

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

CASE NO. 2024010195

CASE NO. 2023100750

DECISION

MAY 23, 2024

On October 23, 2023, Parents on behalf of Student filed a due process hearing request, called complaint, with the Office of Administrative Hearings, called OAH, naming Ukiah Unified School District, called Ukiah. Student amended the complaint on December 4, 2023. On January 4, 2024, Ukiah filed a complaint with OAH, naming Student. On January 12, 2024, OAH consolidated Student's complaint and Ukiah's complaint, and set Ukiah's case as the primary case for the consolidated matter. OAH granted the parties' joint request to continue the consolidated matter on January 12, 2024.

Administrative Law Judge Paul H. Kamoroff heard this matter by videoconference in California on February 27, 28, 29, March 5, 6, 7, 19, 20, 21, 26, 27, 28, and April 10, and 11, 2024.

Attorneys Kaitlyn A. Schwendeman and Debra I. Sanders represented Ukiah. Lydia Colvig, Ukiah's Director of Special Education, attended the hearing on Ukiah's behalf. Attorney Joshua Cruz represented Student. Parents attended the hearing on Student's behalf. OAH provided Parents a Spanish language interpreter during each day of the hearing.

At the parties' request, OAH continued the matter to May 2, 2024, for written closing briefs. The record was closed, and the matter was submitted on May 2, 2024.

ISSUES

At the commencement of the hearing, Student withdrew issues 2(d),(e),(f),(h), and 3(e),(f), and (l). During the hearing, OAH granted with prejudice Student's motion to dismiss issue 4(n). The remaining issues have been renumbered and reorganized for clarity.

UKIAH'S ISSUE

1. Does Ukiah's October 3, 2023 individualized education program, called IEP, offer Student a free appropriate public education, called FAPE, in the least restrictive environment, such that Ukiah may implement the IEP without Parents' consent?

STUDENT'S ISSUES

2. Did Ukiah deny Student a FAPE, from October 23, 2021, through the end of the 2021-2022 school year, by failing to:
 - a. conduct an augmentative and alternative communication assessment;
 - b. conduct an occupational therapy assessment;
 - c. offer appropriate and measurable IEP goals; and
 - d. offer appropriate social skills services?

3. Did Ukiah deny Student a FAPE during the 2022-2023 school year, by failing to:
 - a. conduct a sufficient psychoeducational assessment;
 - b. conduct a sufficient speech and language assessment;
 - c. conduct an augmentative and alternative communication assessment;
 - d. conduct an occupational therapy assessment;
 - e. provide data or progress on previous goal completion;
 - f. offer appropriate and measurable IEP goals;
 - g. offer appropriate speech and language services;
 - h. offer appropriate behavior services;
 - i. offer appropriate augmentative and alternative communication services;
 - j. offer appropriate occupational therapy services;

- k. implement Student's IEP services;
 - l. make a clear offer of FAPE; and
 - m. offer or implement transportation services?
4. Did Ukiah deny Student a FAPE during the 2023-2024 school year, through December 1, 2023, by failing to:
- a. conduct a sufficient occupational therapy assessment;
 - b. conduct a sufficient functional behavior assessment;
 - c. conduct an augmentative and alternative communication assessment;
 - d. offer appropriate and measurable IEP goals;
 - e. offer appropriate speech and language services;
 - f. offer appropriate behavior services;
 - g. offer appropriate augmentative and alternative communication services;
 - h. offer appropriate social skills services;
 - i. offer appropriate occupational therapy services;
 - j. offer appropriate specialized academic instruction;
 - k. implement Student's IEP services;
 - l. make a clear FAPE offer; and
 - m. offer or implement transportation services?

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5. Did Ukiah deny Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by failing to:
- a. provide Student's complete school records within five days of Parents' multiple requests;
 - b. provide Parents' prior written notice following Parents' requests for additional IEP services during IEP team meetings held in May, June, August, September, and October, 2023;
 - c. provide clear responses to Parents' questions during IEP team meetings;
 - d. obtain Parents' consent before reducing or changing Student's IEP services;
 - e. hold an IEP team meeting within 30 days of Parents' request on October 24, 2023;
 - f. provide timely IEP progress reports; and
 - g. have essential IEP team members attend IEP team meetings during the 2023-2024 school year?

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.

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§ 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).) This matter was consolidated. Ukiah had the burden of proof for issue 1, and Student had the burden of proof for the remaining issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

THE STUDENT

Student was five years old and in a transitional kindergarten at the time of hearing. Student resided with Parents within Ukiah's geographic boundaries at all relevant times. Student was eligible for special education under the primary category autism and the secondary category speech or language impairment. Autism is a neurological and developmental disorder that resulted in global delays for Student, including impacting his ability to communicate and learn.

At the request of Parents, Ukiah conducted an initial evaluation of Student for special education in the fall of 2021. At the time of evaluation, Student was three years old and had not undergone prior assessments for special education, nor had Student engaged in formal schooling or early intervention programs. Following this evaluation, Ukiah convened Student's first IEP team meeting on February 2, 2022. The IEP team determined Student's eligibility for special education and related services, identifying autism as the primary eligibility category. Additionally, due to severe speech and language delays alongside characteristics associated with autism, subsequent IEPs identified Student as eligible under both autism and speech or language impairment.

As a result of these disabilities, Student exhibited characteristics including

- limited verbal communication,
- developmental delays in academics,
- minimal social interaction with peers and adults,
- sensory dysregulation,

- challenges in fine motor skills and body coordination,
- inattention, and a need for frequent verbal and physical prompts to participate in his educational setting.

During the 2021-2022 and 2022-2023 school years, Student attended an Ukiah-operated State preschool program called Preschool Village, participating in the inclusion classroom with neurotypical peers. For the 2023-2024 school year, Student attended a regular education transitional kindergarten at Oak Manor Elementary School, an Ukiah public school.

Throughout the period under review, Ukiah convened annual IEP team meetings for Student on February 2, 2022, and January 18, 2023, as well as addendum IEP team meetings on

- May 3, 2023,
- May 9, 2023,
- June 9, 2023,
- August 17, 2023,
- September 19, 2023,
- October 3, 2023, and
- October 23, 2023.

Parents last consented to Ukiah's IEP offer presented in the January 18, 2023 annual IEP, as modified by the May 3, 2023 addendum IEP.

ISSUE 1: WAS THE OCTOBER 3, 2023 IEP APPROPRIATE SUCH THAT UKIAH CAN IMPLEMENT IT WITHOUT PARENTS' CONSENT?

Ukiah argues its October 3, 2023 IEP offered Student a FAPE, in the least restrictive environment, such that Ukiah may implement the IEP without Parents' consent. Student responds the IEP was flawed on several grounds and should not be implemented without Parents' consent.

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

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

The development of an IEP is a collaborative activity accomplished by an IEP team convened by the school district. A parent is an integral and required member of the IEP team. (20 U.S.C. § 1414 (d)(1)(B)(i); 34 C.F.R. § 300.321(a)(1)(2006); Ed. Code, § 56341, subd. (b)(1).) A school district is required to conduct, not just an IEP team meeting, but also a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School*

Dist. No. 23 (9th Cir. 1992) 960 F.2d 1479, 1485; *Fuhrman v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.) The standard for “meaningful participation” is an adequate opportunity to participate in the development of the child’s IEP. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133.)

In determining educational placement, a school district must ensure that the placement decision is made by a group of persons including the child’s parents. (34 C.F.R. § 300.116 (a)(1) (2006)). Parents must have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to such child. (20 U.S.C. § 1415(b)(1).) In this regard, an educational agency must ensure that one or both of the parents of a child with a disability is present at each IEP team meeting. (34 C.F.R. § 300.322(a); Ed. Code, §§ 56341.5, subd. (a), 56342.5.) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkleman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904]. Parental participation in the IEP process is also considered “(a)mong the most important procedural safeguards.” (*Amanda J. ex rel Annette J. v. Clark County School District* (9th Cir. 2001) 267 F.3d 877, 882.)

As of October 2023, Student, aged five, was enrolled in a transitional kindergarten in Ukiah and qualified for special education and related services due to autism as the primary eligibility and speech or language impairment as the secondary eligibility. Across various domains, Student exhibited developmental delays, with communication and academic skills being significant areas of concern. Student was primarily non-verbal and relied on adult support and augmentative and alternative communication

devices to communicate with others. When those were not available, Student seldom communicated with peers or adults. Additionally, Student had observed needs in

- interpersonal relationships,
- adaptability,
- self-regulation,
- sensory processing, and
- fine motor skills.

Student relied on adult assistance to initiate and complete tasks and required hand-over-hand prompting for writing and other school tasks.

On October 3, 2023, Ukiah convened an addendum IEP team meeting for Student, with Parents in attendance. The Ukiah IEP team members consisted of

- Special Education Director Lydia Colvig,
- special education coordinator Melissa Smilgys,
- school psychologist Sarah Walker,
- speech and language pathologist Kimberly Fine,
- general education teacher Joseph Butler, and
- the school principal.

Additionally, a special education local plan area program specialist and attorneys representing both Student and Ukiah were present. The meeting's stated purpose was to review two recent assessments conducted by Ukiah—a functional behavior assessment and a special circumstances instructional aide assessment—to revise goals, and to address speech services and specialized academic instruction.

During the October 3, 2023 IEP team meeting, however, the IEP team only reviewed the functional behavior assessment and the special circumstances instructional aide assessment. Evidence, including testimony from Parent and Colvig, along with a transcript of the meeting, indicates that Ukiah did not revise Student's goals or address Parents' concerns regarding Student's communication needs or specialized academic instruction. Nevertheless, this IEP addendum proposed a significant reduction in Student's specialized academic instruction, from 1,830 minutes weekly (390 minutes daily, Monday, Tuesday, Thursday, and Friday, and 270 minutes on Wednesday) as offered in Student's August 17, 2023 IEP addendum, to just 30 minutes daily.

Ukiah neglected to address Parents' concerns about this service or offer a rationale during the October 3, 2023 IEP team meeting to justify a decrease in specialized academic instruction. Additionally, no compelling evidence was presented during the hearing to support the reduction of Student's services. On the contrary, the evidence overwhelmingly demonstrated that Student faced substantial academic delays, thus indicating that a reduction in services was unwarranted.

Following the October 3, 2023 IEP, Ukiah sent Parents a prior written notice letter that described its FAPE offer pursuant to the October 3, 2023 IEP. Based upon discussion with the parties during the prehearing conference and the due process hearing, it was established that the October 3, 2023 IEP, both independently and as detailed in the October 5, 2023 prior written notice, is the foundation for Ukiah's sole issue.

The October 3, 2023 IEP was defective on many grounds. First, it was not a comprehensive IEP team meeting but rather a brief session focused solely on discussing the outcomes of Ukiah's recent functional behavior assessment and special circumstances

instructional aide assessment. Despite Student's consistent need for adult assistance in every task, Ukiah did not propose an instructional aide for Student. Additionally, Ukiah concluded Student did not require behavior support. Other crucial components of Student's educational program were neither discussed nor developed during the October 3, 2023 IEP team meeting. Placement options, services, or goals were not considered or offered by the IEP team during this meeting.

Immediately following the October 3, 2023 IEP team meeting, Ukiah formulated the IEP offer, including placement, accommodations, services, and goals. Notably, Ukiah's Director of Special Education Colvig testified she independently crafted three new goals for Student, two pre-academic goals and one for attention and focus, that had not been previously discussed with Parents or addressed in any IEP team meeting. Colvig presented this offer to Parents for the first time in Ukiah's October 5, 2023 prior written notice letter. The October 3, 2023 IEP offer was provided in the October 5, 2023 prior written notice in a take-it-or-leave-it manner, without Parents' participation in the development of the IEP offer. When Parents declined the offer, Ukiah filed its complaint for due process to implement the IEP without Parents' consent.

A district may not arrive at an IEP team meeting with a take it or leave it offer. (*JG v. Douglas County School Dist.* (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.) Participation must be more than mere form; it must be meaningful. (*Deal v. Hamilton County Board of Educ.* (6th Cir. 2004) 392 F.3d 840, 858 [citations omitted] ("*Deal*").) A school cannot independently develop an IEP, without meaningful participation, and then present the IEP to the parent for ratification. (*Target Range, supra*, 960 F.2d at p. 1484.)

Parents are entitled to bring to an IEP team meeting their questions, concerns, and recommendations as part of a full discussion of a child's needs and the services to be provided to meet those needs before the IEP is finalized. (*Assistance to States for the Education of Children Disabilities* (March 12, 1999) 64 Fed. Reg. 12478-12479.)

The evidence overwhelmingly indicates that Parents were substantially denied meaningful participation in the IEP process. It was unreasonable for Ukiah to develop the IEP offer outside of an IEP team meeting. Consequently, Ukiah's October 3, 2023 IEP was severely flawed as it lacked Parents' involvement in formulating the IEP offer. Ukiah presented the offer for the first time in the October 5, 2023 prior written notice, presenting it in a take-it-or-leave-it manner. Hence, the October 3, 2023 IEP failed to fulfill fundamental requirements concerning parental participation in educational program development and was unlawful on that basis.

As discussed in issues 3 and 4 herein, the October 3, 2023 IEP was additionally flawed because it did not offer adequate services for

- behavior management,
- augmentative and alternative communication,
- social skills development,
- occupational therapy, and
- specialized academic instruction.

Based upon a preponderance of evidence submitted for the matter, Ukiah failed to prove the October 3, 2023 IEP offered Student a FAPE in the least restrictive environment. Ukiah shall not implement the October 3, 2023 IEP without Parents' consent.

ISSUES 2(a), 3(c), 3(i), 4(c), AND 4(g): DID UKIAH DENY STUDENT A FAPE BY FAILING TO CONDUCT AN AUGMENTATIVE AND ALTERNATIVE COMMUNICATION ASSESSMENT AND OFFER AUGMENTATIVE AND ALTERNATIVE COMMUNICATION SERVICES?

In issues 2(a), 3(c) and 4(c), Student complains that Ukiah denied him a FAPE by failing to conduct an assessment for augmentative and alternative communication during the 2021-2022, 2022-2023, and 2023-2024 school years. For issues 3(i) and 4(g), Student complains Ukiah denied him a FAPE by failing to offer services for augmentative and alternative communication during the 2022-2023 and 2023-2024 school years. Ukiah responds that Student did not require an assessment or services in this area to receive a FAPE. Ukiah also points out that it provided Student an augmentative and alternative communication device, specifically, an iPad tablet computer, intermittently throughout the time frame in dispute.

Prior to making a determination of whether a child qualifies for a special education services a school district must assess the child. (20 U.S.C. § 1414(a) & (b); Ed. Code, §§ 56320, 56321.) A school district is required to assess in all areas of suspected disability, including for augmentative and alternative communication when necessary, prior to offering related services or devices. (20 U.S.C. § 1414(b)(2) & (3); 34 C.F.R. § 300.304(b)(2), (c)(4) (2006); Ed. Code, § 56320, subds. (e) & (f).) Assessment is required to formulate the type, duration, and frequency of a related service and to offer FAPE. (*Ibid.*) Related services include services as may be required to assist a child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a).) Related

services shall be provided when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. (Ed. Code, § 56363, subd. (a).)

An augmentative and alternative communication device, sometimes referred to as assistive technology, is any piece of equipment that is used to increase, maintain, or improve the functional capabilities of individuals with disabilities. An augmentative and alternative communication service is any service that directly assists an individual with a disability in the selection, acquisition, or use of an augmentative and alternative communication device. (20 U.S.C. § 1401(1); Ed. Code, § 56020.5.)

A school district is required to provide any augmentative and alternative communication device that is necessary to provide a FAPE to a child with a disability. (20 U.S.C. § 1412(a)(12)(B)(i); 34 C.F.R. § 300.105 (2006); Ed. Code, § 56341.1, subd. (b)(5).) An IEP team must consider whether a child requires augmentative and alternative communication devices or services. (20 U.S.C. § 1414(d)(3)(B)(v); 34 C.F.R. § 300.324(a)(2)(v) (2006); Ed. Code, § 56341.1, subd. (b)(5).)

Student had a documented history of communication and writing delays that warranted an augmentative and alternative communication assessment. Each IEP document recorded that Student required an augmentative and alternative communication device to receive a FAPE. For example, Student's initial IEP of February 2, 2022, reported Student was generally nonverbal, with speech limited to a few words and unintelligible vocalizations. Student's annual IEP of January 18, 2023, reported Student required an augmentative and alternative communication device, an iPad tablet computer with a speech generating communication program,

to communicate at school. The May 3, 2023 addendum IEP reported Student required an augmentative and alternative communication device with a speech generating communication program to communicate at school. Student's May 9, 2023 transition IEP, formulated to assist Student's transition from preschool to elementary school, reported Student required an augmentative and alternative communication device with a speech generating communication program to assist with communication in class, and Student could not express his toileting needs without the device.

During the hearing, several of Ukiah's witnesses consistently displayed a lack of familiarity with Student's specific needs and IEPs, or their testimony lacked veracity. Cassandra Capristo, Student's special education case carrier at Ukiah, incorrectly testified that Student's IEPs did not indicate a need for an augmentative and alternative communication device to facilitate his education. Similarly, Ukiah's school psychologist Dr. Kyle Brillhart testified that he reviewed Student's IEPs as part of a fall 2023 assessment but inaccurately claimed that the IEPs did not mention the use of an augmentative and alternative communication device. Additionally, Kimberly Fine, a private speech and language pathologist contracted by Ukiah to provide Student's services in a virtual setting, was unaware that Student's IEPs mandated the use of an augmentative and alternative communication device or that Student had previously utilized such a device at school. The testimony provided by Capristo and Brillhart was frequently discredited during the hearing. Their statements were therefore deemed unreliable and given no weight.

Jenness Hartley was Student's classroom teacher in preschool during the 2021-2022 and 2022-2023 school years. She persuasively testified that Student required an augmentative and alternative communication device. She reported that Student

frequently used an iPad tablet computer with a communication program to assist with his communication in class. Student did not initiate conversations, had a limited vocabulary of less than 15 words, had serious speech and language delays, and could not hand-write without physical hand-over-hand assistance. There was no question that Student required an augmentative and alternative communication device in light of his unique circumstances. Yet, Ukiah did not offer Student an assessment in this area during any of three school years in question for this hearing.

Joseph Butler served as Student's teacher throughout the 2023-2024 school year, up to the time of the hearing. As a regular education teacher, he lacked familiarity with special education and related services. Nonetheless, he was a skilled general education teacher and provided forthright and consistent testimony during the hearing. In Butler's class, all students had access to an iPad tablet computer. However, the provision of this device was inconsistent and not tailored to meet Student's specific needs.

In sum, Student's IEPs required the provision of an augmentative and alternative communication device. However, Ukiah had never assessed Student for augmentative and alternative communication, as is required to determine the type of device necessary to meet Student's unique needs or to formulate the type, duration, and frequency of a related service.

Ukiah mistakenly asserts that assessing Student for augmentative and alternative communication was unnecessary to provide Student with such a device. Ukiah argues that since tablet devices like iPads were generally available to all students in Ukiah's classrooms during the relevant period, and occasionally used by Student, he received adequate augmentative and alternative communication devices and services simply by being a student there. However, Parent and Student's teachers convincingly testified

that Student could not consistently or effectively access the iPad tablet device. Moreover, Student had not received training to use this device, a fact Ukiah would have discovered had it assessed Student.

Ukiah overlooked that it was required to assess in all areas of suspected disability, including augmentative and alternative communication, prior to offering related services or devices. There was no evidence submitted that showed Student had successfully used an augmentative and alternative communication device. Overwhelming evidence, including each IEP document, showed that Student had serious communication and writing challenges, including pen-to-paper hand-writing delays, which warranted an assessment for augmentative and alternative communication.

An augmentative and alternative communication device and related services were necessary for Student because his IEPs identified that he required an augmentative and alternative communication device. Ukiah IEP team members believed that an augmentative and alternative communication device would improve Student's performance, participation, and behavior. Consequently, to formulate Ukiah's FAPE offers during the 2021-2022, 2022-2023, and 2023-2024 school years, it was necessary to assess Student to determine which augmentative and alternative communication device was appropriate to meet his unique needs. Instead, Ukiah's used an ad hoc approach to providing a device generally used by all students regardless of Student's unique needs and in an inconsistent manner. An assessment was necessary to determine the type, duration, and frequency of a related service in this area to support the use of a device specific to Student's needs.

Ukiah's failure to assess Student for augmentative and alternative communication to help Student with identified communication and writing challenges was a procedural violation of the IDEA. (*R.B., ex rel. F.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 940 ("we have, more often than not, held that an IDEA procedural violation denied the child a FAPE.")) A procedural violation of the IDEA constitutes a denial of a FAPE only if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision-making process; or
3. caused a deprivation of educational benefits. (Ed. Code, § 56505 subd. (f)(2); *Target Range School, supra*, 960 F.2d at p. 1484.)

Here, Student's writing challenges resulted in a need for hand-over-hand physical support by an adult to perform any writing task. Student's communication delays impacted his ability to communicate with peers and adults, and impacted his ability access his classroom curriculum. Student's writing and communication delays impacted his ability to progress in a manner that was commensurate with his same-aged peers without special education or related services. Therefore, Ukiah's failure to assess Student in augmentative and alternative communication and provide him a device correlated to his unique needs with related services to ensure his ability to use the device effectively and consistently deprived him of educational benefits, and, accordingly, Ukiah denied Student a FAPE on that basis. (*Carrie I. ex rel. Greg I. v. Dep't of Educ., Hawaii* (D.Haw. 2012) 869 F.Supp.2d 1225, 1247 ("The lack of assessments alone is enough to constitute a lost educational opportunity."))

For the foregoing reasons, Student showed by a preponderance of evidence that Ukiah denied him a FAPE during the 2021-2022 school year, beginning October 23, 2021, the 2022-2023 school year, and the 2023-2024 school year, through December 1, 2023, by failing to assess and provide services for augmentative and alternative communication.

ISSUES 2(b), 3(d), 3(j), 4(a), AND 4(i): DID UKIAH DENY STUDENT A FAPE BY FAILING TO CONDUCT AN OCCUPATIONAL THERAPY ASSESSMENT AND OFFER OCCUPATIONAL THERAPY SERVICES?

Student's issues 2(b) and 3(d) complain that Ukiah denied him a FAPE during the 2021-2022 school year, beginning October 23, 2021, and the 2022-2023 school year, by failing to assess for occupational therapy. Student's issue 4(a) complains that Ukiah denied him a FAPE during the 2023-2024 school year, through December 1, 2023, by failing to sufficiently assess for occupational therapy. Student's issues 3(j) and 4(i) argue Ukiah denied Student a FAPE by failing to offer occupational therapy services during the 2022-2023 school year and the 2023-2024 school year, through December 1, 2023.

Ukiah does not dispute that it did not assess Student for occupational therapy during the 2021-2022 and 2022-2023 school years. Ukiah argues that Student did not require an occupational therapy assessment during that time. Ukiah first assessed Student for occupational therapy on September 6, 2023, and argues that assessment was sufficient. Ukiah did not offer Student occupational therapy services during the time frame in dispute and argues that Student did not require this service in light of his circumstances.

Occupational therapy is a field focused on addressing delays in

- fine motor skills,
- gross motor skills,
- sensory processing,
- vestibular function, and
- proprioception.

Student had a documented history of delays in these domains, indicating a need for occupational therapy intervention. Common among children with autism, Student experienced sensory processing difficulties, such as sensitivity to noise and aversion to certain foods, alongside significant challenges in fine motor skills, throughout his educational career.

A school district is required to assess in all areas of suspected deficit, including occupational therapy. (20 U.S.C. § 1414(b)(2) & (3); 34 C.F.R. § 300.304(b)(2), (c)(4) (2006); Ed. Code, § 56320, subds. (e) & (f).) Assessment is required to formulate the type, duration, and frequency of a related service and to offer FAPE. (20 U.S.C. § 1414(b)(2), (3); 34 C.F.R. § 300.304(b)(2), (c)(4) (2006); Ed. Code, § 56320, subds. (e) & (f).)

Related services include occupational therapy services and other services as may be required to assist a child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371, 82 L.Ed.2d. 664]; *Union School Dist. v. Smith*,

(9th Cir. 1994) 15 F.3d 1519, 1527.) Related services shall be provided when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. (Ed. Code, § 56363, subd. (a).)

Ukiah conducted an initial assessment of Student for special education and related services on February 2, 2022, as part of a psycho-educational evaluation. Sarah Olivarria, a school psychologist for Ukiah, conducted this assessment, primarily utilizing rating scales. The assessment revealed that in addition to autism and other developmental delays, Student exhibited delayed fine motor and gross motor skills. Specifically, Student struggled with performing movements involving his hands and fingers. Olivarria also noted sensory processing delays, including an overreaction to sensory stimuli such as touch, vision, smell, or taste. As a result of these findings, Olivarria recommended that Student receive assistance to address his fine motor delays, which significantly impacted his ability to engage in tasks involving pen-to-paper activities. Student could not write or even draw a line independently. He required hand-over-hand assistance to place a marker on paper, and even then, his attempts at writing resulted in exaggerated scribbles.

Despite identifying problems that fell under the purview of occupational therapy, Ukiah failed to offer an occupational therapy assessment as part of its initial evaluation of Student. Ukiah was therefore unable to make a complete FAPE offer to Student pursuant to the February 2, 2022 IEP.

On January 18, 2023, Ukiah convened Student's second annual IEP team meeting. The IEP document reported that Student had significant fine motor problems. Student's teacher or classroom aide had to provide Student hand-over-hand assistance for Student to place pen to paper. Even with support, Student could not grasp a pencil and could not

write or trace any letters. Student's writing samples were just exaggerated scribbles where traced or copied letters should have been. This IEP also reported Student had sensory processing problems including sensitivity to sensation and sensory input. The IEP team agreed to add a fine motor goal for writing and placing stickers, yet that goal was never formulated or offered. This IEP showed that Student required the intervention of an occupational therapist, yet Ukiah failed to offer an assessment or services in this area. Absent an occupational therapy assessment, Ukiah could not offer an educational program that was individualized to Student's unique needs.

Ukiah convened Student's next IEP team meeting, an addendum, on May 3, 2023. This IEP team noted significant challenges stemming from sensory processing issues that hindered Student's classroom performance. Student struggled with self-regulation, adapting to changes, and was easily distracted by loud noises and peer interactions. Additionally, Student encountered difficulties with food textures and eating. The IEP document explicitly highlighted Student's "substantial sensory processing abnormalities." Nonetheless, Ukiah failed to offer Student an occupational therapy assessment or services during this school year.

In an attempt to mitigate Student's sensitivity to loud noises, the May 3, 2023 IEP offered Student noise-canceling headphones, which Parents accepted. Despite this offer, Ukiah failed to provide Student the headphones. Testimony from Ukiah's special education program coordinator, Smilgys, revealed that the offer for noise-canceling headphones was later rescinded, without Parents knowledge or consent, due to budget constraints for the school year.

Had Ukiah followed through with providing noise-canceling headphones to address Student's sensory sensitivity, it would have been done without the necessary

assessment to determine the specific type of device and related services required to meet Student's individual needs, as legally mandated. (20 U.S.C. § 1414(b)(2), (3); 34 C.F.R. § 300.304(b)(2), (c)(4) (2006); Ed. Code, § 56320, subds. (e) & (f).)

The May 3, 2023 IEP also reported that Student had difficulty running and still could not write, trace, or grasp a pencil or pen. Student required adult, hand-over-hand assistance to place pen to paper for any writing or drawing tasks. Despite overwhelming evidence that Student required the intervention of an occupational therapist, Ukiah did not offer an assessment or services in this area.

Furthermore, the IEP team failed to include an occupational therapist or a person with expertise in that area. As a result, Ukiah could not cogently answer Parents' questions regarding Student's difficulty with running, writing, eating, and loud noises, and related areas of need during the IEP team meeting.

On August 8, 2023, registered occupational therapist Heather Watson conducted an occupational therapy assessment of Student on behalf of the Redwood Coast Regional Center. Student was four years, 11 months old at the time of this assessment. Watson's assessment included a parent report, file review, observations, and sensory processing measures. Student had poor hand strength and difficulty grasping a marker. He could not imitate writing letters, struggled holding scissors, and fatigued easily. Student had very poor social-emotional ability and difficulty recognizing basic emotions, like happy or sad, in others. Student received a very poor rating result, at the 23-month age equivalency, for social-emotional skills. Watson also rated Student below average in his adaptive behaviors.

Watson tested Student's gross motor skills, which included the use of large muscle groups of the body, arms, or legs, such as sitting up, walking, or balancing. Student was significantly delayed in this area, receiving scores in the very poor range, a 26-month age equivalency. Watson also tested Student's fine motor skills, which include the use of muscles that control small and detailed movements, such as hand dexterity and coordination. Student was seriously delayed in this area and received a score at a 23-month age equivalency, also in the very poor range.

Testing also revealed that Student had challenges in sensory modulation that affected his everyday routines. Student had problems with auditory, tactile, gustatory, and vestibular input. Sensory processing problems inhibited Student's ability to focus and complete tasks.

Watson also found that Student had dyspraxia, a developmental coordination disorder. Student struggled with basic body movements, including how much force to exert when moving parts of his body.

Watson's evaluation identified significant delays in multiple areas relevant to occupational therapy for Student. Watson proposed nine occupational therapy goals and recommended that Student receive five hours of occupational therapy services per month. Despite Parents providing Ukiah with a copy of this assessment, Ukiah did not consider it during an IEP team meeting or at any other time.

Pursuant to a request by Parents, Ukiah first conducted its own occupational therapy assessment for Student on September 6, 2023, the beginning of the 2023-2024 school year. Ukiah reviewed the assessment during an IEP team meeting held on September 19, 2023. Registered occupational therapist Miranda Dabbs conducted the assessment on behalf of Ukiah. Dabbs' assessment included a

- records review,
- parent interview,
- teacher interview,
- observations, and a
- fine motor subtest.

Dabbs' assessment found that Student could not demonstrate dynamic finger movement, meaning he moved his entire arm instead of his hand to complete fine motor tasks. Dabbs did not identify any other problems in her report. During the hearing, Dabbs testified on behalf of Ukiah, asserting that Student did not require occupational therapy services to access his education. Although Dabbs conceded Student had fine motor delays, she did not recommend occupational therapy services for Student. Dabbs dismissed Student's fine motor problems as not relevant to his IEP because she mistakenly believed fine motor tasks like handwriting were not necessary for children until they matriculated to higher grade levels. Ukiah witnesses Colvig and Capristo echoed this misrepresentation during their testimony, claiming that fine motor skills like pen-to-paper writing was a higher level and abstract task that was not necessary for children during preschool and kindergarten. This line of testimony was contradicted by Student's school work samples, which included tracing and copying letters, and Student's classroom teachers.

Butler taught Student's regular education transitional kindergarten class during the 2023-2024 school year and was Student's classroom teacher when Dabbs conducted her assessment. Butler persuasively testified that fine motor tasks such as handwriting one's name, tracing and copying letters, and drawing, were common in lower grade levels and were daily tasks in Student's transitional kindergarten classroom. Butler, or an aide assigned to the class, had to physically assist Student with hand-over-hand prompting for Student to complete pen-to-paper related tasks. Student's fine motor delays impaired his ability to access his classroom curriculum. Consequently, Colvig, Capristo, and Dabbs' recommendations against occupational therapy services to help remediate Student's fine motor delays because of his young age were not reflective of Student's educational program or persuasive.

Butler's testimony was corroborated by Student's preschool teacher, Jenness Hartley. Hartley was an inclusion specialist who helped teach Student's inclusion preschool classroom during the 2021-2022 and 2022-2023 school years. Hartley similarly described Student's sensory problems and need for sensory tools. Although sensory tools were made available to all students in the preschool classroom, they were not based on an assessment or individualized to Student's unique needs. Hartley also described Student's difficulty with fine motor skills and need for an adult to use hand-over-hand assistance for Student to complete handwriting and drawing tasks that were common in Student's preschool classroom.

Ukiah's speech and language service provider Gwen Hardage-Vergeer also testified that Student had sensory processing dysregulation and fine motor deficits that impaired his ability to function at school. Hardage-Vergeer directly provided services to Student during preschool and was familiar with his unique needs, having observed him frequently during service sessions and in the classroom. Student was sensitive to noise

and touch and required noise-canceling headphones and sensory tools to access his classroom curriculum. Student also required fine motor manipulatives. Hardage-Vergeer pointed out that it was common of children, who like Student experienced profound autism, to require occupational therapy. Given Student's observed needs and disability, it was unreasonable for Ukiah to delay assessing him for occupational therapy until the 2023-2024 school year.

When it finally did assess Student, its occupational therapy assessment by Dabbs was insufficient. There were several problems with Dabbs' occupational therapy assessment and testimony. A conspicuous problem was Dabbs' misrepresentation that Student did not have a history of deficits in gross motor skills and sensory processing documented in his IEPs and school records. Based on this misconception, Dabbs chose not to assess Student in these areas.

Despite claiming to have reviewed Student's records prior to her assessment, Dabbs overlooked crucial information. A brief examination of Student's IEPs revealed that his IEPs had identified significant sensory processing abnormalities. Moreover, Ukiah's initial psychoeducational assessment, conducted in December 2021, included a gross and fine motor screening measurement. This screening tool found Student fell in the below-average range for both gross motor and fine motor abilities. The inconsistency between Student's school records and Dabb's testimony indicated she was not familiar with Student's IEPs and unique needs, or that her testimony was not truthful.

Furthermore, the regional center's occupational therapy assessment was a crucial part of Student's school records, highlighting sensory processing and gross motor delays. However, Dabbs disregarded this assessment, citing its non-school origin as a

reason for not considering it. A careful assessor would have recognized the importance of integrating information from all relevant sources, including the regional center report. This report identified suspected deficits in sensory processing across various modalities, including auditory, tactile, gustatory, and vestibular input, as well as a developmental coordination delay.

Dabbs' dismissal of this assessment indicated a lack of care and thoroughness in her assessment and recommendations. By choosing not to assess Student in areas where deficits were either identified or suspected, such as gross motor skills and sensory processing, Dabbs failed to sufficiently assess Student and her occupational therapy assessment was defective on that basis.

Notably, Dabbs initially testified that Student did not have gross motor problems or sensory processing issues, but later admitted she had not assessed in those areas. Like her testimony, Dabbs' assessment report made conclusive statements that Student did not have gross motor problems or sensory processing deficits, yet those statements were not supported by her testing.

Furthermore, Dabbs' testimony and assessment reported that Student did not exhibit gross motor problems when she briefly observed him during a physical education class. However, Dabbs' testimony and report was impeached by contemporaneous reporting by Student's physical education teacher Monlux, who reported Student's gross motor skills to be seriously delayed, at a 22-month ability level. Student had difficulty with gross body movements, including difficulty walking closely to others, running, and stopping.

Dabbs' report also stated that Student could hand trace letters. However, her report did not include a writing sample that could be analyzed. Contemporaneous classroom handwriting samples revealed that Student could not trace or copy any letters. Student could only draw exaggerated scribbles around letters that were intended to be traced or copied.

Dabbs attempted to support her testimony by referring to an outside occupational therapy assessment report by Jordan Hargadon. Hargadon did not testify during the hearing and his report, dated February 9, 2024, fell outside of the time frame for the issues involved for this matter and had not been reviewed during an IEP team meeting. The report did not include testing protocols or rating forms that could be analyzed as part of this hearing. Finally, the report failed to name the Ukiah rating examiner for a sensory processing profile, and Dabbs was unfamiliar with who performed the rating scale.

Hargadon reported that Student had below-average fine motor abilities and below-average manual dexterity. Based on a sensory profile administered to Parent, Student had sensory processing dysfunction in all areas reported, including

- social participation,
- vision, hearing,
- touch,
- body awareness,
- balance and motion, and
- planning.

An unnamed teacher reported that Student had no sensory processing problems. At the time of Hargadon's assessment, Butler was Student's classroom teacher. However, he did not confirm participation in Hargadon's assessment during his testimony. It was therefore unclear who the unnamed teacher was that conducted the sensory profile. Hargadon did not testify and could not be examined regarding his report. It was therefore unclear how Hargadon arrived at several conclusions in his report. For these reasons, the validity of the testing and results could not be confirmed during the hearing, and little weight was given to Hargadon's report.

Nonetheless, Dabbs disregarded Parent's sensory profile and Student's fine motor delays to cite Hargadon's report as support for not recommending occupational therapy services.

The credibility of Dabbs' critique of occupational therapy services for Student was undermined by the weight of evidence presented and by her reliance on an unreliable source. Moreover, Dabbs' occupational therapy report dated September 6, 2023, was found to be flawed due to its failure in evaluating Student in significant areas of deficiency, including gross motor skills and sensory processing.

The preponderance of the evidence showed Ukiah knew Student had deficits that fell under the purview of an occupational therapist yet failed to conduct an occupational therapy assessment until September 2023. When it did assess Student for occupational therapy, overwhelming evidence showed Ukiah failed to assess areas of identified or suspected deficit for Student. This information was required for Ukiah to develop IEPs that were individualized to Student's unique needs. Each IEP offered during the disputed time frame was critically flawed as a result of Ukiah's failure to assess or sufficiently assess Student for occupational therapy.

Ukiah's failure to assess or sufficiently assess Student for occupational therapy to help Student with identified motor and sensory challenges was a procedural violation of the IDEA. (*R.B., ex rel. F.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 940 ("we have, more often than not, held that an IDEA procedural violation denied the child a FAPE.")) Here, Student's writing challenges resulted in a need for hand-over-hand, physical support by an adult to perform any writing task. Student's sensory delays impacted his ability to access his classroom curriculum. Student's writing and sensory delays impacted his ability to progress in a manner that was commensurate with his same-aged peers without special education or related services. Therefore, Ukiah's failure to assess Student in occupational therapy and provide him services correlated to his unique needs deprived him of educational benefits, and, accordingly, Ukiah denied Student a FAPE on that basis. (*Carrie I. ex rel. Greg I. v. Dep't of Educ., Hawaii*, *supra*, at 1247.)

A preponderance of evidence also showed that occupational therapy services were necessary for Student to benefit educationally from his instructional program. Student's motor delays and sensory processing challenges fell under the purview of an occupational therapist. It was therefore necessary for Student's IEPs to offer direct occupational therapy services to meet Student's unique needs. Consequently, Ukiah's failure to offer occupational therapy services during the time frame in dispute denied Student a FAPE. (Ed. Code, § 56363, subd. (a).)

Student proved Ukiah denied him a FAPE by failing to conduct an occupational therapy assessment during the 2021-2022 school year, beginning October 23, 2021, and the 2022-2023 school year, and by failing to conduct a sufficient occupational therapy

assessment during the 2023-2024 school year, through December 1, 2023. Student also proved Ukiah denied him a FAPE during the 2022-2023 school year, and the 2023-2024 school year, through December 1, 2023, by failing to offer occupational therapy services.

ISSUES 2(c), 3(f), AND 4(d): DID UKIAH DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE AND MEASURABLE IEP GOALS?

Student's issues 2(c), 3(f), and 4(d) complain that Ukiah denied him a FAPE during the 2021-2022 school year, beginning October 23, 2021, the 2022-2023 school year, and the 2023-2024 school year, through December 1, 2023, by failing to offer appropriate and measurable IEP goals. Ukiah responds that it offered Student appropriate and measurable IEP goals during the time frame in dispute.

For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345.) The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. In *Capistrano Unified Sch. Dist. v. S.W., et al.* (9th Cir. 2021) 21 F.4th 1125, the court stated the IDEA required IEP goals to target a student's needs, but the IDEA did not require an IEP to contain every goal from which a student might benefit. (*Id.* at p. 1133.) Moreover, a school district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and

modifications. (Fed. Regs., Appendix A, Part 300 – Assistance to States for the Education of Children with Disabilities (1999), discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C. § 1414(d)(1)(A)(i)(II).)

THE 2021-2022 SCHOOL YEAR

Ukiah first assessed Student for special education and related services in December 2021. Ukiah's school psychologist Olivarria conducted the assessment. Student was three years, eight months old, and attending an Ukiah preschool. Testing procedures revealed that Student was well below average in his cognitive abilities. This impacted Student's ability to perform academic skills such as reading, writing, and arithmetic. A teacher rating scale also showed Student had serious deficits in areas impacting his academic development. Student had difficulty performing age-level tasks like matching shapes, naming five or more objects, and stacking blocks. Student's performance was at a 19-month level, 25 months delayed compared to his same-aged peers.

Student's teacher Hartley administered social-emotional testing. This test showed that Student was seriously delayed, at the 17-month age equivalency, in his ability to function socially and emotionally. Student could not separate from parents without crying, look at a person who was speaking to him, avoid common dangers, or engage in meaningful social interactions with adults and peers.

Ukiah's speech and language pathologist Nancy Chadd briefly assessed Student's speech and language needs. Testing identified significant speech and language deficits. He was delayed in his ability to use receptive language, expressive language, and his overall ability to communicate in any manner.

Olivarria also administered a gross and fine motor screening measurement. Student fell in the below-average range for both gross motor and fine motor abilities, identifying needs in those areas.

Testing also demonstrated that Student was delayed in adaptive living skills. Student had problems

- eating,
- dressing,
- with functional independence,
- utilizing modern technology, and
- overall self-care.

These skills impacted Student's ability to function daily inside and outside of the classroom.

Student had very elevated behavior problems pertaining to changes in routine, frequently engaged in purposeless stereotypical behaviors, and overreacted to sensory experiences.

Student had autism, encompassing diverse deficits necessitating specialized education and related services. These included

- profound academic delays,
- severe communication deficits spanning expressive, receptive, and pragmatic language domains, as well as social-emotional delays,
- deficiencies in adaptive living skills, behavioral challenges, sensory processing issues, and
- deficits in fine and gross motor skills.

Ukiah reviewed Olivarria's psychoeducational assessment during Student's first IEP team meeting held on February 2, 2022. IEP team members, including Student's teacher, similarly reported academic, behavior, communication, and social-emotional delays being demonstrated by Student in the classroom. To address these delays, Ukiah offered two annual IEP goals.

The first goal was in the combined domains of social communication, receptive and expressive language. The goal called for Student to improve his overall communication by meeting 80 percent of the goal's objectives. Following the goal were five separate and nonsequential objectives. The first objective called for Student to take three turns with a partner, in three of five opportunities. Objective two required Student to imitate a partner. Objective three required Student to follow directions. Objective four called for Student to expand his vocabulary. Objective five called for Student to request high interest objects.

The goal was confusingly written, as objectives are short-term benchmarks designed to show progress towards a specific, annual goal. Here, there was no annual goal, just five nonsequential and unrelated objectives. Furthermore, the goal's baseline was an unmeasurable statement that Student had limited social interactions, difficulty following directions, and used gestures to make requests. While there is no legal requirement for a goal to have a baseline, it is necessary for goals to include accurate present levels of performance. Here, the baseline served as the goal's present level of performance, and the unmeasurable baseline impacted the ability to measure the goal. Consequently, the goal was not appropriate and progress towards this goal, or its objectives, was not possible to measure.

The second goal was for pre-academics. The goal required Student to improve his pre-academic skills by completing 80 percent of the goal's objectives. Following the goal were six separate, nonsequential objectives. Objectives included

- learning functional classroom activities,
- using a picture schedule,
- using pictures to make requests,
- matching objects, pictures, and colors,
- remaining seated, and
- imitating teachers and peers.

Again, the goal was confusingly written, as objectives are short-term benchmarks designed to show progress towards an annual goal. Again, there was no specific annual goal, just objectives, which were unrelated to each other and nonsequential. The goal's baseline was an unmeasurable statement that Student had no preschool experience.

However, the goal was developed in February 2022, following Ukiah's December 2021 psychoeducational assessment. As such, the IEP team had information regarding Student's present levels of performance available when this goal was formulated to determine a baseline from which the goal, or objectives, could have been measured from. Consequently, the goal was not appropriate and progress towards this goal, or its objectives, was not possible to measure.

These two, unmeasurable IEP goals, were not adequate to address Student's unique needs in

- reading,
- writing,
- math,

- receptive language,
- expressive language,
- social-emotional delays,
- adaptive living,
- behavior,
- sensory processing,
- fine motor, and
- gross motor skills.

Consequently, Ukiah denied Student a FAPE during the 2021-2022 school year, pursuant to the February 2, 2022 IEP offer, by failing to offer appropriate and measurable annual goals.

THE 2022-2023 SCHOOL YEAR

Ukiah held Student's next annual IEP team meeting on January 18, 2023. The IEP team reported the same problems expressed by the February 2022 IEP team. Student was seriously delayed in all academic areas and did not communicate with peers or adults. He required an iPad tablet computer with a language program to communicate in one-to-two-word phrases. Behaviorally, Student required constant adult prompting to complete any task. He cried for five minutes and required 30 minutes to calm down when separated from Parent each morning. Student had sensory dysregulation and serious fine motor skill deficits. He required adult, hand-over-hand assistance for handwriting for any fine motor related tasks. To address Student's unique needs, Ukiah offered Student four goals in this IEP.

The first goal was for expressive language. The goal called for Student to communicate his wants and needs and describe items using a one-to-three-word phrase, using any modality, 80 percent of the time in two of three occasions, measured by the speech and language pathologist. The goal indicated the school's speech and language pathologist was responsible for Student achieving the goal and included a baseline with a discernable present level of performance. The goal did not include any short-term objectives or benchmarks. Nonetheless, the goal was measurable, based on Student's present levels of performance, and addressed an identified area of deficit for Student, expressive language.

Goal two was for receptive language. The goal required Student to demonstrate an understanding of 10 basic vocabulary words in various categories with 70 percent accuracy in two of three trials, measured by the speech and language therapist. The goal indicated the school's speech and language pathologist was responsible for Student achieving the goal and included a baseline that described Student's present levels of performance in this area. While the goal did not include any short-term objectives or benchmarks, it was measurable, based on Student's present levels of performance, and addressed a unique area of deficit for Student, receptive language.

The third goal was in the area of social communication. The goal sought for Student to demonstrate joint attention with a peer during a game or activity, and take three turns with another student as part of the game or activity, with 70 percent accuracy in two of three trials, measured by the speech and language therapist. The goal indicated the school's speech and language pathologist was responsible for

Student achieving the goal and included a baseline that described Student's present levels of performance in this area. The goal did not include any short-term objectives or benchmarks but was measurable, based on Student's present levels of performance, and addressed a unique area of deficit for Student, social skills.

Student's fourth goal was in pre-academics. The goal required Student to increase his pre-academic skills by 80 percent. Like the February 2022 goals, there was no actual annual goal but a reference to five separate, nonsequential objectives, listed under what should have been the annual goal's short-term objectives. The first objective called for Student to understand concepts like "heavy" and "light." The second objective called for Student to understand the concept of "three." The third objective required Student to sort objects by physical appearance. Objective four required Student to imitate a drawing of a face. Objective five required Student to match the letters of his name. The baseline was a statement that Student had learned classroom routines and was beginning to interact with peers. There was no present level of performance from which any of the objectives could be measured from. While the goal attempted to address an area of deficit, academics, it did so in a manner that was confusing and unmeasurable.

The IEP team agreed Student required a goal to address his fine motor deficits and discussed adding a goal for handwriting and placing stickers on paper. However, Ukiah failed to develop or offer this goal.

While the January 18, 2023 IEP offered some appropriate and measurable goals in communication, it failed to offer appropriate or measurable goals to address Student's unique needs in

- reading,
- writing,
- math,
- social-emotional,
- adaptive living,
- behavior,
- sensory processing,
- fine motor, and
- gross motor skills.

Consequently, Ukiah denied Student a FAPE during the 2022-2023 school year, pursuant to the January 18, 2023 IEP offer, by failing to offer appropriate and measurable annual goals.

THE 2023-2024 SCHOOL YEAR, THROUGH DECEMBER 2023

Ukiah held addendum IEP team meetings for Student on

- May 3, 2023,
- May 9, 2023,
- June 9, 2023,
- August 17, 2023,

- September 19, 2023,
- October 3, 2023, and
- October 23, 2023.

The October 3, 2023 IEP included three new goals. As discussed in issue 1, these goals were not formulated during the IEP team meeting or with the participation of Parents. Rather, Ukiah's Director of Special Education Colvig singlehandedly formulated three new goals, two pre-academic goals and one for attention and focus, that had not been previously discussed with Parents. These goals were offered, for the first time, in an October 5, 2023 prior written notice to Parents from Colvig. Because these goals were developed without Parents' participation, they are inappropriate. Consequently, Ukiah denied Student a FAPE by failing to offer appropriate and measurable goals during the 2023-2024 school year, through December 1, 2023.

During the hearing, Colvig emphasized that Student's goals were deliberately set not to surpass typical tasks in the regular education curriculum. Colvig felt it essential to provide goals aligning with what the regular education teacher could address during normal classroom activities. She mistakenly believed deviating from this approach would breach the IDEA's least restrictive environment mandate. This misconception was echoed by other Ukiah witnesses during the hearing.

Contrary to Ukiah's misunderstandings, a school district must establish goals for each area where a special education student displays a documented need, regardless of whether those needs align with typical regular education classroom activities. Special education and related services, rather than regular education services, should then be tailored to assist the student in achieving those goals within a year. (Ed. Code, § 56345; 20 U.S.C. § 1401(26)(A)).

Student showed by a preponderance of evidence that Ukiah denied him a FAPE during the 2021-2022 school year, beginning October 23, 2021, the 2022-2023 school year, and the 2023-2024 school year, through December 1, 2023, by failing to offer appropriate and measurable goals.

ISSUES 3(k), 3(l), 4(k), 4(l), AND 5(d): DID UKIAH DENY STUDENT A FAPE BY FAILING TO PROVIDE CLEAR IEP OFFERS AND BY FAILING TO IMPLEMENT STUDENT'S IEPs?

Student's issues 3(k) and 4(k) allege Ukiah denied Student a FAPE during the 2022-2023 and 2023-2024 school years, through December 1, 2023, by failing to implement Student's IEPs. Student's issues 3(l) and 4(l) argue Ukiah denied him a FAPE during the 2022-2023 and 2023-2024 school years, through December 1, 2023, by failing to make a clear IEP offer. Student's issue 5(d) alleges Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by reducing or changing Student's IEP services without Parents' consent. Ukiah responds that its IEP offers were clear and that it materially implemented Student's educational program.

An IEP must set forth a formal, specific written offer of FAPE for a student with special needs' educational program. (*Union v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526, cert. denied (1994) 513 U.S. 965 (*Union*).) The school district must offer a single, specific program, in the form of a clear, coherent offer which parents can reasonably evaluate and decide whether to accept or reject. (*Glendale Unified Sch. Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1107-1108.) This requirement should be enforced rigorously as it creates a clear record to help eliminate factual disputes. (*Union, supra*, 15 F.3d at p. 1526.)

It also assists the parents in presenting complaints with respect to any matter relating to the educational placement of the child and whether to reject or accept the placement and related services. (*Ibid.*; *J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 459-460.) The offer must include a statement of the special education and related services and supplementary aids and services, including program modification or supports. (*Union, supra*, 15 F.3d at p. 1527) The decision as to the frequency and duration of a related service is an IEP team decision that must be included in the school district's written offer of FAPE. (20 U.S.C. § 1414(d)(1)(A)(VII); 34 C.F.R. § 300.320(a)(7) (2006); Ed. Code, § 56345, subd. (a)(7).) The IEP must contain an explanation of the extent to which the student will not participate with nondisabled children in the regular class and during the provision of related services. (20 U.S.C. § 1414(d)(1)(A)(i)(V); 34 C.F.R. § 300.320(a)(5); Ed. Code, § 56345, subd. (a)(5).)

A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822.) However, "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*) The *Van Duyn* court emphasized that IEPs are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute, and not to decide on its own no longer to implement part or all of the IEP. (*Ibid.*)

Student's IEPs were written unclearly to the extent that neither Parents nor Ukiah's IEP team understood the FAPE offers. This resulted in essential services not being implemented and services that were not part of Student's IEP being provided

without Parents' consent. This mismanagement of Student's educational program was the direct result of poorly written IEPs and a systemic misunderstanding of special education law by Ukiah's special education administrators.

THE 2022-2023 SCHOOL YEAR

The February 2, 2022 IEP was Student's operative IEP for the 2021-2022 and 2022-2023 school years, through Student's subsequent IEP of January 18, 2023. The February 2, 2022 IEP lacks clarity for several reasons.

USE OF COMMUNICATION DEVICE WAS UNCLEAR

Despite testimony from Student's teacher at the time, Hartley, indicating that Student utilized an iPad tablet computer with a language program daily for communication, the IEP fails to acknowledge the existence or necessity of such a device. In fact, the IEP incorrectly stated that Student did not require an augmentative and alternative communication device or assistive technology. Consequently, Parents and school staff were uncertain about the inclusion of this device in Student's educational program and the device was only sporadically provided by Ukiah. While Hartley consistently integrated the device into her teaching with Student, other educators and therapists, such as Butler and Fine, testified that they were unfamiliar with it and did not ensure Student's access to it during their instruction. Had the IEP accurately documented Student's need for an augmentative and alternative communication devices or assistive technology, this confusion regarding Student's educational program and the subsequent failure to implement a vital component of Student's education, could have been avoided.

THE FEBRUARY 2022 IEP'S SPEECH SERVICES AND COMMUNICATION GOAL WERE UNCLEAR

The speech and language services in the February 2, 2022 IEP were unclear. Under the IEP section entitled "Special Education and Related Services," the IEP offered two services. The first service offered was speech and language, 900 minutes yearly, provided individually and in a virtual platform. Comments to this section stated that consultation with the family was strongly recommended. From this service description, it is not possible to tell how many sessions Student would receive weekly, the length of each session, or what component of this service was designated for family consultation.

Ukiah's speech therapist Hardage-Vergeer and Parent were confused by the IEP offer for speech and language services offer, and Ukiah did not provide Parents consultation because of this unclear offer.

The Ninth Circuit held that this type of frequency service band is unlawful. (*Los Angeles Unified School Dist. v. A.O.* (9th Cir. 2024) 92 F.4th 1159 (*Los Angeles*)). Frequency service bands like the one in Student's IEP are too vague for Parents to understand the level of services Student would receive to allow Parents to meaningfully participate in the IEP process. Here, the duration and frequency of Student's weekly speech and language service was unclear, and there was no indication of how that determination would be made. Consequently, Ukiah's offer of 900 minutes yearly for this service substantially denied Parents the opportunity to meaningfully participate in the development of Student's IEP, and denied Student a FAPE on that basis.

Moreover, the same IEP offered Student a social communication goal to be implemented by the speech and language therapist. However, the speech and language service was an individual service, and failed to describe how the IEP's social skills goal, which required turn taking with peers, could be implemented as an individual service. As a result of this poor description of services, Ukiah could not implement the first and second objectives under IEP goal one, which called for Student to take three turns with a peer, and to imitate a peer, respectively.

THE FEBRUARY 2022 IEP'S INDIVIDUAL AND GROUP INSTRUCTION WAS UNCLEAR AND NOT IMPLEMENTED

The next IEP service offered was individual and group instruction, 180 minutes, four times weekly, in an individual and group setting. The IEP did not describe what type of service this was. Further, the IEP failed to describe which part of this service would be provided individually, and which part would be provided in a group setting. During the hearing, none of Ukiah's witnesses, including Colvig, Capristo, Butler, or Hartley understood this service offer. None could describe the duration and frequency of the individual service or the group service, what the service was, or who was responsible for implementing the service. In *Los Angeles*, the Ninth Circuit held the failure to clearly describe the duration and frequency of an individual service was a FAPE violation. (*Los Angeles, supra*, at p. 1159) Consequently, Ukiah denied Student a FAPE on this basis.

Ukiah's Director of Special Education Colvig, and special education case manager Capristo, emphatically testified the individual and group instruction offered in Student's IEPs was not a service, but a designation of Student's placement in a regular education,

inclusion preschool. They could not describe why a placement in a regular education classroom was described in this manner under the IEP section entitled Special Education and Related Services.

Colvig and Capristo mistakenly believed that school districts could not offer specialized academic instruction as a related service to preschool aged students, despite a student's unique needs for direct academic services. On this basis, they testified the individual and group instruction offered in the IEPs was not a special education or a related service available to preschool students. Ukiah's witnesses erroneously testified that specialized academic instruction was only available to special education students when they reached higher grades.

In fact, there is no significant distinction between preschool and kindergarten instructional services. Under the IDEA and California special education law, school districts must offer an IEP to eligible students who turn three. (20 U.S.C. § 1412(A)(1); 34 C.F.R. § 300.101(a); Ed. Code, § 56001(b).) If a preschool child requires special education and related services to receive a FAPE, school districts must offer the child an appropriate program. (20 U.S.C. § 1414(d)(1)(A); Ed. Code, §§ 56345(a)(1)(B) and 56441.2.)

An early education program for individuals with exceptional needs between the ages of three and five, inclusive, shall include specially designed services to meet the unique needs of preschool children and their families. To meet this purpose, the program focus is on the young child and his or her family and shall include both individual and small group services which shall be available in a variety of typical age-appropriate environments for young children, including the home, and shall include opportunities for active parent involvement. (Ed. Code, § 56441.2.)

In light of Student's profound academic delays, Ukiah was obligated to provide him specially designed academic services while in preschool and during transitional kindergarten. Student's operative IEP offered Student an instructional service, yet Ukiah failed to implement this service based upon a misconception of law. Ukiah's failure to deliver an agreed upon and essential service denied Student a FAPE.

Colvig and Capristo also mistakenly opined that the regular education classroom teachers were responsible for implementing the IEP's instructional service as part of the normal regular education curriculum. However, Student's regular education teacher, Butler, more persuasively testified that regular education teachers, like himself, were not trained or experienced to implement IEP goals or services. Butler was unfamiliar with Student's IEPs or the special education staff's erroneous belief that he was responsible for implementing special education and related services.

Overall, a preponderance of the evidence showed that Ukiah's staff and Parents were confused by the IEP offer. As a result of the poorly written offer, overwhelming evidence also showed Ukiah did not implement the individual and group instruction services.

THE JANUARY 2023 IEP'S SPEECH SERVICES AND INDIVIDUAL AND GROUP INSTRUCTION WERE UNCLEAR

Similar problems were present in Ukiah's next annual IEP offer of January 18, 2023. This IEP was Student's operative IEP for the remainder of the 2022-2023 school year. The January 18, 2023 IEP, as amended by a May 3, 2023 IEP addendum, was also Student's operative IEP during the 2023-2024 school year, through December 1, 2023.

The January 18, 2023 IEP offered Student the same two services, speech and language and individual and group instruction. Each service was listed under the IEP section entitled "Special Education and Related Services."

The January 2023 IEP offered the same individual and group instruction, 180 minutes, four times weekly in an individual and group setting as in the February 2022 IEP. The IEP again failed to describe which part of this service would be provided individually, and which part would be provided in a group. The failure to clearly describe the duration and frequency of the individual service was a FAPE violation. Consequently, Ukiah denied student a FAPE on this basis. Again, none of the witnesses who testified during the hearing, including 12 Ukiah school employees, could cogently describe this service offer.

This IEP modified the speech and language service to 1,400 minutes per year, individual and group in a separate classroom. Comments for this service described the services as a combination of individual therapy, group therapy, consultation with staff, push-in services (meaning in the classroom), pull-out services (meaning in a separate location outside of the classroom), small group instruction in a separate classroom, and teletherapy. During the hearing, neither Parents nor Ukiah's speech and language therapy providers Fine and Hardage-Vergeer, understood what percentage of time was designated for individual therapy, group therapy, small group therapy, in-classroom services, pull-out services, or consultation. As a result, Student did not receive group therapy, consultation, or services pushed into the classroom.

Offering the speech and language therapy in a frequency service band, 1,400 minutes yearly, was unlawful. (Los Angeles, *supra*, at p. 1159). Neither Parents nor school staff understood the IEP service offer. The frequency service band in Student's IEP was too vague for Parents to understand the level of service to allow Parents to meaningfully participate in the IEP process. The duration and frequency of Student's weekly language and speech services were unclear, as was how that determination would be made. Consequently, Ukiah's offer of 1,400 minutes yearly of this service denied Parents the opportunity to meaningfully participate in the development of Student's IEP, and denied Student a FAPE on that basis. Additionally, the failure to clearly describe the duration and frequency of the individual service was a FAPE violation.

THE IEP WAS UNCLEAR BECAUSE IT FAILED TO DESCRIBE PARTICIPATION WITH NONDISABLED PEERS

Neither the February 2, 2022, nor the January 18, 2023 annual IEPs contained an explanation of the extent to which Student would participate with nondisabled children in the regular class and during the provision of related services. This failure exacerbated both annual IEPs' failure to clearly describe Student's services or how those services would be provided. The unclear description of Student's services and participation with nondisabled peers seriously denied Parents the opportunity to meaningfully participate in the development of Student's educational program. (20 U.S.C. § 1414(d)(1)(A)(i)(V); 34 C.F.R. § 300.320(a)(5); Ed. Code, § 56345, subd. (a)(5).)

THE MAY 3, 2023 ADDENDUM IEP'S SPEECH SERVICES WERE
CLEAR BUT THE INDIVIDUAL AND GROUP INSTRUCTION
REMAINED UNCLEAR AND WAS NOT IMPLEMENTED

The May 3, 2023 IEP addendum offered Student the same individual and group instruction services as in the February 2022 and January 2023 IEPs. This offer therefore denied Student a FAPE for the same reasons discussed for those IEPs.

The addendum IEP modified the speech and language service offer to 240 minutes monthly, individual and group. The service comments describe the service as being delivered in a combination of individual and group therapy, 60 minutes weekly, 30 minutes individual and 30 minutes group, by teletherapy. The addendum IEP clearly described the speech and language services so the duration and frequency of the weekly service, along with the amount of individual services, were understandable to Parents.

Ukiah failed to implement the individual and group instruction during the 2022-2023 school year. From the January 18, 2023 IEP team meeting, through the end of the 2022-2023 school year, Ukiah continued its misconception that individual and group instruction was a regular education placement, and not a special education service.

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THE 2023-2024 SCHOOL YEAR

UKIAH FAILED TO IMPLEMENT THE INDIVIDUAL AND GROUP INSTRUCTION

The January 18, 2023 IEP, as modified by the May 3, 2023 addendum, remained in effect as Student's operative IEP throughout the 2023-2024 school year, which encompassed Student's transitional kindergarten year. Consequently, Ukiah was obligated to provide the instructional services outlined in the IEP. However, Ukiah did not fulfill this obligation, opting for an even more unreasonable interpretation of the services by its special education staff.

During the 2023-2024 school year, Capristo held the position of a special education teacher at Ukiah and acted as Student's special education case manager. In this capacity, her role encompassed ensuring the implementation of Student's IEP. As a special education teacher, Capristo could deliver the individual and group instruction in Student's IEP. However, she did not and her testimony during the hearing concerning this matter, among other issues, was inconsistent and unreliable.

Capristo testified she mistakenly interpreted the IEP service of individual and group instruction, totaling 180 minutes per session, scheduled four times a week in both individual and group settings, as pertaining to Student's regular education placement in preschool rather than an IEP service. Consequently, she believed it was unfeasible to provide this service during the 2023-2024 school year since Student was no longer in preschool. However, as discussed herein, the individual and group instruction outlined in Student's IEP constituted a related service, not a placement,

which Ukiah was obligated to provide. Student's transition to transitional kindergarten did not absolve Ukiah of its responsibility to implement the services specified in Student's most recently agreed-upon IEP. Consequently, Ukiah materially failed to implement Student's instructional services without Parents' consent.

UKIAH UNILATERALLY CHANGED STUDENT'S INSTRUCTIONAL SERVICES AND PLACEMENT

Capristo further testified that, to implement the IEP as best she could, she independently changed the direct instruction service to an observation and consultation service. Along with Colvig, Capristo inexplicably believed that it would be against the law to directly instruct Student. Consequently, she changed Student's direct instructional service to a service of observing Student in his regular education classroom for 180 minutes daily, four times weekly, with consultation to the classroom teacher.

Capristo did not engage in direct teaching with Student or assist in achieving his IEP goals. Ukiah argued that because Capristo provided 180 minutes of observation four times weekly, in the regular education transitional kindergarten classroom, and consultation with Butler, the classroom teacher, regarding Student's needs and goals, it adequately implemented Student's IEP. However, this change to Student's IEP was unlawfully implemented without Parents' knowledge or consent. Ukiah's failure to obtain Parents' consent to a material change to Student's IEP was a violation of the IDEA.

Capristo and Colvig's testimony presented numerous problems. First, their interpretation of the individual and group instruction outlined in Student's IEPs as a service requiring observation and consultation, without any direct instruction, was unreasonable. Second, Capristo did not implement the modified observation and consultation service as she claimed.

Initially, Capristo testified that she provided the observation and consultation service in Butler's classroom, from the start of the school year, August 21, 2023, through the disputed period ending December 1, 2023. However, notes from the October 3, 2023 IEP team meeting contradicted this, revealing that Capristo had not observed Student in Butler's classroom, or consulted with Butler, through the date of that IEP.

When confronted with this evidence, Capristo altered her testimony, stating that she commenced observing Student and consulting with Butler concerning Student's needs and IEP goals, to aid Butler in implementing those goals, immediately following the October 3, 2023 meeting. However, this testimony was contradicted by Butler, who convincingly testified that Capristo had not observed Student in his classroom or consulted with him in any manner from the start of the 2023-2024 school year, or any time during the time frame in dispute, December 1, 2023.

Butler also refuted Capristo's claim that he implemented Student's IEP goals or provided IEP services. As a regular education teacher, Butler lacked the training and experience to implement IEP goals or services, and it was not his responsibility to do so. Despite being a conscientious regular education teacher, Butler was not directly familiar with Student's IEPs and did not implement any goals or services specified in them.

Butler's testimony was persuasive and supported by IEP meeting notes and special education service logs. However, Capristo's testimony was inconsistent and frequently impeached by school records. Consequently, a preponderance of the evidence showed that Capristo made up an IEP service that did not exist, observation and consultation, and then lied to Parents and OAH about providing that service to Student.

Moreover, evidence presented at hearing exposed Ukiah made other changes to Student's IEP without Parents' consent. Special education service logs and testimony from Colvig and Capristo revealed Ukiah pulled Student out of his regular education classroom and placed him in Capristo's moderate to severe special day class, without Parent's consent, during fall 2023. Capristo's special day class was a special education class designed for students with moderate to severe disabilities and did not include typically developing students. Ukiah failed to request or obtain parental consent for this change in Student's IEP.

Upon discovering this, Parents requested Ukiah to stop this change. This request was reiterated by Parents during the IEP team meeting on October 3, 2023, and Ukiah agreed to discontinue this placement change, as noted in the IEP document. However, the special education service logs indicated that Ukiah continued to withdraw Student from his regular education classroom and placed him into the moderate to severe special day class without Parents' knowledge or consent following the October 3, 2023 IEP team meeting.

Capristo's testimony regarding this issue was inconsistent and misleading as well. She initially testified that she only placed Student into her moderate to severe special day class during the first week of school, due to a miscommunication with Parents. She could not describe what the miscommunication was or when it took place, nor was there any record of this miscommunication.

Ukiah's attorneys repeated this misrepresentation in Ukiah's complaint, stating Ukiah inadvertently provided Student this pull-out service for one week, for 30 minutes per day, due to a miscommunication with Parents.

Contrary to statements by Capristo and Ukiah's attorneys, Ukiah's special education service logs show Ukiah placed Student into the moderate to severe special education classroom for pull-out instruction 14 times between September 13, 2023, and October 17, 2023. Three sessions were one hour each, eight sessions were one and a half hours, and three sessions were three hours each. Furthermore, there was no evidence presented to support this placement change occurred as the result of a miscommunication with Parents. These misrepresentations by an essential witness and Ukiah's attorneys were not well taken by OAH and severely undermined the credibility of Ukiah and its attorneys.

FAILURE TO MATERIALLY IMPLEMENT SPEECH AND LANGUAGE SERVICES

Additionally, testimony from Colvig and Ukiah's special education service logs showed Ukiah's failure to consistently deliver Student's language services as outlined in his IEP. Ukiah frequently missed providing Student with speech and language therapy sessions. Specifically, Ukiah did not provide approximately 340 minutes of individual

speech and language services from September 30, 2022, to January 18, 2023, and 570 minutes of individual sessions from January 18, 2023, to June 8, 2023. Given that the February 2, 2022, and January 18, 2023 IEPs only offered Student 900 minutes of speech and language per year, missing this level of services was material.

In sum, Ukiah's failure to implement Student's speech and language and individual and group instruction services was material and denied Student a FAPE. (*Van Duyn, supra*, at p. 822.) Ukiah's unilateral changes to Student's IEP constituted a procedural violation of the IDEA. Ukiah's decision to change Student's IEP instructional services and classroom placement without Parent's consent unquestionably and significantly impeded Parents' opportunity to participate in the decision-making process of Student's educational program, and denied Student a FAPE on that basis. (Ed. Code, § 56505, subd. (f)(2).) A preponderance of evidence showed that Ukiah denied Student a FAPE during the 2022-2023 and 2023-2024 school years, through December 1, 2023, by failing to implement Student's IEPs.

A preponderance of evidence also showed that Ukiah denied Student a FAPE during the 2022-2023 and 2023-2024 school years, through December 1, 2023, by failing to make a clear IEP offer. Finally, a preponderance of the evidence showed that Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by reducing or changing Student's IEP services without Parents' consent.

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ISSUES 2(d) AND 4(h): DID UKIAH DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE SOCIAL SKILLS SERVICES?

Student's Issue 2(d) alleges Ukiah denied him a FAPE during the 2021-2022 school year, beginning October 23, 2021, by failing to offer appropriate social skills services. Student's issue 4(h) alleges Ukiah denied him a FAPE during the 2023-2024 school year, through December 1, 2023, by failing to offer appropriate social skills services. Ukiah responds Student did not require social skills as a separate service to receive a FAPE.

Related services include social skills and other services as may be required to assist a child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a).)

Each IEP documented the necessity for related services to address the specific needs of Student for social skills development. The February 2, 2022 initial IEP highlighted Student's predominantly nonverbal communication, characterized by limited speech and unintelligible vocalizations. Subsequent annual IEP team meetings, including on January 18, 2023, and the addendum meetings on May 3 and 9, 2023, reiterated that Student lacked independent communication abilities with peers or adults in the school environment. Student relied on a speech generating device to convey simple one-to-two-word expressions.

During the 2021-2022 and 2022-2023 academic years, Student's classroom teacher, Hartley, observed that Student exhibited minimal initiative in starting conversations, possessed a vocabulary of fewer than 15 words, and faced significant social skills challenges. These delays hindered Student's interactions with both peers and adults, as well as his ability to fully engage with the classroom curriculum.

Ukiah's initial assessment of Student in fall 2021 revealed notable deficiencies in social skills development. Social-emotional evaluations indicated a substantial delay, equivalent to a 17-month-old, in Student's social and emotional functioning. He struggled to separate from Parents without distress, maintain eye contact during conversations, recognize common hazards, or participate meaningfully in social interactions with adults and peers.

During Student's February 2, 2022 IEP team meeting, Student's teacher similarly reported communication, and social-emotional delays being demonstrated by Student in the classroom. To address these delays, Ukiah offered one annual IEP goal to address the combined domains of social communication, receptive and expressive language. As found in issue 2(c), the goal was inappropriate and unmeasurable.

Moreover, the February 2, 2022 IEP failed to offer a service specifically for social skills, despite having a goal, in part, for social skills. The social communication goal was to be implemented by the speech and language therapist. However, the speech and language service was an individual service, and failed to describe how the IEP's social skills goal, which required turn taking with peers, could be implemented as an individual service. Consequently, Ukiah failed to offer Student appropriate social skills services as part of Student's February 2, 2022 IEP.

The January 18, 2023 IEP also failed to offer social skills services, despite Student's profound need in this area. Ukiah alternatively argued that social skills services were embedded in the speech and language services or the classroom placement. However, Student did not receive group speech and language services, as necessary to work on social skills development. Additionally, Student's unique needs surpassed the normal social skills development found in a regular education inclusion preschool.

The addendum IEPs dated May 3 and 9, 2023, June 9, 2023, August 17, 2023, September 19, 2023, October 3, 2023, and October 23, 2023, also failed to include social skills services for Student, despite his significant challenges in interacting with peers and adults and his demonstrated need for support in social skills development. Ukiah's omission of related services in this crucial area deprived Student of a FAPE. Although speech and language services were offered in these IEPs, they did not address the absence of social skills services. Student's social skills delays were profound and pervasive, warranting separate and specific attention in the form of related services tailored to Student's unique needs.

Based on the foregoing, a preponderance of the evidence showed Ukiah denied Student a FAPE during the 2021-2022 school year, beginning October 23, 2021, and the 2023-2024 school year, by failing to offer appropriate social skills services.

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ISSUES 3(g) AND 4(e): DID UKIAH DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE SPEECH AND LANGUAGE SERVICES?

Student's issue 3(g) and 4(e) complain Ukiah denied Student a FAPE during the 2022-2023 and 2023-2024 school years, through December 1, 2023, by failing to offer appropriate speech and language services. Ukiah responds it offered Student appropriate speech and language services.

Related services include speech and language services, and other services as may be required to assist a child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a).)

Student's communication delays were extensively documented, significantly affecting his interactions with both peers and adults and hindering his access to the classroom curriculum. These delays were severe, encompassing both expressive and receptive language domains.

Each IEP demonstrated that Student required related services to meet his unique needs in the areas of speech and language and social skills development. Student's February 2, 2022 initial IEP reported that Student was generally nonverbal, with speech limited to a few words and unintelligible vocalizations. Student's January 18, 2023 annual IEP, and addendum IEPs of May 3, and 9, 2023, reported that Student could not independently communicate with peers or adults at school. Student was dependent on a speech generating device to communicate in simple, one-to-two-word phrases.

Student's classroom teacher during the 2021-2022 and 2022-2023 school years, Hartley, reported that Student did not initiate conversations, had a limited vocabulary of less than 15 words, and had serious speech and language delays. Student's communication delays impacted his ability to communicate with peers and adults and impacted his ability access his classroom curriculum.

Ukiah's initial assessment of Student in fall 2021, identified significant speech and language deficits. The speech and language component of this assessment found Student was delayed in his ability to use receptive language, expressive language, and his overall ability to communicate in any manner.

Ukiah attempted to address Student's unique needs in speech and language in the February 2, 2022 IEP. IEP team members, including Student's teacher, reported severe speech and language delays being demonstrated by Student in the classroom. To address these delays, Ukiah offered one annual IEP goal to address the combined domains of social communication, receptive and expressive language. As found in issue 2(c), the goal was inappropriate and unmeasurable.

To meet this goal, the February 2, 2022 IEP offered speech and language services, 900 minutes yearly, provided individually and in a virtual platform. From this service description, it was not possible to tell how many sessions Student would receive weekly, or the length of each session. As found in issue 3(l), this service offer of 900 minutes yearly for this service denied Parents the opportunity to meaningfully participate in the development of Student's IEP. Consequently, Ukiah failed to offer Student appropriate speech and language services as part of the February 2, 2022 IEP.

Similar problems were present in Ukiah's next annual IEP offer on January 18, 2023. The January 18, 2023 IEP modified Student's speech and language service to 1,400 minutes yearly, individual and group in a separate classroom. As found in issue 4(l), Ukiah's proposal of 1,400 minutes yearly for this service deprived Parents of the opportunity to participate effectively in the development of Student's IEP, thus denying Student a FAPE.

Additionally, as discussed herein, the failure to clearly describe the duration and frequency of the individual service was a FAPE violation. Consequently, Ukiah failed to offer Student appropriate speech and language services as part of the January 18, 2023 IEP.

On May 3, 2023, the IEP team reconvened to discuss recent assessments. Dr. Brillhart's psychoeducational report indicated that Student exhibited significant developmental delays across various domains, linked to autism spectrum disorder. Additionally, Hardage-Vergeer's speech report highlighted below-average language skills, recommending an increase in speech therapy services to one hour per week.

Based on the speech and language and psychoeducational transition evaluations, the IEP team concluded that Student still qualified for special education, with speech or language impairment being added as a secondary eligibility. In accordance with the speech therapist's advice, the IEP team changed Student's speech and language services to an hour weekly.

This addendum IEP also modified the manner Ukiah offered the speech and language services to Student. Ukiah offered speech and language services for 240 minutes monthly, individual and group. The service comments described the service as being delivered in a combination of individual and group therapy, 60 minutes weekly,

30 minutes individual and 30 minutes group, by teletherapy. The addendum IEP clearly described the speech and language services so the duration and frequency of the weekly service, along with the amount of individual services were understandable to Parents.

Hardage-Vergeer, an experienced speech and language pathologist, provided credible testimony supporting the enhanced speech and language services outlined in the May 3, 2023 addendum IEP.

This IEP, which amended the January 18, 2023 IEP, served as the operative IEP for the remainder of the 2022-2023 school year and for the 2023-2024 school year until December 1, 2023. Student did not challenge Hardage-Vergeer's testimony or demonstrate the inappropriateness of the speech and language services offer following the May 3, 2023 IEP addendum.

A preponderance of the evidence showed Ukiah denied Student a FAPE during the 2022-2023 school year, through the May 3, 2023 addendum IEP, by failing to offer appropriate speech and language services. However, Student failed to show by a preponderance of the evidence that Ukiah denied him a FAPE during the 2023-2024 school year, through December 1, 2023, by failing to offer appropriate speech and language services.

ISSUES 3(h), 4(b), AND 4(f): DID UKIAH DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE BEHAVIOR SERVICES AND CONDUCT A SUFFICIENT FUNCTIONAL BEHAVIOR ASSESSMENT?

Student's issue 3(h) complains that Ukiah denied Student a FAPE during the 2022-2023 school year, by failing to provide appropriate behavior services. Student's

issue 4(b) claims Ukiah denied him a FAPE during the 2023-2024 school year, by failing to conduct a sufficient functional behavior assessment. Student's issue 4(f) complains Ukiah denied Student a FAPE during the 2023-2024 school year, by failing to offer appropriate behavior services. Ukiah responds that Student did not require behavior services in light of his circumstances.

In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, strategies, including positive behavioral interventions, strategies, supports and services to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).)

The IDEA requires a school district to assess a student in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4). Once a school district is on notice that a child has displayed symptoms of a disability, the district must assess the child to determine the child's educational needs. (*Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1118–20 (9th Cir. 2016).)

Ukiah does not dispute that it did not offer Student behavior services during the time frame in dispute or assess Student for behavior until September 2023.

Student had a well-documented history of behavior problems that impacted his ability to access his educational program. Student demonstrated pervasive off-task behavior, inattention, sensory seeking and stereotypical autistic behavior like self-stimming, and separation anxiety.

Ukiah's witnesses Colvig, school psychologist Sarah Walker, and Student's classroom teachers, disclosed that Student required near constant adult assistance and frequent verbal and physical redirection to attend class or complete any task. These

same witnesses reported that it was normal for Student to cry for five minutes and require 30 minutes daily to calm down after separating from his Parent each morning. It was necessary for a teacher or other adult to sit next to Student during class each day, to provide intensive redirection and physical prompting for Student to participate in classroom activities. Student also demonstrated protest behavior during class, like dropping to the floor or calling for a parent. On one occasion, Student seriously injured his head as a result of throwing himself to the ground.

Given these behaviors, Ukiah was on notice that Student displayed symptoms that warranted a behavior assessment to determine Student's behavioral and educational needs. However, Ukiah did not assess Student for behavior until fall 2023, following the start of the 2023-2024 school year. Ukiah therefore made its FAPE offer for the 2023-2024 school year without the benefit of an assessment in an identified area of deficit, behavior, and denied Student a FAPE on that basis.

Despite evidence of behavior problems that impaired Student's ability to benefit from placement in his regular education classroom, Ukiah did not conduct a functional behavior assessment of Student until mid-September 2023. When it did assess, it failed to do so sufficiently.

Ukiah's behavior assessment was conducted by school psychologist Walker, with the report dated September 15, 2023, entitled Functional Behavior Assessment. However, Walker's report contained deficiencies, including an incorrect birthdate for Student, and a lack of standardized testing, rating scales, or formalized assessments. A local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. (20 U.S.C. § 1414(b)(2)(A)). No single measure or assessment shall be the sole criterion for

determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2) ; Ed. Code, § 56320, subd. (e).) Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304 (c)(6).) The local educational agency must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3); Ed. Code, § 56320, subds. (e) & (f).) Assessments must be conducted by individuals who are both "knowledgeable of [the student's] disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (20 U.S.C. § 1414(b)(3)(A)(iv) ; Ed. Code, §§ 56320, subd. (g), 56322.)

Despite Student having documented behavior issues such as persistent off-task behavior, inattention, sensory-seeking, stereotypical autistic behavior like self-stimming, and separation anxiety, Walker's assessment only addressed two behaviors: "whining for mom" and "not eating." No additional behavioral data was collected.

Walker concluded that it was premature to recommend a behavior plan or services for Student, attributing the behaviors to the beginning of the school year and suggesting it was typical for students of similar ages to have difficulty adjusting to new school placements. Consequently, no further testing or action regarding Student's behaviors was recommended in Ukiah's behavior assessment. Based upon this assessment, Ukiah did not offer Student any behavior services. Walker testified in support of her assessment and Ukiah's decision to not offer Student behavior services.

However, her testimony that Student did not require an aide or behavior services was contradicted by overwhelming evidence, including teachers' testimony that Student required near constant adult support in the classroom.

Walker's testimony was also less persuasive than that of Student's expert witness, Raul Tejeda, who testified Student required behavior services, including an aide, to receive a FAPE. Tejeda was a licensed educational psychologist with experience conducting psychoeducational assessments. Tejeda comprehensively assessed Student over six days in fall 2023, and winter 2024. Tejeda was a careful examiner and provided credible testimony during the hearing.

Tejeda's assessment included a records review, interviews with teachers and Parent, observations at school and home, and six standardized assessments, including three for behavior. Student was five years, eight months old, and in transitional kindergarten at the time of the testing. Academic, cognitive, social-emotional and behavior testing demonstrated that Student was seriously delayed, at an overall one year, seven-month age ability level. Student exhibited a significant need for intensive individualized support due to delayed academic, adaptive, behavioral, social-emotional, and cognitive functioning. Specifically, Tejeda recommended that Student be provided individual support at school in the form of a registered behavior technician or similarly trained specialist. Tejeda also recommended Student receive an intensive behavior therapy program, applied behavior analysis, in light of Student's young age, autism diagnosis and characteristics, and unique needs.

Tejeda's testimony during the hearing was deliberate and thoughtful. He persuasively explained that Student required direct behavior intervention services at school by trained and knowledgeable therapists. Tejeda's recommendations aligned

with a majority of the evidence presented, and significant weight was given to his testimony. Student's struggles with inattention, off-task behavior, and frequent need for verbal and physical redirection impaired his ability to access his educational program. Consequently, Ukiah should have conducted an appropriate behavior assessment and offered behavior services. Tejada's testimony and assessment report highlighted Ukiah's failure to sufficiently assess Student as part of its functional behavior assessment. Tejada's testimony, supported by a preponderance of evidence, also credibly demonstrated that Ukiah denied Student a FAPE by failing to offer behavior services.

Student proved by a preponderance of the evidence that Ukiah denied him a FAPE during the 2022-2023, and 2023-2024 school years, through December 1, 2023, by failing to provide appropriate behavior services. Student also proved by a preponderance of the evidence that Ukiah denied him a FAPE during the 2023-2024 school year, by failing to conduct a sufficient functional behavior assessment.

ISSUES 3(m) AND 4(m); DID UKIAH DENY STUDENT A FAPE BY FAILING TO OFFER OR IMPLEMENT TRANSPORTATION SERVICES?

Student's issue 3(m) alleges Ukiah denied him a FAPE during the 2022-2023 school year by failing to offer or implement transportation services. Student's issue 4(m) alleges Ukiah denied him a FAPE during the 2023-2024 school year, through December 1, 2023, by failing to offer or implement transportation services. Ukiah responds it offered Student transportation services, but Parent declined the offer.

Transportation falls within the definition of a related service when required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

Student generally argues that the nature of his disability warranted transportation as a related service in his IEPs. However, Student attended regular education classes at his school of residence, approximately four miles from Student's home. Student provided scant evidence during the hearing to support this issue.

Moreover, Ukiah offered Student transportation as a related service during the February 2, 2022, and January 18, 2023 annual IEP team meetings, and Parents declined this offer. Parents preferred to transport Student the short distance to school and did not desire special education transportation. Ukiah did not believe transportation was necessary to provide Student a FAPE, and therefore agreed to Parents' preference to self-transport Student. During the hearing, Student failed to show how this acquiescence denied Student a FAPE.

Student failed to prove by a preponderance of the evidence that Ukiah denied him a FAPE during the 2022-2023 and 2023-2024 school years, through December 1, 2023, by failing to offer or implement transportation services.

ISSUES 3(a) AND 3(b): DID UKIAH DENY STUDENT A FAPE BY FAILING TO CONDUCT APPROPRIATE PSYCHOEDUCATIONAL AND SPEECH AND LANGUAGE ASSESSMENTS?

Student's issue 3(a) asserts that Ukiah denied him a FAPE during the 2022-2023 school year by failing to conduct a sufficient psychoeducational assessment. Student's issue 3(b) complains Ukiah denied him a FAPE during the 2022-2023 school year by

failing to conduct a sufficient speech and language assessment. Student's challenges are confined to Ukiah's psychoeducational assessment dated April 16, 2023, as well as Ukiah's speech and language assessment of the same date. Ukiah responds that these assessments were appropriately conducted.

In addition to the legal requirements for assessments cited in issue 4(b), legally compliant assessments are conducted by qualified assessors who select valid, reliable assessment instruments, and other means of evaluation, that avoid discrimination on the basis of sex, race, or culture. The assessments must be administered according to the assessment producer's instructions, in a language and form most likely to yield accurate results regarding the student's academic, developmental and functional abilities. (20 U.S.C. § 1414(b)(3)(A); Ed. Code, § 56320, subds. (a) and (b)(3).)

The April 16, 2023 psychoeducational assessment and speech and language assessment were combined in one report, entitled Psycho-Educational Report. Ukiah selected Dr. Brillhart to conduct the psychoeducational assessment, and speech and language pathologist Hardage-Vergeer to conduct the speech and language assessment. Teacher Hartley assisted Dr. Brillhart with the academic portion of the psychoeducational assessment. Additionally, a school nurse conducted a health screening as part of the report.

THE PSYCHOEDUCATIONAL ASSESSMENT

There were many problems with Ukiah's April 16, 2023 psychoeducational assessment. While a desired area of testing was academics, the assessment failed to include any direct academic testing. Instead, Ukiah relied on a single developmental assessment to assess Student's academic skills. The developmental assessment

measured Student's cognitive and social-emotional domains. However, Ukiah failed to directly assess Student's academic abilities in reading, writing, or math. Although formal academic testing for children Student's age were available to Ukiah, the school district elected to not directly assess Student's academic skills. Overall, testing showed serious cognitive impairment, at the 0.5 percentile, meaning Student was more delayed than 99.5 percent of his typically developing peers, and at the third percentile for social-emotional functioning.

Dr. Brillhart's assessment was based on behavior and autism questionnaires provided to Parent and Student's teachers, without any direct interaction or testing of Student. His handling of these questionnaires was flawed, leading to incomplete or inaccurately filled forms, which violated testing protocols. A cursory review of the behavior and autism questionnaires provided by Student's teachers and Parent show the forms were incomplete or incorrectly written, in violation of the manufacturer's instructions and testing protocols.

For example, Parent's behavior rating scale failed to answer 45 questions. Three teacher forms, including an autism rating scale, a behavior inventory, and a developmental profile, failed to include necessary identifying information for the Student or teacher. The teacher's developmental profile was improperly written, with a line through or between responses, instead of responses being circled per the testing instructions, and left 18 questions unanswered.

Additionally, the report's recommendation for sensory tools lacked a proper basis as sensory processing testing was not included in the assessment.

Dr. Brillhart's testimony in support of the psychoeducational assessment was also deeply flawed. Dr. Brillhart was not a careful examiner or witness. He was not familiar with Student's IEPs, prior assessments, or identified areas of deficit.

Initially, Dr. Brillhart testified the questionnaires were properly completed and complied with testing protocols. However, when confronted with the incomplete and inaccurate responses, he changed his testimony, claiming he had swiftly obtained modified responses from the teachers. Yet, Dr. Brillhart failed to provide specifics on how, when, or from whom he acquired these modified responses, or why he failed to record that data in any manner. Dr. Brillhart struggled during his testimony, and both his psychoeducational assessment and his testimony lacked credibility.

In sum, evidence overwhelmingly showed that Ukiah's April 16, 2023 psychoeducational assessment was not sufficient because it failed to assess Student's academic skills and failed to follow testing protocols, resulting in unreliable information.

THE SPEECH AND LANGUAGE ASSESSMENT

Speech and language pathologist Hardage-Vergeer conducted the speech and language assessment as part of the April 16, 2023 psychoeducational assessment. Hardage-Vergeer was an experienced speech and language pathologist and was forthright during her testimony.

Hardage-Vergeer was familiar with Student, having provided him direct speech and language therapy during the 2021-2022 and 2022-2023 school years. As part of her assessment, she used standardized testing to assess Student's receptive and expressive language. She also informally assessed Student's voice, fluency, and oral motor skills.

Hardage-Vergeer attempted to assess Student's articulation skills, but could not do so because of Student's limited vocabulary, intelligibility, and unwillingness to speak out loud.

Overall, Student demonstrated below-average language skills. Student was reluctant to speak and was making slow progress. Based upon her findings, Hardage-Vergeer recommended that Student continue qualifying for speech and language services and to increase those services.

Student tried to discredit the speech and language assessment by pointing out it did not include articulation or pragmatic language testing. However, Hardage-Vergeer persuasively testified that she could not complete testing in those areas because of Student's inability to respond to requests in those areas, not because of an oversight by the examiner. Student failed to provide persuasive evidence that the April 16, 2023 speech and language assessment was inappropriate.

In sum, Hardage-Vergeer's April 16, 2023 speech and language assessment complied with testing protocols, assessed or attempted to assess Student's suspected areas of deficit, and used multiple testing procedures. She followed testing protocols, used multiple forms of testing, was not discriminatory, and performed testing in a manner likely to yield accurate results.

A preponderance of the evidence showed that Ukiah denied Student a FAPE during the 2022-2023 school year by failing to conduct a sufficient psychoeducational assessment. However, a preponderance of the evidence failed to show that Ukiah denied Student a FAPE during the 2022-2023 school year by failing to conduct a sufficient speech and language assessment.

ISSUES 3(e) AND 5(f): DID UKIAH DENY STUDENT A FAPE BY FAILING TO PROVIDE PROGRESS REPORTS FOR STUDENT'S GOALS?

Student's issue 3(e) complains Ukiah denied him a FAPE during the 2022-2023 school year, by failing to provide data or progress on previous goal completion. Student's issue 5(f) asserts Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process by failing to provide timely IEP progress reports. Ukiah responds it timely provided Parents progress reports for Student's goal.

Parental participation in the development of an IEP is essential to the IDEA. 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(b).)

The IEP must describe how the child's progress toward meeting the annual goals will be measured, and when periodic reports in the progress the child is making towards the annual goals will be provided. (34 C.F.R. § 300.320(a)(3)(ii).)

Ukiah argues it met the above requirements by providing Parents goal progress reports twice during the 2022-2023 school year. However, there was no evidence of these progress reports submitted during the hearing. In its closing brief, Ukiah attempted to support this contention by citing to evidence. However, none of the evidence cited supported this contention.

Ukiah also argues it provided progress reporting on Student's goals to Parents during the IEP team meetings. The February 2022, and January 2023 annual IEP team meeting notes reflected there was some discussion regarding progress on Student's goals during the annual IEP team meetings. However, as discussed in issues 2(c), 3(f),

and 4(d) herein, Student's IEPs failed to describe how Student's progress toward meeting the annual goals would be measured, and when periodic reports on the progress Student was making towards the annual goals would be provided. Given these deficiencies, it was not possible for Ukiah to describe with fidelity Student's progress towards his goals during the IEP team meetings.

Ukiah's failure to comply with the IDEA's goal progress reporting denied Parents the ability to understand the nature of Student's disability and the appropriateness of the educational program offered in his IEPs. This seriously prevented Parents from meaningfully participating in the development of Student's educational program, and denied Student a FAPE on that basis.

A preponderance of the evidence showed that Ukiah denied Student a FAPE during the 2022-2023 school year, by failing to provide data or progress on previous goal completion. A preponderance of evidence showed that Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process by failing to provide timely IEP progress reports.

ISSUE 4(j): DID UKIAH DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION?

Students' issue 4(j) complains that Ukiah denied Student a FAPE during the 2023- 2024 school year, through December 1, 2023, by failing to offer appropriate specialized academic instruction. Ukiah responds it offered Student appropriate specialized academic instruction during that time.

An early education program for individuals with exceptional needs between the ages of three and five, inclusive, shall include specially designed services to meet the unique needs of preschool children and their families. (Ed. Code §56441.2.) Related services include specialized academic instruction and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP. (34 C.F.R. § 300.323(a).)

In light of Student's profound academic delays, Ukiah was obligated to provide him specially designed academic services while in preschool and during transitional kindergarten. (Ed. Code, § 56441.2.) Ukiah attempted to meet this obligation by offering instructional services in Student's IEPs.

The January 18, 2023 annual IEP offered Student individual and group instruction, 180 minutes, four times weekly in an individual and group setting, beginning January 19, 2023, through January 18, 2024, well into the 2023-2024 school year. As already found in issues 3(l) and 4(l) herein, the IEP failed to describe which part of this service would be provided individually, and which part would be provided in a group. During the hearing, none of Ukiah's witnesses, including Colvig, Capristo, Butler, or Hartley understood this service offer. None could describe the duration and frequency of the individual service or the group service, what the service was, or who was responsible for implementing the service. As found herein, pursuant to *Los Angeles*, Ukiah's offer of services as described in the January 18, 2023 IEP denied Student a FAPE.

Following the January 18, 2023 annual IEP, Ukiah held addendum IEP team meetings on May 3, 2023, May 9, 2023, and June 9, 2023. Neither of these addendum IEPs modified the instructional service offer.

Ukiah held another addendum IEP team meeting for Student on August 17, 2023, one business day prior to the start of the 2023-2024 school year. This addendum IEP modified the instructional services offer to specialized academic instruction, 1,830 minutes weekly, in a group within the regular education classroom. IEP comments described the service minutes as 390 minutes daily, Monday, Tuesday, Thursday, and Friday, and 270 minutes on Wednesdays. On its face, Ukiah offered appropriate specialized academic instruction services for Student.

However, evidence presented at hearing, including Parent's testimony and a recording of the August 17, 2023 addendum IEP team meeting, and other IEP team meetings, revealed neither the specialized academic instruction service offer, nor Ukiah's desire to modify the instructional services from individual and group instruction to group specialized academic instruction, were discussed with Parents during an IEP team meeting, or ever. There was also no evidence the specialized academic instruction services, or the August 17, 2023 addendum IEP document, were offered to Parents on August 17, 2023.

Rather, evidence showed Ukiah unilaterally formulated the service offer and presented it to Parents for the first time in a prior written notice dated September 6, 2023, four weeks after the start of the 2023-2024 school year. During the hearing, Colvig and Capristo attempted to justify changing Student's services after the school year began as necessary to comply with the least restrictive environment requirement of the IDEA. Ukiah's witnesses erroneously believed a student's IEP had to be modified

after the first 30 days of school or it could be too restrictive for a student. This belief was undermined by the legal requirement that a school district must have an IEP already in place at the beginning of each school year for each child with a disability within its jurisdiction. (34 C.F.R. § 300.323(a).)

Ukiah also overlooks that it cannot unilaterally formulate an IEP offer, including for special education and related services, without the participation of Parents. Parents must have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child. (20 U.S.C. § 1415(b)(1).) Ukiah's formulation of the August 17, 2023 addendum IEP, without meaningful Parent participation invalidated the IEP offer for specialized academic instruction. Student was denied a FAPE by Ukiah's failure to ensure Parents meaningful participation in the development of Student's educational program and by denying him a necessary service.

On September 19, 2023, Ukiah held an addendum IEP team meeting to review the results of an occupational therapy assessment. Ukiah did not discuss Student's specialized academic instruction during this meeting.

On October 3, 2023, Ukiah held another addendum IEP team meeting, during which it reviewed a functional behavior assessment and a special circumstance instructional assistant assessment. The IEP team did not discuss Student's specialized academic instruction during this meeting. Following this IEP team meeting, Ukiah unilaterally proposed to reduce Student's specialized academic instruction to 30

minutes daily, pushed into the regular education classroom. Given Student's significant academic deficits, a reduction in services was not warranted. It was unreasonable to significantly reduce Student's specialized academic instruction, especially without the benefit of a recent psychoeducational or academic assessment. Ukiah failed to provide a rationale to Parents during this meeting to support a decrease in specialized academic instruction or to provide any persuasive evidence during the hearing to support reducing Student's services.

Furthermore, Ukiah did not alter this service during the October 23, 2023 addendum IEP team meeting.

Consequently, evidence demonstrated that Ukiah failed to offer Student appropriate specialized academic instruction in any IEPs during the time frame in dispute.

Student proved by a preponderance of the evidence that Ukiah denied him a FAPE during the 2023-2024 school year, through December 1, 2023, by failing to offer appropriate specialized academic instruction.

ISSUE 5(a): DID UKIAH DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT'S RECORDS?

Student complains he was denied a FAPE by Ukiah's failure to provide Student's complete school records within five days of Parents' multiple requests. Ukiah responds that it timely provided Parents the school records.

Pursuant to Education Code section 56043, subdivision (n),

“Parent or guardian shall have the right and opportunity to examine all school records of the child and to receive complete copies within five business days after a request is made by Parent or guardian, either orally or in writing, and before any meeting regarding an IEP of his or her child or any hearing or resolution session”

On June 21, 2023, Parents, through their attorney, sent Ukiah a written request for Student’s complete educational records. Ukiah then had five days to comply with this request and provide Student’s educational records to Parents. Ukiah failed to meet the five-day requirement.

By email on July 11, 2023, Ukiah, through its attorney, confirmed it had received Parents’ school records request, apologized for the delayed response, and promised to immediately send Parents the school records. Yet, Ukiah failed to produce the records for another six weeks, until August 25, 2023. Consequently, Parents and Student’s attorney did not have the benefit of timely reviewing Student’s educational file prior to the start of the 2023-2024 school year, or before the August 17, 2023 addendum IEP team meeting. Ukiah’s failure to timely provide Student’s school records seriously denied Parents the ability to meaningfully participate in the development of Student’s educational program and denied him a FAPE on that basis.

Student showed by a preponderance of the evidence that Ukiah denied him a FAPE by failing to provide Student’s complete school records within five days of Parents’ request.

ISSUE 5(b): DID UKIAH DENY STUDENT A FAPE BY FAILING TO PROVIDE PARENTS' PRIOR WRITTEN NOTICE?

Student asserts that Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by failing to provide Parents' prior written notice following Parents' requests for additional IEP services during IEP team meetings held in May, June, August, September, and October 2023. Ukiah responds it timely provided Student prior written notices.

Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of FAPE, the school district must provide written notice of its determination. (34 C.F.R. § 300.503.) The notice must contain:

- a description of the action refused by the agency;
- an explanation for the refusal, along with a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the refusal;
- a statement that the parents of a disabled child are entitled to procedural safeguards, with the means by which the parents can obtain a copy of those procedural safeguards;
- sources of assistance for parents to contact;
- a description of other options that the IEP team considered, with the reasons those options were rejected; and
- a description of the factors relevant to the agency's refusal. (20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b)(2006); Ed. Code, § 56500.4, subd. (b).)

Ukiah sent a prior written notice to Parents on May 24, 2024, in response to their verbal requests on May 3, 2023, and May 9, 2023, for a one-on-one paraprofessional support aide. The prior written notice indicated Ukiah's decision to decline Parents' request for a one-on-one aide but committed to conducting a special circumstances instructional assistant assessment. Additionally, the notice acknowledged Parents' requests for an occupational therapy assessment and a functional behavioral assessment, agreeing to provide these assessments as requested.

On June 28, 2023, Ukiah sent Parents a prior written notice to address Parents' request for an independent educational evaluation in speech and language, funded by Ukiah. Ukiah agreed to Parents' request and the prior written notice carefully explained the basis for that decision.

On September 7, 2023, Ukiah provided Parents with a prior written notice detailing its decision to not accommodate Parents' request for in-person speech services. Additionally, the notice acknowledged and approved Parents' request for a psychoeducational independent educational evaluation.

On October 5, 2023, Ukiah sent Parents a prior written notice, outlining its FAPE offer, which included new goals. The prior written notice also described Ukiah's decision to implement the January 18, 2023 IEP, because of Parents' lack of consent to subsequent IEP offers. While a prior written notice is not a substitute for an IEP team meeting with parental participation, the notice itself was not defective.

On October 6, 2023, Ukiah sent another prior written notice, acknowledging that it failed to implement some of Student's speech and language services and proposing a plan for Student to make up the missed services.

Each of these documents provided Parents prior written notice of its decision to propose a change to Student IEP or an assessment for Student, or its decision to refuse a proposed change to Student's IEP or request for assessment. Ukiah's prior written notices were carefully crafted and each included

- a clear description of the action proposed by the school district,
- an explanation of Ukiah's proposal or denial,
- described each evaluation procedure, assessment, record, or report that Ukiah used as a basis of the proposed action,
- included a statement of Parents' protections and procedural safeguards under the IDEA,
- provided sources for Parents to contact to obtain assistance in understanding IDEA provisions,
- described other options consider by the IEP team and why those options were rejected, and
- described any other factors relevant to the proposal or refusal.

Each of Ukiah's prior written notices were easy to understand and met procedural guidelines for a prior written notice.

Student primarily complains that Ukiah failed to answer Parents' questions regarding Student's inability to communicate, sensory dysregulation, and goal baselines and progress. There is validity to Students concerns. However, these concerns show that Ukiah failed to cogently respond to Parents' questions during IEP team meetings, not that Ukiah failed to send Parents a prior written notice as required when it proposed or refused to initiate or change the identification, evaluation, or educational placement of Student or the provision of FAPE.

Consequently, Ukiah met its obligation to provide Parents prior written notices as necessary to comply with the IDEA.

Student failed to show by a preponderance of the evidence that Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by failing to provide Parents' prior written notice following Parents' requests for additional IEP services during IEP team meetings held in May, June, August, September, and October 2023.

ISSUES 5(c) AND 5(g): DID UKIAH DENY STUDENT A FAPE BY FAILING TO RESPOND TO PARENTS' QUESTIONS DURING IEP TEAM MEETINGS AND BY FAILING TO HAVE ESSENTIAL MEMBERS AT IEP TEAM MEETINGS?

Student's issue 5(c) complains Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by failing to provide clear responses to Parents' questions during IEP team meetings. Student's issue 5(g) complains Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by failing to have essential IEP team members attend IEP team meetings during the 2023-2024 school year. Ukiah responds that it met all procedural requirements for IEP team meetings.

Unless excused in writing by the parent, the 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 the regular education environment;
- a special education teacher;

- a representative of the local educational agency who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about available resources;
- someone who can interpret the instructional implications of assessment results; and
- at the discretion of the parent or local educational agency, other individuals who have knowledge or special expertise regarding the child. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5.)

Pursuant to Student's closing brief, Student's issue 5(c) is limited to the October 3, and 23, 2023 addendum IEP team meetings, and issue 5(g) pertains to addendum IEP team meetings held on May 3, 2023, August 17, 2023, October 3, 2023, and October 23, 2023.

The May 3, 2023 IEP team meeting was held to transition Student from preschool to placement in transitional kindergarten for the upcoming 2023-2024 school year, and to discuss a recent speech and language assessment. Parents attended this IEP team meeting, along with

- Hartley, who cotaught Student's regular education inclusion preschool class,
- special education coordinator Melissa Smilgys,
- speech and language therapist Hardage-Vergeer,
- a school principal,

- a Spanish language interpreter,
- a school counselor, and
- outside service providers.

Student specifically complains that a representative from Oak Manor, the school Student would be transitioning to, was not present.

Ukiah's failure to have a representative from Oak Manor or a regular education teacher present at the May 3, 2023 transition IEP team meeting was a procedural violation. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5.) However, a procedural violation only denies Student a FAPE if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision-making process; or
3. caused a deprivation of educational benefits. (Ed. Code, § 56505(f)(2).)

Hartley's attendance at the addendum IEP team meeting helped to mitigate the lack of a representative from Oak Manor being present at this meeting. Hartley was experienced in regular education and special education, and had taught Student daily in his regular education inclusion preschool classroom. She was familiar with the regular education curriculum, Student's unique needs, and how those needs could be addressed in regular education and special education.

Furthermore, while there was not a representative from Oak Manor at this IEP team meeting, there were Ukiah administrators present who had a general knowledge of Ukiah's programs, including those at Oak Manor. Combined with Hartley's experience

and direct knowledge of Student's unique needs, the IEP team was able to address questions regarding Student's transition to kindergarten. Consequently, a preponderance of the evidence did not show that Ukiah significantly impeded the parent's opportunity to participate in the decision-making process by failing to have a representative from Oak Manor or regular education teacher present at the May 3, 2023 addendum IEP team meeting, or deny Student a FAPE.

Ukiah held an addendum IEP team meeting for Student on August 17, 2023. The purpose of the meeting was to modify Student's IEP for the 2023-2024 school year. Parents attended the August meeting, along with

- Ukiah administrators Colvig and Smilgys,
- special education teacher Capristo,
- school psychologist Walker,
- general education teacher Butler,
- an Oak Manor principal,
- a Spanish language interpreter,
- a special education local plan area director, and
- attorneys for Ukiah and Student.

Student specifically complains that Ukiah failed to have a speech and language therapist attend the August 17, 2023 addendum IEP team meeting. Therefore, Parents' questions regarding Student's speech services could not be cogently addressed during this IEP team meeting.

However, the speech and language services offered in the August 17, 2023 addendum IEP were the same as the speech and language services offered in the May 3, 2023 addendum IEP. Ukiah's speech and language pathologist Hardage-Vergeer

attended the May 3, 2023 IEP team meeting, reviewed her recent assessment, and recommended an increase in speech and language services for Student. The IEP team adopted Hardage-Vergeer's recommendations and increased Student's speech and language services. Those recently offered services were not readdressed during the August 2023 IEP team meeting or modified in the addendum IEP document. Consequently, it is unclear why a speech and language therapist was an essential member for the August 17, 2023 addendum IEP team meeting. Moreover, a preponderance of the evidence did not show that this oversight significantly impeded Parent's opportunity to participate in the decision-making process or otherwise denied Student a FAPE.

The October 3, 2023 addendum IEP team meeting was held to review two assessments recently conducted by Ukiah, a functional behavior assessment and a special circumstance instructional assistant assessment. Each of these assessments were conducted by school psychologist Sarah Walker, and dated September 15, 2023.

Walker attended the October 3, 2023 IEP team meeting, along with

- Parents,
- Ukiah's special education director Colvig,
- Ukiah's special education coordinator Melissa Smilgys,
- Student's regular education teacher Butler,
- speech and language pathologist Fine,
- a school principal,
- a Spanish language interpreter,
- a special education local planning area program specialist, and
- attorneys for Student and Ukiah.

While the IEP team included all essential members, Ukiah refused to answer Parents' questions regarding Student's educational program during this meeting. For example, Ukiah's IEP team members proposed to reduce Student specialized academic instruction. Ukiah's last offer for specialized academic instruction, just two months earlier, was for 1,830 minutes weekly, in a group within the regular education classroom, including 390 minutes of daily instructions, Monday, Tuesday, Thursday, and Friday, and 270 minutes on Wednesdays. However, the October 3, 2023 addendum IEP proposed to reduce Student's specialized academic instruction to 30 minutes daily, pushed into the regular education classroom. Given Student's profound academic delays, it did not make sense to significantly reduce his specialized academic instruction especially during a mid-year addendum IEP team meeting and without the benefit of a recent psychoeducational or academic assessment. Ukiah's failure to answer Parents' questions regarding Student's instruction significantly impeded Parents' opportunity to participate in the decision-making process and denied Student a FAPE.

Ukiah did not alter its service offer during the October 23, 2023 addendum IEP team meeting. Ukiah similarly failed to cogently respond to Parents' questions regarding the specialized academic instruction during this meeting and denied Student a FAPE based upon the same grounds as in the October 3, 2023 IEP.

A preponderance of the evidence showed that Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by failing to provide clear responses to Parents' questions during IEP team meetings. However, a preponderance of the evidence did not show that Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by failing to have essential IEP team members attend IEP team meetings during the 2023-2024 school year.

ISSUE 5(e): DID UKIAH DENY STUDENT A FAPE BY FAILING TO TIMELY HOLD AN IEP TEAM MEETING?

Student complains that Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by failing to hold an IEP team meeting within 30 days of Parents' request on October 24, 2023. Ukiah responds that it held various IEP team meetings throughout the school year and was therefore not required to hold an IEP meeting when requested by Parents.

A school district must convene an IEP meeting when a parent requests a meeting to develop, review, or revise the IEP. (Ed. Code, § 56343, subd. (c).) In California, the meeting must be held within 30 days from the date of receipt of the written request, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays. (Ed. Code, § 56343.5.)

On October 24, 2023, Student's attorney sent an email requesting Ukiah to convene an IEP team meeting within 30 days to address various concerns raised by the Parents. These concerns included inquiries about Ukiah's recent assessments, proposals to reduce Student's IEP services, Student's communication needs and progress in speech and language services, and newly proposed goals by Ukiah. According to Ukiah's school year calendar for 2023-2024, Ukiah was obligated to hold this meeting no later than November 30, 2023.

On November 16, 2023, Student's attorney sent a reminder email to Ukiah about Parents' request. The next day, November 17, 2023, Ukiah's attorney responded, stating that due to prior addendum IEP meetings and a resolution session, Ukiah would postpone addressing Parents' concerns until the upcoming annual IEP team meeting.

Ukiah planned to contact Parents later to schedule this annual meeting. Notably, Student's previous annual IEP team meetings were held on February 2, 2022, and January 18, 2023. If Ukiah planned to hold Student's annual IEP team meeting in this same time frame in 2024, it would have exceeded the 30-day requirement from the October 24, 2023 request.

Subsequently, on November 21, 2023, Student's attorney reached out again regarding Parents' request. On November 27, 2023, Ukiah's attorney incorrectly stated that the school district was only obligated to hold an annual meeting to review Student's IEP. Ukiah overlooked the requirement to convene an IEP team meeting within 30 days of a parent's request, in addition to the annual meeting obligation. On the same day, Student's attorney reiterated the request for Ukiah to comply with Parents' October 24, 2023 request.

Ukiah refused Parents' request, and Student's IEP team next convened during the annual meeting, on January 8, 2024. Ukiah argued that because it had already held IEP team meetings on October 3 and 23, 2023, and a resolution session on November 6, 2023, there was no need to comply with the Parents' request for another IEP team meeting. However, Ukiah's argument fails for several reasons.

First, Parents' request was not discretionary. The relevant law required the school district to convene an IEP team meeting within 30 days of Parents' written request, irrespective of Ukiah's subjective belief that prior concerns were addressed. (Ed. Code, § 56343.5.) Second, a resolution meeting does not suffice as an IEP team meeting, lacking required members and formal requirements. Last, prior addendum IEP

team meetings did not adequately address Parents' concerns, focusing primarily on specific assessments and lacking discussion on significant issues like proposed service reductions and communication needs. Therefore, Student's request for another IEP team meeting was justified. In summary, Ukiah was not at liberty to deny Parents' request, and by doing so, seriously impeded their participation in the decision-making process and denied Student a FAPE.

Student proved by a preponderance of the evidence that Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by failing to hold an IEP team meeting within 30 days of Parents' request on October 24, 2023.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1:

Ukiah failed to prove its October 3, 2023 IEP, offered Student a FAPE, in the least restrictive environment, such that Ukiah may implement the IEP without Parents' consent.

Student prevailed on Issue 1.

ISSUE 2 (a), (b), (c), AND (d):

Student proved Ukiah denied him a FAPE, from October 23, 2021, through the end of the 2021-2022 school year, by failing to (a) conduct an augmentative

and alternative communication assessment, (b) conduct an occupational therapy assessment; (c) offer appropriate and measurable IEP goals; and (d) offer appropriate social skills services.

Student prevailed on Issue 2 and all its subsections, (a), (b), (c), and (d).

ISSUE 3(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), AND (m):

Student proved Ukiah denied Student a FAPE during the 2022-2023 school year, by failing to

- a) conduct a sufficient psychoeducational assessment;
- c) conduct an augmentative and alternative communication assessment;
- d) conduct an occupational therapy assessment;
- e) provide data or progress on previous goal completion;
- f) offer appropriate and measurable IEP goals;
- g) offer appropriate speech and language services, in part, through May 3, 2023;
- h) offer appropriate behavior services;
- i) offer appropriate augmentative and alternative communication services;
- j) offer appropriate occupational therapy services;
- k) implement Student's IEP services; and
- l) make a clear offer of FAPE.

Student failed to prove Ukiah denied Student a FAPE during the 2022-2023 school year, by failing to (b) conduct a sufficient speech and language assessment; and (m) offer or implement transportation services.

Student prevailed on Issue 3, subsections (a), (c), (d), (e), (f), (h), (i), (j), (k), and (l). Student prevailed in part on issue 3, subsection (g). Ukiah prevailed on Issue 3, subsections (b) and (m).

ISSUE 4(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), AND (m):

Student proved Ukiah denied Student a FAPE during the 2023-2024 school year, through December 1, 2023, by failing to

- a) conduct a sufficient occupational therapy assessment;
- b) conduct a sufficient functional behavior assessment;
- c) conduct an augmentative and alternative communication assessment;
- d) offer appropriate and measurable IEP goals;
- e) offer appropriate behavior services;
- f) offer appropriate behavior services
- g) offer appropriate augmentative and alternative communication services;
- h) offer appropriate social skills services;
- i) offer appropriate occupational therapy services;
- j) offer appropriate specialized academic instruction;
- k) implement Student's IEP services; and
- l) make a clear FAPE offer.

Student failed to prove Ukiah denied Student a FAPE during the 2023-2024 school year, through December 1, 2023, by failing to (e) offer appropriate speech and language services; and (m) offer or implement transportation services.

Student prevailed on Issue 4, subsections (a), (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l). Ukiah prevailed on Issue 4, subsections (e) and (m).

ISSUE 5(a), (b), (c), (d), (e), (f), AND (g):

Student proved Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by failing to

- a. provide Student's complete school records within five days of Parents' multiple requests;
- c. provide clear responses to Parents' questions during IEP team meetings;
- d. reducing or changing Student's IEP services without Parents' consent;
- e. hold an IEP team meeting within 30 days of Parents' request on October 24, 2023; and (f)
- f. provide timely IEP progress reports.

Student failed to prove Ukiah denied Student a FAPE by preventing Parents from meaningfully participating in the IEP process, by failing to: (b) provide Parents' prior written notice following Parents' requests for additional IEP

services during IEP team meetings held in May, June, August, September, and October, 2023; and (g) have essential IEP team members attend IEP team meetings during the 2023-2024 school year.

Student prevailed on Issue 5, subsections (a), (c), (d), (e), and (f). Ukiah prevailed on Issue 5 subsections (b) and (g).

REMEDIES

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were proper under the IDEA and replaced services that the district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *School Comm. Of Burlington v. Dept. of Educ.* (1985) 471 U.S. 359, 369-371 [85 L.Ed.2d 385].)

In certain cases, appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy violations that may benefit other pupils. (*Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1034.)

The testimony and actions of Ukiah's special education director and case manager revealed fundamental misunderstandings of special education law. Ukiah's systemic misconceptions regarding special education and related services led to unclear offers in IEPs and a failure to deliver necessary services. Student, who had profound communication and academic deficits, would have greatly benefited from consistent speech and language services and direct, specialized academic instruction services, including during preschool.

During IEP team meetings, Ukiah repeatedly

- avoided answering relevant questions from Parents,
- developed service offers and goals outside of the IEP team meetings without parental input,
- frequently altered or withheld services without parental consent, and
- unlawfully denied Parents' request for an IEP team meeting to address concerns.

Additionally, Ukiah failed to adequately evaluate significant areas of suspected and identified deficits, and the IEPs failed to provide necessary supports and services.

The special education staff at Ukiah displayed a lack of familiarity with Student's school records, IEPs, or unique needs. Some special education administrators provided inconsistent or dishonest testimony despite being under oath. Instead of fulfilling its obligation to provide a FAPE to Student and maintaining candor with the ALJ, Ukiah chose to mislead Parents and the ALJ by misrepresenting the law and obscuring facts.

Given these circumstances, it is necessary and equitable to order Ukiah's special education directors and administrators undergo 40 hours of special education training to rectify their misconceptions and ensure compliance with special education laws and duties.

Evidence also established that direct compensatory remedies are warranted. A preponderance of the evidence demonstrated that Ukiah neglected to address Student's unique needs for augmentative and alternative communication. A preponderance of the evidence also showed that Ukiah materially failed to provide speech and language services, including 340 minutes of individual sessions from September 30, 2022, to January 18, 2023, and 570 minutes of individual sessions from January 18, 2023, to June 8, 2023. Ukiah also failed to provide any of the instructional services called for in Student's IEPs during the disputed time-period. Given Student's profound needs in communication, speech and language, and academics, Ukiah's failure to materially implement Student's IEPs deprived him of significant educational benefits.

Consequently, it is equitable to order the compensatory remedies requested by Student, including an

- augmentative and alternative communication assessment by a qualified provider of Parents' choosing,

- compensatory speech and language services of 34 hours, by a nonpublic agency selected by Parents, and
- compensatory specialized academic instruction of 243 hours, by a nonpublic agency selected by Parents.

Finally, a preponderance of evidence submitted at hearing demonstrated that Student had profound delays that fell under the purview of communication, occupational therapy, behavior, and academics, that were not sufficiently addressed by his IEPs. Based upon the evidence submitted at hearing, including credible testimony by Student's expert witness Tejeda, other equitable remedies shall include modifying Student's IEP to include, amongst other supports and services,

- augmentative and alternative communication services,
- occupational therapy services,
- a trained behavior aide, and
- increased specialized academic instruction, at the duration frequency, and modalities specified below.

ORDER

1. Within six months of this Order, Ukiah's special education directors, administrators, and case managers shall complete 40 hours of training related to IDEA compliance. This training shall not be provided by an Ukiah employee or by an employee of the attorneys' office that represented Ukiah during this hearing. Rather, it must be provided by an independent expert in state and federal special education laws, who shall be directed to read this Decision prior to conducting the training and shall tailor the training to the facts presented herein.

2. Ukiah shall fund an augmentative and alternative communication assessment by a qualified assessor selected by Parents. Ukiah shall fund this assessment within 30 days of Parents notifying Ukiah of the assessor.
3. Ukiah shall fund 34 hours of compensatory speech and language services by a nonpublic agency chosen by Parents. Ukiah shall fund this service within 30 days of Parents notifying Ukiah of the nonpublic agency they have selected to provide these services.
4. Ukiah shall fund 243 hours of compensatory specialized academic instruction by a nonpublic agency selected by Parents. Ukiah shall fund this service within 30 days of Parents notifying Ukiah of the nonpublic agency they have selected to provide these services.
5. Within 30 days of this Order, Ukiah shall hold an IEP team meeting for Student wherein it adds the following to Student's educational program:
 - a. Augmentative and alternative communication services, 30 minutes per month, individually, to Student, and two hours per year of consultation to Parents, by qualified Ukiah staff.
 - b. Occupational therapy services of two, 30-minute session per week, individually to Student and in a separate location outside of the classroom, and 30 minutes per month of consultation to Student's teachers, by qualified Ukiah staff.
 - c. An individual, trained behavior aide.

- d. Specialized academic instruction, 60 minutes per day, individually to Student and in a separate location outside of the classroom, for reading, writing, and math, by qualified Ukiah staff.

- 6. Student's other claims for relief are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearings