

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

V.

STOCKTON UNIFIED SCHOOL DISTRICT.

CASE NO. 2024050096

DECISION

OCTOBER 17, 2024

On May 2, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Stockton Unified School District as respondent. Administrative Law Judge Clifford H. Woosley heard this matter by videoconference on August 13, 14, 15, 20, 21, 22 and 28, 2024.

Attorneys Ryan S. Song and Michelle E. Wilkolaski represented Student. Parent attended the hearing on behalf of Student. Attorneys Rebecca Diddams and Dee Anna Hassanpour represented Stockton Unified School District. Dr. Jose M. Avila, Special Education Administrator, attended the hearing on behalf of Stockton Unified School District. Attorney Wilkolaski did not attend the last four days of the hearing and Attorney Hassanpour did not attend the last day of the hearing.

At the parties' request, the matter was continued to September 23, 2024, for written closing briefs. The record was closed, and the matter was submitted on September 23, 2024.

In this Decision, a free appropriate public education is called a FAPE, and an individualized education program is called an IEP. Stockton Unified School District is called Stockton Unified.

ISSUES

1. Did Stockton Unified deny Student a FAPE, in preparation for Student's initial IEP team meeting held on August 18, 2022, by failing to assess Student in the following areas of Student's suspected disabilities: autism, attention deficit hyperactivity disorder, and oppositional defiance disorder?
2. Did Stockton Unified deny Student a FAPE in the 2022-2023 school year from February 1, 2023, by refusing Parent's requests for a one-to-one aide to support Student's toilet training?
3. Did Stockton Unified deny Student a FAPE in the 2023-2024 school year by:
 - a. by failing to offer Student the following:
 - i. a trained health aide to accompany Student on transportation to school;
 - ii. placement in the Preschool Assessment and Autism Center;

- iii. for accommodations of picture exchange communication system, referred to as PECS, and First/Then Contingency; and
 - iv. an alternative augmentative communication device?
 - b. significantly impeding upon Parents' opportunity to participate in the decision-making process regarding provision of a FAPE for Student by refusing Parent's requests for:
 - i. a trained health aide to accompany Student on transportation to school;
 - ii. placement in the Preschool Assessment and Autism Center, a district program;
 - iii. for accommodations of PECS and First/Then Contingency; and
 - iv. an alternative augmentative communication device?
- 4. Did Stockton Unified deny Student a FAPE in the IEP dated April 5, 2023, by significantly impeding upon Parent's opportunity to participate in the decision-making process regarding provision of a FAPE for Student by failing to consider Parents' concerns regarding stress and anxiety Student would likely experience by changing from Bush Elementary School to Marshall Elementary School?

5. Did Stockton Unified deny Student a FAPE in the 2022-2023 school year by failing to offer Student:
 - a. a one-to-one aide who could monitor Student's health, support Student's toilet training, change Student's diapers, and monitor Student's self-harming behaviors; and
 - b. an appropriate applied behavior analysis throughout the school day?
6. Did Stockton Unified deny Student a FAPE in the IEP dated August 29, 2023, by failing to offer Student appropriate:
 - a. behavior services, including an applied behavior analysis program;
 - b. specialized academic instruction;
 - c. speech and language services; and
 - d. counseling services?
7. Did Stockton Unified deny Student a FAPE in the 2022-2023, and the 2023-2024 school years by failing to offer Parent training regarding:
 - a. autism;
 - b. speech or language impairment;
 - c. Student's assistive technology devices;
 - d. behavior support techniques;
 - e. applied behavior analysis;
 - f. data collection practices; and
 - g. curriculum, support programs, at-home practices, exercises, and routines?

At the commencement of the hearing, ALJ Woosley ordered that Issue 3(a)(iii) and Issue 3(b)(iii) be modified, so that the accommodations referred to by Student, in her complaint and prehearing conference, are specified in the issues. Also, for purposes of this decision's analysis, the order of Issue 3(a) and 3(b) were reversed, but not otherwise changed.

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 free appropriate public education 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 (2006); 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]; *see also* 20 U.S.C. § 1415(i)(2)(C)(iii).) In this matter, Student had 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).)

BACKGROUND

Student was four years and eleven months old at the commencement of hearing and was attending Kindergarten at Stockton Unified. At all relevant times, Student resided within Stockton Unified's geographic boundaries.

STUDENT'S WITNESS, SOOKYUNG SHIN, PH.D

On the last day of the hearing, Student called Sookyung Shin, Ph.D., to testify as an expert witness. Stockton Unified objected to Dr. Shin's expertise. Per California Evidence Code, section 720(b), Dr. Shin's knowledge, skill, experience, training, or education needed to be shown before Dr. Shin could testify as an expert regarding Student's issues. Student's counsel attempted to establish Dr. Shin's expertise at hearing, but was unsuccessful. ALJ Woosley ruled, over the objection of Stockton Unified, to allow Dr. Shin to testify and give her testimony the weight it warranted.

Dr. Shin offered opinions regarding the assessment of Student in all areas of suspected disability, including Student's need for

- a one-to-one aide,
- placement,

- accommodations,
- augmentative or alternative communication,
- transitions,
- autism services,
- applied behavioral analysis and behavior services,
- specialized academic instruction,
- counseling, and
- parent training.

Dr. Shin had master's and doctorate degrees in special education. Dr. Shin extensively researched parent rights under the IDEA, although she was not an attorney. However, Dr. Shin did not possess the experience, training, special knowledge, skills, and education that qualified her to provide expert testimony regarding Student's educational program and the issues considered at hearing.

Since 2010, Dr. Shin was a special education consultant and attended over 200 IEP team meetings as a parent advocate. Dr. Shin wrote academic papers, generally with little to no relevance to the proceedings in this case. Dr. Shin was not a credentialed teacher and had no professional teaching experience except with graduate students. Shin never taught general or special education elementary school students. She was not a

- credentialed school psychologist,
- licensed psychologist,
- licensed clinical therapist,
- licensed speech-language pathologist,
- speech-language pathologist's assistant, or a
- board-certified behavior analyst.

She had no training or experience in assistive technology. She was not qualified to interpret assessments or provide any related services. Dr. Shin's willingness to offer opinions at hearing in these professional fields without the necessary education, training, or experience, adversely impacted her credibility and undermined her legal standing to provide expert testimony.

Dr. Shin had previously testified in eight or nine due process hearings. In all of those instances, Shin had been retained by the law firm representing Student in this case. Dr. Shin had also testified in the due process hearings of Student's older siblings. Student's attorneys were so confident that Dr. Shin would testify in support of Student's claims that the firm identified Dr. Shin as Student's expert witness in a prehearing conference statement filed June 4, 2024, before Dr. Shin had ever seen Student or reviewed records related to Student. Dr. Shin was unaware Student identified her as an expert in June, indicating she had only been retained a few weeks before testifying. Also, Dr. Shin did not meet Student until the day before she testified on August 28, 2024, the last day of hearing.

Dr. Shin had an approximately two-hour teleconference with Mother and Student on August 27, 2024. Dr. Shin relied exclusively on Mother for information about Stockton Unified's school programs. Dr. Shin reviewed educational documents offered into evidence but, at hearing, Dr. Shin was often confused and did not know which IEPs or services had been consented to and implemented. Dr. Shin was not familiar with Stockton Unified's educational programs. She did not attempt to contact any of Student's assessors, teachers, or service providers for program information. Dr. Shin never assessed Student or drafted an assessment report regarding Student.

Dr. Shin was not qualified to offer a professional opinion on any of Student's issues for hearing. Dr. Shin's heavy reliance on Parents' view of Student's educational performance, lack of familiarity with Student's educational records, lack of knowledge of Stockton Unified's programs, and willingness to offer opinions in fields in which she lacked education, training, licensing, credentialing, and professional experience, all rendered her opinions uninformed and unpersuasive. Her lay research into IDEA rights, academic publications, and participation in the IEP team meetings of other children did not qualify her to offer relevant opinions on the assessment issues, interpret specialized assessment results, or offer expert opinions regarding Student's academic, social emotional, assistive technology, behavioral or mental health needs, or the appropriateness of Stockton Unified offers of a FAPE.

Lastly, Dr. Shin's close relationship with Student's attorneys, including their confidence that Dr. Shin would testify in Student's favor without adequate preparation or expertise, and her extensive resume as a parent advocate, strongly suggested the existence of bias. (See Evid. Code, § 722, subd. (b).)

For all of these reasons, Dr. Shin's opinions regarding Student's educational needs, and the educational program to meet those needs, were given no weight.

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ISSUE 1: DID STOCKTON UNIFIED DENY STUDENT A FAPE, IN PREPARATION FOR STUDENT'S INITIAL IEP TEAM MEETING HELD ON AUGUST 18, 2022, BY FAILING TO ASSESS STUDENT IN THE FOLLOWING AREAS OF STUDENT'S SUSPECTED DISABILITIES: AUTISM, ATTENTION DEFICIT HYPERACTIVITY DISORDER, AND OPPOSITIONAL DEFIANCE DISORDER?

Student contended Stockton Unified denied Student a FAPE in its August 2022 initial assessments because it failed to assess Student for autism, attention deficit hyperactivity disorder, and oppositional defiance disorder, which Student claimed were areas of suspected disability.

Stockton Unified asserted that its assessments fully evaluated Student's suspected disabilities. At the time of Student's initial assessments, and the subsequent initial IEP team meeting, the information available to Stockton Unified did not indicate Student had suspected disabilities of autism, attention deficit hyperactivity, or oppositional defiant disorder, which prevented Student from accessing and benefiting from her educational program.

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

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

"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 (2017); Ed. Code, §56031.) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.) A procedural violation results in liability for denial of a FAPE only if the violation: impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

An IEP is a written document describing a child's "present levels of academic achievement and functional performance" and a "statement of measurable annual goals, including academic and functional goals" designed to meet the child's educational needs. (Ed. Code, § 56345, subd. (a)(1), (2); 34 C.F.R. § 300.320(a) (2006).) The IEP must also contain a description "of the manner in which the progress of the pupil toward meeting the annual goals ... will be measured and when periodic reports on the progress the pupil is making ... will be provided" (Ed. Code, § 56345, subd. (a)(3); 34 C.F.R. § 300.320(a)(3) (2006)). The IEP shall state the special education and related services and supplementary aids and services to be provided to the pupil and describe the program modifications and supports designed to enable the pupil to advance toward attaining their goals and make progress in the general education curriculum (Ed. Code, § 56345, subd. (a)(4); 34 C.F.R. § 300.320(a)(4) (2006)). The IEP shall explain the extent, if any, that the pupil will not participate with nondisabled pupils in the regular class or activities (Ed. Code, § 56345, subd. (a)(5); 34 C.F.R. § 300.320(a)(5) (2006)) and address any individual appropriate accommodations necessary to measure academic achievement and functional performance of the pupil on state and district-wide assessments. (Ed. Code, § 56345, subd. (a)(6); 34 C.F.R. § 300.320(a)(6).)

The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and District agree otherwise, but at least once every three years unless the parent and 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).) A reassessment may also be performed if warranted by the child's educational or related service needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) A district must also convene an IEP team meeting when a parent requests a meeting to develop, review, or revise the IEP. (Ed. Code, § 56343, subd. (c).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to a student to constitute a FAPE under the IDEA, a school district's offer of educational services and placement must be designed to meet the student's unique needs, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*)

A pupil shall not "be determined to be an individual with exceptional needs" if they do not meet the eligibility criteria under federal and California law. (Ed. Code, § 56329, subd. (a)(2).) The law defines an individual with exceptional needs as one who, because of a disability, "requires instruction and services which cannot be provided with modification of the regular school program." (Ed. Code, § 56026, subd. (b).) The Ninth Circuit Court of Appeals has endorsed the "snapshot" rule, explaining that the actions of the school cannot "be judged exclusively in hindsight ... an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann, supra*, 993 F.2d 1031, 1041.)

STOCKTON UNIFIED'S INTIAL ASSESSMENTS

Student was born prematurely, at 36 weeks, by emergency cesarean section. Student's biological mother died the same day. Student was adopted by her biological mother's cousin, who is referred to as Student's Mother in this Decision. Student had been with her adoptive family since she was two weeks old.

Student was in neonatal intensive care for five weeks at the University of California-San Francisco Medical Center, called UCSF. Student had multiple substance exposure prenatally. Her left kidney was underdeveloped. UCSF referred Student to Valley Mountain Regional Center Early Start Services on November 20, 2019. Student was found eligible for Regional Center services due to her delays in self-help, communication, and physical skills. The Regional Center provided Student with speech and language services and physical therapy.

Part C of the IDEA (20 U.S.C. §§ 1431-1444) provides early intervention services for infants and toddlers, from birth through age two, including their families. These services stop on the child's third birthday. Part B of the IDEA (20 U.S.C. §§ 1411-1419) provides free and appropriate public education in the least restrictive environment for children with disabilities from age three through 21. As Student approached age three, Valley Mountain Regional Center referred Student to Stockton Unified for purposes of evaluation, and a transitional IEP team meeting to determine Student's special education eligibility under Part B of the IDEA. Stockton Unified was Student's local educational agency.

Stockton Unified assembled an assessment team, who evaluated Student and issued nursing and trans-disciplinary assessment reports dated August 4, 2022. The assessment team observed Student, interviewed Mother, reviewed the Valley Mountain Regional Center records, and administered various assessment instruments. The assessment team assessed Student at one in-person session with each assessor conducting their own assessment at the main campus of Stockton Unified's Preschool Autism and Assessment Center, located at St. Bernadette's church. This collective collaboration enabled the team to knowledgeably consider and discuss the assessment results.

For purposes of evaluating a child for special education eligibility, the district must ensure that “the child is assessed in all areas of suspected disability.” (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment was adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all of the child’s needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304 (b)(1).) The assessments used must:

- not be discriminatory on a racial or cultural basis;
- be in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;
- used for purposes for which the assessments are valid and reliable;
- administered by trained and knowledgeable personnel; and
- administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).)

The personnel who assess the student must prepare a written report that shall include the following:

- whether the student may need special education and related services;
- the basis for making that determination;
- the relevant behavior noted during observation of the student in an appropriate setting;
- the relationship of that behavior to the student's academic and social functioning;
- the educationally relevant health, development and medical findings, if any;
- a determination of the effects of environmental, cultural, or economic disadvantage; and
- consistent with superintendent guidelines for low incidence disabilities, the need for specialized services, materials, and equipment. (Ed. Code, § 56327.)

The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

NURSING ASSESSMENT

Registered nurse, Tania Godoy, assessed Student in August 2022. She worked for Stockton Unified for five years and testified at the hearing. She had a bachelor's degree in nursing, a registered nurse license, a California school nurse credential, and a certificate for conducting hearing screenings. Nurse Godoy's duties included evaluating and working with preschool children with autism, speech and language delays, and

moderate to severe behaviors. She attended 50 to 100 IEP team meetings a year and was well acquainted with the IEP team meeting process. As part of her duties, Nurse Godoy regularly reviewed children's medical records, reports, and doctors' diagnoses and prescriptions.

Godoy observed Student and interviewed Mother. Student was very cooperative during the vision and hearing screenings, which Student passed. Nurse Godoy thoroughly reviewed and documented Student's medical history. Student was not taking medication, which had to be administered at school. UCSF specialists continued to monitor Student in the areas of

- facial cranial,
- ophthalmology,
- neurology,
- cardiology,
- urology, and
- ears, nose and throat.

Student had a heart murmur and a kidney issue. As a result, Nurse Godoy created cardiac and kidney emergency action plans. The cardiac emergency action plan was precautionary and, as of the time of hearing, had never been activated.

The kidney emergency action plan was related to Student's hydronephrosis, which caused Student to retain fluids in her kidney. Student's kidney emergency action plan assured that Student had regular access to water and the bathroom. This did not require a one-to-one aide. Nurse Godoy found that Student was, overall, a well child and health was not considered to be an area of academic concern.

INITIAL TRANS-DISCIPLINARY ASSESSMENT

School psychologist Patricia Bloomquist, special education teacher Teresa Flores, and speech and language pathologist Debby Speer-Paulin collaborated in assessing Student. They presented their findings and recommendations in an August 4, 2022, Trans-Disciplinary Assessment Report. Bloomquist was primarily responsible for assembling the final report. Nurse Godoy was part of the assessment team, and the report summarized Godoy's assessment results, which documented Student's significant medical history.

The team interviewed Mother and observed Student. Mother reported that Student did not seem to be bothered by heat, or pain in general. Student would hold her hand under hot water and not be affected. Student loved to climb and jump on a trampoline, sought out swings, and liked hanging upside down. Student engaged in a great deal of pretend play with her dolls throughout the day.

The team observed that Student verbally initiated interaction with the assessors during the assessment. Student consistently responded to her name. Student frequently referenced the assessor and Mother. Student showed good task persistence, self-correcting numerous times when stacking nesting cups. Overall, Student was rather quiet and stoic. She spoke in a whisper during the assessment. Student put forth her best effort and was very pleasant and compliant.

Bloomquist conducted the psychoeducational evaluation portion of Student's assessment and testified at the hearing. Bloomquist had a master's degree in school counseling and school psychology and had a pupil personnel services credential for more than 34 years. She worked with special needs students since 1990 and had been a

school psychologist for Stockton Unified since 1992. Bloomquist was a member of Stockton Unified's preschool and autism assessment team, conducted about 100 assessments a year, and annually attended 85 to 90 IEP team meetings, primarily to present assessment reports. Bloomquist's education, training, and experience qualified her to conduct the psychoeducational evaluation of Student and render expert opinion regarding Student's special education eligibility and recommended services and supports.

Bloomquist testing indicated that Student's cognitive capability was average. Her fine motor skills were below average, and her gross motor skills were average. She was below average in adaptive behavior and receptive communication. Student's expressive communication was in the poor range.

Special education teacher Flores evaluated Student's cognitive, adaptive, and social-communication skills. Flores had a master's degree in special education and held special education credentials in early childhood education and in teaching children with moderate to severe disabilities. Since June 2022, she was a preschool assessment support specialist with Stockton Unified's Preschool Autism and Assessment Center, called PAAC. She was the special education teacher for preschool assessment teams, and would provide trainings to staff and parents, and support in classrooms, as needed.

Flores had worked for Stockton Unified in various capacities since 2002. She initially was a substitute teacher at different school sites. From 2012 to May 2022, she was a full-time special education teacher in preschool special day classes for children with autism, where she also was the program's lead teacher and the autism specialist. Flores had 10 years of classroom and administrative experience using evidence-based practices for educating autistic preschool children, including picture

exchange communication system, which teaches autistic children to communicate using pictures, called PECS. Flores' education, training, and experience qualified her to evaluate Student and render expert opinion regarding Student's special education eligibility and recommended services and supports.

Flores administered several assessments to Student involving

- puzzles,
- crayons,
- shapes,
- colors,
- books, and
- other activities.

Flores also administered the Developmental Assessment of Young Children to Student. Student's cognition and pre-academic skills were in the average range. The age equivalency of Student's adaptive skills was one year, 11-month year old child, for Student's gross motor skills was two years, five months, and for fine motor skills was one year, five months.

Flores orally interviewed Mother, who appeared pleased with the assessments. Other than conducting the August 2022 assessment, the results of which Flores later presented at Student's initial IEP team meeting, Flores did not further assess, or provide services to Student.

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Speer-Paulin was the pathologist who conducted Student's speech and language evaluation. She earned a bachelor of arts in 1997 and a master of arts in 1999, both in communicative disorders. Speer-Paulin had a Certificate of Clinical Competence, speech-language pathologist, and a Clinical and Rehabilitative Services credential. She had been a speech pathologist with Stockton Unified for almost 28 years.

Since 2014 Speer-Paulin was a pathologist with Stockton Unified's preschool assessment team, conducting initial assessments of children, from two year, and ten months old, through four years of age. She conducted more than 100 assessments per year and attended between 100 and 120 IEP team meetings per year. From 1997 to 2014, she worked at Stockton Unified's Walton Special Center, providing initial and ongoing assessments, and services for a variety of speech and language disorders in infants and toddlers from birth to three years of age. Speer-Paulin's education, training, and experience qualified her to evaluate Student's speech and language and render expert opinions regarding Student's special education eligibility and recommended services and supports. Speer-Paulin testified at the hearing. She described Student as very interactive, eager to engage with the adults, and able to follow instructions.

Speer-Paulin observed that Student speech structure and functions were within normal limits. Student was able to imitate some simple oral motor postures. Student spontaneously imitated sounds (speech and nonspeech) and some words and phrases. Student did not yet consistently imitate words on command. Student had ankyloglossia, commonly referred to as "tongue-tie." Speer-Paulin observed that Student was able to extend her tongue to the lip level.

Speer-Paulin found that most aspects of Student's language (semantics, syntax, morphology, phonology) were showing varying degrees of delay. Speer-Paulin concluded that, when combined with Student's limited single word repertoire and reduced mean length utterance, Student's ability to communicate clearly was negatively impacted

ELIGIBILITY RECOMMENDATION

The assessment team discussed Student's assessment results and eligibility for special education. Student displayed reduced intelligibility which significantly interfered with communication. Speer-Palin and the entire assessment team concluded Student met the legal criteria for special education under the category of speech or language impairment.

School psychologist Bloomquist reviewed the statutory criteria for autism eligibility (Education Code, section 3030(g)). Each team member confirmed the report's conclusion that Student did not exhibit autistic-like behaviors or meet the legal criteria eligibility for special education under the category of autism.

STUDENT'S INITIAL AUGUST 18, 2022 IEP TEAM MEETING

Stockton Unified convened Student's initial IEP team meeting on August 18, 2022, for the purpose of determining Student's eligibility for special education under Part B of the IDEA. The meeting was held virtually and in person. Mother received copies of the assessment reports before the meeting. Mother participated and shared her concerns.

Bloomquist, Speer-Paulin, Flores, and Godoy presented their assessment results and the report. The team discussed Student's emergency action plans related to Student's heart murmur and Student's kidney fluid retention, providing for unlimited bathroom privileges and hydration.

The IEP team agreed that Student was eligible for special education under the primary eligibility category of speech or language impairment. The team, including Mother, discussed various placements and services. The IEP team determined Student could access and benefit from a general education preschool and offered speech and language services in a small group setting for 30 minutes per week. Parents enrolled Student in the State HeadStart Preschool Program, at Westgate Elementary School. Once a week, Parents took Student to Stockton Unified's George W. Bush Elementary School, Student's home school, to receive speech therapy services.

STOCKTON UNIFIED DID NOT FAIL TO ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY FOR STUDENT'S INITIAL IEP.

Though Student did not have an autism diagnosis, Stockton Unified considered and analyzed whether Student met the legal criteria for autism eligibility. Student's August 2022 initial assessment used play-based evaluation to compile information regarding autism eligibility criteria. Bloomquist analyzed the collected information and found Student did not meet the statutory criteria for autism eligibility. Each member of the assessment team affirmed that they did not observe, nor were they informed, of Student exhibiting repetitive activities and stereotyped movements. The team noted Student had good task persistence, was very agreeable to direction, and would move on to new tasks without resistance. No one observed that Student had unusual responses to sensory stimuli.

Flores had been a full-time special education teacher in Stockton Unified's preschool special day class for 10 years and was the PAAC program's autism specialist. Flores' testimony regarding autistic behaviors was persuasive and insightful because of her extensive experience with preschool autistic children. Flores testified, like the other assessment team members, that she did not observe or otherwise obtain information about Student which indicated autism was a suspected disability requiring further assessment. Socially, Student responded to her name, had good eye-contact, and liked being praised. She referenced and demonstrated joint reciprocity. Student did have difficulty engaging in back-and-forth interactions, but the assessments and observations indicated this was primarily related to her poor articulation. Mother acknowledged in her testimony that the assessment report included consideration of autism eligibility.

Also, Student asserted Stockton Unified failed to assess Student in the suspected disabilities of attention deficit hyperactivity disorder, called ADHD, and oppositional defiant disorder, called ODD. ADHD and ODD are not categories for special education eligibilities but, instead, are psychological diagnoses, as described in the *American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition, called the DSM-5. A medical diagnosis under the DSM-5 does not mean a student is eligible for special education. A student still needs to meet the legal criteria for a special education eligibility. (Ed. Code, § 56329, subd. (a)(2).)

Stockton Unified did not have reason to believe that Student might have ADHD. Bloomquist noted ADHD was not typically considered for a student under the age of five or six. Student was not quite three years of age when initially assessed. But even if considered, Student exhibited behaviors and attitudes inconsistent with ADHD. The DSM-5 states the essential feature of ADHD is a persistent pattern of inattention and/or hyperactivity and impulsivity that interferes with functioning or development.

"Inattention" is wandering off task and lacking persistence. Here, as documented in Stockton Unified's assessment report, Student was persistent and stayed on task. "Hyperactivity" refers to excessive motor activity or excessive fidgeting, tapping, or talkativeness. Here, Student was quiet, even shy, with no signs of fidgeting or tapping. "Impulsivity" refers to hasty actions that occur in the moment without forethought. Here, the assessment team was surprised that Student paid attention and did not show any signs of impulsivity, which was unusual for a child of Student's age. (See DSM-5, Attention-Deficit/Hyperactivity Disorder, "Diagnostic Features.") At the time of the August 2022 assessments, Stockton Unified did not have information that would indicate ADHD was a suspected disability of Student. Therefore, Stockton Unified did not fail to assess Student for a suspected disability of ADHD.

Moreover, Stockton Unified did not have information that ODD could be a suspected disability of Student. Bloomquist said ODD was never considered for a two-year old and there was no reason to assess as a suspected disability. But even if considered, Student exhibited behaviors and attitudes inconsistent with ODD. The DSM-5 states that the essential feature of ODD is frequent and persistent pattern of angry/irritable mood, argumentative/defiant behavior, or vindictiveness. Here, each member of the assessment team described Student as sweet and cooperative, who pursued each task without complaint. (See DSM-5, Oppositional Defiant Disorder, "Diagnostic Features.") Stockton Unified did not have information that would indicate, at the time of the August 2022 assessments, that ODD was a suspected disability of Student. Therefore, Stockton Unified did not fail to assess Student for the alleged suspected disability of ODD.

Student cited a January 16, 2024, diagnostic evaluation of Student by Dr. Uvalde Palomares, a licensed psychologist. Mother had Student evaluated by Dr. Palomares for the purpose of getting her health insurance to approve coverage for home behavioral therapy. Dr. Palomares conducted the entire evaluation by teleconference. His report was silent as to how much time he spent observing Student. He also interviewed Mother. Dr. Palomares used the Gilliam Autism Rating Scale-Third Edition, and the Conners-3 Parent Rating. Though each of these two instruments have rating scale questionnaires designed for teachers or other providers, he only had Mother complete the rating scales. He also had Mother respond to the Autism Diagnostic Interview – Revised. Mother showed him four home videos of Student. Dr. Palomares diagnosed Student with autism, ADHD, and ODD, using the DSM-5.

Dr. Palomares did not testify at hearing. Per the evaluation, Dr. Palomares did not review any of Student's prior medical records and educational assessments. He did not contact any of Student's providers, teachers, or Stockton Unified's staff. Dr. Palomares did not observe Student in an educational setting and had no reliable knowledge of Student's educational program, her accommodations, her support, or her therapy. If Dr. Palomares diagnostic evaluation had been conducted by a school district assessor, it would not have been legally appropriate and could not properly be considered in determining Student's FAPE. (20 U.S.C. § 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).). Significantly, Dr. Palomares' diagnoses were made in January 2024, almost a year and a half after Stockton Unified's initial August 2022 evaluations. Dr. Palomares' diagnostic evaluation did not support Student's contention that Stockton Unified failed to assess Student in all areas of suspected disability in August 2022.

Stockton Unified's initial assessment of Student must be measured by what Stockton Unified reasonably and objectively knew at the time of its initial August 2022 assessments. (*Adams, supra*, 195 F.3d 1141, 1149.) At the time of the initial assessments and IEP team meeting, Stockton Unified did not possess or have information indicating that autism was a suspected disability requiring further assessment or that ADHD or ODD were suspected disabilities, requiring assessment.

Student failed to prove, by a preponderance of the evidence, that Stockton Unified denied Student a FAPE by failing to assess Student for the suspected disabilities of autism, attention deficit hyperactivity disorder, and oppositional defiance disorder. Student prevailed on Issue 1.

ISSUE 2: DID STOCKTON UNIFIED DENY STUDENT A FAPE IN THE 2022-2023 SCHOOL YEAR FROM FEBRUARY 1, 2023, BY REFUSING PARENT'S REQUESTS FOR A ONE-TO-ONE AIDE TO SUPPORT STUDENT'S TOILET TRAINING?

Student contended Stockton Unified denied Student a FAPE, beginning February 1, 2023, for the 2022-2023 school year, by refusing Parents' request for a one-to-one aide to support Student's toilet training. Student argued that Parents made the request because of Student's health needs related to her hydronephrosis, which caused Student to retain fluid in her kidney.

Stockton Unified responded that Parents did not ask for a one-on-one aide but instead request that Student's toileting needs be addressed in her IEP. When Mother presented a doctor's note indicating Student needed a bathroom schedule, which

included adult assistance with toileting and hygiene, Stockton Unified responded by providing hourly toileting support through a trained health services assistant, who was also available to assist Student for the entirety of the school day.

After her initial August 2022 IEP team meeting, Student attended the HeadStart general education preschool class, with teacher Alyssa Gibson, at Westgate School. Gibson had been a preschool teacher for Stockton Unified since 2018, and a credentialed general education teacher for 12 years. She had never been a special education teacher. She testified at the hearing, confirming Student attended her class for most of the 2022-2023 school year.

Student's preschool class had a maximum of 17 students, a full-time associate teacher, and an adult assistant, who helped from 8:00 a.m. to noon, with breaks, breakfast and lunch. Student attended school all day, except for one day a week for her off-campus speech and language services. The Student's Parents, usually Father, transported Student to and from school each day. Gibson communicated with Parents through phone conversations and the Stockton Unified communication application program, called Class DoJo, used by parents, students, and teachers.

The class took hourly bathroom breaks. Additionally, any child could use the bathroom at any time when needed. If Student had a bowel movement accident in her pull-up, Student's Parents would be contacted, to come and change Student.

Nurse Godoy formulated an emergency action plan to address Student's fluid retention in her kidneys in August 2022, assuring that Student had unlimited access to the bathroom and water for hydration, at any time. Student's condition was typically

addressed by giving her unrestricted access to the restroom. Until February 2023, Stockton Unified was unaware Student was not fully toilet trained and needed more than hands-off verbal assistance to use the bathroom.

Stockton Unified convened an amendment IEP team meeting on February 1, 2023, at Parents' request, to address Parent concerns. The IEP team agreed to initiate new assessments, due to its receipt of updated medical information and reports provided by Parents. The PAAC assessment team sent a new Student assessment plan to Parents. Mother signed the February 1, 2023 IEP document, agreeing to the contents of the amendment, without exception, on February 8, 2023, and returned it to Stockton Unified. At that time Mother also provided the district with a one-page document, entitled "Parents Concerns," to be attached to the amendment IEP.

One of Parents' concerns was that Parents were called to change Student if she had a toileting accident. Parents indicated Student did not communicate when she had a wet pull-up or bowel movement. The preschool staff were limited in assisting Student's toileting. Parents were concerned that if left unaddressed, Student's toileting accidents might lead to a urinary tract infection. Parents stated they were following up on this concern with Student's primary physician.

Teacher Gibson, the associate teacher, and the adult assistant were not permitted to help clean and toilet a child. This was not part of their authorized job duties. Special education administrator, Dr. Avila, testified that state preschool regulations prohibited the general education adult staff from assisting a preschooler with toileting and hygiene. They could take a child to the bathroom, but the child was responsible for

toileting, such as cleaning oneself. Those authorized to assist a preschooler with toileting included a registered nurse, licensed vocational nurse, a health service assistant, and trained special education teachers and certificated paraprofessional staff.

On February 15, 2023, Mother provided Stockton Unified with a doctor's note indicating Student required assistance with her toileting and hygiene, suggesting a scheduled toileting break every half hour. Stockton Unified school nurse, Michelle Kowsari, worked with Mother in developing the toileting schedule, providing trained and authorized support for Student's toileting needs. Kowsari was a registered nurse and testified at the hearing. From 2012 to June 2024, she was a school nurse. She was the HeadStart nurse in 2022-2023. In July 2024, she became Stockton Unified's health services program coordinator. Nurse Kowsari had created multiple health plans to address children's toileting needs in response to doctors' directions.

Nurse Kowsari and her team provided support to assist Student with her toileting and hygiene care, starting the next day, February 16, 2023. Mother requested Student have a once-per-hour toileting schedule, instead of every half hour, because Mother did not want Student to miss excessive class time. A Stockton Unified licensed vocational nurse or trained and authorized health care assistant was available to assist Student in the bathroom each hour of the school day, except for the first hour of school, from 8:00 a.m. to 9:00 a.m. Mother and Stockton Unified agreed Parents would assist Student with toileting prior to her drop-off at school.

Stockton Unified convened an amendment IEP team meeting on March 8, 2023, to discuss Student's toileting needs and support. Mother attended and participated in the meeting, along with a regional center coordinator. During the meeting, the team

discussed the current toileting accommodations, which had been in place since February 16, 2023. The IEP team discussed alternative means of addressing Student's toileting needs. Stockton Unified offered to change Student's placement to a collaborative special day classroom, where the staff were certificated to help Student with her toileting and hygiene. Mother did not accept this offer because Student was just then starting to get used to her current settings and Mother did not want any further changes for Student at that time. Mother agreed to continue with the then current program of an hourly toileting schedule handled by the health care assistant, who was also available at any time during the school day, along with Parents providing the toileting support for the first hour of the school day.

Mother did not request a one-to-one aide. Student did not present any evidence that a one-to-one aide was necessary to address Student's toileting needs, or otherwise. Student did not demonstrate Stockton Unified knew, or should have known, Student required assistance with her toileting and hygiene before it was provided the doctor's note on February 15, 2023.

When informed, Stockton Unified worked with Mother and provided qualified support for Student the next day, February 16, 2023. Mother affirmed the toileting program, indicating that Student's toileting needs were being addressed, at the March 2023 IEP team meeting. Also, Student presented no credible evidence that Student experienced any harm as a result of this toileting program, which Stockton Unified continued to provide until Student transferred from the general education HeadStart preschool to a special day class, at Marshall Elementary School, in May 2023.

Student failed to prove, by a preponderance of the evidence, that Stockton Unified denied Student a FAPE in the 2022-2023 school year from February 1, 2023, by refusing Parent's requests for a one-to-one aide to support Student's toilet training. Stockton Unified prevailed on Issue 2.

ISSUE 3(a): DID STOCKTON UNIFIED DENY STUDENT A FAPE IN THE 2023-2024 SCHOOL YEAR BY FAILING TO OFFER STUDENT THE FOLLOWING:

i. A TRAINED HEALTH AIDE TO ACCOMPANY STUDENT ON
TRANSPORTATION TO SCHOOL?

Student contended s Stockton Unified denied Student a FAPE by failing to offer a trained health aide to accompany Student on the bus to and from school to assure Student's safety and administer prescribed medication should Student suffer a seizure while on the bus. Stockton Unified contended that it responded to Parents' August 2023 notice that Student had a seizure in July 2023, which would require the administration of a prescribed seizure medication if the seizure lasted more than five minutes. Stockton Unified provided a district employed health aide to accompany Student on the school bus ride home, and contracted with an outside agency for the services of a health aide during Student's morning ride from home to school.

Student's placement in the HeadStart preschool at Westgate Elementary did not require transportation as a related service. In April 2023, the Stockton Unified comprehensive reevaluations were completed by school psychologist Melissa Lipman, speech and language pathologist Sylvia Marquez-Baker, special education teacher Corina Rogers, and school nurse Tania Godoy. Stockton Unified convened an IEP team

meeting, to review those evaluations. That meeting was held in two parts, on April 5, 2023, and April 28, 2023. Mother attended the meetings with a parent advocate, Cari Edwards, and Student's regional center case manager. Mother was offered the opportunity to participate in the meetings and did so through her advocate. After reviewing the reevaluations, the IEP team agreed to add "other health impairment" as a secondary eligibility category for Student.

At the April 2023 meetings Mother requested a change of placement from the HeadStart general education setting to a special day class. Stockton Unified had reservations about changing Student's placement so late in the school year, but the IEP team discussed a continuum of placement options. These included continued placement in a general education class, a collaborative special day class, or a structured special day class. Based on Mother's input and request, the IEP team offered placement in the PAAC structured special day class at Marshall Elementary School.

Student began at Marshall Elementary shortly thereafter. Since Marshall Elementary was not Student's home school, the IEP included an offer of transportation on the school bus with a proper car seat. A follow-up IEP meeting occurred on May 8, 2023, during which the team discussed any Parents' concerns regarding the placement. The IEP team again determined the structured setting was appropriate for Student at the time. No one, including Mother and her advocate, raised concerns about Student engaging in self-harm or suggested Student required applied behavior analysis during her school day.

Mother reported Student experienced a febrile seizure in July 2023, while Student was on summer break and not attending school. Once school resumed for the 2023-2024 school year, Stockton Unified convened an IEP meeting on August 29, 2023

to discuss Student's health needs. Mother attended the meeting and was accompanied by advocate Edwards, as well as Student's regional center case manager. Student had been prescribed Diastat. Diastat was a rectal gel and was to be administered if Student had a seizure lasting more than five minutes.

Nurse Godoy updated the emergency health action plan to provide for an emergency response with Diastat if Student experienced a seizure lasting more than five minutes. The IEP team determined a health services rider would accompany Student on the bus ride home, in the afternoon to administer Diastat, if needed. The IEP team discussed options for morning transportation, including reimbursement to Parents for mileage and Student riding the bus without a health services rider. Mother chose to have Student continue to ride on the morning bus without additional support, acknowledging that Student did not require a health aide on the bus in the morning transport. Student did not present evidence that the health aide was necessary for the morning transport to school, at that time.

About two weeks later, on September 15, 2023, Student vomited while on the bus in the morning, which Mother reported as a possible seizure. However, Student presented no evidence that the vomiting incident was a seizure. Also, nurse Godoy testified that even if the vomiting incident was a type of seizure, a health services rider would not have administered Diastat because the incident did not involve seizure lasting more than five minutes. The sole symptom was vomiting and administration of the Diastat would have been inappropriate. A health services rider would not have addressed the situation any differently than the bus driver, who pulled the bus over and stopped, assisted Student, and called Father.

Stockton Unified convened another IEP meeting, held in two parts, on September 25, 2023 and November 14, 2023. Parents decided not to let Student continue to ride the morning bus without a health service rider. The team agreed Stockton Unified would contract with an outside provider, to secure a health services rider for Student's morning transportation. The contracted health services rider for Student's morning bus commute started within a couple of weeks.

Student failed to demonstrate that Stockton Unified failed to provide Student with a health services rider to accompany Student on her bus transportation. Stockton Unified provided the trained rider support for the afternoon bus ride. Mother chose to continue to have Student take the morning school bus without a health services provider, confirming Student would be able to do so. There was no evidence that this was inappropriate for Student. When Parents changed their mind after the September 15, 2023 vomiting incident, Stockton Unified obtained a health services rider from an outside, contracted provider. Student failed to introduce any evidence that Student suffered educational harm because a morning health services rider did not begin until November 2023. Other than the initial reported seizure in July 2023, Student had no documented seizures or seizure activity on the bus or at school.

Student failed to prove, by a preponderance of the evidence, that Stockton Unified denied Student a FAPE in the 2023-2024 school year by failing to offer Student a trained health aide to accompany Student on transportation to school. Stockton Unified prevailed on Issue 3(a)(i).

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ii. PLACEMENT IN THE PAAC?

Student asserted that Stockton Unified denied Student a FAPE for the 2023-2024 school year by failing to offer Student placement in Stockton Unified's PAAC program. Stockton Unified contended that Student's placement in an autism structured special day class at Marshall Elementary.

The IEP team reviewed Stockton Unified's April 2023 comprehensive reevaluations at IEP team meetings held on April 5 and April 28, 2023. Mother attended those meetings, along with her parent advocate. Following the teams' review of the most recent assessments, Parent requested a change of placement from the general education setting to a special day class. After some discussion, Stockton Unified offered Student placement in the PAAC structured special day class at Marshall Elementary. Though most of PAAC's programs were located on the St. Bernadette's church campus, PAAC programs were also at other sites, such as Marshall Elementary. Mother viewed and agreed to the offered PAAC placement and Student began at Marshall Elementary shortly thereafter.

The IEP team discussed the Marshall Elementary PAAC placement at an IEP meeting on May 8, 2023. The IEP team, including Mother and her advocate, determined that the structured setting was appropriate for Student. That placement had one teacher, five special education aides, and twenty students. It utilized extensive integrated supports for language, social emotional, behavioral and academic development. The offer of a FAPE also included thirty minutes per week of direct group speech and language therapy

to complement Student's placement in the language enriched classroom. The structured special day class staff utilized PECS and First/Then contingency programs to support Student's communication. The classroom staff were also properly certified to assist Student with her toileting and hygiene.

During the August 29, 2023 IEP meeting, Stockton Unified proposed a change of placement from the structured class at Marshall Elementary to the structured class at PAAC's main campus, at St. Bernadette's church, which was closer to her home. Mother later viewed the class at St. Bernadette's Church, and declined the offered placement on September 15, 2023. Mother noted Student was comfortable and had made progress in her PAAC class located at Marshall Elementary.

Student was placed in a PAAC structured autism class for the 2023-2024 school year, which Mother confirmed at hearing. Student failed to prove, by a preponderance of the evidence, that Stockton Unified denied Student a FAPE in the 2023-2024 school year by failing to offer student placement in the preschool assessment and autism center program.

Stockton Unified prevailed on Issue 3(a)(ii).

iii. FOR ACCOMMODATIONS OF PICTURE EXCHANGE
COMMUNICATION SYSTEM AND FIRST/THEN CONTINGENCY?

Student asserted Stockton Unified denied Student a FAPE for the 2023-2024 school year by failing to offer accommodations for picture exchange communication system, commonly called PECS, and First/Then contingency. Stockton Unified

contended that both PECS and First/Then contingency were provided in the April 2023 IEP, when Student's placement changed to the PAAC structured special day class for the 2023-2024 school year.

Special education program specialist Hampton was part of Stockton Unified's PAAC program since 2018. She was the program specialist and administrative designee at the April 5 and April 28, 2023 IEP team meetings. Hampton had a bachelor's and master's degrees in special education and holds current credentials in general education and as a mild/moderate education specialist. Hampton also completed a preliminary administrative services credential program. She testified at the hearing.

At the April 2023 IEP team meetings, Mother accepted Stockton Unified's offer to place Student in a PAAC structured special day class at Marshall Elementary and Student soon transitioned to her new class at Marshall Elementary. The structured special day class staff utilized PECS and First/Then contingency, to support Student's communication.

Program specialist Hampton stated that the PECS program was listed in the April 2023 IEP as an assistive technology, instead of an accommodation. First/then contingency, also called the Premack Principle, was a tool for creating positive behavior momentum to motivate a child by sequencing a preferred activity after a less or non-preferred activity, to reinforce the child's effort. First/Then was included in the April 2023 IEP as an accommodation. Hampton explained that PECS and First/Then were both utilized as part of the structured special day class. Speech pathologist Loan Vo, who provided some of Student's speech services, emphasized that PECS was "always available" in the structured day class, along with other visual supports, which reinforced the communication rich educational environment.

When Mother testified at hearing, she alluded to a statement allegedly made by a PAAC class teacher, that PECS was not used in Marshall Elementary class. However, the testimony and documentary evidence demonstrated that PECS was used in Student's special day class. In fact, Mother told Student's primary care physician, Dr. Dawn Gano, in July 2024, that Student was using PECS at school to support her communication with staff.

Documentary and testimonial evidence confirmed Student was offered and was receiving PECS and First/Then contingency as part of Student's IEP placement in the PAAC structured special day class for the 2023-2024 school year. Student failed to prove by a preponderance of the evidence that Stockton Unified denied Student a FAPE in the 2023-2024 school year by failing to offer Student accommodations for the picture exchange communication system and First/Then contingency.

Stockton Unified prevailed on Issue 3(a)(iii).

iv AN ALTERNATIVE AUGMENTATIVE COMMUNICATION DEVICE?

Student claimed that Stockton Unified denied Student a FAPE in the 2023-2024 school year by failing to offer Student an alternative augmentative communication device. Mother claimed Student was essentially nonverbal, saying only one or two words, and her vocabulary was small and limited. Student further argued that an alternative augmentative communication device would have enabled Student to fully participate in class, interacting with adults and socializing with her peers. Parents asserted Student needed an augmentative communication device to access and benefit from her educational program and make meaningful progress.

Stockton Unified contended Student consistently demonstrated a desire to verbally communicate and made regular progress in her verbal communication. A high-tech alternative augmentative communication device was intended to serve as a mode of communication only when no other means existed. A high-tech communication device would diminish Student's motivation to verbally communicate with adults and peers and would rob Student of the opportunity to develop her expressive communication skills.

Augmentative or alternative communication, commonly called AAC, refers to all forms of communication outside of oral speech. Gestures, communications boards, pictures, symbols, and drawings are common AAC tools. During the hearing, these methods were referred to as low-tech. High-tech AAC tools include speech boards and iPads, which a person uses when other means of communication are unavailable. Here, the type of AAC tool that Parents referred to in the issues was a high-tech AAC device. During hearing, Student's counsel was repeatedly admonished to clearly distinguish between high-tech and low-tech AAC when questioning witnesses or making argument.

Student's speech-language pathologists testified at the hearing. Pathologist Speer-Paulin conducted Student's initial speech and language evaluation in August 2022, which was reviewed in the analysis of Issue 1. She had been a pathologist for almost 28 years and had a formidable history of evaluating young children through four years of age. She testified calmly and clearly, providing a basis for her conclusions and recommendations. Speer-Paulin's testimony was persuasive and given significant weight in analyzing Student's speech and language needs.

Speer-Paulin's assessments and observations confirmed Student's expressive language was significantly delayed. Student gestured and made facial expressions, made eye contact, and demonstrated an intent to communicate. Student imitated one

or two words during testing. Speer-Paulin's professional belief was that Student was a little more capable than the testing indicated. She recommended group speech services, because toddlers working together was a powerful tool in developing expressive communication skills. Speer-Paulin's professional opinion was that a high-tech AAC device was not appropriate for Student. High-tech AAC was appropriate only when no other communication was available. Such an AAC device would not increase Student's motivation to communicate and would do nothing to amplify Student's speech and improve her articulation.

Speech pathologist Sylvia Marquez-Baker conducted Student's speech and language evaluation as part of Student's April 5, 2023 preschool multidisciplinary psychoeducational evaluation. She had a masters of arts in communicative disorders, a clinical rehabilitative services credential, a preliminary administrative services credential, and an autism spectrum disorders certificate from University of California, Davis. She had worked as a bilingual speech-language pathologist for Stockton Unified since 1995 and had more than 30 years of experience with special needs children, from preschool to middle school. Marquez-Baker's education, training, and experience qualified her to evaluate Student's speech and language skills and render an expert opinion regarding Student's special education eligibility, as well as the appropriate speech and language services and supports. Her testimony was insightful, informed, and persuasive.

Student was three years, seven months old at the time of the April 2023 assessment. Marquez-Baker clinically observed Student during assessments, reviewed the other assessment team observation notes, and evaluated Student's speech mechanisms of articulation, phonology, voice, and fluency. She administered two standardized instruments, the communication domain of the Developmental Assessment of Young Children, Second Edition, and the Preschool Language Scale,

Fifth Edition. Marquez-Baker also completed the Critical Communication Skills Worksheet, which was an informal checklist obtained through Mother's interview, providing an added lens through which to see Student, other than standardized tests.

Marquez-Baker affirmed that Student met the eligibility criteria for special education under the category of speech or language impairment. She confirmed Student would continue to benefit from an educational placement that supported Student's emerging social awareness and her development of functional use of language. Marquez-Baker recommended speech and language services to address Student's functional language needs, which included pragmatics and Student's emerging social reciprocity.

Marquez-Baker testified that Student would not benefit from and did not require a high-tech AAC device. She explained that Student was using PECS, a low-tech AAC, in the classroom, which was always paired with language to encourage her additional verbal production. Marquez-Baker noted Student's social awareness was improving. Marquez-Baker further testified, as she explained at the April 2023 IEP team meetings, that use of a high-tech AAC device would require Student directing attention to a physical object instead of accessing human communication partners to get her needs met. This would impede Student's ability to learn through play and social reciprocity. Student was verbal with her younger brother. Marquez-Baker noted that Student had a desire to communicate with others and should be given the opportunity to develop communicative skills. A high-tech AAC device would not assist Student in this regard.

Loan Vo was a state-licensed speech-language pathologist, with a certificate of clinical competence and a professional clear clinical or rehabilitative services credential. She worked 10 years as a pathologist for Stockton Unified, provided speech services to

Student in May 2023, and testified at hearing. She also attended a May 8, 2023 IEP team meeting where Mother, through her advocate, requested an AAC device for Student. At that meeting Mother asked for a high-tech AAC device, like an iPad, for Student.

Loan Vo testified that a high tech AAC device was indicated only when a student solely relied on a core board, PECS or other alternative forms of communication, and did not demonstrate any verbal imitation. This was not the case with Student. Therefore, a high-tech AAC device, like an iPad, would not promote Student's use of verbal speech, who had the ability to imitate speech and demonstrated an intent to communicate verbally.

Speech pathologist Laura Reinlib provided speech services to Student throughout the 2023-2024 school year. She virtually communicated with Mother who, at the beginning of the year, asked about the use of a high-tech AAC device for Student. Reinlib told Mother that a high-tech AAC device was typically for nonverbal children. She also told Mother a high tech AAC device was inappropriate for Student because Student was communicating verbally. Reinlib attended the March 13, 2024 IEP team meeting, which was a plan review in preparation for Student's transition to Kindergarten. Both Father and Mother attended and stated that there had been no AAC device support. Reinlib explained to the Parents that Student showed turn-taking skills and concern for others' feelings, which demonstrated the growth Student made in the area of speech and language. In class, Student required modeling to reciprocally engage in activities. Reinlib told the IEP team that a high-tech AAC device would discourage

Student from initiating language and building her communication skills. Reinlib testified that her opinion remained the same. A high-tech AAC device for Student was inappropriate because Student was a growing communicator, who achieved her IEP speech goal at the end of the year.

Student submitted an August 1, 2024 letter from Student's treating neurologist, Dr. Dawn Gano, from UCSF. Less than two weeks before the hearing, Dr. Gano recommended a list of supports, one of which was an AAC device because Student struggled with her communication. However, Dr. Gano's recommendation was without any persuasive context. Dr. Gano did not testify, so it was unclear what Dr. Gano did not know. Nothing in the letter indicated Dr. Gano was familiar with Student's speech and language assessments or the professional opinions of Student's multiple speech pathologists that an AAC device would discourage Student's verbal communicative development. The letter indicated Dr. Gano was unaware Student was placed in a communication-rich learning environment, which consistently supported Student's development of social reciprocity and communicative skills. And nothing indicated Dr. Gano's recommendations were based upon any expertise with such technologies and how their use may diminish the goal of building upon Student's communicative intent and developing verbal communication. Consequently, Dr. Gano's recommendation regarding the appropriateness of a high-tech AAC device for Student was unpersuasive.

Student had the burden of proof by a preponderance of the evidence. *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; *see also* 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student did not meet their burden. Student's assessments and

the testimony of qualified, insightful speech pathologists established that a high-tech AAC device was not appropriate for Student and, indeed, could discourage Student's motivation to verbally communicate.

Student failed to prove, by a preponderance of the evidence, that Stockton Unified denied Student a FAPE in the 2023-2024 school year by failing to offer Student an alternative augmentative communication device.

Stockton Unified prevailed on Issue 3(a)(iv).

ISSUE 3(b): DID STOCKTON UNIFIED DENY STUDENT A FAPE IN THE 2023-2024 SCHOOL YEAR BY SIGNIFICANTLY IMPEDING UPON PARENTS' OPPORTUNITY TO PARTICIPATE IN THE DECISION-MAKING PROCESS REGARDING PROVISION OF A FAPE FOR STUDENT BY REFUSING PARENTS' REQUESTS FOR: (i) A TRAINED HEALTH AIDE TO ACCOMPANY STUDENT ON TRANSPORTATION TO SCHOOL; (ii) PLACEMENT IN THE PAAC, A DISTRICT PROGRAM; (iii) FOR ACCOMMODATIONS OF PECS AND FIRST/THEN CONTINGENCY; AND (iv) AN ALTERNATIVE AUGMENTATIVE COMMUNICATION DEVICE?

Student asserted Stockton Unified denied Student a FAPE by impeding Parents' opportunity to participate in the decision-making process regarding the provision of FAPE, by refusing Parents' requests for:

- (i) a trained health aide to accompany Student on transportation to school;

- (ii) placement in the Preschool Assessment and Autism Center, a district program;
- (iii) for accommodations of picture exchange communication system and First/Then Contingency; and
- (iv) an alternative augmentative communication device.

Stockton Unified contended Parents had the opportunity to participate, and did participate, at every IEP team meeting, many of which were convened at Parents' request. Parents brought an advocate, who strongly participated on Parents' behalf, to most of the IEP meetings. Stockton Unified asserted the IEP documents, and the testimony of witnesses who attended the IEP team meetings, demonstrated that Stockton Unified heard and responded to Parents' requests; did not dismiss Parents' questions and concerns; accepted and included many of Parents' recommendations in Student's IEP, and always discussed the reasons for any disagreement.

Federal and California state laws require that student's educational rights holder be part of any IEP team meeting which is charged with developing and implementing a student's IEP. (20 U.S.C. §§1401(14) 1414(d)(1)(B)(i); Ed. Code, § 56342.5.) School districts must assure that parents have the opportunity, "to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(1).) The United States Supreme Court recognized that parental participation in the special education process was essential to the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994; 167 L.Ed.2d 904].)

However, an IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA did not provide for an "education ... designed according to the parent's desires."].) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) A school district has the right to select the program offered, as long as the program can meet the student's needs, and the district is ultimately responsible for ensuring a FAPE is offered. (*Letter to Richards* (U.S. Dept. of Education, Office of Special Education Programs (OSEP) January 7, 2010).)

Contrary to Student's assertions, Parents' participation during the IEP meetings was extensive. Stockton Unified convened seven IEP team meetings related to the 2023-2024 school year. The annual plan review of Student's reevaluations had IEP team meetings on April 5, 2023 and April 28, 2023. Stockton Unified subsequently convened amendment IEP meetings on May 8, 2023, August 29, 2023, September 25, 2023, and November 14, 2023. On March 13, 2024, the IEP team met to review Student's program for her transition to Kindergarten.

Mother attended all the IEP team meetings and was accompanied by Student's service coordinator from Valley Mountain Regional Center, Kimberlee Adina or Shari Jones, and parent advocate Cari Edwards, except at the IEP team meeting on March 13, 2024. Father attended the March 13, 2024 IEP team meeting with Mother.

Stockton Unified helped ensure Parents' meaningful participation in IEP team meetings by providing them with evaluation reports and draft goals for their review in advance of the meetings. Also, Parents frequently provided written parent concerns to Stockton Unified in advance of the IEP team meetings. These concerns were attached in

writing to the IEP documents, and were addressed at the meetings. Mother testified to her extensive experience attending and advocating for her five children at IEP meetings and testified that she “knew how the process works.”

Mother deferred to her advocate Edwards to speak on her behalf during IEP meetings, even when Mother was specifically addressed by the IEP team. Various attendees testified at hearing that parent advocate Edwards provided outspoken and extensive input at the IEP team meetings, often yelling, targeting certain team members, creating tension, interrupting, and turning IEP team meetings into unpleasant experiences. In many instances, parent advocate Edwards dominated the IEP team discussions. In this decision, any reference to Mother’s or Parents’ statements, questions, or expressed concerns at IEP team meetings, include those made by advocate Edwards, who was authorized to speak on Parents’ behalf.

Student’s assertion that Stockton Unified denied Student a FAPE because it did not offer a trained health aide to accompany Student on transportation to school was discussed and analyzed above, in Issue 3(a)(i). Stockton Unified convened three IEP team meetings to address Parents’ concerns regarding possible seizures while Student rode on the bus to and from school. Upon being informed that Student had a seizure over the summer in July 2023, Stockton Unified promptly created a health plan and quickly convened an IEP team meeting on August 29, 2023, to address Student’s health services for an emergency seizure medication, if needed. The IEP team came to an agreement regarding a health service rider accompanying Student on the bus in the afternoon ride home. The IEP team meeting notes and attendees’ testimony demonstrated a thorough discussion by the IEP team, with Parent advocate’s robust participation.

Stockton Unified convened a September 25, 2023 IEP team meeting, following an incident of Student vomiting on the bus ride to school. The IEP team meeting notes, supported by attendees' hearing testimony, demonstrated that Parent and advocate Edwards shared new medical information regarding Student, Parent's reasons for deciding not to transition Student to another PAAC classroom at that time, and possible means of providing a health service rider on the morning bus ride. Student's special day class teacher, Kelly Skultety, detailed how Student was doing in class. At that IEP meeting, the team also discussed speech and language services in response to Mother's inquiries.

The IEP team continued that IEP meeting to November 4, 2023, at which time the addition of a health service rider for the morning bus ride was discussed and finalized. Mother asked about processes being in place if the rider would somehow be unavailable and how Parents would be reimbursed for driving Student to school. The IEP team meeting notes and testimony demonstrated that Parents participated in discussions of various options, sought and received details regarding rider scheduling, and received responses to questions about Student's class and speech services. Parents' opportunity to participate in the decision-making process was not in any way impeded.

Student's assertion that Stockton Unified denied Student a FAPE for the 2023-2024 school year because it failed to offer placement in Stockton Unified's preschool assessment and autism center was discussed and analyzed above, in Issue 3(a)(ii). However, contrary to Parents' contention, Student was placed in a PAAC structured autism class for the 2023-2024 school year, in response to Mother's requests at the IEP team meetings of April 5 and April 28, 2023. Therefore, Parents were not

denied an opportunity to participate in the decision-making process regarding provision of a FAPE for Student because Stockton Unified did not deny Parents' request for a PAAC placement.

Student's assertion that Stockton Unified denied Student a FAPE for the 2023-2024 school year because it failed to offer accommodations for PECS and First/Then contingency was discussed and analyzed above, in Issue 3(a)(iii). However, contrary to Parents' contention, Student had PECS and First/Then contingency as part of Student's April 2023 IEP placement in the PAAC structured special day class for the 2023-2024 school year. Therefore, Parents were not denied an opportunity to participate in the decision-making process regarding provision of a FAPE to Student because Stockton Unified refused Parents' request for PECS and First/Then contingency. Parents were heard and the district offered the program Parents requested.

Student's assertion that Stockton Unified denied Student a FAPE for the 2023-2024 school year because it failed to offer Student an alternative augmentative communication device was discussed and analyzed above, in Issue 3(a)(iv). This analysis detailed the continuing conversations between Parents and Stockton Unified staff regarding the appropriateness of a high-tech AAC device for Student. Mother and advocate asked about a high-tech AAC device at the April 2023 IEP team meetings. In response, pathologist Marquez-Baker detailed Student's communicative needs and why an AAC device would not assist Student in developing her communicative skills. Pathologist Vo attended the May 8, 2023 IEP team meeting in which Mother's advocate asked about a high-tech AAC device for Student. Vo explained that a high-tech AAC device would not promote Student's use of verbal speech.

When pathologist Reinlib started delivering services to Student, she had conversations about the use of a high-tech AAC device with Mother. Reinlib explained to Mother that such an AAC device was typically for nonverbal children and would be inappropriate because Student was communicating verbally. Reinlib attended the March 13, 2024 IEP team meeting, where Mother and Father said Student did not have high-tech AAC device support. Reinlib responded with a detailed explanation of why such a device was inappropriate, explaining it would discourage Student from initiating language. The IEP team and Student's pathologists listened and responded to Parents' requests, detailing the reasons why the device was inappropriate and could discourage Student to develop her communication skills.

Stockton Unified's decision not to offer a high-tech AAC device, though requested by Parents, was not evidence of Stockton Unified impeding Parents' opportunity to participate in the IEP decision-making process. The Ninth Circuit has held that while the school district must allow for meaningful parental participation, it has no obligation to grant the parent a veto over any individual IEP provision. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) In other words, a school district's decision not to offer what the parent requests or demands was not the same as denying the parent meaningful participation in the IEP decision-making process.

Here, Student simply did not offer any substantive, persuasive documentary or testimonial evidence that Stockton Unified ever impeded Parents from an opportunity to ask questions, disagree with proposals, make requests, or otherwise challenge Stockton Unified's views or proposals. Stockton Unified consistently included Parents and their advocate in the IEP team discussions.

Student failed to prove by a preponderance of the evidence that Stockton Unified denied Student a FAPE in the 2023-2024 school year by significantly impeding upon Parents' opportunity to participate in the decision-making process regarding the provision of FAPE by refusing Parents' requests for

- (i) a trained health aide to accompany Student on transportation to school,
- (ii) placement in the PAAC,
- (iii) accommodations of PECS and First/Then contingency, and
- (iv) an AAC communication device.

Stockton Unified prevailed on Issues 3(b)(i), 3(b)(ii), 3(b)(iii), and 3(b)(iv).

ISSUE 4: DID STOCKTON UNIFIED DENY STUDENT A FAPE IN THE IEP DATED APRIL 5, 2023, BY SIGNIFICANTLY IMPEDING UPON PARENT'S OPPORTUNITY TO PARTICIPATE IN THE DECISION-MAKING PROCESS REGARDING PROVISION OF A FAPE FOR STUDENT BY FAILING TO CONSIDER PARENTS' CONCERNS REGARDING STRESS AND ANXIETY STUDENT WOULD LIKELY EXPERIENCE BY CHANGING FROM BUSH ELEMENTARY SCHOOL TO MARSHALL ELEMENTARY SCHOOL?

Student contended Stockon Unified denied Student a FAPE at the April 5, 2023 IEP by significantly impeding Parents' opportunity to participate in the decision-making process regarding the provision of FAPE to Student because it did not consider Parents' concerns regarding stress and anxiety Student would likely experience by changing from Bush Elementary School to Marshal Elementary School.

Stockton Unified contended Parents requested Student be placed in a more restrictive environment and asked for placement in a Stockton Unified PAAC special day class. Parents' request was discussed by the IEP team at the April 5 and April 28, 2023 IEP team meetings, in email exchanges amongst Stockton Unified staff, Mother, and advocate, and a May 8, 2023 IEP team meeting. Stockton Unified maintained that it, not Parents, was concerned about how the change in placement from the HeadStart preschool to a PAAC program, so late in the school year, would affect Student. Stockton Unified listened and responded to Mother's expressed desire for a more structured environment. Therefore, Stockton Unified formally offered placement in a PAAC structured autism special day class, located at Marshall Elementary.

Student misstated facts and made assertions that were contradicted by documentary evidence and reliable testimony. Issue 4's claim that Student was transferred from Bush Elementary School to Marshall Elementary School was incorrect. Student was never placed at Bush Elementary. Instead, following Student's initial August 18, 2022 IEP team meeting, Parents independently selected and enrolled Student in the HeadStart preschool, located on the Westgate Elementary campus. Student's initial IEP team found Student eligible under the category of speech or language impairment and offered her speech and language services, as a "walk-on service," at Student's home school, which was Bush Elementary. This meant that Parents would bring Student to Student's home school site, Bush Elementary, for speech services one day per week.

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Student was never enrolled at Bush Elementary. However, Stockton Unified sought a ruling on the merits of Issue 4 and, therefore, this analysis of Issue 4 assumes Student correctly asserted that Student was transferred from the state HeadStart preschool class at Westgate Elementary to a PAAC structured special day class at Marshall Elementary.

Parents gave Stockton Unified a written list of their concerns, dated February 1, 2023, which informed Stockton Unified that University of California, Davis, MIND Institute had evaluated Student and arrived at a provisional autism diagnosis. Parents then requested consideration of a PAAC program placement. Stockton Unified convened a February 1, 2023 amendment IEP team meeting. The team reviewed the updated medical information and reports and discussed Parents' concerns and placement request. Stockton Unified offered comprehensive reevaluations of Student, by the PAAC assessment team. The team agreed not to make any changes until the completion of the reevaluations.

Stockton Unified convened an IEP team meeting to review the evaluations, which was held in two parts on April 5, 2023 and April 28, 2023. Mother advocated for a more restrictive placement and was unwilling to have Student finish the school year at HeadStart and wait until the next school year. PAAC had a collaborative special day class and a more restrictive, structured special day class. The team discussed the difference between the collaborative and structured classes at length during the IEP team meetings. Stockton Unified team members believed Student's goals could be achieved in the collaborative special day class. However, Mother rejected the

recommendation for the collaborative class because she believed Student required more support than was available in the collaborative class. Stockton Unified agreed to offer placement in the structured class, which was also appropriate for Student.

Mother toured the structured class at Marshall Elementary prior to Student's official placement and attendance. Program specialist Erica Hampton discussed some of Mother's placement concerns in email exchanges between April 28 and May 5, 2023. Stockton Unified convened a May 8, 2023 amendment IEP team meeting to address any remaining Parental placement concerns. Stockton Unified offered the PAAC structured autism special day class, Mother accepted, and Student started attending it on May 9, 2023. The structured special day class staff utilized PECS and First/Then contingency, to support Student's communication. The staff in that class were properly certified to assist Student with her toileting and hygiene. Mother found the program to be beneficial to Student. At the September 25, 2023 IEP, Stockton Unified offered to transfer Student to a special day class at the PAAC program at St. Bernadette's church, which was closer to Student's home. Mother declined the offer, requesting that Student remain in her then current structured special day class at Marshall Elementary.

Stockton Unified did not force Mother to accept a more restrictive placement against her pleas to keep Student in the general education setting. Mother acknowledged in her testimony that she advocated for Student's placement in PAAC's structured autism setting. Stockton Unified did not tell Mother that Student had to change placement to access toileting support. Student was receiving toileting support at her then current HeadStart placement at Westgate Elementary. Moreover, Stockton Unified, not Mother,

expressed concerns about moving Student from her HeadStart placement to a PAAC special day class so close to the end of the school year because of Student's need for extended time to build rapport.

Student failed to prove, by a preponderance of the evidence, that Stockton Unified denied Student a FAPE in the IEP dated April 5, 2023, by significantly impeding upon Parent's opportunity to participate in the decision-making process regarding provision of a FAPE for Student by failing to consider Parents' concerns regarding stress and anxiety Student would likely experience by changing from Bush Elementary School to Marshall Elementary School.

Stockton Unified prevailed on Issue 4

ISSUE 5: DID STOCKTON UNIFIED DENY STUDENT A FAPE IN THE 2022-2023 SCHOOL YEAR BY FAILING TO OFFER STUDENT:

- a. A ONE-TO-ONE AIDE WHO COULD MONITOR STUDENT'S HEALTH, SUPPORT STUDENT'S TOILET TRAINING, CHANGE STUDENT'S DIAPERS, AND MONITOR STUDENT'S SELF-HARMING BEHAVIORS?

Student contended she was denied a FAPE in the 2022-2023 school year because Stockton Unified did not offer a one-to-one aide to monitor Student's health, support her toilet training, change her diapers, and monitor her self-harming behaviors. Stockton Unified contended that Student did not require a one-to-one aide, that her toileting and hygiene needs were addressed with assigned trained nurses and health aides, and there was no evidence of Student's self-harming behaviors.

Student did not clarify what they meant by “one-on-one aide” in the hearing. A one-on-one aide usually referred to an adult aide to support or address a child’s academics, social pragmatics, or behaviors. Here, Student alleged that Student required a dedicated adult to address Student’s health needs, toileting needs, and alleged self-harming behaviors.

Student’s most discussed health concern at IEP team meetings was her hydronephrosis. Nurse Godoy formulated an emergency action plan to address Student’s consequential kidney fluid retention in August 2022. This plan assured Student had unlimited access to the bathroom and water for hydration. Parents enrolled Student in the HeadStart preschool program. Mother testified she was “very familiar” with the Westgate HeadStart preschool, because she had other children who had attended it in the past and knew that the program staff would not be able to physically assist with toileting and hygiene. Student had unrestricted access to the bathroom and water. Nurse Kowsari persuasively testified that hydronephrosis did not impact Student’s ability to know when she needed to use the restroom or her ability to be toilet trained.

As discussed in Issue 2 above, Stockton Unified was unaware Student needed more than hands-off verbal assistance to use the bathroom, until February 2023. At the February 1, 2023 IEP, Parents shared that the preschool staff were limited in assisting Student’s toileting needs and were concerned that, if left unaddressed, Student’s toileting accidents might lead to a urinary tract infection. Parents stated they were following up with Student’s primary physician regarding this concern.

On February 15, 2023, Mother provided Stockton Unified with a doctor's note indicating Student required assistance with her toileting. Nurse Kowsari and her team provided support to assist Student with her toileting and hygiene care, starting the next day, February 16, 2023. Nurse Kowsari worked with Mother in developing the toileting schedule, and providing training to the staff members who were authorized to support Student's toileting needs. At the March 2023 IEP team meeting, Mother confirmed that the implemented toileting program met Student's toileting needs. Student presented no credible evidence that Student experienced any harm as a result of this toileting program, which Stockton Unified continued to provide until Student transferred from the general education HeadStart preschool to a PAAC special day class at Marshall Elementary in May 2023.

Student did not have any other medical needs that needed to be addressed at school, other than her hydronephrosis, during the 2022-2023 school year. Student took no medication at school and did not require any other regular nursing services. When Stockton Unified initially assessed Student in August 2022, Nurse Godoy created a cardiac emergency action plan to address Student's history of heart murmur, but Student did not require any care or intervention and showed no impact of her heart murmur. During the 2022-2023 school year, Student had no history of seizures and no evidence suggesting that she required any other health support during the school day. Student failed to present any persuasive documentary or testimonial evidence that Student required an assigned one-to-one adult for the purpose of monitoring her health during the 2022-2023 school year.

Stockton Unified staff did not observe Student engaging in any self-harming behaviors at school and did not have any reason to be concerned about self-harm behaviors. Student's HeadStart preschool teacher, Gibson, did not see any such behavior. Nurse Kowsari said she and her team of health service assistants, who worked with Student every day supporting her toileting needs, did not observe any self-harming behaviors. Student failed to establish she ever exhibited self-harming behaviors requiring a one-on-one aide to monitor or address Student's supposed self-harming behaviors.

In argument, Parents referred to Dr. Gano's August 1, 2024 two-page letter, which recommended a one-on-one aide to provide supervision and intervention to navigate and support Student's behavioral challenges, engagements in learning activities, and to ensure her safety throughout the school day. The recommendation did not identify the behaviors or safety issues which were not already addressed or supported in Student's structured special day class. Dr. Gano obviously was unaware of Student's structured learning environment. Therefore, Dr. Gano's written recommendation regarding a one-to-one aide for Student was unpersuasive.

Student had the burden of proof. (*Schaffer, supra*, 546 U.S. 49, 57-58.) Here, Student failed to prove by a preponderance of the evidence that Stockton Unified denied Student a FAPE in the 2022-2023 school year by failing to offer Student a one-to-one aide who could monitor Student's health, support Student's toilet training, change Student's diapers, and monitor Student's self-harming behaviors.

Stockton Unified prevailed on Issue 5(a).

b. APPROPRIATE APPLIED BEHAVIOR ANALYSIS THROUGHOUT THE SCHOOL DAY?

Student alleged that she was denied a FAPE in the 2022-2023 school year because Stockton Unified did not offer appropriate applied behavior analysis throughout the school day. Stockton Unified contended Student did not require applied behavior analysis services because Student never exhibited behaviors which required it.

In the case of a student whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, strategies, including positive behavioral interventions, and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Cal. Ed. Code, § 56341.1, subd. (b)(1).) Applied behavior analysis is a specialized intensive behavior modification therapy that helps children to develop skills to lessen problematic behaviors, like aggression, tantrums, and hurting themselves.

Student's preschool teacher, Gibson, and all of Student's assessors. described Student's behavior as average and unproblematic at school. Student was quiet and reserved at the beginning of the 2022-2023 school year, and demonstrated some limited non-compliance behaviors, by quietly choosing not to engage in an activity. Gibson and speech pathologist Speer-Paulin testified this behavior was not unexpected for a new preschooler. However, Student warmed up over the course of the year and later engaged more fully in class activities. For example, Student increasingly engaged

in parallel play with other children, and joined in games of tag, which was a noted improvement over the quiet and shy social behavior demonstrated at the beginning of the year.

In Student's April 5, 2023, multidisciplinary psychoeducational evaluation, school psychologist Lipman said Student was compliant with directions and transitioned without incident between activities during assessments. While some of the scale instruments endorsed characteristics consistent with autism, Student also demonstrated skills and behaviors that were inconsistent with autism, including an awareness of others and consistent eye contact with others. Special education teacher Rodgers conducted the academic assessment and described Student as cooperative and timid, and very aware of everyone in her environment. Lipman concluded Student's behavior and presentation was consistent with fetal alcohol syndrome disorder, more so than autism. None of the assessors, or the assessment instruments, identified behaviors requiring behavior intervention.

Mother said Student demonstrated some unsafe or aggressive behaviors at home. In 2024, Student started applied behavior analysis therapy services at home, through her health insurance to address those issues. But during the 2022-2023 school year, Student showed no behaviors that impeded Student's learning or that of others at school. (34 C.F.R. § 300.324(a)(2)(i).) The actions of the school were measured by what was, and what was not, objectively known or should have been known, at the time. (*Adams, supra*, 195 F.3d 1141, 1149.) Here, during the 2022-2023 school year, Student did not present behaviors at school that exhibited any need for applied behavior analysis services. As program specialist Hampton correctly stated at hearing, Stockton Unified could not provide interventions for behaviors that were not present.

Student failed to prove by a preponderance of the evidence that Stockton Unified denied Student a FAPE in the 2022-2023 school year by failing to offer Student appropriate applied behavior analysis services.

Stockton Unified prevailed on Issue 5(b)

ISSUE 6: DID STOCKTON UNIFIED DENY STUDENT A FAPE IN THE IEP DATED AUGUST 29, 2023, BY FAILING TO OFFER STUDENT APPROPRIATE:

a. BEHAVIOR SERVICES, INCLUDING AN APPLIED BEHAVIOR ANALYSIS PROGRAM?

Student contended Stockton Unified denied her a FAPE at the August 29, 2023 IEP team meeting because it failed to offer Student appropriate behavior services, including applied behavior analysis. Stockton Unified contended Mother did not ask or discuss Student's behavior at the August 2023 IEP meeting. Moreover, the evidence established Student was not in need of behavior services.

Stockton Unified convened an amendment IEP team meeting on August 29, 2023, to discuss health service for the newly prescribed emergency medication for Student's possible seizures. No one, including Mother and her advocate, raised any concerns regarding needed behavior services for Student.

The November 28, 2023 progress notes of Dr. Dawn Gano, Student's neurologist, stated Student was having some behavior issues at home. But Dr. Gano reported that Mother stated Student had no behavior problems at school, including during summer

2023 extended school year. Mother's testimony confirmed that Student's maladaptive behaviors were only seen at home and that Stockton Unified was not viewing any of these behaviors in the school setting.

Program specialist Hampton confirmed Student did not exhibit any behaviors that interfered with Student's ability to benefit from her education. Student started attending the PAAC structured special day class in May 2023. Student's structured special day class setting incorporated general positive behavior intervention techniques. This class also received support from an autism specialist to provide strategies if behavior concerns arose. Student's placement within the structured class, therefore, offered support to address any mild behaviors which may have occurred. This further indicated that specific behavioral services, including applied behavior analysis, were unnecessary in order for Student to access her education.

Parents introduced no persuasive evidence that Student had behaviors which interfered with her ability to access and benefit from her education. (34 C.F.R. § 300.324(a)(2)(i).) Student failed to prove by a preponderance of the evidence that Stockton Unified denied Student a FAPE in the IEP dated August 29, 2023, by failing to offer Student appropriate behavior services, including an applied behavior analysis program. Stockton Unified prevailed on Issue 6(a)

b. SPECIALIZED ACADEMIC INSTRUCTION?

Parents claimed that Stockton Unified denied Student a FAPE at the August 29, 2023 IEP team meeting because it failed to offer Student specialized academic instruction. Stockton Unified responded that Student was in a special day class in which she received specialized academic instruction during her entire school day.

At the time of the August 29, 2023 IEP meeting, Student was attending the PAAC structured preschool special day class at Marshall Elementary, which was the placement advocated by Mother. A full school day was five and a half hours, or 330 minutes. Student's controlling April 2023 IEP provided for full-day placement in the structured class, with 330 minutes per day of specialized academic instruction, or 1,650 minutes per week of specialized academic instruction. These minutes included outdoor play and lunchtime as instructional time because staff used these times for speech and language and social development. Stockton Unified could not have offered more specialized academic instruction minutes than what Student was receiving, which Parents knew prior to the filing of Student's due process complaint.

Mother did not raise any concerns about inadequate specialized academic instruction at the August 29, 2023 IEP amendment team meeting. Furthermore, Mother did not express any concerns about the offer of specialized academic instruction during her testimony. Parents did not introduce any evidence in support of this issue.

Student failed to prove by a preponderance of the evidence that Stockton Unified denied Student a FAPE in the IEP dated August 29, 2023, by failing to offer Student appropriate specialized academic instruction. Stockton Unified prevailed on Issue 6(b)

c. SPEECH AND LANGUAGE SERVICES?

Student contended Stockton Unified denied Student a FAPE at the August 29, 2023 IEP amendment team meeting because it failed to offer Student appropriate speech and language services. Stockton Unified contended Mother did not express any concerns regarding Student's speech services at the August 2023 IEP meeting. Moreover, the evidence established Student did not require additional speech and language services.

Speech pathologist Marquez-Baker conducted Student's speech and language evaluation as part of Student's April 5, 2023 preschool multidisciplinary psychoeducational evaluation. As discussed in Issue 3(a)(4) above, her testimony was insightful, informed, and persuasive. At the time of the August 29, 2023 IEP meeting, Student was receiving 30 minutes per week of speech and language services provided in a group setting. This offer was made in consideration of Student's placement in a PAAC structured special day class setting, which was a language-rich environment.

Marquez-Baker explained that language development was encouraged throughout the school day by the special education teacher and aides through

- the welcome circle,
- discussions over meals,
- adult and peer models of speech,
- use of PECS and other visuals, and
- supported social play.

Every moment in the class was primed for communication development and vocabulary was embedded in every assignment and activity. The direct speech and language services offered through Student's IEP were a related service to support and reinforce Student's language-rich learning in the PAAC structured day class.

Speech pathologist Vo stated that, based on her experience and expertise, Student's speech services were adequate to address Student's goals and Student demonstrated an ability to benefit from group speech therapy services. She said that none of Student's goals required individual speech therapy and, though Student was shy, she was very good at following directions and peer modeling. Speech pathologist Reinlib provided virtual speech and language services to Student in a small group

setting, with the support of an on-site adult helper, during the 2023-2024 school year. Reinlib said that Student demonstrated very good attention and was able to maintain focus for the full session. The group setting enabled Student to work on her turn-taking goal and social communication, while providing speech and social interaction models. Reinlib concluded that, based on her expertise and experience, Student's speech and language services were sufficient.

Program specialist Hampton, who was the administrative designee at the August 29, 2023 IEP meeting, offered to move Student to a comparable class at PAAC's St. Bernadette location, which was closer to Student's home and where Student could receive in-person speech and language services. Mother viewed the placement, then declined the offer at the next IEP meeting, stating that she preferred to keep Student at Marshall Elementary. Parent did not raise any concerns about speech therapy or the adequacy of those services at the August 29, 2023 IEP meeting, or at any other time.

Student failed to prove by a preponderance of the evidence that Stockton Unified denied Student a FAPE in the IEP dated August 29, 2023, by failing to offer Student appropriate speech and language services. Stockton Unified prevailed on Issue 6(c)

d. COUNSELING SERVICES?

Student claimed that Stockton Unified denied Student a FAPE at the August 29, 2023 IEP team meeting because it failed to offer Student counseling services. Stockton Unified contended Mother did not mention counseling services at the August 2023 IEP and, further, the evidence established that Student did not require counseling services.

Mother testified at hearing about two matters that Parents contend should have caused Stockton Unified to offer counseling services. One was the San Joaquin County Behavioral Health Report, dated August 4, 2022. That report was issued about the same time as Stockton Unified's initial assessment report of Student was issued. However, the San Joaquin County Behavioral Health team report stated, multiple times, that it was unable to assess and evaluate Student because she was young, unable to express herself, and guarded. The report was primarily based on Mother's interview and clinical observation during the appointment. The report did not consider Student's educational experience. The San Joaquin County Behavioral Health team did not observe Student in any educational setting. And the report did not recommend counseling for Student. Student's lack of engagement and verbal communication indicated that talk therapy would be patently unhelpful. This report was also generated a year before the IEP in question. The San Joaquin County Behavioral Health did not provide information to Stockton Unified that would have supported an offer of counseling.

The other matter which Parents contended should have required Stockton Unified to offer counseling was Student's difficulty separating from Parent for speech services while she was receiving such services at Bush Elementary. Speech pathologist Dawning said that, on a limited number of occasions, Student was reticent about leaving Parents and going with Ms. Dawning for speech therapy services. Dawning noted that Student was three years old, a time when separation anxiety was age appropriate. Also, Student had been identified as having some markers of autism, including difficulty with transitions. Mother testified that the first time she took Student for speech therapy services, Student thought she was going home and was upset by the unexpected

change in schedule. Here, Student's discomfort with an unexpected transition indicated Student's need for frontloading or other basic supports, not for counseling services when Student exhibited only normal age-appropriate behaviors.

Further, there was no need to address Student's few episodes of separation anxiety related to in person speech therapy services at the August 29, 2023 IEP team meeting. Student was no longer receiving those speech services at Bush Elementary. Student was placed at the structured class at Marshall Elementary where she also received speech services, in May 2023. Parents did not introduce any other evidence of difficulty separating from Parents which supported a need for counseling.

Stockton Unified supported the social-emotional needs of Student and her classmates through the design of the structured class setting, with

- a set routine,
- visual schedule,
- multiple modes of communication,
- sufficient adult support,
- sensory accommodations and
- more.

School psychologist Lipman had no concerns about Student's mental health when she assessed Student in April 2023. She noted Student was happy and drew stick figures with smiling faces. Special education teacher Flores similarly testified that Student showed no signs of self-injurious behaviors or mental health concerns. Dr. Avila observed Student and noted she interacted with other kids in groups and described her as "joyful."

During the August 29, 2023 IEP meeting, Mother did not request or raise concerns about counseling services for Student. Parents also did not request counseling at any other time. Also, Parents did not present any persuasive evidence that Student required counseling.

Student failed to prove by a preponderance of the evidence that Stockton Unified denied Student a FAPE in the IEP dated August 29, 2023, by failing to offer Student appropriate counseling services. Stockton Unified prevailed on Issue 6(d).

ISSUE 7: DID STOCKTON UNIFIED DENY STUDENT A FAPE IN THE 2022-2023, AND THE 2023-2024 SCHOOL YEARS BY FAILING TO OFFER PARENT TRAINING REGARDING: (a) AUTISM; (b) SPEECH OR LANGUAGE IMPAIRMENT; (c) STUDENT'S ASSISTIVE TECHNOLOGY DEVICES; (d) BEHAVIOR SUPPORT TECHNIQUES; (e) APPLIED BEHAVIOR ANALYSIS; (f) DATA COLLECTION PRACTICES; AND (g) CURRICULUM, SUPPORT PROGRAMS, AT-HOME PRACTICES, EXERCISES, AND ROUTINES?

Student contended she was denied a FAPE in the 2022-2023 and 2023-2024 school year because Stockton Unified did not offer parent training. Stockton Unified contends Parents were well-aware of parent training opportunities provided by the district. Parents had never asked for parent training, and did not establish Parents' training was necessary for Student to benefit from her IEP program and receive a FAPE.

Related services required to assist a student with exceptional needs to benefit from special education may include parent training. (Cal. Ed. Code, § 56363, subd. (b)(11).) School districts are responsible for providing parent training when the child's

IEP team determines that it is necessary for the child to receive FAPE. (See *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).) Parent training means assisting a parent in understanding the special needs of the student, providing the parent with information about child development, and helping the parent acquire necessary skills to facilitate the implementation of the student's IEP. (34 C.F.R. § 300.34(c)(8)(i)-(iii).) To determine whether services for a child's parents, such as training, 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. (See *Letter to Dole* (Office of Special Education and Rehabilitative Services (OSERS), (July 25, 1986) at p. 2.)

Student did not meet her burden of proving that Stockton Unified denied her a FAPE by failing to provide parent training. Mother's testimony revealed her extensive experience with the IEP process and her parenting experience with her other children who also had IEPs. Parents had four older children who have IEPs and Mother acknowledged she, therefore, acquired a breadth of knowledge regarding how the special education process worked. Mother spoke of her familiarity with the PAAC program and other special education placements, the assessment process, her ability to access services and supports through the Regional Center and their insurance, as well as how to advocate for her children. Mother stated that the knowledge she acquired, in working with her older children, better enabled her to obtain home therapies through their insurance regarding Student's behavior at home.

Program specialist Hampton confirmed she shared information about parent resources at each of Student's IEP team meetings, including information about the Family Resource Center, Community Advisory Committee meetings, and Parent coffee hours offered through PAAC. Mother acknowledged she was aware of parent training offered by the Stockton Unified. Mother noted she had attended two Community Advisory Committee meetings. Mother was well-informed regarding special education processes and resources, including parent training opportunities.

Notably, Student did not establish that Parents needed specific training in any of the seven listed areas for Student to receive a FAPE. The evidence at hearing established that Parents never requested training or raised any questions that would indicate their need for training in order for Student to receive a FAPE. No member of Stockton Unified's staff or Student's IEP teams recommended parent training as a necessary related service in any of Issue 7's above listed areas in order for Student to receive an appropriate special education or other required related services in the least restrictive environment. While some of the testimony suggested Parents would have liked training, parent training was not necessary for Student to receive a FAPE.

Student failed to prove by a preponderance of the evidence that Stockton Unified denied Student a FAPE, in the 2022-2023 and the 2023-2024 school years, by failing to offer parent training regarding:

- autism;
- speech or language impairment;
- Student's assistive technology devices;
- behavior support techniques;
- applied behavior analysis;

- data collection practices; and
- curriculum, support programs, at-home practices, exercises, and routines.

Stockton Unified prevailed on Issue 7(a through g).

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1

Did Stockton Unified deny Student a FAPE, in preparation for Student's initial IEP team meeting held on August 18, 2022, by failing to assess Student in the following areas of Student's suspected disabilities: autism, attention deficit hyperactivity disorder, and oppositional defiance disorder?

No. Stockton Unified School District prevailed on Issue 1.

ISSUE 2

Did Stockton Unified deny Student a FAPE in the 2022-2023 school year from February 1, 2023, by refusing Parent's requests for a one-to-one aide to support Student's toilet training?

No. Stockton Unified School District prevailed on Issue 2.

ISSUE 3(a)

Did Stockton Unified deny Student a FAPE in the 2023-2024 school year by failing to offer Student the following:

- i. a trained health aide to accompany Student on transportation to school?
- ii. placement in the Preschool Assessment and Autism Center?
- iii. for accommodations of picture exchange communication system, referred to as PECS, and First/Then Contingency?
- iv. an alternative augmentative communication device?

No. Stockton Unified School District prevailed on Issues 3(a)(i), (ii), (iii), and (iv).

ISSUE 3(b)

Did Stockton Unified deny Student a FAPE in the 2023-2024 school year by significantly impeding upon Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE for Student by refusing Parents' requests for:

- (i) a trained health aide to accompany Student on transportation to school;
- (ii) placement in the Preschool Assessment and Autism Center,

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

- (iii) or accommodations of PECS and First/Then Contingency;
and
- (iv) an alternative augmentative communication device?

No. Stockton Unified prevailed on Issues 3(b)(i), 3(b)(ii), 3(b)(iii), and 3(b)(iv).

ISSUE 4

Did Stockton Unified deny Student a FAPE in the IEP dated April 5, 2023, by significantly impeding upon Parent's opportunity to participate in the decision-making process regarding provision of a FAPE for Student by failing to consider Parents' concerns regarding stress and anxiety Student would likely experience by changing from Bush Elementary School to Marshall Elementary School?

No. Stockton Unified School District prevailed on Issue 4.

ISSUE 5

Did Stockton Unified deny Student a FAPE in the 2022-2023 school year by failing to offer Student:

- a. a one-to-one aide who could monitor Student's health, support Student's toilet training, change Student's diapers, and monitor Student's self-harming behaviors?
- b. an appropriate applied behavior analysis throughout the school day?

No. Stockton Unified School District prevailed on Issues 5(a) and 5(b).

ISSUE 6

Did Stockton Unified deny Student a FAPE in the IEP dated August 29, 2023, by failing to offer Student appropriate:

- a. behavior services, including an applied behavior analysis program?
- b. specialized academic instruction?
- c. speech and language services?
- d. counseling services?

No. Stockton Unified School District prevailed on Issues 6(a), 6(b), 6(c), and 6(d).

ISSUE 7

Did Stockton Unified deny student a FAPE in the 2022-2023, and the 2023-2024 school years by failing to offer parent training regarding:

- (a) autism;
- (b) speech or language impairment;
- (c) Student's assistive technology devices;
- (d) behavior support techniques;
- (e) applied behavior analysis;
- (f) data collection practices; and
- (g) curriculum, support programs, at-home practices, exercises, and routines?

No. Stockton Unified prevailed on Issues 7(a), 7(b), 7(c), 7(d), 7(e), 7(f), and 7(g).

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.

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings