

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019100681

PARENT ON BEHALF OF STUDENT,

v.

MOUNTAIN VIEW UNIFIED SCHOOL DISTRICT.

DECISION

MAY 15, 2020

On October 16, 2019, Student filed his Due Process Complaint against Mountain View School District, called Mountain View, with the Office of Administrative Hearings, called OAH. On October 23, 2019, Mountain View filed its response. On November 22, 2019, OAH granted a joint request for continuance.

Administrative Law Judge Deborah Myers-Cregar heard this matter in Rancho Cucamonga, California, on March 3, 4, and 5, 2020. Richard L. Isaacs, Attorney at Law, represented Student. Parent attended each day of hearing. Summer D. Dalessandro, Attorney at Law, represented Mountain View. Jan VanDyke, Director of Student Services, attended each day of hearing.

At the parties' request, OAH continued the matter to April 13, 2020, for written closing briefs. The parties timely filed their briefs, the record was closed, and the matter was submitted for decision on April 13, 2020.

ISSUES

1. Did Mountain View deny Student a free appropriate public education, called a FAPE, at his September 5, 2019 Individualized Education Program, called an IEP, team meeting by denying Parent's request to have Student's nonpublic agency aide present, and by impeding Parent's right to meaningfully participate in the decisionmaking process?
2. Did Mountain View deny Student a FAPE by preventing free communication between Parent and Student's nonpublic agency aide, and by impeding Parent's right to meaningfully participate in the decisionmaking process?

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 FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

Here, Student filed the Due Process Request and therefore has the burden to prove the allegations. 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 is a seven-year-old boy eligible for special education under the categories of autism and speech and language impairment. At all relevant times, Student lived within the jurisdictional boundaries of Mountain View.

During the 2018-2019 school year, Student did not attend the kindergarten program in Jeanette Young's special day class. Instead, he participated in home schooling and an Applied Behavioral Analysis, ABA, program, working on two-step instructions. West End SELPA held an IEP team meeting April 24, 2019, to plan for his transition to first grade.

On June 20, 2019, a confidential settlement agreement amended the April 24, 2019 IEP to change the provider of intensive individual services to a nonpublic agency behavioral services provider, Autism Learning Partners. For the 2019-2020 school year, Student would transition to first grade with a behavior technician aide, at Liberty Elementary in a San Bernardino County Superintendent of Schools day program. At hearing, the parties reached four stipulations about the settlement agreement. It:

1. did not require Student's aide to attend any IEP team meetings;
2. did not delineate provisions regarding a communication log between anyone;
3. did not waive future claims; and
4. amended Student's IEP on June 20, 2019, to include new services.

Student had a behavior intervention plan dated April 25, 2019. Students' social skills and behavior goal was to eliminate protest behavior with challenging activities, such as yelling, refusing the task, pushing materials away, escaping the area, taking off his shoes and socks, blowing mucous from his nose, dripping saliva on the floor, and saying "peepee." These behaviors increased when the activity or noise level around him increased, when he was uncomfortable, or when presented with a challenging activity. The functional replacement behavior was for Student to communicate his need for a break, either verbally or with a picture icon. The behavior intervention plan included positive reinforcement strategies. The occupational therapist was to be consulted for strategies to meet his sensory needs.

On August 12, 2019, Student started first grade with the assistance of a full-time Autism Learning Partners' behavior technician aide. On September 5, 2019, Mountain View held Student's 30-day IEP team meeting. Parent's paralegal wrote to VanDyke asking for Student's aide to be present. Parent asked Young to invite the Autism Learning Partners Clinical Supervisor Rosalia Alvarado, and behavior technician aide

Latashia Farries. Farries did not attend, but two clinical supervisors did attend. All other required IEP team members attended. The IEP team agreed Autism Learning Partners would conduct a functional behavior assessment. On October 16, 2019, Student filed this complaint. On November 14, 2019, the IEP team reconvened to review the results of the functional behavior assessment. Student's Due Process Request does not challenge the appropriateness of that IEP, nor the appropriateness of the behavior assessment.

ISSUE 1: DID MOUNTAIN VIEW DENY STUDENT A FAPE AT HIS SEPTEMBER 5, 2019 IEP TEAM MEETING, BY DENYING PARENT'S REQUEST TO HAVE STUDENT'S NONPUBLIC AGENCY AIDE PRESENT, IMPEDING PARENT'S RIGHT TO MEANINGFULLY PARTICIPATE IN THE DECISIONMAKING PROCESS?

Student alleges Mountain View violated title 20 United States Code section 1414(d)(1)(B)(i)(vi), and 34 Code of Federal Regulations part 300.321 when it did not invite and include Student's aide from Autism Learning Partners at his September 5, 2019 IEP team meeting.

Student alleges Farries was a crucial member of his educational team, and her input, feedback, views, and opinions made her as valuable as the other IEP team members. He alleges Farries qualified as an individual with knowledge and special expertise as a related services provider.

Student alleges Parent was impeded from meaningful participation because the attendance of his aide was the key to her participation at his IEP team meeting. Student

alleges Farries would have added tremendous benefit to the IEP team. Student does not allege a loss of educational benefit as a result of his aide's absence at the IEP team meeting.

Student alleges in his closing brief that Mountain View should have also required his aide to attend the November 4, 2019 IEP team meeting, but this is not alleged in the Due Process Request, and it is not an issue in this case. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].)

Mountain View contends it did not deny Student a FAPE by not requiring Student's aide to attend the September 5, 2019 IEP team meeting. Mountain View asserts that even if it did commit a procedural violation, the violation was not a substantive denial of FAPE because Parent was afforded meaningful participation, and Student did not lose educational opportunity. Mountain View claims it provided appropriate information to Parent prior to the September 5, 2019 IEP team meeting, responded to her concerns at the IEP team meeting, and agreed to fund a functional behavior assessment through Autism Learning Partners. Mountain View contends it responded to Parent's request for more communication and information by providing daily reports from Student's teacher, and biweekly reports from Autism Learning Partners. Mountain View argues it was not required to include Student's aide at the IEP team meeting, in accordance with 71 Fed. Reg. 46674 (August 14, 2006).

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel must 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), 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services that are individually designed to provide educational benefit through an IEP reasonably calculated to enable the 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 [102 S.Ct. 3034]; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

ESSENTIAL IEP TEAM MEMBERS MUST ATTEND OR BE EXCUSED BY PARENT IN WRITING

Parent's paralegal wrote to VanDyke asking for Student's aide to be present. Parent asked Young to invite the Autism Learning Partners clinical supervisor Alvarado, and behavior technician aide Farries. Farries did not attend, but two clinical supervisors did attend. Alvarado was a Board Certified Behavior Analyst and a clinical supervisor and McMurray was a Masters-level clinical supervisor. Alvarado opined Farries was not required and her presence was not appropriate.

The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(b).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP team meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693-5 (*N.L.*); *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*) [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

Student alleges his aide was a crucial member of his educational team, as an individual with knowledge and special expertise as a related services provider. The first question is whether his aide was an essential IEP team member, requiring a parent to excuse her attendance in writing.

The public agency must ensure that the IEP team includes:

1. the student's parents;
2. a general education teacher;
3. the student's special education teacher;
4. district personnel qualified to provide or supervise specially designed instruction;
5. an individual qualified to interpret evaluations; and
6. at the discretion of the parent or the local education agency, other individuals that have knowledge or special expertise regarding the child, including related services personnel as appropriate.

(20 U.S.C. § 1414(d)(1)(B)(i)(vi); 34 C.F.R. § 300.321.) The determination of whether the individual has knowledge or special expertise shall be made by the party who invites the individual to be a member of the IEP team. (34 C.F.R. §300.321(c); Ed. Code, § 56341.)

The Analysis of Comments and Changes to the Final Regulations, 71 Fed. Reg. 46674 (August 14, 2006), clarified the definition of an essential team member requiring parental consent if absent from the IEP meeting, under 34 Code of Federal Regulations part 300.321:

"Some commenters recommended that parents be informed that they have a legal right to require an IEP Team member to participate in the meeting. . . .

[¶] . . . [¶]

“With regard to the recommendation that the notice state that the parent has a legal right to require an IEP Team member to participate in an IEP Team meeting, it is important to emphasize that it is the public agency that determines the specific personnel to fill the roles for the public agency’s required participants at the IEP Team meeting. A parent does not have a legal right to require other members of the IEP Team to attend an IEP Team meeting. Therefore, if a parent invites other public agency personnel who are not designated by the LEA to be on the IEP Team, they are not required to attend. . . .

[¶] . . . [¶]

“One commenter stated that § 300.321(e) can be read to require that each individual invited to the IEP Team meeting by the parent or the public agency (who has knowledge or special expertise) must attend the meeting unless the parent and the agency agree in writing that they need not attend. The commenter recommended that the regulations clarify that the attendance of the other individuals invited to attend the IEP Team meeting by the parent and public agency is discretionary and that no waiver is needed to hold the IEP Team meeting without them. The commenter recommended revising § 300.321(e)(1) to refer to “mandatory” members of the IEP Team. Another commenter expressed concern that it is not possible to pre-determine the areas of the curriculum that may be addressed at an IEP Team meeting, and recommended that excusals be permitted only for the IEP Team members identified by the public agency in § 300.321(a). . . .

[¶] . . . [¶]

"Discussion: We believe that the excusals from IEP Team meetings apply to the members of the IEP Team in paragraphs (a)(2) through (5) in § 300.321, that is, to the regular education teacher of the child (if the child is, or may be participating in the regular education environment); not less than one special education teacher of the child (or where appropriate, not less than one special education provider of the child); a representative of the public agency who meets the requirements in § 300.321(a)(4); and an individual who can interpret the instructional implications of evaluation results. We do not believe it is necessary to require consent or a written agreement between the parent and the public agency to excuse individuals who are invited to attend IEP Team meetings at the discretion of the parent or the public agency because such individuals are not required members of an IEP Team. We will add new language to § 300.321(e) to clarify the IEP Team members for whom the requirements regarding excusals apply."

34 Code of Federal Regulations part 300.321(e) clarifies that the essential IEP team members who must be excused from the IEP team meeting by the parent are listed in 34 Code of Federal Regulations part 300.321(a)(2)-(5). A person with knowledge or special experience pursuant to section 34 Code of Federal Regulations part 300.321(a)(6) is not an essential member of the IEP team, unless they are also qualified to interpret evaluations, under 34 Code of Federal Regulations part 300.321(a)(5).

STUDENT'S AIDE WAS NOT AN ESSENTIAL IEP TEAM MEMBER AND MOUNTAIN VIEW WAS NOT REQUIRED TO OBTAIN PARENT'S WRITTEN EXCUSE

Student alleges his aide was a crucial member of his educational team, whose input, feedback, views, and opinions were as valuable as the other IEP team members. He alleges Farries qualified as an individual with knowledge and special expertise as a related services provider. If Farries was an essential IEP team member, then her absence at the IEP meeting would require a parental excuse if she were not in attendance.

Student alleges his aide was a mandatory parent invitee, pursuant to 34 Code of Federal Regulations part 300.321(a)(6). Farries worked for Autism Learning Partners, the nonpublic agency that provided his behavioral related services. However, even if she were invited as a related service provider, her attendance would have to be appropriate to be a member of the IEP team.

On August 8, 2019, Autism Learning Partners hosted a meeting for Student at his new school to help ease his transition. The meeting agenda was designed to develop collaboration among Parent and Student's behavioral providers. Student and Parent met the Autism Learning Partner behavior staff: his new aide Farries; Masters level clinical supervisor McMurray; and clinical Board Certified Behavior Analyst supervisor Alvarado. Student and Parent also met his special education teacher Jeannette Young, and director of student services VanDyke. In addition, two representatives from the agency providing Student's home applied behavior analysis, ABA, services, Behavioral Autism Therapies, attended: Student's behavioral technician David Paniagua, and clinical supervisor Omar Gomez.

Before the September 5, 2019 IEP team meeting, Farries worked with Student for only three weeks, five days a week, for his full school day. This brief time frame allowed Farries the ability to gain some short-term limited knowledge and special expertise about Student's behavior in his new school program, as it related to her job duties as a behavior technician collecting data. The question is not whether Student's aide was a crucial member or whether she would have added tremendous value. The question is whether his aide was an essential member of the IEP team, as only essential members are required to be present.

To be a required member of the IEP team under 34 Code of Federal Regulations part 300.321(e), Student's aide must not only have had knowledge or special expertise as determined by the Parent inviting her, but also, as a related service provider be able to interpret the instructional implications of evaluation results.

Here, Farries worked with Student less than a month by the September 5, 2019 30-day IEP team meeting. Farries only provided daily data entry for her clinical supervisors, one of whom was a Board Certified Behavior Analyst, to review, collaborate, interpret, and develop Student's behavior modification plans. Farris' input and feedback would have been limited to that raw data. Her role was to implement his behavior plan, not to develop it. That was not sufficient to qualify Farries as an essential IEP team member.

Alvarado persuasively explained that as a behavioral technician, Farries received 80 hours of training for her position as an aide. Farries had very limited knowledge of applied behavior analysis. Farries had a bachelor of arts degree, but did not have a master's degree or professional credentials or licenses. Farries' role was to assist Student throughout his schoolday, help him work toward his behavioral goals, and take contemporaneous notes when collecting data on the antecedents to his behavior.

Farries submitted her daily reports to her clinical supervisor, McMurray. McMurray observed Student weekly, spending between two hours and five hours per session. She collaborated with Farries and Alvarado to analyze the data, prepare behavioral charts and progress reports, conduct the functional behavior assessment, and attend the IEP team meetings.

Farries did not have the training and qualifications to interpret data or the instructional implications of evaluation results. Therefore, she was not an essential IEP team member pursuant to 34 Code of Federal Regulations part 300.321(a)(2)-(5). Mountain View was not required to have a non-essential IEP team member attend the IEP. Mountain View was not required to obtain a parental excuse for Farries' absence from the September 5, 2019 30-day IEP team meeting, pursuant to 34 Code of Federal Regulations part 300.321(e).

STUDENT'S AIDE WAS NOT AN APPROPRIATE PARENT INVITEE AT THE SEPTEMBER 5, 2019 30-DAY IEP TEAM MEETING

Under Education Code section 56035, "nonpublic, nonsectarian agency" means a private nonsectarian establishment or individual that provides related services for a disabled student to benefit from his educational program.

Farries was not an essential IEP team member, but she might otherwise have been appropriate as a parent invitee. A parent invitee must not only have special knowledge about the student, but must also be appropriate, pursuant to 34 Code of Federal Regulations part 300.321(a)(6). Farries worked for Autism Learning Partners, the nonpublic agency that provided his behavioral related services. As a related service provider, Farries' attendance would have to be appropriate to have included her.

Mountain View contracted with nonpublic agency Autism Learning Partners to be Student's related service providers for his behavior. Autism Learning Partners hired and trained its behavioral technicians to collect data, implement behavior plans, and fill out daily reports for the agency. Its aides were only paid for the time they directly worked with students on their goals. Farries' role did not include attending IEP team meetings to discuss daily data that she did not have the qualifications to analyze.

Farries' attendance at the September 5, 2019 IEP team meeting was not appropriate because two essential team members from Autism Learning Partners attended as the behavioral related service providers. Alvarado and McMurray had the required Master's-level training and qualifications. Alvarado was a Board Certified Behavior Analyst clinical supervisor. They reviewed and analyzed the data from Student's behavioral technician, they collaborated with Farries and other team members, and included Farries' observations in the written prepared reports they shared with the IEP team. They answered all the questions Parent and the IEP team members raised in the IEP team meeting.

Alvarado convincingly testified that Farries' attendance at the IEP team meeting would not have been appropriate. Although Farries had some knowledge and specialized experience with Student, she did not have the educational qualifications to answer questions related to interpreting data, or to interpreting the instructional implications of evaluations results. Farries was trained to take notes on Student's behavior and to implement the behavior modification plan that her supervisors developed. She was trained to re-direct Student back to a task, prompt him to engage in a task, and intervene when Student was engaging in target behaviors, such as protests. Alvarado spends 12 hours per month supervising Student, supporting Farries

and providing additional training if needed. McMurray also spend two to five hours per week observing and supervising Student. McMurray included Farrie's observations in her data analysis. Parent had access to this information every two weeks.

Farries' attendance was not appropriate because she chose not to accept Parent's invitation to the September 5, 2019 IEP team meeting. Farries only wanted to work with Student in the classroom and did not want to feel forced to take sides. She did not consent to attend. Farries was not a public employee of a public agency. As a parent invitee, Farries' attendance at the IEP was not appropriate.

PARENT WAS NOT SIGNIFICANTLY IMPEDED FROM MEANINGFULLY PARTICIPATING IN STUDENT'S SEPTEMBER 5, 2019 IEP TEAM MEETING

A student is denied a FAPE only if the procedural inadequacies impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decisionmaking process, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii)(I)-(III).) Student has not met his burden of proof.

A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP team meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L.*, *supra*, 315 F.3d at pp. 693-5; *Fuhrmann*, *supra*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

Parent explained she was impeded from meaningfully participating in Student's September 5, 2019 IEP because Farries was the key to her participation at his IEP team meeting. Parent felt Farries would have added tremendous benefit to the IEP team.

Parent explained she wanted Farries at the IEP meeting to ask questions and have conversations. Parent wanted the IEP team to hear from Farries. She wanted to know details of how her son was doing and whether Farries was using any punishment strategies.

All the essential members of Student's IEP team attended the September 5, 2019 IEP team meeting: Parent, grandparent, Parent's paralegal by telephone, Behavior Autism Therapies behavioral technician David Paniaqua; Autism Learning Partners clinical supervisors Alvarado and McMurray; special education teacher Young, general education teacher Jackie Brazynetz, occupational therapist Shagufta Sandy, principal Mary Laihee, director of student services VanDyke, attorney Dalessandro, and speech-language pathologist Cecilia Vizon. Parent's attorney and paralegal had asked Mountain View to invite Farries, but Young, VanDyke, Alvarado and McMurray did not believe it was appropriate for her to attend, and did not require Farries to be there.

The IEP team meeting notes and audio recording, and the credible testimony of Parent and VanDyke, demonstrated that Parent actively spoke throughout the meeting, expressed concerns about Student's behavior, and made requests for more information. When the IEP team discussed Student's updated baselines and progress on his goals, Parent was very interactive. Goal 10 was updated to indicate Student no longer blew mucous or dripped saliva. Parent asked questions about 11 out of his 12 goals. The IEP team added a reading goal. Parent discussed how to make Student's goals more rigorous, and how to establish his progress with his goals. She expressed her ideas to improve measurements. Parent was able to ask questions, disagree, and share her concerns. The IEP team responded to each of Parent's questions. Student's special education teacher and case manager, Young, provided detailed answers.

Young discussed Student's performance, and his interactions with his aide Farries. Young was his case manager and collaborated with his service providers on a daily and weekly basis. The IEP team discussed each specific goal and made appropriate changes. The Autism Learning Partner clinical supervisors provided their additional support, experience, and expertise. They had observed Student in Young's classroom, studied the daily behavior logs, which included data from Farries, and analyzed the data to help develop his behavioral goals. At the end of the IEP team meeting, Parent had no unanswered questions. Student's paralegal, his grandparent, and his home behavior services provider also had no unanswered questions.

In response to Parent's concerns, Mountain View agreed to conduct a functional behavior assessment through Autism Learning Partners. Mountain View also agreed Young would send Parent the behavior graphs when Autism Learning Partners provided them every two weeks.

At the September 5, 2019 IEP team meeting, Parent was able to meaningfully and heartily participate, without the behavioral technician. Parent was represented by a paralegal by telephone. Also in attendance were two other Parent invitees, a grandparent, and the Student's home behavior services technician, Paniagua. Parent was informed of Student's problems, attended the IEP team meeting, expressed disagreement regarding the IEP team's conclusions, and requested revisions in the IEP. Parent had the opportunity to discuss the Student's proposed IEP, and her concerns were considered by the IEP team. Therefore, Parent participated in the IEP process in a meaningful way.

Mountain View did not deny Student a FAPE when it did not include Farries at his September 5, 2019 IEP team meeting. Farries was a behavioral technician and not an essential IEP team member. Mountain View was not required to obtain parental consent

for her absence. It was not appropriate to include Farries in the IEP team meeting. Parent meaningfully participated in Student's September 5, 2019 IEP Team Meeting.

ISSUE 2: DID MOUNTAIN VIEW DENY STUDENT A FAPE WHEN IT DID NOT ALLOW PARENT TO FREELY COMMUNICATE WITH STUDENT'S NONPUBLIC AGENCY AIDE, SIGNIFICANTLY IMPEDING PARENT'S RIGHT TO MEANINGFULLY PARTICIPATE IN THE DECISIONMAKING PROCESS?

Parent alleges that while the IDEA mandates formal notices, meetings, and legal documents, Parent has obvious rights to have informal communication, such as through a daily communication log, with Farries. Parent alleges that preventing this direct communication frustrates the collaborative process that the IDEA encouraged. Parent alleges that the nonpublic agency, Autism Learning Partners, should make the decision about sharing its aide's communication log. Student alleges Mountain View made the decision, and this significantly impeded Parent's right to meaningfully participate in the decisionmaking process.

Mountain View contends it did not deny Student a FAPE when it channeled communication related to Student's aide through his special education teacher and the nonpublic agency behavioral services supervisor. Mountain View argues that even if it did commit a procedural violation by directing communication in that way, that was not a substantive denial of FAPE because Parent still had meaningful participation, and Student did not lose educational opportunity. Mountain View asserts it provided appropriate information to Parent prior to the September 5, 2019 IEP team meeting, responded to her concerns at the IEP, and agreed to fund a functional behavior

assessment through Autism Learning Partners. Mountain View also contends it responded to Parent's request for more information at the IEP by providing daily reports from Student's teacher, and providing biweekly reports from the nonpublic agency.

Preliminarily, the time period at issue is between August 12, 2019, when Student began school, and October 16, 2019, when Student filed his complaint.

MOUNTAIN VIEW MET MANDATORY TIMEFRAMES FOR DISTRICT COMMUNICATION WITH PARENT ABOUT STUDENT'S PROGRESS

Education Code section 56343, subdivision (j) addresses the mandatory timeframes in which a district must formally meet with parents to address their concerns about a student's progress toward goals, and the need for appropriate revisions to the IEP. An IEP team will meet when a student has an initial formal assessment, when the student demonstrates a lack of anticipated progress, when a parent or teacher requests a meeting to develop, review or, revise the IEP, and at least annually to review the student's progress on annual goals, the appropriateness of the student's placement, and the need for any revisions. A reassessment shall occur not more frequently than once a year, unless the parent and local education agree. (Ed. Code, § 56343, subd. (k).) An IEP team meeting requested by a parent shall be held within 30 calendar days. (Ed. Code, § 56343, subd. (l).) An IEP team will meet within 30 days of a student transferring to the district, to either adopt the previous IEP, or to develop, adopt, and implement a new IEP. (Ed. Code, § 56343, subd. (m)(1).)

There is one circumstance which requires a district to have near-immediate communication with a parent about a student's behavior. If there is a behavioral emergency and the school staff is required to use emergency interventions, the parent must be notified within one school day, the school staff must immediately prepare an

emergency behavioral report, and an administrator shall determine whether the incident should be referred to the IEP team to consider creating or modifying a positive behavior intervention plan. (Ed. Code, § 56521.1.)

Mountain View met these mandatory timeframes, and there has not been a behavioral emergency justifying near-immediate communication from them. Student began his program on August 12, 2019. Student's 30-day IEP was timely held on September 5, 2019, when, after collaborating with Parent, her attorney, Student's home behavior program provider, and the nonpublic agency behaviorists supervising Student's program at school, Mountain View agreed to have the nonpublic agency conduct a functional behavior assessment to address Parent's concerns about Student's maladaptive behaviors. Although Student claimed Parent was impeded from meaningfully participating at the September 5, 2019 IEP team meeting, Student did not challenge any part of the September 5, 2019 IEP.

Autism Learning Partners' Alvarado conducted the functional behavior assessment and interviewed Farries for her input aide on October 15, 2019. Alvarado also interviewed Young and Vizon. Alvarado observed Student in his classroom.

Mountain View met the mandatory timeframes for evaluating Student's progress when it timely held the November 4, 2019 IEP team meeting to review the results of Autism Learning Partner's behavior assessment, within the 60-day requirement applicable to assessments conducted by a school district. However, by then, Student had already filed this complaint on October 16, 2019. The November 4, 2019 IEP and behavior assessment are not at issue in this hearing.

Parent did not have a right to have informal communication and a daily communication log with Student's aide Farries. Mountain View and Autism Learning Partners were not required to provide daily updates to a parent, unless it involved a behavioral emergency. There was no evidence of any behavioral emergencies.

MOUNTAIN VIEW MAY MAKE REASONABLE RESTRICTIONS ON ITS COMMUNICATION WITH PARENT

A school district may place reasonable restrictions on a communication plan with a parent, such as biweekly meetings to minimize an "unproductive communication pattern." *L.F. v. Lake Washington School District* #414 (9th Cir. 2020) 947 F.3d 621, held that such a communication plan actually regulated the school district's conduct. The plan "only set a limit on the amount of communication to which the District would respond. It limited parent to specified channels, the biweekly meetings, for any communication to which he wanted a response. It determined that parent did not explain how the communication plan imposed unreasonable restrictions on his ability to share his concerns about his daughter's educational needs. The plan addressed the manner in which parent communicated with the District, not the content of his speech. 'Members of the public do not have a constitutional right to force the government to listen to their views.'" (*Id.* at *___, citing *Minn. State Bd. for Cmty. Colleges v. Knight*, (1984) 465 U.S. 271, 283 [104 S.Ct. 1058, 79 L.Ed. 299].)

Parent is requesting substantially more frequent communication from Mountain View than is statutorily required to provide.

Parent was concerned she could not ask her son about his school day and she wanted answers to her questions. Parent wanted to speak to the aide daily. Parent wanted the raw data from the daily behavior logs at the end of each school day, instead

of receiving the clinical supervisor's behavior charts and graphs every two weeks when the nonpublic agency sent them to Student's special education teacher/case manager.

Parent wanted to talk to the aide contemporaneously. She wanted to know details of how her son was doing. Parent wanted daily logs and raw data from the aide because she thought it was helpful for her to track it and share it with Student's home behavior services team. She wanted the information to help her son's transition to home each day. Parent wanted daily information to know what prompt hierarchy the aide was using, and how the aide measured the time between prompts. She wanted to know if punishment strategies were being used. She wanted to know how Student was being socialized with other students.

Mountain View did not hide Student at his school as Parent observed Student in class seven times between April 25, 2019 and January 29, 2020. She was able to see him with his aide, with his other related service providers, mainstreaming into another class, and transitioning back to his class. Student's home behavior program clinical supervisor Gomez observed Student at school three times. Parent received nine behavior graphs from Autism Learning Partners, one every two weeks. Accordingly, Student did not establish that Mountain View's communication restrictions were unreasonable or prevented parental access to relevant information to participate in Student's educational decisionmaking process.

MOUNTAIN VIEW PROVIDED PARENT MULTIPLE CHANNELS TO COLLABORATE WITH THE IEP TEAM MEMBERS AND BEHAVIORISTS AND PARENT MEANINGFULLY PARTICIPATED IN THE DECISIONMAKING PROCESS

The record showed Parent had frequent daily, weekly, and monthly communications between herself, Student's home ABA clinical supervisor, and many Mountain View and Autism Learning Partners staff. These communications went beyond Student merely demonstrating a lack of anticipated progress over a several week or month timeframe. Parent's daily detailed questions focused on the antecedents to Student's behaviors, so that she could tell his home ABA aide to help transition Student to his home program.

Mountain View and Autism Learning Partners hosted a meeting in Student's classroom on August 8, 2019, four days before school began. Student and Parent met his special education teacher and case manager Young, the director of special education, and the Autism Learning Partners supervision staff and aide, Alvarado, McMurray, and Farries. Student's home ABA program supervisor and aide also attended. At the end of that meeting, Parent asked Farries to enter Student's behaviors in a communication log book. Farries agreed, and they used it on the first day, before Young stopped its use, asking Parent to direct all questions to her.

STUDENT'S SPECIAL EDUCATION TEACHER AND CASE MANAGER GAVE PARENT SUBSTANTIALLY MORE INFORMATION THAN REQUIRED, AND PARENT ENGAGED IN MEANINGFUL COLLABORATION AND PARTICIPATION

Young was Student's case manager and highly qualified special education teacher with 15 years' experience. She held a master's of science degree in special education, a moderate/severe level II credential, a clear multiple subject credential, and had completed all the coursework for her educational administrative credential. Young was central to making sure Student was making progress on his IEP goals. She spoke and collaborated with all Student's service providers at the end of the day.

Young was direct, sincere, and forthright when she persuasively testified about her knowledge about Student, and her extensive and frequent communications with Parent. Young presented as a patient, kind, sweet, and compassionate teacher when she described her concern for Student and Parent transitioning him into his school program. Young maintained steady eye-contact, and spoke in a calm, measured tone. She was articulate and a clear communicator.

On the first day of school, Young began communicating with Parent in a handwritten log book. At the end of each school day, Young sat and collaborated with Student's aide, and wrote a summary and highlights of Student's day for Parent. Young wrote about specific prompts used, when Student needed redirection or breaks, how he was engaging with his peers, and how he dealt with transitions in his day. Young's daily summaries totaled approximately five and a half pages of notes per week. Young did not provide the same intensive level of daily communication for any other student.

Young was overly accommodating when she prepared her daily reports for Parent about Student at the end of each day. Young responded to all of Parent's text messages, paper notes, e-mails, messages through Liberty Elementary School's DOJO system, and conversations in person when Parent volunteered. Young consistently went above and beyond her normal work hours, reading and answering Parent's emails and messages, as late as 9:00 PM. She understood it could be a difficult transition for Student, who had not been a classroom last year, and she wanted to help.

Parent mentioned three instances when she wanted clarification from logs and notes, and speaking to the aide would have given her the answers she wanted. Once, she wanted information about Student falling asleep in class. Another time Young's note said he enjoyed his speech therapy, yet he cried during the session. And on another occasion, his aide noted Student spoke with a high pitched voice before he was about to engage in a targeted maladapted behavior. Young answered every question Parent had. If Young was not able to immediately respond, she would collaborate with the appropriate team member and respond in a timely manner. Parent was also able to e-mail or call Autism Learning Partner's McMurray to ask questions.

Young opined she was not clear what amount and type of information would satisfy Parent, if anything could. Young wrote detailed notes at the end of every day. She often worked through her lunch break, and late in the evening responding to Parent's questions. Young recently began feeling that she was spending so much extra time responding to Parent's questions in detail, that she had to ask for a substitute for a half day several times this year, so she could catch up on work for some of her other students. In her 15 years of teaching, she had not had as much extended communication with any other parent. Other parents did not email her daily or even weekly. Young remained committed to cheerfully and happily working with Student and

providing Parent with information to support Student. Student was making progress. While Young provided an unusually high level of intensive communication with Parent, that intensive level is not necessary to provide Student a FAPE.

AUTISM LEARNING PARTNERS GAVE PARENT SUBSTANTIALLY MORE INFORMATION THAN REQUIRED, AND PARENT ENGAGED IN MEANINGFUL COLLABORATION AND PARTICIPATION

Autism Learning Partners' clinical supervisor Alvarado persuasively explained that her agency did not typically provide the internal notes or behavior charts to parents because it was not required. Those reports are usually only provided at IEP team meetings. Alvarado agreed to make an exception for Parent to receive the behavior charts every two weeks to help Student and Parent transition into the school program. Alvarado and McMurray collaborated and timely responded to communication from Young and Parent. McMurray also worked late hours for Student, emailing Young Student's two week behavior graphs between 7:30 and 9:00 p.m.

MOUNTAIN VIEW AND AUTISM LEARNING PARTNERS APPROPRIATELY DECLINED SHARING THE BEHAVIOR TECHNICIAN AIDE'S DAILY NOTES WITH PARENT

Parent alleges the nonpublic agency, Autism Learning Partners, should make the decision about sharing its aide's communication log. Parent contends Mountain View made the decision and it was not legally entitled to do so.

Parent had sufficient access to communication with aide. Parent saw Farries in person at the nurse's office three afternoons each week when she picked Student up from school. Parent sometimes texted Farries to alert her when Student was tired, or had a difficult night sleeping.

A nonpublic agency is not required to allow free, unlimited daily communication between a parent and its own behavioral technician. Alvarado credibly testified about the importance of channeling information through the clinical supervisors, instead of allowing his aide to provide daily raw data to Parent without the context of their behavioral analysis. She was concerned that the daily data could be misinterpreted and misunderstood without further context. They were responsive to all of Parent's concerns and agreed to provide the twice-monthly behavioral charts they prepared.

Mountain View did not deny Student a FAPE when it did not allow Parent to have unlimited communication with Farries. A daily communication log between Parent and the nonpublic agency aide was not required to offer Student a FAPE. Mountain View could set reasonable restrictions on its communication with Parent. Limiting the communication between Parent and the aide was appropriate. Student's special education teacher and case manager was the appropriate focal point for communication with all his providers. Young provided extensive daily notes, e-mails, and DOJO messages to Parent, and Parent meaningfully participated in the decisionmaking process.

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: Mountain View offered Student a FAPE at the September 5, 2019 IEP, when it did not require Student's nonpublic agency aide to be present as she was not a required member of the IEP team. Student's aide's presence at the IEP was not appropriate. The aide's absence did not significantly impede Parent's participation in the decisionmaking process. Mountain View prevailed on Issue 1.

Issue 2: Mountain View offered Student a FAPE when it did not allow Parent to have unfettered communication with the nonpublic agency aide, and instead provided daily teacher reports, texts, emails, and DOJO messages; biweekly agency reports, a functional behavior assessment; and Mountain View did not significantly impede Parent's participation in the decisionmaking process. Mountain View prevailed on Issue 2.

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/

DEBORAH MYERS-CREGAR

Administrative Law Judge

Office of Administrative Hearings