's maladaptive behavior which cause pain, trauma, or are deemed unacceptable under

Education Code section 49001, defining and prohibiting corporal punishment. (Ed. Code, § 56520, subd. (a)(4).)

Grandparent described an incident he and Shirley Faulk, the school crossing guard observed on September 25, 2019, between Student and his teacher.

That morning, Grandparent dropped Student off in his classroom around 8:00 AM. Grandparent then exited the school and walked to his car. He stopped to speak to Faulk.

Grandparent stood at the street corner near the school's cross walk, which was behind Student's classroom and the sidewalk. From his vantage point, Grandparent could see the classroom door and outside area and could recognize Brandt and Student.

Faulk directed Grandparent's attention to the outside of Student's classroom. Faulk asked Grandparent, "Who is that person with Brandt?" Grandparent recognized Student's coat, and saw Brandt standing outside speaking to Student. Grandparent's attention was momentarily diverted by the sounds of a screeching car and he looked away. When he looked back, Student and Brandt were no longer there.

Moments later, he noticed the door opened again. Brandt and Student walked out of the classroom. Brandt closed the door, bent down on her knees, placed her hands-on Student's shoulders and began to shake him. Initially, Brandt shook Student softly, but then more forcefully. Grandparent credibly testified the shaking was so hard he could see Student's head moving back and forth. Brandt shook Student's shoulders about five times.

Grandparent yelled to Brandt, "Why are you shaking my Grandson like that?" When Brandt did not respond, Grandparent yelled louder, "Why are you shaking my

Grandson like that?" Brandt looked over and saw Grandparent. She appeared startled. She stood up and responded she was following the directions of the school psychologist, Ricci and said, "This is what you do to get Student's attention," or words to this effect. Grandparent responded this was, "Not true." Then, Brandt took Student back into the classroom.

Faulk did not testify at hearing. However, Faulk's statements of her observation of the event was recorded by Thompson as part of Los Angeles' internal investigation of this incident. Thompson testified at hearing concerning Faulk's statement. Thompson recounted he interviewed Faulk within a few days of the September 25, 2019 incident. Faulk confirmed she was standing at the crosswalk speaking to Grandparent the morning of September 25, 2019. Faulk saw Brandt come out of the classroom with Student. She directed Grandparent's attention to Brandt and Student. Faulk observed Brandt shake Student. Thompson directed Faulk to prepare a written statement documenting her observation of the incident. Faulk prepared a written statement confirming her observation of Brandt shaking Student the morning of September 25, 2019. Thompson credibly explained he had no reason to doubt Faulk's veracity and she appeared to be truthful when making her statement. Further, Faulk's statement was near the time of the event, and therefore considered reliable.

Grandparent's earnest demeanor and detailed recollection of the facts of this event supported his credibility. His testimony, therefore, was afforded substantial weight. Further, Grandparent's recounting of the event was corroborated by the eye-witness account of Faulk as recounted by Thompson. (Cal. Code of Regs., tit, 5, § 3082, subdivision (b).)

Grandparent went immediately to Thompson's office to report the incident. Thompson was not currently available. Grandparent went to Student's classroom

because he was concerned about Student's physical safety. He collected Student and his belongings and walked out of the classroom. Brandt was on the telephone at the time. Grandparent and Brandt's testimony was consistent about Grandparent's removal of Student from the classroom, except Brandt testified Grandparent made a threatening remark to her as he was exiting the classroom, but then later apologized. However, whether Grandparent made a negative comment is irrelevant to the issue of whether Los Angeles denied Student a FAPE by committing a prohibited intervention.

As Grandparent exited the school, Thompson and Ricci approached him. Brandt followed Grandparent out of the classroom and stood next to Thompson. Grandparent explained what he observed Brandt do to Student to Ricci and Thompson. Grandparent asked Ricci if she had instructed Brandt to shake Student, and Ricci denied she gave this advice. Grandparent then went with Thompson to his office and met with him for around 20 minutes and discussed what he had observed and expressed his concerns about Student's safety. Thompson agreed Brandt's behavior was inappropriate and Brandt should not have placed her hands-on Student. Thompson then told Grandparent about the incident when he found Student sleeping unsupervised on the rug during naptime.

Brandt's testimony was largely consistent with that of Grandparent, except she adamantly denied shaking Student. Brandt explained the previous day she saw Student hit a classmate with a plastic shovel. Ricci happened to be present in the area when this occurred. Brandt spoke with Ricci about the incident. Ricci then approached Student, lowered herself to eye-level with Student, placed her hand on Student's shoulder and spoke firmly to him. Brandt recounted Ricci told her she should this technique with Student and that, "Student's parents do that at home." A few moments later, Student ran away from his speech and language service provider. Ricci again approached

Student, lowered herself to eye-level with Student and placed her hand on his shoulder to redirect his behavior. Brandt explained she modeled this technique the next day.

Brandt recalled the morning of September 25, 2019. When Student arrived, she told him she expected him to behave appropriately. Almost immediately, he began disrupting other students by hitting them and failed to follow Brandt's instructions. Brandt took Student outside the classroom. She admitted placing her hands-on Student's shoulders but denied shaking him. Brandt recalled she looked at Student in the eyes and said, "We keep our hands to ourselves." She then brought him back into the classroom.

After they returned to the classroom, Student began screaming and Brandt took Student outside again because she did not want to disrupt the other children or embarrass Student. Brandt again knelt, placed her hands-on Student's shoulders, and told him, "We do not scream."

Brandt's testimony that she did not shake Student's shoulders was not credible. Her testimony seemed rehearsed and insincere. Brandt showed no remorse for her actions or sympathy towards Student. She described in detail Student's negative behaviors that morning, as if to suggest he was partly to blame. Brandt insisted Grandparent and Faulk lied about having observed her shake Student.

Brandt attempted to justify her behavior towards Student by relying on the technique she observed Ricci use with Student. Brandt's testimony regarding her conversations with Ricci was based on uncorroborated hearsay and therefore was afforded little weight. (Cal. Code of Regs., tit, 5, § 3082, subdivision (b).) Thompson recalled he spoke with Ricci following the incident and she confirmed she did not instruct Brandt to place her hands-on Student's shoulders. Grandparent's testimony was

consistent with that of Thompson. Grandparent credibly testified Ricci told him the day of the incident that she did not instruct Brandt to place her hands-on Student. The weight of the evidence established Ricci did not direct Brandt to place her hands-on Student.

The preponderance of the evidence proved Brandt used a prohibited intervention by shaking Student's shoulders. This fact was established by Grandparent's credible, contemporaneous eye-witness account of the events, his immediate reporting of the event to Thompson, and Thompson's interview of Faulk. No evidence was introduced showing Brandt, a highly experienced teacher, intended to cause hurt Student or cause him pain. Rather, Brandt was overwhelmed and understaffed in the classroom, and lacked training on appropriate behavioral techniques.

STUDENT DID NOT RETURN TO A LOS ANGELES SCHOOL FOR SIX-WEEKS

Grandparent explained he called Parent following his meeting with Thompson and told her about what had happened and then took Student home. Student told Parent that his arm and shoulder hurt and, "My teacher did this to me." Parent brought Student to the emergency room the day of the incident but had to return the following day because of the long wait. No evidence was introduced about the extent of Student's injuries, if any, or how any physical injuries impacted Student's ability to access his educational program.

Parent convincingly testified that prior to the September 25, 2019 incident, Student went to sleep each night at a standard time and slept without difficulty. Following the September 25, 2019 incident and continuing through the date of hearing, Student had trouble falling asleep and had nightmares three to four times each week. Student began wetting his bed two times per week following the event, which continued until approximately December 2019. Student expressed fear of going to school immediately following the September 25, 2019 event. Parent did not return Student to 54th Street Elementary after the September 25, 2019 event.

Student did not receive any general education instruction or special education services during the six-week period he was out of school.

On November 13, 2019, Student returned to school at the Ozzie Goren campus. No evidence was offered suggesting Student remained fearful or reluctant to attend school after he started at Ozzie Goren on November 13, 2019. Parent credibly testified Student did well in the smaller class at Ozzie Goren and received the speech and language services delineated in the IEP during the entirety of his attendance at Ozzie Goren. She explained Student graduated from the Ozzie Goren program at the end of the 2019-2020 school year and was preparing to enter kindergarten at the time of the due process hearing.

Stephanie Jones was an early child special education specialist at Los Angeles. She oversaw 14 Head Start agencies on behalf of Los Angeles. She was responsible for, among other things, overseeing implementation of special education services. Jones confirmed at hearing that Parent enrolled Student at Ozzie Goren on November 13, 2019. Student attended Ozzie Goren for the remainder of the 2019-2020 school year. During the time Student was at Ozzie Goren, Los Angeles provided speech and language services to Student as set forth in his IEP.

The preponderance of the evidence proved Los Angeles committed a prohibited intervention that was likely to cause physical pain. (Ed. Code, §56521.2, subd. (a)(1).)

LOS ANGELES FAILED TO PREPARE A BEHAVIORAL EMERGENCY REPORT AND CONVENE AN IEP TEAM MEETING WHICH RESULTED IN EDUCATIONAL LOSS

Los Angeles reported the September 25, 2019 incident to law enforcement within a day of the incident. Los Angeles also conducted an internal investigation concerning the September 25, 2019 incident and concluded no abuse occurred. Thompson took witness statements of Grandparent, Faulk, two adult classroom volunteers, and Student's classmates. Faulk's witness statement was consistent with Grandparent's testimony in that they both recalled seeing Brandt shake Student's shoulders several times. The two adult volunteers and other children did not observe the incident. Brandt was relieved of her classroom duties on September 26, 2019 pending the results of the investigation. Los Angeles ultimately concluded no significant harm resulted from the incident and Brandt returned to her classroom approximately two weeks later.

Student did not allege that Los Angeles did not timely and appropriately investigate the incident.

When school staff uses emergency interventions on a disabled student, the parents must be notified within one school day, if appropriate, to prevent the emergency interventions from being used in lieu of "planned, systematic behavioral interventions." (Ed. Code, § 56521.1, subd. (e).) "A behavioral emergency report shall immediately be completed and maintained in the file of the disabled student. (Ed Code, § 56521.1, subd. (e)(1)-(5).) The behavioral emergency report must be forwarded immediately to a designated responsible administrator for review. (Ed. Code, § 56521.1, subd. (f).)

A behavioral emergency report must be prepared for a student with exceptional needs who does not have a behavioral intervention plan when an emergency intervention is used. (Ed. Code, § 56521.1, subd. (g).) The designated responsible administrator must within two days schedule an IEP team meeting to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim plan. (*Id.*)

Student's IEP did not contain a behavior intervention plan. Neither Student nor Los Angeles offered evidence whether a behavioral emergency report was prepared following the September 25, 2019 incident. A behavioral emergency report should have been prepared and within two days an IEP team meeting scheduled to determine the necessity for a functional behavioral assessment. (Ed. Code, § 56521.1, subds. (e), (f) & (g).)

Furthermore, regardless of whether the emergency behavior report was prepared, Los Angeles should have scheduled an IEP team meeting following the incident. The IDEA requires local educational agencies to ensure the IEP team revises a student's IEP as appropriate to address, among other things, any lack of expected progress toward the annual goals and in the general education curriculum, information about the child's anticipated needs, or other matters. (20 U.S.C. § 1414(d)(4)(A)(ii), (iv).) The IDEA places the obligation on the local educational agency to revise a student's IEP in response to new information and events.

Los Angeles did not schedule an IEP team meeting to address the behavioral emergency, Student's educational program, or determine the extent to which interventions, supports or services, including positive behavioral interventions and supports and other behavioral strategies might be needed and, if necessary, reevaluate Student. The prohibited interventions and Parent's removal of Student from school

were significant events impacting Student's educational needs. Accordingly, an IEP team meeting should have been promptly convened to consider Student's needs and supports as well as remedy any denial of FAPE. (20 U.S.C. § 1414(d)(4)(A)(ii), (iv).)

Because Los Angeles failed to complete a behavior emergency report or schedule a timely IEP team meeting after the shaking incident, it resulted in an educational loss to Student. Student's education program was in limbo when Los Angeles should have been taking action to ensure Student received the services in his IEP. These failures impeded Student's ability to access his educational program for the six-week period he was out of school and resulted in an educational loss.

DENIAL OF FAPE AND LOSS OF EDUCATIONAL OPPORTUNITY BASED UPON TWO PROHIBITED INTERVENTIONS

The issue is whether the prohibited interventions used against Student constituted a denial of FAPE. In analyzing the impact of the two prohibited interventions used, the young age of Student and his speech and language impairment were considered.

It is fundamental that a safe and healthy environment is necessary to an appropriate educational program. Public and non-public schools must "provide an appropriate and meaningful educational program in a safe and healthy environment for all children regardless of possible physical, mental, or emotionally disabling conditions." Some disabled children have significant behavioral challenges that adversely impact their ability to learn. (Ed Code, §§ 56520, subd. (a)(1) & (2), 56521.) Research and experience demonstrate that providing positive behavioral interventions and supports are effective in addressing the learning and behavioral needs of children with disabilities. (20 U.S.C. § 1400(c)(5)(F); Ed. Code, § 56520, subd. (a)(3).)

The California Legislature intends for children with serious behavioral challenges to receive timely and appropriate assessments and positive supports and interventions. (Ed. Code, § 56520, subd. (b)(1).) When a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies, including positive behavior interventions, and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) & (b); Ed. Code, § 56341.1, subd. (b)(1).)

When behavioral interventions, supports, and other strategies are used, they must be used in consideration of the student's physical freedom and social interaction and be administered in a manner that respects human dignity and personal privacy. (Ed. Code, § 56520, subd. (b)(3).)

Aversive behavioral interventions are negative consequences or stimuli used to change a student's problematic and disruptive behavior that impedes his ability to access his education. (*Bryant v. New York State Educ. Dept.* (2d Cir. 2012) 692 F.3d 202, 213.)

Procedural violations do not automatically require a finding of a denial of FAPE. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484, superseded on other ground by statute (referred to as *Target Range*).) A procedural error results in a denial of FAPE only if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE; or
3. caused a deprivation of educational benefits.

(20 U.S.C. § 1415(f)(2)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(1) & (2); *Target Range*, *supra*, 960 F.2d at 1483-1484).)

In determining whether procedural violations resulted in the denial of FAPE, the hearing officer must find:

1. the procedural errors resulted in the loss of an educational opportunity to the student; or
2. interfered with the opportunity of the parent to participate in the formulation process of the individualized education program.

(Ed. Code, § 56505, subd. (j).)

The Ninth Circuit has held a procedural error resulting in a loss of any educational opportunity denies a student a FAPE. (*Doug C. v. Hawaii Department of Education* (9th Cir. 2013) 720 F. 3d 1038, 1047.) "A procedural error results in the denial of an educational opportunity where, absent the error, there is a 'strong likelihood' that alternative educational possibilities for the student 'would have been better considered.'" (*Ibid*., quoting concurring opinion of Judge Gould in *M.L. v. Federal Way School Dist*. (9th Cir. 2005) 394 F.3d 634, 657.)

Only material failures to implement the IEP are a substantive violation of the IDEA. "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack

of it, may be probative of whether there has been more than a minor shortfall in the services provided." (*Van Duyn v. Baker School Dist*. (9th Cir. 2007) 502 F. 3d 811, 822 (*Van Duyn*); 20 U.S.C. §§ 1401(9)(D), 1414(d), 1415(f)(3)(E)(i).)

The courts have not definitively developed a standard for determining when the use of unauthorized prohibited interventions deny students a FAPE. Some courts have suggested even one incident of physical mistreatment may constitute a violation of a student's IEP and in turn the IDEA. (*Shadie v. Forte and Hazelton Area School District* (MD. Pa. April 22, 2013, Civil Action No. 3:10–2121.) 2013 WL 1729368.). The courts and administrative agencies that have considered this issue have generally evaluated the use of the prohibited intervention, how the school district responded to the incident and whether the conduct prevented the student from accessing their educational program. *Doe v. Clark Co. Board of Ed*. (D. Nev. August 28, 2007, No. 02:03–CV–01500–LRH–RJJ.) 2007 WL 2462615 [mistreatment must be shown to interfere with student's right to FAPE]; (*In Re Student with a Disability* (SEA MT March 18, 2014) 2014-01, 114 LRP 34648 [teacher's improper use of mechanical restraints, coupled with school district's failure to address the reports of mistreatment, deprived student of FAPE]; *Beaumont Independent School District* (SEA TX August 28, 2014) 162-SE-0214, 114 LRP 41599 [use of behavioral interventions, including striking child on the hand with a yardstick, denied child FAPE where significant portion of IEP not implemented.].)

Student did not display behavioral problems at the start of the school year, but around the third week of school his negative behaviors inexplicably increased. Student's anxiety level increased in the school environment as he became more disruptive and his negative behaviors escalated to the extent that by the September 16, 2019, he engaged in four to six negative behaviors daily. Student's IEP recommended facilitated peer interaction to support Student's use of language, as well as daily structured language

activities facilitated by an adult to engage in questions, answers and conversations. The weight of the evidence established the classroom lacked necessary adult supports. Student's increased negative behaviors can reasonably be explained by the lack of structured activities and adult support within the classroom.

Student's change in behavior seemed to coincide with the unsupervised nap incident. Brandt explained Student often was disruptive during nap time. Although Brandt denied recalling the details of the unsupervised nap incident, she admitted she "might" have asked an adult to take Student outside to "take a break." The evidence clearly established that on one occasion in September 2019 Student spent naptime unattended outside his classroom on a rug. Thompson admitted this was wrong.

Brandt was admittedly frustrated by the lack of support in her classroom and the failure of the school administration to rectify the situation. Thompson confirmed Brandt's classroom lacked the required number of aides and he knew Brandt was overwhelmed. However, Brandt's action of allowing Student to spend his naptime sleeping alone outside without adequate supervision was a prohibited intervention.

When behavioral supports and strategies are administered, they must be done in a manner that allows for physical freedom and social interaction and respects a student's dignity. (Ed. Code, § 56520, subd. (b)(3).) Student, who was four years old at the time, should not have been permitted to sleep alone outside because of Brandt's inability to control Student's behavior problems because of insufficient staffing in the classroom. (Ed. Code, § 56521.2, subd. (a)(7).) This action was unsafe, isolated Student from his peers and was injurious to his dignity.

Emergency interventions must only be used to control spontaneous and unpredictable behavior which pose an immediate threat of harm to the student or others. Emergency interventions must not be a substitute for a systematic behavioral intervention plan designed to change, replace, modify or eliminate an undesirable targeted behavior. (Ed. Code, § 56521.1 subds. (a) & (b).)

Here, on September 25, 2019, Brandt admitted removing Student from the classroom because he was hitting other students and not following instructions. Brandt took Student outside and restrained him by placing both hands on his shoulders. Although Brandt denied shaking Student's shoulders repeatedly, the weight of the evidence proved otherwise. Two eye-witness accounts, including Grandparent and Thompson's investigation and interview of Faulk, established that Brandt restrained Student by placing her hands on his shoulders and shaking them up to five times. Restraining and shaking Student's shoulders was a prohibited aversive intervention when there was no behavioral emergency. (Ed. Code, § 56521.2, subd. (a)(1).)

Even though the weight of the evidence established that Brandt did not intend to harm Student, the acts of physically restraining and shaking Student's shoulders were likely to cause pain. (*Id.*) These actions were the antithesis of the positive behavioral interventions and supports effective in addressing the learning and behavioral needs of children with disabilities. (20 U.S.C. § 1400(c)(5)(f); Ed. Code., § 56520, subd. (a)(3).)

Los Angeles argued in its closing brief it remained willing and able to provide Student his IEP services during the six-week period he was out of school. However, it presented no evidence it made any efforts to provide these services to Student. The burden was on Los Angeles, not Student, to implement Student's IEP.

Further, Los Angeles relied on *M.L. v. Federal Way School District*, *supra*, 394 F.3d 634, 650-651, for its argument no denial of FAPE occurred. In *M.L.*, the Ninth Circuit established a standard for determining when a teacher's failure to take action to prevent other students from bullying a disabled student constitutes a denial of FAPE. The present case does not involve bullying of Student by other students or Student's teacher. However, the reasoning of *M.L.* is instructive. The Ninth Circuit determined the student failed to demonstrate the teasing resulted in the loss of an educational benefit. (*Id.* at p. 651.) The student also failed to establish any, "violence, or threat of physical contact between another student and M.L." (*Id.*)

Here, Student was left unsupervised on one occasion and was physically shaken on one occasion, resulting in Student being removed from school for 33 school days and resulting in an educational loss caused by Brandt's actions. Therefore, *M.L.*, by analogy, supports rather than negates a finding that Los Angeles denied Student a FAPE.

The preponderance of the evidence proved that the prohibited interventions resulted in loss of educational opportunity to Student. Student's last day of school at 54th Elementary was September 25, 2019 and he did not return to another Los Angeles school until November 13, 2019. Following the incident, Parent spoke with Karen Brown at Los Angeles. Ms. Brown provided Parent a list of other potential school sites. Parent called each of the schools on the list, but none of them had available space for Student. Other than providing Parent a list of schools and suggesting Student return to Brandt's classroom, Los Angeles made no effort to find an alternative placement for Student nor did it convene an IEP team meeting.

On October 4, 2019, Parent met with Thompson. Thompson encouraged Parent to return Student to 54th Street Elementary. Parent told Thompson she did not want Student to return to the same classroom because she did not want Student to have contact with Brandt. She explained Student was having nightmares, wetting his bed, and expressed fear and reluctance to return to school.

While *Van Duyn* does not require demonstrable harm for Student to prevail, the preponderance of the evidence established Student suffered an educational loss. Student missed 33 days of school following the September 25, 2019 incident until November 13, 2019, the date he enrolled at Ozzie Goren. Student not only was deprived of access to his general education curriculum during this period, but he missed 100 percent of the special education services provided in his IEP for this time period. Student's May 23, 2019 IEP provided him with 120 minutes a month of speech and language services by a speech language pathologist, and 120 minutes a month of direct service instruction by an early childhood itinerant teacher to support his language goals. Student was deprived of these services during the 33 missed school days.

Regarding the procedural violation, the weight of the evidence proved Student lost educational benefits as a result of the two prohibited interventions. (*Target Range, supra,* 960 F.2d 1479, 1483-1484.) Further, Los Angeles committed a substantive violation by failing to implement Student's IEP due to Brandt's conduct.

PSYCHOLOGICAL EVALUATION OF STUDENT BY DR. ESTHER CHON

A psychological assessment of a pupil must be conducted by a credentialed school psychologist who is trained and prepared to assess appropriate cultural and ethnic factors. (Ed. Code, §§ 56322, 56324, subd. (a).).

Student seeks compensatory damages. Student argued that he suffered physical and psychological harm as a result of the two incidents of prohibited intervention and required specific compensatory remedies. As detailed above, this Decision makes no finding of fact whether Student suffered physical or psychological harm. This Decision considers only whether the prohibited interventions denied Student a FAPE resulting in the loss of educational opportunity, and Student's entitlement to compensatory education.

Student's expert witness Dr. Esther Chon had been a licensed clinical psychologist in private practice in California since 2007. She received a master's degree in teaching English to Speakers of Other Languages and a master's degree in International Education. She received her doctorate in clinical psychology. Chon testified at hearing.

Chon entered private practice in 2013. Much of her practice involved providing mental health therapy for children and adults affected by medically related trauma. At the due process hearing, Chon detailed her experience in the area of education. As a psychology intern, Chon provided individual, family and group therapy in the elementary school setting through the Child, Youth and Family Services Consortium. She was a behavioral sciences extern for Children's Hospital of Los Angeles and participated in IEP team meetings to assist with the transition of children with cancer-related medical diagnoses transition into the school environment. She worked as a supervisor in a cooperative effort with the Department of Child Foster Care Services to re-integrate foster care children back to their home environments.

Chon had a wide range of experience working with children and adults impacted by trauma. Some of this experience touched upon the educational setting, including participating in IEP team meetings and providing feedback to teachers on addressing her clients' social and emotional needs. However, Chon was not a school psychologist. She did not hold a California teaching credential nor a California special education credential. Chon was not a board-certified behavior analyst.

Chon's opinions were based on information she obtained around July 19, 2020, less than nine days prior to the due process hearing. She interviewed Parent and Grandparent, reviewed the results of two surveys completed by Parent, and observed Student in two play trauma therapy sessions. Parent and Grandparent told Chon about the two incidents at school. Chon opined Student met the criteria for post-traumatic stress disorder for children under the age of six years old. She based her diagnosis on the intrusiveness of the memory, Student's hyper-vigilance in play therapy, his dissociative symptoms, Parent's reports of Student playing alone, Student's avoidance in discussing the event, and physiological changes, including bed wetting.

Chon's recounting of some of the key facts about the two incidents was inconsistent with Parent and Grandparent's testimony, which negatively impacted her credibility. For example, Chon recounted that starting in mid-September 2019 Student did not want to go to school and began wetting his bed and having recurring nightmares. Parent and Grandparent explained Student did not express school avoidance or begin bedwetting and experiencing recurring nightmares until after the September 25, 2019 incident.

Chon explained that after the September 25, 2019 incident Student preferred to play alone rather than with his peers and was distrustful of his teachers. However, neither Parent nor Grandparent testified to these facts. Parent and Grandparent

explained Student was fearful of returning to Brandt's classroom, but they did not recount he was fearful of going to school after he started at Ozzie Goren. Chon did not offer any facts supporting her conclusion Student had difficulties interacting with classmates and being distrustful towards his teachers while at Ozzie Goren. At the time Chon spoke with Parent and Grandparent Student had been attending Ozzie Goren for approximately seven months. Chon's failure to consider Student's progress at Ozzie Goren negatively impacted her credibility.

Chon reported she spoke to Student about how he felt about school, and in response he put his head down and did not respond, which reflected stress-avoidance. However, she then provided a contradictory recitation of the facts and recalled Student told her, "she did a million mean things to me" and "she made me sleep on a dirty rug." Chon's multiple factual inconsistencies negatively impacted her overall credibility.

Chon opined that the data Parent provided on the Trauma Symptoms Checklist for Young Children reflected clinically significant signs of stress-intrusion and stress-avoidance. She opined Student's recurrent nightmares and reluctance to talk about the school related events were indicative of post-traumatic stress disorder. Chon also explained that the feedback Parent provided on the Child Behavior's Checklist was clinically significant because Student's fear of sleep and recurrent nightmares suggested Student was experiencing post-traumatic stress.

At hearing, Chon did not detail the information gleaned from the questionnaires, Parent's answers, or the survey scoresheets. Chon offered no explanation how or why these surveys were administered, what they were intended to measure or assess, the subject matter of the questions, how the answers were scored or how the data was

interpreted. Chon did not explain the protocols for diagnosing a child under the age of six years old with post-traumatic stress disorder and speech and language impairment. Chon did not provide a written report. Chon's failure to explain the relevance of these tools to her assessment weakened the basis of her opinions.

Chon explained the significance of the play trauma sessions she administered to Student. She first met Student at his home sometime after July 19, 2020. She first spoke with Student and then engaged in play therapy. She set-up toy scenes depicting a school, playground, home and hospital setting. She opined young children with post-traumatic stress disorder may act out traumatic events in their play or be hyper-vigilant for signs that the trauma may occur again. For example, a child who has experienced physical abuse may play roughly with classroom objects, dolls or other students because aggressive conflict resolution or interactions with others may be considered normal.

Chon reported Student's play within the toy home setting reflected positive, healthy interactions. She did not describe what play by Student demonstrated she considered to be positive interactions in the home setting. Chon opined Student's play in the school environment, however, demonstrated internal conflict. She reported Student toppled over dolls, made a doll fall from the top of the building, and stuck a doll's head in the toilet.

Approximately two days after her initial visit with Student, Chon met Student in her office and engaged in another play therapy session. She did not explain what she observed in the second play trauma session.

Chon's opinion that Student suffered post-traumatic stress as a result of the two prohibited interventions was not credible given the factual inconsistencies in her testimony and failure to explain how Student met the criteria for this diagnosis. More

importantly, for purposes of the issue before OAH, Chon did not persuasively explain how Student's diagnosis of post-traumatic stress disorder resulted in an educational loss to Student. Chon offered general opinions about how post-traumatic stress disorder can negatively impact a student's ability to learn. She explained a child who is experiencing post-traumatic stress is in a constant state of "fight or flight" which reduces the connections in the frontal lobe of the brain and negatively impacts his ability to learn. She further opined sleep disruptions can lead to cognitive deficits. When questioned about how the two incidents impacted Student in the educational environment, she offered a lengthy, scientific answer about how post-traumatic stress generally affects brain functioning.

Chon's testimony reflected a lack of knowledge about how Student functioned in the educational environment while attending Ozzie Goren. The credible testimony of Parent, Grandparent and Jones established Student thrived in the small group, general education program at Ozzie Goren, between November 13, 2019 through the end of the 2019-2020 school year and that Student received his speech and language services during that period.

Chon made recommendations at hearing to remedy the damage allegedly suffered by Student as a result of the prohibited interventions. Chon recommended:

1. a complete psychoeducational evaluation;
2. weekly, one-hour trauma processing therapy for a period of one year; and
3. twice weekly, one-hour clinic based occupational therapy for a six-month period to address Student's disassociation tendencies.

However, Chon did not explain why these services were necessary to address the failure of Los Angeles to provide Student a FAPE for six weeks or to compensate Student for any loss of educational benefit by failing to receive the services set forth in his IEP. Chon's recommendations were not persuasive because her proposed resolutions for Student in the educational context were based on generalities and not on Student's unique needs, and therefore her opinions were afforded little weight.

Additionally, Chon's recommendations for proposed resolutions were not persuasive because she did not conduct any formal or standardized testing of Student to determine whether Student's stress affected his educational performance. She did not evaluate Student's ability to function in the school environment with general education supports. She did not observe him in the classroom environment either on-site or virtually. Chon did not discuss Student's academic, behavioral or social functioning with anyone from Los Angeles, including Student's teachers at Ozzie Goren or anyone on his IEP team. Yet, she testified it was her general practice when working with children impacted by trauma to obtain input from the child's teachers and other adults to develop tools to support social/emotional functioning. She agreed it would have been helpful to have spoken to Student's teacher before making her diagnosis.

Chon's unfamiliarity with Student's present levels of performance, goals and progress towards his goals following the relevant incidents and failure to communicate with Student's teachers and IEP team members negatively impacted her credibility and the basis for her proposed resolutions. Chon did not establish how the incidents, or her diagnosis of post-traumatic stress disorder, adversely impacted Student's educational performance. Therefore, her testimony was not persuasive and recommendations for proposed resolutions were given little weight.

Student argued in his closing brief Student continued to exhibit hyper-vigilance, sleep disturbance, and fear of being hurt by his teachers. However, Student offered no evidence that Student exhibited hyper-vigilance or fear of his teachers at Ozzie Goren. Parent credibly explained that Student continued to have sleep disturbances after the September 25, 2019 event through the date of hearing, but Student failed to prove how this impeded access to his educational program. Student did not offer any evidence his language and speech regressed, or that he failed to make progress towards his language and articulation goals following the September 25, 2019 incident. None of Student's teachers or IEP team members were called to testify about any educational impediments by Student during his time at Ozzie Goren. The weight of the evidence proved Student that Los Angeles provided Student the speech and language services required by his IEP while attending Ozzie Goren and he successfully completed the 2019-2020 school year.

Therefore, the preponderance of the evidence proved Student's right to a FAPE was impeded and he suffered an educational loss for the six-week period he missed school following the prohibited interventions. However, Student did not prove he suffered an educational loss following his enrollment at Ozzie Goren.

CONCLUSIONS AND PREVAILING PARTY

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

Issue 1: Did Los Angeles deny Student a free appropriate public education by abusing Student during the 2019-2020 school year, causing Student psychological and physical harm and denying him educational opportunity?

Student prevailed on Issue 1.

REMEDIES

Student sought the following remedies in his closing brief: an independent educational evaluation in the area of psychoeducation by an assessor of Parent's choice; 52 hours of compensatory counseling by a non-public agency; and 52 hours of clinic-based occupational therapy by a non-public agency.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Department of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168] (*Forest Grove*).)

In remedying a FAPE denial, the student is entitled to relief that is appropriate considering the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) The purpose of the IDEA is to provide students with disabilities a free appropriate public education which emphasizes special education and related services to meet their unique needs. (*Burlington*, *supra*, 471 U.S. 359, 374.) Appropriate relief means relief designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994)

33 F.3d 1489, 1497 (*Puyallup*).) 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 ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.)

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*, *supr*a, 471 U.S. at pp. 369-371.; *Puyallup*, *supra*, 33 F.3d at pp. 1489, 1496.) An independent educational evaluation at public expense may be awarded as an equitable remedy, if necessary, to grant appropriate relief to a party. (*Los Angeles Unified School Dist. v. D.L.* (C.D. Cal. 2008) 548 F.Supp.2d 815, 822-23.)

A school district also may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Park*, *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. 1* (D.Conn. 2008) 533 F.Supp.2d 245, 265; *Orange Unified School Dist. v. C.K.* (C.D. Cal. June 4, 2012, No. SACV 11–1253 JVS (MLGx)) 2012 WL 2478389, *12.) An award of compensatory education need not provide a day-for-day compensation. (*Puyallup*, *supra*, 33 F.3d 1489, 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id*. at p. 1496.)

These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award need not provide a "day-for-day compensation." An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid, supra*, 401 F.3d 516, 524.)

The award must be reasonably calculated to provide educational benefits that likely would have accrued from special education services the school district should have provided in the first place. (*Ibid.*)

Accordingly, the following compensatory services are deemed to be appropriate.

Los Angeles is ordered to conduct a psychoeducational evaluation of Student. At Parent's option, initiation of the assessment may be put on hold until no more than three months after students are permitted to physically return to school campuses without restriction on the number of students, as determined by the governing Health Department.

Student missed school from September 26, 2019, through November 12, 2019, a total of 33 school days as a result of the prohibited interventions and Parent's reasonable decision not to return Student to Brandt's classroom. The missed school days were calculated using Los Angeles' academic calendar for the 2019-2020 school year.

Los Angeles is ordered to provide Student with compensatory academic support to remedy Student's loss of educational opportunity for his missed school days. Los Angeles is ordered to provide Student with 16.5 hours of academic support or tutoring, representing one hour for every two days of missed school days based on a total of 33 missed school days. The tutoring shall be provided by a provider of Los Angeles' choice who can deliver the services at Student's home, via videoconference, or on campus, as determined by the governing Health Department. Student shall have until December 31, 2021 to use those tutoring hours. Any time not expended by that date shall be lost.

Los Angeles is ordered to provide Student 2.5 hours of speech and language services by a licensed speech and language pathologist, representing 30 minutes per week (120 minutes each month) for the six-week period Student missed school. The speech and language services shall be provided by a provider of Los Angeles' choice who can deliver the services at Student's home, via videoconference, or on campus, as determined by the governing Health Department. Student shall have until December 31, 2021 to use the speech and language service hours. Any time not expended by that date shall be lost.

Los Angeles is ordered to provide Student 2.5 hours of early childhood itinerant teaching services to support Student's language functions, representing 30 minutes per week (120 minutes each month) for the six-week period Student missed school. The early childhood itinerant teaching services shall be provided by a provider of Los Angeles' choice who can deliver the services at Student's home, via videoconference, or on campus, as determined by the governing Health Department. Student shall have until December 31, 2021 to use the early childhood itinerant teaching hours. Any time not expended by that date shall be lost.

ORDER

1. Los Angeles is ordered to conduct a psychoeducational evaluation of Student. At Parent's option, initiation of the assessment may be put on hold until no more than three months after students are permitted to physically return to school campuses without restriction on the number of students, as determined by the governing Health Department.
2. Los Angeles is ordered to provide Student with 16.5 hours of compensatory academic support or tutoring. The tutoring shall be provided by a provider of Los Angeles' choice who can deliver the services at Student's home,

via videoconference, or on campus, as determined by the governing Health Department. Student shall have until December 31, 2021 to use those tutoring hours. Any time not expended by that date shall be lost.

3. Los Angeles is ordered to provide Student speech and language therapy by a licensed speech and language pathologist. Los Angeles is ordered to provide Student with 2.5 hours of speech and language therapy. The speech and language therapy shall be provided by a provider of Los Angeles' choice who can deliver the services at Student's home, via videoconference, or on campus, as determined by the governing Health Department. Student shall have until December 31, 2021 to use the speech and language service hours. Any time not expended by that date shall be lost.

4. Los Angeles is ordered to provide Student 2.5 hours of early childhood itinerant teaching services to support Student's language functions. The early childhood itinerant teaching services shall be provided by a provider of Los Angeles' choice who can deliver the services at Student's home, via videoconference, or on campus, as determined by the governing Health Department. Student shall have until December 31, 2021 to use the early childhood itinerant teaching hours. Any time not expended by that date shall be lost.

RIGHT TO APPEAL THIS DECISION

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

/s/

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020010423
CASE NO. 2020060184

PARENT ON BEHALF OF STUDENT,

v.

NORRIS SCHOOL DISTRICT.

DECISION

SEPTEMBER 2, 2020

On January 14, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on Student's behalf naming Norris School District. On May 7, 2020, OAH granted Student leave to file a First Amended Complaint, which reset all timelines. On June 4, 2020, Norris School District filed a due process hearing request with OAH, naming Student. On June 8, 2020, OAH consolidated the two cases. On June 26, 2020, OAH granted a continuance of the due process hearing for

good cause. Administrative Law Judge Adrienne L. Krikorian heard this matter by videoconference on July 14, 15, 16, 17, 20, 22, and 23, 2020.

Attorney Goriune Dudukgian represented Student. Paralegal and educational advocate Beverly Foster and Parents attended the hearing on Student's behalf. Attorneys Stephanie Gutcher and Melissa Allen represented Norris School District. Administrator of Student Services Russellyn Sullivan attended on Norris' behalf.

At the parties' request, OAH continued the matter to August 17, 2020, for written closing briefs. The record was closed, and the matter was submitted on August 17, 2020.

ISSUES

Student's Issues are numbered 1, 2, 3, 4 and 6. Norris' Issue is number 5. Free appropriate public education is referred to as FAPE. Individualized education program is referred to as IEP.

1. Did Norris School District deny Student a FAPE by materially failing to implement Student's November 27, 2018 and March 6, 2019 IEPs?
2. Did Norris School District deny Student a FAPE from November 28, 2018, by failing to conduct an appropriate functional behavioral assessment?
3. Did Norris School District deny Student a FAPE from November 28, 2018, by failing to offer IEPs that included:
4. Appropriate annual goals in the areas of academics, social skills, pragmatics, executive function, and behavior;
5. Adequate behavioral services;
6. A behavior intervention plan; and

7. Appropriate occupational therapy services?
8. Did Norris School District deny Student a FAPE by failing to make a clear written offer of FAPE in the November 21, 2019 IEP?
9. Did Norris School District offer Student a FAPE in Student's January 22, 2020 IEP, such that Norris School District may implement the January 22, 2020 IEP over Parents' objections?
10. Did Norris School District deny Student a FAPE during the 2020 COVID-19 school closure, through May 7, 2020, by failing to provide Student any appropriate special education or related services, including appropriately tailored alternative service delivery options?

JURISDICTION

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

- all children with disabilities have available to them a 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
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the

identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student had the burden of proof on Issues 1 through 4 and 6 as the filing party on those issues. Norris had the burden of proof on Issue 5, shared by Student to the extent Issue 3 included claims of denial of FAPE for the January 22, 2020 IEP.

Student was seven years old and ready to transition to second grade at the time of hearing. Student resided with Parents within Norris' geographic boundaries at all relevant times. Student was eligible for special education under the categories of autism, and speech and language in the areas of receptive and expressive language.

Student entered Norris' kindergarten program in August 2018. He had no formal school experience before he started kindergarten. Upon enrollment, Mother requested that Norris assess Student for eligibility for special education, based upon a suspected disability of autism. Norris assessed Student during the fall of 2018.

Student frequently avoided academic work, eloped from the classroom, and spent parts of the school day in the principal's or nurse's office, where he played with a

tablet computer, from the start of school in August 2018, until the initial November 27, 2018 IEP team meeting. Student refused instructions in the classroom by adults and engaged in work refusal behaviors that interfered with his access to the educational program. During the first semester of kindergarten, Parents occasionally picked Student up from school, at Norris' request, before the kindergarten school day ended, because of Student's behaviors and work refusal.

ISSUE 1: DID NORRIS SCHOOL DISTRICT DENY STUDENT A FAPE BY MATERIALLY FAILING TO IMPLEMENT STUDENT'S NOVEMBER 27, 2018 AND MARCH 6, 2019 IEPS?

Student contends Norris denied Student a FAPE by failing to implement Student's November 27, 2018 and March 6, 2019 IEPs. Norris contends it materially implemented Student's November 27, 2018 IEP by making a good faith effort to provide IEP services, using a variety of tools and techniques to address Student's refusal behaviors. Norris also contends it attempted to modify Student's IEP in March 2019 to address Student's behaviors, but Parents refused to consent to the changes.

FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Where a student alleges the denial of a FAPE based on the failure to implement an IEP, in order to prevail, the student must prove that any failure to implement the IEP was "material," which means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822 (*Van Duyn*).) No statutory requirement of perfect adherence to the IEP exists, nor does any reason rooted in the statutory text exist to view minor implementation failures as denials

of a FAPE. (*Id.* at p. 821.) "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." (*Van Duyn*, 502 F.3d at p. 815.)

Student's Issue 1 is limited to Student's claim that Norris failed to implement his IEP through March 17, 2020. The time period from March 18, 2020, through May 7, 2020, is discussed under Issue 6.

NOVEMBER 27, 2018 IEP AS AMENDED

Student's initial IEP team met on November 27, 2018, three months after Student started kindergarten. Parents actively participated in the meeting. The IEP team considered a psychoeducational assessment report by school psychologist Stacy Limpias, and a speech and language assessment report by speech therapist Andrea Zielsdorf. The IEP team found Student eligible for special education under the categories of autism, and speech and language in the areas of receptive and expressive language.

The IEP team discussed placement in general education and special day class environments. The IEP team explained that a special day class would have a smaller class size and more adult support for Student, given his behavior of work refusal and elopement from class. Parents wanted to see if Student could benefit from general education before putting him in a more restrictive environment. The IEP team also discussed shortening Student's school day temporarily, with an incremental return to the full day as he adjusted to school. Mother expressed concern about a shortened school day.

The IEP team offered Student placement in a general education kindergarten for the full kindergarten school day, for the regular school year, until Student's next annual IEP in November 2019. The IEP provided for 6,300 out of 6,420 monthly minutes in the general education classroom. The IEP team offered Student 160 minutes a month of one-to-one specialized academic instruction in the general education classroom, and 120 minutes a month of speech and language services in a separate classroom. The IEP included five communication goals and one social emotional goal. The IEP team offered 13 accommodations and modifications for classroom instruction, including warnings before transitions, choices of tasks, preferential seating next to peers, frequent breaks, and single directions given in a variety of ways. Parents consented to the November 27, 2018 IEP.

On November 28, 2018, Father signed a Ladder of Success contract with Norris. The contract provided for a modified school day until January 22, 2019, when Student would return to a full day, ending at 1:35 p.m. Norris used Ladder of Success contracts for any child, including general education students, in kindergarten who needed time to adjust to the school environment. The Ladder of Success contract temporarily shortened the number of minutes per day in the general education classroom but did not change the number of minutes of specialized academic instruction and speech therapy in Student's IEP.

Norris amended the November 27, 2018 IEP on December 12, 2018, which combined this Decision refers to as the November 27, 2018 IEP. The amendment added 240 minutes of daily specialized academic instruction and 60 minutes monthly of speech and language services for the 2019 extended school year. The November 27, 2018 IEP remained Student's operative IEP until May 7, 2020.

Student's schedule in kindergarten with the Ladder of Success contract resulted in less than a full school day of general academic instruction and social interaction, depriving him of educational benefit. Although the contract provided that Student would return to a full time schedule by January 22, 2019, Student's school schedule did not change back to a full school day before the end of the 2018-2019 regular school year. Student therefore did not receive the benefit of having access to a full school day of instruction at any time after November 27, 2018, through the end of the 2018-2019 school year.

Norris contends it discussed extending the Ladder of Success contract with Mother and her advocate at a March 22 2019 IEP team meeting. Mother advised Norris she would consider extending the contract, but never agreed in writing to change the date for Student's return to full time. Most important, Parents did not consent in writing at any IEP team meeting to amend Student's November 27, 2018 IEP to change the number of minutes at school through the end of the 2018-2019 school year. Norris' argument that Parents consented to less IEP services was therefore not persuasive.

Norris also did not deliver the full number of minutes of specialized academic instruction or any one-to-one speech therapy called for in Student's November 27, 2018 IEP, at any time after Parents signed the IEP, through March 17, 2020, because of Student's frequent elopement and work refusal. When Student started first grade, he generally attended for the full school day. However, as he did in kindergarten, Student continued to refuse to cooperate with speech therapist Zielsdorf. Student did not meaningfully benefit from speech therapy services in kindergarten or first grade.

Student also resisted specialized academic instruction from his resource teachers, although he received some instruction. Student often eloped to the office, missing

classroom instruction as a result. Student's behaviors interfered with his ability to access his education and he did not make meaningful progress toward his IEP goals, through March 17, 2020.

Student proved Norris did not implement the November 27, 2018 IEP as written. However, under *Van Duyn, supra*, at 502 F.3d p. 822, the analysis of whether that resulted in a denial of FAPE requires consideration of whether the failure to implement the IEP was material. For a material failure to exist, Student had the burden of showing that there was more than a minor discrepancy between the services provided Student and those required by the IEP. (*Id,* at p. 815.)

Student proved Norris failed to materially implement the IEP. Norris was obligated to continue implementing the November 2018 IEP, for as long as it remained Student's operative IEP. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) Student's IEP called for a full school day of general education academic instruction, less 260 minutes of related services. Student received only a fraction of speech therapy, missed approximately 52 hours of general education instruction in kindergarten, and received only some of his specialized academic instruction during the relevant time period. Student received little educational benefit from the November 27, 2018 IEP through March 17, 2020. Norris' failure to implement the IEP by not providing the full amount of hours of instruction and speech therapy services was a material failure to implement under *Van Duyn*, and resulted in a denial of FAPE. (*Van Duyn, supra,* 502 F.3d at p. p815.)

MARCH 6, 2019 IEP

In early January 2019, Parents contacted school administrators and voiced concern over Student's sensory needs and his behaviors at school. Norris referred

Student for an occupational therapy assessment on January 8, 2019. The IEP team met on March 6, 2019 to discuss the occupational therapy assessment. Because Parents' educational advocate could not attend the meeting, Norris closed the meeting with Parents' permission. The IEP meeting resumed on March 22, 2019. The IEP team considered the occupational therapy assessment. The occupational therapy assessment is discussed under Issue 3.

The March 22, 2019 IEP team also discussed Student's behaviors, their impact on his classroom experience, and Student's refusal to participate in speech therapy services, even when a classroom behavioral aide attempted to help Student. The IEP team discussed Student's progress toward his goals, and the impact his behaviors had on his progress. Student's advocate and Parents actively participated in a discussion regarding whether Student would benefit from a functional behavioral assessment and an assistive technology assessment, the need for a one-to-one aide trained in Applied Behavioral Analysis, and changing placement to a special day class.

Parent declined to consider changing Student's placement to a special day class until Norris completed the testing Parent requested, including a functional behavioral assessment. Parent signed the IEP dated March 6, 2019 IEP for attendance only.

Student's contention that Norris denied Student a FAPE by failing to implement the March 6, 2019 IEP was unsupported by the evidence. Parents did not consent to implement the March 6, 2019 IEP. Norris could not implement the March 2019 IEP, and was obligated to continue implementing the November 27, 2018 IEP, as long as it remained Student's operative IEP. Therefore, Norris did not deny Student a FAPE by failing to implement the March 6, 2019 IEP.

ISSUE 2: DID NORRIS SCHOOL DISTRICT DENY STUDENT A FAPE FROM NOVEMBER 28, 2018, BY FAILING TO CONDUCT AN APPROPRIATE FUNCTIONAL BEHAVIORAL ASSESSMENT?

Student contends Norris denied Student a FAPE by failing to conduct an appropriate functional behavioral assessment. Student claims Norris delayed assessment to determine if Student's behavior problems decreased as he acclimated to kindergarten. Student also contends Norris' October 2019 functional behavioral assessment was procedurally deficient. Norris contends conducting a functional behavioral assessment before Norris' October 2019 assessment was premature because Student needed time to acclimate to the school environment. Norris also contends the assessment met all procedural requirements and resulted in a report the IEP team considered in connection with its November 2019 and January 2020 IEP offers for special education and related services.

To determine the contents of an IEP, a student eligible for special education under the IDEA must be assessed in all areas related to his or her suspected disability. No single procedure may be used as the sole criterion for determining whether the student has a disability or whether the student's educational program is appropriate. (20 U.S.C. § 1414 (a)(2), (3); Ed. Code § 56320, subd. (e), (f).)

For purposes of evaluating a child for special education eligibility, the assessment must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive

and behavioral factors, in addition to physical or developmental factors. The determination of what tests are required is made based on information known at the time. (*Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158.)

The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) No single measure shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

Individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area" must conduct assessments of students' suspected disabilities. (Ed. Code §§ 56320, subd. (g); 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A school district is also required to ensure the evaluation is sufficiently comprehensive to identify all of the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

FAILURE TO ASSESS UNTIL OCTOBER 2019

A disability is "suspected," and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may

have a particular disorder. (*Timothy O. v. Paso Robles Unified School Dist*. (9th Cir. 2016) 822 F.3d 1105, 1120-21.) That notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Id*. at p. 13 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, and *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202].)

Parents requested a functional behavioral assessment in December 2018. Norris responded with a prior written notice declining to assess and advising Parents that Norris wanted to give Student time to acclimate to kindergarten. Parents continued to express concern about Student's behaviors through the 2018-2019 school year, requesting one-to-one aide support and more attention to Student's behaviors.

Psychologist Dr. Betty Jo Freeman testified at hearing. Dr. Freeman conducted an independent educational evaluation of Student in October 2019, including testing, parent and teacher interviews, and she observed Student at school. She documented her findings in a report dated October 7, 2019. Dr. Freeman observed Student again on November 13, 2019, and presented her report to the IEP team on that day. She also participated in a January 22, 2020 IEP team meeting by telephone.

Dr. Freeman's education and credentials included a PhD in 1968-69, and extensive clinical training and experience. She published numerous articles and presented trainings to groups including school districts on the subject of behaviors and autism. Her specialty was working with autistic children. She held the position of Emerita Professor at UCLA after 2004. She testified and consulted in numerous legal matters involving children with special needs. Dr. Freeman's testimony was credible

based on her credentials, and her knowledge of Student through assessments and IEP team meeting discussions.

Dr. Freeman concluded that, characteristic of a child with autism, Student did not know how to learn from the time he entered kindergarten. She opined Norris should have evaluated Student's refusal and elopement behaviors shortly after Student started kindergarten, based on his behaviors of hiding behind chairs, requiring attention all the time, aggression towards the teacher and elopement. A proper functional behavioral assessment at that time would have shown areas of difficulty.

Independent assessor Jeffrey Hayden, BCBA-D, testified at hearing and concurred with Dr. Freeman's conclusions regarding the need for a functional behavioral assessment. Dr. Hayden was a Board Certified Behavior Analyst-Doctoral, with a PhD in education with emphases in special education, disability, and risk. He was knowledgeable in the area of behavior based upon his education and work experience. Dr. Hayden reviewed Student's educational records in January 2020 as the first part of an independent educational functional behavior assessment, which was interrupted by the COVID-19 school closure in March 2020. He had not completed the assessment by observing Student at school or collecting data on Student's behaviors. Dr. Hayden's testimony was credible to the extent relevant based upon his academic credentials, his experience in the field of Applied Behavioral Analysis, his familiarity with functional behavioral analyses, and his review of Student's educational records.

Speech therapist Shawn Manvell, and occupational therapist Dr. Kelly Auld-Wright, whose credentials are discussed under Issue 3(a) and 3(d), respectively, agreed with Dr. Freeman and Dr. Hayden's conclusions. Each of Student's independent assessors were confident the results of a functional behavioral assessment, as part of

Student's initial assessments, was warranted and would have led to development of a behavior intervention plan and IEP team consideration of a one-to-one aide trained in Applied Behavioral Analysis in kindergarten.

NORRIS' OCTOBER 2019 ASSESSMENT

In late May 2019, Norris agreed to conduct a functional behavioral assessment. School psychologist Limpias conducted the assessment in October 2019, after Student started first grade. She also conducted a special circumstances instructional aide assessment at that time. Limpias held a master's degree in school psychology and a pupil personnel services credential. She was a certified licensed educational psychologist, with training in multiple areas including assessments and behavior interventions and supports. She worked for Norris as a school psychologist since 2009. She was familiar with Student based on interactions with him in kindergarten and first grade. Limpias' credentials, in combination with her familiarity with Student, qualified her to conduct Student's behavior assessments.

Limpias documented the assessment results in a written report dated October 19, 2019. Limpias testified at hearing. Limpias' testimony was credible based on Limpias' credentials and experience in the area of school psychology, her familiarity with and assessments of Student, attendance at Student's IEP meetings, and her interactions with Student at school.

Limpias reviewed Student's educational records, including the psychoeducational assessment and related interviews of Student in fall 2018. She interviewed Student's past and current classroom teachers, Student's first grade resource support teacher Sandra McEwen, Student's extended school year special education teacher Brandi Church, Student, and Parents. Limpias thoroughly summarized those interviews in her

report. Student could not participate in an interview because of his refusal to cooperate by answering questions.

Limpias also observed Student at school on several occasions as part of her assessment. The first observation lasted an entire school day. Ten subsequent observations lasted one hour each day, and were conducted from 1:00 p.m. to 2:00 p.m., just before the end of the school day. Limpias chose that time frame because Student's teacher reported his target behaviors increased after lunch. She summarized Student's IEP service minutes, and noted that Student participated in the extended school year day class. She noted additional assessments requested by Parents, including a special circumstance instructional assistant assessment, assistive technology, augmentative alternative communication, and independent evaluations in speech and language, psychoeducational and occupational therapy.

Limpias found Student had average school attendance. Student had 16 log entries due to behavior incidents from fall 2018 through September 10, 2019. Some entries referred to refusal and protest behaviors. Behaviors included eloping, which were sometimes the result of a request made of Student. Other behaviors included Student hitting or kicking a teacher or adult who requested that Student perform a non-preferred task. The report noted previous interventions and their effectiveness. Student had some success in extended school year, where his eloping behaviors decreased from multiple times a day, to once or twice towards the end of extended school year. Limpias' data was consistent with testimony from extended school year special education teacher Brandi Church, who had successfully used multiple and various interventions during extended school year to reduce Student's task avoidance behaviors, resulting in improved behaviors at the end of extended school year.

Limpias described Student's target behavior as "refusal." Limpias summarized antecedent and consequences of Student's refusal behavior. Limpias defined the behavior as each time a request was given directly to Student, Student shouted "no" or "I'm too busy" or "I can't" or "go away." At times, Student ignored the request and refused to comply, and occasionally went to a preferred behavior like playing with trains. After too many requests were made, Student would then elope from the classroom. Student refused tasks approximately nine times a day on average, between 1:00 p.m. and 2:00 p.m. On one day, Limpias observed no refusals because it was a free day where the teacher made no academic demands of the classroom.

Limpias described the desired replacement behavior as complying with a request given to the class as a whole, or individually to Student, and following the direction the first time it was given, or after the first prompt. Student was compliant with instructions during the 1:00 p.m. to 2:00 p.m. time frame on average one tenth of the time. Limpias also described the functional equivalent replacement behavior as Student requesting an appropriate alternative, from options that were teacher approved. Student would then ask for help, or negotiate and partially comply. The functional equivalent replacement behavior was intended to offer Student an alternative to the refusal behavior, to allow Student to continue to avoid non-preferred tasks and access a desired activity or item.

Limpias developed a report after collecting data, and recommended the IEP team adopt a behavior intervention plan with behavior goals. She recommended three goals for the IEP team to consider, including reducing target behavior, engaging in desired replacement behavior, and participating in modified activities that allow Student to engage differently, partially, and or negotiate partial compliance.

On November 22, 2019, Norris held an IEP team meeting to review its functional behavioral assessment with Parents. Parents disagreed with the functional behavioral assessment, and requested an independent educational evaluation by Dr. Hayden. Norris agreed to Parents' request and contracted with Dr. Hayden to conduct an independent functional behavior assessment.

Dr. Hayden reviewed Limpias' functional behavioral assessment. He was critical of most aspects of the report. For example, Dr. Hayden criticized the one-hour observations conducted by Limpias, questioning the choice of times she observed. He also criticized the description of the desired replacement behavior as deficient and vague. Dr. Hayden opined the report should have included the details of data collected or an analysis of the data beyond the general narrative. Dr. Hayden criticized the proposed goals in Limpias' report as not appropriate. He opined the goals did not address the primary function of the behavior. Dr. Hayden was critical of the third proposed goal because it sought partial compliance, and was not sufficiently specific or workable

Dr. Hayden opined that Norris' functional behavioral assessment was not sufficiently detailed to address all of Student's unique behavioral needs. The purpose of a functional behavioral assessment was to inform the IEP team and those providers who will work with a student of sufficient detailed data to enable the team to develop an appropriate behavior intervention plan that could be implemented, and data collected during implementation.

In *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), the Ninth Circuit noted that actions of a school district cannot be judged exclusively in

hindsight. An IEP must take into account what was and was not objectively reasonable at the time the IEP was drafted.

Adams is applicable here as it relates to Dr. Hayden's opinions of the functional behavioral assessment. Dr. Hayden's opinions were informative to the extent they addressed his opinion of shortcomings of the assessment report. However, Dr. Hayden's opinions were not persuasive. Dr. Hayden had never met or observed Student or collected data on Student's observed behaviors. Dr. Hayden never attended an IEP meeting, had not yet discussed his opinions about Norris' functional behavioral assessment with Limpias or any member of the IEP team, and had not yet completed Student's independent evaluation. Therefore, Dr. Hayden's opinions did not carry enough weight to prove that Norris' functional behavioral assessment was so procedurally deficient that it resulted in Norris denying Student a FAPE.

In summary, Norris procedurally violated the IDEA by failing to assess Student in the area of behavior while he was in kindergarten. Norris had enough information about Student's behaviors and their impact on his access to his education from before the initial IEP meeting to prompt Norris to initiate a functional behavioral assessment for Student well before the end of the 2018-2019 school year. Norris denied Student a FAPE by significantly depriving Parents of the opportunity to meaningfully participate in the development of Student's educational program, and by depriving Student of educational benefit.

Student did not prove that Norris denied Student a FAPE by failing to conduct an appropriate functional behavioral assessment in October 2019. Limpias' report was procedurally compliant and contained sufficient information for an IEP team to develop

a behavior intervention plan, determine how it would be implemented, and draft appropriate goals for Student.

ISSUES 3(A) THROUGH 3(D): DID NORRIS SCHOOL DISTRICT DENY STUDENT A FAPE FROM NOVEMBER 28, 2018, BY FAILING TO OFFER IEPS THAT INCLUDED APPROPRIATE ANNUAL GOALS IN THE AREAS OF ACADEMICS, SOCIAL SKILLS, PRAGMATICS, EXECUTIVE FUNCTION, AND BEHAVIOR; ADEQUATE BEHAVIORAL SERVICES; A BEHAVIOR INTERVENTION PLAN; AND APPROPRIATE OCCUPATIONAL THERAPY SERVICES?

The following discussion of Issues 3(a) through 3(d) focuses on the appropriateness of Student's goals and services in the November 27, 2018 IEP until January 22, 2020. The appropriateness of the January 22, 2020 IEP offer of placement, goals and services, and Student's claims and defenses associated with that IEP, are discussed under Issue 5 of this Decision. The discussion under Issue 5 concludes Student did not meet his burden of proof on Issues 3(a), 3(b), 3(c) and 3(d) with respect to the January 22, 2020 IEP.

ISSUE 3(A) – ANNUAL GOALS FROM NOVEMBER 18, 2018 UNTIL JANUARY 22, 2020

Student contends the six annual IEP goals in Student's November 27, 2018 IEP were insufficient to address his needs at school for him to gain educational benefit. Student contends Norris did not offer any additional appropriate goals in the area of occupational therapy, pragmatics, executive functioning, academics and behavior, up to the time the original complaint was filed. Norris contends the goals drafted at the initial

IEP meeting in November 2018 were appropriate, incorporated Student's needs in pragmatics, academics, behavior and executive functioning, and were sufficient to address Student's needs as they were known to the IEP team at the time.

Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031,56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.) In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (*Endrew F.*).)

The IEP for each child with a disability must include a statement of measurable annual goals. The statement of goals must include benchmarks or short-term objectives related to meeting the child's needs that result from the child's disability. The goals must be designed to enable the child to be involved in and progress in the general curriculum, and to meet each of the child's other educational needs that result from the child's disability. (34 CFR §300.347(a)(2).) The IEP for each child with a disability must include a statement of how the child's progress toward the child's annual goals will be measured.

The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be

measured. (*Jessica E. v. Compton Unified School Dist.* (C.D. Cal. 2017, No. CV16-04356-BRO) 2017 WL 2864945; see also Ed. Code, § 56345; 20 U.S.C. § 1414(d)(1)A)(i).) An examination of the goals in an IEP is central to the determination of whether a student received a FAPE. IEP goals and goal achieving methods are considered as of the time the plan was implemented. The examination of those goals asks whether those methods were "reasonably calculated" to confer a meaningful benefit. (*Adams, supra,* 195 F.3d at p. 1149.)

The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS 1988) 213 IDELR 118.)

The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges v. Spartanburg County School Dist. Two* (D.S.C. 2011, No. 7:10-cv-01873-JMC) 57 IDELR 128.). The IEP must contain a description of how the child's progress toward meeting the annual goals described will be measured and when periodic reports on the progress the child is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided. (20 U.S.C.A. § 1414(d)(1)(A)(iii).)

NOVEMBER 27, 2018 IEP

Student's initial IEP had six annual goals. Goals 1 through 5 were in communication and the IEP team developed those goals based on Norris' initial speech and language assessment. Goal 6 was a social emotional goal based on school psychologist Limpias' psychoeducational assessment and Student's behaviors observed during the three months before the initial IEP team meeting.

Student's initial psychoeducational assessment established that Student's skills in reading comprehension, math comprehension, and written expression were low. Student performed below Norris' standards in math, and far below in English Language Arts. The initial psychoeducation report recommended support in the academic areas of deficit. However, the IEP team did not provide any specific goals in academics, focusing instead on Student's communication and social skills.

Administrator Sullivan opined at hearing that Goals 3 and 5, in communication, were inclusive of Student's needs in pragmatics. The IEP team designed each of those goals to help student express himself and understand others, as recommended by Zielsdorf's initial speech and language report. Sullivan also opined each of the goals was intended to address Student's behaviors in accessing his academics. However, none of the goals specifically addressed academic needs noted in the initial psychoeducational assessment.

Speech and language pathologists Shawn Manvell and Samantha Tan of Achievement Center for Therapy conducted an independent educational evaluation in speech and language for Student in October 2019. Their report, dated October 8, 2019, reflected their assessment results. Manvell testified at hearing, but did not attend any

IEP meetings for Student. Tan attended Student's IEP team meeting on November 13, 2019, but did not testify at hearing.

Manvell held a master's degree in speech pathology and was licensed as a speech pathologist in 2000. She worked in private practice with students with IEPs. She has assessed over 100 children during her career, and performed approximately 25-30 independent speech evaluations. Manvell privately provided communication disorder therapy, pediatric feeding and augmentative alternative communication services.

Tan and Manvell interviewed Parent, who attended the assessment with Student. Manvell reviewed Student's November 2018 IEP, and Norris' initial speech and language assessment. The assessors unsuccessfully attempted to administer standardized tests to Student. Student was not cooperative, engaged in striking, tantrums, crying and refused to continue. The assessors could not acquire baseline and ceiling data on Student. Manvell opined that, based upon her experience, the independent assessment nevertheless provided valid and reliable results.

Manvell concluded Student had a moderate to severe pragmatic delay, delayed vocabulary, delayed morphology or the structure of use of language, and delayed receptive and expressive language. Manvell opined Student's "prognosis" was excellent. Manvell acknowledged at hearing that the independent assessment results were consistent with Norris' speech and language assessment results. Manvell did not propose any goals in her independent assessment report.

Manvell's report noted that the "current communication goals through his current IEP" were "appropriate to assist in remediation of current speech and language skills." Tan attended Student's November 13, 2019 IEP team meeting. Tan reported to

the IEP team that she and Manvell thought the IEP goals from the November 2018 IEP were "good goals" for Student to work on.

At hearing, Manvell opined that Student's initial five IEP communication goals were "appropriate and fair". However, she also inconsistently criticized two of the five communication goals, and the social emotional goal, Goal 6. The inconsistency impacted the credibility of her testimony. Manvell opined that Goals 1 and 5 required a level of functioning too high for Student. Manvell opined Goal 6 was inappropriate because Student did not have the skill set for expressive language, or receptive skills, to meet the goal. Manvell was critical that the November 2018 IEP did not include any goals in the area of pragmatics, which was a known deficit for Student when he started kindergarten. She also opined Student required at least four pragmatic goals to lay a foundation of skills leading to adding a peer buddy.

Manvell's testimony at hearing was confusing and contradictory. However, to the extent Manvell's criticisms of Goals 1, 5 and 6 were consistent with testimony from Dr. Freeman and independent assessor occupational therapist Dr. Kelly Auld-Wright, both of whom attended IEP team meetings for Student, Manvell's criticisms received some weight.

Norris argued it did not offer separate academic goals in November 2018 because Student did not have preschool experience and needed to learn to "be a student and stay in class". Norris also argued that Student's needs required the team to focus on Student's behavior before he could access his academics. Norris' argument was not persuasive, and failed to show that Student did not require academic goals at that time.

Dr. Freeman opined, based on cognitive testing, that Student had the cognitive ability to handle grade level curriculum with proper modifications in place. Student's autism diagnosis impacted his ability to learn, in part because of behavioral deficits. Student also had deficits in executive function relating to self-organization and behavioral regulation. Dr. Freeman opined Student demonstrated deficits in following two-step instructions when he started working with the curriculum. Student's language processing deficits and behaviors were impeding him from learning. Student had a major deficit in coping skills and managing his own behaviors. Student required social goals and communication goals to manage his language processing deficits, including in pragmatics.

Dr. Freeman was critical of Goal 6, which Sullivan opined included executive function aspects. Goal 6 was not measurable because it had no baseline. The goal provided that, through the use of reinforcers, Student would increase his on-task behavior when denied a preferred activity. He would be able to verbalize his feelings, accept feedback, and resume the task at hand without engaging in negative behaviors, such as refusing to participate, in four out of five trials in two week increments. The goal included three incremental objectives. Without a baseline, it was not possible to measure Student's progress for this goal.

Dr. Freeman opined Student's IEP goals should have been drafted around his behavior, which they were not. Student needed to learn to enter the classroom, sit down and engage in activities. He needed a positive goal to use his replacement behavior. He required a goal addressing early stages of executive functioning, and learning to comply with a teacher's commands. The goals in the November 2018 IEP addressed methods of decreasing his inappropriate behaviors rather than teaching him positive behaviors, rendering them inappropriate for Student.

Student proved that Norris denied him a FAPE in the November 27, 2018 IEP, by failing to offer Student appropriate goals in academics, communication and behavior specifically addressing Student's pragmatic and semantic needs, his refusal behavior, or, as recommended by Dr. Freeman, any goals in executive functioning to address self-organization and behavioral regulation. Goal 6 was an incomplete and immeasurable social emotional goal.

MARCH 6, 2019 IEP; JUNE 14, 2020 IEP; AUGUST 20, 2019 IEPS

The IEP team met on March 6, 2019 and March 22, 2019, to discuss Student's present levels of performance and Norris' occupational therapy assessment. The IEP team did not find Student eligible for occupational therapy and did not offer new goals in any area of need.

Dr. Auld-Wright conducted an independent evaluation of Student in the area of occupational therapy in October 2019. Her assessment included a review of Student's records, including his November 27, 2018 IEP and Norris' occupational therapy assessment report. She documented her findings in a written report. Dr. Auld-Wright had a doctorate in occupational therapy, and was licensed and registered in California. She worked for a large school district in Southern California for six years as a clinical advisory therapist. Dr. Auld-Wright assessed close to 1000 students, attended IEP team meetings, and participated in the development of occupational therapy goals. She conducted approximately 20-30 independent evaluations in her private practice since 2019. Dr. Auld-Wright participated in Student's November 21, 2019 IEP meeting. Dr. Auld-Wright's testimony was credible based upon her credentials and understanding of Student's needs based on her assessment observations in the classroom, parent and teacher interviews, and records review.

Dr. Auld-Wright opined that Student had sensory and fine motor deficits that required goals. Her opinions regarding Student's needs for occupational therapy services is discussed under Issue 3(d). Dr. Auld-Wright was critical of Norris' March 2019 occupational therapy assessment. In her opinion, the conclusions reached by Norris' assessor were focused on Student's behaviors, in part because Student was resistant to assessment tasks. The conclusions were therefore based upon Student's preferred activities. Dr. Auld-Wright disagreed with Norris' assessor's conclusion that Student's fine and visual motor skills were functional for school participation. Norris' conclusions did not acknowledge visual motor or sensory issues, which Dr. Auld-Wright observed evidence of in Student's records.

Dr. Auld-Wright credibly opined Student demonstrated historic needs in occupational therapy that required goals based on the data in Norris' occupational therapy assessment from spring 2019. Sensory needs are common in young children with autism. Student could not hold a pencil, which Dr. Auld-Wright opined was not a behavioral issue. Student demonstrated deficits in tactile perception, and difficulty with praxis, or the ability to plan, organize and carry out a sequence of unfamiliar actions. Those deficits impacted handwriting and imitating motions.

Dr. Auld-Wright's testimony credibly established that the deficits she observed in Student existed when he was in kindergarten, based upon her review of Student's records and her own assessment. Occupational therapy goals would have benefited Student if he had been found eligible for occupational therapy services in March 2019.

Norris denied Student a FAPE by failing to offer occupational therapy goals until January 22, 2020. Dr. Auld-Wright recommended eleven sample IEP goals in her report to address Student needs in sensory reactivity to tactile, movement and auditory

information. Dr. Auld-Wright recommended goals to address vestibular integration to maintain position and coordination of head, eyes, trunk and limbs. She recommended goals to address Student's needs in graphomotor and fine motor skills, affecting handwriting. She also recommended goals to address Student's body awareness and tactile responses, and conceptualizing and following through with a plan. Under *Adams, supra*, 195 F.3d at p. 1149, Dr. Auld-Wright's recommendations for goals were credible and relevant. Dr. Auld-Wright determined from her assessment and review of records that the deficits in fine and gross motor skills that she observed in Student existed in kindergarten. Norris should have recognized those needs from and after Student's initial IEP team meeting on November 27, 2018, and certainly by the time of the March 22, 2019 IEP team meeting.

Student's IEP team met in June 2019 and August 2019 to discuss Parents' requests for assessments and progress after the extended school year. The IEP team made no changes to Student's November 27, 2018 IEP at either meeting.

Student proved Norris denied Student a FAPE by failing to offer appropriate goals from November 27, 2018, until the January 22, 2020 IEP offer. Student proved that the IEP team had acquired sufficient information about Student at and after Student's initial IEP team meeting, to consider and develop additional goals in academics, social skills, pragmatics, executive function, occupational therapy and behavior after the November 27, 2018 IEP.

ISSUES 3(B) AND 3(C) - BEHAVIORAL SERVICES AND BEHAVIOR INTERVENTION PLAN FROM NOVEMBER 27, 2018, UNTIL JANUARY 22, 2019

Student contends Norris denied Student a FAPE by failing to offer appropriate behavior services or a behavior intervention plan to address Student's known behaviors at or after the November 27, 2018 IEP team meeting. Norris contends it did not deny FAPE because it employed numerous interventions regarding Student's behaviors through the first semester of first grade. Student met his burden of proof.

Special education resource teacher McEwen held a bachelor's degree in child development, a multiple subject and learning handicap credential, and a resource specialist program credential. McEwen taught since 1966, and was employed as a special education teacher by Norris since 1999. Her credentials, experience, and knowledge of Student rendered her testimony persuasive and credible. McEwen was Student's resource support program teacher in first grade. McEwen performed initial academic assessments for Student as part of the initial psychoeducational assessment, and served as his resource teacher in first grade. McEwen also observed Student in various settings in kindergarten before he was eligible for special education.

Brandi Church was a credentialed special education teacher with a master's degree in special education. Her work experience included teaching at a learning center as a resource support teacher in a mixed special day and resource setting. Church was employed by Norris as a special education teacher for over five years. Church observed Student as part of a kindergarten classroom observation, and later taught Student in extended school year 2019.

Both special education teachers credibly testified at hearing based on their credentials and their knowledge of Student. Both teachers credibly opined that Student's elopement and work refusal were behaviors that substantially interfered with Student's access to his educational program. Church opined Student required additional adult support in the extended school year classroom. Student's behaviors subsided when Student was permitted to engage in preferred activities or received preferred rewards, such as "Toy Story cards."

Norris engaged school psychologist and board certified behavior analyst Josh Stuart to assess Student in the area of educationally related mental health services in January 2020. Student's IEP team had not yet reviewed Mr. Stuart's March 25, 2020 assessment report before the COVID-19 closure. Stuart worked in education for over 20 years. He was also a credentialed teacher and worked in school administration. Stuart provided credible opinions relating to Student's behaviors based upon his credentials and experience, and his observations of Student during his assessment. Although his report had not yet been reviewed by the IEP team, Stuart credibly testified at hearing, concurring with Limpias and Dr. Freeman, that Student required daily and explicit instruction and systematic teaching using Applied Behavioral Analysis from an appropriately trained aide to acquire appropriate behavior skills.

Dr. Freeman credibly opined, based on Student's records and her own observations, Norris was inappropriately managing Student's behaviors by allowing him to do what he wanted to avoid a "meltdown." Freeman opined that Norris' approach to determine how to address Student's needs using trial and error was not appropriate for Student.

Student made no meaningful progress toward his IEP goals largely because of his behavior. He did not access his speech and language services because of his refusal behaviors. He did not benefit from specialized academic instruction or instruction from the general education teacher because of his refusal behaviors. Student proved that Norris denied him a FAPE from November 27, 2018, until January 22, 2020, by failing to offer an appropriate behavior intervention plan and behavioral services consistent with a behavior plan.

ISSUE 3(D) - OCCUPATIONAL THERAPY SERVICES FROM NOVEMBER 27, 2018, UNTIL JANUARY 22, 2020

Student proved that Norris denied Student a FAPE by failing to offer any occupational therapy services after March 22, 2019, through the January 22, 2020 IEP. Dr. Auld-Wright credibly testified that Student's sensory needs were evident in kindergarten and that he would have benefited from occupational therapy services if the IEP team had offered them in March 2019. The IEP team acknowledged at the November 2019 IEP team meetings that Student needed occupational therapy services to access his educational program. Norris did not formally offer Student any occupational therapy services until the January 22, 2020 IEP offer, despite evidence that it had knowledge of Student's needs in occupational therapy at least as early as March 2019. Norris' failure to offer any occupational therapy services during that time denied Student a FAPE.

In summary, Student prevailed on Issues 3(a), (b), (c), and (d), regarding IEPs from November 27, 2018, until the January 22, 2020 IEP offer, by proving Norris failed to offer appropriate measurable goals in all areas of need, a behavioral intervention plan and associated behavioral services, and occupational therapy services.

ISSUE 4: DID NORRIS SCHOOL DISTRICT DENY STUDENT A FAPE BY FAILING TO MAKE A CLEAR WRITTEN OFFER OF FAPE IN THE NOVEMBER 21, 2019 IEP?

Student contends the November 21, 2019 IEP was not clearly written as to the number of minutes and manner of delivery of related services, resulting in a denial of FAPE. Norris acknowledged at hearing those elements of the IEP were not clear. Norris contends, however, it did not deny FAPE because Parents declined to consent to any offer that changed Student's placement until an independent educational evaluation in behavior was completed.

The IDEA requires that an educational program be individually designed and reasonably calculated to provide meaningful educational benefit to a child with a disability. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1310.) The purpose of a written offer is to alert parents of the need to consider seriously whether a school district's proposed placement is appropriate under the IDEA. It helps parents determine whether to oppose or accept the placement with supplemental services. (*Union v. Smith* (9th Cir. 1994) 15 F.3d 1519, *cert. denied* (1994) 513 U.S. 965 (*Union*).) The IDEA explicitly requires written prior notice to parents when an educational agency proposes or refuses, to initiate or change the educational placement of a child with a disability or the provision of a FAPE. (*Id.* at p. 1526; see also 20 U.S.C. § 1415(b)(3).)

The requirement of a formal written offer creates a clear record that will eliminate troublesome factual disputes about what additional educational assistance the school district offered to supplement a placement. Failure to make a clear written offer of placement and services is a procedural violation of the IDEA. (*Union*, *supra.*, 15 F.3d at

p. 1527). See also, title 20 United States Code § 1414(d)(1)(A)(i), title 34 Code of Federal Regulations. § 300.320(a), and Education Code § 56345, subd. (a).

A procedural violation results in a denial of FAPE if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making 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); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*), *superseded by statute on other grounds, as stated in R.B. v. Napa Valley Unified School Dist.* (9th Cir.2007) 496 F.3d 932, 939.)

The IEP is to be read as a whole. No requirement exists that necessary information be included in a particular section of the IEP if that information is contained elsewhere. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2); Ed. Code, § 56345, subd. (h).)

Student did not meet his burden of proof on Issue 4. Although Norris procedurally violated the IDEA by failing to make a clear written offer in November 2019, the failure to make a clear written offer did not impede Parents' participation in decision making, or deprive Student educational benefit.

Student's IEP team met for several hours on November 13 and 21, 2019. Parents attended the meetings with their educational advocate and actively participated in the meeting. The IEP team, including independent evaluators, discussed the various independent evaluations, developed goals and discussed related services. The IEP team recommended placement in a special day class. Although Parents liked the proposed special day classroom program after their observation, Parents informed the IEP team they would not agree to any change of placement or program until an independent

functional behavioral assessment was completed and the IEP team considered the results.

During hearing, Sullivan admitted the IEP document presented to Parents on November 22, 2019 had ambiguities that required clarification. Specifically, those ambiguities included the number of minutes Student would receive in related services, and where and how those services would be delivered. Sullivan acknowledged that, based upon questions from Parents and their advocate at the November 2019 IEP team meeting, the IEP was not sufficiently clear. She therefore scheduled another IEP team meeting in January 2020 after the holiday break, to clarify Norris' IEP offer and answer Parents' questions.

Norris' November 21, 2019 IEP offer was not clearly written, resulting in a procedural violation under *Union*, *supra*., 15 F.3d at p. 1527. However, the evidence established that Parents actively participated in the meeting with their advocate, and had ample opportunity to ask questions and make comments. Based upon their questions at the meeting, Parents understood the elements of the offer at the meeting. While the number of minutes of occupational therapy services or the exact location of the service remained unclear, Parents generally understood what service Norris was offering. The IEP team agreed another meeting was needed to clarify some of their questions.

Nevertheless, Parents remained unwilling in November 2019 to sign their agreement to any proposed IEP offers, until Dr. Hayden completed his independent functional behavioral assessment, and until after Parents received all the information from that evaluation and the IEP team considered Dr. Hayden's report. Student did not prove that Norris' lack of a clear offer of the amount and location of occupational

therapy services resulted in depriving Student of educational benefit, impacted his access to a FAPE or significantly deprived Parents of the opportunity to participate in the development of the November 2019 IEP.

ISSUE 5: DID NORRIS SCHOOL DISTRICT OFFER STUDENT A FAPE IN STUDENT'S JANUARY 22, 2020 IEP, SUCH THAT NORRIS SCHOOL DISTRICT MAY IMPLEMENT THE JANUARY 22, 2020 IEP OVER PARENTS' OBJECTIONS?

Norris contends it procedurally and substantively complied with the IDEA in preparation for, and when it made its FAPE offer at, Student's January 22, 2020 IEP team meeting. It contends the FAPE offer met the standards in *Endrew F., supra,* 137 S.Ct. at p. 1000, because the offer was reasonably calculated to enable Student to make measurable progress in light of Student's circumstances. Student contends the January 22, 2020 IEP did not offer FAPE, particularly in the areas of goals, behavior and occupational therapy.

Norris had the burden of proof on its claim that the January 22, 2020 IEP offered FAPE. Student had the burden of proof on his claim that the January 22, 2020 IEP did not offer FAPE based on the claims raised in Issues 2, and 3(a) through 3(d), as to specific elements of the IEP.

The legal analysis of a school district's compliance with the IDEA consists of two parts. First, the tribunal must determine whether the district has complied with the procedures outlined 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. (*Rowley, supra, 458 U.S. at pp. 206-207.*)

Here, the January 22, 2020 IEP team meeting was a continuation of the November 13 and 21, 2019 IEP team meetings, and the IEP offer was a clarified version of the November 21, 2019 IEP offer. As such, when considering the appropriateness of the January 22, 2020 IEP offer, what happened at the November 2019 and January 2020 IEP team meetings that led to the IEP offer on January 22, 2020 is relevant.

PROCEDURAL REQUIREMENTS

RECENT EVALUATIONS WERE PROCEDURALLY COMPLIANT

Norris based its January 22, 2020 IEP offer on multiple assessments, including independent evaluations in psychoeducation by Dr. Freeman, occupational therapy by Dr. Auld-Wright, speech and language by Manvell and Tan, and Limpias' October 2019 functional behavioral assessment and special circumstances instruction assistance assessment. Norris' assessments were properly conducted by qualified professionals, and documented in written reports. All assessment reports were presented and thoroughly discussed at the November 2019 and January 2020 IEP team meetings. Parents, their advocate and independent assessors participated at the November 2019 and January 2020 IEP team meetings in a meaningful way. Norris' assessors participated in either the November and or January IEP meetings, and offered their opinions. The IEP team considered, discussed, had the opportunity to disagree with, and or incorporate recommendations from all assessors. Norris complied with this procedural requirement.

NOTICE, PARENTAL PARTICIPATION AND IEP MEETING WERE PROCEDURALLY COMPLIANT

The IDEA explicitly requires formal written notice to parents when an educational agency proposes, or refuses, to initiate or change the educational placement of a disabled child. (See 20 U.S.C. Sec. 1415(b)(3); *Union*, *supra*., 15 F.3d at p. 1527.) Unless excused in writing, the IEP team must consist of parents or their representative, a regular and special education teacher, a qualified representative of the school district, and an individual who can interpret instructional implications of assessment results. The IEP team may also include individuals who have the knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).) 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 FAPE to the child. (34 C.F.R. § 300.501(b) & (c); Ed. Code, §§ 56304, 56341.)

Norris gave proper notice to Parents of the November 13 and 21, 2019, and January 22, 2020 IEP meetings. Parents received a written copy of their Procedural Rights at all three meetings. Parents and their educational advocate attended all three meetings. All required persons attended the meetings. Parents and their advocate actively participated at those meetings by asking questions, expressing concerns and requesting information and follow up from Norris' IEP team members. Dr. Freeman, Dr. Auld-Wright, and speech pathologist Tan attended, presented their reports, and participated in sessions of the November meetings. Dr. Freeman participated in the January meeting by telephone. Norris staff at both meetings included Student's general education teacher Kristell Olsen, special education resource teacher McEwen, psychologist Limpias, speech therapist Zielsdorf, occupational therapist Stacey Grisham, and administrative representatives Sullivan and school principal Hudson.

Consequently, Norris ensured that all necessary participants, including Parents, attended each IEP team meeting. Norris proved the IEP team meetings that led to the January 22, 2020 IEP offer met procedural requirements for notice, participation and attendance. (Ed. Code, § 56505, subd. (j).)

IEP GOALS WERE PROCEDURALLY COMPLIANT AND APPROPRIATE

The November 21, 2019 IEP, as clarified by the January 21, 2020 IEP offer, contained 17 annual goals. The goals were based upon present levels of performance reported by Norris' staff and independent assessors at the November 2019 IEP team meetings. The IEP team members and guests present on November 21, 2019 discussed and developed each of the proposed annual goals, with active input from Parents and their educational advocate. The January 2020 IEP team clarified and updated Student's present levels of performance.

Student contended in his closing argument that the January 22, 2020 IEP offer did not include measurable annual goals in pragmatic language and social skills. Student did not meet his burden of proof. The IEP included five communication goals incorporating pragmatic language and social skills, to be supervised by the speech pathologist. The IEP included six academic goals in reading and math to be supervised by the resource and classroom teachers. The IEP included six social emotional goals to be supervised by the school psychologist, Student's special education and general education teachers, and an occupational therapist. Each goal was measurable. Each goal included a reason for the goal, a baseline, and periodic objectives that went through the end of the 2019-2020 school year. The goals incorporated some of the recommendations and comments from Dr. Freeman, Manvell and Tan, Dr. Auld-Wright,

and from Limpias' functional behavior and special circumstances instructional assistance assessments.

Tan attended the November 13, 2019 afternoon session of the IEP team meeting by telephone, and presented the independent speech and language assessment report. However, Tan was not present when the IEP team developed proposed annual goals for the coming school year at the November 21, 2019 IEP team meeting. At hearing, Manvell opined the January 22, 2020 IEP offer of communication goals was insufficient. Student required pragmatic goals and more semantic goals. She also criticized the goals as too high functioning based upon her observations of Student in October 2019. Manvell's opinions regarding the goals offered in the January 2020 IEP did not carry great weight, in part because neither Manvell nor Tan attended the IEP team meeting on November 21, 2020, when the goals were developed, or shared their opinions on the new goals with the January 22, 2020 IEP team. (*Adams, supra*, 195 F.3d at p. 1149.)

The January 22, 2020 IEP goals were appropriate for Student. Student offered no persuasive evidence that those seventeen goals were procedurally non-compliant, or that they did not address known needs for Student to help him achieve academic benefit. Student did not establish that, without specifically entitled goals in pragmatics and more semantic goals, he could not make meaningful progress.

Given Student's known unique needs, particularly his need to develop skills to access his educational program, the seventeen goals as written were sufficient for Student in the second grade. Student did not prove in Issue 3(a) the goals as presented in the January 22, 2020 IEP resulted in a denial of FAPE or that Norris denied Student a FAPE by failing to offer appropriate goals in academics.

SUBSTANTIVE REQUIREMENTS

PLACEMENT IN A SPECIAL EDUCATION CLASSROOM WAS THE LEAST RESTRICTIVE ENVIRONMENT FOR STUDENT

In determining the educational placement of a child with a disability, a school district must ensure that the placement decision is made by a group of persons including the parents and other persons knowledgeable about the child. The IEP team must consider the meaning of the evaluation data and the placement options, and consider educating the child in the least restrictive environment. (34 C.F.R. § 300.116.) Placement is determined annually and is based on the child's IEP. It must be as close as possible to the child's home and at the school that he or she would attend if non-disabled unless the IEP team determines otherwise. (*Id.*) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or the quality of services that he or she needs. *(Id.*)

A child with a disability should not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. A "specific educational placement" is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs. (Cal. Code Regs., tit. 5, § 3042, subd. (a).)

To conclude whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit balanced four factors in *Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H*). The analysis in *Rachel H.* looks at the educational benefits of placement full-time in a regular class. It also looks at the nonacademic benefits of such placement, and

the effect a student had on the teacher and children in the regular class. The fourth factor considers the costs of mainstreaming a student. (*Id.*)

If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1050 (*Daniel R.R.*).) The continuum of program options includes, but is not limited to regular education; resource specialist programs; designated instruction and services; and special classes. (Ed. Code, § 56361.)

The Norris IEP team members opined, at the IEP team meetings and at hearing, that Student's placement should be in a special day class, which would have been at a different campus than Student's home school. The January 22, 2020 IEP offered Student placement in a mild moderate special day class, with specialized academic instruction for 4,542 minutes per year. The IEP specified Student would spend 32 percent of the school day in general education.

When a parent seeks placement of an IEP student in general education, whether that placement meets the requirements for the least restrictive environment first depends on analysis of the four factors of *Rachel H., supra*, 14 F.3d at p. 1404. Here, Norris proved that application of relevant facts to those factors supported a finding that the general education setting was not appropriate for Student.

Applying the first *Rachel H.* factor, Student's academic scores were within the below average area in academic testing. McEwen and Dr. Freeman credibly and confidently opined Student was cognitively capable of learning the general education curriculum. He could write his name, count to 30 and write numbers up to 30.

However, first grade work was difficult for Student because his behavior interfered with his learning. McEwen delivered specialized academic instruction to Student in the general education classroom in the mornings. McEwen observed that Olsen modified instructions and changed expectations for Student, modified settings to encourage him to engage in academic tasks, and limited the number of steps he took to achieve completion of the project. Student could not work 30 minutes on task like his general education peers. Depending on Student's receptiveness, seventy percent of Student's instruction was delivered in a corner, at a desk, under a table, under a counter or at another student's table when the other student was sitting with the rest of the class during floor time.

McEwen credibly opined Student did not appear to grasp anything the classroom teacher was teaching and he did not participate. Student acquired minimal if any educational benefit from the general education classroom. Student would benefit from a class with higher student/adult ratio, which included more checks and balances of his progress. Second grade would be even more challenging. Student needed, and did better in a smaller setting with one-to-one instruction with frequent breaks.

Church credibly opined, based upon her knowledge of Student, that the general education classroom was not an appropriate placement for Student. Student was bright and capable of accomplishing tasks with modifications. Church opined while it might be possible for Student to make some progress in general education, Student would not receive the same intensity of interventions as in special education. In contrast to special education teachers in a special day class, the general education teachers do not have the time to implement strategies, and they do not have the training to put the strategies together to make sure they are done with fidelity. Student needed a higher ratio of adults to students, which was not possible in a general education setting.

Regarding the second *Rachel H.* factor, McEwen observed that Student was more social in first grade in Olsen's general education classroom than in kindergarten. Student's classmates invited him to join in activities. Before October 2019, Student's behaviors disrupted the classroom approximately 15 to 20 percent of the school day. After extended school year and Student's initial adjustment to first grade, McEwen opined Student's disruptive behavior only disrupted the classroom five percent of the time and the behavior decreased as the school year progressed. Extended school year teacher Church noted similar characteristics by Student in the classroom in 2019 extended school year. Student's elopement from class and refusal behaviors gradually improved during the four-week summer program and Student became more socially successful. Based upon his behaviors, Church credibly opined at hearing that Student would receive more benefit from a special day class with less students than the larger classroom population of a general education classroom.

Considering the third and fourth *Rachel H.* factors, Student's behaviors had an impact on the classroom teacher and more indirectly on the other children. From the time Student entered kindergarten, the teacher and adult classroom staff engaged in attempts to help Student from eloping, encouraging him to participate in educational activities, sometimes away from the other children. The general education teachers took steps to modify the manner in which they delivered instruction to Student, which took them away from other students. Other than a few incidents where Student reacted negatively to directives by trying to hit or kick an adult staff member, no one offered any credible evidence that Student's behaviors had a significant negative impact on the other children. Neither party offered evidence relating to the fourth *Rachel H.* factor relating to cost.

Under *Rachel H.*, the evidence was persuasive that a general education classroom was not an appropriate placement for Student. The next step in the analysis is to determine whether Student could have been supported with services in the general education classroom sufficient to provide him with the least restrictive environment under *Daniel R.R.* 874 F.2d at p. 1050. The IEP team considered multiple options on the continuum of placement. Norris team members advised Parents that the special day class Norris offered was at William Bimat Elementary School, which was not Student's home school.

In the context of least restrictive environment, Dr. Auld-Wright, Freeman, and Manvell recommended up to six hours, four times a week, of related services in occupational therapy, behavior intervention, and speech therapy. Although their reports suggested the bulk of that time would be provided in one-to-one instruction outside of the classroom, when asked at hearing, they opined that the services might be provided in the general education classroom some of the time, with intensive adult support. Dr. Freeman opined that teaching Student in his environment, as opposed to pulling him out of the classroom, was important. Both Dr. Freeman and Dr. Hayden also opined Student needed a full time one-to-one behavior aide for the entire school day, including while receiving services and during his general education participation.

Limpias recommended, based upon her functional behavioral assessment and special circumstances instructional assistance assessment, that Student required a full time aide with a behavior intervention plan. Limpias opined, however, she would only recommend that service in a special day class. Student resisted direct adult assistance in the classroom and did not work well when adults attempted to directly work with Student. Limpias credibly opined a special day class with one-to-one adult support was less restrictive than in a general education classroom. Student could spend more time

in the smaller classroom, with more indirect adult supervision, and more opportunities to engage socially with the limited number of students in the classroom. On the other hand, the recommendations by Dr. Freeman, Dr. Auld-Wright, and Manvell would have required Norris to pull Student out of the classroom several hours a day, causing Student to miss a substantial part of classroom time. Limpias' opinions were persuasive.

Parents liked the special day program at Bimat Elementary. However, Parents wanted "the best" for Student, and therefore were not willing to agree to a change of placement without Dr. Hayden's final report. Under *Rowley, supra*, 458 U.S. at pp. 201-204, as clarified by *Endrew F. supra,* 137 S.Ct. at p. 1000, Norris was not required to provide Student with "the best" program. Instead, it was required to offer Student an educational program tailored to Student's unique needs to enable him to make meaningful progress in light of Student's circumstances. Norris did so in the January 22, 2020 IEP.

Student argued in favor of a general education classroom. Student contended that Norris never tried giving Student a behavior plan, a one-to-one aide trained in Applied Behavioral Analysis, and an appropriate level of speech and occupational therapy services to see if Student could access his education in a general education placement. Student also argued that Student did not often disturb the children in the general education classroom. The arguments were not persuasive when considered in the context of *Rachel H.,* the amount of support Student would have required in the general education classroom, and all of the evidence indicating Student would benefit from a smaller classroom with increased adult supervision until he acquired the skills to access his education without consistent refusal behaviors.

Here, Norris proved that its offer of placement in a special day class with 32 percent of the day in general education, accompanied by a full time one-to-one aide, was an appropriate placement for Student in the least restrictive environment. Norris' placement offer was based upon and supported by a considerable amount of data collected from numerous professionals, multiple assessments, observations of Student, and a year of Norris attempting, unsuccessfully and with numerous trial interventions, to educate Student in the general education setting.

NORRIS' OFFER OF RELATED SERVICES WAS APPROPRIATE

Norris' January 22, 2020 IEP offer included numerous related services, based on the IEP team's consideration of the independent educational evaluations and its own assessments conducted in fall 2019. The offer of services was appropriate.

SPEECH THERAPY

The IEP offer included individual speech and language therapy, delivered in a separate classroom, for 120 minutes a month by a speech therapist. Tan participated in the discussion about communication services including sharing the recommendations from the independent speech and language evaluation. Tan informed the IEP team that, although she and Manvell liked the five speech goals in the November 27, 2018 IEP, 120 minutes a month of speech services would not be effective in working on those goals. She recommended to the IEP team that Student would benefit from three 30-minute sessions weekly of speech services, individually and in group sessions. She also recommended a behavior plan for Student. Zielsdorf reported to the January 2020 IEP team that she had difficulty working with Student over the past year because of his resistance, explaining the 120 minutes a month initially offered in November 2018 was a starting point until Student was less resistant. The IEP team thoroughly discussed

Student's present levels of performance in speech, with related behavioral issues, at the January 2020 IEP team meeting.

Norris proved its offer of 120 minutes a month of individual speech therapy services in a separate classroom as part of a special education classroom placement was appropriate. Norris considered Manvell and Tan's recommendations in conjunction with the other independent assessors' recommendations. The IEP team members had a robust discussion which included Parents and their educational advocate. Norris made its offer of 120 minutes monthly of individual pull out speech therapy based on all the information before it, including active participation by speech therapist Zielsdorf, who was familiar with Student since he enrolled in Norris. The speech therapy offer in conjunction with communication goals was appropriate.

OCCUPATIONAL THERAPY

Norris also proved its offer of 120 monthly minutes of occupational therapy services, and 20 minutes a month of consult was an appropriate amount. Although the offer was unclear as to location, that lack of clarity did not result in a material procedural violation.

Norris did not have occupational therapists on staff, and relied on the Kern County Special Education Local Plan Area to provide the service. The IEP offer specified that services would be provided in the "service provider's location," which was not clear on its face. However, at the IEP team meeting, occupational therapist Stephanie Grisham explained to Mother and her advocate how Grisham would deliver occupational therapy to Student as a push-in service to the special education classroom at Bimat Elementary. Grisham also explained how she used related service minutes. She gave examples of activities and strategies she used. She explained her support in the area of

sensory integration. She offered to review notes from 2019 extended school year to become more familiar with Student at that time. Although the IEP document left the location of services unclear, the IEP team thoroughly discussed the offer in detail with significant parental participation including numerous questions by Mother and her advocate. The procedural violation of not making clear the location of services was not a material procedural violation and did not deprive Parents of meaningful participation in the development of the IEP offer.

Next, Norris' offer of occupational therapy services was reasonably calculated to enable Student to make appropriate progress in light of Student's circumstances. Dr. Auld-Wright recommended occupational therapy twice weekly for 60 minutes a session, delivered individually in a clinic or therapy room. Dr. Auld-Wright also recommended 30 minutes a month of occupational therapy collaboration. Dr. Auld-Wright opined that Goal 11, which addressed self-regulation, required a group setting and could be done as part of the monthly collaboration. The IEP team considered Dr. Auld-Wright's recommendations when developing its offer of services.

However, Norris did not have a setting comparable to what Dr. Auld-Wright recommended. The amount of pull-out services recommended by Dr. Auld-Wright, when considered in the context of all the other services and supports in the IEP, was excessive and restrictive for Student at the time of the offer. Norris' offer was appropriate. Student did not prove in Issue 3(d) that Student could not make meaningful progress with the amount of occupational therapy services Norris offered in conjunction with the proposed occupational therapy goals.

BEHAVIOR SUPPORT

Norris proved its offer of a full time one-to-one special circumstances adult aide was appropriate in the context of the entire IEP offer. If a child's behavior impedes the child's 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)(i) and (d)(4); Ed. Code § 56521.1(b).) The IEP included 7,220 minutes a month of intensive individualized services in the special education classroom, during unstructured times, such as recess and lunch, and during district-provided curb to curb transportation.

Norris' offer of a full time one-to-one adult aide was consistent with the recommendations by Limpias, Stuart, Dr. Freeman, and Dr. Hayden, and was appropriate. Student argued that Norris offered no evidence that the one-to-one aide would be trained in Applied Behavioral Analysis. Student's argument was not persuasive. Student cited to no authority that requires a school district to specify in an IEP the qualifications of staff assigned to work with students.

Limpias developed a behavior intervention plan consisting of 10 pages, in conjunction with her functional behavioral assessment. The behavior intervention plan, dated November 13, 2019, addressed Student's refusal behaviors, the impact of the behaviors, and noted a serious need for a behavior intervention plan. The behavior intervention plan focused on Student's refusals during the 1:00 to 2:00 p.m. period at school. The plan included predictors for the behavior. Supports included specific praise, and recommended additional systems. The school psychologist and teacher would supervise the monitoring and implementation of the behavior plan. The plan was

consistent with Limpias' functional behavioral assessment, which the IEP team discussed at the November and January IEP meetings.

Dr. Hayden, Limpias, Dr. Freeman, Dr. Auld-Wright and Manvell all credibly opined that a successful application of Applied Behavioral Analysis to manage Student's behaviors required a plan that the provider would follow, and keep data on the elements of the plan. The January 22, 2020 IEP team referred to the behavior intervention plan and noted that, if Student had a behavioral aide, the behavior support plan could be implemented as part of that service. Student did not persuasively argue that, without reference to an "Applied Behavioral Analysis trained aide" in the IEP, the IEP failed to offer FAPE.

Norris proved the January 22, 2020 IEP offered Student appropriate services and supports, in conjunction with behavior goals, in the area of behavior. Dr. Hayden criticized the proposed behavior intervention plan for the same reasons as his criticism of Limpias' functional behavioral assessment. However, under *Adams, supra*, 195 F.3d at p. 1149, Dr. Hayden's criticisms did not carry sufficient weight to find that the behavior intervention plan from November 13, 2019 was so insufficient as to deny Student a FAPE. Because this decision finds that the functional behavioral assessment was appropriate, Student's argument that the behavior plan was not appropriate because of an inappropriate assessment was not persuasive. Student did not prove in Issues 3(b) and 3(c) that the January 22, 2020 IEP materially failed to offer FAPE in the area of behavior.

Parents signed the January 22, 2020 IEP for attendance only. They informed the IEP team they would take the document home to review, and advised the IEP team they

would further discuss the IEP offer with representatives of Norris during a "resolution meeting." Parents did not consent to the IEP as of June 4, 2020.

In summary, Norris met its burden on Issue 5. The January 22, 2020 IEP offer, developed at the November 13 and 22, 2019 and January 22, 2020 IEP team meetings, offered Student a FAPE in the least restrictive environment. Student did not meet his burden under Issues 3(a) through 3(d) that Norris failed in the January 22, 2020 IEP to offer appropriate goals, appropriate related services in the areas of communication, one-to-one aide support and a behavior plan, or occupational therapy goals and services.

ISSUE 6: DID NORRIS SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2020 COVID-19 SCHOOL CLOSURE THROUGH MAY 7, 2020, BY FAILING TO PROVIDE STUDENT ANY APPROPRIATE SPECIAL EDUCATION OR RELATED SERVICES, INCLUDING APPROPRIATELY TAILORED ALTERNATIVE SERVICE DELIVERY OPTIONS?

Student contends Norris failed to implement Student's November 27, 2018 IEP by failing to provide appropriately tailored special education or related services to Student from March 18, 2020, until May 7, 2020. Norris contends it complied with state and federal mandates and provided Student's education using appropriate alternative supports and services given the school closure and inability to deliver those services in person.

This is an issue arising out of the universal 2020 COVID-19 pandemic, during which California's governor Gavin Newsom, in concert with the federal government and local governments, ordered a statewide shutdown of businesses and schools. The

United States Department of Education initially issued guidance on the issue of the school shutdowns in March 2020. Governor Newsom issued an executive order on March 22, 2020, granting local educational agencies the authority to close schools, accompanied by a directive to the California Department of Education, referred to as the CDE, to develop guidance that included "ensuring students with disabilities" receive a FAPE consistent with their IEP, and local educational agencies meet other procedural requirements under the IDEA.

A local education authority which offers "distance learning" opportunities for its general education students has a concomitant duty to "make every effort to provide special education and related services to the child in accordance with the child's individualized education program." (*U.S. Dept. of Educ., Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (March 12, 2020) at p. 2.) School districts must "ensure that students with disabilities also have equal access to the same opportunities [as general education students], including the provision of FAPE," and, "to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA." (*Ibid.)*

In subsequent guidance, the Office of Special Education and Resource services, known as OSERS, recognized that educational institutions are "straining to address the challenges of this national emergency." (OSERS, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities,* (March 21, 2020) at p. 1.) OSERS assured school districts that "ensuring compliance with the IDEA should not prevent any school from offering educational programs through distance instruction." (*Ibid.*). OSERS noted the provision of FAPE may include, as appropriate, special education and related services provided

through distance instruction provided virtually, online, or telephonically." (*Id.* at pp. 1-2.) OSERS reiterated its March 12, 2020 guidance on compensatory education. "Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services" IEP teams must make an individualized determination "whether and to what extent compensatory services may be needed when schools resume normal operations." (*Id.* at p. 2.)

The CDE issued similar guidance on March 20, 2020, and April 9, 2020. (*Cal. Dept. of Educ., Special Education Guidance for COVID-19* (March 20, 2020); *Cal. Dept. of Educ., Special Education Guidance for COVID-19, COVID-19 School Closures and Services to Students with Disabilities* (April 9, 2020).). The CDE advised that, if a local educational agency can continue providing special education and related services as outlined in the IEP, or an agreed upon amendment to the existing IEP, through a distance learning model, it should do so. (*CDE Guidance* (March 20, 2020) *supra,* at Point 1.) The local educational agency could also consider alternative service delivery options such as in-home service delivery, meeting with individual students at school sites, or other appropriate locations to deliver services. The CDE also encouraged local educational agencies to work collaboratively with nonpublic schools and agencies to ensure continuity of services, including moving to virtual platforms for service delivery to the extent feasible and appropriate. (*Id.*)

When a local educational agency offers distance learning for instructional delivery in lieu of regular classroom instruction during a school site closure for students, it must also provide equitable access to those services for students with disabilities. A local educational agency must create access to the instruction, including "planning for appropriate modifications or accommodations based on the individualized needs of each student and the differences created by the change in modality such as a virtual

classroom." (*CDE Guidance,* (April 9, 2020), *supra*, at Point 2). Educational and support services provided should be commensurate with those identified in the IEP for each student to ensure educational benefit. *(Id.*)

Local educational agencies may consider the use of accessible distance technology, instructional phone calls, and other curriculum-based activities that have been "scaffolded" based on student need. (*Id.*) The local educational agency could also consider alternative service delivery options such as in-home service delivery, meeting with individual students at school sites, or other appropriate locations to deliver services. (*CDE Guidance* (March 20, 2020) *supra,* at Point 1.)

On April 27, 2020, U.S. Secretary of Education Betsy DeVos announced through a Department of Education press release that she was "not recommending Congress pass any additional waiver authority" concerning the FAPE and least restrictive environment requirements of the IDEA, noting again that "learning must continue for all students during the COVID-19 national emergency." (*U.S. Dept. of Educ., Secretary DeVos Reiterates Learning Must Continue for All Students, Declines to Seek Congressional Waivers to FAPE, LRE Requirements of IDEA*., April 27, 2020 Press Release).

NORRIS FAILED TO MATERIALLY IMPLEMENT STUDENT'S IEP

The relevant inquiry is whether Norris materially failed to implement Student's November 27, 2020 IEP from March 18 through May 7, 2020, because of the COVID-19 school closure. (*N.D v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1117, citing *Van Duyn, supra*, 502 F.3d at p. 822).) In *N.D.*, the Ninth Circuit Court of Appeals explicitly found that school closures related to a fiscal crisis did not constitute a change of placement. However, addressing a claim for "stay put" under title 20 United States Code section 1415(j), the Ninth Circuit held that a school closure caused by furloughs

due to a state fiscal crisis could support a claim of "material failure to implement an IEP." (*Id.* at *p. 1117*.) The COVID-19 situation is analogous. This analysis turns on whether Norris complied with Student's IEP, considering COVID-19 guidance issued by the state and federal governments, and, if so, did the compliance satisfy the IDEA sufficient to avoid a finding of a material failure to implement the IEP.

NORRIS ATTEMPTED TO PROVIDE STUDENT WITH ACADEMIC INSTRUCTION AND SPEECH THERAPY SERVICES

Student contends Norris had an obligation to provide appropriate alternate educational services during the school closure. Norris contends that to fulfill the IEP in its entirety was not possible under the circumstances. The two positions do not conflict in Student's case. Although it was not possible to implement Student's IEP as written, Norris was obligated to offer a temporary placement and program that "closely approximated" Student's last educational placement. (See *Ms. S. v. Vashon Island School Dist*. (9th Cir. 2003) 337 F.3d 1115, 1131.)

Norris established at hearing that it attempted to deliver distance learning instruction and services to Student to the extent feasible during the COVID-19 school closures. Norris sent a prior written notice to all parents dated March 23, 2020. The notice informed parents that the school district was closing effective March 18, 2020 due to COVID-19. Norris informed all parents it would provide distance learning to general education students. Norris informed all parents of special education students that if the child received IEP services such as speech or occupational therapy, the services providers would be providing resources and or practice exercises for the child to work on at home. Norris invited parents of special education students to email students' teachers or service providers with questions. The notice included parents'

rights and procedural safeguards. Student's Parents received those general notices. Norris' schools remained physically closed to all students through May 7, 2020, when Student amended his complaint.

Norris provided Student, through Parents, with a general Distance Learning Plan packet by March 24, 2020. Mother confirmed receipt of the packet. Mother reported to McEwen on March 24, 2020 that Student was having difficulty with technology and online instruction. Student was resistant to, and did not want to participate in, online resources offered by general education teacher Olsen. In response to Mother's concerns, McEwen offered to provide weekly online direct instruction to Student through Zoom, and assistance for Parents if needed. Mother declined the offer.

McEwen continued to check in with Mother regularly. General education teacher Olsen made weekly online distance learning resources available to her students. Neither McEwen nor Olsen delivered any in-person instruction to Student.

On March 30, 2020, after Mother again reported to McEwen that Student was struggling with the individual packet developed for Student, McEwen provided Student a supplemental work packet. Zielsdorf provided Student with a Speech Distance Learning Plan on April 2, 2020, including numerous worksheets and other tools. Father worked daily during the school week with Student on the materials provided by McEwen. Although Father read the instructions provided by Zielsdorf, he did not understand them. Zielsdorf did not provide any training to Father other than written instructions in the materials. As a result, Father did not use the speech therapy materials provided by Zielsdorf. Father relied on Mother to communicate with Norris during the school closure and did not know how to reach Zielsdorf. Zielsdorf maintained contact

with Mother by email, inviting Parents to contact Zielsdorf if they had any questions or concerns.

Olsen sent home additional general education resources including worksheets for Student after spring break. McEwen also offered an additional binder of resources for Student, which McEwen dropped off to Parents' home on April 17, 2020. Mother responded by email reporting that Student engaged in and enjoyed the additional resources. On April 17, 20, and 28, 2020, Sullivan emailed Mother notifying her that Olsen reached out to Student's IEP team to see what other supports might be available for Student. Zielsdorf recommended to Parents a variety of online "I Can Do" iPad tablet computer applications. Mother requested the additional educational applications with an iPad tablet computer, as suggested by Zielsdorf. Sullivan delivered the iPad to Parents for Student's use.

Student's teachers and providers checked in with Mother weekly and continued to provide additional resources for Student to use at home. Mother reported to Norris that Student was enjoying the new materials, and that Parents had purchased additional materials for Student. Mother confirmed in an email on May 5, 2020, that Student would participate in extended school year. Church delivered a learning packet prepared by Zielsdorf to Parents for extended school year.

Father opined at hearing that Student made progress during the school closure through the end of the school year using materials from Norris and materials Parents purchased independently. Student was willing to work with Father for the majority of the home-instructional time with Father's assistance. Student was learning sign language and taught those skills to Father. Student read books to Father, which was a new skill for Student.

NORRIS DID NOT MATERIALLY IMPLEMENT STUDENT'S IEP SERVICES

Although Student made some academic progress, Norris did not materially implement Student's November 27 2018 IEP during the 28 school days between March 23, 2020, when Norris started distance learning for all students, and May 7, 2020. Student proved that Norris materially violated the IDEA by failing to implement Student's November 27, 2018 IEP due to the COVID-19 school closure. While unavoidable circumstances prevented Norris from fully implementing Student's November 2018 IEP at school, nevertheless the IDEA includes no exceptions to implementation for physical school closures caused by pandemics or governmental directives to close schools. Norris remained responsible under the IDEA for materially implementing IEP's despite the school closure, even if by alternate methods of delivery. (*N.D v. Hawaii Dept. of Education*, *supra*, at p. 1117).)

Between March 18 and May 7, 2020, Norris provided Student with no direct instruction. McEwen did not deliver to Student any virtual instruction as an alternative to one-to-one specialized academic instruction from McEwen, in part because of Student's aversion to virtual learning. Owen also did not offer or provide any direct instruction. Zielsdorf also did not offer or provide Student direct virtual speech therapy as an alternative. For example, Norris could have collaborated with Parents to find ways to provide direct instruction to Student, with McEwen and or Zielsdorf participating virtually with Father's assistance, even if Student resisted direct participation using a computer. No one from Norris discussed those types of options with Parents before May 7, 2020, or the possibility of offering Father training to help him deliver the speech therapy materials to Student, with Zielsdorf's virtual assistance.

Norris was obligated to ensure that it provided Student with the special education and related services identified in Student's IEP developed under IDEA to the extent possible, even if direct delivery of those services and supports was delayed or required modification by government directives. Because it did not do so, Norris denied Student a FAPE from March 23, 2020 until May 7, 2020. (*Van Duyn, supra*, 502 F.3d at p. 822.)

Student also proved that, during the relevant time, Norris committed procedural violations that significantly impeded Parent's opportunity to participate in the decision-making process in Student's alternate educational program. (*Rowley, supra*, 458 U.S. at p. 205; 20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *Target Range, supra,* 960 F.2d at p. 1484.) Norris was obligated to provide Parents with prior written notice if it proposed to change Student's placement or provision of FAPE. (20 U.S.C. § 1415(b)(3). Norris should have sent Parents prior written notice explaining how Norris proposed to change or modify Student's IEP as an alternate mode of delivery of instruction during the school closure. Although Olsen reached out to Norris members of Student's IEP team for additional guidance and materials, Norris did not send a prior written notice to Parents, specifically relating to Student, before May 7, 2020. Norris should have done so particularly after Parents reported that Student was resisting virtual learning, and that he did not benefit from the speech therapy materials Norris provided.

Norris also should have held an IEP meeting, virtually if not in person. The CDE noted in its April 9, 2020 *New Guidance*, at Point 1, "there may be instances when amending the IEP to reflect the change to distance learning might be necessary and or appropriate." *(CDE Special Education Guidance, Point 1* (April 9, 2020.); 20 USC § 1414 (d)(4)(A); 20 USC § 1414 (d)(3)(D); 34 C.F.R. § 300.324.) Here, scheduling an IEP team meeting was appropriate to allow the entire IEP team to consider with Parents alternate

methods of delivery of Student's services, particularly because Parents were struggling to deliver all of the instructional materials provided by Norris to Student. Norris' failure to hold an IEP team meeting, in combination with its failure to send specific prior written notice to Parents, significantly impeded Parents' opportunity to participate in the decision-making process regarding Student's alternate educational program during the school closures. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *Target Range, supra,* 960 F.2d at p. 1484.)

CONCLUSIONS AND PREVAILING PARTY

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

Issue 1: Norris denied Student a FAPE by materially failing to implement Student's November 27, 2018 IEP. Norris did not deny Student a FAPE by failing to implement Student's March 6, 2019 IEP. Student prevailed on Issue 1 as to the November 27, 2018 IEP for the period between November 27, 2018 and May 7, 2020. Norris prevailed on Issue 1 as to the March 6, 2019 IEP.

Issue 2: Norris denied Student a FAPE by failing to assess Student in the area of functional behavior before October 2019. Norris did not deny Student a FAPE from November 27, 2018, by failing to conduct an appropriate functional behavioral assessment in October 2019. Student partially prevailed on Issue 2 and Norris partially prevailed on Issue 2.

Issue 3(a): Norris denied Student a FAPE from November 27, 2018, until the January 22, 2020 IEP, by failing to offer IEPs that included appropriate annual goals in

the areas of academics, social skills, pragmatics, executive function, and behavior. Norris did not deny Student a FAPE in the January 22, 2020 IEP, by failing to offer an IEP that included appropriate annual goals in the areas of social skills, pragmatics, executive function, behavior and academics. Student partially prevailed on Issue 3(a). Norris also partially prevailed on Issue 3(a).

Issues 3(b) and (c): Norris denied Student a FAPE from November 27, 2018, until the January 22, 2020 IEP, by failing to offer IEPs that included adequate behavioral services and a behavior intervention plan. Student prevailed on Issues 3(b) and 3(c) from November 27, 2018, until January 22, 2020. Norris prevailed on Issues 3(b) and (c) as to the January 22, 2020 IEP.

Issue 3(d): Norris denied Student a FAPE from November 27, 2018, until the January 22, 2020 IEP, by failing to offer Student IEPs that included appropriate occupational therapy services. Student prevailed on Issue 3(d) for the period from March 22, 2018, until January 22, 2020. Norris prevailed on Issue 3(d) as to the January 22, 2020 IEP.

Issue 4: Norris did not deny Student a FAPE by failing to make a clear written offer of FAPE in the November 21, 2019 IEP. Norris prevailed on Issue 4.

Issue 5: Norris offered Student a FAPE in Student's January 22, 2020 IEP, such that Norris may implement the January 22, 2020 IEP over Parents' objections. Norris prevailed on Issue 5.

Issue 6: Norris denied Student a FAPE during the 2020 COVID-19 school closure on March 18, 2020, through May 7, 2020, by failing to provide Student appropriate special education or related services, including appropriately tailored alternative service

delivery options, and by significantly impeding Parents ability to materially participate in alternative delivery options for Student's IEP services. Student prevailed on Issue 6.

REMEDIES

Student prevailed on Issues 1 and 6 through May 7, 2020, and partially prevailed on Issues 2, and 3(a), (b), (c), and (d) through January 22, 2020. Student is entitled to remedies for those denials of FAPE. Norris prevailed on Issue 5 which entitles it to implement Student's January 22, 2020 IEP without parental consent.

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft appropriate relief for a party. An award of compensatory education need not provide a day-for-day compensation. (*Id.* at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.)

An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524, citing *Student W. v. Puyallup School Dist., supra,* 31 F.3d at p. 1497.) 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 ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524. The CDE noted in its March 20, 2020 Guidance for COVID-19, that for purposes of considering compensatory services once a local educational agency resumes regular session, educational need may be measured by assessing whether the child continued

to make progress toward IEP goals, or experienced regression during the school closure. (*CDE Guidance* (March 20, 2020), *supra*, at Point 3.)

For purposes of calculating remedies, the ALJ relied on the school calendars for the 2018-2019 and 2019-2020 regular school years. The 2018-2019 school year consisted of 24 weeks from November 27, 2018, until May 30, 2019. The 2019-2020 school year, through May 7, 2020, consisted of approximately 35 school weeks.

REMEDIES FOR ISSUES 1 AND 6 FOR FAILURE TO IMPLEMENT IEP, AND ISSUE 3(A) REGARDING SPEECH GOALS

Regarding Issues 1, 3(a) relating to goals in speech and language, and Issue 6, Student proved that Norris did not implement Student's November 27, 2018 IEP with fidelity at any time after the IEP was developed until May 7, 2020, or offer appropriate goals in social skills and pragmatics until January 22, 2020.

First, Student missed IEP speech services consisting of 40 minutes weekly of specialized academic instruction and 30 minutes weekly of speech therapy for approximately 59 regular school weeks. He did not meet or make progress toward his goals, or have appropriate IEP speech goals in pragmatics and social skills. Student did not receive direct speech and language services, from November 27, 2018, through May 7, 2020. The November 2018 IEP provided for 120 minutes a month, or thirty minutes a week, of individual speech therapy services. Zielsdorf reported at several of Student's IEP team meetings, between November 2018 and January 2020, that she had difficulty delivering services to Student because of his refusal behaviors. Goals in the areas of social skills or pragmatics would have been delivered as part of his speech therapy services if they had been offered.

Norris' November 27, 2018 and January 22, 2020 IEP offers of 120 minutes a month of speech therapy was a reasonable amount of services given Student's needs. Therefore, Student is entitled to a total of 40 hours of compensatory speech therapy services. This remedy is based upon 30 minutes of missed direct services a week for 59 school weeks plus 10 additional hours for the lack of appropriate goals in social skills and pragmatics. The 40 hours of speech therapy services shall be provided by a certified non-public agency of Parents' choosing.

As an additional remedy for Norris' FAPE denial for failure to implement Student's IEP in Issues 1 and 6, Student is entitled to compensatory academic instruction for the period of November, 27, 2018 through May 7, 2020. Student requested 51.66 hours of academic instruction for this FAPE denial. Student also requested, without explanation, an additional two hours per week for 52 weeks from November 28, 2018 through March 17, 2020.

This remedy is based on two aspects of the IEP. First, based upon sign-in-sign-out sheets, Student missed approximately 52 hours of school time between January 22, 2019, and May 24, 2019, because Norris did not return him to a full school day as required by the November 27, 2018 IEP. Student attended school on most school days before March 18, 2020, notwithstanding the shortened days in kindergarten, but he did not benefit fully from his specialized academic instruction minutes. Resource teacher McEwen's testimony credibly established that during the approximately 59 weeks, Student did receive some instruction from his resource support teachers, including McEwen. However, Student did not fully benefit from the service for the 28 days of the COVID-19 closure, although he made some academic progress.

In total, for November 27, 2018 until May 7, 2020, Student's operative IEP provided for 2,360 minutes of specialized academic instruction by a resource teacher based upon 59 weeks at 40 minutes a week. Student did not establish through credible evidence how much of the approximately 2,360 minutes of specialized academic instruction Student missed before May 7, 2020. However, the evidence established that Student accessed the academic materials provided by McEwen and Owen during the COVID-19 closure, with Parent's help. Student also made some academic progress during the 2018-2019 and 2019-2020 school years, which justifies reducing compensatory academic hours by a small amount.

The time period January 22, 2019, through May 24, 2019, consisted of 83 shortened school days. Student estimated approximately 52 hours of missed instruction during that time period, which was not unreasonable based upon what should have been approximately a five and one half hour school day. Therefore, as an equitable remedy for Issues 1 and 6 relating to academic instruction, Student is entitled to 52 hours of tutoring for missed school hours from January 22, 2019 through May 22, 2019, and 25 hours of tutoring based upon 65 percent of the total 2,360 minutes for specialized academic instruction, for a total of 77 hours of tutoring to be provided by a certified non-public agency of Parents' choosing.

In addition, for Issue 6, Norris shall convene an IEP meeting, virtually or in person, whichever is safe and feasible. The IEP team shall develop an appropriate alternative temporary distance learning plan for Student consistent with the intent of Student's January 22, 2020 IEP, and updated present levels of performance, until Student can return to the school campus for in-person instruction. Any agreements shall be documented as an amendment to Student's January 22, 2020 IEP. The January 22, 2020 IEP, as it may be amended, shall constitute Student's "stay put" under title 20 United

States Code section 1415(j), title 34 Code of Federal Regulations section 300.518(a), and Education Code section 56505 subd. (d), until Parents consent to a new amendment or annual IEP, or as otherwise ordered by OAH or other tribunal.

REMEDIES FOR ISSUES 2, 3(A), 3(B) AND 3(C) - BEHAVIOR

In connection with Issues 2, and 3(a), (b) and (c), Norris denied Student a FAPE by failing to assess him in the area of behavior until October 2019, and failing to offer Student any specific behavioral intervention or appropriate goals related to behavior until the January 22, 2020 IEP.

Student is entitled to a compensatory award as a remedy for Issues 2, and 3(b) and 3(c), up to the January 22, 2020 IEP. A reasonable number of one-to-one compensatory behavior intervention hours for the 44 school weeks between November 27, 2018, and January 22, 2020, is 44 hours plus an additional five hours based upon the lack of behavior goals. Parents shall also receive five hours of training, for a total of 54 hours of compensatory services. This remedy was calculated based upon approximately one hour a week for 44 regular school weeks with consideration of some additional time for the lack of goals, and parental training.

In addition, based upon testimony from Sullivan that Norris did not have a board certified behavior analyst on staff, Norris shall fund 10 hours of consultation by a board certified behavioral analyst with Student's classroom teacher and service providers. The services shall be provided by a certified non-public agency of Parents' choosing.

REMEDY FOR ISSUE 3(D)

Norris also denied Student a FAPE by failing to offer occupational therapy services or goals for 27 weeks from March 22, 2018, until January 22, 2020. The two

hours a week outside the classroom recommended by Dr. Auld-Wright was excessive for compensatory relief when considered in conjunction with Student's age, his level of functioning, and the services Student would be receiving at school. Norris' January 22, 2020 IEP offered 120 minutes a month of individual occupational therapy, or 30 minutes a week, which was reasonable for Student's school day. A reasonable number of compensatory hours for lack of goals and services is 19 hours of after-school occupational therapy services by a certified non-public agency of Parents' choosing.

REMEDY FOR ISSUE 5

Regarding Issue 5, Norris may implement the January 22, 2020 IEP without parental consent if Parents want Student to attend Norris for a public education.

ORDER

1. Norris shall fund 40 hours of after-school speech therapy services for Student by a certified non-public agency of Parents' choosing.
2. Norris shall fund 77 hours of academic tutoring for Student by a certified non-public agency of Parents' choosing.
3. Norris shall fund 49 hours of after-school one-to-one behavior services for Student, and five hours of Parent training in Applied Behavioral Analysis, by a certified non-public agency of Parents' choosing.
4. Norris shall fund 10 hours of consultation with Student's classroom teacher and service providers, by a board certified behavioral analyst through a certified non-public agency of Parents' choosing. The time and frequency of service shall be determined by the provider and Norris staff.
5. Norris shall fund 19 hours of after-school occupational therapy for Student by a certified non-public agency of Parents' choosing.

6. Norris shall contract with the non-public agency(s) selected by Parents within 45 days of Parents notifying Norris of the agency. The compensatory remedy hours ordered by this Decision shall be available for Student's use through June 30, 2022. Any unused hours remaining on July 1, 2022, shall be forfeited.
7. Norris shall convene an IEP meeting virtually or in person, whichever is safe and feasible, within 15 business days of the date of this decision. The IEP team shall develop an appropriate temporary alternate distance learning plan for Student until Student can return to school for onsite instruction, consistent with the intent of Student's January 22, 2020 IEP. Any agreements reached shall be implemented as an amendment to Student's January 22, 2020 IEP.
8. Norris may implement Student's January 22, 2020 IEP, without parental consent if Parents want Student to attend Norris for a public education. The January 22, 2020 IEP, as it may be amended, shall constitute Student's "stay put" under title 20 United States Code section 1415(j), title 34 Code of Federal Regulations section 300.518(a), and Education Code section 56505 subd. (d), until Parents consent to a new amendment or annual IEP, or as otherwise ordered by OAH or other tribunal.
9. All other requested relief requested by each party is denied.

RIGHT TO APPEAL THIS DECISION

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

/s/
Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

OSEP QA 20-01

September 28, 2020

The Office of Special Education Programs (OSEP), within the U.S. Department of Education's (Department) Office of Special Education and Rehabilitative Services, issues this Question and Answer (Q & A) document in response to inquiries concerning implementation of the Individuals with Disabilities Education Act (IDEA) Part B provision of services in the current COVID-19 environment.

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

To review other Q & A documents that OSEP has provided related to COVID-19, please visit https://sites.ed.gov/idea/topic-areas/#COVID-19. Information specific to the COVID-19 pandemic may be found online at https://www.ed.gov/coronavirus. Additional OSEP K-12 resources, strategies and support materials are available at https://ncsi.wested.org/.

IDEA PART B SERVICE PROVISION

State educational agencies (SEAs) and local educational agencies (LEAs) are facing new and unexpected challenges in providing meaningful instruction to children, including children with disabilities, for the 2020-2021 school year. OSEP recognizes that the COVID-19 pandemic has impacted various parts of the nation in different ways. OSEP also recognizes that circumstances continue to rapidly change, and ultimately, the health and safety of children, families, and the school community is most important.

Decisions about the 2020-2021 school year, including how and when educational and other services are provided, are being made by State and local officials, with continued academic growth and the safety of the local school community being of paramount significance. As public agencies and officials grapple with challenging decisions, administrators, educators, and parents[1] may need to consider multiple

[1] Under 34 C.F.R. § 300.30(a), the term "parent" means: (1) a biological or adoptive parent of a child; (2) a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) a guardian generally authorized

options for delivering instruction, including special education and related services to children with disabilities. Those options could include remote/distance instruction, in-person attendance, or a combination of both remote/distance instruction and in-person attendance (hybrid model). However, OSEP reminds SEAs and LEAs **that no matter what primary instructional delivery approach is chosen, SEAs, LEAs, and individualized education program (IEP) Teams remain responsible for ensuring that a free appropriate public education (FAPE) is provided to all children with disabilities.** If State and local decisions require schools to limit or not provide in-person instruction due to health and safety concerns, SEAs, LEAs, and IEP Teams are not relieved of their obligation to provide FAPE to each child with a disability under IDEA.

This document is meant to aid LEAs and parents in identifying steps they can take to ensure that as the 2020-2021 school year continues, children with disabilities are well-positioned with an educational program that meets each child's unique needs. Just as a child's needs may change during the school year, so can the circumstances needed to ensure the health and safety of children and the entire school community. Therefore, school staff and parents are encouraged to work together to find ways to meet the needs of children with disabilities, notwithstanding the COVID-19 challenges.

Q1. What steps can an LEA take to ensure each child with a disability has an IEP in effect at the start of the 2020-2021 school year?

Under 34 C.F.R. § 300.323(a), at the beginning of each school year, each public agency, which includes LEAs, must have an IEP in effect for each child with a disability within its jurisdiction. To ensure that an appropriate IEP is in place for each child, the LEA may need to convene a meeting of the child's IEP Team, which includes the individuals described in Q2, to determine whether any revisions to the IEP are needed. 34 C.F.R. § 300.324(b)(1).

We understand circumstances are always subject to change and recognize that ultimately the health and safety of children, families, and the school community is most important. SEAs and their public agencies must make every effort to continue to provide children with disabilities with the special education and related services appropriate to their needs.

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to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) a surrogate parent who has been appointed in accordance with 34 C.F.R. § 300.519 or Section 639(a)(5) of the IDEA.

As conditions continue to change throughout the country, some of the special education and related services included in a child's IEP may need to be provided in a different manner; however, all children with disabilities must continue to receive FAPE and must have "the chance to meet challenging objectives."[2] Therefore, IEP Teams should identify how the special education and related services included in a child's IEP will be provided and should consider a variety of instructional methods and settings.

For example, IEP Teams can discuss how a child's IEP will be implemented with traditional in-person instruction and how services also could be provided through remote/distance instruction if circumstances require a change to distance learning or a hybrid model. In making these determinations, IEP Teams should consider alternate available instructional methodologies or delivery, such as online instruction, teleconference, direct instruction via telephone or videoconferencing, or consultative services to the parent (if feasible).

Q2. Which members of the IEP Team must participate in the review discussed in Q1?

The IEP Team members referenced in 34 C.F.R. § 300.321(a) are generally required to participate in meetings to develop, review, and revise a child's IEP. This list includes, among other participants, the parents of the child; not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); and not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child. Under 34 C.F.R. § 300.321(e), it is permissible for certain members to be excused from attending the IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. If the IEP Team meeting involves a modification to or discussion of the member's area of the curriculum or related services, the member may be excused from attending an IEP Team meeting, in whole or in part, if the parent, in writing, and the public agency consent to the excusal; and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

Q3. When is an LEA permitted to use the IEP amendment process in 34 C.F.R. § 300.324?

The IDEA Part B regulations provide in 34 C.F.R. § 300.324(a)(4)(i), that in making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an

[2] *Endrew F. v Douglas County School District Re-1*, 137 S.Ct. 988, 1000 (2017).

IEP Team meeting for the purpose of making those changes, and instead, may develop a written document to amend or modify the child's current IEP. It is important to note that an amendment to an IEP cannot take the place of an annual IEP Team meeting. See also Q6.

If changes are made to the child's IEP through a written document, the public agency must ensure that the child's IEP Team is informed of those changes. Upon request, a parent must be provided with a revised copy of the IEP with the changes incorporated. 34 C.F.R. § 300.324(a)(6). In addition, under 34 C.F.R. § 300.503(a), the public agency must provide the parent with prior written notice that meets the requirements of 34 C.F.R. § 300.503(b) a reasonable time before the public agency (1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. This provision applies, even if the IEP is amended without convening an IEP Team meeting, pursuant to 34 C.F.R. § 300.324(a)(4).

Q4. If extended school year (ESY) services were unable to be provided during the summer due to the COVID-19 pandemic, what additional steps can public agencies take to make FAPE available to children with disabilities who require such services?

ESY services are defined as special education and related services that are: (1) provided to a child with a disability beyond the normal school year of the public agency; (2) provided in accordance with the child's IEP; (3) are at no cost to the parents of the child; and (4) meet the standards of the SEA.

Each public agency must ensure that ESY services are available as necessary to provide FAPE to children with disabilities. 34 C.F.R. § 300.106. It is important to remember that IEP Team determinations regarding ESY services are prospective and not intended to make up for past denials of FAPE.

The specific analysis and standards that an IEP Team may use to determine whether a child requires ESY services in order to receive FAPE are left to States to determine. However, the determination must be based on the individual needs of the child, and not on the category of the child's disability.[3]

[3] 34 C.F.R. § 300.106(a)(3)(i). See also, Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities, Final Rule, 64 Fed. Reg. 12406, 12576-12477 (March 12, 1999).

A child's entitlement to needed ESY services continues to apply even if schools and other facilities are closed due to COVID-19. The Department recognizes ESY services are typically provided to children with disabilities during the summer months. We understand that some ESY services, particularly those that require direct, in-person contact, may not have been able to be delivered this past summer. In such instances, public agencies should consider providing ESY services to the child during the normal school year, during school breaks or vacations where appropriate to the child's needs and consistent with applicable standards. [4]

INITIAL EVALUATION

Q5. What exceptions are available to an LEA in meeting the timeline requirement for conducting initial evaluations and IEP Team meetings when access to school buildings is limited or current health restrictions prevent face-to-face meetings?

Under 34 C.F.R. § 300.301(c)(1), the initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation, or if the State has established a timeframe within which the evaluation must be conducted, within that timeframe. The exceptions to the initial evaluation timeframe are set forth in 34 C.F.R. § 300.301(d). Those exceptions permit extension of the timeframe if a parent repeatedly fails or refuses to produce the child for the assessment; or if the child enrolls in a new school in a new public agency after the relevant timeframe has begun. States may specifically adopt a timeframe within which the initial evaluation must be conducted, including adopting the IDEA 60-day timeframe. States that specifically adopt a timeframe within which the initial evaluation must be conducted, including adopting the IDEA 60-day timeframe, also have the flexibility to establish additional exceptions through State regulation or policy.

INITIAL AND ANNUAL IEP TEAM MEETINGS

Q6. What flexibilities are available to an IEP Team in meeting the initial and annual IEP Team meeting requirements when access to schools is limited or local restrictions prevent face-to-face meetings?

Within 30 days of determining a child needs special education and related services, an IEP must be developed for the child in accordance with

[4] See also, *Questions and Answers on Providing Services To Children With Disabilities During The Coronavirus Disease 2019 Outbreak* (March 12, 2020), Q&A A-1, regarding consideration of compensatory services, if needed to make up for any skills that may have been lost, when FAPE cannot be provided.

34 C.F.R. §§ 300.320 through 300.324. 34 C.F.R. §§ 300.306(c)(2) and 300.323(c)(1). In addition, under 34 C.F.R. § 300.324(b)(1)(i), each child's IEP must be reviewed periodically, but not less than annually to determine whether the annual goals are being achieved.

The Department recognizes that some States, due to operational constraints because of the COVID-19 pandemic, are currently unable to conduct face-to-face IEP Team meetings. Under 34 C.F.R. § 300.322(a), LEAs must take steps to ensure that one or both parents attend or are afforded the opportunity to participate in an IEP Team meeting by notifying them of the meeting early enough to ensure that they can attend and by scheduling the meeting at a mutually agreed upon time and place. If face-to-face meetings are not feasible or practicable, the Department encourages the use of the flexibility included in 34 C.F.R. § 300.328 which allows LEAs to conduct initial and annual IEP Team meetings through alternate means. Such alternate means could include a telephone or video conference call (if feasible and consistent with privacy standards) if acceptable to the parents and other IEP Team meeting participants.

REEVALUATION

Q7. How can LEAs conduct reevaluations to determine a child's continued eligibility for IDEA Part B when staff cannot conduct in-person meetings or evaluations due to the pandemic?

Under Part B of IDEA, a reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(2). The Department acknowledges that, during the pandemic, social distancing measures and each child's individual disability-related needs may make administering some in-person evaluations impracticable and may place limitations on how evaluations and reevaluations are conducted under IDEA Part B.

LEAs should investigate all appropriate assessment instruments and tools to determine if some can be administered or completed remotely during the pandemic, provided that evaluation of the child is based on personal observation (whether in person or through videoconferencing). LEAs should also work with the developers of their current assessment instruments to determine if the instruments can be administered or completed remotely, without significantly impacting the validity and reliability of the results. However, under 34 C.F.R. § 300.304(c)(1)(iii)-(v), tests and other evaluation materials must be used for the purposes for which the assessments or measures are valid and reliable, and must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

Note that when conducting reevaluations under Part B, the IEP Team and other qualified professionals must conduct a review of existing evaluation data on the child.

A reevaluation based solely on a review of existing evaluation data must be sufficiently comprehensive to determine whether the child continues to have a disability and the educational needs of the child. 34 C.F.R. § 300.305(a). The review of existing evaluation data on the child may occur without a meeting and without obtaining parental consent. 34 C.F.R. §§ 300.300(d)(1) and 300.305(a) and (b).

6.10 Postsecondary Transition Services Manual
Verbal report, no materials

Join us virtually as the CAHELP Prevention and Intervention team celebrates 40 local schools and 14 supporting partners who have been recognized by the California PBIS Coalition for their dedication to students and their positive impact on the community in response to COVID-19.

A Virtual Recognition Event

October 29th

3:00 - 4:00 p.m.

Register to receive Zoom link

https://sbcss.k12oms.org/52-193170

www.CAHELP.org

CONGRATULATIONS To All Our Locally Recognized Schools

Adelanto Elementary School District
- Adelanto Elementary School District
- Columbia Middle School
- Melva Davis Academy of Excellence
- Morgan Kincaid Preparatory School
- Westside Park Elementary School

Apple Valley Unified School District
- Apple Valley High School
- Mariana Academy
- Rancho Verde Elementary
- Rio Vista School of Applied Learning
- Sandia Academy
- Sycamore Rocks Elementary

Barstow Unified School District
- Barstow Fine Arts Academy
- Barstow STEM Academy
- Cameron Elementary
- Central High School
- Crestline Elementary
- Henderson Elementary School
- Lenwood Elementary School
- Montara Elementary School
- Skyline North Elementary School
- Barstow High School

Helendale School District
- Helendale Elementary School
- Helendale Secondary School

Pathways to College
- Pathways to College

San Bernardino County Superintendent of Schools
- Bradach State Preschool

Silver Valley Unified School District
- Fort Irwin Middle School
- Lewis Elementary School
- Newberry Springs Elementary School
- Silver Valley High School
- Tiefort View Intermediate School
- Yermo School

Snowline Joint Unified School District
- Serrano High School
- Snowline Academy
- The Heritage School
- Vista Verde Elementary School
- Wrightwood Elementary School

Victor Elementary School District
- Liberty School of Creativity and Innovation

Victor Valley Union High School District
- Hook Jr. High School
- Silverado High School
- Victor Valley High School

AND ALSO TO THE RECOGNIZED SUPPORTING AGENCIES

Supporting Partner Agencies
- Adelanto School District
- Assistance League of Victor Valley
- Barstow Unified School District
- D/M SELPA
- First Student
- HES Parent Teacher Committee
- Lenwood Parent Teacher Student League (PTSL)
- Olson Photography
- Paul Swick Family Center
- Rebecca Raymond Memorial Foundation
- Renaissance Learn/myOn/ IXL
- School Shine
- Silver Lakes Educational Foundation
- Silver Lakes Market

2020 PBIS Community Cares

For more information regarding the California PBIS Coalition or the PBIS Community Cares Recognition Awards please visit www.PBISCA.org.

Professional Learning Opportunity | CAHELP

Utilizing Restorative Practices in the Virtual Classroom

This overview will provide educators with an introduction to the continuum of Restorative Practices. Participants will increase knowledge of social emotional practices through classroom rituals and utilize specific questions to prompt discussions for healthy social emotional interaction using a virtual platform.

Presented By

Kami Murphy
Program Manager

Pamela Strigglers
Prevention and Intervention Lead Specialist

Date

November 4, 2020

Time

Training time: 2:00 - 3:30 p.m.

Location

Virtual training, a link will be sent to each participant after registering.

This training may be recorded.

Audience

Special education teachers, general education teachers, paraprofessionals, site administrators, and district administrators.

Cost

$25 Per Attendee

Registration

Please register online at:

https://sbcss.k12oms.org/52-193156

Special Accommodations

Please submit any special accommodation requests at least fifteen working days prior to the training by notating your request when registering.

CAHELP
17800 Highway 18
Apple Valley, CA 92307

Jeni Galyean
Jeni.Galyean@cahelp.org
(442)292-5094, ext. 213

www.cahelp.org/
https://sbcss.k12oms.org

SELPA Meeting
October 2020

CALIFORNIA DEPARTMENT OF EDUCATION
Tony Thurmond, State Superintendent of Public Instruction

Policy and Guidance Updates

CDE website

https://www.cde.ca.gov/ls/he/hn/coronavirus.asp

OSEP guidance

https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-provision-of-services-idea-part-b-09-28-2020.pdf

https://www2.ed.gov/about/offices/list/ocr/docs/qa-covid-20200928.pdf

Monitoring Update

Disproportionality

- Due October 15
- Next steps: CDE will perform a quality check on a random selection of reviews
- Notification of Sig Dis will occur in January

Assessments and IEPs

- Letter sent to LEAs and SELPAs asking LEAs to reduce students waiting assessments and IEP by 20%
- 80% of LEAs with late assessments have fewer than 10 students waiting for evaluation
- 75% of LEA with overdue IEPs have fewer than 20 late IEPs
- There are no corrective actions assigned to this letter
  - CDE will consider individual LEA concerns and circumstances before assigning corrective actions

Identifying Students that Need IEPs and Assessments

- Data pulled on September 15
  - Our numbers are different. Why?
    - CALPADS may not have been updated yet
    - CALPADS records have not been uploaded
    - Meeting was held but the record has not been uploaded
    - Record was uploaded after September 15
- Below are steps to the logic for determining the late IEPs:
  - Obtain the **latest or most recent Annual** (Meeting type code 20) for the student who has an Plan (Educational Plan Type code 100,150,200) as of the 09/15/2020 ODS snapshot date.
  - Calculate the difference of days between Meeting date and pull date (09/15/2020). If the student has a Withdrawal date, use the withdrawal date instead.
  - Identify all Late IEPs over 365 days
  - Here's the snippet of code:
    - Special Education Meeting Type Code='20' and Education Plan Type Code in('100','150','200') and datediff(day, Special Education Meeting Type Code, IIF(SENR Withdrawal Date is not null, Withdrawal Date,due date))>365

Identifying Students that Need IEPs and Assessments (Cont)

- Below are steps to the logic for determining the 60 days that are pending initial Evaluation:
  - Meeting Type Code in ('30') and Parental Consent date ex: 07/01/2019 and difference between the pull date (09/15/2020) – Initial Evaluation Parental Consent Date over 60

- TIP: Rather than running data on CALPADS extracts your IEP system may already run these types of reports for you.

Intensive Review of LEAs

- Focus on current distance learning process for SWDs
- Individual interviews with LEAs
- SELPAs are welcome to attend
- Usually takes one hour
- Piloted with 2 LEAs
  - How did it go?
- Up Next

SIG Dis Workshop B

- These are ongoing and have been very productive
- These are individualized and can be intensive but ensures that LEAs have a strong CCEIS plan

CALPADS Update

Key Dates

- Census Date : October 7, 2020
- Initial Certification Date: December 18, 2020
- Final Amendment Date: January 29, 2021
- Heads up: Extension for FRPM eligibility date (December 31, 2020) means ALL LEAs will need decertify and recertify after on or after January 7, 2021

Changes to Triennials

- Triennial Meeting records:
  - Cannot be amended
  - Cannot have Special Education Program Exit dates populated
  - Must have Disability Codes that Match the most recent Initial or Annual Meeting records
- Triennial Records will no longer be brought into the 16.1, 16.2, 16.3 LEA and SELPA Reports, therefore Special Education Program Exit Dates and Disability Codes will be pulled from the most recent Annual or Initial Meeting

Error Code 438 Updates

- SPED0438 is being updated to remove Disability 1 and Disability 2 codes from being updated through an amendment
- Updates to primary and secondary disability codes MUST be done through a triennial evaluation
  - Special education vendors will be assisting in the effort to create an annual record in conjunction with a triennial evaluation if disability codes are changed

Reporting Pending Records

- Once a parent signs the parent consent, a pending record (Meeting type 30 must be uploaded)
- Please do not wait to upload a pending record

County Office of Education Records

- COEs should **only** report SENR and SPED records for students who are:
  - attending a COE school and COE is service provider
  - not attending school in any other LEA, but are receiving special education services through the COE
- Remember where enrollments occur: Where the child attends school is who should report the data as the reporting LEA
- IF the child is attending a school in another LEA and then the COE is the service provider the COE should NOT send the SPED record

Enrollment Status Guidance

- All students on an IEPs must have a PRIMARY Enrollment Status (10)
- Infants, Toddlers (IFSPs) and children attending private schools (ISPs) must have Enrollment Status 50
- SWD in transition with IEPs should NOT be enrollment status 50 and grade AD. The students should be have a primary Enrollment Status of 10 and grade 12
- We are creating input validation errors to enforce this

Active Records

- To ensure each SPED record has an effective start and end date reflecting a student's information at a certain point in time, the following rules will be enforced:
  - Meeting and Amendment Dates cannot occur on the same day
  - Meeting and Amendment Dates cannot occur between an existing SPED record's dates (Meeting, Amendment or Program Exit) for the same student and same education plan (See Example)
  - Special Education Program Exit Dates must be on the most recent record (excluding triennials) for the same student and same education plan

Addition of new Student with Disabilities Indicator to SSID Extract

- New field will be added to SSID Extract to indicate when an incoming student is on an active Special Education plan
- Will assist LEAs in **early identification** of students who are on active plans
- LEAs must create a local process where the Special Education Data Coordinator is notified by the CALPADS Data Coordinator when a student is on an active plan

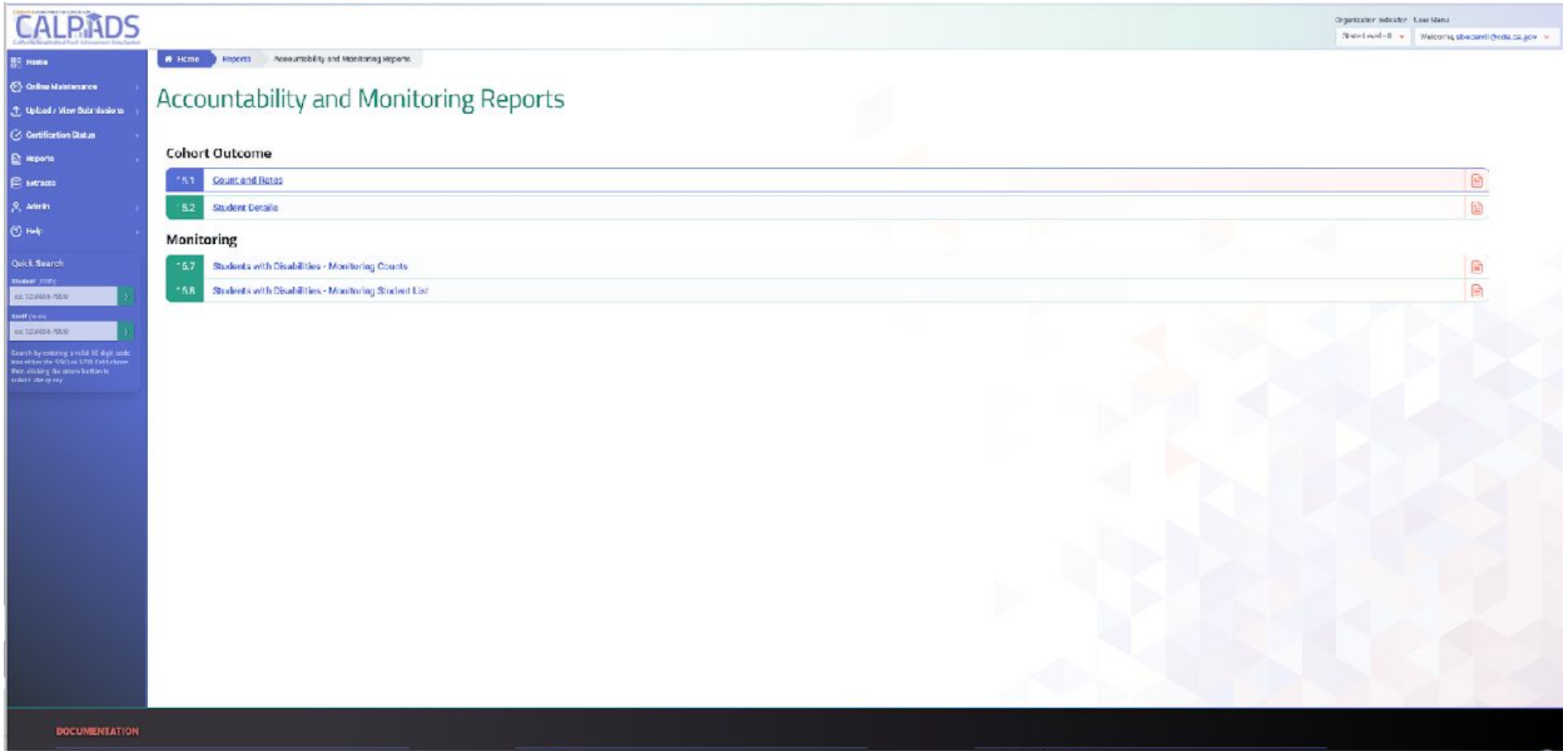
5 Year Old Kindergarten Placement

- Clarification from US Department of Education
  - Only 5 year old children in TK or K will be counted toward school age placement
  - Children who are 4 years old in TK on census day will not be counted in school age and will be considered preschool

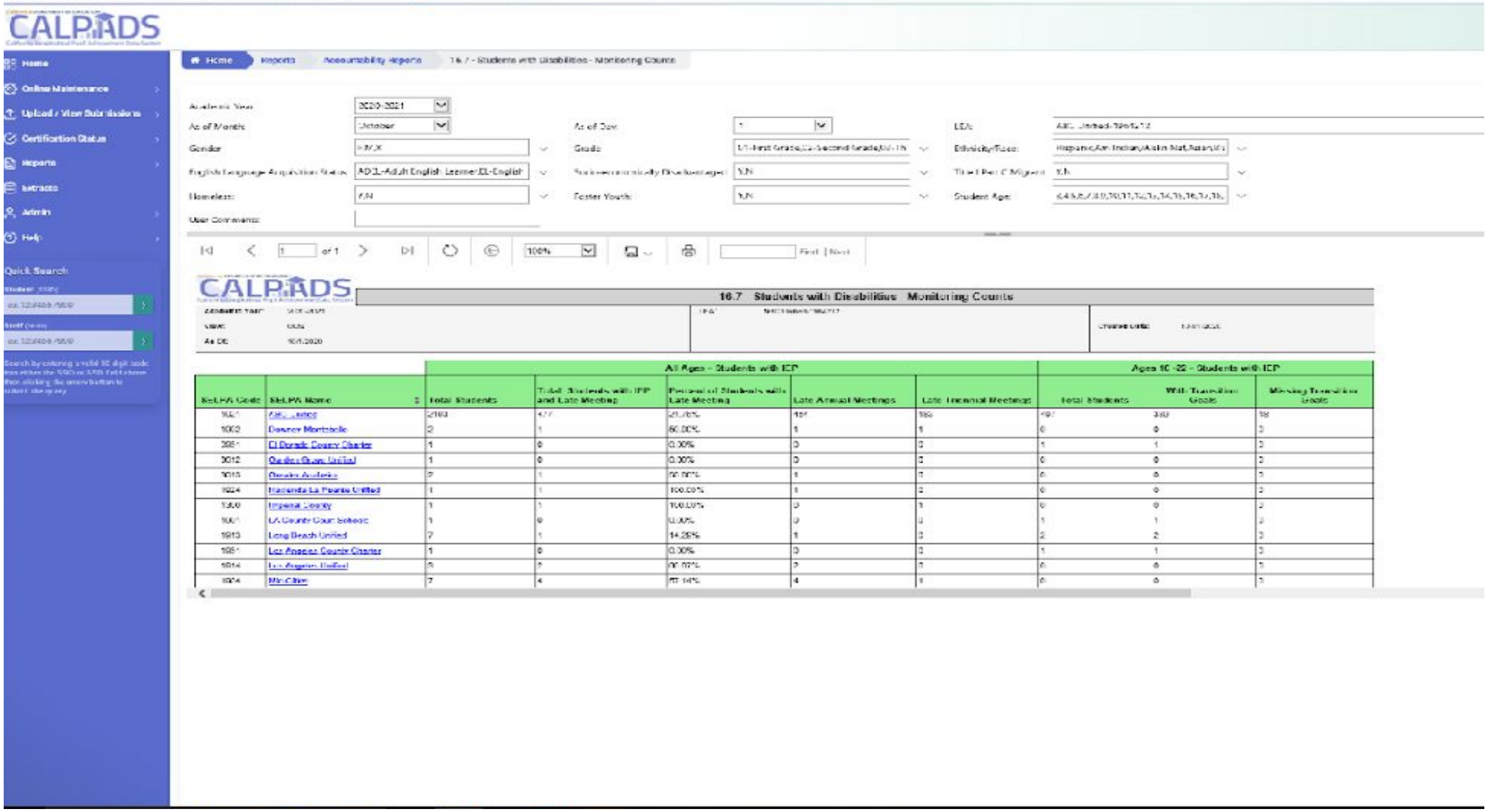
Monitoring Reports

- Monitoring reports at SELPA-level are currently in development (COMING SOON)
- CERT137 and CERT139 are being permanently disabled – LEAs and SELPAs must use monitoring reports
- Where are these monitoring reports (16.7 and 16.8)?

Monitoring Reports



Monitoring Reports




DEPARTMENT OF EDUCATION
STATE OF CALIFORNIA

6.13 Nonpublic School/Nonpublic Agency Update

Verbal report, no materials

State Testing Updates

October 2020 Steering Meeting

Senate Bill 820 brought changes to the following State testing requirements:

- **ELPAC:** Allowing for a 45-calendar-day extension to the Initial ELPAC 30-calendar-day requirement. SB 820 allows LEAs a total of **75 calendar days** to administer the 2020–2021 Initial ELPAC, officially score it, and provide the results to parents and guardians.

- **Physical Fitness Test (PFT):** Suspends the administration of the Physical Fitness Test (PFT) for the 2020–2021 school year.

- **California High School Proficiency Examination (CHSPE):** to be offered more than once per semester, if public health requirements are met

Alternate ELPAC We have received more information regarding the Alternate ELPAC:

- Determined eligible by the IEP team
    - K-12 (up to 22 years old)
    - English learner (EL) or ***potential EL***
- Online, linear test
- Consistent test forms
- Integrated task types in the 2 domains
    - Expressive
    - Receptive
        - No domain exemptions – each domain must be administered and attempted
- January 12 – February 16, 2021 – Operational Field Test (***mandatory*** – all students identified as eligible by their IEP teams will need to participate)
    - Administration recommendation from CDE is for In-Person/Co-located administration
        - Following California Department of Public Health Physical Distancing Administration Guidelines

San Bernardino County Superintendent of Schools
Transforming lives through education

Ted Alejandre
County Superintendent

MEMORANDUM

Date: October 1, 2020

To: Directors of Special Education

From: Richard Frederick, Area Director

Subject: Audiological Service Reports

Attached are the Audiological Service Reports for the month of September 2020 by district.

If you have any questions concerning these reports, please contact Dale Folkens, Ed. D. Principal at (760) 244-6131 ext 247 or via email at dale.folkens@sbcss.net.

DMSELPA

Desert/Mountain Special Education Local Plan Area
17800 Highway 18
Apple Valley, CA 92307-1219

P 760-552-6700
F 760-242-5363
W www.dmselpa.org

MEMORANDUM

Date October 16, 2020

To: Directors of Special Education

From: Peggy Dunn, Program Manager

Subject: **Occupational and Physical Therapy Reports**

Attached are the occupational and physical therapy Referral Status, and Current Students Direct Services reports by district.

If you have any questions concerning either report, please contact me at (760) 955-3568 at peggy.dunn@cahelp.org

Desert Mountain SELPA
2020-2021 Non-Public School Placement Report

	July				August				September				October				November				December			
	District Placed	Residential Placed	LCI/Foster Placed	TOTAL	District Placed	Residential Placed	LCI/Foster Placed	TOTAL	District Placed	Residential Placed	LCI/Foster Placed	TOTAL	District Placed	Residential Placed	LCI/Foster Placed	TOTAL	District Placed	Residential Placed	LCI/Foster Placed	TOTAL	District Placed	Residential Placed	LCI/Foster Placed	TOTAL
Adelanto	6		1	7	5			5	4		1	5												
Apple Valley	16	2	11	29	13	2	11	26	18	2	9	29												
Baker																								
Barstow	3			3	3			3	4			4												
Bear Valley																								
Helendale																								
Hesperia	11	2		13	9	2		11	16	1	1	18												
High Tech High																								
Lucerne Valley	1	1		2	1	1		2	1			1												
Needles																								
Oro Grande																								
Silver Valley																								
Snowline	11		1	12	9		1	10	10		2	12												
Trona																								
Victor Elem	16		1	17	11		1	12	8		3	11												
VVUHSD	14	1	2	17	18	1	2	21	20	1	2	23												
TOTALS	**78**	**6**	**16**	**100**	**69**	**6**	**15**	**90**	**81**	**4**	**18**	**103**												
2019-20 Totals	80	11	19	110	74	11	16	101	73	8	17	98	74	8	19	101	75	8	19	102	75	8	19	102
2018-19 Totals	56	18	10	84	63	15	10	88	66	15	13	94	76	13	15	103	81	12	17	110	82	12	17	111
2017-18 Totals	32	17	5	54	30	16	5	51	33	16	6	55	30	17	5	51	21	17	6	44	23	17	5	45
2016-17 Totals	88	21	15	124	79	20	13	112	79	17	14	110	87	17	14	118	90	19	14	123	90	21	14	125

California Association of Health and Education Linked Professions

Upcoming Trainings

Date/Time	Event	Location
10/16/2020 9:00 AM - 11:00 A	OUTREACH COLLABORATION	DMESC
10/16/2020 11:00 AM - 1:00 PM	SPECIAL EDUCATION DIRECTORS TRAINING- LEGAL GUIDANCE FOR DIFFICULT IEPS DURING COVID	VIRTUAL
10/20/2020 8:30 AM - 3:30 PM	PBIS BOOTCAMP K-12	DMESC
10/20/2020 1:00 PM - 3:00 PM	Student Discipline: Manifestation Determination Process	Online
10/20/2020 2:00 PM - 3:30 PM	UNDERSTANDING ACCESSIBILITY RESOURCES WITHIN THE CALIFORNIA ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS (CAASPP)	WEBINAR
10/21/2020 1:00 PM - 2:30 PM	SELF-HARMING VERSUS SUICIDE: UNDERSTANDING THE DIFFERENCES	VIRTUAL
10/23/2020 9:00 AM - 11:30 A	SECTION 504 FOR EDUCATORS	VIRTUAL
10/27/2020 8:30 AM - 12:30 PM	BULLYING PREVENTION AND INTERVENTION: USING EXPECT RESPECT CURRICULUM	DMESC
10/27/2020 2:00 PM - 3:30 PM	BULLYING PREVENTION OVERVIEW	VIRTUAL
10/27/2020 1:00 PM - 2:15 PM	DE-ESCALATION STRATEGIES FOR EDUCATORS AND OTHER SCHOOL PERSONNEL	ONLINE

California Association of Health and Education Linked Professions

Upcoming Trainings

Date/Time	Event	Location
10/27/2020 1:00 PM - 3:00 PM	The Basics of Accessing the Curriculum Through Assistive Technology	
10/28/2020 12:30 PM - 2:30 PM	SOCIAL EMOTIONAL LEARNING (SEL)	DMESC
10/28/2020 12:30 PM - 2:30 PM	SOCIAL EMOTIONAL LEARNING (SEL): DO I HAVE IT ALREADY? WHY DO I NEED IT? HOW DO I GET MORE OF IT?	VIRTUAL
10/29/2020 3:00 PM - 4:00 PM	PBIS COMMUNITY CARES RECOGNITION EVENT	VIRTUAL
10/29/2020 8:00 AM - 4:00 PM	RESTORATIVE CONFERENCES	DMESC
10/30/2020 1:00 PM - 3:00 PM	FAMILY FUN DAYS	DMESC
11/4/2020 8:30 AM - 3:30 PM	GET SKOOL'D IN THE 3R'S -RHYTHM, RHYME, AND REPRESENTATION	DMSELPA
11/5/2020 1:00 PM - 2:30 PM	EARLY CHILDHOOD DAILY SCHEDULES AND VISUAL CUES TO SUPPORT SELF-REGULATION	ONLINE

Professional Learning Opportunity | CAHELP

Section 504 for Educators

Section 504 of the Rehabilitation Act of 1973 (aka Section 504) is Congress' directive to all entities that receive federal funding to banish discrimination on the basis of disability from their operations.

This workshop will provide an overview of the general obligations relating to Section 504, distinctions with the Individuals with Disabilities Education Act, and best practices for compliance with Section 504 laws and regulations.

Presented By
Megan M. Moore, Attorney at Law

Date
October 23, 2020

Time
Training time: 9:00 - 11:30 a.m.

Location
Virtual training, a link will be sent to each participant after registering.
This training may be recorded.

Audience
General education teachers, special education teachers, 504 coordinators, site and district administrators.

Cost
There is no cost associated with this event.

Registration
Please register online at:
https://sbcss.k12oms.org/52-193344

Special Accommodations
Please submit any special accommodation requests at least fifteen working days prior to the training by notating your request when registering.

CAHELP
17800 Highway 18
Apple Valley, CA 92307

Marysol Hurtado
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760.955.3552

www.cahelp.org
https://sbcss.k12oms.org

Professional Learning Opportunity | CAHELP

De-Escalation Strategies for Educators and Other School Personnel

This course focuses on the importance of self-regulation of school personnel and the impact on the de-escalation process, highlighting non-verbal and verbal communication. Walk away with concrete strategies to quickly assess and appropriately respond.

Presented By

Danielle Côté, Program Specialist
Linda Rodriguez, Program Specialist

Date

October 27, 2020

Time

Training time: 1:00 - 2:15 p.m.

Location

Online, a link will be sent to each participant after registering.

Audience

Special education teachers, paraprofessionals, site administrators, school psychologists, general education teachers, safety and police officers and other school personnel.

Cost

Free

Registration

Please register online at:
https://sbcss.k12oms.org/52-193144

Special Accommodations

Please submit any special accommodation requests at least fifteen working days prior to the training by notating your request when registering.

This training may be recorded.

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Jennifer Holbrook
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https://sbcss.k12oms.org

Region 10 Alternative Dispute Resolution (ADR) Committee presents:

Managing
High Conflict Personalities
in IEP & other Team Meetings

Presenter:
Bill Eddy, Esq., LCSW

Have you been in a difficult IEP meeting where the child's needs are secondary to the person creating the conflict? If so, this webinar is for you!

Bill Eddy will provide information specific to understanding the high-conflict personality and how the person approaches problem-solving, particularly in an IEP meeting. Most importantly, he will share tools and methods for managing relationships with high conflict personalities. An expected outcome of engaging in this webinar is to learn the predictable behavior patterns of high conflict personalities and ways to respond constructively that benefit the professional relationship and ultimately the child at the center of IEP meeting.

Presented by Bill Eddy, Esq., LCSW

Bill Eddy is an attorney, therapist, mediator, author, the co-founder, and Chief Innovation Officer of the High Conflict Institute. He pioneered the High Conflict Personality Theory (HCP) and is a leading expert on managing disputes involving people with high conflict personalities. He was the Senior Family Mediator at the National Conflict Resolution Center for 15 years, a Certified Family Law Specialist lawyer representing clients in family court for 15 years, and a Licensed Clinical Social Worker therapist with twelve years' experience. He serves on the faculty of the Straus Institute for Dispute Resolution at the Pepperdine University School of Law in California and is a Conjoint Associate Professor with the University of Newcastle Law School in Australia. He has been a speaker and trainer in over 30 U.S. states and 10 countries and is the author or co-author of sixteen books (as of 2020) and has a popular blog on the Psychology Today website with over 4 million views.

Thursday
October 29, 2020
1:30 pm – 3:30 pm

Cost:
$50.00 per individual

Register Online:
https://sbcss.k12oms.org/46-193665

Professional Learning Opportunity | CAHELP

Transition Planning for All Students

This course is specifically designed to provide participants with an overview of the legal mandates and ethical requirements necessary to meet IDEA transition mandates for students with disabilities age 16 and older. An emphasis will be placed on transition services including the Individual Transition Plan (ITP), measurable postsecondary goals, and the legal requirements for developing the Summary of Performance (SOP). Using the person-centered planning process, participants will learn how to generate student profiles essential in the required planning of postsecondary goals.

Participants will learn how to meet the requirement of Indicator 13, strategies necessary to involve students and family members in student-centered transition planning, and review a systematic approach to develop meaningful and realistic transition goals based on student needs, interests, and assessment profiles.

Presented By
Adrienne Shepherd, Program Manager

Date
November 5, 2020

Time
Training time 9:00 a.m. - 12:00 p.m.

Location
Virtual training, a link will be sent to each participant after registration and closer to the date of the event. **This training may be recorded.**

Audience
Special and general education teachers, counselors, administrators, psychologists, and other interested support staff who work with the secondary student population.

Cost
There is no fee for this training.

Registration
Please register online at: https://sbcss.k12oms.org/52-183951

Special Accommodations
Please submit any special accommodation requests at least fifteen working days prior to the training by notating your request when registering.

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Apple Valley, CA 92307

Laura Campbell
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Professional Learning Opportunity | CAHELP

Crisis Prevention Institute (CPI) Flex-Blended Learning

Presented By
CPI Team Members

Date
Part 1: Complete the on-line CPI module prior to the November 19, 2020 Q & A virtual session from 2:30 to 4:00 p.m.

Part 2: In Person Training- To be determined

Cost
$40 Per Attendee

Registration
https://sbcss.k12oms.org/52-193494

Description
The Non-Violent Crisis Prevention Institute (CPI) is a two-part course focusing on crisis prevention and intervention. With a core philosophy of care, welfare, safety, and security and aligned with positive behavioral supports principles, it gives educators the skills to safely and effectively prevent, disengage, and physically withhold (as a last resort) dangerous situations.

Part 1: The self-paced on-line modules will take 2 - 4 hours, once completed the participants must print their certificate and bring it to the in-person training.

Part 2: The in-person training, participants should dress safely and must attend the entire course. Upon successfully demonstrating competency of disengagement skills, physical interventions, and passing of a written exam, they will receive CPI certification. The date for this training will be determined based on state and county guidelines.

Audience
Special education teachers, general education teachers, paraprofessionals, school psychologists, and administrators.

Special Accommodation
Please submit any special accommodation requests at least fifteen working days prior to the training by notating your request when registering.

This training may be recorded.

CAHELP
17800 Highway 18 Apple
Valley, CA 92307

Jennifer Holbrook
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760.955.3559

www.cahelp.org/
https://sbcss.k12oms.org

California Association of Health and Education Linked Professions

Professional Learning Opportunity | CAHELP

Forms and Facts 101

Presented By
Sheila Parisian, Program Specialist

Date
Available until May 28, 2021

Time
Monthly Zoom meetings will be held for Q & A's : 3:00 - 4:30 p.m.

Cost
Free

Description

In this self-paced virtual course, participants will gain knowledge of the procedural and substantive protections for parents and their children with qualifying disabilities. Participants will be guided through specific required forms and components of the IEP to ensure understanding of legal compliance when considering the unique circumstances of an individual child. All participants will have access to resources, links to the Desert/Mountain SELPA policies and flowcharts to help IEP teams conduct meaningful IEP meetings. Participants are encouraged to participate in discussions and questions.

Registration

Participants will receive access to the online training once they register.

Please register online at:
https://sbcss.k12oms.org/52-190732

Participants are expected to watch recorded content on the PowerSchools site prior to the monthly live webinar. The live webinar will provide an opportunity to review main points and provide an opportunity for a Q & A session.

Audience

Special education teachers, school psychologists, general education teachers, and site administrators.

Special Accommodations

Please submit any special accommodation requests at least fifteen working days prior to the training by notating your request when registering.

CAHELP
17800 Highway 18
Apple Valley, CA 92307

Judith Loera
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760.955.3573

www.cahelp.org
https://sbcss.k12oms.org

California Association of Health and Education Linked Professions

Professional Learning Opportunity | CAHELP

Present Levels of Performance (PLOPs), Goals, and Educational Benefit

Presented By
Sheila Parisian, Program Specialist

Date
Available until May 28, 2021

Time
Monthly Zoom meetings will be held for Q & A's : 3:00 - 4:30 p.m.

Cost
Free

Description
This self-paced virtual course will focus on understanding the IEP process and ways to determine if a student is receiving educational benefit. The participants will explore how the IEP process guides the development of legally compliant present levels of performance (PLOPs) as baseline indicators so that IEP goals are written for each area of need and directly linked to the baseline or PLOP. Participants will learn how to establish a statement of measurable annual goals by identifying areas of educational need derived from the student's areas of strengths and concerns. Participants will have the opportunity to view examples of both PLOPs and goals while practicing writing from the case studies provided. A brief discussion on how to link goals to the Common Core State Standards and Essential Standards will be addressed. Participants will gain an understanding of how to use data to determine whether a student has shown progress on goals to enable a child to make appropriate progress in light of their circumstances.

Registration
Participants will receive access to the online training once they register.

Please register online at:
https://sbcss.k12oms.org/52-190734

Participants are expected to watch recorded content on the PowerSchools site prior to the monthly live webinar. The live webinar will provide an opportunity to review main points, examine scenarios to determine if the plop links to the goal and a Q & A session.

Audience
Special education teachers, general education teachers, site administrators, counselors, and school psychologists.

Special Accommodations
Please submit any special accommodation requests at least fifteen working days prior to the training by notating your request when registering.

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