

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

CASE NO. 2022120744  
CASE NO. 2022070352

THE CONSOLIDATED MATTERS INVOLVING  
  
PARENT ON BEHALF OF STUDENT, AND  
  
TRAVIS UNIFIED SCHOOL DISTRICT.

DECISION

June 5, 2023

On July 12, 2022, the Office of Administrative Hearings, called OAH, received a Request for Due Process Hearing, referred to as a complaint, from Travis Unified School District, OAH case number 2022070352, naming Student. On December 27, 2022, Student filed a complaint in OAH case number 2022120744 naming Travis Unified School District. On January 4, 2023, OAH granted Student's motion to consolidate the two cases, designating Student's case as the primary case for the 45-day timeline for issuance of the decision. Student's motion to amend and request for continuance was granted on February 27, 2023.

Administrative Law Judge Tiffany Gilmartin heard this matter on March 21, 22, 23, 27, 28, 29, 2023 and April 5 and 10, 2023.

Attorney Tania Whiteleather represented Student. Parent attended all hearing days on Student's behalf. Attorney Jan Tomsy represented Travis. Director of Special Education, Deanna Brownlee attended all hearing days on Travis' behalf.

At the parties' request the matter was continued to May 5, 2023, for written closing briefs. On May 4, 2023, parties jointly filed a request to extend the deadline to submit closing briefs due to Student's counsel suffering from significant data loss when her computer servers failed. The request was granted. The record was closed, and the matter was submitted on May 8, 2023.

## STUDENT'S ISSUES

1. Did Travis deny student a free appropriate public education, or FAPE, during the 2021–2022 school year by:
  - a. Failing to assess student in all areas of suspected disability, specifically, autism like behaviors, speech and language, behavior, and mental health;
  - b. Failing to review the independent educational evaluation by Dr. Crampton;
  - c. Failing to reimburse parents the cost of student's independent educational evaluation in behavior;
  - d. Failing to identify all areas of student's needs, specifically, mental health and autism;
  - e. Failing to develop appropriate goals, specifically, in social skills perspective taking, peer conflict, and blaming others;

- f. Improperly exiting student special education and related services;
- g. Failing to provide parents all educational records within five days of request?

## TRAVIS' ISSUES

1. Is Travis' March 2022 functional behavior assessment appropriate that Student is not entitled to an independent educational evaluation at public expense?

Both parties, one orally, and one by notice, sought to clarify issues following the prehearing conference. Student argued eligibility for autism should be added to the issues for hearing. Student's complaint alleges Travis failure to meet Student's needs; however, it does not allege an issue regarding eligibility as a child with autism. Travis' complaint alleged the appropriateness of multiple assessments. After reviewing the compliant and hearing argument, the undersigned denied Student's request to add eligibility for autism as an issue as it was not pled in the complaint.

Travis initially sought to establish its speech and language, psychoeducation, and behavior assessments were legally compliant. The Order following Prehearing Conference incorrectly omitted the functional behavior assessment. Following the prehearing conference, Travis filed a request to include an issue regarding finding its functional behavior assessment was legally compliant. Travis also sought to dismiss its claims regarding the psychoeducation and speech and language assessments. Travis' clarification was supported by the compliant, amended complaint, and prehearing

conference statements all which included the functional behavior assessment. Accordingly, the undersigned granted the request to place at issue the legal compliance of Travis' functional behavior assessment.

On March 14, 2023, Student withdrew several sub-issues and modified his remedy request to align with the withdrawn issues. All remaining issues were clarified at the start of the hearing.

## 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 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).) Both parties carried the burden for their respective cases. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was nine years old and in fourth grade at the time of hearing. Student resided within Travis' geographic boundaries at all relevant times. Student was eligible for special education under emotional disturbance with a secondary eligibility of other health impairment.

#### ISSUE 1(a) AND 1(f): DID TRAVIS DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR BY FAILING TO ASSESS IN ALL AREAS OF SUSPECTED DISABILITY, AND IMPROPERLY EXITING STUDENT FROM SPECIAL EDUCATION?

Student's triennial reassessment was due in fall 2021. Parents were provided an assessment plan on August 10, 2021. Travis proposed to assess Student in academics, health, intellectual development, speech and language, social-emotional, and behavior, as well as conduct a functional behavior assessment. Parent consented to the assessment plan on September 9, 2021. The IEP team then met on September 14, 2021 where the team agreed to reconvene on October 7, 2021 when Student's assessments would be complete.

It was at the October 7, 2021, IEP team meeting where the Travis members of Student's IEP team determined Student was no longer eligible for special education. Student alleges he was improperly exited from special education. Whether the exit was proper will be addressed later in this decision.

In November 2021, Student's behavior began to significantly decline. He suffered a mental health crisis and exhibited unexplained outbursts. In January 2022, Student's maladaptive behavior escalated so severely he struck a staff member, attempted to elope from school, and County emergency mental health services were engaged while Student was at school.

Parent requested Student be reassessed for special education. An assessment plan was provided to parents on January 27, 2022. The assessment plan provided Student would be assessed in

- academics,
- health,
- intellectual development,
- speech,
- motor,
- social emotional,
- adaptive behavior, and
- behavior.

Parent consented to the assessment plan on January 30, 2022. Travis reassessed Student and convened an IEP team meeting on March 28, 2022 to discuss the findings and make a new determination of eligibility.

Student argues Travis failed to assess Student in all areas of suspected disability, specifically in autism-like behaviors, speech and language, behavior, and mental health. Student does not challenge, and no findings are made, regarding whether the assessments were legally compliant.

The school district must reassess a student eligible for special education at least once every three years; but may not assess more than once a year unless Parents agree. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381(a)(2).) The school district must assess or reassess the educational needs of a child with a disability if requested by Parent, or a teacher; or if the district determines that the educational or related services needs of the child, including improved academic achievement and functional performance, warrant a reevaluation. (Ed. Code, § 56381(a).)

Student argued in his closing brief that Travis failed to identify Student's specific learning disability, mental health, and autism needs. The evidence demonstrates Student was comprehensively assessed in his triennial evaluation in fall 2021. His IEP team recommended, and Parents consented, exiting Student from special education on the basis of this triennial evaluation. When Student's behavior suddenly and severely deteriorated, the evidence demonstrated Travis, again, comprehensively assessed Student in spring 2022. Student did not meet his burden of proof to show he was not assessed in all areas of need during the 2021-2022 school year.

## 2021 PSYCHOEDUCATIONAL ASSESSEMENT

School psychologist Shannon Carter conducted Student's triennial psychoeducational assessment in Fall 2021. Carter is a state licensed educational psychologist and has a pupil personnel services credential with five years of experience.

Carter established the psychoeducational assessment evaluated Student's needs in academics, intellectual development, mental health, and social emotional and behavior. Carter had a relationship with Student as she provided direct counseling services to Student as a second grader.

For her assessment, Carter reviewed Student's cumulative records, including his educational and development history starting in kindergarten. She interviewed Parent, his general education teacher, and Student. Parent gave Carter a list of Student's current medication prescriptions. Carter conducted three classroom observations of Student in both structured and unstructured environments. She administered a variety of standardized tests to include the

- Wechsler Intelligence Scale for Children, Fifth Edition;
- the Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition;
- Test of Auditory Processing Skills;
- Test of Visual Perceptual Skills, Fourth Edition;
- Behavior Assessment for Children, Third Edition;
- Sentence Completion, Conners 3rd Edition;
- Gilliam Autism Rating Scales, Beck Youth Inventory, and
- Children's Depression Inventory, Second Edition.

On the Weschler Intelligence Scale, Student's cognitive abilities were in the high average to above average range. Student's full scale intelligent quotient score was 111, in the above average range. Student exhibited significant strengths in nonverbal broad visual intelligence, visual patterns, and reasoning skills. Student's processing speed,



working memory, and verbal comprehension were in the average range. His visual spatial index, fluid reasoning, and general ability were all in the high average range.

Carter provided rating scales to Parent, teacher and Student for the Behavior Assessment Systems for Children Scale. Student's and teacher were sharply different from Parent's views of Student. Parent identified externalizing problems, behavioral symptoms, social skills, leadership, daily living, adaptive skills, executive functioning, and ADHD probability as at-risk areas. Student identified attitudes to school, locus of control, relations with parents, and self-reliance as at-risk areas. Teacher identified bullying as at-risk. Neither Student nor teacher rated any areas as clinically significant. Parent rated hyperactivity and attention problems as clinically significant.

Student's executive functioning index score and problem-solving index score, and behavioral control index were in the elevated classification range. Student's attention control index score placed him in the extremely elevated classification range. Carter noted Parent reported a higher amount of elevated indices and reasoned Student had elevated behaviors in the home versus the school.

Carter also administered the Conners, 3rd edition. The Conners is an assessment of attention deficit hyperactivity disorder. Student and teacher identified no at-risk areas. Parent's rating scales of observed behavior at home, identified inattention and executive function as at-risk. Parent's rating scales also listed hyperactivity and impulsivity as clinically significant. Student identified family relations as clinically significant. Upon review of the Conners' reports, Carter again noted Student may be behaving differently at home versus school.

Carter also assessed Student to determine if he met the criteria for eligibility under autism. Carter used the Gilliam Autism Rating Scale to screen Student for autism.

Student, Parent, and teacher completed rating scales. Parent rated Student in the probable category of autism spectrum disorder. Teacher and Student rated Student in the unlikely category of autism spectrum disorder. Carter also interviewed Parent who described Student as affectionate, sometimes angry, aggressive, and impulsive. Student would frequently have temper tantrums and mood swings. Parent described Student's sensitivity to stimuli such as sound, food, smell, touch, and light. Parent told Carter she did not believe Student was on the autism spectrum. Testimony supported Student was comfortable in his education environment, he engaged in conversations easily, engaged with his peers in academic and athletic endeavors, and displayed no characteristics of autism.

Christine Davidson, Ed.D, testified at hearing as one of Student's expert witnesses. Dr. Davidson is a board-certified behavior analyst, a licensed educational psychologist, and owner of a specialized learning center focused on students with autism. Dr. Davidson had experience working with children with special needs, children with autism, and performing independent educational evaluations.

Dr. Davidson reviewed Student's educational records and his 2018 and 2021 psychoeducational assessments. Dr. Davidson did not assess Student and met with him the day before her testimony over Zoom for one hour. Dr. Davidson opined at hearing Student should be found eligible under the category of autism, with a secondary eligibility of specific learning disorder or other health impairment.

Dr. Davidson testified the Behavior Assessment System for Children, Third Edition and the Conners 3 Rating Scales are instruments that are used to address concerns related to autism. Dr. Davidson argued; however, the instruments also

require additional tools such as the Gilliam Autism Rating Scales. Dr. Davidson indicated in her testimony that Student had not been assessed using the Gilliam Autism Rating Scales.

Dr. Davidson's testimony was given no weight as she demonstrated a lack of familiarity with Student's specific testing instruments, presentation at the time of the October 2021 assessment, the overall report prepared by Carter, and a lack of foundation for her stated eligibility opinions.

As part of the 2021 triennial review, Jennifer Killam, Student's resource teacher administered an academic assessment utilizing the Woodcock-Johnson Tests of Achievement, Fourth Edition, (WJ-IV-ACH) and teacher observations. The Woodcock-Johnson is a norm-referenced standardized test of achievement used to assess basic academic skills. Student was cooperative and polite during the testing sessions. He was tested over three days in 20-to-30-minute increments in a one-on-one environment. Student scored in the average to very superior across all subtests. Student's reading cluster ranged from the 42nd to 99th percentile. Student's math clusters ranged from the 52nd to the 83rd percentile. Students writing clusters ranged from the 54th to the 83rd percentile. Student's oral language cluster range from the 39th to the 86th percentile.

Killam also observed Student general education classroom. Student was observed following directions, being prepared to learn, and engaging with his classmates appropriately. He was easily redirected when he and another student were observed chatting with each other.

Killam testified at the hearing that she was very fond of Student. She testified he liked being a helper in her class, assisted other students, and had a great sense of humor. Killam concluded in a report Student's academic achievement was in the high average range. She further concluded this is consistent with how he is performing in the general education classroom. Her report recommended supports for Student that could be implemented in a general education classroom such as having an alphabet line on his desk, a popsicle stick or spacer for writing sentences, or access to computer for his writing assignments. Her report indicated Student no longer needed specialized academic instruction services.

Student further alleged Travis failed to assess Student's mental health needs. Student argues since Carter, the school psychologist is unable to diagnose under the Diagnostic and Statistical Manual of Mental Disorders-V, this fact is prima facie evidence Travis failed to assess Student's mental health needs.

In fall 2021, Carter assessed Student's mental health utilizing the Beck Youth Inventories of Emotional and Social Impairment and the Children's Depression Inventory, Second Edition. The Beck Youth Inventories is a self-reported measurement to assess a child's experience of

- depression,
- anxiety,
- anger,
- disruptive behavior, and
- self-concept.

All areas inventoried were within the average range. The Children's Depression Inventory is also a self-reported measurement to assess the presence and severity

of depressive symptoms in children. Student reported an elevated assessment of interpersonal problems in peer and family relations. All other areas were within the average range.

Student produced no authority or evidence that Travis was required to have personnel who could diagnosis under the Diagnostic and Statistical Manual of Mental Disorders-V conduct Student's assessments. Further, the evidence showed that Carter was appropriately credentialed to perform the assessments she performed.

Student argues his mental health issues that started in November 2021 were sufficient to put Travis on notice he required another mental health assessment. Parent testified Student's psychiatrist had recently changed his medication, which could explain the sudden and severe behavior changes. Student presented no legal authority or evidence that Travis did not evaluate mental health needs as part of its comprehensive psychoeducational evaluation. Carter's report identified Student's depression and emotional problems. Student provided no legal authority or evidence Travis was required to diagnosis Student's mental health conditions under the Diagnostic and Statistical Manuel of Mental Health.

In his closing brief, Student argues Travis failed to gather and address sufficient historical information about Student's behavior prior to the age of three. Student argued the form Travis provided to Parent was insufficient for Parent to provide Travis with information about Student's pre-age three skills, parental concerns, and behaviors.

Student's argument is unpersuasive. The evidence established Carter had sufficient knowledge of Student's early developmental history and parental concerns. Carter met extensively with Parents, identified behaviors that concerned Parents, and understood their future goals for Student.

The evidence established that by early October 2021, Travis' psychoeducation assessment evaluated Student's needs in the areas of academics, intellectual development, mental health, and social emotional and behavior.

## 2022 PSYCHOEDUCATIONAL ASSESSMENT

In March 2022, Carter again conducted a psychoeducational assessment for Student. Carter assessed Student's needs in academics, intellectual development, social emotional behavior, and adaptive behavior. Carter testified in spring 2022 she considered the eligibility categories of emotional disturbance, other health impairment, and specific learning disability for Student. Neither Parent nor Carter suspected autism as an area of eligibility in February and March of 2022.

For this assessment, Carter reviewed Student's cumulative records, including his educational and development history starting in kindergarten. She interviewed Parent, his general education teacher, and Student. She conducted two observations of Student in both structured and unstructured environments. As this was the second psycho-educational evaluation conducted during the 2021-2022 school year, Carter had to use different instruments from the 2021 evaluation to avoid invalidating the testing. She administered a variety of standardized tests to include the

- Differential Ability Scales, second edition, Sentence Completion,
- Behavior Assessment System for Children, third edition, Parent and Teacher rating scales;

- Connors Comprehensive Behavior Rating Scales, teacher assessment report;
- Connors Comprehensive Behavior Rating Scales, Parent Assessment Report;
- Connors 3 self-report short form, NICHQ Vanderbilt Rating Scale, Adaptive Behavior Assessment System 3rd Edition;
- Beck Youth Inventory;
- Child Depression Inventory-2; Multidimensional Anxiety Scale for Children;
- Scales for Assessing Emotional Disturbance, 3rd Edition.

The Differential Ability Scales, Second Edition, assesses conceptual functioning in

- verbal, nonverbal reasoning,
- spatial problem solving,
- working memory, and
- processing speed.

Student's scores were all in the average range. On the Recall Designs subtest, Student was able to successfully draw six designs; however, he refused to complete the entire test.

Sentence Completion is a nonstandard exercise that allows the student to complete the question which can provide clues to the examiner of emotional or behavior problems that may need to be further explored. Student's responses focused on death and hating everything in his life.

The Behavior Assessment System for Children is a multidimensional test that measures various aspects of behavior. Neither Student, teacher, nor Parent rated student as anxious. Both rated Student clinically significant in

- adaptability,
- adaptive skills,
- aggression,
- oppression, and
- conduct problems.

It should be noted Student's teacher's responses indicated a negative overall view of Student's behavior. Student's behaviors were elevated in both home and school settings.

The Conners Comprehensive Behavior Rating Scales was completed by Student's teacher and Parent. Both teacher and parent indicated clinically significant behaviors of defiance and aggression, hyperactivity, impulsivity, violence potential indicator. Both teacher and parents further indicated an at-risk score and social problems and upsetting thoughts.

On the Conners Self-Report Student listed clinically significant scores in

- inattention,
- learning problems,
- hyperactivity,
- impulsivity,



- depression,
- aggression, and
- family relations.

Student was also evaluated using the Vanderbilt ADHD diagnostic assessment scale. The Vanderbilt provides symptom assessment for symptoms that meet the criteria for inattentive and hyperactive attention deficit hyperactivity disorder. Based on the response of both Student's teacher and Parent, Student met the criteria for oppositional defiant disorder. Moreover, based on student's teacher's response, Student met the criteria for ADHD, inattentive and hyperactive subtype, and conduct disorder.

The Adaptive Behavior Assessment System 3rd edition evaluates adaptive skills Student may need to care for himself, others, and meet the demands of home, school, and the community. Student was rated in the eighth percentile and low range of the general adaptive composite by Parent. Student was rated in the fifth percentile and low range by teacher. Both raters expressed significant concern in their evaluation of Student.

The Beck Youth Inventory of emotional and social impairment is used to assess

- depression,
- anxiety,
- anger,
- disruptive behavior and
- self-concept.

Student self-assessed to be in the moderately elevated range of depression. Student self-assessed to be in the extremely elevated range for disruptive behavior and anger.

The Scales for Assessing Emotional Disturbance, 3rd edition is an instrument used to assess for emotional disturbance. There was interrater agreement between Student's teacher and Parent in the areas of inability to learn and inappropriate behavior as highly indicative of emotional disturbance.

Children's Depression Inventory second edition assesses the presence and severity of depressive symptoms in children as observed by parents and teachers. There was interrater agreement that Student exhibited depressive symptoms in the categories of emotional problems and functional problems.

The Multidimensional Anxiety Scale for Children, second edition is a comprehensive assessment of anxiety dimensions in children as observed by parent or child. Student was rated high average by parent and the categories of

- separation anxiety,
- phobias,
- generalized anxiety index,
- humiliation,
- rejection tense, and
- restlessness.

Student self-assessed in the high average range in panic.

Killam conducted Student's academic assessment. Like, Student's second psychoeducational assessment, Killam's assessment required different testing instruments to prevent testing invalidation. Killam utilized the Weschsler Individual Achievement Test, Third Edition in March 2022.

Killam reported Student's work refusal and behavior outbursts significantly impacted his academic performance. During testing, Student required several prompts to comply, he made frequent loud noises and negative comments about peers and his sibling.

Killam observed Student in his general education classroom. Student was observed cutting in front of other students in line to leave the classroom, making disruptive noises, and work avoidance.

Student scored in the average to high average on the Weschler comprehension clusters, average to superior on the reading clusters, and average on the math clusters. On Student's writing clusters he was in the average range in all areas with exception of essay composition he scored low average. Student's work refusal and failure to use punctuation, capitalization and correct grammar impacted his score on the essay component.

The evidence established that by March 2022, Travis' psychoeducation assessment evaluated Students needs in the areas of academics, intellectual development, mental health, and social emotional and behavior.

Student argued in his closing brief Student's psychoeducational assessment was not appropriately conducted. Student did not plead appropriateness of the psychoeducational assessment and this decision makes no determination of appropriateness.

## SPEECH AND LANGUAGE ASSESSMENTS

Travis' speech and language pathologist, Traci Bernhardt, assessed Student's language skills in September 2021. Bernhardt, who did not testify at this hearing, administered a wide variety of standardized assessments to Student. Bernhardt conducted formal and informal assessment measures, received teacher input, and Student observation. Bernhardt administered

- the Clinical Assessment of Articulation and Phonology, second edition, (CAAP-2),
- the Test of Language Development-Intermediate-Fifth Edition, (TOLD-I:5),
- the Structured Photographic Expressive Language Test-third edition (SPELT-3),
- Pragmatics Language Skills Inventory, (PLSI),
- Social Language Development Test-Elementary: Normative Update (SLDT-E:NU), and
- the Comprehensive Assessment of Spoken Language, second edition, (CASL-2).

Student scored in the average range on four of the assessments. Student scored in the eighth percentile, or below average, on the Structured Photographic Expressive Language Test. The SPELT-3 measures a child's production of sentences elicited from full-color photographs. Student exhibited difficulty with

- possessive pronouns,
- irregular verbs,
- formation using both direct object and indirect object,
- forming negative infinitive phrases, and
- forming relative clauses while using relative pronouns.

Student scored in the seventh percentile, borderline impaired or delayed, in the Social Language Development Test-Elementary Update. The SLDT-E:NU measures a child's social language development. Student scored impaired or delayed in interpersonal negotiation and below average in multiple interpretations subtests.

Bernhardt completed a 30-minute classroom observation of Student in his general education classroom. Student was observed participating attentively in the classroom. Bernhardt conducted an informal 50-word speech and language sample where Student was tested the areas word knowledge, simple and complex sentences, speech fluency, and vocal quality. Student exhibited occasional lateralization of his SH sounds; however, Bernhardt determined his speech was in the average range for child of his age.

Travis' speech and language pathologist, Joyce Bae, assessed Student's language skills on February 28, 2022 and March 7, 2022. Bae testified she administered standardized assessments that were different than the instruments used with Student in October 2021. As a result, Bae conducted

- formal and informal assessment measures,
- parent interview,
- teacher interview,
- classroom observation,
- clinical observation, and
- standardized tests in articulation, language, and pragmatics.

Bae administered the

- Goldman-Fristoe Test of Articulation, Third Edition;
- The Clinical Evaluation of Language Fundamentals, fifth edition;
- Receptive One-Word Picture Vocabulary Test, fourth edition;
- Expressive One-Word Picture Vocabulary Test, fourth edition;
- Test of Pragmatic Language, second edition.

Student scored in the average range on four of the assessments. Student scored below average on the Test of Pragmatic Language, second edition. Bae reported Student's behavior may influence how Student performed on the pragmatic assessment. Bae reported Student is known to be social; however, he has targeted other students with aggressive behaviors. Bae's report concluded Student did not meet the criteria for special education eligibility for speech and language in spring 2022.

Deborah McClosky assessed Student in speech and language in March 2023. McClosky, who testified, has a certificate of clinical competence in speech-language pathology. At the time of hearing, McClosky had not completed her assessment report. At the start of the hearing, Student withdrew his issue relating to whether Travis failed to reimburse Parents for the cost of his independent educational evaluation. McClosky's testimony supports Travis assessed Student in speech and language. McClosky's persuasiveness is impacted as she strayed beyond her area of expertise. Student put at issue only whether Travis failed to assess. Travis clearly demonstrated they assessed Student. When Student withdrew the issue of reimbursement no further determination was necessary.

Student argued in his closing brief Student's speech and language assessment was not appropriately conducted. Student did not plead appropriateness of the speech and language assessment and this decision makes no determination of appropriateness.

The evidence established Travis conducted two speech and language assessments of Student's needs during the 2021-2022 school year.

## FUNCTIONAL BEHAVIOR ASSESSMENTS

Student also argued Travis failed to assess Student's behavior needs. A functional behavior assessment was also conducted as part of Student's triennial eligibility evaluation. Kaitlyn Hensley, a behavior intervention specialist for Travis, conducted a functional behavior assessment of Student in September 2021. Hensley reviewed Student records, observed Student, generated an antecedent behavior consequence narrative, conducted a momentary time sampling, interviewed Student's teacher, provided the questionnaire to parents and from that data developed a list of behaviors of concern.

Five areas of concern were identified for Student. Noncompliance, aggression, elopement, screaming, inappropriate contact were all areas identified. Hensley gathered data from September 13, 2021 through October 1, 2021. She produced a written report of her findings and it was delivered to the IEP team. Hensley, who testified, reported behaviors that were previously listed as concerning were no longer observed in Student. Student was observed engaging with his classmates and easily redirected to task. Hensley recommended Student no longer receive his staff support during recess, discontinue his behavior intervention plan and direct behavior intervention services.

In March 2022 Hensley conducted another behavior assessment of Student. Hensley

- completed direct observations,
- collected antecedent, behavior, consequence data,
- conducted a motivation assessment scale of Student,
- provided assessment tools to Student's teacher and Parents, and
- conducted a records review.

Hensley's report looked at six behaviors concerns:

- vocal outbursts,
- disruptive behavior,
- inappropriate comments,
- elopement,
- noncompliance, and
- aggression.



Hensley observed Student across eight school days for more than nine hours. Hensley's report indicated Student's behaviors were more prevalent inside the classroom. Student was also observed engaging in socially appropriate behaviors; however, Hensley identified some of Student's behaviors were to avoid non-preferred tasks.

Jenna Rhodes testified hearing as one of Student's expert witnesses. Rhodes is a board-certified behavior analyst. She owns an agency that provides private applied behavior analyst therapeutic services to children on the autism spectrum.

Rhodes was engaged by Parents to conduct an independent educational evaluation in behavior of Student in March 2023. At the time of hearing Rhodes had not completed her report. Rhodes

- reviewed many of Student's records,
- observed him three times in a school setting, and
- provided screening tools to his teacher, occupational therapist, classroom aide, and Parent.

Rhodes was highly complementary of Student's current classroom teacher. However, Rhodes disagreed with how Student's functional behavior assessment identified his target behaviors. She stated they were grouped together and unclear. She was unable to articulate during testimony how she would have isolated the

(This space intentionally left blank. Text continues on following page.)

behaviors better in her report. Rhodes answered many questions during testimony with a caveat of she would need more information to provide a response. Rhodes testimony was unpersuasive as

- she failed to offer more clarity or discernment to the functional behavior assessment she was critiquing,
- her observations of Student occurred more than a year after the behavior assessments were conducted, and
- Student's behavior needs had changed significantly during the previous school year.

The evidence established Travis conducted two functional behavior assessments of Student's needs during the 2021-2022 school year.

## EXITING FROM SPECIAL EDUCATION AT THE OCTOBER 7, 2021 IEP TEAM MEETING

Student alleged Travis improperly exited Student from special education. Student argued that at the time he was exited, Travis should have found him eligible under specific learning disability, autism, and speech and language.

The IEP team first met on September 14, 2021. All team members were present. Parents were provided a copy of their procedural safeguards. The team reviewed Student's present level of performance. As Student still had open assessments pending and the team agreed to reconvene on October 7, 2021.

On October 7, 2021, the team met again to review Student's triennial reassessment and determine continued eligibility. Parents were again provided an additional copy of

their procedural safeguards at the start of the IEP team meeting. All team members were present for the IEP team meeting. All assessment reports were provided to Parents prior to the IEP team meeting. Parent indicated she did not have any concerns about Student at the time of the IEP team meeting on October 7, 2021. The team reviewed the assessment data and each assessor was given an opportunity to present their report. The team reviewed Student's previous IEP including his present levels of performance and progress on goals. Student met all his goals in all areas save for the one behavior goal. The team recommended Student no longer be eligible for special education. The evidence supported Killam provided Parents an opportunity to take the IEP document home for review or seek additional support; however, Parents elected to consent to the IEP on October 7, 2021.

Student also argued one unmet behavior goal was a fatal flaw in the team's decision to exit him from special education. Student cited *Hall v. Vance County Board of Education* (774 F.2d 629, 636 (4th Cir. 1985)) to argue a failure to master all IEP goals was a denial of FAPE.

The instant case is distinguishable from *Hall*. In *Hall*, the student received poor grades, showed no improvement, and achievement tests had him performing at the lowest levels in the nation. *Hall* was not assessed for any learning disabilities until after his parents removed him from his school placement. Conversely, all evidence supported Student was comprehensively assessed, performing at grade level in school. Student was bright, social; engaging in age-appropriate behaviors, demonstrating good sportsmanship, and following classroom rules.

A student may derive educational benefit under Board of Education of the Hendrick Hudson Central School Dist. v. Rowley (1982) 458 U.S. 176, 201-204; even if

some of his goals and objectives are not fully met. All testimony supported Student made progress up to the point of his fall 2021 triennial assessment. At the time of review, Student successfully met all goals except for one behavior goal. This goal called for 100 percent accuracy over 10 consecutive school days. Here, Student was completed his goal with 97 percent accuracy across 10 consecutive school days.

The evidence demonstrated the IEP team comprehensively assessed Student utilizing a variety of assessment tools including standardized tests, observations, and parent questionnaires. The evidence further demonstrates Student's present levels of performance were thoroughly reviewed by his IEP team. Parents were active participants in the IEP team process. They had an opportunity to review all assessments prior to the team meeting. Parents consented to exiting him from special education and related services on October 7, 2021. The evidence demonstrated Student in October 2021 Student did not have a need for continuing special education and services.

## SPECIFIC LEARNING DISABILITY

In his closing brief, Student argues Travis failed to properly consider Student for a specific learning disability. A student may be eligible for special education in the category of specific learning disability if he has: a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may have manifested itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The basic psychological processes include attention, visual

processing, auditory processing, phonological processing, sensory-motor skills, and cognitive abilities including association, conceptualization, and expression. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

Student did not demonstrate a significant discrepancy between his cognitive ability and achievement. Student further did not demonstrate any signs of a processing disorder. His cognitive ability was consistent with his academic scores. Student's classroom performance, instructional history, and teacher input was consistent with a student who did not qualify for a specific learning disability.

In determining whether a student has a specific learning disability, a school district is not required to take into consideration whether the student has a severe discrepancy between achievement and intellectual ability. (Ed. Code § 56337, subd. (b).) Instead, a school district may use a process that determines if the student responds to scientific, research-based intervention as part of the assessment process. (Ed. Code, § 56337, subd. (c).)

In determining the existence of a severe discrepancy, "[n]o single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the individualized education program team as to the pupil's eligibility for special education." (Cal. Code Regs., tit. 5, § 3030, subd. (10) (B).)

Student argues the 22-point discrepancy in the September 2021 subtest scores of fluid reasoning and working memory on the Wechsler Intelligence Scale for Children, Fifth Edition was sufficient to put Travis on notice of his specific learning disability. Student argues Dr. Davidson determined Student had a specific learning disability in listening comprehension, writing, and reading comprehension from her review of his

psychoeducational assessment report. Student further argues Carter improperly relied on the full-scale intelligence quotient assessment was counter to the publisher's manual guidelines.

Student's argument is not persuasive. First, Dr. Davidson did not assess Student and only observed Student for an hour the day before her testimony over Zoom to arrive at her conclusion. Further, Student argued Carter failed to follow publisher's guidelines, but failed to introduce the guidelines in his questioning of Carter or Dr. Davidson. No evidence was introduced that Student's tested cognition differed from his academic achievement. Student did not demonstrate he required special education services. The impairment must require instruction and services that cannot be provided with modification of the regular school program. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a)(1); Ed. Code § 56026, subds. (a) & (b).) Every school-based assessment since 2018 determined Student was not eligible for specific learning disability. The evidence supported Student was bright and a voracious reader. Student did not meet his burden that Travis improperly exited him from special education by failing to find him eligible for specific learning disability.

## SPEECH AND LANGUAGE

A pupil is eligible for special education and related services in the category of language or speech disorder when he or she demonstrates difficulty understanding or using spoken language to such an extent that it adversely affects his or her educational performance and cannot be corrected without special education and related services. (Ed. Code, § 56333.)

That difficulty must result from any of the following disorders:

1. Articulation disorders, such that the pupil's production of speech significantly interferes with communication and attracts adverse attention.
2. Abnormal voice, characterized by persistent, defective voice quality, pitch, or loudness. An appropriate medical examination shall be conducted, where appropriate.
3. Fluency difficulties which result in an abnormal flow of verbal expression to such a degree that these difficulties adversely affect communication between the pupil and listener.
4. Inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the pupil's language performance level is found to be significantly below the language performance level of his or her peers.

Hearing loss which results in a language or speech disorder and significantly affects educational performance.

Student did not demonstrate an articulation disorder such that his speech production significantly interfered with communication or attracted adverse attention. He did not demonstrate a fluency disorder or abnormal voice. Peers understood what he communicated. Student demonstrated an appropriate language performance level. He did not have a hearing loss which resulted in a language or speech disorder.

A qualifying language or speech disorder is defined in more detail by regulation. (Cal. Code Regs., tit. 5, § 3030, subd. (11).) The definition of an expressive or receptive language disorder is technical, and involves either of the following measurements:

The pupil scores at least 1.5 standard deviations below the mean or the score is below the seventh percentile for his or her chronological age or developmental level on one or more standardized tests in one of the areas listed in subdivision (A) and displays inappropriate or inadequate usage of expressive or receptive language as measured by a representative spontaneous or elicited language sample of a minimum of 50 utterances (Cal. Code Regs., tit. 5, § 3030, subd. (11)(D).)

Student did not score below the seventh percentile threshold required by California law for continued eligibility for special education on any standardized test. Student's scores were all in the average range with exception of his Social Language Development Test-Elementary Update which was scored at the seventh percentile. Student did not demonstrate inappropriate or inadequate usage of expressive or receptive language. Bernhardt determined Student no longer met the eligibility criteria for special education under the speech and language category.

Father testified he raised concerns about how Student would get back into special education should his needs return. He then went on to testify that he did not want Student to be exited from special education and that he made that clear during the IEP team meeting on October 7, 2021. He further testified that both Parents told Travis they did not want Student exited from special education. The evidence does not support Father's statement. The evidence demonstrates Parents were given multiple copies of their procedural safeguards, received copies of all assessments prior to the



meeting, met with Carter to review her psychoeducational assessment, and were informed they could have time to consider the IEP prior to providing consent. Despite this, Parents elected to consent to the IEP that day.

Student did not meet his burden that Travis improperly exited him from special education. The evidence showed Travis' IEP team concluded in October 2021, based on the assessment data Student no longer met the eligibility requirements for special education in speech and language. Parents were given an opportunity to meaningfully participate in the process. Moreover, Parents consented to exiting Student from special education in October 2021.

## AUTISM

In his closing brief, Student argues Travis failed to properly consider special education eligibility for autism like behaviors prior to exiting him from special education in October 2021.

A student is eligible for special education and related services in the category of autism if the student has a developmental disability affecting verbal and nonverbal communication, generally evidence before age three, and adversely affecting a child's educational performance. Characteristics can include

- engagement in repetitive activities,
- stereotyped movements,
- resistance to environmental changes or changes in daily routines and
- unusual response to sensory experiences. (Cal. Code Regs., tit. 5, § 3030, subd. (1).)

The evidence supported Student was known for appropriately joking and laughing with his classmates, able to express personal preferences without issue, interact appropriately with peers and adults, be cognitively flexible, and did not display motoric or repetitive behaviors.

By October 2021, Travis had considered and ruled out autism as an eligibility category for Student twice. Student argues Travis generated an insufficient developmental history of Student in making this determination. The evidence demonstrates Student's 2021 triennial reassessment was the second time Student was fully assessed by Travis. On both occasions Student was determined to not be eligible for special education for autism. Student was known for being a personable, playful, and engaging child.

Carter's 2021 assessment concluded he did not meet the criteria for eligibility in the category of autism based upon the results of the Conners Behavior Rating Scales, third edition, the Behavior Assessment System for Children rating scales, third edition, and the Gilliam Autism Rating Scales. Carter's report and testimony support that Student did not display the symptoms of autism, as did the testimony of his teacher and service providers. Student was described as

- highly social,
- flexible to schedule changes,
- initiated interactions with adults and peers, and
- was always offering to help other students.

At no time did Parent raise concerns with Travis personnel that she believed Student to be autistic. Testimony supported Parent had frequent and extensive contact with Carter and Killam and never raised any concerns. Nor did Student demonstrate any

typical symptoms of autism. The evidence supported Travis properly determined Student did not meet the criteria for eligibility for special education and related services in autism in October 2021.

The evidence demonstrated Student was properly exited from special education and related services in October 2021. Student did not meet the eligibility criteria in specific learning disability, speech and language, or autism. Student did not meet his burden to demonstrate Travis failed to identify Student's unique needs in autism, and thus, require eligibility for special education in that category.

The information before the IEP team on October 7, 2021, supported Travis' view Student was no longer eligible for special education. Bernhardt found Student's speech and language skills improved specifically in articulation that he no longer met the criteria under speech and language impairment. Carter's psychoeducational assessment ruled out specific learning disorder because Student's test scores did not reveal a severe discrepancy between ability and achievement that is required for eligibility in this category. Carter further ruled out other health impairment taking into consideration student's known medical diagnosis of attention deficit hyperactivity disorder and oppositional defiant disorder. Carter further determined Student did not meet the criteria to be eligible under the category of autism.

## STUDENT'S SUDDEN BEHAVIOR CHANGES

In early November 2021 Student began exhibiting significant behavior changes. Student exhibited noncompliant, aggressive, verbal outbursts, and inappropriate contact behaviors. These behaviors were significantly different from previous behaviors of Student. Parent noted Student's significant mood changes. In November 2021, Parent

notified Travis that Student's psychiatrist recently changed his medication. In January 2022 Student required crisis counseling after Student attempted to elope from school. Student expressed suicidal ideations. Student's behavior escalated so severely he struck a staff member, attempted to elope from school, and County emergency mental health services were engaged while Student was at school.

On January 24, 2022, Parents requested Student be reassessed for special education, specifically, in emotional disturbance. Parent cited Student's history of mental health needs, mental health hospitalizations, and ongoing support to County agencies. An assessment plan was generated to assess Student in

- academics,
- intellectual development,
- health,
- speech and language,
- motor,
- social emotional,
- adaptive, and
- behavior.

Parent signed the assessment plan on January 30, 2022.

Parent completed a health and development history report on February 7, 2022. In that report, Parent advised Travis of Student's current medical diagnosis of attention deficit hyperactivity disorder, oppositional defiance disorder, mood disorder. Parent notified Travis of Student's current medication and dosages. Parent identified Student's unpredictable behavior, difficulties with getting along with his peers, attitude, behavior, as social emotional concerns of hers.

TRAVIS' ISSUE: IS TRAVIS' MARCH 2022 FUNCTIONAL BEHAVIOR ASSESSMENT APPROPRIATE THAT STUDENT IS NOT ENTITLED TO AN INDEPENDENT EDUCATIONAL EVALUATION AT PUBLIC EXPENSE?

STUDENT ISSUE 1(c): FAILING TO REMIBURSE PARENT THE COST OF STUDENT'S INDEPENDENT EDUCATIONAL EVALUATION IN BEHAVIOR?

Travis contended its March 2022 functional behavior assessment is appropriate, and thus, Student is not entitled to an independent educational evaluation at public expense. Student's closing brief makes no mention of this issue.

The IDEA provides that Parents have the right to obtain an independent educational evaluation (IEE) and, if the private evaluation meets the standards of the local education agency (LEA), and parents share it with the LEA, to have the evaluation considered in making decisions concerning the provision of FAPE to a child. (34 C.F.R. § 300.502(a), (b)(3), (c)(1).)

Parents can obtain an IEE at public expense if they disagree with an evaluation obtained by the LEA and it either agrees to fund the independent evaluation or the LEA evaluation is found inappropriate by the decision of a hearing officer after an administrative due process hearing. (34 C.F.R. § 300.502(b)(1), (2)(ii). Once a parent has requested an IEE, the LEA "must, without unnecessary delay," file a due process complaint to show that its evaluation is appropriate or assure that the IEE is provided. (34 C.F.R. § 300.502(b)(2)(i), (ii).

An IEE is defined in the IDEA regulations as "an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." (34 C.F.R. § 300.502(a)(3)(i).)

The primary purpose of engaging in the process of developing an FBA is to compile data concerning behaviors of concern from close observation of a student, evaluate the data to identify patterns in the student's behaviors of concern, and discern relationships among setting events, antecedents and consequences in order to specifically describe when and where behaviors occur and develop hypotheses concerning the reasons a student engages in those behaviors.

Student's March 2022 behavior assessment was conducted pursuant to the assessment plan provided to Parent on January 24, 2022. Parent consented to the assessment plan on January 30, 2022.

State and federal law require that an assessor must be "trained and knowledgeable" regarding the assessment. (Ed. Code § 56320, subd. (a)(3).); 20 U.S.C § 1414(3)(a)(iv); 34 C.F.R § 300.304(c)(1)(iv).) Assessments must be conducted by individuals who are knowledgeable of the student's disability and competent to perform the assessment, as determined by the school district. (Ed. Code, §§ 56320, subd. (g) and 56322.) Hensley's qualifications as a Board-Certified Behavior Analyst met the statutory requirements for her to conduct the behavior assessment.

As discussed above Hensley

- completed direct observations,
- collected data on Student,

- conducted a records review of Student, and
- provided parent and teacher assessment tools for their feedback of Student's behavior.

Hensley reviewed the data with the team at Student's March 28, 2022 IEP team meeting. On May 17, 2022, Parent requested an independent educational evaluation in behavior to be conducted by Jenna Rhodes. Parent specifically challenged the lack of frequency data on Student's elopement or breaks. Travis denied Parent's request on June 23, 2022 by prior written notice. Travis filed for due process on July 12, 2022.

Hensley as a BCBA was qualified to conduct the assessment. She demonstrated she had sufficient knowledge of Student's disability. Her assessment consisted of data review and in-person observation. The functional behavior assessment was appropriate under the law.

Travis demonstrated its March 2022 functional behavior assessment was appropriate and Student is not entitled to an independent assessment at public expense. As Travis met its burden is unnecessary to determine whether Travis failed to reimburse Parent for the behavior assessment. Travis prevailed on Issue 2.

## STUDENT'S ISSUE 1(b): FAILING TO REVIEW THE INDEPENDENT EDUCATIONAL EVALUATION BY DR. CRAMPTON?

Stephanie Crampton, Psy. D. conducted an abbreviated cognitive assessment, collected questionnaires from Parents, and prepared a written psychological report of Student after being referred to her from his pediatrician in May 2022. Student alleged

Travis failed to review the independent educational evaluation of Dr. Crampton. Student asserted Parent provided Travis with a copy of Dr. Crampton's report, yet Travis failed convene an IEP team meeting to review her report.

Dr. Crampton testified at the hearing as one of Student's expert witnesses. Dr. Crampton was a licensed clinical psychologist. She had experience working with children in need of specialized education in private school settings. She was not a licensed school education psychologist or credentialed school psychologist. Dr. Crampton was not qualified to conduct a psychoeducational assessment.

Dr. Crampton determined Student met the Diagnostic and Statistical Manual of Mental Disorders-V criteria for autism spectrum disorder and unspecified anxiety disorder. Dr. Crampton testified to Student's medical diagnosis. A medical or psychological diagnosis pursuant to the DSM-V is not synonymous with eligibility under the IDEA.

Dr. Crampton was unable to discuss Student's educational needs. Dr. Crampton did not review Student's educational records or contact any of his teachers. Dr. Crampton only drew information and data from Parent. Dr. Crampton prepared a written report that Parent shared with Travis in August 2022. Travis did not dispute Student's medical diagnosis of autism. However, Dr. Crampton's testimony was not persuasive as the testimony bore no light on Student's educational needs.

Student's argument that Dr. Crampton's report put Travis on notice that Student should be reassessed for autism eligibility is unpersuasive.

Dr. Crampton completed her report on May 22, 2022. Student provided no evidence as to when he shared the contents of Dr. Crampton's report with Travis. The



2021-2022 school year concluded on June 3, 2022. Director of Special Education, Deanne Brownlee testified Travis received a copy of the report on August 4, 2022.

Student further alleges Parent notifying Travis on May 22, 2022 triggered a *Union* issue. (*Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1523 (9th Cir. 1994)). *Union* is distinguishable in the instant case. Travis had conducted two comprehensive psychoeducational evaluations of Student during the 2021-2022 school year. The October 2021 assessment concluded Student was not eligible for special education in the category of autism.

When Parent notified Travis of Dr. Crampton's findings, she also informed Travis she was awaiting the report and would share it with Travis upon receipt. In his closing brief, Student argues he had no obligation to share the report with Travis because under *Union*, Parent's notification of the findings triggered an assessment requirement. This is not the issue at hand. The issue is whether Travis considered the assessment under 34 CFR 300.502 (c)(1). Student's reliance on *Union* is misplaced as the issue of whether Travis should have reassessed pursuant to this report was not pled in this case. The Crampton report was not an independent educational evaluation.

If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria. The criteria under which the evaluation is obtained and the qualifications must be the same as the criteria that the public agency uses when it initiates an evaluation. (34 CFR 300.502 (c)(1) & (e)).

The Crampton assessment was a supplemental report. It was not an independent educational evaluation. It did not meet the same criteria required of a public agency. Dr. Crampton did not meet the qualifications to conduct a psychoeducational assessment. Travis had no obligation to review the report.

Student did not meet his burden to demonstrate Travis failed to review the Crampton assessment during the time at issue. Student did not prevail on Issue 1(b).

STUDENT'S ISSUE 1(d) AND (e): FAILING TO IDENTIFY ALL AREAS OF NEED AND GOALS AND FAILING TO DEVELOP APPROPRIATE GOALS, SPECIFICALLY IN SOCIAL SKILLS, PERSPECTIVE TAKING, PEER CONFLICT, AND BLAMING OTHERS?

Student argues Travis failed to identify all areas of Student's needs and provide appropriate goals. Student's closing brief was silent to this issue.

After the fall 2021 triennial assessment the Travis team determined Student no longer required special education to access his education. He was exited from special education services and received transitional support until Thanksgiving 2021.

Around November 7, 2021, Parent reported to Carter that Student's medication had changed. She also reported Student experienced significant mood changes. Student's behavior deteriorated and new, more aggressive behaviors, surfaced. Student also experienced mental health emergencies that required intervention from county mental health providers.

In January 2022, Parent requested Student be re-assessed for special education, specifically in the areas of emotional disturbance. As discussed above, Student was reassessed. On March 28, 2022, the IEP met to review Student's 2022 assessments and make an eligibility determination. At this meeting, the team determined Student met the eligibility criteria for emotional disturbance. The team further determined Student required specialized academic instruction, social and behavioral supports to allow him to participate in the general education curriculum. No team members were excused from the meeting. The assessment results were shared with all team members.

The meeting was continued until April 4, 2022. When the meeting was reconvened, the team continue to review Student's present levels of performance, his assessments and the determination of eligibility was made. Student's unique areas of need were determined to be

- behavior,
- social emotional regulation,
- sensory regulation,
- work completion, and on task behavior, and
- writing.

Goals were proposed in the following areas: three behavior goals to address appropriate language, Student's propensity for noncompliance and elopement, and self-management; four social-emotional goals to address Student's needs in understanding emotions, thought replacement, peer conflict management, and social skills to increase peer relations; Student had one goal to address self-regulation strategies, one goal to address work completion, on-task behavior, and writing.

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.)

Student failed to meet his burden that Travis failed to identify all areas of need specifically mental health and autism. Travis completed two comprehensive psychoeducational evaluations of Student during 2021-2022 school year. In both instances, Carter utilized broadband assessment tools such as the Behavior Assessment System for Children and more narrow band tools such as the Children's Depression Inventory. Based on the data provided, Travis appropriately determined Student had mental health and behavior needs and provided goals and services to support these needs.

Student was found eligible for special education under emotional disturbance and other health impairment. Moreover, Student's March 28, 2022 IEP offered him 60 minutes weekly of individual counseling from March 28, 2022 until June 3, 2022 in a pull out fashion. From June 4, 2022 until March 27, 2023 Student was offered 30 minutes of weekly individual counseling through a nonpublic day school and 40 minutes daily group counseling through a nonpublic day school. Student failed to meet his burden that Travis did not develop goals in all areas of need.

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.) 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 Schl 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].)

Student failed to prove that the March 28, 2022 IEP did not offer goals in social skills, perspective taking, peer conflict, and blaming others that met his needs. The March 28, 2022 IEP provided Student five social emotional goals to address Student's needs.

One goal was written to help Student label his own emotions such as anger, fear, happiness, sadness with an 80 percent accuracy in four out of five trials. The goal would be supported by his behavior intervention specialist, mental health clinician, and classroom staff.

Student's second social emotional goal dealt with thought replacement. Student would practice positive self-talk to reduce suicidal ideation and reduce comments and gestures pertaining to death and dying by 50 percent during the reporting period. The goal would be supported by his school psychologist, mental health clinician, and classroom staff.

Student's third social emotional goal addressed peer conflict management. Student would demonstrate appropriate problem solving skills by identifying Student's point of concern and generate to solutions using I statements and kind words in four out of five opportunities. The goal would be supported by his school psychologist, mental health clinician, and classroom staff.

Student's fourth social emotional goal address appropriate peer relationship skills. This goal supported Student's cooperative learning and would be measured by

the absence of aggressive behavior, name calling, verbal put downs in four out of five outcomes. The goal would be supported by his school psychologist, mental health clinician, and classroom staff.

Student's fifth social emotional goal dealt with addressing Student's self-regulation strategies such as deep breathing, journalizing, movement break, and to complete one strategy with 25 percent assistance in three out of four trials. The goal would be supported by his occupational therapist, behavior intervention specialist, and mental health clinician. Student did not prevail on Issue 1 (d) and (e).

#### STUDENT'S ISSUE 1(g): FAILING TO PROVIDE PARENTS ALL EDUCATIONAL RECORDS WITHIN FIVE DAYS OF REQUEST?

Student argues Travis failed to provide student with a copy of his school records within five business days of his request. Student argues this procedural violation denied Student a FAPE. Travis contends it timely provided student with all requested records.

Student failed to meet his burden of proof. Parent testified she received thousands of pages from Travis. Student's expert witness Rhodes also testified to the voluminous number of records she received from Parent.

Education Code section 56504 states in relevant part that the parent shall have the right and opportunity to examine all school records of his or her child and to receive copies ... within five business days after the request is made by the parent, either orally or in writing. Education Code section 49061(b) states that a

"pupil record means any item of information directly related to an identifiable pupil, other than directory information, that is maintained

by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm, or other means."

A procedural violation does not constitute a denial of FAPE unless it impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child or deprived the Student's educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii).)

Student went to great lengths to argue certain records should have existed, but were not produced; however, the evidence did not support Student's argument. Student did not establish Parent did not receive all existing Student records within five days. Student did not prevail on Issue 1(g).

## CONCLUSIONS AND PREVAILING PARTY

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

### ISSUE 1(a):

Student failed to meet his burden of proof that Travis denied Student a FAPE during the 2021-2022 school year by failing to assess Student in all areas of suspected disability, specifically, autism like behaviors, speech and language, behavior, and mental health.

Travis prevailed on Issue 1(a).

#### ISSUE 1(b):

Student failed to meet his burden of proof that Travis denied Student a FAPE during the 2021-2022 school year by failing to review the independent education evaluation by Dr. Crampton.

Travis prevailed on Issue 1(b).

#### ISSUE 1(c):

Student failed to meet his burden of proof that Travis denied Student a FAPE during the 2021-2022 school year by failing to reimburse Parents the cost of Student's independent educational evaluation in behavior.

Travis prevailed on Issue 1(c).

#### ISSUE 1(d):

Student failed to meet his burden of proof that Travis denied Student a FAPE during the 2021-2022 school year by failing to identify all area of Student's needs, specifically, mental health and autism.

Travis prevailed on Issue 1(d).

#### ISSUE 1(e):

Student failed to meet his burden of proof that Travis denied Student a FAPE during the 2021-2022 school year by failing to develop appropriate goals, specifically, in social skills, perspective taking, peer conflict, and blaming others.

Travis prevailed on Issue 1(e).



#### ISSUE 1(f):

Student failed to meet his burden of proof that Travis denied Student a FAPE during the 2021-2022 school year by improperly exiting Student from special education and related services.

Travis prevailed on Issue 1(f).

#### ISSUE 1(g):

Student failed to meet his burden of proof that Travis denied Student a FAPE during the 2021-2022 school year by failing to provide all educational records within five days of request.

Travis prevailed on Issue 1(g).

#### TRAVIS' ISSUE:

Travis proved its March 2022 functional behavior assessment was appropriate that Student is not entitled to an independent educational evaluation at public expense.

Travis prevailed on this issue.

#### ORDER

Student's requested relief on all issues is denied.

## RIGHT TO APPEAL THIS DECISION

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

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings