

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022020679

PARENT ON BEHALF OF STUDENT,

v.

SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT.

DECISION

June 20, 2022

On February 18, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming San Bernardino City Unified School District. San Bernardino City Unified School District is referred to as San Bernardino City. Administrative Law Judge Deborah Myers-Cregar heard this matter by videoconference on April 5, 7, 12, and 14, 2022.

Robert Burgermeister, Attorney at Law, represented Student. Parent attended the hearing on April 7, 2022, for several hours, and on April 14, 2022, on Student's behalf.

Meagan Kinsey represented San Bernardino City. Dr. Howanna Lundy, Director of Special Education, attended the hearing on April 5, and 7, 2022 on San Bernardino City's behalf. Sean McDuffee, special education representative by a special assignment, attended the hearing on April 12, and 14, 2022, on San Bernardino City's behalf.

At the parties' request the matter was continued to May 26, 2022, for written closing briefs. The record was closed, and the matter was submitted on May 26, 2022.

ISSUES

At the prehearing conference and at the hearing, the issues were further discussed and clarified, consistent with *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. Issue number 3 in the prehearing conference order duplicates issue number two and is stricken. Accordingly, the issues for hearing have been modified and renumbered below as stated on the record and further clarified here.

1. Did San Bernardino City deny Student a free appropriate public education, called FAPE, from March 2021, through February 18, 2022, by failing to assess in the areas of:
 - a. Speech and language;
 - b. Cognitive processing;
 - c. Gross motor development;
 - d. Fine motor development;
 - e. Occupational therapy;
 - f. Adaptive skills;
 - g. Autism spectrum disorder;

- h. Auditory processing; and
 - i. Physical therapy?
- 2. Did San Bernardino City deny Student a FAPE from March 2021, through February 18, 2022, by failing to offer sufficient goals reasonably calculated to enable Student to receive an educational benefit to address Student's needs in the areas of:
 - a. Expressive communication;
 - b. Receptive communication;
 - c. Gross motor skills;
 - d. Fine motor skills;
 - e. Auditory processing;
 - f. Adaptive living skills;
 - g. Social-emotional functioning;
 - h. Behavior; and
 - i. Academics?
- 3. Did San Bernardino City deny Student a FAPE from March 2021, through February 18, 2022, by failing to offer sufficient programs and supports to address Student's needs in the areas:
 - a. Regression; and
 - b. Social skills?
- 4. Did San Bernardino City deny Student a FAPE from December 9, 2021, through February 18, 2022, by failing to offer a one-to-one aide?
- 5. Did San Bernardino City deny Student a FAPE during the 2021-2022 school year, through February 18, 2022, by failing to offer Student:
 - a. In-home applied behavior analysis, called ABA, therapy; and
 - b. ABA clinical meetings?

6. Did San Bernardino City deny Student a FAPE during the 2021-2022 school year, through February 18, 2022, by failing to offer Parent training regarding Student's speech and language impairment?
7. Did San Bernardino City deny Student a FAPE by denying Parent an opportunity to meaningfully participate in Student's IEP process by excusing the school nurse and general education teacher from the December 9, 2021 IEP team meeting without Parent's informed 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; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code

Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student filed the due process complaint, so Student bears 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).)

At the time of the hearing, Student was five years old and attended Arrowhead Grove Headstart preschool, a San Bernardino County program. Student resided within San Bernardino City's geographic boundaries at all relevant times. On December 9, 2021, Student became eligible for special education under the category of speech and language impairment. Student continued to attend the Arrowhead Grove Headstart preschool program and never attended a San Bernardino City preschool program.

ISSUES 1A THROUGH 1I: DID SAN BERNARDINO CITY DENY STUDENT A FAPE FROM MARCH 2021, THROUGH FEBRUARY 18, 2022, BY FAILING TO ASSESS IN THE AREAS OF SPEECH AND LANGUAGE, COGNITIVE PROCESSING, GROSS MOTOR DEVELOPMENT, FINE MOTOR DEVELOPMENT, OCCUPATIONAL THERAPY, ADAPTIVE SKILLS, AUTISM SPECTRUM DISORDER, AUDITORY PROCESSING AND PHYSICAL THERAPY?

Student alleges San Bernardino City knew Parent attempted to enroll Student in preschool, knew of her suspected disabilities, and failed to assess her in nine areas beginning March 2021, through December 9, 2021. Student alleges Parent tried to

enroll her at a school site and get her assessed in March and April 2021 and was turned away as recently as October 2021. Student alleges Parent, Student's social worker, and Arrowhead Grove Headstart all made referrals for a special education speech assessment and that San Bernardino City refused to enroll and assess her.

San Bernardino City Schools alleges Parent did not request an evaluation for Student until October 12, 2021. It asserts it timely assessed Student in all areas of suspected disability once Parent consented.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

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

PRESCHOOL ELIGIBILITY

A child may be found eligible for special education beginning at three years of age. (Ed Code, § 56026, subd. (c)(2).) A preschool child between the ages of three and five years may qualify for early childhood special education services provided by a local educational agency if the criteria for an identified disabling condition is met and the need for specially designed instruction or services is established, among other criteria. (Ed. Code, § 56441.11, subds. (b).)

CHILD-FIND

School districts have an affirmative, ongoing duty to identify, locate, and evaluate all children with disabilities residing in the state in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a) Ed. Code, § 56301, subd. (a).) This duty is commonly referred to as “child find.”

Child find applies to parentally-placed private school children, defined as children who are enrolled by their parents in private school. (34 C.F.R. § 300.131; Ed. Code § 56170.)

The local education agency where private schools are located must engage in child-find activities such as posting flyers in private school facilities and host round table discussions with community members. When a child is enrolled in a private school without having been identified as having a qualifying disability, the local education agency is responsible for ensuring the child is evaluated, subject to parental consent. (OSEP QA 22-01 February 28, 2022, Question A-2; 34 C.F.R. §§ 300.00-300.111(a), 300.9.)

However, child-find does not guarantee eligibility for special education and related services under the IDEA. Child find is merely a locating and screening process which is used to identify those children who are potentially in need of special education and related services. Before finding a child eligible for special education and related services, a school district is then tasked with conducting a full and individual initial evaluation of the child's eligibility for special education. (20 U.S.C. § 1414(a)(1); 34 C.F.R § 300.301; Ed. Code, §§ 56320, 56302.1.)

The child-find process must be designed to ensure equitable participation of parentally-placed private school children, the activities undertaken must be similar for the school district's public school children, and the process must be completed in a time period comparable to that for student attending public school in the school district. (34 C.F.R. § 300.131(b), (c) & (e); Ed. Code, § 56301, subds. (c)(1) & (3).)

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

ASSESSMENTS

A student must be assessed if the school district determines that the educational or related service needs, and improved academic achievement and functional performance, of the student warrant assessment, or if the parents or teacher request an assessment. (Ed. Code, § 56381, subds. (a),(b).)

The requirements to assess a Student may be triggered by the informed suspicions of outside experts. Once a school district has notice that a student displayed

symptoms of an eligible disability, it must assess the student in all areas of that disability with reliable, standardized testing instruments, utilizing procedures that meet the statutory requirements. Informal observations and the subjective opinions of staff members who dispel such reported suspicion, are not sufficient. (*Timothy O. v. Paso Robles Unified School Dist.*, (9th Cir. 2016) 822 F.3d 1105, *N.B. v. Hellgate Elementary School Dist.*, (9th Cir. 2008) 541 F.3d 1202.)

For purposes of evaluating a child for special education eligibility, the district must ensure that “the child is assessed in all areas of suspected disability.” (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158.) When standardized tests are considered invalid for preschool children between the age of three and five, alternative means shall be used including scales, instruments, observations, and interviews, as specified in the assessment plan. (Ed. Code, § 56441.11, subd. (e).)

School districts must obtain the informed consent of student’s parent to assess the student. (20 U.S.C. §§ 1414(b)(2)(A)(i), 1415(b)(3), 34 C.F.R. § 300.304(a).) The school district shall make reasonable efforts to obtain informed consent of the parent before conducting the assessment. The assessment can begin immediately after receipt of consent. (Ed. Code, § 56211 subd. (c)(1),(4).) Initial evaluations must be conducted within 60 days of parental consent. (34 C.F.R. § 300.301(c))

The IEP team shall consider all the relevant material which is available on the child. No single score or product of scores shall be used as the sole criterion for the

decision of the IEP team as to the child's eligibility for special education, or developing an appropriate program. (20 U.S.C. § 1414(b)(2)(B); Ed. Code, § 56320, subd. (e), (Cal. Code Regs., tit. 5, § 3030, subd. (a).)

A school district's failure to conduct appropriate assessments or reassess in all areas of suspected disability may constitute a procedural denial of FAPE. (*Park, supra*, 464 F.3d 1025, 1031-1033) A procedural violation results in liability for denial of a FAPE only if the violation; impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

STUDENT FAILED TO PROVE SAN BERNARDINO WAS REQUIRED TO ASSESS HER BETWEEN MARCH 2021 THROUGH NOVEMBER 10, 2021

Student incidentally asserts San Bernardino City failed to assess Student when it had actual notice of Student's disabilities under non-specific child-find obligations. San Bernardino City alleges Student did not plead child-find as part of Issue 1.

Student did not actually allege San Bernardino City failed to seek and serve Student, but rather that it failed to assess Student at relevant times. Student's unsupported claim and incidental use of the term child-find in one sentence of the complaint is therefore treated synonymously with alleging San Bernardino City failed to assess Student.

PARENT'S REPORTED ENROLLMENT OF STUDENT AT SAN BERNARDINO CITY

Student failed to prove Parent requested an assessment from San Bernardino City in March 2021. Student failed to prove she requested an assessment from San Bernardino City prior to October 2021, and did not enroll Student prior to November 3, 2021.

Parent testified she privately placed and enrolled Student at the Arrowhead Grove Headstart preschool, run by the County of San Bernardino on an unspecified date between December 2020 and January 2021. However, Parent reported to the assessors that she enrolled Student in May, 2021, and this is determined to be the most credible date. Student attended the Headstart preschool eight hours per day, from 8:00 AM to 4:00 PM, and is expected to graduate from preschool in May 2022. Prior to her enrollment in San Bernardino City, Student received speech services through her medical insurance, one hour per month for six months from Wonderlab, a non-public agency. The Arrowhead Grove Headstart received federal funds. It was not affiliated with San Bernardino City.

Parent asserted she first went to San Bernardino City to enroll Student for purposes of an assessment on March 31, 2021. Parent testified that she went to an elementary school she could not clearly identify, calling it "Lankership" or "Lankershim," to meet with San Bernardino City instructional assistant Anna Lopez and enroll and assess Student. Parent claimed she spoke to Lopez, or another secretary who told her that an assessment and IEP team meetings took six to eight months, that Student did not qualify for special education services, and turned her away and told her to leave. Parent's testimony was not persuasive.

San Bernardino City's early childhood assessment team, called ECAT, was located at a different district location, known as Carmack. Lopez was responsible for receiving all initial student preschool referrals from outside agencies. Once she received the referral, she created a student contact log, contacted parents to enroll the student, and scheduled the assessments and IEP team meeting to review the assessments. Lopez persuasively testified that Parent did not contact her in March 2021, and she did not turn Parent away. There was no contact log, documentation, or corroborating evidence to support Parent's claim, and Parent did not establish that she contacted San Bernardino City to enroll Student and request an assessment in March 2021. Rather, the documentation showed that San Bernardino acted reasonably when Parent began the enrollment process in October 2021, completed the enrollment paperwork on November 4, 2021, signed the proposed assessment plan on November 5, 2021, and that San Bernardino assessed Student on November 10, 2021.

Parent was not a credible historian which rendered her testimony less reliable than other more persuasive evidence. Examples of Parent's confusion are discussed later in this Decision. At hearing, Parent appeared confused about the sequence of events, people, and locations she went to enroll Student and have her assessed. She was also inconsistent in parts of her testimony. For example, Parent testified Student's adoption became final on March 8, 2022, and later reported it became final on April 7, 2022. Parent testified about vastly different enrollment dates at the Arrowhead Grove Headstart program. Parent also testified she did not know Student's social worker who contacted San Bernardino City in April 2021, described below, and then the following day testified it was her social worker's supervisor. Parent incorrectly claimed that the IEP team meeting was held in person in November 2021, claiming that the four assessors spoke to her and Student, but did not explain their reports. Significantly, during her

testimony Parent could not even recall the IEP team meeting held on December 9, 2021 through Google-Meet, even though she participated and electronically signed her name.

Parent did not establish she attempted to enroll Student and requested an assessment in March 2021, based on Parent's alleged enrollment and request for assessment in March 2021. Parent did not establish San Bernardino City denied her a FAPE and failed to assess her between March 2021 and November 10, 2021.

SOCIAL WORKER REFERRAL

Student next asserts that two telephone messages in April 2021 from a social worker identifying her for a special education assessment triggered San Bernardino City's obligations to assess her.

On April 9, and April 13, 2021, Sonia Williams, a social worker with the Department of Children and Family Services, telephoned San Bernardino City psychological services program office to let them know Student was a foster child who should be tested for speech and language impairment before the beginning of the fall school year. These two calls were the first documented referral of Student for special education eligibility assessment. The psychological services office secretary sent two emails to instructional assistant Lopez.

On April 13, 2021, Ms. Lopez created a contact log on an Excel spreadsheet to document her contact regarding Student. She returned social worker William's telephone call and left a voice mail message with her contact information. However, social worker Williams did not follow up and did not return Lopez' telephone call.

San Bernardino City acted reasonably by returning Williams' telephone call, leaving its contact information, and making itself available for Williams. San Bernardino City was not required to track down Student beyond returning the social worker's message. Ms. Lopez was not required to do anything more than make herself available for additional contact. While Student alleges Lopez should have enrolled her immediately, Lopez did not have enough information or documentation from William's telephone message to enroll Student and start the assessment process. The social worker's message left confusing information, reporting that Student was placed with Student's paternal grandmother, who passed away on October 16, 2020, and had lived in the city of Barstow. The telephone message did not provide Parent's information, Student's foster parent as of October 17, 2020. Lopez did not have documentation about the educational rights holder, and did not have written consent by an educational rights holder to enroll and assess Student. Parent did not establish San Bernardino City acted unreasonably, denied her a FAPE, and violated its obligations by failing to assess her between March 2021 and November 10, 2021, based on the referral made by the social worker in April 2021.

HEADSTART REFERRAL

Parent testified she asked the Arrowhead Grove Headstart preschool for a referral for a speech assessment three times, beginning March 31, 2021. She claimed she filled out a referral request on Headstart paperwork with an employee named Crystal, and with a supervisor named Desiree. Parent testified she asked Desiree about the referral many times when she picked Student up in the afternoons, as recently as May 2021. Those records from Headstart were not in evidence at hearing and there was no documentation or corroborating evidence provided to support Parent's assertion. In

any event, there was no evidence that San Bernardino was ever made aware of this March 31, 2021 referral. Parent's testimony was not persuasive, especially because the convincing evidence established Student was not enrolled in the program until May 2021.

Rather, the first documented referral from Student's preschool was on August 23, 2021, when Lopez received a referral from Janice Browning at Arrowhead Grove Headstart preschool. San Bernardino City returned Browning's telephone call, left contact information, and made itself available for additional contact. Browning did not return her telephone call. Lopez did not have sufficient information and documentation from Browning's message to enroll and assess Student at that time. Lopez did not have the written consent of the educational rights holder to proceed. Parent did not establish San Bernardino City denied her a FAPE and failed to assess Student between March 2021 and November 10, 2021, based on the Arrowhead Grove referrals.

PARENT REFERRAL, ENROLLMENT, AND CONSENT TO ASSESS

The first documented and verifiable contact directly between Parent and San Bernardino City occurred on October 12, 2021, when Lopez documented she received a telephone call from Parent for a speech assessment. Lopez made an appointment for Parent to enroll Student on October 19, 2021 at 9:00 AM. Due to the ongoing COVID-19 pandemic, San Bernardino established safety protocols requiring appointments to process student enrollment paperwork. Lopez emailed Parent to confirm the October 19, 2021 enrollment appointment, and identified the paperwork Parent would need to bring to enroll Student. Parent confirmed receiving the email. San Bernardino City acted reasonably and timely by immediately providing Parent with an appointment to enroll Student and begin the assessment process.

On October 19, 2021, Parent arrived at the appointment but did not have the juvenile court documentation required to establish she held educational rights and to enroll and assess Student as a foster child. Lopez explained to Parent that she needed proof of Student's foster parent placement and court documents granting her Student's educational rights before Student could be enrolled. Lopez called Jessica Dame at Student's Headstart program to advise them that foster parents needed to establish they had sufficient educational rights to consent to an assessment. San Bernardino City acted reasonably in getting this confirmation by informing Parent of the additional enrollment documentation that was needed, and by following and contacting Student's private pre-school to confirm they were aware of the process.

On October 27, 2021, Lopez received a voice message from Student's social worker, Monica Barajas. On October 29, 2021, Lopez returned Barajas telephone call to discuss the court documentation Parent needed to show she was Student's educational rights holder. Lopez provided Barajas with the early childhood assessment team's telephone number to follow up with Barajas questions about the court documentation required to enroll Student.

On November 3, 2021, Lopez received all the documents she needed to enroll Student in San Bernardino City. On November 4, 2021, she confirmed with Parent that Student was officially enrolled. On November 5, 2021, Nisha Cadena, a special education teacher and assessor, emailed Parent a proposed assessment plan, and Parent signed it the same day. Cadena scheduled dates with Parent for Student's assessment on November 10, 2021, and for the IEP team meeting on December 9, 2021.

As explained in more detail below, San Bernardino assessed Student in the fall of 2021. Student's assessments were conducted in person, with four assessors, all parties

wearing personal protective equipment, and a written report was completed on December 1, 2021. The assessment results were reviewed at the December 9, 2021 IEP team meeting where Student was found eligible for special education with a speech and language impairment. The IEP team wrote a goal and offered 90 minutes per month of speech and language services. San Bernardino City acted reasonably and met its obligation to assess Student by immediately obtaining the proper documentation to verify Parent had sufficient educational rights, obtaining parental consent to assess, expeditiously assessing Student, and timely holding an IEP team meeting to discuss eligibility within the statutory timelines within 60 days of Parent's October 12, 2021, request for assessment and November 5, 2021, written consent to assess. (34 C.F.R. § 300.301(c).)

Student did not meet her burden of proof demonstrating that San Bernardino City violated any obligation to assess Student between March 2021 and November 10, 2021, before Student was enrolled and before Parent consented to assessments. San Bernardino City was not able to or required to enroll or assess Student without Parent's consent and proof as to the holder of Student's educational rights.

NOVEMBER 10, 2021 THROUGH FEBRUARY 18, 2022

San Bernardino City developed the November 5, 2021, assessment plan to evaluate Student's known and suspected disabilities, based upon Parent's reported concerns. The assessment plan's evaluation areas included:

- academic achievement;
- health;
- language and speech communication;
- motor development;

- social-emotional behavior;
- adaptive behavior; and
- an early childhood assessment.

Parent did not request additional areas of evaluation.

ISSUE 1A: SPEECH AND LANGUAGE

On November 10, 2021, speech language pathologist Dionne Ramey assessed Student using the Preschool Language Scales, Fifth Edition, and the Hodson Assessment of Phonological Processes, Third Edition. Ramey also interviewed Parent about Student's basic speech and language skills at home. Ramey documented her findings in the December 1, 2021, multidisciplinary report.

Based on her assessment, Ramey determined Student had articulation and phonological delays in prevocalic liquid production and cluster reductions for "s" and "l" blends. Student made other errors which were within the developmental expectation for her age. Ramey determined Student had a mild articulation impairment which could affect her ability to be understood by her teacher, staff members and her peers, which might require Student to repeat herself. Student used verbal communication and typical gestures, but did not use signs such as those used in American Sign Language. Student did not have deficits in her vocabulary, receptive or expressive communication skills, and her scores fell in the average range for her age. Student's voice did not draw attention or negatively impact her ability to communicate in various settings. Student's vocal quality was appropriate for her age and academic needs. Her speech fluency during conversations was within normal limits and was not an area of suspected disability.

Ramey also determined that based on the Preschool Language Scales, Fifth Edition, Student's auditory comprehension and expressive communication fell in the average range, with a score of 89. Student exhibited developmentally appropriate language skills compared to peers her age, receptive and expressive language, and pragmatic and social communication were not areas of suspected disability.

Based on her assessment, Ramey recommended special education eligibility under the category of speech and language impairment because of Student's mild articulation disorder. Ramey helped the IEP team develop one articulation and phonology goal and recommended 90 minutes per month of speech and language services.

Student did not establish that San Bernardino City failed to assess her in the area of speech and language.

ISSUE 1B AND 1H: COGNITIVE PROCESSING AND AUDITORY PROCESSING

Student alleges that cognitive processing and auditory processing were acute areas of need that were not assessed. Parent claimed Student had an unspecified delay in answering yes and no questions.

San Bernardino City claims Student did not provide any information that either cognitive processing or auditory processing were areas of suspected disability.

Student failed to establish at hearing what she meant by the failure to assess in the area of cognitive processing. There is no such qualifying disability or definition under the IDEA or the Diagnostic and Statistical Manual, Fifth Edition. Student's due

process complaint references the statutory definition of a specific learning disability as a severe discrepancy between cognitive ability and achievement in one or more academic areas, but this was not specifically addressed during the hearing.

Parent asserted that Student had a thirty second delay in responding to yes and no questions, which put San Bernardino City on notice to assess in that area. San Bernardino City conducted a variety of assessments, and Parent's claim was not supported by the persuasive testimony of Bethany Faz, Nisha Cadena, and Dionne Ramey, who conducted Student's assessments. Parent's report of Student's skills on these measures was subjective, and Parent evinced inconsistent and unreliable testimony, and is therefore not persuasive as the sole basis of otherwise unsupported evidence. Parent's claim that Student had a 30-second delay in responding to yes and no questions was not persuasive.

San Bernardino City conducted assessments which would have demonstrated auditory processing deficits, as reported by Parent. School psychologist Bethany Faz and special education teacher Nisha Cadena conducted psychoeducation and academic assessments which would have demonstrated Student's deficits. Faz reviewed Student's records, interviewed Parent, observed Student, administered the Developmental Profile, Fourth Edition, and the Adaptive Behavior Assessment System, Fourth Edition. Faz also reviewed Dionne Ramey's speech and language assessment, and special education teacher Cadena's school readiness assessment results on the Bracken School Readiness Assessment, Third Edition, and Cadena's interview of Student's Headstart teacher Laura. Faz credibly testified that during her assessment, Student did not exhibit deficits in auditory processing. Student answered questions appropriately, had no delay in her responses, and performed in the average range in the academic assessment.

Cadena also persuasively testified Student had no delay in her responses to assessment questions. Student pointed to correct responses quickly and Cadena understood that Student knew the answer. Student also had age appropriate academic skills, and had appropriate knowledge for a four-year old. There was no evidence that Parent, a teacher, or anyone else made a request for an additional evaluation of Student's cognitive processing for a specific learning disability or auditory processing. Student provided no persuasive evidence that Student required any further evaluations for auditory processing for a specific learning disability or auditory processing, or that there were additional areas of known or suspected disability. There was no evidence that Student's teacher had information or concerns that warranted an additional assessment of Student in these areas.

To the extent that Student intended to claim that San Bernardino City failed to conduct an IQ test, all California school districts are enjoined from using such tests on black students for purpose of determining eligibility for special education. (*Larry P. by Lucille P. v. Riles*, 495 F.Supp. 926, (1979), affirmed in part in 793 F.2d 969 (1984), which determined that I.Q. tests had a disproportionate effect on black children in special education assessments.) Thus, under *Larry P.*, San Bernardino City was enjoined from using an assessment which purports to measure IQ, mental age, cognition, mental ability, or mental aptitude or which uses correlations with such a test to establish special education eligibility. Faz, Cadena and Ramey used other assessment tools which evaluated Student's auditory processing skills.

San Bernardino City did not deny Student a FAPE by failing to conduct an IQ assessment for purposes of determining special education eligibility. It used alternative instruments to evaluate Student for general processing information, and did not use

solely a single measure to evaluate Student. San Bernardino did not deny Student a FAPE by failing to assess Student in the areas of cognitive processing and auditory processing.

ISSUES 1C, 1D, 1E, 1I: GROSS MOTOR DEVELOPMENT, FINE MOTOR DEVELOPMENT, OCCUPATIONAL DEVELOPMENT, AND PHYSICAL THERAPY

Student asserts that her gross and fine motor skills fell in the below average range, and that an occupational therapist and a physical therapist should have assessed her.

San Bernardino City asserts Student did not request an occupational therapy or physical therapy assessment. It alleges Parent did not report any information suggesting Student had fine or gross motor skills deficits.

Student failed to prove that San Bernardino City did not assess her gross motor development, fine motor development, occupational development, and physical development. San Bernardino City assessed Student and determined she did not have deficits in these areas which were impacting Student's ability to access her education. There was no evidence that the early childhood assessment team did not assess her motor development identified in the assessment plan. As part of the initial assessment of Student as a preschooler, both fine motor and gross motor development were assessed using more than one measure.

Cadena, a special education teacher, conducted Student's preacademic assessment using the Bracken School Readiness Assessment, Third Edition, which

looked at basic skills, letters, colors, numbers, size comparisons, shapes, and skills needed for kindergarten readiness. This assessment included a basic screening for fine motor skills. When writing her name, Student used a partial fist grasp, which was established to be an age-appropriate emerging skill for the more advanced tripod grasp. Student used a crayon and a graphite pencil. Cadena did not have concerns about Student's fine motor skills as a result of the age-appropriate pencil grip.

Faz, the school psychologist, looked at multiple sources of data, including the Adaptive Behavior Assessment System, Third Edition, and the Developmental Profile, Fourth Edition, and did not have concerns about Student's fine or gross motor skill development which would have warranted further assessment by an occupational therapist or physical therapist. Parent reported that Student's physical development was below average. As part of her assessment, Faz observed Student using a lateral quadpod grip in her right hand. Faz opined it was developmentally appropriate grip for preschoolers. She credibly explained during the preschool years, young students continue to develop skills as in the tripod grip. During preschool, many students try many kinds of grips, and Student was still very young. Additionally, Faz noted Student's Headstart teacher, only identified as Ms. Laura, did not report any concerns about Student's motor development.

Parent reported Student had below average physical skills, based on her responses on the Adaptive Behavior Assessment System, Third Edition, ratings scales. However, Parent also reported Student was able to ride a two-wheeled bicycle without falling most of the time, and could balance on one foot for at least 10 seconds. Faz credibly testified when she looked at Student's other assessment date and her own observations, she did not have concerns as Parent claimed Student had. Parent's report of Student's skills on these measures was subjective, and Parent evinced inconsistent

and unreliable testimony, and is therefore not persuasive as the sole basis of otherwise unsupported evidence. Student did not exhibit deficits in her gross motor skills.

Further, there was no evidence that either Parent or a teacher made a request for an occupation therapy or physical therapy evaluation. Nor did Student establish any specific areas of concern at the time in which those evaluations were warranted. Student provided no persuasive evidence by expert testimony or otherwise that Student required an occupational therapy or a physical therapy evaluation. Student's Headstart teacher Laura did not provide information to San Bernardino City about Student that would warrant further assessment. San Bernardino City conducted gross and fine motor development assessments and it had no reason to suspect Student had a disability that warranted further gross or fine motor assessments or any evaluations in the areas of occupational therapy or physical therapy.

San Bernardino City did not deny Student a FAPE by failing to assess in the areas of gross or fine motor development, or occupational and physical therapy.

ISSUE 1F: ADAPTIVE LIVING SKILLS

Student alleges San Bernardino City failed to assess her in the area of adaptive living skills. Student claims the adaptive living skills assessment demonstrated she fell in the below to well below average range, requiring an assessment.

San Bernardino City asserts it assessed Student in all areas of suspected disability.

Student failed to prove that San Bernardino City did not provide an adaptive living skills assessment. Faz conducted two assessments, which were based on Parent reporting.

Faz conducted the Developmental Profile, Fourth Edition. Based upon Parent reporting, Student's overall level of adaptive behavior fell in the below average range. That assessment measured Student's competence in daily living such as eating at home, dressing, self-care, functioning independently, and using modern technology. Faz conducted an additional assessment, the Adaptive Behavior Assessment System, Third Edition. More detailed information about Student's profile revealed her conceptual skills score of 87 fell in the low average range, her social skills score of 94 fell in the average range, and her practical skills score of 76 fell in the below average range. Based on Parent reporting, Student's home living skills and self-care skills were well below average to below average. All other skills were reported by Parent to be average to low average. Parent's report of Student's skills on these measures was subjective, and Parent evinced inconsistent and unreliable testimony, and is therefore not persuasive as the sole basis of otherwise unsupported evidence.

Faz obtained more detailed information about Student's unique profile of adaptive functioning by reviewing her performances in other assessment composites. Faz credibly testified when she looked at Student's other assessment data and her own observations, she did not have concerns as Parent reported. Student did not exhibit deficits in her adaptive living skills.

San Bernardino City did not deny Student a FAPE by failing to assess in the area of adaptive living skills.

ISSUE 1G: AUTISM SPECTRUM DISORDER

Student alleges San Bernardino City failed to assess her in the area of autism spectrum disorder. Student claims she had documented characteristics of autism

spectrum disorder because she had delayed communication in expressive, receptive, and pragmatic speech and language. Student argues that such an assessment was warranted because Student was slow to process information, had sensory reactions to loud noises, required visual and physical prompts and modeling, and required supports to facilitate social interactions.

San Bernardino City asserts it did not have an obligation to assess Student for autism spectrum disorder because it is a medical diagnosis. It alleges Parent did not report concerns that Student had autism and did not provide outside medical reports or expert determinations that Student exhibited those characteristics.

Parent reported to the assessors that Student's strength was interacting with her peers and her cousins. Parent reported to the assessors that Student engaged in shared play activities, was usually a good sport, and understood how to make friends. On the Adaptive Behavior Assessment System, Third Edition, Parent rated Student to be in the average range for leisure and social skills. During the assessment process, Student greeted the assessors and established rapport with them. Parent did not establish San Bernardino City was on notice that Student had characteristics of autism.

Student also did not establish that San Bernardino City did not screen for autism. Although it did not formally assess Student for autism spectrum disorder, Faz was trained and credentialed to administer the Autism Diagnostic Observation Schedule, and based on the totality of her assessment and observations of Student, had no reason to suspect autism spectrum disorder was impacting Student's ability to access her education. Student did not require a formal assessment for autism. There was no evidence that Parent, teacher, or anyone else made a request for an evaluation in the area of autism. Nor did Student establish any specific areas of concern in which an

autism spectrum disorder assessment was warranted. Student provided no expert testimony or other evidence proving that Student required such an evaluation. Neither Student's Headstart preschool teacher Laura, nor anyone else, provided information about Student that warranted such an assessment.

Faz had a credential that authorized her to conduct assessments for autism, and training to determine if a student met the criteria for special education eligibility for autism. Among other things, she completed graduate training to evaluate characteristics of autism for eligibility. She also completed professional development training to assess students for autism through the National Association of School Psychologists and the California Association of School Psychologists. She was also trained to assess using the Autism Diagnostic Observation Schedule, Second Edition.

Faz assessed Student using the Adaptive Behavior Assessment System, Third Edition, and the Developmental Profile, Fourth Edition. Faz interviewed Parent who did not report concerns with behavior or autism. Faz interviewed Laura, Student's Headstart teacher, who had no concerns about Student's behavior in the classroom and did not report any observed characteristics of autism. Faz also observed Student as part of her assessment and reviewed the data. Student did not demonstrate characteristics of autism and it did not establish it was a suspected disability.

Cadena had a special education credential that allowed her to work with students with autism. She was familiar with the typical characteristics that students with autism demonstrate. Cadena did not observe any behaviors suggesting Student had autism. Moreover, Parent did not report any behaviors or concerns about autism during the Parent interview.

Ramey had a speech language pathology credential that allowed her to provide services for students with autism. She did not observe any speech and language deficits which indicated Student could have autism. Student had appropriate social interaction, had adequate eye contact, responded to questions and verbal instructions, and had appropriate play skills. Student did not demonstrate deficits in social skills interactions, social greetings, or responding to questions.

San Bernardino City did not deny Student a FAPE by failing to assess in the area of autism.

ISSUES 2A THROUGH 2I: DID SAN BERNARDINO CITY DENY STUDENT A FAPE FROM MARCH 2021 THROUGH FEBRUARY 18, 2022, BY FAILING TO OFFER SUFFICIENT GOALS REASONABLY CALCULATED TO ENABLE STUDENT TO RECEIVE AN EDUCATIONAL BENEFIT TO ADDRESS STUDENT'S NEEDS IN THE AREAS OF EXPRESSIVE COMMUNICATION, RECEPTIVE COMMUNICATION, GROSS MOTOR SKILLS, FINE MOTOR SKILLS, AUDITORY PROCESSING, ADAPTIVE LIVING SKILLS, SOCIAL EMOTIONAL FUNCTIONING, BEHAVIOR, AND ACADEMICS?

Student alleges San Bernardino City failed to offer goals sufficient to address Student's needs and severe deficits, because she scored average to below average in several areas of assessment. Student claims that her single speech and language articulation goal was insufficient to address the totality of her needs.

San Bernardino City alleges it had no obligation to offer services prior to the December 9, 2021 IEP, and that it offered an appropriate goal based on her sole identified area of needs.

Whether a student was offered or denied a FAPE is determined by looking at what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, (*Adams*), citing *Furhman v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) This is known as the "snapshot rule."

An IEP for a preschool child must include a written statement that includes the manner in which the disability affects their participation in various activities. (Ed. Code, § 56345, subd. (a)(1)(B).)

An IEP must include a statement of measurable, annual academic and functional goals designed to meet the needs of the student. An IEP must also include a description of how the student's progress toward annual goals will be measured. (Ed. Code, §56345, subds. (a)(2) & (3).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. Goals are deemed appropriate when they address each are of unique need, are based on present levels of performance, and present a challenging series of objectives. Thus, goals are deemed measurable when they can be measured by grade level and accuracy level. (Ed. Code, § 56345)

The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges ex rel. F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-CV-01873-JMC) 2011 WL 3882850.)

MARCH 2021 THROUGH DECEMBER 9, 2021

Student was not enrolled at San Bernardino City until November 4, 2021, assessed until November 10, 2021, and was not eligible for special education until December 9, 2021. San Bernardino City did not have a duty to offer Student special education and related services before she was assessed and found eligible.

DECEMBER 9, 2021 THROUGH FEBRUARY 18, 2022

The December 9, 2021 IEP team developed one goal to address Student's mild articulation impairment. The goal for articulation and phonology required that by December 9, 2022, Student would produce all members of a two-sound cluster when given a visual prompt, in four out of five attempts, in two out of three sessions. The IEP team did not develop any other goals.

ISSUE 2A: EXPRESSIVE COMMUNICATION

Student alleges San Bernardino City denied Student a FAPE when it failed to offer goals in the area of expressive communication. Student argues that such a goal was required because Student had difficulty using spoken language and had an articulation disorder. San Bernadino City asserts that Student did not establish expressive communication was an area of need requiring a goal.

At the time of the IEP, Student was able to use words and sentences and was understandable. She could ask for help, initiate conversations, greet others, and use her name. Student's expressive language scores on the Preschool Language Skills, Fifth Edition, placed her in the average range. She used grammatically correct questions and responses. Student did not exhibit difficulty using spoken language.

Student had a mild articulation disorder, but was still easily understood in most settings. San Bernardino City developed a goal to help her with her articulation disorder, which is a small component of expressive communication. Student did not establish she had another important area of unique need in her expressive communication, other than the mild articulation and phonology disorder San Bernardino City identified and addressed. There was no persuasive evidence that Student required an additional goal in this area. Among other things, Student provided no teacher report or expert testimony that demonstrated she required an additional expressive communication goal, other than her articulation/phonology goal.

ISSUE 2B: RECEPTIVE COMMUNICATION

Student alleges San Bernardino City failed to offer goals in the area of receptive disorder because Student had difficulty understanding spoken language and had an articulation disorder. San Bernardino City contends Student did not prove she had receptive communication needs that required a goal.

Student was able to follow verbal and non-verbal instructions. Student's receptive communication scores on the Preschool Language Skills, Fifth Edition, placed her in the average range. Student did not exhibit difficulty understanding spoken

language. Moreover, Student already had a goal for articulation and Student failed to prove that a receptive language goal would have addressed that area of need.

Student did not establish she required a goal and had an identified, important area of unique need in her receptive communication. There was no persuasive evidence that Student required a goal in this area. Among other things, Student provided no teacher report or expert testimony that demonstrated she required a receptive communication goal.

ISSUE 2C: GROSS MOTOR SKILLS

Student alleges San Bernardino City failed to offer goals in the area of gross motor skills because Parent rated her gross motor skills in the below average range with a score of 79. San Bernardino City Schools contends gross motor skills were not an area of need for Student.

Student had below average physical skills, based upon Parent's report on the Adaptive Behavior Assessment System, Third Edition, and the Developmental Profile, Fourth Edition. However, Parent also reported Student was able to ride a two-wheeled bicycle without falling most of the time and could balance on one foot for at least 10 seconds. Faz credibly testified when she looked at Student's other assessment data and her own observations, she did not have concerns as Parent claimed Student had. Parent's report of Student's skills on these measures was subjective, and Parent evinced inconsistent and unreliable testimony, and is therefore not persuasive as the sole basis of otherwise unsupported evidence. Student did not exhibit deficits in her gross motor skills.

Student did not establish she required a goal and had an identified, important area of unique need in her gross motor skills. There was no persuasive evidence that Student required a goal in this area. Among other things, Student provided no teacher report, credentialed assessor testimony, or expert testimony that demonstrated she required a gross motor skills goal.

ISSUE 2D: FINE MOTOR SKILLS

Student alleges San Bernardino City failed to offer goals in the area of fine motor skills because her fine motor skills were rated in the below average range with a score of 79. San Bernardino City contends fine motor skills were not an area of need.

Parent reported that Student's physical development was below average. Parent reported during the assessment that Student could cut out simple shapes, squares, and circles, and stay close to the lines. Student copied her name with a crayon and a graphite pencil.

Cadena conducted Student's preacademic assessment using the Bracken School Readiness Assessment, Third Edition, which included a basic screening for fine motor skills. When writing her name, Student used a partial fist grasp, which was established to be an age-appropriate emerging skill for the more advanced tripod grasp. Cadena did not have concerns about Student's fine motor skills as a result of the age-appropriate crayon and pencil grip.

Faz looked at multiple sources of data, including the Adaptive Behavior Assessment System, Third Edition, and the Developmental Profile, Fourth Edition, and did not have concerns about Student's fine motor skill development which would have warranted further assessment by an occupational therapist or physical therapist. Faz

observed Student using a lateral quadpod grip in her right hand, a developmentally appropriate grip for preschoolers. During the preschool years, many students try many kinds of grips, and continue to develop skills such as the tripod grip, and Student was still very young. Student's Headstart teacher, Laura, did not report any concerns about Student's motor development.

Parent's report of Student's skills on these measures was subjective, and Parent evinced inconsistent and unreliable testimony, and is therefore not persuasive as the sole basis of otherwise unsupported evidence. Student did not exhibit deficits in her fine motor skills.

Student did not establish she required a goal and had an identified, important area of unique need in her fine motor skills. There was no persuasive evidence that Student required a goal in this area. Among other things, Student provided no teacher report or expert testimony that demonstrated she required a fine motor skills goal.

ISSUE 2E: AUDITORY PROCESSING

Student alleges San Bernardino City failed to offer goals in the area of auditory processing because Parent believed Student had a thirty-second delay answering yes and no questions. San Bernardino City contends auditory processing was not an area of need.

Although Parent claimed Student had a thirty-second delay in responding to questions, that was not supported by the evidence. Parent's report of Student's skills on these measures was subjective, and Parent evinced inconsistent and unreliable testimony, and is therefore not persuasive as the sole basis of otherwise unsupported

evidence. Student did not display any delay in her response time to assessment questions or requests. Parent's report that Student had a 30-second delay responding to yes and no questions was not persuasive.

Student did not establish she required a goal and had an identified, important area of unique need in auditory processing. There was no persuasive evidence that Student required a goal in this area. Among other things, Student provided no teacher report or expert testimony that demonstrated she required an auditory processing goal.

ISSUE 2F: ADAPTIVE LIVING SKILLS

Student alleges San Bernardino City failed to offer goals in the area of adaptive living because her adaptive living skills fell in the well below average range with a score of 82. San Bernardino City contends that adaptive living skills were not an area of need.

Parent's rating on the Developmental Profile, Fourth Edition, and the Adaptive Behavior Assessment System, Third Edition, reported one below average subtest, and one well below average subtest. While Student's score of 82 on the General Adaptive Composite of the Adaptive Behavior Assessment System, Third Edition, fell in the below average range, most of Student's adaptive living scores were in the average to low average range, which would not establish an area of need. More detailed information about Student's profile revealed her conceptual skills score of 87 fell in the low average range, her social skills score of 94 fell in the average range, and her practical skills score of 76 fell in the below average range. Student's practical skills were divided into community use, home living, health and safety, and self-care.

However, Parent's report of Student's skills on these measures was subjective, and Parent evinced inconsistent and unreliable testimony, and is therefore not persuasive as the sole basis of otherwise unsupported evidence.

Faz credibly testified that a single subtest cannot be relied upon for evaluating Student's needs. San Bernardino City did not use only one measure to evaluate Student in this area. Beside the subtests of the two assessments, the evaluation also the remaining subtests of the assessments, Parent's and teacher's interviews, and her observations of Student.

Faz credibly testified it was typical to see such variability on these measures among preschool students. Faz explained that lowest scores were in the home living and self-care areas, and those skills should be addressed at home.

Student did not establish she required a goal and had an identified, important area of unique need in her adaptive living skills. There was no persuasive evidence that Student required a goal in this area. Among other things, Student provided no teacher report, credentialed assessor testimony, or expert testimony that demonstrated she required an adaptive living skills goal.

ISSUE 2G: SOCIAL-EMOTIONAL FUNCTIONING

Student alleges San Bernardino City failed to offer goals in the area of social skills when an assessment showed her social-emotional skills were in the below average range with a score of 79. San Bernardino City contends social emotional functioning were not an area of need.

Student did not exhibit deficits in her social-emotional functioning at the time of the December 2021 IEP. Parent reported to the assessors that Student's strength was interacting with her peers and her cousins. Parent reported to the assessors that Student engaged in shared play activities, was usually a good sport, and understood how to make friends. On the Adaptive Behavior Assessment System, Third Edition, Parent rated Student to be in the average range for leisure and social skills. During the assessment process, Student greeted the assessors and established rapport with them. Parent also reported that Student had no behavioral issues or tantrums. Headstart teacher Laura did not report any concerns with Student's social-emotional functioning.

Student did not establish she required a goal and had an identified, important area unique need in her social-emotional functioning. There was no persuasive evidence that Student required a goal in this area. Among other things, Student provided no teacher report or expert testimony that demonstrated she required a social-emotional functioning goal.

ISSUE 2H: BEHAVIOR

Student alleges San Bernardino City failed to offer goals in the area of behavior when she had an adaptive living score in the well-below average range. San Bernardino City contends behavior was not an area of need.

Student's adaptive skill composite scores in the Developmental Profile, Fourth Edition, and the Adaptive Behavior Assessment System, Third Edition, are discussed in Issue 2F. However, Student is repeating her argument and relying on assessments that are not normed for evaluating behavior.

Parent reported during assessment in November 2021 that Student's strength included interacting with other children and being a good listener. Faz observed Student during the assessment, and Student was calm, cooperative, and transitioned easily. Student was attentive and cooperative, and needed little redirection to stay on tasks. Student was also able to attend to tasks for long periods of time.

Ramey also observed Student as part of her assessment of Student. Student was able to focus on her tasks and follow instructions. Parent also reported that Student had no behavioral issues or tantrums. Headstart teacher Laura also reported no concerns about Student's behavior as of the December 2021 IEP.

Student did not establish she required a goal and had an identified, important area of unique need in her behavior. There was no persuasive evidence that Student required a goal in this area. Among other things, Student provided no teacher report or expert testimony that demonstrated she required a behavior goal.

ISSUE 2I: ACADEMICS

Student alleges San Bernardino City failed to offer goals in the area of academics when her conceptual skills were rated in the low average range with a score of 87 and her practical skills were rated in the below average range with a score of 76. San Bernardino City contends that academics was not an area of need.

Student did not establish she had deficits in the area of academics warranting a goal in this area. Student relies on assessments that are not normed for evaluating academics and preacademics, and the argument is not convincing. The evidence established Student performed in the average range academically for preschool

students her age. On the Bracken School Readiness Assessment, Third Edition, Student's academic score of 96 fell in the average range. Moreover, as of December 2021, Headstart teacher, Laura had no concerns about Student academically.

Student did not establish she required a goal and had an identified, important area of unique need in academics. There was no persuasive evidence that Student required a goal in this area. Among other things, Student provided no teacher report or expert testimony that demonstrated she required an academic goal.

ISSUES 3A AND 3B: DID SAN BERNARDINO CITY DENY STUDENT A FAPE FROM MARCH 2021 THROUGH FEBRUARY 18, 2021, BY FAILING TO OFFER SUFFICIENT PROGRAMS AND SUPPORTS TO ADDRESS STUDENT'S NEEDS IN THE AREAS OF REGRESSION AND SOCIAL SKILLS?

Student alleges Parent attempted to enroll her in school in March 2021 and was turned away, causing regression which was not addressed. Student alleges she had social skills needs at that time which were not offered.

San Bernardino City alleges Parent did not enroll Student until November 4, 2021, and that when it assessed Student in November 2021, there was no basis for determining regression when she was not yet eligible for special education, and that she did not exhibit social skills needs.

MARCH 2021 THROUGH DECEMBER 9, 2021

Student was found eligible for special education services on December 9, 2021. San Bernardino City was not required to offer Student services prior to December 9, 2021.

DECEMBER 9, 2021, THROUGH FEBRUARY 18, 2022

REGRESSION

Extended school year services must be provided if the student's IEP team determines the services are necessary.(34 C.F.R. § 106) Extended school year services shall be provided when the interruption of the student's educational programming is likely to cause regression.(Cal. Code Regs., tit. 5, § 3043.)

At the December 9, 2021, IEP, Student was made eligible for special education services under the category of speech and language impairment. The IEP team offered Student placement in a general education setting and offered 90 minutes per month of speech therapy services for her mild articulation disorder. It did not offer extended school year services.

Based upon what was appropriate at the time, Student did not establish San Bernardino City was required to offer extended school year services at the December 2021 IEP because Student was initially found eligible at that IEP and Student did not demonstrate regression. Student did not establish she regressed between December 9, 2021, through February 18, 2022.

There were no IEP team meetings held between December 2021 and February 18, 2022, and there was no evidence an IEP was necessary to address regression. Student presented no baseline data and evidence of a lack of progress at hearing which required San Bernardino to convene an IEP team meeting to address regression concerns. Student did not meet her burden of proof establishing that San Bernardino City denied her FAPE by failing to offer sufficient programs and supports to address regression.

SOCIAL SKILLS

Student failed to prove the December 9, 2021, IEP did not offer appropriate social skills programs and supports to address her deficits. The assessments demonstrated Student had a mild articulation disorder, but she did not otherwise have social skills deficits. The December 9, 2021, IEP offered 90 minutes per month of speech therapy services. Student failed to prove the services offered failed to meet any her speech and language needs as it related to social skills.

As part of her academic assessment, special education teacher Cadena, interviewed Parent. However, Parent did not report any concerns about Student's social skills. In fact, Parent reported that Student's strength included interacting with other children and being a good listener. Moreover, during assessment, Student was well behaved, and had typical responses from a social skills perspective for a student her age. As discussed in Issue 1G above, Student did not exhibit any characteristics consistent with autism.

As part of her assessment, Cadena also spoke to Laura, Student's Headstart preschool teacher. Laura reported that Student got along well with her peers.

Speech language pathologist Ramey interviewed Parent about Student's basic speech and language skills at home. Student entered the room readily, not reluctantly. Student had adequate social skills, took conversational turns, asked the assessor her name, and had adequate eye contact. Student was able to engage with other assessors and sit at a table. Student did not act out, leave her seat, or leave the room. Ramey did

not observe any delay in Student's response time in processing verbal directions. Student's auditory comprehension score of 89 placed her in the average range, which was between 85 and 115.

Ramey opined Student did not exhibit speech or social skills characteristics of autism. Student had appropriate social interaction, responded to questions, sat, and attended to verbal instructions, and showed play skills. Student did not demonstrate any deficits in social skills which could be addressed by a speech and language pathologist, such as social greetings and responding to questions. Ramey did not recommend social skills because Student exhibited no deficits in those areas.

As discussed above, school psychologist Faz, conducted Student's psychoeducational assessment. On the Adaptive Behavior Assessment System, Fourth Edition, Student's score of 94 placed her in the average range for her age for social skills. Student's scores demonstrated she had an age-appropriate ability to interact with peers, establish and maintain relationships, have appropriate emotions, select games, and play with other children. Faz determined Student did not have social skills deficits and did not demonstrate a need for a goal or services in that area.

Significantly, when Faz interviewed Parent as part of the assessment, Parent did not express concerns about Student's social skills. Parent did not share concerns about autism. Faz did not observe any social skills deficits during her assessment. Student was motivated, compliant, willing to be involved in the process, made adequate eye contact, and was very friendly.

Student did not meet her burden of proof establishing she had social skills deficits which required an annual goal and specialized services to address her needs.

(*Rowley, supra*, 458 U.S. 176, 201-204 [102 S. Ct. 3034]; *Endrew F., supra*, 580 U.S. ____ [137 S.Ct. 988, 1000].) The credible testimony of Cadena, Ramey, and Faz demonstrated that their assessments, observations of Student, interviews with Parent and preschool teacher Laura, proved Student had no suspected social skills deficits, based upon what the IEP team knew at the time of the December 9, 2021, IEP. (*Adams, supra*, 195 F.3d at p. 1149.)

ISSUE 4: DID SAN BERNARDINO CITY DENY STUDENT A FAPE FROM DECEMBER 9, 2021, THROUGH FEBRUARY 18, 2022 BY FAILING TO OFFER A ONE-TO-ONE AIDE?

A one-to-one aide is required as a related service if the student requires an aide to benefit from special education. (34 C.F.R. § 300.34(a))

Student alleges she required a one-to-one aide because her social-emotional skills, gross and fine motor skills, practical skills and general adaptive composite fell in the below average range, her conceptual skills fell in the low average range, and her adaptive behaviors fell in the well below average range. Student asserts she also struggled at home. Student contends that her scores and home behavior established she required a one-to-one aide in the classroom setting.

San Bernardino City alleges Student did not require a one-to-one aide because did not require one to benefit from special education, based on its assessments.

DECEMBER 9, 2021, THROUGH FEBRUARY 18, 2022

Student failed to prove the December 9, 2021, IEP denied her a FAPE by failing to offer behavior support in the form of a one-to-one aide. Student failed to prove the

services offered in the IEP failed to meet her behavior needs. Student did not establish she had deficits which required a one-to-one aide to access her preschool program.

During the assessment process, Cadena interviewed Laura, Student's Headstart preschool teacher. Student was able to independently navigate her preschool program without a one-to-one aide. Laura reported Student had no academic concerns, knew her letters to the alphabet, got along well with her peers, and could sit and listen to books being read to her. Laura did not describe difficulties requiring Student to have a one-to-one aide in the preschool setting.

Parent's initial concern that Student took 30 seconds to process information and therefore required a one-to-one aide was not established by the evidence. Cadena, Faz, and Ramey did not observe deficits with Student's processing information. They were able to assess Student without a one-to-one aide. The assessors described Student as well behaved, appropriately social, and able to focus and participate in the assessment process. Student did not act out, leave her seat, or leave the room. Student did not require them to redirect her to stay on task.

There was no persuasive evidence that Student required a one-to-one behavior aide. Based upon the teacher interview, the credible testimony of the assessors, and the information known to the December 9, 2021, IEP team, Student did not have deficits which required a one-to-one aide at the time of the December 2021 IEP or at any time through February 18, 2022.

ISSUE 5: DID SAN BERNARDINO CITY DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR THROUGH FEBRUARY 18, 2022, BY FAILING TO OFFER STUDENT IN-HOME APPLIED BEHAVIORAL ANALYSIS, CALLED ABA, THERAPY, AND ABA CLINICAL MEETINGS?

Student alleges her scores in the areas of social-emotional skill, adaptive behaviors, gross and fine motor skills, conceptual skills practical skills and her general adaptive composite scores and behavior struggles at home established she required home ABA therapy and clinical meetings to address her problem behaviors.

San Bernardino City alleges Student exhibited no problematic behaviors during the assessment, and that neither Parent nor her teacher reported problematic behaviors. It asserts Student did not require positive behavioral interventions and supports because her behavior did not impede her learning.

2020-2021 SCHOOL YEAR THROUGH DECEMBER 9, 2021

Student was found eligible for special education services on December 9, 2021. San Bernardino City was not required to offer Student any services prior to December 9, 2021, as it timely assessed Student and held Student's initial IEP team meeting.

DECEMBER 9, 2021, THROUGH FEBRUARY 18, 2022

Student failed to prove the December 9, 2021, IEP denied Student a FAPE by failing to offer in-home applied behavioral analysis, or ABA therapy. Student did not establish she had deficits in her behavior which impeded her learning or that she

required positive behavior interventions such as ABA therapy and unspecified ABA clinical trainings to access her preschool or home program. (Ed. Code, § 56341, subd. (b)(1).)

Neither Parent nor Ms. Laura reported Student had problem behaviors. At hearing, Parent explained that Student did not get into trouble at school, was always good at home, and did not have behavior issues. Student did not throw tantrums or act out. This was corroborated by the reports of Student's teacher, as Laura reported Student got along with her peers. Moreover, neither Parent nor Laura reported they suspected Student had autism or that Student had the characteristics of autism.

Student's adaptive skills and social-emotional skills fell in the average range prior to the December 2021 IEP. Student was compliant, motivated, and actively participated in the assessment process. Student was friendly and maintained eye contact. Student was calm and answered the assessment questions appropriately. As discussed in Issue 1G, Faz did not observe Student to have behaviors indicative of autism, and Parent did not report concerns with autism or other problem behaviors. Student did not act out, leave her seat, or leave the room, and Student's behaviors did not interfere with Student completing the assessments.

While Parent claimed that Student required some assistance with community use, home living, health and safety and self-care at home, Faz, based on her credentials and experience, persuasively explained the rating scales score of 76 and general adaptive composite score of 82, while below average, were only two subtests of a larger comprehensive assessment. The below average score in home living and self-care did not demonstrate a need and justify a goal or in-home ABA therapy services for those tasks, as they were developmentally appropriate for a preschool student. Faz

determined Student did not have behavioral needs, based on her own assessment, observations, Student's performance on the assessment, Parent's interview, teacher Laura's interview, and the other relevant data which evaluated the whole picture of Student. Student failed to present any persuasive evidence to rebut Faz's findings.

Based upon the teacher interview and the credible testimony of the assessors, and what the December 9, 2021, IEP team knew at the time, Student did not have deficits which required specialized services and home Applied Behavior Analysis and clinical training during the 2021-2022 school year through February 18, 2022.

ISSUE 6: DID SAN BERNARDINO CITY DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR, THROUGH FEBRUARY 18, 2022, BY FAILING TO OFFER PARENT TRAINING REGARDING STUDENT'S SPEECH AND LANGUAGE IMPAIRMENT?

Student asserts that San Bernardino City failed to offer Parent training to address that Student's speech and language impairment.

San Bernardino City asserts it provided Parent with the assessment report at the IEP team meeting, which contained suggestions for Parent to assist Student with her articulation errors.

2021-2022 SCHOOL YEAR THROUGH DECEMBER 9, 2021

Student was found eligible for special education services on December 9, 2021. San Bernardino City was not required to offer Student any services prior to December 9, 2021, as San Bernardino timely assessed Student and held the initial IEP team meeting.

DECEMBER 9, 2021, THROUGH FEBRUARY 18, 2022

Related services required to assist a student with exceptional needs to benefit from special education may include parent counseling and training. (Ed. Code, § 56363, subd. (b)(11).) Parent training means assisting a parent in understanding the special needs of the student, providing the parent with information about child development, and helping the parent acquire necessary skills to facilitate the implementation of the student's IEP. (34 C.F.R. § 300.34(c)(8)(i)-(iii).)

Student failed to prove that San Bernardino City denied Student a FAPE in the December 9, 2021, IEP by failing to offer parent training regarding Student's speech and language impairment. Parent failed to establish that the skills required any training. San Bernardino City listed recommendations for Parent to assist Student, and Parent did not establish she required training.

San Bernardino City speech language pathologist Ramey assessed Student and determined she had a mild articulation impairment which could affect her ability to be understood by her teacher, staff members and her peers. Student used verbal communication and typical gestures and did not use American Sign Language to communicate. Other than a mild articulation impairment, Student did not have deficits in her vocabulary, receptive or expressive communication skills.

Based on her assessment, Ramey recommended eligibility for special education services under the category of speech and language impairment, and the IEP team agreed. Ramey helped the IEP team develop one articulation and phonology goal and recommended 90 minutes per month of speech and language services.

Ramey credibly testified and explained in her assessment report how Parent could facilitate speech and language at home, by singing songs and reading books to provide opportunities to produce a variety of sounds, and to model how to produce a sound correctly. If Student made an incorrect sound, Parent could model how to produce the sound correctly, without requiring Student to repeat it back. Parent could repeat a target sound or word a few times so Student could hear it produced correctly and model the correct production of sounds in words and sentences in a natural environment, speaking slowly and clearly. Ramey discussed her recommendations with Parent at the IEP team meeting, provided a written copy of her report and recommendations to Parent, but did not practice the techniques with her.

Student failed to establish that any parent counseling or training was required for Student to benefit from her special education program. Ramey's recommendations were basic suggestions that parents would typically engage in with their child in a natural environment, such as singing songs like "Old Mac Donald Had a Farm" with their child, reading books such as those written by Dr. Seuss with their child, and modeling to their child how to pronounce sounds correctly and repeating them. Parent failed to establish that these skills required any training. (Ed. Code, § 56363, subd. (b)(11).)

Student did not establish that the failure to offer parent training denied Student a FAPE.

ISSUE 7: DID SAN BERNARDINO CITY DENY STUDENT A FAPE BY DENYING PARENT AN OPPORTUNITY TO MEANINGFULLY PARTICIPATE IN STUDENT'S IEP PROCESS BY EXCUSING THE SCHOOL NURSE AND GENERAL EDUCATION TEACHER FROM THE DECEMBER 9, 2021, IEP TEAM MEETING WITHOUT PARENT'S INFORMED CONSENT?

Student alleges that the nurse and general education teacher are mandatory members of the IEP team, and that San Bernardino City denied her a FAPE because excused the nurse and general education teacher from the December 9, 2021, IEP team meeting. Student asserts this procedural violation denied her a FAPE because Parent was unable to fully participate in the IEP team meeting.

San Bernardino City asserts it did not deny Student a FAPE when Parent excused the nurse and general education teacher because Parent knowingly consented in writing, and that Parent fully participated in the December 2021 IEP team meeting.

The IEP team members shall include at least one of the student's parents, one of the student's regular education teachers, one of the student's special education teachers, a representative of the school district, and assessors with knowledge of the student. A parent may also invite other individuals with knowledge of the student. A member may be excused if the parent and school district agree in writing that the member's attendance is not necessary because the member's area of the curriculum or related services is not being discussed. The excused member must confer with the parent and submit input into the development of the IEP prior to the meeting. (Ed. Code, § 56341, subds. (a),(b),(f) & (g).)

"[T]he informed involvement of parents" is central to the IEP process. (Ibid.) Protection of parental participation is "[a]mong the most important procedural safeguards" in the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994].) (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882 ("*Amanda J.*").) Parents not only represent the best interests of their child in the IEP development process, but also "provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know." (Ibid.)

Parental participation in the IEP and educational placement process is critical to the organization of the IDEA. (*Doug C. v. Hawaii Dept. of Education* (9th Cir. 2013) 720 F. 3d 1038, 1043, (*Doug C.*)) Parental participation safeguards are "[a]mong the most important procedural safeguards" in the IDEA and "[p]rocedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA." (*Doug C., supra*, 720 F. 3d at p. 1044, citing *Amanda J., supra*, 267 F.3d at 882, 892.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(b).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP team meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693-5 (*N.L.*); *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.)

Neither the school nurse nor a general education teacher attended the IEP team meeting on December 9, 2021. The evidence established that based on Parent's agreement in writing, San Bernardino City excused both the nurse and the general education teacher from attending the meeting.

The excused nurse conferred with the Parent and submitted input into the development of the IEP prior to the IEP team meeting. The excused nurse provided a health assessment as part of the IEP, interviewed Parent, and included information that Parent provided to her. Student had no remarkable health concerns. Student did not require any services, accommodations, or modifications to her educational program as a result of the health assessment.

The excused general education teacher Laura, from Student's Headstart program, conferred with Parent about Student. Moreover, the evidence established that Laura had input into the development of the IEP prior to the IEP team meeting. The special education teacher and the psychologist both interviewed Laura. The general education teacher's interview was included in the assessment and discussed at the IEP team meeting.

Parent alleged that the general education teacher was not asked to attend the IEP team meeting. However, Parent knowingly signed the excusal form, and did not ask the teacher to attend when she had the right to do so. (Ed. Code, § 56341, subds. (b)(6),(f),(g).)

The IEP recommended a general education setting, and Student did not require any specialized services, accommodations, or modifications to her educational program, other than 90 minutes per month of speech and language services. Parent meaningfully participated in the development of Student's IEP because she was informed about Student's problems, attended the IEP team meeting, heard the assessors explain their reports, had the opportunity to express disagreement regarding the IEP team's

conclusions, and had the opportunity to request revisions in Student's IEP. However, she consented to the IEP and did not request changes to it, until the subject due process request was filed.

NO PROCEDURAL VIOLATION

Student also did not establish that San Bernardino's excusal of the attendance of the nurse and general education teacher from the December 9, 2021, was a procedural violation. San Bernardino City substantially complied with Education Code section 56341, subdivisions (a),(b),(f) and (g).) To the extent there were any technical violations, Student failed to establish that any procedural violation which impeded her right to a FAPE, significantly impeded 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).) Student failed to prove that the nurse and the general education teacher did not consult with Parent and provide input into the IEP. Student also failed to prove that Parent did not consent to the excusal of the nurse and general education teacher in writing. Moreover, Parent meaningfully participated in the development of Student's IEP because she was informed about Student's problems, attended the IEP team meeting, heard the assessors explain their reports, had the opportunity to express disagreement regarding the IEP team's conclusions, and had the opportunity to request revisions in Student's IEP. Parent consented to the IEP and did not request changes to it, until the subject due process request was filed. (Ed. Code, § 56341, subds. (a),(b),(f) &(g).)

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

ISSUE 1A:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to assess in the area of speech and language.

San Bernardino City prevailed on Issue 1A.

ISSUE 1B:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to assess in the area of cognitive processing.

San Bernardino City prevailed on Issue 1B.

ISSUE 1C:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to assess in the area of gross motor skills.

San Bernardino City prevailed on Issue 1C.

ISSUE 1D:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to assess in the area of fine motor development.

San Bernardino City prevailed on Issue 1D.

ISSUE 1E:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to assess in the area of occupational therapy.

San Bernardino City prevailed on Issue 1E.

ISSUE 1F:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to assess in the area of adaptive skills.

San Bernardino City prevailed on Issue 1F.

ISSUE 1G:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to assess in the area of autism spectrum disorder.

San Bernardino City prevailed on Issue 1G.

ISSUE 1H:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to assess in the area of auditory processing.

San Bernardino City prevailed on Issue 1H.

ISSUE 1I:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to assess in the area of physical therapy.

San Bernardino City prevailed on Issue 1I.

ISSUE 2A:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to offer sufficient goals reasonably calculated to enable Student to receive an educational benefit to address Student's needs in the area of expressive communication.

San Bernardino City prevailed on Issue 2A.

ISSUE 2B:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to offer sufficient goals reasonably calculated to enable Student to receive an educational benefit to address Student's needs in the area of receptive communication.

San Bernardino City prevailed on Issue 2B.

ISSUE 2C:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to offer sufficient goals reasonably calculated to enable Student to receive an educational benefit to address Student's needs in the area of gross motor skills.

San Bernardino City prevailed on Issue 2C.

ISSUE 2D:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to offer sufficient goals reasonably calculated to enable Student to receive an educational benefit to address Student's needs in the area of fine motor skills.

San Bernardino City prevailed on Issue 2D.

ISSUE 2E:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to offer sufficient goals reasonably calculated to enable Student to receive an educational benefit to address Student's needs in the area of auditory processing.

San Bernardino City prevailed on Issue 2E.

ISSUE 2F:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to offer sufficient goals reasonably

calculated to enable Student to receive an educational benefit to address Student's needs in the area of adaptive living skills.

San Bernardino City prevailed on Issue 2F.

ISSUE 2G:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to offer sufficient goals reasonably calculated to enable Student to receive an educational benefit to address Student's needs in the area of social-emotional functioning.

San Bernardino City prevailed on Issue 2G.

ISSUE 3A:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to offer sufficient programs and supports to address Student's needs in the area of regression.

San Bernardino City prevailed on Issue 3A.

ISSUE 3B:

San Bernardino City did not deny Student a FAPE from March 2021, through February 18, 2022, by failing to offer sufficient programs and supports to address Student's needs in the area of social skills.

San Bernardino City prevailed on Issue 3B.

ISSUE 4:

San Bernardino City did not deny Student a FAPE from December 9, 2021, through February 18, 2022, by failing to offer a one-to-one aide.

San Bernardino City prevailed on Issue 4.

ISSUES 5A AND 5B:

San Bernardino City did not deny Student a FAPE during the 2021-2022 school year, through February 18, 2022, by failing to offer Student in-home ABA therapy and clinical meetings.

San Bernardino City prevailed on Issues 5A and 5B.

ISSUE 6:

San Bernardino City did not deny Student a FAPE during the 2021-2022 school year, through February 18, 2022, by failing to offer Parent training regarding Student's speech and language impairment.

San Bernardino City prevailed on Issue 6.

ISSUE 7:

San Bernardino City did not deny Parent an opportunity to meaningfully participate in Student's IEP process by excusing the school nurse and general education teacher from the December 9, 2021, IEP team meeting without Parent's informed consent.

San Bernardino City prevailed on Issue 7.

ORDER

1. All relief sought by Student is denied.

RIGHT TO APPEAL THIS DECISION

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

/s/

Deborah Myers-Cregar

Administrative Law Judge

Office of Administrative Hearings