

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

v.

YUBA CITY UNIFIED SCHOOL DISTRICT.

CASE NO. 2023050319

AMENDED DECISION

ORIGINAL DECISION ISSUE DATE AUGUST 21, 2023

AMENDED DECISION ISSUE DATE SEPTEMBER 08, 2023

On May 8, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student naming Yuba City Unified School District as respondent. Administrative Law Judge Penelope Pahl heard this matter via videoconference on June 27, 28, and 29, 2023.

Attorney Robert Burgermeister represented Student. Parent attended all hearing days on Student's behalf. Attorneys Dee Anna Hassanpour and Matejka

Handley represented Yuba City. Christy Taylor, Yuba City's Special Education Coordinator, attended all hearing days on Yuba City's behalf. Observers from Yuba City's Counsel's office attended the hearing on parts of Tuesday, June 27 and Wednesday, June 28, for training purposes by agreement of the parties.

At the parties' request, the matter was continued to July 31, 2023 for written closing briefs. Yuba City submitted a timely closing brief. Pursuant to the *nunc pro tunc* order issued on August 25, 2023, Student's closing brief was also accepted as filed on July 31, 2023. This amended decision is issued following consideration of Student's closing brief. Consideration of Student's closing brief did not change the result of the prior Decision.

## ISSUES

1. Did Yuba City Unified School District deny Student a free, appropriate public education, or FAPE by assigning Student to distance learning from May 8 2021, through June 4, 2021, without assessing Student for additional programs, supports and accommodations needed to access distance learning?
2. Did Yuba City Unified School District deny a FAPE, by assigning Student to distance learning from May 8 2021, through June 4, 2021, without

providing necessary services and accommodations as stated in the April 13, 2021 Individualized educational Plan or IEP, specifically:

- a. Services of 50 minutes of speech and language and 120 minutes of specialized academic instruction per week; and
  - b. Accommodations of visual/icons for daily activities and a schedule or choice board?
3. Did Yuba City Unified School District deny a FAPE from May 8, 2021 through June 4, 2021 by failing to offer Student:
  - a. A one-to-one aide;
  - b. Direct occupational therapy services rather than consultation; and
  - c. Direct speech and language services rather than consultation?
4. Did Yuba City deny Student a FAPE from May 8, 2021 to June 4, 2021 by failing to address regression resulting from being assigned to distance learning without being provided the specialized academic instruction and speech services, and the accommodations of visual/icons for daily activities and schedule or choice board stated in Student's April 13, 2021 IEP?
5. Did Yuba City deny Student a FAPE in its April 6, 2022 IEP offer by:
  - a. Failing to accurately state Student's Present levels of performance in the areas of occupational therapy, speech therapy, vocational needs, and assisted living skills;

- b. Offering Parents a predetermined IEP, and thereby denying Parents the opportunity to meaningfully participate in the IEP development process?
6. Did Yuba City deny Student a FAPE by failing to offer extended school year services for the 2020-2021, and 2021-2022 School Years?
7. Did Yuba City deny Student a FAPE from the beginning of the 2021-2022 school year through March of 2023 by failing to offer Student:
  - a. A one-to-one aide;
  - b. Direct occupational therapy services rather than consultation; and
  - c. Direct speech and language services rather than consultation?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, also called the IDEA, 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 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 has the burden of proof by a preponderance of the evidence; and is limited to the issues alleged in the complaint unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student filed this case, and has the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was seven years old and had just completed first grade at the time of hearing. Student resided within the Yuba City Unified School District's geographic boundaries at all relevant times. Student was eligible for special education under the category of speech language impairment.

## STATUTORY FRAMEWORK

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 through an IEP reasonably calculated to enable a child to make progress appropriate considering 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 [137 S. Ct. 988, 1000].)

## ISSUE 1: DID YUBA CITY UNIFIED SCHOOL DISTRICT DENY STUDENT A FREE, APPROPRIATE PUBLIC EDUCATION, OR FAPE BY ASSIGNING STUDENT TO DISTANCE LEARNING FROM MAY 8, 2021, THROUGH JUNE 4, 2021, WITHOUT ASSESSING STUDENT FOR ADDITIONAL PROGRAMS, SUPPORTS, AND ACCOMMODATIONS NEEDED TO ACCESS DISTANCE LEARNING?

Student's complaint asserted that Yuba City should have conducted assessments to determine Student's needs during the distance learning period from May 8, 2021 through June 4, 2021.

Yuba City argues that this was an emergency, limited distance learning period, necessitated by a class Covid-19 exposure, and lasted from May 18, 2021 to May 27, 2021. Yuba City further contends it had no information that assessments were warranted.

Student argues that she should have been assessed for distance learning needs between May 8 and June 4, 2021 to determine the services and accommodations Student needed in a distance learning setting, as Yuba City was aware of her needs as a result of her speech deficits.

After a child's initial assessments to establish special education eligibility, the school district has a duty to assess the student's needs, and continuing eligibility for special education every three years, unless the agency determines reevaluation is necessary prior to the next triennial assessment, or a Parent, or teacher, requests an assessment. (20 U.S.C. § 1414(a)(2); Ed. Code, § 56381, subd. (a); see *M.S. v. Lake Elsinore Unified School District*, (9th Cir. 2017) 678 Fed. Appx. 543, 544 (unpub. opn.).)

Student's triennial assessments had just been completed in March and April of 2021. Student failed to establish that either Parent, or a teacher, had requested an assessment during the time period from May 8, 2021 to June 4, 2021. Nor did Student establish that Yuba City determined a reevaluation of Student was necessary during this time period. Although Student argues that Yuba City "consciously ignored its duty to assess the Student for accommodation required for her in a distance learning setting," Student offered no evidence of this.

Student's argument that her triennial assessment was inadequate was both unintelligible and failed to address the subject of the issue. Student did not plead an issue challenging the legal sufficiency of Student's triennial assessment.

Student's argument also assumed facts not in evidence. She asserts, "Student never adapted well to school in front of a computer screen," citing to no evidence supporting that statement. This was not a fact proved during the hearing.

Student inaccurately argues that Student was in distance learning from May 8, 2021 through June 4, 2021; and then attempts to argue inadequacies in Student's triennial assessments that were not pled. Student's triennial assessments were

completed prior to the April 21, 2021 IEP, a time period not at issue in this case. Student did not assert that the triennial assessments were not legally compliant in this complaint. Therefore, these arguments will not be addressed in this decision.

During the time period at issue in this complaint, which begins on May 8, 2021, Student attended preschool in person, part time, from May 8, 2021 to June 4, 2021. Student attended Mondays and Fridays from 12:15 pm to 3:15 PM.

The class was shifted to distance learning for only 10 calendar days due to a class exposure to Covid-19 in May 2021. Although the evidence conflicted slightly, the preponderance of the evidence established that Student's preschool class moved to a virtual setting from May 18, 2021 to May 27, 2021, because of the Covid-19 exposure. During this time, Student's teachers presented co-taught, virtual learning preschool classes live, via videoconference, five times per week, twice per day, for 30 minutes, which was the length of time teachers were informed was recommended for virtual presentations to preschool age students. Student attended most of the afternoon sessions held during the eight school days the classroom was closed.

Student presented no evidence of requests or recommendations for assessments from either Parent or teachers made at any time between May 8, 2021 and the end of distance learning on May 27, 2021, including during the IEP team meeting on May 27, 2021, the last day of distance learning. There was no evidence that Parent notified Yuba City of a concern about Student's inability to access the distance learning preschool class presentations during the brief closure. Nor did Student present evidence that Parent notified Yuba City of an assessment need related to any inability Student experienced accessing her education in the distance learning environment at the May 27, 2021 IEP; or at any other time between May 8,



2021 and the end of distance learning on May 27, 2021. Nor was evidence presented that Yuba City had notice of any inability by Student to access her distance learning on any of the eight school days distance learning preschool classes were in session between May 8, 2021 and June 4, 2021 from any other source that should have led them to determine a need for a reevaluation. Student failed to meet her burden of proving that Yuba City denied her a FAPE by failing to assess her distance learning needs from May 8, 2021 through June 4, 2021.

ISSUE 2: DID YUBA CITY UNIFIED SCHOOL DISTRICT DENY A FAPE, BY ASSIGNING STUDENT TO DISTANCE LEARNING FROM MAY 8 2021, THROUGH JUNE 4, 2021, WITHOUT PROVIDING NECESSARY SERVICES AND ACCOMMODATIONS AS STATED IN THE APRIL 13, 2021 IEP, SPECIFICALLY SERVICES OF 50 MINUTES OF SPEECH AND LANGUAGE AND 120 MINUTES OF SPECIALIZED ACADEMIC INSTRUCTION PER WEEK; AND ACCOMMODATIONS OF VISUAL/ICONS FOR DAILY ACTIVITIES AND A SCHEDULE OR CHOICE BOARD?

Student argues that Yuba City deprived her of speech and language services, specialized academic instruction, and accommodations during distance learning from May 8, 2021 to June 4, 2021. Yuba City argues that Student failed to prove she was denied a FAPE because of any failure on Yuba City's part to implement Student's services and accommodations during distance learning.

Student erroneously argues that Student was "assigned to distance learning beginning in April 2020 and continuing through the end of the 2020-2021 school year;" and "Student was assigned to distance learning from February 2021 and continuing

through the end of the 2020-2021 school year;" and "... from May 8, until June 4, 2021 District provided services in a distance learning setting." None of these time frames accurately state the distance learning period established by the evidence during hearing. As discussed previously, the evidence established that, during the time period at issue in this complaint, Student attended distance learning from May 18, 2021 to May 27, 2021, due to a classroom Covid-19 exposure.

Only material failures to implement an IEP constitute violations of the IDEA. 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 ex rel. Van Duyn v. Baker School Dist. 5J*, (9th Cir. 2007) 502 F.3d 811, 815.)

Student did not establish that Yuba City materially failed to implement Student's specialized academic instruction, speech therapy or accommodations during distance learning.

## NO MATERIAL LOSS OF SPECIALIZED ACADEMIC INSTRUCTION

During the eight school days of distance learning, Student missed six hours of classroom instruction, specifically, on Friday, May 21, 2021 and Monday, May 24, 2021. Student returned to in-person learning by Friday, May 28, 2021.

During the distance learning period, Yuba City sent daily invitations for Student to attend live preschool classes presented virtually by her preschool teachers. Student was in a co-taught general education and special education inclusion program. Student had two teachers during each distance learning session. The classes lasted for 30 minutes. During the sessions, Student's preschool teachers continued lessons in pre-math, and pre-literacy skills that were the core of the preschool program. They also engaged in

music and movement, and social development skills. Student attended most of the eight afternoon class sessions offered. Student offered no evidence explaining why she did not attend all offered sessions, and no evidence of the exact number of days Student attended classes.

According to her April 13, 2021 IEP, Student was supposed to receive 310 minutes of specialized academic instruction each week in a co-taught, inclusion preschool program. Student missed one Friday, and one Monday, of in-person preschool session during the short, emergency distance learning period. Both Parent and Sherrie Bartley, Student's special education teacher for preschool, confirmed Student attended "most" of the eight, 30-minute sessions of virtual preschool provided during distance learning. Student was not required to attend all available sessions, but they were made available to all students who wanted to attend. Student also received "asynchronous" learning packets to do at home, when the virtual preschool was not in session, during the eight school days in question. Student did not prove the amount of time Student attended distance learning preschool class or how much time was spent in asynchronous learning.

Student failed to prove the amount of specialized academic instruction lost or the discrepancies between the distance learning program provided, and the IEP requirements. Parent stated Student attended "most" of the eight daily preschool sessions but failed to prove which days Student did not attend, or why. Student did not prove how any loss of specialized academic instruction during the short distance learning period constituted more than a minor discrepancy with Student's IEP. Nor did Student prove that any discrepancies between the distance learning program and Student's IEP, hindered Student's education in any way. No expert or other witness testified to any material impact on Student's education due to the short distance

learning period. Nor did Student prove that she was entitled to compensatory education because she lost educational benefits or lost educational opportunities that resulted from Student being deprived of specialized academic instruction during the distance learning period.

Student failed to meet her burden of proving a material loss of specialized academic instruction during distance learning.

### NO MATERIAL LOSS OF SPEECH AND LANGUAGE SERVICES

Student also failed to establish a material loss of speech and language services during the 10-day distance learning period during May 2021. Student's IEP entitled her to two 25-minute sessions of speech and language therapy each week, for a total of 50 minutes of services per week. When attending in person, Student received these sessions on the days she attended preschool. Student attended distance learning from May 18 through May 27, 2021. During that time, two, 25-minute speech sessions were due to Student, specifically, on Friday, May 21, 2021, and Monday, May 24, 2021. Student received those services.

Both Parent and Denise Keep, Student's speech language pathologist, confirmed that, during distance learning, Student's speech services were provided online. Student provided no evidence of any missed speech therapy sessions during distance learning. Nor did Student offer any evidence that Student had difficulty accessing online speech services. It is unclear why this claim was pursued given the evidence presented at hearing. Student did not meet her burden of proving that Yuba City failed to offer Student the speech therapy services provided in her IEP during distance learning.

## NO MATERIAL FAILURE TO IMPLEMENT ACCOMMODATIONS

Student also asserted that Yuba City failed to provide Student's accommodations during distance learning. Student argued that Student was deprived of accommodations during distance learning, but Student's argument was unclear regarding which accommodations were not provided. Yuba City argues that accommodations were provided and any discrepancy in the accommodations was not material.

An IEP must contain a statement of the program modifications or supports that will be provided for the student to advance appropriately toward attaining his annual goals, and to be involved in and make progress in the regular education curriculum. The IEP must also include a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), and (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).)

On March 20, 2020, the California Department of Education, also called CDE, issued guidance that stated, when providing instruction through a distance learning model, local educational agencies must create access to the instruction for students with disabilities, including planning for appropriate modifications or accommodations based on the individualized needs of each student and the differences created by the change in modality. (Cal. Dept. of Educ., Special Education Guidance for COVID-19, COVID-19 School Closures and Services to Students with Disabilities (March 20, 2020).)

Pursuant to state and federal guidance, Yuba City was allowed to offer Student alternatives to in-person services such as distance learning, so long as the alternative

methods of instruction offered FAPE. (*Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* (March 21, 2020, Office of Civil Rights and OSEP) at p. 2.; *Special Education Guidance for COVID-19* (CA Dept. of Education, 3-31-2020) p. 1, § 2.)

Student's IEP included accommodations, specifically "visuals/icons for daily activities scheduled or choice board." In the preschool classroom, Student had a visual daily schedule on which she received check marks for completing activities. She also had a choice board which allowed her to choose the activities she wanted to do in the order she chose. During the 30-minute distance learning sessions, visual schedules were used. All students completed activities together. Therefore, virtual learning did not allow for children to choose the order in which they preferred completing activities.

Student offered no evidence that the lack of a choice board impeded Student's ability to access the 30-minute distance learning sessions, let alone that it constituted a material failure to implement Student's IEP. It is notable that Student's IEP articulated the accommodations offered as alternatives, describing the program accommodations as, "visuals/icons for daily activities scheduled or choice board." A visual schedule was used during the virtual preschool sessions. Student did not prove that the lack of the opportunity to use a choice board during the brief distance learning period denied Student a FAPE.

Student's closing brief cites to District Exhibit 5, Student's April 13, 2021 IEP, as evidence that packets sent home to Students for "asynchronous" or independent work between May 18 and May 27, 2021, "did not include the accommodations." This evidentiary reference was unclear as there was no Student statement describing what in the 36-page document supported that argument, or how Student was deprived of

accommodations in relation to the packets Students could work on when class was not in session online. The packets were not considered part of Student's specialized academic instruction, according to preschool teacher Bartley.

Student did not meet her burden of proving that Yuba City denied her a FAPE by failing to provide necessary specialized academic instruction, speech and language, or accommodations during distance learning which occurred from May 18 through May 27, 2021.

ISSUE 3: DID YUBA CITY UNIFIED SCHOOL DISTRICT DENY A FAPE FROM MAY 8, 2021 THROUGH JUNE 4, 2021 BY FAILING TO OFFER STUDENT A ONE-TO-ONE AIDE; DIRECT OCCUPATIONAL THERAPY SERVICES RATHER THAN CONSULTATION; AND DIRECT SPEECH AND LANGUAGE SERVICES RATHER THAN CONSULTATION?

Student argues that Yuba City denied her a FAPE between the dates of May 8, 2021 and June 4, 2021, because it failed to offer Student a one-to-one aide, direct occupational therapy services rather than consultation services, and direct speech and language services rather than consultation services.

Yuba City argues Student did not prove Yuba City denied Student a FAPE by failing to offer Student a one-to-one aide or occupational therapy. Nor, Yuba City asserts, did the district have reason to believe Student required a one-to-one aide or occupational therapy during that time frame. Yuba City asserts Student was offered direct speech and language services from May 8, 2021 through June 4, 2021.

Student's closing brief argues, contrary to the evidence, that, "from May 8 to June 6, 2021, her only interaction with teacher happened via email and via virtual learning." Due to this inaccurate statement, Student's closing brief is unclear as to whether she is arguing she needed the listed services in the classroom during the time period identified, or whether Student was deprived needed services during distance learning only. The issue has been interpreted based on its plain language, and the proven dates of the 10-day distance learning period of May 18 through May 27, 2021.

### STUDENT DID NOT REQUIRE A ONE-TO-ONE AIDE

Student did not prove that Yuba City had any reason to suspect she needed a one-to-one aide to assist her in her preschool classroom, or during distance learning.

The failure to provide necessary supports and services to meet a student's special education needs is a substantive violation of the IDEA. (20 U.S.C. § 1414(d)(1)(A)(i)(III); Ed. Code § 56345(a)(4).) For purposes of the IDEA, "the term 'free appropriate public education' is defined to include 'special education' and 'related services.'" (*Taylor v. Honig*, (9th Cir. 1990) 910 F.2d 627, 629. Related services are defined as the developmental, corrective, and other supportive services that may be required to assist a disabled child to benefit from special education." (*Id.*).

Preschool special education teacher Sherrie Bartley described Student as an independent preschool participant who particularly enjoyed any activity involving dramatic play, music, movement, and dancing. She observed Student enjoying social activities and playing with other students. Student had several good, foundational, pre-academic skills that would help her transition to kindergarten. Specifically, Student knew some letters and numbers, and could complete most classroom



routines independently, including entering the classroom, transitions, and preparing to go home. While Student had some challenges sitting and attending during instruction, she easily responded to redirection. Her behaviors did not impede her learning, or the learning of others.

Denise Keep, Student's speech language pathologist between May 8, 2021 and June 4, 2021, also found Student to be cooperative. Student did not demonstrate behavior issues in her sessions. Keep described Student as bubbly, fun, and interactive. Student eagerly participated in speech therapy sessions. Student easily transitioned between class and speech sessions and behaved well during in-class push-in speech services.

Student offered no persuasive evidence that Student required a one-to-one aide during the short distance learning period from May 18, 2021 to May 27, 2021. Although Parent testified Student sometimes failed to attend and sometimes climbed under the table during distance learning sessions, there was no evidence of how often this occurred, or how it impacted Student's overall ability to access her education during the short distance learning period. Student was four years old.

Neither Keep, nor Parent, nor any other witness, testified Student required the assistance of a one-to-one aide to access virtual speech and language therapy sessions offered during distance learning, from May 18 through May 27, 2021.

Student did not meet her burden to show that she required a one-to-one aide. Student did not prove she was denied a FAPE due to Yuba City's failure to offer a one-to-one aide from May 8, through June 4, 2021.

## STUDENT DID NOT REQUIRE DIRECT OCCUPATIONAL THERAPY SERVICES

Student alleged that she should have been offered direct occupational therapy services instead of occupational therapy consultation services. Student argues that, based on her demonstrated skills levels, "it is reasonable to assume that District was on notice that Student needed direct occupational therapy services rather than just consultation." Yuba City argues Student was not offered occupational therapy services of any kind as there was no indication of an occupational therapy need.

For purposes of the IDEA, "the term 'free appropriate public education' is defined to include 'special education' and 'related services.'" (*Taylor v. Honig*, (9th Cir.1990) 910 F.2d 627, 629.) Related services, or "designated instruction and service" as they are termed in California, are services that are required to assist a child with a disability to benefit from special education. These services include occupational therapy services. (34 C.F.R. § 200.23; Ed Code § 56363.)

Occupational therapy is defined as services provided by a qualified occupational therapist that include:

- improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
- improving ability to perform tasks for independent functioning; if functions are impaired or lost; and
- preventing, through early intervention, initial or further impairment or loss of function. (34 C.F.R. § 300.24 (c)(6).)

Student's closing brief demonstrates confusion regarding the occupational therapy services Student was offered between May 8, 2021 and June 4, 2021. Student was not offered occupational therapy consultation services. Furthermore, Student failed to prove she needed occupational therapy services to benefit from her education. The burden of proof was on Student to demonstrate the need. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer, supra*, 546 U.S. at pages 57-58 and 62; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Yuba City's notice of Student's need is not "presumed." Student was required to prove that Yuba City had notice of the need, and failed to meet her burden to do that.

None of Student's teachers believed she needed occupational therapy services during preschool. Bartley described Student's fine motor skills as age appropriate. Bartley explained that preschool students were learning how to open and close scissors and started learning the correct way to hold a pencil. Student enjoyed coloring and other art. She could draw something when directed to do so, and strung beads on pipe cleaners independently. Student loved to dance, and enjoyed riding what were called "the bikes" outside. She enjoyed going up and down the slide and could do so independently. Neither Bartley nor Keep recalled having any motor skills concerns about Student. Nor did either Bartley or Keep recall Parent ever mentioning concerns about Student's motor skills or any concerns that would have created a suspicion of an occupational therapy need.

No witness, including Parent, described any concerns about Student's fine or gross motor skills that impacted her education. Parent acknowledged progress in fine motor skills in preschool from April of 2021 forward. Parent mentioned that Student would want to wash her hands if she did not like the consistency of something she touched. However, Student offered no evidence of this being a pervasive problem

or one that interfered in Student's ability to access her education. No other witness mentioned this as a concern, or identified any other issue that might raise a suspicion of an occupational therapy need. No expert testified to unaddressed occupational therapy needs of any kind during this period.

Student failed to prove she had an occupational therapy need that Yuba City did not address.

### YUBA CITY PROVIDED STUDENT WITH DIRECT SPEECH AND LANGUAGE SERVICES

Student's complaint alleged she did not receive the speech and language services offered in her IEP, from May 8, 2021 to June 4, 2021 but instead received "consultation services." Yuba City denies this. Student argues that the speech and language services were inadequate, and that the speech pathologist provided consultation rather than direct services. Student did not plead an issue alleging that Student's speech services from May 8 2021 through June 4, 2021 were inadequate, so that issue will not be addressed in this decision.

It is unclear why this issue was pursued. Student's closing argument was confusing, as it asserted Student received only consultation services despite the clear contradictory evidence presented at hearing. The evidence established that Student received direct speech and language services from May 8, 2021 through June 4, 2021. Parent confirmed Student received direct speech and language services throughout this time period. Preschool speech pathologist, Denise Keep, provided 25 minutes of direct speech and language services to Student, twice per week from May 8, 2021 to June 4, 2021, both when Student was in the classroom, and during the brief distance

learning period from May 18, 2021 to May 27, 2021. In addition to the direct services, Keep also provided consultation services to teachers, and other IEP team members.

Student did not meet her burden of proving that Yuba City denied her a FAPE by failing to offer Student a one-to-one aide; direct occupational therapy services, rather than consultation services; or direct speech and language services, rather than consultation services; between the dates of May 8, 2021, and June 4, 2021.

ISSUE 4: DID YUBA CITY DENY STUDENT A FAPE, FROM MAY 8, 2021 TO JUNE 4, 2021, BY FAILING TO ADDRESS REGRESSION RESULTING FROM BEING ASSIGNED TO DISTANCE LEARNING WITHOUT BEING PROVIDED THE SPECIALIZED ACADEMIC INSTRUCTION AND SPEECH SERVICES, AND THE ACCOMMODATIONS OF VISUAL/ICONS FOR DAILY ACTIVITIES AND SCHEDULE OR CHOICE BOARD STATED IN STUDENT'S APRIL 13, 2021 IEP?

Student argues that Yuba City denied her a FAPE during the period from May 8, 2021 to June 4, 2021 by failing to address regression resulting from being assigned to distance learning without being provide the SAI, speech services and accommodations required by her April 13, 2021 IEP. Yuba City argues Student failed to prove Student suffered any regression due to the short, emergency distance learning period from May 18 through May 27, 2021. Therefore, Yuba City concludes, Student could not have been denied a FAPE for failure to address the regression.

As previously discussed, Student's only distance learning period between May 8, 2021, and June 4, 2021, occurred from May 17, 2021 to May 27, 2021 when Student's preschool class went to virtual learning for eight school days due to a class Covid-19 exposure. As detailed in Issue 2 of this Decision, Student did not prove that Yuba City

materially failed to implement the IEP-required specialized academic instruction, or Student's accommodations, during those eight days of distance learning. The evidence established Student received all speech therapy services due. Therefore, Student could not show she suffered regression as a result of being deprived of, specialized academic instruction, her IEP accommodations, or speech and language services during distance learning.

Student argued in closing that Yuba City was "aware Student is prone to regression," and also "District was clearly aware that Student's participation during virtual learning resulted in regression ...." However, Student cited no evidence supporting these conclusory statements and had presented none at hearing.

Student failed to offer any evidence that Student regressed for any reason, in any way, as a result of her participation in the brief period of distance learning instruction offered from May 18, 2021 to May 27, 2021. Therefore, Student did not meet her burden of proving that Yuba City denied her a FAPE by failing to address regression that occurred during distance learning, due to the failure to provide Student a specialized academic instruction, speech and language services, or her IEP accommodations during distance learning.

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ISSUE 5: DID YUBA CITY DENY STUDENT A FAPE, IN ITS APRIL 6, 2022 IEP OFFER, BY FAILING TO ACCURATELY STATE STUDENT'S PRESENT LEVELS OF PERFORMANCE IN THE AREAS OF OCCUPATIONAL THERAPY, SPEECH THERAPY, VOCATIONAL NEEDS AND ASSISTED LIVING SKILLS; AND BY OFFERING PARENTS A PREDETERMINED IEP, THEREBY DENYING PARENTS THE OPPORTUNITY TO MEANINGFULLY PARTICIPATE IN THE IEP DEVELOPMENT PROCESS?

NO FAILURE TO ACCURATELY STATE PRESENT LEVELS OF PERFORMANCE

Student's complaint contended that Yuba City failed to accurately state Student's present levels of performance in her April 6, 2022 IEP, in the areas of occupational therapy, speech therapy, vocational needs, and "assisted living skills." Student argues "the present levels of performance were not based on appropriate assessments to determine how Student's learning challenges following return to in person learning and regression needed to be addressed." This argument attempts to introduce a failure to assess issue that Student did not plead in this case, and which will not be addressed in this decision.

Yuba City argues Student failed to prove that present levels of performance in the areas of occupational therapy, speech therapy, vocational needs, and "assisted living skills" were inaccurately stated.

A student's IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(I)(aa); Ed Code § 56345(a)(1).)

Student offered no evidence that the present levels of performance stated in the April 6, 2022 IEP were inaccurate as to Student's abilities in the areas of occupational therapy, speech therapy, vocational needs and "assisted living skills" which was interpreted to mean adaptive living skills. No witness, including Parent, testified to any inaccuracies in the present levels of performance in the four listed areas. Nor did any witness testify that Student demonstrated substantially different levels of performance, than those reported in the April 6, 2022 IEP, in any of the four listed areas, at any time near to, or after, the April 6, 2022 IEP.

Special education teacher and case carrier Michelle Cummings worked with Student during kindergarten and first grade, through the time Student disenrolled from Yuba City. As case carrier, Cummings created the draft IEP for the April 6, 2022 IEP team meeting. The draft was created in collaboration with Student's general education kindergarten teacher, Shannon Carr. Carr submitted information in response to Cummings' emailed questions regarding present levels of performance, fine and gross motor skills, and classroom behavior. At hearing, both Carr and Cummings confirmed the accuracy of present levels of performance stated in the April 6, 2022 IEP.

Student's April 6, 2022 IEP present levels of performance stated that Student did very well in kindergarten and had made progress in all academic areas. Cummings observed that Student played well with others and enjoyed school. She functioned independently in the classroom and could walk to and from the learning center by



herself for specialized academic instruction sessions with Cummings. She could read nine of 40 kindergarten high frequency words and could name 23 of 26 capital letters and sounds. She could count from one to 20. Student met her social and reading goals from the last IEP. Student's fine motor skills improved, and she participated in recess with her peers. Student continued to work on self-control when she did not get her way, or something made her mad. Student also continued working on using her words to express frustration.

Kindergarten and first grade speech pathologist, Raveena Bains, wrote Student's present levels of performance in speech communication for the April 6, 2022 IEP. She described Student's strengths as semantics, voice, and fluency. Bains, who worked with Student in the classroom and in a small group outside the classroom, stated Student was able to understand the function of general items used in the classroom and understood and followed the classroom routines and two-step directions. She could produce sentences with four to five words, with correct subject-verb agreement, and use prepositional phrases correctly. Bains identified needs in the areas of articulation and expressive language. Student struggled with temporal concepts, such as before, after, or during. Student's ability to answer questions effectively was partly deemed due to her lack of attention. Student was observed to be distracted by others around her or to be thinking of other things.

Cummings and Bains discussed the present levels of performance with Parent and the rest of the IEP team on April 6, 2022. No evidence was offered that Parent questioned the accuracy of the present levels of performance at the time of the April 6, 2022 IEP, or that Parent raised concerns with any IEP team members about them at any

time after the IEP team meeting. Nor was any other evidence offered establishing that the April 6, 2022 IEP's present levels of performance were inaccurate in any way. The evidence failed to establish a basis for this claim.

## YUBA CITY DID NOT PREDETERMINE THE APRIL 6, 2022 IEP

Student argues that the April 6, 2022 IEP was predetermined because Parent's concerns were not adequately addressed and documented. Yuba City denies this.

In the Ninth Circuit, "[a] school district violates the IDEA if it predetermines placement for a student before the IEP is developed, or steers the IEP to the predetermined placement." (*K.D. ex rel. C.L. v. Dep't of Educ., Hawaii*, (9th Cir. 2011) 665 F.3d 1110, 1123.) School administrators and staff must enter the IEP team meeting with an open mind and must meaningfully consider the parents' input. (*Doyle v. Arlington Cnty. Sch. Bd.*, (E.D. Va. 1992) 806 F. Supp. 1253, 1262.)

Student offered no evidence the April 6, 2022 IEP was predetermined. Student did not identify any elements of the IEP she alleged were predetermined. Each of the Yuba City IEP team members recalls discussion about the IEP. Carr recalled a detailed discussion of present levels of performance and the academic progress Student had made over the year. Bains described Student's speech and language growth, particularly her high receptive language capabilities. Cummings described going through the draft IEP section by section, and handwriting updates on the draft as discussions took place. Parent was informed that Student met her academic and social goals from the prior IEP.

Parent testified that the IEP team refused to discuss her requested changes to Student's speech services. Parent asserts that she requested either that Student receive

her speech therapy in individual sessions, as opposed to small groups; or that Student receive an increase in speech and language minutes. Parent initially recalled the IEP team replying that Student did not need more speech because she was doing well in speech, and that Student should not miss more class given Student's speech progress. On cross examination, Parent described being told Student was "doing fine" and "making a little bit of progress" so they were going to continue the services she already had. Parent was unable to recall who said this to her. The conversation Parent relayed was not memorialized in any IEP notes. Parent did not mention the IEP notes missing information to anyone at Yuba City after the IEP.

None of the Yuba City IEP team members recalled Parent requesting additional speech therapy or a different type of speech therapy. Bains specifically recalled Parent agreeing with her service recommendation of 50 minutes per week and having no questions about the planned services.

Parent had difficulty throughout the hearing recalling the details of her discussions with IEP teams during IEP team meetings. She only seemed certain of her memory when relating recollections that would be favorable to Student's case or responding to the frequent leading questions posed by her counsel. As a result, her testimony that the IEP team refused to grant her requests regarding different speech services lacked credibility. Parent failed to prove by a preponderance of the evidence that she asked for additional speech services that Yuba City denied.

Even had Parent proved that the IEP team refused to increase Student's speech and language services, Parent did not prove that was evidence of predetermination. Parent described the discussion of her request, and the explanation from someone on the IEP team of the reasoning behind the speech and language services offered.

An example of a predetermined placement is when the parents are presented with "a 'take it or leave it' option." (*Mandeville v. Department of Education* (D. Hawaii, Dec. 29, 2022, No. CV 21-00468 LEK-WRP) 2022 WL 17986826, at 12 (*Mandeville*); citing *R.A. ex rel. Habash v. W. Contra Costa Unified Sch. Dist.*, (9th Cir. 2017) 696 F. App'x 171, 173.) If the evidence shows that the school district was open-minded in the placement decision and other decisions in the IEP development process, the placement was not predetermined. (*Ibid*, citing, *S.H. ex rel. Hollister v. Tustin Unified Sch. Dist.*, (9th Cir. 2017) 682 F. App'x 559, 561.)

Here, even if Student's version of events is accepted as true, which Student did not prove, Parent recalled her request being considered and discussed. According to Parent, the unidentified IEP team member(s) explained why they did not believe Student required an offer of additional, or more intensive services. Parent also recalled Yuba City IEP team members explaining why, from their perspective, additional time out of class for speech and language services would not benefit Student's overall education. The IEP team's consideration of Student's needs during the IEP shows that the team did not engage in predetermination of Student's services. (*Mandeville*, 2022 WL 17986826, at 13.)

Student also argues, without evidence citation, that Parent was not involved in the discussion of the draft goals in the IEP. At the hearing, Parent testified both that the IEP team made changes to the goals during the IEP, and that she was not involved in the changes to the goals because they were already written out. This contradictory testimony negatively impacted Parent's credibility on this issue.

Bains, Student's Kindergarten speech therapist, testified she presented the speech goals to Parent during the April 6, 2022 IEP, and Parent responded during the meeting that they "looked good." As noted previously, Cummings described going section by section and updating the draft IEP as it was discussed in the meeting.

Although Student's closing brief asserts a scattershot of additional arguments, including lack of informed consent, failure to assess, poorly written goals, and failure to implement IEPs, that Student asserts demonstrate predetermination; the arguments not discussed here do not address the predetermination issue. Student offered no other evidence that Yuba City predetermined the April 6, 2022 IEP.

Student did not meet her burden of proving that Yuba City denied her a FAPE by predetermining the April 6, 2022 IEP.

#### ISSUE 6: DID YUBA CITY DENY STUDENT A FAPE BY FAILING TO OFFER EXTENDED SCHOOL YEAR SERVICES FOR THE 2020-2021, AND 2021-2022 SCHOOL YEARS?

Student argues that the IEP teams involved in both the April 13, 2021, and April 6, 2022 IEPs, were aware that Student was prone to regression. According to Student, based on this knowledge and the fact that Student failed to meet some goals, Yuba City should have offered Student extended school year services. Yuba City argues that Student did not qualify for extended school year services.

Extended school year eligibility is provided to students who have disabilities which are likely to continue indefinitely or for a prolonged period; and interruption of the pupil's educational programming may cause regression, when coupled with limited

recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition. (Cal. Code Regs. tit. 5 § 3043.) Extended school year services are provided if an IEP team determines, on an individual basis, in accordance with Code of Federal Regulations, title 34, §§ 300.320 through 300.324, that the services are necessary to provide FAPE to the child. (34 C.F.R. § 300.106(a)(2); see, *G.G. v. Conejo Valley Unified School Dist.* (N. D. Cal. 2022) 2022 WL 17478600, p. 12.)

In this case, Student failed to establish a need for extended school year services in either summer of 2021 or summer of 2022. None of the Yuba City IEP members believed Student required extended school year instruction. Nor did Student offer proof of her need for extended school year instruction.

## 2020-2021 SCHOOL YEAR

The April 13, 2021 IEP team discussed extended school year instruction. Bartley did not recommend it at the meeting because she had not seen regression following lengthy breaks such as winter, summer, or return from distance learning. Bartley did not see Student having more problems than the general education students going back to the class routines or recalling previously taught information. Nor did she observe Student struggling with knowledge recoupment more than any other student after a break.

Keep, Student's preschool speech pathologist, recalled the question of extended school year being discussed during the April 13, 2021 IEP team meeting. Keep did not believe Student needed extended school year instruction. Keep's opinion was that Student had made significant progress towards her goals, and maintained that progress

over school breaks. Keep recalls Parent agreeing with the conclusion that no extended school year was needed when it was discussed at the April 13, 2021 IEP team meeting.

On May 27, 2021, Yuba City held an IEP amendment meeting to discuss Student's transition from preschool to kindergarten. Although Parent offered evidence that the issue of extended school year was not discussed at this IEP, the only issue pled in this case is whether FAPE was denied because extended school year was not offered. Therefore, the separate procedural question of whether the issue was discussed is not addressed in this decision.

No evidence was presented that Student required extended school year services during the summer of 2021. Student did not present evidence of regression. Nor did Student present evidence that any interruption of the pupil's educational programming caused regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of her disabling condition. (Cal. Code Regs. tit. 5 § 3043.)

Student did not prove she was denied FAPE due to a failure to offer extended school year services during the summer of 2021.

## 2021-2022 SCHOOL YEAR

Yuba City held Student's annual IEP on April 6, 2022. Yuba City did not offer extended school year services for the summer of 2022. Student did not meet her burden of proving that she was entitled to extended school year services in the summer of 2022.

Bains, Student's kindergarten speech pathologist, observed no need for extended school year services for the 2022 extended school year when the matter was discussed during the April 6, 2022 IEP. Bains opined that Student did not qualify for extended school year because she did not demonstrate regression in her speech therapy after breaks. Bains recalled Parent agreeing that Student did not require extended school year services.

Neither Student's kindergarten special education teacher, Cummings, nor her general education kindergarten teacher, Carr, believed Student required extended school year services. Neither believed Student regressed or had difficulty recouping information following extended school breaks during the school year.

Carr was also Student's first grade reading intervention teacher. Lincrest Elementary School had an intervention program for all general education students who needed additional reading help. Carr taught Student's reading instruction group. Carr did not observe that Student had lost skills when she began the 2022-2023 school year by not receiving extended school year services during the summer of 2022.

Parent testified that extended school year was not discussed at either the April 13, 2021 IEP team meeting, or the April 6, 2022 IEP team meeting. However, as mentioned previously, the issue pled is whether Yuba City denied FAPE by failing to offer extended school year services; not whether extended school year services were discussed. Therefore, neither the procedural issue related to the discussion, nor the comparative credibility of the witnesses in that regard, will be analyzed in this decision.

Parent offered no evidence that Student needed extended school year services, or that Student regressed, or was unable to retain or recapture information Student learned when returning to school after the summer 2022 break. Student did not prove



that she had limited recoupment capacity when she returned to her general education first-grade class in the fall of 2022. Student also offered no evidence that, without extended school year services, it would be either impossible, or unlikely, that Student would attain the level of self-sufficiency and independence that would otherwise be expected in view of her disability.

Student did not meet her burden of proving that Yuba City denied her a FAPE by failing to offer extended school year services during the summers of 2021 and 2022.

**ISSUE 7: DID YUBA CITY DENY STUDENT A FAPE, FROM THE BEGINNING OF THE 2021-2022 SCHOOL YEAR THROUGH MARCH OF 2023, BY FAILING TO OFFER STUDENT A ONE-TO-ONE AIDE, DIRECT OCCUPATIONAL THERAPY SERVICES RATHER THAN CONSULTATION, AND DIRECT SPEECH AND LANGUAGE SERVICES RATHER THAN CONSULTATION?**

Student's complaint asserted Yuba City denied her a FAPE during the 2021-2022 and 2022-2023 school years through March of 2023 due to its failure to offer her a one-to-one aide, or direct occupational therapy, and speech and language therapy, services. Yuba City argues Student withdrew from the district on March 3, 2023 so any claim could only extend to March 3, 2023. Furthermore, Yuba City argues, Student failed to prove that the services offered did not meet her needs, or were not reasonably calculated to meet her needs or enable her to make appropriate progress.

Parent removed Student from Yuba City on March 3, 2023. This issue will address the time period from the beginning of the 2021-2022 school year through March 3, 2023.

## NO ONE-TO-ONE AIDE NECESSARY

Student argues that she should have been offered the services of a one-to-one aide to "assist Student with behaviors, comprehension, inattention and other learning issues" and to provide interventions "to address skills needed to manage Student's learning challenges." However, Student offered no evidence that she had behaviors; or "comprehension, inattention or other learning issues," that indicated a need for a one-to-one aide. Nor did Student offer evidence that she had "learning challenges" requiring the interventions of a one-to-one aide.

None of Student's instructors believed she showed signs of needing an aide. Her behavior did not impede her ability to access her education, nor did it impede her classmates' ability to access their education. Student's kindergarten teacher described her behavior as age appropriate and was impressed with the progress Student made during her kindergarten year. While Student was noted to have some difficulty when she didn't get her way, or when a peer would not share, her conduct was consistent with many other students in the kindergarten class. Carr noted that many students coming into kindergarten after the pandemic had more difficulties with behavior due to the isolation they had experienced. Both Carr and Parent acknowledged that Student made progress in being able to use her words to express her frustration by the end of the 2021-2022 school year.

Student offered no evidence regarding any maladaptive behaviors during the portion of the 2022-2023 school year that she attended school in the Yuba City district. Student was in first grade during the 2022-2023 school year. During first grade, general education reading intervention sessions, Carr noted Student did quite well. Student was in a group of seven students who worked on phonemic awareness with Carr for 40

minutes four times per week. Carr described Student as doing the work assigned and making great progress. Carr did not observe any behavior concerns during these lessons.

Student offered no evidence that she had comprehension, inattention, or other learning issues in either kindergarten or first grade that would have necessitated a one-to-one aide. Student did not define the “comprehension” deficits that required the intervention of a one-to-one aide. No expert testified that student had comprehension or attention deficits that impeded her ability to access her education. Nor was other evidence offered establishing problems in the areas of comprehension or attention that should have resulted in a one-to-one aide being assigned to help refocus Student.

Student failed to meet her burden of proving she was denied a FAPE due to Yuba City’s failure to offer a one-to-one aide during the 2021-2022 and 2022-2023 school years through March 3, 2023, when Student was withdrawn from Yuba City to attend a charter school.

## NO OCCUPATIONAL THERAPY NEED

Student argues that her April 6, 2022 IEP reported that Student “struggled at school and that she required the in person direct intervention and services of a trained and licensed Occupational Therapist.” Student offers no specific evidence citation for this assertion other than generally referencing the 29-page IEP document. A close review of the April 6, 2022 IEP revealed no such statement. Yuba City argues that Student did not require occupational therapy services during either the 2021-2022 or 2022-2023 school years, through March 3, 2023.

Student did not prove that she was offered occupational therapy consultation services rather than direct occupational therapy services. She received no occupational therapy services in kindergarten or first grade. Nor did Student establish a need for occupational therapy services during kindergarten or the portion of first grade she attended in Yuba City.

None of Student's teachers saw Student display any occupational therapy deficits. Her fine and gross motor skills were described as age appropriate by Carr, Cummings, and Bains. Student demonstrated age-appropriate skills by the end of kindergarten, using a scissors and pencil. Student's gross motor skills were also age appropriate according to her teachers. Student walked to and from the learning center to access speech therapy, and played on the playground equipment without difficulty. Student navigated the classroom with ease. Student offered no expert or other evidence of occupational therapy needs that were not met. Student failed to meet her burden of proving she had unmet occupational therapy needs.

## STUDENT RECEIVED DIRECT SPEECH AND LANGUAGE THERAPY

The evidence clearly contradicted Student's argument that she was offered only consultation as opposed to direct speech therapy. Bains confirmed Student received direct speech therapy during the 2021-2022 and 2022-2023 school years through March 3, 2023. Parent also acknowledged that Student received direct speech services during kindergarten and first grade while attending school in the Yuba City district. There was no explanation for continuing to pursue this claim when the evidence from both the speech pathologist and Parent proved it had no basis.

Student did not meet her burden of proving that Yuba City denied her a FAPE by failing to offer Student a one-to-one aide, or for failing to offer direct occupational therapy or direct speech and language therapy services.

## 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:

Yuba City Unified School District did not deny Student a free, appropriate public education, or FAPE by assigning Student to distance learning from May 8, 2021, through June 4, 2021, without assessing Student for additional programs, supports and accommodations needed to access distance learning.

Yuba City prevailed on Issue 1.

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## ISSUE 2:

Yuba City did not deny Student a FAPE, by assigning Student to distance learning from May 8 2021, through June 4, 2021, without providing necessary services and accommodations as stated in the April 13, 2021 IEP, specifically:

- a. Services of 50 minutes of speech and language and 120 minutes of specialized academic instruction per week; and
- b. Accommodations of visual/icons for daily activities and a schedule or choice board?

Yuba City prevailed on Issues 2a and 2b.

## ISSUE 3:

Yuba City did not deny a FAPE from May 8, 2021 through June 4, 2021 by failing to offer Student:

- a. A one-to-one aide;
- b. Direct occupational therapy services rather than consultation; and
- c. Direct speech and language services rather than consultation.

Yuba City prevailed on Issues 3a, 3b, and 3c.

## ISSUE 4:

Yuba City did not deny Student a FAPE from May 8, 2021 to June 4, 2021 by failing to address regression resulting from being assigned to distance

learning without being provided the specialized academic instruction and speech services, and the accommodations of visual/icons for daily activities and schedule or choice board stated in Student's April 13, 2021 IEP.

Yuba City prevailed on Issue 4.

#### ISSUE 5:

Yuba City did not deny Student a FAPE in its April 6, 2022 IEP offer by:

- a. Failing to accurately state Student's present levels of performance in the areas of occupational therapy, speech therapy, vocational needs, and assisted living skills;
- b. Offering Parents a predetermined IEP, and thereby denying Parents the opportunity to meaningfully participate in the IEP development process.

Yuba City prevailed on Issues 5a and 5b.

#### ISSUE 6:

Yuba City did not deny Student a FAPE by failing to offer extended school year services for the 2020-2021, and 2021-2022 school years.

Yuba City prevailed on Issue 6.

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## ISSUE 7:

Yuba City did not deny Student a FAPE from the beginning of the 2021-2022 school year through March of 2023 by failing to offer Student:

- a. A one-to-one aide;
- b. Direct occupational therapy services rather than consultation; and
- c. Direct speech and language services rather than consultation.

Yuba City prevailed on Issues 7a, 7b, and 7c.

## ORDER

Student did not prevail on any issues. All requested remedies 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.

PENELOPE S. PAHL

Administrative Law Judge

Office of Administrative Hearings