

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT, AND  
KERN HIGH SCHOOL DISTRICT.

CASE NO. 2024080863

CASE NO. 2024080626

DECISION

December 16, 2024

On August 12, 2024, Kern High School District, called Kern, filed a due process hearing request with the Office of Administrative Hearings, called OAH, in case number 2024080626, Kern's Case, naming Student. On August 21, 2024, Parent on behalf of Student filed a due process hearing request in OAH case number 2024080863, Student's Case, naming Kern. On August 22, 2024, Student filed a motion to consolidate the cases. OAH granted the motion on August 26, 2024, and designated Student's Case, OAH case number 2024080863, as the Primary Case.

Administrative Law Judge June R. Lehrman, called the ALJ, heard this matter via videoconference on October 8, 9, 10, 15, 16, 17, 22, 23, and 24, 2024.

Attorneys Michelle Wilkolaski and Ryan Song represented Student. Mother attended all hearing days. Attorneys Monica Batanero and Anna Wood represented Kern. Director of Special Education Jennifer Anderson attended all hearing days.

The matter was continued to November 25, 2024, for written closing briefs. The record was closed and the matter was submitted on November 25, 2024.

## ISSUES

### KERN'S ISSUES

1. Were Kern's January 17, 2024 assessments appropriate such that Parent is not entitled to independent educational evaluations at public expense in:
  - a. Psychoeducation;
  - b. Speech and language;
  - c. Functional behavior;
  - d. Educationally related mental health; and
  - e. Occupational therapy?
2. May Kern exit Student from special education and related services without Parents' consent, pursuant to the January 17, 2024 individualized education program?

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## STUDENT'S ISSUE

3. Did Kern deny Student a free appropriate public education, called a FAPE, during the 2023-2024 school year in the January 17, 2024 individualized education program, by failing to offer services when it recommended Student be exited from special education services?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All subsequent references to the Code of Federal Regulations are to the 2006 edition, 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 free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a

FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; 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).) In this consolidated case, each party was the petitioning party and as such, had the burden of persuasion on its respective 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 16 years old at the time of hearing. Student resided within Kern's geographic boundaries at all relevant times. Student had been diagnosed with autism in 2011 at the age of three and began school with a special education eligibility of autism. However, by the time of the hearing, Student's eligibility category was language or speech disorder.

ISSUE 1: WERE KERN'S JANUARY 17, 2024 ASSESSMENTS APPROPRIATE SUCH THAT PARENT IS NOT ENTITLED TO INDEPENDENT EDUCATIONAL EVALUATIONS AT PUBLIC EXPENSE IN (a) PSYCHOEDUCATION, (b) SPEECH AND LANGUAGE, (c) FUNCTIONAL BEHAVIOR, (d) EDUCATIONALLY RELATED MENTAL HEALTH, AND (e) OCCUPATIONAL THERAPY?

Kern contends its three-year assessments were appropriate such that Student is not entitled to independent educational evaluations at public expense. Student contends that the assessments did not accurately represent Student's unique needs.

Federal law uses the term “evaluation” instead of the term “assessment” used by California law, but the two terms have the same meaning and are used interchangeably in this Decision.

Student enrolled in Kern at the beginning of the 2023-2024 school year. Student’s last agreed-upon and implemented IEP was dated September 11, 2020, and was from Fruitvale School District, which Student attended prior to enrolling in Kern. The parties stipulated that the 2020 IEP called for a full-time placement in general education with speech and language services of 120 minutes per month, specialized academic instruction of 150 minutes per week, and occupational therapy consultation of 30 minutes per month.

On September 26, 2023, Kern generated an assessment plan to assess Student in:

- academic performance,
- social and emotional status,
- adaptive behavior,
- motor abilities,
- speech/language,
- general ability including intellectual development,
- health,
- post-secondary transition,
- psychological processing,
- autism,
- educationally related mental health,

- augmentative and alternative communication, and
- special circumstances instructional assistance, or one-to-one aide services.

Mother consented to the assessment plan via an agreement signed on November 7, 2023. Kern conducted the assessments and reviewed them at an IEP team meeting on January 17, 2024 with additional meetings on February 6, 2024, February 14, 2024, and April 10, 2024.

Sometime after the last IEP team meeting, Mother requested independent educational evaluations in

- psychoeducation,
- speech and language,
- functional behavior,
- educationally related mental health, and
- occupational therapy.

By letter dated July 22, 2024, Kern declined. Kern then filed for due process to defend the appropriateness of its assessments.

The procedural safeguards of the IDEA provide that under certain conditions a parent is entitled to obtain an independent educational evaluation of a child at public expense. (20 U.S.C. § 1415(b)(1).) An independent evaluation is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) A parent may request an independent assessment at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an independent assessment at public expense, the school district must, without unnecessary delay, either

initiate a due process hearing to show that its assessment is appropriate or provide the independent assessment at public expense. (34 C.F.R. § 300.502(b)(2).) The school district may inquire as to the reason why the parent disagrees with the district's assessment, but the district may not require the parent to provide an explanation and may not unreasonably delay its "fund or file" obligation to either provide the independent assessment at public expense or file its due process complaint to demonstrate the appropriateness of its assessment. (34 C.F.R. § 300.502(b)(4).)

A local educational agency must ensure that reevaluations of a child's needs are conducted if the district determines that the educational or related services needs of a child with special needs, including improved academic achievement and functional performance, warrant a reevaluation; or if the parent or teacher request a reevaluation. (20 U.S.C. § 1414 (a)(2)(A); 34 C.F.R. § 300.303.) Reevaluations must be conducted in accordance with the procedural requirements of the IDEA. (20 U.S.C. § 1414 (a)(2)(A); 34 C.F.R. § 300.303.) Reevaluations must be conducted at least every three years and may not be performed more frequently than once a year unless both the district and the parents agree. (20 U.S.C. § 1414 (a)(2)(B).)

A local educational agency must assess a special education student in all areas of suspected disability, including if appropriate:

- health and development,
- vision,
- hearing,
- motor abilities,
- language function,
- general intelligence,

- academic performance,
- communicative status,
- self-help,
- orientation and mobility skills,
- career and vocational abilities and interests, and
- social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).)

A local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. (20 U.S.C. § 1414(b)(2)(A).). No single measure or assessment shall be the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304 (c)(6).) The local educational agency must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3); Ed. Code, § 56320, subds. (e) & (f).) Assessments must be conducted by trained and knowledgeable individuals who are both "knowledgeable of [the student's] disability" and "competent to perform the assessment, as determined

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by the school district, county office, or special education local plan area.” (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (g), 56322.) The assessments used must be:

- selected and administered so as not to be discriminatory on a racial, cultural, or sexual basis;
- provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;
- used for purposes for which the assessments are valid and reliable; and
- administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b)(3)(A)(v); Ed. Code, § 56320, subds. (a) & (b).)

Any psychological assessment, including individually administered tests of intelligence and emotional functioning, must be conducted by a credentialed school psychologist. (Ed. Code, §§ 56324, subd. (a), 56320, subd. (b)(3).) The assessment must result in a written report that includes recommendations. (Ed. Code, § 56327). The report must be provided to the parent. (Ed. Code, § 56329, subd. (a)(3).) After assessments and other evaluation measures have produced the evaluation data needed to determine eligibility, a group of qualified professionals and the parents, generally constituting an IEP team, uses the data to determine the student’s eligibility. (Ed. Code, § 56330; 34 C.F.R. § 300.306(c)(1).)

As long as statutory requirements for assessments are satisfied, the United States Department of Education, Office of Special Education Programs, called OSEP, has advised that selection of particular testing or evaluation instruments is left to the discretion of State and local educational authorities. (Letter to Anonymous (OSEP Sept. 17, 1993); *Haowen Z. v. Poway Unified School Dist.* (S.D.Cal., August 14, 2013, No. 13-CV-1589-JM BLM) 2013 WL 4401673.)

For each of the assessments at issue here, and as detailed below, Kern's assessments were appropriate. Kern assessed Student in all areas of suspected disability, used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, and did not rely on any single measure or assessment. Kern's assessments were sufficiently comprehensive to identify all of Student's special education and related service needs, whether or not commonly linked to a disability category. The testing instruments were technically sound and demonstrated the effect that cognitive, behavioral, physical, and developmental factors had on Student's functioning. The assessments were selected and administered so as not to be discriminatory. The assessments were used for purposes for which the assessments are valid and reliable, and administered in accordance with any instructions provided by the producer of such assessments. They resulted in written reports that included recommendations that were provided to the parent. They were administered in English, Student's native language. They were tailored to assess Student's specific areas of educational need, and selected and administered to ensure that the test results accurately reflected his aptitude. No single measure or assessment was used as the sole criterion for determining whether Student had exceptional needs. Student was assessed in all areas related to his suspected disability.

The assessors were trained individuals who were both knowledgeable and competent. All assessors were qualified to administer and interpret the results of the tests they administered. Trisha Sanchez was the school psychologist who conducted the psychoeducational evaluation. She held a master's degree in school psychology and a clear pupil services credential. Caryn Gover, who conducted the speech and language testing, was a licensed speech-language pathologist. Gover also provided direct speech services to Student during the 2023-2024 school year and was acquainted with Student's speech and language abilities. Katherine Graves, who conducted the functional behavior and mental health assessments, was Kern's lead school mental health clinician and held licenses as a marriage and family therapist and professional clinical counselor, as well as a clear health services credential. Czarina Biagtan, who conducted the occupational therapy assessment, was a licensed occupational therapist. All had conducted numerous assessments in their respective fields.

Each of the assessors testified at hearing. Their answers were straightforward and comprehensive, exhibiting their extensive background and expertise in the assessments they administered. They forthrightly acknowledged some disparities in the testing results, for example, between Mother's and teachers' rating scales, and some low scores, as detailed below. When additional testing was warranted to further explore such disparities, they undertook it. For example, Gover opined that Student underperformed on some scores when compared to his true abilities, and this opinion was substantiated by other assessment results, observations, and teacher reports. Therefore, the assessments were appropriate such that Kern need not fund independent educational evaluations at public expense.

## 1.a.: PSYCHOEDUCATION

School psychologist Sanchez conducted a psychoeducational assessment that resulted in a report dated January 16, 2024, as amended May 6, 2024. Sanchez investigated Student's academic performance, social and emotional status, adaptive behavior, cognition, and psychological processing, so as to opine on the possible eligibility categories of

- autism,
- emotional disability,
- intellectual disability,
- other health impairment, or
- specific learning disability.

She also conducted a "special circumstances instructional assistant" assessment to determine if Student required one-to-one adult support throughout his school day. Sanchez reviewed Student's educational history records, conducted observations and interviews, and administered standardized and non-standardized testing instruments.

Mother, when Sanchez interviewed her, reported that Student was

- kind,
- creative,
- witty,
- smart,
- thoughtful,
- generous,
- loved life, and
- was easy going

She noted he had difficulties making friends. He often chose to be alone, and he required prompting to be more social. Mother reported that Student

- was easily over-stimulated,
- sometimes had a short attention span,
- was impulsive,
- overreacted,
- required a lot of parental attention,
- fell often,
- bumped into things,
- had difficulties with food textures,
- picked at his skin, and
- was overly energetic.

Student became upset when misunderstood.

Mother reported that Student struggled with paying attention to details. He required prodding to answer questions. Mother reported that Student followed two-step directions, but not more. When asked why adult assistance would be needed, Mother shared that she wanted an aide with Student because he was struggling to open his locker and had difficulty manipulating small objects. The school resolved the locker issue, but it took three weeks, during which Student experienced stress. Mother further stated concerns that Student needed redirection in the classroom and might need help with clarifying questions if he was confused. Mother reported that Student struggled to remember where the bus picked up on campus. She felt an aide would have helped him if he were lost.

At hearing, Mother reiterated these same concerns, stating that Student was likeable but scattered and disorganized, struggled with multi-step directions, needed reminders and prompting, and was confused by social norms and situations. Mother believed Student was capable of succeeding in general education, but continued to have needs that required support and assistance because of his disability. He had fine motor needs Mother saw at home, for example, folding up his laundry, buttoning and unbuttoning clothing, wrapping items with tissue paper, making his bed, and manipulating objects with his hands.

Student at his interview with Sanchez reported liking and adjusting well to high school. He was feeling comfortable and making friends. He wanted to participate in class. He disliked being pulled out for assessments or services because it interfered with learning the day's lessons.

As a result of Mother's concerns, Sanchez paid attention during her observations to Student's ability to navigate the school campus independently. She observed whether he paid attention and maintained focus and attention within the classroom setting. She observed to see if any behaviors would adversely impact his education or the education of others, which might warrant one-on-one direct support from an adult. Within the school setting, Sanchez's observations and the reporting from all of Student's teachers did not confirm any of Mother's stated concerns.

Kirk Bowyer, general education teacher of a class called "modified physical education," reported to Sanchez that Student

- was a team player,
- followed directions,
- had excellent behavior,

- participated in class,
- had good attendance,
- did what was asked of him,
- asked questions,
- communicated,
- stayed on task,
- worked from initial directions,
- volunteered answers, and
- completed assignments in a required time.

He had no concerns for Student. Bowyer testified at hearing and confirmed that these were his impressions of Student.

Other teachers made similar reports. Chris Barron, general education science teacher, reported that Student

- participated,
- listened,
- completed work,
- had his materials for class,
- volunteered answers,
- gave the correct answers when called upon,
- showed appropriate social skills in groups,
- stayed on task, and
- worked from initial directions.

Tonya Parham, general education math teacher who testified at hearing, reported that Student completed all his work, was a leader when placed in a group, helped others, and

always put in full effort on a task. Student was not missing any assignments and Parham had no concerns for him. She listed his behavior, class participation, homework completion, and attendance as "excellent" and his test scores and grades as "good."

Student

- mastered the material quickly,
- stayed on task,
- volunteered answers,
- gave correct answers when called on,
- showed appropriate social skills in groups,
- contributed to group objectives,
- completed assignments in the required time,
- worked quietly, and
- worked from initial directions.

The observations of other teachers were all in accord. Student was earning A's and B's and was universally well-liked. He did well in class, listened, worked independently and diligently, was ambitious for his own learning, and was an overall excellent student. None of his teachers reported any concerns. Cheri Thornberry, special education English teacher who provided support during Student's co-taught English class, reported that he could be a slow starter some days but once he was on task, he remained on task and did not require prompting to get back to task. Thornberry reported that Student asked for help when needed, had great behavior, and she had no concerns for him. Thornberry testified at hearing and confirmed these impressions of Student's presentation at school.



Sanchez's direct observations of Student during her testing of him were in accord. Student

- was polite and friendly,
- held reciprocal conversations,
- did not display any repetitive movements or restricted behaviors,
- followed through with all questions that were asked of him,
- asked questions when needed for clarification,
- self-corrected,
- transitioned from task to task with no concerns,
- worked diligently, and
- continued with more difficult test questions.

In her classroom observations, she saw nothing but on-task behavior. He participated well in both group and independent activities. He maintained focus. He turned in assignments and answered questions in class correctly. He asked appropriately to use restrooms or take breaks. During unstructured times, he had conversations with staff in a friendly and appropriate manner. He socialized with peers. He both initiated and responded to conversations.

The passing observations of other Kern administrators who saw Student periodically were also in accord. For example, high school assistant principal Josh Williams observed Student dozens of times in passing during the school year during lunch, socializing, playing football, and hanging out with peers. Program Specialist Rudy Cabrera observed Student in passing and saw him interacting with others in very typical ways.

## INTELLECTUAL FUNCTIONING

Sanchez assessed Student's intellectual functioning using the Wechsler Intelligence Scale for Children, Fifth Edition. This is a standardized, norm-referenced measure of intellectual ability that yields an intelligence quotient composite score that represents a child's general intellectual ability. It also yields composite scores that represent intellectual functioning in five specific cognitive domains, specifically

1. verbal comprehension,
2. visual spatial skills,
3. fluid reasoning,
4. working memory, and
5. processing speed.

Student's full-scale composite score was 85, which was low average. This meant that Student performed at the same level as or better than 16 percent of his peers. Student scored average in the domains of visual spatial skills, fluid reasoning, and working memory. He rated low average in the domains of verbal comprehension and processing speed. Overall, Sanchez opined that Student's scores suggested he possessed the requisite abilities to access the general curriculum. This was congruent with his performance at school and his grades of A's and B's.

## ACADEMIC ACHIEVEMENT

To assess Student's academic achievement, Sanchez administered the Woodcock-Johnson Tests of Achievement, Fourth Edition, which is an individually administered, nationally standardized test that measures a student's reading, writing, and math skills. The test yields composite scores in broad reading, broad math, and

broad written language. Each of the broad scores are derived from subtest scores. When compared to grade-level peers, Student performed in the average range in:

- reading,
- broad reading,
- basic reading skills,
- reading fluency,
- mathematics,
- broad mathematics,
- math calculation skills,
- math problem solving,
- written language,
- broad written language, and
- written expression.

His cluster scores fell in the low average range in reading comprehension. Given these results, Sanchez determined that Student could access and understand grade-level content in all academic subjects. This was in line with Student's grades, and his teachers' observations of him. There was no contrary evidence calling this conclusion into any doubt.

## EXECUTIVE FUNCTIONING

Sanchez investigated Student's executive functioning, or the ability to plan ahead and organize information, because of Mother's concerns with his ability to sustain attention and focus. To do this, Sanchez administered certain subtests of the Das-Naglieri Cognitive Assessment System, Second Edition, an individually administered test of cognitive functioning designed to assess the planning, attention, simultaneous,

and successive cognitive processes. Composite scores result in ratings of executive function without working memory, executive function with working memory, and working memory. Student scored average on both working memory and executive function without working memory, and just below average on executive function with working memory. Sanchez determined that Student was capable of problem solving, accomplishing tasks, and keeping information in an immediate awareness in an age-appropriate manner.

This conclusion was in line with her observations of Student, and with teacher input. Mother's observations were the only contrary evidence calling this conclusion into any doubt, and her observations were not in the school setting.

## SOCIAL-EMOTIONAL FUNCTIONING

Sanchez used the Behavior Assessment System for Children, Third Edition to assess Student's social-emotional functioning. This test uses rating scales administered to Student, teachers and parents to evaluate the behavior and self-perceptions of children and young adults. It is designed to measure numerous aspects of behavior and personality, including positive as well as negative dimensions. It is further designed to facilitate the differential diagnosis and educational classification of a variety of childrens' emotional and behavioral disorders as well as to aid in the design of treatment plans.

Scores in the clinically significant range suggest a high level of maladjustment. Scores in the at-risk range identify either a significant problem that may not be severe enough to require formal treatment, or the potential of a developing problem that

needs careful monitoring. Scores in the average range indicate behavior that is consistent with and acceptable for an individual of that age. Scores are reported for subtests, which are combined into several composite scores for:

- externalizing problems,
- internalizing problems,
- school problems, and
- adaptive skills.

Sanchez gave the rating scales to Student's modified physical education teacher Bowyer, math teacher Parham, Mother, and Student. In externalizing behaviors, the teachers and Mother both rated Student as average. Although on one form Mother submitted she rated him at risk for hyperactivity, this did not change the overall average composite score. Overall, in line with her observations of him, Sanchez concluded that the scores did not raise concerns that Student exhibited any disruptive behaviors.

All raters perceived Student's internalizing behaviors as in the average range. Student's school problems as observed by his teachers fell within the average range, and Student rated himself average. This indicated Student maintained his attention to detail and teachers did not observe any academic concerns.

Student's adaptive skills fell within the average range according to all raters. Overall, this indicated that Student performed everyday tasks in a safe manner, adapted to changes, communicated with others, accomplished academic goals, and interacted with peers and adults in an age-appropriate manner.

The test also resulted in a behavioral symptoms index that measured the accumulation of the above information along with atypicality and withdrawal behaviors. Student's overall behaviors, according to his teachers' and Mother's responses, fell within the average range. Teachers rated his atypicality and withdrawal in the average range. On one of her responses, Mother rated Student's withdrawal in the at-risk range, but in a second submission she rated him as average, as did Student himself. He rated his own inattention/hyperactivity and emotional symptoms in the average range. This indicated to Sanchez that Student did not behave in an odd manner, did not avoid social contact with others, and was not easily distracted. Student's other responses indicated that he had strong relationships with his parents and peers, did not have any concerns with self-esteem, and saw himself as trustworthy.

Mother gave more detailed information on the general comment section. When asked what Student's behavioral and emotional strengths were, she reported,

"Student is very resilient. Although there have been moments of self doubt or issues with peers/feeling/activities, Student manages to be forgiving, uses grace for others and moves forward. He is very kind and has a good heart. Student is very easy, and I enjoy spending time with him. Most do. He needs a little extra support here and there but is very capable of life and basic needs once a routine is established."

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When asked to list any specific behavioral and/or emotional concerns, Mother reported that his

"[f]acial expressions sometimes show frustrations or [an] 'angry look'.

Student is working on this. Student sometimes gets excited about things and doesn't think something through. The excitement sometimes leads to falls or injuries. Sometime the excitement might also include personal space of others. He is aware of this by speaking to him and is trying to work on this."

Sanchez concluded that Student was well-behaved, did not have negative emotional behavior in the school setting, that there were no academic or behavioral concerns expressed by the teachers, and that Student did not exhibit any odd behaviors or avoid social contact with others. He could adapt to change easily and perform everyday tasks for himself. He interacted with peers and adults in an age-appropriate manner.

## ADAPTIVE FUNCTIONING

Adaptive skills are the behaviors required for personal independence and social sufficiency. They include:

- gross-and fine-motor skills,
- social interaction,
- language comprehension and expression,
- eating and meal preparation,
- toileting,
- dressing,

- personal self-care,
- domestic skills,
- time and money skills,
- work skills, and
- community orientation.

On the Behavior Assessment System for Children, Third Edition, discussed above, Student's adaptive skills fell within the average range according to all raters.

Sanchez also administered the Adaptive Behavior Assessment System, Third Edition, to assess Student's adaptive skills. This assessment uses rating scales, which Sanchez provided to Mother and to general education science teacher Chris Barron. The general adaptive composite is made up from three domains, called the conceptual domain, the social domain, and the practical domain.

The conceptual domain measures an individual's communication abilities, application of academic skills, and ability to manage and accomplish tasks. Mother rated Student below average, and his teacher rated him as average.

The practical domain measures the behaviors needed to address personal and health needs, take care of one's surroundings, and function in the community. Mother rated Student below average, and his teacher rated him as average. Mother's answers indicated that in her opinion, Student was below average in his abilities to:

- plan activities,
- use community resources,
- clean,
- prepare food,



- perform chores,
- follow safety rules, and
- show caution.

However, based on the teacher's report, Sanchez concluded that Student's scores indicated that he could:

- make independent choices,
- exhibit self-control,
- take responsibility,
- engage in play, and
- plan activities.

Sanchez attributed the discrepancy between Mother's and the other teacher's scores to the difference between the home and school setting.

In the social domain, which measures behaviors needed to engage in interpersonal interactions, act with social responsibility, and use leisure time, both Mother and teacher rated Student in the below average range, with lower scores in his ability to initiate conversations, express his emotions, and assist others. Sanchez concluded that the lower scores, even those shared by Student's teacher, were not borne out by Student's presentation at school. Student's conceptual, social, and practical functioning at school was better than those scores indicated they would be. Given Student's overall functioning at school, below average scores either from Mother or teachers did not raise red flags for Sanchez nor make her question the other results.

The general adaptive composite summarizes performance across all adaptive skill areas. Mother rated Student as below average in his adaptive skills. Student's teachers rated him as average. Considering the disparate views of Student provided by Mother and teachers in interviews and other assessment tools, Sanchez determined that Student may have required minimal assistance in the home setting for his daily living skills but did not require assistance in the school setting.

In addition to the above assessment tools, Sanchez administered additional tools specifically directed toward the eligibility categories of specific learning disability and autism. These additional assessment tools are discussed in further detail below in connection with the legal requirements for those specific eligibility categories. She also assessed Student's need for a one-to-one aide, called a "special circumstances instructional assistant," and found he did not require one to navigate the school environment, based on multiple observations during both structured and unstructured times and input from the school staff.

## 1.b.: SPEECH AND LANGUAGE

Karen Gover, speech-language pathologist, held a master's degree in speech language pathology and a California license as a speech-language pathologist, as well as a clinical rehabilitative services credential, and a certificate of clinical competence. She provided direct services to Student during the 2023-2024 school year. She conducted the three-year assessment for language and speech starting in the middle of November 2023. Her report was dated January 30, 2024, as amended May 8, 2024. The amendments were non-substantive changes made to background history.

Gover reviewed Student's educational records, observed him, conducted interviews, and administered standardized and non-standardized testing instruments. She assessed Student in articulation, fluency, receptive and expressive language, pragmatics, and for augmentative and alternative communication.

Gover observed Student for four sessions in English and math classes to see how he was interacting, initiating, and responding to others, following directions, answering questions, and to monitor his intelligibility and fluency. She also observed his demeanor during assessment sessions. She had already been familiar with him from providing direct services over the course of the school year. She observed him in social interactions, both initiating and responding, helping other students thoughtfully, participating in class, and answering questions correctly. Teachers shared that Student was usually the first one done with his assignments, voluntarily helped other students, readily asked and answered questions, and was always on task. They expressed no concerns regarding his performance in class nor regarding his ability to interact appropriately with teachers or his peers.

Mother completed rating scales and Gover interviewed her. Mother expressed that Student may struggle with directions, especially multi-step directions, and did better when things were written down for him. She felt that he did not always understand being taken advantage of. She reported he was disturbed by loud noises, took things literally, and struggled with reading body language. Mother mentioned that she had a private speech and language assessment conducted of Student. However, she never shared the results or report with Kern even after they requested she do so.

Gover administered a social skills questionnaire to Student, in which he rated his own social skills. Gover then interviewed Student, who stated he was having a very good transition into high school. He had in the past experienced some bullying at previous schools. But by the time of this assessment, he had not experienced bullying at high school. He was making friends. He had no areas of concern about his communications with others. His biggest concern was about being pulled from classes for services and missing classwork.

## ARTICULATION

Gover administered a standardized assessment called the Goldman Fristoe Test of Articulation, Third Edition. In this test, the student names pictures that are shown to him, thereby speaking all of the individual sounds in English, including consonant blends in the different positions of words. It provides a standardized method to assess what sounds he is producing correctly versus incorrectly and in which position of words.

Student exhibited one incorrect consonant blend mispronouncing the "pl" sound in the word "plane" as a "pw." But his standard score was 91, with 100 being the average, and therefore indicating no articulation concerns. Gover also administered two non-standardized sampling tools to assess Student's articulation and fluency – a speech sample and a conversational sample. Student's percentage of errors was negligible, less than a quarter of a percent on one sample and 2.2 percent on the other. Gover had no concerns regarding Student's articulation or intelligibility. Gover judged Student's overall intelligibility to be 100 percent.

Gover also assessed Student's voice, for which there is no specific assessment tool other than the examiner's clinical judgment. Gover noted that Student tended to speak in a monotone, but she did not consider this to be significant.

## FLUENCY

Student had a history of stuttering. Stuttering is encompassed within the term "fluency." At hearing, Mother reported Student stuttered on some days and not others, depending on the circumstances of his day, and if he was experiencing a rough start to the morning or a little bit of frustration. Student had in the past expressed to Mother that his stuttering affected him in school when children would mock or make fun of him. In the past, he had been reluctant to ask questions or volunteer with reading out loud.

Gover had Student complete a rating scale called the Overall Assessment of the Speaker's Experience of Stuttering, and also analyzed the conversational samples. In the samples, she noted a total of 10 dysfluencies. She also took parent and teacher input through written questions. Mother completed two forms, one rating the severity of Student's stuttering at three out of seven, and the other at two out of seven. His teachers all indicated that stuttering or dysfluency was of no concern and did not impact Student in the classroom. Student himself reported that he rarely stuttered anymore, usually only when excited, and that he had learned strategies to slow his speech down. He did not feel that stuttering impacted his ability to communicate or participate in school or social settings. Gover had no fluency concerns for Student.

## RECEPTIVE AND EXPRESSIVE LANGUAGE

Gover used the Oral and Written Language Scales, a standardized instrument, to globally assess Student's receptive and expressive language skills. The test is broken

into two parts to assess listening comprehension and oral expression. Student tested within the average range on both sections. Gover also administered another standardized test, the Comprehensive Assessment of Spoken Language, Second Edition, to investigate individual areas including synonyms, syntax, nonliteral language, and contextual meaning. Student tested within the average range. Gover found no expressive and receptive language concerns.

## PRAGMATICS

Gover used the Clinical Assessment of Pragmatics to assess pragmatic social language. The Clinical Assessment of Pragmatics is a standardized test that uses videos to replicate various social interactions to test a student's ability to read non-verbal cues and understand context.

Student scored below average in pragmatic judgment and poor in both pragmatic performance and the paralinguistic index, with standard scores of 88, 79, and 76 respectively. But Gover discounted Student's lower scores because of the strict scoring protocols in the test, which would not permit her to draw Student out or prompt him. He answered certain questions correctly but had to be scored lower because of a lack of detail in his answers. Also, Gover noted here and elsewhere that Student's affect was "dry," which in the context of the test lowered some of his scores that called for the expression of emotion. Student's composite score on this test was 84, which came out just below the average range which cut off at 85.

Comparing these results with other information she obtained in her observations and interviews, Gover was not concerned. But because of the low scores on that test, Gover conducted additional assessments to look further into the results.

The Social Thinking Dynamic Assessment Protocol looks at different areas related to social communication, specifically the initiation of language, integration and interpretation abilities, understanding of perspective, and humor and human relatedness. This is a non-standardized assessment tool using an interview of a student and asking him questions related to a series of pictures representing social scenarios, to determine if he can recognize what is occurring in the scenes depicted. This tool allowed Gover to pull information from Student, prompting him or engaging with him about his answers. The flexibility is designed to see what level of prompting a student requires to understand information.

Gover found that Student had more skills with and understanding of nonverbal cues than he had displayed in the standardized video-based test in which she was not allowed to prompt him. He engaged and responded to different conversational overtures for topics both of her choosing and of his own. He also initiated topics on his own.

Gover had no concerns for him in this area. Student interpreted social situations and made accurate educated guesses about what potential relationships might be, based on the context of the pictures. He identified emotions in the picture as what people might be feeling. He determined the perspective and emotions being depicted. Student's exhibition of these skills indicated to Gover that Student could understand, recognize, and describe subtle details that lead to understanding a social situation. He could then determine what somebody else might be thinking or feeling. He could make abstract inferences and understood the perspective of others. Gover had no concerns for him in these areas.

In the areas of humor and human relatedness, Gover saw Student as “dry” and “subtle.” He preferred individual class activities, although he did do group projects when asked. But he consistently assisted other students in different classrooms. Student’s performance in class and on the Social Thinking Dynamic Assessment Protocol reflected that Student had an understanding of social communication, non-verbal cues, and other people’s thoughts, emotions, and perspectives. He interacted with a variety of peers. Gover had no concerns for Student’s social interactions.

The next assessment tool Gover used to assess Student’s pragmatics was the Impact Social Communication Rating Scale. This tool consists of a rating scale that a parent and teachers complete. This is a standardized test that yields a standard score. The responses across all the raters indicated Student’s pragmatic language skills would most likely not have any negative impact.

Gover concluded Student understood the social world around him. He could recognize details, take another person’s perspective, ascribe emotions, and use appropriate words when communicating. He did not always add supportive statements, which comported with Gover’s experience of Student as a “man of fewer words” who was not talkative. He enjoyed interacting with people, was very polite, respectful, kind, considerate, and empathetic. Gover had no concerns about Student in pragmatics.

## AUGMENTATIVE AND ALTERNATIVE COMMUNICATION

Gover also conducted a screening to determine if Student had any needs for assistive technology for communication. In her opinion, he did not need augmentative and alternative communication support, which is needed when a student is unable to communicate without such assistance. The devices Gover considered were a picture



exchange system where the student communicates solely using icons, or writing as the sole modality for communication, or speech-generating devices or dynamic displays. Student could verbally communicate and therefore using any of these would impede his communication. At hearing, when questioned about Student's need for augmentative and alternative communication, Mother admitted that Student did not need a communication device, other than a cellphone and a computer.

Gover's assessments did not identify any concerns for Student. He was doing well in all areas. Most of his test scores were average and those that fell below average were balanced by information gathered from teachers that he was performing well in the classroom, had friends that he socialized with, was getting good grades, and was motivated and happy. Initially when looking at the standardized video-based tests, Gover had some initial concerns about his pragmatic skills. But when she followed up with the Social Thinking Dynamic Assessment Protocol, she felt Student successfully interpreted social language. She attributed his low scores to the design of that test and the limitations on her being allowed to prompt him.

### 1.c.: FUNCTIONAL BEHAVIOR ASSESSMENT

Katherine Graves, lead school mental health clinician, conducted a functional behavioral assessment. Interviews of Mother and Student, review of records, and written forms and interviews with teachers revealed that Student had no concerning behaviors to measure. Observations revealed no problem behaviors for the functional behavior assessment. Student had no behavioral infractions. He did not demonstrate any problems with loud or quiet environments, varied lighting conditions, changes in seating, movement in the classroom, or transitions in classes or tasks.

The purpose of a functional behavioral assessment is to identify problem behaviors and take data as they occur, to identify the triggers of the behavior, make a hypothesis about why a student is exhibiting those behaviors, and devise a method to redirect that student to meeting his or her needs in a more appropriate fashion. It generally results in a behavior intervention plan.

Here, Student had no maladaptive behaviors to observe, and Graves was confused about why this assessment was needed, given that the precursor need for such an assessment did not exist. Student demonstrated the ability to work individually and in group settings with no behavioral concerns. He responded very well to redirection and was eager to please others. He engaged appropriately with peers and maintained positive peer relationships. Mother, Student, and staff expressed that there had been no behavioral problems or concerns that would adversely affect Student's education, therefore Graves had no hypothesis of a function of any problem behavior.

#### 1.d: EDUCATIONALLY RELATED MENTAL HEALTH

On June 30, 2011, several provisions of the Government Code were amended, making it clear that school districts were solely responsible for ensuring that students with disabilities received special education and mental health related services, including those that had previously been provided by county mental health agencies. The amendments redirected funding from county mental health agencies to school districts and authorized the districts to determine whether a student needed educationally related mental health services.

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Graves conducted an assessment to determine whether Student needed educationally related mental health services. She used a set of criteria that were formally included in the repealed Government Code sections, because in her judgment she continued to consider these relevant. These included

- whether a student could benefit from his or her education,
- whether any mental health needs were significant and intense,
- whether they were temporary, and
- whether lesser interventions had been successful.

In her opinion after assessing him, Student did not need educationally related mental health services.

Graves reviewed Student's records for behavior, mental health, and social-emotional information. She interviewed Student, Mother, and teachers. She and another staff person observed Student in class and during unstructured times. She used structured interview forms and rating scales, including the Student Behavior Interview and Reinforcement Survey, Columbia Depression Scale, and Generalized Anxiety Disorder Seven-Item Scale.

Student was cooperative during the interview. He presented with a happy mood and appeared calm. His affect was stable. He gave brief answers to questions, but elaborated when asked for more information. His hygiene was appropriate, his hair was combed, and his clothing was clean. He made eye contact while speaking. His vocal tone was even and at a moderate volume. He communicated clearly and competently to questions asked. His responses appeared truthful and thoughtful. He was oriented to time and place, and his thoughts appeared to be intact. Student appeared to have no problem with memory during the interview. There was no evidence of disturbance of perception or thought. Student estimated that he has approximately 15 friends that he

interacted with daily. He stated he mostly interacted with his friends at school, and sometimes outside of school. He reported having no anxiety with social interactions and did not isolate while at school.

When asked about coping strategies, he reported that he talked to his friends if he needed help with anything. He stated he typically slept seven hours per day. He had no problems with falling or staying asleep. He denied feelings of

- depression,
- sadness,
- irritability,
- hopelessness, and
- helplessness.

He denied suicidal thoughts or intent. When asked about any eating problems, Student denied any problems and stated he ate a healthy diet. Student denied any use of

- alcohol,
- smoking,
- vaping,
- marijuana, or
- other substances.

He reported he had no problems with self-care, that he fed himself, and had good hygiene habits.

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When asked about concentration and staying focused, Student estimated he experienced difficulty approximately once per month when he had a big test. Outside of that, he stated he did not have problems with focus or concentration in the classroom. He denied having any problems with anxiety or panic symptoms. He denied having any

- hallucinations,
- delusional thinking,
- paranoid thinking,
- mania, or
- homicidal thoughts.

He reported no problems with verbal or physical aggression. He reported no history of legal problems or gang affiliations.

The Columbia Depression Scale is a 22-item self-report screening tool that can be given to adolescents ages 11 and older for both depression and suicide screening. Questions focus on feelings and behaviors over the past four weeks. Responses to the questions are yes or no. The score is calculated by assigning scores of zero to "no" responses and one to "yes" responses. The scores are added together for all 22 questions. Total scores correspond to the chance of depression, with zero-six very unlikely, seven-11 moderately likely, 12-15 likely, and 16 and over highly likely. The score is used in combination with further evaluation.

Student completed the scale. His total score was eight, indicating depression was moderately likely. Interview and follow up questions to positive responses, however, indicated that Student had causes for his positive responses other than depression.

For example, he might get tired, but follow-up questions indicated that sometimes he stayed up late playing video games. He might get anxious, but that was because he was ambitious about getting good grades.

The Generalized Anxiety Disorder Seven-Item Scale is a self-reported screening tool that identifies anxiety symptoms such as

- worry,
- tension,
- restlessness,
- muscle pain,
- fatigue,
- difficulty concentrating, and
- irritability.

It can also be used as a screening measure of panic, social anxiety, and post-traumatic stress disorder. Questions focus on symptoms over the past two weeks. A score is calculated by assigning scores to the responses and adding them. Scores of five, 10, and 15 are taken as the cut-off points for mild, moderate, and severe anxiety. Scores under five indicate no or minimal anxiety. Student's total score was two, indicating minimal anxiety.

Mother told Graves during a phone interview that she had no concerns with Student's behavior and did not believe he needed behavioral interventions. Mother stated her primary concerns were that Student could not open a locker and that he had occasions when he missed the bus home that school year. Mother stated she felt he needed reminders and she wanted someone with him in case he needed assistance. She felt Student was slow to transition from one task to the next and was slow to transition

from one class to another. Mother wanted him to leave early to make it to the bus on time. She reported Student had "normal fears, nothing abnormal, heights, spiders, etc." When Graves asked on the phone about any further anxiety symptoms, Mother stated Student did not have any anxiety problems with socializing, crowded places, or public speaking, and that he volunteered in the school setting. She reported he had difficulty in loud environments, was sensitive to loud noises, and needed to use headphones. She stated Student did not have depressive symptoms and he "loves life."

Graves gave structured interview forms called the Functional Assessment Interview Tool to all of Student's teachers. Modified physical education teacher Bowyer reported Student was

- friendly,
- sociable,
- socially aware,
- honest,
- easy going,
- followed directions,
- had a positive attitude and outlook, and
- was a hard worker.

Math teacher Parham reported Student was

- friendly,
- a self-starter,
- honest,
- easygoing,
- kind to adults,

- had a good sense of humor,
- positive attitude and outlook,
- good communication skills,
- followed directions, and
- was a hard worker.

English co-teacher Thornberry reported Student was

- friendly,
- helpful,
- sociable,
- easygoing,
- attentive to instruction,
- kind to adults,
- kind to other students,
- had a positive attitude and outlook and lots of friends, and
- followed directions.

Science teacher Chris Barron reported Student was friendly, a self-starter, and attentive to instruction.

Weightlifting teacher Anthony Mills reported that Student was

- friendly,
- helpful,
- sociable,
- liked by peers,
- a self-starter,
- socially aware,



- honest,
- easygoing,
- attentive to instruction,
- kind to adults,
- kind to other students,
- had good sense of humor,
- positive attitude and outlook,
- good communication skills,
- followed directions and
- was a hard worker.

He reported that Student took a little more time in the locker room.

Video production teacher Patrick Vaughan reported that Student was

- friendly,
- honest,
- easygoing,
- attentive to instruction,
- kind to adults,
- kind to other students,
- had a good sense of humor,
- a positive attitude and outlook, and
- followed directions.

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Special education teacher Melisa Barron participated in a phone interview and reported Student's strengths in the school setting were

- staying on task,
- paying attention,
- asking questions,
- participating appropriately,
- doing what is asked, and
- asking questions when he did not understand something or needed clarification.

When asked about any concerns reported by teachers, Barron stated that Parham had mentioned Student taking long bathroom breaks. Barron reported that when Student was spoken to about it, he immediately stopped taking the long breaks. She reported that he responded well to correction. She stated that the long bathroom breaks were the only concern she has received regarding Student's behavior at school. When asked if anyone had reported Student having any problems with anxiety, panic, fear of environments or people, she responded, "No, nothing." Student appeared very relaxed and comfortable in his environment. Barron stated Student liked to joke with peers and staff. When asked if anyone had reported Student having any problems with depression, irritability, sadness, tearfulness, or hopelessness, she responded, "Nothing, zero." There had been no suicidal or homicidal concerns, no unusual comments or behaviors, and no mental health concerns reported to her or observed by her.

Bowyer, Parham, Thornberry, and Melisa Barron testified at hearing. Their testimony concerning Student's functioning at school was in accord with these interview results. Mother's testimony about her concerns for Student were also in accord with the interview as reported by Graves.

Graves opined that Student was not exhibiting or endorsing mental health symptoms at school. He did not appear to have any mental health symptoms impacting his educational functioning in the school setting that would need intervention. Student did not display any behaviors at school that affected his learning or the learning of others. He had numerous friends, was comfortable interacting with a large group of students, and did not appear to have any social problems at school. His experience with anxiety was within normal limits and did not appear to impact his educational performance. He denied depressive symptoms. Interviews and records indicated there were no mental health problems. School staff had not reported any mental health concerns.

Student did not have any mental health symptoms, behaviors or concerns that would adversely affect or impede his ability to attend school, complete necessary tasks, or participate in any school activities.

### 1.e.: OCCUPATIONAL THERAPY

Occupational therapist Czarina Biagtan assessed Student in December 2023. She reviewed Student's educational records, observed him during testing sessions, and observed his writing. She interviewed Mother and teachers. She conducted a functional evaluation of his fine motor skills. She administered the Beery-Buktenica Developmental Test of Visual-Motor Integration, the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition, the Wold Sentence Copying Test, and an Adolescent Sensory Profile.

During classroom observations, Student located all materials, books, and papers needed for academic tasks. On his desk, he had his folder with his worksheets, Chromebook, and pencil. He independently accessed his Chromebook. He followed

and completed multi-step instructions from teachers without additional cuing. He tapped his pencil on his desk for a few seconds but was not disruptive to the class or his peers and refocused back to task independently. He participated actively in the lesson, worked diligently, and answered all questions correctly, demonstrating a grasp of the material. He raised his hand to answer questions. His work product was organized and legible, with better-than-fair line adherence, good spacing between letters and words, and consistent letter size. In Biagtan's clinical judgment, his work would be considered legible to an unfamiliar eye. He maintained upright functional sitting posture during class. He initiated conversations with peers and responded appropriately during conversations. He refocused his attention to schoolwork without prompting. He transitioned to and from the testing area to his classroom without difficulty. He did not demonstrate difficulty navigating the school environment. During testing, Student was cooperative and polite.

The Beery-Buktenica Developmental Test of Visual-Motor Integration is a standardized assessment tool that includes three subtests: visual-motor integration, visual perception, and motor coordination. The visual-motor integration subtest requires a student to copy shapes. The visual perception subtest requires a student to identify matching forms. The motor coordination subtest requires a student to draw lines within a targeted area. The test is designed to assess the extent to which individuals can integrate their visual and motor abilities. Student's scores showed low visual-motor integration skills, average visual perception and low fine-motor coordination skills. Biagtan discounted his lower scores. He drew lines almost within the target area but strayed outside it, so he achieved a lower score. Biagtan did not consider Student's deficits to impact him educationally, given his good functioning in the classroom.

She administered a functional evaluation of fine-motor skills, a structured guide for a clinical observation. The tool provided a structure to document observations. Student had functional strength and endurance. He opened containers and managed tools. Teachers did not report any difficulty accessing fine-motor tasks in the classroom. He could write. He did not report or demonstrate pain or fatigue during writing activities. He used classroom tools such as an eraser and scissors. His pencil grasp was not mature, as he wrapped all five fingers around the pencil. He preferred typing in class and typed at a rate of 42 words per minute with 95 percent accuracy, which was functional for his grade level.

Biagtan administered the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition, a standardized test that measures motor skills. Student scored in the below average range for the fine-motor precision subtest. He was also below average in the fine-motor integration subtest. He scored in the average range for the manual dexterity subtest. His fine manual control was below average. Biagtan discounted these lower scores because his classroom performance was functional when it came to what this test measured. His accuracy with finger control, coloring, cutting, and other tasks like transferring pennies, placing pegs in a board, sorting cards, threading beads and the like was, although below average for his age, nevertheless functional in the school setting.

On the Wold Sentence Copying Test, a timed test that measures the rate and accuracy at which a student can copy a 110-letter paragraph, he scored at 94 percent legibility and 99 percent accuracy. The test was not normed for his ninth-grade level, but Biagtan extrapolated from the highest normed, eighth-grade level to determine that Student's skills were functional.

Baigtan also investigated Student's sensory processing, which involves the senses of touch, sight, hearing, taste, and smell, and information gathered from the vestibular and proprioceptive systems. These systems play a major role in the development of muscle tone, motor skills, self-awareness, and the ability to meaningfully interact with others. She used the Adolescent/Adult Sensory Profile, a self-evaluation tool that monitors the subject's self-perception of responses to everyday sensory experiences.

Student's responses indicated he had lower arousal, which meant he might need more stimulation to be engaged with tasks. He also scored high for sensory sensitivity. Thus, he might react to stimulation more than others. He also scored lower than average for sensory seeking, which might inhibit him from trying new experiences. He also reported sensitivity to touch, as in discomfort wearing certain fabrics, and difficulty with background noise. Biagtan again discounted these scores based on Student's satisfactory performance in the classroom, her observations of him, and his teachers' perceptions.

In summary, Biagtan opined that Student had low visual-motor integration skills, average visual-perceptual skills and low fine-motor coordination skills. He produced legible writing independently. His writing speed was adequate for his grade level. Although he scored "less than most people" in the sensation-seeking quadrant and "more than most people" in the sensory-sensitivity quadrant of the Adolescent Sensory Profile, Student demonstrated functional sensory processing and modulation skills in the school setting. He independently maintained good regulation in the school setting. He indicated good speed and accuracy when manipulating objects. Fine-motor skills were not a concern, in Biagtan's clinical judgment. Student successfully performed functional fine-motor skills to participate in school activities with fine-motor components.

Furthermore, Student demonstrated functional executive functioning and organization skills. He completed multi-step instructions, maintained good organizational skills in the classroom with material and work on a page, demonstrated good transition skills, and good responsiveness to peer interactions. Biagtan did not recommend school-based occupational therapy.

Student's lower scores were not clinically or functionally significant and did not evidence the need for occupational therapy. Student could and did successfully access his school environment.

ISSUE 2 AND ISSUE 3: MAY KERN EXIT STUDENT FROM SPECIAL EDUCATION AND RELATED SERVICES WITHOUT PARENTS' CONSENT, PURSUANT TO THE JANUARY 17, 2024 INDIVIDUALIZED EDUCATION PROGRAM; DID KERN DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION WHEN IT RECOMMENDED STUDENT BE EXITED FROM SPECIAL EDUCATION SERVICES?

Kern contends that the January 17, 2024 IEP team procedurally and substantively complied with the IDEA, that the eligibility conclusion by the Kern members of the IEP team was correct, and that it may exit Student from special education without parental consent. Parent contends Student has needs that continue to require special education and related services.

Student's IEP team met on January 17, February 6 and 14, and April 10, 2024, to review Student's three-year assessments and determine Student's continued eligibility for special education and related services. Kern's IEP team members determined that

Student no longer qualified for special education under any special education eligibility criteria, and therefore Student was no longer entitled to a FAPE. Parent disagreed with this decision and refused consent to the IEP.

Eligibility for special education and related services is twofold. A student must first meet eligibility criteria under one of the disabling conditions as defined by federal and state regulations. If identified as a student with a disabling condition, the student must also demonstrate a need for special education services. Both components must be met to be determined eligible for special education. State and federal laws outline disability categories or disabling conditions for which a student may be eligible for special education and related services.

For a child to be eligible for special education in California, the child must have a disability as defined by state and federal law. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8; Ed. Code, § 56026, subd. (d).) Section 3030 of title 5 of the California Code of Regulations defines the various eligibility categories under California law. Here, Kern investigated the special education eligibility categories of

- autism,
- language or speech disorder,
- specific learning disability,
- other health impairment,
- emotional disability, and
- intellectual disability.



Here, Kern correctly determined that Student was not eligible for special education and related services under any of the applicable categories, each of which is discussed in further detail below.

## AUTISM

Under California law, autism is a developmental disability that significantly affects verbal and nonverbal communication and social interaction, generally evident before age three, which adversely affects a child's educational performance. Characteristics often associated with autism are repetitive activities, stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).)

Student received a medical diagnosis of autism in 2011 when he was three years old. He qualified for an IEP as a student with autism at that time. That eligibility remained until 2016, after which his eligibility category became language or speech disorder.

Sanchez assessed Student using the Autism Spectrum Rating Scales, a comprehensive rating scale that is designed to measure behaviors associated with autism spectrum disorders. The assessment investigated difficulties with communication skills, deficits in attention, and problems engaging both peers and adults in social interaction. The total score was a composite of the social, unusual behaviors, and self-regulation scales, each comprised of several sub-categories. The forms asked the raters to score Student's behaviors as average, slightly elevated, elevated, or very elevated. General education video production teacher Vaughn and general education weightlifting teacher Mills responded, as well as Mother.

The teachers reported some elevated or slightly elevated, but mostly average, scores. Vaughn and Mills both rated Student as slightly elevated in his social/communication, and his social/emotional reciprocity. Mills also rated Student as slightly elevated in his behavioral rigidity, and as elevated in his sensory sensitivity. These individual scores did not change the teachers' overall ratings, which indicated that Student did not exhibit autistic characteristics at school.

Sanchez nevertheless followed up on those elevated scores with further interviews. Both teachers reported that Student preferred to stay with one peer or in a small group of peers. Neither teacher noted this as a concern within the classroom setting. Mills observed that Student liked his own space when working out. He did not tend to get into other students' spaces and took a step back when someone entered his personal space. He engaged in "horseplay" back and forth with others but tended to stay with one other peer. Student also made sure that his water bottle followed him anywhere he went and did not let it out of his space. These characteristics were what led Mills to score Student as elevated or slightly elevated.

However, Student did not react to the loud noises in the weight room. Loud music in the gym did not cause Student to cover his ears, state it was too loud, or wince. Neither teacher noted concerns within the classroom setting. There were no concerns in stereotypy or peer relations. Student did not exhibit difficulties with hyperactivity or inattention that affected his academic success. On all ratings given, Student demonstrated the ability to relate to peers and adults.

Mother indicated more concerns, noting numerous slightly elevated, elevated, or very elevated scores. She submitted two different responses to the rating questions. On the first, she rated Student as very elevated for unusual behaviors, characteristics

associated with a diagnosis of autism, stereotypy, and sensory sensitivity. Her second form rated him as very elevated in sensory sensitivity. She reported more elevated and slightly elevated scores than did the teachers. Based on parent rating, Student's most impacted area of concern was in unusual behaviors, indicating he may have trouble tolerating changes in routine. Mother rated his stereotypy and sensory sensitivity as very elevated, stating that he

- was bothered by socks and shoes, repeats words or phrases that others say,
- flapped his right pointer finger when excited,
- became overly excited and too stimulated, cried with loud noises, and
- loved to make rows and multiples.

Sanchez opined that while Mother's rating scales indicated behavioral characteristics associated with autism in the home setting, teacher rating scales indicated minimal to no characteristics of autism in the school setting. Sanchez interpreted the teacher results to indicate that Student was not observed to exhibit characteristics associated with autism in the school setting, and that Mother's observations were not consistent with those of his teachers. Sanchez determined that for both teachers, Student was not demonstrating or showing any symptoms related to autism, but within the home setting Mother did observe him to have some symptoms.

Sanchez concluded that Student did not meet the eligibility criteria as a student with autism. He was social with peers and staff. There were no concerns in his communication with anybody on the school campus. He was communicative. He socially interacted with peers. He was not observed to have any type of repetitive

movements, or any type of sensory-input sensitivities that would require him to need supports. Sanchez saw no adverse effect on his educational performance. Noting that at the age of three he was given the medical diagnosis of autism, she opined that on the high school campus he was not showing any of those adverse effects in his ability to perform. Sanchez's observations during structured and non-structured times of Student's school day indicated he had appropriate social interactions. He sought out peers, participated in group or partner work in class, was sought out for peer interaction by others, and laughed at appropriate times with staff and peers, indicating appropriate social reciprocity.

During the evaluation process, Student held appropriate conversational skills and appropriate eye contact. He asked for breaks as needed throughout the testing process for the restroom or to get water. Student transitioned from task to task in the classroom setting as well as from class-to-class. Student reported that he can adjust his plans if they do not go as expected. Student did not engage in repetitive activities or stereotyped movements in the classroom. Student did not exhibit sensory sensitivity as reported by the teachers or observed by Sanchez. Student did not react to loud noises in the weight room with music or barbells, nor did Student require any sensory supports within the classroom. Student had age-appropriate independent living skills in the school setting. He did not require additional support to care for his daily needs.

Sanchez concluded that Student was well-behaved, did not have negative emotional behavior in the school setting, that there were no academic or behavioral concerns expressed by the teachers, and that Student did not exhibit any odd behaviors or any type of avoiding of social contact with others. He adapted to change easily. He performed everyday tasks for himself. He interacted with peers and adults in an age-appropriate manner.

The observations of the other assessors, and all of Student's teachers, were in accord. Student exhibited age-appropriate communication skills and reciprocal social-interaction skills. He did not exhibit any stereotypical behaviors or restricted interests. He offered consistent and appropriate reciprocal conversation. He answered questions appropriately and completely. He used appropriate eye contact. He did not display unusual sensory interests or mannerisms. He did not display excessive interests in specific topics, or any compulsions or ritualistic behaviors. He exhibited age-appropriate communication skills and reciprocal social-interaction skills.

Observations revealed no characteristics associated with autism. Student came to testing on his own and on time. Student engaged with the examiners. Student had good attention, transitioned easily, and followed instructions. Student was on-task at school. He regularly engaged spontaneously with no prompting, was oriented toward the teachers, focused, attentive, and able to answer questions when called upon. He followed the pace of the lessons regularly and without difficulty. Student volunteered and answered questions in class, talked with friends, joined groups, and engaged in group conversation. Mother's concerns were not corroborated within the school environment by any other evaluations, observations, interviews, or other data. Student demonstrated average communication skills, including in pragmatic language. He revealed no unusual responses to sensory experiences. Student did not display deficits associated with autism at a level that adversely impacted his educational performance.

Based on all the data, Student did not display significant verbal, nonverbal, and social deficits in the school environment associated with autism. Nor did they adversely impact Student's educational success or his ability to access his education. Therefore,

Student did not meet the eligibility criteria as a student with autism. Accordingly, at the IEP team meetings where the IEP team reviewed the assessments, Kern correctly concluded that Student did not meet eligibility criteria for special education under the category of autism.

## LANGUAGE OR SPEECH DISORDER

A student is eligible for special education and related services under the category of language or speech disorder if the student demonstrates difficulty understanding or using spoken language under specified criteria and to such an extent that it adversely affects his or her educational performance, which cannot be corrected without special education. (Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).)

The specified disorder criteria are articulation, voice, fluency, or language disorder. An articulation disorder is when the student displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention. Significant interference in communication occurs when the student's production of single or multiple speech sounds on a developmental scale of articulation competency is below that expected for his or her chronological age or developmental level, and which adversely affects educational performance. (Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).)

Abnormal voice is characterized by persistent, defective voice quality, pitch, or loudness. (Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).)

A student has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the student and listener. (Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).)

When, as here, standardized tests are considered to be valid for the specific student, a student has an expressive or receptive language disorder when he or she scores at least 1.5 standard deviations below the mean, or below the seventh percentile, for his or her chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).)

As discussed in Issue 1.b., Gover considered the areas of

- articulation,
- fluency,
- voice,
- receptive and expressive language – including morphology, syntax, and semantics – and
- pragmatics.

On the Clinical Assessment of Pragmatics, Student obtained some below-average subtest scores. However, Gover credibly concluded that the below-average scores were anomalies because they were inconsistent with Student's demonstrated communication skills. Further, Gover concluded that these inconsistent below-average scores did not correspond with all her other assessment findings. Student's appropriate pragmatic language skills were confirmed by additional assessment measures, specifically the Social Thinking Dynamic Assessment Protocol and the Impact Social Communication Rating Scale to provide additional detail regarding Student's social communication

abilities in the classroom. Student's teachers described him as exhibiting generally age-appropriate social communication skills. No particular social communication deficits were noted. Student was happy, calm, organized, and completed tasks. Student

- engaged in banter,
- had a sense of humor,
- understood figurative language,
- asked and answered questions,
- switched topics appropriately, and
- talked about issues that were of interest to others.

Other clinically significant informal data showed that Student had age – appropriate abilities in making inferences and interpreting social language including nonverbal language, social interaction, and perspective. Student's expressive, receptive, and pragmatic use of language was consistently within the normal and expected range across educational settings. Student did not display deficits in

- articulation,
- voice,
- fluency,
- receptive language,
- expressive language, or
- pragmatic language.

Student did not demonstrate difficulty understanding or using spoken language to such an extent that it adversely affected his educational performance. As a result, Gover concluded that Student did not meet eligibility requirements for special education under the category of speech or language disorder.



Student's skills in the classroom and social settings all indicated that he had receptive and expressive language abilities that allowed him to participate with both peers and adults on campus as expected for his age and grade. Overall, Student presented with the ability to express his thoughts and feelings in an age-appropriate manner. Therefore, Student did not meet the eligibility criteria as a student with a language or speech disorder.

Accordingly, at the IEP team meetings where the IEP team reviewed the assessments, Kern correctly concluded that Student did not meet eligibility criteria for special education under that eligibility category.

## SPECIFIC LEARNING DISABILITY

A specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, write, spell, or perform mathematical calculations. (20 U.S.C. § 1401(30); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd (a).) The basic psychological processes include:

- attention,
- visual processing,
- auditory processing,
- phonological processing,
- sensory-motor skills, and
- cognitive abilities, including
- association,
- conceptualization, and
- expression. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

To determine whether or not Student had this qualifying disorder, Sanchez investigated all these areas.

## ATTENTION

As described in Issue 1, Sanchez used two parts of the Das-Naglieri Cognitive Assessment System, Second Edition, to investigate Student's attention. This assessment is an individually administered test of cognitive functioning for children and adolescents ranging from five through 18 years of age that was designed to assess the planning, attention, simultaneous, and successive cognitive processes. The test supports the calculation of three supplemental composite scores: (1) executive function without working memory, (2) executive function with working memory, and working memory.

The attention scale required Student to selectively attend to a particular stimulus and inhibit attending to competing stimuli. Student's performance on the attention processing scale was below average with a standard score of 82. The successive processing scale measured Student's ability to recall the order of words spoken by the examiner and comprehend and answer questions based on ordering of words. On successive processing, Student's performance was in the average range with a standard score of 94. Sanchez determined that Student's attention processing skills were commensurate with his cognitive abilities, with a full-scale composite score of 85 on the Wechsler Intelligence Scale for Children. Sanchez opined that Student could attend to information and comprehend within a below-average to average range, indicating to her that this was not an area of concern.

There was no contrary expert testimony, nor did Student on cross-examination elicit any significant doubt as to Sanchez's conclusions.

## VISUAL PROCESSING

Visual processing involves the ability to perceive, analyze, synthesize, and think with visual patterns, including the ability to store and recall visual representations. Sanchez investigated Student's visual reasoning with the visual-spatial index on the Wechsler Intelligence Scale for Children and the verbal-spatial relations subtest on the Das-Naglieri Cognitive Assessment System. Student scored in the average range on both assessments. This indicated that Student's visual reasoning skills were developed and not an area of concern.

## AUDITORY AND PHONOLOGICAL PROCESSING

To investigate Student's auditory and phonological processing, Sanchez administered the Test of Auditory-Perceptual Skills, Fourth Edition. This test is a measure of auditory skills necessary for development, use, and understanding of language commonly used in academic and everyday activities. It is designed to provide information about language processing and comprehension skills across three intersecting areas: (1) phonological processing, (2) auditory memory, and (3) listening comprehension. These areas are critical to the development of higher-order language skills, including literacy skills.

On the phonological processing index, Student's standard score was 94, in the average range. On the auditory memory index, Student's standard score of 97 placed him in the average range. The auditory memory index measures basic memory processes, including sequencing. Memory is another process that underlies most processing abilities. These scores indicated Student demonstrated average phonological/auditory processing skills.

Sanchez relied on Gover's assessment to investigate the listening comprehension aspect of auditory/phonological processing. Sanchez determined that Student demonstrated average phonological/auditory processing skills, which were not an area of concern.

## SENSORY-MOTOR SKILLS

Sensory-motor processing is the ability to process visual, auditory, kinesthetic, and olfactory information. Student was given the block design subtest on the Wechsler Intelligence Scale for Children and earned a scaled score of eight, which is in the average range. On the coding subtest, Student was asked to copy a shape using fine motor movements. He received a scaled score of six, which is in the low average range.

Relying on this information and on the occupational therapy report, Sanchez determined that Student could perform age-appropriate sensory-motor tasks and that this was not an area of concern.

## COGNITIVE ABILITIES

### ASSOCIATION

Sanchez also investigated the cognitive processing areas of association, conceptualization, and expression. Association may be seen on tasks that involve

- long-term memory and retrieval,
- understanding cause and effect relationships,
- understanding part and whole relationships, and
- understanding basic organizational relationships.

Student's working memory on the Das-Naglieri Cognitive Assessment System was in the average range with a standard score of 91. Sanchez also administered the working memory composite on the Wechsler Intelligence Scale and Student scored in the average range with a standard score of 97. He demonstrated a score in the low average range on the processing speed index on the Wechsler Intelligence Scale, with a standard score of 86.

Sanchez found that Student's association processing was commensurate with his full-scale cognitive ability on the Wechsler, which yielded a standard score of 85. She therefore determined that this was not an area of concern. There was no contrary expert testimony, nor did Student on cross-examination elicit any significant doubt as to Sanchez's conclusions.

### CONCEPTUALIZATION

The cognitive processing ability of conceptualization involves higher-order thinking, also known as fluid reasoning, problem-solving, logic, and decision-making. Student demonstrated average fluid reasoning with a standard score of 100 on the Wechsler. Student could

- follow directions,
- understand meaning,
- demonstrate logical thought,
- make inferences, and
- perform multi-step activities on the fluid reasoning composite.

Sanchez determined these were not areas of concern.

## EXPRESSION

The cognitive processing ability of expression involves organizing and using information to express thoughts verbally and in writing. This includes the production of meaningful speech and communication. Student's verbal comprehension and written expression fell in the low average to average ranges on the Wechsler verbal comprehension index and the Wechsler written expression score. His verbal comprehension was commensurate with his full-scale cognitive ability on the Wechsler. Sanchez determined these were not areas of concern.

Based on all the psychological processes assessed, Student did not show weakness in any processing area. His processing skills were commensurate with his full-scale cognitive ability, which was low average. Specifically, his attention processing, auditory processing, association processing, conceptualization processing, expression processing, sensory-motor processing, and visual processing were all at his developmental ability level. There was no contrary expert testimony, nor did Student on cross-examination elicit any significant doubt as to Sanchez's conclusions.

Accordingly, at the IEP team meetings where the IEP team reviewed the assessments, Kern correctly concluded that Student did not meet eligibility criteria for special education under the eligibility category of specific learning disability.

## OTHER HEALTH IMPAIRMENT

Other health impairment means having limited strength, vitality, or alertness that is due to conditions, including attention deficit hyperactivity disorder, that adversely affects a child's educational performance. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(9); 34

C.F.R. § 300.8(c)(9).) During the assessors' and teachers' numerous observations in the school setting, Student was generally

- on-task,
- regularly engaged,
- oriented toward the teacher,
- focused, attentive, and
- answered questions when called upon.

There was no evidence that Student was affected by a chronic or acute health problem that would adversely impact his educational performance.

Further, based on both observational data and teacher rating scales, Student was able to maintain his strength, vitality, and alertness throughout his school day within the general education setting. Student maintained focus and attention. In class, he was on task and completed tasks. Teachers reported that he turned in his work and did not struggle to complete tasks.

Mother reported him to have a low muscle tone and be "clumsy." However, this was not observed within the classroom setting. At the time of the assessments, Student was taking two physical education classes in which he excelled. Accordingly, at the IEP team meetings where the IEP team reviewed the assessments, Kern correctly concluded that Student did not meet eligibility criteria for special education under the category of other health impairment.

## EMOTIONAL DISABILITY

Emotional disability, formerly called emotional disturbance, means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- an inability to learn that cannot be explained by intellectual, sensory, or health factors;
- an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- inappropriate types of behavior or feelings under normal circumstances;
- a general pervasive mood of unhappiness or depression; or
- a tendency to develop physical symptoms or fears associated with personal or school problem. (Cal. Code Regs, tit. 5, § 3030, subd. (b)(4).)

Student did not demonstrate an inability to learn. Student had the ability to build and maintain satisfactory relationships with peers and teachers. He did not demonstrate inappropriate feelings under normal circumstances, nor present with a pervasive mood of unhappiness, or depression. Student did not demonstrate physical symptoms, or fears, associated with personal or school problems.



Therefore, at the IEP team meetings where the IEP team reviewed the assessments, Kern correctly found that Student did not meet eligibility requirements for special education under the category of emotional disability.

## INTELLECTUAL DISABILITY

Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (Cal. Code Regs, tit. 5, subd. § 3030(b)(6).)

Student's cognitive functioning was low average with a full-scale standard score of 85. This was not "significantly subaverage." His adaptive skills were also rated by teachers and Mother to be in the below-average to average ranges with no deficits.

Student did not meet eligibility criteria to qualify as a student with intellectual disability. Overall, the cognitive and processing testing and rating scale results indicated that Student possessed age-appropriate abilities. Based on Student's educational history, testing results and direct observations, at the IEP team meetings where the IEP team reviewed the assessments, Kern correctly determined that Student was not eligible under the category of intellectual disability.

## ELIGIBILITY DETERMINATION

At the IEP team meetings to review the multi-disciplinary three-year assessments, the Kern IEP team members proposed to exit Student from special education after discussing the assessment results and Student's school performance.

Kern's IEP recommendation to exit Student from special education was supported by assessments in all areas of suspected need, and a conclusion that Student no longer qualified for special education under any eligibility category. Moreover, regardless of whether Student met the eligibility criteria for any category, Kern established that Student did not demonstrate a need for special education services.

Not every student who is impaired by a disability is eligible for special education. A student is eligible for special education and related services if he is a child with a disability who, "by reason thereof, needs special education and related services." (20 U.S.C. § 1401(3)(A)(ii); 34 C.F.R. § 300.8(a)(1); Ed. Code, § 56026, subds. (a) & (b); Cal. Code Regs., tit. 5, §3030, subd. (a).) California law defines an "individual with exceptional needs" as a student who requires special education because of his or her disability. (Ed. Code, § 56026, subds. (a) & (b).) When determining whether a student needs special education, courts consider whether the student needs assistance in order to receive educational benefit from the general education classroom. (*Hood v. Encinitas Union School Dist.* (9th Cir. 2007) 486 F.3d 1099, 1106-1107.) Here, based on all the evidence Kern and Student presented, Student did not need special education or related services to access his education.

Student's teachers, who testified credibly at hearing, rated him as excellent in classwork, homework completion, grasp of the material, and peer interactions. He was obtaining grades of A's and B's. Student volunteered, knew the right answers, and contributed meaningfully during class discussions. He worked well with others and was well-respected. Student's math teacher reported that Student turned in his assignments, followed along with the lessons, understood the material, and worked well with other students. In language arts and social studies classes, Student was well-liked in groups and performed well on tests. Other students depended on him, and the teachers could

depend on him to make good contributions to class. He complied with classroom rules. He understood the academic concepts of the classes he took. None of his teachers reported any concerns about his academic performance.

In the school setting, Student was generally on-task and regularly engaged. Student had good attention, transitioned easily, engaged spontaneously with no prompting, was oriented toward the teacher, was focused, attentive, and was able to answer questions when called upon. He was on time and followed the pace of lessons regularly and without difficulty. He appropriately engaged in reciprocal dialog with his teachers and peers. Student walked with friends, joined groups, and engaged in group conversation. Teachers reported that he was a willing and eager participant in class activities and completed his work tasks. Teachers also reported that Student engaged in banter, asked and answered questions, transitioned appropriately, and displayed age-appropriate abilities in social interactions.

The data upon which Kern relied was current and based upon recent multi-disciplinary assessments by qualified professionals, which the IEP team discussed and considered at IEP team meetings. Student's teachers and the assessors credibly opined, based upon their knowledge, experience, and assessment results, that Student was progressing and meeting grade-level expectations for his age group in the general education environment. Kern met its burden of proof that Student did not need special education or related services to access his education, and that it was now appropriate to exit Student from special education.

For the same reasons, Student did not establish by a preponderance of the evidence that Kern denied him a FAPE by failing to offer services.

## PARENTAL PARTICIPATION

There are two parts to the legal analysis of a school district's compliance with the IDEA. In addition to deciding whether the IEP was appropriate, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Board of Educ. v. Rowley* (1982) 458 U.S. 176, 206-207, [73 L.Ed. 2d 690].)

Procedurally, the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501; Ed. Code, § 56500.4.) 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 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 v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

Mother felt her participation in Student's education was thwarted by school staff. She believed staff made it difficult to obtain educational records. She wanted progress reports delivered in physical rather than electronic form and believed this was denied her. School phone lines were often down. She felt that district administrators tried to control who spoke to her and when. When she did communicate with them, it was overwhelming, as if the school was deliberately trying to overwhelm and exhaust her.

Mother and her advocate attended all four IEP team meetings at issue in this case. Mother felt that she was not permitted to ask questions at the meetings and that Kern had predetermined their decision to exit Student from special education. At hearing, Mother disputed she was given appropriate opportunities to engage with the IEP team. Team members told her that the meetings were to review assessment reports and to hold her questions until the end, by which time Kern's decision to exit Student was apparent. She felt that on the date of the last IEP team meeting, no one asked for her thoughts or opinions, and made their determination without including her.

For their part, Kern IEP team members were under the impression at the time of the meetings that Mother was actually in agreement with the proposal to exit Student from special education. Mother disputes having given that indication.

Mother's perception of having been silenced was not corroborated by the IEP team meeting notes regarding her contributions, which the evidence established were written contemporaneously and accurately. Mother's perception also was not corroborated by the credible testimony of the Kern IEP team members. The IEP team meeting notes were contemporaneously taken by program specialist Cabrera and assistant principal Stacy Garrett, who both testified at hearing and authenticated the notes' accuracy. The testimony of all IEP team participants other than Mother confirmed their accuracy. In the notes, Mother's comments and questions were reflected, and she did not deny that she was able to make those comments and questions. Mother was accompanied to all IEP team meetings by her advocate, whose comments and questions were also reflected in the notes. Cabrera credibly recalled Mother questioning, for example, the speech and language and the occupational therapy assessments. Cabrera recalled Mother sharing that Student's fine motor skills made it difficult for him to use a

knife or button a shirt or tie his shoelaces. At hearing, Carbrerra independently recalled Mother stating these concerns at the IEP team meeting, and they are reflected in the notes. They also comport with Mother's testimony regarding her concerns. Similarly, Cabrera recalled Mother sharing that Student stuttered, especially when stressed, as reflected in the IEP team meeting notes and as comported with Mother's testimony. At hearing, Mother admitted she shared "a lot of concerns" at the IEP team meetings.

Mother's testimony that her advocate "tried," but was not permitted, to ask questions at the IEP team meetings was not persuasive, given the contrary contemporaneous notes reflecting the advocate's input. Mother's testimony that she "was not given the opportunity" to share her outside assessments with the IEP team was contrary to the more credible evidence that the assessors asked her to provide those outside reports while Kern's own assessments were underway. Moreover, Mother, at hearing, admitted that the assessors had asked her for the outside reports while interviewing her.

Predetermination does not refer to after discussion, but to the lack of meaningful discussion itself. Here, although Mother disagreed, Kern engaged in meaningful discussions with her. Kern included her in the process of determining Student's eligibility for special education and related services.

After the last of the IEP team meetings, confusion set in. Mother contended that the assessment reports were factually inaccurate. At hearing, Mother asserted that when she informed Kern of her concerns in April 2024, they pressured her into unreasonable deadlines to clarify her concerns. Kern, on the other hand, contended it offered to go over the assessment reports with Mother line by line and that she declined. Emails, phone calls, and letters were exchanged. Mother contended that in April and May 2024,

she requested more IEP team meetings, and that program specialist Cabrera refused her, saying there had been enough meetings. Cabrera emphatically denied having said this.

At the IEP team meetings, Kern suggested that Student's needs, if any, could be met with accommodations under Section 504 of the Rehabilitation Act of 1973, through what is called a "504 plan." Mother claimed that when she investigated this option, the 504 plan coordinator told her that she was required to sign the IEP and consent to exiting Student from special education before a 504 plan could even be considered. Kern denied this. Cabrera testified he spoke with Mother on April 23, 2024, to clarify that a 504 plan was not dependent on an exit from special education.

On May 22, 2024, Kern staff went to Mother's home to deliver unclaimed mail, taking with them a school security officer, which Kern asserted is standard practice when visiting homes. Mother characterized the visit as an attempt to intimidate her. At some point, she contacted the Kern Superintendent, who referred her back to the same school staff she was complaining about.

The events after the IEP team meetings are tangentially relevant if at all, because an IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. An IEP is "a snapshot, not a retrospective." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; *Fuhrman v. East Hanover Board of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041.)

Moreover, Mother's contentions were not persuasive. Her views about alleged factual inaccuracies in the assessment reports were not clear, neither to Kern at the time nor at hearing. Her testimony was diffuse and unclear, mixing timeframes and moving from one topic to another, and making repeated references to her "notes" that she would have to check before answering questions at hearing. Cabrera was believable in

his emphatic denial that he ever refused to convene more IEP team meetings. He established credibly that he spoke with Mother on April 23, 2024, concerning the availability of a 504 plan regardless of Student's IEP status. Moreover, director of special education Anderson, in response to Mother's complaints, in late April 2024 offered an immediate IEP team meeting. Then, Kern in writings dated June 6 and 13, 2024, documented their offers of further IEP team meetings, to which Mother did not respond. In response to Mother's contention that she was denied information about a 504 plan, Kern scheduled a meeting on May 30, 2024, with Garrett, Anderson, and assistant principal Williams. Mother declined to attend, stating she would not attend because it was not a "resolution" meeting, a term that was unclear at the time to Kern and remained unclear at hearing.

The evidence established Mother was afforded proper participation at the four IEP team meetings, that her objections to the assessments were not clear, and that afterward she declined to participate in numerous further IEP team meetings or in meetings that staff offered to address her concerns.

## 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.

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## ISSUE 1:

Kern's January 17, 2024 assessments were appropriate such that Parent is not entitled to independent educational evaluations at public expense in:

- a. Psychoeducation;
- b. Speech and language;
- c. Functional behavior;
- d. Educationally related mental health; and
- e. Occupational therapy.

Kern prevailed on Issue 1.a., 1.b., 1.c., 1.d., and 1.e.

## ISSUE 2:

Kern may exit Student from special education and related services without Parents' consent, pursuant to the January 17, 2024 individualized education program.

Kern prevailed on Issue 2.

## ISSUE 3:

Kern did not deny Student a free appropriate public education during the 2023-2024 school year at the January 17, 2024 individualized education program by failing to offer services when it recommended Student be exited from special education services.

Kern prevailed on Issue 3.

## REMEDIES

Kern may exit Student from special education and related services without parental consent.

## ORDER

1. Kern may exit Student from special education and related services without parental consent.
2. 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.

June R. Lehrman

Administrative Law Judge

Office of Administrative Hearings