

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2022110407

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PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL DISTRICT.

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DECISION

FEBRUARY 27, 2023

Parent on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, State of California, on November 14, 2022, naming San Juan Unified School District, called San Juan or San Juan Unified. The Office of Administrative Hearings is called OAH.

On January 4, 5, 10, 11, 12, 17, 18, and 19, 2023, Administrative Law Judge, referred to as ALJ, Brian H. Krikorian heard the due process matter. Attorneys Lynda Williams, Leroy Sumter, and Sheila Bayne represented Student. Attorneys Dee Anna

Hassanpour and Merle Gould represented San Juan. Jessica Lauder, San Juan's Assistant Director of Special Education attended all hearing days on San Juan's behalf. Parent attended all hearing days on behalf of Student.

The matter was continued to February 10, 2023, for the parties to submit closing briefs. Closing briefs were received on February 10, 2023, the record was closed, and the matter was submitted for decision.

## ISSUES

An Individualized Education Program shall be referred to as an IEP. A free appropriate public education shall be referred to as a FAPE.

1. Did the parties' prior settlement agreement, and waiver of claims, divest OAH of jurisdiction to adjudicate any issues before April 23, 2021?
2. Did San Juan Unified deny Student a FAPE from November 14, 2020, and extended school year, through the complaint's filing date, by failing to implement Student's IEP program, services, and accommodations to allow student to access distance learning?
3. Did San Juan Unified deny Student a FAPE by assigning Student to distance learning from the beginning of the 2020-2021 school year, until the end of San Juan Unified's distance learning program, without evaluating Student and offering necessary programs, services, and accommodations to ensure Student could obtain a FAPE through distance learning?

4. Did San Juan Unified deny Student a FAPE from November 14, 2020, and extended school year, through the complaint's filing date, by failing to properly assess Student for current levels and transition needs, and failing to schedule and hold IEP team meetings in time to offer needed services, programs, and accommodations?
5. Did San Juan Unified deny Student a FAPE from November 14, 2020, and extended school year, through the complaint's filing date, by failing to appropriately assess Student in
  - occupational therapy,
  - vocational,
  - communication,
  - adaptive physical education,
  - social skills,
  - adaptive living skills,
  - behavior,
  - assistive technology, and
  - speech?
6. Did San Juan Unified deny Student a FAPE from November 14, 2020, and extended school year, through the complaint's filing date, by failing to materially implement
  - occupational therapy,
  - vocational, communication,
  - adaptive physical education,
  - social skills,

- adaptive living skills,
  - behavioral,
  - assistive technology, and
  - speech services?
7. Did San Juan Unified deny Student a FAPE by failing to evaluate Student for academic regression as a result of San Juan Unified's failure to materially implement Student's IEP from November 14, 2020, through the 2021-2022 school years, to identify necessary programs, services, and accommodations to address Student's regression?
8. Did San Juan Unified deny Student a FAPE for the 2021-2022 school year and extended school year, through the complaint's filing date, by failing to develop and implement an IEP that addressed Student's learning disabilities related to Rett Syndrome, and specifically by failing to:
- develop appropriate present levels of performance,
  - address Parent concerns regarding regression and appropriate transition, and
  - offer appropriate supports, programs, accommodations, and services?
9. Did San Juan Unified deny Student a FAPE from October 2020, through the complaint's filing date, by failing to develop an IEP reasonably calculated to enable Student to receive educational benefit by failing to offer adequate goals in Student's areas of need?

## JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint unless the other party consents and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this hearing, Student has the burden of proving the issues raised by the complaint Student filed. (20 U.S.C.

§ 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).) The factual statements included in this decision constitute the findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 11 years old and in fifth grade at the time of hearing. Student resided within San Juan's geographic boundaries at all relevant times. Student was eligible for special education under the categories of Orthopedic Impairment and Other Health Impairment. Student was diagnosed with Rett Syndrome.

Rett syndrome is a genetic disorder that typically becomes apparent after six to 18 months of age and is present almost exclusively in females. It is considered a rare disorder, occurring in one of every 10,000 females. Symptoms include impairments in language and coordination, and repetitive movements. Those affected often have slower growth and difficulty walking. Complications of Rett syndrome can include seizures, scoliosis, and sleeping problems. In addition, Student suffered from Apraxia which made her unable to use words easily, and coordinate her movements, especially walking and hand use. Student required a feeding tube and assistance to go to the bathroom.

#### ISSUE 1: DOES THE PARTIES' PRIOR SETTLEMENT AGREEMENT, AND WAIVER OF CLAIMS, DIVEST OAH OF JURISDICTION TO ADJUDICATE ANY ISSUES BEFORE APRIL 23, 2021?

Student contends that the parties April 23, 2021 settlement agreement does not waive Student's ability to challenge San Juan's services and implementation of Student's IEP going back to November 14, 2020. San Juan contends that the settlement agreement waiver eliminates any claims that exist prior to April 24, 2021.

## WAIVER OF CLAIMS IN A SETTLEMENT AGREEMENT

Parents have the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 10281029 (*Wyner*).)

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman’s Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) “Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties’ expressed objective intent, not their unexpressed subjective intent, governs.” (Id. at p. 686.) If a contract is ambiguous, i.e., susceptible to more than one interpretation, then extrinsic evidence may be used to interpret it. (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40.) Even if a contract appears to be unambiguous on its face, a party may offer relevant extrinsic evidence to demonstrate that the contract contains a latent ambiguity; however, to demonstrate an ambiguity, the contract must be “reasonably susceptible” to the interpretation offered by the party introducing extrinsic evidence. (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391, 393.)

In this case Parent filed a due process complaint against San Juan on March 8, 2021, in OAH Case No. 2021030372. On April 23, 2021, Parent signed a Final Settlement Agreement to resolve all issues in Parent’s March 8, 2021, complaint. A Notice of Dismissal was filed by Parent on April 26, 2021. The parties subsequently signed an

amended settlement agreement on March 8, 2022. The amendment addressed only the use of the compensatory education fund and did not alter any other terms of the settlement agreement.

Here, as part of their settlement agreement, Parent waived all claims on behalf of Student that existed through April 23, 2021. Both parties were represented by counsel at the time. The current complaint seeks adjudication of issues going back to November 14, 2020. Prior to hearing, San Juan filed a motion to bifurcate the issues because the settlement agreement waived all claims prior to April 23, 2021. That motion was denied, and Issue 1 was added.

Paragraph seven of the agreement was a comprehensive release and discharge of claims. Student unambiguously waived all claims against San Juan through the date the settlement agreement was fully executed. Therefore, any other claims against San Juan for its actions and omissions through April 23, 2021, were waived in the settlement agreement. Included in that waiver was any challenge to the appropriateness of Student's 2020 and 2021 IEPs, failures to implement the IEP during the Covid-19 pandemic, and failures to provide a FAPE due to virtual, or distance, learning. Because the plain language of the release in the settlement agreement bars all claims related to the period through its execution, Student may not litigate issues that San Juan denied Student a FAPE through April 23, 2021.

As part of the settlement, Parent consented to the February 12, 2021 IEP. Student alleges San Juan failed to implement the February 12, 2021 IEP during the months following the execution of the settlement agreement, and that issue was not included in

the waivers in the settlement agreement. As such, all issues below are modified to a time period from April 24, 2021 through the date Student's complaint was filed with OAH on November 14, 2022.

ISSUE 2: DID SAN JUAN UNIFIED DENY STUDENT A FAPE FROM NOVEMBER 14, 2020, AND EXTENDED SCHOOL YEAR, THROUGH THE COMPLAINT'S FILING DATE, BY FAILING TO IMPLEMENT STUDENT'S IEP PROGRAM, SERVICES, AND ACCOMMODATIONS TO ALLOW STUDENT TO ACCESS DISTANCE LEARNING?

ISSUE 3: DID SAN JUAN UNIFIED DENY STUDENT A FAPE BY ASSIGNING STUDENT TO DISTANCE LEARNING FROM THE BEGINNING OF THE 2020-2021 SCHOOL YEAR, UNTIL THE END OF SAN JUAN UNIFIED'S DISTANCE LEARNING PROGRAM, WITHOUT EVALUATING STUDENT AND OFFERING NECESSARY PROGRAMS, SERVICES, AND ACCOMMODATIONS TO ENSURE STUDENT COULD OBTAIN A FAPE THROUGH DISTANCE LEARNING?

In Issue 2, Student contended that Student's IEP, program, and services were not materially implemented during the period that Student received distance learning. San Juan contends that it provided services during this period to the best of its abilities. In Issue 3, Student contended that Student was not appropriately evaluated by San Juan prior to providing distance learning services and instructions to Student, to ensure that Student would progress. San Juan denied this contention. Because Issues 2 and 3

address the same period, and because most of Student's contentions involve a time period that is within Student's waiver of claim, the ALJ will analyze both issues at the same time.

## THERE WAS NO DENIAL OF FAPE FROM NOVEMBER 14, 2020, THROUGH APRIL 23, 2021

Student contends that from November 14, 2020, through the date of filing of the complaint, she was denied a FAPE when San Juan failed to implement Student's 2020 and 2021 IEPs during distance learning. Because this Decision found above that the settlement agreement barred claims which occurred through April 23, 2021, San Juan did not deny Student a FAPE from November 14, 2020 to April 23, 2021.

## SAN JUAN UNIFIED DID NOT DENY STUDENT A FAPE FROM APRIL 23, 2021, BY FAILING TO IMPLEMENT STUDENT'S IEP, INCLUDING HER PROGRAM, SERVICES AND ACCOMMODATIONS DURING DISTANCE LEARNING, OR WITHOUT EVALUATING STUDENT AND OFFERING NECESSARY PROGRAMS, SERVICES, AND ACCOMMODATIONS TO ENSURE STUDENT COULD OBTAIN A FAPE THROUGH DISTANCE LEARNING

Issues 2 and 3 arose out of the 2020 COVID-19 pandemic, during which California's governor, consistent with federal and local governments, ordered a statewide shutdown of schools and certain businesses. The United States Department of Education initially issued guidance about the school shutdowns in March 2020. Governor Newsom issued an executive order on March 22, 2020, granting local educational agencies the authority

to close schools. This order was accompanied by a directive to the California Department of Education, referred to as the CDE, to develop guidance for local educational agencies that included “ensuring students with disabilities” received a FAPE consistent with their IEPs, and compliance with other procedural requirements under the IDEA.

In January of 2020, Student was in second grade, and was attending Earl Le Gette Elementary School, which is part of San Juan’s district. In January 2020, Student broke her arm and was absent from school until mid-March 2020, when the district ceased in-person instruction due to the pandemic. As a result, Student did not return to in-person instruction at Le Gette until February 1, 2021. During the period from mid-March, 2020, through January 31, 2021, Student was instructed and provided accommodations and services through distance learning. Student began to receive in-person instruction and services from February 1, 2021 onward.

Student’s March 2021 complaint against San Juan, and the subsequent settlement, addressed alleged denials of FAPE which occurred during distance learning including San Juan’s failure to do additional assessments. Because the parties’ settlement agreement waived all claims which occurred through April 23, 2021, and because Student did not receive virtual instruction after that date, Student did not prove by a preponderance of the evidence that San Juan denied Student a FAPE by failing to provide appropriate services and accommodations, or otherwise failing to implement the IEP during distance learning, from April 24, 2021, onward. San Juan prevailed on Issues 2 and 3.

ISSUE 4: DID SAN JUAN UNIFIED DENY STUDENT A FAPE FROM NOVEMBER 14, 2020, AND EXTENDED SCHOOL YEAR, THROUGH THE COMPLAINT'S FILING DATE, BY FAILING TO PROPERLY ASSESS STUDENT FOR CURRENT LEVELS AND TRANSITION NEEDS, AND FAILING TO SCHEDULE AND HOLD IEP TEAM MEETINGS IN TIME TO OFFER NEEDED SERVICES, PROGRAMS, AND ACCOMMODATIONS?

Student contended that San Juan failed to properly assess Student's present levels of performance and transition needs, especially because of her unique needs due to Rett syndrome. Student also contended that San Juan did not schedule timely IEP meetings to address those needs. San Juan denied these allegations. As set forth in detail below, Student did not prove by a preponderance of the evidence that San Juan failed in its obligations under the IDEA.

THERE WAS NO DENIAL OF FAPE FROM NOVEMBER 14, 2020, THROUGH APRIL 23, 2021

As addressed above, because the prior settlement agreement between the parties bars any claims through April 23, 2021, San Juan did not deny Student a FAPE from November 14, 2020 through April 24, 2021.

## SAN JUAN UNIFIED DID NOT DENY STUDENT A FAPE BY FAILING TO PROPERLY ASSESS STUDENT FOR CURRENT LEVELS AND TRANSITION NEEDS OR FAILING TO SCHEDULE AND HOLD IEP TEAM MEETINGS IN TIME FROM APRIL 24, 2021, THROUGH NOVEMBER 14, 2022

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 Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690., at 202–204, 102 S.Ct. 3034 (Rowley); Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 400–01, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017) (Endrew). Each local educational agency shall ensure that a child is assessed in all areas of suspected disability. (20 USC §1414(b)(3)(B)). A reevaluation will be conducted if the local educational agency determines that the educational needs of the child, including improved academic achievement and functional performance, warrant a reevaluation, or if the child's parents or teacher requests a reevaluation. However, a reevaluation may occur no more than once a year, unless both the district and Parent agree to do otherwise. (20 USC §1414(a)(2); 34 C.F.R. 300.303; Ed. Code § 56329(d))

## SAN JUAN UNIFIED MET ITS OBLIGATIONS TO ASSESS AND RECORD STUDENT'S PRESENT LEVELS OF PERFORMANCE

Student accessed different modes of communication which had varying efficacy. One method of communication was for an adult to hold up two hands and give Student a choice. For example, the left hand was "yes", and the right hand was "no." Student

then used her eyes to point to a choice. A white board offering two to four choices was also used. Student also used a device called a “talker”, as well as a tablet that could be programmed with various choices, to facilitate Student’s responses to questions.

Student’s inability to easily communicate often resulted in Student becoming frustrated and acting out either verbally or physically. Many of the symptoms of Rett Syndrome were like symptoms of an autistic disorder. Because Rett Syndrome is a rare disorder, and Student was unable to communicate, San Juan personnel had difficulty assessing her with Standardized testing and getting consistent results.

However, the District showed that it conducted informal assessments and obtained feedback from parents, teachers, specialists and therapists from April 24, 2021, through November 14, 2022.

## SEPTEMBER 10, 2021 IEP MEETING

San Juan held an IEP meeting on September 10, 2021. Among those in attendance at the meeting were

- Parent,
- Student’s resources teacher, Alexandra Gordon,
- Student’s general education teacher, Rory McLure,
- Student’s speech pathologist, Melissa Fischer,
- occupational therapist Lisa Reed,
- inclusion specialist, Anna Lisa Story,

- Lariviere, Kristin Carroll, who was a specialist providing adaptive technology assistance, and
- Student's adaptive physical education specialist, Joey Marquez.

Other than Carroll, all the above testified at the hearing.

Reed reported Student was doing well in her occupational therapy sessions, was focused, and making progress on her goals. Parent observed Student's fine motor skills had improved, and she liked the sensory regulation that was being provided. Fischer indicated Student had made progress on her eye gaze device and liked to make eye contact when communicating. She used facial expressions often. Fischer implemented new pictures to teach Student pronouns.

McClure noted Student showed interest in being in class and wanted to socialize with her peers. McClure testified that he spent more emphasis on Student's socializing skills, than Student's academic instruction. McClure testified he used Student's communication device as much as possible, although he wasn't formally trained on it. The results of his attempts were inconsistent. He tried to determine a way he could improve his interactions with her, including trying different seating areas. Student would do many things with her hands, including grabbing other students' hair or the aide's hair or hand when she was animated. Sometimes the aid would get hit. When this would happen McClure would provide space and generally not focus on her behavior but, instead, moved on with the lesson.

The team did not change any goals or services. However, they agreed to have a subsequent informal meeting with Lariviere to review her recommendations and modifications to curriculum as needed.

## TRANSITION TO TRAJAN ELEMENTARY SCHOOL

In November 2022, Parents decided on their own to remove Student from Le Gette, and to place Student at Trajan Elementary School, also within San Juan's boundaries. Parents felt that Trajan would offer a more hands-on approach for Student's unique needs. Student appeared to have adjusted to the transition without an issue, and quickly began to socialize with her peers and her teachers. However, this imposed a difficult learning curve on the new teachers and staff because most of them had no prior experience with a child with Rett syndrome. The team at Trajan collaborated with Lariviere, Parent, as well as the team from Le Gette, to gain a broader understanding of Student's needs and services.

Student used an adaptive device known as a Forbes Winslate. Staff used both the Winslate and low-tech means, such as whiteboards and "yes" and "no" visuals, to communicate with Student. To assess present levels, staff used low tech means due to Student's inconsistent responses when using the Winslate. Beginning in November 2022, the staff at Trajan continued to consult with Lariviere on appropriate modeling for Student. They also consulted with La Gette personnel regarding teaching strategies that had worked with Student.

Michelle Horner, Student's fourth grade classroom teacher at Trajan, testified at the hearing. Horner initially used the Winslate for academic instruction. Over time, and to prevent Student from avoiding using the device, Horner limited use of the Winslate for social interactions only, such as Student talking to her peers, telling Horner something, and trying to let them know if something was bothering Student. Lariviere came to Horner's class to help. Horner opined this may have been Lariviere's first encounter in a school setting with Student. When Lariviere tried to model what she

had recommended, she realized it was not working. Lariviere and Horner then changed the modeling by sitting next to, and a little behind, Student, and put one white board with two choices in front of her. This required Student to turn her body and tell them when she got the right answer and provided more consistent data for Horner.

Horner used different strategies to avoid Student having to leave the classroom when her behavior worsened due to frustration. Horner also provided regular sensory breaks for her to walk, take a break in a learning center, or to watch fish on a video screen to de-escalate her. None of these methods proved consistently successful. Student was always allowed to return and reincorporate into class once she was calmed.

### THE FEBRUARY 8, 2022 IEP MEETING

An annual IEP team meeting was held on February 8, 2022 at Trajan. In attendance were Student's physical therapist, adaptive physical education teacher, case manager, Trajan's principal, Student's speech and language pathologist, and Parent. Also present was CTECH device specialist, Philippa Bellamy. Bellamy worked with Student since 2018 and attended some of Student's IEP meetings.

Student's present levels of performance were discussed. In adaptive physical education, Student used a modified bicycle, which she loved. She showed both willingness and enthusiasm to attend adaptive physical education. Student met her prior IEP goal to be able to catch and throw a ball, as well as her goal of catching a ball while seated. The team proposed additional goals about her scooter board use and to increase her flex leg positioning. The team agreed to continue the twice weekly adaptive physical education sessions.

In physical therapy, Student could get up and down from her classroom chair independently. She used rails at times when going up and down steps and continued to use her adapted bicycle in physical therapy as well. The team proposed draft goals for transitioning from standing to sitting, from the floor to standing independently, and riding her bicycle independently. The team agreed to the proposed goals. Student would continue receiving physical therapy once a week.

Student partially met her prior occupational therapy goals. Student still needed support in some areas and was not consistent with her right hand for her goal of sorting bean bags by their colors. Student also struggled with zippers and her therapist recommended further work on this area to develop self-help skills. Her therapist recommended she also be allowed to work with Student in bathroom support so Student could access the bathroom independently. The team agreed on draft goals for occupational therapy, and for Student to continue with occupational therapy services.

Student struggled in speech due to technical difficulties with her Winslate device. However, San Juan contracted with the CTECH technology department, an outside company, to provide on-site consultation that fixed those problems. Teachers and therapists communicated directly with CTECH when needed. Student also let staff know when she was having difficulty using the device or if it was not working.

Student's speech performance was inconsistent due to her lack of motivation at times. When Student used low-tech devices, such as the white board or "yes" and "no" responses, she was very consistent in her abilities. Student improved when

she requested items, and with greeting to peers and staff. Student worked on core vocabulary. Student socialized and loved to communicate about herself. Student also gave her communication partner a chance to respond. The team agreed to an assessment plan for additional adaptive augmentative communication devices to explore whether another device could be helpful. The meeting ended to allow Lariviere to come to school and observe Student and staff. After that Lariviere would attend a subsequent meeting with her recommendations.

### MARCH 8, 2022 IEP MEETING

A follow up IEP team meeting was held on March 8, 2022. Lariviere attended this meeting. The team discussed Student's academic progress. Lariviere discussed the importance of literacy and Student's need to learn to read and write. Lariviere recommended Student start to work on a QWERTY keyboard to develop phonic awareness. A QWERTY keyboard denoted the standard layout on English-language typewriters and keyboards, having q, w, e, r, t, and y as the first keys from the left on the top row of letters.

The team noted that measuring present levels of phonic awareness was difficult due to Student's unique issues and that current measures were not adapted to assessing children with Rett syndrome. The team agreed to review resource materials to create goals for literacy and behavior. The team also worked on literacy goals to be included in the IEP. Parent and the team agreed to review Student's schedule to determine which settings promoted class participation, while providing enough pull-out time for

academic intervention and to address Student's self-care needs. The team concluded the meeting with proposed goals and recommendations for services and accommodations. Student was also offered extended school year services to prevent regression.

As of June 2022, Student was making progress on, and occasionally meeting, her physical therapy goal, adaptive physical education goals, occupational therapy goals, and speech and language goals. She worked towards meeting her inclusion goals.

#### SAN JUAN MET ITS OBLIGATIONS UNDER THE IDEA

An IEP team shall meet whenever any of the following occurs:

1. A pupil has received an initial formal assessment. The team may meet when a pupil receives any subsequent formal assessment.
2. The pupil demonstrates a lack of anticipated progress.
3. The parent or teacher requests a meeting to develop, review, or revise the individualized education program.
4. At least annually, to review the pupil's progress, the individualized education program, including whether the annual goals for the pupil are being achieved, and the appropriateness of placement, and to make any necessary revisions. The individualized education program team conducting the annual review shall consist of those persons specified in subdivision (b) of Section 56341. Other individuals may participate in the annual review if they possess expertise or knowledge essential for the review. (Cal. Ed. Code § 56343)

Transition services begin when a child eligible for special education turns 16 years of age. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); 34 C.F.R. § 300.320(b). Transition services means a coordinated set of activities for a child with a disability that:

1. is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including
  - postsecondary education,
  - vocational education,
  - integrated employment (including supported employment),
  - continuing and adult education,
  - adult services,
  - independent living, or
  - community participation;
2. is based on the individual child's needs, taking into account the child's strengths, preferences, and interests. 30 C.F.R. § 300.43 (2006).

At Parent's request after the regular school year started in the fall of 2021, San Juan held an IEP team meeting in September to follow up on Lariviere's report. Student's present levels were discussed at this meeting. Shortly after this meeting Student moved to Trajan. The Trajan staff then consulted with Lariviere, as well as Le Gette personnel, to understand Student's unique needs and begin to implement the IPE.

An annual IEP meeting was held on February 8, 2022. Student's present levels were discussed. Student had met some of her goals and was making progress towards

other goals. New goals were discussed. The February 8 meeting was then “tabled” to allow Trajan personnel to consult further with Lariviere, and to allow her to attend classes so she could provide input.

A second meeting was held in March 2022, with Lariviere in attendance. Further levels of progress were discussed, and goals were completed. Both Parent and Lariviere were actively involved in the meeting. Following the meeting, Student’s progress on goals and her present levels were assessed in a progress report of June of 2022. She was making progress on some goals, meeting some goals, and working toward other goals.

San Juan met the standards required in *Rowley* and *Endrew* to measure Student’s progress, address any shortcomings, and to hold timely IEP meetings to discuss Student’s progress. There was no evidence presented which established that San Juan failed to call a timely IEP meeting when requested or required.

Finally, Student alleged that San Juan failed to properly assess Student’s “transition” needs. The evidence was unclear as to whether Student objected to the lack of future transition needs, or the transitioning Student needed from activity to activity. With respect to the former, San Juan was not obligated to address post-secondary transitioning until Student turned 16 years of age. Regarding the latter, the evidence established that San Juan appropriately addressed Student’s unique needs when she transitioned from instruction, to therapy, to outdoor activities. Student did not prove by a preponderance of the evidence that San Juan denied Student a FAPE by failing either to properly assess student for her current levels performance and transition needs, or by failing to schedule and hold required or necessary IEP team meetings.

ISSUE 5: DID SAN JUAN UNIFIED DENY STUDENT A FAPE FROM NOVEMBER 14, 2020, AND EXTENDED SCHOOL YEAR, THROUGH THE COMPLAINT'S FILING DATE, BY FAILING TO APPROPRIATELY ASSESS STUDENT IN OCCUPATIONAL THERAPY, VOCATIONAL, COMMUNICATION, ADAPTIVE PHYSICAL EDUCATION, SOCIAL SKILLS, ADAPTIVE LIVING SKILLS, BEHAVIOR, ASSISTIVE TECHNOLOGY, AND SPEECH?

THERE WAS NO DENIAL OF FAPE FROM NOVEMBER 14, 2020, TO APRIL 23, 2021

Student contended San Juan denied her a FAPE by failing to appropriately assess Student in occupational therapy, vocational, communication, adaptive physical education, social skills, adaptive living skills, behavior, assistive technology, and speech and language. San Juan contended because it appropriately assessed Student in all areas of suspected disability it did not deny Student a FAPE from April 23, 2021 through November 14, 2022.

Because the settlement agreement bars any claims prior to April 24, 2021, San Juan did not deny Student a FAPE from November 14, 2020 to April 23, 2021.

## LEGALLY APPROPRIATE ASSESSMENTS ARE REQUIRED IN ALL AREAS OF SUSPECTED DISABILITY

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. (*Rowley*, supra, 458 U.S. 176, 201-204; *Endrew supra*, . at [137 S.Ct. 988, 1000].) Federal law uses the term evaluation and California uses assessment, but the two terms have the same meaning and are used interchangeably in this Decision. Assessments are required to determine eligibility for special education, and the type, frequency, and duration of needed specialized instruction and related services. (20 U.S.C. § 1414(a); 34 C.F.R. § 300.303; Ed. Code, §§ 56043(k), 56381, subd. (a).) As noted above, a reevaluation may occur no more than once a year, unless both the district and Parent agree to do otherwise. (20 USC §1414(a)(2); 34 C.F.R. 300.303; Ed. Code § 56329(d).

## SAN JUAN UNIFIED DID NOT DENY STUDENT A FAPE BY FAILING TO CONDUCT APPROPRIATE ASSESSMENTS

Student received a health assessment in December of 2019, and again during the triennial assessment in March of 2020. Student received an adaptive physical education assessment, an augmentative and alternative communication device needs assessment, a speech and language assessment, and a shared services assessment in February of 2020. As a term of the parties' settlement, San Juan also funded a Rett services assessment by Lariviere.

Student did not prove by a preponderance of the evidence, that San Juan failed to meet any of its legal obligations to assess Student in any area of suspected disability. From April 24, 2021, through November 14, 2022 the record is devoid of evidence of Parent requesting any additional assessments. Furthermore, there was no evidence that any other assessments were required. None of the San Juan witnesses could recall Parent requesting additional assessments. The only evidence presented was an email string between Parent and Sharon Gomez, the resource specialist, between December 13

and 15, 2022. This was dated after this matter was filed. In that email string, Gomez indicated Parent would receive a document granting consent to update assessments for Student's present levels of performance in all areas. Parent indicated that they had "not consented" to assessments in the past unless the assessments were done by a Rett specialist.

San Juan prevailed on Issue 5.

ISSUE 6: DID SAN JUAN UNIFIED DENY STUDENT A FAPE FROM NOVEMBER 14, 2020, AND EXTENDED SCHOOL YEAR, THROUGH THE COMPLAINT'S FILING DATE, BY FAILING TO MATERIALLY IMPLEMENT OCCUPATIONAL THERAPY, VOCATIONAL, COMMUNICATION, ADAPTIVE PHYSICAL EDUCATION, SOCIAL SKILLS, ADAPTIVE LIVING SKILLS, BEHAVIORAL, ASSISTIVE TECHNOLOGY, AND SPEECH SERVICES?

Student contended San Juan failed to materially implement occupational therapy, vocational therapy, communication, adaptive physical education, social skills, adaptive living skills, behavioral, assistive technology, and speech services from April 24, 2021 to November 14, 2022. San Juan contended it fully and materially implemented all services for Student.

THERE WAS NO DENIAL OF FAPE FROM NOVEMBER 14, 2020, TO APRIL 23, 2021

Because the settlement agreement bars any claims prior to April 23, 2021, San Juan did not deny Student a FAPE from November 14, 2020 to April 23, 2021.

## SAN JUAN UNIFIED DID NOT FAIL TO MATERIALLY IMPLEMENT STUDENT'S SERVICES FROM APRIL 24, 2021 TO NOVEMBER 14, 2022

The February 8, 2021 IEP was the operative IEP from April 24, 2021, to February 8, 2022. That IEP offered Student 240 minutes of pull-out and 120 minutes of consultation, per week, in specialized academic instruction. Student was to receive 90 minutes weekly of language and speech services and 30 minutes a week of occupational therapy. Student would also receive 60 minutes a week of adaptive physical education and physical therapy. Finally, Student was assigned an instructional assistant, given specialized orthopedic services, and 60 minutes per month of assistive services technology through a non-public agency.

Student was back in person at Le Gette from April 24, 2021 to June 8, 2021 for the conclusion of the 2020-2021 school year. Student returned to Le Gette for the fall semester of the 2021-2022 school year on August 12, 2021. As discussed above, Student transferred to Trajan in November of 2021. Student received in-person instruction and services from April 24, 2022 onward.

Reed provided in-person occupational therapy services to Student weekly, beginning upon Student's return to in-person instruction in February of 2021. Reed had some communication with Parent about occupational therapy, but primarily focused on Student's goals and progress. Student showed increased focus and was doing well once she returned to school in person. Student had difficulty sorting bean bags by color but was able to move through an obstacle course with only verbal cues.

Fischer provided speech and language services to Student 90 minutes weekly at the school. Fisher observed Student making progress with her eye gaze device. Student

communicated by pinching others, or through facial expressions if her device did not work properly. Student appeared happy in her sessions, although her performance was inconsistent. Student showed progress, even when she made mistakes on the device. The staff and Fischer responded to Student when she made the errors. This helped Student gain a better understanding of her knowledge of words and phrases.

Student showed increased mobility in the classroom and around the campus. Student was able to walk on uneven and even surfaces independently with occasional verbal or tactile direction by the physical therapist. Student could walk up and down the playground stairs while holding railings.

In adaptive physical education, which Student received twice a week in 30 minute sessions, Student was a willing and enthusiastic participant. She rode an adapted bicycle if the weather was good. Student also worked on control skills such as throwing, catching, and kicking. In February 2022, Student received an orthopedic consult by Charlene Grady. Grady recommended that Student continue to receive training in toileting, campus safety, looking at her surroundings, and holding objects. Grady further recommended that physical therapy services continue for Student. The IEP team requested Grady recommend another desk for Student that would support her communication devices.

In academics Student continued to be exposed to general education curriculum to the maximum extent possible. Student knew her letters and letter sounds. Although she continued to read at a first-grade level, Student was also provided grade level reading material through software on her device, so she had opportunities to read

grade level material. Gomez testified that while at Trajan, Student's most productive instructional sessions were limited to 15 minutes in length. Gomez persuasively opined that, just because Student didn't meet a particular goal, that did not mean she was not learning or progressing. For example, Student previously made random eye gaze choices, which did not necessarily communicate what she wanted. Gomez believed, over time, Student was starting to effectively ask for the things she actually wanted.

A full time, one-on-one aide was provided to Student each school year. At the beginning of the 2022-2023 school year, Student arrived at school and her prior aide was no longer present. Parent expressed concern that Student did not have an aide present, and that the prior aide, who had been trained in Rett services was no longer present in the school.

Trajan's principal, Monica Curiel, assistant director Lauder and others testified that an aide was assigned to Student and was present on the first day of the school year. Lauder credibly opined San Juan had no control over personnel decisions or why some aides chose to leave the district or change schools within the district. San Juan recognized that having a consistently Rett trained aide was the optimum goal. Even though it was not always possible to have a Rett trained aide assigned to Student, San Juan always provided a full time, one-to-one aide for Student.

San Juan met its obligations under the IDEA to provide services to Student from April 24, 2021 to November 14, 2022. San Juan was obligated to provide access to specialized instruction and related services individually designed to provide educational benefit to Student and calculated to enable her to make progress appropriate in light of her circumstances. (*Rowley*, supra, 458 U.S. 176, 201-204; *Endrew*, supra, at [137 S.Ct.

988, 1000]). San Juan provided those services on a regular basis, and Student showed overall progress. Student did not prove by a preponderance of the evidence that San Juan failed to materially implement Student's services.

San Juan prevailed on Issue 6.

ISSUE 7: DID SAN JUAN UNIFIED DENY STUDENT A FAPE BY FAILING TO EVALUATE STUDENT FOR ACADEMIC REGRESSION AS A RESULT OF SAN JUAN UNIFIED'S FAILURE TO MATERIALLY IMPLEMENT STUDENT'S IEP FROM NOVEMBER 14, 2020 THROUGH THE 2021-2022 SCHOOL YEARS, TO IDENTIFY NECESSARY PROGRAMS, SERVICES, AND ACCOMMODATIONS TO ADDRESS STUDENT'S REGRESSION?

Student contended that San Juan failed to properly address regression of Student each year, and that San Juan's failure to materially implement Student's IEP contributed to the regression. San Juan contended there was minimal to no regression by Student, and that San Juan provided services and accommodations to address any regression that occurred.

THERE WAS NO DENIAL OF FAPE FROM NOVEMBER 14, 2020, TO APRIL 23, 2021.

Because the settlement agreement bars any claims prior to April 23, 2021, San Juan did not deny Student a FAPE from November 14, 2020 to April 23, 2021.

## SAN JUAN UNIFIED DID NOT FAIL TO IMPLEMENT STUDENT'S IEP TO ADDRESS REGRESSION FROM APRIL 24, 2021 TO NOVEMBER 14, 2022

Student demonstrated only minor regression after April 24, 2021. Student's February 8, 2021 IEP offered Student extended school year with related services in speech and language, adaptive physical education, occupational therapy, and physical therapy. She was also offered a one-to-one aide. Student's February 8, 2022 IEP also offered those same related services to prevent Student's regression over the summer.

As discussed above in the analysis of Issue 6, the evidence established that San Juan materially implemented the IEP by providing and making available the required services and accommodations over the extended 2022 school year.

San Juan met its obligations under the IDEA by materially implementing Student's operative IEPs from April 24, 2021 to November 14, 2022. Student did not establish she regressed significantly after returning to in-person instruction. To the extent Student suffered from some minor regression, San Juan addressed it by offering and implementing appropriate specialized academic instruction and related services during each applicable extended school year. San Juan was obligated to provide specialized instruction and related services individually designed to provide Student with educational benefit and calculated to enable her to make progress appropriate in light of her circumstances. (*Rowley*, supra, 458 U.S. 176, 201-204; *Endrew* supra, at [137 S.Ct. 988, 1000].). San Juan provided that specialized academic instruction and related services on a regular basis, and Student showed overall progress. Student failed to meet her burden of proof on this issue.

San Juan prevailed on Issue 7.

ISSUE 8: DID SAN JUAN UNIFIED DENY STUDENT A FAPE FOR THE 2021-2022 SCHOOL YEAR AND EXTENDED SCHOOL YEAR, THROUGH THE COMPLAINT'S FILING DATE, BY FAILING TO DEVELOP AND IMPLEMENT AN IEP THAT ADDRESSED STUDENT'S LEARNING DISABILITIES RELATED TO RETT SYNDROME, AND SPECIFICALLY BY FAILING TO (A) DEVELOP APPROPRIATE PRESENT LEVELS OF PERFORMANCE, (B) ADDRESS PARENT CONCERNS REGARDING REGRESSION AND APPROPRIATE TRANSITION, AND (C) OFFER APPROPRIATE SUPPORTS, PROGRAMS, ACCOMMODATIONS, AND SERVICES?

Student contended that San Juan failed to consult with a Rett specialist, and thereafter fully implement the specialist's recommendations starting at the beginning of the 2021-2022 school year. Student also contended San Juan did not materially implement the IEP and, therefore, failed to support Student's Rett syndrome disabilities. San Juan argued that it retained and regularly consulted with Parent's chosen specialist, Lariviere, and that it met its obligations under the IDEA by materially implementing Student's 2021 and 2022 IEPs.

#### SAN JUAN UNIFIED'S SERVICE AGREEMENT WITH LARIVIERE

Related services may be provided to individuals or small groups in a specialized area of educational need, and throughout the full continuum of educational settings. (Cal. Code Regs., tit. 5, § 3051, sub. (a)(1).) Related services, when needed, are determined by the IEP team. (Cal. Code Regs., tit. 5, § 3051, sub. (a)(2).)

As noted above, Student and San Juan entered into a settlement agreement on April 23, 2021 to address issues raised in Student's due process complaint filed in March 2021. These issues included the allegation that Student regressed due to distance learning in from March 2020 to February 1, 2021, and that San Juan failed to offer a program and services to appropriately address Student's unique Rett syndrome disabilities. As part of the settlement, San Juan agreed to enter into a service contract with an educational professional trained in Rett syndrome, who would assess and report on Student's needs and accommodations. San Juan also agreed to provide a compensatory education fund for Student to address the regression she suffered because of virtual learning. The March 8, 2022, amendment to that settlement agreement allowed San Juan to use some of that compensatory education fund to directly contract with Lariviere for direct services and consultation regarding Student's unique needs.

On July 6, 2021, San Juan and Lariviere entered into a service agreement for the period from July 1, 2021, through June 30, 2022. Both Lauder and Lariviere testified that the contract was renewed in October 2022 and was retroactive to the beginning of the 2022-2023 school year. During the summer of 2021, Lariviere observed Student virtually through video conference while Student worked with both her nanny and her aunt. Lariviere also worked directly with Student. Lariviere also consulted with speech and language pathologist, Fischer, to offer recommendations on working with Student.

On September 9, 2021, Lariviere prepared a four-page report identifying Student's needs and recommended supports. Lariviere recommended Student have continued access to content read out loud to Student, as well as additional digital content so Student could see the text being read to her. The report further recommended guided reading lessons for Student on her Winslate device. Lariviere also recommended Student

be given a daily and consistent structure for 12 weeks in phonics to foster a solid foundation. The report also recommended Student receive support for her literacy skills at least two hours per weekday by providing her access to reading content and videos.

In the area of inclusion, Lariviere recommended she continue to provide consultation and collaboration with Student's resource specialist to support Student's access to the general education curriculum. Lariviere further recommended Student be provided software to help her access the general education curriculum on her iPad. For speech and language, Lariviere recommended Student's speech and language pathologist work on programming Student's needs on her communication device frequently to give Student access to a diverse menu of words. Lariviere also recommended ongoing consultation with the speech pathologist to ensure her recommendations were properly implemented.

Lariviere recommended Student have a quick and easy way to communicate with her peers programmed on her communication device. These methods would include programming areas of interest unique to Student, and "memorable life experiences" she could share with peers and others. Lariviere also recommended that Student's peers be trained on the communication device so they could easily communicate with Student. Finally, Lariviere recommended Student's device be programmed with games and other applications to enhance her eye gaze and tracking abilities.

As discussed in detail above in the analysis of Issue 4, the IEP team at Le Gette Elementary met on September 10, 2021 to discuss Lariviere's report. Lariviere was present at the meeting and provided input. Parents then made the decision to make an intra-district transfer of Student to Trajan Elementary. Lariviere and members of the

Trajan staff testified that during Student's transition to Trajan, Lariviere was consulted to find ways to ensure Student was receiving appropriate services and was able to progress.

Both Lariviere and Bellamy, the CTECH specialist, testified they had the ability to access Student's learning and communication devices, and program them as Student's abilities evolved. Bellamy testified persuasively she could access the device remotely and she worked with Parents and Trajan staff to teach them how to also program the device remotely. Lariviere testified that during the 2022 calendar year, she worked directly with Fischer to program sufficient speech and language options on Student's device. Lariviere was able to upload books and other materials onto Student's device. She would then show Student how to access the content. Lariviere also programmed a link to an "electronic bookshelf" that allowed Student to choose books on her own to read. Starting in September of 2022, Lariviere uploaded videos to the device that would provide Student with instruction in phonics.

Lariviere testified Student needed a comprehensive sensory plan to be able re-regulate herself when she got frustrated. Lariviere recommended the team have monthly meetings to assess Student's progress in this area. At hearing, Student's occupational therapy expert, JanDee Goodis, opined that Student should have been provided goals to address needs in the areas of "sensory" stimulation and for "staying in the classroom". However, Goodis never assessed Student, and had not observed Student in an educational setting. Moreover, Goodis did not speak with any of Student's teachers or service providers. Students' occupational therapist and speech

and language pathologists both testified that they would regularly consult with Lariviere, particularly if Student became frustrated or was having difficulty progressing in meeting her goals.

## IMPLEMENTATION OF GOALS AND SERVICES

As of the first progress report in June of 2022, all of Student's goals were being implemented and she was making progress on them. In occupational therapy, adaptive physical education and physical therapy, Student was able to sit down on top of the slide with a partial squat with minimal assistance. Student could also pull herself forward and use both hands to slide down. Student was able to move forward on her scooter board for eight to 10 feet. She was regularly taking five to six steps on the balance beam with both hands held in front of her with less adult assistance. Student was able to push downward on a school door lever with minimal assistance needed only 25% of the time and was able to pull a key ring on her lunch box zipper with her left hand for three out four attempts while an adult held the lunch box.

Student was also making progress on her inclusion and speech goals. She would wait 30 seconds after being instructed to "please wait." However, there were times when she was in a "stimulating" environment that she did not wait. Student could attend to partner assisted word scanning when requested to do so, although she still was not selecting words on her own. When reading a story, Student would attend to the written portion of the story 50% of the time and was able to select the correct topic with eye gaze on two attempts. Student was able to combine two core words when given maximum prompting. Student met and exceeded her baseline benchmark in

expressing a positive or negative opinion using low tech means. Student still needed help navigating her device to express her opinions. Finally, Student made progress in asking her peers questions by using her device.

Both Parent and Lariviere opined San Juan was doing the “bare minimum” to provide services to Student. While not all Lariviere’s recommendations were implemented or agreed to by the IEP team, San Juan made every effort to address Student’s needs, and the evidence established Student was progressing on her goals. San Juan directly contracted with Lariviere for both the 2021 and 2022 school years. San Juan included Lariviere at IEP meetings, and San Juan personnel routinely consulted with her when Student was not progressing, and incorporated her suggestions into the IEP. Lariviere testified she had direct access to Student’s devices, could program them as needed, and regularly consulted with San Juan personnel during the 2022 calendar year. In addition, San Juan directly contracted with CTECH to ensure Student had the correct devices. San Juan staff also routinely consulted with Bellamy, who had a Ph.D. in speech and language, and was credentialed in the United States and Great Britain.

The evidence established the services and level of support offered and implemented were sufficient to enable Student to make progress appropriate in light of Student’s circumstances and unique needs. As addressed in Issue 7, Student had very little regression after she returned to in-person instruction. The benchmarks and baselines in each of Student’s goals were based upon data from Lariviere’s report, as well as from the observations of the Trajan personnel, who testified they consulted with both Lariviere and Student’s teachers at Le Gette Elementary.

The instructional program and services offered Student were not too restrictive. The IEP team members indicated they intended to help Student become more independent

and overcome the significant limitations caused by Rett syndrome. The specialized academic instruction, related services and goals offered appropriately addressed Student's sensory and transition needs. Therefore, Student did not meet her burden of proof by a preponderance of the evidence that San Juan denied Student a FAPE by not addressing her unique needs caused by Rett Syndrome. San Juan prevailed on Issue 8.

**ISSUE 9: DID SAN JUAN UNIFIED DENY STUDENT A FAPE FROM OCTOBER 2020, THROUGH THE COMPLAINT'S FILING DATE, BY FAILING TO DEVELOP AN IEP REASONABLY CALCULATED TO ENABLE STUDENT TO RECEIVE EDUCATIONAL BENEFIT BY FAILING TO OFFER ADEQUATE GOALS IN STUDENT'S AREAS OF NEED?**

Student contended that San Juan failed to develop an IEP that was reasonably calculated to allow Student to receive an educational benefit by not offering adequate, measurable goals. San Juan contended that the goals were driven by Student's data, and that the recommendations and input of Parent, Bellamy and Lariviere were incorporated into the goals.

As noted above, the operative time period for this issue is from April 24, 2021 to November 14, 2022. The first IEP developed and offered during this period was the annual February 8, 2022 IEP.

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 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, 1988) 213 IDELR 118.) The IEP team need not draft IEP goals in a manner that the parents find optimal, if the goals are objectively measurable. (*Bridges v. Spartanburg County School Dist. Two* (D.S.C. 2011, No. 7:10-cv-01873-JMC) 57 IDELR 128 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress]). The IEP must contain a description of how the child's progress toward meeting the annual goals described will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as using quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. 20 U.S.C.A. § 1414(d)(1)(A)(iii).

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. 2017, No. CV1604356-BRO) 2017 WL 2864945; see also Ed. Code, § 56345; 20 U.S.C. § 1414(d)(1)(A)(i).) An examination of the goals in an IEP is central to determining whether a student received a FAPE. "[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.). If the school district's program (1) reflects the student's needs, (2) is reasonably calculated to provide the student with some educational benefit, and (3) comports with the IEP, the school district has offered FAPE. (See *Rowley*, 458 U.S. 188-89; *Park v. Anaheim Union High School District*, 464 F. 3d 1025 (9th Cir. 2006), IDELR 178, citing *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 893 (9th Cir. 1995).)

## THE FEBRUARY 2022 IEP

On February 8, 2022 the IEP team at Trajan held their first meeting. Lariviere did not attend this meeting. However, Bellamy attended and provided consultation on Student's devices. On March 8, 2022 a follow-up IEP team meeting was held. The IEP team then worked on developing literacy goals, as well as a balance between social inclusion and academics. With Lariviere in attendance at the March 2022 meeting, the team discussed Student's goals. The team proposed two occupational therapy goals, three inclusion goals, two adaptive physical education goals, three physical therapy goals, and three speech and language goals. Both Parent and Lariviere participated in the discussion formulating the goals.

Student's occupational therapy goals included gross motor planning and upper body strength, which would be achieved by Student pushing downward on a door lever. In the area of fine motor skills, Student would grasp a zipper on a key ring and move the zipper. In the area of physical therapy and adaptive physical education, Student would be required to transition from sitting to standing at the top of a slide four out of five trials. Student would also transition from sitting on the floor to standing, without pulling herself up, five days a week. Student would ride her adaptive tricycle 50 feet on a level surface five days a week. Student would practice opportunities to keep her legs in a flexed position while riding a scooter board for 10 feet. Student would also access a four-inch wide, two-inch-high balance beam, and walk for six consecutive steps out of one of two trials, in three sessions.

In the area of inclusion, Student would be required to wait for a speaker to finish and remain in proximity to the speaker for two minutes. This was necessary to avoid Student from wandering off or losing attention. Student was also given access to a

QWERTY keyboard, with goal of her being properly positioned and writing a word or phrase with at least three letter selections that directly corresponded to the topic. Finally, Student was given a goal that would allow her to access her reading device, visually attend the reading material being read aloud to her, and visually process the reading 60% of the time the material was being read.

Student's speech and language goals included combining two core words on her home screen for the purpose of requesting, directing, and gaining information 80% of the time in three of five sessions. Student would demonstrate the ability to express a positive or negative opinion after an activity 80% of the time in three out of five sentences. Finally, Student would use either her device or low-tech means to appropriately initiate an interaction with a peer and allow the peer the appropriate time to respond. At the conclusion of the March meeting, the IEP team agreed to these goals. Neither Parent, nor Lariviere, objected to the nature and content of the goals.

Student presented no evidence that established she needed additional goals or that these goals were not sufficiently tailored for her needs. The 2022-2023 annual goals in all categories were procedurally compliant and appropriate. San Juan did not deny Student a FAPE by failing to design appropriate goals in the areas of occupational therapy, physical therapy, inclusion, adaptive physical education or speech and language. All goals were tailored to Student's unique needs for the 2022-23 school year. In addition, all goals incorporated Lariviere's recommendations to some degree. Lariviere's input was considered at the March 2022 meeting, and she was regularly consulted by San Juan's personnel when Student became frustrated during the 2022 calendar year. San Juan prevailed on Issue 9.

## 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:

The parties' prior settlement agreement, and waiver of claims, divested OAH of jurisdiction to adjudicate any issues before April 24, 2021.

San Juan prevailed on Issue 1.

### ISSUE 2:

San Juan did not deny Student a FAPE by failing to implement Student's IEP program, services, and accommodations to allow student to access distance learning.

San Juan prevailed on Issue 2.

### ISSUE 3:

San Juan did not deny Student a FAPE from April 24, 2021 through the complaint's filing date, by assigning Student to distance learning without evaluating Student and offering necessary programs, services, and accommodations to ensure Student could obtain a FAPE through distance learning.

San Juan prevailed on Issue 3.

#### ISSUE 4:

San Juan did not deny Student a FAPE from April 24, 2021 through the complaint's filing date, by failing to properly assess Student for current levels and transition needs, and failing to schedule and hold IEP team meetings in time to offer needed services, programs, and accommodations.

San Juan prevailed on Issue 4.

#### ISSUE 5:

San Juan did not deny Student a FAPE from April 24, 2021 through the complaint's filing date, by failing to appropriately assess Student in occupational therapy, vocational, communication, adaptive physical education, social skills, adaptive living skills, behavior, assistive technology, and speech.

San Juan prevailed on Issue 5.

#### ISSUE 6:

San Juan did not deny Student a FAPE from April 24, 2021 through the complaint's filing date, by failing to materially implement

- occupational therapy,
- vocational,
- communication,
- adaptive physical education,
- social skills,
- adaptive living skills,
- behavioral,

- assistive technology, and
- speech services.

San Juan prevailed on Issue 6.

#### ISSUE 7:

San Juan did not deny Student a FAPE from April 24, 2021, through the complaint's filing date, by failing to evaluate Student for academic regression as a result of San Juan's failure to materially implement Student's IEP and failing to identify necessary programs, services, and accommodations to address Student's regression.

San Juan prevailed on Issue 7.

#### ISSUE 8:

San Juan did not deny Student a FAPE from April 24, 2021 through the complaint's filing date, by failing to develop and implement an IEP that addressed Student's learning disabilities related to Rett Syndrome.

San Juan prevailed on Issue 8.

#### ISSUE 9:

San Juan did not deny Student a FAPE from April 24, 2021 through the complaint's filing date, by failing to develop an IEP reasonably calculated to enable Student to receive educational benefit by failing to offer adequate goals in Student's areas of need.

San Juan prevailed on Issue 9.

## ORDER

Student's 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.

Brian H. Krikorian

Administrative Law Judge

Office of Administrative Hearings