

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2023010119

PARENT ON BEHALF OF STUDENT,

v.

GRANITE MOUNTAIN CHARTER SCHOOL.

DECISION

June 20, 2023

On January 6, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Granite Mountain Charter School, called Granite Mountain, a public charter school. On January 13, 2023, OAH continued the first day of hearing to March 7, 2023. Administrative Law Judge Christine Arden heard this matter via videoconference using the Zoom software application on March 7, 8, 9, 15, 16, 28, 29, & 30, 2023.

Mother represented Student on all hearing days. Student did not attend the hearing.

Attorney Vivian Billups-Randolph represented Granite Mountain Charter School, referred to as Granite Mountain, at the hearing. Dr. Cristina Navarro-Cabero, Chief of Specialized Pupil Services, attended all hearing days on Granite Mountain's behalf, except for about one hour on March 28, 2023, when Nicole Balogh, Special Education Program Administrator, attended the hearing on Granite Mountain's behalf.

At the parties' request, the matter was continued to May 15, 2023, to allow the parties time to prepare and submit their written closing argument briefs to OAH. The record was closed, and the matter was submitted on May 15, 2023.

ISSUES

The issues at the due process hearing are stated below. A free appropriate public education is called a FAPE. An individualized education plan is called an IEP.

The issues were modified from the Order Following Prehearing Conference, dated February 17, 2023, by agreement of the parties on the record during the due process hearing. Some issues have been rephrased for clarity, with no substantive changes. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

1. Did Granite Mountain deny Student a FAPE during the 2022-2023 school year through January 6, 2023, by delaying to either
 - file an action with OAH until August 29, 2022, to defend its assessments of Student in the areas of occupational therapy, speech and language, and functional behavior, as legally compliant, or

- fund independent educational evaluations in those areas in response to Parent’s verbal request for independent educational evaluations made at the June 10, 2022 IEP team meeting, and in an email?
2. Did Granite Mountain deny Student a FAPE, during the 2021-2022 school year by failing to implement occupational therapy services and speech and language services by either using improperly credentialed therapists, or improperly supervised assistants?
 3. Did Granite Mountain deny Student a FAPE, during the 2021-2022 school year from February 2022, by significantly impeding upon Parent’s opportunity to participate in the decision-making process regarding provision of a FAPE to Student by:
 - A. failing to have either the occupational therapist and the speech and language pathologist, or their assistants who worked with Student, attend the IEP team meetings held in February, May, and June 2022.
 - B. forbidding Student’s special education teacher from sharing data regarding Student’s academic progress on goals and other collected data about Student, at the IEP team meeting held on June10, 2022.

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- C. failing to allow discussion of Parent's concerns at the IEP team meetings held in May 2022, and June 2022.
 - D. changing Student's goals in the areas of speech and language, and occupational therapy, without Parent's consent?
- 4. Did Granite Mountain deny Student a FAPE, in the IEPs dated May 12, 2022, and June 10, 2022, by failing to make clear offers of a FAPE by stating that the applied behavioral analysis consultation will be provided "as needed," rather than for an exact number of minutes per month?
 - 5. Did Granite Mountain deny Student a FAPE by failing to implement Student's goals in the areas of speech and language, and occupational therapy, offered in the IEPs dated February 2022, May 12, 2022, and June 10, 2022?

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).) In this case Student requested the hearing and, therefore, has the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

At the time of hearing Student was seven years old and in second grade at Granite Mountain, a public charter school. Student started attending Granite Mountain in first grade at the beginning of the 2021-2022 school year. Student resided with his Parents within the boundaries of the Fontana Unified School District, which is not a party to this lawsuit. Student was enrolled in Granite Mountain at all relevant times. Student was eligible for special education under the primary eligibility category of autism, and the secondary eligibility category of speech or language impairment.

LEGAL FRAMEWORK FOR CASES UNDER THE IDEA

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) Parents and school personnel develop an

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

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988,1000].)

Procedural violations do not automatically require a finding of a FAPE denial. (*W.G., et al. v. Board of Trustees of Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1484, superseded by statute on other grounds by IDEA Amendments of 1997.). A procedural violation constitutes a denial of a FAPE only if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parents' opportunity to participate in the decision - making process regarding provision of a FAPE to the student; or
3. caused the child to be deprived of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

PROCEDURAL BACKGROUND RELEVANT TO THIS MATTER

Granite Mountain initially filed a due process hearing request with OAH, naming Student, on August 19, 2022, seeking, in part, an order finding its speech and language,

occupational therapy, and functional behavior assessments of Student conducted in Fall 2021 were legally compliant and Granite Mountain was not required to fund independent educational assessments.

Student filed this case against Granite Mountain on January 6, 2023. The two cases were consolidated and Student's case was designated as the primary case. However, Granite Mountain dismissed its case naming Student on February 28, 2023, prior to the start of hearing on March 7, 2023. Therefore, only Student's case proceeded to hearing before OAH.

CHARTER SCHOOLS

The respondent, Granite Mountain, is a public charter school and a local education agency. Students with disabilities retain all rights under the IDEA when they attend a charter school, just as they would when attending traditional public schools. (34 C.F.R. § 300.209(a).) A charter school that is a local educational agency, called a LEA, must serve children with disabilities in the same manner that a LEA serves children with disabilities in other public schools. (*Id.*, at subd. (b)(1)(i); Ed. Code, § 47604.) A LEA is defined as a "school district, a county office of education, a nonprofit charter school participating as a member of a special education local plan area, or a special education local plan area." (Ed. Code, § 56026.3.) A special education local plan area is referred to as a SELPA.

Although charter schools have been granted independence to develop unique educational models, the California Legislature did not intend that the charter school statutes override or conflict with special educational law. California Education Code, § 47646, subd.

(a), imposes on the charter local educational agency the duty to ensure that all children with disabilities enrolled in the charter school receive special education in a manner consistent with their IEPs and in compliance with the IDEA and its regulations.

ISSUE ONE: DID GRANITE MOUNTAIN DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR THROUGH JANUARY 6, 2023, BY REFUSING TO FUND INDEPENDENT EDUCATIONAL ASSESSMENTS IN OCCUPATIONAL THERAPY, SPEECH AND LANGUAGE, AND FUNCTIONAL BEHAVIOR?

Student contends Granite Mountain must fund independent educational evaluations in occupational therapy, speech and language and functional behavior because Mother requested independent educational evaluations in those areas and a behavior intervention plan at the June 10, 2022 IEP meeting. Student further contends that because Granite Mountain failed to timely file an action with OAH seeking an order finding its assessments of Student in occupational therapy, speech and language, and functional behavior were legally compliant, Granite Mountain was obligated to fund independent educational evaluations in those areas.

Granite Mountain contends Student is not entitled to independent educational evaluations in occupational therapy, speech and language, and functional behavior, because Parent did not disagree with the validity or legal compliance of Granite Mountain's assessments of Student in those areas. Granite Mountain further contends it had no obligation to file with OAH to affirm the validity of those assessments because Parent did not challenge the accuracy, validity or legal compliance of those assessments. Granite Mountain contends that because Parent's stated reason for requesting independent educational evaluations was to obtain new baselines of Student's skills, it was also not obligated to fund independent educational evaluations.

INDEPENDENT EDUCATIONAL EVALUATIONS

The IDEA requires a local education agency to conduct a reevaluation (called a reassessment in California law), of a special education pupil at least once every three years, unless the parent and the agency agree otherwise. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) California law refers to assessments, rather than evaluations, but they mean the same thing. The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2); 34 C.F.R. § 300.304(b); Ed. Code, § 56320, subds. (e), (f).)

Pursuant to 34 C.F.R. § 300.502(b)(1), “[a] parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to conditions in paragraphs (b)(2) through (4) of this section.” Procedural safeguards of the IDEA provide that, under certain conditions, a student is entitled to obtain an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1), (b)(1) & (2); Ed. Code, §§ 56329, subd. (b), 56506, subd. (c).) An independent educational evaluation is 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).)

When a parent disagrees with a public school’s assessment of a child and requests an independent evaluation at public expense, the school district must, “without unnecessary delay,” either initiate a due process hearing to show that its evaluation was appropriate, or provide the independent evaluation at public expense. However, if the

final decision after a due process hearing finds the district's assessment was appropriate, the parent does not have a right to obtain an independent educational assessment at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).)

The school district may inquire as to the reason why a parent objects to the school district's assessment, and is requesting an independent evaluation. However, the school district cannot require parents to provide an explanation for their disagreement with an assessment. Moreover, if the parent objects to the validity of a district assessment, the district cannot unreasonably delay either providing the requested independent evaluation at public expense or filing its due process complaint to demonstrate the appropriateness of its assessment. (34 C.F.R. § 300.502(b)(4).) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees. 34 CFR § 300.502(b)(1); *Letter to Thorne* 16 IDELR 606 (OSEP 1990).

The IDEA allows states to determine the time by which a request for due process hearing must be filed. (20 U.S.C. § 1415(b)(6)(B).) California law provides that a request for a due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (I).) There is no more specific statutory limitation on the time in which a parent can make a request for an independent educational evaluation. In the instant case, Parent requested independent educational evaluations less than a year from when Granite Mountain completed its assessments of Student.

STUDENT ATTENDED KINDERGARTEN IN THE 2020-2021 SCHOOL YEAR AT ANOTHER CHARTER SCHOOL

During the 2020-2021 school year, when Student was in kindergarten, he attended Sky Mountain Charter School, called Sky Mountain. Sky Mountain's program primarily supported home-schooling and followed an individualized independent study model. In December 2020, Sky Mountain provided an assessment plan to Parents in preparation for a statutorily mandated three-year review of Student's IEP, which was due to be held by May 24, 2021. Parents did not consent to that assessment plan until April 13, 2021. Consequently, the assessments were not completed before the three-year IEP team meeting was held on May 24, 2021.

STUDENT ENROLLED IN GRANITE MOUNTAIN IN AUGUST 2021

Because Student disenrolled from Sky Mountain before it completed his three-year assessments, the September 24, 2021 IEP team directed Student's case manager and special education teacher, Rosalynn Lippen, to draft a comprehensive assessment plan. Parent later consented to that assessment plan. Student did not offer into evidence the date Parent consented to the assessment plan.

GRANITE MOUNTAIN ASSESSED STUDENT IN FALL 2021

Granite Mountain employees conducted comprehensive assessments of Student in Fall 2021. Granite Mountain's licensed speech-language pathologist, Cheri Somers, assessed Student in the area of speech and language on November 2, 2021. Chloe Replogle, Granite Mountain's licensed occupational therapist, assessed Student in the area of occupational therapy on October 20, 2021. Brittany Gentry, Granite Mountain's credentialed school psychologist, assessed Student in the area of functional behavior

over five days in October 2021. The functional behavior assessment results indicated Student's minor behavior deficits were best addressed by a few behavior goals, instead of a behavior intervention plan.

Gentry very candidly and competently testified at hearing that, after conducting Student's functional behavior assessment, Gentry concluded Student's behavior problems were not severe enough to warrant a behavior intervention plan. Her testimony was persuasive, well-reasoned, and was not contradicted by any other educator or behavior expert. Gentry opined it was preferable to use behavior goals, rather than a behavior intervention plan, to address Student's minor negative behaviors, because goals restricted Student's behavior less than a behavior intervention plan would. A behavior intervention plan, which was a more restrictive methodology, was not necessary in Student's case. Gentry referred to the behavior goals as a less restrictive methodology than a behavior intervention plan. Gentry further persuasively opined behavior goals were preferable to a behavior intervention plan to address Student's minor behavior issues, because goals would be more likely to promote Student's independence. Gentry convincingly opined it was generally better to use the least restrictive methodology available to address a pupil's behavior deficits.

Nicole Bryant, a credentialed school psychologist with over 20 years-experience in that role, who was employed by Granite Mountain as a school psychologist, and attended several of Student's IEP meetings, testified at hearing. Bryant testified very persuasively that the least restrictive method of addressing negative behaviors were accommodations. Bryant testified that behavior goals were a more restrictive means of addressing behavior deficits than accommodations, and the most restrictive means was a behavior intervention plan. Bryant persuasively opined a functional behavior assessment can appropriately recommend accommodations and behavior goals to

address behavior deficits, instead of a behavior intervention plan. Bryant further testified it is best to support the child's progress by using the least restrictive means possible to address a child's behavior problems.

The results of Granite Mountain's assessments of Student in speech and language, occupational therapy, and functional behavior, were reviewed by Student's IEP team at meetings held on November 18, 2021, and December 9, 2021. At those IEP team meetings Mother and Student's advocate had no complaints about the validity of those assessments. In fact, Mother thought the assessments of Student conducted by Granite Mountain were valid and the results captured an accurate picture of Student.

GRANITE MOUNTAIN CONTRACTED WITH NONPUBLIC AGENCIES TO PROVIDE STUDENT'S RELATED SERVICES

Granite Mountain employees conducted special education assessments. However, Granite Mountain contracted with NJA Therapies, Inc., referred to as NJA, a nonpublic agency, to provide direct speech and language therapy and occupational therapy related services to Student. NJA employed licensed speech-language pathologist assistants, and occupational therapy assistants, who directly delivered services to the child. NJA also employed licensed speech language pathologists and occupational therapists, who

- supervised the assistants,
- interpreted assessment results,
- analyzed collected data on each child's progress,
- recommended treatment plans and
- attended IEP meetings.

NJA's speech-language pathology assistants and occupational therapy assistants usually did not attend IEP meetings, because they were not authorized to interpret assessments and collected data, or to make recommendations regarding the nature of related services that pupils needed.

Granite Mountain also contracted with Behavioral Autism Therapies, referred to as BAT, an agency that supported people with autism through the implementation of applied behavior analysis techniques and strategies, to provide one-to-one aide support to Student during his speech therapy sessions and occupational therapy sessions. Student had a weekly individual session with his specialized academic instructor, Christine Rule. Student also had another weekly specialized academic instruction session with Rule in a small group setting. Student received one-to-one aide support during the group specialized academic instruction session, but the evidence was unclear as to whether Student received one-to-one aide support during his individual specialized academic instruction session. Student also received privately funded applied behavior analysis services from BAT outside of school.

MOTHER REQUESTED INDEPENDENT EDUCATIONAL EVALUATIONS AND A BEHAVIOR INTERVENTION PLAN

More than six months after Student's IEP team reviewed the results of the assessments conducted in Fall 2021, at an IEP team meeting held on June 10, 2022, Mother requested independent educational evaluations in the areas of speech and language, and occupational therapy. At that same IEP meeting Mother also requested Student be provided a behavior intervention plan developed by a board-certified behavior analyst. At that time, Student's negative behaviors were being addressed in his IEP by two behavior goals, rather than a behavior intervention plan.

Mother stated at the June 10, 2022 IEP meeting that the reason she requested independent educational evaluations was because she did not trust NJA, the nonpublic agency that provided speech and language, and occupational therapy services to Student. Mother told the team she was requesting the independent educational evaluations to obtain new baselines for Student's present levels of performance in the areas of speech and language, and occupational therapy.

Mother never claimed the reason she asked for independent educational evaluations was because she disputed the validity or conclusions of Granite Mountain's Fall 2021 assessments of Student. Even when testifying at hearing Mother never claimed Granite Mountain's assessments of Student in the areas of speech and language, occupational therapy, and functional behavior, were invalid, inaccurate, or legally noncompliant in any way. The record is clear that Mother sought the independent educational evaluations simply because she did not trust the reports about Student's progress presented by NJA's speech-language pathologist and occupational therapist, primarily because they did not usually work directly with Student.

Mother's main complaint with NJA was that its speech and language pathology assistants and occupational therapy assistants, who worked directly with Student, did not attend Student's IEP meetings. Mother thought the assistants should attend IEP meetings, along with the licensed speech-language pathologist and occupational therapist assigned to Student, to discuss Student's progress.

At the June 10, 2022 IEP meeting Mother stated, "I don't feel like anything that comes from NJA when it comes to OT and speech is appropriate and I'm going to request an IEE in speech and in OT since everything that's coming from NJA is a mess." Mother further stated at that meeting,

"I again feel that anything coming from NJA is has been [in]appropriate and unfortunately for everybody, including myself, I have no choice but to request an IEE [in] speech and in OT to get all this fixed and get us all you know to start from fresh."

Mother was unhappy with NJA because the licensed speech and language pathologist assistants, and occupational therapy assistants from NJA, who delivered related services directly to Student, were not present at IEP meetings, and she rarely saw the speech pathologist and occupational therapist at Student's related service sessions. Therefore, Mother suspected the assistants were not being properly supervised, although Mother seemed to be generally satisfied with the related services being delivered to Student by the speech-language pathology assistant and occupational therapy assistant.

Parent voluntarily stated the reason she requested the independent educational evaluations in speech, and occupational therapy at the June 10, 2022 IEP meeting. Mother did not request independent educational evaluations because she disagreed with Granite Mountain's assessments of Student in speech and language, occupational therapy, and functional behavior, or because she thought the assessments were legally noncompliant or otherwise inaccurate. Parent told the IEP team at the June 10, 2022 IEP meeting the reason she was requesting independent educational evaluations in speech and language and occupational therapy was that she did not trust anything done by

NJA. Parent also stated she requested the independent educational evaluations in speech and language, and occupational therapy to obtain updated baselines for Student's present levels of performance in those areas.

Over Summer 2022 and at the beginning of the 2022-2023 school year Granite Mountain attempted to settle the dispute with Student regarding the requested independent educational evaluations sought for updated present levels, but those negotiations did not result in a resolution of the dispute. Dr. Christine Navarro-Cabero, referred to as Navarro, Granite Mountain's Chief of Specialized Pupil Services, is both a licensed clinical and school psychologist. She testified very competently and convincingly that it is not necessary or appropriate to conduct independent educational evaluations simply to obtain new baselines of a child's present levels of performance. Navarro persuasively testified that a specialist, such as a speech and language pathologist, or an occupational therapist, could very quickly determine what Student's present levels of performance were by simply working with Student for a short time and informally assessing him on his skill mastery. Consequently, it is clear that independent educational evaluations were not necessary to obtain new baselines for Student's skills at any time since they were first requested by Mother on June 10, 2022.

STUDENT IS NOT ENTITLED TO INDEPENDENT EDUCATIONAL EVALUATIONS

A local educational agency is only required to file to defend the appropriateness of its assessment or fund independent educational evaluations when the parent disagrees with the agency's assessment. (34 C.F.R. § 300.502(b)(2)(i)). Parent did not disagree with any of Granite Mountain's assessments of Student conducted in Fall 2021, either as to the validity of the results, or Granite Mountain's compliance with procedural requirements

for the assessment. Parent was not seeking independent educational evaluations to obtain another expert opinion as evidence to challenge the validity of Granite Mountains assessment results, and Student did not make a claim the assessments were not legally compliant in this due process matter. Because Parents never challenged the validity of the speech and language, occupational therapy, and functional behavior assessments, whether or not those assessments were legally compliant is not an issue to be decided in this due process matter.

Rather, Mother sought independent educational evaluations in speech and language and occupational therapy to obtain a subsequent update of Student's present levels of performance in those areas, which is not the purpose of the "file-or-defend" procedure provided in applicable law. Parent sought independent educational evaluations to determine if Student's present levels of performance had changed over the approximately six months since Granite Mountain had assessed Student in speech and language, occupational therapy, and functional behavior. However, obtaining new baselines for a child's performance less than a year following an assessment is not the appropriate purpose for publicly funded independent educational assessments. Therefore, Granite Mountain was not required to file a case with OAH to defend those assessments or fund independent educational evaluations.

The federal regulations expressly permitted Granite Mountain to ask Parent to explain the reason for her request for independent educational evaluations. However, it was not even necessary to ask Parent her reason for requesting independent educational evaluations because Parent freely offered her reason when she made the request. There was no procedural violation in Granite Mountain's conduct at the June 10, 2021 IEP meeting as to Parent's request.

Because Granite Mountain was not required to file a due process hearing request to defend the appropriateness of its assessments, Student cannot prevail on his claim that Granite Mountain unnecessarily delayed in filing such a request with OAH. Moreover, Granite Mountain was not required to fund an independent educational evaluation in functional behavior simply because Parent requested Student be given a behavior intervention plan. The extremely persuasive testimony of Gentry established a behavior intervention plan was not appropriate for Student because his behavior problems were not severe, and behavior goals were the appropriate least restrictive method of addressing Student's minor behavior issues.

CONCLUSION ON ISSUE ONE

Student failed to prove by a preponderance of the evidence that he was entitled to independent educational evaluations in the areas of speech and language, occupational therapy, and/or functional behavior at public expense. Therefore, Granite Mountain prevailed on Issue one.

ISSUE TWO: DURING THE 2021-2022 SCHOOL YEAR DID GRANITE MOUNTAIN DENY STUDENT A FAPE BY EITHER FAILING TO USE PROPERLY CREDENTIALLED SPECIALISTS, OR BY FAILING TO SUPERVISE THE SPECIALISTS' ASSISTANTS WHO DELIVERED RELATED SERVICES TO STUDENT?

Student contends Granite Mountain denied him a FAPE in the 2021-2022 school year by failing to use properly credentialed speech-language pathologists or occupational therapists when providing speech-language therapy and occupational therapy services to Student. Student further contends Granite Mountain denied him

a FAPE by failing to ensure that the speech-language pathologist assistants, and occupational therapy assistants who delivered related services to Student in the 2021-2022 school year were properly supervised.

Granite Mountain contends that all speech-language pathologists and occupational therapists who provided or supervised the delivery of related services to Student were properly licensed. Granite Mountain further contends that all speech-language pathologist assistants and occupational therapy assistants were properly supervised.

Student made no claim that any related service providers from BAT were not properly credentialed, licensed, or supervised. Student's claims challenging the credentials and/or licenses and proper supervision of assistants were limited to NJA personnel who provided speech and language services and occupational therapy services to Student.

RELATED SERVICE PROVIDERS MUST BE LICENSED IN CALIFORNIA

All individuals providing related services to children with IEPs in California must hold qualifications consistent with California state approved or recognized certification licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services. Ed. Code §§ 56365 and 56366; 34 C.F.R. § 300.156(b). Both speech-language pathologists and occupational therapists must be licensed in California. CA Business & Professions code § 2532 and § 2570.3(a).

STUDENT FAILED TO PROVE NJA'S STAFF WHO WORKED WITH STUDENT WERE NOT PROPERLY LICENSED

Mother suspected NJA speech-language pathologist Kelly Cleary was not licensed as a speech pathologist in California because Mother's research indicated Cleary had an out of state home address. During Summer, 2022, Mother filed two compliance complaints against Granite Mountain with the California Department of Education. One of those complaints alleged Granite Mountain had used unlicensed service providers from NJA to provide related services to Student.

During Summer 2022, in order to draft a response to one of Mother's compliance complaints, Navarro conducted research regarding the California licenses held by each of the NJA related service providers who had worked with Student in the 2021-2022 school year. Navarro very persuasively testified that she conducted research with the California Department of Consumer Affairs as to whether each of the related service providers from NJA who provided related services to Student in the 2021-2022 school year were properly licensed in California.

Navarro printed copies of the information she obtained from the California Department of Consumer Affairs regarding licenses of the related service providers on June 14, 15, and 16, 2022. Those documents were identified and authenticated by Navarro and admitted into evidence at hearing. For example, a search of the California Department of Consumer Affairs database showed that Kelly Cleary's speech pathologist license was issued by the California Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board on May 14, 2009, and was still current when Cleary provided services to Student. Cleary had an out-of-state mailing address.

However, that fact did not establish that Cleary's California license was not valid and active at the relevant times. The documents and Navarro's testimony convincingly established that all of the NJA speech-language pathologists and occupational therapists, and their assistants, who worked with Student, or on his case, during the 2021-2022 school year, were validly licensed in California. Navarro's testimony was extremely credible because she responded candidly, confidently, without hesitation, and knowledgeably to questions, and her testimony was corroborated by the documentary evidence.

Navarro further testified the printouts from the California Department of Consumer Affairs confirmed the validity of the California license held by each speech-language pathologist, occupational therapist, speech-language pathologist assistant, and occupational therapy assistant who worked with Student during the 2021-2022 school year. Granite Mountain's evidence was extremely persuasive. Student offered no evidence in rebuttal to Navarro's convincing testimony and the corroborating documentation. Student failed to prove by a preponderance of the evidence that each of the NJA speech language pathologists and occupational therapists who worked with Student during the applicable time period were properly not licensed in California.

STUDENT FAILED TO PROVE NJA'S SPEECH-LANGUAGE PATHOLOGY ASSISTANTS AND OCCUPATIONAL THERAPIST ASSISTANTS WERE NOT PROPERLY SUPERVISED

Licensed speech-language pathology assistants may practice certain delegated services under the supervision of a California licensed speech-language pathologist in

California. CA Bus. & Prof. Code § 2538.2. Also, licensed occupational therapy assistants may practice certain delegated services under the supervision of a California licensed occupational therapist. CA Bus. & Prof. Code § 2570.1.

Student failed to present persuasive evidence in support of his allegation that the NJA speech-language pathology assistants, and occupational therapy assistants who worked directly with Student were not properly supervised by their supervising speech-language pathologist and occupational therapist, respectively. The transcript of the recording of the June 10, 2022 IEP meeting established that both Dr. Naomi Achondo, the Director of NJA, and one of its licensed occupational therapists assigned to supervise Student's occupational therapy services, and Michelle Rosales, a NJA licensed speech-language pathologist assigned to supervise Student's speech and language therapy services, both attended that meeting and discussed their supervision of assistants working directly with children.

Achondo stated at the June 10, 2022 IEP team meeting that she supervised Vivian Gonzalez, the NJA occupational therapy assistant who was then working directly with Student every week. Achondo further stated at the meeting that she conferred with Gonzalez each week after Student's occupational therapy session regarding what they had worked on during the session. Rosales also stated at the June 10, 2022 IEP meeting that she observed the speech-language pathologist assistants she supervised in sessions at least once monthly. Rosales also stated she conferred with each of those speech-language pathologist assistants every week to see how each child, including Student, was doing and to inquire if the assistant needed any support from the speech-language pathologist during treatment sessions.

Rosales explained to Mother at the June 10, 2022 IEP meeting that the speech language pathology assistants and occupational therapy assistants working with Student were licensed in California, and they each went through rigorous programs before receiving those licenses. Rosales also explained at the June 10, 2022 IEP meeting that the licensed assistants were authorized to provide treatment to Student, and to report on Student's progress to their supervisors. Achondo further explained that the assistants were authorized to do most everything their supervisors could do, except analyze or interpret evaluations and data, and make recommendations for treatment.

Mother expressed her displeasure at the June 10, 2022 IEP meeting because she had seen Achondo, Rosales, and other supervising speech-language pathologists and occupational therapists, only infrequently observing Student's speech-language therapy and occupational therapy service sessions. However, both Achondo and Rosales explained to Mother at the June 10, 2021 IEP meeting that they each regularly conferred with their assistants after Student's therapy sessions about his work on goals and progress.

Rosales reported to the team at the June 10, 2022 IEP meeting regarding Student's speech-language therapy, and Student's communication strengths and weaknesses. Achondo also reported to the team at the June 10, 2022 IEP meeting regarding Student's occupational therapy, and Student's fine motor and visual motor skills and weaknesses, and his progress on various motor skills. Moreover, the NJA service log for Student during a portion of the 2021-2022 school year included multiple service note entries by the assigned supervising speech-language pathologists and

occupational therapists. The recording of the June 10, 2022 IEP meeting established that both Achondo and Rosales were able to answer all questions raised about Student's occupational therapy and speech-language therapy services.

Student did not call the speech-language pathologist assistants or occupational therapy assistants who worked with Student, or any other qualified witness, to testify that the supervision of speech-language pathologist assistants or occupational therapy assistants who provided services to Student had not been properly supervised in compliance with the supervision requirements of the California Speech-Language Pathology and Audiology and Hearing Aide Dispensers Board, and/or the California Occupational Therapy Board. Supervision by the therapists of their assistants regularly occurred in conferences after Student's therapy sessions, when Mother was not present. Mother's testimony that the speech-language pathologist and occupational therapist did not supervise their assistants properly was simply conclusory and unsupported. Therefore, Mother's testimony on this issue was not persuasive.

At the June 10, 2022 IEP meeting both the speech-language pathologist, and occupational therapist, each stated that they regularly conferred with their assistants regarding what had occurred during Student's therapy sessions. Because Mother was not at those meetings between the therapists and their assistants, Mother incorrectly assumed the assistants were not appropriately supervised. Student failed to provide convincing evidence supporting Student's allegation that the speech-language therapist and occupational therapist had not properly supervised their assistants who worked with Student to provide related services.

Student failed to introduce persuasive admissible evidence to establish that the NJA licensed speech-language pathology assistants and occupational therapy

assistants who delivered services directly to Student were not properly supervised by the licensed speech-language pathologist and occupational therapist. Moreover, Student also failed to prove that the conferences between the speech-language pathologist, and occupational therapist, with their respective assistants, following Student's therapy sessions, did not constitute proper supervision of a speech-language pathology assistant and an occupational therapy assistant.

CONCLUSION ON ISSUE TWO

Student failed to prove by a preponderance of the evidence that the speech-language pathologists and occupational therapists who worked with Student in the 2021-2022 school year were not properly licensed in California. Student also failed to establish by a preponderance of the evidence that the speech-language pathologist assistants and occupational therapist assistants who worked with Student were not properly supervised by the assigned speech-language pathologist and occupational therapist, respectively. Therefore, Granite Mountain prevailed on Issue two.

ISSUE THREE (A): DID GRANITE MOUNTAIN DENY STUDENT A FAPE BY SIGNIFICANTLY IMPEDING ON PARENT'S OPPORTUNITY TO PARTICIPATE IN IEPS, BY FAILING TO HAVE THE OCCUPATIONAL THERAPIST, THE SPEECH-LANGUAGE PATHOLOGIST, OR THEIR ASSISTANTS AT THE IEP TEAM MEETINGS HELD IN FEBRUARY, MAY, AND JUNE 2022

Student contends Granite Mountain denied him a FAPE in the 2021-2022 school year, by failing to have the speech-language pathologist, occupational therapist, speech-language pathology assistant and occupational therapy assistant who worked with Student at the IEP team meetings held in February, May, and June 2022. Student

contends the law requires the speech-language pathology assistant and occupational therapy assistants who provided related services directly to Student be present at IEP team meetings.

Granite Mountain contends it did not deny Student a FAPE because all required IEP team members attended or were excused by Parent from attending each of the IEP meetings which occurred in February, May, and June 2022. Granite Mountain further contends that the speech-language therapist and occupational therapist who supervised Student's speech and language therapy and occupational therapy services were able to and did provide information and answered all questions about the related services at the IEP team meetings, and Parent's opportunity to participate in the IEP was not significantly impeded.

A PARENT MUST BE AFFORDED THE OPPORTUNITY TO PARTICIPATE IN THE DECISION-MAKING PROCESS

Among the most important procedural safeguards are those that protect the parent's right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, §56341.1, subds. (a)(2), (d)(3) & (f).)

A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP team meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693-5 (N.L.); *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

SPEECH-LANGUAGE PATHOLOGY ASSISTANTS AND OCCUPATIONAL THERAPY ASSISTANTS ARE NOT REQUIRED IEP TEAM MEMBERS

An IEP team meeting must include the following:

- at least one parent;
- a representative of the local educational agency;
- a regular education teacher of the child if the child is, or may be, participating in the regular education environment;
- a special education teacher or provider of the child;
- an individual who can interpret the instructional implications of assessment results;
- other individuals who have knowledge or special expertise regarding the pupil, as invited at the discretion of the district; and,
- when appropriate, the student.

(20 U.S.C. § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).) The same required IEP team members are also identified in the federal regulations. (34 C.F.R. § 300.321 (a)(1)-(7).)

However, a required team member may be excused from attending an IEP meeting if parents give their written consent to the excusal of that team member. The essential IEP team members who must be excused from an IEP team meeting by the parent are the same as those required to be present at IEP meetings. (34 C.F.R. § 300.321(e).)

The speech language pathology assistants and occupational therapy assistants who provided related services directly to Student were not among the personnel legally required to attend IEP team meetings. 20 USC § 1414 (d)(1)(B)(i)-(vii); Ed. Code, § 56341(b)(1)-(5); and 34 CFR § 300.321(a) (a)(1)-(7). Therefore, Granite Mountain did not commit a procedural error by failing to ensure that the speech-language pathology assistants, and occupational therapy assistants, who worked directly with Student, were present at IEP meetings.

A SPEECH-LANGUAGE PATHOLOGIST AND OCCUPATIONAL THERAPIST WERE PRESENT AT THE SUBSTANTIVELY CONDUCTED IEP MEETINGS, EXCEPT WHEN EXCUSED BY PARENT

Achondo was one of the licensed occupational therapists from NJA assigned to Student's case in the 2021-2022 school year. Kelly Cleary, a licensed speech-language pathologist with NJA was assigned to Student's case early in the 2021-2022 school year. Michelle Rosales replaced Cleary as the licensed speech-language pathologist assigned to Student's case in Spring of the 2021-2022 school year, no later than May 12, 2022. There was no evidence as to the precise date Rosales replaced Cleary as the speech-language pathologist assigned to Student.

IEP AMENDMENT MEETING ON FEBRUARY 22, 2022

There was an IEP team meeting held at 8:30 AM on February 22, 2022, for the purpose of amending Student's IEP dated May 24, 2021, with updated present levels of performance, goals, and services. The participants at this meeting were:

- Mother;
- Peter Attwood, advocate;
- July Tay, Granite Mountain's Special Education Program Coordinator and administrative designee;
- Brittany Gentry, school psychologist;
- Mario Rivera, Student's aide;
- Christine Rule, specialized academic instructor;
- Victoria McCraw, general education teacher;
- Rosalyn Lippen, special education teacher and case manager; and
- Achondo, occupational therapist.

No speech-language pathologist attended the February 22, 2022 IEP meeting. However, the IEP meeting notes state the speech-language pathologist was ill and unable to attend the meeting, and that Achondo had to leave the meeting by 9:00 a.m. The IEP meeting notes indicate Mother consented both verbally and in writing either before the meeting, or at the beginning of the meeting, to excuse the speech-language pathologist from attending the entire meeting, and to excuse the occupational therapist from attending part of the meeting. The February 22, 2022 IEP meeting notes also indicate Achondo reported to the IEP team about Student's occupational therapy, and answered Mother's questions. Mother had no other questions for Achondo before Achondo left the meeting. There was no persuasive evidence that the IEP meeting notes were inaccurate.

Since Mother excused both the speech-language pathologist from the entire meeting, and the occupational therapist from part of the February 22, 2022 IEP meeting, Student cannot later claim Mother's opportunity to participate in the IEP process was significantly impeded upon by their excused absences from the IEP team meeting. Moreover, Student failed to provide convincing evidence regarding how Mother's opportunity to participate in the IEP process was significantly impeded upon by the excused absences of those two IEP team members from the February 22, 2022 IEP meeting.

THE MAY 12, 2022 IEP MEETING

The May 12, 2022 IEP team meeting lasted for only approximately seven minutes. At the beginning of the meeting Mother told the team she would not sign the IEP team meeting notice because one invitee listed on the notice was not in attendance at the meeting. When Mother told the team she would not sign the IEP meeting notice, Tay, Granite Mountain's designated administrative representative, ended the meeting to avoid a potential procedural error. Since no substantive IEP meeting was held on May 12, 2022, Parent was not denied her opportunity to participate in that meeting.

THE JUNE 10, 2022 IEP MEETING

Speech-language pathologist Rosales, and occupational therapist Achondo, the supervising service providers assigned to Student's case, both attended the entire June 10, 2022 IEP meeting. A recording of the entire meeting lasting more than two hours was admitted into evidence. The recording established that Rosales and Achondo reported on Student's progress in speech-language and occupational therapy sessions, respectively. They answered all questions posed to them at that IEP meeting about

Student's speech-language therapy and occupational therapy services and progress on goals in those areas. Both specialists were aware of their assistants' direct work with Student during speech-language therapy and occupational therapy sessions.

In summary, Student failed to establish that the absence of either the speech-language pathologist, the occupational therapist, the speech-language pathologist assistant, or the occupational therapy assistant, significantly impeded upon Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student. The assistants are not required participants in IEP team meetings. Moreover, Student cannot complain Parent's opportunity to participate was significantly impeded upon by the absence of the speech-language pathologist and the occupational therapist from the February 22, 2022 IEP meeting, since Mother consented to their excusals from that meeting. No substantive IEP meeting took place on May 12, 2022 because it was terminated immediately following Mother's refusal to sign the meeting notice.

CONCLUSION ON ISSUE THREE (A)

Student failed to meet his burden of proof on Issue three (A) by a preponderance of the evidence. Granite Mountain prevailed on Issue three (A).

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ISSUE THREE (B): DID GRANITE MOUNTAIN SIGNIFICANTLY IMPEDE UPON PARENT'S OPPORTUNITY TO PARTICIPATE IN THE DECISION-MAKING PROCESS BY FORBIDDING STUDENT'S SPECIAL EDUCATION TEACHER FROM SHARING DATA AT THE IEP TEAM MEETING HELD ON JUNE 10, 2022?

Student contends Parent's opportunity to participate was significantly impeded upon when Student's special education teacher was not allowed to present her collected data on Student to the IEP team at the IEP meeting on June 10, 2022.

Granite Mountain contends Student's special education teacher was not prevented from presenting her collected data about Student at the June 10, 2022 IEP team meeting. It further contends Parent's opportunity to participate in the IEP team meeting was not impeded upon by Granite Mountain because that data was presented by Student's case manager at the June 10, 2022 IEP team meeting.

The parents of a child with a disability must be afforded an opportunity to participate in IEP team meetings. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).) However, the evidence did not establish that Student's special education teacher was prevented from sharing data she collected at the June 10, 2022 IEP team meeting.

Christine Rule, a California credentialed special education teacher, was assigned to provide specialized academic instruction to Student for the 2021-2022 school year. In preparation for Student's June 10, 2022 IEP meeting Rule drafted a detailed report about Student's progress in specialized academic instruction based on data she collected regarding Student's work.

Student's case manager, Lippen, presided over the June 10, 2022 IEP team meeting. Because the team had a lot of information to address at that meeting, and June 10, 2022, was the last day of the 2021-2022 regular school year, Lippen asked Rule if Lippen could read Rule's report aloud in order to efficiently provide all the information in Rule's report to the team. Rule agreed to Lippen's request. No one forbid Rule from sharing the data she collected about Student at the June 10, 2022 IEP meeting. In fact, Rule's report, which included the collected data about Student's work, was presented in full to the team. The report was merely read out loud to the team by Lippen, Student's case manager, rather than presented by Rule herself. Rule attended the meeting and was available to answer any questions that Mother, or any team member, had about Rule's report or the data she collected about Student's progress.

Student presented no convincing evidence at hearing which established, or even suggested, Rule was forbidden from presenting the data she collected about Student or information from her report at the June 10, 2022 IEP team meeting. Rule testified candidly and without hesitation at hearing, that Rule was not forbidden from sharing data she collected about Student at the June 10, 2022 IEP meeting. Moreover, the recording of that IEP team meeting was also proof that Rule was not forbidden from presenting her data and report.

The evidence established Rule was not forbidden from sharing her collected data at the June 10, 2022 IEP team meeting. Moreover, Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student was not significantly impeded upon at the June 10, 2022 IEP team meeting merely because Lippen read Rule's report and collected data about Student aloud, instead of Rule presenting that information herself at the June 10, 2022 IEP team meeting.

CONCLUSION ON ISSUE THREE (B)

Student failed to meet his burden of proof by a preponderance of the evidence on Issue 3(B). Therefore, Granite Mountain prevailed on Issue three (B).

ISSUE THREE (C): DID GRANITE MOUNTAIN SIGNIFICANTLY IMPEDE PARENT'S OPPORTUNITY TO PARTICIPATE IN THE IEP PROCESS BY NOT ALLOWING DISCUSSION OF PARENT'S CONCERNS AT THE IEP TEAM MEETINGS HELD IN MAY 2022, AND JUNE 2022?

Student contends Parent's opportunity to participate in IEP team meetings held in May and June 2022 was significantly impeded upon because the team was not allowed to discuss Parent's concerns.

Granite Mountain contends Parent's opportunity to participate in the IEP team meetings held in May and June 2022, were not significantly impeded upon because Mother's concerns were all discussed at the June 10, 2022 IEP meeting, and the May 2022 IEP meeting was terminated before any substantive discussion occurred.

The May 12, 2022 IEP meeting lasted for about seven minutes before it was terminated because Mother refused to sign the IEP meeting notice. No substantive discussions about Student took place during that extremely brief IEP team meeting. Granite Mountain reasonably remedied any potential procedural error in meeting attendance or the requisite notice by rescheduling the meeting to June 10, 2022, where Mother had an opportunity to discuss her concerns in full. Student cannot claim in good faith that Mother's concerns were not discussed at the May 12, 2022 IEP meeting, which was rescheduled because Mother refused to sign the meeting notice.

The entire recording of the June 10, 2022 IEP meeting was admitted into evidence, as well as a transcript prepared by Mother of about half of the recording of that meeting. At hearing Mother played a brief few minutes of that recording. That portion of the recording was concerning because Lippen was quickly reading Rule's report at that time, without any significant discussion. Those few minutes of the recording were troubling because Lippen's presentation of this information to the team did not allow time for discussion among team members.

However, after the hearing the undersigned ALJ listened to the entire recording of the June 10, 2022 IEP meeting while reading Student's partial transcript of the recording of that meeting. It then became clear that the few minutes of the recording played by Student at hearing were not representative of Mother's participation in the entire meeting, which lasted over two hours. The entire recording of the June 10, 2022 IEP meeting established that the team comprehensively addressed Mother's concerns later in the IEP meeting. After the team thoroughly discussed Mother's concerns, Lippen asked Mother a few times if there was anything else Mother wanted to discuss with the team before the meeting ended. Mother replied that there was nothing else she wanted to discuss. The entire recording of the June 10, 2022 IEP meeting was convincing evidence that Mother was allowed ample opportunity to raise all her concerns, and discuss those concerns thoroughly with the rest of the IEP team at the June 10, 2022 IEP meeting. Therefore, Granite Mountain did not significantly impede upon Mother's opportunity to participate in the decision-making process regarding provision of a FAPE to Student at the June 10, 2022 IEP team meeting.

CONCLUSION ON ISSUE THREE (C)

Student failed to meet his burden of proof on Issue three (C). Therefore, Granite Mountain prevailed on Issue three (C).

ISSUE THREE (D): DID GRANITE MOUNTAIN SIGNIFICANTLY IMPEDE PARENT'S OPPORTUNITY TO PARTICIPATE BY CHANGING STUDENT'S SPEECH AND LANGUAGE, AND OCCUPATIONAL THERAPY GOALS WITHOUT PARENT'S CONSENT?

Student contends Granite Mountain changed Student's goals in the areas of speech and language and occupational therapy without Parent's consent, because at times the speech-language pathologist assistant or occupational therapy assistant were working on incorrect goals.

Granite Mountain contends it did not change Student's goals in speech and language and occupational therapy without Parent's consent.

PARENTS MUST CONSENT TO PROPOSED GOALS BEFORE THE SCHOOL MAY IMPLEMENT THEM, UNLESS OAH ORDERS OTHERWISE

For each area in which a special education student has an identified need, the IEP team must develop 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, subd. (a)(2); *Letter to Butler* (OSERS Mar. 25, 1988).) An IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) The purpose of goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345.)

The IEP team need not draft IEP goals in a manner the parents find optimal, as long as the goals are sufficiently measurable. (See, *F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-cv-01873-JMC) 2011 WL 3882850, at *6.) A school district may only implement those portions of an IEP to which the parent consents. (20 U.S.C. § 1414(A)(1)(D)(i)(II); Ed. Code, § 56346, subd. (a).) Where a parent does not consent to all components of an IEP, a school district is required to implement those other components of the program to which parent did provide consent. (Ed. Code, § 56346, subd. (e).)

However, a school district's failure to implement a portion of an IEP does not necessarily establish that it attempted to change the child's IEP without notifying the parents in advance in violation of the procedural requisites of 20 USC § 1415(b)(3). (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F. 3d 811, 819.) Moreover, only a material failure to implement an IEP would constitute a denial of a FAPE. (*Van Duyn v. Baker Sch. Dist. 5J, supra*, 502 F.3d 811, 815, 821.)

EVIDENCE REGARDING STUDENT'S CURRENT GOALS WAS VAGUE

Parents first enrolled Student at Granite Mountain for the 2021-2022 school year. The evidence was unclear as to which IEP Granite Mountain implemented in Fall 2021, as Parents did not give even a partial consent to the May 24, 2021 IEP until January 9, 2022. Mother eventually consented to a revised May 24, 2021 IEP on March 2, 2022. Throughout the hearing the evidence regarding which IEP, or which parts of an IEP, were current and consented to by Parents on any particular date was extremely difficult to determine. Parents had a pattern of not consenting to proposed IEPs until months (or at a minimum weeks) after the IEP meeting in which the IEP was offered, and that consent was usually limited to only part of the IEP. Moreover, the consented to portion of the IEP was usually also subject to exceptions conveyed to the

school later in correspondence from Mother. Student failed to introduce much of the corroborating documentation, if any existed, regarding Parents' limited consents to offered IEPs as evidence at hearing.

Student started attending first grade at Granite Mountain on August 25, 2021, the first school day of the 2021-2022 regular school year. Granite Mountain held its first IEP team meeting for Student on September 24, 2021. COVID-19 restrictions were still in place, and the meeting was held virtually online. This was an interim IEP team meeting held about 30 days after Student enrolled for the purpose of checking on the implementation of Student's last consented to IEP from Sky Mountain, and to review Student's present levels of performance.

Parent provided Granite Mountain with a letter of consent for services offered in Student's annual IEP from Sky Mountain dated December 10, 2020, which Parent had signed on April 13, 2021, subject to exceptions. This letter of consent was not introduced as evidence. The team determined at the September 24, 2021 IEP meeting that Student needed goals in

- communication,
- fine motor,
- social-emotional/behavior,
- reading comprehension,
- math operations in base ten, and
- written expression.

The team established Student's baselines for academic and behavioral skills and revised some of Student's goals. Parent verbally agreed to the new proposed goals and stated

she would sign the IEP digitally following the meeting. Because COVID-19 restrictions remained in place in September 2021, the team explained all instruction and related services would be delivered virtually until pandemic restrictions were lifted.

The September 24, 2021 IEP offered Student

- individual speech therapy services for 30 minutes weekly,
- individual occupational therapy services for 30 minutes weekly,
- specialized academic instruction in 3 sessions for a total of 90 minutes weekly, and a
- one-to-one aide to be provided during in-person related services.

The team determined Student did not require extended school year because he did not regress academically during extended school breaks. The team also determined Student would be outside of the regular classroom 11 percent of the school day to receive related services and specialized academic instruction. The team explained to Parent that Student would start to receive the special education services described above once Parent signed the IEP that was developed at the September 24, 2021 IEP team meeting.

Mother testified she gave partial consent to the September 24, 2021 IEP on November 18, 2021, and later provided Granite Mountain with her written exceptions to that consent on January 9, 2022. Student did not offer Mother's consent or the January 9, 2022 writing concerning the exceptions to Mother's consent into evidence. Therefore, the evidence was unclear regarding what the exceptions were to the September 24, 2021 IEP. Sometime later Student's IEP was revised to increase his related services to two 30-minute speech and language therapy sessions per week, and one 45-minute occupational therapy

session per week. This increase may have occurred when Mother gave her written consent to the February 22, 2022 IEP amendment on March 2, 2022. However, this evidence was ambiguous.

STUDENT FAILED TO PROVE GOALS WERE CHANGED WITHOUT PARENT'S CONSENT

Mother was very involved, along with the rest of the IEP team members, in the detailed development of Student's goals. Mother, who was Student's learning coach, gave the IEP team significant input as to all of Student's proposed goals before the goals were ultimately adopted by the IEP team, consented to by Parent, and implemented. The evidence presented by Student on this point, which was mostly Mother's testimony, was very confusing, contradictory, and unpersuasive.

Mother expressed her opinion that around April 29, 2022, a speech-language assistant who worked directly with Student was working on one or more goals containing different language than the language Mother believed to be consistent with the final consented to goals. Mother herself appeared confused as to which goals were or were not consented to, in whole or in part, at particular times. Consequently, Student failed to offer persuasive admissible evidence that Granite Mountain unilaterally changed Student's speech and language goals.

Also, Mother testified vaguely that the nature of some prompts, verbal or otherwise, used in occupational therapy were not, in her opinion, consistent with Student's fine motor goals. Mother's vague and speculative testimony was not convincing. Student failed to offer persuasive admissible evidence that Granite Mountain unilaterally changed Student's occupational therapy goals.

Student failed to establish by a preponderance of the evidence that any of Student's goals were unilaterally changed by Granite Mountain without Parent's consent, or that any service provider failed to implement the appropriate goals. Moreover, Student also failed to establish, if there was an error in the implementation of a certain goal as precisely written, that the error was material.

CONCLUSION ON ISSUE THREE (D)

Student failed to establish by a preponderance of the evidence that Granite Mountain unilaterally changed Student's goals without Parent's consent, thereby significantly impeding upon Parent's participation rights. Therefore, Student failed to meet his burden of proof on Issue three (D). Granite Mountain prevailed on Issue three (D).

ISSUE FOUR: DID GRANITE MOUNTAIN FAIL TO MAKE A CLEAR OFFER OF A FAPE IN THE MAY 12, AND JUNE 10, 2022 IEPS BY STATING THAT THE APPLIED BEHAVIORAL ANALYSIS CONSULTATION WILL BE PROVIDED AS NEEDED, RATHER THAN FOR AN EXACT NUMBER OF MINUTES PER MONTH?

Student withdrew Issue four on the fifth day of hearing during Mother's testimony. Code of Civil Procedure section 581, subdivision (c), states a plaintiff may dismiss his or her complaint, or any portion thereof, with or without prejudice prior to the actual trial commencing. Code of Civil Procedure § 581, subdivision (e), further states if a plaintiff requests a dismissal after the trial commences, the court will dismiss a complaint with prejudice, unless all parties consent to dismissal without prejudice or the

court finds good cause for a dismissal without prejudice. There was no evidence of an agreement between the parties that Student's issue four would be dismissed without prejudice.

CONCLUSION ON ISSUE FOUR

Student dismissed Issue four on the fifth day of hearing, without agreement between the parties that this issue would be dismissed without prejudice. Student's closing brief appeared to argue Issue four in Student's argument regarding Issue three (D), even though that argument was irrelevant to Issue four, and Mother had already withdrawn Issue four on the record at hearing. Therefore, Student's Issue four is dismissed with prejudice. There is no prevailing party on Issue four.

ISSUE FIVE: DID GRANITE MOUNTAIN DENY STUDENT A FAPE BY FAILING TO IMPLEMENT GOALS IN THE AREAS OF SPEECH AND LANGUAGE, AND OCCUPATIONAL THERAPY, OFFERED IN THE IEPs DATED FEBRUARY 2022, MAY 12, 2022, AND JUNE 10, 2022?

Student contends Granite Mountain denied Student a FAPE by failing to implement Student's then current goals in the areas of speech and language, and occupational therapy as stated in the IEPs of February 22, 2022, May 12, 2022, and June 10, 2022. Student further contends Granite Mountain was instead implementing goals expressed with language different than the language to which Mother had consented.

Granite Mountain contends that, at all applicable times, prior to the time Mother declined Student's participation in speech and language therapy services and in occupational therapy services, it appropriately and materially implemented the then current consented to goals in the areas of speech and language and occupational therapy.

A MINOR FAILURE TO IMPLEMENT AN IEP DOES NOT CONSTITUTE A DENIAL OF A FAPE

A school district must implement all components of a student's IEP. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(c).) When a student alleges the denial of a FAPE based on the failure to implement an IEP, in order to prevail, the student must prove that any failure to implement the IEP was material. A material failure to implement an IEP means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 822.)

A material failure occurs only when there is more than a minor discrepancy between the services provided to the disabled child and those required by the IEP. There is no statutory requirement of perfect adherence to an IEP. A failure to implement an IEP may deprive a child of a FAPE. However, the language of the IDEA counsels against making minor implementation failures actionable given that special education and related services need only be provided "in conformity with" the IEP. There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a FAPE. (*Van Duyn v. Baker Sch. Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 815, 821.)

STUDENT FAILED TO PROVE THE SPEECH AND LANGUAGE AND OCCUPATIONAL GOALS WERE NOT MATERIALLY IMPLEMENTED

Mother claimed on April 29, 2022, the speech-language pathologist assistant working with Student was implementing speech goals that were either not current or not correctly worded. Mother's written notes on the second speech goal admitted into evidence at Student's request, stated that Rosales and Achondo called Mother in April 2022, and asked if Mother wanted to discuss this problem. However, Mother declined that request.

If Mother thought that there was some confusion as to the correct wording of the current speech goals being implemented, it behooved her to take that opportunity to clear up any misunderstanding regarding the exact language of the speech goals. Consequently, this Decision declines to allow Student to profit from his claims that Granite Mountain failed to implement the correct goals, and denied Student a FAPE, when Mother was asked by the therapists to confer to clear up any confusion about the goals that might exist, and Mother refused to cooperate to clear up any alleged error or confusion that may have existed.

Mother also testified without specificity that the occupational therapist assistant was not implementing the appropriate sort of prompts called for in the goals. Mother provided no specific examples of this alleged error regarding prompts. Mother is also not an occupational therapist. Consequently, her testimony in this regard was given very little weight.

On August 29, 2022, Mother sent Granite Mountain a written request to stop implementing Student's speech therapy services and occupational therapy services. On

August 31, 2022, Navarro sent Parents a letter confirming Parents' cancellation of Student's participation in speech therapy and occupational therapy services. Navarro's letter also informed Parents it would not make up Student's missed related service sessions if Parents later decided to reinstate those services.

Mother claimed she did not receive Navarro's letter, but Mother's testimony that she never received that letter was not credible. Mother confirmed Navarro's letter was addressed correctly. When testifying she never received Navarro's letter dated August 31, 2022, Mother's tone of voice and demeanor varied from the rest of her testimony. This was the second time at hearing Mother testified she had not received documents sent by Granite Mountain to Parents via U.S. Mail. In one of those instances, according to Navarro, Granite Mountain had received a receipt confirming delivery of the mailed documents to Parents.

In contrast to Mother's testimony, Navarro testified convincingly that the letter was sent from her office on August 31, 2022, and was not returned to Granite Mountain by the U.S. Post Office as undeliverable. Navarro's testimony was more credible than Mother's on this point, so it is more likely than not that Parents actually received the August 31, 2022, letter, although Student would not prevail on Issue five even if Parents had not received Navarro's letter.

However, Mother's apparently false testimony on the point of receiving documents in the U.S. Mail from Granite Mountain undermined Mother's credibility in general. It is a commonsense principle for evaluating witness credibility that the trier of fact may disbelieve a witness who deliberately lies about something under oath, because experience has taught us that a deliberate liar cannot be trusted. (*People v. Lawrence* (2009) 177 Cal.App.4th 547, 554-555.)

One of the two compliance complaints Mother filed against Granite Mountain with the California Department of Education in Summer 2022, alleged Granite Mountain failed to implement the appropriate speech and language, and occupational therapy goals. Navarro testified that, in connection with preparing Granite Mountain's response to that compliance complaint, Navarro conducted extensive research as to whether Granite Mountain implemented the appropriate speech and occupational therapy goals during the 2021-2022 school year. Navarro researched this issue by comparing each of Student's IEPs with Student's progress reports to check if the appropriate goals were implemented in speech and language, and occupational therapy for the 2021-2022 school year. The progress reports all stated the goals implemented. After comparing each of Student's IEPs to the progress reports, Navarro concluded Granite Mountain had properly implemented the correct goals in both speech and language, and occupational therapy. Navarro's testimony was far more convincing, detailed and persuasive, than Mother's testimony on this issue.

Student's closing argument brief failed to address issue number five altogether. Therefore, Mother's confusing testimony was not cleared up by Student's closing argument brief. Moreover, Student's presentation of only negligible evidence at hearing, which was both confusing and conclusory, and failure to make any argument in his closing brief in support of Issue five, creates an inference that there was no persuasive evidence, and no legitimate legal argument which supported Student's allegations in Issue five. Student failed to prove by a preponderance of the evidence that Granite Mountain failed to implement Student's correct goals in the areas of speech and language, and/or occupational therapy.

STUDENT FAILED TO PROVE THAT ANY ERROR IN THE LANGUAGE OF THE SPEECH AND/OR OCCUPATIONAL GOALS IMPLEMENTED WERE MATERIAL

Student had four speech goals for the 2021-2022 school year. When testifying Mother ambiguously stated that some speech goals should have included language specifying that Student would do a task successfully in three out of five opportunities, but the phrase “out of five opportunities” was mistakenly omitted from the final implemented goal. Mother’s testimony on this issue was very confusing, and there was no convincing documentary evidence which supported Student’s Issue five.

Only Student’s first and second speech goals stated Student would do certain described tasks with 70 percent accuracy when provided moderate cues, in four to six out of ten opportunities, as measured by speech-language pathologist data and observation. The other two speech goals did not contain similar phrasing regarding how many prompts Student would get out of a certain number of opportunities. When testifying Mother failed to specify if only one, or both of those speech goals should have been phrased differently to allow Student only three out of five opportunities to succeed at a described task, instead of phrased that Student would succeed in four to six out of ten opportunities. Mother appeared confused, and her testimony was vague and unpersuasive.

Mother was not specific when testifying about the alleged discrepancy, if any, between the correctly worded occupational therapy goals, and the occupational goals which actually were implemented. Moreover, there was no documentary evidence that supported Student’s claim that the proper occupational therapy goals were not

implemented. Also, Student failed to prove that any failure to implement the correctly worded occupational therapy goals constituted a material failure to implement Student's IEP.

Student failed to prove with a preponderance of the evidence that Granite Mountain failed to materially implement the last consented to speech goals and occupational therapy goals. Student also failed to establish with a preponderance of the evidence that Granite Mountain materially failed to implement the correctly worded occupational therapy goals.

CONCLUSION ON ISSUE FIVE

Student failed to meet his burden of proof by the preponderance of the evidence on Issue 5. Therefore, Granite Mountain prevailed on Issue five.

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

Granite Mountain did not deny Student a FAPE during the 2022-2023 school year through January 6, 2023, by delaying to either file an action with OAH until August 29, 2022, to defend its assessments of Student in the areas of occupational therapy, speech and language, and functional behavior, as legally

compliant, or fund independent educational evaluations in those areas in response to Parent's verbal request for independent educational evaluations made at the June 10, 2022 IEP team meeting, and in a subsequent email.

Granite Mountain prevailed on Issue One.

ISSUE 2:

Granite Mountain did not deny Student a FAPE during the 2021-2022 school year by failing to implement occupational therapy services and speech and language services by either failing to use properly credentialed therapists, or failing to use properly supervised assistants.

Granite Mountain prevailed on Issue Two.

ISSUE 3(A):

Granite Mountain did not deny Student a FAPE during the 2021-2022 school year from February 2022, by significantly impeding upon Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student by failing to have neither the occupational therapist and the speech and language pathologist, nor their assistants who worked with Student, attend the IEP team meetings held in February, May, and June, 2022.

Granite Mountain prevailed on Issue Three (A).

ISSUE 1(B):

Granite Mountain did not deny Student a FAPE, from February 2022 through the end of the 2021-2022 school year, by significantly impeding upon

Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student by forbidding Student's special education teacher from sharing data regarding Student's academic progress on goals and other collected data about Student, at the IEP team meeting held on June 10, 2022.

Granite Mountain prevailed on Issue Three (B).

ISSUE 3(C):

Granite Mountain did not deny Student a FAPE, during the 2021-2022 school year from February 2022, by significantly impeding upon Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student by failing to allow discussion of Parent's concerns at the IEP team meetings held in May 2022, and June 2022.

Granite Mountain prevailed on Issue Three (C).

ISSUE 3(D):

Granite Mountain Charter School did not deny Student a FAPE, during the 2021-2022 school year from February 2022, by significantly impeding upon Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student by changing Student's goals in the areas of speech and language, and occupational therapy without Parent's consent.

Granite Mountain prevailed on Issue Three (D).

ISSUE 4:

Issue Four was dismissed with prejudice.

ISSUE 5:

Granite Mountain did not deny Student a FAPE by failing to implement Student's goals in the areas of speech and language, and occupational therapy, offered in the IEP(s) dated February 2022, May 12, 2022, and June 10, 2022.

Granite Mountain prevailed on Issue Five.

ORDER

1. All relief sought by the Petitioner, Student, is denied.

RIGHT TO APPEAL THIS DECISION

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

CHRISTINE ARDEN

Administrative Law Judge

Office of Administrative Hearings