

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

THE CONSOLIDATED MATTERS INVOLVING:
PARENTS ON BEHALF OF STUDENT, AND LODI
UNIFIED SCHOOL DISTRICT.

CASE NO. 2024090958

CASE NO. 2024080727

DECISION

DECEMBER 23, 2024

On August 20, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Lodi Unified School District, in OAH case number 2024080727. On September 24, 2024, OAH received a due process hearing request from Lodi Unified School District, naming Student, in OAH case number 2024090958. On October 2, 2024, OAH issued a written order consolidating Student's case with Lodi Unified School District's case and ordered that the 45-day timeline for issuance of the decision in the consolidated matter be based on the date of the filing of the complaint in Lodi Unified School District's Case.

Administrative Law Judge Christine Arden heard this consolidated matter by videoconference on October 15, 16, 17, 22, 23, 24, 29, and 30, 2024. An Administrative Law Judge is called an ALJ.

Attorney Ryan Song represented Student. Mother attended all hearing days on Student's behalf. Student did not attend the hearing. Attorney Colleen Villarreal represented Lodi Unified School District. Paul Warren, Administrative Director of Student Services, and the Director of the Lodi Area Region Special Education Local Plan Area, called the SELPA, attended all hearing days on Lodi Unified School District's behalf, except for approximately two hours on October 29, 2024, and the entire day on October 30, 2024.

At the parties' request, OAH continued the consolidated matter to December 9, 2024, to allow written closing briefs. The record was closed, and the matter was submitted on December 9, 2024.

ISSUES

A free appropriate public education is called a FAPE. An individualized education program is called an IEP. The issues addressed by this Decision are as follows.

STUDENT'S ISSUES

1. Did Lodi Unified School District deny Student a FAPE in the April 5, 2023 IEP by:
 - A. Failing to make a clear written offer because of the misspellings, missing page numbers, extraneous or incorrect information in or attached to the IEP?

- B. Failing to develop any goals addressing Student's needs regarding self-help, depression, atypicality, adaptability, inattention, and behavior rigidity to help him stay on task, regulate his emotions, and manage his assignments?
- C. Regarding the goals offered, failing to make clear who was responsible for observing and documenting Student's efforts beyond mention of the general teacher data/records?
- D. Failing to offer a one-to-one aide for the entire school day?
- E. Failing to offer behavior intervention services?
- F. Failing to offer a behavior intervention plan?
- G. Failing to offer individual counseling services?
- H. Failing to offer home-based applied behavior analysis services in the form of behavior therapy and clinical meetings?
- I. Failing to offer extended school year services for summer 2023 to address regression?
- J. Failing to offer parent training?

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2. Did Lodi Unified School District deny Student a FAPE by failing to assess Student in all areas of need, specifically, failing to assess Student between April 5, 2023, and the filing of the complaint on August 20, 2024, for possible dyslexia, including failing to conduct a psycho-motor development assessment to identify any deficits in visual-perceptual skills?
3. Did Lodi Unified School District deny Student a FAPE by failing to develop an IEP at the May 15, 2024 IEP team meeting?

DISTRICT'S ISSUE

4. May Lodi Unified School District exit Student from special education without parental consent based on its determination at the May 15, 2024 IEP team meeting?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

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

Student had the burden of proof on Student's Issues. Lodi Unified School District had the burden of proof on District's Issue. 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 12 years old and in sixth grade at Joe Serna Charter School, called Serna School, at the time of hearing. Serna School was a charter school within the Lodi Unified School District, which Student attended since kindergarten. Student resided within Lodi Unified School District's geographic boundaries at all relevant times. At the time of hearing, Student was eligible for special education under the primary category of specific learning disability, and the secondary category of speech or language impairment.

STUDENT'S BACKGROUND

Student was initially found eligible for special education and related services on April 2, 2018, when he was five years, eight months old, under the category of speech or language impairment. On February 26, 2019, the IEP team recognized Student's attention deficit disorder and added a secondary eligibility under the category of other health impairment. In November 2020, Student was diagnosed by a medical doctor with autism spectrum disorder. In February 2021, after reassessment, the IEP team changed Student's primary area of eligibility to specific learning disability, and his secondary eligibility to speech or language impairment.

Student was also medically diagnosed with attention deficit hyperactivity disorder, called ADHD, asthma, and disruptive mood dysregulation disorder. Student took prescription medication for his ADHD and mood dysregulation. Because he was on prescription medication, Student saw a psychiatrist, provided through his health insurance carrier, at least once every other month. No information was presented regarding how long Student had regularly seen a psychiatrist.

Mother testified Student's visual processing deficit was sometimes referred to as an orthographic processing deficit. Mother further testified Student had dyslexia. Because of these processing deficits, Student needed extra time to complete tests and assignments. His IEPs provided the accommodation of allowing him extra time to take for tests and complete assignments.

At the end of the 2020-2021 school year, in Student's third-grade year, Parents requested Student be retained for the 2021-2022 school year. They were concerned Student was not reading at grade level and had fallen behind during the distance

learning program in place at Serna School during the COVID-19 pandemic. Lodi Unified School District originally resisted Parents' request to have Student repeat third grade, but eventually granted Parents' request and Student repeated third grade during the 2021-2022 school year

THE DUAL LANGUAGE IMMERSION PROGRAM AT SERNA SCHOOL

Serna School was a charter school of choice, rather than Student's school of residence within the Lodi Unified School District. Parents elected to enroll Student at Serna School, instead of the local school assigned to Student pursuant to his home address. All students enrolled in Serna School were educated in its dual Spanish and English language immersion program. Serna School served children in kindergarten through eighth grade. It had a smaller student population and smaller class sizes than many other schools within the Lodi Unified School District.

Serna School's kindergarten and first-grade classes were taught in Spanish only for 90 percent of the school day. The percentage of the school day taught in English increased by 10 percent each successive school year as students moved through the elementary grades. By fifth grade, 50 percent of the school day was taught in Spanish, and 50 percent was taught in English. Sixth graders received most of their instruction in English, and only social studies and Spanish language arts were taught to them in Spanish. The gradual shift in the language of instruction intended to ensure that students developed verbal and written proficiency in both Spanish and English. The Serna School dual language immersion program was an academically rigorous program, particularly for children like Student who started at Serna School in kindergarten as

English only speakers. Student learned to speak, read, and write in both Spanish and English, concurrently with mastering the substance of all other academic subjects at Serna School.

Lodi Unified School District considered sixth through eighth grade at Serna School to be middle school. Sixth- through eighth-grade students at Serna School changed classrooms between class periods and had multiple teachers during the school day. This approach was intended to prepare students for a typical comprehensive California high school program.

STUDENT'S ISSUE 1A: DID LODI UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE IN THE APRIL 5, 2023 IEP BY FAILING TO MAKE A CLEAR WRITTEN OFFER BECAUSE OF THE MISSPELLINGS, MISSING PAGE NUMBERS, EXTRANEIOUS OR INCORRECT INFORMATION IN OR ATTACHED TO THE IEP?

Student contends multiple spelling errors, missing page numbers, extraneous information, and incorrect information in the April 5, 2023 IEP, rendered that IEP offer of special education and related services unclear. Student further contends that unclear offer undermined Parents' ability to understand specifically what constituted the offered program in the April 5, 2023 IEP.

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Lodi Unified School District contends the offer of a FAPE conveyed in the April 5, 2023 IEP was clear, and did not contain misspellings, missing page numbers, extraneous or incorrect information that rendered that offer unclear. Moreover, it contends Parents attended the April 5, 2023 IEP team meeting and understood the offer of a FAPE conveyed by the IEP team that day.

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

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

In analyzing a claim that a school district failed to offer a necessary service or other necessary element of a program in an IEP, the district's action must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*).) Therefore, the information that was before the IEP team at the times the IEPs at issue were developed is crucial evidence to a claim that an additional service or other support should have been offered as a FAPE in an IEP.

A formal, specific offer from a school district alerts the parents of the need to consider seriously whether the proposed placement, related services, accommodations, supports, and all other elements of the offered IEP, are appropriate for the child under the IDEA. A formal written offer also helps parents determine whether to reject or accept the offered placement with supplemental services. The IEP is a

"formal, written offer [that] creates a clear record that will do much to eliminate troublesome factual disputes ... about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any." (*Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 (*Union*).)

Although *Union* involved a district's failure to produce any formal written offer, numerous judicial decisions have invalidated IEPs that, even though formal offers were made, were insufficiently clear and specific to permit parents to make intelligent decisions regarding whether to consent, consent with exceptions, or seek relief through a due process hearing. (See, e.g., *A.K. v. Alexandria City School Board* (4th Cir. 2007) 484 F.3d 672, 681; *Knable v. Bexley City School Dist.* (6th Cir. 2001) 238 F.3d 755, 768; *Glendale Unified School Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp. 2d 1093, 1108.) The holding in *Union* requires "a clear, coherent offer which [parent] reasonably could evaluate and decide whether to accept or appeal." (*Ibid.*)

THE APRIL 5, 2023 IEP OFFER OF A FAPE

Student was in fourth grade during the 2022-2023 school year. Student's IEP team met on April 5, 2023, when he was 10 years, seven months old, for Student's annual program review. The team noted Student's visual processing deficit hindered his ability to access the general education curriculum. The team also noted Student had an

articulation disorder which impacted his ability to participate academically and socially. The IEP team did not mention any other disabilities, deficits or needs which impacted Student at school. The team also recognized Student had been very successful in fourth grade, both academically and socially.

After discussion, the IEP team offered the following special education and related services in the IEP dated April 5, 2023, for the period starting on April 5, 2023, and ending on April 4, 2024:

- primary eligibility for special education under specific learning disability and secondary eligibility under speech or language impairment;
- placement outside of the general education classroom or activities for 16 percent of the school day, and in general education classes or activities for 84 percent of the school day;
- five goals in the following areas implemented by the below identified staff members:
 - social skills – speech and language pathologist;
 - reading fluency – general education teacher and special education teacher;
 - math calculation – general education teacher and special education teacher;
 - math reasoning – general education teacher and special education teacher; and
 - organization - general education teacher and special education teacher;

- the following program accommodations:
 - checks for understanding of instructions;
 - repeating and/or rephrasing of instructions when needed;
 - chunking work to assure he completed small part of the task before going onto new task;
 - seating within close proximity to teacher, so that teacher could assure Student was following along;
 - shortened assignments or extra time for homework;
 - extra time when taking a test;
 - when having to copy off the board or a projector, providing Student with a copy of the notes after class so he could participate without having to copy everything; and
 - “when writing an essay or more,” Student had the choice of using the speech-to-text function on his Chromebook or computer;
- no program modifications of the curriculum in general education classes were needed;
- paraeducator additional adult support for 950 minutes a week to assist Student with transitions from one activity to another, and for task initiation and completion during classes in English language arts, Spanish language arts, and math. The IEP explicitly stated “[t]his is not a stay put service.” The paraeducator support was offered as a dispute settlement.

- related services in:
 - language and speech for 25 minutes each week in group sessions provided in a separate classroom; and
 - specialized academic instruction delivered to Student individually and in a group through both a “push-in” and “pull out” model provided in the resource room.

THE OFFER OF A FAPE IN THE APRIL 5, 2023 IEP WAS CLEAR

Student failed to introduce any persuasive evidence supporting his claim that the offer of a special education and related services in the April 5, 2023 IEP was unclear because of misspellings, missing page numbers, extraneous or incorrect information in or attached to the IEP. The plain language of that offer of a FAPE demonstrated that the program offered Student in the April 5, 2023 IEP was well defined and clearly described. The five new annual goals, program accommodations, related services, supports, and paraeducator support services to be provided in three identified academic general education classes, were all clearly described in the April 5, 2023 IEP. That IEP also clearly stated Student did not require any modification of the general education curriculum.

Student’s due process request alleged that the April 5, 2023 IEP included misspellings, missing page numbers, and incorrect information, which led to the offer of a FAPE being rendered confusing. However, Student failed to offer any evidence at hearing regarding which specific misspellings, missing page numbers, or incorrect information were “scattered throughout” the April 5, 2023 IEP, that caused Parents to be confused by the offer of a FAPE conveyed therein. Furthermore, Student’s closing brief erroneously argued Lodi Unified School District admitted in a November 16, 2023 email that it had incorrectly written goals offered in the April 5, 2023 IEP. However, this

statement is incorrect. Neither Student, nor Lodi Unified School District, offered an email dated November 16, 2023 to be introduced into evidence at hearing. Additionally, there was no clear or convincing testimony or other evidence presented at hearing concerning an email from Lodi Unified School District dated November 16, 2023, regarding a problem with the language of proposed goals. Furthermore, there was no evidence admitted at hearing concerning improperly written goals offered Student in the April 5, 2023 IEP.

Student's closing brief also argued Lodi Unified School District refused to alter the April 5, 2023 IEP after hearing Parents concerns or receiving a letter from Student's doctor. There was no evidence Parents were concerned that the April 5, 2023 offer of a FAPE was unclear. Parents disagreed with the offer of a FAPE, but there was no evidence they were confused by what was offered. Moreover, the only relevant letter from Student's doctor admitted into evidence at hearing was a letter dated May 17, 2024, which did not address the April 5, 2023 IEP, but concerned the recommendations of the IEP team meeting held on May 15, 2024.

None of the alleged misspellings, missing page numbers, extraneous or incorrect information errors in the April 5, 2023 IEP were raised to the ALJ's attention through testimony or documentary evidence at hearing. It was not the obligation of the ALJ to comb through the April 5, 2023 IEP to search for possible errors which may have confused Parents. (See *Kraim v. Virginia, et al.* (S.D.W. Va. July 26, 2021, No. 3:21-cv-00326) 2021 WL 3612305, at *3 ["[J]udges are not pigs searching for truffles," and not required to be "mind readers."]; see also *In Re: Out of Network Substance Use Disorder Claims Against United Healthcare* (C.D. Cal., October 14, 2022, 8:19-cv-02075-JVS(DFMx)) 2022 WL 17080378, fn. 2 (*In Re: Out of Network*) ["The Court 'is not a pig searching for truffles in a forest,' and will 'not perform the work of representing

parties.”); *Agarwal v. Oregon Mutual Insurance Company* (D.Nev. January 18, 2013, No. 2:11-cv-01384-LDG) 2013 WL 211093, at *3 [“[I]t is not the responsibility of the judiciary ‘to sift through scattered papers in order to manufacture arguments for the parties.’”].)

Student also claims in his closing brief that the IEP team meeting notes from prior IEP team meetings, which were automatically generated by the software program used by the special education department when the April 5, 2023 IEP document was printed, caused the April 2023 offer of a FAPE to be unclear. However, it is obvious that those notes reflected discussions of the team at prior IEP team meetings. It is unbelievable that inclusion of dated notes from prior IEP team meetings included in the April 5, 2023 IEP document rendered the offer of a FAPE contained therein unclear.

Mother testified she attended each of Student’s IEP team meetings since he was found eligible, and the evidence indicated Father had also attended many of Student’s IEP team meetings. Mother’s testimony established she was not confused about the elements of the program offered in the April 5, 2023 IEP. She may have disagreed with some elements of the FAPE offer, but she was not confused as to what program Lodi Unified School District offered. There was also no evidence that Father was ever unclear as to what constituted the April 5, 2023 FAPE offer. Parents attended and participated in the April 5, 2023 IEP team meeting and were vocal and involved with the rest of the IEP team members in developing an offer of a FAPE for Student. If Parents were at all confused about what program was being offered as a FAPE, they could have asked for clarification at the IEP team meeting, but they did not.

The evidence established that Lodi Unified School District’s FAPE offer conveyed in the April 5, 2023 IEP was sufficiently clear. Student failed to meet his burden of proof on Student’s Issue 1A.

STUDENT'S ISSUE 1B: DID LODI UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE IN THE APRIL 5, 2023 IEP BY FAILING TO DEVELOP ANY GOALS ADDRESSING STUDENT'S NEEDS REGARDING SELF-HELP, DEPRESSION, ATYPICALITY, ADAPTABILITY, INATTENTION, AND BEHAVIOR RIGIDITY TO HELP HIM STAY ON TASK, REGULATE HIS EMOTIONS, AND MANAGE HIS ASSIGNMENTS?

Student contends he had special educational needs in the areas of self-help, depression, atypicality, adaptability, inattention, and behavior rigidity, and that those needs interfered with Student's ability to stay on task, regulate his emotions, and manage assignments. Student further contends the IEP team should have offered him goals in self-help, depression, atypicality, adaptability, inattention, and behavior rigidity to help Student stay on task, regulate his emotions, and manage his assignments.

Lodi Unified School District contends on April 5, 2023, Student was successfully staying on task in school, regulating his emotions at school, and managing his academic assignments. Lodi Unified School District further contends Student did not exhibit special needs at school in April 2023 in the areas of

- self-help,
- depression,
- atypicality,
- adaptability,

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- inattention, and
- behavior rigidity.

Therefore, it contends Student did not require goals in self-help, depression, atypicality, adaptability, inattention, and behavior rigidity in the April 5, 2023 IEP.

When a child is eligible for special education, in developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the most recent evaluations of the child, and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop one or more annual goals based upon the child's present levels of academic achievement and functional performance. (Ed. Code, § 56345, subd. (a)(2).) The IEP team is required to review a child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. The IEP team must also, at least once annually, revise the IEP as appropriate to address the:

- child's lack of progress toward any of his/her annual goals;
- results of any reevaluation;
- information provided by the parents;
- the child's anticipated needs; and
- other matters. (20 U.S.C. § 1414(d)(4)(A).)

Federal and state law specify in detail what an IEP must contain. (20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320; Ed. Code, § 56345.) An annual IEP must contain a statement of the individual's present levels of academic achievement and functional performance, including the manner in which the disability of the individual affects his involvement and progress in the regular education curriculum. (20 U.S.C.

§ 1414(d)(1)(A)(i)(I); 34 C.F.R § 300.320 (a)(1); Ed. Code, § 56345, subd. (a)(1).) The statement of a student's present levels of performance creates a baseline for designing educational programming and measuring a student's future progress toward annual goals.

An annual IEP must also contain a statement of measurable annual goals designed to meet the individual's needs that result from the individual's disability to enable the student to be involved in and make progress in the general curriculum; and meet each of the student's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, U.S. Dept. of Education, Office of Special Education and Rehabilitative Services, March 25, 1988).

In addition, the annual goals in an IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III); Ed. Code, § 56345, subd. (a)(3).) An examination of an IEP's annual goals is central to the determination of whether a student has received a FAPE. A court must look to the IEP goals and goal achieving methods at the time the plan was implemented and determine whether those methods were reasonably calculated to confer a meaningful benefit. (*Adams, supra*, 195 F.3d at p. 1149.)

A student may derive educational benefit under *Rowley* if some of the child's goals and objectives are not fully met, or if they make no progress toward some of them, as long as they make progress toward others. A student's failure to meet all goals, perform at grade level, or achieve passing grades in classes is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. (*Perusse v. Poway Unified School Dist.* (S.D.Cal. July 12, 2010, No. 09 CV 1627) 2010 WL 2735759, at p. 11.)

Benchmarks or short-term objectives for annual goals are required only in IEPs for children with disabilities who take alternate assessments aligned to alternate academic achievement standards. (34 C.F.R. § 300.320(a)(2) & (B)(ii); Ed. Code, § 56345, subd. (a)(1)(C).) In the present case, Student did not take alternate assessments aligned to alternate achievement standards. During fourth, fifth, and sixth grade all of Student's classes, except for the study skills class taught by credentialed resource services teacher Eric De Santiago, were general education classes using grade-level curriculum.

The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (2)(A).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges v. Spartanburg County School Dist. Two* (D.S.C. 2011, No. 7:10-cv-01873-JMC) WL 3882850, at p. 6. [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].)

The IDEA does not establish a specific number of goals that must be included in an IEP, as that would contradict the premise that every IEP should be individualized. However, there should be at least one annual goal for each area of a child's needs. "[A]n

IEP is not required to contain every goal from which a student might benefit." (Capistrano Unified School Dist. v. S.W. (9th Cir. 2021) 21 F.4th 1125, 1133, cert. denied sub nom.)

A failure to offer an appropriate goal is a procedural violation of the IDEA, which results in a denial of a FAPE only if the violation impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a); Ed. Code, § 56505, subd. (f)(2); *W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1484, *superseded in part by statute on other grounds*.)

["...procedural inadequacies that result in the loss of educational opportunity, [citation], or seriously infringe the parents' opportunity to participate in the IEP formulation process, [citations], clearly result in the denial of a FAPE."].)

Stated another way, a procedural violation "will be 'actionable' only if [it] affected the student's substantive rights.'" (*Leggett v. Dist. of Columbia* (D.C.Cir. 2015) 793 F.3d 59, 67, quoting *Lesesne ex rel. B.F. v. Dist. of Columbia* (D.C. Cir. 2006) 447 F.3d 828, 832, 834.)

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STUDENT DID NOT REQUIRE ADDITIONAL ANNUAL GOALS IN OTHER AREAS NOT ADDRESSED IN THE APRIL 5, 2023 IEP

SELF-HELP

Student argues he should have been offered a self-help goal in the April 5, 2023 IEP. However, Student previously had an annual self-help goal in the April 12, 2022 IEP during his repeated third-grade year. Student met that goal by April 5, 2023, when he was in fourth grade. There was no convincing evidence introduced that Student had any continuing self-help deficits as of April 5, 2023. Based on Student's present levels of performance in April 2023, he no longer had self-help needs. The evidence indicated Student voluntarily sought help from adults at school when he needed clarification or further explanation.

Based on Student's then present levels of performance, Student did not have a continuing need in the area of "self-help" as of April 5, 2023. Moreover, Student's expert witness, Dr. Sookyung Shin, testified Student did not qualify for eligibility for special education under the categories of either specific learning disability, or speech or language impairment. Shin further opined Student did not need goals related to those two eligibility categories, or in the area of self-help.

DEPRESSION

There was no persuasive evidence that Student was depressed at any time close to the April 5, 2023 IEP team meeting. There is no mention by any teacher, service provider, or IEP team member that Student was depressed in spring 2023, when he was in fourth grade. There were no indications from Student's conduct at school that he was

depressed or experiencing social-emotional difficulties. No IEP team member mentioned at the April 5, 2023 IEP team meeting that Student was depressed. In fact, it was the consensus of the IEP team at that meeting that Student was doing extremely well in fourth grade, both academically and socially. Student socialized well with peers and adults at school. There was no reason for the IEP team to suspect Student was depressed or that he required a goal that addressed depression to receive a FAPE.

ATYPICALITY

Student failed to present persuasive evidence that Student had a need in the area of “atypicality” or that he needed a goal in this area. Moreover, it is unclear what Student meant by “atypicality.” Student presented no evidence explaining what needs he had that an atypicality goal would address.

Furthermore, the evidence was overwhelmingly clear that Student had friends, and regularly socialized with them at recess and lunch time. Student was uncomfortable when he was pulled out of class to receive speech and language services because he felt he did not need speech therapy, and he did not want to appear to his peers as being different from them.

Student introduced no evidence that explained or illustrated what an atypicality goal would address to facilitate Student’s progress at school. The evidence established Student had good social skills and he did not appear “atypical” to others. Student did not prove an atypicality goal was required for a FAPE.

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ADAPTABILITY

Student failed to introduce any evidence at hearing that supported the allegation that he needed an annual goal in the area of adaptability on April 5, 2023. Student introduced no evidence he had any problems adapting to circumstances at school, or transitions to new tasks. Mother may have rated Student as having significant issues with adaptability at home, but Student had no problems with adaptability at school. Student did not have an adaptability goal in the February 2022 IEP. There was no concern raised about Student having a special need in that area at the April 5, 2023 IEP team meeting, so it makes sense that the team did not offer a goal in that area.

Student failed to establish that Lodi Unified School District denied him a FAPE by failing to offer him a goal in adaptability in the April 5, 2023 IEP.

INATTENTION

Student was medically diagnosed as having ADHD after Lodi Unified School District initially found him eligible for special education in April 2018. However, Student took medication to address his ADHD and did not exhibit any significant inattentive behavior at school. The evidence indicated that by April 5, 2023, Student sustained his attention to tasks at school and achieved significant academic success in fourth grade. Student did not have an annual goal in the area of inattention in his February 2022 IEP. The April 5, 2023 IEP did not indicate that any team member, including Parents, raised a concern at the IEP team meeting about Student having an attention deficit that hindered his access to his education.

Student did not introduce any persuasive evidence, and no expert testimony, that Student had demonstrated attention needs at the April 5, 2023 IEP team meeting. Student failed to establish that Lodi Unified School District denied him a FAPE by failing to offer him an inattention goal in the April 5, 2023 IEP.

BEHAVIOR RIGIDITY

Student failed to establish he had a need in the area of behavior rigidity. No witness testified that Student's behavior was rigid. He had a medical diagnosis of autism spectrum disorder, but there was no evidence he could not adjust his behavior to unexpected changes in routines or tasks at school. Student introduced no persuasive evidence indicating Student could better access his education if his behavior was less rigid. There were no examples presented of Student's behavior rigidity at school in Spring 2023. Student's grades and teacher comments about his school performance established Student did very well academically and socially in fourth grade. This suggests Student did not exhibit unreasonably rigid behavior at school.

There was no convincing evidence presented that Student experienced behavior rigidity that interfered in any way with his ability to access his education. Student did not have an annual goal in the area of behavior rigidity in the February 2022 IEP. Moreover, no IEP team member, including Parents, mentioned a concern about Student's rigid behavior hindering access to his education at the April 5, 2023 IEP team meeting. Student failed to establish that Lodi Unified School District denied him a FAPE by failing to offer him a behavior rigidity goal in the April 5, 2023 IEP.

According to the notes of the April 5, 2023 IEP team meeting, Student was not having difficulty at school with staying on task, regulating his emotions, or managing his assignments. Moreover, there was no convincing evidence that Student had deficits in the areas of self-help, depression, atypicality, adaptability, inattention, and behavior rigidity, that would require annual goals in any of those areas in the April 5, 2023 IEP. Student also failed to prove the lack of a goal in these areas impeded Student's right to a FAPE, caused a deprivation of educational benefits, or significantly impeded the parent's opportunity to participate in the decision-making process.

Therefore, Student failed to meet his burden of proof on Student's Issue 1B.

STUDENT'S ISSUE 1C: REGARDING THE GOALS OFFERED, DID LODI UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE IN THE APRIL 5, 2023 IEP BY FAILING TO MAKE CLEAR WHO WAS RESPONSIBLE FOR OBSERVING AND DOCUMENTING STUDENT'S EFFORTS BEYOND MENTION OF THE GENERAL TEACHER DATA/RECORDS?

Student alleges that none of his April 5, 2023 IEP goals make clear who is responsible for observing and documenting his efforts "except for the mention of general teacher data/records."

Lodi Unified School District contends that the April 5, 2023 IEP properly identified the district personnel responsible for implementing each goal offered, and monitoring Student's progress on such goals. Lodi Unified School District further contends the April 5, 2023 IEP sufficiently identifies the data and/or documents which would be relied upon to measure Student's goal progress.

The April 5, 2023 IEP expressly identified which district staff members were responsible for implementing and monitoring Student's progress on each of the five annual goals offered. The April 5, 2023 IEP offered five goals in

1. social skills,
2. reading fluency,
3. math calculation,
4. math reasoning, and
5. organization.

The speech and language pathologist was responsible for implementing the social skills goal and monitoring Student's progress on it.

The general education teacher and special education teacher were responsible for implementing the goals on

- reading fluency,
- math calculation,
- math reasoning, and
- organization, and
- monitoring Student's progress on each goal.

Each of the five offered goals in the April 5, 2023 IEP also identifies the data and/or documents that school district personnel were required to review and rely upon when measuring Student's progress. For the social skills goal, the speech-language pathologist was required to review and rely upon teacher reported data collections and data tracking. For the reading fluency goal, the general education teacher and special education teacher were required to review and rely upon Student work samples/teacher charted records. For the math calculation goal, the general education and special education teachers were

required to review and rely upon Student work samples/teacher records. For the math reasoning goal, the general education and special education teachers were required to review and rely upon work samples or teacher-made tests. For the organization goal, the general education and special education teachers were required to review and rely upon Student's placement of specified items in his designated area/folders.

The April 5, 2023 IEP appropriately identified the school district personnel responsible for implementing and monitoring each of Student's five offered goals. Moreover, the five offered goals appropriately identified the data or documents school district personnel were required to review and rely upon when measuring Student's progress. No credible evidence was introduced at hearing which supported Student's claim that either the school district personnel responsible for implementing each goal, or the documents and data upon which the school district personnel were required to review and rely upon in measuring Student's progress on each goal, were inadequate or incorrect. The responsible school district personnel were correctly identified for each of the five goals and the documents which the district personnel were required to review and rely upon in measuring Student's progress were sufficiently specific.

Student offered no persuasive evidence that the five offered goals in the April 5, 2023 IEP failed to appropriately identify the school district personnel responsible for implementing and measuring Student's progress on each goal. Moreover, Student offered no convincing evidence that the five offered goals failed to appropriately identify the collected data or documents school district personnel would review and rely upon in measuring Student's goal progress. Each goal identified the specific responsible district personnel and the data and/or documents they would rely upon in measuring Student's progress. Student failed to meet his burden of proof on Student's Issue 1C.

STUDENT'S ISSUE 1D: DID LODI UNIFIED SCHOOL DISTRICT DENY
STUDENT A FAPE IN THE APRIL 5, 2023 IEP BY FAILING TO OFFER A ONE-
TO-ONE AIDE FOR THE ENTIRE SCHOOL DAY?

Student contends he required a full-time aide during the entire school day, instead of during just three academic classes, to access the academic curriculum and appropriately socialize at school.

Lodi Unified School District contends Student did not require a full-time aide at any time in the school day, other than during Spanish language arts, English language arts, and math. It further argues aide services during the entire school day would have been too restrictive for Student, and might have caused him to develop an inappropriate dependence on the aide.

Student withdrew Issue 1D in his closing brief. Although Student mistakenly referred to Issue 1C, rather than 1D, Student's closing brief clearly intended to withdraw Student's Issue 1D, which alleged Lodi Unified School District denied him a FAPE by failing to offer him paraeducator support for the entire school day. Despite Student's belated withdrawal of Issue 1D, and because Lodi Unified School District was required to defend against the claim made in Issue 1D at hearing, this Decision addresses it.

The IDEA requires IEP teams to consider the use of positive behavioral interventions and supports, and other strategies, to address behaviors that impede a student's learning or that of others. (20 U.S.C. § 1414 (d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).) A district's failure to develop positive behavior interventions can amount to a denial of FAPE. (See e.g., *Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028, 1029; *C.F. ex rel. R.F. v. New York City Dept. of Education* (2d Cir. 2014) 746 F.3d 68, 81.) The "educational

benefit” to be provided to a child requiring special education is not limited to addressing the child’s academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (County of San Diego v. California Special Education Hearing Office (9th Cir. 1996) 93 F.3d 1458, 1467.)

The evidence was overwhelming that as of the April 5, 2023 IEP, Student’s behavior at school was excellent. The IEP noted he was “a respectful young man.” Student was diligent with his assigned tasks, participated in classroom activities, and interacted appropriately with adults and peers. The April 5, 2023 IEP also noted that Student “had been very successful in fourth grade both academically and socially.” Moreover, the IEP team documented that the paraeducator support, was not a stay-put service, and it would be faded out within a year.

Warren, Lodi Unified School District’s Director of Student Services and the SELPA director, convincingly testified that paraeducator services were customarily offered only when no alternative less restrictive means to correct a child’s maladaptive behaviors existed. Warren was an extremely believable witness, who had extensive professional experience in special education over the last 29 years as both a service provider and an administrator. He held a marriage and family therapist credential, a professional pupil personnel services credential, and an administrative services credential. He was also in charge of 504 reasonable accommodation plans for general education students within the district. A 504 plan is a formal plan schools develop pursuant to section 504 of the Rehabilitation Act of 1973, to give children with disabilities, who are not eligible for special education, the support they need at school.

At the time of hearing, Warren had worked at Lodi Unified School District for 25 years in the special education department. He had been a special education administrator for the last 11 years. Before that, Warren provided related services to children with special needs for about 16 years. When responding to questions posed to him at hearing, Warren was candid, and answered promptly with thorough and believable answers. He convincingly opined that full-time paraeducator support was not appropriate for children whose behaviors could be corrected through teacher prompting. He further persuasively testified that paraeducator support could cause a child to become dependent on aide services. Whereas the objective was to teach a child tools so that the child could independently transition from one task to another and stay on task.

Warren further testified that most children who were offered full-time paraeducator support had a history of disciplinary actions, like suspensions, at school because their behaviors were so significant. Student had never been formally disciplined since his enrollment at Serna School in kindergarten. The evidence was clear Student did not require one-to-one aide services for any more than during the three academic classes specifically noted in the April 5, 2023 IEP. By April 5, 2023, Student regularly stayed on task, kept organized, and socialized successfully with peers and adults at school. No expert witness testified that Student needed aide support in April 2023.

There was no reason to offer Student such a restrictive service as paraeducator support during the entire school day. In fact, the evidence indicated the presence of an aide during his three classes embarrassed Student because he did not want to appear different from his peers. Corroborating Student's lack of the need for an aide during the

entire school day, the notes of the April 5, 2023 IEP established the IEP team informed Parents that Student's paraeducator support would be faded out and ended within the year.

Student offered no persuasive evidence that he required a full-time aide during the entire day at the time of the April 5, 2023 IEP team meeting. Instead, the evidence showed the IEP team was appropriately already raising the issue of fading out Student's aide services.

Student failed to meet his burden of proof on Student's Issue 1D.

STUDENT'S ISSUE 1E: DID LODI UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE IN THE APRIL 5, 2023 IEP BY FAILING TO OFFER BEHAVIOR INTERVENTION SERVICES?

Student contends he required behavior intervention services because his behavior interfered with his access to the academic curriculum, and he needed such services to appropriately socialize with peers at school.

Lodi Unified School District contends Student's behavior at school was excellent. Lodi Unified School District further contends Student transitioned well between tasks, stayed on task, participated in class, and socialized well with both peers and adults. Lodi Unified School District further contends Student had no need for behavior intervention services, in addition to the paraeducator support offered during three academic classes.

The evidence was overwhelming that Student's behavior at school was very good as of the April 5, 2023 IEP. For the same reasons discussed in Issue 1D above, there was no reason for the IEP team to consider giving Student behavior intervention services

beyond offering him paraeducator support during math and Spanish and English language arts classes. There was no evidence Student required more behavior intervention services than were offered in the April 5, 2023 IEP.

Student's closing brief curiously relied on a snippet of testimony from Gianna Ritchie, Student's aide in sixth grade during the 2024-2025 school year. However, Ritchie's testimony did not prove Student needed additional behavior intervention services at the time of the April 2023 IEP. Ritchie did not know Student at the time of the April 5, 2023 IEP, as Ritchie would have still been attending high school herself on that date. Moreover, Ritchie generally testified Student was a sweet, considerate boy without behavior problems, who did not need the study skills class, or aide services.

Student failed to introduce any persuasive evidence supporting his claim that he was denied a FAPE in the April 5, 2023 IEP because he was not offered behavior intervention services. Student was offered paraeducator support during three academic classes to address his transitions from one task to another, and to ensure consistent attention to task and completion of assignments. However, Student had no maladaptive behaviors that hindered his access to the curriculum or interfered with his socialization at school.

Student offered no persuasive evidence that he required further behavior intervention services beyond what was offered in the April 5, 2023 IEP. Student's teachers consistently opined he was a "great kid" with good behaviors, who had been very successful in fourth grade. It would be inappropriate and unwarranted for the IEP team to have offered Student behavior intervention services beyond the paraeducator support offered in the April 5, 2023 IEP. Student failed to meet his burden of proof on Student's Issue 1E.

STUDENT'S ISSUE 1F: DID LODI UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE IN THE APRIL 5, 2023 IEP BY FAILING TO OFFER A BEHAVIOR INTERVENTION PLAN?

Student contends he required a behavior intervention plan because his behavior interfered with his access to the academic curriculum, and he needed a behavior plan to help him appropriately socialize at school.

Lodi Unified School District contends Student had no behavior deficits that interfered with his access to the curriculum or his ability to appropriate socialize at school. Therefore, it would not have been appropriate to offer Student a behavior intervention plan.

Student offered no persuasive evidence that he required a behavior intervention plan in the April 5, 2023 IEP. A behavior intervention plan provides techniques aimed at extinguishing specified negative behaviors and training the child to replace those negative behaviors with positive behaviors. As discussed in Issues 1D and 1E, Student did not have behavior problems that required a behavior intervention plan. On the contrary, in many respects Student behaved like a model pupil at school. Moreover, there was no evidence that Student had ever required or been offered a behavior intervention plan, probably because he never exhibited behaviors that warranted such an offer. Student also did not show which negative behaviors of Student had to be extinguished and replaced.

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There was no reason the IEP team should have considered a behavior intervention plan for Student when he did not have behaviors that had to be modified to facilitate his access to the curriculum. Consequently, Student failed to meet his burden of proof on Student's Issue 1F.

STUDENT'S ISSUE 1G: DID LODI UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE IN THE APRIL 5, 2023 IEP BY FAILING TO OFFER INDIVIDUAL COUNSELING SERVICES?

Student contends he required counseling services due to emotional meltdowns Student exhibited at home, and because Student was uncomfortable in some social situations with peers.

Lodi Unified School District contends Student did not exhibit any conduct that warranted counseling or express a need for counseling services at school. Student performed well in fourth grade during the 2022-2023 school year both academically and socially, and there was no information before the IEP team on April 5, 2023, that indicated Student needed counseling services.

Counseling services are a related service which is "required to assist a child with a disability to benefit from special education ..." (34 C.F.R. § 300.34(a).) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. (34 C.F.R. § 300.34(c)(2).) A child's unique needs are to be broadly construed to include the child's

- academic,
- social,
- health,

- emotional,
- communicative,
- physical, and
- vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

As discussed in sections 1D, 1E, and 1F of this Decision, Student did not exhibit any emotional or social problems at school. There was no information before the IEP team in April 2023 that indicated Student needed counseling services. Only Mother rated Student on a rating scale as being at risk for emotional issues. No one else surveyed rated Student as having needs in this area. Student historically received the monthly or bi-monthly services from a psychiatrist to monitor his prescription medications. According to Mother, that psychiatrist was very familiar with Student. There was no request for counseling services made by Parents, or anyone else. There was also no recommendation from Student's psychiatrist that he be provided with counseling services at school. There was no evidence that Student, Parents, or anyone else, informed any member of the IEP team or any Lodi Unified School District personnel that Student was suffering social-emotional concerns that should be addressed through counseling services at school in Spring 2023.

Mother's testimony that Student had meltdowns at home at night due to pressures he felt at school was not persuasive evidence that Student had problems at school that warranted an offer of counseling services. Student's demeanor and behavior at school was outstanding, so there was no objective reason for anyone at Lodi Unified School District to suspect Student needed

counseling, when he had never needed it before. Lodi Unified School District cannot be held responsible for failing to offer counseling to Student if it was not aware Student had developed new social-emotional needs. Moreover, there was no indication that Student had developed needs requiring counseling services at school.

Student offered no persuasive evidence that Student required an offer of counseling services in the April 5, 2023 IEP. The Lodi Unified School District IEP team members, service providers, and teachers all perceived Student to be an emotionally and behaviorally well-adjusted and responsible child, who did not require counseling services to access his education.

There was no reason the IEP team should have offered counseling services to Student in the April 5, 2023 IEP. Student failed to meet his burden of proof on Student's Issue 1G.

STUDENT'S ISSUE 1H: DID LODI UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE IN THE APRIL 5, 2023 IEP BY FAILING TO OFFER HOME-BASED APPLIED BEHAVIOR ANALYSIS SERVICES IN THE FORM OF BEHAVIOR THERAPY AND CLINICAL MEETINGS?

Student contends he required applied behavior analysis services in the form of behavior therapy and clinical meetings because Student had a specific learning disability and was medically diagnosed with autism spectrum disorder and demonstrated a need for behavioral services to make meaningful behavioral, social, and emotional progress.

Lodi Unified School District contends Student did not require applied behavior analysis services in the form of behavior therapy and clinical meetings at the time of the April 5, 2023 IEP because Student's behavior at school during the 2022-2023 school year was very good. It argues that Student was successful both academically and socially at school at that time. It asserts that there was no information before the IEP team on April 5, 2023, that indicated applied behavior analysis services, behavior therapy and/or clinical meetings were needed by Student for a FAPE.

As discussed above, in issues 1D, 1E, and 1F, Student's behavior at school was excellent. Serna School had never taken any disciplinary action against Student. He was consistently respectful and courteous to adults and peers. He was also responsible regarding his academic assignments. There was no evidence Student needed applied behavior analysis services, behavior therapy and/or clinical meetings for a FAPE.

Notably, Student did not offer any evidence to explain what applied behavior analysis was, or how it would benefit Student. Student also offered no evidence regarding why Student required behavior therapy or clinical meetings in order to access his education at school. There was no information before the April 5, 2023 IEP team that suggested Student was having behavior issues at school that should be addressed through applied behavior analysis services. Student failed to meet his burden of proof on Student's Issue 1H.

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STUDENT'S ISSUE 1I: DID LODI UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE IN THE APRIL 5, 2023 IEP BY FAILING TO OFFER EXTENDED SCHOOL YEAR SERVICES FOR SUMMER 2023 TO ADDRESS REGRESSION?

Student contends that the April 5, 2023 IEP denied him a FAPE by failing to offer him extended school year services during summer 2023. Student contends he required extended school year services to address the academic regression he would suffer over summer 2023 without a special education program. Student further contends without extended school year services in summer 2023, he would not be able to attain the level of self-sufficiency and independence he had previously attained by the end of the 2022-2023 regular school year.

Lodi Unified School District contends Student did not require an extended school year program over summer 2023 because the interruption of Student's school program over a summer would not likely cause academic regression of learned academic concepts that Student could not recoup in a reasonable amount of time. It also argues that the summer break without school instruction was not likely to undermine Student's self-sufficiency and independence.

The law requires an IEP to state whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).) Extended school year services shall be provided, in accordance with 34 C.F.R. § 300.106, for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. (5 C.C.R. § 3043.) Such individuals must have disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when

coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition. (*Ibid.*)

Student did not establish he required extended school year for summer 2023. Student was functioning at or above grade level in all subject areas, even math, which was his weakest subject. After considering Student's present levels of performance and satisfactory progress on his prior annual goals, the IEP team appropriately concluded at the April 5, 2023 IEP team meeting that Student was not in danger of regressing academically over the summer break to such an extent that he could not recoup previously learned academics within a reasonable period of time, similar to other children in general education classes after the summer break. Moreover, the IEP team appropriately determined that an interruption from a school program for summer 2023 would not cause Student to regress academically to an extent that Student would lose the self-sufficiency and independence he had attained by the close of the 2022-2023 regular school year.

There was no evidence that Student had ever regressed academically or socially over school breaks to an extent that he could not recoup previously learned concepts and information within a reasonable period of time when school resumed. There was no evidence Student had ever previously been offered extended school year. Therefore, it is reasonable to assume Student was able to recoup learned concepts and information after breaks from school in the past. There was no information before the IEP team on April 5, 2023, that would suggest Student required extended school year to be able to progress on his goals and access his education at the beginning of the 2023-2024 regular school year.

Student's closing brief did not cite to any specific evidence demonstrating that at the time of the April 2023 IEP that interruption of Student's educational programming during summer 2023 might cause regression such that Student would lose the self-sufficiency and independence he had attained by the close of the 2022-2023 regular school year. Student offered no persuasive evidence that he required extended school year services for summer 2023.

There was no reason the IEP team should have offered extended school year services to Student in the April 5, 2023 IEP. Student failed to meet his burden of proof on Student's Issue 1I.

STUDENT'S ISSUE 1J: DID LODI UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE IN THE APRIL 5, 2023 IEP BY FAILING TO OFFER PARENT TRAINING?

Student contends the April 5, 2023 IEP denied him a FAPE by failing to offer him parent training. Student contends he required parent training in order to access his education so Parents could appropriately support Student at home. Student further contends parent training was needed "with regard to Student's support programs, ABA [referring to applied behavior analysis] data collection, curriculum, techniques, practices, routines, or other needs."

Lodi Unified School District contends Student did not require parent training to access his education. Lodi Unified School District further contends Student was successful at school at the time of the April 2023 IEP team meeting, so there was no reason for the IEP team to think Parents needed training to support Student at home.

Lodi Unified School District further contends that Parents were professional educators and did not require training to learn ways to support Student at home so he could succeed at school.

The evidence was clear that as of the April 5, 2023 IEP team meeting Student was succeeding at school. Therefore, Student failed to prove Parents lacked knowledge of how to support Student so he would succeed at school.

In California, related services must be provided “as may be required to assist an individual with exceptional needs to benefit from special education” (Ed. Code, § 56363, subd. (a).) Related services include parent counseling and training. (5 C.F.R. § 300.34(a). The IDEA and the California Code of Regulations define parent counseling and training as:

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

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

Student failed to introduce any evidence establishing why Parents needed training to support Student. There was no evidence regarding the areas in which parent training was needed on April 5, 2023. Parents never told the IEP team they needed training in any areas to support Student.

Parents were both experienced public-school general education teachers. Mother testified she had worked with children with IEPs many times throughout her years of teaching experience. During her testimony, Mother did not say she needed training in any areas to support Student's progress at school. Father did not testify at hearing. Student introduced no evidence that Father needed any kind of training in order to support Student at school.

Student offered no convincing evidence at hearing, nor did he cite to any evidence in his closing brief, to support his claim that Student required Parents to receive training to support Student's success at school. Student unpersuasively argued that parent training was required for Student's assistive technology devices. However, there was no evidence that Student used complicated communication devices or other computer programs that Parents did not know how to use. Student failed to establish the areas in which Parents supposedly needed training in order to receive a FAPE.

Student offered no persuasive evidence that parent training was required for Student to receive a FAPE at the time the April 5, 2023 IEP was developed. There was no reason the IEP team should have offered parent training in the April 5, 2023 IEP. Student failed to meet his burden of proof on Student's Issue 1J.

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STUDENT'S ISSUE 2: DID LODI UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE BY FAILING TO ASSESS STUDENT IN ALL AREAS OF NEED FROM APRIL 5, 2023, THROUGH AUGUST 20, 2024, SPECIFICALLY, FOR POSSIBLE DYSLEXIA, AND IN THE AREA OF PSYCHO-MOTOR DEVELOPMENT TO IDENTIFY ANY DEFICITS IN VISUAL-PERCEPTUAL SKILLS?

Student contends Lodi Unified School District denied him a FAPE from April 5, 2023, through August 20, 2024, by failing to assess him for possible dyslexia and in the area of psycho-motor development to identify his visual-perceptual skill deficits.

Lodi Unified School District contends the assessments it administered to Student from February through May 2024, in preparation for Student's three-year review due by May 2024, in the areas of psychoeducation, academics, and speech and language, addressed all areas of Student's suspected disabilities, including possible dyslexia, and disabilities related to Student's psycho-motor development, including visual-perceptual skill deficits. Lodi Unified School District further contends its psychoeducational assessment accurately identified Student's processing deficits, and no other assessments were needed to address Student's possible dyslexia, or any other psycho-motor development deficits.

A district must ensure that a child is assessed in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code § 56320, subd. (f).) The assessment must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the child is classified. (20 U.S.C. § 1414(b)(3); 34 C.F.R. § 300.304(c)(6); Ed. Code, § 56320, subd. (c).)

Persons competent to administer the assessments must conduct them, as determined by the local educational agency. (20 U.S.C. 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); Ed. Code, § 56322.) Assessors must be knowledgeable about the student's suspected disability. (Ed. Code, § 56320, subd. (g).) For example, psychological assessments of pupils shall be administered in accordance with Education Code section 56320 and shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, §§ 56322.)

Assessment materials must not be racially, culturally, or sexually discriminatory. Assessment instruments must be provided in the pupil's native language or mode of communication, unless it is clearly not feasible to do so. (Ed. Code, § 56320, subd. (a).) Assessments must be used for purposes for which the assessments or measures are valid and reliable. Only trained and knowledgeable personnel can administer assessments in accordance with instructions provided by the producer of the assessments. However, individually administered tests of intellectual or emotional functioning shall be administered only by a credentialed school psychologist. (Ed. Code, § 56320, subd. (b)(3).)

Assessments must be selected and administered to best ensure that when a test administered to a pupil with impaired sensory, manual, or speaking skills, the test results accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills (unless those skills are the factors the test purports to measure). (34 C.F.R. § 300.304(c)(1); see also Ed. Code, § 56320, subd. (d).)

Assessments must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A).) No single measure or assessment may be used as the sole criterion for determining whether a pupil is an individual with exceptional needs or determining an appropriate educational program for the pupil. (Ed. Code § 56320, subd. (e).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D.Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where the concern prompting the assessment was reading skills deficit].)

Assessors must also prepare a written report of the assessment results and provide it to parents. (Ed. Code, § 56329, subd. (a)(3).) Moreover, an IEP team meeting must be held to review the assessment report within 60 days of parent's consent to the assessment plan. (Ed. Code, § 56302.1.) The report must include:

- whether the student may need special education and related services;
- the basis for making that determination;
- the relevant behavior noted during observation of the student in an appropriate setting;
- the relationship of that behavior to the student's academic and social functioning;
- the educationally relevant health, development, and medical findings, if any;
- if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and

- consistent with guidelines for low incidence disabilities (those effecting less than one percent of the total statewide enrollment in grades kindergarten through twelfth grade), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.)

LODI UNIFIED SCHOOL DISTRICT CONDUCTED A COMPREHENSIVE ASSESSMENT OF STUDENT IN SPRING 2024

THE PSYCHOEDUCATIONAL ASSESSMENT

A school district must conduct a reassessment at least once every three years, unless the parent and the agency agree that it is unnecessary. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).) Lodi Unified School District comprehensively assessed Student in spring 2024. Beatriz De La Cruz Cordova, a credentialed school psychologist, who has been employed by Lodi Unified School District for the last five years, conducted a psychoeducational assessment of Student between February and May 2024. Cordova also drafted a written report dated May 12, 2024, which contained the results of her evaluation. Cordova presented that assessment report at an IEP team meeting on May 15, 2024.

As part of her assessment, Cordova reviewed Student's educational records, including previous assessment reports. Cordova also interviewed Student, Mother, Santa Salmon (Student's fifth-grade general education teacher), De Santiago (Student's study skills teacher and resource specialist), and the paraeducator who provided Student with aide support in fifth grade during the 2023-2024 school year.

Cordova observed Student in his English language arts class in February 2024. She also observed Student on two additional occasions in March 2024 during his lunch and recess. Cordova observed Student a fourth time in April 2024 during his Spanish language arts class, where instruction was provided in Spanish. During all of Cordova's classroom observations of Student, he was attentive, and remained engaged in assigned tasks. He actively participated in class activities, and interacted appropriately with teachers and peers. During lunch and recess, Student socialized and played sports with peers comfortably. Cordova also observed Student during multiple testing sessions, during which he was cooperative, followed instructions, and remained consistently attentive.

Cordova administered the following standardized assessment instruments to Student in connection with the psycho-educational evaluation in spring 2024:

- Wechsler Intelligence Scale for Children, fifth edition
- Comprehensive Test of Phonological Processing, second edition
- Feifer Assessment of Reading – selected subtests
- Developmental Neuropsychological Assessment, second edition – selected subtests
- Behavior Assessment System for Children, third edition – parent and teacher rating scales
- Revised Children's Manifest Anxiety Scale, second edition
- Conner's Report Rating Scales, fourth edition - parent, teacher, and self-report rating forms

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- Behavior Rating Inventory of Executive Function, second edition - parent, teacher, and self-report rating forms
- Autism Spectrum Rating Scales – parent and teacher ratings forms

Cordova's psychoeducational assessment of Student in spring 2024 was thorough and addressed all areas of Student's suspected disability that were not otherwise covered by the speech and language assessment and academic assessment also conducted in spring 2024.

SPEECH AND LANGUAGE ASSESSMENT

Colleen Selling, a very experienced speech and language pathologist employed by Lodi Unified School District, assessed Student in the areas of articulation, voice and fluency, expressive and receptive language, and social language/pragmatics, in March and April 2024. As part of this speech and language assessment, Selling observed Student both on the playground and in academic classes. Selling administered the following standardized instruments:

- Social Language Development Test Elementary Normative Update
- Test of Pragmatic Language – two
- Test of Problem Solving – three - normative update
- Receptive, Expressive and Social Communication Assessment – elementary edition, which included the following inventories:
 - Social Communication Inventory - Parent
 - Social Communication Inventory – Teacher
 - Social Communication Inventory – Paraeducator provider

Selling drafted a Speech and Language Report dated May 13, 2024, containing the results of her evaluation, which she presented at the IEP team meeting on May 15, 2024. Selling's assessment of Student in speech and language was comprehensive and addressed all suspected disabilities Student might have related to his communication skills.

ACADEMIC EVALUATION

In March 2024, special education teacher De Santiago assessed Student's academic skills. As part of this assessment, De Santiago observed Student during five academic achievement testing sessions lasting between 30 to 45 minutes each. In connection with this assessment, De Santiago administered two standardized instruments to Student in areas of achievement and oral language.

De Santiago drafted a written report dated May 13, 2024, containing the results of the academic evaluation, which he presented at the May 15, 2024 IEP team meeting. The evidence established Student was assessed in all areas of suspected disability.

THERE WAS NO EVIDENCE THAT THERE WERE AREAS OF STUDENT'S SUSPECTED DISABILITY WHICH LODI UNIFIED SCHOOL DISTRICT FAILED TO ASSESS

Student offered no convincing evidence at hearing that Lodi Unified School District denied Student a FAPE by failing to assess for possible dyslexia, including a psycho-motor development assessment to identify deficits in visual-perceptual skills. Student's suspected processing deficits, including dyslexia, were all thoroughly assessed

in the psycho-educational assessment conducted by Cordova from February through May 2024. Furthermore, Student failed to introduce any evidence explaining what constituted the allegedly missing “psycho-motor development” assessment.

Student failed to elicit credible testimony from any witness with expertise in conducting special education evaluations regarding what instruments Lodi Unified School District should have administered to assess all areas of Student’s suspected disability. Neither Student’s expert Shin, nor Mother, provided any persuasive testimony undermining the validity or comprehensiveness of the assessment instruments used by Lodi Unified School District to evaluate Student. Moreover, as more fully addressed below, Shin had no expertise in administering or interpreting the results of evaluations. Student also failed to introduce any persuasive evidence regarding why the nine standardized instruments administered to Student in the spring 2024 psychoeducational assessment failed to address Student’s possible dyslexia, or any other processing deficits he had related to his psycho-motor development, including visual-perceptual skill deficits.

School psychologist Cordova, speech-language pathologist Selling, and special education teacher De Santiago, presented the results of their assessments of Student at the May 15, 2024 IEP team meeting. Those assessment results indicated Student did not experience an adverse educational impact on account of any disability. Student failed to introduce any evidence that credibly challenged the validity or comprehensiveness of those assessment results.

Cordova, Selling, and De Santiago all testified very credibly at hearing. Each appeared to testify candidly, honestly, without hesitation, with sufficient detail, and consistency. They each portrayed Student as an excellent pupil, a hard worker, and a

child who had mastered multiple tools and techniques which allowed him to manage his processing and attention deficits successfully at school. Moreover, they all consistently indicated Student socialized well with adults and peers at school. They all saw Student as a child who was happy and successful at school. The testimony of those three witnesses was far more credible than the testimony of either Mother or Shin.

Student failed to meet his burden of proof on Student's Issue 2. Lodi Unified School District did not deny Student a FAPE between April 5, 2023, and August 20, 2024, by failing to assess Student in all areas of suspected disability, including possible dyslexia or other processing problems, including visual-processing skill deficits.

STUDENT'S ISSUE 3: DID LODI UNIFIED SCHOOL DISTRICT DENY STUDENT A FAPE BY FAILING TO DEVELOP AN IEP AT THE MAY 15, 2024 IEP TEAM MEETING?

DISTRICT'S ISSUE 4: MAY LODI UNIFIED SCHOOL DISTRICT EXIT STUDENT FROM SPECIAL EDUCATION WITHOUT PARENT'S CONSENT BASED ON ITS DETERMINATION AT THE MAY 15, 2024 IEP TEAM MEETING THAT STUDENT WAS NO LONGER A CHILD WITH A DISABILITY WHO NEEDED SPECIAL EDUCATION AND RELATED SERVICES?

As to Student's Issue 3, Student contends Lodi Unified School District denied him a FAPE by failing to develop a complete IEP at the May 15, 2024 IEP team meeting.

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As to Student's Issue 3, Lodi Unified School District contends it was not required to develop an IEP at the May 15, 2024 IEP team meeting because the results of the three-year review assessments conducted established Student no longer qualified for special education under any eligibility category.

As to District's Issue 4, Student contends he was denied a FAPE on May 15, 2024, when district proposed to exit Student from special education because Student continued to need special education in the form of a study skills class conducted by a special education resource specialist to successfully access the general education curriculum.

As to District's Issue 4, Lodi Unified School District contends it should be authorized to exit Student from special education because his comprehensive three-year review assessment results established he was no longer qualified for special education and related services. Lodi Unified School District further contends Student's processing deficits could be successfully addressed by accommodations provided through a 504 reasonable accommodation plan. It further contends that on May 15, 2024, Student no longer required annual goals, specialized academic instruction, or any related services.

Issues 3 and 4 are addressed together in this Decision because both require an analysis of the same claim: whether Student continued to be eligible for special education on May 15, 2024. As discussed above, each party had the burden of proof on their respective Issues. The burden of proof in this case was the preponderance of the evidence.

To be eligible for special education, a student between the ages of 3 and 21, must both, have a qualifying disability, and because of that disability, need special education. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a)(1) & (b); Ed. Code, § 56026, subds. (a) & (b).) Except where a student's special education eligibility is terminated because of graduation from secondary school with a regular diploma or due to exceeding the age for eligibility, a local educational agency is required to conduct an evaluation of the child before determining that the child is no longer a child with a disability. (20 U.S.C. § 1414(c)(5).

A school district must conduct appropriate assessments before terminating a child's eligibility for special education. (20 U.S.C. § 1414(c)(5).) Assessments require review at an IEP team meeting. (Ed. Code, § 56341.1, subds. (a)(3) and (d)(2).) An IEP team reviews assessment results to determine eligibility and make program recommendations. (Ed. Code, § 56342.)

ELIGIBILITY

For purposes of special education eligibility, the term "child with a disability" means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, requires instruction, services, or both, which cannot be provided with modification of the regular school program. (20 U.S.C. § 1401(3)(A)(ii); 34 C.F.R. § 300.8(a); 5 C.C.R. § 3030(b).)

Similarly, California law defines an "individual with exceptional needs" as a pupil who is identified by an IEP team as "a child with a disability" pursuant to title 20 United States Code section 1401(3)(A)(ii), and who requires special education because of his or her disability. (Ed. Code, § 56026, subds. (a), (b).) Not every student who is impaired by a disability is eligible for special education. Some disabled students can be adequately educated in a regular education classroom. Federal law requires special education for a "child with a disability," who is defined in part as a child with an impairment "who, by reason thereof, needs special education and related services. (20 U.S.C. § 1401(a)(3)(A)(ii); 34 C.F.R. § 300.8(a)(i).) State law requires special education for "individuals with exceptional needs, who are defined in part as individuals whose impairment "requires instruction, services, or both, which cannot be provided with modification of the regular school program. (Ed. Code, § 56026, subd. (b).) When deciding whether a student needs special education, courts apply the *Rowley* standard and consider whether the pupil can receive some educational benefit.

THE SPRING 2024 ASSESSMENTS OF STUDENT WERE VALID

As determined in Student's Issue 2, Lodi Unified School District assessed Student in all areas of suspected disability in the spring 2024 three-year review assessments. The results of those assessments established Student was no longer eligible for special education under any eligibility category. Student offered no evidence which undermined the validity of the assessments results.

The results of the spring 2024 psychoeducational assessment indicated he performed within the superior to extremely superior range on measurements of his working memory. His verbal comprehension was measured within the superior range. He fell within the average range in the areas of visual-spatial and fluid reasoning.

Student's processing speed fell in the low range, establishing his need for extra time to complete assignments and tests. Student's overall intellectual ability was in the average to above average range.

Student performed above average to superior on his phonological awareness and memory. Student's verbal fluency was scored in the moderately above average range. His performance in both reading fluency and orthographic processing was in the average range. The assessment did not reveal Student had any academic areas of need that required special education and related services.

The rating scales Mother completed regarding Student indicated she thought Student was in the clinically significant range for

- hyperactivity,
- aggression,
- externalizing problems,
- anxiety,
- depression,
- somatization,
- internalizing problems,
- attention problems,
- emotional dysregulation,
- atypicality,
- withdrawal,
- behavior symptoms, and
- adaptability.

Student reported he did not have more than normal anxiety. Teachers and service providers completing rating scales about Student did not perceive him as having

- unusual behaviors,
- self-regulation problems,
- attention problems,
- depression,
- anxiety, or
- social deficits.

The psychoeducational assessment considered if Student qualified for special education eligibility under the categories of:

- specific learning disability;
- other health impairment;
- autism; and
- emotional disturbance (now referred to in California as emotional disability).

Based on the observations, interviews, and standardized instrument assessment results, Cordova reasonably and competently concluded Student did not qualify for eligibility for special education under any of the above four categories. There was no evidence that district should have considered other eligibility categories for Student. Therefore, Cordova recommended Student be exited from special education.

Cordova further encouraged the IEP team to consider whether Student would be a candidate for a 504 reasonable accommodation plan to provide him with extra time to help him with his processing speed deficit. Cordova also recommended that a 504

reasonable accommodation plan should also be considered to allow him to use a calculator or multiplication table, and “spell check” software, or a dictionary to avoid spelling errors.

As discussed in Student’s Issue 2, Lodi Unified School District conducted thorough and complete assessments of Student in spring 2024. Cordova was trained and experienced in administering the standardized instruments used in this assessment, and in interpreting the assessment results. Student did not introduce any evidence which effectively challenged the validity of any of the assessments conducted as part of Student’s 2024 three-year reassessment.

PARENTAL PARTICIPATION

An IEP team is required to include:

- one or both of the student’s parents or their representative; a regular education teacher if a student is, or may be, participating in regular education;
- a special education teacher;
- a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about available resources;

- a person who can interpret the instructional implications of assessments results; at the discretion of the parties, other individuals; and
- when appropriate, the person with exceptional needs. (34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].)

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(a); 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.*, *supra*, 993 F.2d at p. 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].)

PARENTS MEANINGFULLY PARTICIPATED IN THE IEP PROCESS

Student failed to introduce any evidence which suggested Parents' opportunity to participate in the IEP process in connection with the May 15, 2024 IEP was significantly impeded by school district personnel. Parents actively participated in the May 15, 2024 IEP team meeting. They asked questions, and mentioned their concerns to the team.

There was also no evidence Parents were misled or deprived of accurate or material information about Student, his needs, or his progress. Lodi Unified School District appropriately facilitated Parents' meaningful participation in the May 15, 2024 IEP.

STUDENT'S SUCCESS AT SCHOOL DURING FIFTH GRADE

The evidence established that at the time of the May 15, 2024 IEP team meeting, Student no longer required special education and related services. Student was in Salmon's general education fifth-grade class at Serna School during the 2023-2024 school year. During Salmon's class Student received general education instruction in math, language arts, science, and history. Because Serna School was implementing a dual language immersion program, Salmon taught language arts and math in Spanish, and history and science in English.

Salmon testified very credibly at hearing. Salmon worked as a fifth-grade teacher for Lodi Unified School District for seven years. Before that, Salmon taught at a private school. She had a bachelor's degree in liberal studies and held a California multiple subject teaching credential for first through sixth grades. Salmon usually had one child with an IEP in her class each school year.

While in Salmon's class Student was a creative, hardworking pupil who enjoyed learning, reading, science, and history. He was also inquisitive. Student liked to share information about his interests with others. Student was respectful to both peers and teachers. He had friends at school, and was open to working with others. He worked

well with peers on group projects. Student regularly socialized with peers at school. Student regularly played sports with a particular group of boys at recess. He also regularly ate lunch with the same group of friends.

Math was challenging for Student in fifth grade. It was his weakest subject. Salmon explained that because she taught math in Spanish, it was particularly challenging for Student because he was learning both math and Spanish concurrently. Although challenging, Student met grade-level standards in math during fifth grade. Student had not committed all his multiplication tables to memory, but with the accommodation of a multiplication table or calculator, Student met grade-level math standards. Importantly, Student understood the math strategies taught in fifth grade.

Student's report card from fifth grade in the 2023-2024 school year, established he performed very well academically that school year. Student received good grades in the following 10 subject areas throughout the entire school year:

- Reading in Spanish
- Reading in English
- Writing in Spanish
- Writing in English
- Listening and speaking
- Mathematics
- Music
- Physical education
- Science, and
- Social studies

Student received a grade of either “three,” meaning he met grade standards, or “four,” meaning he exceeded grade standards, in each of the above listed subject areas during all four quarters of fifth grade.

Additionally, during each of the four quarters in fifth grade Student exceeded standards and received a grade of “four,” meaning he exceeded grade standards, in each of the following areas of academic responsibility:

- Demonstrates academic effort
- Follows rules and directions
- Shows respect for others
- Uses time appropriately
- Works independently
- Completes classwork
- Effort in music, and
- Effort in physical education

Student’s report cards from fifth grade also included teacher comments. Such comments for quarters two, three, and four of that year proved Student was perceived by his teachers to be an excellent and well-rounded pupil. The teacher comments stated Student was an enthusiastic and responsible learner with outstanding reading skills. The teacher comments also indicated Student continued to meet or exceed grade-level standards in all subject areas. The teacher comments also established Student participated actively in his classes.

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The evidence established Student was a responsible and hard-working pupil with no behavior problems and good communication skills at school. All of Student's teachers and service providers who testified at hearing, particularly Selling, De Santiago, and Salmon, consistently opined Student was an excellent pupil. They all consistently and credibly opined Student functioned very well at school in fifth grade both academically and socially. The teachers reported Student related well to both his peers and the adults at school. Moreover, Student demonstrated no maladaptive behaviors at school.

Student's excellent grades in all academic and behavioral areas during fifth grade corroborated the results of the comprehensive assessments reviewed by the team at the May 15, 2024 IEP team meeting. Those assessment results correctly established Student did not experience an adverse educational impact on account of a disability. Consequently, Student did not require special education services to access the general education curriculum.

Therefore, Student no longer qualified for special education under any eligibility category on May 15, 2024. Lodi Unified School District's recommendation to exit Student from special education was appropriate.

Mother testified Student needed a lot of extra time to complete complicated assignments due to his processing deficits. Mother further opined that the study skills class of resource specialist teacher, Eric De Santiago, created a safe space for Student to ask for help, particularly with math. However, several of Student's teachers testified he voluntarily asked for help when he was confused about something.

At the time of hearing, Student's last consented to and implemented IEP was dated April 5, 2023. That IEP offered specialized academic instruction in the form of a study skills class taught by special education resource specialist teacher Eric De

Santiago, in four 45-minute sessions per week. Student also received speech and language services in a group model four times per month in 25-minute sessions in a separate classroom.

At the May 15, 2024 IEP team meeting, Lodi Unified School District members of Student's IEP team determined Student no longer qualified for special education and related services. After reviewing the latest assessment results and Student's present levels of performance, the school district members of the IEP team concluded Student no longer needed specialized academic instruction and related services. The school district team members also determined Student's educational needs could be successfully addressed through accommodations provided in a 504 plan.

Parents disagreed with the IEP team's conclusions, and did not consent to Lodi Unified School District's May 15, 2024 proposal to exit Student from special education. Therefore, Lodi Unified School District continued implementing the April 5, 2023 IEP. Mother testified at hearing that she agreed Student no longer needed speech and language services, but she never consented to end that related service due to this pending case. Pursuant to the April 5, 2023, Student also received temporary, but not stay-put, paraeducator support during his classes in math, English language arts, and Spanish language arts, for a total of 950 minutes per week.

STUDENT'S BEHAVIOR AT SCHOOL DIFFERED SIGNIFICANTLY FROM HIS BEHAVIOR AT HOME

Mother testified Student had meltdowns several times a week at home in fifth grade due to the stress he felt to achieve academically at school. Mother, who is an eighth-grade English language arts teacher, expressed concern that Student's writing

was behind grade level in fifth grade. However, those concerns were not credible, as the evidence was clear that Student functioned at or above grade level in all subject areas, including writing in both English and Spanish languages at the time of the May 2024 IEP. One 2024 standardized reading test result established Student's reading was at the twelfth-grade level. Mother questioned the validity of that test result, but provided no persuasive reasons why that test result was inaccurate.

Mother feared Student would fall behind if he was without the study skills class in his schedule. However, those fears were not reasonable or believable, as Ritchie testified Student was often bored and did not have anything to work on during his study skills class. Student often simply read for pleasure during study skills because he did not need teacher assistance and all his assignments were completed. Moreover, the data collected regarding how often the paraeducator interacted with Student established that Student rarely utilized the services of his adult aide.

Mother also feared that if Student received accommodations through a 504 plan, those accommodations might not be implemented with fidelity by his general education teachers. However, this was mere speculation, and was not a valid reason to keep Student in special education when he no longer met eligibility requirements. Even Mother acknowledged Student was one of the top pupils in his grade level when she was interviewed by Cordova in connection with the spring 2024 psychoeducational assessment.

Mother's fears that Student would not succeed without a study skills class seemed unrealistic and not based on facts.

THE TESTIMONY OF STUDENT'S EXPERT WITNESS WAS NOT PERSUASIVE

Student called Dr. Sookyung Shin, a special education consultant and advocate, to testify at hearing. Shin was retained by Student to provide expert opinions on issues in this case.

Shin was not a credible witness. In 2023, Shin received a doctorate degree in special education from University of Kansas. Shin testified her doctoral program focused heavily on early childhood from birth to five years old. A few minutes later, Shin testified that two-thirds of her training concerned school-aged children. This inconsistent testimony created doubt as to Shin's area of expertise, if any. Shin further testified her doctoral program addressed legal policy regarding special education and disability discrimination claims made before the Office of Civil Rights, and informal resolution of IDEA disputes between children and school districts prior to due process hearings. Based on her inconsistent testimony and resume content, it was unclear what area of special education expertise Shin had, if any.

Shin was not credentialed as a special education teacher or as a teacher in any subject, although she claimed she taught children with disabilities as part of her doctoral program, but provided no details about that experience. As a graduate student, Shin taught a class of future teachers about children with disabilities in general. Since 2010, Shin has consulted with families, who are mostly "culturally diverse," as a special education lay advocate. At the time she testified, Shin spent 75 percent of her time advocating for special needs children, and 25 percent of her time working with attorneys

to prepare their legal cases. Shin has testified in eight to 10 OAH due process hearings. Every time she testified at a hearing she was retained by the same law firm representing Student in this case.

Shin's sole meeting with Student and Mother occurred via videoconference for about an hour and a half the night before Shin testified at hearing. Shin spoke with Student for about 45 minutes during that videoconference meeting. Shin never spoke with Father. The only documents Shin reviewed about Student were those uploaded to the electronic evidence software file in this case. However, Shin was designated as a witness in Student's Prehearing Conference Statement filed with OAH on October 2, 2024, before Shin had reviewed any documents in this matter, or met Student or Mother. The fact that Shin was hired to testify in this case before meeting Student or Parents, or reviewing any pertinent records, undermined Shin's credibility.

Shin never observed Student at school, or conferred with his teachers or service providers at Serna School. Shin did not interview Student's medical providers. Shin was not familiar with the program at Serna School or the special education supports provided to Student there. It was clear Shin was hired to give an opinion that would benefit Student in this litigation, even before Shin had any familiarity with Student or the issues pending in this case. Thus, Shin's testimony was unreliable.

When Shin met Student on videoconference for about 45 minutes the night before she testified at hearing, Student was well behaved. Shin had no problem understanding Student during their meeting. Student told Shin he liked school.

Shin did not conduct any assessments of Student. Shin was never trained or qualified to administer special education assessments, or to draft annual IEP goals. Shin noted Student was weak in spelling after reviewing only one of his writing samples. Shin referred to Student as being “twice exceptional” because she stated he had “high intelligence.” Shin did not have adequate background about or information regarding Student to render any opinions about what he needed to access his curriculum, as her interaction with Student was very brief.

Shin opined that Lodi Unified School District made an error by failing to focus on whether Student was eligible for special education under the categories of autism and other health impairment. Shin conceded, that as of the time of hearing, Student did not qualify for eligibility for special education under the categories of either specific learning disability or speech or language impairment. Shin further acknowledged Student did not need goals in either of those areas, or in self-help.

Shin further opined, without providing a rationale, that Student should have been eligible for special education because he had some social-emotional and mood regulation problems. Despite having conducted no evaluation, Shin completely ignored the portions of the May 13, 2024 psychoeducational assessment report drafted by Cordova that considered eligibility for Student under all plausible eligibility categories, and concluded that the assessment results established he was no longer eligible for special education under any of those categories.

Shin appeared to give no weight to the consistent excellent grades Student earned during fifth grade. Shin also disregarded the assessment results of the psychoeducational and academic evaluations conducted in spring 2024. Shin’s unsupported and biased opinion that on May 15, 2024, Student’s IEP team should

have been focused on Student's medical diagnosis of autism, made no sense. The comprehensive assessments conducted by Cordova, Selling, and De Santiago established Student no longer qualified for special education under any eligibility category, including autism and emotional disability (previously referred to as emotional disturbance).

Student wrote the writing sample Shin reviewed during fifth grade while he waited for Mother at the back of her classroom. Based on this sole writing sample, Shin opined Student had poor spelling and his writing was not at the fifth-grade level. This opinion was given no weight. Shin never taught fifth graders language arts and was not qualified to give an expert opinion regarding whether or not Student's writing was at, below, or exceeded grade-level standards.

Shin had no relevant training or experience in teaching special education. Shin also had no training or experience in administering special education assessments and interpreting assessment results. Shin's opinions were inconsistent and appeared to be based on incomplete information. Shin did not observe Student in school, and did not speak with any of Student's teachers or the case carrier.

Moreover, Shin admitted on a number of points that she was unfamiliar with Student's needs in various areas, class content, and programs and services available to both pupils with IEPs, and those in general education at Serna School. Shin's inconsistent testimony and reliance on a very small amount of information undermined the credibility of all her opinions. Despite Shin's doctoral degree in special education, it was unclear what experience or expertise she had, if any, relevant to the issues in this case. Shin's testimony and opinions were not persuasive regarding any issues in this case, and was given very little to no weight.

STUDENT'S BEHAVIOR AT HOME DID NOT QUALIFY HIM FOR SPECIAL EDUCATION

Although "educational performance" may encompass more than academic achievement, the plain meaning of educational performance suggests school-based evaluations. An elementary school student excelled academically and behaved like any other child in his class, lead the court to conclude that the student's alleged behaviors outside of school had no bearing on his need for special education. (*Q.W. v. Board of Educ. of Fayette County, Ky.*, (6th Cir. 2015, unpublished), 630 Fed. Appx., 580, 583; 136 S. Ct. 1729 (2016) *cert. denied.*)

In this case, Student's negative behaviors at home were inconsistent with Student's excellent behavior at school. Student's behavior outside of school did not qualify him for special education.

DISTRICT SATISFIED ITS OBLIGATION TO FILE A DUE PROCESS REQUEST SEEKING CONFIRMATION OF ITS MAY 15, 2024 IEP OFFER OF A FAPE

In California, if a parent does not consent to a proposed IEP component that the school district determines is necessary to provide a child with a FAPE, that district must initiate a due process hearing in accordance with title 20 United States Code section 1415(f). (Ed. Code, § 56346, subd. (f).) Under that provision, once an impasse with the parent is reached, the school district must expeditiously file a due process complaint seeking an Order confirming its offer constituted a FAPE. The school district cannot instead opt to hold additional IEP team meetings or continue the IEP process in lieu of initiating a due process hearing. (*I.R. supra*, 805 F.3d at p. 1170.)

In this case, once Parents refused to consent to the May 15, 2024 IEP, Lodi Unified School District was obligated to seek OAH's confirmation of the appropriateness of that IEP. Lodi Unified School District satisfied its obligation under the IDEA and the California Education Code by filing the secondary case in this consolidated matter.

DISTRICT WAS NOT REQUIRED TO DEVELOP AN IEP FOR STUDENT ONCE IT DETERMINED HE WAS NO LONGER ELIGIBLE FOR SPECIAL EDUCATION

Warren, both the Lodi Unified School District's Student Services Director and the SELPA director, testified convincingly that he was familiar with the requisite procedures an IEP team must take to exit a child from special education. Warren had decades of experience as a special education administrator and teacher. Warren further credibly testified that Student required only accommodations to access the curriculum, and those accommodations could be implemented through a 504 plan.

The preponderance of evidence established it was appropriate for the IEP team to not develop a draft IEP in this case, where the team determined the child no longer qualified for special education eligibility based on assessment results. It was impossible for the IEP team to develop goals for Student given that he no longer had special needs to be addressed by either specialized academic instruction or related services.

Student presented no authority in its closing brief that suggested an IEP team was obligated to prepare a draft of a complete IEP when the team found a child was no longer eligible for special education based on current assessment results and input from the IEP team. The Ninth Circuit Court of Appeals has held that once a school district completes a reassessment, it is required to either develop an appropriate IEP, or

disqualify the child from special education. (*A.O. v. Los Gatos-Saratoga Joint Union High School Dist.* (9th Cir. 2007) 484 F.3d 1230, 1233.) In this case, because the IEP team appropriately determined Student was no longer eligible for special education, it had no obligation to develop an IEP for Student at the May 15, 2024 IEP team meeting.

Lodi Unified School District appropriately assessed Student in all areas of suspected disability in spring 2024. Lodi Unified School District presented its assessment findings at the May 15, 2024 IEP team meeting, which included all required participants, afforded Parents meaningful participation, and correctly determined Student was no longer eligible for, and did not require, special education.

Student failed to meet his burden of proof on Student's Issue 3. Lodi Unified School District had no obligation to develop an IEP for Student on May 15, 2024 because the IEP team had properly determined he was no longer eligible for special education.

Lodi Unified School District met its burden of proof on District's Issue 4. Lodi Unified School District proved it appropriately recommended Student be exited from special education. Comprehensive assessments and Student's present levels of performance established Student was no longer eligible for special education on May 15, 2024, under any eligibility category.

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.

STUDENT'S ISSUE 1A:

Lodi Unified School District did not deny Student a FAPE in the April 5, 2023 IEP by failing to make a clear written offer because of the misspellings, missing page numbers, extraneous or incorrect information in or attached to the IEP.

Lodi Unified School District prevailed on Issue 1A.

STUDENT'S ISSUE 1B:

Lodi Unified School District did not deny Student a FAPE in the April 5, 2023 IEP by failing to develop any goals addressing Student's needs regarding self-help, depression, atypicality, adaptability, inattention, and behavior rigidity to help him stay on task, regulate his emotions, and manage his assignments.

Lodi Unified School District prevailed on Issue 1B.

STUDENT'S ISSUE 1C:

Lodi Unified School District did not deny Student a FAPE in the April 5, 2023 IEP regarding the goals offered, by failing to make clear who was responsible for observing and documenting Student's efforts beyond mention of the general teacher data/records.

Lodi Unified School District prevailed on Issue 1C.

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STUDENT'S ISSUE 1D:

Lodi Unified School District did not deny Student a FAPE in the April 5, 2023 IEP by failing to offer a one-to-one aide for the entire school day.

Lodi Unified School District prevailed on Issue 1D.

STUDENT'S ISSUE 1E:

Lodi Unified School District did not deny Student a FAPE in the April 5, 2023 IEP by failing to offer behavior intervention services.

Lodi Unified School District prevailed on Issue 1E.

STUDENT'S ISSUE 1F:

Lodi Unified School District did not deny Student a FAPE in the April 5, 2023 IEP by failing to offer a behavior intervention plan.

Lodi Unified School District prevailed on Issue 1F.

STUDENT'S ISSUE 1G:

Lodi Unified School District did not deny Student a FAPE in the April 5, 2023 IEP by failing to offer individual counseling services.

Lodi Unified School District prevailed on Issue 1G.

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STUDENT'S ISSUE 1H:

Lodi Unified School District did not deny Student a FAPE in the April 5, 2023 IEP by failing to offer home-based applied behavior analysis services in the form of behavior therapy and clinical meetings.

Lodi Unified School District prevailed on Issue 1H.

STUDENT'S ISSUE 1I:

Lodi Unified School District did not deny Student a FAPE in the April 5, 2023 IEP by failing to offer extended school year services for summer 2023 to address regression.

Lodi Unified School District prevailed on Issue 1I.

STUDENT'S ISSUE 1J:

Lodi Unified School District did not deny Student a FAPE in the April 5, 2023 IEP by failing to offer parent training.

Lodi Unified School District prevailed on Issue 1J.

STUDENT'S ISSUE 2:

Lodi Unified School District did not deny Student a FAPE by failing to assess Student in all areas of need, specifically, failing to assess Student between

April 5, 2023, and the filing of the complaint on August 20, 2024, for possible dyslexia, including failing to conduct a psycho-motor development assessment to identify any deficits in visual-perceptual skills.

Lodi Unified School District prevailed on Issue 2.

STUDENT'S ISSUE 3:

Lodi Unified School District did not deny Student a FAPE by failing to develop an IEP at the May 15, 2024 IEP team meeting.

Lodi Unified School District prevailed on Issue 3.

DISTRICT'S ISSUE 4:

Lodi Unified School District may exit Student from special education without parental consent based on its determination at the May 15, 2024 IEP team meeting that Student was no longer a child with a disability who needed special education and related services.

Lodi Unified School District prevailed on Issue 4.

ORDER

1. All relief sought by Student is denied.
2. Lodi Unified School District may exit Student from special education without Parents' consent.

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.

Christine Arden

Administrative Law Judge

Office of Administrative Hearings