

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

v.

PARAMOUNT UNIFIED SCHOOL DISTRICT.

CASE NO. 2024060869

DECISION

NOVEMBER 15, 2024

On June 25, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request, called a complaint, from Parents on behalf of Student, naming Paramount Unified School District. OAH continued the matter for good cause on July 19, 2024.

Administrative Law Judge Rommel P. Cruz heard this matter by videoconference on September 10, 11, 12, and 17, 2024.

Attorneys N. Jane DuBovy and Katherine Johnson represented Student. Parent attended all hearing days on Student's behalf.

Attorneys Jonathan Read and Taylor Needham represented Paramount Unified. Director of Special Education Rochelle Yatomi attended all hearing days on Paramount Unified's behalf.

At the parties' request, the matter was continued to October 8, 2024, for written closing briefs. The record was closed, and the matter was submitted on October 8, 2024.

ISSUES

In his closing brief, Student argues Paramount Unified failed to offer an individualized education program, called an IEP, with updated present levels of performance, goals, accommodations, services, and placement, in violation of the Individuals with Disabilities Education Act, referred to as the IDEA. Student also argues the decisions and actions taken by Paramount Unified involving the June 4, 2024 IEP denied Student a free appropriate public education, called a FAPE, beyond the 2023-2024 school year.

However, the issues heard and decided in this matter were limited to the issues raised in Student's complaint. (20 U.S.C. § 1415(f)(3)(B).) In the Issues Presented section of his complaint, Student specifically elected to limit his issues to be heard and decided to the June 4, 2024 IEP's determination of eligibility, and the offer of related services and placement. Student did not raise in his complaint, nor clarify at the prehearing conference or at hearing, that he sought to litigate the June 4, 2024 IEP's goals or accommodations, or raise any other procedural or substantive violation claim beyond the Issues described in this Decision.

Further, Student elected to limit the period in which he claims Paramount Unified denied him a FAPE to the 2023-2024 school year. If Student had sought to litigate claims alleging Paramount Unified failed to offer him a FAPE for the 2024-2025 school year based on the June 4, 2024 IEP, Student could have timely requested to amend his complaint to include the 2024-2025 school year, or to raise any other claims involving the June 4, 2024 IEP. (20 U.S.C. §1415(c)(2)(E)(i).) He did not.

Accordingly, this Decision makes no determination as to Student's claims involving the June 4, 2024 IEP's offer of goals and accommodations, or any other procedural or substantive violation beyond the Issues described in this Decision. Furthermore, this Decision makes no determination whether Paramount Unified denied Student a FAPE beyond the 2023-2024 school year.

On September 12, 2024, following the parties' opening statements and the introduction of evidence and testimony, Student withdrew Issue 1d as set forth in the Order Following Prehearing Conference for Hearing by Videoconference dated August 26, 2024. OAH dismissed Issue 1d with prejudice. (Code Civ. Proc., § 581, subd. (e).) The remaining issues to be decided, as clarified by the parties and the Administrative Law Judge, are as follows:

1. Did Paramount Unified deny Student a FAPE in the 2023-2024 school year because the June 4, 2024 IEP failed to:
 - a. take into consideration Parents' concerns, including Student's needs in sensory processing, behavior, adaptive skills, social skills, communication, and coping skills;

- b. consider all available data provided by the independent psychoeducational, speech, and occupational therapy assessors;
- c. refrain from predetermining its offer of services and placement;
- d. offer Student eligibility under the category of autism;
- e. offer appropriate and sufficient language and speech services;
- f. offer appropriate and sufficient occupational therapy services;
- g. offer appropriate and sufficient recreational therapy services;
- h. offer appropriate and sufficient social skills services;
- i. offer appropriate and sufficient counseling services; or
- j. offer placement in the general education transitional kindergarten with a one-to-one aide, supervised by a board-certified behavior analyst?

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JURISDICTION

This hearing was held under the IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All references to the Code of Federal Regulations will be to the 2006 version unless otherwise stated. The main purposes of the IDEA are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

Here, Student requested the hearing and had the burden of proof as to the 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 five years old at the time of hearing. He resided within Paramount Unified's geographic boundaries at all relevant times. Student had a diagnosis of autism and was eligible for special education under the category of speech or language impairment. At the time of hearing, he was attending a private preschool.

PARAMOUNT UNIFIED'S INITIAL ASSESSMENTS

Student attended a preschool outside of Paramount Unified during the 2022-2023 school year. Student's preschool referred him to Paramount Unified to be assessed for special education services in spring 2023. Student was approximately three years, and 11-months old when Paramount Unified assessed his

- health,
- pre-academic skills,
- cognitive functioning,
- communication development,
- motor development, and
- sensory processing skills.

For the spring 2023 assessments, Parent reported Student had difficulties with his speech and articulation. Student also repeated phrases, did not engage in conversations, nor shared with others. Student cried, threw tantrums, and withdrew when he felt misunderstood. Parent also reported Student hit adults and siblings when frustrated.

In addition, Parent reported Student struggled with transitions. He needed advance notice of upcoming events, and did not tolerate changes or being told “no.”

Paramount Unified’s preschool special education teacher Hannah Lee assessed Student’s pre-academic skills, obtained input from his preschool teacher and observed Student in his preschool classroom. Lee was a preschool special education teacher for 11 years and was a member of Paramount Unified’s preschool initial assessment team.

Lee administered a criterion-referenced assessment tool tailored for children birth to seven years of age, that assessed Student’s ability to

- name colors,
- name uppercase and lowercase letters,
- understand number concepts,
- count,
- compare different amounts,
- name shapes,
- sort objects, and
- recognize quantities.

In all areas but one, sorting objects, Student demonstrated skills in the range of four to eight years of age. When sorting objects, Student demonstrated skills in the three-year old range.

Student’s preschool teacher reported that Student could follow group instruction, work independently, complete class assignments and homework, and participate in group activities. The teacher reported that Student interacted with one friend, who shared the same interests in blocks and toy cars. The teacher described Student as “very independent” who went to the restroom by himself, a “good student” who followed

routines, and responded well to receptive language. The teacher wanted Student to use more words in a sentence, speak louder, and pronounce his words better. The teacher and other students could not always understand what Student was saying. The teacher stated that she had “no major concerns” about Student.

Lee observed Student on three occasions. The first and third observations occurred during testing, and the second occurred at Student’s preschool. Lee did not observe any concerning behaviors.

During testing, Lee noted that Student frequently answered questions but was difficult to understand at times. At preschool, Lee observed Student to independently pour and scoop food during lunch, and successfully use tongs. The teacher reported to Lee that Student generally played next, but did not interact directly with, other children, with the exception of one specific child who Student sometimes played with.

School psychologist Lisa Waters assessed Student’s cognitive functioning using a standardized assessment tool. Waters was a school psychologist for 10 years. Waters found Student’s nonverbal reasoning skills as an area of strength based on his performance, which fell in the high range.

Speech-language pathologist Kristin Bruning assessed Student’s communication skills using a variety of standardized assessment tools, a rating scale, a language sample, and observations. Bruning found Student’s expressive and receptive language skills in the average range. Student’s general language ability was also in the average range. Specifically, Student demonstrated average abilities in interpreting spoken language, applying appropriate word structure rules and using appropriate pronouns, and labeling illustrations such as people, objects, and actions.

Bruning also determined Student's social language skills were average based on Parent's ratings. Student demonstrated good eye contact and attention, and enjoyed asking and answering questions during testing.

However, Student had difficulty articulating the /k/, /g/, and /s blend/ sounds. Bruning found Student to be intelligible 75 percent of the time, and opined Student's articulation was an area of need.

Occupational therapist Aishani Patel assessed Student's motor development and sensory processing skills. Patel was an occupational therapist for six years, the past four years with Paramount Unified.

Results of Patel's standardized testing showed that Student's visual perception skills to perform complex eye-hand coordination tasks were in the average range. His grasping skills were also in the average range. Patel determined Student's gross motor and sensory processing skills were adequate for the school setting. At hearing, Patel opined Student did not demonstrate any needs necessitating occupational therapy services at the time of her assessment.

The assessors opined Student qualified for special education services under the category of speech or language impairment due to an articulation disorder. The assessors opined Student did not qualify for special education because of his autism. The assessors' findings, conclusions, and recommendations were contained in a multidisciplinary assessment report dated March 29, 2023.

INITIAL IEP TEAM MEETING AND INDEPENDENT EDUCATIONAL EVALUATIONS

Paramount Unified convened IEP team meetings on May 8 and 25, 2023, to review the March 29, 2023 multidisciplinary assessment report and to determine Student's eligibility for special education services. Among those who attended the meetings were Parent, program administrator David Daley, Student's preschool teacher, Bruning, Waters, Lee, and Patel. The IEP developed in May 2023 is referred to as the May 8, 2023 IEP.

Following the IEP team's review of the March 29, 2023 multidisciplinary assessment report, Paramount Unified's IEP team members determined Student qualified for special education services under the category of speech or language impairment and identified articulation as the only area of need necessitating goals and services. The May 8, 2023 IEP's FAPE offer included two articulation goals, and 20 minutes, twice a week, of group language and speech services. The IEP offered a regular early childhood program for preschool, and a regular transitional kindergarten or kindergarten classroom once Student turned five years old in April 2024.

On October 10, 2023, Student's attorney, on behalf of Parents, provided Paramount Unified written notice of Parent's disagreements with the May 8, 2023 IEP. On October 26, 2023, Parents on behalf of Student filed a complaint with OAH, naming Paramount Unified.

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On January 16, 2024, Student and Paramount Unified reached a final settlement agreement to resolve Student's due process hearing request. As part of the final settlement agreement, Paramount Unified agreed to fund independent educational evaluations in psychoeducation, speech and language, and occupational therapy.

Licensed clinical psychologist Sharis Rostamian, Psy.D. conducted the independent psychoeducational evaluation. Dr. Rostamian assessed Student and presented her findings, conclusions, and recommendations in a report dated May 16, 2024. Dr. Rostamian testified at the hearing.

Occupational therapist Gwendolyn Olicker conducted the independent occupational therapy evaluation. Olicker assessed Student and presented her findings, conclusions, and recommendations in a report dated May 14, 2024. Olicker testified at the hearing.

Student selected speech-language pathologist Susan Hollar to conduct the independent speech and language evaluation. Hollar prepared an assessment report, but only one page of Hollar's speech and language assessment report was admitted into evidence. The single page contained goals proposed by Hollar. Hollar did not testify at the hearing.

Student did not attend a Paramount Unified early childhood program, nor did Parent avail Student of speech and language services during the 2023-2024 school year. Paramount Unified's last day of instruction for the 2023-2024 school year was June 6, 2024.

ISSUE 1a: DID THE JUNE 4, 2024 IEP FAIL TO CONSIDER PARENT'S CONCERNS IN SENSORY PROCESSING, BEHAVIOR, ADAPTIVE SKILLS, SOCIAL SKILLS, COMMUNICATION, AND COPING SKILLS?

Student contends Paramount Unified denied him a FAPE because Paramount Unified failed to consider Parent's concerns about a specific offer of placement and services at the June 4, 2024 IEP team meeting. Paramount Unified contends it considered Parent's concerns at the June 4, 2024 IEP team meeting, and Student was not denied a FAPE for that reason.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In developing an IEP, 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* (9th Cir. 1992) 960 F.2d 1479, 1485 (*Target Range*); *Fuhrmann v. East Hanover Board of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*)). The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP team meeting, expresses disagreement regarding the IEP team's conclusions, and

requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss an IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

Paramount Unified convened an IEP team meeting on June 4, 2024, to review the independent educational evaluation reports by Dr. Rostamian, Olicker, and Hollar.

Parent attended the meeting along with

- Student's attorney,
- Lee,
- Waters,
- Patel,
- Daley, speech-language pathologist Brenda Hernandez, and
- a disabilities and inclusion specialist from Student's preschool.

Dr. Rostamian, Olicker, and Hollar, together referred to as the independent assessors, attended the meeting and presented their assessment reports. The amendment to the May 8, 2023 IEP developed on June 4, 2024, is referred to as the June 4, 2024 IEP. Student was five years old at the time of the June 4, 2024 IEP team meeting.

Lee, Waters, Patel, Daley, and Hernandez testified at hearing. Each testified to their education, training, and experience, which established them as experienced and competent in their professional fields. Their testimony was thoughtful and confident, and therefore, credible and persuasive.

The evidence established Paramount Unified did not fail to consider Parent's concerns at the June 4, 2024 IEP team meeting. The independent assessors reported Parents' concerns, which Paramount Unified's IEP team members reviewed and considered. Paramount Unified's IEP team members also considered the concerns Parent raised at the June 4, 2024 IEP team meeting.

Dr. Rostamian presented her psychoeducational assessment report to the IEP team, which described the concerns Parent shared with her. Parent reported Student struggled with changes in routine and transitions. At the time of the assessments, Parent shared Student had two to three tantrums a day, which often occurred when he was not warned about transitions, or did not get what he wanted. Parent did not specify if the tantrums also occurred at school.

Parent also reported to Dr. Rostamian that Student became fixated on an item or request and would constantly request it. Parent struggled to understand what Student said.

Dr. Rostamian's assessment also collected, analyzed, and reported concerns Parent conveyed through rating scales. In behavior, Parent's ratings reflected scores in the at-risk range for externalizing and internalizing behaviors, behavioral symptoms, and adaptive skills. Parent's ratings in aggression, depression, and withdrawal fell in the clinically significant range. Parent's rating of Student's adaptive skills at home fell in the moderately low range. For autism, Parent's ratings indicated the probability to be "very likely."

Olicker presented her occupational therapy assessment report to the IEP team. Olicker's assessment report did not describe concerns Parent reported directly to Olicker. However, Olicker collected, analyzed, and reported the concerns Parent shared through a rating scale Parent completed for Olicker. According to Parent's ratings, Student demonstrated significant challenges at home related to sensory processing, specifically sensitivity to noises and tactile stimuli.

Hollar presented her speech and language assessment report to the IEP team. Hollar did not testify at the hearing, nor did Student present any evidence that Parent reported any concerns to Hollar. However, the June 4, 2024 IEP team meeting notes, and the testimony of speech-language pathologist Hernandez demonstrated Paramount Unified's IEP team members reviewed and considered Hollar's entire assessment report.

Paramount Unified also considered the concerns Parent raised at the June 4, 2024 IEP team meeting. According to the June 4, 2024 IEP team meeting notes, Parent only shared their concern "regarding summer services."

At hearing, Parent testified she reported to the IEP team she expected Paramount Unified to provide her with clear guidance of Student's IEP placement, and the services available during the summer. Parent also testified she expected Paramount Unified to offer more speech services, and to add occupational therapy, social skills, and behavior services to Student's IEP. However, aside from Parent's expectations, Parent did not testify reporting to the June 4, 2024 IEP team specific concerns she had about Student's

- sensory processing skills,
- behavior,
- adaptive skills,

- social skills,
- communication, and
- coping skills.

Student failed to offer any persuasive testimony or documentary evidence demonstrating the June 4, 2024 IEP failed to consider any concerns Parent raised about Student's

- sensory processing skills,
- behavior,
- adaptive skills,
- social skills,
- communication, and
- coping skills.

Student argues Paramount Unified failed to address Parent's concerns at the June 4, 2024 IEP team meeting, and in the June 4, 2024 IEP, that the specific location as to where Student would receive language and speech services was unclear. Student's argument was not persuasive.

The June 4, 2024 IEP was sufficiently clear as to where Student could access language and speech services. The educational setting offered in the June 4, 2024 IEP was consistent with the offer of placement in the May 8, 2023 IEP when Student was in preschool, which identified Hollydale School as Student's school of attendance, but also noted that the language and speech services were not available at Hollydale. Program

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administrator Daley explained at hearing that language and speech services were not available to Student at Hollydale during preschool because Hollydale did not have a preschool program on site. Instead, the IEP offered language and speech services at a Paramount Unified early childhood program.

The June 4, 2024 IEP also noted, and as explained by Daley at hearing, that once Student turned five years old and qualified for transitional kindergarten or kindergarten, Student could access language and speech services at Hollydale's transitional kindergarten and kindergarten program. The evidence established the June 4, 2024 IEP sufficiently explained that Student could receive special education services at his school of residence, Hollydale, at the time of the June 4, 2024 IEP team meeting because Student was five years old. In sum, Paramount Unified and the June 4, 2024 IEP did not fail to consider Parent's placement concerns.

Based on the information presented by the independent assessors, including the concerns raised by Parent at the June 4, 2024 IEP team meeting, Paramount Unified determined further assessments of Student were necessary before making any changes to Student's IEP. As a result, the June 4, 2024 IEP continued the same offer of language and speech services and placement in a transitional kindergarten or kindergarten program from the May 8, 2023 IEP.

The evidence established Paramount Unified's IEP team members considered the concerns Parent reported to the independent assessors and to the June 4, 2024 IEP team, including any concern about Student's

- sensory processing,
- behavior,

- adaptive skills,
- social skills,
- communication, and
- coping skills.

Student offered no credible testimony or documentary evidence to demonstrate how Paramount Unified, or the June 4, 2024 IEP, failed to consider Parent's concerns.

Accordingly, Student failed to prove Paramount Unified denied him a FAPE because the June 4, 2024 IEP failed to consider Parent's concerns, including concerns about Student's needs in sensory processing,

- behavior,
- adaptive skills,
- social skills,
- communication, and
- coping skills.

Paramount Unified prevailed on Issue 1a.

ISSUE 1b: DID THE JUNE 4, 2024 IEP FAIL TO CONSIDER ALL AVAILABLE DATA FROM THE INDEPENDENT ASSESSORS?

Student contends Paramount Unified failed to consider the data from the independent assessors to develop an offer of FAPE at the June 4, 2024 IEP team meeting. Paramount Unified contends it considered all available data presented by the independent assessors.

If a parent obtains an independent educational evaluation at public expense or shares with the school district an evaluation obtained at private expense, the results of the evaluation must be considered by the school district. (34 C.F.R., § 300.502(c)(1).) The plain meaning of the word “consider” is to “think about in order to understand or decide; ponder.” (Webster’s New World College Dictionary, Fourth Edition, p. 310 (2004); see *T.S. v. Board of Educ. of Town of Ridgefield* (2nd Cir. 1993) 10 F.3d 87, 89 [the plain meaning of the word “consider” is to “reflect on: think about with a degree of care or caution” (quoting Webster’s Third New International Dictionary 483 (1986)).].)

Consideration of an independent educational evaluation does not require a substantive discussion of the evaluation, that every member of an IEP team read the evaluation report, or that a school district accord the evaluation any particular weight. (*S.W. v. New York Dept. of Educ.* (S.D.N.Y. 2015), 92 F.Supp.3d 143, 158.) The IDEA only requires a school district to consider the results of a parent-initiated evaluation; it does not require a school district to adopt the conclusions of such an evaluation. (*Michale P. v. Dept. of Educ.* (9th Cir. 2011) 656 F.3d 1057, 1066, fn. 9.)

The question to be answered in Issue 1b is not whether Paramount Unified failed to accept the findings or adopt the conclusions by the independent assessors. Rather, the question to be answered is whether Paramount Unified reflected on, pondered over, and thought about the data presented by the independent assessors when Paramount Unified decided to seek further assessments of Student instead of amending Student’s IEP. The evidence established Paramount Unified did. Paramount Unified considered all\ available data presented by the independent assessors when Paramount Unified decided to continue the May 8, 2023 IEP’s FAPE offer, and to defer any changes to the IEP until additional assessments of Student could be completed.

The data shared by the independent assessors suggested Student's behaviors, communication, fine motor skills, sensory processing skills, and social-emotional functioning differed from what Paramount Unified had observed and assessed in spring 2023. The information presented by the independent assessors also offered an inconsistent picture of Student's performance at school. As whole, the information shared by the independent assessors and the preschool suggested Student's educational needs may have changed since spring 2023, and further assessments were needed to clarify the discrepancies between the spring 2023 assessments and the information presented by the independent assessors and the preschool.

Reports from Student's preschool teachers varied, and supported the need for further assessments and observations. Preschool teachers Leticia Ojeda and Paola Curiel co-taught Student in preschool during the 2023-2024 school year. Neither of the teachers were the same teacher who taught Student in the 2022-2023 school year and participated in the 2023 assessments. Ojeda reported to Dr. Rostamian that Student needed a lot of reminders in class. Staff had to shadow him to manage his triggers. He became dysregulated if another child did not follow classroom rules. Ojeda described Student as solitary, who did not initiate play with other students and typically played on his own. Ojeda shared that Student was bright but needed help regulating his emotions and communicating. Ojeda opined Student would benefit from having a one-to-one aide in kindergarten to help Student regulate himself, be flexible to changes, to communicate, and navigate a large classroom.

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Student's preschool teachers did not attend the June 4, 2024 IEP team meeting. According to the disabilities and inclusion specialist who shared the preschool teachers' observations, Student had difficulty regulating his emotions and lining up with peers. The teachers observed Student display aggressive behaviors, such as pulling another child's hair. Student also got angry and would at times cry and scream.

On the contrary, Curiel reported to Dr. Rostamian, Student's behaviors had significantly improved. He had become accustomed to the classroom routines and could transition between activities with ease. He also followed rules for cleaning up toys. Curiel also reported Student's verbal communication improved; he could state what he wanted, and answered questions.

Socially, Curiel reported Student played with many children, playing with different children on the same day or week. Student also initiated conversations and engaged with other children. He played with a variety of toys and was more willing to share. Overall, Curiel reported Student had made considerable progress since he began attending the preschool.

The observations by the independent assessors also supported the need for further assessments. Olicker observed Student in his preschool classroom for one hour. During that time, Olicker did not observe Student interact with any child while he played.

Dr. Rostamian observed Student for two hours and 20 minutes in the preschool. Dr. Rostamian observed Student being aggressive and unfriendly towards other children. He flicked the heads of two other children and gently pulled the hair of one.

On the other hand, Dr. Rostamian also observed Student display appropriate behaviors. Dr. Rostamian opined in her report Student played very well with one friend, demonstrating appropriate social skills, with

- appropriate eye contact,
- communication,
- shared enjoyment,
- joint attention, and
- play.

Dr. Rostamian also observed Student transition easily between activities. Dr. Rostamian further opined in her report Student followed instructions and participated in group activities. He responded appropriately when his expectations were not met. He also demonstrated the ability to care for his belongings, get his needs met, and follow classroom rules. In sum, the evidence established Paramount Unified considered the observations reported by the teachers and the assessors, and as result, determined further assessments were necessary.

The independent assessors' testing data also showed concerns about Student's behavior, social emotional functioning, fine motor, and sensory processing skills which necessitated further assessments. Olicker opined Student had significant challenges with fine motor skills and sensory processing. In addition, Olicker found Student had low muscle tone, diminished gross motor planning, and sensory processing challenges, with significant sensitivity to noises and tactile stimuli.

Occupational therapist Patel testified Olicker's findings were significantly different from what she assessed and observed of Student, and what was reported by Student's preschool teacher in spring 2023. At the June 4, 2024 IEP team meeting, Patel

questioned Olicker about the sensory processing ratings completed by Parent and Ojeda. Ojeda's ratings did not show significant sensory challenges in the classroom. Curiel did not complete any ratings for Olicker. Also, Dr. Rostamian did not observe any sensitivity to noises by Student, and instead noted Student's repeatedly rang a bell during her observation. At hearing, Patel persuasively opined further assessments were necessary to further understand Student's sensory needs in school.

Olicker recommended occupational therapy goals and accommodations. In addition, Olicker recommended Student receive individual occupational therapy services to address

- sensory processing,
- sensory integration,
- low muscle tone,
- gross motor planning, and
- fine visual motor skills.

Olicker also recommended occupational therapy consultation services with teachers and school staff.

Dr. Rostamian opined Student met special education eligibility criteria for autism. She recommended a one-to-one aide for Student in a general education kindergarten classroom if the class had more than 12 students. She also recommended

- extended school year services,
- a behavior intervention plan,
- a functional behavior assessment,
- a central auditory processing assessment,
- an occupational therapy assessment,

- social skills instruction,
- counseling services, and
- school-based recreational therapy.

Speech-language pathologist Hernandez testified about certain aspects of Hollar's independent speech and language assessment report. Hollar found Student had a severe articulation delay, with receptive and expressive language, and social pragmatic deficits. Hollar also found Student had symptoms consistent with an auditory processing disorder. Hollar recommended language and speech services and weekly social group services. At the June 4, 2024 IEP team meeting, Hollar also recommended a central auditory processing assessment and a one-to-one aide for Student.

At hearing, Hernandez did not criticize Hollar's conclusions and recommendations. Rather, Hernandez opined Hollar's findings and conclusions were significantly different from the findings and conclusions by Paramount Unified's assessors in spring 2023. Therefore, Hernandez opined additional assessments were warranted to explain the discrepancies.

The evidence established Paramount Unified reflected on, and considered with a degree of care and caution, the data presented by the independent assessors. At the conclusion of the June 4, 2024 IEP team meeting, Paramount Unified offered to conduct psychoeducational, speech, and occupational therapy assessments to further assess Student's present levels of functioning based on the discrepancies between Paramount Unified's initial assessments in 2023, and the new data presented by the independent assessors. Lee, Patel, Waters, Hernandez, and Daley testified they each agreed with Paramount Unified's decision to conduct additional assessments of Student before the IEP team could further develop Student's IEP.

Paramount Unified provided Parent with an assessment plan dated July 16, 2024, which further established Paramount Unified considered the data presented by the independent assessors. The July 16, 2024 assessment plan offered to assess Student's academic achievement, intellectual development, language, speech, and communication development, motor development, social-emotional functioning, behavior, and adaptive skills. In addition, the assessment plan offered to conduct a functional behavior assessment, and a central auditory processing assessment as recommended by Dr. Rostamian.

Furthermore, Paramount Unified offered to conduct an educationally related mental health services assessment because Dr. Rostamian recommended counseling services. Parent provided written consent to the July 16, 2024 assessment plan on August 9, 2024. The evidence established Paramount Unified considered the data the independent assessors provided in developing the July 16, 2024 assessment plan. Student failed to offer any credible evidence of how Paramount Unified or the June 4, 2024 IEP failed to consider the data presented by the independent assessors.

Paramount Unified made no changes to its offer of FAPE, and instead offered to further assess Student in all areas of suspected need based on the data presented by the independent assessors, including assessments in the areas recommended by the independent assessors. The evidence established the June 4, 2024 IEP reflected Paramount Unified's consideration of the data presented by the independent assessors.

Accordingly, Student failed to prove Paramount Unified denied him a FAPE because the June 4, 2024 IEP failed to consider all available data provided by the independent psychoeducational, speech, and occupational therapy assessors. Paramount Unified prevailed on Issue 1b.

ISSUE 1c: DID PARAMOUNT UNIFIED PREDETERMINE THE JUNE 4, 2024 IEP'S OFFER OF SERVICES AND PLACEMENT?

Student contends Paramount Unified predetermined the June 4, 2024 IEP because Paramount Unified had no intention of modifying Student's IEP at the June 4, 2024 IEP team meeting, regardless of the information Parent and the independent assessors presented. Paramount Unified contends it did not predetermine the offer of services and placement in the June 4, 2024 IEP. Paramount Unified argues it considered the information presented by Parent, the independent assessors, and Student's preschool in determining further assessments were needed before changing Student's IEP.

Predetermination occurs when an educational agency has decided on its offer of FAPE prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Board of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP team meeting with a take it or leave it offer. (*JG v. Douglas County School Dist.* (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.) The law requires the school district to engage in an open discussion of Student's educational program and show a willingness to discuss options proffered by parents. (*Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1054-1055.)

Predetermination causes a deprivation of educational benefits where, absent the predetermination, there is a strong likelihood that alternative educational possibilities for the student would have been better considered. (*M.S. v. Los Angeles Unified School Dist.* (C.D.Cal. September 12, 2016, Case No. 2:15-cv-05819-CAS-MRW) 2016 WL 4925910 at p.12. (citing *Doug C. v. Hawaii Depart. Of Education* (9th Cir. 2013) 720 F.3d 1038, 1047.) A student is not required to prove that his placement or services would

have been different but for the predetermination. (*Ibid.*) Further, predetermination is an automatic violation of a parent's right of participation under the IDEA. Where predetermination has occurred, regardless of the discussions that may occur at the meeting, the school district's actions would violate the IDEA's procedural requirement that parents have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child. (*H.B. v. Las Virgenes*, 239 Fed.Appx. 342, 344, quoting 20 U.S.C. § 1415(b)(1).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Fuhrmann, supra*, 993 F.2d at p. 1031.) However, after-acquired information may be used to assess the reasonableness of a school district's earlier action. (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2011) 652 F.3d 999, 1006 (*Pajaro*).)

Paramount Unified did not predetermine the June 4, 2024 IEP's offer of services and placement. Paramount Unified's IEP team members listened and questioned Dr. Rostamian, Olicker, and Hollar about their respective assessment reports, and considered the assessors' findings, conclusions, and recommendations. The IEP team also heard from Student's preschool about his classroom needs, and Parent's concerns.

Student argues Paramount Unified ignored the data from the independent assessors, and should have relied on its own assessments in 2023, the data presented by the independent assessors, and updated information from Parents and service providers to develop an offer of FAPE at the June 4, 2024 IEP team meeting. The argument was

not persuasive. Paramount Unified was not obligated to accept the findings, conclusions, and recommendations of the independent assessors without question to develop an offer of FAPE.

Further, reports by Student's preschool teachers, observations, and assessments by the independent assessors and Paramount Unified's assessment team in 2023 conflicted, therefore, Paramount Unified's need to further assess Student was warranted considering Paramount Unified had not observed Student for more than a year. Paramount Unified did not serve and observe Student during the 2023-2024 school year. Therefore, it was reasonable for Paramount Unified to question whether its own assessments in 2023 could still be relied on to determine Student's current educational needs based on the new information presented by the independent assessors and Student's new preschool teachers.

Paramount Unified's cautious approach in relying too heavily on the independent assessors' data and the 2023 assessments was reasonable in light of the information available to the June 4, 2024 IEP team. Student's functioning and needs according to the independent assessors and the preschool was significantly different than how Student was functioning in preschool when Paramount Unified assessed him in 2023. Witnesses Daley, Waters, Patel, Lee, and Hernandez credibly opined that Student's present levels of functioning as reported by the independent assessors and the preschool, were considerably different from Student's functioning at the time of Paramount Unified's initial assessments of Student more than a year prior.

Furthermore, Student's functioning in preschool at the time of hearing demonstrated Paramount Unified acted reasonably when it decided to further assess Student before making any changes to his IEP. (*Pajaro, supra*, 652 F.3d 999, at p. 1006.)

Student transitioned to his new preschool on August 20, 2024. The director of this preschool testified Student was academically advanced, communicated well with his peers and teacher, played and shared with other children, and had no behavioral problems. Student did not tantrum at school, was compliant, and was easily redirected. The evidence demonstrated Student's functioning at the new preschool differed from his functioning in the 2023-2024 school year, and was generally consistent with how he was functioning when Paramount Unified assessed him in spring 2023. Accordingly, Paramount Unified's decision to proceed carefully to thoroughly understand Student's educational needs through further assessments and observations was proper.

The evidence established Paramount Unified's decision to reassess Student, rather than to amend the IEP was reasonable and justified, based on the information presented by the independent assessors and the preschool. The evidence also established Paramount Unified engaged in an open discussion with Parent, the preschool, and the independent assessors at the June 4, 2024 IEP team meeting regarding Student's educational needs and program, and showed a willingness to discuss options offered by Parent and the independent assessors. Paramount Unified did not come to the June 4, 2024 IEP team meeting with a take it or leave it offer of services and placement. Accordingly, Paramount Unified did not predetermine the offer of services and placement in the June 4, 2024 IEP.

Student failed to prove Paramount Unified denied him a FAPE because Paramount Unified predetermined the offer of services and placement in the June 4, 2024 IEP. Paramount Unified prevailed on Issue 1c.

ISSUE 1d: DID PARAMOUNT UNIFIED DENY STUDENT A FAPE BY NOT FINDING HIM ELIGIBLE FOR SPECIAL EDUCATION SERVICES UNDER THE CATEGORY OF AUTISM IN THE JUNE 4, 2024 IEP?

Student contends Paramount Unified failed to update the June 4, 2024 IEP to include autism as a qualifying disability for Student's special education services. Paramount Unified contends it did not deny Student a FAPE by not finding him eligible for special education services under the category of autism in the June 4, 2024 IEP.

A child qualifies for special education services as an individual with exceptional needs because of autism if the child's autism significantly affects their verbal and nonverbal communication and social interaction, which is generally evident before the age of three, and the autism adversely affects the child's educational performance. (Cal. Code Regs., tit. 5, § 3030(a) and (b)(1).) Other characteristics associated with autism include engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (Cal. Code Regs., tit. 5, § 3030(b)(1).)

As long as a child remains eligible for special education and related services, the IDEA does not require an IEP to identify the most accurate disability category for the child. The IDEA does require a child be classified by their disability so long as each child who has a qualifying disability, and who, by reason of that disability, needs special education and related services, is regarded as a child with a disability. (20 U.S.C. § 1412(a)(3)(B); Ed. Code, § 56301, subd. (a).) The IDEA is not concerned with labels, but with whether a student is receiving a FAPE. (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2014) 758 F.3d 1162, 1173, citing *Heather S. v. Wisconsin* (7th Cir.1997) 125 F.3d

1045, 1055.) The very purpose of categorizing disabled students is to try to meet their educational needs, it is not an end to itself. (*Pohorecki v. Anthony Wayne Local School Dist.*, (N.D. Ohio 2009) 637 F.Supp.2d 547, 557.)

Student failed to prove Paramount Unified denied him a FAPE because the June 4, 2024 IEP did not designate him eligible for special education services under the category of autism. At the June 4, 2024 IEP team meeting, Paramount Unified considered Dr. Rostamian's finding and recommendation that Student qualified for special education services under the category of autism. Paramount Unified was aware at the time of its initial assessments in 2023, that Student had a diagnosis of autism, but their initial assessments did not find his autism adversely affected his educational performance. At the conclusion of the June 4, 2024 IEP team meeting, Paramount Unified reasonably sought additional assessments to determine how Student's autism adversely affected his educational performance, before making any determination of his eligibility under the category of autism.

Most importantly, the June 4, 2024 IEP continued to maintain Student's eligibility for special education services under the category of speech or language impairment. The IDEA did not require the June 4, 2024 IEP to also label Student eligible for special education services under the category of autism to receive a FAPE. Further, Student did not prove Student required an autism eligibility to receive a FAPE or that Student could not receive a FAPE with a speech or language impairment eligibility. Student offered no testimony or documentary evidence that Paramount Unified could not meet Student's needs without also designating him as eligible under the category of autism.

Accordingly, Student failed to meet his burden of proving Paramount Unified denied him a FAPE during the 2023-2024 school year by failing to offer him eligibility under the category of autism in the June 4, 2024 IEP. Paramount Unified prevailed on Issue 1d.

ISSUES 1e AND 1h: DID PARAMOUNT UNIFIED FAIL TO OFFER APPROPRIATE AND SUFFICIENT LANGUAGE AND SPEECH, AND SOCIAL SKILLS SERVICES IN THE JUNE 4, 2024 IEP?

Student contends Student had significant needs in communication and social skills, and the language and speech services in the June 4, 2024 IEP were insufficient to meet those needs. Student also contends the June 4, 2024 IEP required social skills services to meet his social skills deficits.

Paramount Unified contends the June 4, 2024 IEP's language and speech services were appropriate to address Student's identified communication needs, and any changes to those services first required a further assessment of Student's functioning and needs in that area. Paramount Unified also contends a reassessment of Student was necessary before offering any social skills services.

The IEP is the centerpiece of the IDEA's education delivery system for disabled children and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345.) The IEP is a comprehensive statement of the educational needs of a child with a

disability, and the specially designed instruction and related services to be employed to meet those needs. (*School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].)

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]; *Andrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].) Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; 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).)

Student failed to prove Paramount Unified denied him a FAPE because the June 4, 2024 IEP failed to offer appropriate and sufficient language and speech, and social skills services. The evidence established Paramount Unified's decision to maintain the same level of language and speech services, and to refrain from offering social skills services in the June 4, 2024 IEP was reasonable and proper because the June 4, 2024 IEP team had conflicting information about Student's communication and social pragmatic skills which warranted additional assessments.

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Student's contention that the June 4, 2024 IEP should have offered additional language and speech services was not persuasive. Student relies on Hollar's findings that Student had deficits in receptive, expressive, and social pragmatics. However, Hollar's findings were inconsistent with Paramount Unified's findings in 2023, and the reports presented by preschool teacher Curiel's and Dr. Rostamian's observations.

Preschool teacher Curiel reported Student could express his wants and respond to questions. Student was also social. He played with many children, playing with different children on the same day or week. Student also initiated conversations and engaged with other children. He played with a variety of toys and was willing to share.

Dr. Rostamian opined Student demonstrated appropriate social skills with a friend. Dr. Rostamian observed Student use appropriate eye contact and communication skills, and demonstrate shared enjoyment, joint attention, and proper playing. The evidence established Curiel's and Dr. Rostamian's observations of Student's communication skills did not support Hollar's findings and conclusions, and therefore, additional assessments were necessary to determine the extent of Student's communication deficits, and the impact any deficits had on his classroom performance.

Dr. Rostamian's recommendation for social skills services was not supported by her own findings or observations, and her report and testimony did not explain the discrepancies reported by the preschool teachers and her own observation. Accordingly, Dr. Rostamian's recommendation for social skills services as a necessary service for Student to receive a FAPE, was not persuasive.

In addition, Student offered no evidence that the amount and type of language and speech services offered in the June 4, 2024 IEP was inappropriate or insufficient to address Student's articulation needs identified in the June 4, 2024 IEP. The June 4, 2024

IEP identified Student's articulation as the only area of need. Paramount Unified offered two articulation goals to meet those needs. Though the June 4, 2024 IEP incorrectly stated the end date of the language and speech services was May 7, 2024, testimony by program administrator Daley credibly established the language and speech services continued to be available to Student until additional assessments of Student were completed and reviewed by the IEP team. The June 4, 2024 IEP continued to offer 20 minutes of group language and speech services, twice a week.

Speech-language pathologist Hernandez testified as to parts of Hollar's assessment report. According to Hernandez, Hollar recommended 45 minutes of language and speech services, twice a week, to address Student's deficits that Hollar identified.

However, Hollar's recommended 45 minutes of language and speech services, twice a week, was not persuasive because the recommended minutes were not limited to supporting the two articulation goals offered in the June 4, 2024 IEP, but to support the additional goals Hollar had recommended. Student offered no testimony or documentary evidence to establish he needed more than 20 minutes, twice a week of language and speech services to support the June 4, 2024 IEP's two articulation goals.

Paramount Unified's IEP team members credibly testified additional assessments of Student's receptive language, expressive language, and social pragmatic needs were warranted to confirm Student's communication needs in school, and the services to support those needs. Hollar did not testify about her assessment, and Student failed to offer any testimony to establish that the information available to the June 4, 2024 IEP team was sufficient and clear to determine Student's communication deficits and service needs. Therefore, Paramount Unified's decision to defer changing the amount and type

of language and speech services, including not offering social skills services, in Student's IEP, until assessments could be completed, was objectively reasonable and did not deny Student a FAPE.

Furthermore, Student failed to establish how 40 minutes a week of language and speech services in the June 4, 2024 IEP, or the lack of social skills services, denied him a FAPE through June 6, 2024. Student failed to show how the June 4, 2024 IEP deprived him of language and speech services, and social skills services for the last three days of Paramount Unified's 2023-2024 school year. Student was not attending a Paramount Unified program, and Student offered no evidence that after the June 4, 2024 IEP team meeting, Parent had any intent of enrolling him in a Paramount Unified transitional kindergarten or kindergarten program, or availing Student of special education and related services on or before June 6, 2024. Furthermore, Student offered no testimony or documentary evidence of how the offer of language and speech services in the June 4, 2024 IEP, or the lack of social skills services, significantly impeded Parent's ability to make an informed decision about Student's education for the 2023-2024 school year.

Student failed to prove Paramount Unified denied him a FAPE during the 2023-2024 school year, by failing to offer appropriate and sufficient language and speech and social skills services in the June 4, 2024 IEP. Accordingly, Paramount Unified prevailed on Issues 1e and 1h.

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ISSUE 1f: DID PARAMOUNT UNIFIED FAIL TO OFFER APPROPRIATE AND SUFFICIENT OCCUPATIONAL THERAPY SERVICES IN THE JUNE 4, 2024 IEP?

Student contends the June 4, 2024 IEP required occupational therapy for Student to receive a FAPE. Paramount Unified contends Student was not denied a FAPE because the June 4, 2024 IEP did not offer occupational therapy services. Paramount Unified argues the information presented at the June 4, 2024 IEP team meeting necessitated additional assessments before offering additional services in Student's IEP.

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP did not offer occupational therapy services. The evidence established the discrepancies between the 2003 assessment findings, and the information from Olicker, Dr. Rostamian, and Student's preschool teachers demonstrated additional assessments of Student's sensory processing, sensory integration, low muscle tone, gross motor planning, and fine motor and visual motor skills were warranted, before determining whether he required occupational therapy services.

At hearing, Patel shared she did not observe Student demonstrate sensory processing challenges in her spring 2023 assessment. Patel observed Student navigate the classroom appropriately. Patel tested Student in the classroom. Patel opined Student was not negatively affected by the classroom background noise and the bright ceiling lights. Student remained on task during testing. In addition, Student's preschool teacher did not report any sensory concerns about Student in spring 2023.

Further, the reports from preschool teachers Ojeda and Curiel did not demonstrate a clear need for occupational therapy services. The preschool teachers did not report concerns regarding Student's low muscle tone and gross motor planning, or the impact the deficits may have had to his classroom performance.

Further, Olicker's recommendation for occupational therapy services to support Student's deficit in fine motor and visual motor skills were not persuasive. Occupational therapist Patel assessed Student's grasp and visual motor integration skills in spring 2023, and found his skills were in the average range. At hearing, Patel testified that she observed Student appropriately grasp a marker, pipes, and magnet tiles.

Dr. Rostamian's findings were similar to Patel's. Based on standardized testing, Dr. Rostamian found Student's visual perception to be average. Dr. Rostamian also found Student's visual motor skills and fine motor speed coordination in the average range. Dr. Rostamian opined Student's visual-perceptual and visual motor skills were intact for Student's age, and her findings were consistent with Patel's. Accordingly, Paramount Unified's doubts in Student's need for individual occupational therapy services, and its decision to conduct further assessments of Student's occupational therapy needs was justified.

The evidence established additional assessments of Student were warranted because new information from the independent assessors and Student's preschool at the June 4, 2024 IEP team meeting indicated Student's functioning at school was significantly different than how Student was functioning in spring 2023. Accordingly, Paramount Unified's decision not to offer occupational therapy services in the June 4, 2024 IEP until Student was further assessed to determine his occupational therapy needs, was proper, and did not violate the IDEA.

In addition, Student failed to establish how the lack of occupational therapy services in the June 4, 2024 IEP denied him a FAPE through June 6, 2024. As discussed in Issues 1e and 1h, Student did not prove Paramount Unified denied him a FAPE by failing to offer occupational therapy, or any related services during the last three days of the 2023-2024 school year. Furthermore, Student offered no testimony or documentary evidence of how the absence of occupational therapy in the June 4, 2024 IEP significantly impeded Parent's ability to make an informed decision about Student's education for the 2023-2024 school year.

Accordingly, Student failed to prove Paramount Unified denied him a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to offer appropriate and sufficient occupational therapy services. Paramount Unified prevailed on Issue 1f.

ISSUES 1g AND 1i: DID PARAMOUNT UNIFIED FAIL TO OFFER APPROPRIATE AND SUFFICIENT RECREATIONAL THERAPY AND COUNSELING SERVICES IN THE JUNE 4, 2024 IEP?

Student contends the June 4, 2024 IEP required recreational therapy and counseling services for Student to receive a FAPE. Paramount Unified contends Student was not denied a FAPE because the June 4, 2024 IEP did not offer recreational therapy and counseling services. Paramount Unified argues the information presented at the June 4, 2024 IEP team meeting necessitated additional assessments before offering additional services in Student's IEP.

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RECREATIONAL THERAPY SERVICES

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP did not offer recreational therapy services. At the June 4, 2024 IEP team meeting, Dr. Rostamian recommended school-based recreational therapy to assist Student with navigating the playground and school campus, especially when Student transitioned to a new school for kindergarten.

Dr. Rostamian's recommendation for school-based recreational therapy was not persuasive. Student's preschool teacher for the 2022-2023 school year did not report any concern about Student's ability to navigate the preschool classroom, playground or campus. Preschool teachers Ojeda and Curiel also did not report concerns about Student's ability to navigate the preschool classroom, playground or campus. Dr. Rostamian also failed to support her recommendation for school-based recreational therapy with any of her observations of Student or any other information presented to the June 4, 2024 IEP team.

Student failed to offer any persuasive testimony or documentary evidence to establish the June 4, 2024 IEP required recreational therapy services for Student to benefit from special education. Accordingly, Paramount Unified did not deny Student a FAPE by not offering recreational therapy services in the June 4, 2024 IEP.

COUNSELING SERVICES

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP did not offer counseling services. At the June 4, 2024 IEP team meeting, Dr. Rostamian recommended 30 minutes a week of counseling

services to address Student's social-emotional needs "that may arise." Dr. Rostamian opined in her assessment report that Student could benefit from learning appropriate coping and self-regulation skills in the classroom and playground.

Dr. Rostamian's recommendation for counseling services in the June 4, 2024 IEP was not persuasive. Dr. Rostamian did not opine in her assessment report or at hearing, that Student required counseling services to receive a FAPE. In addition, Student's preschool teacher in spring 2023 did not report any social-emotional concerns about Student to Paramount Unified's assessment team. Furthermore, preschool teachers Ojeda and Curiel presented Student differently in their reports to Dr. Rostamian. Ojeda described Student as solitary, and needing help to self-regulate. On the other hand, Curiel described Student as social, easily transitioning between activities, and following instructions and rules. Based on teacher reports, it was unclear to what extent, if any, Student's coping and self-regulation skills were impacting his classroom performance. Therefore, Paramount Unified's decision not to offer counseling services in the June 4, 2024 IEP, but instead to offer an educationally related mental health services assessment, was reasonable, proper, and did not violate the IDEA.

In addition, Student failed to establish how the lack of recreational therapy and counseling services in the June 4, 2024 IEP denied him a FAPE through June 6, 2024, for the same reasons as discussed in Issues 1e, 1f, and 1h. Furthermore, Student offered no testimony or documentary evidence of how the absence of recreational therapy and counseling services in the June 4, 2024 IEP significantly impeded Parent's ability to make an informed decision about Student's education for the 2023-2024 school year.

Accordingly, Student failed to prove Paramount Unified denied him a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to offer appropriate and sufficient recreational therapy and counseling services. Paramount Unified prevailed on Issues 1g and 1i.

ISSUE 1j: DID PARAMOUNT UNIFIED FAIL TO OFFER PLACEMENT IN A GENERAL EDUCATION TRANSITIONAL KINDERGARTEN WITH A ONE-TO-ONE AIDE, SUPERVISED BY A BOARD-CERTIFIED BEHAVIOR ANALYST IN THE JUNE 4, 2024 IEP?

Student contends he required a placement in a general education transitional kindergarten classroom with behavioral support to receive a FAPE. Student claims he was not ready to attend a kindergarten program. Paramount Unified contends the June 4, 2024 IEP placement offer for transitional kindergarten or kindergarten was appropriate. Paramount Unified argues Student was ready to attend either a transitional kindergarten or kindergarten program without the need for a one-to-one aide.

School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56040.1.) The IDEA also requires, to the maximum extent appropriate, that a child with a disability must be educated with children who are not disabled. (*Ibid.*)

School districts, as part of a special education local plan area, must have available a continuum of program options to meet the needs of individuals with exceptional needs for special education and related services as required by the IDEA and related federal regulations. (34 C.F.R. § 300.115; Ed. Code, § 56360.) The continuum of program options includes, but is not limited to:

- regular education;
- resource specialist programs;
- designated instruction and services;
- special classes;
- nonpublic, nonsectarian schools;
- state special schools;
- specially designed instruction in settings other than classrooms;
- itinerant instruction in settings other than classrooms; and
- instruction using telecommunication in the home, hospitals or institutions. (34 C.F.R. § 300.115; Ed. Code, § 56361.)

In California, specific educational placement is defined as that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

A student shall be admitted to a kindergarten program at the beginning of a school year, or at a later time in the same year, if the child will have their fifth birthday on or before September 1 of the 2014-2015 school year, and each school year thereafter.

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(Ed. Code, § 4800, subd. (a)(4).) For the 2023-2024 school year, a child who will have their fifth birthday between September 2 and April 2 shall be admitted to a transitional kindergarten program maintained by the school district. (Ed. Code, § 4800, subd. (c)(1)(E).)

Student failed to prove the June 4, 2024 IEP denied him a FAPE by not offering placement in the general education transitional kindergarten with a one-to-one aide, supervised by a board-certified behavior analyst. Student had his fifth birthday after April 2, 2024, and was age-appropriate to attend a kindergarten program.

Assessments showed Student was developmentally on track for kindergarten. Student's preschool teacher Ojeda completed the Desired Results Development Profile on April 19, 2024. The Desired Results Development Profile was a rating scale to assess a child's development in

- self-regulation skills,
- social and emotional development,
- language development,
- literacy,
- math,
- gross and fine motor development, and
- health which included nutrition, safety and personal care.

The teacher's ratings showed Student was kindergarten ready in all areas assessed. Preschool special education teacher Lee testified as to the April 19, 2024 Desired Results Development Profile and persuasively opined Student was assessed to be kindergarten ready. The June 4, 2024 IEP continued to offer placement in a general education transitional kindergarten or kindergarten classroom.

Paramount Unified's decision to further assess Student before limiting its offer of placement to transitional kindergarten with a one-to-one aide, was appropriate in light of the new information presented by the independent assessors and Student's preschool. The reports from preschool teachers and assessors presented to the IEP team on June 4, 2024, varied with respect to Student's behaviors in the classroom. In addition, testimony from Student's preschool program director demonstrated Student did not require a one-to-one aide in school. Therefore, Paramount Unified's decision to assess Student's behavior before considering a one-to-one aide to support Student in a general education classroom was appropriate.

In addition, Student failed to establish how the placement offer in the June 4, 2024 IEP that was not a general education transitional kindergarten with a one-to-one aide, supervised by a board-certified behavior analyst, denied him a FAPE through June 6, 2024. Furthermore, Student offered no testimony or documentary evidence of how the offer of placement in the June 4, 2024 IEP significantly impeded Parent's ability to make an informed decision about Student's education for the 2023-2024 school year. Accordingly, the June 4, 2024 IEP's offer of placement did not deny Student a FAPE during the 2023-2024 school year.

Student failed to prove Paramount Unified denied him a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to offer placement in the general education transitional kindergarten class with a one-to-one aide supervised by a board-certified behavior analyst. Paramount Unified prevailed on Issue 1j.

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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 1a:

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to take into consideration Parent's concerns, including Student's needs in

- sensory processing,
- behavior,
- adaptive skills,
- social skills,
- communication, and coping skills.

Paramount Unified prevailed on Issue 1a.

ISSUE 1b:

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to consider all available data provided by the independent psychoeducational, speech, and occupational therapy assessors.

Paramount Unified prevailed on Issue 1b.

ISSUE 1c:

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to refrain from predetermining its offer of services and placement.

Paramount Unified prevailed on Issue 1c.

ISSUE 1d:

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to offer Student's eligibility under the category of autism.

Paramount Unified prevailed on Issue 1d.

ISSUE 1e:

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to offer appropriate and sufficient language and speech services.

Paramount Unified prevailed on Issue 1e.

ISSUE 1f:

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to offer appropriate and sufficient occupational therapy services.

Paramount Unified prevailed on Issue 1f.

ISSUE 1g:

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to offer appropriate and sufficient recreational therapy services.

Paramount Unified prevailed on Issue 1g.

ISSUE 1h:

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to offer appropriate and sufficient social skills services.

Paramount Unified prevailed on Issue 1h.

ISSUE 1i:

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to offer appropriate and sufficient counseling services.

Paramount Unified prevailed on Issue 1i.

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ISSUE 1j:

Paramount Unified did not deny Student a FAPE during the 2023-2024 school year because the June 4, 2024 IEP failed to offer placement in the general education transitional kindergarten with a one-to-one aide, supervised by a board-certified behavior analyst.

Paramount Unified prevailed on Issue 1j.

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.

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings