

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022040873

PARENTS ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

DECISION

November 4, 2022

On April 26, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Chaffey Joint Union High School District, called Chaffey, and Sky Mountain Charter School. On July 7, 2022, OAH granted Student's request to dismiss Sky Mountain Charter School and the matter proceeded against Chaffey.

Administrative Law Judge Paul H. Kamoroff heard this matter by videoconference on August 9, 10, 11, 16, 17, and 18, 2022, and September 20, 21, and 27, 2022.

Attorneys Sheila C. Bayne, Lynda Williams, Valerie Weiss, and Robert Burgermeister represented Student. Mother attended all hearing days. Student did not attend the hearing. Attorney Sundee M. Johnson represented Chaffey. Chaffey's Director of Special Education, Kelly Whelan, attended all hearing days on Chaffey's behalf.

At the parties' request, the matter was continued to October 11, 2022, for written closing briefs. The record was closed, and the matter was submitted on October 11, 2022.

ISSUES

1. Did Chaffey deny Student a free appropriate public education, called FAPE, for the 2021-2022 regular school year, pursuant to Student's October 14, 2021 individualized education program, called IEP, by failing to:
 - a. Assess in all areas of suspected disability, including occupational therapy, physical therapy, adapted physical education, behavior, assistive technology, and mental health;
 - b. Offer appropriate programs and supports for speech and language and behavior, including an individual aide;
 - c. Offer appropriate goals;
 - d. Offer physical therapy and adapted physical education;
 - e. Offer at-home applied behavior analysis services and related clinic meetings;
 - f. Offer occupational therapy;
 - g. Offer a sufficiently intensive academic program;

- h. Find Student eligible for special education services under autism, and the secondary category speech and language impairment;
- i. Consider Parents' requests; and
- j. Offer equestrian therapy?

JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed.

Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student, as the petitioning party, had the burden of proof for 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 15 years old and in 10th grade at Los Osos High School, a Chaffey school, at the time of the hearing. Student resided with Parents within Chaffey's geographic boundaries at all relevant times.

At the time of the hearing, Student was eligible for special education and related services under the categories specific learning disability, based upon an attention processing disorder that impacted her ability to progress in math, and other health impairment, based upon an attention disorder.

ISSUE 1: DID CHAFFEY DENY STUDENT A FAPE FOR THE 2021-2022 REGULAR SCHOOL YEAR, PURSUANT TO STUDENT'S OCTOBER 14, 2021 IEP?

Student alleges Chaffey denied her a FAPE during the 2021-2022 regular school year based upon various claims challenging the appropriateness of Student's October 14, 2021 IEP. Chaffey responds the October 14, 2021 IEP was based upon adequate assessments and offered appropriate goals, supports, and services.

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 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].)

Student was bright and well-mannered with a history of average to high grades in all classes, although she sometimes struggled in math, where she earned lower but passing grades.

Etiwanda School District initially evaluated Student for special education during the 2011-2012 school year, prekindergarten, and found Student eligible for special education under the category speech and language impairment due to an articulation disorder. Student was eligible for special education under speech and language impairment until the end of the 2015-2016 school year. During that time, Student's special education and related services were limited to speech and language services for an articulation disorder.

In spring 2016, third grade, Etiwanda School District reassessed Student and found she no longer demonstrated an articulation disorder and did not meet criteria for special education eligibility under any category. Etiwanda School District and Parents agreed to exit Student from special education at that time. Student continued to

perform well in general education classes during the 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years, without special education or related services. Student accessed her educational program, exhibited no academic, social, behavior or mental health problems, and earned passing to high grades in each class.

SKY MOUNTAIN CHARTER SCHOOL

Student enrolled in Sky Mountain Charter School, called Sky Mountain, an unaffiliated, online, charter school, for the 2020-2021 school year, eighth grade. At Mother's request, Sky Mountain conducted an initial assessment for special education in December 2020. Sky Mountain's initial assessment was limited to a speech and language evaluation conducted by Center for Developing Kids, a private agency funded by Sky Mountain. Results of the speech and language assessment showed that Student received low to high average scores in each area tested and did not demonstrate an articulation disorder.

On May 21, 2021, Sky Mountain held an initial IEP team meeting for Student. The IEP team found Student qualified for special education under speech and language impairment, based upon low average scores in receptive and expressive language. Sky Mountain did not identify any other area of deficit as Student performed well academically and had no behavior problems. Sky Mountain's IEP offered four goals, each for speech and language, and 45 minutes, twice weekly of speech and language services. Parents consented to the IEP.

THE 2021-2022 SCHOOL YEAR

Student enrolled in Los Osos High School, a Chaffey school, for the 2021-2022 regular school year, her ninth grade. The first day of school was August 9, 2021.

On August 13, 2021, Chaffey held an interim IEP team meeting. Mother attended with educational advocate Christin Bentley. Chaffey IEP team members included school psychologist Marilyn Lanier, speech-pathologist Breanne Whalen, special education advisor Julia Castillo Watkins, occupational therapist Abigail Villanueva, and general education math teacher James Foresio. The IEP team considered Sky Mountain's IEP, school records and assessments, Parent's concerns, and teachers' input.

Student's case manager B. Whalen met with Student prior to the IEP team meeting. Student had a history of earning high grades in difficult classes and had just begun receiving speech and language services from Sky Mountain in May 2021. While meeting with Student, B. Whalen quickly found Student was polite, bright, conversational, and articulate. Student did not demonstrate any observable disorders and the Sky Mountain IEP goals were far below Student's ability level.

During the interim IEP team meeting, Chaffey teachers reported similar findings. Student had quickly adjusted to her new school, performed well in class, communicated effectively with others, had friends, and was easily understood by teachers and peers. Student did not demonstrate any observable deficits. Consequently, Chaffey staff questioned the appropriateness of the Sky Mountain IEP and desired to conduct reassessments of Student.

On August 17, 2021, Chaffey provided Parents an assessment plan to assess Student in the areas of academic achievement, health, intellectual development, speech-language communication development, motor development, social-emotional behavior, adaptive behavior, occupational therapy, physical therapy, and adapted physical education. Each area of assessment denoted the testing would be completed by qualified school staff, including a school psychologist, speech-language pathologist,

occupational therapist, resource specialist program teacher, school nurse, physical therapist, or adapted physical education specialist. Parents consented to the assessment plan on August 18, 2021. Parents did not request any additional areas of testing. Chaffey completed the assessments and provided Parents written reports for each assessment prior to October 14, 2021.

Chaffey scheduled an IEP team meeting for October 14, 2021, to review the assessments, but agreed to Parents' request to continue the meeting date. Chaffey held the IEP team meeting over three days, November 1, 2021, December 1, 2021, and December 13, 2021, to review the assessments and offer Student a FAPE. All of Student's issues arise from the November 1, 2021, December 1, 2021, and December 13, 2021 IEP team meetings, collectively referred to as the October 14, 2021 IEP, and its impact on Student's educational program during the 2021-2022 regular school year.

Parents attended the IEP team meetings, along with their special education advocate Bentley. Chaffey's IEP team members included physical therapist Victoria Tobias, school psychologist Lanier, occupational therapist Abigail Villanueva, general education teachers Simon Ho and Bethany Encina, guidance counselor Cynthia Deiner, adaptive physical education teacher Melissa Seybert, speech-language pathologist Aysa Nava, special education advisor Watkins, and regular education teacher Calvin Tang.

Student's teachers reported she was engaged during class, timely completed assignments, was cooperative, attentive, and focused. Student was well received by her

peers and teachers. Student was polite, had friends, and participated during class. Student did not demonstrate any academic, social, emotional, or behavioral concerns.

By December 2021, Student earned passing to high grades in each class, including a B+ in physical education, A+ in Chorus, D in math, C+ in English, C in Biology, and an A+ in Chinese, although Chinese was not Student's native language.

As part of its assessments, Chaffey conducted a psychoeducational assessment that identified Student with a mild attention disorder that supported special education eligibility under specific learning disability and other health impairment. The IEP team adopted these findings, and, in December 2021, Chaffey found Student eligible for special education under the categories specific learning disability, based upon an attention disorder that impacted her ability to progress in math, and other health impairment, based upon an attention disorder. As part of the IEP, Chaffey offered goals, accommodations, and services. Parents consented to implementation of the IEP, but not that it offered Student a FAPE.

Student benefited from the IEP. Throughout the school year, Student maintained friendships, participated in class, had near perfect attendance, and earned high grades. Student's 2021-2022 final school year grades consisted of an A in physical education, an A+ in chorus, an A in English, a B in Math, an A in Biology, and an A+ in Chinese. Student accessed and benefited from her educational program.

ISSUE 1(a): FAILURE TO ASSESS

Student's first claim alleges that Chaffey denied her a FAPE during the 2021-2022 regular school year, arising from the October 14, 2021 IEP, by failing to assess Student for occupational therapy, physical therapy, adapted physical education, behavior,

assistive technology, and mental health. As alleged, Student's issue is limited to a claim that Chaffey failed to assess in these areas. Student's issue did not include a separate claim that the assessments conducted by Chaffey were inappropriate.

Chaffey responds it assessed Student in all areas of suspected disability.

Prior to making a determination of whether a child qualifies for special education services, a school district must assess the child. (20 U.S.C. § 1414(a), (b); Ed. Code, §§ 56320, 56321.) After the initial assessment, a school district must conduct a reassessment of the special education student not more frequently than once a year, but at least once every three years. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381, subd. (a)(2).) By this standard, the assessments at issue in this case constitute reassessments, as Student was initially assessed for special education by Sky Mountain in December 2020.

A school district must conduct a reassessment if it determines that the educational or related service needs of the child, including improved academic achievement and functional performance, of the child warrant a reevaluation, or if the student's parents or teacher request a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); see also Ed. Code, § 56381, subd. (a)(1).)

A school district's failure to assess constitutes a procedural violation of the IDEA. (*R.B., ex rel. F.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007) 496 F.3d 932, 940.) A procedural violation of the IDEA constitutes a denial of a FAPE only if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision making process; or

3. caused a deprivation of educational benefits. (Ed. Code, § 56505(f)(2); *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, (9th Cir. 1992) 960 F.2d 1479, 1484.)

THE OCCUPATIONAL THERAPY ASSESSMENT

Student's claim that Chaffey failed to assess her for occupational therapy had no merit as there was no question that Chaffey assessed Student in this area. The August 17, 2021 assessment plan included an assessment for occupational therapy. Parents consented to the plan and Chaffey quickly selected registered occupational therapist Villanueva to conduct the assessment. Villanueva did so and included her findings in a written report dated October 6, 2021. Chaffey provided Parents a copy of the occupational therapy assessment by October 14, 2021.

Villanueva presented the results of Student's occupational therapy assessment to the October 14, 2021 IEP team. Occupational therapy is a related service designed to improve a student's fine motor, coordination, and sensory processing skills. Villanueva had over 19 years' experience conducting occupational therapy assessments and providing occupational therapy services for school districts and private agencies. Villanueva reviewed Student's records and work samples, interviewed teachers, observed Student in class, and conducted formal and informal testing of Student.

As part of her observation, Villanueva observed Student in her English class. Student was engaged, able to take notes, answer questions in writing within lines on a worksheet, and write in her journal. There were no concerns from Villanueva or Student's teacher regarding Student's ability to function in the classroom.

Villanueva used multiple tests to assess Student's occupational therapy needs. Results from a test of motor proficiency found Student had average abilities in fine motor control, fine motor dexterity, and visual motor skills. Scores from a test of visual and motor ability showed Student had average visual motor, visual spatial, and fine motor abilities. Similarly, testing showed Student had average skills in visual motor integration.

Villanueva measured Student's sensory processing abilities and their effect on Student's functional performance in the classroom and school environment. In each area assessed, including auditory, visual, touch, movement, and behavior, along with sensory seeking, sensory avoiding, sensitivity and registration, Student received average scores.

In visual motor skills and visual perceptual skills, Student had no identified weaknesses. Similarly, Student had no weaknesses in sensory processing, self-regulation skills, or praxis, the ability to plan and execute coordinated movement. Student had no difficulty attending to self-care tasks or performing at school. She could independently change into her physical education uniform, cut paper, manipulate buttons, tie shoes, type, grasp objects, manage and organize schoolwork, and access her educational program.

As to prevocational skills and executive functioning, Student showed no areas of deficit. These areas included inhibition, initiation, emotional control, time management, sustained attention, transitions and flexibility, working memory, planning and organization, organization of materials, and self-monitoring. Student displayed no areas of deficit in any area tested.

Villanueva also assessed Student in the areas of typing, technology, and writing. Student had average to above average skills in each area.

Villanueva was a competent and experienced assessor who comprehensively assessed Student for occupational therapy. She compiled her findings in a written report that was shared with Parent during an IEP team meeting. Villanueva answered questions from Parents and their advocate regarding occupational therapy during the IEP team meeting.

Villanueva testified during the hearing in support of her assessment and findings. Her testimony and report persuasively showed that Chaffey comprehensively assessed Student for occupational therapy.

Student called Jandee Goodis to support her claim that Chaffey did not assess Student for occupational therapy. Goodis was an experienced occupational therapist with over 42 years' experience assessing for and providing occupational therapy services. However, there were problems with Goodis's testimony, including that it did not support Student's claims. Goodis was retained by Student's attorney in August 2022, three months after Student filed her complaint and after the hearing had commenced. She reviewed Student's records for the first time after it had been identified as evidence for the hearing. She did not assess Student or observe her at school, nor had Goodis attempted to observe Student or interview her teachers or assessors. Goodis met Student once, by videoconference, for approximately one hour in August 2022.

On this basis, Goodis opined there were no material problems with Chaffey's occupational therapy assessment and did not believe Student required occupational therapy services or goals. Overall, Goodis failed to support any of Student's claims for this matter.

Based upon comprehensive testing by a qualified occupational therapist, evidence overwhelmingly showed that Student did not require further testing in the areas of occupational therapy to access her educational program. Consequently, Student failed to prove by a preponderance of the evidence that Chaffey denied her a FAPE by failing to assess for occupational therapy.

THE PHYSICAL THERAPY ASSESSMENT

Student's claim that Chaffey failed to assess her for physical therapy was meritless as there was no question that Chaffey assessed Student in this area. The August 17, 2021 assessment plan included an assessment for physical therapy. Parents consented to the plan and Chaffey selected physical therapist Tobias to conduct the assessment. Tobias assessed Student on September 27, 2021, and compiled her findings in a written report that was provided to Parents by October 14, 2021.

Tobias was a physical therapist for San Bernardino County Superintendent of Schools. She shared the results of her physical therapy assessment with the October 14, 2021 IEP team. Physical therapy promotes motor-based functioning to help a student participate in everyday routines and activities that are part of the educational program.

As part of her assessment, Tobias reviewed records, conducted interviews, observed Student inside and outside of class, and performed standardized and non-standardized testing. Student obtained average to high scores in each area tested. Student did not demonstrate any problems in the areas of neuromuscular status, muscle tone and spasticity, strength, foot and ankle manual muscle testing, posture, transfers between sitting and standing, sitting, standing, gait, walking, ambulation throughout the school campus, stairs, protective reactions, safety, coordination, or gross motor skills. Student received a perfect score on the Pediatric Balance Scale, which assessed Student's risk of falling. Student demonstrated no problems in any areas covered by physical therapy.

Tobias shared the results of her physical therapy assessment with the IEP team. Parents were concerned regarding Student's webbed toes, and Tobias recommended over-the-counter shoe inserts to address this concern. To address Parents' concerns, the IEP team also devised various accommodations. Tobias carefully reviewed each aspect of her testing with Parents and answered questions from Parents and their advocate. Based upon Tobias's assessment, Student was comprehensively assessed for physical therapy.

During the hearing, Student failed to present testimony from a physical therapist or persuasive evidence that diminished Tobias's assessment.

Based upon comprehensive testing by a qualified physical therapist, evidence overwhelmingly showed that Student did not require further testing in the areas of physical therapy to access her educational program. Consequently, Student failed to prove by a preponderance of the evidence that Chaffey denied her a FAPE by failing to assess for physical therapy.

THE ADAPTED PHYSICAL EDUCATION ASSESSMENT

Student's claim that Chaffey failed to assess her for adapted physical education was meritless as there was no question that Chaffey assessed Student in this area. Chaffey's August 17, 2021 assessment plan included an assessment for adapted physical education. Parents consented to the plan and Chaffey selected adapted physical education specialist Seybert to conduct the assessment. Seybert assessed Student on September 8, 2021, and compiled her findings in a written report that was provided to Parents by October 14, 2021.

Seybert reviewed the results of her adapted physical education assessment of Student with the IEP team. Adapted physical education is specially designed instruction provided to students who are unable to participate in a regular physical education class, even with modifications, accommodations or supplementary aids and services. Seybert had over 20 years' experience as an adapted physical education teacher and was the Department Chair for Chaffey's Physical Education department. Seybert relied on input from Student's regular physical education teacher and a comprehensive motor proficiency test that measured fine and gross motor proficiency, with subtests that focus on stability, mobility, strength, coordination, and object manipulation. Teacher reports and testing showed that Student had average to above average abilities in each area observed and tested. In particular, Student's fine and gross motor skills were well above average. Results from Seybert's testing showed that Student did not require adapted physical education.

Seybert shared the results of her testing with the IEP team, including Parents and their advocate. The IEP team agreed that Student did not require adaptive physical education services and should remain in regular physical education classes.

Seybert persuasively testified in support of her assessment and findings during the hearing. Student submitted no evidence that impugned Seybert's testimony or assessment.

Based upon comprehensive testing by a qualified adapted physical education specialist, and teacher input, evidence overwhelmingly showed that Student did not require further testing in the areas of adapted physical education. Consequently, Student failed to prove by a preponderance of the evidence that Chaffey denied her FAPE by failing to assess for adapted physical education.

BEHAVIOR

Student's claim that Chaffey failed to assess her for behavior was meritless based on several grounds. First, there was no dispute that Student did not have behavior problems. Thus, behavior was not a suspected area of deficit that required an assessment. Each witness who testified, including Mother, described Student was polite, kind, and easily followed instructions. Secondly, there was no question that Chaffey assessed Student for behavior as part of its psychoeducational assessment. Chaffey's August 17, 2021 assessment plan included a psychoeducational assessment that included tools to assess behavior. Parents did not request an additional assessment for behavior, nor was one requested by anyone else. Chaffey provided Parents a copy of the psychoeducational assessment by October 14, 2021.

School psychologist Lanier administered the psychoeducational assessment for Student in October 2021. The comprehensive assessment consisted of a review of Student's records, interviews with Student, Mother, and Student's teachers, classroom observations, and the administration of several testing instruments, including various

tools to assess behavior. Lanier was an experienced assessor with 26 years' experience as a school psychologist. Lanier compiled her findings in a written report dated October 14, 2021.

Lanier's assessment did not identify any behavioral problems that interfered with Student's education. To the contrary, Student had no past or present behavior problems. She was cooperative, polite, compliant, and receptive to instructions by teachers and staff. Student had friends and got along well with others. Student never threatened to hurt herself or others, disrupted a classroom, or displayed any behavioral problems at school. Rating scales, along with reports by teachers and staff, showed that Student demonstrated appropriate behavioral, social, and emotional functioning in the classroom and during school activities. Overall, there was no indication that behavior problems interfered with Student's learning.

Lanier shared her findings with Parents and the IEP team during the November and December 2021 IEP team meetings. Lanier credibly testified in support of her assessment and findings during the hearing. She persuasively testified that she appropriately assessed Student for behavior problems and that Student did not require behavior intervention services.

There was no evidence submitted at the hearing that a Parent, teacher, or any IEP team member believed that behavior was a suspected area of disability or that Student required behavior intervention services. To the contrary, during the hearing Mother testified she did not believe Student required behavior intervention services.

Based upon comprehensive testing by a qualified school psychologist, and teacher input, evidence overwhelmingly showed that Student did not require further

testing in the areas of behavior to access her educational program. For the foregoing reasons, Student failed to show by a preponderance of the evidence that Chaffey denied her a FAPE by failing to assess for behavior.

ASSISTIVE TECHNOLOGY

Student's claim she was denied a FAPE because Chaffey failed to assess her for assistive technology was also meritless. Assistive technology is any item, piece of equipment, software program, or product system that is used to increase, maintain, or improve the functional capabilities of persons with disabilities. (20 U.S.C. § 1401(1); Ed. Code, § 56020.5.) During the hearing, there was no evidence provided that showed Parents, or anyone, had requested an assistive technology assessment, or that this was an area of suspected disability for Student that required an assessment.

For example, Chaffey's August 17, 2021 assessment plan did not include an assessment for assistive technology. Parents consented to the plan and did not request additional assessments. Moreover, Chaffey's occupational therapy assessment found that Student did not require technology or equipment to access her educational program, as she could type, write, and take notes with average ability or above. Similarly, Student's IEP from Sky Mountain stated that Student did not require assistive technology devices or services. Student easily accessed her classes without the support of equipment, software program, or product systems, outside of what was normally provided in regular education. Neither Parents or their advocate, or any of Student's teachers, requested an assistive technology assessment, devices, or services.

During the hearing, Student abandoned this issue and failed to submit any evidence to support that she required an assessment for assistive technology.

In sum, assistive technology was not a suspected area of disability for Student and therefore Chaffey was not obligated to assess her in this area. For these reasons, Student failed to prove by a preponderance of the evidence that Chaffey denied her a FAPE by failing to assess for assistive technology.

MENTAL HEALTH

Student contends Chaffey denied her a FAPE because Chaffey failed to assess her mental health. This area falls under educationally related mental health services. Educationally related mental health services are provided to students receiving special education services when the student has significant social, emotional and/or behavioral needs that impede their ability to benefit from their special education services, supports, and placement.

Student did not request an educationally related mental health services assessment as part of the assessments agreed to for the October 14, 2021 IEP. Chaffey's August 17, 2021 assessment plan denoted each area of assessment and did not include an educationally related mental health services assessment. Parents agreed to that plan and did not request additional assessment. Student failed to submit any evidence to show that any person requested an educationally related mental health services assessment for Student or that one was necessary in light of Student's circumstances.

Student did not have a history of mental health problems. She had never taken medication and was never hospitalized for mental health problems. Neither Student nor her family had a history of depression or mental health problems. Student never threatened to hurt herself or others or displayed any emotional or behavioral problems

at school. There was no persuasive evidence submitted at the hearing that Student had social, emotional, or behavioral needs that impeded her ability to benefit from special education services, supports, and placement.

Moreover, in October 2021, Chaffey's psychoeducational assessment of Student included a social and emotional functioning component. School psychologist Lanier's assessment consisted of a review of Student's records, including past assessments, interviews with Student, Mother, and Student's teachers, observation of Student in class, and the administration of several testing instruments, including tools to measure social and emotional functioning.

While a rating scale by Mother showed she believed Student had problems with anxiety and emotional self-control, teacher rating scales, along with reports by teachers and staff, more persuasively showed that Student demonstrated appropriate social and emotional functioning in the classroom and during school activities. Overall, there was no indication that emotional issues interfered with Student's learning or that Student required further testing for mental health. To the contrary, evidence showed that Student easily accessed her educational program without mental health services.

Lanier credibly testified in support of her assessment and findings. Student failed to present any persuasive evidence that impugned Lanier's testimony, assessment, or findings.

Based upon comprehensive testing by a qualified school psychologist, evidence overwhelmingly showed that Student did not require further testing in the areas of mental health or educationally related mental health services to access her educational

program. Given the foregoing, Student failed to show by a preponderance of the evidence that Chaffey denied her a FAPE by failing to assess in mental health.

ISSUE 1(b): FAILING TO OFFER APPROPRIATE SPEECH AND LANGUAGE AND BEHAVIOR SERVICES, INCLUDING AN INDIVIDUAL AIDE

Student alleges Chaffey denied her a FAPE by failing to offer appropriate programs and support for speech and language and behavior, including an individual aide, during the 2021-2022 regular school year, pursuant to the October 14, 2021 IEP.

Chaffey argues that Student did not require speech and language or behavior services, including an individual aide, to access or benefit from her educational program.

Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. Related services may include speech and language services when appropriate. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [in California, related services are also called designated instruction and services].)

In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).)

SPEECH AND LANGUAGE

Student had a history of demonstrating an articulation disorder that qualified her for special education. From prekindergarten through third grade, Etiwanda School District provided Student speech and language services for an articulation disorder. Etiwanda reassessed Student as part of a 2016 triennial evaluation and found Student no longer demonstrated an articulation disorder. With Parents' consent, Etiwanda exited Student from special education during Students' third grade.

From fourth grade through seventh grade, 2016 through 2020, Student attended Caryn Elementary School, Harry S. Truman Middle School, and Fontana Middle School. Student did not receive an IEP or school-based speech and language services. She continued to perform well at school, earning passing to high grades in each class. Teachers did not report any speech and language delays. Although shy at first, Student was conversational, articulate, understood others, and her peers and teachers easily understood her.

Student attended Sky Mountain, an online charter school for eighth grade, the 2020-2021 school year. Pursuant to Parents' request, Sky Mountain assessed Student for special education eligibility in December 2020. Results of the speech and language assessment showed that Student received low to high average scores in each area tested and did not demonstrate an articulation disorder. On this basis, Sky Mountain found Student eligible for special education under speech and language impairment in May 2021. Sky Mountain's IEP offered four goals in the areas of speech and language, and 45 minutes, twice weekly of speech and language services.

After enrolling in Chaffey in August 2021, Chaffey teachers and speech-language pathologist B. Whalen questioned the appropriateness of Sky Mountain's IEP. They found Student was bright, articulate, conversational, with an ability level far above the goals included in Sky Mountain's IEP.

During an interim IEP team meeting held on August 13, 2021, Student's regular education teachers reported Student communicated effectively with others, socialized with friends, and teachers and peers easily understood her. On this basis, as part of the interim IEP offer, Chaffey, Parents, and their advocate, agreed to reduce the level of speech and language services from 45 minutes, twice weekly, to 30 minutes weekly.

In October 2021, Chaffey speech-pathologist B. Whalen reassessed Student in speech and language. B. Whalen was a qualified assessor with 10 years' experience assessing and providing speech and language services to students. She reviewed Student's records, interviewed Student, Parents, and each of Student's teachers, observed Student during multiple classes on different days, and used a variety of testing instruments, without repeating standardized testing recently conducted by Sky Mountain.

In class, Student was attentive, independently followed teachers' verbal and written instructions, and independently approached and spoke with peers and teachers. Student had friends and easily interacted with others. Student initiated, responded, and socialized with peers. Student easily understood others and was easily understood by others. During testing, Student appropriately greeted the examiner, answered questions, asked for clarification when needed, engaged in spontaneous conversation, was attentive, and maintained appropriate and consistent eye contact.

Student's articulation was 100 percent intelligible. Student demonstrated no deficits, including vocal quality, pitch, loudness, and rate of speech. Student's speech was fluent, and she demonstrated no concerns, including smoothness of speech and stuttering patterns. Student demonstrated no language concerns, including semantics, morphology, syntax, and pragmatic language. Finally, Student was at a 100 percent achievement level for each annual goal in Sky Mountain's May 2021 IEP after only three months of school, two of which were with reduced services under Chaffey's interim agreement.

B. Whalen also analyzed testing performed in prior speech and language assessments, including the Sky Mountain funded assessment. Although Student demonstrated some variability in the areas of syntax and nonliteral language, these weaknesses did not impact Student in the therapeutic or classroom setting. Student did not have a speech and language disorder that impacted her ability to access and benefit from her educational program.

At the October 14, 2021 IEP team meeting, Chaffey IEP team members agreed with B. Whalen's conclusions and recommendations, and the IEP did not offer speech and language services. As a result, Student filed the complaint for the present matter. During the hearing, B. Whalen credibly testified in support of her recommendation that Student did not require speech and language services.

Student called four witnesses during the hearing, including Mother, occupational therapist Goodis, psychologist Theresa Edwards, and speech-language pathologist Susan Hollar.

Mother was a caring and diligent advocate for Student and actively involved in Student's education. Mother believed Student had various disabilities, including a

speech and language disorder that was overwhelming to Student. However, Mother struggled to describe the disorder or how it impacted Student. Student socialized with various friends, interacted during class, and effectively communicated with peers and adults. Any disorder observed by Mother was not observed in school and did not impact Student while at school.

Mother was also frustrated because private speech-language pathologists would not provide services to Student. Although Parents' insurance agreed to fund private speech and language services, Parents could not find a service provider willing to serve Student. Mother described a recent encounter where a private speech-language pathologist refused to provide services because, after meeting with Student, the therapist described Student as "doing great" and not demonstrating a need for speech and language services. This anecdote by Mother supported Chaffey's conclusion that Student did not demonstrate any observable communication disorders. Overall, Mother's testimony was not persuasive in showing that Student required speech and language supports or services to receive a FAPE.

Goodis met Student once, by videoconference, for one hour in August 2022. Edwards met Student, once, by videoconference, for 45 minutes in September 2022. During these interactions, Goodis and Edwards each found Student was polite, responsive, conversational, understanding, and easily understandable. Student was an effective communicator, maintained appropriate eye contact, and easily engaged in spontaneous conversation. Student exhibited no speech and language delays during her interactions with Goodis or Edwards. Consequently, Goodis's and Edwards's testimony did not support that Student required speech and language supports or services.

Susan Hollar was a speech-language pathologist with over 20 years' experience serving children in private practice. Pursuant to Parent's request for an independent educational evaluation following Chaffey's speech and language assessment, Chaffey agreed to fund an independent speech and language evaluation by Hollar, who Parents selected.

Hollar met and assessed Student over two occasions in May 2022, and compiled her findings in a written report dated May 28, 2022. Her report was first reviewed by Chaffey in September 2022.

Hollar's assessment included a review of records, interviews with Mother and Student, a school observation, and a variety of testing instruments. Hollar did not interview Student's teachers or have them complete rating scales.

Testing in the areas of articulation, oral, and written language, yielded average scores. However, Hollar identified deficits in higher level thinking, including critical thinking, narrative, and nonliteral language. On this basis, Hollar determined Student had a speech and language impairment and recommended speech and language services, twice weekly, at 45 minutes per session. Although an experienced speech-language pathologist, there were problems with Hollar's testimony.

For example, Hollar's assessment was not reviewed by Chaffey until September 26, 2022, one day prior to Hollar's testimony and almost a year after the IEP in dispute for this matter. Any areas of deficit identified by Hollar were not available to Chaffey when it formulated the October 14, 2021 IEP offer, and it was reasonable for Chaffey to rely on the information it had at the time the IEP offer was made. The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability, must be evaluated in light of information that the

district knew, or had reason to know, at the relevant time. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041).)

Next, Hollar testified Student had a severe speech and language disorder that impacted her ability to communicate with others across all settings and was apparent to any adult who interacted with Student. However, this testimony was contradicted by a preponderance of the evidence submitted for this matter. For example, Chaffey witnesses, including speech-language pathologist B. Whalen, adapted physical education specialist Seybert, regular education teachers Tang and James Grasmick, school counselor Deiner, occupational therapist Villanueva, school psychologist Lanier, along with Student's experts Goodis and Edwards, were all adults who had interacted with Student, and each testified they had no difficulty communicating with Student. To the contrary, each of these witnesses observed Student was articulate, easy to understand, conversational, understood complex language, maintained appropriate eye contact, and demonstrated no apparent communication deficits. This testimony was corroborated by Student's high grades in complex classes, such as an A+ in Chinese.

Finally, there were internal inconsistencies in Hollar's testimony that diminished her credibility. For example, Hollar testified she directly observed Student struggle to communicate with peers during a classroom observation she conducted in April 2022. However, Hollar backtracked when it was pointed out that her written report contradicted this testimony. Hollar wrote that during Student's ecology class, the only class Hollar observed, Student followed along, engaged in classroom conversation, spoke within a study group, answered questions, and interacted appropriately with peers. These observations were consistent with the classroom teacher's observations

reported in Hollar's assessment that Student had no problems interacting with others or understanding the subject matter. For all of these reasons, little weight was given to Hollar's testimony.

In sum, evidence that Student required speech and language supports and services at the time the October 14, 2021 IEP was formulated was outweighed by countervailing evidence. Consequently, Student failed to show by a preponderance of the evidence that Chaffey denied Student a FAPE by failing to provide appropriate programs and supports for speech and language.

BEHAVIOR

Student alleged Chaffey denied her a FAPE by failing to provide appropriate programs and supports for behavior, including an individual aide. During the hearing, Student abandoned this issue by failing to present any evidence, including witness testimony or documentary evidence, to support that Student had behavior problems that required intervention or an individual aide.

Significantly, during the hearing, Mother testified that she did not believe Student required behavior supports or services, including an individual aide, and had not requested such. Mother was not aware this claim was asserted on Student's behalf in Student's complaint.

Consequently, Student failed to show by a preponderance of the evidence that Chaffey denied her a FAPE by failing to provide appropriate programs or supports for behavior, including an individual aide.

ISSUE 1(c): THE IEP GOALS

Student claims she was denied a FAPE during the 2021-2022 school year, pursuant to the October 14, 2021 IEP, because Chaffey failed to offer appropriate goals. Chaffey responds it offered appropriate goals as part of the IEP.

For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345.) The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. In *Capistrano Unified Sch. Dist. v. S.W., et al.* (9th Cir. 2021) 21 F.4th 1125, the court stated the IDEA required IEP goals to target a student's needs, but the IDEA did not require an IEP to contain every goal from which a student might benefit. (*Id.* at p. 1133.) Moreover, a school district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (Fed. Regs., Appendix A, *Part 300 – Assistance to States for the Education of Children with Disabilities* (1999), discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C., § 1414(d)(1)(A)(i)(II).)

The October 14, 2021 IEP was based upon recent testing in various areas, including academics, cognition, speech and language, occupational therapy, physical therapy, adapted physical education, health, behavior, adaptive behavior, and social emotional functioning. Chaffey held three IEP team meetings, on November 1, 2021, December 1, 2021, and December 13, 2021, to review the assessments, determine

present levels of performance, discuss parent and teacher concerns, identify areas of need, formulate goals to address those areas of need, and offer accommodations and services to meet those goals.

Along with Parents and their advocate, Chaffey ensured that qualified assessors in each area of assessment were present. Participants included the school's psychologist, speech-language pathologist, occupational therapist, physical therapist, adapted physical education specialist, Student's regular education teachers, guidance counselor, special education adviser, and an education specialist.

After reviewing Student's assessments, present levels of performance, input from Parents and their advocate, and data from Student's teachers, the IEP team identified areas of need in math, study skills and organization, and, given Student's age, post-secondary education, and employment. To meet those areas of need, the IEP team developed four goals, in the areas of math, study skills and organization, career exploration, and college awareness.

The career exploration goal called for Student to complete a list of interest inventories to identify interests and strengths, select a career, and research that career, measured by an oral report by Student and charting by her case carrier.

The math calculation goal called for Student to, while using a calculator and teacher led activity, add, subtract, and multiple polynomials with 80 percent accuracy in three trials, measured by work samples and teacher records.

The goal for study skills and organization, including task initiation and completion, sought for Student to increase her organization and task completion skills by tracking missing assignments on a school-based program, create assignment lists to

complete, and logging completed and submitted assignments in an agenda for six consecutive weeks, with 85 percent rate of completion, measured by student work and progress on the school program.

Finally, the college awareness goal tied into other post-secondary goals, which were designed to help Student identify areas of need and classes that would lead to meeting her post-secondary goals and attend college after graduation.

Each goal had a baseline, short-term objectives, was measurable, identified school staff responsible for ensuring Student met the goal, and correlated to an area of identified need for Student.

To meet those goals, the IEP offered various accommodations, annual college awareness services, and specialized academic instruction for 55 minutes, daily, in a study skills class.

Like all the issues for this matter, Student had the burden of proof for this issue. However, Student submitted negligible evidence to support her claim that the goals were not appropriate.

Student's expert, Goodis, had no concerns regarding the goals and did not recommend additional goals. Mother and Student's expert Hollar made an irrelevant attempt to show that speech and language goals offered pursuant to Sky Mountain's May 2021 IEP were not appropriate. No weight was given to this testimony as those goals were not an issue for this matter.

Hollar's independent speech and language assessment recommended 26 speech and language goals designed to address a severe communication disorder. However, as found in Issue 1(b), Hollar's description of Student's needs was not consistent with a

preponderance of the evidence submitted for this matter, which more persuasively showed Student did not require speech and language services to access or benefit from her educational program. Consequently, Student did not require speech and language goals to receive a FAPE.

Finally, Student's expert Edwards's testimony regarding the IEP goals was discombobulated and did not support Student's claim. For example, she first opined the math goal was inappropriate because it did not include the testing that identified Student's disability, backtracked on that opinion, testified the goal was appropriate, and later testified the goal should not have included Student's ability to use a calculator. The internal inconsistencies in Edwards's testimony, along with a lack of foundation explaining why the math goal should have not included Student's use of a calculator, diminished the weight of her testimony in this area. After reading the other goals for what appeared the first-time during hearing, Edwards appeared frustrated regarding this area of testimony and generally opined there were no problems with the IEP goals.

In contrast, Chaffey's witnesses, including school psychologist Lanier, special education advisor Watkins, and Student's regular education teachers Tang and Grasmick, persuasively testified the IEP goals were appropriate to meet all of Student's educational needs.

For the foregoing reasons, Student failed to show by a preponderance of the evidence that Chaffey denied her a FAPE by failing to offer appropriate goals.

ISSUE 1(d): PHYSICAL THERAPY AND ADAPTED PHYSICAL EDUCATION

Student contends Chaffey denied her a FAPE for the 2021-2022 regular school year, pursuant to the October 14, 2021 IEP, by failing to offer related services for physical therapy and adapted physical education.

Special education related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. Related services may include physical therapy and adapted physical education when appropriate. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363.)

Student's claim is based on Mother's belief that Student has webbed feet, poor motor skills, and tires easily, and therefore requires school-based physical therapy and an adapted physical education class instead of a regular physical education class. Student's other witnesses, including Goodis, Edwards, and Hollar, did not recommend physical therapy or adapted physical education during their testimony.

PHYSICAL THERAPY

Physical therapy services are designed to promote motor-based functioning to help a student access and participate in their educational program. As found in Issue 1(a), Chaffey's physical therapist Tobias comprehensively assessed Student in this area. She determined that Student did not require physical therapy services.

Tobias was a careful examiner who reviewed Student's school records, conducted interviews of Student and her teachers, observed Student inside and outside of class, and performed standardized and non-standardized testing to determine if Student had

any motor disorders. Student obtained average to high scores in each area tested. Student did not demonstrate any problems in the areas of neuromuscular status, muscle tone and spasticity, strength, foot and ankle manual muscle testing, posture, transfers between sitting and standing, sitting, standing, gait, walking, ambulation throughout the school campus, stairs, protective reactions, safety, coordination, or gross motor. Student received a perfect score on a test of balance to assess the risk of falling. Student demonstrated no problems in the areas of physical therapy. During the hearing, no person who had interacted with student, other than Mother, reported any concerns that would warrant physical therapy services.

Tobias shared her report with the IEP team, including Parents and their advocate, during the November and December 2021 IEP team meetings. Tobias carefully reviewed each aspect of her testing with Parents and answered various questions from Parents and their advocate.

While the IEP did not offer Student physical therapy services, it offered various accommodations to address Mother's belief that Student had physical problems. The accommodations included that Student may be excused from running activities with no impact on her physical education grade, Student could leave books in class as needed, Student was permitted extra time to walk between classes, including early dismissal from class, and was not marked tardy if late to a class. In addition, the IEP offered Student extended time to complete tests and assignments, and monthly collaboration between regular education teachers, special education staff, and Student.

Chaffey's physical therapy assessment and recommendation against providing physical therapy services was corroborated by Student's ability to attend school, access her education, transition easily between classes, participate during all classes including regular physical education, and earn high grades.

Based upon comprehensive testing by a qualified physical therapist, a preponderance of the evidence showed that Student did not require physical therapy services to access or participate in her educational program. Student failed to prove by a preponderance of the evidence that Chaffey denied her a FAPE by failing to offer physical therapy services.

ADAPTED PHYSICAL EDUCATION

Adapted physical education is specially designed instruction provided to students who cannot participate in a regular physical education class, even with modifications, accommodations or supplementary aids and services. As found in Issue 1(a), Chaffey's adaptive physical education specialist, Seybert, comprehensively assessed Student in this area in September 2021 and found that Student did not require adapted physical education.

During the hearing, Seybert credibly testified that Student did not require adapted physical education. Seybert based this opinion on input from Student's regular physical education teacher and testing that measured Student's fine and gross motor proficiency, with subtests that focused on stability, mobility, strength, coordination, and object manipulation. Teacher reports and testing showed Student had average to above

average abilities in each area observed and tested. In particular, Student's fine and gross motor skills were well above average. Consequently, Student did not require adapted physical education.

Seybert shared the results of her testing during IEP team meetings held in November and December 2021. The IEP team agreed that Student should continue participating in regular physical education classes with the accommodations in the IEP, rather than receiving adapted physical education.

Seybert's testing and testimony was corroborated by Student's passing grades in each class, including a B+ in regular physical education, demonstrating Student could access and participate in regular education classes, including physical education, without adapted physical education.

During the hearing, Student failed to present expert testimony or documentary evidence that impugned Seybert's assessment or recommendations. Any concerns Mother had regarding Student's physical limitations were adequately addressed by the IEP accommodations.

Based upon comprehensive testing by a qualified adapted physical education specialist, evidence overwhelmingly showed that Student did not require adapted physical education services. Thus, Student failed to prove by a preponderance of the evidence that Chaffey denied her FAPE by failing to offer adapted physical education.

ISSUE 1(e): AT-HOME APPLIED BEHAVIOR ANALYSIS SERVICES AND RELATED CLINIC MEETINGS

Student claims Chaffey denied her a FAPE during the 2021-2022 school year, pursuant to the October 14, 2021 IEP, by failing to offer at-home applied behavior analysis services and related clinic meetings for those services. Chaffey argues Student did not demonstrate behavior problems and did not require any behavior intervention service.

Applied behavior analysis is an intensive behavior modification therapy sometimes used for children with autism who have significant behavioral challenges. As found in Issue 1(b), Student did not require behavior intervention services to access or benefit from her educational program.

Student abandoned this issue during the hearing. Student failed to submit any evidence to support that she required at-home behavior modification services or related clinic meetings. The only witness questioned regarding this issue was Mother, who testified Student did not require at-home applied behavior analysis services and related clinic meetings. Mother was familiar with applied behavior analysis therapy, had not requested this service for Student, and did not believe it was appropriate for Student. Parents were not aware this claim was included in Student's complaint.

In her closing brief, Student stated this issue was "withdrawn." Code of Civil Procedure, section 581, et seq., addresses motions to withdraw complaints and issues. Section 581, subdivision (c), states that the filing party may dismiss his or her complaint, or any portion of it, with or without prejudice prior to the actual commencement of trial. Section 581, subdivision (e), states that after the actual commencement of a trial, a court

will dismiss a complaint, or any portion of it, with prejudice upon a plaintiff's request, unless all parties consent to dismissal without prejudice or unless the court finds good cause for a dismissal without prejudice. Here, Student failed to request dismissing this issue in a motion or to have that request granted by the Administrative Law Judge. Stating "withdrawn" below an issue in Student's closing brief is inadequate to be considered a motion.

In the instant case, nine days of hearing took place, consisting of the testimony of 14 witnesses. The hearing followed a prehearing conference where Student's attorney confirmed each issue. Most of the witnesses were Chaffey employees and Chaffey had to arrange substitute instructors for the witnesses to be able to testify during the school day. Chaffey expended considerable resources and time in defending the case filed by Student. Therefore, the prejudice to Chaffey weighs heavily in making a final determination on this issue, thereby preventing the possibility of Student re-filing a complaint on the same issues, necessitating a new hearing for an issue or issues that have already been litigated. Consequently, this issue is deemed not withdrawn and fully litigated.

Therefore, Student failed to show by a preponderance of the evidence that Chaffey denied her a FAPE during the 2021-2022 school year, pursuant to the October 14, 2021 IEP, by failing to offer at-home applied behavior analysis services and related clinic meetings.

ISSUE 1(f): OCCUPATIONAL THERAPY SERVICES

Student argues Chaffey denied her a FAPE for the 2021-2022 regular school year, pursuant to the October 14, 2021 IEP, by failing to offer occupational therapy. Chaffey responds that Student did not require occupational therapy to receive a FAPE.

Occupational therapy is a related service designed to improve a student's fine motor, coordination, and sensory processing skills. Special education and related services may include occupational therapy when appropriate. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363.)

As found in Issue 1(a), Chaffey occupational therapist Villanueva comprehensively assessed Student for occupational therapy in October 2021. During the hearing, Villanueva credibly testified that Student did not require occupational therapy to receive a FAPE.

Villanueva had 19 years' experience conducting occupational therapy assessments and providing occupational therapy services for school districts and private agencies. Villanueva reviewed Student's records and work samples, interviewed Student's teachers, observed Student in class, and conducted formal and informal testing of Student. Tests results showed Student had average abilities in fine motor control, fine motor dexterity, visual motor skills, visual motor ability, visual spatial ability, fine motor ability, and sensory processing, including auditory, visual, touch, movement, and behavior, sensory seeking, sensory avoiding, sensitivity, and registration. In addition, Student had no weaknesses in self-regulation skills, or praxis, the ability to plan and execute coordinated movement. Student had no difficulty attending to self-care tasks or performing at school. She could independently change into her physical

education uniform, cut paper, manipulate buttons, tie shoes, type, grasp objects, manage and organize schoolwork, and access her educational program. Student also demonstrated no deficits in prevocational skills and executive functioning, including inhibition, initiation, emotional control, time management, sustained attention, transitions, flexibility, working memory, planning and organization, organization of materials, and self-monitoring. Finally, Student had average to above average skills in typing, technology, and writing. Student displayed no deficit in any area that fell under the purview of occupational therapy.

Villanueva's findings were consistent with Student's ability to access her educational program, and high grades. Teacher reports that Student was engaged in class, able to handwrite notes, write answers to questions within lines on a worksheet, and write in her journal, also corroborated Villanueva's testimony. There were no concerns from Student's teachers regarding Student's ability to function in the classroom.

Student failed to submit any persuasive evidence that impugned Villanueva's testimony. To the contrary, Student's independent occupational therapist, Goodis, testified that Student did not require occupational therapy.

Based upon comprehensive testing by a qualified occupational therapist, evidence overwhelmingly showed that Student did not require occupational therapy to access or benefit from her educational program. Consequently, Student failed to prove by a preponderance of the evidence that Chaffey denied her a FAPE by failing to offer occupational therapy.

ISSUE 1(g): FAILURE TO OFFER A SUFFICIENTLY INTENSIVE ACADEMIC PROGRAM

Student contends she was denied a FAPE during the 2021-2022 school year, pursuant to the October 14, 2021 IEP, because Chaffey failed to offer a sufficiently intensive academic program. Chaffey denies this issue and points out that, along with her IEP goals, accommodations and services, Student received regular education classes of the same intensity as her typically developing peers.

Student was enrolled in regular education classes with typically developing ninth grade students at Los Osos High School, including core academic classes, physical education, and elective courses. These classes met A-G requirements, meaning high school courses that students must complete to be eligible for admission to the University of California and California State University systems. Student's academic program was sufficiently intensive.

In addition, Student's October 14, 2021 IEP offered various accommodations to support her in regular education classes, and a daily study skills class to assist student with assignment completion, organization, and math. With these accommodations, Student performed well in her regular education classes and earned passing to high grades in each course.

Parents consented to implementation of the IEP and evidence showed Student performed well because of the IEP. For example, Student's math grade improved from a D to a B, and Student earned high grades in each course by the end of the 2021-2022 school year. Each witness who testified regarding Student's classes confirmed the

appropriateness of Student's educational program, including Lanier, Castillo, Tang, and Grasmick. Mother also attributed Student's improved grades to the October 14, 2021 IEP, in particular, the study skills course included in that IEP.

Student had the burden of proof on this claim yet failed to present any evidence regarding this issue. It was not clear during the hearing why Student believed her academic program was not sufficiently intensive, what alternative academic program Student desired, or whether Parents were aware this claim was included in Student's complaint. Student's closing brief was similarly unclear regarding this issue and instead re-argued Student's claim regarding the IEP goals. Regardless, Student failed to prosecute this issue during the hearing.

Based on the foregoing, Student failed to show by a preponderance of the evidence that Chaffey denied her a FAPE by failing to offer a sufficiently intensive academic program.

ISSUE 1(h): ELIGIBILITY UNDER AUTISM AND SPEECH AND LANGUAGE IMPAIRMENT

Student asserts Chaffey denied her a FAPE during the 2021-2022 regular school year, pursuant to the October 14, 2021 IEP, by failing to find Student eligible for special education under the primary eligibility category autism, and the secondary eligibility category speech and language impairment.

As long as a child remains eligible for special education and related services, the IDEA does not require that the child be placed in the most accurate disability category. Nothing in the IDEA requires that children be classified by their disability so long as

each child who has a disability listed in the IDEA and who, by reason of that disability, needs special education and related services. (20 U.S.C. § 1412(a)(3)(B); Ed. Code § 56301(a).) The IDEA is not concerned with labels, but with whether a student is receiving a FAPE. (*E.M. ex rel. E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2014) 758 F.3d 1162, 1173, citing *Heather S. v. Wisconsin* (7th Cir.1997) 125 F.3d 1045, 1055.)

A child may have a qualifying disability, yet not be found eligible for special education if the student does not meet the IDEA eligibility criteria. (See *Hood v. Encinitas Union School District* (9th Cir. 2007) 486 F.3d 1099, 1107-1108, and 1110.)

Here, Student qualified for special education under specific leaning disability, and the secondary category other health impairment. She was therefore entitled to a FAPE regardless of her area of eligibility.

AUTISM

Autism is a neurological disorder that impacts one's communication, behavior, and learning. A child qualifies for special education under the category of autism if they have a developmental disability significantly affecting verbal and nonverbal communication and social interaction adversely affecting the child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (Cal. Code Regs., tit. 5, § 3030(b)(1).)

Student's claim is based on Mother's belief that Student has mild autism. There was some basis for Mother's belief. For example, Lanier's psychoeducational assessment included a screening instrument used to identify persons with autism spectrum disorder.

Based on rating scales provided by Mother, scores showed there was a probability Student had autism. However, behavior rating scales and reports from Student's teachers did not identify Student with autistic-like characteristics. Additionally, Lanier did not observe Student demonstrate autistic-like characteristics in the clinical setting or during her classroom observations.

In an abundance of caution, Lanier recommended the IEP team consider autism as an area of eligibility for Student based upon Mother's rating scales. The IEP team did so and determined Student did not demonstrate autistic-like behaviors at school. If Student had autism, it did not impact her ability to access or benefit from her educational program. Student did not meet eligibility criteria for autism because she did not demonstrate a disorder significantly affecting her verbal and nonverbal communication and social interaction, or demonstrate autistic-like characteristics, that adversely affected her education. During the hearing, Lanier credibly testified the IEP arrived at the appropriate conclusion that Student did not qualify for special education under the eligibility category autism.

On July 19, 2021, independent psychologist Lisa French diagnosed Student with mild autism based upon Parent rating scales on two autism screening tools. Little weight was given to French's assessment for several reasons. First, French relied primarily on Parent input to derive the autism diagnosis and did not attempt to obtain information, such as rating scales, from Student's teachers. Secondly, French did not observe Student at school or contact Student's teachers or prior assessors. Thirdly, French did not testify during the hearing, which would have been helpful to clarify and support her findings. Finally, Student's expert witness Edwards, called to support this issue, testified there was not enough information in French's assessment or Lanier's assessment to support a finding of eligibility for special education and related services

under the category autism. Finally, Edwards testified she did not observe Student demonstrate verbal or nonverbal delay, or autistic-like behaviors, during her 45-minute meeting with Student. To the contrary, Student maintained appropriate eye contact, was not sensory seeking, communicated effectively, and engaged in spontaneous conversation, all typically difficult for those with autism.

Student performed well during the 2021-2022 regular school year and there was no persuasive evidence submitted during the hearing that showed Student required additional supports or services, or eligibility under autism, to benefit or access her educational program.

For the foregoing reasons, Student failed to show by a preponderance of the evidence that Chaffey denied her a FAPE, by failing to offer her eligibility for special education under the primary category of autism.

SPEECH AND LANGUAGE

Student claims Chaffey denied her a FAPE during the 2021-2022 regular school year, pursuant to the October 14, 2021 IEP, by failing to offer her eligibility for special education under the secondary category speech and language impairment. Chaffey argues Student did not qualify for speech and language services.

A pupil shall be assessed as having a language or speech disorder which makes him or her eligible for special education and related services when he or she demonstrates difficulty understanding or using spoken language to such an extent that it adversely affects his or her educational performance and cannot be corrected without special education and related services. To be eligible for special education and related

services, difficulty in understanding or using spoken language shall be assessed by a language, speech, and hearing specialist who determines that such difficulty results from any of the following disorders:

- a. Articulation disorders, such that the pupil's production of speech significantly interferes with communication and attracts adverse attention.
- b. Abnormal voice, characterized by persistent, defective voice quality, pitch, or loudness. An appropriate medical examination shall be conducted, where appropriate.
- c. Fluency difficulties which result in an abnormal flow of verbal expression to such a degree that these difficulties adversely affect communication between the pupil and listener.
- d. Inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the pupil's language performance level is found to be significantly below the language performance level of his or her peers.
- e. Hearing loss which results in a language or speech disorder and significantly affects educational performance.

(Ed. Code § 56333; Cal. Code Regs., tit. 5 § 3030, subd. (b)(11).)

As found in Issue 1(b), Student did not qualify for speech and language services during the 2021-2022 school year. Chaffey comprehensively assessed Student for speech and language in October 2021. The qualified assessor determined Student did not have an articulation disorder, abnormal voice, fluency difficulties, disorder of spoken language, hearing loss, or any disorder that would qualify her for special education and related services under the category speech and language impairment.

Student's IEP team correctly reviewed the assessment results and lawfully found Student did not qualify for special education under the category speech and language impairment. As also found in this Decision, Chaffey lawfully did not offer Student speech and language supports or services as part of the October 14, 2022 IEP offer.

Based upon these findings, there was no persuasive evidence to support finding Student eligible for special education under the secondary category speech and language impairment.

Consequently, Student failed to show by a preponderance of the evidence that Chaffey denied her a FAPE by failing to offer her eligibility for special education under the secondary category speech and language impairment.

ISSUE 1(i): CONSIDERATION OF PARENTS' REQUESTS

Student asserts Chaffey denied her a FAPE during the 2021-2022 regular school year, pursuant to the October 14, 2021 IEP, by failing to consider Parents' requests.

Parental participation in the development of an IEP is essential to the IDEA. (*Winkleman v. Parma City Sch. Dist.* (2007) 550 U.S. 516, 524.) It is among the most important procedural safeguards in the Act. (*Amanda J. v. Clark Cnty. Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) A parent has meaningfully participated in the development of an IEP when the parent is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693.)

An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp. 2d 127, 139 [IDEA does not

provide for an education designed according to the parent's desires.].) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) A school district has the right to select the program offered, as long as the program is able to meet the student's needs, and the district is ultimately responsible for ensuring a FAPE is offered. (*Letter to Richards*, U.S. Dept. of Educ., Office of Special Education Programs (January 7, 2010).)

During the hearing, Student failed to present testimony or documentary evidence to support or clarify this issue. Following the hearing, it remained unclear what Parents believed was not considered by Chaffey. Notwithstanding Student's failure to prosecute issues for this matter, a preponderance of the evidence showed that Chaffey considered Parents' requests.

Chaffey took seriously Parents concerns regarding Student's education. Just days after enrolling in Los Osos High School, Chaffey offered a comprehensive assessment plan to assess Student in every area of suspected deficit based upon Parent and teacher concerns regarding Student's last implemented IEP.

Chaffey timely scheduled an IEP team meeting for October 14, 2021, to review the assessments, but continued the IEP meeting at Parents' request. Chaffey held the IEP team meeting over three days, with Parents, their advocate, and all necessary participants, to ensure Parents were able to fully participate in the review of multiple assessments and the formulation of goals, accommodations, and services. As reflected in the IEP document, Parents and their advocate were vocal participants during the IEP team meetings. IEP meeting notes reflect Parents' input regarding past diagnoses, strengths, weaknesses, and present levels of performance. Parents and their advocate

asked questions regarding the various assessments and their questions were answered by qualified staff. Parents and their advocate assisted in the formulation of goals, accommodations, and services. Parents' concerns and areas of disagreement were included throughout the IEP document. While Chaffey did not agree to all of Parents' requests during the IEP team meeting, that does not mean those concerns were not considered by Chaffey. As held by the Ninth Circuit, while a school district must allow for meaningful parental participation, it has no obligation to grant the parent a veto over any individual IEP provision. (*Ms. S. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, at p. 1131.)

On January 3, 2022, Parents provided Chaffey a consent-dissent letter regarding the IEP offer, that Chaffey attached to the IEP document. Parents disagreed with Chaffey's speech and language assessment, occupational therapy assessment, and psychoeducational assessment, and requested independent educational evaluations funded by Chaffey for new assessments in those areas. Parents also requested assessments for vision therapy and auditory processing. On January 6, 2022, Chaffey sent Parents a prior written notice letter and granted those requests.

Parents also disagreed with Chaffey's offer of specialized academic instruction to address math and executive functioning through a study skills class. While Chaffey stood by its IEP offer, Chaffey offered to fund 40 hours of private tutoring by a nonpublic agency to accommodate Parents' concerns.

Parents requested changes to IEP accommodations. Chaffey agreed to all of Parents' requests and incorporated the changes into a January 13, 2022, IEP amendment.

At every step, Chaffey included Parents in the development of Student's educational program, appropriately responded to their various concerns, and frequently went beyond what was called for in the development of Student's educational program in an attempt to collaborate with Parents.

For the forgoing reasons, Student failed to show by a preponderance of the evidence that Chaffey denied Student a FAPE by failing to consider Parents' requests.

ISSUE 1(j): EQUESTRIAN THERAPY

Student asserts Chaffey denied her a FAPE during the 2021-2022 regular school year, pursuant to the October 14, 2021 IEP, by failing to offer equestrian therapy.

Equine, or horse, therapy involve activities with horses or members of the horse family to promote human physical and mental health.

During the hearing, Student abandoned this issue. Student failed to present any evidence to support she required equestrian therapy to receive a FAPE. When questioned regarding this claim, Mother testified she did not know what equestrian therapy was and had not requested this therapy for Student. Parents did not know this issue was included in Student's complaint for this matter. No other witness was questioned regarding this issue.

In her closing brief, Student stated this issue was "withdrawn." As found in Issue 1(e), Code of Civil Procedure, section 581, et seq., requires a motion to withdraw issues after the hearing has commenced, and the granting of that motion by the court,

neither which took place here. Given this issue was included in Student's complaint and the Prehearing Conference Order, and the hearing consisted of nine days of testimony by 14 witnesses, at great expense to Chaffey, this issue is deemed fully litigated.

For the foregoing reasons, Student failed to prove by a preponderance of the evidence that Chaffey denied her a FAPE by failing to offer equestrian therapy.

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(a):

Chaffey did not deny Student a FAPE during the 2021-2022 regular school year, pursuant to Student's October 14, 2021 IEP, by failing to assess in all areas of suspected disability, including

- occupational therapy,
- physical therapy,
- adapted physical education,
- behavior,
- assistive technology, and
- mental health.

Chaffey prevailed on this issue.

ISSUE 1(b):

Chaffey did not deny Student a FAPE during the 2021-2022 regular school year, pursuant to Student's October 14, 2021 IEP, by failing to offer appropriate programs and supports for speech and language and behavior, including an individual aide.

Chaffey prevailed on this issue.

ISSUE 1(c):

Chaffey did not deny Student a FAPE during the 2021-2022 regular school year, pursuant to Student's October 14, 2021 IEP, by failing to offer appropriate goals.

Chaffey prevailed on this issue.

ISSUE 1(d):

Chaffey did not deny Student a FAPE during the 2021-2022 regular school year, pursuant to Student's October 14, 2021 IEP, by failing to offer physical therapy and adapted physical education.

Chaffey prevailed on this issue.

ISSUE 1(e):

Chaffey did not deny Student a FAPE during the 2021-2022 regular school year, pursuant to Student's October 14, 2021 IEP, by failing to provide at-home applied behavior analysis services and related clinic meetings.

Chaffey prevailed on this issue.

ISSUE 1(f):

Chaffey did not deny Student a FAPE during the 2021-2022 regular school year, pursuant to Student's October 14, 2021 IEP, by failing to offer occupational therapy.

Chaffey prevailed on this issue.

ISSUE 1(g):

Chaffey did not deny Student a FAPE during the 2021-2022 regular school year, pursuant to Student's October 14, 2021 IEP, by failing to offer a sufficiently intensive academic program.

Chaffey prevailed on this issue.

ISSUE 1(h):

Chaffey did not deny Student a FAPE during the 2021-2022 regular school year, pursuant to Student's October 14, 2021 IEP, by failing find Student eligible for special education services under the primary category autism and the secondary category speech and language impairment.

Chaffey prevailed on this issue.

ISSUE 1(i):

Chaffey did not deny Student a FAPE during the 2021-2022 regular school year, pursuant to Student's October 14, 2021 IEP, by failing to consider Parents' requests.

Chaffey prevailed on this issue.

ISSUE 1(j):

Chaffey did not deny Student a FAPE during the 2021-2022 regular school year, pursuant to Student's October 14, 2021 IEP, by failing to offer equestrian therapy.

Chaffey prevailed on this issue.

ORDER

All of Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

/s/

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearings