

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022040227

PARENTS ON BEHALF OF STUDENT,

v.

STANISLAUS UNION SCHOOL DISTRICT.

DECISION

July 29, 2022

On April 6, 2022, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Stanislaus Union School District, called Stanislaus. Administrative Law Judge Paul H. Kamoroff heard this matter by videoconference in California on May 24, 25, 26, and 31, 2022, and June 1, 2, 14, and 15, 2022.

Attorney Damien B. Troutman represented Parents and Student. Mother attended the hearing each day. Student did not attend the hearing. Attorneys Dee Anna Hassanpour and Anisha Asher represented Stanislaus. Stanislaus's Assistant Superintendent Jennifer Backman attended each day of the hearing.

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

ISSUES

1. Did Stanislaus deny Student a free appropriate public education, called FAPE, from April 6, 2020, through the end of the 2019-2020 regular school year, by failing to offer:
 - a. Appropriate goals, supports, and services for academics;
 - b. Appropriate goals, supports, and services for behavior;
 - c. Appropriate goals, supports, and services for executive functioning;
 - d. Appropriate goals, supports, and services for pragmatic language;
 - e. Goals and services for fine motor; and
 - f. Assessment in the area of fine motor?
2. Did Stanislaus deny Student a FAPE during the 2020-2021 regular school year, by failing to offer:
 - a. Appropriate supports during distance learning;
 - b. Appropriate goals, supports, and services for academics;
 - c. Appropriate goals, supports, and services for behavior;
 - d. Appropriate goals, supports, and services for executive functioning;
 - e. Appropriate goals, supports, and services for pragmatic language;

- f. Goals and services for fine motor; and
 - g. Assessment in the area of fine motor?
3. Did Stanislaus deny Student a FAPE, by failing to provide an appropriate prior written notice in response to Parents' April 18, 2021 consent-with-exceptions communication?

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

THE STUDENT

Student was 13 years old and in seventh grade at the time of hearing. Student last attended Stanislaus during the sixth grade. During summer 2021, Parents withdrew Student from Stanislaus and placed him at Aspire Charter School, an unaffiliated public charter school, which he attended through the hearing. Student resided within Stanislaus's geographic boundaries with his parents during the relevant time period, his fifth and sixth grades.

Student was eligible for special education and related services under the eligibility category Autism, and secondary eligibility category Specific Learning Disability. As a result of his disabilities, Student had difficulty with academics and off-task behaviors. Student was eligible for an IEP and received special education and related services since 2012.

ISSUES 1 AND 2: DID STANISLAUS DENY STUDENT A FAPE FROM APRIL 6, 2020, THROUGH THE END OF THE 2019-2020 REGULAR SCHOOL YEAR, AND DURING THE 2020-2021 REGULAR SCHOOL YEAR?

Student asserts that Stanislaus denied him a FAPE during the 2019-2020 regular school year, fifth grade, beginning April 6, 2020, and during the 2020-2021 regular school year, sixth grade, based upon various grounds. In particular, Student complains that Stanislaus failed to provide appropriate goals, supports, and services for academics, behavior, executive functioning, pragmatic language, and fine motor, and to assess in the area of fine motor. Student also complains that remote learning denied him a FAPE during parts of the 2020-2021 school year. Stanislaus responds that it provided appropriate goals, supports and services during both school years, and Student did not require additional testing for fine motor.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) All subsequent references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted. Parents and school personnel develop an 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.*.)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program, not that preferred by the parent. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the child. (*Ibid.*) For a school district's offer of special education services to constitute a FAPE under the IDEA, the offer must be designed to meet the student's unique needs, comport with his IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Id.* at pp. 1314-1315; *Rowley, supra*, 458 U.S. at p. 203.)

An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education designed according to the parent's desires."].) A school district has the right to select the service provider so long as the provider is able to meet the student's needs. The IDEA does not empower parents to make unilateral decisions about programs funded by the public. (*Slama v. Independent School Dist. No. 2580* (D.Minn. 2003) 259 F. Supp.2d 880, 885 [refusal to assign service providers of parent's choice does not result in a denial of a FAPE.]; *N.R. v. San Ramon Valley Unified School Dist.* (N.D.Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323, at *7 [parents are not entitled to their preferred provider].) Parents, no matter how well motivated, do not

have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child. (*Rowley, supra*, 458 U.S. at p. 208.)

The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D.Cal., May 2, 2017, No. CV16-04356-BRO (MRWx)) 2017 WL 2864945; see also 20 U.S.C. § 1414(d)(1)(A)(i)(II) & (III); Ed. Code, § 56345, subd. (a)(2) & (3).)

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) 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 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].) "But there is no specific form of measurement required by statute or caselaw. Cf. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.* (9th Cir. 2011) 631 F.3d 1117,1122 (goal measurement can be

“based on teachers’ subjective observations”). (*R.P.*)” *Capistrano Unified Sch. Dist. v. S.W.*, 21 F.4th 1125, 1134 (9th Cir. 2021). “The IDEA does not require that the IEP Team rely on specific kinds of quantitative data.” (*Id.* at p. 1135.)

“Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.)

“Related services” are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [in California, related services are also called designated instruction and services].)

Education Code Section 56335 defines and describes educational services for students with the characteristics of dyslexia, as evidence-based, multi-sensory, direct, explicit, structured, and sequential approach to instruction. (Ed. Code § 56335, subd. (a).) The Ninth Circuit recently found a school district satisfied the IDEA by evaluating the student for a “specific learning disability,” and the school district did not violate its obligation to evaluate the student in “all areas of suspected disability” when it did not formally evaluate for dyslexia. (*Crofts v. Issaquah Sch. Dist. No. 411* (9th Cir. 2022) 22 F.4th 1048 (*Crofts*.) The Court further held the school district’s IEPs were reasonably calculated to help the student progress, and the school district did not deny the student a FAPE by offering reading services for a specific learning disability instead of the parents’ preferred teaching method. (*Id.* at pp. 1056–57.) The methodology used to implement an IEP is left up to the district’s discretion so long as it meets a student’s needs and is reasonably calculated to provide meaningful educational benefit to the child. (*Rowley, supra*, 458 U.S. at p. 208; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141,1149-1150 (*Adams*).)

When conducting a review of a district's proposed program, an ALJ must evaluate the adequacy of the IEP based on information available to the district at the time the IEP was developed, and by what was reasonable at the time and not in hindsight. (*Adams, supra* 195 F.3d at p. 1149.); *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) An IEP is a "snapshot, not a retrospective." (*Adams, supra* 195 F.3d at p. 1149.)

THE 2020 ANNUAL IEP

Student's Issue 1 began on April 6, 2020, and goes through May 22, 2020, the last day of the 2019-2020 regular school year. Student's annual IEP for that time frame was held over two days on February 20, 2020, and April 23, 2020.

Stanislaus conducted triennial evaluations of Student in February 2020. The areas assessed included

- health,
- academic achievement,
- inclusion,
- language,
- speech and communication,
- social emotional,
- behavior,
- psychoeducational, and
- intellectual development.

The assessment plan for the triennial evaluations was consented to by Parent, wherein she also requested that Stanislaus assess Student for dyslexia. Stanislaus conducted the triennial evaluations but did not conduct an assessment entitled "dyslexia." Rather,

Stanislaus assessed Student's reading and writing under the lens of whether Student had a specific learning disability, and determined Student had a specific learning disability based on a significant discrepancy between his ability and his academic performance in the areas of listening comprehension and reading fluency.

The triennial assessors attended the annual IEP team meeting, where they reviewed the results of their assessments and answered questions from Parents regarding the testing and findings. Student did not challenge the appropriateness of the triennial evaluations or the qualifications of the assessors. Nor did Student request that Stanislaus fund an independent education evaluation in any area. Consequently, the appropriateness of the 2020 triennial evaluations was not an issue considered for this hearing.

Stanislaus held Student's 2020 annual IEP for several hours over two days, February 20 and April 23, 2020. At the time, Student attended fifth grade at Agnes Baptist Elementary School, a Stanislaus public school. Student was eligible for special education and related services under the primary eligibility category Autism, and secondary category Specific Learning Disability.

Autism is a neurodevelopmental disorder characterized by social, behavioral, and learning delays. Specific learning disability is a disorder in an area of basic psychological processes that have manifested a difficulty in the ability to listen, think, speak, read, write, spell, or do mathematical calculations, and includes conditions such as dyslexia. The basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization, and expression. (Cal. Code Regs., tit. 5, § 3030.)

The IEP team included

- Mother,
- Student's aunt,
- general education teacher Gary Carpenter,
- special education teacher Stacey Rapisura,
- speech-language pathologist Sara Perino,
- Stanislaus County Office of Education, called SCOE,
- Board-Certified Behavior Analyst, called BCBA, Natalie Libby,
- SCOE Autism Inclusion Specialist Faun Hyde-Olivera,
- Stanislaus Assistant Superintendent Dr. Heather Freitas,
- a representative from the Valley Mountain Regional Center, and
- the school's principal.

The IEP team carefully reviewed Student's strength's, areas of difficulty, Parent concerns, and present levels of performance. Student was engaged and actively participated during each class. He especially enjoyed science and social studies and reading books of interest to him. Student was independently organized, receptive to incentives, and kind to others. He was athletic and enjoyed football, track, and baseball. Parent was primarily concerned that Student was academically below grade level, particularly in reading, where Student was two-to-three years behind his typical peers.

Along with regular education classes, Student received specialized academic instruction in a special day class, called the Learning Center. During the Learning Center, Student shared and expressed himself orally and in writing. Student's writing had improved over the school year, although he still required support, including in punctuation and paragraph formation. Student's reading had progressed with

demonstrated improvements in reading fluency and comprehension. Student still had reading deficits and read at a third-grade reading level, two years below grade level. While delayed compared to his same-aged peers, this showed one year's improvement based upon 2019 state testing.

Student progressed in general education as well. He participated during class, showed reading improvement, did well in science and social studies, and responded well to redirection. Student still struggled to perform grade-level work, had difficulty in math, and was sometimes inattentive. Student did not demonstrate any gross or fine motor problems, but required reminders to write legibly.

Student spoke well and was intelligible to others. He had age-appropriate voice, articulation, and fluency. Student's pragmatic language ranged from poor to average for his age. Yet, he used appropriate language and eye contact, and eagerly engaged in conversation.

Student made significant improvement in his behavior, social interactions, and organization over the past school year. Student was self-aware of his social behavior and its impact on others. He was kind and helpful, played well with others, and used coping skills to respond to disappointment. Student responded well to positive behavior interventions and was able to access his general education classroom, along with recess and breaks with his typical peers. Student took care of his own needs at school. He understood and complied with the school schedule. Student improved in executive functioning, including his ability to organize and plan, although he still had difficulty prioritizing and self-managing. Student had no health or medical problems.

The IEP team reviewed Student's progress toward his prior annual goals. Student met a reading-fluency goal that required him to read an unpracticed third-grade text

with over 80 percent accuracy. This showed reading improvement since the last annual IEP, May 2019, when Student was reading at a beginning second-grade level. Student also made progress towards a reading-comprehension goal, including meeting each benchmark for this goal. Student improved in math and met a multiplication math goal with 100 percent accuracy. Student also made progress towards a paragraph-writing goal. Student met or made meaningful progress towards each annual goal.

After Mother, Student's teachers, and school staff who had assessed Student discussed Student's present levels of performance, the IEP team agreed Student required support in the areas of

- reading fluency,
- reading comprehension,
- written language,
- phonological coding,
- math,
- perspective-taking, and
- executive functioning.

To address these needs, the IEP team developed 10 new annual goals.

Goal one, in reading fluency, called for Student to read an unpracticed fifth-grade reading passage at 80 percent accuracy in two of three trials, measured by teacher charting. The goal included benchmarks, identified general education and special education staff as people responsible for Student meeting the goal, and a baseline showing Student was 84 percent accurate in this area while reading a third-grade passage. The goal was appropriately ambitious and called for Student to make two years' gain in reading in one year.

Goal two, in reading comprehension, required Student to independently answer questions to a fourth-grade passage, with 80 percent accuracy in two of three trials, measured by teacher charting. The goal had short-term benchmarks and identified general education and special education staff as people responsible for Student meeting the goal. The goal included a baseline showing Student was 50 percent accurate in this skill.

Goal three, in writing, sought for Student to compose a paragraph with appropriate punctuation, organization, and content, using a writing rubric, with 70 percent accuracy in two of three trials, measured by Student's work samples. The goal had an attached writing rubric, short-term benchmarks, and identified general education and special education staff as people responsible for Student meeting the goal. The goal included a baseline showing Student was 56 percent accurate in this skill.

Goal four, for writing, required Student to properly capitalize and punctuate dictated sentences with 80 percent accuracy in two of three trials, measured by Student's work samples. The goal had short-term benchmarks, identified general education and special education staff as people responsible for Student meeting the goal, and had a baseline showing Student was 63 percent accurate in this skill.

Goal five was in math reasoning and word problems. It sought for Student to highlight key words in multi-step, grade-level problems, to solve the problem, in three of five trials, measured by Student's work samples. The goal had short-term benchmarks and identified general education and special education staff as people responsible for Student meeting the goal. The goal included a narrative baseline that identified Student's present levels of performance in this skill.

Goal six, for speech and grammar, required Student to identify various parts of speech, with 70 percent accuracy in one of two trials, measures by Student's work samples. The goal had short-term benchmarks and identified general education and special education staff as people responsible for Student meeting the goal. The goal included a narrative baseline that identified Student's present levels of performance in this skill.

Goal seven, for English Language Arts, called for Student to perform a minimum of five phonological tasks at a rate of 30 to 40 correct per minute, measured by teacher and staff data collection and charts. The goal had short-term benchmarks and identified general education and special education staff as people responsible for Student meeting the goal. The goal included a baseline showing Student was 84 percent accurate at a third-grade level in these skills.

Goal eight, for social behavior, called for Student to use positive behavior strategies to self-advocate without arguing or becoming angry, with 80 percent accuracy over three observations, measured by teachers and staff. The goal had short-term benchmarks and identified general education and special education staff as people responsible for Student meeting the goal. The goal included a narrative baseline that identified Student's present levels of performance in this area.

Goal nine, for behavior, called for Student to remain on task in the classroom during 80 percent of a 20-minute observation, with no more than one teacher redirection, in three of four observations. The goal had short-term benchmarks and identified school personnel responsible for Student meeting the goal. The goal included a baseline showing Student was on-task 56 percent of the time in a classroom.

Goal 10, for executive functioning, sought for Student to self-manage and prioritize to help organize, a minimum of twice daily, with no more than two prompts, measured by teacher and staff data collections. The goal had short-term benchmarks and identified general education and special education staff as people responsible for Student meeting the goal. The goal included a narrative baseline that identified Student's present levels of performance in this area.

To meet Student's goals, the IEP team offered a variety of supports, accommodations, special education, and related services. Supports and accommodations included, but were not limited to,

- text-to-speech assistance technology,
- separate settings for tests,
- breaks,
- extra time to complete assignments,
- preferential seating, and
- visual systems such as checklists.

Supports also included supervision by a Board-Certified Behavior Analyst, 15 minutes monthly, and supervision by a Speech-Language Pathologist, 15 minutes yearly.

Special education and related services included specialized academic instruction by the Autism Inclusion Specialist, inside and outside of regular education classes, 45 minutes weekly; intensive individual services during core instruction, consisting of an individual behavior aide for 210 minutes daily; and specialized academic instruction for reading, writing, and math, provided in the Learning Center, for 685 minutes weekly.

The specialized academic instruction was increased by 125 minutes per week compared to Student's prior IEP, to accommodate for the higher number of academic goals and loftiness of the goals. For example, goal one called for Student to make two years' progress in reading, which was considered ambitious but achievable by the IEP team.

The remaining parts of Student's school day, 61 percent, would be in regular education. The IEP also offered extended school years services.

Student had moderate behavior problems related to autism, such as attention seeking and off-task behavior. To address Student's unique behavior needs, the IEP offered the behavior goals, an individual behavior aide, and monthly consultation by a BCBA. The IEP team also agreed to continue providing Student a behavior intervention plan, which was recently updated based upon the 2020 triennial evaluations and included within the IEP.

The IEP offered a solid plan to address all of Student's identified deficits. No area of unique need was left unaddressed. The 2020 IEP was based upon recent triennial assessments that were not in dispute and formulated with input from Parents and qualified school staff who were familiar with Student.

CONDUCT FOLLOWING THE 2020 ANNUAL IEP

On March 19, 2020, all public schools in California were closed in response to lawful orders from the Governor to curb the spread of a deadly global pandemic caused by the novel coronavirus, called COVID-19. Stanislaus's normal spring break occurred March 23 through 27, 2020. From March 30 through April 19, 2020, Stanislaus provided

instruction remotely through asynchronous instruction. From April 20 through May 22, 2020, the last day of the regular school year, Stanislaus provided remote learning through synchronous instruction. Synchronous learning means although the students learn from a distance, students attend a class session daily or weekly at the same time as the instructor and other classmates using teleconference technology. The class is a prescheduled commitment that cannot be rescheduled. Asynchronous learning permits the students to learn on their own schedule using classroom materials, within a certain timeframe.

Stanislaus resumed synchronous remote learning when school reopened on August 10, 2020, the first day of 2020-2021 regular school year. This continued until October 12, 2020, when Stanislaus provided a hybrid program of remote learning and in-person instruction. From October 12 through December 21, 2020, the first day of winter break, Student attended classes in person twice a week, and received remote learning thrice a week. Stanislaus resumed remote-only learning following the winter break, January 11, 2021, through February 12, 2021, at which time the school resumed in-person instruction each school day.

Stanislaus provided Student's IEP services during remote instruction, including an individual aide who accompanied Student remotely when he received synchronous instruction by videoconference.

On September 3, 2020, Stanislaus held an addendum IEP team meeting to discuss Student's performance and needs during remote learning. Mother attended, along with

- Student's aunt,
- regular education teacher Jill Kelley,
- special education teacher Stacey Rapisura,

- SCOE Board-Certified Behavior Analyst Jennifer Escarcega,
- SCOE inclusion specialist Faun Hyde-Olivera,
- Assistant superintendent Dr. Heather Freitas,
- the school principal, and
- a representative from the regional center.

Student was an eager and active participant during remote instruction. He logged into each video-class, completed classwork, and participated during group discussion. However, Student was sometimes inattentive or spoke out of turn. The IEP team discussed various strategies to help Student stay engaged during video-classes, including prompting by the individual aide, and less prompting by Parent, who normally accompanied Student during video-classes although she was not required to do so. The IEP team also discussed the use of breakout rooms, asynchronous work, and more time for Student to converse with his peers, whom he enjoyed seeing virtually. Stanislaus was receptive to the input from Mother, Student's aunt, and school staff, but denied Mother's request for an in-person aide at Student's home. Mother believed Student required his aide to sit next to him during video-classes to help him stay focused. However, Mother's request would endanger Student, the aide, and the families of each, due to the risk of exposure to COVID-19, which was killing millions globally at that time.

To ease Student's receipt of remote learning, Stanislaus agreed to modify Student's IEP to include

- additional special education curriculum for the home,
- expanded virtual classes in the Learning Center,
- some class scheduling changes per Parent request,
- teacher-provided notes,

- an additional virtual session for social and emotional support,
- prerecorded math lessons, and
- a revised behavior chart.

The amendment IEP also included an emergency circumstances provision, to be used if school instruction was disrupted because of a natural or other disaster.

On September 3, 2020, SCOE Board-Certified Behavior Analyst Jenn Escarcega provided Student and his IEP team an updated behavior intervention plan to help address Student's behaviors during distance learning. The added interventions included

- home-based reinforcers,
- teacher- and staff-provided praise during classroom instruction,
- virtual classroom reminders and accommodations,
- access to recorded class sessions,
- a visual schedule, and
- other positive behavior strategies.

THE 2021 ANNUAL IEP

Stanislaus held Student's 2021 annual IEP team meeting for several hours over two days, February 18 and March 2, 2021. Student was 11 years old and attending sixth grade at Agnes Baptist Elementary School. Parents attended and participated in the meetings, along with their independent assessor Dr. Mitchel Perlman, Student's attorney, and Student's aunt. Stanislaus IEP team members included

- general education teacher Jill Kelley,
- special education teacher Stacey Rapisura,
- speech-language pathologist Sara Perino,
- SCOE Board-Certified Behavior Analyst Escarcega,

- Autism Inclusion Specialist Faun Hyde-Olivera,
- school psychologist Jacqueline Baez,
- the school principal,
- a regional center representative,
- Stanislaus's Assistant Superintendent, and
- Stanislaus's attorney.

The IEP team agreed that Student remained eligible for special education and related services under the category Autism, and secondary eligibility category Specific Learning Disability. Dr. Perlman shared his independent psychoeducation/neuropsychological evaluation that he conducted of Student in December 2020. Dr. Perlman emphasized that, in addition to Autism, Student had dyslexia, which he believed was overlooked by Stanislaus. The IEP team considered Dr. Perlman's report and thoroughly discussed Student's present levels of performance. The IEP team considered input from Dr. Perlman, Parent, Student's attorney and aunt, Student's teachers, and school staff who were familiar with Student.

Student was an active and inquisitive learner. He enjoyed reading aloud in class, asked questions, and eagerly shared his thoughts and ideas. Student was kind, social, and enjoyed interacting with his peers and adults. He was outgoing and it was normal for Student to lead the class in the pledge of allegiance each morning. Student was interested in science and social studies, and math had become an area of strength since the last annual IEP. However, Student sometimes became confused or off-task during remote instruction, had difficulty understanding new concepts, and was performing below grade level.

In reading comprehension, Student improved from a third-grade level to a fourth-grade level. In writing, Student improved his ability to compose a paragraph with proper conventions and punctuation. In math, Student was now working, inconsistently, at grade level. In speech, Student could correctly identify parts of speech with 100 percent accuracy. For pragmatic speech, Student used appropriate language, engaged in conversation, and provided appropriate eye contact, all without prompting. Student had no gross or fine motor deficits, although he still required reminders to write more legibly. In executive functioning, Student had improved his ability organize and plan. He successfully accessed remote instruction and completed his assignments during both in-person and remote learning. Student had no health or adaptive living problems. Overall, Student was a hard worker who actively engaged with peers and adults.

The IEP team reviewed Student's progress towards his 2020 annual goals. By February 2021, Student met goals one through six for

- reading fluency,
- reading comprehension,
- paragraph writing,
- written language,
- math reasoning/word problems, and
- speech/grammar.

He made progress toward goals seven through 10, for English Language Arts, social behavior, behavior, and executive functioning. Student met goal one for reading fluency, considered lofty when proposed by the team, to read an unpracticed fifth-grade reading passage, showing significant reading progress since the 2020 annual IEP.

Student earned passing and above-average grades for each class during the 2020-2021 school year, including during remote learning. His grades at the time of the 2021 IEP were:

- Math B+,
- Reading A-,
- Language Arts A-,
- Science B,
- Social Studies B, and
- Writing C.

After reviewing Student's present levels of performance and considering input from Student's Parents, attorney, independent expert, and a qualified school team familiar with Student's unique needs, the IEP team determined Student had areas of need in

- reading fluency,
- reading comprehension,
- written language,
- basic reading,
- phonological awareness,
- math,
- sequential processing,
- executive functioning,
- classroom behavior,
- social awareness, and
- social behavior.

To meet those needs, the IEP team formulated 11 new annual goals.

Goal one, for reading fluency, called for Student to correctly read an unpracticed sixth-grade text at 120 words per minute, with 90 percent correct in two of three trials, measured by teacher charting. The goal had short-term benchmarks and identified the general education and special education teachers as people responsible for Student meeting the goal. The goal's baseline described that Student could read an unpracticed fifth-grade text at 108 word per minute, with 98 percent correct.

Goal two, reading comprehension, sought for Student to answer questions to a practiced sixth-grade level passage, with 80 percent correct in two of three trials, measured by teacher charting. The goal had short term benchmarks and identified the general education and special education teachers as people responsible for Student meeting the goal. The goal's baseline described that Student could read an unpracticed fifth-grade text at 108 word per minute, with 98 percent correct. The baseline showed Student could generally comprehend fifth-grade reading passages with 71 percent accuracy.

Goal three, for writing, sought for Student to correctly write a five-paragraph composition, with 70 percent accuracy in two of three trials measured by Student's work samples. The goal had short-term benchmarks and identified the general education and special education teachers as people responsible for Student meeting the goal. The goal's baseline described Student could write one paragraph with 70 percent accuracy with a writing rubric.

Goal four, for math, called for Student to independently solve various equations in four of five opportunities, measured by Student's work samples. The goal had

short-term benchmarks, identified the general education and special education teachers as people responsible for Student meeting the goal, and had a baseline that described Student's present level of performance in this area.

Goal five, for phonological awareness, required Student to appropriately respond to phonological awareness tasks at a rate of 20 to 30 per minute, with no more than three errors, measured by teacher charting. The goal had short-term benchmarks, identified the general education and special education teachers as people responsible for Student meeting the goal, and a baseline describing Student's present level of performance in this area.

Goal six, for word fluency, sought for Student, when presented with nonsense-word reading tasks, to read 40 to 50 words per minute and not to exceed three errors, measured by teacher charting. The goal had short-term benchmarks, identified the general education and special education teachers as people responsible for Student meeting the goal, and a baseline describing Student's present level of performance in this area.

Goals seven, for sequential processing and executive functioning, sought for Student to restate, organize, and plan multistep directions, measured by teacher and staff data. The goal had short-term benchmarks, identified the general education and special education staff as people responsible for Student meeting the goal, and a baseline describing Student's present level of performance in this area.

Goal eight, social awareness and behavior, was to use various strategies for impulse control, to refrain from interrupting others, and control other maladaptive behaviors, 75 percent of the time in four of five observations, measured by teacher and

staff data collection. The goal had short-term benchmarks, identified the general education and special education staff as people responsible for Student meeting the goal, and a baseline describing Student's present level of performance in this area.

Goal nine, for social behavior and life skills, sought for Student to use social cues to appropriately interact 80 percent of the time, measured by teacher and staff collection. The goal had short-term benchmarks, identified the general education and special education staff as people responsible for Student meeting the goal, and a baseline describing Student's present level of performance in this area.

Goal 10, for executive functioning and behavior, called for Student to use tools and organization skills to transition successfully between locations 80 percent of the time, measured by teacher and staff data collection. The goal had short-term benchmarks, identified the general education and special education staff as people responsible for Student meeting the goal, and a baseline describing Student's present level of performance in this area.

Goal 11, for executive functioning and classroom behavior, required Student to use tools and organization skills to timely complete academic assignments 80 percent of the time, measured by teacher and staff data collection. The goal had short-term benchmarks, identified the general education and special education staff as people responsible for Student meeting the goal, and a baseline describing Student's present level of performance in this area.

In sum, each IEP goal was measurable, appropriately ambitious, and sought to improve an identified area of deficit for Student. Each goal had short-term benchmarks and identified school personnel who were responsible for Student meeting the goal.

Each goal included a baseline that described Student's present level of performance when the goal was formulated, either through a quantitative percentage or by a qualitative narrative describing the baseline.

To meet the goals, the IEP team offered a variety of supports, accommodations, special education, and related services. Supports and accommodations included, but were not limited to, text-to-speech assistance technology, separate settings for tests, breaks, extra time to complete assignments, preferential seating, and visual systems such as checklists, writing rubrics, and supervision by a Speech-Language Pathologist, 15 minutes monthly, an increase from the 2020 annual IEP.

Special education and related services included specialized academic instruction by an inclusion specialist, inside and outside the regular classroom, for 45 minutes weekly; intensive individual services, consisting of an individual behavior aide for 210 minutes daily; specialized academic instruction for reading, writing, and math, provided in the Learning Center, for 895 minutes weekly, which was an increase of 210 minutes per week compared to the 2020 annual IEP; and behavior intervention services by a Board-Certified Behavior Analyst for 30 minutes monthly, also an increase from the 2020 IEP.

The remaining parts of Student's school day, 46 percent, would be in regular education. The IEP also offered extended school years services.

To meet Student's behavior needs, in addition to the behavior goals, classroom supports, behavior aide, and behavior intervention services, the IEP offered Student a behavior intervention plan by a Board-Certified Behavior Analyst.

The 2021 annual IEP offered Student a comprehensive plan to meet his educational needs in light of his circumstances. Although Student demonstrated progress since the 2020 IEP, the 2021 IEP significantly increased specialized academic instruction, behavior services, and oversight by the speech-language pathologist, in response to concerns raised by Parents and Dr. Perlman.

ISSUES 1(A) AND 2(B): ACADEMICS

Student complains the 2020 and 2021 annual IEPs did not offer Student appropriate goals, supports, and services to meet Student's academic needs. Student primarily asserts Stanislaus failed to remediate Student's dyslexia as a separate disability from specific learning disability. Stanislaus responds it appropriately met Student's academic needs by addressing Student's specific learning disability in reading and writing.

Dyslexia is a neurobiological disorder characterized by below age-level reading ability. Problems include difficulties with

- reading accuracy,
- fluency,
- decoding,
- writing,
- sounding out, and
- comprehending words.

While dyslexia can be remediated, there is no cure for dyslexia. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, called DSM-5, includes a definition for the diagnosis of a "specific learning disorder" but does not recognize dyslexia as a separate disorder or diagnosis. Within the category of

specific learning disorder, the DSM-5 notes that dyslexia is “an alternative term used to refer to a pattern of learning difficulties characterized by problems with accurate or fluent word decoding, and poor spelling abilities.” (Am. Psychiatric Ass’n, Diagnostic and Statistical Manual of Mental Disorders (DSM-5) 67 (5th ed. 2013) (diagnostic code F81.0).) Similarly, the Ninth Circuit has held that dyslexia is not a separate disorder from Specific Learning Disability. (*Crofts, supra*, 22 F.4th at pp. 1048-1057.)

Stanislaus completed Student’s triennial evaluations just prior to the 2020 annual IEP. Stanislaus selected qualified assessors for the triennial evaluations, including a school psychologist, speech-language pathologist, Board-Certified Behavior Analyst, Autism Inclusion Specialist, and other educational specialists. Among other areas, Stanislaus assessed Student under the “Specific Learning Disability” eligibility category, which statutorily encompasses dyslexia. On this basis, Stanislaus identified Student with a Specific Learning Disability, based on a significant discrepancy between his ability and his academic performance in the areas of listening comprehension and reading fluency, and related disorders in reading, writing, and math. Along with input from Parents and teachers, the triennial assessments informed the 2020 and 2021 IEP offers. The IEP offers were based on valid data and reflected Student’s unique areas of need.

For the 2020 IEP, Student’s unique academic needs were identified as reading fluency, reading comprehension, written language, phonological coding, and math. The 2020 IEP goals specifically targeted areas that characterized Student’s academic delays. Based on these unique areas of need and the input from all IEP team members, the IEP team formulated seven academic goals in the areas of

- reading fluency,
- reading comprehension,
- writing paragraphs/use of supporting details,

- written language for capitalization and punctuation,
- math reasoning/word problems,
- parts of speech/grammar, and
- one in English Language Arts for phonological tasks necessary for reading decoding, such as segmenting, blending, parts of words, and combining words.

The baselines for the academic goals one thorough four, and seven, contained quantitative data based on Student's present functioning. The baselines of goals five and six included qualitative statements of Student's present functioning. The academic goals were all appropriately ambitious, measurable, attainable within a year, identified school staff responsible for the goal, and designed to improve Student's unique areas of deficit.

Like the 2020 annual IEP, the 2021 IEP meeting was held for several hours over two days and included input and present levels of performance from Parents, school assessors, Student's teachers, and staff familiar with Student. The 2021 annual IEP also included input from Student's independent expert Dr. Perlman and Student's attorney. The 2021 IEP offer was based on valid data and identified Student's areas of unique need. To meet Student's academic needs, the IEP team developed six academic goals, in reading fluency, reading comprehension, composition writing, solving equations, phonological awareness, word fluency, and one in English Language Arts for phonological tasks necessary for decoding in reading, such as segmenting, blending, parts of words, and combining words. The baselines for the academic goals contained quantitative or qualitative data based on Student's present functioning. The academic goals were all appropriately ambitious, measurable, attainable within a year, identified school staff responsible for the goals, and designed to meet Student's unique needs.

To meet the 2020 goals, the 2020 annual IEP offered various supports, including,

- text-to-speech assistance technology,
- separate settings for tests,
- breaks,
- extra time to complete assignments,
- preferential seating,
- a writing rubric, and
- visual systems such as checklists.

The IEP provided 685 minutes weekly, more than two hours daily, of reading, writing and math instruction in a special education classroom, as well as various accommodations in the regular education classroom. This was an increase from Student's 2019 annual IEP, which offered 560 minutes weekly of specialized academic instruction in the Learning Center, for reading, writing and math.

Student benefitted from 560 minutes weekly of specialized academic instruction, as shown by his progress towards his 2019 annual IEP goals. The 2020 annual IEP increased the number and loftiness of the goals, and expanded Student's specialized academic instruction to correlate with that increase. It was therefore reasonable to believe at the time the 2020 IEP was formulated Student would benefit from 685 minutes weekly of specialized academic instruction in reading, writing, and math. By the 2021 IEP, Student met or made meaningful progress towards each of the 10 goals offered in the 2020 IEP and received passing or high grades in each class. Student's progress toward goals, and his passing grades, ability to access regular and special education, and readiness to move on to a higher grade level supported the appropriateness of the 2020 IEP offer.

The 2021 annual IEP also increased the specialized academic instruction, to 895 minutes weekly in the Learning Center for reading, writing and math, a 210-minute increase from the 2020 IEP. Student met lofty goals contained in the 2020 IEP, including improving his reading ability to correctly read an unpracticed fifth-grade passage, a two-year improvement over one school year. Nonetheless, Stanislaus significantly increased Student's specialized academic instruction in light of Student's unique reading delays and in consideration of Dr. Perlman's independent evaluation results and recommendations.

In addition to specialized academic instruction in the Learning Center, the 2020 and 2021 IEPs offered services by an Autism Inclusion Specialist, an individual behavior aide, behavior services by a Board-Certified Behavior Analyst, oversight by a speech-language pathologist, and a behavior intervention plan, all of which helped Student focus and improve his ability to benefit from academic instruction. No area of academic delay was left unaddressed by either the 2020 or 2021 IEPs.

During hearing, Student called Mother and experts Dr. Mitchel Perlman, Carla Priya Tjerandsen, and Sean McCormick, to support Student's claims that Stanislaus failed to offer appropriate academic goals, supports, and services. Student's witnesses primarily complained that Stanislaus overlooked Student's dyslexia. There were problems with the witnesses' testimony.

Mother was a caring and diligent advocate for Student. She was primarily concerned that Student was below grade level in reading. Mother mistakenly believed that the purpose of special education was to bring Student to grade level, using Parents' preferred instructional methodologies. Mother attributed Student being below grade level in reading to Stanislaus failing to diagnose Student's dyslexia, which she believed

was separate from a specific learning disability. As discussed below, Parents misunderstood Stanislaus's obligations to Student and for children with dyslexia.

Mitchel Perlman, Ph.D., was an experienced forensic clinical psychologist and neuropsychologist based in San Diego. Dr. Perlman did not meet or assess Student until after the 2020 annual IEP. In Fall 2020, he performed various assessments of Student, which he compiled in a written Psychoeducational/Neuropsychological Assessment report dated December 17, 2020. Like Stanislaus's assessors, Dr. Perlman determined Student had deficits in reading, writing, and math, and that Student was eligible for special education under the categories Autism and Specific Learning Disability. However, Dr. Perlman also diagnosed Student with dyslexia, and cited that as the basis for Student's delays in reading and writing. In his report and during the hearing, Dr. Perlman stressed the need for an evidence-based reading program that addressed orthology (word recognition), phonology, sequencing, reading decoding, and reading comprehension, delivered by a qualified teacher.

Dr. Perlman was an experienced evaluator. However, he failed to provide any substantive criticisms of Student's 2020 IEP or 2021 IEP, both which found Student eligible for special education under the categories Autism and Specific Learning Disability and identified Student with similar reading and writing deficits. Dr. Perlman offered no opinion regarding the services offered in Student's IEPs, including the duration, frequency, or modality of the specialized academic instruction. This omission was conspicuous given the significant increase in specialized academic instruction offered by Stanislaus following Dr. Perlman's participation in the development of the 2021 IEP. Although Dr. Perlman observed Student at school as part of his assessment, he was not familiar with the reading or writing programs used by Stanislaus staff and offered no specific critique of the instructional methodologies employed by Student's

teachers. Dr. Perlman's written report recommended that Student receive various instructional methodologies, including a method called Orton-Gillingham. However, during hearing, Dr. Perlman testified that he was not an "interventionist" and therefore refrained from recommending or criticizing a specific methodology for Student.

Dr. Perlman was primarily concerned that Student was not diagnosed by Stanislaus with dyslexia and that Student was below grade level in reading and writing. Dr. Perlman correlated these facts and erroneously opined that Student's dyslexia could have been "cured" had it been discovered earlier. Dr. Perlman's lack of familiarity with Stanislaus's instructional methods and failure to describe with any particularity the problems with the school's services diminished the persuasiveness of his testimony in this area.

Carla Priya Tjerandsen testified that Stanislaus did not provide Student appropriate services for a child with dyslexia. Tjerandsen was an educational consultant who had experience delivering instruction at a private school. She described herself as a dyslexia and Orton-Gillingham expert. She was not a psychologist and therefore was unable to diagnose dyslexia. Tjerandsen met Student once, remotely, in April 2022, when he attended Aspire Charter school, nine months after he left Stanislaus, and over a year following Student's 2021 annual IEP. Tjerandsen claimed she assessed Student in academics during their April 2022 meeting. However, she failed to describe her testing and there was no correlated assessment report provided to Stanislaus or submitted as evidence for this matter. Tjerandsen did not provide services to Student, or meet or assess him, before or after her April 2022 meeting. Tjerandsen never attended an IEP team meeting for Student, observed him at school, or met any of his service providers. The relevancy of her assessment, had it been articulated or submitted, would be low, as there was an intervening school year between the 2021 IEP offer and when Tjerandsen

first met Student. During this time, Student attended an unaffiliated local educational agency that provided its own education program. It would therefore be difficult to determine if progress, or regression, were attributable to Stanislaus or Aspire Charter School at the times of her assessment. Regardless, the results of Tjerandsen's assessment were conspicuously omitted from the evidence for this matter.

Tjerandsen was not familiar with the program, services, or methodologies used by Stanislaus. This did not stop her from criticizing the school's reading program, which she mistakenly described was limited to Read Naturally, an evidence-based reading program, which she mistakenly described as not evidence-based. Tjerandsen had erratic criticisms of Student's IEP goals, including that a particular goal's baseline was inappropriate because it used a narrative instead of a percentage, and later complained when a goal's baseline used a percentage instead of a narrative. Tjerandsen referred to the level of services offered in Student's IEP as "generous," yet later opined that Stanislaus failed to offer enough services. Tjerandsen generally believed Stanislaus failed to offer a reading program calculated to meet Student's needs as a child with dyslexia because it did not include the Orton-Gillingham teaching methodology, which will be discussed in more detail below. In light of Tjerandsen's lack of familiarity with Stanislaus's services, and her sometimes inconsistent and erroneous testimony, little weight was given to Tjerandsen's testimony.

Stanislaus special education teacher Stacey Rapisura more persuasively described that Stanislaus used a variety of State-approved, evidence-based reading programs to remediate Student's delays in reading and writing, including Read Naturally, Read 180, System 44, Fast Forward, Language Live!, and Step Up to Writing. For math, Stanislaus used Excel Math, Touch Math, Moby Max, and Eureka Math. The programs were

evidence-based methods for remediating Student's deficits, including those characterized by dyslexia, and used instructional methodologies for

- reading fluency,
- reading comprehension,
- written expression,
- vocabulary,
- reading decoding,
- sequential processing,
- reading foundational skills,
- writing, and
- math.

Rapisura was an experienced and qualified special education teacher who assessed Student and directly provided Student specialized academic instruction for several years. She was familiar with Stanislaus's programs and the services and methodologies provided to Student. She credibly described that the IEP team was informed of Student's unique reading and writing disorders and provided an appropriate and comprehensive program to meet Student's unique academic needs.

Sean McCormick also testified in support of Student's claim. McCormick had a master's degree in "Exceptional Education" and was the founder and director of Executive Function Specialists, a private agency founded in 2020. Executive Function Specialists provided services remotely. McCormick had some teaching experience and described himself as a math and executive functioning expert.

McCormick met Student once, remotely, on March 23, 2022, while Student attended Aspire Charter School and nine months after Student left Stanislaus.

McCormick assessed Student during this meeting using testing that he developed himself. During testimony, McCormick was unable to clearly describe his testing or findings. He was also unable to describe what school records he had reviewed for Student, other than Dr. Perlman's report. Like Tjerandsen's assessment, Student failed to provide McCormick's written report to Stanislaus or as evidence for this matter. The relevancy of McCormick's assessment, had it been articulated or submitted, would also have been diminutive, as there was an intervening school between Student's attendance at Stanislaus and McCormick's assessment, during which Student received special education and related services from a different local educational agency. Again, it would be difficult to attribute Student's skills at the time of McCormick's testing to either Stanislaus or Aspire Charter School. Nonetheless, the omission of McCormick's assessment, which was provided to Parents but not Stanislaus, was conspicuous and diminished the persuasiveness of his testimony.

Like Tjerandsen, McCormick had not provided Student services or observed him in a classroom, and was not familiar with the programs, methodologies, or services delivered while Student attended Stanislaus. McCormick's lack of familiarity with Student, his IEPs and school records, and Stanislaus's services, diminished his ability to persuasively testify and little weight was given to his testimony.

Overall, Student's witnesses did not understand that by evaluating Student for Specific Learning Disability, Stanislaus had statutorily evaluated Student for dyslexia. (20 U.S.C. § 1401(30); *Crofts, supra*, 22 F.4th at pp. 1048-1057.) Specific Learning Disability is the special education eligibility category for dyslexia. Stanislaus assessed for Specific Learning Disability, found Student had a specific learning disability, and developed an IEP to address Student's unique deficiencies in reading and writing that were related to his specific learning disability and which also coincided with

characteristics of dyslexia. Stanislaus was not required to denominate Student's specific learning disability as "dyslexia" to appropriately remediate his unique reading and writing deficits.

Student also asserts the IEPs denied Student a FAPE because he would have progressed more if Stanislaus used Orton-Gillingham-based teaching methods. Student's argument is misguided because a school district is not required to use the teaching methodology a parent prefers when providing special education services, such as specialized academic instruction, even when the parent's preferred methodology may yield more improvement than the district's selected methodology. Rather, school districts are entitled to select teaching methods and programs that will permit the student to make meaningful educational benefit, as a matter of educational policy. (*J.L. v. Mercer Island Sch. Dist.* (9th Cir. 2010) 592 F.3d 938, 945 n.5 (*J.L.*); see also *Rowley*, *supra*, 458 U.S. at p. 208 ("[O]nce a court determines that the requirements of the [IDEA] have been met, questions of methodology are for resolution by the States."); *R.P.*, *supra*, 631 F.3d at p. 1122 ("The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit.").

Districts need not specify an instructional method unless that method is necessary to enable a student to receive a FAPE. (*J.L.*, *supra*, 592 F.3d at p. 952.) Rather, to meet its substantive obligations, a district must merely provide an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Endrew F.*, *supra*, 137 S. Ct. at p. 1001.)

Here, Student's 2020 and 2022 annual IEPs offered substantial specialized academic instruction in a special education class to remediate Student's reading, writing,

and math delays. In addition, the IEP offered supports and accommodations in the regular education classroom. The offer was formulated by an IEP team that included Parent and qualified IEP team members who were familiar with Student. These IEPs were reasonably calculated to provide Student an educational benefit when offered, and did so, as evidenced by Student's progress on his annual IEP goals, classroom grades, and ability to access regular and special education. Notwithstanding this progress, each year, Stanislaus increased Student's services to ensure greater progress and to address Parents' concerns and those of their expert and representatives. Each IEP offer was formulated by qualified and experienced Stanislaus IEP team members, including general education and special education teachers, Autism Inclusion Specialist, school psychologists, speech-language pathologist, and Board-Certified Behavior Analysts. A preponderance of the evidence showed that the 2020 and 2021 IEP offers were reasonably calculated to provide Student an appropriate educational benefit in light of his circumstances.

A preponderance of evidence showed the instructional methods Stanislaus selected were evidence-based and designed to remediate Student's deficits in reading, writing, and math. Student did not prove the Orton-Gillingham method was required for Student to receive a FAPE. Rather, evidence showed the 2020 IEP and 2021 IEP were reasonably calculated to enable Student to progress and receive FAPE without the Orton-Gillingham methodology. Stanislaus selected evidence-based instructional methods to improve Student's unique reading disorder, including those characterized by dyslexia, including multi-sensory and multi-faceted instruction for

- reading fluency,
- reading comprehension,
- phonological processing,

- written expression,
- vocabulary,
- reading decoding,
- sequential processing,
- reading foundational skills, and
- writing.

(Ed. Code § 56335, subd. (a).) Stanislaus also provided evidence-based instruction for math.

A preponderance of evidence demonstrated Student made appropriate educational progress in light of his disabilities without the Orton-Gillingham methodology. By the 2020 annual IEP, Student met or progressed towards each goal from the prior annual IEP. Similarly, by the 2021 annual IEP, Student met each of the six academic goals and passed each class with average-to-high grades. Student's fifth-grade regular education teacher Carpenter, and his sixth-grade regular education teacher Kelly, credibly testified Student accessed regular education, correctly completed classwork and homework, and actively participated during regular education classes. Special education teacher Rapisura, who taught Student's Learning Center class during the fifth and sixth grades, persuasively testified Student improved in reading, writing, and math each school year he attended Stanislaus.

Student's witnesses decried that Student was below grade level and relied primarily on this fact to support their opinion that Stanislaus denied him a FAPE. However, there was no question that Student had a reading disorder that resulted in him reading below grade level and that required special education and related services, which is why, in part, that Student had an IEP. Had Student been at grade level in each

area, he would not have required special education and related services. Consequently, Student performing below grade level was not determinative of whether Stanislaus offered a FAPE. The IDEA does not require that students with special education services perform on par with students receiving general education instruction. (*Endrew F., supra*, 137 S.Ct. at p. 1001.) Instead, it requires that an IEP be tailored to a student's circumstances and reasonably calculated to help that student progress in light of those circumstances. Stanislaus met that standard here.

For academics, the 2021 and 2022 annual IEPs offered a comprehensive and robust plan to remediate Student's deficits and provide him a meaningful benefit in light of his circumstances. Consequently, Student failed to show by a preponderance of evidence that Stanislaus denied him a FAPE by failing to offer appropriate goals, supports, or services for academics during the 2019-2020 or 2020-2021 school years.

ISSUES 1(B) AND 2(C): STUDENT'S BEHAVIOR

Student complains he was denied a FAPE during the 2019-2020 regular school year, beginning April 6, 2020, and the 2020-2021 regular school year, because Stanislaus failed to provide him appropriate goals, supports, and services for behavior. Stanislaus contends it appropriately met Student's behavior needs.

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

Student had moderate behavior problems attributable to autism. Although an eager learner and active classroom participant, he was sometimes inattentive or off-task

during class. To address Student's behavior problems, Stanislaus assessed Student in the areas of behavior by a school psychologist, Autism Inclusions Specialist, and conducted a functional behavior assessment by a Board-Certified Behavior Analyst. The school's assessors identified off-task behavior as a problem impacting Student's education. To address this behavior problem, Stanislaus provided

- a behavior intervention plan,
- regularly updated the behavior intervention plan,
- provided intensive individual support consisting of an individual behavior aide during core instruction,
- formulated behavior goals,
- provided in-class support, and
- provided direct behavior intervention services by a Board-Certified Behavior Analyst.

THE BEHAVIOR INTERVENTION PLANS

For the 2019-2020 school year, Student's operative behavior intervention plan was dated February 13, 2020, and developed by experienced Board-Certified Behavior Analyst Natalie Libby. The plan followed Student's triennial evaluation, which included psychoeducation, inclusion, and behavior assessments, amongst other areas. Libby was familiar with Student as she had assessed him, observed him on many occasions, provided him services, reviewed his IEPs and school assessments, and interviewed his teachers. The behavior intervention plan identified problem behaviors. Student's problem behaviors were limited to off-task behavior, defined as Student engaging in non-teacher-directed activities during instructional time. The plan described the

- behavior,
- hypotheses for the function of the behavior,

- baselines for the behaviors,
- antecedents, or triggers for off-task behavior,
- proactive behavior strategies, and
- reactive behavior strategies.

Along with further recommendations if a change of circumstances occurred, the behavior intervention plan described the criteria for changing or discontinuing the plan. The behavior intervention was aligned with IDEA requirements for a behavior plan. (20 U.S.C. § 1414(d)(3)(B)(i).)

While Student's moderate behaviors manifested during in-person and remote instruction, Student became frustrated with Mother during remote instruction. Student had an individual behavior aide who accompanied Student during classroom instruction, including appearing by video for virtual classes. It was normal for the behavior aide to prompt or redirect Student several times per class. However, Mother took it upon herself to more frequently prompt and redirect Student during virtual instruction, in addition to the aide's support. Mother overdid this, prompting or redirecting Student approximately 20 times more per class than the aide. This frustrated Student and he sometimes appeared aggressive toward Mother during remote instruction.

Parents and school staff, including special education teacher Rapisura and school Board-Certified Behavior Analysts Libby and Escarcega, and inclusion specialist Hyde Olivera, communicated with Parents by email frequently during remote instruction regarding Student's behaviors. Stanislaus was responsive to Parents and called an IEP team meeting on September 3, 2020, to modify Student's IEP to help address Parents' concerns related to behavior problems during remote learning. Also on September 3, 2020, Board-Certified Behavior Analyst Escarcega modified Student's

behavior intervention plan to address behaviors that arose as a result of remote learning. For example, the updated behavior intervention plan added proactive behavior strategies and reactive behavior strategies.

Stanislaus again updated Student's behavior intervention plan in February 2021. Board-Certified Behavior Analysts Libby and Escarcega, with the assistance of regular education teacher Kelly, described Student's problem behaviors. Escarcega was an experienced behaviorist who was involved with Student since the third grade. She developed or assisted in the development of his behavior intervention plans, trained Student's individual aides, and collaborated with Student's general education teachers, Inclusion Specialist, special education teachers, and Student's applied behavior analysis home program.

The updated behavior intervention plan identified that Student's behavior problems were still limited to off-task behaviors, and described the functions for the behavior, tracked baselines for the behavior, antecedents for the behavior, proactive behavior strategies, and reactive behavior strategies, along with data taken during distance learning. In addition to other recommendations, the revised plan included specific recommendations for distance learning. All necessary criteria for a lawful and meaningful behavior intervention plan were included in the February 2021 behavior plan.

Along with the behavior intervention plan, Student's 2020 and 2021 IEPs included goals, supports, and services for behavior. The goals, supports, and services were based on recent assessments by qualified staff. For example, school psychologist Kathy Hoagland, who had 20 years-experience assessing students with disabilities

conducted a psychoeducational assessment of Student in January and February 2020. The assessment included standardized and non-standardized testing, observations, and teacher and parent interviews.

Hyde-Olivera, with 19 years' experience as an Autism Inclusion Specialist and special education teacher, assessed Student in the area of inclusion support, to help support his off-task behavior in regular education, amongst other areas. Board-Certified Behavior Analyst Libby, with a master's degree in psychology, 10 years' experience providing behavior intervention services, and seven years as a Board-Certified Behavior Analyst, reassessed Student in behavior as part of the February 2020 triennial evaluations. Libby reviewed school records, observed Student on several occasions in the classroom, and used the Functional Analysis Screening Tool, to assess Student's behaviors. Board-Certified Behavior Analyst Escarcega, with a master's degree in teaching, specializing in applied behavior analysis, and seven years as a Board-Certified Behavior Analyst, assessed Student, reviewed, records, observed Student, served Student for many years, trained staff who served Student, and developed his behavior intervention plans, was similarly qualified and familiar with Student's unique needs.

Each persuasively testified during hearing that the behavior plans and supports were adequate to improve Student's problem behaviors and permit Student to access and benefit from regular education and special education.

In sum, qualified assessors identified off-task behavior as an area of need and shared their reports during the 2020 and 2021 annual IEP team meetings. The IEP teams, including Parents, used this and other data to formulate behavior goals. For the 2020 IEP, the IEP team developed two behavior goals, including social behavior and remaining on task in the classroom, areas of identified need. Each goal was

appropriately ambitious, measurable, had baselines, benchmarks, and identified staff responsible for Student meeting the goal. To meet these goals, Stanislaus offered classroom supports, intensive individual services during core instruction consisting of an individual behavior aide for 210 minutes daily, monthly behavior supervision by a Board-Certified Behavior Analyst, and a behavior intervention plan.

With input from Parents, Dr. Perlman, Parents' attorney, Student's teachers, Board-Certified Behavior Analysts, qualified school staff, and others, the 2021 IEP team updated Student's present levels of performance in behavior. This reflected Student's updated behavior intervention plan, which identified that Student engaged in off-task behaviors an average of 8.5 times a day and included blurting out, interrupting, and talking over others during distance learning. To improve these behaviors, the IEP team formulated four behavior goals. The goals addressed Student's need for

- impulse control,
- refraining from interrupting other,
- proper use of social cues,
- appropriate interaction with others transitioning between activities and classrooms,
- organization,
- classroom behavior,
- on-task behavior, and
- completing assignments.

These goals addressed identified areas of need, were appropriately ambitious, measurable, had baselines and benchmarks, and identified staff responsible for Student meeting the goals.

To meet Student's goals, the IEP team offered a variety of special education, related services, supports, and accommodations. Related services and supports included

- intensive individual services during core instruction, consisting of an individual behavior aide for 210 minutes daily,
- behavior intervention services by a Board-Certified Behavior Analyst for 30 minutes monthly,
- inclusion support, and
- a behavior intervention plan supervised by a Board-Certified Behavior Analyst.

Although the goals, supports, and services from the 2020 IEP allowed Student to access and benefit from his education, the 2021 IEP increased Student's behavior goals and Board-Certified Behavior Analyst services. It was therefore reasonable to believe at the time the 2021 IEP was offered, the behavior goals, supports, and services would improve Student's behavior problems and permit Student to access and benefit from his educational placement.

Student's witnesses, including Mother, Dr. Perlman, Tjerandsen, and McCormick pointed to Student's off-task behaviors as conclusive evidence that Stanislaus denied him a FAPE. Yet, Student's witnesses failed to describe why the behavior services offered in Student's IEPs were inadequate. Stanislaus already identified Student's off-task behaviors as an area of need. It was not enough for Student's witnesses to point to the deficit itself as the reason why a FAPE was denied. Consequently, little weight was given to their testimony in this area.

Mother also believed Student could become aggressive as a result of inappropriate behavior services. However, there was inadequate evidence submitted during hearing to support this concern, including a complete lack of disciplinary concerns or evidence that Student had physically hurt anyone at home or school. Rather, a preponderance of the evidence showed Student's behavior problems were limited to off-task and inattentive behaviors.

Student also called Jeanine Wilkinson to support his claim that Stanislaus failed to provide appropriate behavior services. Wilkinson was a Board-Certified Behavior Analyst for 12 years at private agencies. She met Student twice, remotely, in March and June 2022, a year after Student began attending Aspire Charter School. Wilkinson did not formally assess Student but observed him complete homework with Mother. Wilkinson had no other contact with Student. Like Tjerandsen and McCormick, Wilkinson had not shared her findings with any local educational agency prior to the hearing.

The only behavior problems Wilkinson observed during her remote meeting with Student and Mother included moderate off-task behaviors and a need for occasional prompts and redirection. Yet Wilkinson opined that Student required additional services and a behavior aide that was better trained to prevent him from becoming aggressive at home. She deliberated that Student likely had greater behavior needs than those reported in his IEPs, and that he required far greater Board-Certified Behavior Analyst support, including four hours monthly of direct Board-Certified Behavior Analyst intervention, one hour for each behavior goal. There were some problems with Wilkinson's testimony.

For example, Wilkinson was not familiar with supports or services offered by Stanislaus, the individual behavior aide, or the training of the aide. Wilkinson was critical that Stanislaus had a plan to slowly remove the behavior intervention plan and supports, called a fade-out plan, which she believed was premature given Student's off-task behaviors. However, no such fade-out plan existed in Student's IEPs or behavior plans. Wilkinson attempted to criticize Student's behavior goals, but inadvertently praised the goals as "great," suitably ambitious, and appropriate to work toward Student's independence. Wilkinson referred to the school's behavior testing, the Functional Analysis Screening Tool, as the "gold standard" for behavior testing. Wilkinson had not attended Student's IEP team meetings, observed him at school, assessed him, or directly served Student. Wilkinson's sometimes inconsistent or erroneous testimony, and lack of familiarity with Student, diminished the weight of her testimony.

Overall, a preponderance of evidence did not support Student's claim that he required increased or alternative behavior supports, goals, or services to meet his unique needs. The purpose of behavior intervention services is to support a student's access to education. The behavior supports and services provided by Stanislaus achieved this goal and allowed Student to access and benefit from regular education and special education. For example, the 2020 IEP and the 2021 IEPs reported Student met or made meaningful progress towards each goal and received average-to-high grades in each class.

Student's regular education teachers Carpenter and Kelly, who taught Student during the 2019-2020 and 2020-2021 school years, each provided uncontroverted testimony Student accessed and benefited from regular education classes. Student had occasional off-task behaviors that could disrupt his peers, and therefore required occasional prompting and redirection. This was adequately performed by his individual

behavior aide. Student did not require additional behavior services to access his regular education classes. Student's special education teacher Rapisura similarly testified Student required occasional prompting and redirection, which was adequately provided by the aide. Stanislaus witnesses persuasively testified Student had sufficient behavior services in light of his circumstances. Finally, Board-Certified Behavior Analysts Libby and Escarcega persuasively testified the level of behavior support and interventions offered and provided by Stanislaus were appropriate to meet Student's moderate behavior problems. Each had assessed Student, observed him at school, directly served him for several years, and credibly testified regarding Student's behavior needs.

In sum, Stanislaus routinely assessed, collected data for, and identified Student's behaviors. It provided a comprehensive plan to remediate Student's behavior problems, including off-task behavior and did so, thereby permitting Student to access and benefit from regular education and special education. While Parents would have liked more services, a preponderance of evidence showed that the behavior goals, supports, and services offered by Stanislaus were appropriate to meet his unique needs.

For the foregoing reasons, a preponderance of evidence showed that Stanislaus did not deny Student a FAPE by failing to offer or provide appropriate goals, supports, or services for behavior.

ISSUES 1(C) AND 2(D): STUDENT'S EXECUTIVE FUNCTIONING

Student contends Stanislaus failed to offer Student adequate goals, supports, and services for executive functioning, thereby denying him a FAPE. Stanislaus denies this claim, asserting it met Student's needs in this area.

Executive functioning includes the ability to plan, organize, focus attention, and remember instructions. For students, executive functioning impacts the ability to organize, complete, and turn-in classwork and homework.

Based upon the triennial evaluations and observations by teachers and school staff, Stanislaus identified executive functioning as an area of deficit for Student. By the 2020 annual IEP, Student had improved in his ability to organize and complete classwork, follow instructions, and consistently turn-in homework. Nonetheless, the IEP team considered this an area of deficit and developed an executive functioning goal to improve Student's ability to self-manage, prioritize, and manage tasks. The goal sought to improve identified deficits, was appropriately ambitious and measurable, had a baseline and benchmarks, and identified school staff who were responsible for Student meeting the goal. To meet this and other goals, the 2020 IEP offered Student a variety of supports in regular education and special education, 180 minutes per month of inclusion services, and 685 minutes weekly of specialized academic instruction, amongst other services.

Teachers and school staff worked with Student to meet this goal, and, by the 2021 annual IEP team meeting, Student made meaningful progress towards the goal. Moreover, Student successfully accessed remote and in-person instruction and completed his classwork during both instructional modalities. Student completed his homework and improved his ability to organize, plan, and manage schoolwork. This assisted his ability to earn passing to high grades in each class.

The 2021 annual IEP team carefully reviewed Student's present levels of performance and input from Parents, Student's attorney, independent expert, teachers, and school staff who were familiar with Student to identify his unique areas of need. To

meet Student's unique needs, the IEP team developed 11 new goals, including two for executive functioning. These goals sought to improve Student's sequential processing deficits, ability to use tools and organization skills to transition successfully between locations, and to use tools and organization skills to timely complete academic assignments. The goals were measurable, appropriately ambitious, had benchmarks and baselines, and identified staff responsible for Student meeting the goals. The goals met necessary legal criteria and sought to improve an identified deficit.

To meet the goals, Stanislaus offered various accommodations and increased specialized academic instruction, amongst other services. The goals, supports, and services offered in the 2021 IEP were reasonably calculated to enable Student to obtain a meaningful educational benefit in light of his circumstances.

Student's witnesses complained that Student had delays in executive functioning, overlooking that Stanislaus had also identified this deficit. Yet, none of Student's witnesses described additional or alternative goals, supports, or services that Stanislaus should have offered to address Student's executive functioning needs. Stanislaus teachers Carpenter, Kelley, and Rapisura more persuasively testified that the supports, goals, and services already included in Student's IEPs were appropriate and improved Student's ability to organize, plan, and complete assignments.

For the foregoing reasons, Student failed to show by a preponderance of the evidence that Stanislaus denied him a FAPE by failing to offer or provide appropriate supports, goals, or services for executive functioning.

ISSUES 1(D) AND 2(E): STUDENT'S PRAGMATIC LANGUAGE

Student argues he was denied a FAPE because Stanislaus failed to provide appropriate goals, supports, and services for pragmatic language. Stanislaus responds that it assessed Student's language and speech needs by a licensed speech-language pathologist and Autism Inclusion Specialist, identified a pragmatic language disorder, formulated goals to improve that disorder, and offered classroom supports and related services by an inclusion specialist, under the supervision of the school's speech-language pathologist, to remediate this deficit.

Student was previously eligible for special education and related services under the eligibility category Speech and Language Impairment. For this disorder, Stanislaus provided Student speech and language services outside of the classroom, called pull-out services, for several years. Student improved in language and speech and by the 2019-2020 school year, his language and speech disorder was limited to a mild pragmatic language delay.

Pragmatic language refers to social language skills that are used in daily interactions with others. Examples include conversational skills, non-verbal communication such as eye contact, understanding non-literal language, and understanding emotions.

As part of Student's triennial evaluations in February 2020, Stanislaus's speech language pathologist Sara Perino conducted a speech and language assessment. Perino was an experienced speech-language pathologist, with 23 years' experience assessing

and providing services to children with speech and language disorders. Perino was familiar with Student, having provided him pull-out speech and language services for several years. She testified in support of the 2020 and 2021 annual IEPs.

As part of Perino's 2020 speech and language assessment, she assessed Student in the areas of phonology, semantics, syntax and morphology, and pragmatic language. Perino assessed Student over three separate occasions using standardized and non-standardized instruments and observations. Perino's assessment revealed Student had adequate speech production, meaning there were no problems in his mechanisms of the face, mouth, jaw, or structure, for speech production. Student engaged in conversational speech without any errors and was intelligible to both the known and unknown listener. Student's speech fluency and voice quality were average. Student's expressive and receptive language also fell within the average range of testing. Perino used the Comprehensive Assessment of Spoken Language, a standardized oral language assessment, and the Pragmatic Language Skills Inventory, which consists of teacher and parent rating scales, to assess Student's pragmatic language.

Based upon her testing and observations, Perino identified Student with a language disorder in the area of pragmatics. Student had no other language or speech delays and Perino believed Student's pragmatic language delay should be addressed with supports in the general education classroom. Perino provided Student direct, pull-out services for several years, and felt Student no longer benefited from direct speech and language instruction. Rather, Student needed to work on generalizing pragmatic language skills and strategies with his typical peers. Perino believed this could best be accomplished through the assistance of the school's Autism Inclusion Specialist.

Perino shared the results of her triennial assessment during the 2020 IEP team meetings. Parent, Perino, and the IEP team reviewed Student's present levels of performance, including in pragmatic language. The IEP team agreed that Student spoke well and was intelligible to others. He had age-appropriate voice, articulation, and fluency. Student used appropriate language and eye contact, and eagerly engaged in conversation. Overall, Student made significant improvement in his behavior, social interactions, and organization over the past school year. Nonetheless, the IEP team continued to identify Student with a pragmatic language disorder.

To meet this area of need, the IEP team formulated a goal to improve Student's pragmatic language skills, including his knowledge of perspective-taking, flexibility, ability to compromise with peers, and ability to self-advocate appropriately with peers. To meet this goal, the IEP offered classroom supports, 45 minutes weekly of inclusion services, and annual supervision by the school's speech-language pathologist, along with an individual aide for prompting and redirection, and other services. Parents agreed to the IEP offer and did not challenge the appropriateness of Perino's speech and language assessment.

By the 2021 annual IEP team meeting, Student made meaningful progress toward the pragmatic language goal, improved his ability to use social language, and could correctly identify parts of speech with 100 percent accuracy. Student used appropriate language, engaged in conversation, and provided appropriate eye contact, all without prompting. Student accessed regular and special education and received passing and high grades in each class. This evidenced the appropriateness of Stanislaus's 2020 IEP offer.

The 2021 IEP team again identified pragmatic language as an area of need. To remediate this need, the IEP team formulated three goals to improve Student's use of pragmatic language including social cues reminders, age-appropriate social behavior, appropriate participation during social interactions, use of environmental and observational strategies to better communicate with others, and to verbally paraphrase instructions. To meet these goals, the IEP offered a variety of classroom supports, inclusion services for 45 minutes weekly, increased speech-language pathologist support to monthly supervision, an individual aide for redirection and prompting, and other services. Given Student's progress in pragmatic language skills with less services offered in the 2020 IEP, it was reasonable for Stanislaus to believe the increased goals, supports, and services in the 2021 annual IEP would meet Student's pragmatic language needs.

Autism Inclusion Specialist Inclusion Hyde-Olivera also testified in support of the 2020 and 2021 IEPs. As part of Stanislaus's 2020 triennial evaluations, Hyde-Olivera conducted an inclusion assessment for Student. Amongst other areas, Hyde-Olivera observed Student's pragmatic language and formally and informally assessed Student's social language. As an experienced inclusion specialist, it was normal for Hyde-Olivera to assess in these areas, to help formulate pragmatic language goals, and to be responsible for working with Student on those goals inside and outside of regular education classes. Hyde-Olivera provided Student 45 minutes of direct inclusion services weekly, during which she worked to improve Student's pragmatic language skills. Hyde-Olivera and Perino credibly testified the inclusion services, along with supervision by Perino, appropriately met Student's pragmatic language needs.

Student called Tracie Soder to support his claim that Stanislaus did not appropriately meet his pragmatic language needs. Soder was an experienced speech language pathologist with 17 years' experience assessing children with language and speech deficits. Soder met Student for the first time in March 2022, almost a year after he left Stanislaus. She did not formally assess Student or observe him at school. Although an experienced assessor, Soder had limited knowledge of Student and overall failed to support Student's contentions. Based upon her informal meeting with Student, she described him as sweet, pleasant, conversational, and receptive to others, further evidencing that Student only had a mild pragmatic language delay.

Soder opined the IEP goals were adequately ambitious and addressed pragmatic language delays. She complained the school's speech-language pathologist should have provided Student more language services, yet testified it was "great" that an inclusion specialist was providing the services in this area. Soder opined Student should receive 30 minutes of services each week to address his pragmatic language needs. This aligned with the IEPs' offer of 45 minutes weekly of the inclusion services, along with the speech-language pathologist supervision. Overall, Student's witnesses failed to impugn the testimony of Perino and Hyde-Olivera, or the integrity of the IEP offers regarding Student's pragmatic language needs.

For the foregoing reasons, Student failed to show by a preponderance of the evidence that Stanislaus denied him a FAPE by failing to offer or provide appropriate goals, supports, or services for pragmatic language.

ISSUES 1(E) AND (F), AND 2(F) AND (G): STUDENT'S FINE MOTOR SKILLS

Student complains that Stanislaus denied him a FAPE by failing to offer goals, supports and services, and to assess, his fine motor deficits. Stanislaus responds that Student did not have a fine motor deficit that required assessment, goals, supports, or services.

Student qualified for special education services since May 2012, based on special education assessments. In February 2020, Stanislaus conducted a triennial reassessment of Student. There was no dispute regarding the 2020 triennial evaluations, and the evaluations were conducted outside the applicable two-year statute of limitations. (20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2); Ed. Code, § 56505, subd. (I).) Rather, Student's issue is limited to an allegation that Stanislaus failed to assess, and serve, Student's fine motor needs.

Prior to making a determination of whether a child qualifies for special education services, a school district must assess the child. (20 U.S.C. § 1414(a) & (b); Ed. Code, §§ 56320, 56321.) After the initial assessment, a school district must conduct a reassessment of the special education student not more frequently than once a year, but at least once every three years. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381, subd. (a)(2).) By this standard, the fine motor assessment requested in this case constitutes a reassessment.

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

also Ed. Code, § 56381, subd. (a)(1).) By this standard, Stanislaus would have been obligated to assess Student for a fine motor disorder if Parents or a teacher requested that assessment.

Parents, Student's aunt, Student's teachers, and qualified school staff attended two annual IEP team meetings for the 2019-2020 school year. No one requested an assessment of Student's fine motor development during these meetings. Nor did anyone suggest fine motor skills was an area of suspected deficit. To the contrary, the IEP team believed Student's gross and fine motor needs were average compared to his typical peers. No one requested Stanislaus assess Student in the area of fine motor development during the 2019-2020 school year.

Parents, their attorney, and private expert Dr. Perlman, attended the annual IEP team meeting for the 2020-2021 school year. Student's teachers and qualified school staff, and Stanislaus's attorney also attended the 2021 annual IEP team meeting. No one requested an assessment of fine motor development during any IEP team meeting in the 2020-2021 school year. Nor did anyone suggest Student required a fine motor skills assessment outside of an IEP team meeting. Notably, Dr. Perlman completed his psychoeducational/neuro-psychological independent evaluation in December 2020, and shared the results of his assessment during the February 2021 IEP team meeting. Dr. Perlman did not recommend Student be assessed in the area of fine motor development in his written report, during the IEP team meeting, or during his testimony.

Fine motor deficits sometimes fall under the purview of occupational therapy. However, no person requested that Student be assessed in the area of occupational therapy during the timeframe in dispute.

Given the foregoing, Stanislaus was not obligated to assess Student for a fine motor deficit based upon it being requested by Parents or teachers, or for being identified as a suspected area of deficit for Student during an IEP team meeting.

Rather, Student argues his poor handwriting was conclusive evidence he had a fine motor deficit that required assessment, goals, supports, and services. Student solely pointed to handwriting samples as self-describing evidence of a fine motor delay. However, a preponderance of evidence, including assessment and testimony by Dr. Perlman, showed that Student's poor handwriting was attributable to his specific learning disability, which included a reading and writing disorder.

Stanislaus assessed and identified that Student had a writing disorder. Each IEP denotes writing as an area of need, and provides goals, special education and related services, supports, and accommodations, specifically to improve Student's writing. For example, the 2020 annual IEP provided two writing goals, including for Student to write a paragraph with appropriate punctuation, organization, and content, and to properly capitalize and punctuate dictated sentences. The IEP goals

- sought to improve Student's handwriting,
- were appropriately ambitious, measurable, attainable within a year,
- included an attached writing rubric,
- had short-term benchmarks and baselines, and
- identified general education and special education staff as people responsible for Student meeting the goal.

The goals met all legal requirements.

To meet those goals, the 2020 IEP offered various classroom supports, an individual aide, inclusion services, and 685 minutes weekly of specialized academic

instruction, amongst other services. The specialized academic instruction was an increase over Student's prior annual IEP, and included state-approved, evidence-based instruction for writing.

By the 2021 annual IEP team meeting, Student improved in writing, met each writing goal, and earned passing and high grades for each subject, including a writing class. The IEP team reported Student had no gross or fine motor deficits, but still required reminders to write more legibly. To meet this need, the IEP team formulated and offered a writing goal, for Student to correctly write a five-paragraph essay. The goal was appropriately ambitious, measurable, had a baseline and benchmarks, and identified school staff who were responsible for Student meeting the goal. The goal met legal requirements. To meet the goal, the IEP offered Student a variety of classroom supports and accommodations, including,

- text-to-speech assistance technology,
- separate settings for tests,
- breaks,
- extra time to complete assignments, and
- visual systems such as checklists.

The IEP also offered 895 minutes weekly of specialized academic instruction, an increase of 210 minutes more than Student's last IEP, amongst other services. Like the prior IEP, the specialized academic instruction incorporated state-approved, evidence-based instruction for writing. The supports and services offered to meet the goal and Student's writing needs were lawful and appropriate.

In March and April 2022, Mendel Uychutin, a Registered Occupational Therapist, assessed Student and consolidated his findings in a written report. Uychutin found

Student's fine motor skills for handwriting was within the average performance range. This finding corresponded with the lack of observed fine motor delays during the 2019-2020, and 2020-2020 school years, and the lack of requests for an assessment.

In sum, there was no persuasive evidence offered during hearing that Student had a fine motor delay that required assessment, goals, supports, or services, outside of the writing goals, supports, and services already offered in Student's IEPs.

Given the foregoing, Student failed to show by a preponderance of the evidence that Stanislaus denied him a FAPE by failing to offer or provide an assessment, goals, support, or services in the area of fine motor development.

ISSUE 1(A): DISTANCE LEARNING

Student complains that Stanislaus denied him a FAPE by failing to provide appropriate supports for distance learning during the 2020-2021 school year. During hearing and in Student's closing brief, Student primarily complained that Stanislaus's failure to provide an in-person behavior aide at Student's home during remote instruction denied him a FAPE. During this time, distance learning was lawfully ordered by California's governor to help curb the spread of a deadly, global pandemic, COVID-19. Student argues that Stanislaus should have provided him an in-person aide despite the Governor's orders and pandemic.

Stanislaus contends it provided Student appropriate supports during distance learning, in compliance with state and federal law.

On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency in California as a result of the COVID-19 pandemic.

On March 13, 2020, Governor Newsom issued Executive Order N-26-20, which authorized school districts to continue educating students to the extent feasible, through distance learning and/or independent study.

In response to COVID-19's unprecedented rapid spread and to protect public health and safety, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering all California residents to immediately stay at their home or place of residence except as needed to operate critical federal infrastructure sectors. (Cal. Exec. Order N-33-20 (March 19, 2020).) The California State Public Health Officer issued a list of designated "essential" workers who were allowed to leave their homes to support specified critical infrastructure sectors, which included workers teaching at "public and private ... K-12 schools," but only for "distance learning." Executive Order N-33-20 remained in effect until June 11, 2021. (*Brach v. Newsom* (9th Cir. 2021) 6 F.4th 904, 911.)

The Governor's stay at home order that restricted teaching to distance learning was authorized under Government Code sections 8567, 8627, and 8665 and Health and Safety Code sections 120125, 120140, 131080, 120130, subdivision (c), 120135, 120145, 120175 and 120150. The Governor's order and local educational agencies' school closures and limitation of instruction to distance learning was consistent with the Ninth Circuit's decision in *N.D. v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116-1117 (*N.D.*). In *N.D.*, the Hawaii Department of Education, which operates Hawaii's schools as a single local educational agency, shut down public schools on Fridays to alleviate a major fiscal crisis. The Ninth Circuit upheld the school district's ability to stop providing instruction on Fridays to alleviate a major emergency and rejected the students' arguments that ceasing services owed to them under their IEPs violated the IDEA. The Ninth Circuit explained, "Congress did not intend for the IDEA to apply to

system wide administrative decisions[;] Hawaii's furloughs affect all public schools and all students, disabled and non-disabled alike" and "[a]n across the board reduction of school days such as the one here does not conflict with Congress's intent of protecting disabled children from being singled out." (*Id.* at p. 1116.) The Court reasoned the IDEA does not "give the parents of disabled children veto power over a state's decisions regarding the management of its schools." (*Id.* at p. 1117.)

Finally, the Governor's stay at home order that restricted teaching to distance learning was deemed lawful by the United States District Court. (*E.M.C. v. Ventura Unified School District* (C.D.Cal. October 14, 2020, No. 2:20-CV-09024-SVW-PD) 2020 WL 7094071 (*E.M.C.*)). Similar to Student's allegations, the student in *E.M.C.* experienced difficulties with distance learning and alleged she required in-person services despite the Governor's prohibition on in-person instruction. Relying on *N.D., supra*, the court upheld the Governor's order, and denied the student's request for in-person services despite the student's IEP providing in-person services, as the IEP had been modified by lawful statewide restrictions prohibiting in-person instruction. (*Id.* at *6.) The court rejected the student's argument that restrictions on in-person services did not excuse a school district from its obligation to provide in-person IEP services. Similarly, here, Student's IEP was lawfully modified by the statewide restrictions requiring school closures and distance learning.

Student argues Stanislaus should have provided Student an in-person aide during distance learning despite the foregoing. Student relies on *Parent v. Orcutt Union Sch. Dist.*, OAH Case 2020100618 (April 22, 2021) (*Orcutt*), to support his assertion that he qualified for an exception to distance learning. In *Orcutt*, the student was severely disabled and attacked his parent during distance learning. For these reasons, *Orcutt* found the student qualified for an exception to distance learning and the school district

should have provided the student in-person support. *Orcutt* relied on California Department of Education guidance that supported an exception to distance learning under those circumstances, for a severely disabled or medically fragile student. *Orcutt* was issued in April 2021. Following *Orcutt*, in October 2021, the Ninth Circuit found that school districts are not obligated to follow guidance from the Department of Education. (*Cyrus Csutoras v. Paradise High School* (9th Cir. 2021) 12 F.4th 960.) Consequently, Stanislaus was not required to determine whether the severity of Student's disability qualified him for an exception to distance learning. (*N.D.*, supra, F.3d at p. 1117; *Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 (superseded on other grounds by statute); Cal. Code Regs., tit. 5, § 3085 [OAH Decisions are not binding precedent]). Moreover, Student failed to show that the severity of Student's disabilities was similar to those demonstrated by the student in *Orcutt*.

Student's argument also overlooks the basis for the Governor's order and Stanislaus's compliance with the order. In fall 2020, COVID-19 was a deadly pandemic with no available vaccine that killed millions worldwide and eventually killed over one million Americans. It was reasonable and necessary for Stanislaus to follow the Governor's orders to close schools and provide distance learning to help curb the spread of this sometimes fatal, airborne, respiratory virus. While Parents desired to have an aide support Student in the home, to do so would have exposed Student to risk of infection and possible death, along with Parents, and any other relatives who came into contact with Student. It would also expose the aide to risk of infection and death, along with the aides' children, parents, grandparents, and others. This highlights the impracticality and deadly risks associated with having a parent or IEP team have the ability to veto lawful stay-at-home orders.

Evidence also showed that Stanislaus appropriately met Student's educational needs during distance learning. For example, Stanislaus worked on Student's IEP goals, and provided the special education, regular education, related services, and supports in Student's IEPs during remote instruction. This included an individual aide who accompanied Student remotely when he received synchronous instruction by videoconference.

Stanislaus also updated Student's IEP as necessary to address concerns related to distance learning. On September 3, 2020, Stanislaus held an addendum IEP team meeting to discuss Student's distance learning. Student was an eager and active participant during his virtual instruction but was sometimes inattentive or spoke out of turn. For example, Dr. Perlman, after observing Student over two consecutive days during distance learning in Fall 2020, reported that Student easily accessed his regular education classes, including math and science. Student appropriately logged into each class and enthusiastically participated during instruction. Student volunteered to answer questions, engaged in conversation, and normally responded correctly to teacher questions. Student occasionally spoke out of turn because he was excited to be in class but did not demonstrate any significant behavior problems. Overall, Dr. Perlman, who only met, assessed, and observed Student remotely, found Student was easy to work with, easily established and maintained rapport with others, and approached his schooling and tasks with a high degree of effort and enthusiasm. Dr. Perlman's report and testimony supported the conclusion Student did not require additional supports to access distance learning.

Nonetheless, the September 2020 IEP team discussed various strategies to help Student stay engaged during remote instruction, including more prompting by the individual aide and less prompting by Mother, which distracted Student. The use of

break-out rooms, asynchronous work, and more time for Student to converse with his peers, additional special education curriculum for the home, expanded virtual classes in the Learning Center, some class scheduling changes per Parent request, teacher-provided notes, an additional virtual session for social and emotional support, prerecorded math sessions, and a revised behavior chart, were all offered by Stanislaus during the addendum IEP team meeting. Stanislaus was responsive to Student's needs during distance learning and modified his IEP, as necessary to support his access to distance learning.

Additionally, in September 2020, Board-Certified Behavior Analyst Escarcega updated Student's behavior intervention plan to help address Student's behaviors during distance learning. The modified plan added

- home-based reinforcers,
- teacher-and-staff-provided praise during classroom instruction,
- virtual classroom reminders and accommodations,
- access to recorded class sessions,
- a visual schedule, and
- other behavior strategies.

Escarcega persuasively testified that the behavior supports were adequate for Student to access his instruction. This was evidenced by Student meeting or progressing towards each annual goal and earning passing and high grades during this time.

Notably, Student's experts Dr. Perlman, Tjerandsen, McCormick, and Wilkinson each met Student solely by videoconference, including after Stanislaus schools had reopened for in-person instruction. Student's witnesses believed it was safer to meet with Student and Parents remotely than in person. Moreover, Student's witnesses

believed they were able to engage with Student and assess his needs remotely. This evidence supported that Student had the ability to use and benefit from distance learning.

Student's expert Wilkinson testified in support of Parents' request for an in-person aide during remote instruction. Although an experienced Board-Certified Behavior Analyst, she did not observe Student during remote instruction, did not formally assess him, did not observe him at school, and only met Student twice, remotely, in March and June 2022, long after Stanislaus provided Student distance learning. For these reasons, Wilkinson's testimony was less persuasive than the school's behaviorists, who had assessed and served Student. Overall, Mother and Wilkinson's testimony that Student required an in-person aide to access remote instruction, despite the global outbreak of a highly contagious and sometimes fatal virus resulting in the Governor declaring a state of emergency and ordering citizens to stay at home, was not persuasive or supported by a preponderance of the evidence.

For the foregoing reasons, Student failed to show by a preponderance of the evidence that Stanislaus denied him a FAPE by failing to provide appropriate supports during distance learning.

ISSUE 3: DID STANISLAUS DENY STUDENT A FAPE BY FAILING TO PROVIDE AN APPROPRIATE PRIOR WRITTEN NOTICE TO PARENTS' APRIL 18, 2021 CONSENT-WITH-EXCEPTIONS COMMUNICATION?

Student alleges Stanislaus did not appropriately respond to Parents' "consent with exceptions" letter dated April 18, 2021. Parents sent the letter in response to Stanislaus's February 18, and March 2, 2021 annual IEP offer. The five-page letter

described Parents consented to the IEP, but had various questions, concerns, and requests regarding Student's educational program. Stanislaus argues it was unnecessary to respond to Student's letter because Parents consented to the IEP, and Stanislaus was not seeking to change Student's educational program outside of the IEP.

The IDEA requires a school district to provide prior written notice to the parents of a pupil whenever it proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the pupil, or the provision of a FAPE to the pupil. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a); Ed. Code § 56500.4.) A prior written notice must meet specific requirements to protect parents' rights and participation. (20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b).)

Stanislaus convened Student's annual IEP team meeting on February 18 and March 2, 2021. Parents, along with Dr. Perlman, participated during the IEP team meetings. Parents and Dr. Perlman believed that Stanislaus overlooked Student's dyslexia and requested information regarding Stanislaus's instructional programs for dyslexia. Stanislaus IEP team members agreed to provide that information to Parents following the IEP team meetings but failed to do so.

Parents' request for information regarding Stanislaus's instructional programs for dyslexia was reasonable and significant, as Education Code section 56335, subdivision (a), requires that school districts develop program guidelines for dyslexia. While Stanislaus showed during the due process hearing that it met this requirement and Student's unique needs, as interpreted by *Crofts*, it failed to describe to Parents how this requirement was met during Student's IEP team meetings.

Accordingly, on April 18, 2021, Parents sent Stanislaus a five-page letter describing their consent, with exceptions, to the IEP offer. Attached to the letter was the signature page to the IEP, identifying that Parents consented to the IEP offer. The letter described concerns Parents had regarding various parts of the IEP offer and meeting notes, and requests related to those concerns. In particular, Parents requested that Stanislaus provide Student instructional methods for dyslexia, data showing progress towards goals, amendments to IEP goals, that a registered behavior technician replace Student's individual behavior aide, a new functional behavior assessment, to expand Student's categories of special education eligibility to include Dyslexia in addition to Autism and Specific Learning Disability, and other requests.

Stanislaus did not respond to the April 18, 2021 letter, and Parents removed Student from Stanislaus following the conclusion of the 2020-2021 school year, May 28, 2021. Student asserts Stanislaus's failure to respond to the letter violated his educational rights.

Stanislaus contends it was not necessary to reply to the letter because Parents consented to the IEP and Stanislaus was not proposing to initiate or change the identification, evaluation, or educational placement, or the provision of a FAPE, to Student. Stanislaus errs, as it was also required to provide prior written notice when it refused to initiate or change the identification, evaluation, or educational placement, or the provision of a FAPE, to a student. Parents requested changes to the FAPE offer, including amended goals, a different level of qualifications for Student's behavior aide, different instructional methodologies, a new assessment, and a change to the identification of Student's eligibility category for special education services, amongst

other requests. While Stanislaus was not required to make those changes, Stanislaus was still required to provide written notice to Parents as to why it was refusing such changes. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4.)

Stanislaus's failure to provide prior written notice in response to Parent's April 18, 2021 letter constitutes a procedural violation of the IDEA. A procedural violation of the IDEA constitutes a denial of a FAPE "only if the violation:

- (1) impeded the child's right to a FAPE;
- (2) significantly impeded the parent's opportunity to participate in the decision-making process; or
- (3) caused a deprivation of educational benefits."

(Ed. Code, § 56505, subd. (f)(2); *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, Missoula, Mont. (9th Cir. 1992) 960 F.2d 1479, 1484 (*W.G.*.)

Parents believed Stanislaus did not use instructional programs for disorders characteristic of dyslexia and that Student required greater behavior intervention. As found herein, Stanislaus appropriately provided evidence-based instructional methods to ameliorate Student's reading and writing disorder under the eligibility category Specific Learning Disability, which included delays characteristic of dyslexia, in compliance with Education Code section 56335 and *Crofts*. (Ed. Code, § 56335; *Crofts*, *supra*, 22 F.4th at pp. 1048-1057.)

As found herein, a preponderance of evidence also showed Stanislaus met Student's behavior needs, without the need for a new functional behavior assessment or changing Student's individual behavior aide to a registered behavior technician

provider, as requested by Parents in the April 18, 2021 letter. However, the purpose of a prior written notice is to inform parents of a school district's refusal to take actions requested by parents and to describe the basis for its refusal, such as

- refusing to change an instructional program,
- changing a service provider,
- denying a new assessment, or
- refusing to amend a student's eligibility category.

Had Stanislaus described the basis for its refusal of these requests in a prior written notice, it may have deterred Parents from pursuing a due process hearing on similar issues. While Parents consented to the 2021 IEP, Mother persuasively testified Parents removed Student from Stanislaus following the 2020-2021 school year because Parents believed, albeit mistakenly, that Stanislaus failed to provide services that remediated characteristics of dyslexia or adequate behavior services. It was incumbent upon Stanislaus to reply to Parents' April 18, 2021 letter for Parents to have the ability to determine whether they wanted to keep or remove Student from Stanislaus's educational program. Stanislaus's failure to provide prior written notice to Parents' requests significantly impeded Parent's opportunity to participate in the decision-making process regarding their son's educational program and denied Student a FAPE on that basis. (Ed. Code, § 56505, subd. (f)(2); *W.G., supra*, 960 F.2d at p. 1484.)

Consequently, Student showed by a preponderance of the evidence that he was denied a FAPE because Stanislaus's failed to respond to Parents' April 18, 2021 consent-with-exceptions letter.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1, SUBSECTIONS (A), (B), (C), (D), (E), AND (F):

Stanislaus did not deny Student a FAPE, beginning April 6, 2020, during the 2019-2020 regular school year, by failing to provide appropriate goals, supports, or services for academics, behavior, executive functioning, pragmatic language, fine motor, or by failing to assess for a fine motor deficit.

Stanislaus prevailed on this issue, including all subsections.

ISSUE 2, SUBSECTIONS (A), (B), (C), (D), (E), (F), AND (G):

Stanislaus did not deny Student a FAPE during the 2020-2021 regular school year by failing to provide appropriate supports during distance learning, appropriate goals, supports and services for academics, behavior, executive functioning, pragmatic language, fine motor, or by failing to assess for a fine motor deficit.

Stanislaus prevailed on this issue, including all subsections.

ISSUE 3:

Stanislaus denied Student a FAPE by failing to appropriately respond to Parents' April 18, 2021 consent-with-exceptions communication.

Student prevailed on this issue.

REMEDIES

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were proper under the IDEA and replaced services that the district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *School Comm. of Burlington v. Dept. of Educ.* (1985) 471 U.S. 359, 369-371 [85 L.Ed.2d 385].)

In certain cases, appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy violations that may benefit other pupils. (*Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].)

Here, Stanislaus denied Student a FAPE by failing to provide prior written notice, which significantly impeded Parents' opportunity to participate in the decision-making

process regarding Student's education and denied Student a FAPE on that basis. (Ed. Code, § 56505, subd. (f)(2). Student is therefore entitled to a remedy.

Amongst other remedies, Student requested reimbursement for Dr. Perlman's December 17, 2020 Psychoeducational/Neuropsychological assessment. While Stanislaus appropriately addressed Student's reading and writing delays, including those characteristic of dyslexia, under Specific Learning Disability, Stanislaus failed to explain this compliance in response to Parents' April 18, 2021 consent-with-exceptions letter. Stanislaus's failure to provide prior written notice required Parents to rely on Dr. Perlman, an experienced neuropsychologist, to answer questions they had regarding Student's educational program and in deciding whether to reject Stanislaus's educational program by removing Student to Aspire Charter School. It is therefore equitable to reimburse Parents for the costs of Dr. Perlman's assessment and IEP participation as a remedy to Stanislaus's failure to provide prior written notice. Student provided evidence during hearing that Parents incurred \$7,087.50 for Dr. Perlman's assessment and IEP participation. It is therefore equitable to order Stanislaus to reimburse Parents \$7,086.50 as a remedy to Stanislaus denying Student a FAPE by failing to provide prior written notice.

Education code section 56335, subdivision (a), requires that school districts develop program guidelines for dyslexia. While Stanislaus showed during the due process hearing that it met this guideline and Student's unique needs as required by *Crofts*, it failed to describe to Parents how this requirement was met in response to Parents' April 18, 2021 letter requesting Stanislaus provide Student instructional methods for dyslexia. This failure, along with Stanislaus's failure to describe in a prior written notice why it refused Parents' other requests, significantly impeded Parents' participation in the decision-making process and therefore denied Student a FAPE. To

remedy this violation, and to prevent similar, future violations, it is equitable to order Stanislaus to train its special education administration and staff on the requirements concerning prior written notice. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a); Ed. Code, §§ 56500.4, 56335, subd. (a).)

Student's request for reimbursement for assessments by Tjerandsen, Soder, and McCormick are denied as those assessments were obtained by Parents almost an entire school year after Parents removed Student from Stanislaus, were not relied upon by Parents in their decision to remove Student from Stanislaus, were not provided to Stanislaus for consideration or submitted as evidence for this matter and were obtained solely in preparation for the due process hearing.

Other remedy requests are denied as being too remote from the narrow FAPE denial found in this Decision.

ORDER

1. Within 30 calendar days of this Decision, Stanislaus shall reimburse Parents \$7,087.50, which represents costs for Dr. Mitchel Perlman's December 17, 2020 Psychoeducational/Neuropsychological assessment and related IEP team meeting participation. Student submitted sufficient documentation at hearing as to the assessment's cost and payment by Parents.
2. Within 60 calendar days of this Decision, Stanislaus shall train its special education administration and staff for a total of two hours regarding its obligations concerning prior written notices.
3. Student's other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

/s/

Paul H. Kamoroff

Administrative Law Judge

Office of Administrative Hearings