

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021110493
CASE NO. 2021110347

THE CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT,

and

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT.

DECISION

APRIL 21, 2022

On November 12, 2021, Saddleback Valley Unified School District filed with the Office of Administrative Hearings, called OAH, a due process hearing request in OAH case number 2021110347, naming Student. On November 17, 2021, Parents on behalf of Student filed a due process hearing request, OAH case number 2021110493, naming Saddleback Valley Unified School District.

On November 19, 2021, OAH granted Student's motion to consolidate the two matters. On December 20, 2021, OAH granted the parties' request to continue the due process hearing.

Administrative Law Judge Clifford H. Woosley heard this matter in a videoconference hearing, on February 15, 16, and 17, 2022.

Attorney Damian R. Fragoso represented Student. Student's Parents attended on Student's behalf. Attorney S. Daniel Harbottle represented Saddleback Valley. Dr. Diane Clare, Director of Special Education, attended on Saddleback Valley's behalf.

The parties agreed the matter was continued until March 14, 2022, for submission of written closing briefs, at which time the briefs were filed, the record closed, and the matter submitted for decision.

ISSUES

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

SADDLEBACK VALLEY'S ISSUE

1. May Saddleback Valley exit Student from special education and cease providing Student services, without the consent of Parent, because Student no longer meets special education eligibility criteria?

STUDENT'S ISSUES

1. Did Saddleback Valley deny Student a FAPE by failing to find him eligible for special education and related services in the October 12, 2021 annual IEP?
2. Did Saddleback Valley deny Student a FAPE by failing to offer appropriate levels of speech and language services in the October 12, 2021 annual IEP?
3. Did Saddleback Valley deny Student a FAPE by failing to assess Student in the area of occupational therapy as recommended by two independent education evaluators during the 2021-2022 school year?
4. Did Saddleback Valley deny Student a FAPE by denying meaningful parental participation when it failed to consider all potential categories of eligibility for special education and related services at the October 12, 2021 annual IEP?
5. Did Saddleback Valley deny Student a FAPE by failing to maintain Student's "stay put" services at the beginning of the 2021-2022 school year?

The issues have been rearranged for purposes of analysis, but otherwise remain the same as discussed by the parties and ALJ at the prehearing conference on February 7, 2022.

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R.

§ 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this consolidated hearing each party has the burden of proving the issues raised by the complaints they filed. The factual statements included in this decision constitute the findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was three years old when he became eligible for special education placement and services under the category of autism in October 2017. Student was seven years old at the time of hearing, attending first grade at Del Lago Elementary School. Student lived within the boundaries of Saddleback Valley at all times relevant to this decision.

SADDLEBACK VALLEY'S ISSUE: MAY SADDLEBACK VALLEY EXIT STUDENT FROM SPECIAL EDUCATION AND CEASE PROVIDING STUDENT SERVICES, WITHOUT THE CONSENT OF PARENT, BECAUSE STUDENT NO LONGER MEETS SPECIAL EDUCATION ELIGIBILITY CRITERIA?

Saddleback Valley contended that it properly exited Student from special education because its IEP team members determined at the October 12, 2021 annual IEP team meeting that Student no longer required special education placement or services to access and benefit from his general education curriculum. Saddleback Valley asserted that it relied on its October 2020 triennial assessment, two independent educational evaluations, classroom observation, information from Parents, and the input of Student's teachers and service providers in determining that Student was intelligent, sociable, communicative, and focused in the general education classroom, achieving average to above average scores in all subjects, at the October 2021 IEP team meeting.

Student claimed that the independent education evaluations found that Student continued to be eligible for special education as a child with autism and that Student required specialized academic instruction and related services of occupational therapy and speech and language to access and benefit from his public education.

ASSESSMENTS AFFIRMED STUDENT'S SPECIAL EDUCATION ELIGIBILITY

Saddleback Valley asserted it was entitled to exit Student from special education at the annual October 2021 IEP team because special education law provided that IEP teams must review a child's needs, including the results of reassessments, the pupil's anticipated needs, and any other relevant matter. (Ed. Code § 56341.1, subd. (d).) Saddleback Valley contended that its October 2021 IEP team members properly determined that Student no longer required special education and related services to succeed in a general education classroom.

Federal and state law provided that only children who met specific eligibility criteria were entitled to special education and related service. (20 U.S.C. § 1401(3)(A); Ed. Code, § 56026(a).) To be eligible, the child must be deemed "a child with a disability" and, by reason thereof, require special instruction, services, or both, which cannot be provided without modification of the general education program. (20 U.S.C. § 1401(3)(A)(ii); 34 C.F.R. § 300.8(a); (Ed. Code § 56026, subd. (b); C.C.R. § 3030(a).) Saddleback Valley found that Student did not qualify for special education because, regardless of his disabilities, Student did not require instruction and services that could not be provided without modification of the regular school program.

Saddleback Valley cites *Hood v. Encinitas Union School Dist.*, (9th Cir. 2007) 486 F.3d 1099, which involved whether a student was eligible for special education because of a specific learning disability or other health impairment. In finding for the school district, the *Hood* Court determined that the student was not eligible for special education because the alleged disabilities that student "did suffer from did not adversely affect her performance to the extent that she required education outside of the general classroom." (*Id.* at pp. 1106, 1110.) Saddleback Valley cited two recent

District court cases, which referred to *Hood*. (*Legrís v. Capistrano Unified School Dist.*, (C.D.Cal) 2020 WL 7086564 at p. 15; *Simmons v. Pittsburg Unified School Dist.*, (N.D.Cal) 2014 WL 2738214 at p. 3.)

However, these three cases did not concern reevaluation to determine whether a child should be exited from special education. Federal and state law specifies a mandatory, stringent evaluation process for exiting a child, who was already special education eligible and receiving specialized academic instruction or related services. Title 20 United States Code section 1414(c) outlines the requirements for reevaluating and exiting a child from special education. These same requirements are mirrored in federal regulations and state statute. (34 C.F.R. § 300.305; Ed. Code, § 56381.)

When evaluating or reevaluating a child, Title 20 United States Code section 1414(c)(1)(A) states that the child's IEP team and other qualified professionals shall review existing assessment data, including evaluations and information from a child's parents, classroom-based observations, and input from the child's teachers and related service providers. Section 1414(c)(1)(B) then states the team

on the basis of that review [§ 1414(c)(1)(A)], and input from the child's parents, identify what additional data, if any, are needed to determine --
(i) ... in case of a revaluation of a child, whether the child continues to have such a disability and such educational needs"

and "(iii) ... whether the child continues to need special education and related services." In other words, the review of existing evaluation data mandated in subpart (A) was for the purpose of determining what additional data was necessary for a reevaluation of Student to determine educational needs, including whether Student continued to need special education.

Saddleback Valley contends it complied. Its October 2021 IEP team members reviewed Student's October 2020 triennial psychoeducational assessment, two April 2021 independent assessments, the August 2021 IEP team meeting that reviewed the independent assessments, Parents' concerns, Student's teachers' and providers' inputs and opinions, and Student's academic performance. However, these assessments and prior IEP team meetings did not find that Student should be exited from special education.

2020-2021 - STUDENT'S KINDERGARTEN YEAR

Student attended kindergarten during the 2020-2021 school year at Lake Forest Elementary School. Saddleback Valley convened a triennial IEP team meeting on October 15, 2020, to review Saddleback Valley's multi-disciplinary triennial assessment. The IEP team confirmed that Student remained eligible for special education as a child with autism but reduced Student's services to 30 minutes of push-in specialized academic instruction per day, with two goals. Parents did not agree with the decrease in specialized academic instruction and the elimination of occupational therapy, speech and language therapy, and extended school year. Parents did not accept Saddleback Valley's FAPE offer.

Both parties filed requests for due process hearing with OAH in January 2021. On March 18, 2021, the parties settled, and Saddleback Valley agreed to fund psychoeducational and speech and language independent educational evaluations in return for a full release on March 18, 2021. The parties agreed that Saddleback Valley would continue to implement Student's April 27, 2020 IEP as "stay put." (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).)

Dr. Robin Morris, Psy.D., Licensed Marriage Family Therapist, conducted Student's independent psychological educational evaluation, issuing a 31-page report dated April 30, 2021. Dr. Morris determined a general education classroom was most appropriate for Student, instead of being pulled out for small group specialized academic instruction. Dr. Morris believed that Student would benefit from participating in general education. However, Dr. Morris recommended weekly occupational therapy sessions to assist in his sensory processing deficits. Dr. Morris analyzed and confirmed Student met the eligibility criteria for autism.

Speech pathologist Chloe Adler conducted Student's speech and language independent educational evaluation on April 17, 2021. Adler concluded that Student had a language-based learning disability, or speech and language impairment, which would negatively impact his ability to perform academically and to access his curriculum. Adler diagnosed Student with a language disorder and a social pragmatic communication disorder and affirmed Student's eligibility.

On his final kindergarten report card, Student met grade level standards in reading foundations, reading literature and information, language, and writing, and exceeded standards in phonics and word recognition. Student did not quite meet grade standards for participating effectively in collaborative discussions. The parties did not review the independent educational evaluations before the end of Student's kindergarten year.

2021-2022 - STUDENT'S FIRST GRADE YEAR

On August 16, 2021, Student started first grade at a different school, Del Lago Elementary School, at Parents request. Saddleback Valley convened a virtual IEP team

meeting on August 23, 2021, to review Dr. Morris' psychological evaluation and Adler's speech and language evaluation. Since Student's new school team were not yet well acquainted with Student, Student's Lake Forest kindergarten school team of kindergarten general education teacher Patricia Fox, special education teacher Britni Hart, school psychologist Grace Rose, speech pathologist Kim Jander, and occupational therapist Artesja Cobb also attended.

Dr. Morris presented her report, findings, and recommendations. The Saddleback Valley IEP team members readily agreed with Dr. Morris' finding that Student functioned well in the general education classroom and should not be pulled out for specialized academic instruction, where Student was probably the brightest student. However, Saddleback Valley team members disagreed with Dr. Morris' recommendation to continue with occupational therapy and speech and language services. Adler presented her speech and language evaluation. Saddleback Valley team members expressed concern that Adler never observed Student in school, with Student's peers, or in any setting other than the approximate two hours of testing.

Saddleback Valley's offer of FAPE at the August 2021 IEP included 30 minutes a day of push-in specialized academic instruction, in the general education class. Jander recommended adding language and speech services, once a week for 30 minutes until the annual IEP, to look at Student's problem-solving skills. Parents declined the offer.

OCTOBER 12, 2021 ANNUAL IEP TEAM MEETING

Saddleback Valley virtually convened Student's annual IEP on October 12, 2021. All requisite IEP team members were present, including Parents, their attorney Fragoso, and Student's Del Lago school team. General education teacher Jessica Costa, special

education teacher Scott Connor, school psychologist Dayna Van Farowe, occupational therapist Anna Berezin, pathologist Holly Keiser, and coordinator Gigi Ostrowsky credibly testified at the hearing, consistent with their involvement with Student as reflected in IEP documentation and their professional views of Student's performance and behaviors.

The team reviewed progress on the eight goals from Student's April 2020 IEP, which the team referred to as the "stay put" goals, because Parents had not consented to the October 2020 IEP and its recommended goals. Saddleback Valley found that Student had met seven of the eight stay-put goals at last year's triennial IEP. The goal regarding safety rules on the playground could not be measured because the playground was closed pursuant to COVID restrictions, but the June 1, 2021 progress report found that Student met this goal after restrictions were lifted.

Conner reported that Student continued to meet the four social emotional and self-regulation stay-put goals. Student could reply to staff/peers when spoken to, maintained appropriate eye contact and body posture, and advocated for himself during classroom instruction, recess, lunch, and library. Student followed the safety rules on the playground, sitting six feet apart from peers at the tables when eating, keeping hands and feet to himself, cleaning up after himself, listening to staff, play a game by complying with rules, turn-taking with peers, and advocating for himself as needed. Student self-regulated by following social distance guidelines while at school, inside the classroom, at lunch tables, lining up for class, and walking between class and the car. Student acknowledged people who entered the classroom, was very attentive, and greeted everyone appropriately. Costa shared that Student self-advocates in the

general education setting by using appropriate language if a peer was in his space and by independently telling Costa when it's time for him to go to his specialized academic instruction class with Mr. Conner.

Berezin reported that Student continued to meet the sole stay-put occupational therapy fine motor goal of properly grasping a pencil for a sustained amount of time. Student had a sustained, functional, age appropriate, three-finger tripod grasp. Berezin had no concerns with Student's fine motor abilities to access his educational setting.

Parents' attorney requested an occupational therapy assessment in the area of sensory processing. Saddleback Valley offered to add occupational therapy consultation to gain data regarding Student's sensory processing at the August 2021 IEP, but Parents declined, and the service was not implemented. Saddleback Valley also provided a September 2021 prior written notice, which addressed why it was declining the request for the sensory processing assessment. However, the school team stated that Student did not display inappropriate sensory seeking behaviors in school.

Pathologist Keiser reported that Student continued to meet all stay-put speech and language goals from his 2020 IEP. Mother noted that Student did not maintain eye contact when speaking with others in the home setting unless it was a highly preferred topic and questioned whether Student maintained eye contact in school. Conner did not see eye contact as an issue.

Keiser did not propose speech and language goals for Student because Student was accessing curriculum, and continued to show age appropriate speech, language, and pragmatics. Berezin did not propose any occupational therapy goals in fine motor or sensory domains because Student did not have deficits in these areas that required

goals or services. Conner agreed with Dr. Morris that Student did not require specialized academic instruction and therefore did not propose any goals.

Psychologist Van Farowe reviewed the criteria for autism eligibility, summarizing Student's testing, current progress, and the team's discussions. Generally, Student did not have academic deficits and needs. He was accessing curriculum, and continued to show age appropriate speech, language, and pragmatics. Student's triennial assessment, Dr. Morris' independent evaluation, Student's average to above average performance on the October 2021 I-Ready Diagnostic Assessments for reading and mathematics, and the observations and input of Student's teachers and providers, demonstrated that Student could access general education curriculum without the need for special education. Saddleback Valley IEP team members agreed that Student no longer met the eligibility for special education and that Student would be exited from special education.

SADDLEBACK VALLEY FAILED TO ADHERE TO STATUTORY GUIDELINES FOR EXITING A CHILD FROM SPECIAL EDUCATION

In essence, Saddleback Valley's IEP team members determined at the October 2021 IEP team meeting that no additional data was necessary to determine that Student was no longer eligible and should be exited from special education. (20 U.S.C. § 1414(c)(1)(B).) However, Section 1414(c)(4) states that if the team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the district shall notify the child's parents of the reasons for the determination and of the right of the parents to request an assessment to

determine whether the child continued to be a child with a disability. The district is not required to conduct an assessment, unless requested by the parents. (20 U.S.C. § 1414(c)(4); 34 C.F.R. § 300.305(d); Ed. Code, § 56381, subd. (d).

Here, coordinator Ostrowsky sent an October 28, 2021 prior written notice to Parents following the October 2021 IEP team meeting, describing the basis for Saddleback Valley's decision to exit Student from special education. Ostrowsky respectfully asked Parents to consent. However, if Parents did not consent, Saddleback Valley would file a due process request with OAH to obtain an Order allowing it to exit Student without Parents' consent. Saddleback Valley did not notify Parents that they had a right to request an assessment to determine whether Student continued to be a child with a disability. Saddleback Valley did not comply with Section 1414(c)(4)(A)(ii).

Further, a district cannot exit a student from special education services without first conducting assessments to determine whether such action is appropriate. (20 U.S.C. § 1414(c)(5)(A); 34 C.F.R. § 300.305(e)(1); Ed. Code, § 56381, subd. (h).) Here, each of the three assessments to which Saddleback Valley referred affirmed Student's special education eligibility. Also, Saddleback Valley chose those portions of the independent assessments with which its team members agreed, supporting its view that Student was no longer eligible. For example, Saddleback Valley repeatedly cited to Dr. Morris' finding that Student should be in the general education classroom, but discounted her finding that Student met the criteria for autism eligibility and her recommendation of services and assessment.

Federal and state special education law required an assessment before exiting a child from special education. "Before determining that an individual is no longer an individual with exceptional needs, the local educational agency shall assess the

individual” in accordance with state and federal guidelines. (Ed. Code, § 56381, subd. (h).) An assessment finding Student no longer eligible was necessary, particularly here, where all of Student’s assessments – district and private – confirmed Student’s eligibility as a child with autism. Therefore, Saddleback may not exit Student from special education, without Parents’ consent. Student prevails on Saddleback Valley’s Issue One.

STUDENT’S ISSUE 1: DID SADDLEBACK VALLEY DENY STUDENT A FAPE BY FAILING TO FIND HIM ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES IN THE OCTOBER 12, 2021 ANNUAL IEP?

Student contended that Saddleback Valley’s attempt to exit Student from special education, at the October 12, 2021 IEP, denied Student a FAPE. Saddleback Valley asserted that Student did not require special education or related services to access and benefit from the general education program.

Under the IDEA and corresponding state law, students with disabilities have the right to a FAPE. (20 U.S.C. § 1400 et seq.; Ed. Code, § 56000 et seq.) FAPE means special education and related services that are available to the student at no cost to the parents, that meet the state educational standards, and that conform to the student’s IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (p).)

The congressional mandate to provide a FAPE to a child includes both a procedural and a substantive component. In *Rowley*, the United States Supreme Court utilized a two-prong test to determine if a school district had complied with the IDEA. First, the district is required to comply with statutory procedures. Second, a court will examine the child’s IEP to determine if it was reasonably calculated to enable the student to receive educational benefit. (*Rowley, supra*, 458 U.S. 176, 206.)

Here, Saddleback Valley was obligated to assess Student before exiting Student from special education, at the October 2021 IEP team meeting. Since it did not, Student remained eligible as an individual with exceptional needs and, as such, was entitled to an offer of FAPE. Regardless of its expectation that Parents would decline the offer, Saddleback Valley was obligated to offer Student a FAPE at the October 12, 2021 annual IEP. Saddleback Valley did not do so.

A procedural violation results in liability for denial of a FAPE only if the violation: impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.). Federal and state law required that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. §1414(d)(1)(B)(i); Ed. Code, §§ 56304.)

Saddleback Valley should have assessed Student before exiting him from special education at the October 2021 IEP team meeting. The October 2021 IEP notes and testimony from Saddleback Valley team members confirm that the more-than-two-hour team meeting included vigorous discussions regarding exiting Student from special education. However, Mother convincingly testified that Parents were unaware and shocked when they realized at the IEP team meeting that Saddleback Valley decided to exit Student from special education.

If Student was properly assessed before the meeting, Parents would have been on notice of Saddleback Valley's intent and the basis for its decision, enabling Parents to

be better equipped to participate. Saddleback Valley's procedural error in exiting Student from special education, without assessment and not making a FAPE offer, significantly impeded the Parents' opportunity to participate in the decision-making process, which was a denial of FAPE. Student prevails on Student's Issue 1.

STUDENT'S ISSUE 2: DID SADDLEBACK VALLEY DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE LEVELS OF SPEECH AND LANGUAGE SERVICES IN THE OCTOBER 12, 2021 ANNUAL IEP?

Student asserted that Saddleback Valley's failure to offer speech and language services at the October 12, 2021 IEP team meeting was a denial of FAPE. Saddleback Valley contended that Student did not require speech and language services.

Pursuant to the stay-put April 2020 transition IEP, Student had three language/social pragmatic goals and was receiving a half hour per week of speech and language therapy. The first goal addressed Student's sequencing and inferencing abilities by predicting what might happen next. The second goal was to improve Student's ability to identify how someone was feeling. The third goal was to enable Student to follow whole-group activities. Since April 2020, Student's speech and language needs were assessed twice.

OCTOBER 2020 TRIENNIEL SPEECH AND LANGUAGE ASSESSMENT

Assessments must be conducted by individuals who are both knowledgeable of the student's disability and competent to perform the assessment, as determined by the school district, county office, or special education local plan area. (Ed. Code, §§ 56320, subd. (g), 56322; see, 20 U.S.C. § 1414(b)(3)(A)(iv).) The assessment must use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical,

and developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) An assessor must produce a written report of each assessment that includes whether the student may need special education and related services and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).)

Saddleback Valley pathologist Jander gave Student his weekly stay-put speech therapy for his 2020-2021 kindergarten year. Jander also assessed Student for the October 2020 triennial assessment and found that Student did not require speech and language therapy. Jander was a licensed pathologist for 20 years, worked for Saddleback Valley since 2016, performed about 50 assessments per year, and attended more than 50 IEP team meeting annually. Jander's education, credentials, and experience qualified her to administer standardized tests and conduct Student's language assessment. She testified at the hearing.

Jander documented her findings in the October 15, 2020 triennial Multi-Disciplinary Assessment report. She observed Student in the general education classroom, when the class was working on an independent pumpkin inspection worksheet. Once Student initiated his work, he finished his worksheet without any other cues or prompts. Student asked questions when needed for assistance. He followed group directions, used appropriate eye contact, initiated communication, and engaged in conversational turn-taking. Jander observed Student on another day, during lunch and recess. Student played well with peers, followed game rules and group directions, transitioned easily without prompts, and expressed his needs using age appropriate language skills. Jander also talked to Student's general education teacher Fox, special education teacher Hart, and occupational therapist Cobb, all of whom participated in the triennial assessment.

Jander assessed Student over multiple sessions. She evaluated Student's articulation by observation and the Goldman-Fristoe Test of Articulation, Third Edition. Student's oral abilities indicated adequate structure and mobility to support functional communication, normal voice quality, pitch, and resonance. Student's articulation tested to be within normal limits.

Jander administered the Comprehensive Assessment of Spoken Language, over two sessions, finding that Student's receptive, expressive, and pragmatic language were well within the average range. Student's scores on the Social Language Development Test-Elementary, Normative Update, were in the average range for making inferences, giving multiple interpretations, and supporting peers. Jander determined that Student met his three language/social pragmatic goals and, based on the assessment results, language samples, and observations, that Student had the language skills necessary to access the general education curriculum.

Jander reported her results at the October 15, 2020 triennial IEP team meeting. The Saddleback Valley team members determined that Student no longer needed speech and language services.

Student stopped attending kindergarten as of March 11, 2021. On April 12, 2021, Parents emailed Lake Forest Elementary a letter from board-certified pediatric neurologist, Dr. Andrew McIntosh. Dr. McIntosh stated that Student was diagnosed with autism spectrum disorder, mild with anxiety; attention deficit hyperactivity disorder; and a new-onset tic disorder. Student was taking medications. Parents asked that, upon return to school, Student attend only half a day. Special Education District Coordinator, Gigi Ostrowsky, sent Parents an April 22, 2021 prior written notice pursuant to Title 34 Code of Federal Regulations section 300.503, declining Parents' request. A reason for

the denial was the open-ended nature of the doctor's suggested modified school day. Student returned to school on April 19, 2021. Parents picked Student up at 11:00 a.m. every day, for the remainder of the school year.

At hearing, Jander, Student's two kindergarten school teachers. and occupational therapist convincingly testified that, after Student's April 2021 return from being out of school for a month, Student's behaviors and tics quickly diminished. For the remainder of kindergarten, Student's social and pragmatic language skills enabled Student to access and benefit from his general education, follow the teachers' directions, wait his turn in conversations and when playing, initiate conversations with peers, advocate for himself, ask for help when needed, and was easily redirected. This was confirmed in Dr. Morris' observations of Student in school.

APRIL 2021 INDEPENDENT SPEECH AND LANGUAGE EDUCATIONAL ASSESSMENT

Student primarily relies on pathologist Adler's April 2021 independent educational speech and language evaluation to demonstrate that Student's October 2021 IEP offer must include speech and language therapy to be FAPE. Adler had a Master of Arts in speech language pathology and had been a licensed and credentialed speech language pathologist for 10 years in California and New York. In 2018, Adler formed the Language and Literacy Group, administering assessments and providing language and educational therapy to children with a range of language-based learning disabilities and delays. Adler's education, credentials, and experience qualified her to administer standardized tests and conduct Student's language assessment. She testified at the hearing.

Adler interviewed Parents and reviewed Student's records, IEP's, and assessments. Adler summarized relevant portions of Saddleback Valley's triennial assessment. During testing, Student worked hard and completed tasks with moderate complaining. He was motivated by games in between testing items and never refused to work. Student needed redirection throughout testing. He struggled to sit still and required movement breaks. Generally, Student benefited from positive feedback. The testing was completed in one session, totaling two to three hours, with breaks and lunch. Adler did not observe Student in school. Adler did not communicate with Student's teachers or providers and did not have them participate in any testing instruments. Adler testified that she found little benefit in observing a child at school and was able to make her determination on her assessments.

Adler administered subtests from the Test of Integrated Language and Literacy Skills, which assessed Student's pre literacy skills, phonemic awareness, vocabulary, reading comprehension and writing. Student's vocabulary was below average and demonstrated weak vocabulary skills related to semantic relationships and cognitive-linguistic flexibility. This weakness meant Student would continue to struggle with social communication.

Student performed below average on the test's narrative language story retelling task, which was a foundational oral language skill necessary to develop good reading comprehension and writing. Student also performed below average on the test's social communication component. Student was above average in phonemic awareness and his ability to perceive and reproduce phonological structure of words when speaking, demonstrating a strong ability to decode words.

On the Oral Passage Understanding Scale, Student scored in the below average range, demonstrating a weakness in listening comprehension. Adler conducted a language sample analysis, using the Systematic Analysis of Language Transcripts software, which compared Student's language sample with age and grade-matched peers. Adler found Student's articulation skills to be below age and grade expectations. Adler reviewed the language testing conducted by Dr. Morris, which revealed weaknesses in receptive and expressive vocabulary and below average problem solving. Dr. Morris recommended that Student's speech therapy continue for pragmatic and receptive vocabulary weakness, but Dr. Morris' assessment did not specifically evaluate Student for speech and language needs at school. Adler did not mention Dr. Morris' two school observations.

Adler used the Social Thinking Dynamic Assessment to evaluate Student's pragmatic skills, by observing how Student tackles and thinks about various tasks. The tasks included a double interview, where Adler interviewed Student and then Student interview Adler, an exercise using eyes to communicate thinking, and the sequencing of social photo cards. The dynamic assessment indicated that Student needed explicit instruction of social cognitive skills to assist him in successfully navigating peer interactions in school.

SPEECH AND LANGUAGE THERAPY WAS NOT A NEEDED RELATED SERVICE FOR FAPE

The independent speech assessment was unpersuasive. For example, the Social Thinking Dynamic Assessment to assess Student's abilities was not standardized. Adler observed how Student tackled tasks and how he thought about them, concluding that Student was at risk for pragmatic challenges. She recommended that Student receive

explicit instruction in social cognitive skills to be successful with, and continue to navigate, peer interactions in school. Yet, the independent pathologist made no attempt to observe Student's social/pragmatic communication. She never observed Student at school, on the playground, with peers, or in any setting other than the assessment room, testifying that her assessments were sufficient.

Saddleback Valley's IEP team members disagreed with the independent speech and language assessment conclusions at the August 2021 IEP team meeting, and again at the October 2021 annual IEP, because the independent pathologist's failure to connect with Student's school teams. Especially troubling was the failure to contact and speak to Jander, the pathologist who had been providing weekly speech therapy for more than seven months. Student's first grade general education teacher Costa, special education teacher Conner, speech pathologist Keiser, and occupational therapist Berezin all summarized their observations and work with Student, at the October 2021 IEP team meeting. They persuasively testified that Student's pragmatic and communication skills enabled him to successfully navigate adult and peer interactions in the classroom and on the playground, throughout first grade.

Special education law required that the IEP team or other qualified professionals shall consider "classroom observations" when evaluating a child's educational needs or eligibility. (20 U.S.C. § 1414(c)(1)(A)(ii); 34 C.F.R. § 300.305(a)(1)(ii); Ed. Code, § 56381, subd. (b)(1).) Special education law anticipated that independent assessors would observe a child in school, mandating that if the school district assessors observed, "the same opportunity must be provided to the independent assessor." (Ed. Code, § 56329, subd. (b).) Jander conducted multiple observations, carefully reporting Student's social pragmatic interactions. Though legally guaranteed the same right to observe Student, the independent assessor chose not to.

The significance of the independent assessor's failure to obtain Student's school team's input was illustrated when Adler later submitted suggested speech and language goals, which were reviewed at the October 2021 IEP team meeting. Student's pathologist Keiser stated that Student already demonstrated the skills targeted in the proposed pragmatic goals. Student demonstrated whole body listening, a good command of language, and a sense of humor. Student understood expected versus unexpected behaviors, could predict how people would feel, identify a smart versus a wacky guess, and was a flexible thinker. Costa said the proposed goals in reading comprehension and writing were skill areas that were being taught in the first grade and higher grades, such as making inference in texts. The proposed goals were not addressing deficits because Student had not yet been taught the targeted skills. They would be addressed through the general education curriculum when all general education students would be working towards these skills. The proposed goals were not addressing unique needs requiring special education. The independent speech assessment would have been able to more appropriately evaluate Student's speech and language needs, if Student's school teams had been properly contacted.

Student dismissed the testimony of Saddleback Valleys' teachers and service providers as "anecdotal," thereby suggesting they were not reliable, credible, or persuasive. However, state and federal special education law required the IEP team or other qualified professionals to consider "observations by teachers and related service providers" when evaluating a child's educational needs or eligibility. (20 U.S.C. § 1414(c)(1)(A)(iii); 34 C.F.R. § 300.305(a)(1)(iii); Ed. Code, § 56381, subd. (b)(1).) True, Mother saw Student's speech and language needs differently, but Student's teachers and providers were convincing in their description of Student's social and pragmatic skills in the school setting.

Here, Student did not meet his burden of proof that speech and language services were a related service necessary for Student to benefit from his special education. (34 C.F.R. § 300.34(a) and (c)(15).) Saddleback Valley did not have to offer speech and language services at the October 12, 2021 IEP for Student to receive a FAPE. Saddleback Valley prevails on Student's Issue 2.

STUDENT'S ISSUE 3: DID SADDLEBACK VALLEY DENY STUDENT A FAPE BY FAILING TO ASSESS STUDENT IN THE AREA OF OCCUPATIONAL THERAPY AS RECOMMENDED BY TWO INDEPENDENT EDUCATION EVALUATORS DURING THE 2021-2022 SCHOOL YEAR?

Student claimed that Saddleback Valley's refusal to assess Student's sensory needs with an occupational therapy assessment denied Student a FAPE. Saddleback Valley claimed that the assessment was not necessary because Student did not demonstrate sensory concerns in the school environment.

A district must ensure that a child is assessed in all areas related to a suspected disability. (Ed. Code § 56320, subd. (c), (f).) No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414 (b)(2)(B); Ed. Code, § 56320, subd. (e).)

Student's April 2020 IEP provided Student with a half hour of occupational therapy per week to address Student's fine motor goal of consistently maintaining a mature tripod pattern for holding a pencil. Occupational therapist Cobb assessed Student as part of the October 2020 triennial assessment, found that Student no longer had fine motor deficits, and determined Student met his occupational therapy goal.

In her April 2021 independent psychological educational evaluation, Dr. Morris observed Student in school on two different days, accompanied by school psychologist Grace Rose. Dr. Morris determined that Student's social and pragmatic skills and behaviors while in school, including the general education classroom, demonstrated Student did not need special academic instruction.

However, Dr. Morris found Student's behaviors to be significantly different during her assessment sessions with Student. Dr. Morris detailed Student's conduct during assessment sessions, where Student could not remain still, even for short periods of time. Student blurted out information, touched items within and outside his reach, and was frequently fidgeting, rocking his chair, dropping his pencil, crawling under the desk, twirling his hair, and repetitively nodding or shaking his head while looking up at the ceiling. Dr. Morris suggested weekly occupational therapy sessions to assist in his sensory processing deficits.

Saddleback Valley disagreed with Dr. Morris' finding that Student had sensory deficits in need of occupational therapy or assessment. Saddleback Valley referred to occupational therapist Cobb's triennial assessment which determined that Student did not have sensory deficits. Cobb reported that Student was rated "just like the majority of others" across all sensory quadrants and school factors and all sensory and behavioral sections.

Dr. Morris and Student's school teams confirmed that Student was not exhibiting maladaptive behaviors in the school setting that interfered with Student's ability to access and benefit from the general education curriculum. But Dr. Morris observed and documented intense and persistent sensory seeking behaviors during assessment, when Student was not in school's group setting. During assessment, Student engaged in self-

stimulatory behaviors, fixated on routines, and perseverated if routines were changed. Student's teachers and service providers said Student did not have any sensory deficits or behaviors in school that were out of the ordinary for first graders, normalizing Student's conduct. However, Dr. Morris' standardized assessments, clinical observations, and determinative findings convincingly demonstrated that Student's behaviors, exhibited during assessment, could be related to Student's diagnosis and eligibility of autism (Cal. Code Regs., tit. 5, § 3030(b)(1)) and should be assessed.

Saddleback Valley should have offered Student an occupational therapy assessment of Student's sensory needs and behaviors to determine if Student required services so the sensory deficits and behaviors did not, and would not, interfere with Student's ability to access and benefit from his general education curriculum. Saddleback Valley's failure to conduct the occupational therapy assessment constituted a procedural violation of IDEA. (*Park, ex Rel. Park v. Anaheim Union High* (9th Cir. 2006) 464 F.3d 1025, 1032-1033.)

The failure to offer and conduct an occupational therapy assessment, related to Student's sensory deficits, needs, and behaviors, significantly impeded Parents' opportunity to participate in the decision-making process. Dr. Morris credibly and persuasively reported Student had sensory needs that should be addressed. The occupational therapy assessment would have informed Parents, and the entire IEP team, if Student required related services. Student has met his burden of proof that Saddleback Valley's failure to offer an occupational therapy assessment denied Student a FAPE. Student prevails on Student's Issue 3.

STUDENT'S ISSUE 4: DID SADDLEBACK VALLEY DENY STUDENT A FAPE BY DENYING MEANINGFUL PARENTAL PARTICIPATION WHEN IT FAILED TO CONSIDER ALL POTENTIAL CATEGORIES OF ELIGIBILITY FOR SPECIAL EDUCATION AND RELATED SERVICES AT THE OCTOBER 12, 2021 ANNUAL IEP?

Student contended that Saddleback Valley denied Parents meaningful participation at the October 12, 2021 IEP team meeting because it failed to consider all potential categories of eligibility. Saddleback Valley responded that there were no other potential eligibility categories to consider, other than autism.

Federal and state law define and identify the criteria for 13 categories of eligibility for special education. (34 C.F.R. § 300.8; 5 Cal. Code Regs., tit. 5, § 3030.) Here, Student did not present evidence that Student was reasonably suspected of being special education eligible in any category other than autism.

Student believed that Dr. McIntosh's diagnoses of a tic disorder and attention deficit hyperactivity disorder demonstrated a potential for eligibility under the category of other health impairment and therefore should have been discussed at the October 2021 IEP team meeting. However, Dr. Morris analyzed whether her assessment results supported other health impairment eligibility in her April 2021 independent education evaluation report and at the August 2021 IEP team meeting. Dr. Morris concluded and credibly demonstrated that Student did not meet the statutory eligibility criteria for other health impairment. (34 C.F.R. § 300.8(b)(9); 5 Cal. Code Regs., tit. 5, § 3030, subd. (b)(9).) Parents and their attorney meaningfully participated in the August 2021 IEP team meeting, asking questions, stating disagreements, and generally expressing their

concerns. Student presented no evidence that other health impairment was a potential eligibility that required further analysis or discussion at the October 2021 IEP team meeting.

Student also failed to demonstrate that the October 2021 IEP team meeting should have included discussion of speech or language impairment as a potential eligibility. (34 C.F.R. § 300.8(b)(11); 5 Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).) The independent speech and language evaluation diagnosed Student with language and social pragmatic communication disorders. However, the evaluator did not analyze whether Student met the legal criteria for speech and language impairment eligibility. As discussed in Student's Issue 3, above, the independent speech and language evaluation was not persuasive regarding Student's speech and language needs. Further, at the October 2021 IEP meeting, the team discussed Student's speech and language needs, the independent speech and language evaluation, and the independent pathologist's proposed goals. The IEP team meeting notes and the participants' hearing testimony demonstrated a lively exchange that included the parties' attorneys, Mother, and Student's teachers and providers. Though Parents may have disagreed with the Saddleback Valley team members' views of Student's speech and language needs, this did not mean Parents were deprived meaningful participation. (*Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.)

Student did not meet his burden of proof that Student was potentially eligible for special education, under categories other than autism, that Saddleback Valley should have considered at the October 2021 IEP team meeting. Therefore, Parents were not denied meaningful participation in the IEP process. Saddleback Valley prevails on Student's Issue 4.

STUDENT'S ISSUE 5: DID SADDLEBACK VALLEY DENY STUDENT A FAPE BY FAILING TO MAINTAIN STUDENT'S "STAY PUT" SERVICES AT THE BEGINNING OF THE 2021-2022 SCHOOL YEAR?

Student claimed that Saddleback Valley denied Student a FAPE because it materially failed to provide Student's IEP stay-put related services of specialized academic instruction and speech at the beginning of the 2021-2022 first grade year. Saddleback Valley acknowledged there were scheduling issues at the beginning of the school calendar, but that the matter was quickly resolved and was not material.

A school district must implement all components of a student's IEP. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(c).) When a student alleges the denial of a FAPE based on the failure to implement an IEP, to prevail, the student must prove that any failure to implement the IEP was "material," which means that the services provided to a disabled child fell "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 822.) A minor discrepancy between the services provided and the services required in the IEP is not enough to amount to a denial of a FAPE. (*Ibid.*) Here, the parties agreed that Student's April 2020 annual IEP would be implemented as stay put.

Student started first grade at a different elementary school, Del Lago, on August 16, 2021. Student had a new general education teacher, occupational therapist, special education teacher, and speech pathologist. At the hearing, Mother testified that she discovered Student was not receiving his full one hour per day of specialized academic instruction. Student was scheduled to be pulled out for his specialized

academic instruction between 12:30 p.m. and 1:30 p.m. However, general education recess started at 1:15 p.m. Mother wrote an email to Student's special education teacher Conner on September 3, 2021.

Conner replied, stating that he pulled Student every day at 12:30 p.m. to 1:30 p.m., allowing 15 minutes to be outside during recess. Since recess was technically general education, Conner acknowledged that the last 15 minutes of Student's specialized academic instruction could be viewed as "push in" services, not "pull out." However, Conner wanted to work with Student in a social setting, to address playing together, taking turns, and self-advocacy. If Mother was not in agreement with the calendaring, Conner would do the last 15 minutes of specialized academic instruction after recess. Mother wanted all of the specialized academic instruction to be pull-out. Conner changed the scheduling, effective Tuesday, September 7, 2021, after the Monday Labor Day holiday. Student contended he lost a total of three hours and 45 minutes of specialized academic instruction, over the first 15 days of first grade, which was a material failure to implement Student's stay-put IEP, denying Student a FAPE.

Student also asserted that Student's weekly half hour of speech was incorrectly scheduled during the specialized academic instruction. Mother contacted the pathologist Keiser, who changed the speech services to Tuesday mornings. Student claimed he lost an hour and a half of speech services.

Student failed to meet his burden of proof regarding the lost services. Conner testified at hearing. He scheduled Student's last 15 minutes of specialized academic instruction to be during recess because the April 2020 stay-put IEP goals necessitated some time with Student in general education and on the playground. Goal one included Student learning to initiate play interactions by joining or asking to play in the

general education setting. Goal three addressed Student following safety rules on the playground. The stay-put IEP identified the educational specialist as the person responsible for pursuing and monitoring the goals and Conner was working with Student on these goals. Though the 15 minutes during recess was in general education, the time was consistent with the stay-put IEP's goals and the educational specialist's responsibilities. Student did not demonstrate he lost three hours and 45 minutes of specialized academic instruction.

Mother testified that she found out that pathologist Keiser pulled Student for speech services when specialized academic instruction was scheduled. Keiser testified at hearing. When school started, Keiser pulled Student for his speech therapy every Friday after recess. When Mother emailed Conner that she wanted the last 15 minutes of specialized academic instruction to be "pull-out" after recess, Conner forwarded the email to Keiser, because Conner knew this change created a scheduling conflict with Student's speech services on Friday. Keiser therefore changed Student's speech therapy to Tuesday morning, consistent with Mother's request. Student did not lose any speech services.

Student did not meet his burden of proof that the scheduling issues resulted in a failure to implement that fell significantly short of the services required by Student's stay-put IEP. Saddleback Valley prevails on Student's Issue 5.

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.

SADDLEBACK VALLEY ISSUE 1:

Saddleback Valley cannot exit Student from special education and cease providing Student services, without the consent of Parent, because Student no longer meets special education eligibility criteria.

Student prevailed on Saddleback Valley's Issue 1.

STUDENT'S ISSUE 1:

Saddleback Valley denied Student a FAPE by failing to find him eligible for special education and related services in the October 12, 2021 IEP.

Student prevails on Student's Issue 1.

STUDENT'S ISSUE 2:

Saddleback Valley did not deny Student a FAPE by failing to offer appropriate levels of speech and language services in the October 12, 2021 IEP.

Saddleback Valley prevails on Student's Issue 2.

STUDENT'S ISSUE 3:

Saddleback Valley denied Student a FAPE by failing to assess Student in the area of occupational therapy during the 2021-2022 school year?

Student prevails on Student's Issue 3.

STUDENT'S ISSUE 4:

Saddleback Valley did not deny Student a FAPE by denying meaningful parental participation when it failed to consider all potential categories of eligibility for special education and related services at the October 12, 2021 annual IEP.

Saddleback Valley prevailed on Student's Issue 4.

STUDENT'S ISSUE 5:

Saddleback Valley did not deny Student a FAPE by failing to maintain Student's "stay put" services at the beginning of the 2021/2022 school year.

Saddleback Valley prevails on Student's Issue 5.

REMEDIES

STUDENT'S ISSUE 1

Student prevailed on Student's Issue 1. Saddleback Valley denied Student a FAPE because it did not make a FAPE offer to Student. As a remedy, Student seeks an Order directing Saddleback Valley to provide an IEP restoring Student's eligibility for special education and related services, based on the August 23, 2021 IEP offer, and include any amendments as a result of this decision.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. §1415(i); see *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985))

471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A* (2009) 557 U.S. 230, 243-244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) When school districts fail to provide a FAPE to a student with a disability, the student is entitled to relief that is “appropriate” in light of the purposes of the IDEA. (*Burlington, supra*, at pp. 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*Id.* at p. 374.)

Here, Student prevailed on his Issue 1 because Saddleback Valley’s procedural error, in improperly exiting Student from special education before assessing him and not making a FAPE offer, significantly impeded Parents’ opportunity to participate in the decision-making process. Therefore, Student remains eligible for special education under the category of autism. However, Student is not entitled to an order directing Saddleback Valley to provide specific related services in Student’s IEP. Student did not prove, by a preponderance of the evidence, what related services were necessary for Student to receive FAPE. As determined in Issue 2, Student did not demonstrate that an offer of speech and language services was necessary for Student to receive FAPE. Additionally, Student did not prove up that Student was entitled to occupational therapy for Student to receive a FAPE but only that Saddleback Valley should have assessed. Therefore, Student’s IEP shall reflect that Student remains eligible as a child with autism.

STUDENT’S ISSUE 3

Student prevailed on Student’s Issue 3 because Saddleback Valley did not offer an occupational therapy assessment of Student’s sensory related needs during the 2021-2022 school year. Student requests an independent educational evaluation as a remedy.

An independent educational evaluation at public expense may be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (*Los Angeles Unified School Dist. v. D.L.* (C.D. Cal. 2008) 548 F.Supp.2d 815, 822-823.) An independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question. (34 C.F.R. § 300.502(a)(3)(i).) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (34 C.F.R. § 300.502(e)(1).) Except for these criteria, the public agency may not impose conditions or timelines related to obtaining the independent educational evaluation at public expense. (34 C.F.R. § 300.502(e)(2).)

Here, Dr. Morris convincingly determined that Student had sensory related issues and behaviors, consistent with Student's eligibility of autism. Dr. Morris recommended occupational therapy to address Student's sensory related issues at the August 2021 IEP team meeting, at which Parents requested an occupational therapy assessment of Student's sensory needs. As discussed above in Student's Issue 3, Student established that Saddleback Valley improperly denied – and continued to deny – Parents' request. Student is entitled to equitable remedy.

This requires an evaluation of the parties' conduct. Student wanted Saddleback Valley to assess and determine if Dr. Morris' conclusions regarding Student's sensory needs and behaviors required related services. Saddleback Valley's response was to refer to the October 2020 assessment, which said Student sensory measures were like the majority of other children, and to Student's teachers and providers who did not see

sensory deficits or behaviors that were out of the ordinary for first graders. However, Dr. Morris meticulously documented Student's more intense and persistent sensory seeking behaviors during assessment. An occupational therapy assessment would have determined if Student required related services to prevent the sensory related behaviors from interfering with his education. Saddleback Valley could have agreed to conduct the occupational therapy assessment at the August 2021 and October 2021 IEP's, but did not. Now, six months later, Student remains without additional insight to his sensory related behavioral needs. Equity strongly favors Student in fashioning the remedy.

Therefore, Student is entitled to an independent educational evaluation in the area of occupational therapy at Saddleback Valley's expense. Student did not provide evidence regarding the cost of such assessment. The independent evaluation shall be in accordance with Saddleback Valley's or its special education local plan area's criteria regarding independent educational evaluations, including qualifications of the assessor and maximum cost limitations for such assessment.

ORDER

1. Saddleback Valley Unified School District may not exit Student from special education without Parents' consent.
2. Student remains eligible for special education and related services under the eligibility category of autism.
3. Saddleback Valley School District shall fund an independent occupational therapy evaluation of Student with an assessor of Parents' choice, in accordance with Saddleback Valley's or its special education local plan area's criteria regarding independent educational evaluations, including

qualifications of the assessor and maximum cost limitations for such assessment. If Saddleback Valley's criteria and its special education local plan area's criteria regarding independent educational evaluations differ, the criteria that provides Parents with greater choice or funding shall be used. Parents shall not be required to choose the independent assessor from a list of assessors provided by Saddleback Valley. Parents may choose any independent occupational therapy assessor, as long as the assessor and assessment otherwise meet the independent educational assessment criteria. The independent occupational therapy evaluation shall include assessment of Student's sensory deficits and sensory related behaviors, with recommendations for related services, if any. The evaluation may also assess Student in other areas typically assessed in occupational therapy evaluations, as determined by Parent and the selected assessor.

RIGHT TO APPEAL THIS DECISION

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

/s/

Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings