

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

v.

MANTECA UNIFIED SCHOOL DISTRICT AND STOCKTON UNIFIED
SCHOOL DISTRICT.

CASE NO. 2023030132

DECISION

June 1, 2023

On February 28, 2023, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, naming Manteca Unified School District and Stockton Unified School District. Administrative Law Judge Alexa Hohensee heard this matter by videoconference on April 18, 19, 20, 21, 24, and 25, 2023.

Attorneys Sheila Bayne, Robert Burgermeister, and Peter Collison represented Student. Father, and Mother when Father was unavailable, attended all hearing days on Student's behalf. Attorneys Dee Anna Hassanpour and Matejka Handley represented both Stockton Unified School District, called Stockton, and Manteca Unified School

District, called Manteca. Jose Avila, Ed.D., Special Education Administrator, attended all hearing days on behalf of Stockton. Jody Burriss, Director of Special Education, attended five hearing days, and Denise Nagao, Coordinator of Special Education, attended one hearing day, on behalf of Manteca.

At the parties' request, OAH continued the matter to May 16, 2023, for written closing briefs. OAH closed the record and submitted the matter on May 16, 2023.

ISSUES

The issues at hearing are stated below. A free appropriate public education is called a FAPE. An individualized education program is called an IEP. The issues have been rephrased and reorganized for clarity. 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 Stockton deny Student a FAPE from February 28, 2021, to the end of the 2020-2021 school year, by assigning Student to distance learning without continuing to provide in-person services?
2. Did Stockton deny Student a FAPE from February 28, 2021, to the end of the 2020-2021 school year, by not providing Student with necessary accommodations for distance learning?
3. Did Stockton deny Student a FAPE from February 28, 2021, to the end of the 2020-2021 school year, by not assessing Student for distance learning?

4. Did Manteca deny Student a FAPE in the November 23, 2021 IEP, by failing to include appropriate goals in the areas of:
 - a. fine motor skills;
 - b. speech and language pragmatic skills; and
 - c. social emotional skills?
5. Did Manteca deny Student a FAPE in the November 23, 2021 IEP, by failing to offer sufficient programs, supports, and services in the areas of:
 - a. speech and language;
 - b. behavior, specifically a one-to-one aide; and
 - c. occupational therapy?
6. Did Manteca deny Student a FAPE in the November 23, 2021 IEP, by failing to offer parent training in the areas of:
 - a. autism; and
 - b. language or speech impairment?
7. Did Manteca deny Student a FAPE in the November 23, 2021 IEP, by failing to offer extended school year services to address regression?
8. Did Manteca deny Student a FAPE in the November 15, 2022 IEP, by failing to include appropriate goals in the areas of:
 - a. fine motor skills;
 - b. speech and language pragmatic skills; and
 - c. social emotional skills?
9. Did Manteca deny Student a FAPE in the November 15, 2022 IEP, by failing to offer sufficient programs, supports, and services in the areas of:
 - a. speech and language;
 - b. behavior, specifically a one-to-one aide; and
 - c. occupational therapy?

10. Did Manteca deny Student a FAPE in the November 15, 2022 IEP, by failing to offer parent training in the areas of:
 - a. autism; and
 - b. speech or language impairment?
11. Did Manteca deny Student a FAPE in the November 15, 2022 IEP, by failing to offer extended school year services to address regression?

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).) Here, Student had the burden of proof on all issues. 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 six years old and in kindergarten at the time of hearing. Student resided with Parents in the Stockton or Manteca geographic boundaries at all relevant times. Student was eligible for special education under the category of autism.

ISSUE 1: LACK OF IN-PERSON SERVICES DURING DISTANCE LEARNING

Student contends he was denied a FAPE from February 28, 2021, through the end of the 2020-2021 school year, because Stockton assigned Student to distance learning without continuing to provide in-person services. In particular, Student asserts his IEP required the in-person specialized academic instruction and speech and language services that existed prior to distance learning. Stockton contends it replicated Student's in-person program to the extent possible under pandemic conditions, and that Student made educational progress.

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

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

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit. This is done 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; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 (*Endrew F.*))

A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822.)

At hearing, Stockton proved that Student disenrolled from Stockton on April 13, 2021, after moving to Manteca. Accordingly, Issues 1, 2, and 3 go through April 13, 2021, as Stockton was not obligated to provide Student a FAPE following his move to Manteca.

During the six-week period at issue against Stockton, February 28, through April 13, 2021, distance learning and limited in-person instruction in small, isolated groups were lawfully ordered by California's Governor to help curb the spread of a deadly, global pandemic, COVID-19.

The pandemic first affected California students in spring of the 2019-2020 school year. School closures happened nationwide, and on March 12, 2020, the United States

Department of Education, Office of Special Education and Rehabilitative Services, known as OSERS, published guidance for educating children with disabilities during the COVID-19 pandemic. (OSERS, March 12, 2020, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (OSERS Q & A), Answer to Question A-1.) OSERS advised school districts they would not violate the IDEA if they closed schools to slow or stop the spread of COVID-19. On March 13, 2020, Governor Newsom issued Executive Order N-26-20, which authorized school districts to close and educate students, to the extent feasible, through distance learning and independent study.

In response to COVID-19's unprecedented rapid spread in California, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering all California residents to immediately stay in their homes except as needed to operate critical federal infrastructure sectors. (Cal. Exec Order N-33-20 (March 19, 2020).) The California State Public Health Officer issued a list of designated essential workers who were allowed to leave their homes to support critical infrastructure sectors, which included workers teaching at public and private K-12 schools, but for distance learning only. Executive Order N-33-20 remained in effect until June 11, 2021. (*Brach v. Newsom* (9th Cir. 2021) 6 F.4th 904, 911 (*Brach*).) The ability to operate schools, or anything else, turned on what sort of permission State officials granted either in the form of rules governing critical infrastructure sectors or an exception to the stay-at-home order. (*Brach, supra*, 6 F.4th at p. 911.)

The Governor's distance learning order was authorized under Government Code sections 8567, 8627, and 8665, and Health and Safety Code sections 120125, 120140, 131080, 120130, subdivision (c), 120135, 120145, 120175, and 120150. The Governor's order, and local educational agencies' subsequent school closures and limitation of

instruction to distance learning, was consistent with the Ninth Circuit's decision in *N.D. v. Hawaii Dept. of Educ.* (9th Cir. 2010) 600 F.3d 1104, 1116- 1117 (*N.D.*). In *N.D.*, the Hawaii Department of Education, which operates Hawaii's schools, shut down public schools on Fridays to alleviate a major fiscal crisis.

The Ninth Circuit upheld the Hawaii Department of Education's ability to stop providing instruction on Fridays to alleviate a major emergency, and rejected the students' arguments that ceasing services owed to them under their IEPs violated the IDEA. The Ninth Circuit explained that Congress did not intend for the IDEA to apply to system wide administrative decisions. Because Hawaii's furloughs affected all public schools and all students, disabled and non-disabled alike, it did not conflict with Congress's intent of protecting disabled children from being singled out. (*Id.* at p. 1116.) The Court reasoned the IDEA does not give parents of disabled children veto power over a state's decisions regarding the management of its schools. (*Id.* at p. 1117.)

Governor Newsom's distance learning order was found lawful by the United States District Court. (*E.M.C. v. Ventura Unified School District* (C.D.Cal. October 14, 2020, No. 2:20-CV-09024-SVW-PD) 2020 WL 7094071 (*E.M.C.*)). Similar to Student's allegations, the student in *E.M.C.* experienced difficulties with distance learning and alleged she required in-person services despite the Governor's prohibition on in-person instruction. Relying on *N.D.*, the court upheld the Governor's order. It denied the student's request for in-person services, as the IEP had been modified by lawful statewide restrictions prohibiting in-person instruction. (*Id.* at *6.) Similarly, here, Student's IEP was lawfully modified by the statewide restrictions requiring school closures and distance learning.

On June 29, 2020, Governor Newsom signed Senate Bill 98 into law during the ongoing pandemic, setting standards for the 2020-2021 school year. Senate Bill 98, among other things, created Education Code section 43501, which defined distance learning and set minimum school days for kindergarten through twelfth grade for the 2020-2021 school year. The kindergarten school day required a minimum of 180 instructional minutes. (Ed. Code, § 43501, subd. (a).) No minimum school day was set for preschool.

Although not legally required by school districts, from July 17, 2020, through September 4, 2020, the California Department of Education, called CDE, and the California Department of Public Health, called CDPH, issued guidance to school districts about making some classes available, in addition to distance learning, during the 2020-2021 school year, for students with complex educational needs. If the CDPH removed the county in which the school was located from the statewide monitoring list of counties with high rates of COVID-19 infections, it permitted groups of 14 children or less to be taught in groups, called cohorts, on alternating days or partial days, in addition to distance learning. On-campus classes were limited to 25 percent of total enrollment, space permitting. Each cohort required two adults, and the cohort group was to stay together and not interact with other cohorts. Contact with service providers, such as behaviorists, speech pathologists, and occupational therapists was also limited to prevent the spread of COVID-19 across settings. (*Providing In-Person Specialized Supports and Services to Students with Disabilities* (CDE and CDPH, Sept. 30, 2020).) The CDE and CDPH required specific practices to be put in place during cohort instruction to decrease opportunities for transmission of the virus. These practices were

to facilitate more efficient contact tracing in the event of a positive case, and allowed for testing, quarantine, and isolation of a cohort instead of an entire population of children and supervising adults in the event of a positive case or cluster of cases. (*Ibid.*)

Stockton closed its schools in March 2020, and placed all students, disabled and non-disabled alike, on distance learning. Distance learning included a combination of online instruction in real time, and packets of instructional materials sent to the students' homes. Live online instruction, called synchronous instruction, did not have students and teachers physically in the same classroom, but together in a videoconference classroom. Synchronous classes were pre-scheduled, and students logged in at a designated time. Instruction that was not live, called asynchronous instruction, allowed students to learn on their own schedule without interacting with teachers or other classmates. For asynchronous instruction, online links to pre-recorded videos prepared or chosen by the teachers were posted to Stockton's website for communicating with parents, called Class Dojo. At the preschool level, classroom materials such as lesson sheets, crayons, and scissors were provided to parents to support learning activities.

Student participated in distance learning with Jessica Baldwin, his preschool special education teacher. Baldwin taught an autism preschool class with embedded pre-academic, communication, and social skills curriculum. During distance learning, Baldwin sent a visual schedule for Student to use at home and regularly loaded videos, curriculum, and printouts on Class Dojo. Student actively participated in videoconference activities during daily synchronous classes, and Mother regularly sent Baldwin pictures and videos of Student engaged in assigned asynchronous activities.

During the period at issue for Stockton, Student's operative IEP was dated December 3, 2020. In December 2020, Student was three years old. Based in part on Mother's report of Student's performance at home during distance learning, the IEP team formulated annual goals in communication, fine motor skills, interactive play, and turn-taking. The December 3, 2020 IEP offered Student distance learning, or in-person small group, cohort instruction if that became available, until Stockton schools reopened for all students. The IEP provided that, when schools reopened, Student would receive 330 minutes daily of intensive instruction in Stockton's autism preschool class. It also offered 30-minute sessions 10 times per year of small group speech and language services with a speech language pathologist, when emergency restrictions ended.

In January 2021, Stockton created half-day preschool cohorts, limited to five students chosen by the teacher, in-person, twice a week. On February 9, 2021, Student began attending the afternoon cohort taught by Baldwin. Baldwin chose Student because he had participated well in videoconference classes and home activities. In a daily morning online component of her class, Baldwin instructed both her cohort and remote students in a daily videoconference class for 30 minutes each on kindergarten readiness skills, such as social skills, self-help skills, and compliance. Two afternoons each week, Baldwin instructed her cohort students in-person for two hours per day with the assistance of a classroom aide. Baldwin's cohort received small group in-person speech and language services by a Stockton speech language pathologist for one hour per week. Baldwin continued to send lessons home for independent work throughout the week.

Parents and Student moved to Manteca in April 2021, and Student disenrolled from Stockton and stopped attending Baldwin's class on April 13, 2021.

Student argues that he should have received in-person services as contemplated by his pre-pandemic IEP, contrary to the Ninth Circuit finding that the IDEA does not give disabled students the right to implementation of their IEPs in a way that would override statewide administrative orders on school management that affect all students, disabled and non-disabled. (*N.D.*, *supra*, at 600 F.3d p. 1117.)

Student alleges in his complaint that he was struggling with distance learning in spring 2021, and that authority such as *N.D.* and *E.M.C.* should be disregarded in favor of a purported federal order from New York stating that computer-based services were not a satisfactory substitute for in-person services during the pandemic. (*L.V. v. New York City Dept. of Education* No. 19-CV-05451 (AT)(KP) *1 (S.D.N.Y. July 8, 2020).) This argument is not persuasive for many reasons. Most importantly, the cited document is a magistrate's recommendation, and not a New York federal court order. Even if it was a court order, neither New York federal nor Second Circuit decisions take precedence over Ninth Circuit law in California.

In addition, the document is of no persuasive value, as it is based on facts with no relation to those here. The recommendation was made after two years of litigation, in a case that sought enforcement of a hearing officer's pendency order, not an IEP. It was based, in part, on the student having insufficient internet access for distance learning, and a history of the school district failing to provide ordered services remotely, let alone in person.

Lastly, the recommendation was for in-person services only to the extent qualified providers could be found who were willing to provide in-person services during the pandemic. This non-binding recommendation is not a court ruling, not precedent, and not persuasive.

Similarly, in his closing brief, Student relies on prior OAH decisions finding that the students' distance learning programs were not in conformance with their IEP. Those decisions are distinguishable on their facts, unpersuasive, and not binding precedent. (Cal. Code Regs., tit. 5, § 3085 [OAH Decisions are not binding precedent].)

Student's argument also overlooks that, in spring 2021, COVID-19 was a deadly pandemic with no widely available vaccine that killed millions worldwide and eventually killed over one million Americans. It was reasonable for Stockton to follow the Governor's orders to close schools and provide distance learning to help curb the spread of this sometimes fatal, airborne respiratory virus. It was also reasonable to follow CDPH guidance to re-open schools under strict limitations. In-person instruction without regard to public health mandates would have exposed Student to risk of infection and possible death, along with Parents, and any other relatives who came into contact with Student. It would also have exposed school workers to risk of infection and death, along with their families and others. These risks highlight the impracticality and deadly consequences associated with giving a parent or an IEP team the ability to veto lawful stay-at-home orders and statewide health restrictions, as proposed by Student.

The weight of the evidence did not demonstrate that Stockton failed to comply with Student's December 3, 2020 IEP, or meet Student's educational needs during distance and cohort learning in spring 2021. Student was interested and actively

participated in videoconference classes. Student was on camera, cooperating with teacher directions, and happily participating in activities on screen. As part of a cohort, Student worked on

- preschool level pre-academics,
- functional communication,
- social skills,
- joint attention, and
- readiness skills.

Student appeared happy to be back at school and participated eagerly in activities and classroom routines. Student made meaningful progress on his goals from February 28, through April 13, 2021, and showed growth in all areas of kindergarten readiness. This progress and growth prompted Baldwin to complete a transition checklist referring Student for advancement to one of Stockton's less structured autism classrooms. Baldwin's checklist indicated that Student had acquired the functional communication, self-help, transition, play, social, and behavior skills, in line with his December 3, 2020 goals in communication, fine motor skills, interactive play, and turn-taking.

Baldwin was a credentialed special education teacher with a master's degree in special education, and 10 years of teaching preschool autism classes. She was also trained in behavior analysis, with extensive experience in data collection and evidence based practices for behavior intervention. At hearing, she presented with a professional demeanor and answered all questions readily and thoroughly. Student attended Baldwin's autism classroom at Stockton for two years, 2019-2020, and 2020-2021, and Baldwin possessed good recall of Student and his educational program. She persuasively opined that Student received the academic services in his IEP and

made appropriate progress on his goals from February 28, 2021, through his last day of attendance on April 13, 2021. This was consistent with Baldwin's contemporaneous February 26, 2021, written recommendation that Student had acquired the critical skills necessary to advance to a less structured preschool classroom.

Stockton speech language pathologist Beatriz Perez provided small group speech and language services to Baldwin's preschool autism classroom in spring 2021. Perez was familiar with the preschool autism classrooms' communication curriculum from collaborating with the teachers in those classes for nine years as part of the classrooms' embedded communication support. During distance learning, Perez

- sent newsletters to parents with suggested activities,
- provided activity suggestions to teachers,
- attended videoconference classes with the preschool teachers one day per week,
- sent home vocabulary packets tailored to students' needs, and
- provided parent training by videoconference on different topics and ideas for working on communication at home.

She was familiar with Student from working with Baldwin's preschool autism classroom. Perez's testimony at hearing was persuasive, and no special education teacher, speech language pathologist, or other expert witness testified contrary to the opinions of Baldwin or Perez regarding Student's educational program.

In spring 2021, Perez was limited to attending Baldwin's cohort one day per week for one and one-half hours, due to COVID-19 restrictions. Perez ran a small group communication station for the students in Baldwin's class, including Student. Student made progress in functional communication. Perez opined that her attendance during

videoconference classes, consultations with Baldwin, and materials supplied to Parents, complied with the speech and language services requirements of Student's IEP during distance learning.

The December 3, 2020 IEP did not require her to attend physical classes or consult with teachers in person to provide the communication supports embedded into the autism preschool program. In spring 2021, these same services, in conjunction with weekly direct small group services to the five students in Baldwin's cohort, met and exceeded the requirements of Student's December 3, 2020 IEP and provided Student with the language supports he needed to make progress on his communication goals.

Student had goals to address his difficulties with language, peer interaction, and transitions. From February 28, through April 13, 2021, Baldwin and Perez implemented the specialized academic instruction and speech and language services in the December 3, 2020 IEP, to support these goals.

Student's argument that he was entitled to in-person services disregards that the December 3, 2020 IEP was written during the COVID-19 pandemic and expressly offered distance learning and cohort classes until schools reopened to all students. Stockton's distance learning and cohort services did not materially fail to implement, or even deviate from, an IEP that offered exactly what was provided.

For these reasons, Student failed to prove by a preponderance of the evidence that Stockton denied him a FAPE from February 28, 2021, through the end of the 2020-2021 school year, by assigning Student to distance learning without continuing to provide in-person services. Stockton prevailed on Issue 1.

ISSUE 2: ACCOMMODATIONS DURING DISTANCE LEARNING

Student contends he was denied a FAPE from February 28, 2021, through the end of the 2020-2021 school year, because Stockton did not provide him with necessary accommodations for distance learning. Stockton contends it provided all required accommodations.

The accommodations in the December 3, 2020 IEP included consultation and collaboration between the educational team and speech language pathologist for 30 minutes per month, to develop and implement classroom wide functional communication strategies promoting independence and spontaneous communication skills throughout the classroom routine. As discussed in Issue 1, Stockton was not obligated to provide Student a FAPE following his April 13, 2021 move to Manteca.

Stockton provided these accommodations from February 28, through April 13, 2021. Perez discussed program wide accommodations with Baldwin for 30 minutes or more per month, attended one of Baldwin's videoconference classes each week, and worked directly with the students in Baldwin's cohort. In addition, Baldwin sent home to Parents the accommodations she and Perez had developed for Student, including visual supports, a visual schedule, and token boards for use during distance learning. Perez and Baldwin developed and implemented classroom wide functional communication strategies to promote Student's independent and spontaneous communication throughout the school day. Student tended to gravitate more to adults and peers for spontaneous communication, but over the 2020-2021 school year, he learned to use his words more often, and his sentences became longer. Father believed Baldwin helped get Student out of his shell.

Baldwin and Perez opined persuasively that Student received the accommodations in the December 3, 2020 IEP, which permitted Student to access his education and make progress on his goals.

Father expressed concern at hearing that Student's language and social skills had regressed during the pandemic school closures. As explained by Perez, this was a concern for all preschool parents, because during stay-at-home orders, children had limited or no opportunity to interact with other children to practice social skills. Nonetheless, during distance learning Student enjoyed and actively participated in Baldwin's videoconference classes. Once back in the cohort program, Student developed functional communication, social skills, and play skills that Baldwin determined were sufficient for advancement to a less structured classroom. Student received and benefitted from the consultation and collaboration accommodations specified in the IEP and implemented during online learning and the cohort program, including visual supports, a visual schedule, and token boards sent home to Parents.

Student failed to prove by a preponderance of the evidence that Stockton denied him a FAPE from February 28, 2021, to the end of the 2020-2021 school year, by not providing Student with necessary accommodations for distance learning. Stockton prevailed on Issue 2.

ISSUE 3: ASSESSMENT FOR DISTANCE LEARNING

Student contends Stockton denied him a FAPE by failing to assess Student for distance learning from February 28, 2021, through the end of the 2020-2021 school year. In particular, Student asserts Stockton should have reassessed him to determine if

he required additional accommodations during distance learning to make educational progress. Stockton contends that Student made appropriate progress during distance learning, and further assessment was not required.

After a student is assessed and found eligible for special education, the IDEA requires reevaluations to be conducted not more frequently than once a year unless the parent and school district agree otherwise, but at least once every three years unless the parent and school district agree that a reevaluation is not necessary. (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 reassessments rather than reevaluations, but they mean the same thing.

In California, a reassessment must be conducted if the school district determines that the educational or related service needs, including improved academic achievement and functional performance, of the student warrant a reassessment, or if the student's parents or teacher request a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

Stockton first assessed Student for special education and he became eligible on December 4, 2019. His three-year assessment was not due until December 2022. Parents did not request an assessment, and neither did Baldwin, Perez, or any other Stockton staff member. Therefore, an assessment was not required unless Stockton determined that Student's academic achievement and functional performance warranted a reassessment.

Stockton was not obligated to provide Student a FAPE following his April 13, 2021 move to Manteca. As discussed at Issues 1 and 2, from February 28, through April 13, 2021, Student made educational progress. Student accessed all aspects of

distance learning. He eagerly participated in videoconference classes, and the learning activities provided in teacher packets or linked online. Student also attended Baldwin's in-person cohort two days a week with four of his peers. He actively engaged in lessons and made progress on his annual goals of functional communication, fine motor skills, and play skills. Student made such good progress on his goals and in all areas of school readiness that Baldwin referred him to a less structured preschool program. Stockton did not, and had no reason to, determine that Student's academic or functional performance required reassessment between February 28, and April 13, 2021.

Father testified that Parents were concerned about Student's social skills, although they did not request an assessment. Neither this testimony nor other evidence persuasively showed Student required a reassessment during that time.

Student failed to prove by a preponderance of the evidence that Stockton denied him a FAPE from February 28, 2021, through the end of the 2020-2021 school year, by not assessing Student for distance learning. Stockton prevailed on Issue 3.

ISSUES 4a THROUGH 4c: THE NOVEMBER 23, 2021 IEP GOALS

Student contends that Manteca denied Student a FAPE by failing to include appropriate goals in the November 23, 2021 IEP. Specifically, Student asserts the IEP failed to provide appropriate goals in the areas of fine motor skills, speech and language pragmatic skills, and social emotional skills. Manteca contends the IEP had appropriate goals in those areas that were measurable, appropriately ambitious, and tailored to meet Student's unique needs.

An IEP describes a student's needs, including academic and functional goals related to those needs. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).) The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (a).)

The goals must be measurable and designed to meet the student's needs so that the student can be involved in and make progress in the general education curriculum and meet each of the other educational needs. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i).) The IEP must also describe how progress towards the goals developed will be measured and reported. (20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3).)

Goals are typically developed once a year at a student's annual IEP team meeting. Annual goals should describe what a student with a disability can reasonably be expected to accomplish within a 12-month period of the special education program. (*Letter to Butler* (OSERS, Mar. 25, 1988); *Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations)* (*Letter to Butler*).) The IEP must show a direct relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

Student's family moved to Manteca in April 2021, and Mother enrolled Student at Manteca with Stockton's December 3, 2020 IEP. On April 28, 2021, Manteca offered Student a 30-day placement with specialized academic instruction in the San Joaquin County Office of Education's autism preschool, and ten, 30-minute sessions of speech therapy. Manteca duplicated Student's December 3, 2020 IEP as closely as possible. Parents consented to the interim placement, called the County program, on May 4, 2021, and Student entered the County program on June 8, 2021. The interim placement is not an issue in this due process matter.

On September 3, 2021, near the beginning of the 2021-2022 school year, Manteca held an IEP team meeting to review Student's progress in the County program. Student made progress on his goals, but still had educational needs in the areas of pre-academics, fine motor, communication, and social skills. County program staff believed Student was capable of progressing in a program with less support and recommended that Student transfer to one of Manteca's special day autism preschool classes for students with mild to moderate disabilities. The September 3, 2021 IEP team recommended goals for Student's annual IEP review later that fall. Goals included for Student to follow instructions involving six prepositions such as over, under, and in front of,

- to answer story questions,
- to answer social questions,
- to learn one-to-one correspondence in math, and
- to identify eight categories of items.

Manteca offered Student a special day autism preschool classroom and increased his speech services to eight, 25-minute sessions, or about six times per month through Student's annual IEP due December 2, 2021. Parents consented to the September 2021 IEP, and Student began attending Annie Johnson-Maxson's autism preschool classroom the next week, on September 11, 2021.

Annie Johnson-Maxson held a special education credential and taught general education preschool for 13 years before becoming a special education preschool teacher in 2019. Her preschool classroom had 11 students and was supported by two classroom paraprofessionals. The focus of the classroom was to help students develop

in their areas of need and to prepare them for transitional kindergarten and kindergarten. Johnson-Maxson's classroom resembled a general education preschool classroom and kept a schedule similar to general education kindergarten.

Manteca held Student's annual review IEP on November 23, 2021, the IEP at issue. Johnson-Maxson reported on Student's present levels of performance. Johnson-Maxson took data weekly on Student's pre-academic performance and tracked Student's social emotional functioning through observation. Student had not met two of his four goals from December 3, 2020, but was making progress on all of them. Student responded to greetings and social questions with prompting, but not independently. He could trace lines and letters with a correct pincer grasp but continued to use a fist grip unless prompted. Student described a picture, but had difficulty, particularly with pronouns. Student engaged in parallel play with peers but did not initiate interactive play. Student was compliant, maintained attention to task with prompting, and was easily redirected, so behavior was not an area of concern.

The November 23, 2021 IEP team identified Student's areas of need as

- pre-academics,
- fine motor,
- social emotional functioning, and
- language, including social communication, called pragmatics.

The team kept and revised the fine motor, pre-academic, and speech and language goals from the December 3, 2020 IEP, and added pre-academic, social emotional, and pragmatic goals, discussed in detail as relevant below.

2021 FINE MOTOR SKILLS GOAL

The November 23, 2021 fine motor skills goal targeted Student's pre-kindergarten writing needs, so that Student could be involved and make progress in the general education curriculum. The November 23, 2021 IEP team reviewed Student's progress on goals and Johnson-Maxson's report of Student's present levels of performance, both of which indicated that although Student made progress, fine motor skills were still an area of need. Student could trace lines, letters, and shapes, but he used an immature palmar grasp, and his writing was shaky.

The IEP team wrote a goal for Student to trace the letters of his first name with a partial pincer grasp on his writing utensil, with 80 percent accuracy in three out of four opportunities, as measured by work samples and teacher's classroom data records. This goal was appropriately ambitious, as it addressed fine motor skills and writing in the general education curriculum, and Student's need to strengthen his fine motor abilities and pencil grip. Both the classroom teacher and the classroom paraprofessionals were responsible for helping Student reach this goal. This was consistent with Johnson-Maxson's testimony that Student would have many opportunities to work on fine motor skills in the classroom under the guidance and help of the teacher and paraprofessionals. The goal was measurable using work samples and provided for three progress reports during the following 12 months.

The November 23, 2021 IEP annual fine motor goal had a direct relationship between Student's present levels of performance and the specific educational services to be provided. In the prior year, Student made strides in controlling his writing instrument to trace lines and shapes. A goal to trace the letters in Student's name was reasonably calculated to provide Student with necessary pre-writing skills for the

transition to kindergarten. Johnson-Maxson opined persuasively that the fine motor goal could reasonably be expected to be accomplished within a 12-month period with the supports in the offered autism classroom.

Johnson-Maxson was a well-qualified special education teacher. At hearing, she had a calm demeanor, good recall of Student, and often provided explanatory detail when answering questions. She opined that the November 23, 2021 fine motor skills goal appropriately addressed all Student's fine motor needs, was measurable, appropriately ambitious, and reasonably attainable in one year. She proposed the goal because Student needed to acquire pre-writing skills to succeed in kindergarten. No expert witness rebutted Johnson-Maxson's testimony. Although Father testified that Student had a palmer grasp, could not independently write his name, and had difficulty writing letters of the alphabet, this was consistent with Johnson-Maxson's report to the IEP team and testimony. Father did not establish there were unknown or unaddressed fine motor skills needs in the November 2021 IEP.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 23, 2021 IEP, by failing to include appropriate goals in the area of fine motor skills. Manteca prevailed on Issue 4a.

2021 SPEECH AND LANGUAGE PRAGMATICS SKILLS GOALS

On September 3, 2021, the County program reported to the IEP team that, as to receptive language, Student could follow the classroom routine and two-step directions with prompting, could make choices, and identified several items. With respect to expressive language, Student was verbal, used sentences of one to six words in length, could label several nouns and verbs, was learning to understand and answer functional

questions, and answered simple yes or no questions. Pragmatically, Student could respond to his name, maintain eye contact during social interactions, demonstrated increased joint attention with communicative partners, and could attend to a task through completion with prompts.

Johnson-Maxson and Marita Garcia, the speech language pathologist working with Student, reported to the November 23, 2021 IEP team that, in the area of language, Student answered questions in circle time, used two to five word sentences, spoke to himself during book time and play, and benefitted from models and extra time to respond to questions and directions. Student had some articulation errors and spoke softly, but both were appropriate for his age. However, Student struggled to accurately label pictures, inconsistently followed directions with prepositions, rarely responded to greetings or social questions, and had difficulty responding to questions. In pragmatics, at issue here, Student generally responded to his name, but struggled with identifying facial expressions and nonverbally expressed rules, did not consistently greet or take leave of others, did not consistently make statements of appreciation or request help, and needed adult support to advocate for himself with peers.

In the area of pre-academics and pragmatics, the team developed a goal for Student to respond appropriately to greetings and leave takings, and to answer 10 social questions regarding static personal information such as his name, in 80 percent of opportunities across three sessions, as measured by classroom and speech language pathologist charted data and/or direct observation. At that time, Student required modeling and prompting for greetings, leave takings, and social questions, and did not respond independently.

The team developed a second pragmatics goal for Student to use learned phrases to initiate play and advocate for himself in eight out of 10 opportunities, with a verbal prompt from staff. In November 2021, Student engaged only in parallel play, although he did so next to his peers, and did not know how to advocate in situations, such as a toy being taken by another child.

The team also developed receptive and expressive language goals, sometimes titled pre-academic goals, to receptively identify categories of objects, follow directions with prepositions, expressively label categories of items, and expressively answer questions such as who, what, when, and where.

To support Student's progress on his annual speech and language goals, the November 23, 2021 IEP offered Student placement in the preschool autism program with its embedded communication and social skills curriculum, and regular collaboration between the teacher and speech language pathologist. It also offered Student 50-minute sessions of speech services, with 20 sessions over the school year, working directly with a speech language pathologist in the classroom. Classroom accommodations included

- choice boards,
- visual schedules,
- visuals of classroom rules,
- token boards, and
- first/then visuals.

The pre-academics and pragmatic language goal for Student to respond to greetings, leave takings, and social questions was appropriate and ambitious. It addressed the general education curriculum for preschool learning foundations of listening and speaking, and also addressed Student's receptive and expressive language

deficits, which interfered with his ability to respond appropriately during adult and peer interaction. The classroom teacher, classroom paraprofessionals, and speech language pathologist were responsible for helping Student achieve this goal, which was expressly supported by the offered speech services.

The second pragmatics goal, for Student to use learned phrases to initiate play and advocate for himself with prompting, was appropriate and ambitious. It addressed preschool learning foundations of listening and speaking, and also addressed Student's pragmatics deficits, which interfered with his ability to engage in interactive play or negotiations with his peers. The classroom teacher, classroom paraprofessionals, and speech language pathologist were responsible for helping Student achieve this goal, and it was expressly supported by the autism preschool curriculum, and the speech services offered.

Each of the four language goals was measurable using work samples, observations, or charted data, and provided for three progress reports during the following 12 months.

The November 23, 2021 IEP language goals each had a direct relationship between Student's present levels of performance and the specific educational services to be provided. The language goals were reasonably calculated to provide Student with appropriate receptive, expressive, and pragmatic language skills to prepare him for the transition to kindergarten. Johnson-Maxson and Garcia opined persuasively that each of the language goals could reasonably be expected to be accomplished within a 12-month period with the supports offered in the autism preschool classroom and speech services, and addressed all of Student's speech and language needs.

No expert witness testified contrary to the opinions of Johnson-Maxson or Garcia. Although Father testified Student spoke in one and two word sentences, still pointed at desired items, and could be difficult to understand, this did not contradict Johnson-Maxon or Garcia. Father's testimony did not establish there were any unknown or unaddressed speech and language needs, particularly in pragmatics, in November 2021.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 23, 2021 IEP, by failing to include appropriate goals in the area of speech and language pragmatic skills. Manteca prevailed on Issue 4b.

2021 SOCIAL EMOTIONAL SKILLS GOALS

Johnson-Maxson reported to the November 23, 2021 IEP team that Student was more cooperative on arrival at school than when he first moved from the County program, and was no longer crying or protesting as often. He sat quietly during circle time but did not participate independently. In small groups, he needed reminders to stay on task and complete work. The IEP team appropriately wrote a social emotional goal for Student to, in a large group setting, participate in circle time activities for 10 to 15 minutes with minimal reminders from staff, with 60 percent accuracy as measured by teacher observation and data collection. This goal enabled Student to be involved in and progress in general education and state standards for self-regulation, as Student had difficulty with sitting still and maintaining attention that interfered with his ability to participate in large group activities. The classroom teacher and classroom paraprofessionals were responsible for helping Student achieve this goal, which was supported by the autism preschool classroom curriculum and the small student to adult ratio in that classroom.

The IEP team also appropriately wrote a second social emotional goal for Student to complete tabletop work in a small or large group setting with no more than two teacher prompts or cues, in four out of five opportunities, with 80 percent independence as measured by classroom data. This goal allowed student to be involved in and progress in the general education curriculum and state standards for group participation, as Student's preference of working alone and difficulty maintaining attention to nonpreferred tasks interfered with his ability to participate in both small group and large group activities. The classroom teacher and paraprofessionals were responsible for helping Student achieve this goal, which was supported both by the autism preschool classroom curriculum and the small student to teacher ratio in that classroom.

The November 23, 2021 IEP annual social emotional goals were appropriate and ambitious. Each had a direct relationship between Student's present levels of performance and the specific educational services to be provided. The goals stated Student's baseline skill level and were supported by the social skills curriculum and behavioral supports in the autism preschool classroom, and by the small student to adult ratio that would allow the teacher and staff to work directly with Student on the targeted skills. The social emotional goals were reasonably calculated to provide Student with appropriate self-regulation and behavior skills to participate in the general education curriculum. Johnson-Maxson opined persuasively that the social emotional goals met all of Student's social emotional needs, were appropriately ambitious, and could reasonably be expected to be accomplished within a 12-month period with the supports offered in the autism preschool classroom.

Student contends the goals were insufficiently ambitious and did not offer educational benefit. However, each of the goals expressly addressed preschool

foundational skills, the general education curriculum, or state standards. Each goal addressed an identified area of need that interfered with Student's access to the general education curriculum. Making progress on or meeting these goals would prepare Student for kindergarten, by teaching him the mechanics of writing, the language skills to participate in grade level curriculum and interact appropriately with his peers, and to function appropriately during small group and large group activities. These goals were appropriately ambitious. They did not target de minimus change but addressed those areas that interfered with Student's ability to engage and make progress in the general education curriculum. Student failed to submit any evidence to support his contention.

Student also contends he was not adequately assessed to inform the November 23, 2021 IEP team of all areas of need. This argument fails for several reasons. First, Student did not bring a claim that he was inadequately assessed in November 2021. Second, Student did not identify in his complaint any specific area that was not adequately assessed. Third, Student did not present evidence of information on any area of need that the IEP team did not have, and that would have changed any of the goals developed at that meeting. And last, Student did not present evidence of any goals that Student required but were not included in the November 23, 2021 IEP.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 23, 2023 IEP, by failing to include appropriate goals in the area of social emotional skills. Manteca prevailed on Issue 4c.

ISSUES 5a THROUGH 5c: PROGRAMS, SUPPORTS, AND SERVICES IN THE NOVEMBER 23, 2021 IEP

Student contends the November 23, 2021 IEP denied him a FAPE, by failing to offer sufficient programs, supports, and services in the areas of speech and language, behavior, specifically an individual aide, and occupational therapy. Manteca contends it offered appropriate services in those areas.

An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrmann v. East Hanover Board of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrmann*).) An IEP is a snapshot, not a retrospective. (*Id.*, citing *Fuhrmann, supra*, 993 F.2d at p. 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed, by looking at the IEP's goals and goal achieving methods at the time the plan was implemented and determining whether the methods were reasonably calculated to confer an educational benefit. (*Adams, supra*, 195 F.3d at p. 1149; *Fuhrmann, supra*, 993 F.2d at p. 1041.)

To determine whether a school district substantively offered a student a FAPE, the focus must be on the adequacy of the district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1313-1315.) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program, and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*)

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

SPEECH AND LANGUAGE

The weight of the evidence did not demonstrate the November 23, 2021 IEP offered Student insufficient speech and language services.

The November 23, 2021 IEP team had the present levels reports on Student's speech and language performance from Johnson-Maxson and Garcia. It also had the September 3, 2021, present levels of performance from the County program. Student met two of four December 3, 2020, annual goals, but continued to have difficulties with communication development, particularly interacting with peers and participating in group activities. As found at Issue 4b, the November 23, 2021 IEP team correctly identified Student's communication needs as receptive, expressive, and pragmatic language. The November 23, 2021 IEP contained annual goals in each of these areas.

To support Student's progress on his annual speech and language goals, the November 23, 2021 IEP offered Student placement in the preschool autism program, and 50-minute sessions of speech services 20 times per year, with the speech language pathologist working directly with Student in the classroom. Classroom accommodations included

- choice boards,
- visual schedules,
- visuals of classroom rules,

- token boards, and
- first/then visuals.

The weight of the evidence demonstrated that Manteca offered sufficient programs, supports and services in the area of speech and language. Johnson-Maxson worked with each of her students in their area of need, and the autism preschool classroom had sufficient teacher and classroom staff to support Student on his pre-academic and language goals. The autism preschool classroom had a communication rich curriculum, and students regularly worked on pragmatic language and social skills. Each autism preschool teacher also collaborated with a speech language pathologist on how to best support acquisition of language skills during the classroom day and had the speech language pathologist regularly contribute classroom-wide and small group language lessons.

Speech language pathologist Garcia opined persuasively that the placement and speech services offered were sufficient for Student to make progress on his speech and language goals. Garcia was a licensed and credentialed speech therapist working exclusively with preschool children for nine years and had good recall of working with Student. Her testimony at hearing on Student's speech and language needs, and the components of an educational program to meet those needs, was persuasive and uncontradicted by any other speech pathologist.

The November 23, 2021 IEP team more than doubled the speech services Student received in the December 3, 2020 IEP, and in November 2021, Garcia anticipated Student could meet all of his speech and language goals within one year's time with the placement, services, and accommodations offered. Particularly, as to Student's expressive language goal to describe a picture with subjects and verbs, she

opined that the visual supports written into the goal would allow him to meet the goal. As to the pragmatics goal, the autism preschool classroom gave Student multiple opportunities, across multiple settings, and with support from the teacher and classroom staff, to practice phrases to initiate play and advocate for himself throughout each school day.

Parents were concerned about Student's communication in November 2021. However, November 23, 2021 IEP team members testified consistently that Parents did not request different or additional speech services, and Father admitted as much. Father did not testify as to what other services he believed Student needed, or the type, duration, and frequency of such services. Father was not a licensed speech language pathologist, but even if he were, the lack of an opinion as to what additional services, programs, and supports Student needed falls short of establishing that Student was not offered the special education and related services required to make progress on his speech and language goals.

The special education and related services offered in the November 23, 2021 IEP addressed Student's unique needs, were reasonably calculated to provide educational benefit, and comported with the IEP developed by Student's IEP team, including Parents. The speech and language services were sufficient to ensure that Student made progress in speech and language appropriate to his circumstances.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 23, 2021 IEP, by failing to offer sufficient programs, supports, and services in the area of speech and language. Manteca prevailed on Issue 5a.

ONE-TO-ONE AIDE

Student argues that he should have been offered a one-to-one aide in the November 23, 2021 IEP, because he did not meet the December 3, 2020 behavior goal. Student failed to present any evidence to show that Student's behaviors warranted a one-to-one aide.

The December 3, 2020 IEP included one behavior goal for Student to independently engage in and maintain play with a peer. In November 2021, Student did not meet that goal because he did not engage in back and forth play, but he made progress because he advanced to parallel play with, or play alongside, his peers. Johnson-Maxson opined that Student's progress was developmentally appropriate and preceded interactive play.

Johnson-Maxson reported to the November 23, 2021 IEP team that Student rarely cried or protested when he was dropped off at school for the day. Student sat quietly during circle time, although he did not participate unless called upon. He enjoyed being assigned classroom jobs, and helping during circle time, breakfast, or lunch. Student stayed focused in small groups when he was interested, although he needed reminders to stay on task when he was not. Johnson-Maxson did not observe any maladaptive behaviors. The November 2021 IEP team and written IEP acknowledged that Student had difficulty engaging with peers and needed multiple reminders to engage or stay on task. These behaviors were addressed with two social emotional goals for Student to participate in a large group, with minimal verbal reminders from staff, and to independently complete tabletop work in small groups with no more than two prompts.

Placement in the autism special day preschool classroom, with its embedded social and communication curriculum and a low student to staff ratio, was reasonably calculated to enable Student to make progress on his social emotional goals for peer interaction and independent work completion. Johnson-Maxson opined persuasively that the autism classroom, and the support of the teacher and classroom paraprofessionals, were sufficient for Student to meet his social emotional goals.

The November 23, 2021 IEP stated that Student's behavior impeded the learning of himself or others because Student could be detached and have difficulty engaging with others. He resisted demands by hyper-focusing on desired items when presented with a nonpreferred task. However, the IEP team determined that positive behavior interventions such as first/then cards, redirection, and a visual schedule were sufficient to address these behaviors, in addition to his two social emotional goals and classroom supports. Visual support such as choice boards, visual schedules, visual descriptions of classroom rules, token boards, and first/then visuals were added to the IEP as accommodations to support Student's social emotional goals.

Johnson-Maxson opined that Student did not need a one-to-one aide in November 2021, to accompany him during the school day or to make progress on his goals. Student could follow the classroom routine independently with visual supports and could independently complete classwork. With the exception of early protests on arrival when Student first transitioned from the County program, Student was compliant and well-behaved. The small ratio of three or four students to each adult in the autism preschool classroom provided sufficient adult support to teach Student

- classroom expectations,
- how to participate,

- give Student encouragement and positive reinforcement, and
- redirect or prompt Student as needed.

These strategies and positive behavior interventions were appropriate and sufficient to address Student's behavior needs without a one-to-one aide.

Parents did not request a one-to-one aide at the November 23, 2021 IEP team meeting. Father failed to explain why Student's complaint requested a one-to-one aide. Father's testimony did not support that Student required a one-to-one aide to make progress on his goals or classwork. Parents may have preferred Student have a dedicated one-to-one aide to promote even greater benefit, but a one-to-one aide was not necessary for Manteca to offer Student a FAPE with regard to his behavior. (See *Gregory K., supra*, 811 F.2d at p. 1313-1315.)

Manteca's IEP offer of the autism preschool classroom with a low student to teacher ratio, embedded supports, and accommodations was designed to address Student's unique social emotional and behavior needs. It was reasonably calculated to provide educational benefit and comported with Student's IEP to address social emotional functioning and behavior. A one-to-one aide was not requested or necessary to enable Student to make educational progress.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 23, 2021 IEP, by failing to offer sufficient programs, supports, and services, in the area of behavior, specifically a one-to-one aide. Manteca prevailed on Issue 5b.

OCCUPATIONAL THERAPY

Student contends that because he did not meet the fine motor goal in his December 2, 2020 IEP, he did not receive sufficient programs, supports, and services in that area, and additionally, required occupational therapy to meet his November 23, 2021 fine motor goal.

A student may derive educational benefit if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. A student's failure to perform at grade level is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. (*Walczak v. Florida Union Free School Dist.* (2nd Cir. 1998) 142 F.3d 119, 130; *E.S. v. Independent School Dist, No. 196* (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *M.P. v. Poway Unified School Dist.* (S.D.Cal. July 12, 2010, No. 09 CV 1627) 2010 WL 2735759, *10-11; *M.S. v. Lake Elsinore Unified School Dist.* (C.D.Cal. July 24, 2015, No. 13-CV-01484-CAS (SPx)) 2015 WL 4511947, *8.)

California recognizes that some pupils may not meet or exceed the growth projected in annual goals and objectives of the IEP. (See Ed. Code, § 56345, subd. (c).) No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203 fn. 25.)

The baseline of the fine motor goal in the November 23, 2021 IEP, reported Student had learned to trace letters, lines and shapes, but still used a fist grip and had shaky handwriting. Johnson-Maxson reported to the IEP team that, although Student had not met his goal of independently tracing using a pincer grasp, he made progress and could trace letters, lines, and shapes, as well as form some letters on his

own, with a pincer grasp with prompting. She reported that Student's fine motor skills were improving in general, and Student scribbled to represent people, places, or things, and cut with scissors although not along the line.

Johnson-Maxson proposed the November 23, 2021 IEP's annual fine motor goal that Student would trace the letters of his first name with a partial pincer grasp. She opined that, in November 2021, it was reasonably foreseeable that the autism preschool classroom supports and opportunities to strengthen fine motor skills would be sufficient for Student to meet the goal within a year's time. Johnson-Maxson and her classroom paraprofessionals worked with Student individually on his tracing skills and observed him improve his tracing and letter-forming skills. They anticipated that opportunities to practice writing and building strength in Student's fingers with classroom activities, such as molding Playdoh, would help Student reach his fine motor goal. Manteca's IEP offer of the autism preschool classroom with a low student to teacher ratio, embedded supports, and identified accommodations was reasonably calculated to ensure Student made progress on his fine motor goal of tracing his first name with a pincer grasp. No expert witness or persuasive evidence controverted Johnson-Maxon's testimony.

Student made progress on his November 23, 2021 fine motor goal with the services offered. By March 2022, he could trace the letters of his name, although he still used a fist grip. By April 2022, on a kindergarten readiness test administered by Johnson-Maxson, Student could reproduce figures, color inside the lines, complete a maze, and hold a pencil correctly. The fact that Student continued to revert to, and preferred, a fist grip, did not mean Student did not make progress on his goal, or needed additional programs, supports, and services to obtain educational benefit.

Manteca's November 15, 2022 IEP offer of the autism preschool classroom with embedded opportunities and supports for strengthening his fine motor skills and writing was designed to address Student's unique fine motor needs. It was reasonably calculated to provide educational benefit and comported with Student's IEP to ensure Student made progress on his fine motor goals appropriate in light of his circumstances. Occupational therapy was not necessary for Student to receive a FAPE in the November 23, 2021 IEP.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 23, 2021 IEP, by failing to offer sufficient programs, supports, and services in the area of occupational therapy. Manteca prevailed on Issue 5c.

ISSUES 6a AND 6b: PARENT TRAINING

Student contends Manteca denied Student a FAPE by failing to offer training to Parents in autism and speech or language impairment in the November 23, 2021 IEP. Manteca contends Parents did not request or require parent training for Student to benefit from special education.

Student's complaint cites title 34 Code of Federal Regulations section 300.34(c)(8), as "regulating" parent training. However, that section is nothing more than a definition of parent training. It does not obligate a school district to offer parent training.

Student's complaint states a list of ideas for "Parent IEP Training" without citation. Student's creation of the term Parent IEP Training does not obligate a school district to offer parent training in an IEP.

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

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

As with other related services, districts are responsible for providing parent counseling and training when the child's IEP team determines that it is necessary for the child to receive FAPE. (U.S. Dept. of Educ., *Assistance to States for the Education of Children with Disabilities, and Preschool Grants for Children with Disabilities* (71 Fed. Reg. 46573, Aug. 14, 2006).) To determine whether services for a child's parents, such as training or counseling, should be included in a child's IEP, the team developing the IEP must determine that the service is needed for the child to receive an appropriate special education or other required related services in the least restrictive environment. (*Letter to Dole* (OSERS, July 25, 1986) at p. 2.) Any related services provided for parents must assist the child in developing skills needed to benefit from special education or correct conditions which interfere with the child's progress toward the goals and objectives listed in the IEP. (*Ibid.*)

As discussed at Issues 4 and 5, Student's November 23, 2022 IEP team identified Student's areas of need, wrote goals in those areas of need, and offered sufficient programs, supports, and services for Student to meet his goals in speech and language, behavior, and fine motor skills. The weight of the evidence did not establish that Student required parent training for autism or speech or language impairment in his IEP to receive a FAPE, to assist in developing skills needed to benefit from special education, or to make progress on his annual goals and access his education.

Father testified that neither he nor Mother requested parent training in autism or speech or language impairment at any IEP team meeting, or from any person at

Manteca at any time. Nor did he establish that Parents required training. Father did not explain the nature of the training in autism or speech or language impairment he believes Parents needed in November 2021, or how that training was necessary for Student to make progress on his goals or access his educational program. None of the educational professionals who testified opined that parent training in autism or speech or language impairment was necessary for Student to receive a FAPE in November 2021. In sum, Student failed to present any evidence to support this issue.

Student's IEP did not contain parent training and counseling services, but such services were readily available. Several Manteca members of Student's IEP teams testified that the information packet attached to the procedural safeguards given to Parents at each IEP team meeting directed special education parents to the Parent Advisory Committee, which provided free training for parents of students with disabilities. This packet also contained information for contacting the Valley Mountain Regional Center, a state agency that provided services, including parent training, to families of children with disabilities. Similarly, Student's pediatrician referred parents to the Valley Mountain Regional Center, where Parents received training in Student's disabilities to support Student at home.

Multiple Manteca IEP team members testified that if Parents had requested parent training in autism or speech or language impairment, they would have discussed that at the IEP team meetings and considered providing training to Parents. However, Parents did not request parent training, and parent training was not necessary for Student to receive a FAPE.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 23, 2021 IEP, by failing to offer parent training in the areas of autism or speech or language impairment. Manteca prevailed on Issues 6a and 6b.

ISSUE 7: EXTENDED SCHOOL YEAR SERVICES

Student contends Manteca denied him a FAPE by failing to offer services in the November 23, 2021 IEP for the extended school year following the 2021-2022 school year. Student argues Manteca was on notice that Student was prone to regression from Parents' reports that Student's language decreased, and behaviors increased, when in-person instruction stopped during the 2020-2021 school year. Student contends Manteca failed to evaluate Student's level of regression in all areas of need or address it in the November 23, 2021 IEP. Manteca contends Student did not need extended school year services.

California special education regulations require that extended school year services be provided for each student with exceptional needs who requires special education and related services in excess of the regular academic year. (Cal. Code Regs., tit. 5, § 3043.) A student needs extended programming if interruption of their educational programming may cause regression, rendering it impossible or unlikely that they will attain the level of self-sufficiency and independence that would otherwise be expected in view of their disabling condition. (*Ibid.*)

The purpose of extended school year placement and services is to prevent regression and recoupment difficulties during the summer break. (*Letter to Myers*, U.S. Dept. of Ed., Office of Special Ed. Programs (Dec. 18, 1989).)

Student failed to present any legal or factual authority to show regression that occurred during distance learning was similar to regression that may occur during a summer break. Student offered no evidence that he regressed in pre-academics, communication, fine motor skills, behavior, play skills, or any other area of need while in distance learning. Nor did Student regress over summer 2021, when he was not provided extended school year services. By the September 3, 2021 IEP, Student met two of his four goals and made progress on the others. At the November 23, 2021 IEP, Student was making progress in all areas.

Student questioned Johnson-Maxson and Garcia on whether Student's progress had slowed after the summer break, and during Student's transition from the County program to Manteca's autism preschool classroom. Both testified consistently that Student's progress had slowed, but his skills had not regressed. After the 2021 summer break, and his transition into Johnson-Maxson's classroom, Student continued to make progress in all areas of need without regression, including

- daily living skills,
- peer interactions,
- compliance,
- transitioning skills, and
- social skills.

Despite a brief period of protest at being dropped off at a new school in September 2021, Student was an eager and capable helper in his preschool classroom, began parallel play with his peers, was compliant, transitioned between activities well with

prompting and a visual schedule, and improved his work in large and small group activities. Student did not need a recoupment period because he did not suffer any skill regression.

Progress is analogous to acceleration. Less acceleration is not the equivalent of going backwards, or even coming to a stop. Any slowing of Student's progress was still progress, and the evidence did not demonstrate that Student regressed in any area of need during school breaks prior to November 23, 2021. Accordingly, Manteca was not required to offer Student extended school year services in the November 23, 2021 IEP to address regression and recoupment.

In Student's closing brief, he urges OAH to follow the Arizona Department of Education, Exceptional Student Services, 2007 guidelines for determining eligibility for extended school year services. Student cites an Arizona statute that contains criteria for determining if a student is eligible for extended school year services. Arizona law, and Arizona state agency interpretations of Arizona law, do not impose obligations on school districts in California. This Decision declines to apply Arizona law in determining whether Manteca should have offered extended school year services to Student, in November 2021, or November 2022.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 23, 2021 IEP, by failing to offer extended school year services to address regression. Manteca prevailed on Issue 7.

ISSUES 8a THROUGH 8c: NOVEMBER 15, 2022 IEP ANNUAL GOALS

Student contends Manteca failed to include appropriate goals in the areas of fine motor skills, speech and language pragmatic skills, and social emotional skills, in the IEP developed on November 15, 2022. Manteca contends it offered appropriate goals in those areas.

As detailed at Issue 4, the purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) Goals must be measurable and designed to meet the student's needs so that the student can be involved in and make progress in the general education curriculum, or to meet other educational needs. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i).) The IEP must also describe how progress on goals will be measured and reported. (20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3).) Annual goals should describe what can reasonably be expected to accomplish within a 12-month period. (*Letter to Butler, supra*, (OSERS Mar. 25, 1988).) There must be a direct relationship between the present levels of performance, the goals, and the specific educational services offered. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

2022 FINE MOTOR SKILLS GOAL

On April 7, 2022, Manteca convened an IEP team meeting to review Student's assessments and progress and determine if he needed changes to his program or supports for the transition to kindergarten. Johnson-Maxson, Garcia, and other Manteca staff attended, as did Parents.

Student made progress on his fine motor goal by tracing better but continued to use a fist grip to hold the pencil near the top. Johnson-Maxson reported that she wanted to try a shorter pencil and a pencil grip to promote Student holding the pencil correctly.

The IEP team offered Student a full day of specialized academic instruction in a special day autism classroom for kindergarten, with mainstreaming for lunch, recess, and special events. The total minutes were extended to 360 per day, to account for the longer kindergarten day. Student's speech services were changed from 50-minute sessions to 25-minute sessions, and increased to six times per month in a separate group setting. Breaking the sessions into smaller periods of time would allow the speech language pathologist to schedule sessions to minimize time out of the classroom and missed academic instruction.

Student began the 2022-2023 school year in Sandra Brasil's autism special day kindergarten classroom. Brasil's classroom had 10 students and 2 paraprofessionals, for a student to adult ratio of three or four to one. The classroom had a set daily routine, and focused on social emotional learning, such as

- social greetings,
- play skills,
- vocabulary,
- independence, and
- self-help.

Students rotated through small group activities on components of general education curriculum, such as math, science, art, and social studies, with a particular emphasis on

English language arts and high frequency word vocabulary. Brasil's class went to recess with general education students, and some students mainstreamed into general education transitional kindergarten and kindergarten classrooms for circle time, which was called calendar in kindergarten. During the school day, Brasil reinforced good behavior and motivation with token boards on which students could earn stickers for a small item at the end of the day.

At the beginning of the school year, Student dropped to the ground and screamed, yelled, or hit in protest and refused to go to class or transition to a different activity. Brasil modified Student's day to allow him longer periods for transition, and taught him to use his words instead of verbal and physical protests. These interventions stopped the daily protests. When frustrated, Student would rip paper and stuff it in his mouth, although he was compliant and would spit it out when asked. Student initially resisted mainstreaming into the general education kindergarten classroom, then stood in the back of the classroom, but Brasil was confident that Student would eventually join the group for calendar activities. By the second semester, Student was eagerly going to the general education classroom and participating in calendar activities.

On September 9, 2022, Brasil made a written referral for a Manteca occupational therapist to visit the classroom and consult with her about fine motor strategies and whether Student needed a formal assessment for occupational therapy services. Her concerns were that Student continued to struggle with writing and holding his pencil correctly and showed some trouble self-regulating. She also wondered if sensory issues were part of Student's difficulty paying attention and transitioning between activities,

disruptive noises, paper chewing, and seeking pressure and tight hugs from staff. Brasil was trained in a number of fine motor strategies to help kindergarteners with writing, which many kindergarteners struggled with, and although those interventions helped Student, she was concerned about Student's fine motor skills and possible sensory processing deficits.

In response to Brasil's referral, occupational therapist Charae McConnell observed Student in September 2022. She gave Brasil additional strategies for helping Student with writing and responding to his sensory requests. Because Student was about to be comprehensively assessed for the three-year review of his educational program, which would include a perceptual motor skills assessment, McConnell recommended that Brasil implement the new strategies to see if they worked for Student and discuss the results of the three-year assessment at an IEP team meeting. If there were still concerns, the next step was an occupational therapy assessment.

School psychologist Rebecca Jones conducted the psychoeducational assessment of Student in October 2022, in preparation for the three-year review. Her assessment included visual and motor integration functions, such as motor control and eye-hand coordination. Student scored in the low average range in these areas.

On November 15, 2022, Manteca convened an IEP team meeting for the three-year review of Student's educational program. Parents, Brasil, Graciano, general education teacher Diedre Pickett, Jones, a Manteca administrator, and an observing intern psychologist attended.

Jones reported Student's low average visual and motor integration results to the November 15, 2022 IEP. Jones also recommended accommodations in Student's educational program to address his slow processing and skill levels. These included

- pre-teaching and re-teaching,
- materials in multiple modalities,
- tracking success with small rewards,
- asking open-ended questions to encourage verbal skills.

They also included modeling and role-playing, telling Student what to expect in novel situations, using first/then questions, asking questions to check for comprehension, and additional time for assignments. Jones recommended that Student's annual goals be small and measurable, and steadily increase in complexity as his skills continued to grow.

The team reviewed Student's progress on the November 23, 2021 fine motor skills goal. Student copied lines, circles, and letters, but used the correct grip only 40 percent of the time, rather than the 80 percent targeted. Student was capable of drawing vertical lines, horizontal lines, a cross, and a circle, and the team wanted Student to build on his success by putting these skills together to form written letters.

Brasil reported that writing was not a preferred activity for Student. Student preferred a palmar grasp, and only changed to a pincer grasp with prompting. His writing was shaky and light. Student could cut on a straight line with prompting on how to hold the scissors.

The IEP team identified fine motor skills as one of Student's areas of need. The IEP team wrote a goal for Student to write his first name with an uppercase letter

followed by lowercase letters with legible formation, with 60 percent accuracy, in two of three opportunities, as measured by classroom data. Student needed to write the letters of the alphabet, in both capital and lower case, and this goal addressed Student's fine motor skills and aligned with the kindergarten general education curriculum. The classroom teacher and the classroom paraprofessionals were tasked with responsibility for helping Student to reach this goal. The goal was measurable and provided for three progress reports during the following 12 months.

McConnell assessed Student for occupational therapy in December 2022. Manteca held an IEP team meeting to review that assessment on January 20, 2023, and added another fine motor skills goal. Student could hold his writing instrument correctly and form letters, but his legibility needed improvement. The second fine motor skills goal required Student to cut along a 6-inch curved path within one-eighth of an inch of the border while holding the paper with his non-dominant hand, in three of five trials. To meet those goals, the IEP team added services by an occupational therapist, 25 sessions at 30 minutes per session. The sessions included

- push-in services in the classroom,
- pull-out to the occupational therapy room, and
- collaboration with the teacher, Parents, and other relevant service providers, in the occupational therapist's clinical judgment.

The goal was measurable with the allowable deviation from the line, capable of being achieved in one year, and provided for three progress report periods.

McConnell recommended the second fine motor skills goal to address Student's hand strength and hand dominance. McConnell observed Student was switching hands, possibly due to fatigue. She explained to the IEP team that establishing hand dominance

would allow Student to focus his pincer grip consistently on one hand, making it likely that he would adopt a more mature grasp. This would allow him to experience writing with less hand fatigue and improve his legibility.

The two fine motor skills goals had a direct relationship between Student's present levels of performance and the specific educational services to be provided. The fine motor writing goal built on Student's acquisition of letter formation skills. The fine motor cutting goal addressed Student's hand strength and hand dominance. The teacher and paraprofessional support in the classroom, later supplemented with occupational therapy, were reasonably calculated to help Student perform and make progress in the kindergarten general education curriculum.

At hearing, Brasil explained that a lot of writing took place in kindergarten and first grade, and Student would have many opportunities to work on fine motor skills in the classroom under the guidance and help of the teacher and paraprofessionals. Occupational therapist McConnell opined the first goal was appropriate on November 15, 2022, and targeted different writing skills from the year before. The November 2021 fine motor goal addressed Student's grasp pattern, which was habitual and difficult to change. The November 2022 goal advanced Student's writing skills of letter formation and legibility, even as Student learned a better grasp pattern.

McConnell also opined in her professional judgment that the first fine motor goal was appropriate to meet Student's fine motor needs in November 2022, because it was only after the occupational therapy assessment was completed in December 2022, that it became appropriate to add a second fine motor goal addressing hand dominance. McConnell was a well-qualified occupational therapist who provided occupational

therapy to Student in spring 2023. Her opinions at hearing were well-reasoned and persuasive. Father's testimony did not contradict McConnell. No occupational therapist or other expert witness testified contrary to McConnell's opinions.

Each goal was appropriate, measurable, and addressed Student's fine motor skill needs as they were known at the time. Both goals described what Student could reasonably be expected to accomplish in a 12-month period and provided for three reporting periods.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 15, 2022 IEP, by failing to include appropriate goals in the area of fine motor skills. Manteca prevailed on Issue 8a.

2022 SPEECH AND LANGUAGE PRAGMATIC SKILLS GOALS

In March 2022, Johnson-Maxson formally assessed Student's academic skills in preparation for Student's transition to kindergarten for the 2021-2022 school year. As relevant to this issue, Student was in the very delayed range when asked to expressively show understanding of concepts such as size comparisons, quantity, or time.

In April 2022, Garcia assessed Student's speech and language skills by observing Student and testing the progress on his four language goals. On the playground, Student glanced at peers but did not interact with them. In the classroom, student followed directions slowly, needed frequent reminders to participate in group activities, and benefitted from adult language models to access preferred items or negotiate with peers. Student met the benchmark on his receptive language goal by following single step directions targeting the prepositions on top and in front. He made progress on the

pragmatics goal of responding to greetings, leave takings, and social questions, by answering questions about his name, age, and favorite food. He met the March 2022 benchmark for his expressive language goal by using complete sentences to describe pictures in 40 percent of opportunities. He also met the benchmark in his pragmatics goal to use learned phrases to initiate play and advocate for himself with a verbal prompt in four out of five opportunities. Garcia recommended that Student continue speech and language services.

Manteca's speech language pathologist Kilian Graciano assessed Student's speech and language skills in November 2022, in preparation for the three-year IEP review. Student's receptive and expressive language were low for someone his age, and he had difficulty with social skills and group activities. He only followed one-step directions independently, and his sentences were simple and lacked syntax and semantics. This meant Student's sentences were not grammatically correct, and failed to convey Student's thoughts and ideas clearly. Student used verbal communication to get his wants and needs met but did not use nonverbal communication except to push away.

In articulation, Student's sound substitutions, such as "v" for "th" in brother and smooth, were no longer age appropriate, and Graciano rated him as 80 percent intelligible to an unfamiliar person. Graciano recommended Student be placed in a classroom with an embedded communication curriculum to work on language skills and continue to receive speech and language services.

By November 2022, Student made progress on his speech and language goals. Student met his receptive language goal of following single-step directions targeting six prepositions. Student partially met his goal of responding to greetings, leave takings

and social questions, although his 50 percent response rate did not meet the 80 percent target. Similarly, on his picture describing goal, Student's use of accurate subjects and verbs increased from 17 percent to 60 percent but missed the goal of 70 percent. In pragmatics, Student progressed from never initiating play or advocating for himself to using modeled phrases to initiate play and advocate 50 percent of the time. However, he still needed prompts and structured situations and did not reach the goal of 80 percent. In language-related pre-academic goals, Student met his goal of answering 12 who, what, when, and where questions accurately 80 percent of the time, and met the goal of receptively identifying eight categories in 80 percent of opportunities.

Based upon the speech and language assessment, Student's progress on prior IEP goals, and input from IEP team members, the November 15, 2022 IEP team identified language, articulation, and pragmatics as areas of need. The IEP team designed speech and language goals to meet Student's need to learn and use social language. Play skills were an important part of participating in kindergarten and first grade, and the pragmatics goal was designed to teach Student the pragmatic language skills of interactive play with peers.

The pragmatics goal required Student, in a structured speech therapy activity, to demonstrate understanding and ability to follow social expectations for

- negotiating play activities,
- turn-taking, and
- asking someone and being asked to play, including accepting and rejecting, in social situations.

The goal would be measured in three out of five trials, by speech language pathologist observations and data collection. This aligned with the kindergarten general education curriculum standard to, with guidance and support from adults, explore word relationships and nuances in word meanings. The speech language pathologist was responsible for working with Student on this goal, and it was supported by direct speech and language services. Services included six sessions per month, at 25-minutes per sessions, in a small group with a speech language pathologist.

The November 15, 2022 IEP team also drafted and adopted goals in syntax and articulation that allowed Student to be involved and make progress in the general education curriculum. The articulation and syntax goals addressed Student's syntax and articulation needs, and supported his writing and interaction with peers. They also addressed the kindergarten standard that students speak audibly and express their thoughts, feelings, and ideas clearly. Those goals were also the responsibility of the speech language pathologist during her speech and language sessions with Student and had a direct relationship between Student's present levels of performance and the services offered.

All three speech and language goals were appropriate, measurable, achievable in 12 months, and provided for three reporting periods.

Graciano was a licensed speech language pathologist, with multiple degrees in communication disorders, and certification in assistive technology and augmentative and alternative communication. She worked with special needs students for 23 years as a speech language pathologist with Manteca. She had good recall of working with Student during the 2022-2023 school year, and her opinions were supported and persuasive. She opined that her November 2022 assessment identified all of Student's

speech and language needs, and the goals included in the November 15, 2022 IEP addressed all of those needs. All three speech and language goals were appropriate and supported Student's pragmatics. The syntax goal supported expressive language and speaking in complete sentences. The articulation goal would help with intelligibility. The pragmatics goal would teach Student the stepping stones of interactive play with peers. No speech language pathologist or any other expert witness testified contrary to Graciano's opinions.

Father testified he believed Graciano had lowered the standards so that Student could continue working on the same goals. However, Graciano persuasively opined that the November 15, 2022 goals worked on different and higher level skills. The November 2021 pragmatics goals required Student to respond to greetings or simple social questions, or to initiate play or self-advocate. The November 2022 pragmatics goal took this a step further and required Student to learn and use the skills of interactive play with peers, including an understanding of and ability to follow the intricacies involved in peer play in kindergarten and first grade. Student had to learn to accept or reject offers to play and react appropriately to acceptance or rejection of his own requests. Play also involved negotiating the activity itself and taking turns. The articulation goal was new, and the syntax goal required Student to add more complex parts to his sentences, including pronouns, possessives, and plurals that were not specifically targeted by the November 2021 picture describing goal. Graciano did not lower Student's speech and language standards in November 2022, and the November 15, 2022 IEP team did not adopt the same language goals as in the November 23, 2021 IEP.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 15, 2022 IEP, by failing to develop appropriate goals in the area of speech and language pragmatic skills. Manteca prevailed on Issue 8b.

2022 SOCIAL EMOTIONAL SKILLS GOALS

Manteca assessed Student in the area of social emotional skills in October 2022. School psychologist Jones conducted the assessment and shared the result of the assessment during the November 15, 2022 IEP team meeting. Student had delayed social emotional function in interpersonal relationship abilities, social and emotional understanding, and functional performance in social situations.

On behavior rating scales, Student was at-risk for atypical behavior in categories of

- hyperactivity,
- anxiety,
- attention problems,
- adaptability,
- social skills, and
- functional communication.

Student was rated clinically significant for the tendency to evade others, to avoid social contact, and engage in problem behaviors.

In measurements of autistic behavior, Student exhibited features characteristic of, and directly related to, the diagnostic criteria for autism spectrum disorder. These included lack of tolerance for change in routine, engagement in stereotypical behaviors, and an overreaction to certain sensory experiences.

Regarding Student's present levels of performance, Student was participating more in circle time by singing songs, following along with song movements, and

engaging with the lesson with minimal verbal reminders from staff. He attended to large group activities 60 percent of the time, and participated for up to five minutes, with minimal verbal reminders. Student independently completed work in group settings with minimal prompts and was beginning to work with peers in a small group. Student still struggled with group activities and maintaining attention, and often needed one-to-one attention and multiple prompts to stay on task. Student parallel played alongside peers and engaged with peers with adult support and guidance. Student was generally self-sufficient and asked for help as needed, but he continued to need extended time and patience for transitions. Student would still yell, refuse, hit, kick, rip paper, and occasionally overturn his desk when asked to make a transition, do an academic task, or work in groups. Brasil's classroom interventions addressed Student's behaviors, and the aggressive behaviors were too infrequent to warrant a behavior intervention plan.

Student made progress on, but did not meet, his two social emotional goals from November 2021. Student could only participate in large groups with minimal verbal reminders from staff for five minutes and missed the target of 10 to 15 minutes. For the goal to complete tabletop work in a small group, Student did not meet the goal but progressed from not working in a group at all to working with a group in two out of five opportunities. He still needed prompts to stay on task, as academics and writing were a struggle for him.

The November 15, 2022 IEP team identified Student's social emotional functioning as an area of need, and appropriately drafted two social emotional goals. The first goal directed that, with the use of visual aids, Student join a group for 10 minutes with no more than three visual, gestural, or verbal prompts to sit quietly and remain on task, in two out of three opportunities, as measured by classroom charted data. This goal

addressed educational needs resulting from Student's disability, including delays in interaction skills and social performance, and his tendency to avoid social contact. The classroom teacher and classroom paraprofessionals were responsible for helping Student achieve this goal. The goal was supported by the autism kindergarten classroom's focus on social skills and low student to teacher ratio. These were imbedded in Manteca's offer of 360 minutes of daily specialized academic instruction. This social emotional goal was measurable using classroom charted data, achievable in one year, and provided for three progress reports during the following 12 months.

The November 15, 2022 IEP team drafted a second social emotional goal for Student, with the use of visual aids, to use an individual classroom station to independently complete up to four simple tabletop tasks, or four mastered tabletop tasks, with no more than four teacher prompts or cues, in four of five opportunities. This goal addressed educational needs resulting from Student's disability, including hyperactivity, attention problems, adaptability, and lack of tolerance for change in activities. The classroom teacher and classroom paraprofessionals were responsible for helping Student achieve this goal. This goal was also supported by the autism classroom's focus on social skills and low student to teacher ratio. Additionally, it was measurable using classroom charted data, achievable in one year, and provided for three progress reports during the following 12 months.

Accommodations to support the social emotional goals were added to Student's IEP, including

- visual schedules,
- visual descriptions of classroom rules,
- token boards,

- first/then visuals,
- fewer choices,
- frontloading a change/transition,
- individual schedule choices, and
- extra time to complete assignments.

The November 15, 2022 IEP annual social emotional goals each had a direct relationship between Student's present levels of performance and the specific educational services to be provided. Student's present levels of performance were obtained through a psychoeducational assessment, progress on goals, and Brasil's observations and classroom data, and summarized in the goal baselines. The baselines reflected that Student made progress in joining small and large group activities and in working independently, but had significant room for improvement and was still dependent on adult reminders to increase his time in groups or stay on task. The November 15, 2022 IEP team offered the same level of support that allowed Student to make progress on his November 2021 social emotional goals. This included 360 minutes daily in the autism special day classroom, with a low student to adult ratio that would allow the teacher and staff to work directly with Student on the targeted skills and a curriculum that focused on social skills. The IEP also included accommodations to support Student's learning style with visuals and token boards that Brasil used to motivate Student to earn small rewards.

Jones and Brasil opined persuasively that the psychoeducational assessment and present levels of performance reports to the November 15, 2022 IEP team identified all of Student's social emotional needs. Brasil opined that the November 2022 social emotional goals were suitably ambitious, based on her observations and classroom data. The assessment information on Student's abilities and functional skills

demonstrated that Student's autism affected him in profound ways, particularly with delayed social emotional functioning and an aversion to social contact, which supported Brasil's opinion. In addition, Student's social emotional goals allowed for slow but steady progress, and did not increase in complexity until Student could build on that success, as recommended by Jones.

Student contends he was not adequately assessed to inform the November 15, 2022 IEP team of all areas of social emotional need. However, Student failed to submit any persuasive evidence to support this claim. Rather, the psychoeducational assessment, Brasil's trained and experienced observations of Student in the classroom, and the data on Student's progress on previous social emotional goals, were sufficient to inform the team of all Student's social emotional needs. Student did not present any evidence or information on an area of need that the IEP team did not have, and that would have changed the social emotional goals developed at that meeting. Student did not present evidence of any goals that Student required but were not included in the November 23, 2021 IEP.

In addition, although it occurred after the November 15, 2022 IEP, the March 8, 2023, progress report stated Student was very close to meeting the benchmark for the group participation goal, and very close to meeting the goal for independent work. Brasil persuasively opined that by March 2023, Student's progress on his social emotional goals had increased his ability to participate in the general education curriculum.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 15, 2022 IEP, by failing to include appropriate goals in the area of social emotional skills. Manteca prevailed on Issue 8c.

ISSUES 9a THROUGH 9c: PROGRAMS, SUPPORTS, AND SERVICES IN THE NOVEMBER 15, 2022 IEP

Student contends Manteca denied him a FAPE by failing to offer sufficient programs, supports, and services in the areas of speech and language, behavior, specifically a one to one aide, and occupational therapy, in the November 15, 2022 IEP. Manteca contends it offered appropriate programs, supports, and services in those areas.

Manteca was required to design an educational program that addressed Student's unique educational needs, was reasonably calculated to provide Student with some educational benefit, and comported with Student's IEP. (*Gregory K., supra*, 811 F.2d at pp. 1313-1315.) Manteca has offered a FAPE if the IEP is reasonably calculated to enable Student make progress appropriate in light of his circumstances. (*Endrew F., supra*, 580 U.S. at p. 402.)

SPEECH AND LANGUAGE

To support Student's progress on his annual goals, the November 15, 2022 IEP offered Student daily specialized academic instruction for 360 minutes, in the autism program special day class for students with mild to moderate disabilities, with mainstreaming for calendar, lunch, recess and special events.

Brasil was Student's special day class teacher during the 2022-2023 school year, and familiar with Student's speech and language needs in November 2022. Her mild to moderate autism special day class was a language rich environment, with embedded curriculum and supports for communication, particularly social emotional learning, play

skills, and vocabulary. Brasil and her staff worked with Student to use his words instead of maladaptive behaviors, which was a significant factor in reducing those behaviors and transitioning Student into the general education class by November 15, 2022.

To specifically support Student's progress on his speech and language goals, the November 15, 2022 IEP continued Student's level of speech services of 25-minute sessions of group services, six times per month. Speech and language pathologist Graciano assessed Student in November 2022, and provided services to him during the 2022-2023 school year. Graciano was a well-qualified and experienced speech language pathologist, and her opinions regarding Student's needs, and the services to meet those needs, was persuasive and uncontradicted by any other expert witness.

Graciano observed Student make slow but meaningful progress during his speech sessions with her two times per week, six times per month. Graciano's assessment and speech therapy data identified all of Student's communication needs. She proposed Student's goals in syntax, articulation, and pragmatics, and recommended the level of services written into the IEP. Graciano anticipated Student could make progress and meet his speech and language goals, including the pragmatics goal, within one year's time, with the placement, speech services, and accommodations offered in the November 15, 2022 IEP.

Student argues his failure to meet most of the language goals from November 2021, indicated he was offered an insufficient amount of speech services in the November 23, 2021 IEP, and should have been offered different or additional services in the November 15, 2022 IEP. However, although Student did not meet his November 2021 language goals, he made meaningful progress with the level of services in the November 2021 IEP. Graciano did not recommend more speech

services, as the frequency and duration of services adopted by the IEP team were sufficient for Graciano to model social expectations, practice social situations, and engage in activities to reinforce lessons. Graciano persuasively opined the IEP offered Student appropriate programs, supports, and services to meet his unique speech and language needs.

Father testified Parents were concerned about Student's communication in November 2022. However, the November 15, 2022 Manteca IEP team members, including Brasil, Graciano, Jones, and general education teacher Pickettay, did not recall Parents requesting different or additional speech services. Further, Father confirmed that Parents did not. Father did not testify as to what other programs, services, or supports he believed Student needed in the area of communication to make progress, or the type, duration, and frequency of such services. Father was not a licensed speech language pathologist, but even if he were, the lack of an opinion as to what additional services, programs, and supports Student needed falls short of establishing that Student was not offered appropriate special education and related services required to make progress on his speech and language goals. Student failed to submit persuasive evidence of any sort to support his claim that Manteca failed to appropriately address his speech and language needs.

The special education and related services offered in the November 15, 2022 IEP addressed Student's speech and language needs, were reasonably calculated to provide some educational benefit, and comported with the other components of the IEP. The IEP team considered Student's present levels of performance and assessment results, as well as the goals developed on that information. The special education and related services offered were sufficient and reasonably calculated to ensure that Student made progress in speech and language appropriate to his circumstances.

Student failed to show by a preponderance of the evidence that Manteca denied him a FAPE in the November 15, 2022 IEP, by failing to offer sufficient programs, supports, and services in the area of speech and language. Manteca prevailed on Issue 9a.

ONE-TO-ONE AIDE

Student contends he struggled with behaviors in the classroom. Jones's psychoeducational assessment rated Student in the clinically significant range in aggression and anxiety, and at-risk in other areas such as attention, withdrawal, social skills, and communication. Therefore, Student argues Manteca should have offered a one-to-one aide.

The November 15, 2022 IEP stated Student's behavior impeded learning because Student could be detached and had difficulty engaging with others. Student resisted demands by hyper-focusing on or playing with desired items. In addition to Student's social emotional goals to join a group for 10 minutes, and to independently complete tabletop work, the November 15, 2022 IEP contained a behavior goal for Student to transition between activities without maladaptive behaviors in 50 percent of opportunities, in two of three consecutive data tracking days, for which Student's teacher and classroom staff were responsible.

The November 15, 2022 IEP offered Student 360 minutes daily in the autism special day classroom, with a low student to adult ratio that would allow the teacher and staff to work directly with Student on the targeted skills and a curriculum that focused on social skills and good behavior. The IEP listed positive behavior supports of first/then

cards, redirection, and visual schedules. The IEP also included accommodations to support Student's learning style with visuals, and a token economy to motivate Student.

This level of service allowed Student to make significant progress on his behaviors in Brasil's kindergarten classroom. At the beginning of the 2022-2023 school year, Student would drop to the ground on arrival at school, and scream, yell, hit, and kick to avoid going to class. He also did this to avoid transitions throughout the day and could not enter Pickett's general education classroom for mainstreaming. Brasil and her staff taught Student to use his words when frustrated, used a visual schedule to warn him of transitions, and gave him longer periods to transition. By November 2022, Student was familiar with the school schedule and was transitioning with less verbal protests. He could transition without protest into the general education classroom, although he was still standing in the back of the classroom and not participating in the calendar activities. Brasil reasonably anticipated that, with additional time, Student would meet his behavior goal.

By the time of hearing in April 2023, Student could independently transition to group activities without maladaptive behaviors 40 percent of the time and had almost met his behavior goal. Student acquired and used significantly more language and made verbal requests for help, which reduced his maladaptive behaviors. He transitioned into the general education classroom without maladaptive behaviors twice each day. Brasil's class was practicing a song every day with the general education class for the school's year-end presentation, in addition to mainstreaming during calendar. From December 2022, through March 2023, Student did well and only protested a couple of days when there was a staff change. Student sometimes protested when there was a schedule

change, when difficult demands were placed on him, or when he was denied access to a preferred item or activity. However, he was easily redirected. Although this information was not available to the November 15, 2022 IEP team, it was evidence that supported Brasil's opinion in November 2022, that the embedded classroom supports, with the support of herself and her staff, were sufficient for Student to make progress on transitions without maladaptive behavior.

Brasil was trained in behavior support, taught autistic students with moderate to severe and mild to moderate disabilities for 16 years, and was familiar with all levels of behavior intervention. When asked at hearing if a functional behavior assessment should have been done before November 15, 2022, Brasil explained that it was appropriate to write a behavior goal first to target Student's maladaptive behaviors in her classroom with the use of strategies she and her staff were trained in to address behaviors, under the guidance of Manteca's behaviorist. She persuasively opined that a functional behavior assessment was unwarranted in November 2022, and would not be necessary unless classroom staff efforts did not work, or more support was needed.

Manteca's behaviorist, Staci Saylor, regularly consulted with Brasil as part of the embedded autism special day classroom supports. She also conducted observations of Student in the classroom, on the playground, at lunch, and during transitions in February 2023. Saylor was a board certified behavior analyst with over five years of experience in school settings. She opined that Student did not need a one-on-one aide, because his behaviors could be adequately addressed by Brasil and her behaviorally trained staff in the classroom. Student was very compliant, often transferred from activity to activity

without protest, and followed instructions. Saylor opined Student had maladaptive, but not aggressive, behaviors and did not require a one-to-one aide to accompany him for safety purposes.

Father testified that Student would have benefitted from a one-to-one aide but did not explain how a one-to-one aide was necessary for Student to make progress on his behavior goal, social emotional goals, or any goals. Father did not explain how a one-to-one aide would address Student's reported anxiety, attention, withdrawal, social skills, or communication, or why Brasil and staff could not accomplish the same task with their training and the structure and embedded supports of the autism classroom. Father was not a credentialed special education teacher or a trained behaviorist. Parents may have preferred that Student have a dedicated one-to-one aide to work with Student on his behavior goals, but a one-to-one aide was not necessary for Manteca to offer Student a FAPE with regard to his behavior. (See *Gregory K.*, *supra*, 811 F.2d at p. 1313-1315.)

Father admitted that Parents had not asked for a one-to-one aide by November 15, 2022, and the IEP team had no obligation to discuss unneeded and unrequested additional staff.

At hearing, each of the witnesses present at the November 15, 2022 IEP team meeting expressed surprise at the notion Student needed a one-to-one aide. School psychologist Jones noted Student went willingly with her for psychoeducational testing and was compliant during testing. Student was easily redirected during her observations, and Jones opined the supports in Brasil's classroom were sufficient for Student to access his education. Jones noted that many children have maladaptive behaviors but do not need a one-to-one aide, and opined Student did not need one.

Jones considered a one-to-one aide very restrictive because it could result in prompt dependence and decreased self-sufficiency. She stressed that it is not natural for a child to be accompanied throughout the school day by an adult, and a one-to-one aide could interfere with development of the child's own independence.

Speech language pathologist Graciano opined that Student did not need a one-on-one aide in November 2022. She had observed Student in the classroom, playground, and lunchroom, and did not see behaviors that could not be addressed by his classroom staff. She was particularly concerned that Student could become dependent on a one-to-one aide and did not recommend that Student be offered one.

Occupational therapist McConnel opined that Student did not need a one-to-one aide. She observed him in September 2022, assessed him in December 2022, and worked with him after January 2023. She testified that he had improved significantly in his ability to make transitions. McConnell opined that although another adult in the classroom could be helpful, it was not necessary for Student to access what is expected of him in the classroom.

Student's general education teacher Pickettay testified that, in September 2022, Student struggled with entering her classroom and adjusting to her classroom routine. However, by April 2023, he transitioned into her class well and was eager and ready to participate. She testified that she never had to discipline Student, and opined that Student did not need a one-to-one aide to participate in mainstreaming.

The consistent opinions of educational professionals Brasil, Jones, Graciano, McConnell, and Pickettay were persuasive that Student did not have behavioral needs that warranted the services of a one-to-one aide in his November 15, 2022 IEP. Student failed to submit persuasive evidence that contradicted the school witnesses.

The program and behavioral supports, including accommodations, offered in the November 15, 2022 IEP, addressed Student's behavior needs, were reasonably calculated to provide Student with educational benefit, and comported with Student's IEP. The program and behavioral supports in the November 15, 2022 IEP were reasonably calculated to enable Student to make progress on his behaviors appropriate in light of his circumstances. A one-on-one aide was not necessary for Student to access his education.

Student failed to show by a preponderance of the evidence that Manteca denied him a FAPE in the November 15, 2022 IEP, by failing to offer sufficient programs, supports, and services in the area of behavior, specifically, a one to one aide. Manteca prevailed on Issue 9b.

OCCUPATIONAL THERAPY

Student contends that the November 15, 2022 IEP team was on notice that Student needed occupational therapy in addition to classroom supports to make progress in fine motor skills. Student did not meet the previous fine motor goal, Brasil requested consultation from an occupational therapist, and the IEP team recommended that Parents consent to an occupational therapy assessment. Additionally, the January 10, 2023 occupational therapy assessment found Student's fine motor skills below average. Student argues that occupational therapy services of 30-minute sessions, 25 times per year, or approximately weekly, should have been added to the November 15, 2022 IEP to support Student's fine motor goal.

A student may derive educational benefit if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. (*Crofts v. Issaquah School Dist. No. 411* (9th Cir. 2022) 22 F.4th

1048, 1057.) California recognizes that some pupils may not meet or exceed the growth projected in annual goals and objectives of the IEP. (See Ed. Code, § 56345, subd. (c).) No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203 fn. 25.)

An offer of services not previously offered is not evidence that the previous IEP was inadequate. The appropriateness of each IEP is determined independently on its own merits, and the incorporation of additional services does not create an inference that a previous IEP failed to provide a FAPE. (*Sioux Falls School Dist. v. Koupal* (Sup.Ct.S.D. 1994) 526 N.W.2d 248, 253, *cert. denied* (1995) 515 U.S. 1143.)

The November 15, 2022 IEP offered 360 minutes of specialized academic instruction in a mild to moderate autism special day class, with embedded writing curriculum and a low student to adult ratio that would provide Student with one-to-one attention and hand-over-hand help, to support the first fine motor skills goal. The November 15, 2022 IEP was amended on January 10, 2023, to add a second fine motor skills goal for Student to cut with scissors along a circle, and 30-minute sessions of occupational therapy, 25 times per year, to support that goal.

The weight of the evidence did not establish the November 15, 2022 IEP required occupational therapy services to provide a FAPE. By November 2022, Student copied, and no longer needed to trace, lines and shapes. Writing was not a preferred activity and Student used a fist grip unless prompted to use a pincer grip. But by the time McConnell assessed Student in December 2022, Student knew the letters of his name and could form them, although he had difficulty with legibility. Student made

significant progress on his November 2021 fine motor writing goal, with the writing curriculum embedded in the special day autism class, and with the instruction and support of Brasil and her classroom staff.

Brasil wanted Student to be a successful writer, and the November 15, 2022 IEP team adopted a proposed goal for Student to write his first name with an upper case letter followed by a lower case letter in legible formation, with 60 percent accuracy. The baseline had Student at 29 percent accuracy, based on Brasil's observations and data. The IEP offer of 360 minutes daily in the autism special day class, with its embedded supports and low student to adult ratio, allowed for one-on-one and hand-over-hand writing instruction. The class curriculum, opportunities for practice, and adult guidance addressed Student's need for fine motor skills support. The placement and level of services offered enabled Student to make significant progress in pre-writing skills the year before.

The addition of occupational therapy in the January 10, 2023 IEP did not establish Student should have been offered occupational therapy in the November 15, 2022 IEP. Student made significant progress on his November 2021 fine motor skills goal with the guidance and support of Brasil and her paraprofessionals. Student's failure to meet the goal does not diminish his progress in learning to independently make the vertical lines, horizontal lines, and shapes that are the foundation of letter formation. This same level of service could be anticipated to allow Student to meet, or make progress on, the November 15, 2022 fine motor skills goal.

Manteca's occupational therapist McConnell opined that the November 2022 fine motor goal appropriately addressed Student's handwriting and letter formation. The offer of the autism special day classroom with a low student to adult ratio, embedded

supports, and the identified accommodations, were appropriate on November 15, 2022, and reasonably calculated to ensure that Student met that goal. McConnell also opined it was appropriate to have Student assessed for occupational therapy prior to offering him occupational services, and that the assistance of Brasil and classroom staff was an appropriate offer of services to support the November 15, 2022 fine motor goal pending the results of her assessment. No occupational therapist or other expert witness testified contrary to McConnel's opinions.

The special education, related services, accommodations, and placement offered in the November 15, 2022 IEP, addressed Student's fine motor skill needs, were reasonably calculated to provide Student with educational benefit, and comported with the IEP. The November 15, 2022 IEP, was reasonably calculated to enable Student to make progress on his fine motor skills appropriate in light of his circumstances.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 15, 2022 IEP, by failing to offer sufficient programs, supports, and services in the area of occupational therapy. Manteca prevailed on Issue 9c.

ISSUES 10a AND 10b: THE NOVEMBER 15, 2022 IEP AND PARENT TRAINING

Student contends Manteca denied Student a FAPE by failing to offer training to Parents in autism and speech or language impairment in the November 15, 2022 IEP. Manteca contends Parents did not request or require parent training for Student to benefit from special education.

As discussed at Issues 8 and 9, Student's November 15, 2022 IEP team identified Student's areas of need, wrote goals in those areas of need, and offered programs,

supports, and services reasonably calculated to enable Student to meet his goals in speech and language, behavior, and fine motor skills. The weight of the evidence did not establish that Student required parent training for autism or speech or language impairment in his IEP to make progress on his annual goals and access his education.

The weight of the evidence did not demonstrate that parent training in autism or speech or language impairment for parents would assist Student in developing skills needed to benefit from special education or correct conditions which interfered with Student's progress on the goals listed in his IEP.

Mother completed a questionnaire in October 2022, as part of Student's assessment for the three-year review, and stated that Parents were concerned about Student's ability to advocate for himself. However, by the time of the November 15, 2022 IEP, Student made progress on his November 2021 pragmatics goal, and went from never advocating for himself to advocating for himself 50 percent of the time, with maximal supports and cues in structured situations. As discussed at Issue 8b, the November 15, 2022 IEP team addressed this pragmatic skill by advancing the goal to require Student to demonstrate understanding and the ability to follow social expectations in social situations. As discussed at Issue 9a, the November 15, 2022 IEP team addressed this concern by offering sufficient speech and language services to support that goal.

Parents did not request parent training at that November 15, 2022 IEP team meeting, or at any other time, to address this concern or any other concern. At hearing, Father did not explain how parent training in autism or speech or language impairment was needed for Student to receive a FAPE on November 15, 2023.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE in the November 15, 2022 IEP, by failing to offer parent training in the areas of autism or speech or language impairment. Manteca prevailed on Issues 10a and 10b.

ISSUE 11: NOVEMBER 15, 2022 IEP AND EXTENDED SCHOOL YEAR

Student contends Manteca denied him a FAPE in the November 15, 2022 IEP, by failing to offer extended school year services to address regression. Student argues the November 15, 2022 IEP team should have been aware that Student was prone to regression because his development had regressed during distance learning two years earlier. Student contends he should have been assessed for regression and offered extended school year for 2023, in the November 15, 2022 IEP. Manteca contends Student did not have a pattern of regression and therefore, did not require extended school year services.

Student did not establish that he suffered regression as the result of distance learning in 2020-2021, let alone regression that warranted extended school year services two years later. As discussed at Issues 4a, 4b, and 4c, Student made progress on his goals from December 2020, through November 2021, and as discussed at Issue 7, Student had no regression or pattern of regression from December 2020, through November 2021.

The weight of the evidence did not establish Student suffered regression, or had a pattern of regression, from November 2021, through November 2022. Student's reports of progress on his goals did not show regression over the summer break 2022. Brasil took classroom data on Student's progress on goals and behavior, and did not see any changes in his rates of progress or behaviors after a one-week break in October 2022.

Graciano took data on Student's speech and language goals and did not see any skill loss over the October 2022 break. Following the November 15, 2022 IEP, McConnell took data on Student's occupational therapy goals over the 2023 spring break and did not see any change in the rate of progress. Student did not have a pattern of regression over school breaks, or the need for an extended recoupment of skills on return from a break. Therefore, Manteca was not required to offer Student extended school year for 2023, in the November 15, 2022 IEP. Student failed to submit any testimony or persuasive evidence to support this issue.

Student failed to prove by a preponderance of the evidence that Manteca denied him a FAPE November 15, 2022 IEP, by failing to offer extended school year services to address regression. Manteca prevailed on Issue 11.

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:

Stockton did not deny Student a FAPE, from February 28, 2021, to the end of the 2020-2021 school year, by assigning Student to distance learning without continuing to provide in-person services.

Stockton prevailed on Issue 1.

ISSUE 2:

Stockton did not deny Student a FAPE from February 28, 2021, to the end of the 2020-2021 school year, by assigning Student to distance learning without providing necessary accommodations.

Stockton prevailed on Issue 2.

ISSUE 3:

Stockton did not deny Student a FAPE from February 28, 2021, to the end of the 2020-2021 school year, by not assessing Student for distance learning.

Stockton prevailed on Issue 3.

ISSUE 4a THROUGH 4c:

Manteca did not deny Student a FAPE in the November 23, 2021 IEP, by failing to include appropriate goals in the areas of (a) fine motor skills, (b) speech and language pragmatic skills, and (c) social emotional skills.

Manteca prevailed on Issues 4a through 4c.

ISSUE 5a THROUGH 5c:

Manteca did not deny Student a FAPE in the November 23, 2021 IEP, by failing to offer sufficient programs, supports, and services in the areas of (a) speech and language, (b) behavior, specifically a one-to-one aide, and (c) occupational therapy.

Manteca prevailed on Issues 5a through 5c.

ISSUE 6a AND 6b:

Manteca did not deny Student a FAPE in the November 23, 2021 IEP, by failing to offer parent training in the areas of (a) autism, and (b) speech or language impairment.

Manteca prevailed on Issues 6a and 6b.

ISSUE 7:

Manteca did not deny Student a FAPE in the November 23, 2021 IEP, by failing to offer extended school year services to address regression.

Manteca prevailed on Issue 7.

ISSUE 8a THROUGH 8c:

Manteca did not deny Student a FAPE in the November 15, 2022 IEP, by failing to include appropriate goals in the areas of (a) fine motor skills, (b) speech and language pragmatic skills, and (c) social emotional skills.

Manteca prevailed on Issues 8a through 8c.

ISSUE 9a THROUGH 9c:

Manteca did not deny Student a FAPE in the November 15, 2022 IEP, by failing to offer sufficient programs, supports, and services in the areas of (a) speech and language, (b) behavior, specifically, a one to one aide, and (c) occupational therapy.

Manteca prevailed on Issues 9a through 9c.

ISSUE 10a AND 10b:

Manteca did not deny Student a FAPE in the November 15, 2022 IEP, by failing to offer parent training in the areas of (a) autism, and (b) speech or language impairment.

Manteca prevailed on Issues 10a and 10b.

ISSUE 11.

Manteca did not deny Student a FAPE in the November 15, 2022 IEP, by failing to offer extended school years services to address regression.

Manteca prevailed on Issue 11.

ORDER

All of Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings