

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2020030548

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PARENT ON BEHALF OF STUDENT,

v.

GROSSMONT UNION HIGH SCHOOL DISTRICT.

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DECISION

November 9, 2020

On March 13, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Grossmont Union High School District, called Grossmont, as respondent. OAH granted Student leave to amend the due process hearing request on March 24, 2020, and August 6, 2020. Administrative Law Judge, called ALJ, Cynthia Fritz, heard this matter by videoconference on September 29, October 1, and 5, 2020.

Attorneys Meagan Nunez and Patrice Darlin Mulvaney represented Student. Guardians attended the hearing each day on behalf of Student. One Guardian attended

the hearing each day intermittently. Attorney Tania Prado attended the hearing each day for observation only. Student did not attend the hearing.

Attorneys Sarah Sutherland and Amy Rodgers represented Grossmont. Rose Tagnesi, Director of Special Education, attended the hearing each day on Grossmont's behalf. Attorney Daniel Lowe attended hearing day two and three to assist Grossmont.

OAH continued the matter to October 20, 2020, at the parties' request for written closing briefs. OAH closed the record and submitted the matter on October 20, 2020.

## ISSUES

At hearing, the ALJ granted Student's motion to withdraw issues 1a, 1f, and part of 2b, as set forth in the Order Following Prehearing Conference dated September 23, 2020. The ALJ renumbered the remaining issues for clarity.

During the hearing, the parties clarified and agreed to the issues as stated below.

1. Did Grossmont deny Student a free appropriate public education, called a FAPE, during the 2018-2019 school year by failing to:
  - a. conduct a legally compliant educationally related mental health services assessment;
  - b. offer adequate services and supports; specifically, in the areas of mental health and mathematics;
  - c. timely fulfill its child find obligation by failing to identify and evaluate Student for special education needs;
  - d. offer annual goals in all areas of need; specifically, concentration, emotional regulation, mathematics, and social skills; and

- e. provide prior written notice of its decision not to evaluate Student for special education eligibility?
- 2. Did Grossmont deny Student a FAPE during the 2018-2019 school year by preventing Guardians from participating in the individual education program, called an IEP, process by failing to:
  - a. timely fulfill its child find obligations by failing to identify and evaluate Student for special education needs, and
  - b. conduct a legally complaint assessment in the area of educationally related mental health?

On the last day of hearing, Student sought to expand her first issue to include whether Grossmont implemented the May 2019 IEPs during the 2018-2019 school year. Student's request to augment issue one, over Grossmont's objection, was denied. Student failed to plead the issue in her second amended due process hearing request and Grossmont did not have sufficient notice of it. Accordingly, no decision is reached as to IEP implementation during the 2018-2019 school year.

## 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 (2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student has the burden of proof on all issues. 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 16 years old and in eleventh grade at the time of hearing. She resided within Grossmont's geographic boundaries at all relevant times. On May 3, 2019, the IEP team determined Student was eligible for special education under the category of other health impairment.

Student experienced trauma as an adolescent when her mother died, and she was subsequently transported from Mexico to San Diego. While in San Diego, she

suffered neglect, physical and sexual abuse, and ended up in a crisis center. Guardians obtained guardianship of her in 2017. Student was diagnosed with attention deficit hyperactivity disorder, called ADHD, the following school year in December 2019.

ISSUE 1C AND 2A: DID GROSSMONT DENY STUDENT A FAPE DURING THE 2018-2019 SCHOOL YEAR AND DENY PARENTAL PARTICIPATION IN THE IEP PROCESS WHEN IT FAILED TO TIMELY FULFILL ITS CHILD FIND OBLIGATIONS BY FAILING TO IDENTIFY AND EVALUATE STUDENT FOR SPECIAL EDUCATION?

Student asserted that Grossmont denied her a FAPE during the 2018-2019 school by failing to timely identify, locate, and evaluate her as a child with a disability. Student argued that progress reports, grades, behavior, known outside tutoring, teacher concerns, Guardian concerns, and prior traumatic history should have placed Grossmont on notice of a suspected disability earlier than March 2019, when it assessed her for special education.

Grossmont denied it had reason to suspect a disability that required a special education assessment prior to March 2019. While aware of Student's motivation and attention issues, classroom behavior, and academic struggles, Grossmont argued that Student received passing grades the first semester of the 2018-2019 school year and made progress with few general education supports. Grossmont maintained it learned about Student's social issues and traumatic history in December 2018 and offered her more general education interventions for Spring 2019. Grossmont maintained that it timely referred Student for special education upon Guardian's request in March 2019.

A FAPE means special education and related services that are available to an eligible child that meet state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) 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); see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), 56363, subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321 (2006) & 300.501 (2006).)

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 Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000].)

The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and evaluate all children with disabilities residing in the state that need special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a) (2006); Ed. Code, § 56301, subd. (a).) This duty is commonly referred to as "child find."

A school district's obligation to identify, locate, and evaluate a specific child is triggered when there is knowledge of, or reason to suspect, a disability and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii, v. Cari Rae S.* (D.Hawaii 2001) 158 F.Supp.2d 1190, 1194 (*Cari Rae S.*)). The threshold for suspecting a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

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, 1119.) 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. 1121 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, and *N.B. v. Hellgate Elementary School Dist., ex rel. Board of Directors, Missoula County, Mont.* (9th Cir. 2008) 541 F.3d 1202].)

The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability must be evaluated based on information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F. 3d 1141, 1149 (*Adams*), (citing *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031).)

## 2018-2019 SCHOOL YEAR – NINTH GRADE

### FALL SEMESTER 2018

The evidence demonstrated that Student, while struggling in some areas, made progress in her general education program during the fall 2018 semester, her ninth-grade year. In eighth grade, Student received "standard not met" on her standardized mathematics assessment conducted at her previous school district. Consequently, upon entering Grossmont, Student was placed in a collaborative integrated mathematics class that was co-taught by one general education teacher and one special education teacher. Student received no other supports for the fall 2019 semester.

At the beginning of the 2018-2019 school year, Guardian contacted Student's mathematics teachers regarding her mathematics struggles, and her participation in private mathematics tutoring once a week and the after-school tutorial program at school. Two separate teachers contacted Guardian in September 2018 with concerns. Student's mathematics teacher who is also a special education teacher, Megan Tiffany-Howard, noted that Student is friendly but lacked motivation to engage in her mathematics material independently and relied on her group to tell her answers. Student's English teacher, Elizabeth Stellin, had difficulty getting Student back on track due to excessive socializing with other students. Student's six-week progress grades on September 20, 2018, showed that she received three A's, two C's, and an F in English. Student's conduct showed satisfactory and outstanding marks in all subjects except English. In English, Student received an unsatisfactory conduct mark. Stellin commented that Student talked too much and distracted others in class. Despite some concerns in two classes and one F progress grade, the evidence failed to establish that Grossmont had reason to suspect a disability at that time. Student's motivation issue and lack of independence was central to one class, mathematics, the subject she struggled with most. Student's talking, attention, and distraction issues were also isolated to one class, English. The concerns were inconsistent at that time.

Moreover, by November 1, 2018, Student's 12-week progress grades showed all passing grades, with improvement in English to a D grade. Although she continued to receive an unsatisfactory conduct mark in English, with teacher comments that she continued to talk too much, distract others, and disrupt the class, this behavior was isolated exclusively to her seventh period English class. Student received outstanding and satisfactory conduct grades in her other classes. Thus, the concerns were not pervasive at the time. Student made progress in her general education curriculum, and



the evidence did not demonstrate that she required special education supports and services to make such progress. Moreover, Student's behavior did not impede her educational progress at the time.

On December 17, 2018, Tiffany-Howard contacted Guardian to discuss Student's difficulties and to obtain strategies to address Student's negative self-talk in class. Tiffany-Howard enjoyed having Student in class but expressed concerns about her not accepting help, announcing she was bipolar, and struggling with motivation. Guardian responded to Tiffany-Howard that Student needed prompting and encouragement, but that Student did not have a bipolar diagnosis or any medical diagnosis which would impact her school progress.

The following day Guardian requested an in-person meeting with Student's school counselor, Julianna Manuel, to discuss Student's spring semester. Guardian expressed concern over Student struggling "mildly" in academics and asked about a hybrid homeschool program for her to cut down on social issues. Guardian believed that Student overshared personal information with others and it impeded her ability to make friends. For the first time, Guardian discussed her concerns regarding Student's social issues and traumatic history, but to her knowledge, Student had no previous medical diagnosis and had never been recommended for special education by previous schools, social workers, psychologist, or her primary care physician. Further, Guardian presented no reports or input from any other school, medical doctor, therapist, or social worker that Student's behavior impeded her learning. Thus, the evidence failed to support that Grossmont had notice of any medical diagnosis at that time.

While Guardian credibly testified Student struggled at home with homework, she did not share this information with Grossmont. No evidence showed that Student's

behavior, attention, motivation, negative self-talk, and academic struggles at school resulted in failing grades, social-emotional problems, or the inability to access the curriculum. Rather, the evidence demonstrated that Student made progress with few general education supports. Student received A's, B's, and C's for her official fall 2018 semester grades. Her sole unsatisfactory conduct grade in English contrasted with other marks in this area. For example, while Student continued to receive an unsatisfactory conduct grade in English with comments about talking, distracting, and disrupting others, her Spanish teacher, Carmelina Pantoja, noted that Student was a conscientious worker and a pleasure to have in class. Additionally, every other teacher gave Student a satisfactory or outstanding grade for conduct for the semester.

Despite Student's issues first semester, she demonstrated the ability to function in class, academically and socially, with few general education interventions. Further, Grossmont credibly explained through two separate witnesses, Manuel, Student's school counselor, and Katy Abruzzo, Grossmont's school psychologist, that the behavior Student displayed during the fall 2018 school year was typical of a ninth grader adjusting to high school transition and its elevated rigors and demands. Additionally, Student's receipt of math tutorial services did not singularly establish that Grossmont should have known of a suspected disability, as many high school students receive these services. Given the information Grossmont had at that time, the evidence did not establish that it had reason to suspect a disability that required a special education assessment through the fall 2018 semester.

#### SPRING 2019

The relationship between the duty to assess a student for special education eligibility, the duty to provide special education services, and the duty to utilize general

education resources was summarized in *Los Angeles Unified School District v. D.L.* (C.D. Cal. 2008) 548 F. Supp.2d 815, 819-820 [internal citations omitted], "To prevent districts from "over-identifying" students as disabled, Congress mandated that states develop effective teaching strategies and positive behavioral interventions ... to assist students in the general education classroom without an automatic default to special education." (*Ibid.*) While districts must assess students suspected of having a disability to see if they qualify for special education, "a student shall be referred for special education instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized." (*Ibid.*, citing Ed. Code, § 56303.) Nonetheless, a school district's pursuit of general education interventions in accord with state policy may not be used to unreasonably delay the special education assessment process. (*Johnson v. Upland Unified School District* (9th Cir. Jan. 8, 2002, No. CV-98-09501-AHM) 2002 WL 22345 at p. 1; *Hacienda La Puente Unified Sch. Dist. of Los Angeles v. Honig* (9th Cir.1992) 976 F.2d 487, 491-492 [An unreasonable delay in identifying and evaluating children with disabilities may result in a legal violation].) Here, the evidence supports Grossmont's contention that it was utilizing general education resources to support Student during the early 2019 spring semester due to its belief that Student was able to access the curriculum without special education and related services.

Guardian's meeting with Manuel on December 20, 2018, resulted in Student being offered the following general education interventions for the spring 2019 semester:

- Advancement Via Individual Determination program, an organizational skills elective class which included assistance with college tutors twice a week,
- after school tutorial program with a credentialed teacher;

- a school-based girl's support group that included group therapy; and,
- placement on the waitlist for individual therapy at the school resource center.

Student continued to participate in her collaborative mathematics class with support from one general education teacher and one special education teacher.

Guardian declined the Advancement Via Individual Determination program because she did not want Student to take that in place of another elective class. Additionally, Student had stopped attending the after-school tutorial program the previous semester. Student attended the girl's support group. Student also requested counseling the first week of February and she began attending school-based individual therapy at the beginning of May 2019, which Guardian believed helped her.

During spring 2019, Student continued to exhibit some of the same behavior as noted by Tiffany-Howard and Stellin the previous semester. She also started missing more school assignments. Despite this, on February 15, 2019, Student's six-week progress report showed all passing grades. An A in technology, a C in Spanish, mathematics, physical education, and naval science, and a D in English. All conduct marks were satisfactory or outstanding except English which was unsatisfactory. Stellin commented that her behavior was improving but she had missing classwork and homework, talked too much, distracted others, and disrupted the class. No further concerns were raised between February 15, 2019, and March 5, 2019, when Guardian requested a special education assessment. Grossmont's offer of general education interventions was reasonable in light of Student's progress.

Although Student struggled behaviorally and academically, it continued to be inconsistent. She had accessed a school support group and group therapy services and continued to be successful in her educational performance at school with all passing

grades during her first progress report second semester. The weight of the evidence demonstrated that Student behaved in ways consistent with other children her age, sometimes inattentive and unmotivated, but generally earning passing grades. The evidence did not demonstrate that Grossmont was on notice that Student displayed symptoms of any particular disability or may have a particular disorder, thereby triggering a duty to assess. Without the application of hindsight, Grossmont had no reasonable basis to suspect a disability from the beginning of the spring 2019 semester through March 5, 2019, when Guardian requested a special education assessment.

Student's behavior and academic performance, however, declined precipitously at the end of March 2019 and through the end of 2018-2019 school year. Behaviorally, Student continued to exhibit attention, motivation, and behavior issues, and missed assignments. Additionally, her tardiness increased beginning in March 2019, and she received a Saturday detention at the end of March for truancy. Academically, Student's struggles reflected in falling grades. Student received 2 F grades in English and physical education, and a D in mathematics on her April 5, 2019 12-week progress report, although Stellin noted that her behavior and work were improving and gave her a satisfactory in conduct. However, her mathematics and physical science teachers noted unsatisfactory conduct. Now, both Student's academic and conduct struggles increased across multiple classes and teachers, despite the added general education interventions instituted in January 2019.

At this point, April 2019, Grossmont should have assessed Student for special education because the general education interventions were no longer successful. Guardian requested a special education assessment on March 5, 2019, and Grossmont timely began the assessment process in March 2019. Accordingly, Student failed to

prove by a preponderance of the evidence that Grossmont denied Student a FAPE for failing in its child find obligations.

Student additionally asserted that Grossmont denied her a FAPE because it prevented Guardians from participating in the IEP process by failing to fulfill its child find obligation. Violations of child find and the obligation to evaluate children with disabilities who might need special education and related services are procedural violations of the IDEA and of the Education Code. (*Cari Rae S.*, *supra*, 158 F.Supp 2d at p. 1196; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)

A procedural violation does not constitute a FAPE unless the procedural inadequacy:

- impeded the student's right to a FAPE,
- significantly impeded the parent's opportunity to participate in the decision-making process, or
- caused a deprivation of educational benefits.

(20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see also *N.B. v. Hellgate Elementary School Dist.*, *supra*, 541 F.3d 1202, at p. 1208, quoting *Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892.)

This Decision finds that there was no child find violation. Consequently, Grossmont could not have impeded the Guardian's opportunity to meaningfully participate in the decision-making process due to a child find violation since no violation was established by Student.

## ISSUE 1E: DID GROSSMONT DENY STUDENT A FAPE DURING THE 2018-2019 SCHOOL YEAR BY FAILING TO PROVIDE PRIOR WRITTEN NOTICE OF ITS DECISION NOT TO EVALUATE STUDENT FOR SPECIAL EDUCATION ELIGIBILITY?

Student alleged that Grossmont denied her a FAPE by failing to provide prior written notice after Guardian requested a special education assessment on December 20, 2018. Grossmont contends that Guardian requested a special education assessment on March 5, 2019, followed by Grossmont's timely initiation of the assessment process.

A referral for assessment means any written request for assessment made by a parent, guardian, teacher, or other service provider. (Ed. Code, § 56029.) All referrals for special education and related services shall initiate an assessment process and shall be documented. (Cal. Code Regs., tit. 5, § 3021, subd. (a).) If the referral is verbal, the school district shall offer to assist the individual making the request to put the request in writing. (*Ibid.*)

A school district must provide written prior notice to the parents of a child whenever it proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a) (2006).) The notice shall include a description of the action the school district proposes or refuses; an explanation of why the school district proposes or refuses to take the action; a description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action; a statement that the parents have procedural safeguards; if the notice is not an initial referral for evaluation, the procedure to obtain a

copy of the procedural safeguards; sources the parents may contact to obtain assistance; a description of other options considered by the IEP team and the reason those options were rejected; and a description of the factors relevant to the school district's proposed or refused action. (20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b) (2006); Ed. Code, § 56500.4.) A school district's failure to provide prior written notice is a procedural violation of the IDEA.

There is a factual dispute regarding the nature and substance of the December 20, 2018 meeting between Guardian and Manuel. Guardian contends that she made a verbal request to Manuel for an IEP during the meeting, which Manuel denies. According to Guardian, she asked for an IEP for Student and Manuel responded by pointing out that Student passed her classes and was making progress but would discuss the matter with the school psychologist. According to Manuel, Guardian did not request an IEP or assessment for Student. Instead, Manuel inquired about any previous IEPs of Student, then independently sought out the school psychologist to inquire informally about options for Student. Manuel then confirmed her discussion with the school psychologist in an email to Guardian the following day.

For purposes of this Decision, it is not necessary to decide the substance of the December 20, 2018 meeting, as it relates to whether or not Guardian requested a special education assessment. When the facts are viewed in a light most favorable to Student, she did not establish a FAPE violation. Supposing Student established all the following facts:

- Guardian orally requested a special education assessment on December 20, 2018;
- Grossmont failed to help put the request in writing;
- Grossmont's email response constituted prior written notice; and



- the email response failed to satisfy the prior written notice legal requirements.

Student failed to establish her special education eligibility during that time period, thus, no FAPE violation.

Unless the child was eligible for special education at the time of the procedural violation, there cannot be a denial of a FAPE. (*R.B. v. Napa Valley Unified School Dist.*, (9<sup>th</sup> Cir. 2007) 496 F.3d 932, 942.) Although there was some general discussion at hearing regarding Student's academic, attention, and social emotional issues that were present throughout the 2018-2019 school year related to child find obligations, eligibility was never discussed or established.

There was no expert testimony or any testimony of any witness regarding eligibility prior to May 3, 2019. Additionally, Student failed to present any documentary evidence of Student's eligibility at that time, or what category Student would have been eligible for prior to May 3, 2019. Thus, Student failed to establish her eligibility prior to May 3, 2019. Accordingly, Student failed to prove that Grossmont denied Student a FAPE for failing to provide a legally compliant prior written notice.

ISSUE 1A AND 2B: DID GROSSMONT DENY STUDENT A FAPE DURING THE 2018-2019 SCHOOL YEAR BY FAILING TO CONDUCT A LEGALLY COMPLIANT EDUCATIONALLY RELATED MENTAL HEALTH ASSESSMENT AND PREVENTING GUARDIANS FROM PARTICIPATING IN THE IEP PROCESS?

Student asserted that Grossmont's educationally related mental health services assessment lacked observations, interviews, testing, and was otherwise incomplete.

Grossmont argued that its 2019 educationally related mental health assessment was legally compliant.

School district evaluations of students with disabilities under the IDEA serve two purposes: (1) identifying students who need specialized instruction and related services because of an IDEA-eligible disability, and (2) helping IEP teams identify the special education and related services a student requires. (34 C.F.R. §§ 300.301 (2007) and 300.303 (2006).) The first refers to the initial evaluation to determine if the child has a disability under the IDEA, while the latter refers to the follow-up or repeat evaluations that occur throughout the course of the student's educational career. (See 71 Fed. Reg. 46,640 (Aug. 14, 2006).) The IDEA uses the term "evaluation," while the California Education Code uses the term "assessment". As used in this Decision, the terms "assessment" and "evaluation" mean the same thing and are used interchangeably.

In performing an assessment, a school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R., § 300.305 (2007); Ed. Code, § 56381, subd. (b)(1). It must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).)

In conducting an assessment, a school district must follow statutory guidelines. It must select and administer assessment materials that are in the student's native language and that are free of racial, cultural, and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The assessment materials must be valid and reliable for the purposes for which the assessments are used. (20 U.S.C. § 1414(b)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).) Trained, knowledgeable, and competent district personnel must administer the assessment. (20 U.S.C.

§ 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (b)(3), 56322.) A district cannot use a single measure or evaluation as the sole criteria for determining whether the pupil is a child with a disability. (Ed. Code, § 56320, subd. (e); see also 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2) (2006).) An assessment must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors, and administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(a)(2), (b) & (c); Ed. Code, §§ 56320, 56381, subd. (e).) Student must be assessed in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).)

Psychological assessments shall be conducted by a credentialed school psychologist. (Ed. Code., § 56324, subd. (a).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158.)

The personnel who assess the student must prepare a written report that shall include the following: whether the student may need special education and related services; the basis for making that determination; the relevant behavior noted during the observation of the student in an appropriate setting; the relationship of that behavior to the student's academic and social functioning; the educationally relevant health, development, and medical findings, if any; and a determination of the effects of environmental, cultural, or economic disadvantage if appropriate. (Ed. Code, § 56327.)

Grossmont conducted an initial multidisciplinary assessment of Student resulting in a report dated April 29, 2019. The multidisciplinary assessment included health, academic, cognitive, processing, memory, attention, social-emotional, and emotional disturbance testing. Abruzzo, conducted interviews and administered the cognitive,

processing, memory, attention, social emotional, and emotional disturbance testing. Savannah Noel, school psychology intern, performed two classroom observations. A Grossmont school nurse administered vision and hearing testing. Special education teacher, Kristina Espley, conducted academic assessments.

Credentialed school psychologist Autumn Lowry, conducted Grossmont's educationally related mental health assessment, resulting in a report dated May 1, 2019. Lowry held a master's degree in education school psychology. She began working at Grossmont as a school psychologist intern in August 2017. The report itself totaled three pages. It included Student's: health and developmental history taken from Guardian's history questionnaire, educational history, current functioning according to Abruzzo, and a summary and recommendations section.

Grossmont argued that Lowry conducted the educationally related mental health assessment in conjunction with the multidisciplinary assessment and report. Thus, Lowry appropriately relied on observations, interviews, and other information from the multidisciplinary assessment for her report. The evidence, however, does not support Grossmont's contention.

Lowry completed the report two days after the multidisciplinary report was completed. The multidisciplinary assessment report incorporated all the separate assessors' testing, findings, and recommendations into one report. Lowry's report, findings, and recommendations were not included, incorporated, or referenced in the multidisciplinary report. Additionally, Lowry was not referenced in the multidisciplinary report. Neither Lowry nor Abruzzo described, at hearing, that Lowry's report was a part of the multidisciplinary report. Further, the multidisciplinary report stems from Guardian's request on March 5, 2019, to assess Student for special education. The

educationally related mental health assessment was initiated by the IEP team and referred by Abruzzo on March 13, 2019 to Lowry, due to Guardian's concerns regarding Student's mental health. Thus, the educationally related mental health assessment was a stand-alone assessment. Although Lowry could review the multidisciplinary report and consider the information in it for her own assessment, she needed to abide by the federal and state assessment legal requirements separate from the multidisciplinary assessments and report.

Student's expert witness, Dr. Jill Weckerly, holds two doctorates, one in cognitive science and linguistics, the other in clinical psychology, and a master's degree in linguistics. She previously worked as a clinical psychologist for the San Diego Unified School District's Mental Health Resource Center since 2002 and is currently in private practice. Weckerly has extensive experience conducting neuropsychological evaluations and assessed Student in December 2019. Her opinion regarding the legal compliance of Lowry's assessment was given great weight.

Dr. Weckerly reviewed Grossmont's assessments and found Grossmont's educationally related mental health services assessment deficient for several reasons. Dr. Weckerly opined, at hearing, that Lowry did not know Student and failed to conduct interviews, observations, and testing of Student. Therefore, she did not have the requisite knowledge for credible and accurate recommendations of Student's mental health. Dr. Weckerly found the assessment and report neither thorough nor complete.

Grossmont's educationally related mental health services assessment was fatally flawed in several respects. Lowry's assessment wholly failed to assess Student in mental health. First, Lowry should have observed Student. A district must ensure that the child is observed in her learning environment, including a regular classroom setting, to

document academic performance and behavior in the areas of difficulty. (34 C.F.R. § 300.310(a) (2006).) Here, Lowry failed to observe Student in any setting. Even if Lowry could rely upon observations from Grossmont's multidisciplinary assessment, there was no evidence that Noel looked for issues related to whether Student should be receiving educationally related mental health services at the time of her observations. Further, Lowry did not consult Noel about her observations. Accordingly, the assessment failed to satisfy the observation legal requirement.

Second, Lowry failed to include any observations of Student's assessment, including Noel's observations from the multidisciplinary assessment, in her report. Under California law, an assessment report must describe "relevant behavior noted during the observation of the pupil in an appropriate setting." (Ed. Code, § 56327, subd. (c).) Thus, the assessment report was not legally compliant.

Third, the assessment and assessment report were not sufficiently comprehensive to accurately identify Student's mental health needs. The assessment must be sufficiently comprehensive and tailored to evaluate specific areas of educational need, whether or not commonly linked to the disability category in which the child has been classified. (20 U.S.C. § 1414(b)(3)(C); 34 C.F.R. Sec. 300.304(c)(6) (2017); Ed. Code, § 56320, subd. (c).) Lowry had no personal knowledge of Student and had never met her. Although Student currently attended Grossmont, Lowry never contacted, interviewed, observed, or assessed her. At the very least, Lowry should have met with Student. Instead, the assessment amounted to a records review when it was a referral from Abruzzo and the IEP team in addition to the multidisciplinary assessment.

Further, the only person Lowry consulted was Abruzzo. Lowry failed to interview Guardians or Student's teachers. Lowry reviewed a history questionnaire filled out by

Guardian but received no input from teachers or Student. Thus, her recommendations were not based on any personal knowledge of Student and carried little weight.

Additionally, Student shared with Abruzzo that she believed her therapist diagnosed her with "minor anxiety" and "borderline depression." Yet, Lowry did not inquire about Student's private therapy or medical records to determine if this was correct or if the therapy was educationally related. Lowry failed to conduct any type of mental health testing. Instead, she relied upon Abruzzo's testing and results, although Abruzzo made the referral for the educationally related mental health assessment. Thus, Grossmont's assessment was incomplete and lacked the substantive information required to generate a credible opinion. Accordingly, Grossmont's failure to conduct a legally compliant educationally related mental health assessment of Student was a procedural violation of the IDEA.

Student also asserted that Guardians were denied meaningful participation in the IEP process by Grossmont's failure to conduct a legally compliant educationally related mental health assessment. Parents must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement with 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.) A 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. (*Fuhrmann v. East Hanover Bd. of Educ.*, *supra*, 993 F.2d at p. 1036.)

Here, Grossmont's incomplete assessment provided no real information on Student's educationally related mental health needs. Accordingly, Guardians were deprived of critical information required at the May 3 and May 31, 2019 IEP team meetings, to meaningfully participate in the decision-making process regarding Student's mental health, thus denying her a FAPE .

ISSUE 1D: DID GROSSMONT DENY STUDENT A FAPE DURING THE 2018-2019 SCHOOL YEAR BY FAILING TO OFFER ANNUAL GOALS IN ALL AREAS OF NEED, SPECIFICALLY, CONCENTRATION, EMOTIONAL REGULATION, MATHEMATICS, AND SOCIAL SKILLS?

Student asserted that the May 3, 2019 IEP should have contained additional goals in concentration, emotional regulation, mathematics, and social skills to provide her a FAPE. Grossmont argued that additional goals were not required because the current goals addressed Student's unique needs.

An annual IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (Ed. Code, § 56345; Letter to Butler, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) Failure to provide a statement of appropriate annual goals is a violation of the IDEA's procedural requirements for the



formulation and revision of IEPs. (See 20 U.S.C. § 1415(d)(1)(A)(i); Ed. Code 56345, subd. (a).)

The purpose of goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345.) In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child, and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(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.

An IEP is evaluated in light of information available at the time it was developed and is not to be evaluated in hindsight. (*Adams, supra*, 195 F.3d at p. 1149.) This evaluation standard is known as the "snapshot rule." (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 439.; *J.G. v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801.) The Ninth Circuit, however, has observed that after-acquired evidence may shed light on the objective reasonableness of a school district's actions at the time the school district rendered its decision. (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2011) 652 F.3d 999, 1006.) The Ninth Circuit held that, in reviewing a district's actions, courts may look to evidence not known to the decision makers at the time as "additional data, discovered late in the evaluation process, may provide significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date." (*Ibid*).

On May 3, 2019, Grossmont held an IEP team meeting to review initial assessments and found Student eligible for special education under the category of other health impairment for ADHD symptoms. The IEP team found Student displayed areas of need in work completion/organization, English, and mathematics, and drafted three goals in comprehension, assignment completion, and solving linear equations and inequalities. When goals are drafted, they are based on a student's particular needs at the time they are developed. However, the educationally related mental health assessment was invalid as discussed previously, thus, there is no way to know whether the May 3, 2019 IEP correctly determined Student's mental health needs, which could include social skills, concentration, and emotional regulation.

### SOCIAL SKILLS GOAL

Although there is no way to know if Student had a social skill need at the time of the May 3, 2019 team meeting, Student failed to meet her burden that she needed a social skills goal. Here, Guardian expressed concerns about Student's social skills at school beginning in December 2018. Some teachers expressed concerns about Student's behavior but not related to social skills. Student was generally described by teachers as getting along with other students and observed as friendly and well-liked.

Further, Weckerly did not endorse a social skill need or any social skills goals for Student at hearing. Additionally, Weckerly's December 2019 assessment neither found a need in social skills nor made a recommendation for a social skills goal for Student. Thus, Student failed to establish that she had social skills needs. Accordingly, Student failed to meet her burden of persuasion that Grossmont should have offered Student a social skills goal during the 2018-2019 school year.

## CONCENTRATION GOAL

Student asserted that Student required a concentration goal in order to receive a FAPE. Grossmont argued that Student's IEP team did not identify a unique need in the area of concentration that required a goal. As previously determined, the educationally related mental health assessment was improper, thus it is unknown if concentration was an area of need at the time of the May 3, 2019 IEP team meeting.

Student, however, failed to prove a need for a concentration goal. Weckerly credibly established at hearing that Student had a need in attention, which encompasses concentration. She based her opinion on the data she reviewed from Grossmont's 2019 multidisciplinary assessment and the data obtained from her December 2019 testing. Weckerly, however, did not endorse a concentration goal at hearing. Additionally, Weckerly did not recommend a concentration goal in her December 2019 assessment report. Instead, she recommended accommodations such as: breaking down assignments, repetition of instructions and directions, written instructions, graphic organizers, a calculator, preferential seating, prompting, movement breaks, extra time for assessments and assignments, and reducing workload.

The IDEA does not require that each identifiable need, deficit, or area of struggle or challenge be addressed in a separate goal as long as the IEP, overall, offers a FAPE.

In *Coleman v. Pottstown Sch. Dist.* (E.D.Pa. 2013) 983 F.Supp.2d 543, the District Court found:

Plaintiffs interpret [§ 1414(d)(1)(A)(i)(II)] as requiring a school district to create measurable goals for every recognized educational and functional need of a student with disabilities. . . .[I]t would . . . be inconsistent with

the longstanding interpretation of the IDEA to find that providing a FAPE requires designing specific monitoring goals for every single recognized need of a disabled student. As noted above, a FAPE is a threshold guarantee of services that provide a meaningful educational benefit, not a perfect education.

(*Id.* at pp. 572-573.) The Court of Appeal affirmed that part of the District Court's decision. (*Coleman v. Pottstown Sch. Dist.* (3d Cir. 2014) 581 Fed.Appx. 141, 147-148; see also *N.M. v. The School Dist. of Philadelphia* (3d Cir. 2010) 394 Fed.Appx. 920, 923 [nonpub. opn.]; *L.M. v. Downingtown Area Sch. Dist.* (E.D. Pa., April 15, 2015, No. 12-CV-5547) 2015 WL 1725091, p. 16; *Benjamin A. v. Unionville-Chadds Ford Sch. Dist.* (E.D. Pa., Aug. 14, 2017, Civ. No. 16-2545) 2017 WL 3482089, pp. 12-13.)

Here, Grossmont addressed Student's concentration issues by offering Student up to two days of extended time to complete assignments, twice as much time to complete tests, copies of notes provided by the teacher, preferential seating, and the use of a calculator. Additionally, Student's expert did not endorse a concentration goal despite determining a need in attention/concentration. Thus, Student failed to meet her burden of persuasion that she required a concentration goal during the 2018-2019 school year in order to receive a FAPE.

## EMOTIONAL REGULATION

Student asserted that she required a goal focusing on emotional regulation. Grossmont denied that Student needed an emotional regulation goal based upon its assessment information, teacher reports, and Student's behavior at that time. Grossmont's argument was given less weight because of the lack of a proper educational related mental health assessment.

Here, Weckerly endorsed an emotional regulation need for Student at hearing and proposed a coping skills goal. She based her opinion on her social emotional testing, observations, and interviews completed in December 2019, coupled with her review of Student's records, including Grossmont's multidisciplinary assessment. Weckerly opined that Student suffered from symptoms of depression and distress at the end of the 2018-2019 school year that required a coping skills goal.

Weckerly, however, did not recommend any emotional regulation goal in her December 2019 assessment report. Instead, she recommended that Student receive coping skills instruction through her therapy sessions. Conversely, Grossmont did not offer any goals, services, accommodations, or supports related to emotional regulation in the May 3, 2019 IEP, although it continued Student's weekly school-based counseling through the resource center.

Thus, it is unclear from the evidence if Student had a need in emotional regulation that required an emotional regulation goal at the time of the May 3, 2019 IEP. However, the continued absence of a valid educationally related mental health assessment deprived Student of the necessary information to know if an emotional regulation goal was required for Student. Therefore, the FAPE denial continues from May 3, 2019, through June 4, 2019, the end of the 2018-2019 school year.

## MATHEMATICS GOAL

Grossmont determined Student's mathematics needs through its multidisciplinary assessment testing and input from the IEP team meeting members. Epsley administered the Woodcock Johnson IV, a normed test that measures a student's academic achievement skills for the multidisciplinary assessment. Student scores indicated a below average range in mathematics calculation skills and broad mathematics which

relates to a person's mathematics facts fluency, calculation, and applied problem-solving skills.

Abruzzo administered the Kaufman Assessment Battery for Children, second edition for the multidisciplinary report. This assessment tool generated valid results that accurately reflected Student's full-scale intelligence quotient score of 104, placing her in the average range of intellectual functioning. Student demonstrated strength in the learning domain with above average score and received average scores across all other domains. This demonstrated that Student was capable of success at her grade level.

Grossmont's proposed mathematics goal asked Student to solve one variable equations and inequalities involving absolute value, with the use of a calculator, graph the solutions, and interpret them in context with at least 75 percent accuracy as measured by student work samples and teacher record, and aligned to state curriculum standards. Weckerly opined that Student required an additional mathematics goal to address her below average mathematics calculation skills.

Abruzzo opined that the current goal addressed Student's math related deficits. Grossmont, in their closing brief, argued that Student made adequate progress on her math goal and earned a passing grade in math in the fall 2019 semester, demonstrating that Student did not require an additional goal to receive a FAPE.

As written, Grossmont's mathematics goal incorporated Student's mathematics deficits. After the IEP team determined that Student was eligible for special education, she continued in the general education curriculum on the high school diploma track. If a disabled student can access general education curriculum with accommodations, the IDEA requires the IEP to contain goals "designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the

general education curriculum." (20 U.S.C., § 1414 subd. (d)(1)(A)(ii), 34 C.F.R. § 300.320 (2017); Ed Code, § 56345.)

Here, Grossmont did not modify her mathematics curriculum and correctly aligned her mathematics goal to high school curriculum state standards to make progress in the general education curriculum. If Grossmont had added a mathematics calculation goal, it would have lowered the bar on her goals and been too restrictive. Instead, Grossmont offered a high school mathematics goal that incorporated the use of skills related to her deficits. Additionally, Grossmont offered 252 minutes weekly of group mathematics specialized academic instruction, and accommodations such as the use of a calculator, additional time to complete tests, extended time to complete assignments, and copies of notes provided by teachers. The evidence showed that Student made progress on the mathematics goal the following semester and received a C in her fall 2019 mathematics class, such that an additional mathematics goal was unneeded.

Student did not demonstrate that a new mathematics goal was required to make progress in the general curriculum. Here, Student's mathematics deficits were addressed through her mathematics goal, services, and accommodations. Student failed to prove that she was denied a FAPE for failure to include an additional mathematics goal in her IEP.

**ISSUE 1B: DID GROSSMONT DENY STUDENT A FAPE DURING THE 2018-2019 SCHOOL YEAR BY FAILING TO OFFER ADEQUATE SERVICES AND SUPPORTS, SPECIFICALLY IN THE AREAS OF MENTAL HEALTH AND MATHEMATICS?**

Student asserted that the May 3, 2019 IEP failed to offer adequate services and supports in the areas of mathematics and mental health. Grossmont argued that its offer provided Student a FAPE because she was able to make progress in the general curriculum, and it was not required to meet her unique needs.

California law defines special education as instruction designed to meet the unique needs of the pupil coupled with related services as needed to enable the pupil to benefit from instruction. (Ed. Code, § 56031.) "Related Services" include transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401.) In California, related services are called designated instruction and services, and must be provided as may be required to assist an individual with exceptional needs to benefit from special education ..." (Ed. Code, § 56363, subd. (a).)

## MATHEMATICS

Grossmont determined, through assessments and the May 3, 2019 IEP team meeting, that Student had mathematics calculation and fluency needs. The evidence demonstrated that Grossmont addressed these needs by offering specialized academic instruction in mathematics and several accommodations. Specifically, Student's May 3, 2019 IEP offered 252 minutes weekly of group specialized academic instruction for mathematics in a collaborative integrated mathematics class from May 3, 2019, through May 2, 2020. Accommodations, included extended time to complete assignments, use of a calculator on tests and assignments in mathematics and science, a copy of notes provided by teachers, preferential seating, and allowing additional time to complete tests.



Student argued that she had been in the collaborative mathematics class since the beginning of the 2018-2019 school year. For this reason, Student opined that Grossmont failed to offer additional supports or services to address her needs in mathematics. Student's argument ignores Grossmont's addition of specialized academic instruction to aid her participation in the collaborative integrated mathematics class.

On May 20, 2019, Guardian sought additional services for Student based upon Guardian's opinion that Student continued to have difficulty accessing her education. Grossmont convened an IEP team meeting on May 31, 2019, to address Guardian's concerns. At the meeting, Grossmont offered, among other services, an additional 252 minutes of group specialized academic instruction in a guided studies class beginning May 31, 2019, through May 2, 2020.

Grossmont argued that the specialized academic instruction in the guided studies class was inadvertently left out of Student's IEP on May 3, 2019, as a result of a clerical error, which was corrected on May 31, 2019. Thus, it was offered to Student on May 3, 2019. The evidence, however, does not support this contention. The only notation in the May 3, 2019 IEP related to guided studies stated in the notes that the class will be prioritized for Student the following year, but it was not included in the offer. Further, the May 31, 2019 IEP document makes no mention that the additional services added were due to a clerical error. And, the service offer in the May 31, 2019 IEP specifically denotes that the guided studies specialized academic instruction offer begins May 31, 2019, not May 3, 2019. Thus, the specialized academic instruction for the guided studies class was not offered until May 31, 2019.

Grossmont should have offered the specialized academic instruction in the guided studies class on May 3, 2019, to aid in Student's mathematics deficits. At the

time of the May 3, 2019 IEP, Student was receiving a D in her integrated mathematics class, and her final semester grade was a D. Although the 252 minutes of group specialized academic instruction was not exclusive to mathematics, it could have assisted her with mathematics calculations, and as further support of the mathematics specialized academic instruction offered on May 3, 2019.

Stephanie Steppe, Student's guided studies teacher during fall 2019, explained that she worked with Student specifically on math calculation skills throughout the fall 2019 semester in her guided studies class, along with organization, study skills, and other assignments and projects. She opined that her assistance with Student's mathematics calculation deficits in the guided studies class contributed to her mathematics progress in the general curriculum. Student's final grade for the fall 2019 semester showed a C in mathematics which supported Steppe's opinion of its positive effect on Student's mathematics skills.

While the May 3, 2019 IEP discussed the guided studies class as a possibility for the 2019 school year, it was not offered to Student until the end of the school year on May 31, 2019, after Guardian expressed concerns. This service was appropriate for Student and should have been offered to her on May 3, 2019, to address her mathematics deficits. Grossmont explained that it would be too disruptive for Student to change her class schedule at the end of the school year to include the guided studies class. This may be true, but Grossmont should have offered other services in lieu of the specialized academic instruction for the guided studies class until the following year commenced. Student proved by a preponderance of the evidence that Grossmont failed to offer appropriate mathematics services from May 3, 2019, through May 31, 2019.

## MENTAL HEALTH

Student argued that Grossmont failed to offer appropriate services in mental health, specifically private educationally related mental health services. Student asserted that these services were required in addition to her school-based counseling services in order to progress educationally for the remainder of the 2018-2019 school year, because the school-based counseling was not sufficient to meet Student's mental health needs.

Grossmont argued that educationally related mental health services were unnecessary because: the assessment data did not show a need for educationally related mental health services, Weckerly did not recommend these services after her assessment; and, Student's progress during fall 2019 demonstrated that the services, and accommodations in place were successful without the need for further services.

A child's educational needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, abrogated in part on other grounds by *Schaffer v. Weast* (2005) 546 U.S. 49, citing *H.R. Rep. No. 410*, 1983 U.S.C.C.A.N. 2088, 2106.) Moreover, "educational benefit" is not limited to academic needs, but also includes the social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

California Education Code, section 56331(b) provides, "[a] local educational agency shall provide any specially designed instruction required by an individualized education program, including related services such as counseling services, parent

counseling and training, psychological services, or social work services.” These supports aim to enable students to “advance appropriately toward attaining the annual goals [and] to be involved in and make progress in the general education curriculum[.]” (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345(a)(4).)

As previously stated, the educationally related mental health assessment was improper, thus, the May 3, 2019 IEP team lacked the appropriate information to know if Student required educational related mental health services. Student, however, failed to prove a need for private educationally related mental health services at that time.

Weckerly opined that Grossmont should have offered Student private educationally related mental health services at the May 3, 2019 IEP team meeting to meet her mental health needs. She based her opinion on the social emotional data from Abruzzo's social emotional testing, and on her own subsequent interviews, observations, and independent educational evaluation of Student in December 2019. Weckerly opined that Grossmont's testing results demonstrated that Student exhibited signs of depression and trouble coping, at the time of the May 3, 2019 IEP team meeting.

Weckerly's opinions at hearing contradicted her independent educational evaluation in some regards. In her report, Weckerly did not recommend private educationally related mental health services but, rather, continued therapy with a school-based counselor. Weckerly explained, at hearing, that Student's mental health improved between the May 3, 2019 IEP and the independent educational evaluation in December 2019. However, during that time period, Student received school-based

counseling, not private educationally related mental health services. Thus, Weckerly's explanation that the educationally related mental health services were no longer needed by December 2019 supports Grossmont's contention that the school-based counseling Student received between her May 3, 2019 IEP through fall 2019 was successful, such that more intensive private educationally related mental health services were not required for a FAPE.

Moreover, neither Weckerly nor other witnesses proposed any other mental health supports or services that should have been offered at the time of the May 3, 2019 IEP team meeting. Accordingly, Student failed to prove by the preponderance of the evidence she should have been offered private educationally related mental health services or other mental health services or supports at the May 3, 2019 IEP team meeting.

## 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, subsection a: Grossmont failed to conduct a legally compliant educationally related mental health assessment during the 2018-2019 school year. Student prevailed on Issue 1, subsection a.

Issue 1, subsection b: Grossmont failed to offer adequate services and supports in the area of mathematics. Student failed to prove by the preponderance of the evidence that Grossmont failed to offer adequate supports and services in the area of

mental health. Student partially prevailed on Issue 1, subsection b. Grossmont partially prevailed on Issue 1, subsection b.

Issue 1, subsection c: Grossmont timely fulfilled its child find obligation to identify and evaluate Student for special education needs. Grossmont prevailed on Issue 1, subsection c.

Issue 1, subsection d: Student demonstrated that Grossmont had a lack of information to determine if an annual goal in emotional regulation was required. Student failed to prove that Grossmont was required to offer annual goals in concentration, mathematics, and social skills. Student partially prevailed on Issue 1, subsection d. Grossmont partially prevailed on Issue 1, subsection d.

Issue 1, subsection e: Grossmont did not deny Student a FAPE by failing to provide prior written notice of its decision not to evaluate Student for special education eligibility. Grossmont prevailed on Issue 1, subsection e.

Issue 2, subsection a: Grossmont did not deny Student a FAPE by preventing Guardians from participating in the IEP process by failing to timely fulfill its child find obligations and failing to identify and evaluate Student for special education needs. Grossmont prevailed on Issue 2, subsection a.

Issue 2 subsection b: Grossmont denied Student a FAPE by preventing Guardians from participating in the IEP process by failing to conduct a legally compliant educationally related mental health assessment. Student prevailed on Issue 2, subsection a.

## REMEDIES

Student demonstrated that Grossmont denied Student a FAPE by failing to:

- conduct a legally compliant educationally related mental health assessment that denied Guardians of critical information required to meaningfully participate in the decision-making process on May 3, 2019, and May 3, 2019;
- have adequate information in order to determine if it should have offered an emotional regulation goal from May 3, 2019, through June 4, 2019;
- provide appropriate mathematics services from May 3, 2019, through May 31, 2019.

As a remedy, Student seeks compensatory education in the amount of 45 hours in counseling services and 40 hours in mathematics tutoring by a non-public agency.

Under certain conditions, a student is entitled to obtain an independent educational evaluation, called an IEE, at public expense. (20 U.S.C. § 1415(b)(1); Ed. Code, § 56329, subd. (b) Ed. Code, § 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an IEE].)

Grossmont's educationally related mental health assessment did not meet the legal requirements. Student requested compensatory education as the remedy. An independent educational evaluation is the appropriate remedy for an assessment that did not meet the state and federal law.

The evidence established that Guardian requested independent educational evaluations for psychoeducation and educationally related mental health services in

June 2019, because she did not agree with Grossmont's multidisciplinary assessment or its educationally related mental health assessment. Grossmont agreed to Guardian's request. Weckerly completed the independent assessment in December 2019.

While the appropriate remedy for this FAPE violation is an order compelling Grossmont to fund an independent mental health assessment, Grossmont already agreed to an independent mental health evaluation which was completed prior to litigation. Thus, an appropriate remedy at this juncture is an order that Grossmont not rely on its May 2019 educationally related mental health assessment for any future IEP team meetings to determine needs, goals, services, accommodations, and supports should Student return to Grossmont.

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. (*Ibid.*) An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 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 v. Dist. of Columbia, supra*, 401 F.3d at p. 524.) 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." (*Ibid.*)



For purposes of calculating remedies, the ALJ relied on the 2018-2019 Grossmont school calendar. For the failure to offer an emotional regulation goal due to the lack of information known at the time, Grossmont denied Student a FAPE for four weeks, from May 3, 2019, to May 31, 2019. To compensate Student for the denial of FAPE, she is entitled to four hours of counseling services at a rate not to exceed \$150. The amount was calculated at one hour a week of counseling services from May 3, 2019, through June 4, 2019. The services shall be accessed from a licensed therapist of Guardians' choice, who can deliver the services at Student's home, via videoconference, by phone, or in person, as determined by the Guardians and the therapist. Guardian may submit an invoice to Grossmont for services. Grossmont shall reimburse Guardians within 45 days of receiving the invoice or pay the therapist directly. The services must be completed on or before June 15, 2021. Any time not expended by that date shall be lost.

For mathematics services, Grossmont denied Student a FAPE for three weeks, May 3, 2019, to May 31, 2019, consisting of 252 minutes weekly group specialized academic instruction in a guided studies class. This amounts to approximately 12.5 hours of group specialized academic instruction. The evidence showed that the guided studied class was not exclusive to mathematics instruction but also assisted Student in organization, executive functioning, and other academic assignments and projects. Further, the specialized academic instruction was group, not individual. Consequently, Grossmont is ordered to provide Student four hours of individual mathematics tutoring services by a provider of Student's choice not to exceed Grossmont's contract rate for such non-public services, who can deliver the services at Student's home, via videoconference or in person, as determined by the Guardians and tutor. The services

must be completed on or before June 15, 2021. Any time not expended by that date shall be lost.

All of Student's other claims for relief were carefully considered and denied.

## ORDER

1. Grossmont is ordered to attach a note to Student's May 2019 educationally related mental health assessment report in her educational file, stating that the report cannot be relied upon at any future Grossmont IEP team meetings to determine Student's needs, goals, services, accommodations, and supports. The note must be attached to the report within 45 days of this Decision.
2. Student is awarded four hours of counseling at a rate not to exceed \$150 per hour in an individual setting. The services shall be accessed from a licensed therapist of Guardians' choice, either in person, videoconference, or by phone, and to be completed on or before June 15, 2021. Grossmont shall reimburse Guardians within 45 days of receiving the invoice or pay the therapist directly.
3. Student is awarded four hours of compensatory mathematics tutoring to be provided by a non-public agency of Guardians' choice, either in in person or by videoconference as available, at a rate not to exceed Grossmont's contract rate for such non-public services, and to be completed on or before June 15, 2021. Grossmont shall reimburse Guardians within 45 days of receiving the invoice or pay the non-public agency directly.

## 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/

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings