

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

CULVER CITY UNIFIED SCHOOL DISTRICT.

CASE NO. 2024050570

DECISION

NOVEMBER 20, 2024

On May 10, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Culver City Unified School District. On June 17, 2024, OAH extended the resolution session period to July 2, 2024, because Student failed to participate in a resolution session. Also on June 17, 2024, OAH continued the due process hearing to August 20, 2024.

Administrative Law Judge Kara Hatfield heard this matter by videoconference on August 20, 21, and 22, and September 3, 10, 17, and 18, 2024. Attorney Michelle Wilkolaski represented Student. Parent attended the hearing on Student's behalf.

Attorneys Madisyn Aleshire and Tiffany Santos represented Culver City. Diana Fannon, Ed.D., Director of Special Education, attended the hearing on Culver City's behalf.

At the parties' request, the matter was continued to October 14, 2024, for written closing arguments. The parties timely filed their arguments and the record was closed on October 14, 2024.

ISSUES

Free appropriate public education is called FAPE. Individualized education program is called IEP.

1. Did Culver City deny Student a FAPE by failing to include adequate goals in the January 24, 2024 IEP?
2. Did Culver City deny Student a FAPE by failing to offer sufficient programs and services in the January 24, 2024 IEP, specifically:
 - a. a trained one-to-one academic and behavioral aide for the full school day;
 - b. an intensive in-home applied behavior analysis program;
 - c. language and speech services;
 - d. occupational therapy; and
 - e. Parent training related to Student's assistive technology devices, support programs, applied behavior analysis, data collection, curriculum, and transition to high school?

3. Did Culver City deny Student a FAPE by failing to honor Parent's requests for additional support and offering a predetermined IEP, thereby denying Parent participation, in the January 24, 2024 IEP team meeting?
4. Did Culver City deny Student a FAPE by failing to offer sufficient programs and services in the March 22, 2024 IEP, specifically:
 - a. a trained one-to-one academic and behavioral aide for the full school day,
 - b. an intensive in-home applied behavior analysis program,
 - c. language and speech services,
 - d. occupational therapy, and
 - e. parent training related to Student's assistive technology devices, support programs, applied behavior analysis, data collection, curriculum, and transition to high school?
5. Did Culver City deny Student a FAPE by failing to honor Parent's requests for additional support and offering a predetermined IEP, thereby denying Parent participation, at the March 22, 2024, IEP team meeting?
6. Did Culver City deny Student a FAPE by failing to implement Student's IEP on and after March 11, 2024?
7. Did Culver City deny Student a FAPE by failing to address Student's regression from January 24, 2024, through May 10, 2024?

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 et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All references to the Code of Federal Regulation are to the 2006 version, unless otherwise noted. The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528,

163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student had the burden of proof on all issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 14 years old and, if she had been attending school, would have been entering ninth grade at the time of hearing. Student resided within the geographic boundaries of Los Angeles Unified School District at all relevant times. However, for reasons that were not established at hearing, her IEPs stated the "District of Special Education Accountability" was Culver City. Culver City did not defend this case on the basis of non-residency. During the relevant time, Student was enrolled at Culver City Middle School, which she attended until mid-March 2024. Student was eligible for special education and related services under the primary eligibility category of autism and the secondary eligibility category of speech or language impairment. Student had several medical diagnoses as well, with severe head and abdominal migraines and Tourette's Syndrome.

ISSUE 1: DID CULVER CITY DENY STUDENT A FAPE BY FAILING TO INCLUDE ADEQUATE GOALS IN THE JANUARY 24, 2024 IEP?

Student contends the January 24, 2024 IEP did not include adequate goals. Student failed to make specific arguments relating to her goals, but only alluded to the fact that Student did not meet some of the goals from her 2023 IEP.

Culver City contends the goals proposed by Culver City in the January 24, 2024 IEP adequately and appropriately addressed Student's unique needs.

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.) “Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [in California, related services are also called designated instruction and services].)

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

In general, a child eligible for special education must be provided access to specialized instruction and related services that 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 [102 S.Ct. 3034] (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

An IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general

education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320; Ed. Code, § 56345, subd. (a)(1) & (2).)

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (United States Department of Education Office of Special Education and Rehabilitative Services (OSERS) March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges ex rel. F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-CV-01873-JMC) 2011 WL 3882850 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].)

The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D.Cal., May 2, 2017, No. CV16-04356-BRO (MRWx)) 2017 WL 2864945; see also 20 U.S.C. § 1414(d)(1)(A)(i)(II) & (III); Ed. Code, § 56345, subd. (a)(2) & (3).) An examination of the goals in an IEP is

central to the determination of whether a student received a FAPE: “[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit.” (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*).)

The IDEA requires IEP goals to target a student’s needs, but does not require an IEP to contain every goal from which a student might benefit. (*Capistrano Unified School Dist. v. S.W., et al.* (9th Cir. 2021) 21 F.4th 1125, 1133.) Moreover, a school district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (34 C.F.R. § 300, Appendix A – Assistance to States for the Education of Children with Disabilities (1999), discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C. § 1414(d)(1)(A)(i)(II).)

Student did not provide evidence to support her claim that Culver City denied her a FAPE by failing to include adequate goals in the January 24, 2024 IEP. Student called as witnesses Parent, 10 Culver City employees, six past and current contractors with Culver City, and an external witness who did not qualify as an expert. None of them testified Student required any additional or alternative goals to what Culver City offered in the January 24, 2024 IEP.

STUDENT’S MIDDLE SCHOOL PROGRAM

Student was fully included in the general education setting, spending 95 percent of her school day in the regular class and extracurricular and nonacademic activities, and five percent of her time outside the regular class and extracurricular and nonacademic activities. She received specialized academic instruction in English language arts and

math during her placement in a collaboratively taught classroom for those subjects. In these collaboratively taught classes, a general education teacher was responsible for all students in the class and an education specialist, also called a special education teacher, was responsible for the students in the class who had IEPs. Each of these classes was a total of 231 minutes per week, made up of two block periods of approximately 90 minutes per week and one block period of approximately 50 minutes per week. Student's specialized academic instructional time, inside the regular class setting alongside her typical peers, totaled 462 minutes per week.

Student had numerous program accommodations and health accommodations. Student also had program modifications in all educational environments. She worked on an alternative curriculum with modified assignments that adapted the general education curriculum to Student's needs. Inclusion facilitator Mary Chirichella, a credentialed special education teacher, modified Student's assignments with assistance from Student's teachers. Chirichella looked ahead at Student's classes each week, saw what other students would receive, looked at Student's goals, and modified the assignments to Student's level. Chirichella added supports like sentence starters, choices, colors, and more pictures to promote Student's understanding of the material and so Student could demonstrate understanding of the curriculum. For example, if general education students in English language arts were working on identifying plot structure with exposition, rising action, climax, and resolution, Student's assignments were modified such that she was required to identify the beginning, middle, and end of a story.

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Chirichella also modified Student's work by using grade-level topics but providing her access to visual supports such as

- diagrams,
- sentence frames,
- yes-or-no responses,
- two-word answer options, and
- word banks.

With guidance from her one-to-one aide, Student answered questions correctly. She required answers to be highlighted or underlined for her to provide the correct answer. Student's aide or teachers asked her to repeat the question and the answer to support her retention and to practice new terminology. In math, the aide or teacher provided Student a checklist or step-by-step directions, but Student still needed reminders throughout her attempts to solve the math problems. When any of these supports were pulled back to assess Student's progress and retention, Student still required direct guidance to come to an answer.

Reading material for Student was modified. Some of the required reading had pre-made, modified books. When modified books did not exist, Student's subject-matter teachers and Chirichella modified the reading material. Modified material that was not in a pre-printed book was presented to Student as a slide presentation or document on her Chromebook.

A behavior aide accompanied Student at all times across the school day. For all of the day except the lunch period, a non-public agency contracted by Culver City provided a one-to-one behavior aide for Student. When that agency aide took a lunch break, during Student's lunch break, a Culver City employee was Student's one-to-one

behavior aide. The agency aide was supervised by an agency behavior analyst for eight hours per month or approximately two hours per week. The aide supported Student in accessing all her many program and health accommodations.

Student received occupational therapy consultation services to support her sensory needs. She received language and speech therapy for 30 minutes a week individually and 30 minutes a week in a group. She received assistive technology services consultation for herself, parent, classroom staff, and service providers to use assistive technology tools. Student had two forms of assistive technology. One was a Chromebook, which all students at Culver City Middle School received. But Student's Chromebook had an additional tool, called an extension, for word prediction when writing. That extension was not on other students' Chromebooks and was a feature to assist Student to access her education. Student also had an augmentative and alternative communication device, called an AAC device, which was a standard-size iPad tablet with software called Proloquo2Go with voice output. It was a robust program providing picture and text icons to support Student's communication, with categories Student could select to access the language for which she was searching.

As of the 2021-2022 school year, when Student started sixth grade, Student was already using Proloquo2Go on an iPad. Speech-language pathologist Rebekah Taylor described Student's skills with that AAC equipment as "amazing" during the 2021-2022 school year and Taylor had to increase the vocabulary on the device to be more robust and complex and support Student learning more. Student made more progress after Taylor added items and keyboards. In the 2022-2023 school year, seventh grade, Taylor edited a few things to support Student with specific situations she might have, and Student continued to use the AAC device, particularly the keyboard.

Student effectively used her voice to communicate, but sometimes required additional support to be clearly understood. Some accommodations to facilitate Student's expressive communication were a physical or digital metronome to help Student slow the pace of her speech to make it possible or easier for a listener to understand, and an adult prompting Student to use complete sentences to express her needs such as saying, "I need to charge my iPad," instead of only saying the word "charger." Student used multi-modal communication that included speech, pointing, gestures, action, and using her AAC device to supplement her communication and respond to questions, make requests, or clarify communication attempts.

Student's use of the Chromebook with word prediction tool and iPad with Proloquo2Go as her AAC device were not new in the 2023-2024 school year at issue in this case, her eighth-grade year. Student had used these exact devices and programs for several years and was "pretty tech savvy" according to Jennifer Strom, independent assistive technology specialist contracted by Culver City to provide assistive technology services to Student and others. Strom had a master's degree in education and two education specialist credentials, for moderate/severe disabilities and for physical health impairments. Strom also had certifications in assistive technology, augmentative and alternative communication, and inclusion in general education. Student knew how to access her assistive technology and augmentative and alternative communication, demonstrated to Strom and others she knew how to use them, and she enjoyed using them. Student successfully navigated her devices, searched for language, typed words, and searched for information in a different way if one way was disabled. Strom summarized Student at hearing, relative to using assistive technology and augmentative and alternative communication, by saying, "She's a smart gal."

Special education teacher Madeleine Krueger was Student's case carrier since Student was in sixth grade starting in the 2021-2022 school year. Krueger held a multiple subject teaching credential and a mild/moderate education specialist instruction credential with an autism authorization, which was extra training for working with students with autism. During Student's sixth-grade year, Krueger was also her English language arts teacher. In Student's seventh- and eighth-grade years, Krueger worked with Student during an "intervention time" session called Paws that all students at Culver City Middle School participated in two times a week for 45 minutes per session. Krueger provided direct instruction to Student one-on-one and sometimes in a small group for one 45-minute session per week, and Student went to a different classroom for the other 45-minute session of "intervention time."

JANUARY 24, 2024 IEP DATA AND NEW GOALS

In preparation for the January 2024 annual IEP team meeting, Krueger contacted Student's teachers, related services providers, and Parent to gather information about Student's progress over the past year and learn about her present abilities, her challenges, and people's concerns about Student's education. Parent reported two concerns. One was regarding Student's reading comprehension. Parent had stated to Krueger concerns about Student's reading comprehension in sixth and seventh grades, as well as in eighth grade. Parent was also concerned about Student's safety, which was a new concern according to Krueger.

Student's last annual IEP from January 2023 was not in evidence but according to the final progress reports regarding the goals of the January 2023 IEP, Student had 14 goals. Parent did not consent to implementation of the January 2023 IEP until sometime in April 2023. Therefore, by the time of the January 24, 2024 IEP team

meeting, Student had been working on the annual goals for approximately eight or nine months. Culver City staff reported that as of January 2024, Student met five of the annual goals, and made progress on but did not meet the nine others. Student did not meet the January 2023 IEP goals because she had not had a full year to work on them by the time of the reporting in January 2024.

The Culver City IEP team members used the January 9 and 10, 2024 progress reports regarding the goals of the January 2023 IEP to determine Student's present levels of performance, also called baselines, when developing proposed goals for the January 24, 2024 IEP. Student's teachers and related services providers also reported and documented information about Student's skills in various areas in the relevant section of the January 24, 2024 IEP.

Culver City held a two-part IEP team meeting, on January 24 and February 16, 2024, to develop the 2024 annual IEP. The January 24, 2024 IEP team meeting lasted approximately one hour. The February 16, 2024 IEP team meeting lasted approximately one hour and 15 minutes.

STUDENT'S READING NEEDS AND GOALS

In January 2023, the IEP team determined Student had needs in decoding written words. She performed certain tasks involving regularly spelled, unfamiliar, multisyllabic, instructional words with 85 percent accuracy in four out of five opportunities when provided specific supports. But her accuracy dropped to 60 percent when irregularly spelled words, sight words, and grade-level words were included in the list of words for her to decode. The January 2023 goal for decoding was for Student to decode, with minimal prompts, unfamiliar irregularly spelled words presented on a list or word tiles

with each syllable put on separate cards, after a teacher modeled and/or pre-taught how to read each part and what each word part and the whole word meant. Student was to read the words in a manner that sounded like normal speech in or out of context and count the number of syllables correctly using appropriate visual supports with 80 percent accuracy in four out of five opportunities as measured by teacher-charted records or student work samples.

As of January 2024, Student made progress in decoding irregularly spelled words but still required maximum support to accurately decode words. She therefore did not meet the 2023 goal. She read independent-level text with modifications when provided maximum support. Her accuracy with regularly spelled words with minimal prompting increased to 85 percent in four out of five opportunities, but her accuracy with irregularly spelled words with minimal prompting was still at 60 percent and remained an area of need in January 2024.

In broader reading, Student's skills according to an assessment called Fastbridge Reading were at the beginning reading level. Data from a digital instructional and practice program called IXL indicated Student made progress:

- reading sight words;
- blending and segmenting words with short vowels;
- decoding two-syllable words;
- identifying parts of speech;
- answering literal "WH" questions about who, what, when, and where;
- sequencing events;
- identifying similes and metaphors; and
- identifying plot elements of a story.

The decoding goal proposed for the January 2024 IEP was for Student, within one year, to recall the sound irregularly spelled instructional-level words make and read them aloud in a manner that sounded like normal speech for eight out of 10 words. This skill was to read the words, in or out of context, when the words were written on cards and the irregular spelling patterns were underlined and one guiding statement was given to Student as needed, such as "this part of the word says _____," on four out of five progress monitoring assessments.

Case carrier/special education teacher Krueger developed the 2024 decoding goal with assistance from inclusion facilitator Chirichella. Krueger thought the goal was realistic to achieve within one year and was appropriate for Student because Student required support to read irregularly spelled words.

Parent did not disagree with this goal during the IEP team meetings, and Student offered no evidence that contradicted Krueger's informed opinion the 2024 decoding goal was adequate and appropriate for Student at the time it was offered. Parent asserted at hearing that the goal was not achievable within one year because Student was far behind and it would take more than one year to get caught up to her peers.

Her testimony did not reflect the target of the goal, which was not for Student to decode as well as her peers. Parent's testimony also did not reflect the likelihood of Student "catching up." The preponderance of the evidence established that due to her disabilities, Student would not have reading decoding skills commensurate with her typical peers and Parent's testimony regarding the insufficiency of the decoding goal was not persuasive.

The January 2023 IEP team determined Student had unique needs in reading comprehension. Student was given a modified instructional literary passage that was a familiar text, and was provided a claim about the passage's story elements such as characters, key details, fact, and opinion. Student was also given access to:

- assistive technology;
- sentence starters with a sequence of events;
- visuals;
- a graphic organizer as necessary;
- peer support as needed;
- a word bank;
- word prediction; and
- minimal prompts.

With these supports, Student orally or in writing correctly answered the prompt in at least two or more sentences and also included at least one detail from the passage using context clues and referring back to the text using modeling for text evidence to support the claim with correct supporting sentences/quotations with 80 percent accuracy in three out of four opportunities as measured by teacher-charted records or student work samples.

The January 2023 reading-comprehension goal was for Student to be given a modified independent-level literary text read aloud by the teacher and for Student to read the text aloud and answer questions. She could answer verbally, by pointing to a picture choice, or by selecting a response from multiple choices for four out of five questions for four out of five texts. Her answers were to retell the beginning, middle,

and end of a text with direct teacher comprehension support. Support included options such as “picture walk,” guiding questions, a story map, or comprehension “S.O.S.” – which stood for stop, orient, scaffold.

A modified independent literary text read aloud by teacher was any text being read in the classroom, modified so Student could read it independently, but also providing the read-aloud support to Student. After an adult read the text aloud to Student, Student then read the text aloud. Krueger thought Student truly read the text aloud herself, rather than merely repeating back what she heard the adult say.

Comprehension “S.O.S.” was a comprehension strategy from the Wilson Reading program, which could be used separate and apart from the formal, full Wilson Reading program. When a student read a text, the adult had the student chunk the text into parts, read the first section, stop to picture and orient themselves to what was happening in the text, and have the adult provide step-by-step supports for the student to describe what they pictured in their head.

As of January 2024, Student made progress in reading comprehension and answered who, what, when, and where questions about the beginning, middle, and end of stories with maximum support. She answered questions correctly working on grade-level assignments with modifications, with guidance from her one-to-one aide. But she did not meet the 2023 reading comprehension goal. Reading comprehension remained an area of need in January 2024, and one Parent was specifically concerned about. There was no dispute Student had deficits in reading comprehension. But Parent’s testimony curiously described Student as very intelligent, very independent, and not liking to be helped. Parent called Student a problem solver and said if Student could not verbalize what she wanted to know or was confused about, she used YouTube

and Google to find answers to things. These practical skills suggested Student had a level of reading comprehension more advanced than Parent's stated concerns indicated.

The reading-comprehension goal proposed for the January 2024 IEP was for Student, within one year, to be read aloud a modified instructional-level, nonfiction text, and explain the main topic and retell one key detail in four out of five trials as measured by teacher observation and progress monitoring assessments. Student would accomplish this by an adult directing Student to do something, such as by saying "show me _____ in the story." Student was to respond using a multi-modal communication approach, meaning verbally or using an AAC device, with direct teacher comprehension support such as "picture walk," guiding question, a story map, or comprehension S.O.S.

Case carrier/special education teacher Krueger developed the 2024 comprehension goal with assistance from inclusion facilitator Chirichella and Student's English language arts teacher. Krueger thought the goal was appropriate for Student because Student made progress in identifying the beginning, middle, and end of stories, but needed support to advance to the higher-level skill of identifying the main topic and one detail of a story. Identifying the main topic was more difficult because the main topic usually was not defined inside a text the way a beginning, middle, and end could be, or it required more than only literal comprehension of the story. The goal of explaining a main topic emphasized understanding a story and required inference, not merely retelling the words on a page either verbally, by pointing to pictures, or correctly selecting a multiple-choice option. Parent did not disagree with this goal during the January and February 2024 IEP team meetings, and Student offered no evidence that contradicted Krueger's informed opinion the 2024 comprehension goal was adequate and appropriate for Student at the time it was offered.

Student's 2023 IEP goals included one for grammar, which involved correctly labeling words as various parts of speech, such as noun, verb, adjective, adverb, or pronoun. Student made progress on but did not meet the goal because she required maximum support from an adult to answer questions correctly.

She also had a goal in the 2023 IEP for academic vocabulary related to grade-level science and social studies, which required her to correctly identify the meaning of familiar domain-specific words by selecting the correct picture out of two options with word labels and using sentence frames using multi-modal communication to state the meaning of words. Student met that goal.

The 2024 IEP team did not determine Student had unique needs in grammar or vocabulary and Culver City did not offer goals in the 2024 IEP in these areas. Student offered no evidence she required goals in these areas, or other areas regarding reading, in January 2024 to receive appropriate educational benefit.

STUDENT'S WRITING NEEDS AND GOALS

The January 2023 IEP had two goals regarding writing. The first concerned paragraph structure when writing. Student was given a grade-level instructional topic prompt and wrote or typed a five-sentence informative/narrative piece that included one topic sentence, at least five domain-specific vocabulary words, and a conclusion

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sentence referring to a checklist upon completion with 60 percent accuracy in three out of four opportunities as measured by a teacher-made rubric or student work samples. She accomplished this by working with an adult or peer using minimal prompts and being given:

- access to assistive technology;
- a paragraph template;
- sentence frames;
- two to three choices;
- word prediction;
- temporal words such as first, next, and last; and
- modeling.

The January 2023 goal for paragraph structure was for Student to improve this skill to 80 percent accuracy, and be more independent at doing it, and to write a five-sentence paragraph that included one topic sentence, three supporting details that included at least five domain-specific vocabulary words, and a conclusion sentence. This writing skill was to be completed after reading a modified instructional-level text. She was to be provided the supports of:

- access to assistive technology;
- a paragraph template;
- a word bank;
- sentence frames;
- two to three choices;

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- word prediction;
- temporal words such as first, next, and last;
- modeling; and
- minimal prompting.

The other writing goal in the January 2023 IEP was for sentence structure when writing. When provided with a picture, a word bank, and a prompt stating “write a sentence about the picture using the words provided,” Student wrote a four-to-six-word sentence with correct syntax and grammar with 40 percent accuracy. She used correct capitalization and punctuation with 90 percent accuracy. The January 2023 goal for sentence structure was for Student to compose a six-to-eight-word sentence using appropriate syntax, grammar, capitalization, and punctuation with 80 percent accuracy in four out of five opportunities as measured by curriculum-based assessments and student work samples. She was to be provided with a picture, a word bank, a prompt stating “write a sentence about the picture using the words provided,” and access to assistive technology.

As of January 2024, Student made progress in paragraph structure by writing multiple sentences with maximum support. Student copied sentences onto her assignment and from the board when an adult provided support. At the start of the school year, Student wrote one to two sentences, which increased to three or four sentences during the school year. But she did not meet her 2023 paragraph-structure goal. Paragraph structure remained an area of need. She did meet her 2023 sentence-structure goal.

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In January 2024, Student participated in her classes accessing and completing work using her Chromebook. She used word prediction to support her writing. She could open GoogleDocs, an online word processing program, and enable her word prediction following up to one verbal and one gestural prompt and was very independent and fluent in using her technology. Her word prediction was displayed along the bottom of her screen; however, she was comfortable adjusting the display and location of her word prediction as she typed. She copied sentences within the course of class instruction quickly and usually used the tool to support copying tasks or writing tasks that included a sentence starter and an open ending.

The paragraph-structure goal proposed for the January 2024 IEP was for Student, within one year, after reading a modified instructional-level text and being provided with a writing prompt and access to assistive technology, to write a topic sentence and two details using support strategies such as a paragraph template, word bank, sentence frames, two to three choices, word prediction, temporal words such as first, next, and last, and modeling to score four out of five rubric points on four out of five progress monitoring assessments.

Krueger developed the 2024 paragraph-structure goal with assistance from Chirichella. Student required access to assistive technology for this goal and assistive technology specialist Strom attended both IEP team meetings for the development of the January 24, 2024 IEP. Strom contributed information for this goal. Krueger believed the 2024 paragraph-structure goal was appropriate for Student because Student met her sentence-structure goal the year before and made progress on the paragraph-structure goal. The new paragraph-structure goal focused not on just writing a specific number of sentences but required writing a topic sentence with details.

Parent did not disagree with this goal during the IEP team meetings, and Student offered no evidence that contradicted Krueger's informed opinion the 2024 paragraph-structure goal was adequate and appropriate for Student at the time it was offered. The 2024 IEP team did not determine Student had unique needs in sentence structure and Culver City did not offer a goal in the 2024 IEP in this area.

Student offered no evidence she required a goal in this area, or other areas of writing, in January 2024 to receive appropriate educational benefit.

STUDENT'S MATH NEEDS AND GOALS

In January 2023, the IEP team determined Student had needs in math reasoning. When given story problems, Student required moderate prompting to comprehend what operation or operations were presented in the problem. When provided with moderate prompting and modeling, Student comprehended the story problems with 70 percent accuracy. Once aware of the operation or operations presented in the problem, Student used addition and subtraction within 100 to solve word problems with unknowns in all positions, involving situations of adding to, taking from, putting together, taking apart, and comparing, with 90 percent accuracy in four out of five opportunities as measured by student work samples and teacher-charted records.

The 2023 math-reasoning goal was for Student to be given a variety of five 1-step story problems involving addition, subtraction, multiplication, and division within 100 with unknowns in all positions. These problems were to involve situations of adding to, taking from, putting together, taking apart, and comparing. Student was to be provided with an operation symbol word bank, minimal prompting, and teacher modeling, and then underline at least one key word to support determining the correct

operation and represent the problem by writing an equation and solve using the correct operation in sequential order with 80 percent accuracy in four out of five opportunities as measured by student work samples and teacher-charted records.

In January 2023, the IEP team also determined Student had needs in place values. When given at least five decimals to the thousandths place and visual or tactile base-ten blocks to represent a decimal number, Student required minimal prompts to record the decimals using prior knowledge of basic place value and money, with 68 percent accuracy in four out of five opportunities. She accomplished this using:

- peer support;
- pictures;
- numbers;
- word form and expanded form in an organizer and/or number line; and
- focusing on basic multiplication with repeated addition as necessary.

The January 2023 place-values goal was for Student to be given at least five decimals to the thousandths place and visual or tactile base-ten blocks to represent a decimal number, and, with minimal prompting and support if needed, record the decimals in word form and expanded form using prior knowledge of basic place value and money with 80 percent accuracy in four out of five opportunities as measured by teacher-charted records or student work samples.

As of January 2024, Student made progress in math reasoning by solving problems using the correct operation. But she needed maximum support to underline at least one key word and to determine the operation. She required direct guidance to

come to an answer. She did not meet her 2023 math-reasoning goal and math reasoning continued to be an area of need. Student met her 2023 place-values goal.

The math-reasoning goal proposed for the January 2024 IEP was for Student, within one year, when read aloud a variety of five, one-step story problems and given operation options for multiplication, addition, or subtraction, to identify the operation, develop a corresponding number sentence, such as $15 \times 2 = \underline{\quad}$, and to correctly solve, by using calculator or number chart, in sequential order with 80 percent accuracy in four out of five opportunities as measured by student work samples and teacher-charted records. The story problems were to involve addition, subtraction, multiplication, and division within 100 with unknowns in all positions, involving situations of adding to, taking from, putting together, taking apart, and comparing.

Krueger developed the 2024 math-reasoning goal with assistance from Chirichella and based on data provided by Student's math teacher. Krueger believed the goal was appropriate for Student because Student did well correctly solving problems presented to her with basic calculations set forth for her, but she required support when she herself had to identify the mathematical operation to perform. Student required instruction in the skill of identifying an operation. Parent did not disagree with this goal during the IEP team meetings, and Student offered no evidence that contradicted Krueger's informed opinion the 2024 math-reasoning goal was adequate and appropriate for Student at the time it was offered. The 2024 IEP team did not determine Student had unique needs in any other area of math and Culver City did not offer a goal in the 2024 IEP in another math area. Student offered no evidence she required additional goals in math in January 2024 to receive appropriate educational benefit.

OTHER GOAL AREAS FROM THE 2023 IEP THAT WERE NOT CONTINUED IN 2024

In January 2023, the IEP team determined Student had needs in providing personal information, participatory behaviors, and group participation, and therefore developed goals in each area. By January 2024, Student made progress on but did not meet her goal to answer three differently worded questions regarding the same piece of personal information using a multi-modal communication approach. She pointed to the correct answer with minimal support but struggled to communicate the answer verbally or with her AAC device. She met her goal in participatory behaviors and displayed at least two participatory behaviors for the duration of a timed period of whole group instruction with 80 percent accuracy in four out of five opportunities. Student also met her goal for group participation by completing an engaging academic task in a learning group with two to three familiar students and maintained attention to the group task, refraining from off-task behaviors, for at least 10 minutes with 80 percent accuracy in four out of five group academic tasks. The 2024 IEP team did not determine Student had unique needs in these same areas and Culver City did not offer goals in the 2024 IEP in these areas.

Student offered no evidence she required goals in these areas, or any others, in January 2024 to receive appropriate educational benefit.

STUDENT'S LANGUAGE-AND-SPEECH NEEDS AND GOALS

In January 2023, the IEP team determined Student had needs in receptive and expressive language. Based on the Receptive/Expressive inventories of the Evaluating Acquired Skills in Communication, Third Edition, Student displayed inconsistent accuracy

when answering varied comprehension questions given moderate verbal and visual prompting. The 2023 goal for receptive/expressive language was for Student to be given a simple three-to-five-sentence passage presented in writing and/or auditorily, and answer varied comprehension questions with 80 percent accuracy in four out of five opportunities given no more than two to three visual or auditory prompts as measured by speech therapist data and observation. Student was to accomplish this using a multi-modal communication approach such as verbally or using an AAC device. And she was to accomplish the task by being given a color-coded approach regarding who, what, when, where, "what doing," and "how are they feeling."

As of January 2024, Student made progress in receptive/expressive language achieving the goal with only 70 percent accuracy instead of the targeted 80 percent. Student was most challenged by when and where questions. Receptive and expressive language continued to be areas of need. Regarding speech sound articulation, Student used verbal approximation, gestures, and her AAC device to functionally communicate throughout the school day. At times, she exhibited an increased rate of speech and instances of dysfluencies, which impacted the overall intelligibility of her speech. Student benefited from cues to use pacing strategies to stress each syllable for multisyllabic words and sentences to repair communication breakdowns. Staff prompted Student to use her AAC device to repair communication breakdowns with verbal cues.

However, her AAC device was often unavailable for use during speech therapy sessions because Student failed to charge it at home overnight and brought it back to school with a dead battery. When her AAC device was available for use during sessions,

she demonstrated good ability to navigate the device independently to script longer sentences. She also benefited from using her AAC device to support with pacing to improve overall intelligibility.

A pacing board was sometimes used to help Student slow her rate of speech to avoid syllables running together and sound repetitions. A pacing board was a sheet of paper with dots on it that Student pointed to, or touched, to help her slow her speech and communicate without repetition or as many repetitions.

In receptive and expressive language, Student used a multi-modal approach to functionally communicate her requests, wants, needs, and/or intentions during her speech therapy sessions. Given a simple three-to-five-sentence passage visually and orally, Student answered simple "WH" questions using a multi-modal communication approach with minimal to moderate prompting. She answered who and what questions with minimal prompting, and where and when questions with minimal to moderate prompting. She used her AAC device with text prediction to assist her communication and to repair communication breakdowns during structured tasks.

In pragmatic language, Student greeted and returned greetings with appropriate eye contact with peers and adults when given one to two prompts. Independently or with minimal cues, she labeled emotions and stated the cause of emotions when given a picture scene. She imitated verbal models and prompting to maintain conversational exchanges with her peers in a small group setting. As it related to adaptive/daily living skills, Student had difficulty with social skills and functional communication. She had difficulty complimenting others, making suggestions for improvement in a tactful and socially acceptable manner and had unusually poor receptive and expressive communication skills.

Speech-language pathologist Laura Nagamine provided individual and group speech therapy to Student in the 2022-2023 and 2023-2024 school years, Student's seventh and eighth grades, and was experienced and very familiar with Student's abilities and challenges. Nagamine proposed splitting receptive and expressive language into two distinct goals for the 2024 IEP to more clearly track Student's progress in each area. The receptive-language goal Nagamine proposed for the January 2024 IEP was for Student, within one year, to be presented a story visually and orally and then sequence four to five images and/or text to demonstrate the correct order of events, with 80 percent accuracy given moderate prompting as measured by speech-language pathologist data and/or observation.

During the IEP team meeting at which Nagamine proposed this receptive-language goal, Parent stated she believed Student had already worked on this goal. Student worked on a lower-level skill of sequencing two to three images at an earlier age, and this proposed goal for 2024 was more difficult. Parent agreed the proposed goal was an appropriate level for Student to be working toward. Nagamine believed this goal could be achieved within one year and was appropriate for Student as of January 2024. Student offered no evidence that contradicted Nagamine's informed opinion the 2024 receptive-language goal was adequate and appropriate for Student at the time it was offered.

The expressive-language goal Nagamine proposed for the January 2024 IEP was for Student, within one year, to listen to a short story and then use a multi-modal communication approach, meaning verbally or by using an AAC device, to retell the order of events involving four to five items using temporal and/or sequential vocabulary such as before, after, first, then, next, and last with 80 percent accuracy when provided with visual cues and moderate prompting as measured by speech-language pathologist

data and/or observation. Nagamine explained to the IEP team these two goals involving sequencing and retelling would address Student's comprehension deficits. Parent did not disagree with the expressive-language goal during the IEP team meetings, and the IEP team believed it would help Student organize her thoughts when expressing herself, both academically and socially. Nagamine believed this goal could be achieved within one year. Student offered no evidence that contradicted Nagamine's informed opinion the 2024 expressive-language goal was adequate and appropriate for Student at the time it was offered.

Nagamine opined the two speech goals she proposed for the January 2024 IEP were sufficient and addressed all Student's areas of need, while working on Student's multi-modal communication so she always had a form or mode to be understood by her communication partners.

Student offered no evidence she required goals in additional areas of language and speech, or communication development, in January 2024 to receive appropriate educational benefit.

STUDENT'S NEEDS AND GOAL IN PRE-VOCATIONAL SKILLS

In January 2023, the IEP team determined Student had functional communication needs. Student used communication strategies such as restating what she said, decreasing volume, and stressing sounds with some prompting. She used her AAC device to support verbal output of unknown vocabulary words and pacing with prompting. The 2023 functional-communication goal was for Student, during structured speech therapy sessions, to use communication repair strategies like using her AAC device, restating what she said, decreasing volume, or stressing each sound or syllable in eight out of ten

opportunities observed given no more than three verbal, gestural, or visual prompts across two consecutive sessions as measured by data collection and observation. As of January 2024, Student used communication repair strategies in seven out of ten opportunities when given moderate prompting and therefore did not meet her goal of eight. Her AAC device was often unavailable during speech sessions, which at times added to Student's frustration. Student benefitted from access to her AAC device when it was available to repair communication breakdowns, especially with out-of-context responses or comments.

During the IEP team's discussion of Student's communication development, Nagamine described her main concern was that Student's AAC device usually was not charged when Student brought it back to school from taking it home overnight. Parent reported Student sometimes lost or broke chargers, which might have contributed to her AAC device not being charged. If Student's device was not fully charged during speech therapy sessions, Nagamine had Student use the device until it ran out of battery. If the AAC device was dead, adults prompted Student to make a request to charge it. Then, adults provided access to a charger at school and charged the device. The AAC device could be used while it was plugged in and charging. But sometimes during speech therapy sessions, Nagamine had Student participate without using her device. At those times, Nagamine had Student focus on using verbal mode through a pacing board and modeling to facilitate Student using other modes of communication.

The IEP team's discussion about Student's AAC device not being charged when Student brought it back to school led to the IEP team developing a pre-vocational goal that was labeled in the January 2024 IEP as addressing "organization" as the area of need. Student's baseline information was collected during the IEP team meeting from

assistive technology specialist Strom, speech-language pathologist Nagamine, and Parent. Student was described as using verbal approximation, gestures, and AAC to functionally communicate throughout the school day and being prompted to use her AAC device to repair communication breakdowns with verbal cues. But Student's AAC device was often not charged and unavailable for use during speech therapy sessions and in the classroom. The organization goal in the January 2024 IEP was for Student, within one year, to demonstrate responsibility for her AAC device by transporting it between locations such as home to school, and classroom to cafeteria, and charging it when needed in the designated locations for four out of five opportunities as measured by teacher-charted data. Student's special education teacher was the person responsible for this goal.

Case carrier/special education teacher Krueger believed the organization goal was reasonable to achieve within one year, and addressed a new area of need for Student. Parent did not disagree with this goal during the IEP team meetings, and Student offered no evidence that this pre-vocational goal in organization was not appropriate for Student.

Student's present levels of performance in the vocational domain included putting forth great effort on her schoolwork and completing her assignments diligently. Student was punctual, focused, and used her time efficiently. She worked hard in class and attempted to complete any work put in front of her. She took notes on her assignments and appeared happy. She navigated the technology used in the classroom to access her assignments. With regard to work habits, teachers reported Student

- attended to instruction,
- stayed on-task,

- demonstrated effort,
- brought materials to class, and
- completed her classwork and homework assignments in a timely manner.

She did not always participate in discussions or work independently. Student offered no evidence that she required a different goal or any additional pre-vocational goals as of January 2024 to receive appropriate educational benefit.

STUDENT'S BEHAVIORAL NEEDS AND GOALS

In January 2023, the IEP team determined Student had needs in behavior regarding vocal stereotypy. She engaged in vocal stereotypy in 85 percent of occurrences per one-minute time sample. The January 2023 goal was for Student, during direct instruction and quiet work, to reduce her vocal stereotypy to 80 percent per five-minute partial interval sample, across five consecutive days, using a voice-volume visual, her AAC device, coping strategies, and sensory supports like headphones, gum, or chewables, among others.

As of January 2024, Student made progress but the clinical team needed to continue to block and redirect stereotypy during instructional time. Student did not meet the 2023 behavior goal regarding vocal stereotypy. Student's general education science teacher Richard Mekemson reported Student's behavior in his class to Krueger before the January 24, 2024 IEP team meeting and to the IEP team on January 24, 2024. At the beginning of the 2023-2024 school year, Student

- had a hard time staying in class,
- got agitated, stopped,
- vocalized,

- needed to take breaks, and
- exited the classroom with her aide who took her outside to walk around and get air, then brought her back to class.

Mekemson did not observe anything noticeable that caused Student's inability to attend to class. Some days she was angsty and restless and other days she was more relaxed. Mekemson testified that by the time of the IEP team meeting, Student was staying in her seat, had minimal vocalizations, and rarely needed breaks or to take walks with her aide. However, Student's vocal stereotypy was documented in her January 2024 behavior intervention plan as occurring "74 percent time sample instances per day." Vocal and physical stereotypy, mouthing, and self-injurious behavior were all addressed in her behavior intervention plan.

In addition to targeting these maladaptive behaviors in the behavior intervention plan, Culver City offered Student a goal in the January 2024 IEP in the area of "behavior – attending." The goal was for Student, within one year, to independently redirect herself to academic tasks or activities within the classroom setting following motor or vocal stereotypic behaviors with 80 percent accuracy, for three consecutive days, as measured by data collection. The people responsible for this goal were Student's behaviorists and special education teachers. Student offered no evidence regarding the development of this goal. Student offered no evidence that it was not appropriate for Student as of January 2024.

Other information about Student's present levels of performance in various domains included in the January 24, 2024 IEP illustrated Student's abilities and challenges and was relevant to considering whether Culver City denied Student a FAPE by failing to include adequate goals in the January 24, 2024 IEP. For example, regarding

gross and fine motor development, occupational therapist Kelly Clark reported Student's present levels of performance based on having worked with Student since just after spring break in 2023. Student had functional gross motor and fine motor skills sufficient to access her educational curriculum. Student demonstrated adequate prehension patterns to manipulate various classroom tools and accessed her educational curriculum with accommodations and curriculum modifications while enrolled in general education inclusion classrooms. She tended to produce large-font penmanship but could write smaller with increased visual boundaries such as using three-quarter inch graph paper for math, lines for blank spaces, adapted paper like tactile paper and paper with a blue line bottom border, and reminders to write smaller.

Student's January 2024 IEP stated she had somatodyspraxia, which the internet defines as a disorder that makes it difficult to coordinate and execute new motor tasks, and to process sensory information. Because of it, Student engaged in stimming behaviors like vocalizations, repetitively hitting her jaw, sucking on her fingers, and rocking in the classroom setting as she sought proprioceptive and tactile sensory input, which supported self-regulation throughout the day. Deficits in reading her body cues was thought to possibly impact her ability to access the general education curriculum without accommodations.

Student benefitted from collaboration between the occupational therapist, teachers, and aides to problem solve her needs and provide effective coping strategies such as visiting the nurse, going for a walk, or completing an organizing activity. Student completed body mapping at home before starting her school day, which occupational therapist Clark thought might have been assisting Student in the 2023-2024 school year, as Student sought inputs less than previous years like showing a decreased need for fidget tools.

As of January 2024, Student used a straw/suck-based water bottle to assist with reducing the behavior of sucking on her fingers. Student took breaks throughout the day with preferred items such as YouTube and walking the campus. At the beginning of the 2023-2024 school year, taking a walk break was not preferred, however once it was established with Student that it was acceptable to leave the classroom, walk breaks became preferred again. Student also performed at her best when expectations were clearly laid out for her and modified if obsessive-compulsive disorder tendencies were observed. Student could access her accommodations through teacher and aide support. Overall, Student demonstrated consistent and functional performance in the classroom and completed her assignments with modifications and classroom aide support.

Student's social-emotional/behavioral performance was reported by Student's teachers and behavior team. Teachers described Student as responsible, motivated, anxious, talkative, outgoing, and happy. They reported her strengths and positive attributes as putting forth great effort on her schoolwork. She had difficulty dealing with frustration without distracting others such as by yelling or stomping her feet. Student did not always participate in discussions or work independently. Teachers described her citizenship skills as respectful toward authority, behaving appropriately in class, and following directions. Student did not always participate in group activities, work cooperatively with peers, or appear to have friends. She had difficulty using appropriate verbal and non-verbal communication for social contact, engaged in unusual behaviors, and had difficulty relating to children and adults and with providing appropriate emotional responses to people in social situations. She used language in an atypical manner, engaged in stereotypical behaviors, and had difficulty tolerating changes in routine.

Student's behavioral strengths included following instructions from the behavior aide, following class routines, and attending to non-preferred tasks and activities. She engaged in both motor and vocal stereotypical behaviors including

- whistling,
- humming,
- vocalizing,
- waving her hands in front of her face,
- bringing items close to her face, body rocking, and
- putting her fingers in her mouth.

Some motor stimulatory behaviors included self-injury by hitting her chin, head, or elbows to a hard surface. Student responded when asked to keep a low volume and a calm body during academic activities. She needed to improve spontaneous communication such as asking for help and expressing her wants and needs, because typically she waited for prompts from staff.

This information about Student's present levels of performance was used to develop two other behavior goals in the January 2024 IEP. Culver City offered Student a goal in the January 2024 IEP in the area of "behavior – FERB," which stands for functionally equivalent replacement behavior. Baseline data was that Student used details to communicate her needs in zero percent of opportunities. The goal was for Student, within one year, to independently communicate her needs by doing things like requesting access or requesting using details such as adjectives or adverbs with her AAC device or with vocalization with 80 percent accuracy across three consecutive sessions as measured by data collection. The people responsible for this goal were

Student's behaviorists and special education teachers. Student offered no evidence regarding the development of this goal. Student offered no evidence that it was not appropriate for her as of January 2024.

And the final goal of the January 2024 IEP was in the area of "behavior – flexibility (FERB)." Baseline data was that Student waited for access for up to one minute without engaging in any challenging behaviors in 67 percent of opportunities. The goal was for Student, within one year, to demonstrate flexibility by waiting, counting, walking, making another choice, or other similar behaviors when triggers were presented, like being denied access or having access delayed, schedule changes, or other changes in her routine, in 80 percent of opportunities, across five consecutive days, as measured by data collection. The people responsible for this goal were Student's behaviorists, special education teachers, and occupational therapist. Student offered no evidence regarding the development of this goal. Student offered no evidence that it was not appropriate for her as of January 2024.

Student offered no evidence of additional areas of need that the January 24, 2024 IEP failed to address. The remedies Student requested in her written closing argument include ordering Culver City "to develop and write goals with appropriate baselines specific to Student's areas of need in an adequate amount to address areas of need sufficiently." Student did not offer any description or explanation of what she requested. Student provided no testimony or documents describing what she allegedly needed and was not offered. Student also offered no evidence of what would have been more appropriate goals in the areas of reading, writing, math, language and speech, pre-vocational skills, or behavior and that were necessary for her to receive a FAPE but which Culver City did not offer.

Student presented Sookyung Shin, Ph.D. as an expert to opine on the appropriateness of the goals and services Culver City offered in the January 24, 2024 IEP. However, Student did not show that Shin was a qualified expert to opine on the appropriateness of anything in an IEP. Student did not offer any resume or curriculum vitae for Shin in this case, but several other special education due process cases pursued by Student's attorney's law firm in front of OAH have included Shin's curriculum vitae. The evidence produced in this due process hearing established that Shin earned a master's degree from University of Oklahoma in 2009, and a doctorate degree from University of Kansas in 2023, both in "special education." But Student did not present any specific information about those degrees, although some was in evidence at other hearings.

Even with the benefit of a curriculum vitae and the testimony in those cases, Decisions recently issued by eight different Administrative Law Judges in the following OAH case numbers concluded that Dr. Shin did not have the experience, training, special knowledge, skills, and education to qualify her to provide expert testimony regarding the sufficiency of goals, placements, and services various school districts offered other students:

- 2024050096 (*Student v. Stockton Unified School Dist.* (October 18, 2024));
- 2024050547 (*Student v. Stockton Unified School Dist.* (September 25, 2024));
- 2024050221 (*Student v. Roseville Joint Union High School Dist.* (September 11, 2024));
- 2024050109 (*Student v. Stockton Unified School Dist.* (August 30, 2024));

- 2024050098 (*Student v. Stockton Unified School Dist.* (August 16, 2024));
- 2024020649 (*Student v. Stockton Unified School Dist.* (June 3, 2024));
- 2023110431/2024010262 (*Student v. Snowline Joint Unified School Dist.* (March 22, 2024)); and
- 2023100314 (*Student v. Perris Union High School Dist.* (February 14, 2024)).

In this case, Shin’s testimony established that her experience in special education stemmed from raising a child with autism, who at the time of hearing was 24 years old, and consulting for and advocating for other families of children with disabilities. Shin resided in Kansas. One purpose for which Student attempted to use Shin was to establish the cost of speech therapy, occupational therapy, physical therapy, and behavior aides in “Southern California.” Shin asserted she had knowledge of these costs, which might have related to Student’s proposed remedies, because she knew some related-services providers and also, there was a website called California Transparency that listed public employees’ salaries by job categories and she did some research on that website to see what the average rate was.

Shin’s testimony revealed that information about her had at a recent time been listed on the website of the Law Offices of Sheila C. Bayne, but Shin asked the law firm to remove that information because she was not an employee of the law firm. In this case, Student’s lawyers emailed her a copy of the request for due process hearing and asked her sometime in August 2024 to testify. But Student’s lawyers had already listed Shin as an expert witness on the June 12, 2024 prehearing conference statement, well

before Student's lawyers asked for and/or obtained Shin's agreement to testify in this case. After Shin received Student's lawyers' request for her to testify, she reviewed the complaint and the documents uploaded to the online database of marked exhibits.

The due process hearing started on August 20, 2024. On September 2, 2024, the Labor Day holiday Monday, which was 13 days later, Shin had a 3.5 hour videoconference with Parent that, for part of the time, included Student. Shin had not known of or met the family before September 2, 2024, two days before Shin was scheduled to testify on Wednesday, September 4, 2024. While some of Shin's observations as a percipient witness of what Parent said to Shin and what Student communicated during the videoconference were relevant to other issues in the case, Shin did not have any qualifications to offer legal opinions based on her review of the marked exhibits in this case and one videoconference with Parent and Student. Shin did not conduct a formal assessment of Student. Shin opined that because she took courses on assessments as part of her master's and doctorate programs, this rendered her qualified to conduct an assessment, but that someone else such as a psychologist would have to interpret the assessment results. The fact that she asserted she was qualified to administer assessments so long as someone else interpreted them undermined her credibility. Student's attorneys paid Shin \$4,500.00 for her testimony. For all of these reasons, Shin's testimony was given no weight as an expert witness. However, as discussed below, Shin's communications with Parent and Student as a percipient witness was considered.

Student's case was solely based on Parent's unsupported and nonspecific arguments of inappropriate goals. Consequently, Student failed to prove the January 24, 2024 IEP's goals were not reasonably calculated to confer educational

benefit appropriate in light of Student's circumstances. Student therefore failed to prove by a preponderance of the evidence that Culver City denied her a FAPE by failing to include adequate goals in the January 24, 2024 IEP.

ISSUES 2a, 2b, 2c, 2d, 2e: DID CULVER CITY DENY STUDENT A FAPE BY FAILING TO OFFER SUFFICIENT PROGRAMS AND SERVICES IN THE JANUARY 24, 2024 IEP

Student contends Culver City did not offer sufficient programs and services in the January 24, 2024 IEP. Student argues, without evidence, that "recent additions to the scientific literature [encourage parents and advocates of children with specific learning disabilities] to incorporate the use of intensive behavioral approaches – typically referred to as Applied Behavioral Analysis ('ABA') – in the education of such children." However, Student did not even attempt to argue any evidence suggested Student required intensive in-home applied behavior analysis provided by Culver City through her IEP in January or February 2024. Student also contends Culver City denied Student a FAPE by not offering parent training to Parent. Student did not specify why Parent needed training or particularize what Parent needed training about to enable Student to access her education.

Culver City contends it offered Student sufficient programs and services in the January 24, 2024 IEP, and Student failed to prove she required different or additional supports to receive a FAPE.

ISSUE 2a: TRAINED ONE-TO-ONE BEHAVIOR AND ACADEMIC AIDE FOR THE FULL SCHOOL DAY

If a child's behavior interferes with her learning or the learning of others, the IDEA requires the IEP team, in developing the IEP, to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029.)

The January 24, 2024 IEP increased the amount of time Culver City offered Student a full-time, one-to-one aide from a contracted agency certified by the California Department of Education as qualified to provide the behavior intervention implementation services. The nonpublic agency aide was to support Student for 1,610 minutes per week, which was 26.6 hours per week during the regular school day. The increase was to cover the lunch period during which Student previously did not have the nonpublic agency aide. The January 24, 2024 IEP also offered as an "other support" an aide who was a Culver City employee during lunch or whenever the nonpublic agency aide was on break, and in the locker room before and after physical education.

A preponderance of the evidence established the behavior aide also assisted Student with academic tasks. Inclusion facilitator Chirichella consulted with Student's aide and made sure the aide was mirroring the teaching strategies the teachers were using. One example was repeating vocabulary. If Student had to answer a question, the aide reminded Student what the answer was after Student wrote the answer. Also, to assist Student's comprehension, the aide repeated information and went over what the

teacher talked about. Chirichella observed and Student's general education teachers reported to Chirichella that the aide actively engaged with Student on her academic work.

Culver City's director of special education Diana Fannon, Ed.D. attested to the behavioral training requirements for nonpublic agencies certified by the California Department of Education. The behavior agencies Culver City contracted with sent to Culver City verifications of those trainings. Some nonpublic agencies had different levels of aides and Culver City double checked the trainings the agencies held for their different levels of aides.

Student did not prove Culver City failed to offer Student a trained one-to-one academic and behavioral aide for the full school day. Parent's testimony, as well as the complaint and Student's written closing argument, made clear Parent's entire dispute with Culver City centered around the events of March 11, 2024, some specifics of which were still contested. After school on Monday, March 11, 2024, Student's nonpublic agency aide left Student at Parent's car in the school parking lot when Parent did not appear at the designated time for the handoff of Student from the aide to Parent. Parent was in the school's office in a meeting with the principal, Kenya Williams, Ed.D., to discuss events from November 2022 that Parent raised during the January 24, 2024 IEP team meeting. Parent lost track of time and did not meet Student and the aide in the parking lot as scheduled when school let out.

Culver City acknowledged the aide did not bring Student back into the office to be properly supervised but left her at Parent's car. The aide leaving Student unsupervised at Parent's car was a safety risk and led Parent to question if Culver City could provide Student a safe environment. Parent's outrage over this event led to a permanent

breakdown of trust and Parent's rejection of all attempts Culver City made to repair that trust and make changes to Student's behavior intervention providers to encourage Parent to return Student to campus.

This event in March 2024 did not mean Culver City failed to offer Student a trained one-to-one academic and behavioral aide for the full school day in the January 24, 2024 IEP. The document reflected and the evidence established Culver City offered Student adequate aide support as well as supervision of the behavior aide by a board-certified behavior analyst, a service called behavior intervention development, for eight hours per month, or two hours per week in short months, by the contracted nonpublic agency. Any aide from the nonpublic agency was one trained according to standards set by the California Department of Education and Culver City verified completion of that training.

Student therefore failed to prove by a preponderance of the evidence that Culver City denied her a FAPE by failing offer Student a trained one-to-one academic and behavioral aide for the full school day in the January 24, 2024 IEP.

ISSUE 2b: INTENSIVE IN-HOME APPLIED BEHAVIOR ANALYSIS PROGRAM

Applied behavior analysis is a specialized and intensive psychological behavior modification therapy sometimes used for children with autism who manifest significant behavioral challenges, including self-harm. In sum, applied behavior analysis therapy is a specific behavior modification therapy.

The IEP team may address a student's behavioral needs through annual goals. (34 C.F.R. § 300.320(a)(2)(i).) Furthermore, an IEP may include modifications, supports for teachers, and any related services necessary for a student to achieve their behavioral goals. (34 C.F.R. § 300.320(a)(4).)

A school district is not required to address the emotional or behavioral problems a student may have, regardless of where and when those problems manifest, when the student demonstrates educational progress in the classroom. (*San Rafael Elementary School Dist. v. California Special Educ. Hearing Office* (N.D.Cal. 2007) 482 F.Supp.2d 1152, 1161 (*San Rafael*), citing *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 (*County of San Diego*) ("behavioral and emotional goals are properly addressed through an IEP when they "'affect academic progress, school behavior, and socialization'").) A school district is required to address behavioral problems extraneous to the academic setting "only to the extent they affect the educational progress of the student." (*San Rafael, supra*, 482 F.Supp.2d at pp. 1161-1162.) The appropriateness of an IEP is determined by "whether the child makes progress toward the goals set forth in her IEP." (*County of San Diego, supra*, 93 F.3d at p. 1467.)

Student did not present any evidence explaining why Student required applied behavior analysis therapy in her home to access her education at the time the January 24, 2024 IEP was developed.

In addition to the three behavior goals in the IEP, discussed in Issue 1, the January 24, 2024 IEP included a behavior intervention plan to be implemented at school by the full-time, one-to-one behavior aide under the supervision of a board-certified behavior analyst. This behavior intervention plan was developed by the nonpublic

agency serving Student. A board-certified behavior analyst from the nonpublic agency serving Student attended the IEP team meeting on February 16, 2024, and reviewed the behavior intervention plan with the IEP team. The behavior intervention plan addressed prevention of Student's problem behaviors that impeded learning through environmental structure and supports. It identified the functions of Student's problem behaviors, and proposed functionally equivalent replacement behaviors and teaching strategies to shape Student's behavior and positively reinforce Student's use of her replacement behaviors. And the behavior intervention plan specified appropriate, planned responses staff should take when Student engaged in problem behaviors.

Student failed to present any substantiating data, assessments, or witness testimony supporting Student's alleged need for an in-home applied behavior analysis therapy program to receive a FAPE at the time the January 24, 2024 IEP was developed. Student's written closing argument only tangentially addressed applied behavior analysis in general and did not address Student's claim in Issue 2b that Culver City should have offered her an intensive in-home applied behavior analysis program.

For the foregoing reasons, Student failed to show by a preponderance of the evidence that Culver City denied Student a FAPE by failing to offer an intensive in-home applied behavior analysis program in the January 24, 2024 IEP.

ISSUE 2c: SUFFICIENT LANGUAGE AND SPEECH SERVICES

During the time the January 2023 IEP was in effect, before the January 2024 IEP team meeting, Student received 30 minutes per week of individual speech therapy and 30 minutes per week of group speech therapy. Although Student did not meet her combined receptive-and-expressive-language goal in the January 2023 IEP, it was

not because the language and speech services offered in January 2023 were insufficient. The evidence showed that Student did not meet her January 2023 receptive/expressive language goal because Parent did not consent to implementing the January 2023 IEP, and therefore its goals, until sometime in April 2023. Student did not have a full year to work on the goal. Speech-language pathologist Nagamine reported Student made progress on the 2023 goal. Nagamine also opined the amount and the types of language and speech services Culver City offered Student in 2023 had been appropriate.

Nagamine again recommended and Culver City offered 30 minutes per week of individual speech therapy and 30 minutes per week of group speech therapy in the January 24, 2024 IEP. Nagamine believed these were the appropriate models of delivery and appropriate amounts of time for Student to make progress and meet the receptive and expressive language goals of the January 24, 2024 IEP. Nagamine thought Student would not have benefitted from any increase of the duration or frequency of speech therapy services, and that what Culver City offered in the January 24, 2024 IEP was appropriate for Student if she was given a full year to work toward and achieve the two language goals. In determining how much time Student required in speech therapy, Nagamine also considered Student's total time in the general education environment so Student did not miss out on more of that than would have been appropriate to afford Student access to her education in the least restrictive environment.

During the IEP team meetings on January 24 and February 16, 2024, Parent did not object to Nagamine's suggested model, duration, or frequency of language and speech services. Parent did not request any type, duration, or frequency of language and speech services different than what Nagamine recommended. Nagamine testified that if Parent had requested something more, less, or different, the Culver City members of the IEP team would have considered it. Nagamine was credible on this point because

she incorporated into Student's IEP a strategy Parent told the IEP team Parent successfully used at home with Student. Parent shared she used a metronome, a device normally used for keeping time while playing music, to assist Student with pacing her speech. As a result of Parent sharing how she used the metronome and that Student benefitted from it, Nagamine used a metronome with Student at school to help Student's speech pacing and included it on the list of program accommodations for Student in the January 2024 IEP.

Parent testified that with regard to Student's language and speech, Parent's concerns were that Student "still was not up to level with her peers" and she "asked how we can get her up to there." Parent denied knowing Student participated in group speech therapy and thought it was a typographical error on the IEP document. The preponderance of the evidence established that due to her disabilities, Student would not have language and speech skills commensurate with her typical peers, and Student did participate in group as well as individual speech therapy because both services were in her January 2023 IEP.

During the seven-day hearing, Student did not present any evidence supporting the need for additional language and speech services beyond those offered in the January 24, 2024 IEP to ensure Student's access to her education or a FAPE. None of the witnesses recommended additional language and speech services for Student beyond what Culver City offered. Student failed to submit any data, assessment, report, or testimony that supported Student's claim she needed language and speech services that differed from what Culver City offered.

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Student failed to show by a preponderance of the evidence that Culver City denied her a FAPE in the January 24, 2024 IEP by failing to offer sufficient language and speech services.

ISSUE 2d: SUFFICIENT OCCUPATIONAL THERAPY

Occupational therapist Kelly Clark worked for Stepping Stones Group and provided contracted services to students of Culver City starting after spring break in April 2022. She worked with Student until Student stopped attending school in March 2024. Clark provided occupational therapy consultation service for Student during that time for 30 minutes per month, approximately once per month. Clark directly interacted with Student but did not pull her out of class to work specifically one-on-one with Student. Clark observed Student in the classroom or during breaks and consulted with Student's aide and teachers. Clark also could have consulted with Parent based on Clark's observations of Student in the classroom and during breaks.

Clark had been an occupational therapist for over 10 years. She was previously a behavior interventionist and provided instruction and intervention to students with autism using applied behavior analysis. As a school-based occupational therapist, she had extensive experience delivering both direct services to students and consultation services with educators, paraeducators, other therapists, and parents. Clark's testimony was not contradicted by another occupational therapist or data, and her opinions were given significant weight.

Clark described Student's occupational-therapy-related need at the time of the January 2024 IEP team meeting as being in the area of sensory processing. During the 2023-2024 school year, Student made progress in her sensory processing as evidenced

by her quicker transition at the start of the school year to being comfortable requesting breaks. At the start of the school year, she had to be prompted to ask for breaks, and in the months before the January 2024 IEP team meeting, Student needed less prompting and more frequently requested breaks on her own.

Student showed a decreased need for things from Clark like fidget tools. During the first three months of school, Clark provided some items and when she checked back in later, staff reported Student was doing well with what she had and did not need new things. Clark's consultation services included interacting with Student with her aide and letting Student trial different items, discussing with the aide how to use them, where to store them, and reminding Student and the aide if they lost the item, Clark would get them another. In the months before the January 2024 IEP team meeting, Student showed more responsibility for taking care of her items.

Clark returned to the classroom to observe how the items were working for Student, and sometimes brought Student out of class to practice using the fidgets or trialing other items. For example, to support Student's sensory processing and reduce her sensory-related maladaptive behaviors like hitting her hand on her jaw or sucking on her fingers, Clark provided a water bottle with a straw to suck through and thereby reduce Student sucking on her fingers.

The major purpose of the occupational therapy consultation service was to ensure Student's sensory system was operating in a way that allowed her to access her educational curriculum. To a lesser degree, the purpose was to identify other supports for visual cues that were helpful to Student, such as graph paper to provide visual boundaries that enabled Student to write smaller.

For the January 24, 2024 IEP, Clark reported Student's present levels of performance in Student's gross and fine motor development, noted above in Issue 1 regarding goals. Over time, Student demonstrated functional gross and fine motor skills to access her curriculum. Her fine motor skills supported her academic education and she did not require intervention for them. However, she had challenges with visual motor skills and benefited from increased visual cues if the paper or digital display in front of her was vague about where her answers were supposed to go, such as being only blank space. Sometimes inserting a visual cue was helpful to let Student know exactly where she needed to provide her answer.

Parent testified she had concerns for Student's occupational therapy needs, because Student still wrote very large and when it came to written assignments, she took more space and that took more time. Parent also said Student used too much pressure so it hurt her hand and caused frustration. Parent claimed she asked the occupational therapist what techniques she was using at school to assist Student with getting her handwriting down to a more age-appropriate size, and the occupational therapist said she was using big-lined paper and highlighters to encourage Student to form her letters within the defined space, as well as other adaptive tools. Parent thought the school had been doing that for a while and still Student showed no progress.

The evidence did not establish Parent reported these concerns to the IEP team that developed the January 2024 IEP. And none of Student's teachers or the aide indicated Student had these kinds of problems.

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Parent testified she reiterated that Student struggled with fine and gross motor skills and did not write “appropriately to her peers.” Similar to Student’s other areas of deficit such as reading, comprehending, and verbally communicating, Parent seemed to expect that with school-based services, Student could be made to handwrite as well as her typical peers. Parent repeatedly testified the goal was to get Student up to her grade-level peers. The evidence did not establish that was the target of any of Student’s annual IEP goals, or a reasonable expectation.

Parent testified Student did not meet any of her occupational therapy goals from the most recent IEP, but the evidence established Student did not have any occupational therapy goals in the January 2023 IEP. Additionally, Student did not meet several of her January 2023 IEP goals because it had not been a year since Culver City had Parent’s consent to implement them. If there actually were some goal related to occupational therapy that was not reflected in the evidence, it would not be surprising if Student had not yet met the goal by the time of the January 2024 IEP team meeting. Therefore, Parent’s testimony was far less credible on these points than the documentary evidence and occupational therapist Clark’s appraisal of Student’s skills and needs. Additionally, Parent’s testimony overall was sometimes vague, confused, inconsistent with the documentary evidence, and unclear as to timing. Parent’s testimony was less reliable and given less weight.

The IEP team reviewed Student’s program accommodations and Clark continued to recommend some strategies that had been successful at school and also endorsed adding some that Parent reported had been useful at home and requested be available to Student at school, specifically a weighted vest and a lap pad, also called a lapboard. A weighted vest was a vest with pockets to carry adjustable amounts of weight and

Velcro straps to adjust the fit. A lap pad was a rectangular board about one foot wide and one-and-a-half feet long, filled with sand and resting across the lap to touch the hip joints. Clark had previously trialed a lap pad with Student at school and Student was not comfortable with it. Parent reported Student used it at home and it was effective for her so Clark agreed to try it again at school and it was added to the list of program accommodations in the January 24, 2024 IEP.

Clark did not propose direct, one-to-one occupational therapy for Student because Student did not require direct, pull-out intervention. Based on her performance in the classroom and reports from Student's teachers and aide, Student could access her curriculum. Clark did not recommend any goal for Student to be specifically addressed by occupational therapy because she did not believe Student needed an occupational therapy-specific goal. Clark thought her participation in and partial responsibility for the behavior goal related to flexibility and functional replacement equivalent behavior was sufficient and appropriate because Clark could assist Student develop her flexibility by using sensory strategies or sensory items. Sensory strategies Clark worked on with Student and her aide were things like

- deep breathing,
- squeezing her hands together,
- using breathing techniques to calm her body,
- using a TheraBand for pressure/resistance and sensory input,
- safe oral inputs, and
- fidget devices.

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Clark recommended and Culver City offered Student 200 minutes per year of occupational therapy consultation service. Clark proposed this because she thought it provided better flexibility than the prior IEP's 30 minutes per month so the time could be distributed in a way that served Student's needs, such as by providing more time at major transitions such as the start of the school year and upon returning from winter break. Clark noted in the past Student and her classroom staff required more support at those times, but also did not need 30 minutes per month when Student's needs decreased after the start of the school year. Clark acknowledged the 200 minutes per year was a decrease from the total minutes offered in the January 2023 IEP.

However, Clark thought 200 minutes per year of occupational therapy consultation services was sufficient and allowed services to be frontloaded at a more appropriate rate, based on Student's improvement and decreased need for oversight from an occupational therapist. Student needed fidget tools less, was taking breaks in other ways, and knew better when to take breaks. Parent did not disagree with the proposed occupational therapy consultation service at the IEP team meetings or request anything different.

During the seven-day hearing, Student did not present any evidence supporting the need for additional occupational therapy beyond the consultation service offered in the January 24, 2024 IEP to ensure Student's access to her education or a FAPE. None of the witnesses recommended additional occupational therapy for Student beyond what Culver City offered. Student failed to submit any data, assessment, report, or testimony that supported Student's claim she needed occupational therapy that differed from what Culver City offered.

Student failed to show by a preponderance of the evidence that Culver City denied her a FAPE in the January 24, 2024 IEP by failing to offer sufficient occupational therapy.

ISSUE 2e: PARENT TRAINING RELATED TO STUDENT'S ASSISTIVE TECHNOLOGY DEVICES, SUPPORT PROGRAMS, APPLIED BEHAVIOR ANALYSIS, DATA COLLECTION, CURRICULUM, AND TRANSITION TO HIGH SCHOOL

In California, related services must be provided "as may be required to assist an individual with exceptional needs to benefit from special education." (Ed. Code, § 56363, subd. (a).) The IDEA and the California Code of Regulations define parent counseling and training as:

- assisting parents in understanding the special needs of their child;
- providing parents with information about child development; and
- helping parents acquire the necessary skills that will allow them to support the implementation of their child's IEP. (34 C.F.R. § 300.34(c)(8); see also Cal. Code Regs., tit. 5, § 3051.11(a).)

Parent training must be offered when it is necessary to assist the child with special needs to benefit from her special education. (Ed. Code, § 56363, subd. (b)(11).)

Student offered no evidence to support her claim that Student required Parent to have training regarding Student's assistive technology devices, support programs, applied behavior analysis, data collection, curriculum, and transition to high school for Student to benefit from her special education. And nothing supported an interpretation that Culver City was aware at the time of the January 24 and February 16, 2024 IEP team

meetings that Student required Parent to have training regarding Student's assistive technology devices, support programs, applied behavior analysis, data collection, curriculum, and transition to high school for Student to benefit from her special education.

Student called Parent, 10 employees of Culver City, and six related-services contractors as witnesses, plus Shin, a witness Student had hoped would be deemed an expert but was not. None of them testified Parent required training or counseling about Student's assistive technology devices, support programs, applied behavior analysis, data collection, curriculum, and transition to high school for Student to benefit from her special education.

Parent testified she worked as an advocate for other families of people with disabilities, like herself. She helped families navigate services with the regional centers operated under the State of California Department of Developmental Services and encouraged them to access services from the regional centers. She described herself as an advocate for in-home supportive services and for disability benefits through the federal Social Security Administration.

Parent demonstrated knowledge about Student's special needs and child development – Parent referred to Student being a normal teenager and manipulative at that age. Parent also indicated she had the necessary skills to allow her to support the implementation of Student's IEP. Parent asserted she was involved in Student's education in every way. Parent indicated her agreement with some proposed goals, made suggestions that resulted in adjustments to some goals, and had opinions about which teaching methodologies may or may not be effective for Student.

The IEP team agreed Parent had valuable information about Student, her needs, her challenges, and tools to support Student access her education. The IEP team took Parent's input and suggestions on many points. Parent's expertise about her daughter improved the educational program developed for the January 24, 2024 IEP.

Parent's testimony reflected her own opinion that she understood Student's disability and her educational needs related to her disability, and did not have questions about Student's assistive technology devices, support programs, applied behavior analysis, data collection, or curriculum. Parent stated during the January 24, 2024 IEP team meeting that she wanted Student to graduate high school with a diploma, and wanted Student to have a computer-related elective for high school.

The IEP team briefly discussed what the IEP team meeting notes labeled "the alternative diploma track," and informed Parent the IEP team could recommend a computer-related elective to Student's high school counselor.

With respect to Student's AAC device, speech-language pathologist Taylor directly offered training to Parent when she started working with Student in sixth grade during the 2021-2022 school year. At that time, Student already had the device and was using the software program Proloquo2Go, and Parent was very comfortable with the device.

Parent told Taylor she was more concerned about training for school staff working with Student, so they would be familiar with using AAC and how to navigate the device, and what strategies could be used to support Student's communication. Taylor provided training to the other speech-language pathologists working with Student, to Student's aide, to the behavior supervisor, and to case manager Krueger. But Parent's concern when Student entered sixth grade was not that Parent needed or

wanted training for herself, only that she wanted school staff to be trained and use the AAC device with Student at school, and she wanted some additional vocabulary available on Student's device.

With respect to Student's assistive technology devices, assistive technology specialist Strom checked in with Parent at the beginning of the 2023-2024 school year to see if Parent had any concerns about Student's assistive technology. Parent did not report any concerns regarding Student's assistive technology. Parent did not request any training for herself or Student regarding either Student's AAC device or the Chromebook.

Notably, Parent did not testify that she needed or even wanted training. She only testified that Culver City did not offer her training in specific topics in the January 24, 2024 IEP. Parent did not articulate what type of training she required or why she needed training related to Student's

- assistive technology devices,
- support programs,
- applied behavior analysis,
- data collection,
- curriculum, and
- transition to high school.

Parent never expressed to Culver City a need for parent training, either before, during, or after the January 24 and February 16, 2024 IEP team meetings. No Culver City employee or contractor at the IEP team meetings testified Parent expressed a need or desire for any training. No Culver City employee or contractor opined Parent needed

training related to Student's assistive technology devices, support programs, applied behavior analysis, data collection, curriculum, and transition to high school as of January and February 2024 for Student to benefit from her special education.

Student's written closing argument stated Culver City denied Student a FAPE "by failing to offer Student's Parent any parent training for students with Autism and or Speech and Language Impairment." Student did not address the six specific bases for parent training alleged in the complaint and articulated as Issue 2e.

Student's written closing argument also asserted the general availability of parent training as a related service under the IDEA, and then summarily concluded Culver City "failed to offer any parent training to [Parent] during the January 2024 IEP, despite the known benefits of doing so. Failure to provide any parent training was a denial of FAPE."

But during the seven-day hearing, Student did not present any evidence supporting the need for parent training related to Student's assistive technology devices, support programs, applied behavior analysis, data collection, curriculum, and transition to high school to ensure Student's access to her education or a FAPE. None of the witnesses recommended parent training. Student failed to establish how parent training was necessary for Student to receive a FAPE under the January 24, 2024 IEP. Student did not present any evidence establishing Student would have failed to derive educational benefit from her January 24, 2024 IEP because Parent was not offered parent training related to Student's

- assistive technology devices,
- support programs,
- applied behavior analysis,

- data collection,
- curriculum, and
- transition to high school.

Student failed to show by a preponderance of the evidence that Culver City denied her a FAPE in the January 24, 2024 IEP by failing to offer parent training related to Student's assistive technology devices,

- support programs,
- applied behavior analysis,
- data collection,
- curriculum, and
- transition to high school.

ISSUE 3: DID CULVER CITY DENY STUDENT A FAPE BY FAILING TO HONOR PARENT'S REQUESTS FOR ADDITIONAL SUPPORT AND OFFERING A PREDETERMINED IEP, THEREBY DENYING PARENT PARTICIPATION, IN THE JANUARY 24, 2024 IEP TEAM MEETING?

Student contends Culver City failed to honor Parent's requests for additional support regarding safety, reading comprehension, and Student's large writing. Culver City contends Parent fully participated in the two IEP team meetings at which the January 24, 2024 IEP was developed.

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23 Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1485 (*Target Range*), superseded in part by statute on other grounds.) Participation must be more than mere form; it

must be meaningful. (*Deal v. Hamilton County Board of Educ.* (6th Cir. 2004) 392 F.3d 840, 858 (*Deal*).) A school cannot independently develop an IEP without meaningful participation and then present the IEP to the parent for ratification. (*Target Range, supra*, 960 F.2d at p. 1484.) A school district that predetermines the child's program and does not consider parents' requests with an open mind has denied the parents' right to participate in the IEP process. (*Deal, supra*, 392 F.3d at p. 858.)

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).) 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.)

The IDEA does not require that the IEP identify the specific methodology that a school district will use to meet a student's needs. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed.Reg. 46665 (August 14, 2006).) The methodology used to implement an IEP is left up to the school district's discretion so long as it meets a student's needs and is reasonably calculated to provide meaningful educational benefit to the child. (*Rowley, supra*, 458 U.S. at p. 208; *Adams, supra*, 195 F.3d at p. 1149.)

In finding that a school district did not commit a procedural violation of the IDEA by failing to specify the teaching methodologies it intended to use, the Ninth Circuit stated, "We accord deference to the District's determination and the ALJ's finding that [the student]'s teachers needed flexibility in teaching methodologies because there was not a single methodology that would always be effective." (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 952.)

"*Rowley* and its progeny leave no doubt that parents, no matter how well-motivated, do not have a right under the [IDEA] to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child." (*Lachman v. Illinois State Board of Educ.* (7th Cir. 1988) 852 F.2d 290, 297.)

Student's claim that Parent was denied meaningful participation in the IEP process is baseless. Parent attended and was an active participant during the January 24 and February 16, 2024 IEP team meetings. The testimony of Culver City employees and contractors confirmed Parent shared information about Student related to the development of all of Student's annual goals and that they incorporated what Parent shared into many goals as well as program accommodations. Additionally, Parent herself repeatedly confirmed she shared information, Culver City members of the IEP team used information she shared to revise proposed goals and accommodations, and Parent believed she meaningfully participated in the two IEP team meetings at which the January 24, 2024 IEP was developed.

ADDITIONAL SUPPORT REGARDING SAFETY

Student specifically argues Culver City did not provide Student adequate support by not having an aide with Student during lunch under the January 2023 IEP, which Parent said resulted in Student being harmed by other students during lunch.

To address Parent's safety concern, Culver City increased Student's behavior support to have a Culver City employee provide Student one-to-one aide support during the lunch recess or whenever the nonpublic agency aide took a break. Culver City also added aide support by a Culver City employee in the locker room before and after physical education, presumably because the nonpublic agency aide was not allowed in that facility.

Parent's stated concern resulted in Culver City revising its offer of FAPE to include additional one-to-one aide services to protect Student at all times of the school day. Culver City did not deny Parent meaningful participation in the development of the January 24, 2024 IEP.

READING COMPREHENSION

Student specifically argues Culver City predetermined Student's January 24, 2024 IEP because it did not commit to addressing Student's deficits in reading comprehension through the methodologies Parent preferred, Lindamood Bell or Orton-Gillingham programs. Parent did not want Culver City to use Wilson Reading because she believed it was for students with dyslexia, not autism, and that it would not be helpful for Student. As a result of Parent's objection to the Wilson Reading program, Culver City did not

implement the Wilson Reading program for Student's instruction, although sometimes Student's teacher used individual strategies from Wilson Reading she thought would benefit Student's reading and comprehension.

Parent had no right to dictate the methodology or teaching strategies Culver City used to address Student's challenges with reading comprehension. Parent had no right to veto the use of any particular methodology, but Culver City honored Parent's stated preference that Culver City not use the Wilson Reading program.

Culver City did not deny Parent meaningful participation in the development of the January 24, 2024 IEP.

STUDENT'S LARGE WRITING

Student specifically argues Culver City failed to address Parent's concerns about occupational therapy during the January IEP, and thus denied her meaningful participation. This specifically related to Student "still writing really large" and using too much pressure on the pen when writing.

As discussed in Issue 2d above, the evidence indicated Parent raised a concern about Student's handwriting to the occupational therapist outside of the IEP team meeting setting. The evidence did not establish Parent requested additional support or reported these concerns to the IEP team that developed the January 2024 IEP. Parent did not disagree with the proposed program accommodations or occupational therapy consultation service or request anything different to address Student's handwriting at the January 24 and February 16, 2024 IEP team meetings. Culver City did not deny Parent meaningful participation in the development of the January 24, 2024 IEP.

For the foregoing reasons, Student failed to show by a preponderance of the evidence that Culver City denied Student a FAPE by failing to honor Parent's requests for additional support and offering a predetermined IEP, thereby denying Parent participation, in the January 24, 2024 IEP team meeting.

ISSUES 4a, 4b, 4c, 4d, AND 4e: DID CULVER CITY DENY STUDENT A FAPE BY FAILING TO OFFER SUFFICIENT PROGRAMS AND SERVICES IN THE MARCH 22, 2024 IEP

With respect to Issues 4a, 4c, 4d, and 4e, Student makes the same arguments as for Issues 2a, 2c, 2d, and 2e. Regarding Issue 2b, Student contends at the time of the March 22, 2024 IEP, Parent was keeping Student home from school so Culver City had an obligation to offer her the applied behavior analysis services at home that she would have received at the school site.

Culver City contends it offered Student sufficient programs and services in the March 22, 2024 IEP, and Student failed to prove she required different or additional supports to receive a FAPE.

Significantly, the March 22, 2024 IEP was not a new annual IEP. Culver City held an IEP team meeting barely a month after the last IEP team meeting to discuss possible changes to its offer in the January 24, 2024 IEP, to which Parent had not consented, in view of the events on March 11, 2024, and Parent keeping Student at home thereafter. The March 22, 2024 amendment IEP did not have changes to the goals, placement, accommodations, modifications, or services reflected on the January 24, 2024 IEP document.

After the nonpublic agency aide left Student at Parent's car in the school parking lot on March 11, 2024, Culver City Middle School assistant principal Ingrid Le Clair arranged with the contracted nonpublic agency to change the individual aide supporting Student. Inclusion facilitator Chirichella heard what happened and called Parent to see how Student and Parent were doing, and it was a very emotional phone call. The next day, special education director Fannon called Parent to see how Student and Parent were doing, and it, too, was a very emotional phone call. At the end of the call, Fannon asked to talk about having Student return to school with a different aide and making a plan to return Student to school. Parent said she did not trust any aide to supervise Student. However, the same day, Parent met with the proposed replacement aide from the original behavior agency and principal Williams. Parent did not like things she heard from that aide and did not want to send Student to school.

In a later phone call with Parent on Tuesday, March 12, 2024, Fannon informed Parent Culver City had secured not just a different aide, but a different nonpublic agency, Empowered Behavior, to take over the behavior services for Student. On Thursday, March 14, 2024, Fannon told Parent Empowered would be ready to start the following Monday, March 18, 2024, if Parent would send Student to school. Fannon asked Parent to share her thoughts and let Fannon know if she wanted to discuss things further.

Parent replied that she had no confidence in the first agency or any of its employees and she did not trust any aide at that time. Parent acknowledged Student was missing out and wanted to be back at school, but Parent did not yet know how she felt about Student being back at school. Fannon replied on Friday, March 15, 2024, acknowledging Parent's feelings and requesting Parent let her know if she decided to have Student come on Monday so staff would be ready to receive Student.

After noon on Monday, March 18, 2024, Parent emailed Fannon and school psychologist Lydia Morcos rejecting a different nonpublic agency because it would mean "starting from ground zero," which caused Parent stress. Parent was concerned a new agency did not know Student's medical and behavioral needs. Parent stated she did not trust that Student would be safe returning to campus.

Fannon then asked Morcos to set up an IEP team meeting before transitioning to the new behavior agency so Parent could share her concerns with the new behavior team and Culver City could be sure the new behavior team was aware of Student's health needs and could review her behavior intervention plan. On Wednesday, March 20, 2024, Fannon invited Parent to attend a meeting with the new behavior team from Empowered, as well as herself, school psychologist Morcos, and the school nurse to talk about Student's needs and medical issues. The next day Parent agreed to the meeting on Friday, March 22, 2024, which was the last day before Culver City took two full weeks off for spring break.

Ultimately, Morcos was not able to attend and special education coordinator William Satti, Jr., Ed.D. was scheduled to facilitate the IEP team meeting instead as the local educational agency representative. Case manager/special education teacher Krueger and inclusion facilitator Chirichella, principal Williams, assistant principal Le Clair and assistant principal Kimberly Medendorp, program specialist Nia Hill, and school nurse Amy Thiel attended. Parent attended the IEP team meeting with her advocate. Board-certified behavior analyst Lindsay Pineda from Empowered, the proposed nonpublic agency, also attended.

Parent and her advocate stated Parent had no concerns and would ask questions or provide input as needed. Behavior supervisor Pineda reviewed Empowered's role as

the nonpublic agency taking over Student's behavior intervention aide and behavior intervention development provider. Satti gave Parent the opportunity to ask questions about the newly assigned behavior agency and Parent said she had no questions and just wanted Student to be safe at school.

The school nurse reviewed Student's current health plan with the IEP team, noting the health conditions that were known to Culver City and the supports in place at the middle school to ensure Student's medical needs were addressed. Parent informed Culver City Student had something called absent seizures. This condition was not noted on the January 24, 2024 IEP. March 22, 2024, was possibly the first time Parent reported it to Culver City. Pineda requested to have Empowered review the current health plan and have the assigned aide and supervisor meet with the health team to ensure they had updated and accurate information to address Student's health needs.

The IEP team next discussed the policy and procedure for supporting Student to be sure she always had adult supervision, including:

- the protocol for before and after school regarding Student transitioning from Parent to staff and back;
- the contingency plan if Student's behavior aide was late or absent; and
- the order of responsibility for a supportive adult during an emergency or dismissal from school.

The March 24, 2024 IEP team meeting notes documented the case manager, then the inclusion specialist, and then the school site administrator as the adults who would be

successively responsible for Student if an aide was unavailable. Satti again asked Parent and her advocate if they had any questions or concerns about the information discussed. They did not.

Student's assertion that the March 22, 2024 IEP team should have discussed providing and Culver City should have offered Student an intensive in-home applied behavior analysis program because Student was not attending school is without merit. The purpose of the March 22, 2024 IEP team meeting was to prepare for Student's return to school, and Culver City proposed to do that with an aide from a different behavior agency in response to Student's aide leaving her unsupervised in the school parking lot on March 11, 2024. Culver City wanted Parent to have the opportunity to meet the new behavior agency providing Student with a new aide so Parent had an opportunity to share concerns, ask questions, and discuss next steps for returning Student to campus.

Student failed to offer any evidence to support her claim in Issue 4b that Culver City was required to offer Student an intensive in-home applied behavior analysis program in the March 22, 2024 IEP just because Parent was keeping Student home from school at that time. Student failed to show by a preponderance of the evidence that Culver City denied her a FAPE in the March 22, 2024 IEP by failing to offer an intensive in-home applied behavior analysis program.

Student also failed to offer any evidence to support her claims in Issues 4a, 4c, 4d, and 4e that Culver City denied Student a FAPE by failing in the March 22, 2024 IEP to offer Student sufficient programs and services. Neither Parent nor her advocate shared any information at the March 22, 2024 IEP team meeting that supported Student's claim

she needed any different aide support, language and speech services, occupational therapy services, or parent training than those Culver City offered in the January 24, 2024 IEP.

For the same reasons as Issues 2a, 2c, 2d, and 2e, Student failed to show by a preponderance of the evidence that Culver City denied her a FAPE in the March 22, 2024 IEP by failing to offer

- a trained one-to-one academic and behavioral aide for the full school day,
- sufficient language and speech services,
- sufficient occupational therapy, and
- parent training related to Student's
 - assistive technology devices,
 - support programs,
 - applied behavior analysis,
 - data collection,
 - curriculum, and
 - transition to high school.

ISSUE 5: DID CULVER CITY DENY STUDENT A FAPE BY FAILING TO HONOR PARENT'S REQUESTS FOR ADDITIONAL SUPPORT AND OFFERING A PREDETERMINED IEP, THEREBY DENYING PARENT PARTICIPATION, AT THE MARCH 22, 2024 IEP TEAM MEETING?

Student contends Parent anticipated the March 22, 2024 IEP team meeting would discuss a safety plan for Student but instead discussed having a new board-certified behavior analyst supervise Student's behavior program.

Culver City contends Parent and her advocate did not make any requests at the March 22, 2024 IEP team meeting. Culver City also contends Parent and her advocate had ample opportunity to participate throughout the IEP team meeting.

The evidence established Parent did not make any requests at the March 22, 2024 IEP team meeting. Culver City repeatedly and specifically invited Parent to share her concerns and ask questions, and every time she declined. Culver City representatives Satti, Krueger, Chirichella, Williams, Le Clair, Medendorp, Hill, and Thiel all attended prepared to hear and address Parent's concerns for Student's safety at school. Parent only made one statement, one time, that she wanted Student to be safe at school. Student failed to present any evidence to support her claim Parent made requests for additional support and Culver City ignored them. And Student failed to present any evidence that Parent was denied meaningful participation and the March 22, 2024 IEP was predetermined.

Student failed to show by a preponderance of the evidence that Culver City denied Student a FAPE by failing to honor Parent's requests for additional support and offering a predetermined IEP, thereby denying Parent participation, in the March 22, 2024 IEP team meeting.

ISSUE 6: DID CULVER CITY DENY STUDENT A FAPE BY FAILING TO IMPLEMENT STUDENT'S IEP ON AND AFTER MARCH 11, 2024?

Student contends Parent kept Student out of school after March 11, 2024, because she feared Student would not be safe at school. Student asserts Parent could not trust Culver City with the life and wellbeing of her child without an attentive, qualified aide. Student argues the wording of her issue in her request for due process hearing, stated as

"did Culver City deny Student a FAPE by failing to provide special education services, accommodations, and support since March 11, 2024," was intended to challenge the fact that Culver City did not give Student any supports or services after March 11, 2024. Student's complaint alleged Culver City "has not offered [Student] any educational program or special education services at all since March 11, 2024." Student contends Culver City was aware Student was no longer attending classes due to safety concerns but could have and failed to offer at-home supports and services, and failed to address how to move forward with making sure Student got the supports and services she needed.

Culver City contends it remained ready, willing, and able to implement Student's operative IEP on and after March 11, 2024, through the date Student filed her complaint and beyond.

Where a student alleges the denial of FAPE based on the failure to implement an IEP, the student must prove that any failure to implement the IEP was material, which means the services provided to the child fell "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822 (*Van Duyn*).)

There is no statutory requirement of perfect adherence to the IEP, and minor failures to implement an IEP do not constitute a denial of FAPE. "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." (*Van Duyn, supra*, F.3d 811 at p. 815.) In *Van Duyn*, the court determined the school district's failure to provide five hours of math tutoring per week out of the 10 hours specified in the

student's IEP constituted a material failure to implement the IEP. (*Id.* at p. 823.) A student is not required to prove the district's failure to implement the IEP caused her to lose educational benefits. (*Id.* at p. 822.)

Parent did not consent to the January 24, 2024 IEP. Therefore, between January 24 and March 11, 2024, Culver City continued to implement the special education, related services, and accommodations to which Parent had consented in Student's January 2023 IEP. All special education and related services in that IEP designated the location of services as either a regular classroom at a public day school or a separate classroom in a public integrated facility.

At all times after March 11, 2024, Student's special education and related services in the January 2023 IEP were available. Had Student attended school, she would have received:

- the specialized academic instruction in her co-taught collaborative math and English language arts classes;
- 30 minutes a week of individual speech therapy and 30 minutes a week of group speech therapy;
- 30 minutes a month of occupational therapy consultation;
- part of the allocated yearly assistive technology consultation services for Student's AAC device and Chromebook with predictive text extension; and
- a full-time one-to-one behavior and academic aide from a nonpublic agency supervised by a behavior specialist from a nonpublic agency, except during the lunch period.

Although Student did not come to school to receive academic instruction after March 11, 2024, inclusion facilitator Chirichella continued to modify Student's work and uploaded it to Google Classroom, which Student could access from her Chromebook or any other device that could get online and access Google Classroom. Chirichella testified other members of Student's educational team also continued to upload materials for Student to Google Classroom.

Culver City could not implement Student's one-to-one aide or behavior intervention development because Parent kept Student at home. The January 2023 IEP specified the aide services and supervision were to be provided at the school site.

Culver City could not implement Student's specialized academic instruction because Parent kept Student at home. The January 2023 IEP specified the specialized academic instruction in the collaboratively taught English language arts and math classes were to be provided at the school site.

Culver City could not implement Student's group and individual speech therapy because Parent kept Student at home. The January 2023 IEP specified the language and speech services were to be provided at the school site.

Culver City could not implement Student's occupational therapy consultation service because Parent kept Student at home. Culver City continued to have a behavior agency, special education teacher, speech-language pathologist, occupational therapist, and assistive technology specialist available to serve Student at school under her last agreed-upon IEP from January 2023.

Culver City continued to encourage Parent to return Student to school, although not in the manner and not as frequently as Parent would have liked. Parent did not respond to contacts from Culver City employees. On Friday May 3, 2024, principal Williams emailed Parent requesting to talk to her. Parent responded angrily. Williams replied with an invitation to meet with her, assistant principal Le Clair, and Chirichella to develop a support plan for Student to participate in the eighth-grade end-of-year activities and finish the eighth-grade year with her classmates. Parent again responded angrily, emphasizing that she did not trust anyone from Culver City with Student's life and safety. On Tuesday May 7, 2024, with six weeks left in the school year, Williams emailed Parent that the middle school had a plan she, Le Clair, and Chirichella wanted to share with Parent and requested a phone call to share it with her. Parent requested they send it to her.

On Wednesday May 8, 2024, Le Clair emailed Parent a link to a GoogleDoc and requested Parent's feedback, emphasizing that everything was up for discussion and additional information could be completed during a re-entry meeting, which Le Clair proposed for the upcoming Monday morning. The document was an agenda for a re-entry meeting and included specific proposals to address and opportunities to discuss:

- preparation of Student's new behavior agency and aide;
- timing and personnel for morning drop-off, check-in, and getting to class;
- procedures for end-of-day check-out and hand-off to Parent;
- academics to address a feasible plan to submit a reasonable amount of missing work for credit;

- daily social-emotional and health checks and communication between Parent, staff, administrators, and school nurse; and
- participation in end-of-year activities of the eighth-grade carnival on June 5, 2024, and the eighth-grade promotion ceremony on June 13, 2024.

Parent promptly replied that she would review it and get back to Le Clair as soon as possible.

On Friday May 10, 2024, Student filed her request for due process hearing. Parent did not again reply to Le Clair, did not respond to the invitation to the meeting proposed for May 13, 2024, and provided no input or response to the proposed re-entry plan. Parent did not send Student to the extended school year program Student was offered for summer 2024. As of the time of the due process hearing, Student remained home with Parent and was not attending ninth grade at Culver City High School.

The evidence established Culver City continued to make special education and related services available to Student as required in her January 2023 IEP from March 12, 2024, through the end of the 2023-2024 regular school year and extended school year. The evidence showed that had Student returned to school, either during the regular or extended school year, Culver City was prepared to materially implement all of Students' program components at Culver City Middle School.

Student failed to show by a preponderance of the evidence that Culver City denied Student a FAPE by failing to implement Student's IEP on and after March 11, 2024.

ISSUE 7: DID CULVER CITY DENY STUDENT A FAPE BY FAILING TO ADDRESS STUDENT'S REGRESSION FROM JANUARY 24, 2024, THROUGH MAY 10, 2024?

Student contends Culver City was aware Student was predisposed to experiencing regression during extended instructional breaks and therefore offered Student extended school year services in her IEPs. Student contends Culver City failed to discuss any regression in skills at either the March 22, 2024 IEP team meeting, or at any other time during the remainder of that school year, despite knowing Student was no longer in school and was not receiving any of her IEP supports or services.

Culver City contends Student was making progress while she attended school between January 24 and March 11, 2024, and to the extent Student experienced regression after March 11, 2024, through the date of filing her request for due process, that was the result of Parent not sending Student to school.

Student produced evidence through Parent's testimony that between March and mid-September 2024, Parent observed Student regressing in her communication, independence, fine motor skills, and reading comprehension. Parent testified Student had independently used multiple words, but by mid-September 2024, Student was using one-word responses. Parent also testified Student had been more independent but in mid-September 2024, Student had regressed and required many verbal, physical, and gestural prompts and reminders. Parent further testified Student's handwriting had been better but in mid-September 2024 had regressed. For example, Student needed paper with wax bumps to help Student stay inside the lines and needed a pencil grip that forced her fingers a specific way when writing. Parent also testified that by mid-

September 2024, Parent had to reduce the difficulty of books Student read by two grade levels when Student read at home. In mid-September 2024, Student was “back in first grade from my teaching her at home.”

During Shin’s videoconference with Parent and Student on September 2, 2024, Shin observed Student to be depressed about missing school and so many activities. Student wanted to go back to school. Student’s attorney asked Shin if she had concerns for Student about regression. Shin testified Parent said she was doing her best to work with Student but did not have backgrounds in special education or speech and occupational therapies, and Student was not progressing as much as Parent wanted her to progress. This testimony indicated that rather than reporting to Shin that Student had regressed, Parent characterized Student only as not progressing as much as Parent wanted her to.

Culver City argued credibly that to the extent Student experienced any regression after March 11, 2024, it resulted from Parent’s decision to keep Student from attending school. Three days after principal Williams emailed Parent in May 2024, Parent replied on May 6, 2024, and included the statement Student had regressed academically. Williams requested a meeting. Parent’s initial reply did not respond to that proposal.

Williams persisted and on May 7, 2024, requested a phone call to discuss a plan the middle school staff had for addressing Student’s needs during a return to campus. Parent requested Culver City send her the plan.

On May 8, 2024, assistant principal Le Clair sent Parent Culver City’s proposed re-entry plan and agenda for discussion of Student’s return to school. It included academics and a proposal for getting Student caught up by selecting three to four

pertinent and feasible assignments, and noted "Procedures TBD during re-entry meeting." All other topics about addressing any regression as of May 10, 2024, could have been discussed at the meeting Culver City offered for May 13, 2024. Parent did not expressly decline the meeting invitation, but filed for due process on May 10, 2024, and did not communicate with Culver City thereafter.

The preponderance of the evidence did not establish Student experienced regression in her skills between January 24 and March 11, 2024. To the extent Student had experienced any regression between March 12 and March 22, 2024, the date of the last IEP team meeting Parent attended, Parent did not bring up the issue with the March 22, 2024 IEP team or make any request that Culver City do something to address any regression that might have happened in the two weeks Parent kept Student home from school. Parent said nothing at the March 22, 2024 IEP team meeting other than that she did not have any questions and wanted Student to be safe at school.

After March 22, 2024, Parent refused to communicate with Culver City about Student's needs and education. Parent reported regression on May 6, 2024. Culver City attempted to open a dialog and indicated an agenda for discussing Student's return to school, including to address her academics and including Parent in the decision-making process. Parent refused to participate in discussing any plan to address Student's regression and proceeded to due process on May 10, 2024.

Student failed to show by a preponderance of the evidence that Culver City denied Student a FAPE by failing to address Student's regression from January 24, 2024, through May 10, 2024.

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:

Culver City did not deny Student a FAPE by failing to include adequate goals in the January 24, 2024 IEP.

Culver City prevailed on Issue 1.

ISSUE 2:

Culver City did not deny Student a FAPE by failing to offer sufficient programs and services in the January 24, 2024 IEP, specifically:

- a. a trained one-to-one academic and behavioral aide for the full school day;
- b. an intensive in-home applied behavior analysis program;
- c. language and speech services;
- d. occupational therapy; and
- e. Parent training related to Student's
 - assistive technology devices,
 - support programs,
 - applied behavior analysis,

- data collection,
- curriculum, and
- transition to high school.

Culver City prevailed on Issues 2a, 2b, 2c, 2d, and 2e.

ISSUE 3:

Culver City did not deny Student a FAPE by failing to honor Parent's requests for additional support and offering a predetermined IEP, thereby denying Parent participation, in the January 24, 2024 IEP team meeting.

Culver City prevailed on Issue 3.

ISSUE 4:

Culver City did not deny Student a FAPE by failing to offer sufficient programs and services in the March 22, 2024 IEP, specifically:

- a. a trained one-to-one academic and behavioral aide for the full school day;
- b. an intensive in-home applied behavior analysis program;
- c. language and speech services;
- d. occupational therapy; and
- e. Parent training related to Student's
 - assistive technology devices,
 - support programs,
 - applied behavior analysis,

- data collection,
- curriculum, and
- transition to high school.

Culver City prevailed on Issues 4a, 4b, 4c, 4d, and 4e.

ISSUE 5:

Culver City did not deny Student a FAPE by failing to honor Parent's requests for additional support and offering a predetermined IEP, thereby denying Parent participation, at the March 22, 2024, IEP team meeting.

Culver City prevailed on Issue 5.

ISSUE 6:

Culver City did not deny Student a FAPE by failing to implement Student's IEP on and after March 11, 2024.

Culver City prevailed on Issue 6.

ISSUE 7:

Culver City did not deny Student a FAPE by failing to address Student's regression from January 24, 2024, through May 10, 2024.

Culver City prevailed on Issue 7.

ORDER

All 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.

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings