

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT, AND
MADERA UNIFIED SCHOOL DISTRICT.

CASE NO. 2024020498

CASE NO. 2024020121

DECISION

MAY 9, 2024

On February 2, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Madera Unified School District, called Madera, naming Parent on behalf of Student. On February 13, 2024, OAH received a due process hearing request from Parent on behalf of Student naming Madera. On February 20, 2024, OAH consolidated Madera's case with Student's case. Administrative Law Judge Sabrina Kong heard this matter by videoconference on April 3, 4, and 9, 2024.

Attorney Nicole Mirkazemi represented Madera. Madera's Director of Special Services Rebecca McHaney attended all hearing days on Madera's behalf. Parent represented Student and attended all hearing days on Student's behalf. OAH provided a Spanish interpreter who interpreted for Parent on all hearing days.

At the parties' request, the matter was continued to April 23, 2024, for written closing briefs. The record was closed, and the matter was submitted on April 23, 2024.

On the first day of hearing, the parties represented that Issue 4a in the March 26, 2024 Order Following Prehearing Conference by Videoconference, regarding whether Madera timely provided prior written notice in response to Parent's October 9, 2023 request for an independent psychoeducational evaluation, had been withdrawn at the prehearing conference and was not an issue at hearing. The ALJ renumbered the issues for clarity without changes in substance. (See *J.W. v. Fresno Unified School District* (9th Cir. 2010) 626 F.3d 431, 442-443, *Ford v. Long Beach Unified School District* (9th Cir. 2002) 291 F.3d 1086, 1090; and *M.C. v. Antelope Valley Union High School District* (9th Cir. 2017) 858 F.3d 1189, 1196.) The issues stated below are the only issues heard and decided in this matter, as agreed to by the parties at hearing.

A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

STUDENT'S ISSUES

1. Did Madera deny Student a FAPE during the 2022-2023 school year by failing to:
 - a. assess Student in speech and language; and
 - b. state in a September 1, 2022 IEP how Student's progress towards his goals would be measured, thereby depriving Parent of meaningful participation in the development of Student's IEP?

2. Did Madera deny Student a FAPE by failing to offer appropriate measurable goals in a September 1, 2022 IEP which prevented Student from working on his targeted areas of need and denied him educational benefit, specifically in:
 - a. mathematics;
 - b. written expression; and
 - c. reading?
3. Did Madera deny Student a FAPE during the 2023-2024 school year by failing to:
 - a. assess Student in speech and language; and
 - b. state in an August 25, 2023 IEP how Student's progress towards his goals would be measured, thereby depriving Parent of meaningful participation in development of Student's IEP?
4. Did Madera deny Student FAPE by failing to offer appropriate measurable goals in an August 25, 2023 IEP, which prevented Student from working on his targeted areas of need and denied him educational benefit, specifically in:
 - a. mathematics;
 - b. written expression; and
 - c. reading?
5. Did Madera deny Student a FAPE by failing to timely file a due process hearing request following Parent's October 9, 2023 request for an independent educational evaluation?

MADERA'S ISSUE

6. Was Madera's multidisciplinary psychoeducational evaluation completed on January 20, 2022, appropriate and comprehensive within the meaning of Education Code section 56329, subdivision (c), such that Parent is not entitled to an independent educational evaluation at public expense in psychoeducation?

JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501,

56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

In this consolidated case, Student had the burden of proof on Student's issues, and Madera had the burden of proof on its issue. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 13 years old and resided with Parents in Madera's geographic boundaries at all relevant times. Student attended sixth grade at Madera's Nishimoto Elementary School in the 2022-2023 school year. At Nishimoto, Madera placed Student in a special day class for the majority of the school day and went into a general education class for science and social studies. In the 2023-2024 school year and at the time of the hearing, Student attended seventh grade at Jack G. Desmond Middle School. Madera placed Student in general education inclusion classes and he received push-in specialized academic instruction for math, reading, and English. Push-in meant Student received the specialized academic instruction while in the general education class.

Student was eligible for special education under the category of other health impairment because of attention deficit hyperactivity disorder and nasolacrimal duct blockage, a condition preventing proper tear drainage, which impacted Student's ability to read, write, and participate in the general education curriculum.

ISSUE 6: WAS MADERA’S MULTIDISCIPLINARY PSYCHOEDUCATIONAL EVALUATION COMPLETED ON JANUARY 20, 2022, APPROPRIATE AND COMPREHENSIVE WITHIN THE MEANING OF EDUCATION CODE SECTION 56329, SUBDIVISION (C), SUCH THAT PARENT IS NOT ENTITLED TO AN INDEPENDENT EDUCATIONAL EVALUATION AT PUBLIC EXPENSE IN PSYCHOEDUCATION?

Madera contends its January 20, 2022 multidisciplinary psychoeducational evaluation was appropriate. Madera also contends it timely filed for a due process hearing on February 2, 2024, after Student requested an independent educational evaluation on October 9, 2023. Therefore, Madera contends Student was not entitled to an independent educational evaluation.

Student contends Madera should fund an independent educational evaluation because it did not timely file for due process after Parent’s request. Student further contends that Madera’s assessment was inappropriate because it failed to assess Student in all areas of suspected disability, specifically speech and language. Therefore, Student requests that Madera fund an independent educational evaluation.

MADERA UNNECESARILY DELAYED IN INITIATING A DUE PROCESS HEARING

The procedural safeguards of the IDEA provide that under certain conditions, a parent is entitled to obtain an independent evaluation of a child at public expense. (20 U.S.C. § 1415(b)(1).) An independent evaluation is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).)

A parent has the right to request an independent evaluation at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an independent evaluation at public expense, the school district must, without unnecessary delay, either initiate a due process hearing to show that its evaluation is appropriate, or provide the independent evaluation at public expense. (34 C.F.R. § 300.502(b)(4); Ed. Code, § 56329, subd. (c).)

The public agency may ask for the parent's reason why he or she objects to the public evaluation, but may not require an explanation, and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing. (34 C.F.R. § 300.502(b)(4).)

The term unnecessary delay as used in title 34 Code of Federal Regulations, part 300.502(b)(2), is not defined in the regulations. It permits a reasonably flexible, though normally brief, period of time that could accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an independent evaluation. (*Letter to Anonymous* (U.S. Dept. of Education, Office of Special Education Programs (OSEP), August 13, 2010).) Some delay in the provision of an independent evaluation is reasonable if the school district and the parents are engaging in active communications, negotiations, or other attempts to resolve the matter. (See *Horne v. Potomac Preparatory P.C.S.* (D.D.C. 2016) 209 F.Supp.3d 146, 153-155 (*Horne*).) The determination of unnecessary delay is a fact-specific inquiry. (*J.P. v. Ripon Unified School District* (E.D Cal., Apr. 15, 2009, No. 207CV02084MCEDAD) 2009 WL 1034993 (*Ripon*).) The facts of each case are therefore critical. (*Ibid*.)

For example, in *Ripon*, the court determined the school district's due process request filed more than two months after the request for an independent evaluation was timely, as the parties were communicating regarding the request for the evaluation in the interim and did not come to an impasse on the issue until less than three weeks before the school district's filing. (*Ripon*, 2009 WL 1034993, at p. 7-8.)

In contrast, in *Pajaro Valley Unified School District. v. J.S.* (N.D.Cal., Dec. 15, 2006, No. C 06-0380 PVT) 2006 WL 3734289), the school district did not file its due process complaint to defend its assessment until approximately 11 weeks after the student's request for an independent evaluation. The school district offered no explanation as to why it delayed for 11 weeks in filing its complaint, or why that delay was necessary. The court found the school district's unexplained and unnecessary delay in filing for a due process hearing waived its right to contest the student's request for an independent educational evaluation at public expense, and by itself warranted entry of judgment in favor of the student. (2006 WL 3734289, at p. 3.)

Here, Parent requested an independent educational evaluation on October 9, 2023, stating she disagreed with Madera's January 2022 evaluation. Parent also requested Madera provide the family's non-attorney advocate with Student's school records. Parent did not identify the assessment with which she disagreed in the October 9, 2023 request. However, Madera last evaluated Student between November 2021 and January 2022, as part of a three-year reevaluation which resulted in the January 20, 2022 multidisciplinary psychoeducational report.

Shortly after October 9, 2023, when Parent was at the school site, Rebecca McHaney, Madera's Director of Special Services, asked Parent to withdraw the independent educational evaluation request. Parent informed McHaney she was at the office to sign unrelated forms and declined to discuss the independent educational evaluation request.

On October 30, 2023, Madera denied the independent educational evaluation request in a prior written notice. The notice informed Parent Madera's January 20, 2022 multidisciplinary psychoeducational evaluation and report were appropriate. Additionally, Madera informed Parent it would file for due process to defend its assessment if Parent's request was not withdrawn by November 13, 2023.

Madera did not file for due process on November 13, 2023. Between November 13, 2023, and November 20, 2023, Parent's non-attorney advocate informed Madera's attorney that Parent would withdraw the independent educational evaluation request. During the same period, McHaney requested Parent withdraw the request in writing. Parent responded she was busy, but would do so. No further communications ensued between Madera and Parent, or any family representative, after November 20, 2023. Madera did not file its due process complaint with OAH until February 2, 2024.

The only explanation Madera offered for waiting until February 2, 2024, 15 weeks and five days after Parent's October 9, 2023 request, to file for due process, was it had a weeklong Thanksgiving break and a three-week winter break. Even accepting Madera's school breaks as justification for the due process filing delay, this only accounted for four weeks of a 15-week delay. Madera's situation was similar to that of the school district in *Pajaro*, where the school district waited 11 weeks after student's request for

an independent evaluation to file for due process, without an explanation for the delay, and the District Court determined the school district's due process filing was untimely. (See *Pajaro, supra*, 2006 WL 3734289.)

Madera's Thanksgiving break was from November 20 to November 24, 2023, after McHaney requested Parent withdraw the independent educational evaluation request. A short period after the return from Thanksgiving break to give Parent an opportunity to withdraw Parent's request for the independent educational evaluation would arguably have fallen under the category of necessary delay under *Ripon*, where the school district filed for due process within three weeks after discussions with parent reached an impasse. (See *Ripon, supra*, 2009 WL 1034993.)

Madera had no valid justification for waiting until February 2, 2024, to file its due process complaint. The last communication Madera had with Parent regarding the independent educational evaluation request was before the November 20, 2023 Thanksgiving break. Absent active good faith communications or negotiations to resolve the matter, the existence of school breaks for a fraction of the time passed was an unpersuasive explanation to justify the delay. (See *Horne, supra*, 209 F. Supp.3d at 155). By early December 2023, when Parent had not withdrawn the request for an independent educational evaluation, Madera should have filed its due process complaint. Madera's February 2, 2024 due process filing, four months after Student requested an independent educational evaluation and at least two months after it became clear Parent did not intend to withdraw the request, in the absence of further negotiations, constituted unnecessary delay. (*Id.*).

Therefore, Student was entitled to an independent educational evaluation at public expense, which will be discussed in the Remedies section.

Because Madera did not prove it timely filed for due process after denying Parent's request for an independent educational evaluation, the issue of whether Madera's January 20, 2022 multidisciplinary psychoeducational evaluation was appropriate, is moot and not analyzed in this Decision. Per *Pajaro*, an unexplained and unnecessary delay in filing for a due process hearing waives a school district's right to contest an independent educational evaluation request at public expense. By its unnecessary delay in filing for due process, Madera waived its right to a determination of the appropriateness of its assessment, and a decision in favor of Student on that issue is warranted, irrespective of the appropriateness of Madera's multidisciplinary psychoeducational evaluation. (See *Pajaro, supra*, 2006 WL 3734289.)

ISSUE 1a: DID MADERA DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO ASSESS STUDENT IN SPEECH AND LANGUAGE?

ISSUE 3a: DID MADERA DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO ASSESS STUDENT IN SPEECH AND LANGUAGE?

Student contends Madera should have assessed Student in speech and language in both the 2022-2023 and 2023-2024 school years. Student contends at hearing Madera should have assessed Student in speech and language when Madera conducted its three-year reevaluation, from November 2021 to January 2022, which resulted in the January 20, 2022 multidisciplinary psychoeducational evaluation.

Madera contends speech and language was not an area of suspected need; therefore, Student did not require assessment.

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); 34 C.F.R. §§ 300.320, 300.321, and 300.501; see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a).)

In general, a child eligible for special education must be provided access to specialized instruction and related services that are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201-204 [102 S.Ct. 3034]; *Endrew F. v. Douglas County School District RE-1* (2017) 580 U.S. 386, 403 [137 S.Ct. 988, 1000].)

Madera's three-year reevaluation of Student resulted in a January 20, 2022 report, during the 2021-2022 school year. Student could not challenge the sufficiency of Madera's three-year reevaluation because Student's claims predating February 13, 2022, was barred by the two-year statute of limitations. (20 U.S.C. § 1415(f)(3)(C) & (D); Ed. Code, § 56505, subd. (j).)

THE STATUTE OF LIMITATIONS BARS STUDENT'S CHALLENGE TO MADERA'S FAILURE TO ASSESS IN SPEECH AND LANGUAGE IN ITS NOVEMBER 2021 TO JANUARY 2022 THREE-YEAR REEVALUATION

A parent is required to request a due process hearing within two years of the date the parent knew or should have known about the alleged action that forms the

basis of the complaint, or in such time as the State law allows. (20 U.S.C. § 1415(f)(3)(C).) A due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law. (34 C.F.R. § 300.507(a)(2) (emphasis added).) Based upon this authority, states are permitted to adopt their own statute of limitations, and California has done so.

In California, a request for a due process hearing shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (Ed. Code, § 56505, subd. (j).) The two-year limitations period does not apply to a parent if the parent was prevented from requesting the due process hearing due to either:

1. specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or
2. the withholding of information by the local educational agency from the parent that was required to be provided to the parent under special education law. (*Ibid*; 20 U.S.C. § 1415(f)(3)(C)(D).)

For purposes of the statute of limitations, California's discovery rule is consistent with the IDEA. In California, a claim accrues when a parent learns of the underlying facts that form a basis for the action. (Ed. Code, § 56505, subd. (j).) The statute of limitations

begins to run when a party is or should have been aware of the facts that would support a legal claim, not earlier, when the act occurred, and not later, when a party learns that it has a legal claim. (*El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F. 3d 1016, 1039.

A parent's knowledge that a student's education is inadequate is sufficient for the statute of limitations to begin to accrue. (*M.M. & E.M. v. Lafayette School District*. (N.D.Cal., Feb. 7, 2012, Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, at pp. 17–19 (*M.M.*), *affd.* in part & *revd.* in part (9th Cir. 2014) 767 F.3d 842, 858-859; see also *M.D. v. Southington Board of Education* (2d Cir. 2003) 334 F.3d 217, 221.) The statute of limitations begins to run when a party is aware of the underlying facts that would support a legal claim, not when a party learns that the action was wrong. (*M.M., supra*, at p. 18.)

In *Avila v. Spokane School District*, 81 (9th Cir. 2017) 852 F.3d 936, 937, 945, the Ninth Circuit Court rejected a strict occurrence rule and held that the IDEA's statute of limitations barred claims that were filed more than two years after the time parents knew or should have known about the actions forming the basis for their complaint. (*Id.*) The Ninth Circuit Court in *Avila* remanded to the District Court to determine if the discovery rule would save the claims from the statute of limitations under the IDEA. Upon remand, the District Court found student's claims were barred by the statute of limitations. (*Avila v. Spokane School District* (E.D.Wash., Jan. 29, 2018, No. CV-10-00408-EFS) 2018 WL 616104, *affd.* (2018) 744 Fed.Appx. 506.). The Ninth Circuit Court in *Avila* interpreted the IDEA's statutory provisions because Washington does not have its own statute of limitations.

California has its own statute of limitations which expands the IDEA's statute of limitations. Specifically, California requires either misrepresentation, or withholding of information by a school district to toll the two-year statute of limitations set forth under the IDEA.

The Federal District Court for the Eastern District of California upheld an OAH determination that the parents' claim was time barred when parents argued they were unaware of how far below grade level the student was performing until shortly before filing their complaint. (*Fernandez v. Elk Grove Unified School District* (E.D.Cal., March 31, 2020, No. 2:19-cv-00082-MCE-AC) 2020 WL 1532229.) (*Fernandez*.) *Fernandez* emphasized that for accrual purposes, it did not matter if the parents understood that they had a particular legal claim. Rather, what mattered was that the parents had knowledge of the student's performance more than two years prior to the filing of the complaint. Specifically, the District Court concluded the parents demonstrated they knew, or should have known, the problem which formed the basis of the action by their communications with the IEP team annually about student's subpar progress more than two years before they filed student's claims. (*Id.* at pp. 4-5.)

Under the IDEA, school districts are required to establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of FAPE by such agencies. (20 U.S.C. § 1415(a).) A copy of the notice of a parent's or guardian's rights shall be attached to the assessment plan. A written explanation of all the procedural safeguards under the IDEA shall be included in the notice of a parent's or guardian's rights. (Ed. Code, § 56321, subd. (a).) A

copy of the procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year, except that a copy shall be given to the parents:

1. upon initial referral for assessment or parent request for assessment;
2. upon filing a request for a due process hearing;
3. in accordance with certain discipline procedures; or
4. upon parent request. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a); Ed. Code, § 56301, subd. (d)(2).

Thus, where the evidence shows the parents were fully aware of their procedural options, they cannot excuse a late filing by pointing to the school's failure to formally notify them of those options. (*D.K. v. Abington School District* (3rd Cir. 2012) 696 F.3d 233, 246-247.)

Special education law does not recognize the doctrine of continuing violations as an exception to the two-year statute of limitations. (20 U.S.C. §§ 1415(b)(6)(B), (f)(3)(D); see also *E.F. v. Newport Mesa Unified School District* (C.D.Cal., June 23, 2015, No. SACV 14-00455-CJC (RNBx)) 2015 WL 3867982, p. 8, fn. 6, *affd. on remand E.F. by and through Fulsang v. Newport Mesa Unified School District* (9th Cir. 2018) 726 Fed.Appx. 535; *J.L. v. Ambridge Area School District* (W.D.Pa. 2008) 622 F.Supp.2d 257, 268-269 [IDEA claims are not tolled under a continuing violation theory as the two exceptions specifically set forth in California's statute are the exclusive exceptions to the statute of limitations.] A parent may not file a due process complaint challenging the appropriateness of an IEP that was created outside the statute of limitations, although the IEP was in effect within the statute of limitations. (*K.P., etc., v. Salinas Union High School District* (N.D.Cal., April 8, 2016, No. 5:08-cv-03076-HRL) 2016 WL 1394377, pp. 10-11 [Student could

not challenge development of IEP in effect outside the two-year statute of limitations].) Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Alexopoulos v. San Francisco Unified School District* (9th Cir. 1987) 817 F.2d 551, 555-556 [“Congress recognized that it is critical to assure appropriate education for handicapped children at the earliest time possible. Failure to act promptly could irretrievably impair a child’s educational progress.”].)

Student filed his complaint on February 13, 2024. California’s statute of limitations barred Student’s claims that occurred before February 13, 2022, absent a statutory exception. Madera assessed Student for his three-year reevaluation between November 2021 and January 2022, and held an IEP team meeting on February 10, 2022. Parent attended the February 10, 2022 IEP team meeting. Madera gave Parent a copy of the procedural safeguards at the February 10, 2022 IEP team meeting. At the February 10, 2022 IEP team meeting, Madera’s assessors discussed the results of the January 20, 2022 multidisciplinary psychoeducational evaluation, gave Parent a copy of the report, and discussed Student’s present levels of performance, goals, objectives, placement, and services. After discussions at the IEP team meeting, Parent consented to the IEP.

Consistent with Education Code section 56505, subdivision (f), the allegations in the complaint and the evidence presented at hearing showed that Student knew, or reasonably should have known, of the facts underlying the claims against Madera within two years of the initial complaint. Parent had all the information including the details of the scope of the assessment from the October 28, 2021 assessment plan and from the January 20, 2022 multidisciplinary psychoeducational evaluation, as discussed in detail at the February 10, 2022 IEP team meeting. Parent was aware that Madera did not assess in speech and language during the November 2021 to January 2022 three-year

reevaluation by the February 10, 2022 IEP team meeting. Therefore, Parent was on notice of the scope of the multidisciplinary psychoeducational evaluation, including that Madera had not assessed in speech and language, and the conclusions Madera reached, to timely file the claims that Madera failed to assess in speech and language during the three-year reevaluation.

Further, Student did not allege any facts triggering the applicability of an exception to the statute of limitations in the complaint. Student did not show at hearing that Madera made specific misrepresentations or withheld information that prevented Student's timely filing of the complaint. Specifically, Parent was aware Madera did not conduct a speech and language assessment as part of the three-year reevaluation, and attended the February 10, 2022 IEP team meeting, at which the January 20, 2022 multidisciplinary psychoeducational evaluation report results were reviewed. The evidence did not establish Madera misrepresented the assessments conducted, any of the assessment results, or conclusions reached. The evidence also did not establish Madera withheld information that it was required to provide to Parent. Madera gave Parent a copy of procedural safeguards at the February 10, 2022 IEP team meeting and a copy of the assessment report. Nothing Madera did or failed to do prevented Parent from timely filing a due process hearing to challenge Madera's January 2022 assessment.

Student did not timely file his claim regarding Madera's failure to assess in speech and language during the November 2021 three-year reevaluation which resulted in a January 20, 2022 multidisciplinary psychoeducational evaluation report. Therefore, Student is barred from challenging that Madera did not assess in speech and language during the November 2021 three-year reevaluation which resulted in a January 20, 2022 multidisciplinary psychoeducational evaluation report.

We now turn to Student's claims that Madera failed to assess Student in speech and language during the statutory period in the 2022-2023 and 2023-2024 school years, through February 13, 2024. This Decision did not analyze the period from February 13, 2022, to the beginning of the 2022-2023 school year; although within the statutory period, February 13, 2022, to the beginning of the 2022-2023 school year, did not fall within the 2022-2023, or 2023-2024 school years, under Issues 1a and 3a.

**STUDENT DID NOT PROVE MADERA WAS REQUIRED TO ASSESS
IN SPEECH AND LANGUAGE IN THE 2022-2023 AND 2023-2024
SCHOOL YEARS THROUGH FEBRUARY 13, 2024, THE DATE STUDENT
FILED HIS COMPLAINT**

Student contends Madera failed to assess Student in speech and language.

School district evaluations of students with disabilities under the IDEA serve two purposes: (1) identifying students who need specialized instruction and related services because of an IDEA-eligible disability, and (2) helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.) The first refers to the initial evaluation to determine if the child has a disability under the IDEA, while the latter refers to the follow-up or repeat evaluations that occur throughout the course of the student's educational career. (See 71 Fed. Reg. 46,640 (Aug. 14, 2006).) The IDEA provides for reevaluations, called reassessments in California, to be conducted not more frequently than once a year unless the parent and school district agree otherwise, but at least once every three years unless the parent and school district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must be conducted if the school district

determines the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i) & (ii); 34 C.F.R. § 300.303(a)(1) & (2); Ed. Code, § 56381, subd. (a)(1).)

The IDEA does not mandate that a public agency administer additional testing as part of a reevaluation. (See 20 U.S.C. § 1414(c)(4); 34 C.F.R. § 300.305(d); see also *Z.B. v. District of Columbia* (D.C. Cir. 2018) 888 F.3d 515, 523 [The IEP evaluation does not always require a school to conduct additional testing.]) The reevaluation of a child with disability must be sufficiently comprehensive to identify all the child's special education and related services needs whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).) A school district must assess a student in all areas of suspected disability. (34 C.F.R. § 300.304(c)(4).)

M.S. v. Lake Elsinore Unified School District (9th Cir. 2017) 678 Fed. Appx. 543, 544 (*Lake Elsinore*) (nonpub. opn.), provides an example of the conditions triggering a school district's obligation to reassess. There, the student's inappropriate behaviors became progressively more aggressive and posed a threat to her health and safety. The student was more aggressive at home and with tutors, and sometimes attacked strangers in public. She began injuring herself and screaming and cursing at random intervals. School district staff concluded at an IEP team meeting that the student's behaviors had worsened and were not being addressed sufficiently by the behavior plan then in place. (*M.S. v. Lake Elsinore* (C.D.Cal., July 24, 2015, Case No. 13–CV–01484–CAS (SPx)) 2015 WL 4511947, at p. 7.) The District Court held that the school district denied student a FAPE by failing to assess Student's behavior during the period at issue, because student's functional performance warranted a reevaluation. (*Id.* at p. 8.)

The Ninth Circuit reversed. It held that the school district had no duty to conduct a reevaluation of the student because the local educational agency did not determine reevaluation was necessary, the student's parents had not requested a reevaluation, the student's teacher had not requested a reevaluation, and fewer than three years had elapsed since the student's last evaluation. The court held the District Court erred in holding the school district had a duty to reevaluate the student under these circumstances, and the school district had not procedurally violated the IDEA by failing to reassess. (*Lake Elsinore, supra*, 678 Fed. Appx. at p. 544.)

Here, Student's next three-year reevaluation was not due until February 2025. Therefore, from the start of the 2022-2023 school year through February 13, 2024 of the 2023-2024 school year, Madera was not required to reassess Student unless Madera determined Student's educational or related services needs warranted a reassessment, or if a parent or teacher requested a reassessment. (*Id.*). Student did not establish any of those events occurred triggering Madera's duty to reassess Student in speech and language.

The evidence showed that Student did not have any speech and language issues requiring reassessment from the start of the 2022-2023 school year through February 13, 2024 of the 2023-2024 school year. Madera had determined during the 2019 three-year assessment Student was no longer eligible for speech and language services and stopped those services with parental consent. At hearing, Student's special education teacher in the 2022-2023 school year, Vanessa Ospina, was asked if Student mumbled. Ospina opined it was infrequent, and when asked, Student repeated the utterance a second time in a manner which could be understood. She opined Student spoke clearly and could communicate and share ideas. Therefore, Ospina concluded Student did not have speech and language needs that interfered with his academic

achievement or functional performance. Ospina was a credentialed special education teacher and had taught special education for nine years. Ospina's opinion was persuasive because she was an experienced special education teacher who observed and worked with Student both individually and in group situations throughout the school day.

Student's teacher during the 2023-2024 school year, Richard Schneider, also opined Student did not have any unidentified speech and language needs. Schneider, who attended Student's August 25, 2023 IEP team meeting, also shared that none of Student's current teachers expressed any speech and language concerns regarding Student. Schneider was a credentialed special education teacher and had taught special education for seven years. Schneider was Student's special education teacher and case carrier who worked with Student to ensure Student was accessing and keeping up with all his classes. Schneider also worked with Student's general education teachers and co-taught classes to Student during the school year. Schneider was persuasive because he was an experienced special education teacher who observed Student communicating with adults and peers and worked extensively with Student throughout the school day.

Student did not offer any evidence to show that speech and language was an area of concern, or that any teachers requested Student be assessed in speech and language from the start of the 2022-2023 school year through February 13, 2024 of the 2023-2024 school year. Witnesses who interacted with Student in the school setting testified credibly and consistently that Student could effectively communicate his wants and needs.

Further, Parent did not request a speech and language assessment from the start of the 2022-2023 school year through February 13, 2024, of the 2023-2024 school year.

At hearing, Parent testified she requested a speech and language assessment, but was ignored by Madera. When asked to specify when Parent asked for a speech and language assessment, Parent stated generally it was during an IEP team meeting. Parent attended two IEP team meetings during the statutory period, on September 1, 2022, and August 25, 2023. Neither the September 1, 2022, nor the August 25, 2023 IEP team meeting notes reflected Parent's request for a speech and language assessment. Student did not produce any written request by Parent for a speech and language assessment. None of Madera's witnesses stated at hearing that Parent asked for a speech and language assessment, either verbally or in writing, during the statutory period. Parent's statement that she requested a speech and language assessment was unpersuasive because it failed to establish with specificity the time of the alleged request. Without any corroborating evidence, Parent's unsupported assertion was not credible and insufficient to prove that Parent actually requested a speech and language assessment from the start of the 2022-2023 school year through February 13, 2024, of the 2023-2024 school year.

Likewise, the evidence showed Madera was responsive to Parent when Parent expressed concerns and preferences. For example, at the September 1, 2022 IEP team meeting, Parent expressed concerns that Student was stressed and frustrated with math. Parent then requested Student not mainstream for math because general education math was too difficult for Student. Madera's IEP team responded to Parent's request not to mainstream for math, recorded Parent's concern in the IEP team meeting notes, and agreed not to mainstream Student for math pursuant to Parent's request. Madera successfully rebutted Student's contention that it typically ignored parental requests with concrete evidence to the contrary. Further, Parent had the assistance of a non-attorney advocate who requested an independent educational evaluation in writing on October 9,

2023, that did not request an assessment in the area of speech and language. The totality of the evidence did not support that Parent requested a speech and language assessment during the statutory period only to be ignored by Madera. Parent's unsupported statement that Madera ignored her request for a speech and language assessment was unpersuasive and insufficient to meet Student's burden of proof.

In summary, Madera had no duty to conduct a speech and language assessment because:

- Madera did not determine reevaluation in that area was necessary;
- Parent did not request a speech and language reevaluation;
- Student's teachers did not request a speech and language reevaluation; and
- Fewer than three years had elapsed since Student's last three-year reevaluation.

Student did not prove Madera denied him a FAPE by failing to conduct a speech and language assessment in the 2022-2023 or 2023-2024 school year.

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ISSUE 2a, 2b, AND 2c: DID MADERA DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE MEASURABLE GOALS IN A SEPTEMBER 1, 2022 IEP, WHICH PREVENTED STUDENT FROM WORKING ON HIS TARGETED AREAS OF NEED AND DENIED HIM EDUCATIONAL BENEFIT, SPECIFICALLY IN MATHEMATICS; WRITTEN EXPRESSION; AND READING?

ISSUE 1b: DID MADERA DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO STATE IN A SEPTEMBER 1, 2022 IEP HOW STUDENT'S PROGRESS TOWARDS HIS GOALS WOULD BE MEASURED, THEREBY DEPRIVING PARENT OF MEANINGFUL PARTICIPATION IN DEVELOPMENT OF STUDENT'S IEP?

Student contends Madera did not offer measurable goals in math, written expression, and reading in the September 1, 2022 IEP, thereby denying Student educational benefit. Student also contends Madera did not state in the September 1, 2022 IEP, how goals would be measured and deprived Parent of meaningful participation in development of the September 1, 2022 IEP.

Madera contends Student's September 1, 2022 goals in math, written expression, and reading were appropriate and measurable. Madera also contends it appropriately stated how each goal would be measured in the September 1, 2022 IEP. Issues 1b, 2a, 2b, and 2c will be analyzed together.

An IEP is a written document for each child with a disability that includes a statement of the child's present levels of academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (a)(1); Ed. Code, § 56345 subd. (a)(1).) An IEP must contain a statement of the special education and related services and supplementary aids and services to be provided to the pupil, or on behalf of the pupil, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to advance appropriately toward attaining annual goals. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345, subd. (a)(4).)

In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop 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, subd. (a)(2); *Letter to Butler*, U.S. Dept. of Education, Office of Special Education and Rehabilitative Services (OSERS), March 25, 1988.)

The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges v. Spartanburg County School District Two*

(D.S.C. Sept 2, 2011, No. 7:10-cv-01873-JMC) 2011 WL 3882850 (*Bridges*) [The use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].) A failure to offer an appropriate goal may be a procedural violation of the IDEA. (*Park v. Anaheim Union High School District, supra*, 464 F.3d at p. 1031).

A procedural violation does not automatically require a finding that a FAPE was denied. (*Amanda J. v. Clark County School District* (9th Cir. 2001) 267 F.3d 877, 892.) A procedural violation results in 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.

(20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); see *W.G., et al. v. Board of Trustees of Target Range School District, etc.* (9th Cir. 1992) 960 F.2d 1479, 1484, superseded in part by statute on other grounds [procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE].)

A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 [A parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

ALL THREE GOALS IN THE SEPTEMBER 1, 2022 IEP WERE MEASUREABLE AND APPROPRIATE

Student did not present credible evidence supporting his argument that Madera did not state how Student's progress would be measured or that the three goals Madera offered in the September 1, 2022 IEP were not measurable or appropriate. At hearing, Parent on behalf of Student merely asked Ospina to read the baselines for each goal and the goal, then asked for an explanation of how the goal was measured. Student did not present any opinions except that of Parent, who was not a credentialed teacher and did not articulate any basis for disregarding Ospina's explanations that the goals Madera offered were tailored to Student's unique needs.

Further, Student did not present any evidence that the goals stated in the September 1, 2022 IEP were not measurable as each goal set forth how and by whom Student's progress would be measured. In the closing brief, Student argued, with additional explanations not presented as evidence at hearing, that the goals were not measurable. Argument was not evidence.

Student did not offer evidence at hearing or cite to any legal support that Student's goals needed to be written in the manner Parent preferred, as stated in his closing brief, to be measurable and/or appropriate. (See *Bridges, supra*, 2011 WL 3882850 [The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable].) Absent evidence, parental argument alone was insufficient to meet Student's burden of proof on Issues 1b, 2a, 2b, and 2c.

On the other hand, Madera rebutted parental argument with evidence showing the goals offered in the September 1, 2022 IEP were clear, measurable, and addressed Student's needs. Madera offered Student goals in math calculation, written expression, and reading in the September 1, 2022 IEP as described below. How Madera measured Student's progress on each of the goals offered was stated in detail in the September 1, 2022 IEP. Although not legally required, each goal had short-term objectives, measuring Student's progress each quarter of the school year. Each goal indicated Student's present performance levels in the area of need addressed, stated the goal, why the goal was needed, and who would implement it. Special education teacher Ospina wrote the three goals in the September 1, 2022 IEP, and was responsible for measuring progress on all three goals. The goals in the September 1, 2022 IEP were based on Student's academic needs. Ospina also considered past goals and classroom performance, classroom observations, observations while Ospina administered standardized testing of Student, and all data and standardized assessments from the November 2021 through January 20, 2022 three-year reassessment.

THE MATH CALCULATION GOAL IN THE SEPTEMBER 1, 2022 IEP WAS MEASUREABLE AND APPROPRIATE

Madera stated clearly how the math calculation goal would be measured in the September 1, 2022 IEP. The baseline for the September 1, 2022 math calculation goal documented Student could multiply double-digit whole numbers using the standard algorithm with 80 percent accuracy, but solved division problems with zero percent accuracy. To address Student's needs in learning division, the math calculation goal was that by September 1, 2023, Student would use a multiplication chart to correctly calculate the quotient for division problems with 80 percent accuracy when given a set

of problems that required the division of two numbers, with up to a three-digit dividend and one-digit divisor, with or without remainders, and in the standard algorithm, long division format. The first short-term objective stated Student would achieve the goal with 20 percent accuracy by December 2022. The second short-term objective stated Student would achieve the goal with 40 percent accuracy by March 2023. The third short-term objective stated Student would achieve the goal with 60 percent accuracy by June 2023.

The math calculation goal was appropriate. Madera showed Student met his math calculation goal from the 2021-2022 school year dealing with Student's multiplication skills which prompted Madera to offer a new math calculation goal in the September 1, 2022 IEP, to address Student's needs to learn division in September 2022. The math calculation goal allowed Student to participate in the general education curriculum and progress towards meeting state standards. The goal directly related to Student's math abilities, otherwise known as present levels of performance in September 2022. Absent any evidence to the contrary, the math calculation goal was objectively measurable and appropriate with percentages tied to the completion of discrete tasks to measure Student's progress. (See *Bridges, supra*, WL 3882850.). Madera successfully rebutted Student's argument that progress regarding the math calculation goal was not stated in the September 1, 2022 IEP, and the goal was not measurable or appropriate.

Student did not prove that Madera failed to offer an appropriate measurable math calculation goal in the September 1, 2022 IEP. Student also did not prove that Madera failed to state in the September 1, 2022 IEP, how progress for the math calculation goal would be measured.

THE WRITTEN EXPRESSION GOAL IN THE SEPTEMBER 1, 2022 IEP WAS MEASUREABLE AND APPROPRIATE

Madera stated clearly how the written expression goal would be measured in the September 1, 2022 IEP. The September 1, 2022 written expression baseline stated Student used thinking maps as a guide when writing and wrote complete sentences. Student could write an opinion paragraph with 60 percent accuracy and write a multi-paragraph composition with 20 percent accuracy. The written expression goal was that by September 1, 2023, Student would use thinking maps and/or graphic organizers to write a multi-paragraph narrative in well-structured sequence, in four out of five narratives, when given a narrative writing prompt. The first short-term objective stated that Student would achieve the goal in one out of five narratives by December 2022. The second short-term objective stated that Student would achieve the goal in two out of five narratives by March 2023. The third short-term objective stated that Student would achieve the goal in three out of five narratives by June 2023.

The written expression goal was appropriate. Parent did not understand the term "thinking maps" and asked for the definition multiple times at hearing. Ospina explained at hearing, and Madera's IEP team members explained at the September 1, 2022 IEP team meeting, that thinking maps were tools and an accommodation to help Student organize ideas when writing. The goal itself clarified thinking maps as graphic organizers. Parent's confusion regarding the term "thinking maps," despite repeated explanations from Madera in September 2022 and at hearing, did not render the written expression goal not measurable or inappropriate.

Student made progress on, but did not meet, the written expression goal from the 2021-2022 school year. Therefore, in September 2022, Madera's IEP team members

developed the written expression goal to address Student's needs to organize his thoughts and write multiple paragraphs to express himself with increased accuracy. The written expression goal was directly related to Student's writing abilities in September 2022. The written expression goal allowed Student to participate in the general education curriculum and progress towards meeting state standards. Absent any evidence to the contrary, the written expression goal was objectively measurable and appropriate with percentages tied to the completion of discrete tasks to measure Student's progress. (See *Bridges, supra*, WL 3882850.). Madera successfully rebutted Student's argument that progress regarding the written expression goal was not stated in the September 1, 2022 IEP, and the goal was not measurable or appropriate.

Student did not prove that Madera failed to offer an appropriate measurable written expression goal in the September 1, 2022 IEP. Student also did not prove that Madera failed to state in the September 1, 2022 IEP, how progress for the written expression goal would be measured.

THE READING COMPREHENSION GOAL IN THE SEPTEMBER 1, 2022 IEP WAS MEASUREABLE AND APPROPRIATE

Madera stated clearly how the reading comprehension goal would be measured in the September 1, 2022 IEP. The September 1, 2022 reading comprehension baseline stated Student could read a grade level passage with 74 correct words per minute. Student could also cite text evidence from a grade level text with 10 percent accuracy. The reading comprehension goal was that by September 1, 2023, Student would cite textual evidence to support analysis of what the text states explicitly and inferences drawn from the text with 80 percent accuracy. The first short-term objective stated that Student would achieve the goal with 20 percent accuracy by December 2022.

The second short-term objective stated that Student would achieve the goal with 40 percent accuracy by March 2023. The third short-term objective stated that Student would achieve the goal with 60 percent accuracy by June 2023.

Student did not present any evidence at hearing regarding why the reading comprehension goal was not measurable or inappropriate. However, Student argued in the closing brief that the reading comprehension goal was inappropriate because Madera did not identify Student's grade level in the reading comprehension baseline and did not specify the text Student would be reading. Student was in the sixth grade in September 2022, and Ospina persuasively explained at hearing that the term grade level meant Student's grade level, which was the sixth grade. A reasonable person would reach the same conclusion.

Student's preference that Madera identify each text Student was to read in the reading comprehension goal throughout the 2022-2023 school year was unreasonable, and Student did not cite any law requiring Madera to write the baseline and goal to include the level of specificity preferred by Parent.

Parent was concerned with Student's well below sixth-grade reading comprehension level. However, Student did not show that the baseline or goal Madera offered was inappropriate for Student's unique needs. Student progressed and met all objectives from the 2021-2022 school year IEP's reading fluency goal. Because Student demonstrated reading fluency in the prior school year, the IEP team in September 2022, proposed a goal to address Student's in-depth text comprehension with a higher level of accuracy. Student's below grade-level reading comprehension did not render the goal inappropriate, especially when Madera showed the goal aligned with Student's abilities in September 2022, and addressed

Student's needs for the 2022-2023 school year. The reading comprehension goal was directly related to Student's present levels of performance in September 2022. The reading comprehension goal allowed Student to participate in the general education curriculum and progress towards meeting state standards. Absent any evidence to the contrary, the reading comprehension goal was objectively measurable and appropriate with percentages tied to the completion of discrete tasks to measure Student's progress. Madera successfully rebutted Student's argument that progress regarding the reading comprehension goal was not stated in the September 1, 2022 IEP, and the goal was not measurable or appropriate.

Student did not prove that Madera failed to offer an appropriate measurable reading comprehension goal in the September 1, 2022 IEP. Student also did not prove that Madera failed to state in the September 1, 2022 IEP how progress for the math calculation goal would be measured.

In summary, Student did not prove Madera failed to state how Student's goals would be measured in the September 1, 2022 IEP; or that Madera failed to offer appropriate measurable math calculation, written expression, or reading comprehension goals in the September 1, 2022 IEP. Student did not prove Madera committed a procedural violation that resulted a substantive FAPE denial.

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ISSUE 4a, 4b, AND 4c: DID MADERA DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE MEASURABLE GOALS IN AN AUGUST 25, 2023 IEP, WHICH PREVENTED STUDENT FROM WORKING ON HIS TARGETED AREAS OF NEED AND DENIED HIM EDUCATIONAL BENEFIT, SPECIFICALLY IN MATHEMATICS; WRITTEN EXPRESSION; AND READING?

ISSUE 3b: DID MADERA DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO STATE IN AN AUGUST 25, 2023 IEP HOW STUDENT'S PROGRESS TOWARDS HIS GOALS WOULD BE MEASURED, THEREBY DEPRIVING PARENT OF MEANINGFUL PARTICIPATION IN DEVELOPMENT OF STUDENT'S IEP?

Student contends Madera did not offer measurable goals in math, written expression, and reading in the August 25, 2023 IEP, thereby denying Student educational benefit. Student also contends Madera did not state in the August 25, 2023 IEP, how goals would be measured and deprived Parent of meaningful participation in development of the August 25, 2023 IEP.

Madera contends Student's August 25, 2023 IEP goals in math, written expression, and reading were appropriate and measurable and appropriately stated how each goal would be measured in the August 25, 2023 IEP. Issues 3b, 4a, 4b, and 4c will be analyzed together.

ALL THREE GOALS IN THE AUGUST 25, 2023 IEP WERE MEASUREABLE AND APPROPRIATE

Student did not present credible evidence supporting Parent's argument that Madera did not state how Student's progress would be measured or that the three goals Madera offered in the August 25, 2023 IEP were not measurable or were otherwise inappropriate. At hearing, Parent merely asked Schneider to read the baselines for each goal and the goal, then asked for an explanation of how the goal was measured. Student did not present any opinions except that of Parent, who was not a credentialed teacher and did not articulate any basis for disregarding Schneider's explanations that the goals Madera offered addressed Student's unique needs.

Further, each goal in the August 25, 2023 IEP, set forth how and by whom Student's progress would be measured. In the closing brief, Student argued, with additional explanations not presented as evidence at hearing, that the goals were not measurable. Argument was not evidence.

Student did not offer evidence at hearing or cite to any legal support that Student's goals needed to be written in the manner Parent preferred to be measurable and/or appropriate. (See *Bridges, supra*, 2011 WL 3882850 [The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable].) Absent evidence, the arguments in Student's closing brief were insufficient to meet Student's burden of proof on Issues 3b, 4a, 4b, and 4c.

On the other hand, Madera rebutted Parent's opinion with evidence showing the goals offered in the August 25, 2023 IEP were clear, measurable, and addressed Student's needs. Madera offered Student goals in math calculation, written expression

and reading comprehension in the August 25, 2023 IEP, as described below. How Madera measured Student's progress on each of the goals offered was stated in detail in the August 25, 2023 IEP. Although not legally required, each goal had short-term objectives, measuring Student's progress each quarter of the school year. Each goal indicated Student's present performance levels in the area of need addressed, stated the goal, why the goal was needed, and who would implement it. Special education teacher Schneider wrote the three goals in the August 25, 2023 IEP and was responsible for measuring progress on all three goals. Student received push-in services to work on the goals in these three areas while in the general education classroom. These three goals were based on

- Student's needs in August 2023, past goals progress, classroom performance,
- Schneider's classroom observations of Student,
- Student's performance in California state testing, work samples, and
- data collected and reported by Student's general education teachers.

THE MATH CALCULATION GOAL IN THE AUGUST 25, 2023 IEP WAS MEASUREABLE AND APPROPRIATE

Madera stated clearly how the math calculation goal would be measured in the August 25, 2023 IEP. The August 25, 2023 math calculation baseline stated Student identified the probability of given events with 30 percent accuracy. The math calculation goal was by August 25, 2024, Student would describe the probability of a chance event as a number between zero and one with at least 80 percent accuracy. Larger numbers would indicate greater likelihood of an event occurring. A probability near zero would indicate an unlikely event. A probability around a half would indicate an event neither

unlikely, nor likely, to occur; and a probability near one would indicate a likely event. Although the goal stated Student would meet the goal by August 25, 2023, at hearing Schneider persuasively explained it was a typographical error, and 2024 was the correct year. There was no evidence this typographical error impacted the appropriateness of this goal. The first short-term objective stated that Student would achieve the goal with 45 percent accuracy by October 2023. The second short-term objective stated that Student would achieve the goal with 60 percent accuracy by December 2023. The third short-term objective stated that Student would achieve the goal with 75 percent accuracy by March 2024.

Student argued in the closing brief, without presenting any evidence at hearing, that the math calculation goal was inappropriate because Student did not know what probability of events meant and the goal was too ambitious. The complete lack of evidence made these two arguments unpersuasive. Argument was not evidence.

The math calculation goal was appropriate. Student met his math calculation goal from the 2022-2023 school year and Madera IEP team members developed a new math calculation goal to address Student's needs in August 2023. The math calculation goal was directly related to Student's math abilities in August 2023. The math calculation goal allowed Student to participate in the general education curriculum and progress towards meeting state standards. Absent any evidence to the contrary, the math calculation goal was objectively measurable and appropriate with percentages tied to the completion of discrete tasks to measure Student's progress. (See *Bridges, supra*, WL 3882850.). Madera successfully rebutted Student's argument that progress regarding the math calculation goal was not stated in the August 25, 2023 IEP, and the goal was not measurable or appropriate.

Student did not prove that Madera failed to offer an appropriate measurable math calculation goal in the August 25, 2023 IEP. Student also did not prove that Madera failed to state in the August 25, 2023 IEP how progress for the math calculation goal would be measured.

THE WRITTEN EXPRESSION GOAL IN THE AUGUST 25, 2023 IEP WAS MEASUREABLE AND APPROPRIATE

Madera stated clearly how the written expression goal would be measured in the August 25, 2023 IEP. The August 25, 2023 written expression baseline stated Student could connect claims and reasoning with opinion with 30 percent accuracy. The written expression goal was for Student, by August 25, 2024, to use words, phrases, and clauses to create cohesion and clarify the relationships among claims, reasons, and evidence as measured by work samples or curriculum-based assessments with 80 percent accuracy. The first short-term objective stated that Student would achieve the goal with 45 percent accuracy by October 2023. The second short-term objective stated that Student would achieve the goal with 60 percent accuracy by December 2023. The third short-term objective stated that Student would achieve the goal with 75 percent accuracy by March 2024.

The written expression goal was appropriate. Student argued in the closing brief that the written expression goal was inappropriate because it did not specify Student's writing level and whether the goal was to be met in writing. Madera detailed Student's capabilities in August 2023, in the baseline for the goal. Further, by definition the written expression goal addressed Student's ability to express himself through writing and specified the goal would be measured by curriculum-based assessments and work samples. Student's arguments were unpersuasive.

Student met his first short-term objectives for the written expression goal from the 2022-2023 school year but did not meet that goal. The Madera IEP team members proposed a similar written expression goal to address Student's August 2023 needs. The written expression goal was directly related to Student's writing abilities in August 2023. The written expression goal allowed Student to participate in the general education curriculum and progress towards meeting state standards. Absent any evidence to the contrary, the written expression goal was objectively measurable and appropriate with percentages tied to the completion of discrete tasks to measure Student's progress. (See *Bridges, supra*, WL 3882850.). Madera successfully rebutted Student's argument that progress regarding the written expression goal was not stated in the August 25, 2023 IEP, and the goal was not measurable or appropriate.

Student did not prove that Madera failed to offer an appropriate measurable written expression goal in the August 25, 2023 IEP. Student also did not prove that Madera failed to state in the August 25, 2023 IEP how progress for the written expression goal would be measured.

THE READING COMPREHENSION GOAL IN THE AUGUST 25, 2023 IEP WAS MEASUREABLE AND APPROPRIATE

Madera stated clearly how the reading comprehension goal would be measured in the August 25, 2023 IEP. The August 25, 2023 reading comprehension baseline stated Student identified the figurative and connotative meanings of words with 20 percent accuracy. The reading comprehension goal was that by August 25, 2024, Student would determine the meaning of words and phrases as they are used in a text, including figurative and connotative meanings, as measured by oral or written work samples, teachers' records, and curriculum-based assessments, with 80 percent accuracy. The

first short-term objective stated that Student would achieve the goal with 45 percent accuracy by October 2023. The second short-term objective stated that Student would achieve the goal with 60 percent accuracy by December 2023. The third short-term objective stated that Student would achieve the goal with 75 percent accuracy by March 2024. Although the third short-term objective stated Student would achieve the goal with 75 percent accuracy by March 2025, at hearing Schneider persuasively explained it was a typographical error, and 2024 was the correct year. There was no evidence this typographical error impacted the appropriateness of this goal.

The reading comprehension goal was appropriate. Student argued the goal was too ambitious without presenting any evidence at hearing to support his argument. Parent's expressed concerns with Student's well below seventh-grade reading comprehension level alone did not render the reading comprehension goal inappropriate.

The evidence showed Student progressed and met the reading comprehension goal from the 2022-2023 school year. Annual goals should describe that a student with a disability can reasonably be expected to accomplish within a 12-month period of the special education program. (*Letter to Butler, supra*, OSERS, March 25, 1988; *Notice of Interpretation*, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) Schneider opined at hearing that in August 2023, Student was reasonably expected to progress and meet the proposed reading comprehension goal. Schneider persuasively explained that Student required increased accuracy in determining what words and phrases meant figuratively and connotatively as the next skill level.

The reading comprehension goal was directly related to Student's reading comprehension abilities in August 2023, and addressed Student's needs for the 2023-

2024 school year. The reading comprehension goal allowed Student to participate in the general education curriculum and progress towards meeting state standards. Absent any evidence to the contrary, the reading comprehension goal was objectively measurable and appropriate with percentages tied to the completion of discrete tasks to measure Student's progress. (See *Bridges, supra*, WL 3882850.). Madera successfully rebutted Student's argument that progress regarding the reading comprehension goal was not stated in the August 25, 2023 IEP, and the goal was not measurable or appropriate.

Student did not prove that Madera failed to offer an appropriate measurable reading comprehension goal in the August 25, 2023 IEP. Student also did not prove that Madera failed to state in the August 25, 2023 IEP how progress for the reading comprehension goal would be measured.

In summary, Student did not prove Madera failed to state how Student's goals would be measured in the August 25, 2023 IEP; or that Madera failed to offer appropriate measurable math calculation, written expression, or reading comprehension goals in the August 25, 2023 IEP. Student did not prove Madera committed a procedural violation that resulted in a substantive FAPE denial.

ISSUE 5: DID MADERA DENY STUDENT A FAPE BY FAILING TO TIMELY FILE A DUE PROCESS HEARING REQUEST FOLLOWING PARENT'S OCTOBER 9, 2023 REQUEST FOR AN INDEPENDENT EDUCATIONAL EVALUATION?

Student contends Madera did not timely file for due process after it refused to fund Parent's October 9, 2023 independent educational evaluation request. Madera contends it timely filed its due process complaint on February 2, 2024.

As discussed in the analysis of Issue 6, a school district must act “without unnecessary delay” to a parent’s request for an independent educational evaluation by either funding the independent evaluation or filing for due process to defend its assessment. (34 C.F.R. § 300.502(b)(1)-(4).) This provision of the IDEA ensures parents’ access to an expert who can evaluate all the materials that the school district must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition. (*Schaffer v. Weast, supra*, 546 U.S. 49, 60-61.)

This Decision found at Issue 6 that Madera’s February 2, 2024 due process filing was untimely. Parent requested an independent educational evaluation on October 9, 2023, but Madera did not file for due process to demonstrate the appropriateness of its assessment for four months, although Madera had no communication with Parent after November 20, 2023. Madera acted with unnecessary delay.

Madera’s failure to timely file for due process after denying Parent’s request for an independent educational evaluation significantly impeded Parents’ ability to participate in the IEP decision making process. Madera’s delay prevented prompt OAH adjudication of the appropriateness of Madera’s assessment and parental access to an independent expert’s opinion of Student’s needs.

Madera’s delay in filing for due process was a procedural violation that deprived Student of a FAPE because it significantly impeded Parents’ right to meaningfully participate in decision making regarding Student’s educational program. Consequently, Student is entitled to an independent educational evaluation at public expense, which will be discussed in the Remedies section.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1a:

Madera did not deny Student a FAPE during the 2022-2023 school year by failing to assess Student in speech and language.

Madera prevailed on Issue 1a.

ISSUE 1b:

Madera did not deny Student a FAPE during the 2022-2023 school year by failing to state in a September 1, 2022 IEP how Student's progress towards his goals would be measured, thereby depriving Parent of meaningful participation in development of Student's IEP.

Madera prevailed on Issue 1b.

ISSUE 2a:

Madera did not deny Student a FAPE by failing to offer appropriate measurable goals in a September 1, 2022 IEP which prevented Student from working on his targeted areas of need and denied him educational benefit, specifically in mathematics.

Madera prevailed on Issue 2a.

ISSUE 2b:

Madera did not deny Student a FAPE by failing to offer appropriate measurable goals in a September 1, 2022 IEP, which prevented Student from working on his targeted areas of need and denied him educational benefit, specifically in written expression.

Madera prevailed on Issue 2b.

ISSUE 2c:

Madera did not deny Student a FAPE by failing to offer appropriate measurable goals in a September 1, 2022 IEP, which prevented Student from working on his targeted areas of need and denied him educational benefit, specifically in reading.

Madera prevailed on Issue 2c.

ISSUE 3a.:

Madera did not deny Student a FAPE during the 2023-2024 school year by failing to assess Student in speech and language.

Madera prevailed on Issue 3a.

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ISSUE 3b:

Madera did not deny Student a FAPE by failing to state in an August 25, 2023 IEP how Student's progress towards his goals would be measured, thereby depriving Parent of meaningful participation in development of Student's IEP.

Madera prevailed on Issue 3b.

ISSUE 4a:

Madera did not deny Student a FAPE by failing to offer appropriate measurable goals in an August 25, 2023 IEP, which prevented Student from working on his targeted areas of need and denied him educational benefit, specifically in mathematics.

Madera prevailed on Issue 4a.

ISSUE 4b:

Madera did not deny Student a FAPE by failing to offer appropriate measurable goals in an August 25, 2023 IEP, which prevented Student from working on his targeted areas of need and denied him educational benefit, specifically in written expression.

Madera prevailed on Issue 4b.

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ISSUE 4c:

Madera did not deny Student a FAPE by failing to offer appropriate measurable goals in an August 25, 2023 IEP, which prevented Student from working on his targeted areas of need and denied him educational benefit, specifically in reading.

Madera prevailed on Issue 4c.

ISSUE 5:

Madera denied Student a FAPE by failing to timely file a due process hearing request following Parent's October 9, 2023 request for an independent educational evaluation.

Student prevailed on Issue 5.

ISSUE 6:

Madera did not timely file a due process complaint, without unnecessary delay, so Parent is entitled to an independent educational evaluation at public expense in psychoeducation, and the appropriateness of its multidisciplinary psychoeducational evaluation completed on January 20, 2022 within the meaning of Education Code section 56329, subdivision (c) was therefore moot and not determined.

Student prevailed on Issue 6.

REMEDIES

Student requests that Madera pay for an independent educational evaluation and compensatory education. Madera contends Student did not meet his burden on any issue and should not be entitled to any remedy. Madera further contends that Student is not entitled to a publicly funded independent educational evaluation because its January 20, 2022 multidisciplinary psychoeducational evaluation was appropriate.

However, because Madera unnecessarily delayed and did not file for due process until February 2, 2024, Student is entitled to a publicly funded independent educational evaluation, regardless of whether Madera's January 20, 2022 multidisciplinary psychoeducational evaluation was appropriate.

ALJ's have broad latitude to fashion appropriate equitable remedies for FAPE denials. (*School Community of Burlington v. Department of Education* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup School District, No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3)(2006).) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d. at p. 1497.)

Student is entitled to a remedy under Student's Issue 5 and under Madera's Issue 6, for Madera's failure to file for due process without unnecessary delay after it denied Student's request for an independent educational evaluation. Student did not specifically identify the type of independent educational evaluation desired in his October 9, 2023 request. However, a comprehensive psychoeducational evaluation

would be an appropriate remedy because the three-year reevaluation which Madera failed to timely defend, was a psychoeducational evaluation. Therefore, Madera shall fund an independent psychoeducational evaluation of Student.

The independent psychoeducational evaluation, including cost, qualification, and location of the assessor, shall be in accordance with Madera's 2024 guidelines for independent psychoeducational evaluations. The independent assessor shall be an assessor of Parent's choice, who has not assessed Student in the past or reviewed any of Student's records, assessments, or materials in connection with the hearing in this matter.

Student also requested compensatory education in the due process complaint but did not present any evidence at hearing supporting the need for an award of compensatory education. Therefore, no compensatory education is ordered.

ORDER

1. Madera shall fund an independent psychoeducational evaluation by an assessor of Parent's choice who meets the qualifications stated in Madera's 2024 guidelines for independent psychoeducational evaluations. Further, the independent assessor shall be an assessor who has not assessed Student in the past or reviewed any of Student's records, assessments, or materials in connection with the hearing in this matter.
2. Within five business days of this Decision, Madera shall provide in writing to Parent its 2024 guidelines for independent psychoeducational evaluations.

3. Within 25 business days of receiving Madera's guidelines, Student shall identify at least one assessor who meets Madera's 2024 guidelines for independent psychoeducational evaluations to conduct Student's independent psychoeducational evaluation.
4. Within 60 days after Student selects an assessor who meets Madera's 2024 guidelines for independent psychoeducational evaluations, Madera shall complete the process of contracting with the independent psychoeducational assessor identified by Student.
5. Student will forfeit the remedy of a publicly funded independent psychoeducational assessment if Parent does not comply with this Order or does not make Student reasonably available to the assessor in time for the assessor to complete the independent psychoeducational evaluation by February 10, 2025, the current date of Student's next three-year reevaluation.
6. If Madera's contracting process is delayed beyond 60 days and that contracting delay is the sole cause of the independent psychoeducational evaluation not being completed by February 10, 2025, Madera's obligation to fund the independent educational psychoeducational evaluation shall be extended the same number of days of the contracting delay beyond 60 days.
7. All other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings