

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022080176

PARENTS ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL DISTRICT.

DECISION

NOVEMBER 22, 2022

On August 5, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student naming Stockton Unified School District, called Stockton. Administrative Law Judge Jennifer Kelly heard the matter via videoconference on September 27, 28, and 29, and October 4, 6, and 13, 2022.

Attorneys Robert Burgermeister and Lynda Williams represented Student. Mother attended all hearing days, except for the last hearing day. Attorney Kate Im

represented Stockton. Stockton's Special Education Program Specialist Todd Reynolds and Port City Special Education Local Plan Area's Executive Director Vincent Hernandez each attended some of the hearing days on Stockton's behalf.

At the parties' request, the matter was continued to November 7, 2022 for written closing briefs. The record was closed and the matter was submitted on November 7, 2022.

ISSUES

1. Did Stockton deny Student a free appropriate public education, called FAPE, during the 2020-2021 school year by:
 - a. assigning Student to distance learning and failing to provide in-person services;
 - b. failing to assess Student to ensure he could obtain a FAPE during distance learning; and
 - c. failing to provide Student with necessary accommodations during distance learning to ensure Student could receive a FAPE?
2. Did Stockton deny Student a FAPE in the August 27, 2020 individualized education program, called an IEP, by:
 - a. convening the IEP team meeting without Parents;
 - b. failing to develop adequate goals to address all of Student's areas of need;
 - c. failing to offer sufficient intensive individual services in the form of a one-to-one aide;
 - d. failing to offer sufficient speech and language services;

- e. failing to offer extended school year services to prevent Student's regression;
 - f. failing to offer Parents training to address Student's needs arising from autism;
 - g. failing to offer at home and clinic-based applied behavior analysis therapy;
 - h. predetermining Student's offer of placement and services; and
 - i. failing to offer Student a sufficient program and supports necessary for Student to receive an educational benefit?
3. Did Stockton deny Student a FAPE in the October 29, 2021 IEP by:
- a. convening the IEP team meeting without Parents;
 - b. failing to develop adequate goals to address all of Student's areas of need;
 - c. failing to offer sufficient intensive individual services in the form of a one-to-one aide;
 - d. failing to offer sufficient speech and language services;
 - e. failing to offer extended school year services to prevent Student's regression;
 - f. failing to offer Parents training to address Student's needs arising from autism;
 - g. failing to offer at home and clinic-based applied behavior analysis therapy;
 - h. predetermining Student's offer of placement and services; and
 - i. failing to offer a sufficient program and supports necessary for Student to receive an educational benefit?

4. Did Stockton deny Student a FAPE in the August 27, 2020 and October 29, 2021 IEPs by failing to collect accurate and complete data on Student's goal progress, particularly during the period of distance learning?

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 FAPE 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) and (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 filed the complaint and therefore had the burden of proof for each issue. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

THE STUDENT

Student was 16 years old and in eleventh grade at the time of hearing. Student resided with his Parents within Stockton's geographic boundaries at all relevant times where he attended his home school, Edison High School. Student was initially found eligible for special education and related services in 2009. At the time of the hearing, Student was eligible for special education under the category of autism. Autism is a neurodevelopmental disorder characterized by social, behavioral, and learning delays. (Cal. Code Regs., tit. 5, § 3030.) Due to his disability, Student had difficulty with academics, pragmatic language, and off-task behaviors. Student lacked skills for interacting with adults and other students. Student required prompts and redirection from his teachers to remain on task. Student had difficulties completing classwork and often displayed frustration.

Student transitioned to Edison as a high school freshman in the 2020-2021 school year. Student's operative IEP from August 3, 2020 through September 1, 2020 was his September 10, 2019 IEP from middle school. The September 10, 2019 IEP offered Student 80 percent special education and 20 percent general education. Special education consisted of 300 minutes daily specialized academic instruction in a special day class and 30 minutes monthly speech and language consultation services. Student's operative IEP from September 1, 2020 through May 27, 2021 was his August 27, 2020 IEP. The August 27, 2020 IEP offered Student 56 percent time in special education and

44 percent time in general education. Special education consisted of 848 minutes weekly specialized academic instruction in Student's math and English classes. The August 27, 2020 IEP also offered Student 15 minutes monthly speech and language consultation services, 15 minutes monthly college awareness services, and 15 minutes monthly career awareness services.

FEDERAL AND STATE SCHOOL CLOSURE ORDERS AND GUIDANCE AFTER MARCH 2020

Issue 1 (a), (b), and (c) stem from the global outbreak of the novel coronavirus, called COVID-19. As a result of this highly contagious virus, on March 4, 2020, California Governor Gavin Newsom declared a state of emergency in California. On March 12, 2020, the United States Department of Education Office of Special Education and Rehabilitative Services, known as OSERS, published guidance to states for educating children with disabilities during the COVID-19 pandemic. (OSERS, March 12, 2020, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (OSERS Q and A), Answer to Question A-1.) OSERS advised local educational agencies they would not violate the IDEA if they closed schools to slow or stop the spread of COVID-19 and did not provide educational services to the general student population, then they would not be required to provide services to students with disabilities during that same time period. (*Id.*, at p. 2, Answer A-1.)

On March 13, 2020, Governor Newsom issued Executive Order N-26-20 which authorized school districts to continue educating students to the extent feasible through distance learning and/or independent study. The order directed the California Department of Education, referred to as CDE, to issue guidance on how to ensure

students with disabilities received a FAPE. In response, CDE advised local educational agencies to “do their best in adhering to IDEA requirements ... to the maximum extent possible.” CDE encouraged local educational agencies to “consider ways to use distance technology to meet these obligations.” (CDE, *Special Education Guidance for COVID-19, COVID-19 School Closures and Services to Students with Disabilities* (March 20, 2020) (CDE March 20, 2020 Guidance).)

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, which directed all California residents “to immediately heed the current State public health directives,” including the requirement “to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors.” (Cal. Exec. Order N-33-30 (Mar. 19, 2020).) Under this order, California residents were prohibited “from leaving their homes for any reason, except to the extent that an exception to that order granted back the freedom to conduct particular activities or to travel back and forth to such activities.” (*Brach v. Newsom* (9th Cir. 2021) 6 F.4th 904, 911, citing *South Bay United Pentecostal Church v. Newsom* (9th Cir. 2020) 959 F.3d 938, 944 (Collins, J., dissenting); Case dismissed as moot by *On Rehearing en Banc Brach v. Newsom* (9th Cir. 2022) 38 F.4th 6.)

On March 22, 2020, the California State Public Health Officer issued a list of designated “essential” workers who were allowed to leave their homes to support specified critical infrastructure sectors, which included workers teaching at “public and private ... K-12 schools,” but *only* for “distance learning.” As noted by the Ninth Circuit, Executive Order N-33-20 remained in effect until June 11, 2021, and California residents were prohibited from leaving their homes except to the extent State officials provided an exception. “[T]he ability to operate schools (or anything else) turned on what sort of

permission State officials granted back either in the form of rules governing 'critical infrastructure sectors' or some exception to the stay-at-home order." (*Brach v. Newsom*, *supra*, 6 F.4th 904, 910-911.)

ISSUE 1(a): DID STOCKTON DENY STUDENT A FAPE DURING THE 2020-2021 SCHOOL YEAR BY ASSIGNING STUDENT TO DISTANCE LEARNING AND FAILING TO PROVIDE IN-PERSON SERVICES?

Student contends Stockton denied him a FAPE during the 2020-2021 school year by "assigning him to distance learning" without continuing to provide in-person services while his high school campus was closed due to California's stay-at home orders during the COVID-19 pandemic. Student contends his August 27, 2020 IEP was intended to be implemented in-person and the failure to implement it denied Student a FAPE.

Stockton contends it implemented the August 27, 2020 IEP's specialized academic instruction, speech and language consultation and college and career awareness services through a distance learning model in conformity with Education Code section 43500 enacted for the 2020-2021 school year, and denies it failed to provide Student a FAPE.

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 (2006).) All subsequent references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted. 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 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 998-999] (*Endrew F.*).

The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311; 20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 46032, 56345.) An IEP provides a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to:

- advance in attaining the goals,
- make progress in the general education curriculum, and
- participate in education with disabled and nondisabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a)(1)(A).)

A district's material failure to implement the child's IEP may violate the IDEA. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the child's IEP. (*Van Duyn ex rel. Van Duyn v. Baker School District 5J* (9th Cir. 2007) 502 F.3d 811, 822-823 (*Van Duyn*).) Specifically, to constitute a denial of FAPE the services provided to the child must fall "significantly short of the services required by the child's IEP." (*Id.* at p. 822.) There is no statutory requirement of perfect adherence to the IEP. (*Id.* at p. 821.)

DISTANCE LEARNING DURING THE 2020-2021 SCHOOL YEAR

In advance of the new school year, in summer 2020 the California Department of Public Health announced its plans for reopening schools. The “COVID-19 Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year” (“2020-2021 Reopening Framework”) was developed to guide school districts as they determined when and how to implement in-person instruction. (*Brach v. Newsom*, *supra*, 38 F.4th 6, 9-10.) The 2020-2021 Reopening Framework permitted school districts to permanently reopen once the rate of COVID-19 transmission in their local areas stabilized. (*Id.*)

California Senate Bill 98, Chapter 24, Section 34, defined distance learning in the 2020-2021 school year under Education Code section 43500. (Ed. Code, § 43500, subd. (a), as added Stats. 2020, Ch. 24 (S.B. 98), § 34.) “Distance learning” was defined as instruction in which the pupil and instructor were in different locations and pupils were under the general supervision of a certified employee of the local educational agency. Distance learning included, but was not limited to, all of the following:

1. Interaction, instruction, and check-ins between teachers and pupils through the use of a computer or communications technology.
2. Video or audio instruction in which the primary mode of communication between the pupil and certificated employee was online interaction, instructional television, video, telecourse, or other instruction that relied on computer or communications technology.
3. The use of print materials incorporating assignments that were the subject of written or oral feedback. (*Id.*)

California Senate Bill 98, Chapter 24, Section 34, defined in-person instruction for the 2020-2021 school year under Education Code section 43500, subdivision (b) as, "instruction under the immediate physical supervision and control of a certificated employee of the local educational agency while engaged in educational activities required of the pupil." (*Id.* at subd. (b).)

Pursuant to newly enacted Education Code Section 43503, for the 2020-2021 school year school districts could deliver special education and related services in a student's IEP in a distance learning environment with accommodations necessary to ensure that a student's IEP could be executed in that environment. (Ed. Code, § 43503, subd. (b)(4).)

Student did not prove he needed to receive his specialized academic instruction and related services in-person in the 2020-2021 school year to receive a FAPE. The September 19, 2019 and August 27, 2020 IEPs did not require Student's special education and related services be delivered in-person. Therefore, Stockton was not required to implement these IEPs with in-person instruction as this was not material to Student's IEPs. (*Van Duyn, supra*, 502 F.3d 811, 821.) Student argued Stockton had a legal obligation to assess Student before shifting his instruction from in-person to distance learning. However, Student provided no legal authority for this contention.

Stockton offered and delivered instruction to all students at Edison High School, general and special education alike, through a combination of online distance learning, and in-person instruction in accordance with how those terms were defined under Education Code section 43503 throughout the 2020-2021 school year. (See Ed. Code, § 43500, subds. (a) and (b).) All of Student's teachers were credentialed. Student and his teachers were in different locations, but his teachers supervised Student's learning

with instruction, interaction, and check-ins online every day. Stockton's teachers maintained regular communication with students and parents through direct check-in calls, regular office hours, and online platforms. During distance learning, Stockton modified the grading system for all students to allow students to earn a "no mark" instead of a failing grade. Students who received a no mark had the opportunity to re-take classes for credit.

Stockton provided instruction through a combination of synchronous, real-time instruction, and asynchronous, and independent activities. Synchronous distance learning meant students and teachers were not physically in the same place, but at the same time as each other in a videoconference. Synchronous learning classes were pre-scheduled and students had to log in to the videoconference classroom at the designated time. Asynchronous distance learning permitted students to learn on their own schedule using a variety of print and digital resources. Student's instruction was delivered through both synchronous and asynchronous learning during the 2020-2021 school year.

Stockton provided Chromebook laptops to any student who was in need of one to complete assigned schoolwork. Stockton also provided hotspots to students who did not have an internet connection at home to complete digital distance learning. The evidence proved Student had internet connectivity problems for the first two weeks of the school year, but this issue was resolved by Stockton by providing Student a hotspot. Other than the initial connectivity issue, Student was able to log in to his classes, share his screen with his teachers, and access the online learning platforms. Student typically kept his camera off but would respond when called upon by his teachers.

The evidence established Student received his August 27, 2020 IEP's specialized academic instruction during distance learning. Stockton had a four-by-four block schedule. Student took four classes during each block, or quarter, during the school year. Each class lasted approximately 60 minutes, for a total of 240 minutes daily instruction. To receive credits towards a high school diploma, students had to pass courses with a grade of D or better. Student had general education classes which adhered to state content standards. He received specialized academic instruction by special education teachers in his English and math classes. During block one of the 2020-2021 school year Student had biology, algebra, English, and physical education. During block two Student had biology, algebra, English, and physical education. During block three Student had art, algebra readiness, physical education, and Spanish, and during block four Student had art, algebra readiness, physical education, and Spanish. The evidence established Student was able to log in to his classes, share his screen, access the digital platforms, and respond to his teachers during the 2020-2021 school year.

The introduction of vaccines and California's implementation of the 2020-2021 Reopening Framework allowed schools throughout the state to gradually reopen. By spring 2021, many school districts, including Stockton, had reopened for physical in-person instruction. Stockton provided parents the choice of sending their child for in-person instruction at school or remaining on a distance learning model. Parents opted for Student to remain in distance learning throughout the 2020-2021 school year. Parents' decision was premised, in part, on concerns about Student's exposure to COVID-19.

Student argued his poor grades entitled him to receive his special education instruction in-person. During block one of the 2020-2021 school year Student earned

no marks in algebra 1A and biology, a D in English, and a D minus in physical education. In block two, Student earned a C in English, a D in algebra, a no mark in biology, and a C in physical education. During block three, Student received no marks in algebra readiness and art, a D minus in Spanish and a C minus in physical education. For block four, Student earned a D in algebra and art, a no mark in Spanish, and a D minus in physical education. During summer 2021 Student attended Stockton's summer readiness program, which was offered to all students in order to mitigate learning loss caused by the COVID-19 pandemic. Student earned two B's in his algebra classes and a C in Spanish.

Student misconstrues Stockton's obligation. Stockton was permitted to deliver special education and related services in Student's IEP in a distance learning environment with accommodations necessary to ensure Student's IEP could be executed in that environment. (Ed. Code, § 43503, subd. (b)(4).) Student's Issue 1(a) is premised on his belief he was entitled to in-person instruction notwithstanding the global pandemic and the directives of state officers declaring a state of emergency and issuing stay at home orders. Student cites no binding legal authority for this position. Further, Student failed to offer evidence he was unable to access his educational program through a distance learning model.

Student did not prove the educational services provided to Student through distance learning fell "significantly short of the services required by the child's IEP" in the circumstance of a global crisis. (*Van Duyn, supra*, 502 F.3d 811, 815.) Student failed to meet his burden of proving Stockton denied him a FAPE from August 3, 2020 through May 27, 2021 by assigning him to distance learning without providing in-person services. Student did not prevail on Issue 1(a).

ISSUE 1(b): DID STOCKTON DENY STUDENT A FAPE DURING THE 2020-2021 SCHOOL YEAR BY FAILING TO ASSESS STUDENT TO ENSURE HE COULD RECEIVE A FAPE DURING DISTANCE LEARNING?

Students contends Stockton did not assess Student to ensure he could receive a FAPE during distance learning. Stockton contends it did not need to evaluate Student because it was aware of Student's needs and offered all the required accommodations he needed for distance learning.

Stockton's distance learning program began August 3, 2020. Student failed to prove assessments were requested or warranted prior to starting distancing learning on August 3, 2020, or thereafter through the end of the 2020-2021 school year.

The IDEA provides for periodic revaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the parent and district agree a revaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related service needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) The school district must assess or reassess the educational needs of a child with a disability if requested by a parent or a teacher, or if the district "determines that the educational or related service needs, including improved academic achievement and functional performance of the child warrant a reevaluation." (20 U.S.C. § 1414(a)(2)(A)(ii); 34 C.F.R. § 300.303(a)(2); Ed. Code, § 56381, subds. (a)(1) and (d).)

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial under the IDEA. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033 (*Park*).) A disability is "suspected," and a child must be assessed, when the district is on notice the child has displayed symptoms of that particular disability or disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1119-1120 (*Timothy O.*).

Student did not establish by a preponderance of the evidence he required assessments prior to the initiation of distance learning on August 3, 2020, or during the 2020-2021 school year to ensure he could obtain a FAPE. None of the federal and state guidance concerning delivering special education and services during the COVID-19 pandemic indicated an assessment was required before providing a student's special education and related services through a distance learning modality. Further, SB 98 explicitly authorized distance learning and did not condition it on assessments of each student receiving special education and related services. (Ed. Code, § 43500, subd. (b), as added Stats. 2020, Ch. 24 (S.B. 98), § 34.)

Student presented no evidence of requests for assessments made by Parents or Student's teachers or service providers at any time between August 3, 2020 and the end of the 2020-2021 school year. Based upon an absence of evidence on this issue, Student failed to meet his burden of proving Stockton denied him a FAPE by failing to assess him to ensure he could obtain a FAPE during distance learning. Student did not prevail on issue 1(b).

ISSUE 1(c): DID STOCKTON DENY STUDENT A FAPE DURING THE 2020-2021 SCHOOL YEAR BY FAILING TO PROVIDE STUDENT WITH NECESSARY ACCOMMODATIONS DURING DISTANCE LEARNING TO ENSURE HE COULD RECEIVE A FAPE?

Student contends Stockton failed to provide Student with necessary accommodations during distance learning. Stockton contends it provided Student with the August 27, 2020 IEP's accommodations during distance learning and no additional accommodations were required to provide Student a FAPE.

An IEP must contain a statement of the program modifications or supports that will be provided for the student to advance appropriately towards attaining his annual goals, and to be involved in and make progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(IV) and (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).) The IEP must also include a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance. (*Ibid.*) During the 2020-2021 school year, districts providing special education and related services through distance learning were required to include "accommodations necessary to ensure that [the IEP] can be executed in a distance learning environment." (Ed. Code, § 43503, subd. (b)(4).)

A school district's material failure to implement the child's IEP may violate the IDEA. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn, supra*, 502 F.3d 811, 815.)

Student did not prove Stockton failed to materially implement the August 27, 2020 IEP's accommodations during distance learning. Student also failed to offer evidence he required additional accommodations to ensure the IEP could be executed in the distance learning environment. Student's August 27, 2020 IEP contained program accommodations, including

- simplified instructions,
- on task reminders and verbal encouragement,
- extra time on tests,
- a small group setting, and
- supervised breaks.

Student also had access to notes, outlines and instructions, tactile graphics, visual clues, and a multiplication table.

The preponderance of the evidence established Stockton materially implemented Student's IEP accommodations during distance learning. Education Specialist April Young testified at hearing. Young held a master's degree in special education and a clear mild-to-moderate special education teaching credential. Young worked for Stockton since 2001 and acted as Student's case manager during the 2020-2021 and 2021-2022 school years. Young also taught Student's algebra 1 class during block one of the 2020-2021 school year.

Young convincingly explained she materially implemented Student's IEP accommodations during distance learning, providing several examples. Young shared her screen with Student so he could view her notes. Student also shared his screen with Young so she could view his work. Young uploaded class materials, including notes and outlines, into Google Classroom. Young gave Student additional time to complete his

assignments. Young or her paraprofessional regularly worked with Student in a small setting environment in Zoom breakout rooms to provide Student additional instruction. Young persuasively opined Student performed better and was more engaged in the small group break out rooms. As discussed below, Student demonstrated behavioral difficulties and had social communication deficiencies. According to Young, Student was easily redirected and followed her instructions.

General education teacher Kimberly Fields also persuasively opined she was familiar with Student's IEP accommodations and implemented them during distance learning in fall 2020. Fields was Student's physical education teacher. She assigned students assessments and weekly fitness logs. Fields gave Student additional time to take assessments and turn in assignments. Student was allowed to use his class notes, outlines and checklists when taking assessments. Fields worked with Student in completing his weekly fitness logs by helping him start sentences. Fields also made comments on Student's fitness logs for Student to correct and resubmit.

Stockton's witnesses, including Young, Fields, and Assistant Principal Kristi Lee testified Student accessed his educational program during distance learning. Student had access to a hotspot and a Chromebook and able to log in to his classes. Student typically kept his camera off, but would respond when called upon by his teachers. Student required prompting by his teachers to complete his class assignments.

Student failed to offer evidence of any accommodations in the August 27, 2020 IEP which were not implemented, nor of additional accommodations necessary during distance learning for Student to advance appropriately towards attaining his annual goals, and to be involved in and make progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(IV) and (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).)

Therefore, Student failed to meet his burden of proving Stockton denied him a FAPE by failing to provide Student with necessary accommodations during distance learning. Student did not meet his burden of proof on Issue 1(c).

ISSUE 2(a): DID STOCKTON DENY STUDENT A FAPE IN THE AUGUST 27, 2020 IEP BY CONVENING THE IEP TEAM MEETING WITHOUT PARENTS?

ISSUE 2(h): DID STOCKTON DENY STUDENT A FAPE IN THE AUGUST 27, 2020 IEP BY PREDETERMINING STUDENT'S OFFER OF PLACEMENT AND SERVICES?

Student contends Stockton committed procedural violations by holding Student's annual and transition IEP team meeting on August 27, 2020, and developing Student's IEP without Parents' participation and attendance, which resulted in a denial of FAPE. Student further contends Stockton failed to develop an emergency circumstances learning plan as required by Education Code section 56505, subdivision (e)(7), at the IEP team meeting and instead, subsequently, unilaterally attached it to the August 27, 2020 IEP without notice to Parents or convening an IEP meeting, resulting in predetermination.

Stockton contends the IEP team appropriately convened Student's annual and transition IEP team meeting in Parents' absence based upon Mother's informed written consent allowing Stockton to proceed without her. Stockton disputes its failure to send Parents a copy of the emergency circumstances learning plan denied Student a FAPE.

PROCEDURAL VIOLATIONS UNDER THE IDEA

The IDEA requires state and local educational agencies to guarantee procedural safeguards for children with disabilities and their parents in the provision of FAPE. (20 U.S.C. § 1415(a).) The IDEA's procedural requirements mandate that a school district "comply with the IDEA's extensive and carefully drafted procedures." (*Timothy O., supra*, 822 F.3d 1105, 1118.) As stated by the Supreme Court in *Rowley*, "Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process." (*Rowley, supra*, 458 U.S. at pp. 205-206; *Honig, supra*, 484 U.S. 305, 311 ["Congress repeatedly emphasized throughout the [IDEA] the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness"].) Compliance with the IDEA's procedural safeguards "is essential to ensuring that every eligible child receives a FAPE, and those procedures which provide for meaningful parent participation are particularly important. (*Amanda J. v. Clark Cty. Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 891 (*Amanda J.*)).

The IDEA's procedural safeguards are intended to protect the informed involvement of parents in the development of an education for their child. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994].) "[T]he informed involvement of parents" is central to the IEP process. (*Ibid.*) Parents not only represent the best interests of their child in the IEP development process, but also "provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know." (*Amanda J., supra*, 267 F.3d 877, 882.)

Parents are "afforded a significant and collaborative role in the development of a child's IEP." (*Timothy O., supra*, 822 F.3d 1105, 1111.) The IDEA's procedural rules are

meant to ensure “that the child’s parents have sufficient information to understand and participate meaningfully in all aspects of that discussion.” (*Id.* at p. 1112.) The parents’ right to be involved in the development of their child’s educational program is among the most important of procedural safeguards. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) Parents are an integral part of the IEP team that determine both whether the child is a child with a disability and the content of the child’s IEP. (*M.M. v. Lafayette Sch. Dist.* (9th Cir. 2014) 767 F.3d 842, 851.)

A procedural violation only constitutes a denial of FAPE if the violation impeded the child’s right to a FAPE; significantly impeded the parents’ opportunity to participate in the decision-making progress regarding the provision of a FAPE to the child; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1485 (“*Target Range*”), superseded in part by statute on other grounds.)

STOCKTON FAILED TO TAKE STEPS TO ENSURE PARENTS’ ATTENDANCE AT THE AUGUST 27, 2020 IEP TEAM MEETING

Student met his burden of proving Stockton failed to comply with the procedures required by the IDEA to obtain Parents’ participation in development of Student’s August 27, 2020 IEP. School districts are required to “take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or afforded the opportunity to participate” including providing ample notice and “scheduling the meeting at a mutually agreed on time and place.” (34 C.F.R.

§§ 300.321(a), 300.322(a).) Moreover, if a parent cannot attend, the school district must offer other methods of participation such as video or teleconferencing. (34 C.F.R. §§ 300.322(c), 300.328.)

To satisfy its obligation to ensure that one or both of a child's parents are present at each IEP team meeting or are afforded the opportunity to participate, a school district must notify the parents of the meeting early enough to ensure that they will have an opportunity to attend and schedule the meeting at a mutually agreed on time and place. (34 C.F.R. § 300.322(a).) The notice must indicate the purpose, time, and location of the meeting and who will be in attendance and inform the parents of other individuals on the IEP team who have knowledge or special expertise about the child. (*Id.* at § 300.322(b).) The regulations do not state the amount of time that constitutes timely notice of an IEP team meeting; however, 10 days advance notice is a general guide for timeliness. (*Letter to Constantian*, 17 IDELR 118 (OSEP 1990).)

An IEP team meeting may be conducted without a parent in attendance if the school district is unable to convince the parents they should attend. (34 C.F.R. § 300.322(d).) In such a case, the school district must keep a record of its attempts to arrange a mutually agreed upon time and place, such as:

- detailed records of telephone calls made or attempted and the results of those calls;
- copies of correspondence sent to the parents and any responses received; and
- detailed records of visits made to the parents' home or place of employment and the results of those visits. (34 C.F.R. § 300.322(d).)

In *Doug C.*, the school district and the parents had a difficult relationship. The Ninth Circuit noted a school district may not avoid its responsibilities for meeting the IDEA statutory requirements by blaming the parents. The IDEA protects the student's interests, not the parents. (*Doug C.*, *supra*, 720 F.3d 1038, 1045.) A school district may not "prioritize" the schedules of its own staff or its need to meet statutory deadlines over parental attendance. (*Ibid.*) Further, a school district may not blame a parent's decision to not participate in an IEP team meeting for its own failure to create an IEP with the participation of the appropriate parties. (*Target Range*, *supra*, 960 F.2d 1479, 1485.) Only in rare circumstances will a student's immediate need for services outweigh the importance of parental participation. (*Doug C.*, *supra*, 720 F.3d 1038, 1047.)

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*Target Range*, *supra*, 960 F.2d 1479, 1485.) "Participation must be more than mere form; it must be meaningful." (*Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, 858 [citations omitted] ("*Deal*").) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) and (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) and (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) and (f).) A school cannot independently develop an IEP without meaningful participation, and then present the IEP to the parent for ratification. (*Target Range*, *supra*, 960 F.2d 1479, 1484.)

Education Specialist Young spoke with Mother by telephone on August 13, 2020 and informed her of Student's upcoming IEP team meeting. Mother told Young she was unable to meet on August 27, 2020, due to her work schedule and the IEP team should

meet without her. That same day, Young sent Mother an invitation to attend Student's annual and transition IEP team meeting via videoconference on August 27, 2020, at 9:00 a.m.

The August 13, 2020 IEP meeting invitation contained a variety of boxes for Mother to check to respond to the invitation. Mother checked the box stating parent did not intend to attend but gave permission for Stockton to proceed without parent and acknowledging the IEP would be provided to parent after the meeting for signature. Mother did not complete the IEP invitation form and return it to Stockton before the August 27, 2020 IEP team meeting. Nonetheless, Stockton convened Student's IEP team meeting on August 27, 2020 via videoconference without Parents in attendance.

No evidence was offered the IEP team tried to contact either Parent to confirm whether they planned to attend, made efforts to reschedule the meeting, or encouraged either Parent to attend by telephone or videoconference. No evidence was offered the IEP team emailed Parents, called them, or made any efforts whatsoever to seek their attendance after its initial August 13, 2020 IEP invitation. Further, Stockton offered no testimony or documents establishing Parents' input was solicited.

Stockton mistakenly relied on Mother's conversations with Education Specialist Young and Speech Pathologist Skylar Edwards in holding the August 27, 2020 IEP team meeting without either Parent present. Mother told Education Specialist Young in their August 13, 2020 telephone conversation she worked during the overnight hours and slept during the day, and therefore could not attend the August 27, 2020 9:00 a.m. IEP team meeting. Young also was aware Mother had declined to attend IEP team meetings at Student's prior school, which she mistakenly believed absolved Stockton of its obligation to encourage Parents' attendance. In a telephone conversation sometime

before August 27, 2020, Mother told Speech Pathologist Edwards she did not want Student to receive special education services and asked Edwards how she could remove Student from special education. At hearing, Mother disputed she wanted Student removed from special education. Regardless of Mother's intention, these conversations, without more, were insufficient for Stockton to hold the August 27, 2020 IEP team meeting without either of Student's Parents. While Stockton representatives may justifiably have believed at the time Mother was not interested in attending the IEP team meeting, this did not relieve Stockton of its affirmative obligation to make meaningful efforts to secure Parents' attendance and to document its efforts in doing so. (34 C.F.R. §§ 300.322(a), (c) and (d), 300.328, 300.501(c); *Doug C.*, *supra*, 720 F.3d 1038, 1047.) The overwhelming weight of the evidence proved Stockton committed a procedural violation of the IDEA by holding the August 27, 2020 IEP team meeting without Parents.

PARENT'S POST-IEP TEAM MEETING EXECUTION OF THE AUGUST 13, 2020 IEP TEAM MEETING INVITATION AND THE AUGUST 27, 2020 IEP DOCUMENT DID NOT RELIEVE STOCKTON OF ITS OBLIGATION TO SEEK PARENTS' PARTICIPATION

The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to the child. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.501(b) and (c); Ed. Code, §§ 56304, 56341, 56342.5.)

Mother electronically signed the August 13, 2020 IEP team meeting invitation on August 31, 2020; four days after Stockton held the IEP team meeting. Mother checked the box stating she could not attend the IEP team meeting and gave her permission for

Stockton to hold the IEP team meeting without her pursuant to Code of Federal Regulation part 300.322, subdivision (d). Mother acknowledged the IEP and related documents would be provided for her signature and returned to Stockton in a timely manner. Mother's post-IEP team meeting consent for the IEP team to meet without her did not absolve Stockton of its obligation to comply with the IDEA's procedural requirements of seeking to arrange a mutually agreed upon time and place to hold the IEP with Parents and to document its efforts. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. §§ 300.322(d), 300.501(b) and (c); Ed. Code, §§ 56304, 56341, 56342.5.)

The preponderance of the evidence proved Stockton independently developed the August 27, 2020 IEP and presented it to Mother without her input and participation and without attempting to arrange a mutually agreed upon time and place to hold the IEP team meeting. (34 C.F.R. § 300.322(d).) Mother signed her consent to the August 27, 2020 IEP document without exceptions on September 1, 2020, five days after Stockton held the August 27, 2020 IEP team meeting. Mother's after-the-fact involvement by consenting to the August 27, 2020 IEP was not enough. As observed by the Ninth Circuit in *Doug C.*, the IDEA contemplates parental involvement in the "creation process." (*Doug C.*, *supra*, 720 F.3d 1038, 1048.)

At hearing, Stockton argued Mother could have provided input on the IEP document sent to her after completion of the IEP team meeting. However, obtaining Mother's input after the meeting was held and Student's educational program developed did not satisfy Stockton's obligation to consider Parents' concerns for enhancing Student's education and obtaining information on Student's needs. (20 U.S.C. § 1414(d)(3)(A) and (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) and (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) and (f).) The evidence proved Stockton

independently developed Student's August 27, 2020 IEP without Parents' meaningful participation, and then presented the IEP to Mother for ratification. This constituted a procedural violation of the IDEA. (*Target Range, supra*, 960 F.2d 1479,1484.)

STOCKTON'S PROCEDURAL VIOLATION IN HOLDING THE IEP TEAM MEETING WITHOUT PARENTS DENIED STUDENT A FAPE

A procedural violation results in 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. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *Timothy O., supra*, 822 F.3d 1105,1118.)

Stockton's failure to include Parents in the development of the August 27, 2020 IEP rises to the level of a substantive FAPE denial. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2); *Target Range, supra*, 960 F.2d 1479, 1484.) Stockton's compliance with the procedural requirements may have convinced Parents to attend the August 27, 2020 IEP team meeting and provide important information about Student's strengths and weaknesses, including his pragmatic language and behavioral deficits. Stockton's failure to comply with the procedural requirements infringed on Parents' ability to participate in the IEP formulation process. (*Doug C., supra*, 720 F.3d 1038, 1047.) Mother did not affirmatively refuse to attend the IEP team meeting. She told Young she was unable to attend the IEP team meeting due to her work schedule. At that point, Stockton was required to take steps to convince Parents to attend. (34 C.F.R. § 300.322(d).) Stockton offered no evidence of efforts

made in this regard, including offering alternate dates and times or offering to convene the IEP team meeting by telephone or videoconference. At hearing, Mother confirmed Father also held educational rights. Stockton offered no evidence it made efforts to invite Father to participate. Stockton's decision to hold the August 27, 2020 IEP team meeting denied Parents a meaningful opportunity to participate in the development of Student's educational program.

The fact it might have been frustrating to schedule the meeting with Parents did not excuse Stockton's failure to include Parents in the meetings as it cannot blame the Parents. (*Doug C.*, *supra*, 720 F.3d 1038, 1045; see also *Target Range*, *supra*, 960 F.2d 1479, 1485 [holding the school district could not blame parents' choice to leave an IEP meeting for its own failure to create an IEP with the participation of the appropriate parties].) Stockton's belief Mother did not want Student to participate in special education also did not relieve Stockton of its obligation to comply with the IDEA's procedural requirements. Parents may revoke consent for the continued provision of special education and related services under the IDEA at any time. However, revocation is prospective and does not negate an action that occurred after the parent gives consent and before the parent revokes consent. (34 C.F.R. §§ 300.9(c).) Parents did not revoke consent for Student to receive special education at any time. As a result, Stockton was required to comply with the IDEA's requirements for including Parents as participants and document its efforts to encourage their attendance. (34 C.F.R. §§ 300.322(c), 300.328, 300.501(c).) Their failure to do so precluded Parents from having any involvement in the development of their child's August 27, 2020 IEP.

Student met his burden of proving Stockton's procedural violations amounted to a substantive FAPE denial because Parents were denied meaningful participation in the

development of the August 27, 2020 IEP. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2).) Student met his burden of proof on Issue 2(a). Student prevailed on this issue.

PREDETERMINATION OF EMERGENCY CIRCUMSTANCES LEARNING PLAN

Predetermination of an IEP is a procedural violation under the IDEA. (20 U.S.C. §1415(b)(1); 34 C.F.R. § 300.501(b) and (c)(1); Ed. Code, § 56304, subd. (a).) Predetermination occurs when placement is determined without parental involvement in developing the IEP. More particularly, predetermination occurs when an educational agency has decided on its offer prior to the meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal, supra*, 392 F.2d 840, 857-859.) A school district is required to conduct a meaningful IEP meeting to fulfill the goal of parental participation in the IEP process. (*Target Range, supra*, 960 F.2d 1479, 1485.) A parent has meaningfully participated in the development of an IEP when the parent

- is informed of the child's problems,
- attends the IEP team meeting,
- expresses their 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 (*N.L.*); *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*))[parent who had opportunity to discuss a proposed IEP and whose concerns were considered by the IEP team has participated in the IEP process in a meaningful way].) A school district

violates the IDEA if it independently develops an IEP, without meaningful parental participation, and then presents the IEP to the parent for ratification. (*Ms. S. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1131 (*Vashon Island*), superseded on other grounds by statute.)

The IDEA does not explicitly require an IEP to include a plan for how special education and related services will be delivered if a school closure requires distance learning. Effective June 29, 2020, California Education Code section 56345 required IEP teams to make an individualized determination about how an IEP would be provided under emergency conditions, in which instruction or services, or both, cannot be provided to the student either at the school or in person for more than 10 school days. (Ed. Code, § 56345, subd. (a)(9)(A).) This description must be included in the development of each initial IEP or addressed during the regularly scheduled revision of an IEP and must take public health orders into account. (Ed. Code, § 56345, subd. (a)(9)(B).)

The August 27, 2020 IEP team was required to make an individualized determination about how Student's IEP instruction and services would be provided under emergency conditions. (Ed. Code, § 56345, subd. (a)(9)(A).) Stockton's Special Education Program Specialist Todd Reynolds testified the August 27, 2020 IEP included an emergency circumstances plan. However, the August 27, 2020 IEP document introduced into evidence by Stockton did not contain such a plan. The IEP document contained comments in the offer of FAPE services page that a distance learning model and or hybrid model would be implemented until the "regular educational setting resumes" but did not include an individualized determination how Student's educational program would be delivered in emergency conditions. This violated the requirement of newly enacted Education Code Section 56345, subdivision (a)(9).

On day three of the due process hearing upon the ALJ's questioning of Reynolds about the existence of the emergency circumstances learning plan, Stockton's attorney displayed a document on her screen titled, "Stockton City Unified Emergency Circumstances Consideration IEP Form", called emergency circumstances plan. The document had not been exchanged with Student's counsel. Further, Stockton's counsel did not request the ALJ's permission to show the document before displaying it to Reynolds.

Student objected to Stockton's attempt to introduce the emergency circumstances plan on the basis it had not been timely exchanged with Student's counsel prior to the due process hearing as required by Education Code section 56505, subdivision (e)(7), and OAH's September 20, 2022 Order Following Prehearing Conference for Hearing by Videoconference. Student also argued Mother was not provided a copy of the document when Stockton sent her the August 27, 2020 IEP document for signature, or anytime thereafter.

The ALJ ordered the parties to meet and confer regarding the admissibility of the document. Thereafter, Student filed a motion to strike the emergency circumstances plan and for sanctions. The ALJ ordered Stockton to file a response supported by a sworn declaration confirming when the document was created, by whom, and when and how it was served on Parents. In response to the ALJ's order, Stockton filed a response supported by declaration by Education Specialist Young. In her sworn declaration, Young stated the emergency circumstances plan was discussed at the August 27, 2020 IEP team meeting but was mistakenly not attached to the August 27, 2020 IEP document sent to Mother for signature. Stockton did not provide Parents a copy of the form at any time. The first time Parents were made aware of the existence of the emergency

circumstances form was at the due process hearing. Stockton also did not timely provide the form to Student's counsel as required by Education Code section 56505, subdivision (e)(7).

The issue of whether Stockton failed to make an individualized determination regarding Student's learning plan in the event of an emergency condition as required by Education Code section 56345, subdivision (a)(9)(A), was not specifically pled in Student's due process complaint or identified as an issue in the September 20, 2022 Order Following Prehearing Conference. However, Student challenged whether distance learning was appropriate for Student in Issue 1. Further, Stockton raised the issue at the due process hearing and offered testimony on this issue. Multiple witnesses, including Reynolds, Young, and Mother, testified about whether the emergency circumstances plan was discussed, developed, and incorporated into the August 27, 2020 IEP. Therefore, the issue was tried by the parties' express or implied consent and must be treated as if raised in the pleadings. (*M.C. by and through M.N. v. Antelope Valley Union High School District* (9th Cir. 2017) 858 F.3d 1189, 1196 (*Antelope Valley*) [district's unilateral amendment to student's IEP by changing the offer of services and failure to send parent the revised IEP or notify her of the change was tried by consent where district presented evidence on the issue at the due process hearing].) The ALJ granted Student's motion to strike the emergency circumstances plan and Reynold's testimony claiming the form was included in the August 27, 2020 IEP. The preponderance of the evidence proved Stockton did not develop an emergency circumstances plan as required by Education Code section 56345, subdivision (a)(9)(A).

Like the school district in *Antelope Valley*, Stockton committed multiple procedural violations of the IDEA. First, it unilaterally changed the August 27, 2020 IEP by adding the emergency circumstances plan after the IEP was developed. In rebuttal testimony, Young testified the IEP team discussed the emergency circumstances plan at the August 27, 2020 IEP team meeting. Young's testimony was vague and evasive about what was discussed by the team regarding how Student's IEP instruction and services would be delivered during emergency conditions. Young also appeared nervous and uncomfortable when asked about when the form was created, by whom, and why it was not sent to Parents. As a result, Young's testimony was not believable on this issue.

Second, Stockton did not notify Parents it had added the emergency circumstances plan to the August 27, 2020 IEP. In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent and the school district can agree not to convene an IEP team meeting for the purposes of making those changes and may develop a written document to amend or modify the child's IEP. (34 C.F.R. § 300.324(a)(4)(i).) The entire IEP team must be informed of an IEP amendment made in accordance with this regulation. (34 C.F.R. § 300.324(a)(4)(2).) Unless the IEP is modified by agreement in accordance with paragraph (a)(4), it may be modified only "by the entire IEP team at an IEP team meeting." (*Id.* at § 300.324(a)(6).) The evidence proved Stockton did not seek Parents' consent to add the emergency circumstances plan to the August 27, 2020 IEP in violation of 34 Code of Federal Regulations part 300.324(a)(4). Instead, Stockton unilaterally added the plan to the August 27, 2020 IEP document without notifying Parents or seeking their approval and without convening an IEP team meeting.

Stockton's failure to hold an IEP meeting to amend Student's IEP or to obtain Parent's consent to amend the IEP by adding the emergency circumstances plan denied

Student a FAPE. Stockton was bound by the August 27, 2020 IEP as written unless it re-opened the IEP process and proposed a different IEP. (*Antelope Valley, supra*, 858 F.3d 1189, 1197.) The IEP in effect at the time of the due process hearing was the August 27, 2020 IEP signed by the parties, which did not contain the emergency circumstances plan. Stockton's unilateral addition of the emergency circumstances plan was a per se procedural violation of the IDEA. (*Ibid.* [the unilateral amendment vitiated "the parents' right to participate at every step in the IEP drafting process."].) Stockton's conduct in preparing the emergency circumstances plan and attaching it to the August 27, 2020 IEP exemplifies the practice criticized in *Vashon Island* that a school district violates the IDEA if it independently develops an IEP and then simply presents the IEP to parents for ratification. (*Vashon Island, supra*, 337 F.3d 1115, 1131.) Stockton's conduct was even more troubling because it did not present the emergency circumstances plan to Parents at any time, thereby denying them meaningful participation in development of Student's educational program.

Stockton unconvincingly argued the emergency circumstances plan was not equivalent to an IEP amendment and argued it was justified in attaching the form to the IEP after the fact. This argument disregards the mandate of Education Code section 56345 requiring IEP teams to make an individualized determination about how a student's IEP will be implemented under emergency conditions. (Ed. Code, § 56345, subd. (a)(9)(A).) A required component of Student's IEP of this magnitude, which impacted how Student's program would be delivered during emergency conditions, was an amendment which merited discussion by the IEP team. This is particularly true in light of the COVID-19 pandemic and California's mandate that school districts provide instruction through distance learning for the 2020-2021 school year.

Stockton's conduct in failing to make an individualized determination how Student's educational program would be delivered under emergency conditions, and unilateral amendment of the IEP after-the-fact, constitute predetermination. As a result, neither Parents nor the rest of the IEP team were given an opportunity to make an individualized decision about how Student's program would be provided under emergency conditions. Moreover, this violation denied Parents' meaningful participation in the decision-making process in developing Student's IEP, and therefore denied Student a FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *Target Range, supra*, 960 F.2d 1479, 1485.) Consequently, Stockton predetermined Student's August 27, 2020 IEP. Student prevailed on Issue 2(h).

ISSUE 2(b): DID STOCKTON DENY STUDENT A FAPE BY FAILING TO DEVELOP ADEQUATE GOALS IN THE AUGUST 27, 2020 IEP TO ADDRESS ALL OF STUDENT'S AREAS OF NEED?

Student contends Stockton did not develop appropriate and measurable goals to meet his unique needs in speech and language, reading, writing, math, and transition. Student further contends Stockton failed to base the goals on present levels of performance and academic achievement rendering the goals inappropriate.

Stockton contends it developed appropriate goals based on the information it had available at the time.

For each area in which a child with a disability has an identified need, the IEP team must develop measurable annual goals based upon the child's present levels of academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) The child's needs must be

described through a statement of present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U. S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd.(a)(1)(A); see also *Endrew F., supra*, 137 S.Ct. 988, 999 [IEP teams must give, "careful consideration to the child's present levels of achievement, disability and potential for growth"].) The present levels of performance create baselines for designing a student's educational program and measuring a student's progress towards his annual goals. Parents can use these baselines to monitor their child's progress over time. Information about a child's present levels may derive from a variety of sources, including IEP team members, assessment reports, work samples, and grades. (See, *J.L.N. v. Grossmont Union High School* (S.D. Cal., Sept. 30, 2019, No. 17-CV-2097-L-MDD) 2019 WL 4849172, at * 8.) The present levels of performance section of the IEP must be sufficiently comprehensive to provide a baseline reflecting the entire range of the child's needs. This statement should provide relevant background information about the child's areas of need, strengths, interests, and learning style. (34 C.F.R. § 300.324(a).)

The goals must be measurable and designed to meet each of the child's needs that result from the disability to enable the child to be involved in and make progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2)(A) and (B).) The IEP must also describe how progress towards the goals will be measured and reported. (20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).) The IEP must identify the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3),

(4.) The IEP must show a direct relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

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)(3); see also, 64 Fed. Reg. 12,471 (1999).) Annual goals should describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); *Notice of Interpretation*, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*).) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann, supra*, 993 F.2d 1031, 1041.)

The failure to include appropriate and measurable annual goals in an IEP is a procedural violation of the IDEA. (*Park, supra*, 464 F.3d 1025, 1031-1022.) The Ninth Circuit has held that a procedural error resulting in a loss of an educational opportunity denies a student a FAPE. (*Doug C., supra*, 720 F.3d 1038, 1047.) "A procedural error results in the denial of an educational opportunity where, absent the error, there is a 'strong likelihood' that alternative possibilities for the student 'would have been better considered.'" (*Ibid.*) Stated another way, a procedural violation "will be 'actionable' only 'if [it] affected the student's substantive rights.'" (*Leggett v. Dist. of Columbia* (D.C. Cir. 2015) 793 F.3d 59, 67, quoting *Lesesne ex rel. B.F. v. Dist. of Columbia* (D.C. Cir. 2006) 447 F.3d 828, 832, 834.)

Student proved that at the time of the August 27, 2020 IEP team meeting, Stockton lacked sufficient information to determine Student's educational needs. The evidence proved Student's assessments were outdated and Parents had not consented to Student's triennial assessments the prior year when he was in middle school. Stockton was aware of Student's academic, pragmatic language, and behavior struggles. Stockton lacked sufficient information about Student's levels of academic achievement and functional performance necessary to develop goals in Student's areas of need. As a result, the goals developed for Student were insufficient to afford Student educational benefit in light of his circumstances.

The purpose of the August 27, 2020 IEP team meeting was to develop Student's annual and transition IEP. Education Specialist Young, School Psychologist Melissa Coelho, Speech and Language Pathologist Edwards, and Assistant Principal Lee attended. Neither Parent attended. General education teacher Kimberly Fields was excused from the meeting. Student attended part of the meeting.

Young was responsible for obtaining information about Student's present levels of performance for the August 27, 2020 IEP team meeting. Young obtained input from Student's teachers and reviewed Student's prior IEPs and educational records and formulated Student's IEP goals. Stockton did not solicit Parents' input. Student's last formal assessment was a psychological evaluation conducted by Lodi Unified School District on June 1, 2016. At the time, Student was nine years old. Parents declined Marshall Elementary School's March 27, 2019 triennial assessment plan.

The IEP team reviewed Student's areas of strengths and weaknesses. In the area of academics, Student's strengths included asking questions for clarification, working independently, and responding to questions from his teachers. Student's weaknesses

included failing to turn in assignments and writing complete sentences free of spelling, punctuation, and grammatical errors. Student asked questions for clarification and typically responded to direct questions. He demonstrated comprehension skills by answering questions about class readings. Student worked independently and asked his teachers for help when needed. Student shared with the IEP team that he completed all his work, but often forget to turn it in. Student had many missing assignments and achieved below his ability.

In the area of communication development, Student usually was quiet in class. However, sometimes Student disrupted the class by making noises and inappropriate comments. Student's speech was intelligible. Student did not have deficits in the areas of health, gross or fine motor development, adaptive/daily living skills or vocational.

In the area of social emotional and behavior, Student sometime disrupted the learning environment by turning on his microphone, making noises, and writing inappropriate comments in the Google Meet chat box.

Student's missing assignments, achieving below his ability, giving up easily and disrupting the learning environment were areas of concern. The IEP team determined for Student to receive educational benefit, goals would be written in the areas of reading, writing, math, and transition.

Stockton argued Parents did not want Student to receive special education and services and did not provide Stockton information about Student. Stockton, not Parents, had the obligation to gather information about Student's present levels of performance for review at Student's IEP team meeting. A school district's failure to have

all available information cannot be excused by its unilateral decision to proceed without that information. The IDEA requires an IEP team have comprehensive information about a student's disability and its impacts. (34 C.F.R. §§ 300.305; 300.324(a).)

PROGRESS TOWARDS PRIOR ANNUAL GOALS

The August 27, 2020 IEP team reviewed Student's progress towards his prior annual goals. Student did not meet or make meaningful progress towards any of his annual goals. Student's previous IEP contained a total of five goals in the areas of

- written expression,
- basic math skills,
- reading fluency,
- appropriately dealing with emotions, and
- using appropriate language.

By the August 27, 2020 IEP team meeting, Student had met only one of the five goals, specifically, in the area of using appropriate language in social situations. However, the statement Student met his social language goal was contradicted by a statement within the IEP document stating the IEP team did not have enough information to determine if Student had met any of his annual goals. It also was contrary to the present levels of performance which identified Student's social communication difficulties.

The IEP team found Student did not meet his three academic goals. Student did not meet his prior writing goal requiring him to locate and write four important details relating to a main idea in three passages. Student's last progress report from May 2020

determined Student made minimal progress on this goal, though he worked on it since at least December 17, 2018. The August 27, 2020 IEP team concluded it did not have enough information to determine whether Student met this goal.

Student's math goal required him to calculate basic math skills in the areas of addition, subtraction, multiplication, and division. The IEP progress notes reflected Student had made positive progress towards this goal as of May 8, 2020 and was able to calculate correct responses in 70 percent of measured opportunities. The August 27, 2020 IEP team determined it did not have sufficient information to determine Student's progress towards this goal.

Student's reading goal required him to read a narrative or expository reading passage at instructional level with appropriate pacing, intonation, and expression. The IEP progress notes reflected Student had made progress on this goal as of May 8, 2020. However, the August 27, 2020 IEP team did not have updated information to conclude Student had met this goal.

Student had two social communication goals. One goal required Student to regulate his feelings of frustration or anger. Student's special education teacher with support from the speech and language pathologist were identified as the responsible parties for implementing this goal. The goal required Student to verbally request a break and use self-regulatory strategies within 10 minutes when given visual supports in four out of five trials. Student did not meet this goal.

The second social communication goal required Student to maintain a conversation by using school-appropriate language. Student's teacher and support staff were responsible for implementing this goal. The August 27, 2020 IEP team

checked the box stating Student met this goal. However, the IEP document also stated the IEP team did not have enough information to decide if Student had met this goal.

Despite lacking information on Student's baselines in the areas of social communication, reading, writing and math, the IEP team developed six new goals. Specifically, the IEP team developed

- a speech and language goal dealing with pragmatic language,
- a reading comprehension goal,
- a writing goal for composing multiple paragraphs,
- a math goal for solving algebraic problems, and
- two transition goals for identifying careers and educational or training requirements and related extracurricular activities.

NEW SPEECH AND LANGUAGE GOAL

The IEP team developed a new pragmatic language goal. The baseline indicated Student did not use appropriate language in the classroom. The pragmatic language goal was almost identical to the prior year's speech goal and aimed for Student to use appropriate social communication within the classroom setting by maintaining the topic of conversation, using appropriate turn taking, and ensuring appropriate vocabulary in four of five trials measured by data collection, observation, and teacher collaboration.

Edwards was a licensed, credentialed, and certificated speech-language pathologist employed by Stockton. She worked at Stockton as a speech and language pathologist since 2018. She contributed to the IEP's present levels of performance and drafted the pragmatic language goal. Edwards collaborated with Student's English

teacher regarding Student's goal progress. In the classroom setting, Student was quiet and occasionally made inappropriate comments during class discussions. Student's speech was intelligible.

Edwards testified at hearing. She relied on Student's prior IEP in developing the pragmatic language goal because Student was new to Edison High School. She opined the goal addressed Student's areas of unique need related to his social language deficiency. Edwards further opined Mother did not want Student to receive speech and language services and conceded this influenced her recommendation to reduce Student's monthly speech consultation services.

Stockton did not introduce any evidence of any speech and language assessments, whether standardized or informal, conducted for Student. No evidence was offered Edwards met with Student or observed him prior to the IEP team meeting. The preponderance of the evidence showed the August 27, 2020 IEP team lacked standardized or informal assessment data on Student's speech and language needs. Stockton was on notice of Student's inappropriate comments in class and his behavior struggles. Each of Student's teachers during fall 2020 who testified at hearing, including Young and Fields, described Student's social communication deficiencies. However, the new speech goal was not based on current data with accurate present levels of performance, and therefore was not designed to meet Student's unique needs. As a result, Student's speech and language goal was inappropriate.

NEW ACADEMIC GOALS – READING, WRITING AND MATH

The August 27, 2020 IEP team developed three new academic goals in reading, writing, and mathematics. The IEP document stated, "given current emergency

conditions, baseline levels may include formal data, informal data, observation or other methods of data collection during both in person and distancing learning instruction.” None of the academic or transition goals contained any baseline information, including information based on informal data collection or observations. Because there was no baseline data, it was impossible to measure Student’s goal progress.

The reading goal required Student to demonstrate comprehension skills when given a text at his current reading level by making predictions, comparing, and contrasting, and distinguishing between cause and effect and fact and opinion with 75 percent accuracy in four out of five trials as measured by observation and charting. No baseline information was provided for the goal and therefore it was unclear what Student’s reading comprehension skills were at the time the goal was created. The new reading goal was not appropriate because it was not based on Student’s current abilities and therefore Stockton could not determine if Student was capable of making progress on this goal within one year.

The new writing goal required Student to compose multiple paragraphs following teacher-led pre-writing activities including an introductory paragraph, supporting paragraphs composed of simple facts or details, and a concluding paragraph with fewer than five errors in spelling, punctuation, or grammar, in four of five trials as measured by Student work samples. No baseline information was provided regarding Student’s writing skills, and this made tracking Student’s progress towards this goal impracticable and therefore inappropriate.

The new math goal was identified as an algebra goal but was largely identical to Student’s old math goal which required Student to accurately calculate addition, subtraction, multiplication, and division problems with 80 percent accuracy. To meet

this goal, Student would solve 20 math problems with 80 percent accuracy in three of four trials. Despite Student not having met the prior year's math goal, Stockton used the same goal and made it inappropriately ambitious by adding solving rational numbers, fractions, and integers. The new math goal was not appropriate because the IEP team developed this goal based on outdated information from the prior year's IEP, and not from current information or assessments. Case manager Young did not explain how this baseline was established. Further, the goal was inappropriate because Stockton did not determine if Student was capable of making progress on the goal within one year. As written, the math goal did not relate to Student's areas of need in mathematics and therefore was inappropriate.

The academic goals did not contain baseline data. Because the goals were not based on Student's present level of performance there was no direct relationship between Student's present levels of performance and the goals. (Cal. Code Regs., tit. 5, § 3040, subd.(b).) Further, none of the academic goals indicated which general education teacher or special education staff was responsible for implementing the goals or measuring Student's progress. The evidence proved the academic goals were not legally compliant.

NEW TRANSITION GOALS

Once a child turns 16, the IEP must include appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and the transition services needed to assist the child in reaching those goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); 34 C.F.R. § 300.320(a)(7)(b).)

The August 27, 2020 IEP added two new goals in the area of transition. The first transition goal required Student to complete interest surveys and careers assessments to identify careers of interest and related educational and training requirements as measured by, "contents of Transition Portfolio." The second transition goal required Student to identify extra-curricular activities and or student organizations and or community-based activities that relate to his career interests by using, "STC 3 interest posters or career pathway resources."

The two transition goals did not contain baseline data. The IEP document included a document titled, "Individual Transition Planning." A checked box on the form stated Stockton had conducted age-appropriate transition assessments. However, the results of the assessments were not described on the form or anywhere else in the IEP document. Neither of the transition goals presented any information about what Student could do or had achieved. Because the transition goals lacked baselines, they did not directly relate to Student's areas of need in the area of transition. Consequently, the transition goals were inappropriate.

THE AUGUST 27, 2020 IEP GOALS WERE NOT LEGALLY COMPLIANT

The preponderance of the evidence proved the August 27, 2020 IEP's goals contained numerous flaws. None of the goals contained a baseline, which prevented the IEP team from developing appropriate goals, services, and placement. Further, there was no direct relationship between Student's present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040 subd. (c).) The academic and transition goals also failed to state which teacher or service provider was responsible for implementing them.

Student offered expert testimony by Dr. Theresa Edwards. Dr. Edwards held a Doctor of Educational Psychology. She worked as a school psychologist for over 25 years. Dr. Edwards had substantial experience conducting psychoeducational evaluations, developing behavioral intervention strategies, and providing individual and group counseling and services. Dr. Edwards had significant experience developing IEPs, including identifying present levels of performance and creating academic, behavioral, and social-emotional goals.

Dr. Edwards convincingly opined goals cannot be adequate if they do not relate to a student's area of need. She explained without adequate baselines, an IEP team cannot determine a student's areas of need or develop appropriate goals related to those needs. In her opinion, the August 27, 2020 IEP team should have taken steps to determine Student's areas of need prior to developing new goals. She explained Student's needs could have been ascertained through formal or informal assessments, teacher observations, and consultation with Student's teachers. No expert refuted Dr. Edwards' opinions.

Stockton's failure to develop appropriate goals procedurally violated the IDEA. (*Park, supra*, 464 F.3d 1025, 1034.) This procedural violation resulted in a loss of educational opportunity to Student because the goals lacked sufficient evaluative information about his individual needs. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).) Further, this procedural violation seriously impeded Parents participation in development of the IEP by making it impossible to determine whether the types of services or placement recommended by Stockton based upon Student's needs and goals, were required to receive a FAPE. Accordingly, Stockton denied Parents meaningful participation in the educational decision-making process. Student met his burden of proof on Issue 2(b). Student prevailed on this issue.

FAILURE TO DEVELOP A BEHAVIORAL GOAL

The evidence proved Stockton failed to develop a behavior goal although Student's behaviors were negatively impacting his ability to access his educational program. The educational benefit provided to a child requiring special education is not limited to addressing the child's academic needs, but also their social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's

- academic,
- social,
- health,
- emotional,
- communicative,
- physical, and
- vocational needs.

(*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106, reversed in part on other grounds by *Schaffer, supra*, 546 U.S. 49, 56-58.)

A disabled child's education is more effective when positive behavioral interventions and supports are provided to address the child's learning and behavioral needs. (20 U.S.C. § 1400(c)(5)(F); Ed. Code, § 56520, subd. (a)(3).) When a child's behaviors impede his learning or that of others, the IDEA requires the IEP team consider

the use of positive behavioral interventions and supports and other strategies to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).) In California, the IEP team shall consider the use of positive behavioral interventions and supports, and other strategies to address the behaviors. (Ed. Code, § 56341.1, subd. (b)(1).) A behavior intervention is the “systematic implementation of procedures that result in long lasting positive changes in the individual’s behavior.” (Cal. Code Regs., tit. 5, § 3001, subd. (d).) It includes the design, evaluation, implementation, and modification of the student’s individual or group instruction or environment, including behavioral instruction, to produce significant improvement in the student’s behavior through skill acquisition and the reduction of problematic behavior. (*Ibid.*)

Student proved Stockton denied Student a FAPE in the August 27, 2020 IEP by failing to develop goals specifically addressing Student’s behavior needs. At hearing, Stockton denied Student had behavior needs, suggesting Student merely sought attention. All evidence proved to be contrary. Stockton’s witnesses consistently opined Student displayed maladaptive behaviors in the classroom setting, including making noises and inappropriate comments and failing to attend to task.

Education Specialist Young and general education teacher Fields testified about an incident during fall 2020 where Student displayed a toy gun to the class. Fields stated Student’s classmates were disturbed by this event because the gun appeared real. Fields reported the incident to Assistant Principal Lee. Neither Lee nor any other witness testified how Stockton resolved this incident. Young was aware of the incident but could not recall if it was discussed at any of Student’s IEP team meetings.

At the time of the August 27, 2020 IEP team meeting, Stockton was on notice Student's behaviors were an area of concern. Some of these behaviors, including disrupting the learning environment during class by making noises and writing inappropriate comments, were identified in Student's present levels of performance. Student's behaviors were a signal that Student had behavior difficulties that were manifesting in class and of which the IEP team should have been aware. These behaviors affected Student's learning, and that of his classmates. However, the IEP team did not develop behavioral goals to address these concerns or consider the use of positive behavior interventions, supports, and strategies to address Student's behaviors. (Cal. Code Regs., tit. 5, § 3001, subd. (d).)

The August 27, 2020 IEP's failure to specifically include a behavior goal resulted in an IEP that was not reasonably calculated to permit Student to make progress appropriate in light of his circumstances. The overwhelming weight of the evidence proved Student's inattention to task, work refusal and social communication deficits interfered with Student's ability to make meaningful progress towards his IEP goals and to access his educational program. Stockton's witnesses each testified Student's behaviors negatively impacted his educational progress, as reflected in his failing or slightly passing grades for the 2020-2021 school year. Stockton's failure to develop behavior goals or consider the use of positive behavioral interventions, supports, or strategies specially designed to address these inappropriate behaviors denied Student a FAPE and resulted in a loss of educational benefit. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2).) Therefore, Stockton's failure to create a behavior goal denied Student a FAPE.

ISSUE 3(a): DID STOCKTON DENY STUDENT A FAPE IN THE OCTOBER 29, 2021 IEP BY CONVENING THE IEP TEAM MEETING WITHOUT PARENTS?

Student contends Stockton denied Parents meaningful participation in development of Student's October 29, 2021 IEP by holding the IEP team meeting without Parents. Stockton contends it held the meeting without Parents based on Mother's signed consent allowing Stockton to hold the meeting without her.

Stockton convened Student's annual IEP team meeting on October 29, 2021. Education Specialist Young, Assistant Principal Lee, guidance counselor Monica Madrid and Student attended. General education teacher Julia Delporto Bianchi attended part of the meeting. Neither Parent attended.

Stockton repeated its procedural violation of the IDEA by failing to make efforts to secure Parents' attendance. (34 C.F.R. §§ 300.322(c) and (d), 300.32, 300.501(c).) Stockton sent multiple invitations to Mother to attend Student's 2021 annual IEP team meeting on August 11, August 23, September 3, September 13, and October 1, 2021. Like the prior year, Stockton held the IEP team meeting on October 29, 2021 without either Parent present. Mother signed a consent for Stockton to hold the IEP team meeting without her on November 8, 2021; 9 days after Stockton held the meeting and developed Student's October 29, 2021 IEP. Moreover, other than issuing the IEP team meeting invitations, Stockton made no efforts to secure Parents' attendance, including making and documenting telephone calls, correspondence, or visits to Parents' home or workplace in violation of 34 Code of Federal Regulation part 300.322(d).

At hearing, Young conceded she could not recall whether she had any communications with Mother about scheduling Student's annual 2021 IEP. She generally

testified that in the past Mother provided her consent for the IEP team to meet without her. Other than sending out the IEP meeting invitations, Stockton offered no evidence of its attempts to encourage Parents to attend the annual IEP team meeting. Mother persuasively testified Young did not contact her to schedule Student's annual 2021 IEP team meeting or to solicit her input. Mother's testimony was consistent with Young's testimony on this issue and was confirmed by the notes from the October 29, 2021 IEP document which stated Mother's concerns would be addressed after she gave her input on the IEP document.

Stockton incorrectly assumed its obligation to obtain Parents' participation in the October 29, 2021 IEP team meeting was extinguished based on Parent's prior non-participation. This violates the IDEA's core principle of meaningful parent participation and informed parental consent. (*M.M. v. Lafayette Sch. Dist.*, *supra*, 767 F.3d 842, 851.) Stockton committed a procedural violation of the IDEA by holding the October 29, 2021 IEP team meeting without Parents. Mother's post-IEP team meeting consent to the IEP on November 8, 2021, did not cure Stockton's procedural violation. (*Doug C.*, *supra*, 720 F.3d 1038, 1048.)

As discussed in Issue 2(a) above, Stockton had an obligation to send notice of the meeting early enough to ensure Parents had an opportunity to attend and schedule the meeting at a mutually agreed on time and place. (34 C.F.R. § 300.322(a).) It also should have made efforts to encourage Parents to attend and document its efforts. Stockton offered no such evidence, including making and documenting telephone calls, correspondence, or visits to Parents' home or workplace. (34 C.F.R. § 300.322(a).) Stockton's holding the IEP team meeting and formulating Student's IEP without Parents was a procedural violation under the IDEA which denied Student a FAPE. (*Doug C.*, *supra*, 720 F.3d 1038, 1047.) This failure prevented Parents' meaningful participation in

the development of Student's educational program, for the same reasons as cited in Issue 2(a) above. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *Timothy O., supra*, 822 F.3d 1105, 1118.) Student met his burden of proof on Issue 3(a).

ISSUE 3(b): DID STOCKTON DENY STUDENT A FAPE BY FAILING TO DEVELOP ADEQUATE GOALS TO ADDRESS ALL OF STUDENT'S AREAS OF NEED IN THE OCTOBER 29, 2021 IEP?

Student contends Stockton failed to develop adequate goals in the October 29, 2021 IEP. Stockton contends it developed legally compliant IEP goals in all areas of need.

The IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).)

The October 29, 2021 IEP team discussed Student's present levels of performance. Academically, Student could calculate math problems with a calculator. He could solve one-step math equations. Student could write one to two simple sentences with one noun and one verb. With guidance from the teacher, he could write compound sentences.

Student did not show up to class on a regular basis. He was usually quiet and often just sat and stared. He failed to complete his morning quick writes even after prompting by his English teacher. Student completed little to no work each day and his

responses were often inappropriate and off-topic. As an example, Student told the class he used to “swing cats around by the tail” when he was younger. Student tended to mumble and was difficult to understand. Student did not ask questions or initiate discussions. When called upon by his teacher, he would answer with short responses, such as yes, no, or okay. Student engaged in inappropriate behaviors in the classroom setting. Student conveyed to the October 29, 2021 IEP team he was concerned about not being able to graduate.

The IEP team did not identify any deficits in the areas of gross and fine motor development, vocational, and adaptive and daily living skills. The IEP team determined Student’s behaviors, including exhibiting inappropriate language and behavior, impeded his learning.

PROGRESS TOWARDS OLD GOALS

After considering Student’s present levels of achievement, the October 29, 2021 IEP team considered Student’s progress towards his prior goals. Evidence of Student’s progress towards his goals was limited. Student met only one of seven goals. The latest progress report on his goals was dated May 7, 2021, and reflected Student:

- Made no progress on goal one, the pragmatic language goal;
- Made some progress on goal two, the reading comprehension goal;
- Made no progress on goal three, the writing goal;
- Made some progress on goal four, the math computation goal;
- Achieved goal six, a transition goal identifying careers of interest, and
- Made no progress on goal seven, the transition goal requiring Student to identify extracurricular activities.

The October 29, 2021 IEP team determined Student required goals in the areas of reading, writing, behavior, speech and language, and transition to receive an educational benefit.

DEVELOPMENT OF NEW IEP GOALS

Student proved Stockton denied him a FAPE by failing to develop measurable annual goals designed to meet Student's needs resulting from his disability to enable Student to be involved in and make progress in the general curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) The IEP team developed seven new goals in the areas of pragmatic language, social skills, reading, writing and transition. The goals were largely equivalent to Student's prior goals. The goals did not show a direct relationship between Student's areas of need and the goals, did not indicate who was responsible for implementing the goals, and did not meet Student's behavioral and transition needs. Further, Stockton failed to develop goals in all of Student's known areas of need, including as to math and behavior.

PRAGMATIC LANGUAGE GOAL

Goal one, a pragmatic language goal, aimed for Student to initiate and engage in class appropriate topics in four out of five opportunities when given no more than two prompts or cues. The goal's baseline reflected Student was not initiating conversations or discussing appropriate topics. The speech and language pathologist was responsible for implementing the goal.

Speech Pathologist Edwards testified at hearing. Edwards opined Student had deficits in social communication. He initiated off-topic conversations at inappropriate

times and could not communicate his needs to his teachers. Student made improper comments or gestures when in the classroom, which prompted his teachers' concerns about his behavior.

Edwards opined the pragmatic goal would target Student's needs in communication by encouraging Student to initiate conversations and engage in appropriate topics. The goal aimed for Student to initiate and engage in appropriate conversations in four of five opportunities when given no more than two prompts as measured by data collection and observation by the speech pathologist. The goal contained short term objectives to measure the goal.

The pragmatic language goal was largely identical to the prior year's goal. The goal lacked baseline data on Student's pragmatic language needs. The IEP team did not consider any new formal or information assessments or data collected on Student's speech and language needs. No evidence was offered Edwards observed Student in the classroom setting prior to the October 29, 2021 IEP team meeting. Information about Student's speech and language needs was insufficiently comprehensive to provide a baseline in this area of need. As a result, the goal was not measurable. The preponderance of the evidence proved the new speech and language goal was not appropriate.

SOCIAL SKILLS GOAL

Goal two, a social skills goal, required Student to recognize the personal space of peers and adults with 90 percent accuracy in four of five trials as measured by Student, Parent, and a teacher. The baseline reflected Student often engaged in inappropriate behaviors in the classroom. The goal did not state which inappropriate behaviors were

targeted. As written, the social skills goal failed to establish a direct relationship between the present levels of performance and the goal. (Cal. Code Regs., tit. 5, § 3001, subd. (d).) More particularly, the goal of recognizing personal space of peers and adults did not relate to Student's areas of need in engaging in inappropriate behaviors in the classroom, including making inappropriate comments and gestures.

Stockton offered no testimony regarding how recognizing the personal space of others related to improving Student's deficits in engaging in appropriate behaviors. The goal was further flawed by the failure to identify the general education or special education staff responsible for implementing the goal. As written, the social skills goal was inappropriate because it failed to contain baseline information, was immeasurable, and did not address Student's areas of need.

ACADEMIC GOALS – WRITING AND READING

The IEP offered Student two goals to meet Student's academic deficits in the areas of writing and reading. Goal three, a writing goal, was largely identical to his prior writing goal. The baseline indicated Student could independently write one to two simple sentences with less than two errors. The new goal required Student to compose a multiple sentence paragraph with an introductory sentence and supporting sentences composed of simple facts or details and with fewer than five errors in spelling, punctuation, or grammar in four out of five trials. Student and a "teacher" were responsible for implementing the goal. The failure to identify the general education teacher or special education staff responsible for implementing the goal constituted a procedural flaw because it was unclear who was required to work with Student on the goal and who would track his progress.

Goal four, a reading goal, was also comparable to his prior goal in this area. It required Student to locate and report on important information when presented with materials and resources with seventy-percent accuracy in four of five trials. The baseline indicated Student could follow along during teacher reading for one to two minutes. The baseline did not correlate to the goal. For example, the reading goal required Student to identify information from reading materials, but the baseline stated he could follow along when his teacher was reading. As a result, the goal failed to demonstrate a direct relationship between the area of need and the goal. The goal was further flawed because Student, Parent, and a “teacher” were the persons responsible for implementing this goal, and it was unclear which general education teacher or special education staff was responsible for implementing and measuring progress on the goal.

FAILURE TO DEVELOP A MATHEMATICS GOAL

The October 29, 2021 IEP team determined Student did not meet his prior math goal of solving 20 math problems involving rational numbers, fractions, positive and negative integers, and decimals using addition, subtraction, multiplication, and division with 80percent accuracy in three of four trials as measured by teacher-made or commercially available tests. Student’s prior IEP contained a similar math calculation goal, which also had not been met. Inexplicably, the October 29, 2021 IEP team did not determine mathematics was an area of need for Student and did not develop a new math goal, notwithstanding Student’s failure to meet this goal. The IEP team should have developed a math goal for Student as it was a continued area of need. Stockton’s failure to develop a math goal, therefore, was a procedural violation.

TRANSITION GOALS

The IEP document reflected Stockton interviewed Student prior to the IEP team meeting and conducted an age-appropriate transition assessment. The IEP contained no description of the transition assessment results. Further, the IEP contained overly general baselines, which indicated only that Student wanted to work and go to college or trade school after high school.

The IEP team added two new transition goals, which were almost identical to Student's prior transition goals. Goal six required Student to take a learning style assessment or complete a transition lesson at least once during the semester. The baseline indicated Student's wanted to work after high school. Goal seven required Student to review the websites of local businesses and list three reasons he would work for them. Neither goal indicated how it would be measured or indicated which general education teacher or special education staff was responsible for implementing the goal.

The transition goals were inappropriate based on the lack of baseline information, failure to indicate how the goals would be measured, or which teacher was responsible for implementing and measuring Student's progress towards these goals. The failure to develop appropriate transition goals was a procedural violation under the IDEA.

FAILURE TO INCLUDE A BEHAVIORAL GOAL

The evidence proved Stockton denied Student a FAPE by failing to develop a behavior goal. The October 29, 2021 IEP team determined Student's behaviors impeded his learning and that of others. However, Stockton neglected to create a behavior goal in this known area of need.

The IEP team determined Student's behaviors of exhibiting inappropriate language and/or behavior impeded his learning or that of others. The special factors section of the October 29, 2021 document stated a behavior goal was part of the IEP, however, a behavior goal was not included. The IEP team identified positive behavior interventions, strategies, and support to include, "praise, choices, snacks/homework/assignment pass." As written, these behavior interventions were overly general, did not directly relate to Student's behavioral challenges and were not age appropriate. The IEP did not identify which general education teacher or special education staff was responsible for implementing these positive behavior interventions, describe which environment they would be implemented, or by whom. As drafted, these interventions, without a goal or a responsible teacher or service provider, were not reasonably calculated to provide for a "systematic implementation of procedures that result in long lasting positive changes in the individual's behavior." (Cal. Code Regs., tit. 5, § 3001, subd. (d).)

The October 29, 2021 IEP team's failure to develop a behavior goal was a procedural violation. The weight of the evidence proved Stockton knew since Student enrolled in Edison during the 2020-2021 school year he struggled with social communication with his peers and teachers and engaged in maladaptive behaviors including making inappropriate comments and gestures. Stockton's witnesses, including special education teacher Young, general education teachers Fields, Stephanie Pineda-Flores, and Julia Del Porto Bianchi, speech pathologist Edwards, and special education teachers Shelly Mahoney and Mary Shankle consistently opined Student exhibited social communication and behavior difficulties in the classroom environment. Despite identifying Student's behavior as an area of need, the October 29, 2021 IEP team failed to develop a behavior goal.

TESTIMONY BY SCHOOL PSYCHOLOGIST MELISSA COELHO

At hearing, Stockton did not explain why the October 29, 2021 IEP team failed to develop a behavior goal. Stockton unconvincingly argued the IEP team's referral of Student to a social services case manager was sufficient to address Student's behaviors.

School Psychologist Melissa Coelho testified. Coelho held a bachelor's degree in psychology and a master's degree in school psychology. She did not recall if she attended Student's October 29, 2021 IEP team meeting but thought she might have attended part of the meeting. Coelho opined the purpose of referring Student to the social skills manager was to address Student's behavioral challenges. She explained the social skills manager would work with Student one or two times monthly on his social skills with the objective of having these behaviors generalized in the classroom setting. Coelho did not know the qualifications of the social skills manager or explain what skills they would work on, or the length or frequency of the services. The October 29, 2021 IEP's offer of FAPE did not include services by the social skills manager. It was unclear, therefore, whether the referral to the social skills manager was part of Student's offer of FAPE, or whether it was an intervention available to all students, general education, and special education alike.

Coelho had not assessed or observed Student at the time of the October 29, 2021 IEP team meeting. She did not believe Student was a danger to himself or others and opined his desire to seek attention was the reason for his social communication and behavior struggles. Coelho offered no evidence she had conducted a behavior analysis or collected any data about Student's behaviors or determined their antecedents,

consequences, or interventions to address those behaviors. Coelho's failure to observe or assess Student, or to collect data about the causes for his behaviors, rendered her testimony unpersuasive.

TESTIMONY BY GENERAL EDUCATION TEACHERS MAHONEY,
DEL PORTO BIANCHI, PINEDA-FLORES, AND SHANKLE ABOUT
STUDENT'S CLASSROOM BEHAVIORS

Special education teacher Shelley Mahoney held a master's degree in special education and a clear mild to moderate special education teaching credential. Mahoney had been a special education teacher for approximately nine years. Mahoney had substantial experience conducting special education assessments, writing IEP goals, and attending IEP team meetings. Mahoney was Student's special education teacher in Student's English courses during the first and second blocks of the 2021-2022 school year. At Young's request, Mahoney completed worksheets on Student's present levels of performance for the October 29, 2021 IEP team meeting. Mahoney opined she provided specialized academic instruction to Student in English, but she did not identify any improvement demonstrated by Student with respect to any specific skill or activity.

Mahoney opined Student struggled with task completion. He missed numerous assignments and spent class time on the computer looking at different sites. When called upon, Student read aloud.. Mahoney did not administer formal assessments to students in her special education English class. She graded students based upon completion of research based multi-paragraph essays. Student required extensive

prompting to complete his in-class work. Mahoney implemented Student's IEP accommodations, including providing him extra time, repeating instructions, and allowing Student to use notes.

Student was easily frustrated and sometimes seemed angry and mumbled under his breath, particularly when asked to complete tasks. For example, Student appeared frustrated when Mahoney prompted him to complete his daily journal entry. According to Mahoney, Student seemed angry or frustrated 25 to 50 percent of the time. Student wrote in complete sentences but needed help using correct grammar. Student was generally quiet in class but sometimes blurted out inappropriate words. Mahoney described these outbursts as making his voice "sound scary." Mahoney opined Student's outbursts made his classmates uncomfortable. During one class session in October 2021, Student stated he used to "swing cats around by the tail" when he was younger. Mahoney was able to re-direct Student when he engaged in these behaviors. Student worked alone and did not socialize with his classmates. Student sat at the front of the class and often stared at the wall.

Mahoney opined Student was not able to keep up with the rigor of the curriculum. She eliminated some required assignments because Student was unable to complete the tasks. Student worked slowly or did not complete tasks. Student received an F in English II in block one and a D minus in block two of the 2021-2022 school year.

General education teacher Julia Del Porto Bianchi was employed by Stockton as an English and Theatre teacher. She worked for Stockton for approximately seven years. Bianchi taught Student's Costume Design Tech class during the 2021-2022 school year. Bianchi testified about an incident in October 2021. Student approached Bianchi with a pair of scissors. He came very close and held the scissors over his head. Bianchi felt

shocked when Student approached her with the scissors because he came very close. She did not feel unsafe, but believed the incident was inappropriate. She told Student it was unsafe to carry the scissors in this matter. Bianchi also reported the incident to Young. According to Bianchi, Student did not engage in any further similar incidents.

Bianchi further convincingly explained Student had general difficulties interacting with his peers and understanding social cues. Once, Student asked if he could go into the girls' dressing room while they were changing. Another time, Student commented about one of his classmate's body shape. Student also stood uncomfortably close to his peers. Bianchi opined Student was receptive to her feedback regarding these incidents and easily redirected. Student earned a D minus in Costume Design Tech during block one and a B in block two of the 2021-2022 school year.

General education teacher Stephanie Pineda-Flores was a credentialed general education teacher. She taught Student Spanish during fall 2021. Student had many absences and failed to complete his homework. When he attended class, he often put his head down on his desk. He asked for Pineda-Flores' help in completing his classwork. He dropped the class prior to the end of the term.

Special education teacher Mary Shankle held a master's degree in education and had a mild to moderate special education teaching credential. Shankle taught Student reading during blocks one and two of the 2021-2022 school year. Shankle did not have a detailed memory of Student. She recalled she taught Student during distance learning during the 2020-2021 school year but changed her testimony and confirmed she taught him during physical in-person learning during the 2021-2022 school year. She did not recall Student making inappropriate comments or gestures. She opined Student was focused and on task and completed his assignments. Student sometimes appeared

frustrated, and Shankle permitted him to step outside to take a break. Student earned a D minus in reading during block one and an A minus in block two for the 2021-2022 school year.

There was little evidence Student had any friends during the 2020-2021 or 2021-2022 school years. Parent testified Student did not have friends. Student's teachers, including Young, Fields, Mahoney, and Bianchi recalled Student did not appear to have friends and typically kept to himself.

At hearing, Student's expert, Dr. Edwards, opined Student's behaviors, including failing to participate in class and making inappropriate comments and gestures, were characteristic of Student's disability of autism. She opined Student's IEP team should have held an IEP team meeting to address whether Student required additional services to address his maladaptive behaviors, including school-based counseling by a school psychologist. In response, Stockton argued it offered social skills counseling for Student but Parent refused. Stockton's argument was not persuasive because the IEP team did not develop a behavior goal or explain in the IEP document or at hearing the purpose of referring Student to the social skills manager. Stockton did not assess Student or collect data to determine the antecedents, consequences, or interventions of Student's behaviors. The IEP team did not develop a baseline reflecting Student's behavioral needs or goals to enable him to be involved in and make progress in the general education curriculum.

There was no evidence Student made progress in the area of social emotional, behavior and pragmatic language during the 2020-2021 and 2021-2022 school years. Rather, the evidence established Student's deficits in these areas remained at least the same as when he started at Edison High School. The preponderance of evidence

showed during the 2021-2022 school year Student continued to exhibit some maladaptive behaviors, such as infringing on his teacher's and classmate's personal space, as well as making inappropriate comments in his English and Costume and Design Tech class. He struggled with work completion in English class and often sat and stared at the wall. Special education teacher Mahoney's opinions about Student's refusal to complete tasks and exhibiting feelings of frustration were persuasive. None of Stockton's witnesses during either school year identified any specific skills on which Student made progress.

THE FAILURE TO DEVELOP APPROPRIATE GOALS DENIED STUDENT A FAPE

Stockton's failure to develop appropriate goals with measurable baselines and to identify the general education and special education staff responsible for Student meeting the goals in the areas of academics, social skills, and transition significantly impeded Parents' opportunity to participate in the decision-making process. The failure to include goals in the areas of mathematics and behaviors, including resistance to schoolwork, making inappropriate comments, and engaging in maladaptive behaviors resulted in an IEP that was not reasonably calculated to permit Student to make progress appropriate in light of his circumstances. The lack of goals, supports, and services to improve Student's ability to engage in appropriate behaviors were critical failures in the IEP that deprived Student of an educational benefit. Consequently, Stockton's failure to offer Student goals to meet his academic, social skills and behavioral needs was a procedural violation that denied Student an educational benefit, resulting in the denial of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed.

Code, § 56505, subd. (f)(2).) Student met his burden of proving Stockton denied him a FAPE in the October 29, 2021 IEP by failing to develop appropriate goals. Student prevailed on Issue 3(a).

ISSUES 2(c) AND 3(c): DID STOCKTON DENY STUDENT A FAPE IN THE AUGUST 27, 2020 AND OCTOBER 29, 2021 IEPs BY FAILING TO OFFER SUFFICIENT INDIVIDUAL SERVICES IN THE FORM OF A ONE-TO-ONE AIDE?

Student contends Stockton denied him a FAPE because it was aware Student struggled academically during distance and in-person learning and required a one-to-one aide to make progress towards his IEP goals. Stockton contends Student did not need a one-to-one aide to access his 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 benefitting from special education. (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].)

Student failed to present any witness testimony or documentary evidence to support his claim he required a one-to-one aide, in class or at home, as a related service to benefit from special education. The weight of the evidence established Student struggled academically during distance and in-person learning. However, Student did not prove he would have performed better with the support of a one-to-one aide.

Education Specialist Young persuasively explained she did not believe Student required a one-to-one aide. Young generally opined Student did not perform well in Young's math class in the fall 2020. Young believed Student achieved below his abilities. He often failed to complete tasks and assignments and received low assessment scores. She modified Student's assignments and gave him additional time to complete his work. Student sometimes engaged in disruptive behaviors, such as making loud noises and laying down. When Student engaged in these behaviors, Young easily redirected him and refocused on his work. Student asked questions when he needed help and answered questions during class discussions. Student worked independently and did not require supervision. Young had one classroom paraprofessional. Student was virtually assisted by Young or the paraprofessional as needed.

General education teacher Fields similarly opined Student did not require the services of a one-to-one aide. Student was able to log into Zoom and access the class. Student generally would log in on time, but generally kept his camera off. Student sometimes participated in class discussions and asked questions. However, he disrupted the class by making inappropriate noises and writing comments in the class Google Meet chat box. Fields easily redirected Student.

Parent generally testified that distance learning was difficult for Student and he had difficulty maintaining attention and completing his classwork. She observed Student fall asleep while on the computer during distance learning. Parent did not communicate her concerns about Student's difficulties during distance learning to Stockton at any time. Parent did not offer testimony that Student required a one-to-one aide to access his educational program.

Student also did not offer evidence he required a one-to-one aide during the 2021-2022 school year when he attended school in-person. Student argued, without evidentiary support, he required a one-to-one aide to make progress towards his IEP goals. None of Stockton's teachers or service providers opined Student required a one-to-one aide. Student did not have any adaptive or daily living skills for which he required a one-to-one aide. Student worked independently and transitioned between classes. He was easily redirected by his teachers when he engaged in inappropriate comments or behaviors. Student's expert witness, Dr. Edwards, agreed Student did not require the assistance of a one-to-one aide. Therefore, Student did not establish by a preponderance of the evidence Stockton denied him a FAPE by failing to offer a one-to-one aide in the August 27, 2020 and October 29, 2021 IEPs. Student did not meet his burden of proof on Issues 2(c) and 3(c).

ISSUE 2(d) AND 3(d): DID STOCKTON DENY STUDENT A FAPE IN THE AUGUST 27, 2020 AND OCTOBER 29, 2021 IEPs BY FAILING TO OFFER SUFFICIENT SPEECH AND LANGUAGE SERVICES?

Student contends Stockton denied him a FAPE because it failed to offer Student sufficient speech and language services in the August 27, 2020 and October 29, 2021 IEPs.

Stockton contends the August 27, 2020 IEP's offer of 15 minutes monthly speech and language consultation services was appropriate because Parents did not want Student to receive speech and language services. Stockton further contends it modified Student's speech services to include 75 minutes monthly direct speech and language services in the October 29, 2021 IEP, which was sufficient to meet Student's pragmatic language needs.

ISSUE 2(d): AUGUST 27, 2020 IEP'S OFFER OF SPEECH AND LANGUAGE SERVICES

To meet its substantive obligations under the IDEA, a school district "must offer an IEP reasonably calculated to enable a child to make progress in light of the child's circumstances." (*Endrew F.*, *supra*, 137 S.Ct. 988, 999.) An IEP is a written statement for each child with a disability that is developed using the IDEA's procedures, with the participation of parents and school personnel. The IEP provides a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to work towards the stated goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(a); Ed. Code, §§ 56032, 56345, subd. (a).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the district's proposed program, not that preferred by the parent. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)). For a school district's offer of special education services to constitute a FAPE under the IDEA, the offer must

- be designed to meet the student's unique needs,
- comport with his IEP, and
- be reasonably calculated to provide the student with some educational benefit in the least restrictive environment.

(*Id.* at pp. 1314-1315; *Rowley, supra*, 458 U.S. 176, 203.) The appropriateness of the August 27, 2020 IEP's offer of speech and language services must be evaluated as of the time the offer was made, not with hindsight. (*Adams, supra*, 195 F.3d 1141, 1149.)

Speech Pathologist Edwards opined she recommended to the August 27, 2020 IEP team Student's speech and language consultation services be reduced from 30 minutes to 15 minutes monthly based upon her belief Mother did not want Student to receive speech and language services. Student was new to the school and Edwards was not familiar with his needs. Edwards' testimony reflected a lack of understanding of Stockton's obligation under the IDEA to offer an IEP reasonably calculated to enable a child to make progress in light of the child's circumstances." (*Endrew F., supra*, 137 S.Ct. 988, 999.)

The overwhelming weight of the evidence proved the August 27, 2020 IEP team knew of Student's communication deficiencies, particularly in the area of pragmatic language. Stockton's obligation was to offer Student an IEP reasonably calculated for him to make progress in light of his circumstances. (*Endrew F., supra*, 137 S.Ct. 988, 999.) Stockton failed to do so.

Student proved the speech and language consultation services were insufficient at the time and he required individual speech and language sessions because of his difficulties attending to task and need for repeated redirection, which limited his ability to participate in class discussion. He also required interaction with his peers during group speech and language sessions to work on his pragmatic language skills. The offer of 15 minutes monthly consultation services was not reasonably calculated for Student to make progress in light of his circumstances. (*Endrew F., supra*, 137 S.Ct. 988, 999.)

Student met his burden of proving Stockton denied him a FAPE by failing to offer adequate speech and language services in the August 27, 2020 IEP. Student prevailed on Issue 2(d).

ISSUE 3(d): OCTOBER 29, 2021 IEP'S OFFER OF SPEECH AND LANGUAGE SERVICES

Student's communication deficits continued during the 2021-2022 school year. The October 29, 2021 IEP team determined Student did not meet his prior pragmatic language goal. Student often sat and stared. He tended to mumble and was difficult to understand. He made inappropriate and off-topic statements and did not communicate his needs to his teachers. He sometimes made inappropriate gestures.

The IEP team determined Student still had social communication deficits and continued Student's pragmatic language goal. The IEP team determined Student required direct speech and language services. The October 29, 2021 IEP offered 75 minutes monthly direct speech and language services through a pull-out model, delivered in three 25-minute sessions. The speech and language pathologist was responsible for implementing the goal.

At hearing, Speech Pathologist Edwards opined the IEP's offer of 75 minutes monthly direct speech and language services through a pull-out model was appropriate to meet Student's language deficits. She explained Student had the ability to learn social language skills and these learned skills would generalize in the classroom setting.

At the time of the October 29, 2021 IEP team meeting, Stockton had not assessed Student's speech and language needs. Further, no evidence was offered Edwards had

observed Student. Her information about Student was based largely on her consultation with special education teacher Mahoney. Edwards' lack of familiarity with Student and her failure to assess or observe Student rendered her testimony unpersuasive. Further, Edwards did not explain how direct speech and language services would be sufficient to allow Student to make progress on his pragmatic language needs. She generally opined the skills learned through direct speech and language therapy would generalize in the classroom setting, but she did not describe why direct speech services would meet Student's needs or consider whether group speech and language services may have been appropriate.

Student did not refute Edwards' testimony regarding the adequacy of the offered speech and language services. However, as discussed in Issue 3(b) above, Student proved the October 29, 2021 IEP's pragmatic language goal was inappropriate. Because the goal was not appropriate the October 29, 2021 IEP did not show a direct relationship between the goal and the offer of speech and language services. (Cal. Code Regs., tit. 5, § 3040, subd. (b).) It was uncertain whether the offer of 75 minutes monthly direct speech and language services was adequate to meet Student's pragmatic language needs. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2)(A) and (B).) Therefore, the preponderance of evidence showed the October 29, 2021 IEP's offer of speech and language services was not designed to meet Student's unique needs, or comport with his IEP, and was not reasonably calculated to provide Student with some educational benefit in the least restrictive environment. (*Gregory K.*, *supra*, 811 F.2d 1307, 1314-1315.) Student met his burden of proof on Issue 3(d).

ISSUES 2(e) AND 3(e): DID STOCKTON DENY STUDENT A FAPE IN THE AUGUST 27, 2020 AND OCTOBER 29, 2021 IEPs BY FAILING TO OFFER EXTENDED SCHOOL YEAR SERVICES?

Student contends Stockton denied him a FAPE by failing to offer extended school year services in the August 27, 2020 and October 29, 2021 IEPs. Student further contends he did not make progress towards his IEP goals and his skills regressed. Stockton contends Student did not prove he required extended school year services.

A school district must provide extended school year services when a child's IEP team determines that services are necessary for the provision of a FAPE to the child. (34 C.F.R. § 300.106(a)(2).) Extended school year services are special education and related services that are provided to a child with a disability beyond the normal school year, in accordance with the child's IEP, at no cost to the parent of the child, and meet the standards of the state educational agency. (34 C.F.R. § 300.106(b).) Under the IDEA, schools are required to provide extended school year services as necessary to provide a child with a FAPE. (34 C.F.R. §§ 300.309(a), 300.106(a).) An IEP team's determination regarding extended school year services is prospective and is not intended to make up for past denials of FAPE.

In California, extended school year services shall be provided for each student with exceptional needs who has disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the child's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely the child will attain the level of self-sufficiency and independence that otherwise would be expected in view of his disabling condition. (Cal. Code Regs., tit. 5, § 3043.)

Student did not prove Stockton denied him a FAPE by failing to offer Student extended school year services in the August 27, 2020 and October 29, 2021 IEPs. The August 27, 2020 IEP and October 29, 2021 teams did not determine Student would have difficulty recouping any losses due to regression over school breaks, and Student presented no evidence to the contrary. Student offered no evidence the IEP team had information Student would have any particular difficulties with regression or recoupment with respect to his academic or other skills. At hearing and in his closing brief, Student conflated the need for extended school year with remedying a past denial of FAPE. Student did not meet his burden of proof on Issues 2(e) and 3(e).

ISSUES 2(f) AND 3(f): DID STOCKTON DENY STUDENT A FAPE IN THE AUGUST 27, 2020 AND OCTOBER 29, 2021 IEPs BY FAILING TO OFFER PARENTS TRAINING TO ADDRESS STUDENT'S NEEDS ARISING FROM AUTISM?

Student contends Stockton was aware Student had social skills, communication, and academic deficits resulting from autism. Student contends Stockton should have provided Parents training to "consider Parent's problem with Student at home and his request for help." Stockton contends Student did not meet his burden of proof on this issue.

Student failed to prove Parents made a "request for help" either at the August 27, 2020 or October 29, 2021 IEP team meetings or at any other time during the 2020-2021 or 2021-2022 school years. At hearing, Mother offered no testimony of any problems she experienced at home due to Student's behaviors. During distance learning, she did not observe Student engage in any disruptive behaviors, such as making inappropriate

noises or comments. Sometimes Student sat at the kitchen table to complete his work so she could observe him. Distance learning was difficult for Student and she saw Student cry on one occasion. Parent explained it was a “treat to have a conversation” with Student because he usually kept to himself. Student could follow multi-step directions at home. He sometimes engaged in silly behaviors such as putting a bowl on his head, and from time to time made inappropriate comments. According to Parent, Student did not exhibit problem behaviors at home.

Student offered no evidence Parent requested help during the 2020-2021 or 2021-2022 school years, or that Stockton should have offered Parent training on autism in order to provide Student a FAPE. Student also offered no legal authority in support of this contention. Student failed to meet his burden of proof on Issues 2(f) and 3(f).

ISSUES 2(g) AND 3(g): DID STOCKTON DENY STUDENT A FAPE IN THE AUGUST 27, 2020 AND OCTOBER 29, 2021 IEPS BY FAILING TO OFFER AT HOME AND CLINIC-BASED APPLIED BEHAVIOR ANALYSIS THERAPY?

Student contends he required applied behavioral analysis services in the home and clinic settings to access his educational program. Stockton contends Student did not meet this burden of proof on these issues.

Student’s complaint alleges Student engaged in maladaptive behaviors at school, and Stockton “does not seem to understand that most behaviors occur both at home and school.” Student’s teachers opined he engaged in some inappropriate behaviors during distance and in-person learning. None of Student’s special education or general

education teachers believed he required applied behavior analysis at school. Student's teachers all testified Student was easily redirected. Mother convincingly explained Student did not engage in inappropriate behaviors in the home setting.

Student's expert witness, Dr. Edwards, opined Student did not require applied behavior analysis services. Dr. Edwards believed Student would benefit from school-based counseling. On questioning by the ALJ, Mother testified she believed home therapy would benefit Student, but her testimony made clear she thought "home therapy" meant academic tutoring to help Student do his homework. Mother's testimony did not support Student's claim he required applied behavior analysis services in the home or clinic settings. Student failed to meet his burden of proof on Issues 2(g) or 3(g).

ISSUE 3(h): DID STOCKTON DENY STUDENT A FAPE IN THE OCTOBER 29, 2021 IEP BY PREDETERMINING STUDENT'S OFFER OF PLACEMENT AND SERVICES?

Student contends Stockton predetermined its offer of placement and services in the October 29, 2021 IEP. Stockton contends Student failed to meet his burden of proof on this issue.

Parents have the right to participate in the identification, evaluation, and educational placement of a child with a disability. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(d)(1).) Predetermination occurs when a district has decided on its offer prior to the IEP team meeting, such as when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B. ex rel P.B. v. Las Virgenes Unified Sch. Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344-345.) The IDEA does not prohibit

school districts from discussing a child's special education needs, as well as potential services and placements in advance of the IEP team meeting. (*N.L., supra*, 315 F.3d 688, 693, fn. 3; *C.B. v. Garden Grove Unified School District* (C.D. Cal. Sept. 20, 2012, Case No. SACV 11-01619-JVS(MLGx) 2012 WL 12887773, at **8-9, *affd.* *C.B. v. Garden Grove Unified School Dist.* (9th Cir. 2014) 575 Fed. Appx. 796.) However, district employees must arrive at the IEP team meeting with an open mind and be willing to consider parental input. (*Deal, supra*, 392 F.2d 840, 857-859.)

As discussed in Issue 3(a) above, Stockton violated the IDEA by holding Student's October 29, 2021 IEP team meeting without Parents present and afterwards sending the IEP document to Parents for signature. However, Student did not offer any testimony or documentary evidence proving Stockton predetermined Student's offer of FAPE. Student's counsel implied Stockton's teachers and staff met prior to Student's IEP team meeting, but no evidence established this fact.

Here, there was an absence of evidence Stockton predetermined Student's offer of FAPE in the October 29, 2021 IEP. Student did not prevail on Issue 3(h).

ISSUES 2(i) AND 3(i): DID STOCKTON DENY STUDENT A FAPE IN THE AUGUST 27, 2020 AND OCTOBER 29, 2021 IEPs BY FAILING TO OFFER SUFFICIENT A SUFFICIENT PROGRAM AND SUPPORTS NECESSARY FOR STUDENT TO RECEIVE AN EDUCATIONAL BENEFIT?

Student contends Stockton denied him a FAPE in the August 27, 2020 and October 29, 2021 IEPs by failing to offer him a sufficient program and supports necessary for Student to receive educational benefit.

Stockton contends the August 27, 2020 and October 29, 2021 IEPs each offered Student an educational program that was reasonably calculated to enable Student to make progress appropriate in light of his circumstances.

ISSUE 2(i): AUGUST 27, 2020 IEP'S PROGRAM OFFER AND SUPPORTS

To meet its substantive obligations under the IDEA, a school district must provide an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Endrew F.*, *supra*, 137 S.Ct. 988, 999.) An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams*, *supra*, 195 F.3d 1141, 1149.) Additionally, to determine whether a school district offered a student a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K.*, *supra*, 811 F.2d 1307, 1314.) A downward trend in a student's assessment scores or performance may indicate the student may need more intensive services. (See, *Reyes v. Board of Education for Prince George's County Public Schools* (D. Md. March 31, 2022, No. 20-3565 PJM) 2022 WL 971082, at *14); *Endrew F.*, *supra*, 137 S.Ct. 988, 1000 [an IEP should be "reasonably calculated to enable to the child to achieve passing marks and advance from grade to grade"].)

The weight of the evidence proved the August 27, 2020 IEP's offer of special education and related services was not reasonably calculated to enable Student to make progress appropriate in light of his circumstances and did not do so as evidenced by Student's lack of progress towards his annual IEP goals and largely failing to minimally passing academic grades. A preponderance of the evidence showed the August 27,

2020 IEP team was aware of Student's academic, pragmatic language, and behavior struggles. The IEP team also lacked sufficient information to determine whether Student met his prior year's annual goals.

Notwithstanding the foregoing, the August 27, 2020 IEP substantially reduced Student's specialized academic instruction and speech and language consultation services as compared to Student's May 10, 2019 IEP. The August 27, 2020 IEP offered Student 848 minutes weekly specialized academic instruction in Student's English and math classes. This reduced Student's specialized academic instruction by approximately 43 percent compared to his May 10, 2019 IEP. The IEP reduced Student's monthly speech and language consultation services from 30 minutes to 15 minutes monthly, a 50 percent reduction. The prior year, Student spent 80 percent of his time in the special education environment, and 20 percent time outside the general education setting. In contrast, the August 27, 2020 IEP reduced Student's time in special education to 44 percent and increased his time in the general education environment to 56 percent.

Additionally, the August 27, 2020 IEP team did not address Student's academic, social communication, and behavior issues of which Stockton and the IEP team was aware or should have been aware. The IEP team could have considered whether Student required more services and supports in his general education and special education classes. It could have considered whether direct speech and language services were necessary to address Student's pragmatic language needs, or considered accommodations and supports, including behavior intervention services to address Student's behavioral deficits. (20 U.S.C. § 1414(d)(3)(B)(i).) It failed to do so despite knowledge of Student's demonstrable academic, social language, and behavioral struggles.

The August 27, 2020 IEP document did not reflect the basis for the substantial reduction in Student's specialized academic instruction and speech and language consultation services. At hearing, Education Specialist Young and Speech Pathologist Edwards suggested the IEP team's decision to reduce Student's specialized academic instruction and speech and language consultation services was premised on its belief Parents did not want Student to receive special education. Young conceded the August 27, 2020 IEP team did not discuss the necessary amount of specialized academic instruction and speech and language services required because Parents "were not in attendance." No explanation, other than Stockton's mistaken belief Parents did not want Student to receive special education and related services, was offered by Stockton for substantially reducing Student's program. This was a serious violation of the IDEA's requirement that an IEP must be reasonably calculated to enable a child to make progress appropriate in light of his circumstances. (*Endrew F.*, *supra*, 137 S.Ct. 988, 999.)

Stockton was required to offer Student a FAPE and, under California law, if the Parents disagreed, to initiate a due process proceeding if it determined the proposed special education program component to which Parents did not consent was necessary to provide a FAPE. (Ed. Code, § 56346, subd. (f); *I.R. ex rel. E.N. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1169-1170; (*Capistrano Unified Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1136 (*Capistrano*).) The IDEA's extensive procedures and implementing regulations are designed to protect the child, who suffers when he is not promptly provided a FAPE. (*I.R.*, *supra*, 805 F.3d 1164, 1170 [in context of resolving a parental dispute over an offer of FAPE, a school district must act with reasonable promptness to correct the problem by adjudicating the differences with the parents].)

By the end of block one in October 2020 Student had no marks in algebra and biology, which was the equivalent to failing grades. Student earned a D minus in

physical education and a D in English. By the end of block two in December 2020, Student had a C in English, a D in algebra, a no mark in biology, and a C in physical education. The August 27, 2020 IEP team was aware Student's pragmatic language and behavioral deficiencies were impacting his education. A preponderance of evidence showed the offer of specialized academic instruction and speech and language services was inappropriate as to frequency, duration and setting to meet Student's academic, behavior, and social communication needs. (*Endrew F.*, *supra*, 137 S.Ct. 988, 999.) The August 27, 2020 IEP's offer of special education and services was not designed to address Student's unique educational needs, was not reasonably calculated to provide Student with some educational benefit and did not comport Student's IEP. (*Gregory K.*, *supra*, 811 F.2d at p. 1314.) Therefore, Student met his burden of proving Stockton denied him a FAPE in the August 27, 2020 IEP by failing to offer a sufficient program and supports necessary for Student to receive an educational benefit. Student prevailed on Issue 2(i).

ISSUE 3(I): OCTOBER 29, 2021 IEP'S PROGRAM OFFER AND SUPPORTS

By the October 29, 2021 annual IEP, Student continued to exhibit academic, behavioral, and social communication difficulties. Student failed to meet or make meaningful progress on any of his annual goals, with the exception of one transition goal. Student's grades for block one in fall 2021 were an F in English II, and D's in world history, costume design tech, and reading. His overall grade point average for the first block was a 0.75 percent. Student's classroom behaviors continued to decline, as evidenced by his inattention to task, staring at the wall, inappropriate outbursts, and disrespectful comments to his peers.

The October 29, 2021 IEP's goals in academics, social skills, and transition were materially flawed because they lacked adequate baseline information or failed to identify the responsible general education teacher or special education staff responsible for implementing the goals. Further, the IEP team failed to develop goals in Student's known areas of need in mathematics and behavior. The IEP team identified positive behavior interventions, strategies, and supports, including praise, choices, snacks and homework or assignment passes, but did not designate a teacher or special education staff responsible for implementing the intervention. The IEP failed to demonstrate how these interventions provided for a "systematic implementation of procedures that result in long lasting positive changes in the individual's behavior." (Cal. Code Regs., tit. 5, § 3001, subd. (d).)

Despite Student's failure to make meaningful progress towards his annual goals and his academic and behavioral struggles, Stockton did not modify its offer of specialized academic instruction or provide behavioral support. Stockton's offer of FAPE included placement in the general education setting, specialized academic instruction for 848 minutes weekly in Student's special education math and English classes, 75 minutes monthly direct speech and language services through a pull-out model, 15 minutes monthly career awareness services and 15 minutes monthly college awareness services. With the exception of the change to Student's speech and language services, the offer of FAPE was identical to the August 27, 2020 IEP. The IEP contained the same accommodations as the August 27, 2020 IEP, including simplified instructions, on task reminders and verbal encouragement, a small group setting, and supervised breaks. It also included program modifications, including take-home or open book tests, permitting Student to rework missed problems, providing a vocabulary list with definitions, and proving partial grades based on individual progress or effort.

The preponderance of the evidence proved the October 29, 2021 IEP's offer of program and supports was not designed to address Student's unique educational needs, was not reasonably calculated to provide Student with some educational benefit and did not comport with Student's IEP. (*Gregory K., supra*, 811 F.2d 1307, 1314.) The offer of program and supports was not designed to address Student's academic, transition, and behavioral needs as evidenced by the lack of appropriate goals in these areas. Without adequate goals, an IEP cannot develop an appropriate offer of placement and services. (*Capistrano, supra*, 21 F.4th 1125, 1133 [an IEP contains both goals and an offer of placement and services the school district proposes to accomplish those goals].)

The October 29, 2021 IEP failed to demonstrate a direct relationship between the IEP goals and the offer of placement and services. At hearing, Stockton did not offer testimony about why the October 29, 2021 IEP team continued the same level of specialized academic instruction as in the prior year's IEP despite knowing of Student's academic and behavioral struggles. No testimony was offered regarding whether the IEP team considered additions or changes to Student's specialized academic instruction, related services, and program accommodations and modifications for Student to advance in attaining his goals and make progress in the general education curriculum. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a)(1)(A).) As a result, the preponderance of the evidence proved Stockton denied Student a FAPE. (*Gregory K., supra*, 811 F.2d 1307, 1314.) Student prevailed as to Issue 3(i).

ISSUE 4: DID STOCKTON DENY STUDENT A FAPE IN THE AUGUST 27, 2020 AND OCTOBER 29, 2021 IEPS BY FAILING TO COLLECT ACCURATE AND COMPLETE DATA ON STUDENT'S GOAL PROGRESS, PARTICULARLY DURING DISTANCE LEARNING?

Student contends Stockton failed to collect accurate and complete data on Student's goal progress in the August 27, 2020 and October 29, 2021 IEPs. Stockton contends it tracked and reported progress on Student's goals.

An IEP must contain a statement of measurable goals and adequately describe how the child's progress towards meeting the annual goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(II) and (III); 34 C.F.R. § 300.320(a)(2) and (3); Ed. Code, § 56345, subd. (a)(1).) Neither the IDEA nor caselaw require a specific form of goal measurement. (*Capistrano, supra*, 21 F.4th 1125, 1134, citing *R.P. ex re. C.P. v. Prescott Unified Sch. Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122 (*Prescott*) [goal measurement can be "based on teachers' subjective observations."] As stated by the Ninth Circuit in *Capistrano*, "thus goals [can] be measured ordinally (e.g., no improvement/some improvement/significant improvement), quantitatively, or in some other way." (*Capistrano, supra*, 21 F.4th 1125, 1134.)

An IEP must also describe when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. (20 U.S.C. § 1414(d)(1)(A)(i)(II) and (III); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(1).) At hearing, the evidence proved Parents were provided copies of Student's

report cards on a quarterly basis. No evidence was elicited whether Stockton provided Parents Student's IEP goal progress after each term as required by the August 27, 2020 and October 29, 2021 IEPs.

At hearing, Student offered no evidence through Parents or any other witness regarding what data Stockton was required to collect, or how it failed to accurately collect such data, with respect to any of his IEP goals. In his closing brief, Student argues the IEP goals lacked baseline information and therefore Stockton necessarily failed to collect data on Student's progress towards his goals. This argument misconstrues the IDEA.

The IDEA's requirement IEP goals must be measurable is tied by statute to the requirement the goals adequately meet the needs that result from the student's disability and enable him to be involved in and make progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) The IDEA does not require a statement of the frequency of data collection or the duration of demonstrating a skill. An IEP is not required to contain additional information beyond what is explicitly required by the IDEA. (20 U.S.C. § 1414(d)(1)(A)(ii); see also Ed. Code, § 56345, subd. (i).)

Here, Student failed to offer evidence about data Stockton was required to collect, but failed to collect, with respect to any of Student's IEP goals. Student did not offer persuasive evidence showing Stockton failed to provide Parents goal progress reports following each term. Student failed to meet his burden of proof on Issue 4.

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), (b), AND (c):

Stockton did not deny Student a FAPE during the 2020-2021 school year by

- assigning Student to distance learning without continuing to provide Student in-person services,
- failing to assess Student to ensure he could obtain a FAPE during distance learning and f
- ailing to provide Student with necessary accommodations during distance learning.

Stockton prevailed on Issue 1(a), (b), and (c).

ISSUE 2(a), (b), (d), (h), AND (i):

Stockton denied Student a FAPE by

- convening the August 27, 2020 IEP team meeting without Parents,
- failing to develop adequate goals to address all of Student's needs,
- failing to offer sufficient speech and language services,

- predetermining Student's IEP, and
- failing to offer Student a sufficient program and supports necessary to receive an educational benefit.

Student prevailed on Issue 2(a), (b), (d), (h), and (i).

ISSUE 2(c), (e), (f), AND (g):

Stockton did not deny Student a FAPE in the August 27, 2020 IEP by

- failing to offer sufficient intensive individual services in the form of a one-to-one aide,
- failing to offer extended school year services,
- failing to offer Parents training on Student's needs relating to his autism, or
- failing to offer at home and clinic-based applied behavior analysis services.

Stockton prevailed on Issue 2(c), (e), (f), and (g).

ISSUE 3(a), (b), (d), AND (i):

Stockton denied Student a FAPE by

- convening the October 29, 2021 IEP team meeting without Parents,
- failing to develop adequate goals to address all of Student's needs,

- failing to offer sufficient speech and language services and
- failing to offer Student a sufficient program and supports necessary to receive an educational benefit.

Student prevailed on Issue 3(a), (b), (d), and (i).

ISSUE 3(c), (e), (f), (g), AND (h):

Stockton did not deny Student a FAPE in the October 29, 2021 IEP by

- failing to offer sufficient intensive individual services in the form of a one-to-one aide,
- failing to offer extended school year services,
- failing to offer Parents training on Student's needs relating to his autism,
- failing to offer at home and clinic-based applied behavior analysis services or predetermining Student's offer of FAPE.

Stockton prevailed on Issue 3(c), (e), (f), (g), and (h).

ISSUE 4:

Stockton did not deny Student a FAPE in the August 27, 2020 and October 29, 2021 IEPs by failing to collect accurate and complete data on Student's goal progress.

Stockton prevailed on Issue 4.

REMEDIES

Student prevailed on Issues 2(a), (b), (d), (h), and (i), and 3(a), (b), (d), and (i). Student proved by a preponderance of the evidence he was denied a FAPE in the August 27, 2020 IEP by Stockton's

- failure to include Parents in the IEP team meeting, predetermining Student's IEP,
- failing to develop appropriate goals to address Student's areas of need,
- failing to offer sufficient speech and language services, and
- failing to offer an appropriate program and supports.

Student proved by the preponderance of the evidence Stockton denied him a FAPE in the October 29, 2021 IEP by

- failing to include Parents in the IEP team meeting,
- failing to develop appropriate goals to address Student's unique areas of need,
- failing to offer sufficient speech and language services, and
- failing to offer an appropriate program and supports.

OAH's September 20, 2022 Order Following Prehearing Conference for Hearing by Videoconference mandates that any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. It further mandates that a party seeking compensatory education must provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Finally, it requires that documents offered as evidence to support a request for reimbursement must be separated by vendor.

Student's final briefing requests approximately 970 hours of compensatory education services and assessments in the areas of behavior, psychoeducational, speech and language, and occupational therapy. Student requests his IEP be amended to include new goals in all areas of need, a one-to-one aide, applied behavioral analysis services, and training of Student's IEP team members. Student established several violations of FAPE, but did not provide any expenditures, stipulations, or credible evidence regarding the type, amount, duration, and need for any requested compensatory education. Student showed academic losses, behavioral and pragmatic language difficulties, and failed classes. Student had at least one qualifying disability, and compensatory education may provide a benefit to Student. At hearing, Student did not offer persuasive expert testimony of the appropriate remedy for any of the denials of FAPE found herein.

Although Dr. Edwards' offered her opinion Student required school counseling services, this opinion was not persuasive because Dr. Edwards did not observe Student in the educational setting or conduct any assessments, including a psychoeducational evaluation. Dr. Edwards did not communicate with any of Student's teachers or his IEP team members. Dr. Edwards' opinions were based solely on her review of the August 27, 2020 and October 29, 2021 IEP documents and a videoconference interview with Student and Mother held over the weekend during the course of the due process hearing. Therefore, Dr. Edwards' opinions were not persuasive in determining a resolution for Stockton's FAPE denials.

Administrative law judges have broad latitude to fashion appropriate equitable remedies for FAPE denials. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*); *Parents of Student*

W. v. Puyallup Sch. Dist., No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*.) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

In remedying a FAPE denial, the student is entitled to relief that is appropriate in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) Appropriate relief means “relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” (*Puyallup, supra*, 31 F.3d 1489, 1497.)

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Id.* at p. 1496.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265; *Orange Unified School Dist. v. C.K.* (C.D.Cal. June 4, 2012, No. SACV 11-1253 JVS(MLGx) 2012 WL 2478389, at *12.) Compensatory education is an equitable remedy that depends upon a fact-specific and individualized assessment of a student’s current needs. (*Puyallup, supra*, 31 F.3d 1489, 1496.; *Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.)

The award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Reid, supra*, at p. 524; *Prescott, supra*, 631 F.3d 1117, 1125.) However, hour-for-hour relief for a denial of FAPE is not required by law. (*Puyallup, supra*, 31 F.3d 1489, 1497.)

"[E]quitable considerations are relevant in fashioning relief." (*Burlington, supra*, 471 U.S. 359, 374.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Puyallup, supra*, 31 F.3d at pp. 1496-1497.) A student should not be punished for a parent's missteps. No reduction in compensatory services had been made in this award.

Stockton denied Student a FAPE under Issues 2(a) and 3(a) by convening Student's August 27, 2020 and October 29, 2021 IEP team meetings without Parents present and without complying with the procedures required under the IDEA. Stockton also denied Student a FAPE under Issue 2(h) by predetermining the August 27, 2020 emergency circumstances plan and unilaterally adding it to the IEP without notifying Parent or reconvening an IEP team meeting.

Student requested relief, in part, in the form of training for Stockton staff. The facts of this case show Stockton's staff did not fully appreciate its obligations regarding the procedures for including parents in IEP team meetings, amending IEPs, and developing legally compliant goals. Staff training can be an appropriate compensatory remedy and is appropriate in this case. (*Park, supra*, 464 F.3d 1025, 1034.) Accordingly, Stockton will be ordered to provide staff training on those topics.

Student is entitled to a remedy for Stockton's denial of FAPE in Issues 2(b), (d), and (i), and 3(b), (d), and (i). The overwhelming weight of the evidence proved Student engaged in inappropriate behaviors, had difficulties attending to task and completing work, and struggled with social communication. These deficiencies impacted Student's ability to access his education and resulted in educational loss. Student's report cards reflected mainly failing or just passing grades for the two school years at issue. Student made minimal to no progress on his August 27, 2020 goals and failed to meet or made

de minimis progress on most of the October 29, 2021 IEP goals. The August 27, 2020 and October 29, 2021 IEP goals were largely inadequate, failed to address all of Student's areas of need, and did not show a direct relationship between Student's present levels of performance, the IEP goals, and Student's special education and services. The weight of the evidence further proved the offers of special education and services in the August 27, 2020 and October 29, 2021 IEPs were not designed to address Student's unique educational needs, were not reasonably calculated to provide Student with some educational benefit and did not comport with Student's IEPs.

Student failed to prove an appropriate remedy for Stockton's denial of FAPE in Issues 2(b), (d), (h), and (i), and 3(b), (d), and (i). Therefore, the ALJ has fashioned an appropriate equitable remedy taking into consideration Student's needs resulting from his disability. Full consideration was given to the evidence and testimony presented in this case, taking into account that any compensatory education will result in additional work by Student outside school hours or during school breaks.

Student's May 10, 2019 IEP provided for five hours daily specialized academic instruction in a special day class and 30 minutes monthly speech and language consultation. Student's August 27, 2020 and October 29, 2021 IEPs reduced Student's specialized academic to 848 minutes per week, or roughly three hours per day; a reduction of approximately 2 hours per day compared to his May 10, 2019 IEP. Stockton offered no reasonable basis for this substantial reduction in specialized academic instruction. No changes were made to Student's educational program in the October 29, 2021 IEP, with the exception of modifying Student's speech and language services to direct services 75-minutes monthly. Hour for hour compensatory education is not a required award. However, it is a reasonable reference point.

As an equitable remedy, Student is awarded 186 hours of compensatory education in the areas of academics and speech and language. This compensates Student for the total loss of specialized academic instruction and speech and language services that Student should have received during the 2020-2021 and 2021-2022 school year. For the 2020-2021 school year, this award was calculated based on two missed hours weekly specialized academic instruction for the 34 instructional weeks between August 3, 2020 through May 27, 2021, for a total of 68 hours. In addition, to remedy Stockton's failure to offer Student sufficient speech and language services in the August 27, 2020 IEP, this award includes one hour per week of speech and language services for the same 34-instructional school week period, for a total of 34 hours.

For the 2021-2022 school year, this award was calculated at two missed hours weekly specialized academic instruction for the 36 instructional weeks between August 2, 2021 through May 26, 2022, for a total of 72 hours. This award also includes one hour weekly compensatory speech and language services for the period August 2, 2021, the first day of the regular 2021-2022 school year, through October 29, 2021, the date of Student's annual October 29, 2021 IEP, for a total of 12 hours. The evidence proved the speech and language goal was inadequate and therefore it was uncertain whether the October 29, 2021 IEP's offer of speech and language services was sufficient to meet Student's pragmatic language needs. However, Student failed to offer evidence of the appropriate amount of speech and language services required to meet Student's pragmatic language needs. Further, the evidence established Stockton implemented the October 29, 2021 IEP's 75 minutes monthly speech and language services following Mother's consent to the October 29, 2021 IEP. Therefore, the award of 12 hours compensatory speech and language services through October 29, 2021 is appropriate.

The evidence showed Student had pragmatic language deficiencies which impeded his ability to advance in attaining his goals, make progress in the general educational curriculum, and participate in education with disabled and nondisabled peers. As an equitable remedy, Stockton shall fund an independent educational evaluation at public expense in the area of speech and language by a licensed speech and language pathologist. This remedy is based on Stockton's failure to assess Student's pragmatic language needs during the 2020-2021 and 2021-2022 school years despite Student's known areas of need in pragmatic language and lack of current assessment data. It is further based on Stockton's decision to reduce Student's speech and language services for the 2020-2021 school year, notwithstanding Student's known pragmatic language deficits.

The evidence established Student had significant needs in all areas for which compensatory education is awarded. Therefore, the hours may be allocated among the areas of academics and speech and language services at Parents' discretion. The compensatory education hours shall be available through December 31, 2024. Parents shall be allowed to access services during summer or other school breaks, or other times convenient to meet Student's needs outside his regular school schedule.

As an equitable remedy for Stockton's denial of FAPE in Issues 2(b) and 3(b) for failure to develop a behavior goal or appropriate positive behavioral interventions, Stockton shall convene an IEP team meeting to consider appropriate behavior goals and/or the use of positive behavior interventions and supports, and other strategies, to address those behaviors. The IEP team shall specifically consider Student's inattention to task, work refusal, use of inappropriate words and actions, and any other maladaptive behaviors known to the IEP team at the time of the IEP team meeting.

Student did not establish Stockton denied him a FAPE in the August 27, 2020 IEP by

- assigning him to distance learning,
- failing to assess for necessary accommodations or failing to implement necessary accommodations during the 2020-2021 school year,
- failing to provide Student a one-to-one aide,
- failing to offer Parents training on behaviors associated with autism, or
- failing to offer at home or clinic-based applied behavior analysis services.

Student did not establish Stockton denied him a FAPE in the October 29, 2021 IEP by

- predetermining Student's offer of FAPE,
- failing to provide Student a one-to-one aide,
- failing to offer Parents training on behaviors associated with autism, or
- failing to offer at home or clinic-based applied behavior analysis services.

Finally, Student did not prove Student failed to collect accurate data on Student's goal progress during the 2020-2021 or 2021-2022 school years. Therefore, Student is not entitled to any remedy on these issues.

ORDER

1. Within 45 calendar days from the date of this Order, Stockton shall contract with a California certified non-public agency to provide Student a block of 186 hours of compensatory academic instruction and/or speech and language services, by a certified non-public agency or licensed provider, at a rate not to exceed the hourly rate established by Stockton or

its special education local plan area, called SELPA, for academic instruction and speech and language services. The duration and frequency shall be determined by the provider. These hours may be used for specialized academic instruction and/or speech and language services at Parents' discretion.

The services shall occur at Student's residence or at another location to be agreed upon by Parents and the non-public agency. If the services are held at a location other than Student's home, Stockton shall reimburse Parents for transportation for one round-trip travel to the location, not to exceed 50 miles round-trip, based on Stockton's or its SELPA's standard mileage reimbursement rate.

The block of hours must be used no later than December 31, 2024.

This remedy is compensatory only and does not constitute a part of a stay put placement.

All unused hours remaining on December 31, 2024 shall be forfeited.

2. Within 14 school days from the date of this Order, Stockton shall provide Parents with a list of certified non-public agencies with whom Stockton or its SELPA contracts who may provide specialized academic instruction or speech and language services to Student. Parents shall notify Stockton in writing of its selected certified non-public agency for the purpose of Stockton contracting with the certified non-public agency for Student's compensatory education.

Within 15 calendar days of receiving in writing the name of Parents' selected certified non-public agency, Stockton shall contract with the certified non-public agency selected by Parents.

3. Stockton shall fund an independent speech and language evaluation for Student in an amount not to exceed its SELPA guidelines, by a qualified and licensed speech and language pathologist of Parents' choosing. Within 14 school days from the date of this Order, Stockton shall provide Parents with a list of qualified and licensed speech and language pathologists with whom Stockton or its SELPA contracts and who are available to conduct a speech and language evaluation of Student.

Parents shall notify Stockton in writing of their selected speech and language pathologist for the purpose of Stockton contracting with the speech and language pathologist to conduct the speech and language evaluation.

Within 15 calendar days of receiving in writing the name of Parents' selected speech and language pathologist, Stockton shall contract with the speech and language pathologist selected by Parents.

Parents shall be responsible for scheduling the evaluation, timely providing the evaluator any requested information about Student, and otherwise facilitating the evaluation.

4. Within 60 calendar days of the date of this Order, Stockton shall convene an IEP team meeting with all required IEP team members to develop a behavior goal or goals for Student and/or the use of positive behavior

interventions and supports, and other strategies, to address those behaviors. The IEP team shall specifically consider Student's inattention to task, work refusal, use of inappropriate words and actions, and any other maladaptive behaviors known to the IEP team at the time of the IEP team meeting.

Within 14 calendar days of issuance of this Order, Stockton shall provide Parents an invitation with three possible dates and times to hold the IEP team meeting. The IEP meeting invitation shall be sent to Parents via regular United States mail to their last known address, and to any email addressed on file with Stockton. The IEP team meeting shall be held on a regular instructional school day between the hours of 8:30 a.m. and 3:30 p.m. The IEP team meeting dates shall be selected in sufficient time for the meeting to be held within 60 calendar days of the date of this Order. The invitation shall include a return, pre-addressed, stamped envelope for Parents to return the signed invitation.

Parents shall return the completed invitation with the date and time selected within five calendar days of receipt of the IEP team invitation. In the event Parents fail to sign and return the invitation, Stockton may hold the IEP team meeting in Parents' absence.

5. Within 60 calendar days from the date of this Order, Stockton shall contract with a non-public agency or independent law firm specializing in special education law to provide four hours training to Stockton's Special Education Executive Director and the special education staff at Edison High School on the legal requirements for encouraging parental attendance at

IEP team meetings, amending IEPs, and developing IEP goals. This training shall be completed by August 31, 2023. Stockton shall notify Parents in writing within 10 days of the date Stockton has completed such training.

6. All other relief sought by Student is denied.

RIGHT TO APPEAL 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 with 90 days of receipt.

/s/

JENNIFER KELLY

Administrative Law Judge

Office of Administrative Hearings