

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2022020085

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LUCERNE ELEMENTARY SCHOOL DISTRICT

v.

PARENTS ON BEHALF OF STUDENT.

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DECISION

April 12, 2022

On February 2, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from the Lucerne Elementary School District, called Lucerne, naming Parents on behalf of Student. Administrative Law Judge Charles Marson heard this matter by videoconference on March 8, 9, 10 and 15, 2022.

Attorney Damara L. Moore represented Lucerne. Mike Brown, Lucerne's Superintendent and Principal, attended all hearing days on its behalf. Student's Parents

represented Student, who was briefly present on two hearing days. At the parties' request, the matter was continued to April 5, 2022, for written closing briefs. The record was closed, and the matter was submitted on April 5, 2022.

## ISSUE

Does Lucerne's individualized education program, dated October 27 and November 16, 2021, offer Student a free appropriate public education in the least restrictive environment such that Lucerne may implement it without parental consent?

## JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Lucerne filed the due process request in this matter and bore the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was seven years old and in the first grade at the time of hearing. Student resided within Lucerne's geographic boundaries at all relevant times. Student was eligible for special education under the categories of autism and intellectual disability. He also had a diagnosis of attention deficit hyperactivity disorder.

## PROCEDURAL COMPLIANCE WITH THE IDEA

Lucerne contends that its offered individualized education program, called an IEP, which was produced at an IEP team meeting held on October 27 and November 16, 2021, was procedurally in full compliance with the IDEA and related laws.

Parents contend that the offered IEP was flawed because it offered Student placement in a special day class rather than in general education, but they do not contend it was procedurally invalid in any way. Nonetheless, Lucerne had the burden of proof on this issue. (Ed. Code, § 56346, subd. (f).)

Before any action is taken with respect to the initial placement in special education of an eligible student, an individual assessment of the student's needs must be conducted by qualified persons. ((34 C.F.R. § 300.322(b)(1)(i)(2006); Ed. Code, § 56320.) The school district must provide adequate notice of proposed assessments in an assessment plan and obtain parental consent for them. (34 C.F.R. § 300.304(a)(2006) ; Ed. Code, § 56321, subd. (a).) The assessors must report their findings in writing, and the assessment report must be given to the parent of the child assessed. (20 U.S.C, § 1414(b)(4)(B); 34 C.F.R. § 300.306(a)(2)(2017); Ed. Code, § 56329, subd. (a)(3).) The statutes and regulations do not specify a time by which the report must be provided. The assessors, or someone else able to interpret the educational implications of the assessments, must attend an IEP team meeting to discuss their findings and answer questions. (34 C.F.R. § 300.321(a)(5)(2007); Ed. Code, § 56341, subd. (b)(5).)

A school district must notify parents of the time, place, and purpose of an IEP team meeting, the identities of those who will be in attendance, and the right of parents to bring to the meeting persons who have knowledge or special expertise about their child. (34 C.F.R. §§ 300.322(b)(1)(2006) 56341, subd. (b)(6).)

An IEP team must include at least one parent; a representative of the local educational agency; a regular education teacher of the child if the child is, or may be, participating in the regular education environment; a special education teacher or

provider of the child; an individual who can interpret the instructional implications of assessment results, and other individuals who have knowledge or special expertise regarding the pupil, as invited at the discretion of the district, the parent, and when appropriate, the student. (20 U.S.C. § 1414(d)(1)(B)(i), (iv-vi); Ed. Code, § 56341, subds. (b)(1), (5-6).)

A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement with the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688, 693.) A parent who has an opportunity to discuss a proposed IEP, and whose concerns are considered by the IEP team, has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.) Parents must consent to the IEP in writing before it can be implemented. (34 C.F.R. § 300.9(b) (2008); Ed. Code, § 56021.1, subd. (b).)

Lucerne met all the above requirements in crafting the disputed IEP. During the fall of 2021, in preparation for the IEP team meeting on October 27, 2021, Lucerne conducted four assessments of Student. The assessments had been proposed in an assessment plan given to Parents on September 2, 2021, and approved by them the same day. Jessie Lakin, a highly qualified school psychologist, conducted a psychoeducational assessment. Kimberley Deckman, an experienced speech and language pathologist, conducted a speech and language assessment. Jennifer Adams, an experienced and credentialed special education and resource room teacher, conducted an academic assessment. Jennifer Werner, a licensed and experienced occupational therapist, conducted an occupational therapy assessment. All four wrote

reports, which Lucerne made available to Parents at or before the October session of the IEP team meeting. Each assessor appeared at one or both sessions of the meeting, presented her report, and asked Parents if they had any questions.

Lucerne timely held an IEP team meeting to discuss the assessments on October 27, 2021. (See Ed. Code, § 56043, subd. (c).) It notified Parents of the meeting well in advance of it and in sufficient time for Parents to attend and invite guests, which they did. Lucerne staff arrived with a draft IEP but with the intent of changing it if the IEP team desired. Lucerne ensured that all personnel required by law to attend the meeting were present. The parties discussed the IEP in two two-hour sessions. Parents participated extensively in the meeting, and Lucerne staff considered their views. Lucerne made changes to the IEP draft at Parents' request: for example, by adding a toileting goal advocated by Father. Everyone who attended the meeting and later testified agreed that Parents had the full opportunity to discuss the draft IEP and ask questions. Parents agreed at hearing that they had that opportunity. Lucerne sent the final version of the disputed IEP to Parents, but they declined to consent to it.

The evidence showed that in creating and offering the disputed IEP, Lucerne afforded Parents all the procedural rights to which they were entitled. The offer was procedurally valid.

## SUBSTANTIVE COMPLIANCE

### STUDENT'S NEEDS

For the October 2021 psychoeducational assessment of Student, school psychologist Lakin reviewed his records, interviewed his teacher, service providers, and

Father, and conducted six to eight hours of observation of him in his combined kindergarten and first grade general education class, the resource room, the playground, and the cafeteria. She attempted to administer the Weschler Preschool and Primary School of Intelligence, Fourth Edition, which is designed to measure the cognitive ability of children between two years and six months, and seven years and seven months of age. According to that measure, Student's full-scale IQ was 40, and he was in the very low category in every domain or sub-domain tested.

Lakin also administered the Adaptive Behavior Assessment System, Third Edition, to measure Student's adaptive skills. For that instrument, Lakin obtained ratings from Student's classroom teacher, resource room teacher, and Father ranking his skills in independently completing tasks required for daily living. All of the rankings by both teachers were very low, and most of Father's ratings were the same.

Lakin concluded from these measures and others, and from her interviews and classroom observations, that Student presented with significantly subaverage general intellectual functioning and significant deficits in adaptive skills. From that, she concluded that he qualified for special education in the category of intellectual disability. She established that Student's deficits are so severe that a less restrictive placement such as a mild to moderate SDC would not meet his needs.

Special education and resource room teacher Jennifer Adams conducted an assessment of Student's academic skills, using her own observations and two Brigance III inventories to measure his basic skills and early development. From the Brigance instrument measuring basic skills, she learned that Student could not independently say his name or recognize safety and warning signs or labels. She was unable to assess his capacities in writing, math, basic reading and reading comprehension. Using the

Brigance Inventory of Early Development, Third Edition, Adams was able to determine Student's instructional level compared to his same-age peers across five domains. His score was never above the fifth percentile, and most commonly below the first percentile. Adams concluded that, overall, Student's academic skills were in the age equivalent range between 11 months and one year 11 months.

Speech and language pathologist Kimberley Deckman assessed Student in September 2021. She observed him in and outside of class, interviewed his classroom teacher, and administered four assessment test measures. Student's auditory comprehension and expressive communication were on the level of a child six months old or less. On a receptive one-word picture vocabulary test, Student's scores fell below the first percentile of his peers. Deckman was unable to obtain a 50-word language sample because Student was not using spoken words to communicate. Though Student occasionally produced a single word, he was functionally nonverbal. Deckman found that Student could to some degree use a system of picture icons to communicate and recommended assistive technology for him. She concluded that he would meet the criteria for eligibility in the category of language or speech disorder.

Occupational therapist Jennifer Werner assessed Student in October 2021. Student was unable to complete the Developmental Test of Visual Perception, Second Edition, or the Bruininks-Oseretsky Test of Motor Proficiency, both standardized assessments. Werner therefore based her conclusions on an upper extremity motor development checklist, clinical observations, and a review of Student's records and work samples. She found that Student's delays in fine motor skills and visual integration interfered with the activities necessary for educational progress, and recommended direct occupational therapy for him.



Student was assessed in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The assessors were knowledgeable of Student's disabilities and competent to perform their assessments. (Ed. Code, §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(A)(iv).) Their tests and assessment materials were selected and administered so as not to be racially, culturally, or sexually discriminatory, and were provided and administered in Student's primary language or other mode of communication to the extent feasible. (20 U.S.C. § 1414(a)(3)(A)(i)-(iii); Ed. Code, § 56320, subd. (a).) Their assessments were sufficiently comprehensive to identify all of the student's special education and related services needs. (34 C.F.R. § 300.304 (c)(6)(2006).) Their assessment reports complied with all requirements and were given to Parents in the time allowed by law.

The assessors attended the IEP team meeting, described their reports, and were available to answer questions. The reports of these four assessors, their credentials, and their testimony at hearing showed that their assessments met all statutory requirements and were legally compliant.

## SUBSTANTIVE COMPLIANCE

### GENERAL EDUCATION AND THE LEAST RESTRICTIVE ENVIRONMENT

Student was found eligible for Redwood Coast Regional Center services in November 2016 due primarily to his diagnosis of autism. During 2018 and 2019, Student attended the Head Start program at Upper Lakes Unified School District and had an IEP. In 2019 Upper Lake proposed an IEP that would have moved Student to a

moderate-to-severe special day class run by the Kelseyville Unified School District. In response, Parents withdrew Student from school, and he did not attend school during the rest of 2019, 2020, or part of 2021.

Parents enrolled Student in the first grade at Lucerne on July 19, 2021. The parties disputed whether Parents informed Lucerne that Student had previously had an IEP. Resolving that dispute is unnecessary. It is undisputed that at least some Lucerne staff did not know about the previous IEP and placed Student in general education.

Lucerne realized on the first day of school that Student was disabled and probably eligible for special education. It provided Student a one-to-one aide in his class, held a Student Study Team meeting, and proposed that Student be assessed for special education. The assessments already described were conducted and the parties convened on October 27, 2021 to write an IEP. That IEP is the disputed offer. It proposed to move Student from general education at Lucerne to the regional program in the moderate-to-severe special day class at Kelseyville. The only serious dispute between the parties is whether Student needs to stay in general education to receive a FAPE, as Parents argue, or whether he must be moved to the SDC to receive a FAPE, as Lucerne argues.

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).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); see also Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321 (2007), and 300.501 (2006).)

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

Both federal and state law require a school district to provide special education in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2006); Ed. Code, § 56040.1.) This means that a school district must educate a special needs pupil with nondisabled peers to the maximum extent appropriate, and the pupil may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii)(2006); Ed. Code, § 56040.1; see *Sacramento City Unified Sch. Dist. v. Rachel H.* (1994) 14 F.3d 1398, 1403; *Ms. S. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1136-1137.)

Placement in the most inclusive environment is not an absolute. In an appropriate case, it must yield to the necessity that a student receives a FAPE. The IDEA does not require mainstreaming to the maximum extent possible or conceivable. Instead it requires mainstreaming to the maximum extent appropriate. Education among nondisabled peers is an important element of education for disabled children, but the IDEA does not permit, let alone require, a school district to mainstream a student when the student is unlikely to make significant educational and non-academic progress. (*D.F. v. Western Sch. Corp.* (S.D.Ind. 1996) 921 F.Supp. 559, 571 [citation omitted].)

As the Ninth Circuit Court of Appeal has observed, mainstreaming “is a policy which must be balanced with the primary objective of providing handicapped children with an ‘appropriate’ education.” (*Wilson v. Marana Unified Sch. Dist.* (9th Cir. 1984) 735 F.2d 1178, 1183 [citation omitted].)

In *Sacramento City Unified Sch. Dist. v. Rachel H.*, *supra*, 14 F.3d 1398, the Ninth Circuit set forth four factors that must be evaluated and balanced to determine whether a student is placed in the least restrictive environment:

- (1) the educational benefits of full-time placement in a regular classroom;
- (2) the non-academic benefits of full-time placement in a regular classroom;
- (3) the effects the presence of the child with a disability has on the teacher and children in a regular classroom; and
- (4) the cost of placing the child with a disability full-time in a regular classroom. (*Id.*, 14 F.3d at p. 1404.)

Lucerne presented extensive evidence showing that Student has not benefited from being in a general education classroom. Student’s two teachers and the school psychologist established that Student cannot be taught satisfactorily in a general education class.

Gayle Stottsberry, Student’s classroom teacher in his general education class, had taught the class for six years. Stottsberry has had considerable training and experience teaching autistic children.

Jennifer Adams was Student’s resource room teacher and worked with him both in and out of class. Adams had a bachelor’s degree in early childhood education and

was working toward a mild-moderate special education credential. As a teacher and former paraeducator, Adams also had substantial experience working with autistic children.

Jessie Lakin, a credentialed school psychologist, conducted a psychoeducational assessment of Student in fall 2021. Lakin observed Student in and out of his classroom for five hours on one occasion and two and a half hours on another.

These three witnesses were all well-informed, experienced with Student, qualified to assess him and familiar with his records. Their testimony was thoughtful and well-reasoned, and cross-examination did not reveal any significant shortcomings in that testimony. They were credible witnesses, and their testimony is given substantial weight here. Collectively, their testimony was consistent and described Student's general education experience in detail.

Student was not deriving any significant benefit from the general education class. Even with a one-to-one aide, he did not attend to the material being taught. Stottsberry had modified his curriculum and assignments in an attempt to coordinate them with the class's curriculum, but she established it was impossible for her to modify them enough to fit his abilities. Student could not speak words or participate in class activities. He could not read. He could not write his name and needed hand-over-hand assistance from his aide to accomplish simple tasks like tracing. He could not independently identify colors, print letters, print his name, or put numbers in sequence. When the class studied science or social studies, Student typically used his iPad or did something with his aide unrelated to the subject before the class.

Student was not receiving any non-academic benefit from being with nondisabled students in the general education classroom. He had no social interaction with them. In class, he did not respond if approached by another student. On the playground he ran around the area of student activity, but did not participate, and did not respond to overtures to participate from other students. As Lakin put it after extensive observation of Student, he "didn't interact with other kids even when they try to interact with him."

Student substantially disrupted the general education class on many occasions. Student would not stay in his seat unless an adult was right next to him restraining him, and that frequently did not keep him there. He usually could not pay attention in class for more than a minute or two before he left his seat and ran around the classroom or out of the room entirely. He frequently ran out the door chased by an adult. He banged on his desk, cried, yelled, and threw himself on the floor. He also engaged in loud and frequent vocalizations and self-injurious behavior such as

- biting his arm when upset;
- hitting his chin, face, or head repeatedly; and
- jumping up in the air, drawing up his legs, and landing hard on the floor on his tailbone.

The noises he made were loud and distracting. His self-injurious behavior and his running around in the classroom diverted the attention of his classmates from their work. Whenever he ran out of the classroom with an adult in pursuit, the other students watched that rather than attending to the teacher.

Student was sometimes physically aggressive. He tried to bite speech pathologist Deckman when she blocked his way to a sink, and put his hands around the throat of a classmate, leaving marks.

Student's behaviors had a substantial negative effect on the teacher as well. Stottsberry gave Student as much personal attention as she could but established that he needed far more individual attention from her than she could provide without neglecting her other students. Student wore diapers and needed help with toileting. For a time, Father came twice a day to change him, but at present, resource teacher Adams must come to the classroom twice a day for that purpose.

Neither party made any argument concerning the comparative costs of the two placements, so that *Rachel H.* factor need not be addressed.

No evidence contradicted these descriptions of Student's experience in general education. Parents were the only witnesses who testified on behalf of Student. They had never observed him in class, possibly because of COVID-related restrictions. Neither they nor anyone else claimed to have made any observations that contradicted those of Stottsberry, Adams, and Lakin.

In *Rachel H. supra*, 14 F.3d 1398, the Ninth Circuit held that an intellectually disabled student with an IQ of 44 should be placed full-time in a general education second grade class. That outcome has no application here because the facts of that case were quite different from the facts here. The record in *Rachel H.* showed that the student "received substantial benefits in regular education and that all of her IEP goals could be implemented in a regular classroom with some modification to the curriculum and with the assistance of a part-time aide." (*Id.* at p. 1401.) In reaching this conclusion

the court gave great weight to the fact that Rachel's general education teacher testified in support of her placement in general education, saying that Rachel "was a full member of the class and participated in all activities." (*Ibid.*) Here, by contrast, Student's general education teachers both testified that Student could not access the general education curriculum and received no substantial benefit from being in general education. Both teachers supported his transfer to the Kelseyville SDC. In addition, the student in *Rachel H.* did not disrupt her general education class at all. (*Id.* at pp. 1400-1401.) The evidence here showed that Student significantly disrupted his general education class.

On balance, application of the three pertinent factors from *Rachel H.*, *supra*, 14 F.3d 1398, to this Student in his general education class requires the conclusion that he cannot be satisfactorily educated there. He is learning nothing, socializing with no one, disrupting the other students, and overburdening the teacher.

## THE OFFERED SPECIAL DAY CLASS

Lucerne is a single-school district of 310 students providing instruction from pre-kindergarten through eighth grade. It has one special education teacher. It lacks the resources to provide a special class for autistic children. Instead, in cooperation with five nearby districts and the County Office of Education, it places students in regional programs when needed. The SDC on the Kelseyville campus, which Lucerne offered Student in the disputed IEP, is one such program. It was supervised by Kelli Antoni, the Special Education Director of the Kelseyville Unified School District. Antoni was thoroughly familiar with the SDC and had visited it many times. One of her duties was to describe the program to interested districts and parents.



Antoni's description at hearing of the Kelseyville SDC established that it is a self-contained moderate-to-severe class which usually has 13 to 17 students, with an adult-to-student ratio of one to four. It emphasizes life skills and individual instruction. Each student's IEP team plays a role in defining the student's curriculum. The subjects taught, such as reading, writing, and math, are the same as those in general education, but the pace of instruction is slower, and lessons are individualized. It is routine for instruction to continue in the summer, so students do not regress.

At present the Kelseyville SDC has 11 students. Four are autistic and four are intellectually disabled. Most of the students are functionally nonverbal, and the SDC is equipped with a variety of icons, picture schedules and other visual supports to help them communicate, as well as several types of assistive communications devices. Speech, occupational therapy, and other services are embedded in the program. Students do not need to be pulled out of class to receive these services, which is the practice in general education.

The high ratio of adults to students also allows the SDC's staff to work individually on goals with each student. At hearing, Antoni reviewed each of Student's proposed goals, and established that they could all be implemented in the SDC. In addition, the staff is used to handling students' attempts to "elope," educational jargon for trying to leave the class. They are also used to assisting students who need it with toileting. The SDC has its own bathroom.

Mainstreaming opportunities are available for a student in the SDC when the student is ready to benefit from the experience. Assistance of an aide during mainstreaming is provided if necessary.

Antoni described a typical day in the Kelseyville SDC. When students arrive in the morning, they use the bathroom if needed and then eat breakfast. After that they have circle time, where they can read stories or sing. Then during a short break, staff set up learning centers around the room. Each of the learning centers addresses a single subject like English language arts or math, and the students are divided into groups that move from center to center. After a recess and snack time, the students engage in another round of instruction at the centers.

After lunch, there is music time and another round of the centers, though in the afternoon the centers are more likely to address art rather than academic subjects. The students leave for home at about 2:00 p.m.

The Kelseyville SDC is designed for children like Student. There he could benefit from the company of other students similarly challenged, from a highly individualized curriculum, and from a relatively large adult staff experienced in teaching nonverbal students. His goals could be worked on directly in the class rather than over to the side of a large room with an aide. Many of the students in the SDC have goals similar to those proposed for Student. His toileting needs could be taken care of routinely, rather than by an outsider who visits the class twice a day.

Teacher Stottsberry, resource teacher Adams, and psychologist Lakin all attended the IEP team meeting that produced the offered IEP. They were the District staff who knew Student best. Each favored the offer of the Kelseyville SDC and supported it in their testimonies at hearing. Those three witnesses made a persuasive case for the proposition that Student could receive a FAPE in the Kelseyville SDC.

No one testified in opposition to the proposed transfer of Student to the Kelseyville SDC except Parents. Parents did not file a closing brief, but their views can be inferred from their testimony and statements at hearing. They argued that moving Student to a moderate-to-severe SDC will brand him and "sidetrack" him for life, although he is capable of earning a diploma. However, Student will not earn a diploma if he cannot access a first-grade curriculum, which teaches skills essential for learning in higher grades. If Student displays the capacity, he may return to general education. Director Antoni established that returning a student to general education is the goal of the SDC program, and that she can remember times in which students successfully returned. Psychologist Lakin also remembered some students from the SDC who returned to general education. Placement there at this stage of Student's development will not necessarily sidetrack him for life. A part of Student's current difficulties may be attributed to the fact that for more than a year before he was enrolled in Lucerne, he attended no school at all and regressed.

Mother testified that Student must be able to access the curriculum in general education because he received a great deal of school readiness training from a private provider before he was enrolled in Lucerne. However, if that training had been successful, Student would have demonstrated the results of it in his general education class, but did not.

Mother testified that about two years ago she visited the Kelseyville SDC and was "horrified" by what she saw. The students were placed in desks suitable for high school students, and their feet did not reach the floor. In addition, there was no curriculum, and the room was not clean.

These impressions were incorrect. Antoni established that the SDC does not have desks. Instead, it has horseshoe-shaped tables of a size accessible to all students, and has beanbag and wobble chairs. It also has a curriculum, as described above. It is the same curriculum as in general education, modified for the individual needs and learning pace of each student. The number of staff is adequate to provide individual instruction to students and to keep the room clean, which the staff does.

Finally, Parents argued that Student is quite intelligent and is entitled in fairness to a chance to prove that he can access the curriculum in general education. However, Student was enrolled in the general education class in July of last year, began attending in August, and was still placed there by the time of hearing. Parents did not explain why placement in general education for more than half an academic year has not been sufficient to give Student a chance to show he can access the curriculum.

For the reasons above, Lucerne proved that Student could not obtain a FAPE in the general education class Parents favor but could obtain a FAPE in the offered SDC at Kelseyville. A general education placement is not the least restrictive environment for Student because application of the standards of *Rachel H.*, *supra*, 14 F.3d 1398, shows he cannot be satisfactorily educated there. He can be satisfactorily educated in the SDC, and that is his least restrictive environment.

## GOALS

The offered IEP contains 13 new annual goals. There are three goals for Expressive Language/Alternative and Assistive Communication, and one each for:

- following verbal directions;
- following routines;
- name recognition;

- pre-academic skills;
- sorting colors;
- number sense;
- visual motor integration;
- fine motor/printing skills;
- self-regulation; and
- toileting.

They are designed to be implemented in the Kelseyville SDC. They are all carefully drafted, and address all of Student's areas of need. They are all reflective of the findings of Lucerne's assessments.

All of the annual goals, except the self-regulation goal, have specific baselines, and that goal has sufficient baseline information in the section of the IEP addressing Student's present levels of academic and functional performance to make it measurable. As long as required information is in one place in an IEP, it need not be in another. (20 U.S.C. § 1414(d)(1)(A)(2)(ii)(II).) Accordingly, supplementing a goal with information elsewhere in an IEP, such as in a short-term objective, has been held to make an otherwise incomplete goal valid. (*C.M. v. New York City Dept. of Educ.* (S.D.N.Y., Feb. 14, 2017, 15 Civ. 6275 (ER)) 2017 WL 607579, p. 11; *B.P. v. New York City Dept. of Educ.* (Dec. 3, 2014, No. 14 Civ. 1822(LGS)) 2014 WL 6808130, p. 11, aff'd, 634 Fed.Appx. 845 (2d Cir. 2015, non-pub. opn.])

The authors of the goals testified at hearing and credibly explained the purposes and proposed implementation of the goals. Father apparently authored the toileting goal, since it was added at his request. Parents did not make any criticisms of the annual goals.

## ACCOMMODATIONS AND MODIFICATIONS

The proposed IEP contains;

- accommodations for assistive technology;
- alternative response options;
- multiple or frequent breaks;
- provision of a chewing object to address fidgeting;
- a requirement that staff obtain Student's attention before speaking; and
- a reduction of distractions.

The modification proposed is shortening assignments to focus on mastery of key concepts.

The accommodations and modification were explained at hearing by Tenderly Logan, the Director of Pupil Personnel Services for Upper Lake Unified School District. Before Logan took that position, she was a school psychologist for 16 years. She had substantial experience with low functioning autistic students and had specialized in assessing children with intellectual disabilities. She was familiar with every placement in the county, and had trained new teachers for the County Office of Education. She had been involved in more than 600 placement offers in Lake County.

Logan is under contract to Lucerne as an educational consultant, and helped conduct both sessions of Student's October and November 2021 IEP team meeting. She was already familiar with Student from his time at Upper Lake and had attended at least one of his IEP team meetings there. In addition, she had observed him at Lucerne's request. Logan was thoroughly familiar with Student and his history. Her testimony was

knowledgeable, careful, and restrained. No flaws in it were revealed by cross-examination. She was a credible witness, and her opinions are given substantial weight here.

At hearing, Logan explained each of the accommodations and the modification offered Student in the disputed IEP and opined that each was appropriate for him. She also opined that there was no accommodation or modification he needed that was missing, and the accommodations and modification addressed all Student's areas of need.

Through Logan's testimony, Lucerne established that the accommodations and modification were appropriate and sufficient for Student. Parents made no criticisms of the accommodations or modification.

## SERVICES

The related services Student required at both Upper Lake and Lucerne were specialized academic instruction, assistive technology, occupational therapy, and speech and language support. As established by Antoni, all of these services are integrated into the Kelseyville SDC and have the advantage that they do not require a student to be removed from the classroom. Parents did not argue that there were any related service Student needs that would not be available to him in the offered SDC.

## OTHER IEP REQUIREMENTS

In its written content, the proposed IEP addresses all the subjects that the IDEA and related laws require it to address. Among many other things, it contains an identification of Student's disability, a statement of how it affects his involvement in the

general education curriculum, his present levels of academic achievement and functional performance, including:

- strengths, weaknesses, and assessment data;
- descriptions of his progress on previous goals;
- a statement that he will participate in alternate statewide assessments and curriculum;
- 13 annual goals;
- a variety of supplementary aids, accommodations, modifications and supports; and
- related services integrated into the proposed SDC.

The proposed IEP contains everything the law requires it to contain, and Parents did not argue otherwise.

Because the proposed IEP is both procedurally and substantively valid and is reasonably calculated to allow Student an opportunity to make educational progress appropriate in light of his circumstances, it would provide him a FAPE.

## 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.

Lucerne's IEP dated October 27 and November 16, 2021, offers Student a FAPE in the least restrictive environment such that Lucerne may implement it without parental consent. Lucerne prevailed on this issue.



## ORDER

Lucerne's IEP dated October 27 and November 16, 2021, offers Student a FAPE in the least restrictive environment. Lucerne may implement it without parental consent.

## 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/

Charles Marson

Administrative Law Judge

Office of Administrative Hearings