

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2021050534

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PARENT ON BEHALF OF STUDENT,

V.

FREMONT UNIFIED SCHOOL DISTRICT.

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DECISION

August 20, 2021

On May 19, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Fremont Unified School District. Administrative Law Judge Clifford H. Woosley heard this matter in a videoconference hearing, on July 13, 14, 15, and 19, 2021.

Attorney Brett S. Allen represented Student. Student's mother, called Parent in this Decision, attended on Student's behalf.

Attorney Elizabeth Schwartz represented Fremont Unified. Fran English, Director of the Special Education Department, attended on Fremont Unified's behalf.

The parties agreed the matter was continued until August 10, 2021, for submission of written closing briefs, at which time the briefs were filed, the record closed, and the matter submitted for decision.

## ISSUES

The issues are reorganized by dividing Issue 1 into two separate issues for analysis and ruling. Breaking Issue 1 into Issues 1(a) and 1(b) did not change the consideration of Student's and Fremont Unified's evidence and arguments. (*J.W. ex rel. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

A free appropriate public education is referred to as a FAPE. An individualized education program is referred to as an IEP.

- 1(a). Did Fremont Unified fail to timely and comprehensively assess Student, from October 14, 2020, to May 19, 2021, in all areas of suspected disability, specifically in the areas of psychoeducation, autism, speech and language, and behavior?
- 1(b). If Fremont Unified failed to timely and comprehensively assess Student in all areas of suspected disability, did Fremont Unified's failure deny Student a FAPE, from October 14, 2020, to May 19, 2021?
2. Did Fremont Unified deny Student a FAPE, from February 23, 2020, to May 19, 2021, by failing to fulfill its child find obligations in actively seeking, serving, and finding Student eligible for special education?

Student withdrew another issue regarding production of Student's records shortly before the start of hearing.

## JURISDICTION

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

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The 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 has the burden of proof. 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 four years old at the time of hearing and, at all times relevant to this Decision, lived within the boundaries of Fremont Unified. Student had never been found eligible for special education and related services.

ISSUE 1(A): DID FREMONT UNIFIED FAIL TO TIMELY AND COMPREHENSIVELY ASSESS STUDENT, FROM OCTOBER 14, 2020, TO MAY 19, 2021, IN ALL AREAS OF SUSPECTED DISABILITY?

Student contended that Fremont Unified's 2020 initial assessment of Student was not legally appropriate because the assessment did not comprehensively assess Student in all areas of suspected disability, including psychoeducation, autism, speech and language, and behavior. Student asserted that Fremont Unified failed to address Parent's stated concerns, observe Student outside of home, with peers and unfamiliar adults, and seek information from outside providers. Student claimed that Fremont Unified's assessments were defective, unreliable, and not legally appropriate to conclude that Student was not eligible for special education and related services at the November and December 2020 IEP team meetings.

Fremont Unified contends that it assessed Student in all areas of suspected disability. Fremont Unified also contends it properly administered and considered evaluations and testing instruments. Fremont Unified contends it correctly determined that Student was not eligible for special education, without the need for additional assessments.

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

develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

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

## DR. YOUSSEF'S SEPTEMBER 2020 EVALUATION OF STUDENT

Student attended a toddler daycare class for a year in 2019, about five days a week, eight hours a day, at Alvarado KinderCare in Fremont, California, with teacher Ms. Calderon. KinderCare was a private school and not part of Fremont Unified. Parent had no concerns regarding Student's behaviors or communication at that time. Student was toilet-trained, followed directions, participated in class, and played with other children.

Student transitioned to a KinderCare preschool class, in early January 2020. He turned three years old on February 23, 2020. Student had a different teacher in the preschool class. Student's behaviors began to change. Student was not initiating play, was not playing with peers, preferred playing by himself, would grab items from others, and placed objects in his mouth. He had aggressive behaviors, such as pushing other children and not listening to the teacher. He had toileting accidents. Student struggled

pragmatically communicating with strangers and nonfamily members. Student stopped attending the preschool class in mid to late March 2020, after the onset of the COVID-19 pandemic and California's shelter-at-home mandates.

Student's negative behaviors continued at home. He hit his two older brothers. Student had toileting accidents and refused to follow directions. He was impatient and would cry incessantly when asked to wait. Parent believed Student's language was delayed, from the beginning of the year, because Student was difficult to understand and struggled comprehending simple questions. Student had a hard time paying attention and would be easily distracted. The behavior problems continued through the summer and into fall 2020, prompting Parents to seek help. Parents suspected Student might be autistic, like his two older brothers. Student's pediatrician referred Parents to Dr. Julie Youssef, a developmental-behavior pediatrician. Dr. Youssef saw Parent and Student, in person, on September 15, 2020.

Dr. Youssef took family and medical histories and conducted a physical exam. Student appeared anxious and was mostly nonverbal during the doctor's visit. The doctor did not observe atypical behaviors. Parent completed the parent rating scales of the Behavior Assessment System for Children (Third Edition), a standardized assessment. The scales were designed to examine maladaptive behaviors and to assess a child's emotional, behavioral, and adaptive strengths. The behavior assessment had internal validity checks to measure if a respondent's answers were exaggerated, deflated, or inconsistent. Parent's validity indices were all within normal limits. Parent had clinically significant concerns for Student's aggression, externalizing problems, atypicality, withdrawal, and activities of daily living. Parent scored Student "at risk" for hyperactivity, depression, attention problems, social skills, functional communication, and adaptive skills.

Parent completed the Social Responsiveness Scale (Second Edition), which was a brief quantitative measure of the more subtle aspects of social impairment associated with autism. Parents' responses rated Student's reciprocal behaviors from normal to severe interference with everyday social interaction. Dr. Youssef used the Childhood Autism Rating Scale (Second Edition), which combined direct clinical observations and Parent's report to rate a child's functioning in 15 areas relating to social cognition, communication, emotional responsiveness, learning, and behavior. Student's score indicated he had minimal to no symptoms of autism spectrum disorder.

Dr. Youssef conducted the Autism Diagnostic Observation Schedule (Second Edition), which was a semi-structured standardized assessment of communication, social interaction, and the use of materials in play, for children with possible autism spectrum disorders. The test included standard activities that allowed the examiner to observe behaviors that were important for a diagnosis. Student communicated by making eye contact and using gestures. Towards the end of observations, Student used single words to answer Dr. Youssef's questions. Student made appropriate eye contact, responded to his name on the first prompt, directed facial expressions to the doctor and Parent, and evidenced shared enjoyment during most play. Student did not show evidence of stereotyped behaviors or restricted interests.

Dr. Youssef concluded that Student had symptoms of anxiety, not autism. Dr. Youssef found Student did not have the classic symptoms of selective mutism. Selective mutism was a childhood anxiety disorder characterized by a child's inability to speak in one or more social settings. However, if Student continued to be reluctant to speak outside the home, Dr. Youssef suggested consulting with a therapist or psychologist to address anxiety. Dr. Youssef diagnosed Student with anxiousness.

Dr Youssef reported her findings in a written report, which stated that Parent had scheduled Student for a speech language evaluation and intended to seek a special education assessment. Dr. Youssef encouraged completion of the assessments, to ascertain whether a communication impairment was contributing to social communication difficulties and to see if Student could receive services through the school district. Dr. Youssef recommended continued monitoring of Student's social development and anxiety symptoms and, if anxiety symptoms worsened or persisted, a psychologist should be consulted.

## FREMONT UNIFIED'S NOVEMBER 3, 2020, INITIAL ASSESSMENT OF STUDENT

Parent requested that Fremont Unified assess Student for special education eligibility and related services in September 2020. Fremont timely prepared and provided Parent with a September 30, 2020 assessment plan, which Parent signed October 14, 2020, and returned. Fremont Unified assessed Student, held an initial IEP meeting on November 3, 2020, and found Student not eligible for special education services. Parent disagreed and Fremont Unified convened a second IEP team meeting on December 15, 2020, to further discuss Parent's concerns. At that time, Fremont Unified offered to do additional assessments, in-person, when COVID-19 restrictions lifted. However, Fremont Unified maintained, and continued to assert throughout the hearing, that its IEP team correctly determined that Student was not eligible and that no further assessments were needed.

Before finding a child eligible for special education and related services, a school district must conduct a full and individual initial evaluation of the child. (20 U.S.C. § 1414(a)(1); Ed. Code, § 56320.) For purposes of evaluating a child for special education



eligibility, the district must ensure that “the child is assessed in all areas of suspected disability.” (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) 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.) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify the child’s needs for special education and related services, whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

The personnel who assess the student shall 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 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;
- a determination of the effects of environmental, cultural, or economic disadvantage; and
- consistent with superintendent guidelines for low incidence disabilities, the need for specialized services, materials, and equipment. (Ed. Code, § 56327.)

The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

## IDENTIFYING THE MEANS OF ASSESSING STUDENT IN ALL AREAS OF SUSPECTED DISABILITY

Fremont Unified assessed Student in October 2020, when Student was three years and seven months old, and prepared a November 3, 2020 Preschool Assessment Report. The preschool assessment team consisted of school psychologist Erica Nunez, speech pathologist Monica Kurani, special education teacher Louise Gordon, and school nurse Ran Li. All were competent and qualified to conduct Student's initial psychoeducational, speech and language, cognitive, educational, and health evaluations. The assessment team reviewed Student's file and Dr. Youssef's September 2020 medical report. Nunez contacted KinderCare and interviewed Student's toddler class teacher, Ms. Calderon.

Parent completed a preschool assessment team Parent Questionnaire on September 14, 2020. Parent reported Student's prior attendance at Alvarado KinderCare, which stopped when COVID-19 restrictions started. Parent was concerned about Student's "speech and social," noting that Student had two brothers with autism diagnoses. Parent identified Student's pediatrician, Glara J. Kang, and Dr. Youssef. Parent reported understanding Student about 70 percent of the time, while others understood Student about half the time. Student got frustrated when not understood. Student struggled pronouncing "r" and "th" sounds, maintaining eye contact with familiar people, often did not appropriately respond to "No," spoke between 100 to 200 words, and typically used no more than three words in a sentence. Parent described Student as moody, shy, withdrawn, difficult to calm, aggressive, and happy. The

questionnaire did not ask if Student had been assessed or was receiving services, other than from health providers. Parent signed a release of information form.

School Nurse Li prepared the initial health assessment portion of the report. Parent had no concerns regarding Student's hearing and vision. Student was active, climbing and jumping. Student cried, screamed, and hit others, when very mad. Student would bite objects, such as Legos, cars, pencils, and erasers, and spit out the parts he bit off. Student had severe constipation and relied on MiraLax and Pedia-Lax for management.

## TRANSDISCIPLINARY PLAY-BASED ASSESSMENT

The preschool assessment team decided to utilize three standardized assessments and the Transdisciplinary Play-Based Assessment (Second Edition), referred to in this Decision as TPBA. The Assessment team included TPBA's Child and Family History Questionnaire, All About Me Questionnaire, and All About Me forms in its assessment tools. The team members stated at hearing that these instruments and tests, with the review of records and interviews, assessed Student in all areas of suspected disability.

TPBA was a multi-dimensional assessment of young children designed to integrate information from families, teachers, and childcare providers, with professionals' observations. TPBA was a criterion-referenced assessment, designed to measure a child's performance against a fixed set of predetermined criteria. The criteria were written descriptions of what children were expected to know or be able to do at a specific stage of their education. Criterion-referenced tests differed from standardized assessments, which were norm-referenced tests that compared students' performance

to the "norm" of other test takers. Standardized, norm-referenced tests had well-defined protocols regarding the assessment's administration. Standardized tests typically had the same format, same types of questions, the same content, and precise conditions governing the tests' administration

The core distinctive feature of TBPA was the observation of a child's play with family members, peers, and professionals, while guided by a facilitator. All assessment team members, from the various disciplines, would observe a child at the same time, for about 45 minutes. The team members would take notes guided by TPBA worksheets and forms, which were used in assessing five developmental domains: cognition, conceptual, communication, social-emotional, and sensorimotor. Each domain consisted of subdomains, for which TPBA provided an age range that most closely matched the child's performance. TPBA was not commonly used by California school districts.

Fremont Unified initially purchased the TPBA assessment package at the urging of program specialist Diane Dooley, who testified at the hearing. Dooley had been a Fremont Unified program specialist, in the birth-to-five program, for 11 years and an education specialist on a preschool assessment team the previous 10 years. While an education specialist, Dooley learned of TPBA and recommended the assessment to Fremont Unified. At a conference in October 2017, Dooley attended a session on TPBA and again recommended the assessment to Fremont Unified, which subsequently purchased the updated second edition of the TPBA program.

Beginning in mid-April 2020, Fremont Unified closed the physical schools, suspended in-person learning, and conducted distance-learning, pursuant to COVID-19 shelter-in-place mandates. Fremont Unified stopped conducting in-person special

education assessments and evaluated children virtually. The TPBA publishers created an Online Guidance manual, suggesting processes and strategies for virtually conducting TPBA assessments. Fremont Unified assessment teams attended an online seminar about using TPBA to virtually observe a child at play on screen. Before virtual learning, Fremont Unified occasionally used TPBA; some assessors never used the assessment. However, when in-person evaluation was no longer available, Fremont Unified frequently used TPBA in preschool assessments.

Student's expert, Dr. Danielle Maloff, testified at hearing. Dr. Maloff has a 2018 doctorate in clinical forensic psychology, a 2016 master of arts in forensic psychology, and two 2004 masters of art in educational psychology and counseling. Dr. Maloff was a licensed psychologist and a licensed education psychologist, holding pupil personnel services credentials in school psychology and in school counseling. Doctor Maloof had a private practice and had previously been a school psychologist for 10 years, six of which was with the Los Angeles Unified School District, where she performed an estimated 1000 assessments. Dr. Maloff reviewed Dr. Youssef's report, the Early Learning Center parent questionnaire, the preschool assessment report, Student's initial IEP, the assessment team's notes and rating scales, and all of the documentary evidence that was introduced as evidence in the hearing. Dr. Maloff's education and experience qualified her as an expert in special education assessments and, further, the review of all relevant documents qualified Dr. Maloff to give expert opinion regarding Fremont Unified's initial preschool assessment of Student. (Evid. Code, §§ 803 and 804.)

Doctor Maloff opined that the TPBA was not a complete and appropriate assessment. She opined in support of her overall opinion that the TPBA assessment did not obtain reliable information regarding Student's social emotional status, anxiety, sensorimotor development, and possible attention deficit hyperactivity disorder, which

enabled the assessment team to make an informed determination of Student's special education eligibility. Dr. Maloff reviewed TPBA's manual in addition to the TPBA's on-line guidance handbook provided at the virtual training. TPBA focused on what a child can do, not what a child cannot do. Eligibility determinations were often made when a child's performance was compared to their peers, by standardized norm-based assessment instruments. Dr. Maloff was unaware of any other school district that used TPBA and to what extent TPBA had been peer reviewed.

## ASSESSMENT TEAM OBSERVATION OF STUDENT

The preschool assessment team virtually met with Parent before conducting the TPBA guided, play-based observation. They discussed who would be present, who from the team would virtually guide the play, the toys and games to be used, and the general structure of the observation. Parent had an opportunity to ask questions and partake in the discussion. Since Mandarin was spoken in the home and Student was bilingual, a Mandarin interpreter was virtually present for the observation.

The preschool assessment team virtually observed Student on October 19, 2020, for about 45 to 50 minutes, with Parent and an older brother, in the home setting. They virtually met with Parent immediately before and after the observation. Special education teacher Gordon was the lead facilitator. The team took notes, as guided by TPBA protocols, and videoed the observation.

School psychologist Nunez summarized the observation in the November 2020 preschool assessment: Student and his brother sat on the floor. Student followed Parent's prompt to move to the couch. Student appropriately used various activity items, such as color tiles, Monopoly game, shape puzzles, books, wood logs, paper, and

drawing. Student displayed functional and cooperative play as he used these items with his brother. He was able to wait, watch, and take turns during play. Student looked at his brother, used appropriate eye contact and gestures to communicate, and spoke to him to initiate turns and make comments about their play. He spoke using English for the majority of the observation and he used phrases such as “I’m getting ready” and “now I’d be the yellow one” as they played. He used language appropriately for commenting, requesting, and answering and asking questions spontaneously. Student displayed joint attention and could sustain attention for games for over 10 minutes each, follow directions, and displayed good effort for all tasks.

During and after the observation, team members completed the TPBA forms for the domains for which each was responsible. This included the subdomains, with age equivalencies. The team members used and reported these results in their analysis, conclusions, and recommendations.

The TPBA guidance manual recognized that the virtual observation posed some challenges because the child could not be observed directly interacting with a facilitator and would only be interacting with parents and other family members, such as siblings. Therefore, the manual encouraged that both parents be involved so the assessment team could see the child interact with more than one adult. Here, without explanation, only Parent was in Student’s observation. Also, Fremont Unified’s assessment report referred to Parent-supplied videos of Student, as recommended by TPBA. The assessment team acknowledged in hearing not having any videos from Parent.

## COGNITIVE DOMAIN, EDUCATIONAL DEVELOPMENT, AND MOTOR DOMAIN

School psychologist Nunez evaluated and reported Student's cognitive development, adaptive behavior development, and social emotional domains. Nunez testified at the hearing. Nunez had a 2014 master's degree in counseling and clinical child psychology, with a pupil personnel services credential in school psychology. Nunez worked for Fremont Unified since August 2014 and conducted more than 300 psychoeducational assessments. The majority of assessments involved children with autism. Before the pandemic restrictions, Nunez had never conducted a virtual assessment. Nunez conducted about 15 virtual assessments before Student's October 2020 assessment. Most involved children with suspected autism, a majority had speech and language concerns, and a few involved attention deficits and anxiety.

TPBA's cognitive domain concentrated on the subcategories of attention, memory, problem solving, social cognition, and complexity of play. Nunez summarized her TPBA observation for each cognitive subcategory and compared these with the TPBA cognitive development age table. Nunez determined Student age's equivalency for each cognitive subcategory was between 48 and 54 months of age.

Special education teacher Gordon evaluated Student's educational and conceptual development and sensorimotor development. Gordon testified at the hearing. Using the TPBA guided forms and age equivalency tables for the TPBA observation, Gordon found Student to be at or above age level for emerging math and science, emerging literacy, functions underlying movement, gross motor activity, and arm and hand use. Parent did not express concerns regarding Student's cognitive capabilities and educational development.



Fremont Unified did not adequately address Student's motor skills. The TPBA virtual observation was inadequate. Dr. Maloff persuasively testified that Fremont Unified needed to observe Student play with new and different toys, use scissors, brush teeth, eat, ride a bicycle, go up and down stairs, and climb on playground equipment. Most of these could have been virtually observed but were not. Dr. Maloff viewed the TPBA virtual observation video and concluded Student's sensorimotor development could not have been properly assessed while Student played with familiar toys, in his home, with brother and Parent.

## ADAPTIVE BEHAVIOR DEVELOPMENT

Student's adaptive behavior skills were assessed by the TPBA observation, with the parent Vineland Adaptive Behavior Scale (3rd Edition), and through Parent's interview and reports. Nunez reported that TPBA's age equivalency for Student's sensorimotor contributions to daily life and self-care was 36 months.

The Vineland measured adaptive behaviors that were the things people needed to function in everyday life. Parent's responses to the Vineland scale rated Student's physical skills as adequate and his communication, socialization, and communication skills as moderately low. Parent's report produced a Vineland adaptive behavior composite score of moderately low. Nunez did not ask Student's other parent and teacher Calderon to complete Vineland scales.

## SOCIAL EMOTIONAL DOMAIN

Nunez used the TPBA observation, Behavioral Assessment System for Children (3rd Edition), and Childhood Autism Rating Scale (2nd Edition) in evaluating Student's social emotional functioning, including autism and anxiety.

TPBA's social emotional domain concentrated on the subcategories of emotional expression, regulation of emotions, behavioral regulation, sense of self, emotional themes in play, and social interactions. Nunez summarized her TPBA observation for each subcategory and compared these with the TPBA social emotional age tables. For the social interactions subcategory, Nunez observed that Student initiated joint attention, sought to spontaneously share experiences with others, had social exchanges during play, took turns in conversation, and responded and engaged socially.

The social emotional age tables consisted of eight pages, with a column for each subcategory and a line for each month of age, from one month through 60 months. Each entry lists traits or conduct which the assessor observed of the child during the TPBA observation. The assessor would go through the age tables and search for the entry that best matched what the assessor observed for each subcategory. Nunez found Student age's equivalency for each social emotional domain subcategory to be 36 months of age, except for the sense of self subcategory, which was 48 months.

Nunes had Parent complete the parent rating scales of the Behavior Assessment System. Parent's validity indices were all within normal limits. Parent had clinically significant concerns for Student's aggression, attention problems, atypicality, hyperactivity, social skills, and withdrawal. Parent scored Student to be at risk for activities of daily living, anxiety, depression, and functional communication. Parents' overall behavioral symptoms index for Student was in the clinically significant range.

Nunez used the Childhood Autism Rating Scale (Second Edition). Student's score indicated minimal to no symptoms of autism spectrum disorder. Nunez did not use the

Autism Diagnostic Observation Schedule because the tool's protocols required in-person interaction between the assessor and the child. The publishers did not endorse virtual use of the tool.

The Behavior Assessment System and the Vineland Adaptive were standardized, normed assessment instruments. The value of standardized assessments was that test results can be compared, over time and between responders. If behaviors change over time, a standardized instrument provided a means of examining, measuring, and addressing the changes. If valid standardized results differed amongst multiple responders, the instruments enabled an assessor to examine behaviors within different venues and with different people.

Here, Nunez did not use the standardized tests to thoroughly examine and analyze Student's behaviors, social emotional skills, autism, and anxiety. For example, Parent completed the same Behavior Assessment System parent questionnaire for Dr. Youssef, four weeks earlier. Dr. Youssef carefully reported the results in her September 2020 report. Yet, Nunez did not compare the two sets of responses. Nunez did not ask Calderon to complete the teacher scale questionnaire, for either the Behavior System or the Vineland. Nunez indicated that Student had not been in Calderon's class for more than 10 months and that the instruments preferred responders with more contemporaneous interaction. Yet, the team heavily relied on Nunez's interview of Calderon in their evaluations.

Nunez summarized her 15 to-20-minute interview of Calderon. Student attended the toddler class in 2019. The teacher said Student did fine, though he was a little shy at first. Student played with other children, followed directions and called Calderon, the other teacher, and his classmates by name. Calderon said Student did not have

behavioral challenges in the classroom. Calderon cautioned Parent that Student's behavior might change when he transitioned to the preschool class.

Parent never expressed any behavior concerns while Student attended the toddler daycare class during 2019. Student's negative behaviors started in January 2020 in the new preschool class. Yet, the only teacher with whom Nunez communicated with was Calderon. Nunez had asked KinderCare about Student's teacher, was told Calderon knew Student best, and did not ask about the preschool teacher. As a consequence, the assessment team failed to seek and talk to the one educational professional who could corroborate Parent's expressed concerns for Student's classroom behavior. The preschool teacher would have provided more relevant information, if asked to complete the Vineland and Behavioral Assessment teacher rating scales, than Calderon.

The team did not explore Student's school setting. Nunez and the team failed to report information regarding the two classes, such as class size, students' age range, the number of adults or teachers in the classroom, length and structure of the day, naps, snacks, and lunch. Team members commented that Student's behavioral changes in the preschool class were a typical three-year-old's transition difficulties. This was mere speculation because the assessment team did not seek, report, examine, and compare the two school environments, even though the class change was fundamental to Parent's concerns for which Parent sought assessment.

Nunez summarized Dr. Youssef's September 2020 report, neglecting to identify the standardized assessment tools used in the doctor's evaluation. Nunez and the team did not contact Dr. Youssef, failing to consult with a professional who recently examined Student in person and who could provide trained discernment of Student's interactions with adults, other than family members.

Nunez and the team did not analyze and properly address why the team's TPBA-observed behaviors and socialization skills starkly differed from those reported to occur outside the home and with other children and adults. Instead, Nunez reported the TPBA results, heavily relying upon the TPBA's 45-minute observation, and discounted Parent's expressed concerns and standardized assessment responses. For example, Nunez did not recommend further assessment of Student's anxiety, as Dr. Youssef diagnosed and Parent's scale responses identified, because Nunez did not observe anxiety during the observation. Nunez acknowledged at hearing, though, that the introduction of unfamiliar toys, people, and tasks would have more likely measured Student's anxiety. The TPBA did not address the issues raised by Parent in the referral.

Fremont Unified's use of standardized instruments was limited and, when used, implemented in a manner that garnered little information. For example, Nunez completed the Childhood Autism Rating Scale, using the TPBA observation and relying on Calderon's interview. The assessment's manual said that a rater was to rely on multiple clinical observations, with a variety of people and settings. TPBA's 45-minute virtual observation did not comply with this protocol. Reliance on Calderon was misplaced. Dr. Maloff convincingly demonstrated that the autism rating scale was not properly administered and was not sufficient to determine eligibility for autism. Fremont Unified did not properly evaluate Student's anxiety, behavior, adaptive behaviors, selective mutism, autism, and attention deficits.

## COMMUNICATION DOMAIN

Speech pathologist Kurani evaluated and reported Student's communication development. Kurani testified at the hearing. Kurani had a 2004 master's degree in speech-language pathology and was a credentialed speech pathologist. Since 2012,

Kurani worked for the Speech Pathology Group, which provided speech and language assessments to Fremont Unified, at the Glankler Early Learning Center. Kurani conducted up to 120 assessments a year prior to the COVID-19 pandemic and 50 to 60 since restrictions began.

Prior to the pandemic restrictions, Kurani had used the TPBA assessment tool for about two years, but never virtually. Kurani intended to continue to use TPBA after the return of in-person assessments, but would also administer standardized tests, such as the Comprehensive Assessment of Spoken Language.

Kurani used the TPBA assessment observation, the assessment team's premeeting with Parent, and Calderon's interview, to evaluate Student's speech and language. Kurani did not speak to anyone at KinderCare but relied on Nunez's teacher interview. Kurani did not talk one-on-one with Parent regarding Student's behaviors and difficulties expressing himself in the preschool setting. Kurani opined that a bilingual child would probably take longer to transition into a new class setting but had no knowledge of the preschool class into which Student entered in January 2020.

TPBA's communication domain concentrated on the subcategories of language comprehension, language production, pragmatics, and articulation and phonology. Kurani summarized her TPBA observation related to each subcategory and compared these with the TPBA social emotional age tables. Kurani found that Student's age equivalency for the communication subcategories was 48 months, except for language comprehensive, which was 60 months.

Kurani discussed Student's pragmatic language by examining language samples from the observation. Kurani observed Student spontaneously use three-to-six words in phrases to communicate his wants and needs, made advanced comments in his

environment, responded to and asked questions, and greeted others. Kurani used a Mean Length of Utterance, which was an index of expressive language development in children. Kurani took a 50-utterance language sample of Student from the observation and calculated a 41-month age equivalency for Student. Student readily made comments about his environment and demonstrated appropriate reciprocal interactions with brother. Student maintained eye contact and displayed non-verbal language skills, including gaze, gestures, expressions, and body language, all of which were age appropriate. Kurani observed Student switch between English and Mandarin with his brother and Parent. Yet, as Dr. Maloff convincingly emphasized, Kurani simply could not reliably evaluate Student's pragmatic language without observing Student communicate with his peers, teachers, or other adults.

Kurani informally assessed Student's articulation, voice, and fluency skills and deemed Student age appropriate. Student was 80 percent intelligible to an unfamiliar listener. Student did not stutter during the observation. The pathologist also informally assessed oral motor skills, finding Student's structures and functioning to be within the normal range.

Seven Bridges Therapy privately assessed Student in speech and language and began speech therapy, which continued to the hearing. Kurani first learned that Student was receiving speech therapy at the subsequent November 3, 2020 IEP team meeting. During the assessment process, Kurani never asked Parent if Student was receiving private services or had private evaluations. And having learned of Student's speech therapy, Kurani thereafter made no attempt to talk to Student's private speech and language therapist and review Seven Bridge's evaluation. Kurani was put on notice that Student was scheduled for a private speech assessment in Dr. Youssef's September 2020 report. Asking a parent if there were any prior assessments or private providers was

standard best practices. An assessor must review a child's prior assessments and services as part of their evaluation. California law requires a district to consider the results of an assessment obtained by a parent at private expense. (Ed. Code, § 56329, subd. (c).) Dialogue with other providers and review of assessments were especially critical, given the assessment team's limited 45-minute virtual observation of Student at home with Parent and brother. Kurani and the team failed to thoroughly evaluate Student's speech and language by not identifying, reviewing, and analyzing Student's private speech services and assessment or contacting the speech therapy provider to garner additional information relevant to Student's communication. Fremont Unified heavily relied upon the TPBA virtual observation, while disregarding Parent's consistently expressed concerns about Student's communication and pragmatic deficits. Fremont Unified did not fully and properly assess Student's speech and language.

## ELIGIBILITY

The assessment team summarized findings and concluded their report by examining whether Student met eligibility criteria. The team looked at two eligibilities -autism and speech/language impairment.

Nunez discussed autism eligibility, using California Code of Regulations, Title 5, Section 3030, subsection (b)(1), which enumerated autism eligibility criteria. Autism meant a developmental disability the significantly affects verbal communication, nonverbal communication, and social interaction. Nunez concluded Student did not meet any of the three criteria and found Student not eligible for special education services under autism. Kurani concluded that Student did not meet state eligibility criteria for speech or language disorder, citing portions of California Code of



Regulations, Title 5, Section 3030, subsection (b)(11), which enumerated the eligibility criteria. The team did not consider other eligibilities and did not recommend any further assessments.

## IEP TEAM MEETINGS

Before the IEP team meeting, the assessment team filled out various portions of the IEP Information/Eligibility form, summarizing their findings and leaving blank those sections that required IEP team determination. Fremont Unified emailed this, along with a copy of the initial preschool assessment report, to Parent before the IEP team meeting.

Fremont Unified convened the initial IEP team meeting on November 3, 2020. The preschool assessment team, Parent, and an interpreter attended. School psychologist Alyssa Chang-Lee was the meetings administrator designee and Gordon took meeting notes. All attended virtually due to pandemic restrictions.

Nunez and Kurani presented the initial assessment and the team's conclusion that Student was not eligible for special education under autism and speech or language impairment eligibilities. Parent shared that Student was receiving speech therapy and agreed to share current speech therapy goals with the team. The assessment team did not know this before the meeting. Parent asked for written translation of the assessment report and a copy of the play assessment recording. Parent wanted time to review everything. The meeting adjourned.

Fremont Unified convened a second IEP team meeting on for December 15, 2020. The preschool assessment team (except for nurse Li), Parent, and an interpreter attended. Program specialist Dooley administered the meeting and Gordon took the meeting notes.

Parent disagreed with the assessment teams' conclusions and wanted to discuss the IEP with the entire team. Parent contended Student qualified for special education services. Parent said Student flapped by manipulating hands during the play assessment. Nunez shared that it was an isolated incident that did not impact Student participation in activities. Nunez noted that Dr. Youssef ruled out autism. Nunez talked about what the team observed during the play-based assessment and compared this to the report's autism eligibility table, explaining why Student did not qualify for special education services.

Kurani noted that the team could do a standardized assessment, but such testing would be one-to-one and not give information about Student's abilities to interact with peers. In response to Parent's claim that Student stuttered, Kurani said this was not seen in the observation. Kurani said that stuttering was often seen among bilingual students but was not usually examined until a student was five or six years old.

Parent shared she wanted to proceed with independent educational evaluations. Chang-Lee explained the process but cautioned that Fremont did not have an obligation to implement an independent evaluator's recommendations. The meeting ended with Parent promising to forward any additional medical report, such as for selective mutism. The program specialist would forward documents so Parent could request the independent evaluations. Since an independent evaluation could take some time, the

assessment team represented it was available for further in-person assessment when allowed. Parent electronically signed the IEP documents as “in attendance” only.

Though Fremont Unified offered further in-person assessments after pandemic restrictions were lifted, Fremont Unified contended further assessments were not needed. Each assessment team member stated at the hearing that Fremont Unified had assessed Student in all areas of suspected disability and properly determined he was not eligible.

## FREMONT UNIFIED’S PRESCHOOL ASSESSMENT WAS NOT LEGALLY APPROPRIATE

The shelter-in-place restrictions limited the assessment tools, sources, and observations available in initial evaluations, which would have otherwise been available in pre-COVID 19 assessments. Therefore, the assessment team should have demonstrated robust, affirmative efforts to seek and obtain available information regarding Parent’s expressed concerns about Student, from all sources and all usable assessments. The team did not.

A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304 (b)(1).) The assessments used must be used for purposes for which the assessments are valid and reliable, administered by trained and knowledgeable personnel; and administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).)

The IEP team shall take into account all the relevant material which is available on the child. No single score or product of scores shall be used as the sole criterion for the decision of the IEP team as to the child's eligibility for special education. (Cal. Code Regs., tit. 5, § 3030, subd. (a).)

Here, the initial assessment report revealed an undue reliance upon the TPBA. Fremont Unified failed to seek and obtain information relevant to Parent's stated concerns after Student started preschool in January 2020. The assessors speculated about why Student's behaviors changed in preschool, without having obtained information from the preschool teacher or about the preschool class. Fremont Unified ignored best practices by not seeking and fully reviewing private assessments and failing to determine if Student was receiving services from outside providers. Fremont Unified used few standardized assessments. And when used, the tests were administered in a manner that garnered little useful information or was inconsistent with the instrument's protocols.

A school district must conduct a full and individual initial evaluation of a child before determining if a child was eligible for special education and related services. (20 U.S.C. § 1414(a)(1); Ed. Code, § 56320.) Here, Fremont Unified's Preschool Assessment Report was not legally appropriate and, consequently, could not be the basis of determining that Student was ineligible for special education. Student met his burden of proof by a preponderance of the evidence that Fremont Unified failed to timely and comprehensively assess Student in all areas of suspected disability, including the areas of speech and language, psychoeducational, behavior, and autism. Student prevailed on Issue 1(a).

ISSUE 1(B): IF FREMONT UNIFIED FAILED TO COMPREHENSIVELY AND TIMELY ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY, DID SUCH FAILURE DENY STUDENT A FAPE, FROM OCTOBER 14, 2020 TO MAY 19, 2021?

Student contended that Student was denied a FAPE, from the time Parents signed the assessment plan to the filing of this due process request, because Fremont Unified did not comprehensively assess Student. Student contended that if Fremont Unified had properly assessed Student, Student would have been found eligible for special education.

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.) A procedural violation results in liability for denial of a FAPE only if the violation: impeded the child'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 *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

A determination that Student was entitled to a FAPE was necessary before Student could be found to have been denied a FAPE. Therefore, Student was obligated to prove that he was eligible for special education and a FAPE. Student did not meet his burden.

Student relied upon the opinion of Dr. Maloff, who opined Student was eligible because of developmental delay. Student did not introduce any assessments or

documentation in addition to that used by Fremont Unified in its assessment. Though Dr. Maloff had an admirable educational and professional background, her testimony in this regard was unpersuasive. Dr. Maloff did not have a sufficient evidentiary basis to render an expert opinion that Student was eligible for special education.

The California Evidence Code sets legal guidelines for admitting and considering expert opinion evidence, including careful scrutiny of matter that was not a proper basis for such an opinion or that was based in whole or in part upon the opinion or statement of another (Evid. Code, §§ 803 and 804). Here, Dr. Maloff did not assess or meet Student and never met Parent; she reviewed documents and viewed the observation video. Dr. Maloff stated that Fremont Unified's assessment garnered little useful information relevant to Parent's stated concerns. Dr. Maloff credibly and persuasively detailed the insufficiency of Fremont Unified's initial assessment to determine eligibility. The preschool assessment was not legally appropriate. The assessment and information did not support a determination of ineligibility. Similarly, Fremont Unified's assessment did not support a finding of eligibility. Without additional assessments or information, Dr. Maloff did not have a proper basis for an expert opinion that Student was eligible for special education. Other than Dr. Maloff's opinion, Student presented no additional evidence that supported a finding of eligibility.

Student did not meet his burden of proof, by a preponderance of the evidence, that Fremont Unified's failure to comprehensively assess Student in all areas of suspected disability denied Student a FAPE. Fremont Unified prevailed on Issue 1(b).

## ISSUE 2: DID FREMONT UNIFIED DENY STUDENT A FAPE, FROM FEBRUARY 23, 2020, TO MAY 19, 2021, BY FAILING TO FULFILL ITS CHILD FIND OBLIGATIONS IN ACTIVELY SEEKING, SERVING, AND FINDING STUDENT ELIGIBLE FOR SPECIAL EDUCATION?

Student contended that Fremont Unified failed to meet its child find duty, beginning when Student turned three years old to the filing of this due process request, in seeking and assessing Student and in finding him eligible for special education. Fremont Unified contended that it met its child find obligations.

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 who are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).) A child may be found eligible for special education beginning at three years of age. (Ed Code, § 56026, subd. (c)(2).) This duty is commonly referred to as “child find.” California law specifically incorporates child find in Education Code section 56301, subdivision (a).

Child find applies to parentally-placed private school children, defined as children who are enrolled by their parents in private school. (34 C.F.R. § 300.131; Ed. Code § 56170.) The child find activities a school district undertakes for parentally-placed private school children must be similar to the activities undertaken for the school district’s public school children, and must be completed in a time period comparable to that for student attending public school in the school district. (34 C.F.R. § 300.131(c) & (e); Ed. Code, § 56301, subds. (c)(1) & (3).) Violations of child find, and of the obligation

to assess a student, are procedural violations of the IDEA and the Education Code. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031.)

During 2019, when Student attended a toddler daycare class at KinderCare, Student did not exhibit behaviors that caused Calderon or Parent concerns. In January 2020, after transferring to the KinderCare preschool class, Parent saw changes in behavior and speech. Student turned three years old on February 23, 2020. Three to four weeks later, Student stopped attending KinderCare because of the pandemic's shelter-at-home mandates and remained at home. When Parent requested an initial special education assessment in September 2020, Fremont Unified timely issued a proposed assessment plan and timely scheduled assessment after receipt of the parentally signed plan.

Student asserted that Fremont Unified violated its child find duty by not properly assessing Student and failing to find him eligible for special education. However, child find does not guarantee eligibility for special education and related services under the IDEA. Child find is merely a locating and screening process which is used to identify those children who are potentially in need of special education and related services. A school district is then tasked with conducting an initial evaluation of the child's eligibility for special education. (34 C.F.R § 300.301; Ed. Code, § 56302.1.) Other special education statutes and regulations control the correctness or legal appropriateness of special education assessments, as demonstrated by Student prevailing on Issue 1(a).

Here, Student did not submit any documentary or testimonial evidence that addressed Fremont Unified's child find activities for parentally placed private school children, generally, or at KinderCare, specifically. Student therefore did not prove that Fremont Unified failed to meet its child find duty as to Student. Further, because



Student did not show that he was eligible for special education during this time, even if there was a deficiency in child find, there can be no denial of FAPE for a student who does not meet eligibility criteria

Student did not meet his burden of proof, by a preponderance of the evidence, that Fremont Unified denied Student a FAPE by failing to fulfill its child find obligations in actively seeking, serving, and finding Student eligible for special education. Fremont Unified prevailed on Issue 2.

## 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.

- 1(a): Fremont Unified failed to timely and comprehensively assess Student in all areas of suspected disability, including in the areas of psychoeducation, autism, speech and language, and behavior. Student prevailed on Issue 1(a).
- 1(b): Fremont Unified's failure to timely and comprehensively assess Student in all areas of suspected disability did not deny Student a FAPE. Fremont Unified prevailed on Issue 1(b).
2. Fremont Unified did not deny Student a FAPE, from February 23, 2020, to May 19, 2021, by failing to fulfill its child find obligations in actively seeking, serving, and finding Student eligible for special education. Fremont Unified prevailed on Issue 2.

## REMEDIES

Student prevailed on Issue 1(b). Fremont Unified failed to conduct an appropriate initial assessment of Student, including in the areas of psychoeducation, autism, speech and language, and behavior. Student seeks independent educational evaluations as a remedy.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. §1415(i); see *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) When school districts fail to provide a FAPE to a student with a disability, the student is entitled to relief that is “appropriate” in light of the purposes of the IDEA. (*Burlington, supra*, at pp. 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*Id.* at p. 374.)

An independent educational evaluation at public expense may be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (*Los Angeles Unified School Dist. v. D.L.* (C.D. Cal. 2008) 548 F.Supp.2d 815, 822-823.) An independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question. (34 C.F.R. § 300.502(a)(3)(i).) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the public agency uses when it initiates an evaluation, to the

extent those criteria are consistent with the parent's right to an independent educational evaluation. (34 C.F.R. § 300.502(e)(1).) Except for these criteria, the public agency may not impose conditions or timelines related to obtaining the independent educational evaluation at public expense. (34 C.F.R. § 300.502(e)(2).) If the public agency observed the student in conducting its assessment, or if its assessment procedures make it permissible to have in-class observations of the student, the same opportunity must be provided to the independent assessor. (Ed. Code, § 56329, subd. (b).)

On December 16, 2020, Parent requested that Fremont Unified fund a psychoeducational independent educational evaluation and a speech and language independent educational evaluation, disagreeing with the preschool assessment. On February 8, 2021, pursuant to 34 Code of Federal Regulations part 600.503, Fremont Unified gave prior written notice to Parent and refused to fund the requested independent evaluations, maintaining that its preschool assessment report was valid and appropriate under the law.

Student established Fremont Unified failed to conduct a legally appropriate assessment and is entitled to an equitable remedy. This requires an evaluation of the parties' conduct. Here, Fremont Unified's assessment failed to use instruments and seek information to appraise Parent's stated concerns. The assessment did not examine or analyze why Parent's description of Student's behaviors and speech starkly differed from the assessment team's findings. Additionally, Fremont Unified did not follow basic best practices, such as using standardized instruments to obtain information from other people and venues, seeking and reviewing private assessments, or speaking with private providers who had recently or contemporaneously serviced Student in person. Equity strongly favors Student in fashioning the remedy.

Therefore, Student is entitled to independent educational evaluations in the areas of psychoeducation and speech and language at Fremont Unified's expense. The independent evaluations shall be in accordance with Fremont Unified's criteria regarding independent educational evaluations, including qualifications of the assessor, as long as the Fremont Unified's criteria does not interfere with Parent's right to obtain such evaluations. Fremont Unified shall not impose other conditions with respect to the independent evaluations, including the use of its or its special education local area's maximum cost limitations for assessments.

## ORDER

1. Fremont Unified shall fund an independent psychoeducational evaluation of Student with an assessor of Parents' choice, who meets Fremont Unified's qualification requirements. The evaluation shall include assessment in areas of intellectual development, behavior, motor abilities, social emotional, adaptive behavior, autism, selective mutism, and anxiety. The evaluation may also assess Student in other areas typically assessed in psychoeducational evaluations, as determined by Parent and the selected assessor. Fremont Unified shall fund the selected assessor's time to conduct the evaluation, including review of records, school observations, and interviews of school staff, Parent, and Student, at the assessor's usual hourly rate, as long as such rate does not exceed the typical hourly rate for such assessments in the professional community. Fremont Unified shall also fund up to four hours for the assessor to prepare for and attend, in

person or virtually, an IEP team meeting to present the evaluation findings, including mileage reimbursement at the Federal internal revenue service business reimbursement rate.

2. Fremont Unified shall fund an independent speech and language evaluation of Student with an assessor of Parent's choice, who meets Fremont Unified's qualification requirements. The evaluation will include consideration of selective mutism and pragmatic communication, and may also assess Student in other areas typically assessed in speech and language assessments, as determined by Parent and the selected assessor. Fremont Unified shall fund the selected assessor's time to conduct the evaluation, including review of records, school observations, and interviews of school staff, Parent, and Student, at the assessor's usual hourly rate, as long as such rate does not exceed the typical hourly rate for such assessments in the professional community. Fremont Unified shall also fund up to four hours, at the assessor's usual hourly rate, to prepare for and attend, in person or by telephone, an IEP team meeting to present the evaluation findings, including mileage reimbursement at the Federal internal revenue service business reimbursement rate.
3. Within 15 days of this Order, Fremont Unified shall provide Parent with a list of assessors qualified to conduct the independent psychoeducational and speech and language evaluations. Parent may select an assessor from Fremont Unified's list, or another assessor who meets Fremont Unified's qualification requirements. If Parent selects an assessor not included on Fremont Unified's list, Fremont Unified shall contract with Parent's selected assessor within 15 days of receiving notice of Parent's selection.

4. Fremont Unified shall fund, at standard rates, a qualified Mandarin interpreter (or dialect, at Parents' direction), which the assessors deem necessary to enable them to fully assess Student.
5. Fremont Unified shall convene an IEP team meeting within 30 days of receipt of the last of the independent educational evaluations ordered by this Decision, to consider the results of both reports, unless Fremont Unified and Parent agree to a different timeline.

## 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/

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings