

California Association of Health and Education Linked Professions
Joint Powers Authority (CAHELP JPA)
DESERT/MOUNTAIN CHARTER SELPA EXECUTIVE COUNCIL MEETING
October 15, 2020 – 10:00 a.m. Virtual Via Video Conference
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: 133 160 3971

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 Desert/Mountain Charter SELPA Executive 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

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

4.0 ADOPTION OF THE AGENDA

4.1 **BE IT RESOLVED** that the October 15, 2020 Desert/Mountain Charter SELPA Executive Council Meeting Agenda be approved as presented.

5.0 INFORMATION/ACTION

5.1 Desert/Mountain Charter SELPA Local Plan Revise (**ACTION**)

The Desert/Mountain Charter SELPA Local Plan has been revised to align with the changes made to the CAHELP Governance Council Bylaws. Once the Local Plan is adopted by the Governance Council, the Local Plans will need to be approved by each LEA’s governing board.

AGENDA

5.1.1 **BE IT RESOLVED** that the that the revised D/M Charter SELPA Local Plan be approved as presented.

5.2 Elite Academic Academy-Adult Workforce Investment Change to Virtual Preparatory Academy at Lucerne (**ACTION**)

On March 12, 2020, Lucerne Valley Unified School District approved Elite Academic Academy-Adult Work Force Investment's request to serve grades kindergarten through 12. The school is currently in the process of changing its name to operate as Virtual Preparatory Academy at Lucerne. Along with these changes, they have requested to remain a member of Desert/Mountain Charter SELPA.

5.2.1 **BE IT RESOLVED** that the request for Elite Academic Academy-Adult Work Force Investment/Virtual Preparatory Academy at Lucerne to remain a member of Desert/Mountain Charter SELPA be approved as presented.

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

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

5.3.1 **BE IT RESOLVED** that Desert/Mountain Charter SELPA Emergency Circumstances Consideration Form be approved as presented.

6.0 CONSENT ITEMS

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

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

6.1.1 Approve the January 16, 2020 Desert/Mountain Charter SELPA Executive Council Meeting Minutes.

7.0 CHIEF EXECUTIVE OFFICER AND STAFF REPORTS

California Association of Health and Education Linked Professions
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AGENDA

7.1 Legislative Updates

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

7.2 WestEd Report

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

7.3 Alternative Dispute Resolution (ADR) Grant

Jenae Holtz will provide information regarding the Alternative Dispute Resolution (ADR) Grant.

7.4 Resolution Support Services Summary and Update

Kathleen Peters will present an update on the SELPA's resolution support services.

7.5 Compliance Updates

Peggy Dunn will present compliance updates.

8.0 FINANCE COMMITTEE REPORTS

9.0 INFORMATION ITEMS

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

11.0 CEO COMMENTS

12.0 MATTERS BROUGHT BY CITIZENS

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

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

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

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AGENDA

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

13.0 ADJOURNMENT

The next regular meeting of the Desert/Mountain Charter SELPA Executive Council will be held on Wednesday, January 14, 2021, at 10:00 a.m., at the Desert Mountain Educational Service Center, Aster/Cactus Room, 17800 Highway 18, Apple Valley, CA 92307.

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

LOCAL PLAN
Section B: Governance and Administration
SPECIAL EDUCATION LOCAL PLAN AREA



California Department of Education

Special Education Division

January 2020

SELPA

Fiscal Year

B. Governance and Administration

California *Education Code (EC)* sections 56195 et seq. and 56205

Participating Local Educational Agencies

Participating local educational agencies (LEAs) included in the Special Education Local Plan Area (SELPA) local plan must be identified in Attachment I.

Special Education Local Plan Area—Local Plan Requirements

1. Describe the geographic service area covered by the local plan:

The Desert/Mountain Charter Special Education Local Plan Area (Charter SELPA) is composed of participating local education agency (LEA) charter schools and is the governance structure responsible for the implementation of the provisions of the Local Plan. The areas covered by the Desert/Mountain Charter SELPA are any area where an eligible charter LEA resides throughout the State of California requesting membership and obtaining approval into the Desert/Mountain Charter SELPA by the CAHELP JPA Governance Council.

2. Describe the SELPA regional governance and administrative structure of the local plan. Clearly define the roles and structure of a multi-LEA governing body, or single LEA administration as applicable:

The Desert/Mountain Charter SELPA regional governance and administrative structure of the local plan falls under the governance and administrative structure of the California Association of Health and Education Linked Professions (CAHELP) Joint Powers Authority (JPA). CAHELP JPA operates the departments of Desert/Mountain SELPA, Desert/Mountain Charter SELPA and Desert/Mountain Children's Center (DMCC, a mental health component). CAHELP JPA is a consortium of local school districts within our geographical region and charter LEAs throughout the State of California. Participating LEAs of the Desert/Mountain Charter SELPA have joined in a cooperative effort to provide for the coordinated delivery of programs and services, and to assure equal access to such programs and services to eligible individuals with disabilities requiring special education within the Desert/Mountain Charter SELPA. The CAHELP JPA Governance Council is the governing board of the Desert/Mountain Charter SELPA and shall adopt policies for the Desert/Mountain Charter SELPA and participating LEAs. The policies and procedures adopted by the CAHELP JPA Governance Council under the authority of the adopting LEA boards have the same status and authority as other LEA board policies. In adopting the Local Plan, each LEA agrees to carry out the duties and responsibilities assigned to each agency, or which may be designated at a later date through agreement/policy of the participating LEAs to assist one another with meeting the requirements of applicable federal and state law. Participating agencies may enter into additional contractual arrangements to meet the requirements of applicable federal and state law.

The CAHELP JPA Governance Council shall ensure that all Charter LEAs within the Desert/Mountain Charter SELPA shall have full access and opportunity to participate in the coordinated system of services for identified students with disabilities. To ensure that all identified students have access, a Charter LEA with assistance from the Desert/Mountain Charter SELPA office, may enter into a Memorandum of Understanding (MOU) and/or a contractual arrangement with the local SELPA or surrounding SELPAs or other LEAs within close proximity to the Charter LEA, including nonpublic agencies and nonpublic schools, to ensure that students are identified, assessed, receive individualized education program planning, review, and reevaluation. The function of the Desert/Mountain Charter SELPA and participating LEAs is to provide quality educational programs and services appropriate to the needs of each eligible student with a disability who is enrolled within the Desert/Mountain Charter SELPA. The Responsible Local Agency (RLA) Superintendent, and CEOs of the LEA Charters are responsible for the management and supervision of all special education program operations within the Desert/Mountain Charter SELPA. All such programs are to operate in a manner consistent with the funding provisions of the California Education Code, the Individuals with Disabilities Education Act (IDEA), other applicable laws, and Desert/Mountain Charter SELPA policies and procedures.

The San Bernardino County Office of Education (SBCOE) is also known as the Office of the San Bernardino County Superintendent of Schools (SBCSS) and will be referred to in this document as SBCOE. SBCOE is presently designated as the Responsible Local Agency (RLA) and Administrative Unit (AU) for the Desert/Mountain Charter SELPA, and the CAHELP JPA Governance Council may change the RLA and AU at its discretion and in accordance with California law.

All structural changes within the organization of the Desert/Mountain Charter SELPA, including changes in governance, are decided through deliberations of the CAHELP JPA Governance Council. All conflicts are ultimately resolved through deliberations of the CAHELP JPA Governance Council. However, most concerns are managed within various committee interactions. The Desert/Mountain Charter SELPA Executive Council and Steering/Finance Committee examines program issues, staffing needs, fiscal issues and advises the CAHELP JPA Governance Council regarding adoption of the Annual Service Plan and the Annual Budget Plan. If necessary, recommendations regarding policies, procedures, and the implementation of the Local Plan can be given to the CAHELP CEO for ultimate consideration by the CAHELP JPA Governance Council.

The Desert/Mountain Charter SELPA is governed by the CAHELP JPA Governance Council. The CAHELP JPA Governance Council shall be advised by the CAHELP CEO who shall, in turn be advised by the Desert/Mountain Charter SELPA Executive Council, Steering/Finance Committee and the Community Advisory Committee (CAC). The CAHELP CEO is responsible to ensure that all aspects of the approved Desert/Mountain Charter SELPA Local Plan are implemented according to the approved California Department of Education (CDE) Local Plan and by the CAHELP JPA Governance Council.

CAHELP JPA Governance Council

The CAHELP Governance Council shall consist of the Superintendent/CEO representing each of the LEA members of the Desert/Mountain SELPA, and two (2) CEO representatives from the Desert/Mountain Charter SELPA. A CEO representing multiple LEAs shall count as a single member of the Governance Council. Each member of the Governance Council may designate, in writing, an alternate representative, including but not limited to, another member of the Governance Council ("proxy") if the Superintendent/CEO is unable to attend a meeting; the designated alternate representative or designee shall have the full authority of the designating Superintendent/CEO for the purpose of decision-making. Such a designation must be received by the CEO prior to the commencement of a scheduled meeting of the Governance Council, and shall be good only for that meeting. One-third (1/3) of the members, represented in person or by proxy, shall constitute a quorum at a meeting of members.

The Governance Council is empowered to establish or to participate in the establishment of a system for determining the responsibility of member LEAs for the education of each individual with disabilities. The Governance Council is also empowered to designate an administrative entity to perform such regionalized functions as the receipt and distribution of all Desert/Mountain Charter SELPA funds. This may also include the provisions of administrative support, and coordination of the implementation of the Local Plan for the education of children with disabilities, and to undertake such ancillary and related programs as determined by the Governance Council. The Governance Council shall determine all policy matters for the CAHELP JPA.

Policies governing the Desert/Mountain Charter SELPA shall be adopted by the CAHELP JPA Governance Council and are included as part of the Local Plan. Input may be received from parents, staff, public and nonpublic agencies, and members of the public at large. Individuals wishing an opportunity to address the Desert/Mountain Charter SELPA Executive Council, Steering/Finance Committee and/or the CAHELP JPA Governance Council on a particular agenda item, or have the Executive Council, Steering/Finance Committee and/or the CAHELP Governance Council consider a topic, are invited to complete a Request to Address the Executive Council, Steering/Finance committee and/or the CAHELP JPA Governance Council form.

The CAHELP JPA Governance Council shall review the Desert/Mountain Charter SELPA Local Plan and recommend modifications on an annual basis or as necessary. The CAHELP CEO and Desert/Mountain Charter SELPA Executive Council, and Steering/Finance Committee shall assist the CAHELP JPA Governance Council with these reviews.

The CAHELP JPA Governance Council may initiate and carry on an activity, or may otherwise act in any manner which is not inconsistent with or preempted by law, and which is not in conflict with the purposes for which the Desert/Mountain Charter SELPA is established.

The CAHELP JPA Governance Council shall have responsibility for overall management and direction of the Local Plan development, implementation, and operation. Governance Council

members shall be involved in the budget review and approval process for the Local Plan. SBCOE serves as the current RLA, and any successors or later RLA, shall have responsibility for employing the number and type of Desert/Mountain Charter SELPA staff to meet the program and service requirements necessary for the implementation of the Local Plan as determined by the CAHELP JPA Governance Council.

Responsibilities of the CAHELP JPA Governance Council

The CAHELP JPA Governance Council, with direction from the LEA governing boards, shall be responsible for the following areas of Local Plan administration and shall act to:

- A. Establish operational procedures and make decisions on any matters regarding implementation, administration, and operation of special education programs in accordance with the Local Plan;
- B. Review and approve all Desert/Mountain Charter SELPA policies, procedures, standards, and guidelines;
- C. Review, approve, and monitor the allocation of special education funds to LEAs through the Annual Budget Plan process;
- D. Review, approve, and monitor all budgets assigned to the Desert/Mountain Charter SELPA office;
- E. Provide leadership to the Desert/Mountain Charter SELPA regarding the development, revision, implementation, and review of the Local Plan;
- F. Select and recommend to the Superintendent of the RLA, a qualified candidate to be employed as the CAHELP CEO;
- G. Evaluate the performance of the CAHELP CEO;
- H. Determine and provide direction related to the personnel, program, and service requirements necessary for the implementation of the Local Plan and allocation of special education funds;
- I. Meet as often as necessary during the year to implement the business of the Desert/Mountain Charter SELPA and to provide the necessary direction and guidance to the CAHELP CEO;
- J. Provide direction, consultation, and technical assistance to the LEAs and the Superintendent of the RLA;
- K. Provide a consistent forum to develop, review, and approve policy recommendations, which are submitted to the Governance Council for consideration;
- L. Approve interagency agreements;
- M. Designate participants for the Desert/Mountain Charter SELPA Steering/Finance Committee;
- N. Establish and promote a Community Advisory Committee (CAC);
- O. Receive recommendations from the CAC, Executive Council, Desert/Mountain Charter SELPA Steering/Finance Committee, LEA boards, and other concerned agencies and individuals;
- P. Decide disputes, if any, between participating LEAs that arise concerning special education related matters or related to the interpretation of the Local Plan and other agreements or policies between or among the LEAs;
- Q. Annually evaluate the Local Plan implementation and operations; and
- R. Undertake such additional activities as permitted under the JPA Agreement and Bylaws, California law, and the Local Plan.

SELPA

Fiscal Year

Desert/Mountain Charter Executive Council

The Desert/Mountain Charter SELPA Executive Council is comprised of a representative from each Charter LEA in the Desert/Mountain Charter SELPA at the CEO level. Organizations that operate more than one Charter LEA have a single representative for all Charter LEAs. Each CEO has one vote for the Charter LEA(s) he/she represents. The Desert/Mountain Charter SELPA Executive Council makes recommendations to the CAHELP JPA Governance Council on fiscal and policy matters. This group meets regularly to direct and supervise the implementation of the Local Plan.

Desert/Mountain Charter SELPA Steering/Finance Committee

Each participating LEA shall appoint an appropriate administrator of special education programs and an administrator of the LEAs business department to membership of the Desert/Mountain Charter SELPA Steering/Finance Committee. The Desert/Mountain Charter SELPA Steering/Finance Committee may be requested by the CAHELP JPA Governance Council to provide advice or assistance in other areas as needs are identified within the Desert/Mountain Charter SELPA.

The Desert/Mountain Charter SELPA Steering/Finance Committee meets on a regular basis. The CAHELP CEO or designee serves as the Chairperson of the committee and is responsible for providing timely written notice of the meeting and agenda, minutes for the meeting, and additional documentation as needed to provide informed decision-making.

The duties of the Desert/Mountain Charter SELPA Steering /Finance Committee include, but are not limited to, the following:

- A. Provide information and recommendations for the development, modification, and implementation of the Local Plan to the Executive Council and CAHELP JPA Governance Council;
- B. Develop and implement forms and procedures for the identification, referral, assessment, IEP development, and special education service delivery to individuals with disabilities as established by the Local Plan;
- C. Develop procedures and recommendations for programs and services for review, modification, and approval by the CAHELP JPA Governance Council;
- D. Develop, review, and/or modify an annual budget for the Desert/Mountain Charter SELPA operations, including Regional Services, Program Specialists, and other Desert/Mountain Charter SELPA administrative budgets prior to review, modification, and approval by the Executive Council and final approval by the CAHELP JPA Governance Council;
- E. Recommend and monitor staff development training programs, including parent education activities;
- F. Provide recommendations for membership to the CAC;
- G. Develop, review, and/or modify the Annual Service Plan prior to adoption by the Executive Council and final adoption by the CAHELP JPA Governance Council;
- H. Develop, review, and/or modify the Annual Budget Plan prior to adoption by the Executive Council and final adoption by the CAHELP JPA Governance Council;
- I. Provide information and recommendations for the development, modification, and

implementation of the Desert/Mountain Charter SELPA funding allocation plan to the Executive Council and CAHELP JPA Governance Council; and,

J. Review and make recommendations to the Desert/Mountain Charter SELPA Executive Council and CAHELP JPA Governance Council regarding decisions that impact the finances of LEAs.

The Desert/Mountain Charter SELPA shall develop procedures regarding behavioral assessment and intervention to guide all staff members and parents in responding to students with challenging behaviors. Behavioral assessment and intervention plans will be considered when a student's disciplinary actions constitute a "change of placement," when behaviors impede the learning of the student or others, and when behaviors occur that are dangerous to the student and other. (Education Code 3001, 5CCR 3052, CFR 300.346-300.520, 56341(c)(2). Policies of the Desert/Mountain Charter SELPA outline the behavioral interventions for students receiving special education services within the Desert/Mountain Charter SELPA.

The Desert/Mountain Charter SELPA maintains the Management Information System (MIS). The Desert/Mountain Charter SELPA is responsible for effective collection and maintenance of data relevant to program, placement of children, and other data required by state and federal mandates

It shall be the policy of each LEA and the Desert/Mountain Charter SELPA to provide data or information to the California Department of Education (CDE) that may be required by state and/or federal regulations.

The role of the LEAs is for responsible data entry, quality and integrity of information including in each LEAs MIS system. The LEAs will approve the California Longitudinal Assessment and Pupil Data System (CALPADS) submission as required by the CDE.

The CAHELP CEO shall serve on behalf of the member LEAs and implement the Desert/Mountain Charter SELPA Local Plan including the following regional services and operations in the area of coordination of services to medical facilities.

The role of the individual LEAs is for students with disabilities who are placed in a public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital, or a health facility for medical purposes is the educational responsibility of the LEA in which the hospital or facility is located.

In addition to carrying out the responsibilities identified in the Local Plan, the Desert/Mountain Charter SELPA Steering/Finance Committee may choose to form subcommittees to focus on special issues. Such subcommittees shall report to the Desert/Mountain Charter SELPA Steering/Finance Committee, Executive Council or CAHELP JPA Governance Council, as appropriate.

Distribution of Federal and State Funds

All federal and state special education funds shall be allocated to the Desert/Mountain Charter SELPA AU for distribution to LEAs according to an approved special education funding allocation plan. Any changes to the allocation of federal and state special education funds shall be made by the CAHELP JPA Governance Council as permitted under the CAHELP JPA

Agreement and Bylaws, and California and federal law.

Responsibilities for Distribution of Federal and State Funds

A. The governing boards of the LEAs participating in the Desert/Mountain Charter SELPA have agreed that students with disabilities will be provided with appropriate special education services. The CAHELP JPA Governance Council has been designated the authority to determine the distribution of all federal and state special education funds in order for LEAs to carry out their responsibilities. The AU shall be responsible for the distribution of funds according to an approved special education funding allocation plan. The CAHELP CEO is responsible to ensure that the funds are distributed in accordance with the funding allocation plan.

The Desert/Mountain Charter SELPA Executive Council and Steering/Finance Committee shall participate in the development of the Annual Budget Plan for review and approval by the CAHELP JPA Governance Council. The Annual Budget Plan shall be distributed to the LEAs and the CAC upon approval by the CAHELP JPA Governance Council.

State and federal funds are deposited from the San Bernardino County Treasury into the County School Service Fund (AU), unless otherwise directed by the CAHELP JPA Governance Council. The Desert/Mountain Charter SELPA provides an annual allocation plan to SBCOE for distribution of state and federal funds to the LEAs according to the approved schedule of disbursement.

B. Monitoring the Use of State and Federal Funds

Funds allocated for special education programs shall be used for services to students with disabilities. Federal funds under Part B of IDEA may be used for the following activities:

1. For the costs of special education and related services and supplementary aids and services provided in a general education class or other education-related setting to a student with a disability in accordance with the IEP for the child, even if one or more non disabled children benefit from these services.
2. The CAHELP CEO, with the assistance of the Desert/Mountain Charter SELPA Executive Council, Steering/Finance Committee, and the AU shall be responsible to monitor on an annual basis the appropriate use of all funds allocated for special education programs. Final determination and action regarding the appropriate use of special education funds shall be made by the CAHELP JPA Governance Council through the Annual Budget Plan process.

The Desert/Mountain Charter SELPA monitors the distribution and appropriate use of funds and shares this information with the Desert/Mountain Charter SELPA Executive Council and Steering/Finance Committee. When necessary, meetings are held with individual LEAs for the purpose of monitoring funds.

The Desert/Mountain Charter SELPA is responsible for the preparation of program and fiscal reports requested by the State.

SELPA

Fiscal Year

The CAHELP CEO shall be permitted to monitor the LEAs special education program implementation to ensure compliance in all areas including finance, service delivery, and legal requirements. If the CAHELP CEO or designee determines that an LEA is not compliant and/or not operating in a fiscally responsible manner, the CAHELP CEO may require that the responsibility for resulting costs be borne by the LEA or take such other action as may be required to remedy the matter. The LEA will have the right to appeal any such determination to the CAHELP JPA Governance Council. The decision of the CAHELP JPA Governance Council shall be final.

Procedures for Changes in Governance Structure

Any changes in the governance structure of the Desert/Mountain Charter SELPA are subject to specific provisions of California Education Code 56140, 56195, et. seq., 56195.1 et seq., and 56202 et seq.

1. Any LEA may elect to pursue an alternative option from those specified in California Education Code 56195.1 by notifying CDE, Desert/Mountain Charter SELPA, and the County Superintendent at least one year prior to the date the alternative plan would become effective (California Education Code 56195.3(b)).
2. Any alternative plan of an LEA is subject to the approval of the County Superintendent , which would have LEAs as participating agencies in the alternative plan (California Education Code 56195.1).
3. Approval of a proposed alternative plan by the appropriate County Superintendent(s) must be based on the capacity of the LEA(s) to ensure that special education programs and services are provided to all children with disabilities (California Education Code 56140 (b)).
4. If the County Superintendent does not approve an alternative plan, the County Office shall return the plan with comments and recommendations to the LEAs. The LEAs participating in the alternative plan may appeal the decisions to the Superintendent of Public Instruction (California Education Code 56140(b)(2)).
5. Any alternative plan to be submitted by an LEA or group or LEAs currently participating in the Desert/Mountain Charter SELPA must meet the standards established by the State Board of Education.

3. Describe the SELPA's regional policy making process. Clearly define the roles of a multi-LEA governing body, or single LEA administration as applicable related to the policy making process for coordinating and implementing the local plan:

The CAHELP JPA Governance Council is the governing board of the Desert/Mountain Charter SELPA and shall adopt policies for the Desert/Mountain Charter SELPA and participating LEAs. The policies and procedures adopted by the CAHELP JPA Governance Council under the authority of the adopting LEA board have the same status and authority as other LEA board policy. All proposed policies are vetted through the Desert/Mountain Charter SELPA Program Team consisting of the administrator, program managers, program specialists, psychologists, and prevention/intervention specialists within the Desert/Mountain Charter SELPA. Policies are

SELPA

Fiscal Year

then taken to the Desert/Mountain Charter SELPA Steering/Finance Committee and Executive Council for review, input and approval. The final phase of the policy making is with the CAHELP JPA Governance Council reviewing, providing input and approval.

Opportunities for parent, community input are made through the Desert/Mountain Charter SELPA Executive Council, Charter Steering/Finance Committee meetings and the CAHELP JPA Governance Council meetings.

4. Clearly define the roles of the County Office of Education (COE) as applicable, and/or any other administrative supports necessary to coordinate and implement the local plan:

SBCOE is designated as the Responsible Local Agency (RLA) and Administrative Unit (AU) for the Desert/Mountain Charter SELPA.

A. Responsibilities of the RLA

The RLA shall be responsible for functions as specified under California Education Code 56195.1(c)(2) such as, but not limited to:

1. Receipt and distribution of regionalized services funds as approved by the CAHELP JPA Governance Council. An overall budget for all special education services and programs for the Special Education Local Plan Area shall be prepared under the direction of the CAHELP CEO. The Desert/Mountain Charter SELPA Executive Council and Steering/Finance Committee shall also provide assistance in the development of the annual income and expenditure budgets for the Desert/Mountain Charter SELPA. The budget shall be submitted to the CAHELP JPA Governance Council by the CAHELP CEO for review and approval;
2. Provision of administrative support;
3. Coordination and implementation of the Local Plan;
4. Receipt and distribution of special education funds to LEA accounts for the operation of special education programs and services according to the Special Education Funding Allocation Plan approved by the CAHELP JPA Governance Council;
5. Receipt and distribution of special education funds to accounts exclusively designated for the Desert/Mountain Charter SELPA use; and
6. The employment of staff as designated by the CAHELP JPA Governance Council to support the Desert/Mountain Charter SELPA functions.

The Desert/Mountain Charter SELPA office is designated as the entity responsible for the administration of the Local Plan and assuring that the Desert/Mountain Charter SELPA is in compliance with all applicable laws and regulations.

SELPA Desert/Mountain Charter SELPA

Fiscal Year 2020-21

B. Selection, Employment, and Evaluation of the SELPA Staff

The governing boards of each of the participating LEAs agree to invest in the CAHELP JPA Governance Council with the responsibility of designating an appropriate agency as the RLA for the administration of the Local Plan and its implementation. The boards assure that the CAHELP JPA Governance Council shall indemnify the need for and designate the positions necessary for the operation of the Desert/Mountain Charter SELPA functions according to this Local Plan.

The CAHELP CEO shall be responsible for recommending the employment of Desert/Mountain Charter SELPA personnel to carry out those functions described in the Local Plan.

The CAHELP JPA Governance Council shall be responsible for designating the staff to support the functioning of the Desert/Mountain Charter SELPA. In reviewing and approving the Desert/Mountain Charter SELPA budgets on an annual basis, the CAHELP JPA Governance Council designates the staffing for the Desert/Mountain Charter SELPA office upon recommendation of the CAHELP CEO.

Desert/Mountain Charter SELPA staff shall be employed by the RLA and supervised by the CAHELP CEO according to the RLA's policy and practices. The CAHELP CEO shall use a selection process that is in accordance with the law and personnel policies of the RLA.

Desert/Mountain Charter SELPA employed personnel shall be subject to the administrative procedures and policies in operation with the SBCOE including but not limited to, hiring, supervision, evaluation, and discipline. In addition, contract negotiations shall follow County established procedures for all applicable Desert/Mountain Charter SELPA employed personnel.

C. CAHELP CEO

The fundamental role of the CAHELP CEO is to provide leadership and facilitate a decision making process regarding the implementation of the Desert/Mountain Charter SELPA Local Plan. The CAHELP CEO's role includes the provision of information, specific services identified by the CAHELP JPA Governance Council, technical assistance, leadership, and arbitration. It is the CAHELP CEO's responsibility to represent the interest of the Desert/Mountain Charter SELPA as a whole without promoting any particular LEAs interest over the interest of any other agency. In the event there are differences of opinions and/or positions on issues, it is the CAHELP CEO's responsibility to mediate a reasonable resolution of the issue(s).

The CAHELP JPA Governance Council shall be responsible for the selection, direction, discipline and evaluation of the CAHELP CEO. The CAHELP JPA Governance Council shall assist in the hiring and selection process by the RLA.

The CAHELP CEO is subject to the RLA's policies and procedures for day-to-day operations, but receives direction from, and is responsible to, the CAHELP JPA Governance Council. The CAHELP CEO is evaluated by a joint committee comprised of the Chair of the CAHELP JPA Governance Council and at least two other superintendents/CEOs from the CAHELP JPA Governance Council. The evaluation is confirmed by a vote of the CAHELP JPA Governance

SELPA

Fiscal Year

Council.

The CAHELP CEO shall have the responsibility for the coordination of all the Desert/Mountain Charter SELPA activities.

Desert/Mountain Charter SELPA Staff

The CAHELP JPA Governance Council shall be responsible for designating the employees to support the functioning of the Desert/Mountain Charter SELPA. In reviewing and approving the Desert/Mountain Charter SELPA budgets on an annual basis, the CAHELP JPA Governance Council designates the employees for the Desert/Mountain Charter SELPA office upon recommendation of the CAHELP JPA CEO.

Desert/Mountain Charter SELPA employees shall be employed by the Responsible Local Agency (RLA) and supervised by the CAHELP JPA CEO according to the RLA's policy and practices. The CAHELP CEO shall use a selection process that is in accordance with the law and personnel policies of the RLA.

The supervision of the Desert/Mountain Charter SELPA will be determined by the CAHELP CEO. An organizational chart showing the staff to be supervised by the members of the SELPA management team will be provided to the CAHELP JPA Governance Council annually.

Program Managers

The Desert/Mountain Charter SELPA employs Program Managers for various departments within the organization. The departments may include but are not limited to:

- * Resolution Support Services
- * Regional Professional Learning
- * Career Technical Education
- * Prevention and Intervention
- * Compliance

Included in the Desert/Mountain Charter SELPA staffing are Program Specialists with areas of expertise to provide professional learning and supports to LEAs.

5. Describe the policies and procedures of the SELPA that allow for the participation of charter schools in the local plan:

The function of the Desert/Mountain Charter SELPA and participating LEAs is to provide quality education programs and services appropriate to the needs of each eligible student, within the authorizing LEAs boundaries with a disability who is enrolled within the Desert/Mountain Charter

SELPA, including charter schools who operate as a school of the district or as a LEA.

The Desert/Mountain Charter SELPA provides supports throughout the State of California for member LEAs. The Desert/Mountain Charter SELPA provides technical assistance in ensuring that all Desert/Mountain Charter SELPA LEAs have the support necessary to fulfill their legal obligations under California Education Code, IDEA, and other applicable laws, and the Desert/Mountain Charter SELPA policies and procedures.

State law provides geographical restrictions on the operations of charter schools. Specifically, the geographic and site limitations of the Charter Schools Act apply to all charter schools, including non-classroom-based programs. Charter schools are prohibited from operating facilities outside of the geographical boundaries of their authorizing LEA, subject to limited exceptions. A charter school must identify a single charter school that will operate within the authorizing LEAs boundaries, and that all locations be identified in the charter petition. Additionally, where a charter school provides a majority of its educational services in, and a majority of its students are residents of the county in which it is authorized, the charter school may establish a resource center, meeting space, or other satellite facility in an adjacent county, provided the facility is used exclusively for educational support of students enrolled in non-classroom-based independent study.

Charters are welcome to apply for membership to the Desert/Mountain Charter SELPA on an annual basis. Notice on our website provides the timeline to submit applications. Once applications are received, the Desert/Mountain Charter SELPA team and at least one CEO from the Desert/Mountain Charter SELPA Executive Council conducts an on-site visit to the Charter LEA. Recommendations are then made to the Desert/Mountain Charter SELPA Executive Council for membership with final approval by the CAHELP JPA Governance Council.

For charter schools applying to the Desert/Mountain Charter SELPA, the charter must be a LEA for special education purposes. Charter schools who wish to be considered as a LEA have the option of joining a multi-district SELPA or a charter-only SELPA. Charter schools that opt for LEA status within a multi-district or charter-only SELPA assume legal responsibility for ensuring that children with disabilities receive special education and related services to which they are entitled under federal law. Desert/Mountain Charter SELPA is a charter-only SELPA. Charter LEAs across the state of California who are members of the Desert/Mountain Charter SELPA typically operate their own special education services by either hiring or contracting with qualified staff. Some Charter LEAs seek economies of scale by forming special education service collaboratives outside of the traditional Charter SELPA structure, either with other charter schools or nearby LEAs.

Charter schools that seek LEA status and membership in a SELPA must notify their current SELPA and the CDE of their intended exit at least one full year before exiting. The charter school shall also ensure that agreements with its authorizer are conducive to membership in a new SELPA. The charter agreement and/or Memorandum of Understanding (MOU) should allow the charter school to seek LEA status and/or change SELPAs.

The Desert/Mountain Charter SELPA Administrator (CAHELP CEO), in coordination with participating Desert/Mountain SELPA Charter LEAs, including those that are out-of-geographic boundaries, implement the Local Plan including the coordination of interagency agreements. Interagency agreements are a mechanism for interagency coordination to ensure services required for Free Appropriate Public Education (FAPE) are provided to eligible children with disabilities. Interagency agreements provide information regarding agency roles, services for children, financial obligations, participating entities, and a process for resolving disagreements among parties to the agreement.

For Charter LEAs located outside of San Bernardino County, the Charter LEA will coordinate service agreements with the County in which the Charter LEA is located, to preserve consistency of procedure among agencies.

Additionally, Title 5 of the California Code of Regulations 3062 requires that a master contract shall be used by a charter LEA when effectuating formal agreements with certified nonpublic agencies and nonpublic schools (NPA/S). The master contract shall specify the administrative and financial agreements between the Charter LEA and the NPA/S. A continuum of placements and services must be available if needed by a child with a disability. The term of the master contract shall not exceed one year.

A MOU is an agreement established with the charter school and its authorizer regarding the format, frequency, and scope of oversight activities. While not required, a MOU between the authorizer and charter school may specify how various aspects related to the charter school's operations will be handled. Some authorizers provide extensive language to be included in the charter petition itself governing these items, others will rely on a separate MOU to provide for areas beyond those covered in the petition. A MOU could include a provision for the educational services for children with disabilities, delineating the entity responsible for providing special education instruction and related services and the process through which such compliance will be achieved. The MOU should describe any anticipated transfer of special education funds between the authorizer and the charter school, or the SELPA and the charter school.

When a child with a disability enrolls in the Charter LEA and he/she needs additional related services, the services will be the responsibility of the Charter LEA. The Desert/Mountain Charter SELPA Administrator (CAHELP CEO) or designee will work collaboratively with the SELPA where the Charter LEA is located to contract with them or locate additional providers from the area. Clearly defined MOUs between the authorizer and the Charter LEA will help minimize and mitigate operational challenges for charter schools, authorizing entities, and the SELPA in which the charter LEA is located.

The Desert/Mountain Charter SELPA as authorized by the California State Board of Education assists California Charter LEAs that have successfully completed the Desert/Mountain Charter SELPA membership process and have signed an Agreement for Participation. Charter LEAs accepted into the Desert/Mountain Charter SELPA are deemed LEAs pursuant to Education

SELPA

Fiscal Year

Code 47641 and are obligated to provide special education and related services to applying or enrolled students actually, or potentially entitled to services under applicable state and federal laws and regulations. The Agreement for Participation details the Charter LEA member, SBCOE, and the Desert/Mountain Charter SELPA's mutual agreement for the provision of services under the Local Plan.

The Desert/Mountain Charter SELPA endeavors that all children with disabilities attending Charter LEA members shall receive appropriate special education services, and that such special education programs and services shall be coordinated and operated in the Desert/Mountain Charter SELPA in accordance with the approved policies and procedures defined in the Agreement for Participation.

6. Identify and describe the representation and participation of the SELPA community advisory committee (CAC) pursuant to EC Section 56190 in the development of the local plan:

Each participating member LEA of the Desert/Mountain Charter SELPA, shall appoint representatives to the CAC for the purpose of:

1. Advising the CAHELP CEO regarding the development, amendment and review of the Local Plan;
2. Recommending annual priorities to be addressed by the plan;
3. Assisting in parent education;
4. Encouraging community involvement;
5. Fulfilling such other responsibilities as designated in the Local Plan.

Each CAC representative shall be responsible to the governing board of their respective LEA. All areas of responsibility related to the Local Plan shall be implemented through regularly scheduled meetings of the CAC. Representatives from out of geographic area LEAs may participate in CAC activities through video or telephone conference.

Procedures for CAC appointment

The CAC shall be composed of members approved by their participating LEA governing board. At least fifty-one percent of the members shall be parents of students with disabilities. Members shall include the following:

1. Parents - A majority of the CAC membership is composed of parents of students enrolled in LEAs participating in the Local Plan, including those that are out of geographic boundaries. A majority of these parent members shall be parents of students with disabilities;
2. School Personnel - School related members of the CAC include general education classroom teachers, special education classroom teachers, and other school personnel;
3. Students with disabilities enrolled in special education programs;
4. Representatives of public and private agencies;
5. Others - Persons concerned with students with disabilities; and
6. One member shall be appointed by the Desert/Mountain Charter SELPA Steering/Finance Committee.

Responsibilities of the CAC

Section B: Governance and Administration

SELPA Desert/Mountain Charter SELPA

Fiscal Year 2020-21

The CAC shall serve in an advisory capacity to the Desert/Mountain Charter SELPA and shall act to:

1. Improve communications among students with disabilities, their parents/guardians, and LEA staff;
2. Increase public awareness and understanding of the unique educational needs of students with disabilities by communicating with LEAs, the Desert/Mountain Charter SELPA, and legislative staff members;
3. Advise local, county, and state officials of the development, operation, and review of the Local Plan.
4. Provide a support group and forum for students with disabilities and their parents/guardians where they may express their needs and concerns regarding their children's education;
5. Conduct parent orientation, education training programs for individuals or groups as a means of increasing support for improved educational opportunities for all students;
6. Advise the CAHELP CEO, the Desert/Mountain Charter SELPA Executive Council and Charter SELPA Steering/Finance Committee regarding the development and review of the Local Plan and review of programs under the Local Plan;
7. Make recommendations on annual priorities to be addressed under the Local Plan to the Desert/Mountain Charter SELPA Executive Council and Steering/Finance Committee;
8. Assist in parent education and training. Recruit parents and other volunteers who may contribute to the implementation of the Local Plan;
9. Encourage public involvement in the development and review of the Local Plan;
10. Act in support of students with disabilities. Serve as liaison between the CAHELP CEO and the local communities;
11. Encourage regular attendance in all school programs. Assisting in parent awareness of the importance of regular school attendance;
12. Submit an annual written report to the CAHELP CEO and the Desert/Mountain Charter SELPA Executive Council and Desert/Mountain Charter SELPA Steering/Finance Committee regarding progress of CAC projects;
13. Submit an annual written report to the CAHELP JPA Governance Council. Apprise the CAHELP JPA Governance Council, as needed, on matters of community concern;
14. Become familiar with the laws pertaining to special education and students with disabilities; and,
15. Other duties and responsibilities as assigned by the CAHELP JPA Governance Council.

7. Describe the SELPA's process for regular consultations regarding the plan development with representative of special education and regular education teachers, and administrators selected by the groups they represent and parent members of the CAC:

Policies governing the Desert/Mountain Charter SELPA shall be adopted by the CAHELP JPA Governance Council and are included as part of the Local Plan. Input may be received from parents, staff (general and special education teachers), public and nonpublic agencies, and members of the public at large during the Desert/Mountain Charter SELPA Executive Council,

SELPA

Fiscal Year

Steering/Finance Committee meetings, CAC, and/or the CAHELP JPA Governance Council meetings. Individuals wishing an opportunity to address any committee/council meeting on a particular agenda item, or have the committee/council consider a topic, are invited to complete a Request to Address the particular committee of interest.

The Local Plan is developed and updated by a committee of special and general education teachers and administrators and with participation of parents. Each participating LEA, including those that are out of geographic boundaries, shall appoint representatives to the Community Advisory Committee (CAC) for the purpose of advising the CAHELP CEO regarding the development, amendment and review of the Local Plan, recommending annual priorities to be addressed by the plan; assisting in parent education; encouraging community involvement; and fulfilling such responsibilities as designated in the Local Plan.

8. Identify and describe the responsible local agency (RLA), Administrative Unit (AU), or other agency who is responsible for performing tasks such as the receipt and distribution of funds, provision of administrative support, and coordination and implementation of the plan:

The role of SBCOE is designated as the Responsible Local Agency (RLA) and Administrative Unit (AU) for the Desert/Mountain Charter SELPA.

A. Responsibilities of the RLA

The RLA shall be responsible for functions as specified under California Education Code 56195.1(c)(2) such as, but not limited to:

1. Receipt and distribution of regionalized services funds as approved by the CAHELP JPA Governance Council. An overall budget for all special education services and programs for the Special Education Local Plan Area shall be prepared under the direction of the CAHELP CEO. The Desert/Mountain Charter SELPA Executive Council and Steering/Finance Committee shall also provide assistance in the development of the annual income and expenditure budgets for the Desert/Mountain Charter SELPA. The budget shall be submitted to the CAHELP JPA Governance Council by the CAHELP CEO for review and approval;
2. Provision of administrative support;
3. Coordination and implementation of the Desert/Mountain Charter SELPA Local Plan;
4. Receipt and distribution of special education funds to LEA accounts for the operation of special education programs and services according to the Special Education Funding Allocation Plan approved by the CAHELP JPA Governance Council;
5. Receipt and distribution of special education funds to accounts exclusively designated for the Desert/Mountain Charter SELPA use; and
6. The employment of staff as designated by the CAHELP JPA Governance Council to support Desert/Mountain Charter SELPA functions.

SELPA Desert/Mountain Charter SELPA

Fiscal Year 2020-21

The Desert/Mountain Charter SELPA office is designated as the entity responsible for the administration of the Local Plan and assuring that the Desert/Mountain Charter SELPA is in compliance with all applicable laws and regulations.

B. Selection, Employment, and Evaluation of the Charter SELPA Staff

The governing boards of each of the participating LEAs agree to invest in the CAHELP JPA Governance Council with the responsibility of designating an appropriate agency as the RLA for the administration of the Local Plan and its implementation. The boards assure that the CAHELP JPA Governance Council shall indemnify the need for and designate the positions necessary for the operation of the Desert/Mountain Charter SELPA functions according to this Local Plan.

The CAHELP CEO shall be responsible for recommending the employment of Desert/Mountain Charter SELPA personnel to carry out those functions described in the Local Plan.

The CAHELP JPA Governance Council shall be responsible for designating the staff to support the functioning of the Desert/Mountain Charter SELPA. In reviewing and approving the Desert/Mountain Charter SELPA budgets on an annual basis, the CAHELP JPA Governance Council designates the staffing for the Desert/Mountain Charter SELPA office upon recommendation of the CAHELP CEO.

Desert/Mountain Charter SELPA staff shall be employed by the RLA and supervised by the CAHELP CEO according to the RLA's policy and practices. The CAHELP CEO shall use a selection process that is in accordance with the law and personnel policies of the RLA.

Desert/Mountain Charter SELPA employed personnel shall be subject to the administrative procedures and policies in operation with the SBCOE including but not limited to, hiring, supervision, evaluation, and discipline. In addition, contract negotiations shall follow County established procedures for all applicable Desert/Mountain Charter SELPA employed personnel.

C. CAHELP CEO

The fundamental role of the CAHELP CEO is to provide leadership and facilitate decision making processes regarding the implementation of the Local Plan. The CAHELP CEO's role includes the provision of information, specific services identified by the CAHELP JPA Governance Council, technical assistance, leadership and arbitration. It is the CAHELP CEO's responsibility to represent the interest of the Desert/Mountain Charter SELPA as a whole without promoting any particular LEA's interest over the interest of any other agency. In the event there are differences of opinions and/or positions on issues, it is the CAHELP CEO's responsibility to mediate a reasonable resolution of the issue(s).

The CAHELP JPA Governance Council shall be responsible for the selection, direction, discipline and evaluation of the CAHELP CEO. The CAHELP JPA Governance Council shall be assisted in the hiring and selection process by the RLA.

The CAHELP CEO is subject to the RLA's policies and procedures for day-to-day operations.

Section B: Governance and Administration

SELPA Desert/Mountain Charter SELPA

Fiscal Year 2020-21

The role of SBCOE is designated as the Responsible Local Agency (RLA) and Administrative Unit (AU) for the Desert/Mountain Charter SELPA.

9. Describe the contractual agreements and the SELPA’s system for determining the responsibility of participating agency for the education of each student with special needs residing within the geographical area served by the plan:

The LEAs within the Desert/Mountain Charter SELPA join together pursuant to Sections 56140 and 56195 of the California Education Code to adopt a plan to assure access to special education and services for all eligible individuals with disabilities participating in education within our Desert/Mountain Charter SELPA jurisdiction. In adopting the Local Plan, each participating agency agrees to carry out the duties and responsibilities assigned to it within the plan. Participating LEAs may enter into additional contractual arrangements to meet the requirement of applicable federal and state law.

In adopting the Local Plan, each participating local education agency agrees to carry out the duties and responsibilities assigned to it within the plan. Each agency shall provide special education and services to all eligible students attending their charter schools. In addition, each agency shall cooperate to the maximum extent possible with other agencies to serve individuals with disabilities who cannot be served in the LEA of residence programs. Such cooperation ensures that a range of program options is available throughout the Desert/Mountain Charter SELPA.

Any participating LEA may provide for the education of special education students in special education programs maintained by other districts or counties and may include with the special education program students who reside in other districts or counties.

Pursuant to the provisions of Education Code Sections 56000 et seq., the Desert/Mountain Charter SELPA shall plan, facilitate, implement, and administer the activities of the Desert/Mountain Charter SELPA as approved by the State Board of Education, and shall perform those services as required to accomplish the elements set forth in the plan as well as those required by state and federal law. Those services include, but are not limited to the following:

1. Coordinate community and state agency resources with those provided by Participating LEAs and the RLA, including initiation of such contractual agreements as may be required.

Each LEA of special education accountability is responsible for the students within their jurisdiction. There are no additional contractual agreements that supersede education code.

10. For multi-LEA local plans, specify:

- a. The responsibilities of each participating COE and LEA governing board in the policymaking process:

Education Code 56200 (c)(2) requires that the Local Plan "specify the responsibilities of each

participating county office and district governing board in the policy-making process, the responsibilities of the Superintendent of each participating LEA and county in the implementation of the Local Plan, and the responsibilities of the LEA and county administrators of special education in coordinating the administration of the plan." In accordance with this provision, the Desert/Mountain Charter SELPA has developed the following governance structure, policy development, and approval process.

The governing board for each Charter LEA and the San Bernardino County Superintendent approves the Agreement for Participation and the Local Plan for Special Education. As described within those documents, the Boards of Directors of the Charter LEAs delegate the administrative policy-making process and procedures for carrying out that responsibility to the governance structure of the Desert/Mountain Charter SELPA.

- b. The responsibilities of the superintendents of each participating LEA and COE in the implementation of the local plan:

The CAHELP JPA Governance Council and the Desert/Mountain Charter SELPA Executive Council, with direction from the LEA governing boards, shall be responsible for the following areas of Local Plan administration and shall act to:

1. Establish operational procedures and make decisions on any matters regarding implementation, administration, and operation of special education programs in accordance with the Local Plan;
2. Review and approve all Desert/Mountain Charter SELPA policies, procedures, standards and guidelines;
3. Review, approve, and monitor the allocation of special education funds to LEAs through the Annual Budget Plan process;
4. Review, approve, and monitor all budgets assigned to the Desert/Mountain Charter SELPA office;
5. Provide leadership to the Desert/Mountain Charter SELPA regarding the development, revision, implementation, and review of the Local Plan;
6. Select and recommend to the Superintendent of the RLA, a qualified candidate to be employed as the CAHELP CEO;
7. Evaluate the performance of the CAHELP CEO;
8. Determine and provide direction related to the personnel, program, and service requirements necessary for the implementation of the Local Plan and allocation of special education funds;
9. Meet as often as necessary during the year to implement the business of the Desert/Mountain Charter SELPA and to provide the necessary direction and guidance to the CAHELP CEO;
10. Provide direction, consultation, and technical assistance to the LEAs and the Superintendent of the RLA;
11. Provide a consistent forum to develop, review, and approve policy recommendations, which are submitted to the CAHELP JPA Governance Council for consideration;
12. Approve interagency agreements;
13. Designate participants for the Desert/Mountain Charter SELPA Steering/Finance Committee;

SELPA Desert/Mountain Charter SELPA

Fiscal Year 2020-21

- 14. Establish and promote a Community Advisory Committee (CAC);
- 15. Receive recommendations from the Desert/Mountain Charter SELPA Executive Council, CAC, Desert/Mountain Charter SELPA Steering/Finance Committee, LEA boards, and other interested agencies and individuals;
- 16. Decide disputes, if an, between participating LEAs that arise concerning special education related matters or related to the interpretation of the Local Plan and other agreements or policies between or among the LEAs;
- 17. Annually evaluate the Local Plan implementation and operations; and
- 18. Undertake such additional activities as permitted under the JPA Agreement and Bylaws, California law, and the Local Plan.

AB1808 requires each LEA, in developing a local plan, to cooperate with the county office of education to assure that the local plan is compatible with the local control and accountability plans adopted for the school district and the county board of education. The bill would require, commencing July 1, 2020, a special education local plan area to review its local plan at least once every three years and update as needed to ensure information contained within the plan remains relevant and accurate.

AB1808 requires the superintendent or other chief administrator of a LEA to post on the Internet Web site of the local education agency any local plan, annual budget plan, annual service plan, and annual assurances support plan upon approval of the special education local plan area, and any updates or revisions to the plans upon approval of the special education local plan area.

AB1808 requires a county superintendent of schools to post any local plan, annual budget plan, and annual assurances support plan upon approval of the county office of education, and all local plans submitted by special education local plan areas in the county, on the Internet Web site of the county office of education.

- c. The responsibilities of each LEA and COE for coordinating the administration of the local plan:

Charter LEAs, in adopting the completed Local Plan, agree to carry out the duties and responsibilities assigned within the plan, or which may be designated at a later date through agreement of the participating charter LEAs. Participating charter LEAs may also enter into additional contractual arrangements to meet the requirements of applicable federal and state law.

Each charter LEA shall ensure that children with disabilities are educated with children who are non disabled to the maximum extent appropriate. Removal of children with disabilities from the general educational environment shall occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. It is recognized, however, that some students have educational needs so unique that it is not possible to meet those needs within their charter LEA. As a result, some students will need to receive services from other LEAs within the Desert/Mountain Charter SELPA, or through additional contractual arrangements with LEAs outside of the Desert/Mountain Charter SELPA. Each charter LEA shall cooperate to the maximum extent possible

with other agencies to serve individuals with disabilities who cannot be served in the LEA of enrollment. Such cooperation ensures that a range of program options is available through the Desert/Mountain Charter SELPA.

Each charter LEA is responsible to participate in regular meetings of the Desert/Mountain Charter Executive Council, Steering/Finance Committee, CAC and CAHELP JPA Governance Council to ensure the administration of the Local Plan.

SELPA Program Specialists provide services to each of our LEAs including but not limited to:

1. Observe, consult with, and assist, in accordance with LEA procedures, special education teachers and support staff..
2. Utilize evidence-based data to plan programs, coordinate curricular resources and share in the evaluation of the effectiveness of programs for students with disabilities.
3. Assist with LEA staff development, program development and innovation of special methods and approaches.
4. Provide coordination, consultation and program development in one or more specialized areas of expertise.
5. Upon request, participate in and/or conduct IEP team meetings where technical assistance is needed.
6. Assist in mediation, due process hearings and compliance proceedings by providing expertise in knowledge of special education law and regulations as well as programs and appropriate interventions available through the Desert/mountain Charter SELPA.
7. Assist in developing training for parents and members of the Community Advisory Committee.
8. Provide professional develop learning and technical assistance for general and special education teachers, administrators, support staff and parents.
9. Assist as a liaison to various community agencies such as the San Bernardino County Department of Behavioral Health, Department of Rehabilitation, Inland Regional Center, California Children's Services, and the Probation Department.
10. Conduct nonpublic school visitations to verify students are making appropriate educational progress in accordance with the IEP.
11. Coordinate the assessment of student needs for assistive technology or specialized in the least restrictive environment.
12. Direct instructional support.

SELPA

Fiscal Year

11. Identify the respective roles of the RLA/AU, the SELPA administrator, and the individual LEAs associated with the SELPA related to:

- a. The hiring, supervision, evaluation, and discipline of the SELPA administrator and staff employed by the AU in support of the local plan:

The role of SBCOE is designated as the Responsible Local Agency (RLA) and Administrative Unit (AU) for the Desert/Mountain Charter SELPA.

A. Responsibilities of the RLA

The RLA shall be responsible for functions as specified under California Education Code 56195.1(c)(2) such as, but not limited to:

1. Receipt and distribution of regionalized services funds as approved by the CAHELP JPA Governance Council. An overall budget for all special education services and programs for the Special Education Local Plan Area shall be prepared under the direction of the CAHELP CEO. The Desert/Mountain Charter SELPA Executive Council, Steering/Finance Committee shall also provide assistance in the development of the annual income and expenditure budgets for the Desert/Mountain Charter SELPA. The budget shall be submitted to the CAHELP JPA Governance Council by the CAHELP CEO for review and approval;
2. Provision of administrative support;
3. Coordination and implementation of the Local Plan;
4. Receipt and distribution of special education funds to LEA accounts for the operation of special education programs and services according to the Special Education Funding Allocation Plan approved by the CAHELP JPA Governance Council;
5. Receipt and distribution of special education funds to accounts exclusively designated for the Desert/Mountain Charter SELPA use; and
6. The employment of staff as designated by the CAHELP JPA Governance Council to support the Desert/Mountain Charter SELPA functions.

The Desert/Mountain Charter SELPA office is designated as the entity responsible for the administration of the Local Plan and assuring that the Desert/Mountain Charter SELPA is in compliance with all applicable laws and regulations.

B. Selection, Employment, and Evaluation of the SELPA Staff

The governing boards of each of the participating LEAs agree to invest in the CAHELP JPA Governance Council with the responsibility of designating an appropriate agency as the RLA for the administration of the Local Plan and its implementation. The boards assure that the CAHELP JPA Governance Council shall indemnify the need for and designate the positions necessary for the operation of the Desert/Mountain Charter SELPA functions according to this

SELPA

Fiscal Year

Local Plan.

The CAHELP CEO shall be responsible for recommending the employment of Desert/Mountain Charter SELPA personnel to carry out those functions described in the Local Plan.

The CAHELP JPA Governance Council shall be responsible for designating the staff to support the functioning of the Desert/Mountain Charter SELPA. In reviewing and approving the Desert/Mountain Charter SELPA budgets on an annual basis, the CAHELP JPA Governance Council designates the staffing for the Desert/Mountain Charter SELPA office upon recommendation of the CAHELP CEO.

Desert/Mountain Charter SELPA staff shall be employed by the RLA and supervised by the CAHELP CEO according to the RLA's policy and practices. The CAHELP CEO shall use a selection process that is in accordance with the law and personnel policies of the RLA.

Desert/Mountain Charter SELPA employed personnel shall be subject to the administrative procedures and policies in operation with SBCOE including but not limited to, hiring, supervision, evaluation, and discipline. In addition, contract negotiations shall follow County established procedures for all applicable Desert/Mountain Charter SELPA employed personnel.

C. CAHELP CEO

The fundamental role of the CAHELP CEO is to provide leadership and facilitate decision making processes regarding the implementation of the Local Plan. The CAHELP CEO's role includes the provision of information, specific services identified by the CAHELP JPA Governance Council, technical assistance, leadership and arbitration. It is the CAHELP CEO's responsibility to represent the interest of the Desert/Mountain Charter SELPA as a whole without promoting any particular LEA's interest over the interest of any other agency. In the event there are differences of opinions and/or positions on issues, it is the CAHELP CEO's responsibility to mediate a reasonable resolution of the issue(s).

The CAHELP JPA Governance Council shall be responsible for the selection, direction, discipline and evaluation of the CAHELP CEO. The CAHELP JPA Governance Council shall be assisted in the hiring and selection process by the RLA.

The CAHELP CEO is subject to the RLA's policies and procedures for day-to-day operations. The role of SBCOE is designated as the Responsible Local Agency (RLA) and Administrative Unit (AU) for the Desert/Mountain Charter SELPA.

- b. The local method used to distribute federal and state funds to the SELPA RLA/AU and to LEAs within the SELPA:

All federal and state special education funds shall be allocated to the Desert/Mountain Charter SELPA AU for distribution to LEAs according to an approved special education funding allocation plan. Any changes to the allocation of federal and state special education funds shall

SELPA

Fiscal Year

be made by the CAHELP JPA Governance Council as permitted under the JPA Agreement and Bylaws, and California and federal law.

1. Responsibilities for Distribution of Federal and State Funds

The governing boards of the LEAs participating in the Desert/Mountain Charter SELPA have agreed that students with disabilities will be provided with appropriate special education services. The CAHELP JPA Governance Council has been designated the authority to determine the distribution of all federal and state special education funds in order for LEAs to carry out their responsibilities. The AU shall be responsible for the distribution of funds according to an approved special education funding allocation plan. The CAHELP CEO is responsible to ensure the funds are distributed in accordance with the funding allocation plan.

The Desert/Mountain Charter SELPA Executive Council and Steering/Finance Committee shall participate in the development of the Annual Budget Plan for review and approval by the CAHELP JPA Governance Council. The Annual Budget Plan shall be distributed to LEAs and the CAC upon approval by the CAHELP JPA Governance Council.

State and federal funds are deposited from the San Bernardino County Treasury into the County School Service Fund (AU), unless otherwise directed by the CAHELP JPA Governance Council. The Desert/Mountain Charter SELPA provides an annual allocation plan to SBCOE for distribution of state and federal funds to the LEAs according to the approved schedule of disbursement.

c. The operation of special education programs:

The function of the Desert/Mountain Charter SELPA and participating LEAs is to provide quality educational programs and services appropriate to the needs of each eligible student with a disability who is enrolled within the Desert/Mountain Charter SELPA. The Responsible Local Agency (RLA) Superintendent, and CEOs of the LEA Charters are responsible for the management and supervision of all special education program operations within the Desert/Mountain Charter SELPA. All such programs are to be operated in a manner consistent with the funding provision of the California Education Code, the Individuals with Disabilities Education Act (IDEA), other applicable laws, and Desert/Mountain Charter SELPA policies and procedures.

The Desert/Mountain Charter SELPA will provide technical assistance in ensuring the Charter LEAs have support necessary to fulfill their legal obligations under California Education Code, the Individuals with Disabilities Education Act (IDEA), other applicable laws, and Desert/Mountain Charter SELPA policies and procedures.

d. Monitoring the appropriate use of federal, state, and local funds allocated for special education programs:

Funds allocated for special education programs shall be used for services to students with disabilities. Federal funds under Part B of IDEA may be used for the following activities:

1. For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a student with a disability in accordance with the IEP for the child, even if one or more non disabled children benefit from these services.

2. To develop and implement a fully integrated and coordinated services system. The CAHELP CEO, with the assistance of the Desert/Mountain Charter SELPA Executive Council, Steering/Finance Committee, and the AU shall be responsible to monitor on an annual basis the appropriate use of all funds allocated for special education programs. Final determination and action regarding the appropriate use of special education funds shall be made by the CAHELP JPA Governance Council through the Annual Budget Plan process.

The Desert/Mountain Charter SELPA monitors the distribution and appropriate use of funds and shares this information with the Desert/Mountain Charter SELPA Executive Council and Steering/Finance Committee. When necessary, meetings are held with individual LEAs for the purpose of monitoring funds.

The Desert/Mountain Charter SELPA is responsible for the preparation of program and fiscal reports requested by the State.

The CAHELP CEO shall be permitted to monitor the LEAs special education program implementation to ensure compliance in all areas including finance, service delivery, and legal requirements. If the CAHELP CEO or designee determines that an LEA is not compliant and/or not operating in a fiscally responsible manner, the CAHELP CEO may require that the responsibility for resulting costs be borne by the LEA or take such other action as may be required to remedy the matter. The LEA will have the right to appeal any such determination to the CAHELP JPA Governance Council. The decision of the CAHELP JPA Governance Council shall be final.

12. Describe how specialized equipment and services will be distributed within the SELPA in a manner that minimizes the necessity to serve students in isolated sites and maximizes the opportunities to serve students in the least restrictive environments:

Both state and federal law provide that students with disabilities are entitled to a free appropriate public education (FAPE) that includes special education and related services to meet their unique needs in the least restrictive environment (LRE). Each Desert/Mountain Charter SELPA member must ensure that all children served under their jurisdiction who have disabilities, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, evaluated, and served. Therefore, a full continuum of services

SELPA

Fiscal Year

are available within the Desert/Mountain Charter SELPA.

Due to the large geographical area of the Desert/Mountain Charter SELPA, the Local Plan provides funding per the Desert/Mountain Charter SELPA Fiscal Allocation Plan to the member LEAs so they may appropriately provide for all students with special education needs attending their schools.

The CAHELP JPA Governance Council has indicated its strong preference for a decentralized structure that would keep as many children as possible appropriately served in their LEA of enrollment. It is felt that only when there is convincing evidence that a service is more economically feasible on a regional level would service be provided outside of the local LEAs. Leaving most programs with local LEAs will ensure their responsiveness to local interests and values; minimize transportation; encourage inclusion; and reduce duplication of administrative and service costs.

Policies, Procedures, and Programs

Pursuant to *EC* sections 56122 and 56205(a), the SELPA ensures conformity with Title 20 *United States Code (USC)* and in accordance with Title 34 *Code of Federal Regulations (CFR)* Section 300.201 and has in effect policies, procedures, and programs. For each of the following 23 areas, identify whether, or not each of the following provisions of law are adopted as stated. If the policy is not adopted as stated, briefly describe the SELPA's policy for the given area. In all cases, provide the SELPA policy and procedure numbers; the document title; and the physical location where the policy can be found.

1. Free Appropriate Public Education: 20 USC Section 1412(a)(1)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA that a free appropriate public education is available to all children with disabilities residing in the LEA between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school." The policy is adopted by the SELPA as stated:

Yes No

2. Full Educational Opportunity: 20 USC Section 1412(a)(2)

Policy/Procedure Number:

Section B: Governance and Administration

SELPA

Fiscal Year

Document Title:

Document Location:

“It shall be the policy of this LEA that all children with disabilities have access to educational programs, non-academic programs, and services available to non-disabled children.” The policy is adopted by the SELPA as stated:

Yes No

3. Child Find: 20 USC Section 1412(a)(3)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA that all children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, who are in need of special education and related services, are identified, located, and evaluated. A practical method has been developed and implemented to determine which children with disabilities are currently receiving needed special education and related services." The policy is adopted by the SELPA as stated:

Yes No

4. Individualized Education Program (IEP) and Individualized Family Service Plan (IFSP): 20 USC Section 1412(a)(4)

Policy/Procedure Number:

Document Title:

Document Location:

“It shall be the policy of this LEA that an IEP, or an IFSP that meets the requirements of 20 USC Section 1436 (d), is developed, implemented, reviewed, and revised for each child with a disability who requires special education and related services in accordance with 20 USC Section 1414 (d). It shall be the policy of this LEA that an IEP will be conducted on at least an annual basis to review a student’s progress and make appropriate revisions.” The policy is adopted by the SELPA as stated:

Yes No

SELPA

Fiscal Year

5. Least Restrictive Environment: USC Section 1412(a)(5)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled. Special classes, separate schooling, or other removal of children with disabilities from the general educational environment, occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." The policy is adopted by the SELPA as stated:

Yes No

6. Procedural Safeguards: 20 USC Section 1412(a)(6)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA that children with disabilities and their parents shall be afforded all procedural safeguards according to state and federal laws and regulations." The policy is adopted by the SELPA as stated:

Yes No

7. Evaluation: 20 USC Section 1412(a)(7)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA that a reassessment of a child with a disability shall be conducted at least once every three years or more frequently, if appropriate." The policy is adopted by the SELPA as stated:

Section B: Governance and Administration

SELPA

Fiscal Year

Yes No

8. Confidentiality: 20 USC Section 1412(a)(8)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA that the confidentiality of personally identifiable data, information, and records maintained by the LEA relating to children with disabilities and their parents and families shall be protected pursuant to the Family Educational Rights and Privacy Act, non-academic programs, and services available to non-disabled children." The policy is adopted by the SELPA as stated:

Yes No

9. Part C to Part B Transition: 20 USC Section 1412(a)(9)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA that children participating in early intervention programs under the Individuals with Disabilities Education Act (IDEA), Part C, and who will participate in preschool programs, experience a smooth and effective transition to preschool programs in a manner consistent with 20 USC Section 1437(a)(9). The transition process shall begin prior to the child's third birthday."The policy is adopted by the SELPA as stated:

Yes No

10. Private Schools: 20 USC Section 1412(a)(10)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA to assure that children with disabilities voluntarily enrolled by their parents in private schools shall receive appropriate special education and related services pursuant to

Section B: Governance and Administration

SELPA

Fiscal Year

LEA coordinated procedures. The proportionate amount of federal funds will be allocated for the purpose of providing special education services to children with disabilities voluntarily enrolled in private school by their parents." The policy is adopted by the SELPA as stated:

Yes No

If "NO," provide a brief description of the SELPA's policy related to the provision of law:

11. Local Compliance Assurances: 20 USC Section 1412(a)(11)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA that the local plan shall be adopted by the appropriate local board(s) (district/county) and is the basis for the operation and administration of special education programs, and that the agency(ies) herein represented will meet all applicable requirements of state and federal laws and regulations, including compliance with the IDEA; the Federal Rehabilitation Act of 1973, Section 504 of Public Law; and the provisions of the California EC, Part 30." The policy is adopted by the SELPA as stated:

Yes No

12. Interagency: 20 USC Section 1412(a)(12)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA that interagency agreements or other mechanisms for interagency coordination are in effect to ensure services required for free appropriate public education are provided, including the continuation of services during an interagency dispute resolution process." The policy is adopted by the SELPA as stated:

Yes No

13. Governance: 20 USC Section 1412(a)(13)

Section B: Governance and Administration

SELPA

Fiscal Year

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA to support and comply with the provisions of the governance bodies and any necessary administrative support to implement the local plan. A final determination that an LEA is not eligible for assistance under this part will not be made without first affording that LEA with reasonable notice and an opportunity for a hearing through the State Education Agency." The policy is adopted by the SELPA as stated:

Yes No

14. Personnel Qualifications

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA to ensure that personnel providing special education related services are appropriately and adequately prepared and trained, and that those personnel have the content knowledge and skills to serve children with disabilities. This policy shall not be construed to create a right of action on behalf of an individual student for the failure of a particular LEA staff person to be highly qualified or to prevent a parent from filing a State complaint with the California Department of Education (CDE) about staff qualifications." The policy is adopted by the SELPA as stated:

Yes No

15. Performance Goals and Indicators: 20 USC Section 1412(a)(15)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA to comply with the requirements of the performance goals and indicators developed by the CDE and provide data as required by the CDE." The policy is adopted by the SELPA as stated:

Yes No

Section B: Governance and Administration

SELPA

Fiscal Year

16. Participation in Assessments: 20 USC Section 1412(a)(16)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA that all students with disabilities shall participate in state and district-wide assessment programs described in 20 USC Subsection 6311. The IEP team determines how a student will access assessments with or without accommodations, or access alternate assessments where necessary and as indicated in their respective Reps.." The policy is adopted by the SELPA as stated:

Yes No

17. Supplementation of State, Local, and Federal Funds: 20 USC Section 1412(a)(17)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA to provide assurances that funds received from Part B of the IDEA will be expended in accordance with the applicable provisions of the IDEA, and will be used to supplement and not to supplant state, local, and other federal funds." The policy is adopted by the SELPA as stated:

Yes No

18. Maintenance of Effort: 20 USC Section 1412(a)(18)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA that federal funds will not be used to reduce the level of local funds and/or combined level of local and state funds expended for the education of children with disabilities except as provided in federal laws and regulations." The policy is adopted by the SELPA as stated:

Yes No

Section B: Governance and Administration

SELPA

Fiscal Year

19. Public Participation: 20 USC Section 1412(a)(19)

Policy/Procedure Number:

Policy/Procedure Title:

Document Location:

"It shall be the policy of this LEA that public hearings, adequate notice of the hearings, and an opportunity for comments are available to the general public, including individuals with disabilities and parents of children with disabilities, and are held prior to the adoption of any policies and/or regulations needed to comply with Part B of the IDEA." The policy is adopted by the SELPA as stated:

Yes No

20. Suspension and Expulsion: 20 USC Section 1412(a)(22)

Policy/Procedure Number:

Document Title:

Document Location:

"The LEA assures that data on suspension and expulsion rates will be provided in a manner prescribed by the CDE. When indicated by data analysis, the LEA further assures that policies, procedures, and practices related to the development and implementation of the IEPs will be revised." The policy is adopted by the SELPA as stated:

Yes No

21. Access to Instructional Materials: 20 USC Section 1412(a)(23)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA to provide instructional materials to blind students or other students with print disabilities in a timely manner according to the state-adopted National Instructional Materials Accessibility Standard." The policy is adopted by the SELPA as stated:

Yes No

SELPA

Fiscal Year

22. Over-identification and Disproportionality: 20 USC Section 1412(a)(24)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of children as children with disabilities." The policy is adopted by the SELPA as stated:

Yes No

23. Prohibition on Mandatory Medicine: 20 USC Section 1412(a)(25)

Policy/Procedure Number:

Document Title:

Document Location:

"It shall be the policy of this LEA to prohibit school personnel from requiring a student to obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school or receiving a special education assessment and/or services." The policy is adopted by the SELPA as stated:

Yes No

Administration of Regionalized Operations and Services

Pursuant to *EC* sections 56195.7(c), 56205(a)(12)(B), 56368, and 56836.23, describe the regionalized operation and service functions. Descriptions must include an explanation of the direct instructional support provided by program specialists; and the respective roles of the RLA/AU, the SELPA administrator, and the individual LEAs associated with the SELPA. Information provided should include the reference number, document title, and the location (e.g., SELPA office) for each function:

1. Coordination of the SELPA and the implementation of the local plan:

Reference Number:

Document Title:

Section B: Governance and Administration

SELPA

Fiscal Year

Document Location:

Description:

2. Coordinated system of identification and assessment:

Reference Number:

Document Title:

Document Location:

Description:

3. Coordinated system of procedural safeguards:

Reference Number:

Document Title:

Document Location:

Description:

4. Coordinated system of staff development and parent and guardian education:

Reference Number:

Document Title:

Document Location:

Description:

5. Coordinated system of curriculum development and alignment with the core curriculum:

Reference Number:

Document Title:

Document Location:

Description:

Section B: Governance and Administration

SELPA

Fiscal Year

6. Coordinated system internal program review, evaluation of the effectiveness of the local plan, and implementation of the local plan accountability system:

Reference Number:

Document Title:

Document Location:

Description:

7. Coordinated system of data collection and management:

Reference Number:

Document Title:

Document Location:

Description:

8. Coordination of interagency agreements:

Reference Number:

Document Title:

Document Location:

Description:

9. Coordination of services to medical facilities:

Reference Number:

Document Title:

Document Location:

Description:

10. Coordination of services to licensed children's institutions and foster family homes:

Section B: Governance and Administration

SELPA

Fiscal Year

Reference Number:
Document Title:
Document Location:
Description:

11. Preparation and transmission of required special education local plan area reports:

Reference Number:
Document Title:
Document Location:
Description:

12. Fiscal and logistical support of the CAC:

Reference Number:
Document Title:
Document Location:
Description:

13. Coordination of transportation services for individuals with exceptional needs:

Reference Number:
Document Title:
Document Location:
Description:

14. Coordination of career and vocational education and transition services:

Reference Number:
Document Title:

Section B: Governance and Administration

SELPA

Fiscal Year

Document Location:

Description:

15. Assurance of full educational opportunity:

Reference Number:

Document Title:

Document Location:

Description:

16. Fiscal administration and the allocation of state and federal funds pursuant to *EC* Section 56836.01—The SELPA Administrator's responsibility for the fiscal administration of the annual budget plan; the allocation of state and federal funds; and the reporting and accounting of special education funding.

Reference Number:

Document Title:

Document Location:

Description:

17. Direct instructional program support that maybe provided by program specialists in accordance with *EC* Section 56368:

Reference Number:

Document Title:

Document Location:

Description:

Special Education Local Plan Area Services

1. A description of programs for early childhood special education from birth through five years of age:

Reference Number:

Section B: Governance and Administration

SELPA

Fiscal Year

Document Title:

Document Location:

Description:

2. A description of the method by which members of the public, including parents or guardians of individuals with exceptional needs who are receiving services under the local plan, may address questions or concerns to the SELPA governing body or individual administrator:

Reference Number:

Document Title:

Document Location:

Description:

3. A description of a dispute resolution process, including mediation and final and binding arbitration to resolve disputes over the distribution of funding, the responsibility for service provision, and the other governance activities specified within the local plan:

Reference Number:

Document Title:

Document Location:

Description:

4. A description of the process being used to ensure a student is referred for special education instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized:

Reference Number:

Document Title:

Document Location:

Description:

5. A description of the process being used to oversee and evaluate placements in nonpublic,

Section B: Governance and Administration

SELPA

Fiscal Year

nonsectarian schools and the method of ensuring that all requirements of each student's individualized education program are being met. The description shall include a method for evaluating whether the student is making appropriate educational progress:

Reference Number:	<input type="text" value="N/A"/>
Document Title:	<input type="text" value="Chapter 13"/>
Document Location:	<input type="text" value="Charter SELPA Office/Website"/>
Description:	<input type="text" value="Policies and Procedures"/>

6. A description of the process by which the SELPA will fulfill the obligations to provide free and appropriate public education (FAPE) to a student age 18 to 21 (or age 22 under the circumstances described in *EC 56026(c)(4)*) who has been incarcerated in a county jail and remains eligible for special education services:

The obligation to make FAPE available extends to those otherwise-eligible adults in county jail, age 18 to 21, who: (a) had been identified as a child with a disability and had received services in accordance with an IEP, but left school prior to their incarceration; or (b) did not have an IEP in their last educational setting, but had actually been identified as a child with a disability. (*EC Section 56040*)

It is the responsibility of the district of residence (DOR) to provide special education services and related services to an adult student in county jail who remains eligible for these services and wishes to receive them. The DOR is the district in which the student's parents resided when the student turned 18, unless and until the parents move to a new DOR. For conserved students, the DOR is based on the residence of the conservator. (*EC Section 56041*)

Reference Number:	<input type="text" value="N/A"/>
Document Title:	<input type="text" value="Chapter 6"/>
Document Location:	<input type="text" value="Charter SELPA Office/Website"/>
Description:	<input type="text" value="Policies and Procedures"/>



8560 Alianto Road
Lucerne Valley, CA 92356

July 10, 2020

Desert Mountain SELPA
17800 Highway 18
Apple Valley, CA 92307

To Whom it May Concern:

We are requesting a transfer of the SELPA for Elite Academic Academy – Adult Work Force Investment from Elite Academic Academy to our organization. On March 12, 2020, the Lucerne Valley Unified School District approved the update to the Elite Academic Academy – Adult Work Force Investment to expand its grade bands serviced to now be K-12.

The Elite Academic Academy – Adult Work Force is now its own independent charter that will serve grades K-12 and has its own Head of School, teachers, and support team. The school is currently going under a name change to operate as Virtual Preparator Academy @ Lucerne. All of the necessary paperwork has been filed and we are currently awaiting the approval of such change.

The transfer of SELPA will allow the team to streamline the process of setting up a SELPA as one already exists. Furthermore, it will allow access to the trainings and support provided by Desert Mountain SELPA to our special education team.

We appreciate your consideration and time.

Should you have any questions or need additional information, please feel free to reach out to us.

Sincerely,

Emergency Circumstances Consideration

The IEP team must consider how the student’s individual needs might impact the provision of services in emergency circumstances. In the event that instruction or services, or both, cannot be provided either at the school or in person for more than 10 school days due to a qualifying state of emergency (caused by fire, flood, impassable roads, epidemic, earthquake, imminent major safety hazard as determined by local law enforcement, a transportation services strike by non-school entity, or other official order issued to meet a state of emergency or war), the IEP will be provided by alternate means, depending on emergency conditions and relevant public health orders/directives: CA Ed Code (Ed. Code § 56345(a)(9)). The IEP team should determine how the student’s services could be provided in the event of emergency circumstances.

MEANS OF DELIVERY: FOR EACH CATEGORY, MARK ALL THAT COULD APPLY FOR THE STUDENT WITHIN EMERGENCY CIRCUMSTANCES.

Special Education and Related Services:

- | | | |
|---|--|--|
| <input type="checkbox"/> Teacher-posted lessons, asynchronous (online or other media) | <input type="checkbox"/> Virtual class meetings, synchronous | <input type="checkbox"/> Personalized learning tools (virtual or paper packets as available) |
| <input type="checkbox"/> Virtual office hours (drop-in; parent or student) | <input type="checkbox"/> Scheduled email check-ins (parent or student) | <input type="checkbox"/> Scheduled teacher appointments (virtual or in-person as allowable) |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Comments/exceptions/recommendations: _____ | |

Supplementary Aids and Services: Not Applicable

- | | | |
|---|--|--|
| <input type="checkbox"/> Teacher-posted lessons, asynchronous (online or other media) | <input type="checkbox"/> Virtual class meetings, synchronous | <input type="checkbox"/> Personalized learning tools (virtual or paper packets as available) |
| <input type="checkbox"/> Virtual office hours (drop-in; parent or student) | <input type="checkbox"/> Scheduled email check-ins (parent or student) | <input type="checkbox"/> Scheduled teacher appointments (virtual or in-person as allowable) |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Comments/exceptions/recommendations: _____ | |

Transition Services: Not Applicable

- | | | |
|---|--|--|
| <input type="checkbox"/> Teacher-posted lessons, asynchronous (online or other media) | <input type="checkbox"/> Virtual class meetings, synchronous | <input type="checkbox"/> Personalized learning tools (virtual or paper packets as available) |
| <input type="checkbox"/> Virtual office hours (drop-in; parent or student) | <input type="checkbox"/> Scheduled email check-ins (parent or student) | <input type="checkbox"/> Scheduled teacher appointments (virtual or in-person as allowable) |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Comments/exceptions/recommendations: _____ | |

Extended Year Services: Not Applicable

- | | | |
|---|--|--|
| <input type="checkbox"/> Teacher-posted lessons, asynchronous (online or other media) | <input type="checkbox"/> Virtual class meetings, synchronous | <input type="checkbox"/> Personalized learning tools (virtual or paper packets as available) |
| <input type="checkbox"/> Virtual office hours (drop-in; parent or student) | <input type="checkbox"/> Scheduled email check-ins (parent or student) | <input type="checkbox"/> Scheduled teacher appointments (virtual or in-person as allowable) |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Comments/exceptions/recommendations: _____ | |

Other Services: Not Applicable

- | | | |
|---|--|--|
| <input type="checkbox"/> Teacher-posted lessons, asynchronous (online or other media) | <input type="checkbox"/> Virtual class meetings, synchronous | <input type="checkbox"/> Personalized learning tools (virtual or paper packets as available) |
| <input type="checkbox"/> Virtual office hours (drop-in; parent or student) | <input type="checkbox"/> Scheduled email check-ins (parent or student) | <input type="checkbox"/> Scheduled teacher appointments (virtual or in-person as allowable) |
| <input type="checkbox"/> Comments/exceptions/recommendations: _____ | | |

Behavior Intervention Services: Not Applicable

- | | | |
|---|--|--|
| <input type="checkbox"/> Teacher-posted lessons, asynchronous (online or other media) | <input type="checkbox"/> Virtual class meetings, synchronous | <input type="checkbox"/> Personalized learning tools (virtual or paper packets as available) |
| <input type="checkbox"/> Virtual office hours (drop-in; parent or student) | <input type="checkbox"/> Scheduled email check-ins (parent or student) | <input type="checkbox"/> Scheduled teacher appointments (virtual or in-person as allowable) |
| <input type="checkbox"/> Comments/exceptions/recommendations: _____ | | |

How will the LEA provide behavior supports?

Following the determination that instruction or services, or both, cannot be provided either at the school or in person for more than 10 days due to a qualifying state of emergency, the parent(s)/guardian(s)/adult student will be notified as soon as practicable through an Individualized Emergency Services Plan of the specific alternate means by which the student's IEP will be provided in light of the emergency conditions present at that time. Public health orders shall be considered in determining how services can be provided. Emergency service options will not be implemented if they are inconsistent with a public health order or directive, are inconsistent with the school’s emergency preparedness procedures, and/or would interfere with the health and safety of students or staff during emergency conditions.

This Individualized Emergency Services Plan does not constitute a change to the District’s offer of FAPE. Because the nature of an emergency cannot be known in advance, the specific means by which the IEP will be provided under emergency conditions will be determined at the time, in light of the emergency conditions. The IEP will be provided by alternative means as necessary during the period of emergency conditions only.

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

MINUTES

COUNCIL MEMBERS PRESENT:

Allegiance STEAM Academy – Sebastian Cогnetta, Ballington Academy – Doreen Mulz (via Web Ex), Desert Trails Preparatory Academy (DTPA) & La Verne Elementary Preparatory Academy (LEPA) – Tiffany Sutton, Julia Lee Performing Arts Academy – Tanya Taylor.

CAHELP STAFF PRESENT:

Jamie Adkins, Peggy Dunn, Kami Murphy, Kathleen Peters, Daria Raines, Guille Robles.

1.0 TELECONFERENCE LOCATIONS

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

2.0 CALL TO ORDER

The regular meeting of the Desert/Mountain Charter SELPA Executive Council Meeting was called to order by Program Manager Kami Murphy, at 10:05 a.m., at the Desert/Mountain Educational Service Center, Apple Valley.

3.0 ROLL CALL

4.0 PUBLIC PARTICIPATION

None.

5.0 ADOPTION OF THE AGENDA

5.1 **BE IT RESOLVED** that a motion was made by Sebastian Cогnetta, seconded by Tanya Taylor, to approve the January 16, 2020 Desert/Mountain Charter SELPA Executive Council Meeting Agenda as presented. A vote was taken and the following carried: 4:0: Ayes: Members Cогnetta, Mulz, Sutton, Taylor. Nays: None. Abstentions: None.

6.0 INFORMATION/ACTION

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

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

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

MINUTES

- 6.1.1 **BE IT RESOLVED** that a motion was made by Tanya Taylor, seconded by Doreen Mulz, to approve the Desert/Mountain Charter SELPA Form D/M 154 SLD as presented. A vote was taken and the following carried: 4:0: Ayes: Members Cognetta, Mulz, Sutton, Taylor. Nays: None. Abstentions: None.
- 6.2 Desert/Mountain SELPA and Desert/Mountain Charter SELPA Compliance Monitoring Guide Final Draft (**ACTION**)
- The Desert/Mountain SELPA and Desert/Mountain Charter SELPA Compliance Manual has been developed to assist LEAs within the Desert/Mountain Charter SELPA. The manual will be reviewed and revised throughout the year upon the recommendation of the California Department of Education (CDE). The manual will be modified as necessary in order to support the operations of special education programs in an efficient, effective and legally compliant manner. Suggested revisions to the Desert/Mountain SELPA and Desert/Mountain Charter SELPA Compliance Manual are submitted to the D/M Charter SELPA Steering Committee for consideration and approval.
- Peggy Dunn confirmed that the document will be updated regularly as legislation is approved and changes are presented by CDE. She added that changes will be noted to provide clarity in what changes occurred.
- 6.2.1 **BE IT RESOLVED** that a motion was made by Tanya Taylor, seconded by Doreen Mulz, to approve the Desert/Mountain SELPA and Desert/Mountain Charter SELPA Compliance Monitoring Guide Final Draft as presented. A vote was taken and the following carried: 4:0: Ayes: Members Cognetta, Mulz, Sutton, Taylor. Nays: None. Abstentions: None.
- 6.3 Revised CAHELP Strategic Plan for Web Accessibility (**ACTION**)
- The CAHELP Strategic Plan for Web Accessibility ensures the CAHELP JPA websites have accessible content. The strategic plan is occasionally updated to reflect changes in the Web Content Accessibility Guidelines (WCAG).
- 6.3.1 **BE IT RESOLVED** that a motion was made by Sebastian Cognetta, seconded by Tanya Taylor, to approve the Revised CAHELP Strategic Plan for Web Accessibility as presented. A vote was taken and the following carried: 4:0: Ayes: Members Cognetta, Mulz, Sutton, Taylor. Nays: None. Abstentions: None.
- 6.4 IEP Addendum to Add Desert/Mountain Children’s Center Children’s Intensive Services (CIS) (**ACTION**)
- Desert/Mountain Children’s Center (DMCC) Director seeks approval for an addendum to be used to add Children’s Intensive Services (CIS) services to a child’s IEP.

MINUTES

- 6.4.1 **BE IT RESOLVED** that a motion was made by Tanya Taylor, seconded by Sebastian Cognetta, to approve that an addendum can be used to add Desert/Mountain Children’s Center Children’s Intensive Services (CIS) to a child’s IEP as presented. A vote was taken and the following carried: 4:0: Ayes: Members Cognetta, Mulz, Sutton, Taylor. Nays: None. Abstentions: None.

7.0 CONSENT ITEMS

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

- 7.1 **BE IT RESOLVED** that a motion was made by Tanya Taylor, seconded by Doreen Mulz, that the following Consent Items be approved as presented. A vote was taken and the following carried: 4:0: Ayes: Members Cognetta, Mulz, Sutton, Taylor. Nays: None. Abstentions: None.

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

8.0 CHIEF EXECUTIVE OFFICER AND STAFF REPORTS

8.1 Legislative Updates

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

The following are changes to laws that took effect January 1, 2020:

- Assembly Bill (AB) 1172 amends several sections of Education Code pertaining to nonpublic, nonsectarian schools (NPS) and agencies. The law requires that LEAs that send students to NPSs conduct onsite monitoring visits; requires that NPSs notify the CDE of any student-involved incident in which law enforcement is contacted; gives CDE latitude to immediately suspend or revoke the certification of the NPS if during the course of a CDE investigation there are findings that student health or safety has been compromised at a NPS; requires that an NPS serving students with significant behavioral concerns needs to have a person onsite who is qualified to implement behavior interventions; requires that administrators of NPS/As hold or be working toward specified credentials or licenses; and requires that NPSs train specified staff in evidence-based practices and interventions specific to students’ unique behavioral needs. Further, the new law requires NPSs to submit documentation as a part of their application for certification by the CDE that the NPS will train staff who will have contact or interaction with students during the school day in the use of specified evidence-based practices and

MINUTES

interventions specific to the unique behavioral needs of the students it serves and require LEAs to verify compliance with this requirement,

- AB 605 adds Section 56040.3 to the Education Code pertaining to the use of assistive technology devices. The new law makes LEAs, including charter schools, responsible for providing a student with disabilities who requires the use of an assistive technology device with continued access to that device, or to a comparable device, when the student, because of enrollment in another LEA, ceases to be enrolled in that LEA. This responsibility is in force until alternative arrangements for providing the student with continuous access to the assistive technology device, or to a comparable device, can be made or until two months have elapsed from the date that the student ceased to be enrolled in that LEA, whichever occurs first,
- AB 947 adds Education Code sections 56353 and 56354 to law. The new law authorizes school districts, county offices of education (COEs), and charter schools to consider elements of the expanded core curriculum, as defined, when developing individualized education programs (IEPs) for students who are blind, have low vision, or are visually impaired. If an orientation and mobility evaluation is needed for a student who is blind, has low vision, or is visually impaired, the new law would require that these evaluations be conducted by appropriately certified specialist and occur in familiar and unfamiliar environments, in varying lighting conditions, and in the home, school, and community, as appropriate to ensure that students receive necessary related services.

The following are statutory changes having implications for students with disabilities:

- AB 34 amends the Penal Code by adding qualified autism service providers, qualified autism services professionals, and qualified autism service paraprofessionals, as defined, to the list of individuals who are mandated reporters of child abuse or neglect,
- AB 413 amends both Education Code and Penal Code by deleting references to “at-risk” and replacing the term with “at-promise”.
- AB 988 amends the Education Code by authorizing the Commission on Teacher Credentialing to allow applicants for an education specialist credential to demonstrate their area of concentration based on two years of experience in California, while the candidates hold the preliminary credential,
- AB 1354 amends the Education Code by requiring a COE, as part of the joint transition planning policy, to assign transition oversight responsibilities to existing COE personnel who will work with the county probation department, as needed, and relevant LEAs to ensure that specified transition activities are completed for a student and to facilitate the transfer of complete and accurate education records and a student’s IEP when a student enters the juvenile court school. In addition, AB 1354 would require a student detained more than 20 consecutive schooldays to have an IEP to be developed by the COE in collaboration with the county probation department, as needed, and to have specified items accessible to the holder of the educational rights of the student on the student’s release. AB 1354 also requires the COE, in collaboration, as needed, with the county probation department, to establish procedures for the timely, accurate, complete, and confidential transfer of educational records, as specified,

California Association of Health and Education Linked Professions
Joint Powers Authority (CAHELP JPA)
DESERT/MOUNTAIN CHARTER SELPA EXECUTIVE COUNCIL MEETING

January 16, 2020 – 10:00 a.m.

Desert Mountain Educational Service Center, 17800 Highway 18, Apple Valley CA 92307

MINUTES

- Senate Bill (SB) 223 amends Education Code by authorizing the governing board of a school district, a county board of education, or the governing body of a charter school maintaining kindergarten or any of grades one to twelve, inclusive, to adopt, at a regularly scheduled meeting of the governing board or body, a policy that allows a parent or guardian of a student to possess and administer medicinal cannabis at a school site to the student who is a qualified patient entitled to the protections of the Compassionate Use Act of 1996, excluding cannabis in a smokeable or vapeable form,
- SB 419 amends Education Code by extending the permanent prohibition against suspending students enrolled in kindergarten through grade three for disruption of willful defiance to include students in grades four and five. This prohibition is also being expanded to include students in grades six through eight, until July 1, 2025. The new law also applies these prohibitions to charters schools. Please note that this law will go into effect July 1, 2020.

Kami clarified that Assembly Bill (AB) 5 is specifically related to independent contract employees that are to be considered employees of the organization that is contracting them. Kami continued this entitles the independent contractor to the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. Kami said there is concern that this bill may apply to speech language pathologists, occupational therapists, and others.

8.2 Charter SELPA Local Plan Rewrite

Kami Murphy presented the timeline for the Desert/Mountain Charter SELPA Local Plan rewrite and the public hearings to support community input to the plan. She pointed out the February and March Steering meetings will offer a work group immediately following the Steering meetings with the D/M Charter SELPA workgroup beginning at 2:30 p.m. The workgroup will be a structured meeting to review the plan and policies supporting the D/M Charter SELPA local plan. Kami also said at the April 2020 Steering meeting, there will be a vote on accepting the draft to be presented to the CAHELP JPA Governance Council for their approval.

Kathleen Peters asked if the Community Advisory Committee (CAC) is required to do two readings of the local plan rewrite. She understood CAC was required to do one reading as they are an advisory committee but the log for tracking attached to the timeline reflects a second read completed.

Kami replied the information will be confirmed with Jenae Holtz and reported back to the CAC members.

MINUTES

8.3 Professional Learning Summary

Kami Murphy presented the D/M Charter SELPA Professional Learning Summary. Kami also presented the I-MTSS Symposium. The symposium is scheduled for February 26, 2020 with speakers Dave Pelzer and Kristin Souers. Kami said the cost is \$200 per person which includes continental breakfast, lunch and a book from one of the speakers. She said the symposium will be held at the National Orange Show Events Center in San Bernardino.

8.4 Resolution Support Services Summary

Kathleen Peters presented the D/M Charter SELPA Resolution Support Services Summary. She said in recent due process filings she is seeing a bigger focus on the language around student goals. Kathleen said goals should be meaningful, rigorous, and measurable. She said there are current filings that are solely based on goals. Kathleen stated D/M SELPA does offer training in Present Level of Performance (PLOPS) and Goals as well as Transition Goals. Kathleen suggested the LEAs require their special education staff attend those trainings.

8.5 Charter School Attendance Concerns

Kathleen Peters presented information regarding charter school attendance concerns. She said an LEA asked how to determine if a child in special education's disability is impeding their progress while attending independent study with online instruction. Kathleen said a student on independent study is expected to fulfill their contract whether they are in special education or not. She continued that if a student has been designated as being in special education is not fulfilling the terms of the contract, it is the responsibility of the LEA to determine if there is a connection to the disability. Kathleen discussed strategies of evaluating the student and the offer of a free appropriate public education (FAPE) including: offering to assess the student, visiting the student's home by sending a teacher, administrator, or other employee in to the home to observe the parent and student, offering a Functional Behavior Analysis (FBA) that includes a home visit as part of the assessment, modifying the offer of FAPE to provide support for the parent, increasing the amount of Specialized Academic Instruction (SAI) or other related services, providing some sort of accommodation to ensure the student participates in SAI. Kathleen said that what is happening in a child's home is out of the LEAs control but it still must be acted upon by the IEP team. She concluded that it is important for charter LEAs to have a collaboration with traditional districts to be able to place students for a FAPE.

8.6 Prevention and Intervention Update

Kami Murphy presented a Prevention and Intervention update. She stated the D/M SELPA team previously called Positive Behavioral Interventions and Supports (PBIS) is now Prevention and Intervention. Kami reported Susan Barrett will be presenting PBIS and Mental Health: Implementation and Integration across the Tiers on February 19, 2020 at Apple Valley Unified

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

MINUTES

School District office. Kami encouraged the LEAs to send school teams to this training as Susan will be training around the school site multi-tiered systems. There is no cost to attend this training.

8.7 Compliance Updates

Peggy Dunn presented the following updates on compliance items from the California Department of Education (CDE):

- Performance Indicator Review (PIR) – receiving notifications from CDE slowly. LEAs that are approved to date are: Aveson Global Leadership Academy, Aveson School of Leaders, Ballington Academy for the Arts & Sciences, Desert Trails Preparatory, Encore High School-Riverside, Encore Jr/Sr High School, Odyssey Charter School, and Taylion High Desert Academy,
- 2017-18 Disproportionality Follow Up – LEAS approved to date are: Aveson School of Leaders, Desert Trails Preparatory, Encore High School-Riverside, and Odyssey Charter School,
- 2018-19 Disproportionality – No information received from CDE at this time,
- 2019-20 Targeted Review – the SELPA preview has been received. The process will use 2018-19 data. The LEAs involved are: Aveson Global Leadership Academy, Aveson School of Leaders, Elite Academic Academy-AWFI, Elite Academic Academy – Lucerne, Encore High School – Riverside, Encore Jr/Sr High, Julia Lee Performing Arts Academy, LaVerne Elementary Preparatory Academy, Odyssey Charter – South, Pasadena Rosebud Academy, Pathways to College, Desert Trails Preparatory, and Taylion High Desert Academy. Peggy is working with CDE to get clarification on some questions. The mega letter will be sent by the CDE.

Colette Garland reported on CASEMIS to CALPADS. She stated the first section has been completed along with LEA approvals. Colette shared that D/M Charter SELPA has less than 30 errors in total. She said the LEA certifications are due the week of January 24, 2020. Colette asked for the LEA CALPADS coordinators to add her and Terri Nelson as backups for CALPADS submissions and concluded that she will email an official request.

9.0 FINANCE COMMITTEE REPORTS

9.1 Low Incidence Fund Status

Kami Murphy presented the status of the Low Incidence Fund. She stated prior approval by Jenae Holtz is required. Kami also stated it is important for there to be a clear goal in a child's IEP to reflect how the equipment assists the student educationally.

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

MINUTES

10.0 INFORMATION ITEMS

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

None.

12.0 CEO COMMENTS

Kami Murphy thanked the meeting participants for their grace while she chaired the meeting in Jenae Holtz's absence.

13.0 MATTERS BROUGHT BY CITIZENS

None.

14.0 ADJOURNMENT

Having no further business to discuss, a motion was made by Tanya Taylor, seconded by Sebastian Cогnetta, to adjourn the meeting. A vote was taken and the following carried: 4:0: Ayes: Members Cогnetta, Mulz, Sutton, Taylor. Nays: None. Abstentions: None.

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

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



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: 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. 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: Current law 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 bill 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

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.

October 2020
Number 70



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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

October 2020
Number 70

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](#).

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 intervention⁶ 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/memosdcitrs/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**

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WestEd 



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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.

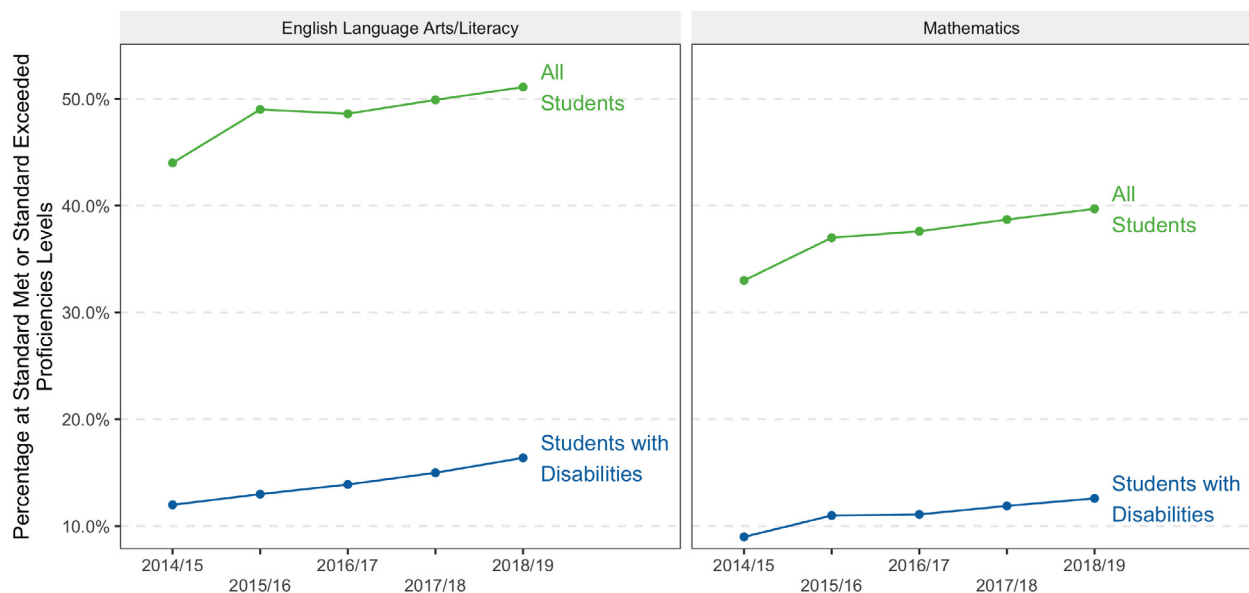
California's Students With Disabilities

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

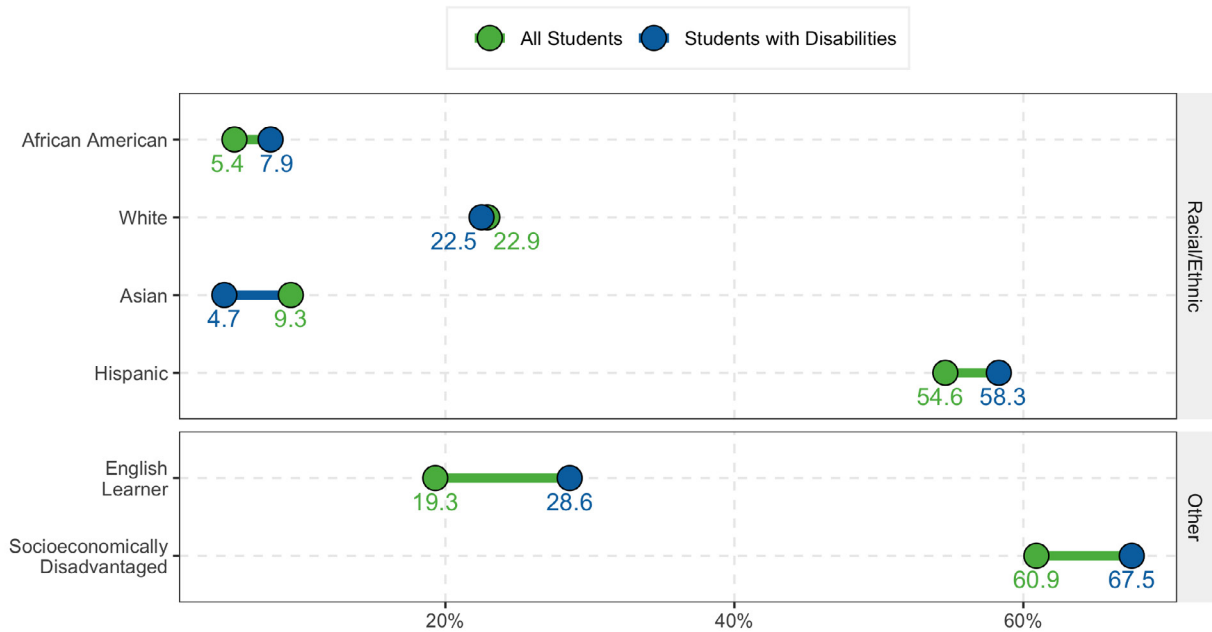


Note. Data from U.S. Department of Education (n.d.); U.S. Office of Special Education Programs (n.d.)

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

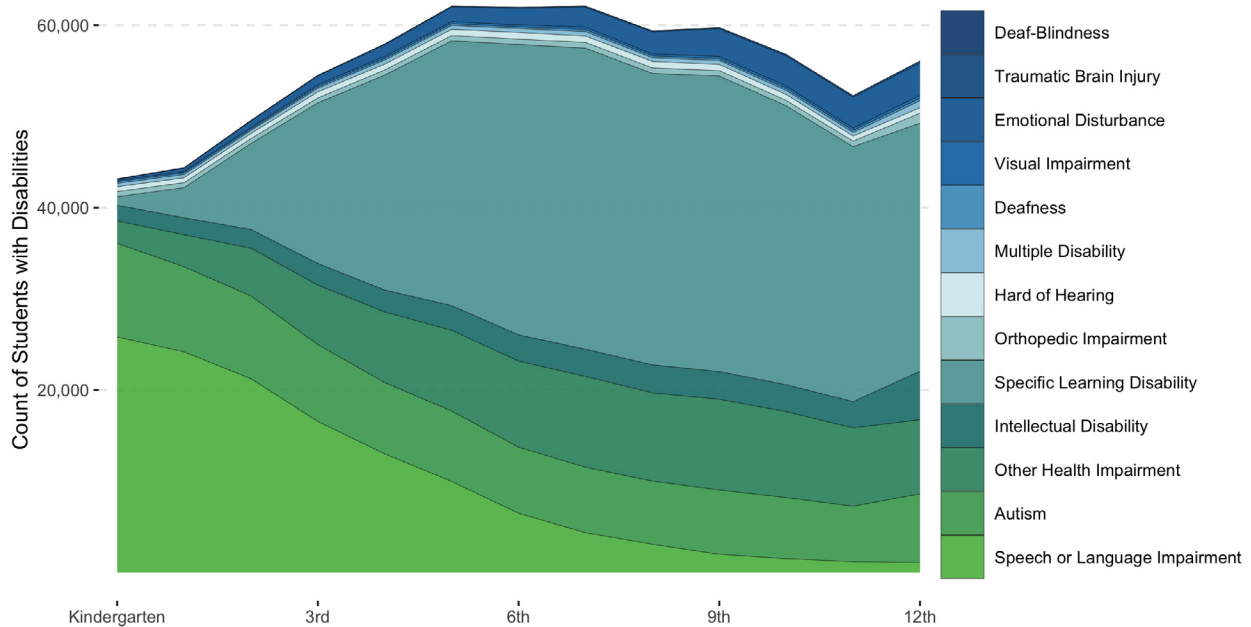


Note. Data from DataQuest Enrollment Data, 2018/19 (CDE, n.d.).

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

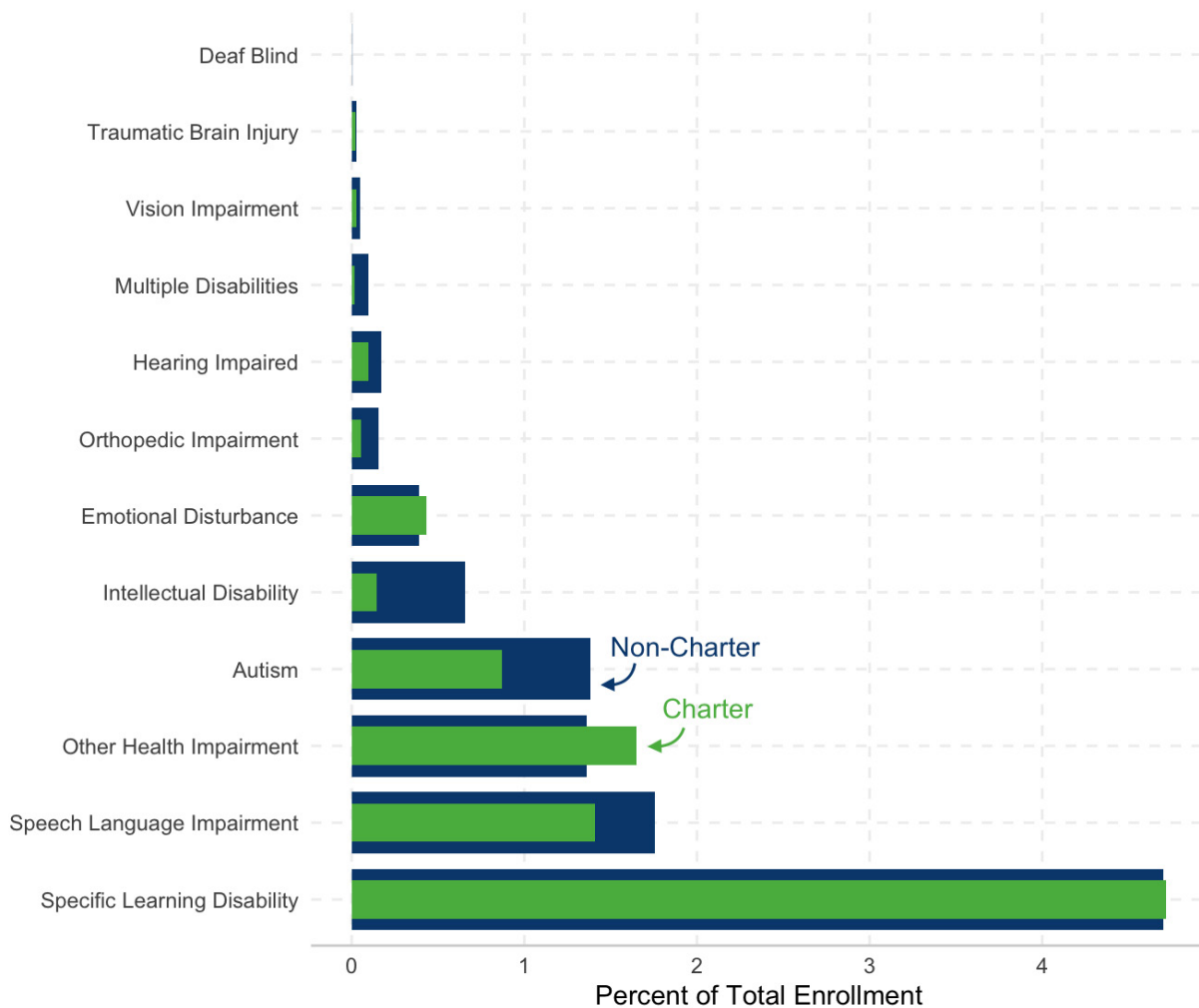


Note. Data from DataQuest 2018/19 Special education enrollment by age and disability statewide report (CDE, 2020a).

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



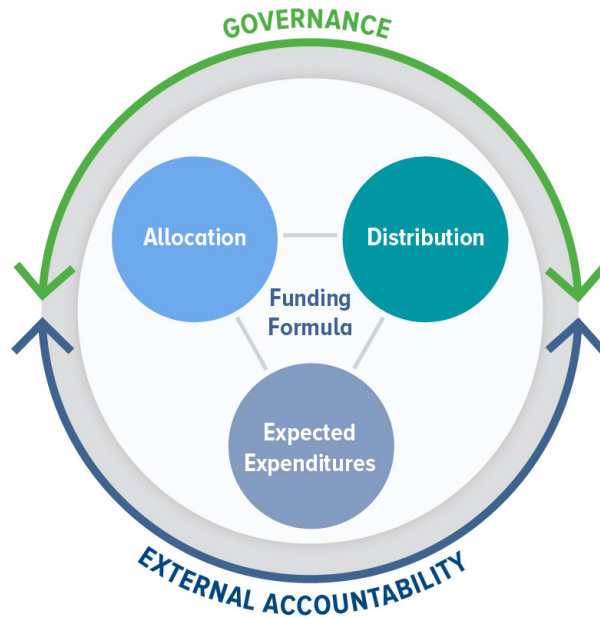
Note. Data from DataQuest 2018/19 Special education enrollment by age and disability statewide report (CDE, 2020a). Non-charter LEAs include charter schools that are schools of the LEA for purposes of special education. See appendix F of main report for details on this distinction.

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

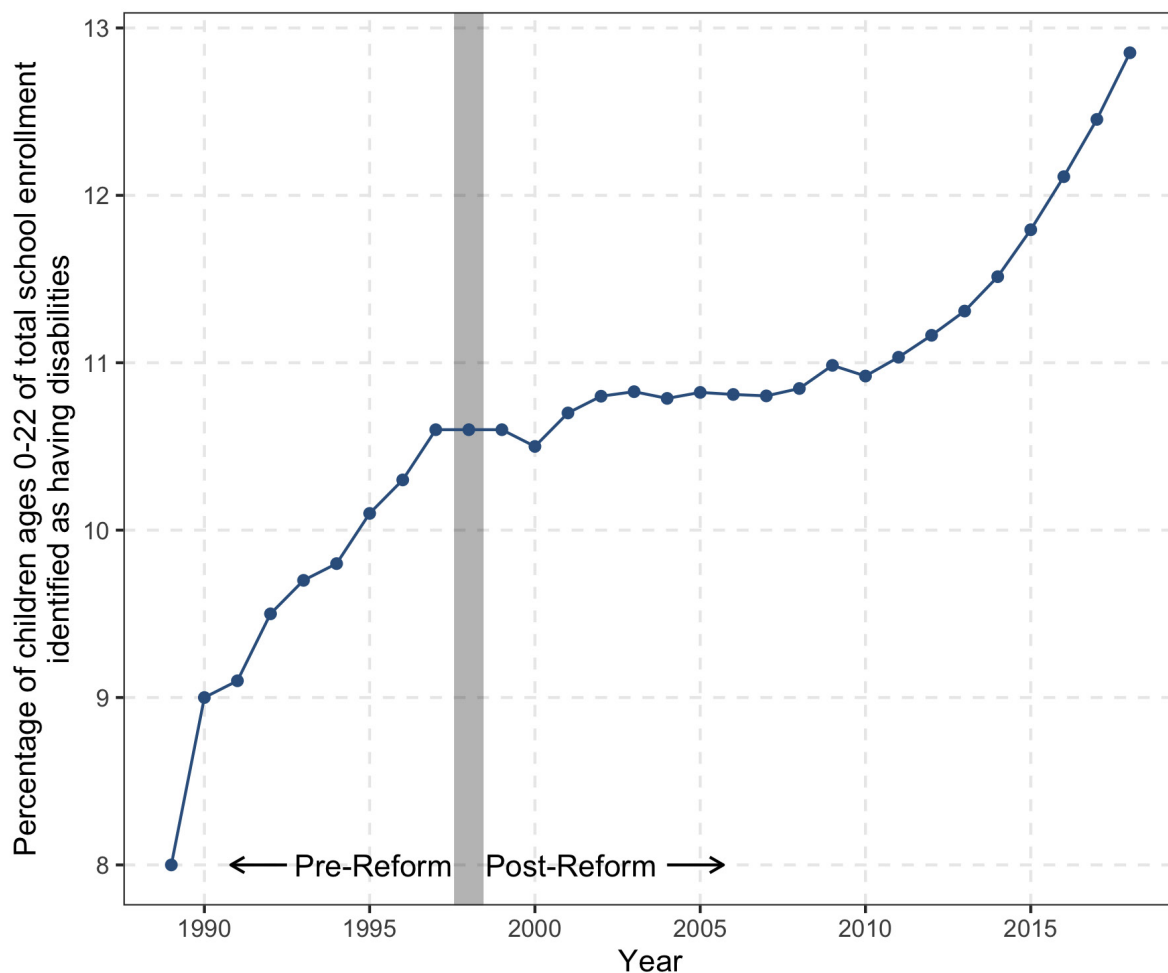
governance structure for special education are also different and separate from those used for general education. Although students with lower-incidence disabilities can benefit from economies of scale created by regional entities, the majority of students with disabilities (almost 57 percent) are taught 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.

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.

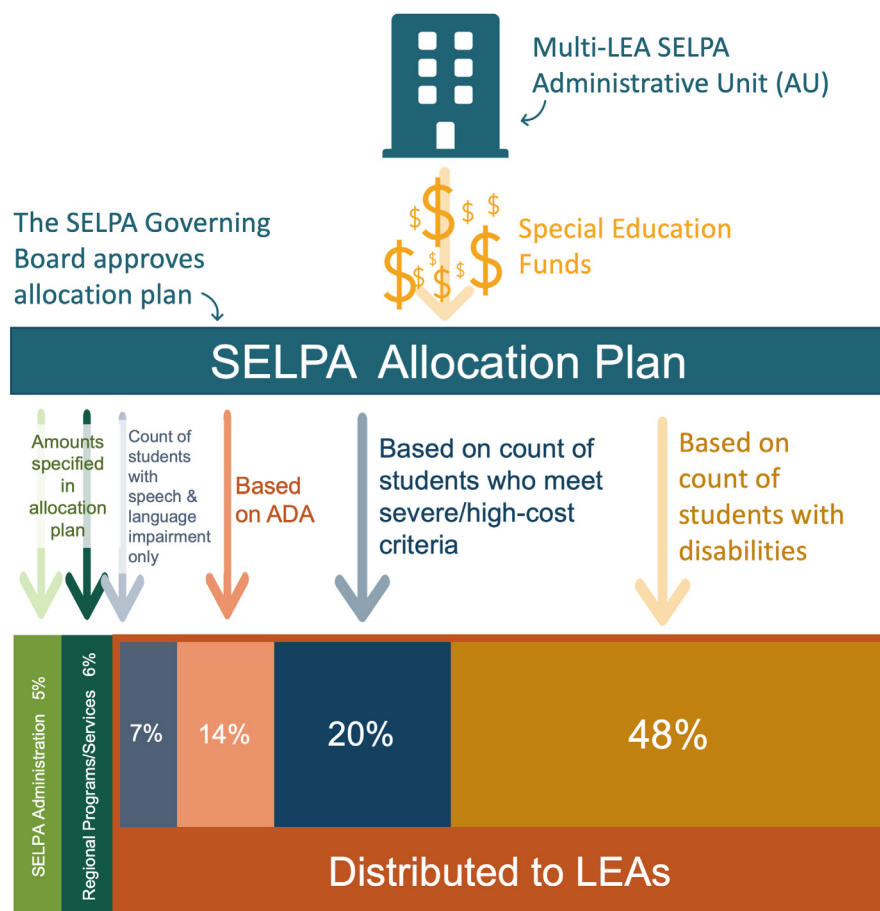
SELPA governing boards determine how funds are allocated for, distributed to, and expended by LEAs. After state funds are distributed to a SELPA, the SELPA's governing board, made up primarily of member LEA superintendents

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.

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

References

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- U.S. Office of Special Education Programs.** (n.d.) *History: Twenty-five years of progress in educating children with disabilities through IDEA*. <https://www2.ed.gov/policy/speced/leg/idea/history.pdf>



October 2, 2020

Dear Special Education Local Plan Area Directors:

ALTERNATE DISPUTE RESOLUTION COVID-19 GRANT FOR 2020-21

Since 2015, the California Department of Education (CDE), Special Education Division (SED), has monitored two grants for Alternate Dispute Resolution (ADR). One grant was distributed to 10 special education local plan areas (SELPAs) to carry out specific statewide assignments related to ADR and was allocated in varying amounts based on a selection process conducted when the grant was first authorized. The other grant, the ADR Expansion (ADRE) grant, reflected an increase in the amount of funds allocated for ADR purposes by the California Legislature in the 2015 annual Budget Act.

The Budget Act of 2020 appropriated \$8,600,000 to be allocated by the Superintendent of Public Instruction (SSPI) to SELPAs to assist local educational agencies with establishing and improving local alternative dispute resolutions, in anticipation of an increased number of local disputes related to the COVID-19 pandemic and special education distance learning. These additional funds for the ADR COVID-19 grant will be distributed equitably among applicant SELPAs, with grant amounts calculated based on a formula that considers the number of students with disabilities enrolled in each SELPA.

The application package for the 2020-21 ADR COVID-19 Grant, as well as documents related to expenditure reporting and use of funds, are comprised of the following:

1. ADR COVID-19 Grant Funding Application (Due October 21, 2020)

The application form must be completed and returned to the CDE no later than **October 21, 2020**, so the CDE can calculate the number of ADR COVID-19 grant recipients and grant award amounts for the 2020-21 fiscal year.

2. ADR COVID-19 Grant Budget Summary (Due October 21, 2020)

The grant budget summary form must be completed and returned to the CDE no later than **October 21, 2020**. Please use the form to provide an estimate of the expenditures for the ADR COVID-19 Grant for the 2020-21 fiscal year, and summarize program resources in the line item budget provided.

3. ADR COVID–19 Enhancement Plan (Due October 21, 2020)

As outlined in the Budget Act of 2020, prior to the receipt of funds, SELPAs must develop and submit a plan to the SSPI, via the SED, describing the alternative dispute resolution process to be enhanced, augmented, or developed, and how the agency will offer and use the alternative dispute resolution process to address special education complaints filed by families related to COVID-19 and distance learning.

For convenience, and to ensure all required elements are addressed, the CDE has provided a template for reporting this information. SELPAs are not required to use the template; however, applicant SELPAs must ensure that the Enhancement Plan submitted to the CDE adequately addresses the required information.

4. ADR COVID–19 Report to the Superintendent of Public Instruction (Due April 1, 2021)

As a condition of receiving grant funds, grantees are required to submit a report to the SSPI, via the SED, by April 1, 2021, that includes all of the following information:

- The number of cases mediated through alternative dispute resolution services.
- The number of cases totally resolved by agreement,
- The number of cases refusing alternative dispute resolution services and requesting due process.
- A list of the issues that generated the request for dispute resolution services.
- Any recommendations for the workgroup developing the statewide Individualized Education Program addendum for distance learning template to ensure issues resulting from special education and related service delivery during the COVID–19 pandemic and distance learning are considered and addressed in the development of the addendum template.

For convenience, and to ensure all required elements are addressed, the CDE has provided a template for reporting this information. SELPAs are not required to use the template; however, applicant SELPAs must ensure that the ADR COVID–19 Report to the SSPI submitted to the CDE by April 1, 2021 adequately addresses the required information.

5. ADR COVID–19 Grant Expenditure Report

Please use the grant expenditure report form to report actual expenditures from October 1, 2020, through June 30, 2021. To receive a timely reimbursement of funds, submit the Expenditure Report to the CDE **no later than September 1, 2021**.

Because the ADR COVID–19 grant is funded through federal funds, SELPAs have 24 months to expend the grant award received in the 2020–21 fiscal year. If a SELPA does not expend all the funds allocated during the first year of the grant, the Expenditure Report form should be submitted during the second year of the grant, **no later than September 1, 2022**.

6. Guidance for the Use of ADR COVID–19 Grant Funds

This document provides guidance on federal requirements for the use of ADR COVID–19 grant funds.

Process for Requesting ADR COVID–19 Grant Funds

ADR COVID–19 grant application documents must be submitted via **email**. Please see below for signature requirements on each form. All documents must be submitted to the ADR mailbox at: ADR@cde.ca.gov, attention Venetia Davis, Associate Governmental Program Analyst, **by 4:59 pm on Monday, October 21, 2020** in order to be considered for funding.

To request ADR COVID-19 grant funds, the following documents must be submitted to ADR@cde.ca.gov by 4:59 pm on Monday, October 21, 2020:

- 1) ADR COVID–19 Grant Funding Application
 - **Email a scanned copy of the ADR COVID–19 Grant Funding Application with a wet signature.** The original, signed copy of the ADR COVID–19 Grant Funding Application must subsequently be mailed to the CDE pursuant to the instructions on the form.
- 2) ADR COVID-19 Grant Budget Summary
 - Digital signatures will be accepted on the ADR COVID–19 Grant Budget Summary. Alternatively, applicants may email a scanned copy of the ADR COVID–19 Grant Budget Summary with a wet signature.
- 3) ADR COVID–19 Enhancement Plan

October 2, 2020

Page 4

If you have any questions regarding this grant, please contact Michael Wimberly, Education Programs Consultant, Special Education Division, by phone at 916-319-0377 or by email at mwimberly@cde.ca.gov.

Sincerely,

The signed copy of this correspondence is on file at the California Department of Education. To request a signed copy, please contact Venetia Davis at vdavis@cde.ca.gov.

Heather Calomese, Director
Special Education Division

HC:mw
Enclosures

Grant Funding Application

Alternate Dispute Resolution COVID-19 Grant

Fiscal Year 2020–2021

The Funding Application is the declaration by the Special Education Local Plan Area (SELPA) of its intent to apply for funding for the 2020–21 Alternate Dispute Resolution (ADR) COVID–19 Grant.

Due Date: October 21, 2020

Local Agency/Administrative Unit

SELPA Name

SELPA Code

SELPA Director

Contact Person Name and Title

Email

Telephone Number

Fax Number

Address

Grant Funding Application

Alternate Dispute Resolution COVID-19 Grant

Fiscal Year 2020–2021

City _____

Zip Code _____

County _____

Certification: I hereby certify that the funds proceeding from this application will be used solely for the purpose of assisting local educational agencies with establishing and improving local alternate dispute resolutions, in anticipation of an increased number of local disputes related to the COVID-19 pandemic and special education distance learning implementation, and will meet all applicable requirements of state and federal rules and regulations. To the best of my knowledge, the information contained in this application is correct and complete and this applicant hereby agrees to have its use of funds reviewed and/or audited.

Print Name of Authorized Signature: _____

Authorized Signature: _____ Title: _____

Date: _____

Note: No funds will be released to the SELPA without an authorized signature on this form.

Email a scanned copy of the ADR COVID–19 Grant Funding Application with a wet signature to ADR@cde.ca.gov. The original, signed copy of the ADR COVID–19 Grant Funding Application must subsequently be mailed to the CDE.

Mail the original to:

Venetia Davis, Associate Governmental
Program Analyst
Special Education Division
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814-5901
Phone: 916-327-3509
ADR@cde.ca.gov

For CDE Use Only:
Date Received by CDE _____
Date Approved by CDE _____
Approved By: _____

Alternate Dispute Resolution COVID-19 Grant Budget Summary

Fiscal Year 2020-2021

Due Date: **October 21, 2020**

This grant budget summary is an estimate of the expenditures for the Alternate Dispute Resolution (ADR) COVID-19 Grant for the 2020-21 fiscal year. Please summarize program resources in line item budgets.

Special Education Local Plan Area (SELPA) Code: _____

SELPA Name: _____

Please indicate the amount of funds allocated to each budget item for grant expenditures. Refer to the California State Accounting Manual for specifics of each category. **For each budget item, indicate the following: the amount, what the expenditure will be used for, and a justification of how this expenditure will be used solely for the purpose of assisting local educational agencies with establishing and improving local alternate dispute resolutions, in anticipation of an increased number of local disputes related to the COVID-19 pandemic and special education distance learning implementation.** Use additional forms if necessary. For allowable expenditures, please refer to the "Guidance for Alternate Dispute Resolution Grant Funds" document.

Program Resources	ADR COVID-19 Grant Funds (Estimated Expenditures)	Description and Justification
1. 1000-Certified salaries		
2. 2000-Classified salaries		
3. 3000-Employee benefits		
4. 4000-Materials and supplies		
5. 5000-Services and other operating costs		

Alternate Dispute Resolution COVID-19 Grant Budget Summary

Fiscal Year 2020-2021

Program Resources	ADR COVID-19 Grant Funds (Estimated Expenditures)	Description and Justification
6. Total Direct Costs <i>(Total of 1-5)</i>		
7. 7300-Indirect Costs <i>CDE approved rate: _____%</i>		
8. Total Program Budget <i>(Total 6-8)</i>		

Print Name of Authorized Signature: _____

Authorized Signature: _____ Title: _____

Date: _____

Note: The grant award will not be released without an authorized signature on this form.

CDE USE ONLY
 Approved By _____

Date _____

Enhancement Plan

Alternate Dispute Resolution COVID-19 Grant

Fiscal Year 2020–2021

Due October 21, 2020

Special Education Local Plan Area (SELPA) Name

SELPA Code

SELPA Director

Contact Person Name and Title

Email

Telephone Number

Enhancement Plan

Alternate Dispute Resolution COVID-19 Grant

Fiscal Year 2020–2021

Due October 21, 2020

Describe the alternative dispute resolution process to be enhanced, augmented, or developed.

Enhancement Plan

Alternate Dispute Resolution COVID-19 Grant

Fiscal Year 2020–2021

Due October 21, 2020

Describe how the agency will offer and use the alternative dispute resolution process to address special education complaints filed by families related to COVID-19 and distance learning.

Alternate Dispute Resolution COVID-19 Grant

Report to California State Superintendent of Public Instruction

Fiscal Year 2020–2021

Due April 1, 2021

Special Education Local Plan Area (SELPA) Name

SELPA Code

SELPA Director

Contact Person Name and Title

Email

Telephone Number

Alternate Dispute Resolution COVID-19 Grant

Report to California State Superintendent of Public Instruction

Fiscal Year 2020–2021

Due April 1, 2021

As a condition of receiving grant funds, grantees are required to submit a report to the Superintendent of Public Instruction (via the Special Education Division) by April 1, 2021, that includes all of the following information:

The number of cases mediated through alternative dispute resolution service:

The number of cases totally resolved by agreement:

The number of cases refusing alternative dispute resolution services and requesting due process:

Alternate Dispute Resolution COVID-19 Grant

Report to California State Superintendent of Public Instruction

Fiscal Year 2020–2021

Due April 1, 2021

A list of the issues that generated the request for dispute resolution services:

Alternate Dispute Resolution COVID-19 Grant

Report to California State Superintendent of Public Instruction

Fiscal Year 2020–2021

Due April 1, 2021

Any recommendations for the work-group developing the statewide Individualized Education Program addendum for distance learning template to ensure issues resulting from special education and related service delivery during the COVID–19 pandemic and distance learning are considered and addressed in the development of the addendum template:

Alternate Dispute Resolution COVID–19 Grant Expenditure Report Fiscal Year 2020–2021

This form is used to report the expenditures for the Alternate Dispute Resolution (ADR) COVID-19 Grant for funds received during the 2020–21 fiscal year.

Reporting period for July 1, 2020–June 30, 2021: Due September 1, 2021

Please indicate the **actual** expenditures from July 1, 2020, through June 30, 2021, and any **projected** expenditures from July 1, 2021, through June 30, 2022. Submit the report for receipt no later than September 1, 2021.

Reporting period for July 1, 2021–June 30, 2022: Due September 1, 2022

Because the ADR COVID–19 grant is funded through federal funds, Special Education Local Plan Areas (SELPA) have 24 months during which to expend the grant award received in the 2020-21 fiscal year. If a SELPA does not expend all the funds allocated to it during the first year of the grant, the Expenditure Report form should be submitted during the second year of the grant. Please indicate the **actual** expenditures from July 1, 2021, through June 30, 2022. Submit the report no later than **September 1, 2022**.

SELPA Code: _____

SELPA Name: _____

Program Resources	ADR COVID–19 Funds Actual expenditures from July 1, 2020–June 30, 2021	ADR COVID–19 Funds Projected expenditures from July 1, 2021–June 30, 2022	ADR COVID–19 Funds Actual expenditures from July 1, 2020–June 30, 2022
1. 1000–Certified salaries			
2. 2000–Classified salaries			
3. 3000–Employee benefits			
4. 4000–Materials and supplies			
5. 5000–Services and other operating costs			

Alternate Dispute Resolution COVID–19 Grant Expenditure Report

Fiscal Year 2020–2021

Program Resources	ADR COVID–19 Funds Actual expenditures from July 1, 2020–June 30, 2021	ADR COVID–19 Funds Projected expenditures from July 1, 2021–June 30, 2022	ADR COVID–19 Funds Actual expenditures from July 1, 2020–June 30, 2022
6. Indirect Costs CDE approved rate percent			
Total Program Budget (Sum of lines 1–6)			

Certification: I certify that the expenditures reported have been made, that this report has been conducted in accordance with laws and regulations, and that full records of receipts and expenditures have been maintained and are available for a period of **five years** after submission of a final expenditure report. I further certify that the expenditures reported on this form are accurate and have been used solely for the purpose of assisting local educational agencies with establishing and improving local alternate dispute resolutions, in anticipation of an increased number of local disputes related to the COVID-19 pandemic and special education distance learning implementation.

Print Name of Authorized Signature:

Authorized Signature: _____ Title: _____

Date: _____

**Guidance for the Use of
Alternate Dispute Resolution
COVID–19 Grant Funds**

California Department of Education
Special Education Division
2020–21

Application Process

As part of receiving the Alternate Dispute Resolution (ADR) COVID–19 Grant, the Special Education Local Plan Area (SELPA) must complete, sign, and submit the following forms to the California Department of Education (CDE) on or before the corresponding due dates listed below:

1. ADR COVID–19 Funding Application: Due October 21, 2020
2. ADR COVID–19 Budget Summary: Due October 21, 2020
3. ADR COVID–19 Enhancement Plan: Due October 21, 2020
4. ADR COVID–19 Grant Award Notification: Return within 10 days after receipt
5. ADR COVID-19 Report to the SSPI: Due April 1, 2021
6. Expenditure Report: Due September 1, 2021
7. Final Expenditure Report: Due September 1, 2022

All forms, reports, and requests, with the exception of the Grant Award Notification and unless otherwise specified, should be submitted by email to the ADR mailbox at: ADR@cde.ca.gov, attention Venetia Davis, Associate Governmental Program Analyst.

California Department of Education Contact Information

The CDE, Special Education Division (SED), staff assigned to the ADR COVID–19 Grant and contact information is provided below:

Venetia Davis, Associate Governmental Program Analyst
Phone: 916-323-9773
Email: vdavis@cde.ca.gov

Michael Wimberly, Education Programs Consultant
Phone: 916-319-0377
Email: mwimberly@cde.ca.gov

Frequently Asked Questions

The following questions and answers provide additional clarification on the use of the ADR COVID–19 grant funds.

What are the minimum requirements for expenditures?

Funds must be expended as noted in the annual Budget Act which states the funds are to assist local educational agencies (LEAs) with establishing and improving local ADRs, in anticipation of an increased number of local disputes related to the COVID–19 pandemic and special education distance learning implementation. As a condition of receiving these funds, the SELPAs shall do all of the following:

- a. Prior to the receipt of funds, develop and submit a plan (a.k.a. the “ADR COVID–19 Enhancement Plan”) to the superintendent of public instruction (SSPI) describing the ADR process to be enhanced, augmented, or developed, and how the agency will offer and use the ADR process to address special education complaints filed by families related to COVID–19 and distance learning.
- b. Submit a report to the SSPI (a.k.a. the “ADR COVID–19 Report to the SSPI) by April 1, 2021, that includes all of the following information:
 1. The number of cases mediated through ADR services.
 2. The number of cases totally resolved by agreement.
 3. The number of cases refusing ADR services and requesting due process.
 4. A list of the issues that generated the request for dispute resolution services.
 5. Any recommendations for the workgroup developing the statewide Individualized Education Program addendum for the distance learning template to ensure issues resulting from special education and related service delivery during the COVID–19 pandemic and distance learning are considered and addressed in the development of the addendum template.

What direct costs are allowable?

For basic guidelines affecting allowability of costs, please visit the U.S. Office of Management and Budget (OMB) Circular No. A–87 web page at Office of Budget and Management Circulars (<https://bit.ly/2IY3YO9>), which provides 43 sections of selected items of costs and principles to be applied in establishing the allowability or unallowability of these items.

Guidance for the Use of Alternate Dispute Resolution COVID–19 Grant Funds

For more information on cost guidelines, please also visit the Education Department General Administrative Regulation (EDGAR), Section 74.171 (Revised 05/10/04) <http://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html>.

In general, direct costs are those that can be identified specifically with a particular final cost objective. Typical direct costs chargeable to federal awards are:

- a. Compensation of employees for the time devoted and identified specifically to the performance of those awards
- b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards
- c. Travel expenses incurred specifically to carry out the award
- d. Salaries and benefits
- e. Administrative costs necessary to carry out the award
 - Accounting/budgeting/audits
 - Communication costs
 - Data processing
 - Recruitment costs (i.e., advertising)
- f. Travel on “official business”
- g. Transportation
- h. Materials and other supplies for instructional services in the classroom, home, or other appropriate instructional setting which are “necessary to carry out the grant”
- i. Indirect costs at the rate approved by the CDE (for more information, please contact the Office of Financial Accountability and Information Services by email at sacsinfo@cde.ca.gov)
- j. Printing and duplication costs
- k. Meetings/conferences, including exhibits to disseminate grant information
- l. In-service training/staff development

Can these costs be incurred via contract(s) for purchase of programs or services?

Yes

Guidance for the Use of Alternate Dispute Resolution COVID–19 Grant Funds

What costs are not allowable?

Rental/lease-to-purchase (including but not limited to facilities and equipment) costs are not allowable. Any expenditures pertaining to capital outlay.

What is the funding source for the ADR COVID–19 Grant?

Federal funds allocated by the annual California Budget Act.

How does the SELPA account for the ADR COVID–19 Grant in the standardized account code structure?

Report the **expenditures** as resource code **TK** (IDEA Alternate Dispute Resolution grant), goal **TK** (Special Education, **TK**), with the appropriate function (e.g., function **TK** [Special Education, **TK**]) and the appropriate object (e.g., object **TK** [**TK**]).

If the obligation is for:	The obligation is made:
Personal services by an employee of the grantee or LEA	When the services are performed
Personal services by a contractor who is not an employee of the grantee or LEA	On the date on which the grantee or LEA makes a binding written commitment to obtain the services
Travel, conferences, or conference attended	When the travel is taken

Must separate accounting be kept for each grant award?

Yes. Federal grant programs require that **separate accounting be maintained**. Accounting for one federal grant cannot be comingled with other federal grants or other funds. Separate accounting provides a clear audit trail from the receipt of the funds by the state to the expenditure of the funds for goods and services at the local level.

What are ADR COVID–19 funds intended to provide?

Funds must be expended as noted in the annual Budget Act which states that the funds are to assist LEAs with establishing and improving local ADR, in anticipation of an increased number of local disputes related to the COVID–19 pandemic and special education distance learning implementation. As a condition of receiving these funds, the special education local plan areas shall do all of the following:

- a. Prior to the receipt of funds, develop and submit a plan to the superintendent describing the ADR process to be enhanced, augmented, or developed, and how the agency will offer and use the ADR process to address special

Guidance for the Use of Alternate Dispute Resolution COVID–19 Grant Funds

education complaints filed by families related to COVID–19 and distance learning.

- b. Submit a report to the superintendent (via the Special Education Division) by April 1, 2021, that includes all of the following information:
 1. The number of cases mediated through ADR services.
 2. The number of cases totally resolved by agreement,
 3. The number of cases refusing ADR services and requesting due process.
 4. A list of the issues that generated the request for dispute resolution services.
 5. Any recommendations for the workgroup developing the statewide Individualized Education Program addendum for distance learning template to ensure issues resulting from special education and related service delivery during the COVID–19 pandemic and distance learning are considered and addressed in the development of the addendum template.

**Desert/Mountain Charter SELPA
Due Process Summary
July 1, 2020 - October 15, 2020**

D = Complaint Dismissed W = Complaint Withdrawn

DISTRICT										CASE ACTIVITY FOR CURRENT YEAR					
	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	Total	D/W	Resolution	Mediation	Settled	Hearing	
Allegiance STEAM Acad - Thrive	N/A	N/A	N/A	N/A	N/A	0	0	0	0		0	0	0	0	0
Aveson Global Leadership Acad	N/A	N/A	2	1	5	1.5	0	0	9.5		0	0	0	0	0
Aveson School of Leaders	N/A	N/A	0	3	1	1.5	0	0	5.5		0	0	0	0	0
Ballington Acad for Arts & Sci	N/A	N/A	N/A	N/A	0	2	0	0	0		0	0	0	0	0
Desert Trails Prep Academy	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Encore Junior/Senior High School	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Encore High School, Riverside	N/A	N/A	0	0	0	1	1	0	2		0	0	0	0	0
Julia Lee Performing Arts Acad	N/A	N/A	N/A	N/A	N/A	0	0	0	0		0	0	0	0	0
LaVerne Elem Preparatory	0	0	0	0	0	0.5	0	0	0.5		0	0	0	0	0
Leonardo da Vinci Health Sci	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Odyssey Charter School	N/A	N/A	0	0	0	0	0	0	0		0	0	0	0	0
Odyssey Charter School - South	N/A	N/A	N/A	N/A	N/A	0	0	0	0		0	0	0	0	0
Pasadena Rosebud Academy	N/A	N/A	N/A	N/A	N/A	1	0	0	1		0	0	0	0	0
Pathways to College	0	0	0	0	0	0	0	0	0		0	0	0	0	0
Taylion High Desert Academy	0	0	0	0	0	0	0	0	0		0	0	0	0	0
SELPA-WIDE TOTALS	0	0	2	4	6	7.5	1	0	18.5		0	0	0	0	0

**Desert/Mountain Charter SELPA
Due Process Activity Summary
July 1, 2020 – October 15, 2020**

LEA Case Number	Issue(s)	Date Filed	Resolution Scheduled	Mediation Scheduled	Pre-Hearing Conference	Due Process Hearing	Status
1. LEA Case No. 2020							
2. Case No. 2020							
3. Case No. 2020							
4. Case No. 2020							

Desert /Mountain Charter SELPA
Legal Expense Summary
As of October 15, 2020

2000-2001	0.00
2001-2002	0.00
2002-2003	0.00
2003-2004	0.00
2004-2005	0.00
2005-2006	0.00
2006-2007	0.00
2007-2008	0.00
2008-2009	0.00
2009-2010	0.00
2010-2011	0.00
2011-2012	0.00
2012-2013	0.00
2013-2014	0.00
2014-2015	0.00
2015-2016	7,378.00
2016-2017	33,886.61
2017-2018	70,994.67
2018-2019	113,834.81
2019-2020	58,033.90
2020-2021	4,104.00

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; *Andrew 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 injuries 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, supra*, 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 Limpas, 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.

Limpas 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. Limpas 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.

Limpas 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. Limpas' 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.

Limpas described Student's target behavior as "refusal." Limpas summarized antecedent and consequences of Student's refusal behavior. Limpas 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, Limpas observed no refusals because it was a free day where the teacher made no academic demands of the classroom.

Limpas 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. Limpas 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.

Limpas 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 Limpas 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. Limpas' 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 Lempias' 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 *Andrew 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

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/special/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(SENRR 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

The screenshot displays the CALPADS web application interface. At the top left, the CALPADS logo is visible. The top right corner shows the user's role as 'Organizer' and their name 'sbecsant@ceda.ca.gov'. The main navigation menu on the left includes options like Home, Online Maintenance, Upload / View Submissions, Certification Status, Reports, Abstracts, Admin, and Help. The current page is titled 'Accountability and Monitoring Reports' and is divided into two main sections: 'Cohort Outcome' and 'Monitoring'. Under 'Cohort Outcome', there are two items: '5.1 Counts and Roster' and '5.2 Student Details'. Under 'Monitoring', there are two items: '5.7 Students with Disabilities - Monitoring Counts' and '5.8 Students with Disabilities - Monitoring Student List'. Each item has a corresponding icon on the right. A 'DOCUMENTATION' link is located at the bottom left of the page.

CALPADS
California Statewide Proficiency Assessment Data System

Organizer: sbecsant
Last Menu: Welcome, sbecsant@ceda.ca.gov

Home Reports Accountability and Monitoring Reports

Accountability and Monitoring Reports

Cohort Outcome

- 5.1 Counts and Roster
- 5.2 Student Details

Monitoring

- 5.7 Students with Disabilities - Monitoring Counts
- 5.8 Students with Disabilities - Monitoring Student List

Quick Search
Student ID#
or 122408-9509

Staff ID#
or 122408-9509

Search by entering a valid 10 digit code into either the QID or SID field above then clicking the search button to return the query

DOCUMENTATION

Monitoring Reports

CALPIADS
California Integrated Prof. Assessment Data System

Home | Reports | Accountability Reports | 16.7 - Students with Disabilities - Monitoring Counts

Academic Year: 2020-2021 | As of Month: October | As of Day: 1 | LEO: All - United 1261,12

Gender: M,X | Grade: L1-First Grade, L2-Second Grade, L3-1h | Ethnicity/Race: Hispanic, Am. Indian/Asian Nat., Asian, O | English Language Acquisition Status: ADL-Adult English, Learner-EL-English | State Secondary Developmental: Y,N | Title I Part C Eligible: Y,h | Homeless: Y,N | Foster Youth: Y,N | Student Age: 6,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18

User Comments:

16.7 of 1 | 100% | Print | Next

CALPIADS | 16.7 - Students with Disabilities - Monitoring Counts

SEARCH YEAR: 10/1/2020 | PAGE: 16/17 | SEARCHED: 10/1/2020 | CHANGE LOG: 10/1/2020

SCLPA Code	SCLPA Name	Total Students	All Ages - Students with IEP				Ages 10-22 - Students with IEP		
			Total Students with IPP and Late Meeting	Percent of Students with Late Meeting	Late Annual Meetings	Late Individual Meetings	Total Students	With Transition Goals	Missing Transition Goals
961	San Joaquin	2163	477	21.70%	157	150	197	359	18
902	Dawson Monticello	2	1	50.00%	1	1	0	0	0
202	El Dorado County Charter	1	0	0.00%	0	0	1	1	0
3012	Orange County Unified	1	0	0.00%	0	0	0	0	0
9010	Orange Unified	2	1	50.00%	1	1	0	0	0
9224	Placenta La Puente Unified	1	1	100.00%	1	0	0	0	0
1300	Imperial County	1	1	100.00%	0	1	0	0	0
961	LA County Countywide	1	0	0.00%	0	0	1	1	0
9910	Long Beach Unified	2	1	50.00%	1	0	2	2	0
902	Los Angeles County Charter	1	0	0.00%	0	0	1	1	0
9014	Los Angeles Unified	2	2	100.00%	2	1	0	0	0
9004	Maricopa	2	4	200.00%	4	1	0	0	0

