

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

PIEDMONT UNIFIED SCHOOL DISTRICT.

CASE NO. 2023120182

DECISION

JUNE 7, 2024

On December 6, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Piedmont Unified School District as respondent. Administrative Law Judge Clifford H. Woosley heard this matter by videoconference on March 19, 20, 21, 25, 26, 27, 28, and April 3, 2024..

Attorney Roberta S. Savage represented Student. Parents attended the hearing on behalf of Student. Attorney David Mishook represented Piedmont Unified School District. Dr. Douglas Harter, Director of Student Services, attended the hearing on behalf of Piedmont Unified School District.

At the parties' request, the matter was continued to May 6, 2024, for written closing briefs. The record was closed, and the matter was submitted on May 6, 2024.

In this Decision, a free appropriate public education is called a FAPE, and an individualized education program is called an IEP. Piedmont Unified School District is called Piedmont Unified.

ISSUES

1. Did Piedmont Unified deny Student a FAPE during the 2021-2022 school year, from December 6, 2021, through the 2022 extended school year, by:
 - (a) failing to provide Student with an ABA trained one-on-one aide, and
 - (b) failing to provide weekly behavioral supervision by a master's level or PhD level Board Certified Behavior Analyst?

2. Did Piedmont Unified deny Student a FAPE during the 2022-2023 school year, 2023 extended school year, and the 2023-2024 school year, through the date of filing the due process complaint, by:
 - (a) failing to provide Student with an ABA trained one-on-one aide, and to provide weekly behavioral supervision by a master's level or PhD level Board Certified Behavior Analyst;
 - (b) failing to offer Student an appropriate public-school placement; and,
 - (c) predetermining Student's school placement?

JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); 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]; *see also* 20 U.S.C. § 1415(i)(2)(C)(iii).) In this matter, Student had the burden of proof. 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 nine years and five months old at the time of hearing and was attending fourth grade at Ecole Bilingue de Berkeley, called Ecole Bilingue, a French bilingual immersion private school. At all relevant times, Student resided within Piedmont Unified's geographic boundaries.

ISSUES 1 (a) AND 1 (b): DID PIEDMONT UNIFIED DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR, FROM DECEMBER 6, 2021, THROUGH THE 2022 EXTENDED SCHOOL YEAR, BY FAILING TO PROVIDE STUDENT WITH AN ABA TRAINED ONE-ON-ONE AIDE AND WEEKLY BEHAVIORAL SUPERVISION BY A MASTER'S LEVEL OR PHD LEVEL BOARD CERTIFIED BEHAVIOR ANALYST?

Student contended that Piedmont Unified denied Student a FAPE, from December 2021 through extended school year 2022, by not properly supporting Student's unique needs as a child with autism and diagnosed anxiety disorder. Student asserted that Student required a one-to-one aide, trained in applied behavior analysis, called ABA, who was weekly supervised by a board certified behavior analyst, called a BCBA, with a master's or doctoral degree. Student claimed that Piedmont Unified improperly placed Student in a large, general education class, with insufficiently trained and supervised paraeducators. Student claimed that Piedmont Unified ignored the recommendations of Student's private providers and assessors and failed to address Student's increasing school-related anxiety, and Student's growing number of tardies, throughout the school year.

Piedmont Unified contends that, while Student exhibited disability-related needs at Havens Elementary School as a result of her autism and anxiety disorder, Student

made substantive progress over the school year because of the support provided by her IEP. Piedmont Unified asserted Parents' and Student's experts' contention that Student required an ABA one-to-one aide, with weekly supervision by a master's level BCBA, was unsupported by the evidence and often contradicted by contemporary communications. Parents' unilateral enrollment of Student in a private French immersion school was unwarranted. Piedmont Unified offered and provided Student a FAPE.

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 individualized education program, referred to as 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].)

"Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39 (2017); Ed. Code, § 56031.) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to

those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

Student attended Keystone Montessori in El Cerrito, California, for preschool. After a brief time in transitional kindergarten at Piedmont Unified, Student transitioned to Ecole Bilingue for transitional kindergarten and kindergarten. Parents were concerned that Student was not socializing with other children and was inflexible to change, resulting in tantrums. Parents observed that Student did not seem to recognize others' feelings. Behavioral and developmental pediatrician, Erica Buhrmann, M.D., evaluated Student in January and February 2020, when Student was five years old.

Dr. Buhrmann administered standardized instruments, had Parents and teachers complete child behavior checklists, observed Student at school in the classroom and at play, and conducted a neurological exam. Dr. Buhrmann found Student met the diagnostic criteria for Autism Spectrum Disorder. Student had excessive fear of social situations, which was significantly greater than expected for a child with autism. Dr. Buhrmann also diagnosed Student with social anxiety disorder.

Dr. Buhrmann recommended an autism intervention program, weekly speech therapy for pragmatic communication skills, and occupational therapy to address Student's sensory difficulties, which impaired Student's functioning. Parents represented that they were seeking an evaluation from the local school district, which was Piedmont Unified.

The Covid-19 pandemic began in March 2020. Ecole Bilingue's attendance became virtual for the remainder of the 2019-2020 school year. Parents enrolled Student at Piedmont Unified for the 2020-2021 school year. Student began attending kindergarten, virtually, at Havens Elementary School, called Havens.

PIEDMONT UNIFIED'S INITIAL ASSESSMENTS OF STUDENT

At Parents' request, Piedmont Unified assessed Student, conducting psychoeducational, occupational therapy, and speech-language evaluations of Student by December 2020. Piedmont Unified convened Student's initial IEP team meeting on December 9, 2020.

PSYCHOEDUCATIONAL ASSESSMENT

Licensed Educational Psychologist Cherie Spivey conducted the initial psychoeducational evaluation of Student, producing a report dated December 9, 2020. Spivey reviewed Student's developmental, family, and school history. Student was virtually attending kindergarten at Havens. Though Student had completed kindergarten at Ecole Bilingue the prior year, Student was repeating kindergarten at Piedmont Unified because Ecole Bilingue used the French school system's kindergarten cutoff date of December 1, while the American school system used September 1. Student struggled with social interactions at both Keystone Montessori and Ecole Bilingue.

Spivey reviewed Dr. Buhrmann's psychological evaluation and diagnoses of autism and social anxiety disorder.

INTERVIEWS AND OBSERVATIONS

Spivey interviewed Student's Mother and Father. Parents reported that Student had difficulty with social cues, initiating play, making friends, and withdrawing in social situations. Student had little ability to recognize emotions in others and to express empathy. Student was very restrictive, did not adapt to change, and lacked flexibility. Student struggled with emotional regulation, easily becoming upset and having frequent tantrums.

When Student was attending in-person school, Parents reported that the morning routine at home and school drop-offs was challenging. Student was often tardy. And once Student arrived at school, she experienced a great deal of separation anxiety and would cling to Parents. Also, when attending in-person school, Student could not read social cues and often felt excluded, even when peers expressed interest in playing with her. Student often paced around the room and had difficulty engaging in group activities.

Spivey interviewed Student. Student said she enjoyed reading and writing. She thought that school was too long. During in-person school, Student liked a "special little corner" in the classroom where she could go during circle time. Student said she had friends, but could not recall any of their names.

Spivey interviewed Student's preschool teacher, Joseph Weaver, who taught Student for two years at Keystone Montessori. Weaver reported that Student had difficulty with transitions, interacting with other children, and was easily upset. Spivey interviewed Ecole Bilingue teachers Alix Koliha and Fatima Fall, who taught Student transitional kindergarten and kindergarten. Student was extremely shy, had a hard time

starting a sentence, and struggled to express herself. Student often wandered around the classroom and struggled to participate in a group. Though Student seemed well-liked by her classmates, Student was often alone during recess. Both teachers reported that morning drop-offs were very challenging.

Spivey interviewed Havens' kindergarten teacher, Laura Zimmerman, who had been virtually teaching Student since the beginning of the 2020-2021 year. Zimmerman said Student did not feel comfortable sharing and participating in the online class environment and often left the screen.

Spivey interviewed clinical psychologist, Dr. Kathryn McCarthy, who had been meeting with Student twice a month, online, since June 2020. Dr. McCarthy testified at the hearing. Student was very attentive during their online sessions. Dr. McCarthy confirmed that Student struggled with modulating the intensity of what Student feels in the moment. Student misread social cues and did not understand social reciprocity. Notably, Student often felt rejected during peer interactions, though not the peer's intent. Student was very sensitive to embarrassment, especially when Student felt confused or made a mistake. Student would shut down quickly and found it hard to seek help. Dr. McCarthy was helping Student to develop emotional regulation and perspective taking, and how to use calming tools, such as breaks. Dr. McCarthy also provided consultation to Parents, helping them to use calming tools.

Spivey observed Student at her virtual morning class, Student would often disengage, playing with pens, crayons, and stickers out, despite Zimmerman's regular prompts and check-ins. Zimmerman gave Student specific, verbal praise at a high frequency for participation and following directions. Spivey also clinically observed Student during assessment sessions, which were both online and in-person, at Havens.

Student put forth strong effort during testing and did not exhibit anxiety that may have negatively impacted her performance. She seemed to enjoy many of the testing activities.

ASSESSMENTS

School psychologist Spivey administered the Kaufman Test of Educational Achievement, Third Edition. Student's reading composite score was in the very high range for her age, math composite was the above average range, and writing composite was in the average range. On the Wechsler Intelligence Scale for Children Fifth Edition, Student scored in the high average to superior range for verbal comprehension. On the Test of Auditory Processing Skills, Fourth Edition, Student was in the above average range. On the Developmental Neuropsychological Assessment, Second Edition, Student scored in the average range for attention and executive functioning and social perception.

School psychologist used five instruments to evaluate Student's social-emotional and behavioral functioning. The results demonstrated Student had characteristics associated with Student's autism. Mother's responses rated Student's defiance and aggression as a high average area of concern. Both Mother and the teacher rated peer relations as a clinically significant area of concern.

SUMMARY, ELIGIBILITY, AND RECOMMENDATIONS

Cognitively and academically, Student was generally in the above average range when compared to same-age peers. Student was creative and artistic, enjoying

- art,
- crafts,

- storytelling,
- yoga,
- science,
- piano, and
- cooking.

The qualitative and quantitative data suggested that Student's ability to focus was appropriate for her age.

Student's school-based challenges were related to her poor social skills and emotional regulation. Student's high degree of rigidity, lack of flexibility, and difficulty adapting to change leads to emotional dysregulation. Student was unable to modulate her emotions, particularly when unexpected things occurred, which leads to emotional outburst or excessive periods of emotional upset. Student required support developing skills, including perspective taking, initiating/joining group activities, and understanding reciprocity of social interactions. Communication and coping strategies would help Student manage her feelings when the unexpected occurs.

School psychologist Spivey found that Student met the legal eligibility criteria for autism. Spivey made a number of recommendations to be considered by the IEP team.

Fundamentally, Student benefitted from established, trusting relationships with school staff members, who should use Student's areas of strength and interest to create a safe and comfortable learning environment. In the classroom, school staff needed to establish rapport and trust through one-on-one discussions and check-ins. Establishing this rapport would better enable Student to correctly identify and express her needs and emotions, which Student internalized. Student needed direct and explicit instruction for

social skill development in reading social cues, engaging peer interactions, understanding reciprocity, and perspective taking. Student needed sensory support to help her self-regulation.

When Student returned to in-person schooling, Spivey suggested the use of

- timers and visual aids, like a daily schedule, to support transitions,
- sentence stems to communicate her needs,
- a “take a break” spot in the classroom, and
- opportunities for meaningful participation in school activities.

SPEECH-LANGUAGE EVALUATION

Certified speech-language pathologist Lisa Cameron assessed Student in November and December 2020, producing a December 10, 2020 speech-language evaluation report. Student exhibited expressive language dysfluency with use of whole word repetitions and phrase revision when trying to organize longer narrative. This was related to pragmatic difficulty, executive functioning, organization, and poor Theory of Mind. Theory of Mind refers to the cognitive ability to attribute mental states, such as

- beliefs,
- intentions,
- desires,
- emotions, and
- knowledge, to others.

Theory of Mind is a crucial component to social cognition, enabling effective communication, empathy, and social interaction.

Student struggled to determine what information was salient and necessary to her listener, which was confusing. Student would then easily abandon her efforts to communicate further. Student's poor Theory of Mind and social anxiety contributed to conversation impairment as well, as indicated by Student's lack of elaboration when answering questions.

Pathologist Cameron suggested that the IEP team consider language supports in the areas of social pragmatics, oral narration, use of consistent pronouns, and remediation of articulation sounds, along with weekly pragmatic language therapy.

OCCUPATIONAL THERAPY ASSESSMENT

Registered and licensed occupational therapist Andrea Lopez assessed Student, issuing a December 9, 2020 occupational therapy assessment report. Lopez

- reviewed available records,
- twice observed Student in her virtual classroom,
- clinically observed during testing,
- took handwriting samples, and
- administered standardized instruments.

Student often showed distress at loud sounds, like slamming doors, electric pencil sharpener, public address announcements, and fire drills. She sometimes did not respond to voices or new sounds. Student repeatedly rocked and fidgeted while seated at her desk. Student did not perform consistently in daily tasks. The quality of her work varied widely. Student typically played repetitively during free time and did not alter activities when given the opportunity. Student exhibited substantive dysfunction in social participation and visual processing.

Lopez recommended calming strategies, to be used across school settings, such as decreasing visual input by seating Student in the front of the classroom. Lopez suggested activities with substantial proprioceptive and vestibular input, such as

- running,
- stomping,
- rocking,
- bouncing,
- jumping, and
- pushing, pulling, or carrying heavy objects.

STUDENT'S INITIAL IEP TEAM MEETINGS

Piedmont Unified convened Student's initial IEP team meeting on December 9, 2020. All requisite members were present, including

- Mother,
- Father,
- Dr. McCarthy,
- special education director Hillary Crissinger,
- Havens' principal Anne Dolid,
- Piedmont Unified school psychologist Marianne Peirce,
- Student's general education teachers,
- program specialist Jessica Siebert, and the
- three assessors.

The meeting was held virtually. Parents previously received copies of the three assessment reports.

Parents indicated they were primarily concerned with Student's social-emotional, behavior, and sensory realms. They emphasized that getting Student to school on a timely basis had long been a challenge. A similar challenge exists with distance learning, but Parents believe that Student's kindergarten placement may be contributing. Student had already completed a full academic year of kindergarten at Ecole Bilingue the previous year. Parents believed that Student may be bored.

Student's general education teacher stated that the challenge was to keep Student engaged; Student often left the screen. When it was time for Student to receive compliments, Student covered her ears, muted the sound, and would erupt into extreme tantrum.

School psychologist Spivey reviewed her psychoeducational evaluation, noting Student's challenges with social and behavioral skills that impact her ability to fully engage in her school program. Student required special education to access her education. Occupational therapist Lopez gave an overview of her occupational therapy report and recommendations, regarding Student's sensory challenges. The meeting concluded because of time. On December 17, 2020, Piedmont Unified convened the second meeting of Student's initial IEP. Pathologist Cameron shared the results of the speech and language assessment.

The IEP team determined that Student was eligible for special education under the primary eligibility category of autism and secondary eligibility category of speech and language impairment. The IEP team developed eight goals, addressing for sensory regulation, transition and disengagement behaviors, and expressive language and coherent narrative. Three goals were for social pragmatics, using active listening

strategies, strengthening Theory of Mind and understanding of what others might like to talk about, and building independent skills for initiating and joining play and maintaining friendships.

The IEP team considered proposed program accommodations. The first accommodation was to provide Student with clear expectations, using visual schedules, visual time, reinforcement of positive behavior, and a regular established morning drop-off routine. Another accommodation was enabling sensory breaks, by encouraging Student to

- stretch,
- do chair push-up,
- breathing exercises,
- asking for a break to jump on a trampoline,
- do jumping jacks, or
- sip water, as needed.

The third accommodation offered proprioceptive options throughout Student's day, such as

- shelving books,
- wiping down tables,
- passing out papers,
- carrying books to the library, and
- other heavy work school jobs.

Student's IEP offered 30 minutes of monthly consultation between the occupational therapist and teaching staff and 30 minutes per month of consultation

between the speech pathologist and teaching staff. Piedmont Unified would also provide a shared paraeducator who would be present for the full, in-person learning day. While distance learning continued, the shared paraeducator was virtually present for Student's synchronous, live and online, general education. When Student returned to in-person learning, Piedmont Unified would offer Parents an assessment to evaluate Student's ongoing paraeducator support.

Offered services included occupational therapy, group or individual, one time a week for 30 minutes. Student would receive two language and speech therapy sessions per week, one session individually and one in a group. The team discussed the possibility of moving Student to first grade. The meeting ended.

Another IEP team meeting was held on January 14, 2021, to address Parents' questions and concerns regarding the proposed IEP. Parents wanted to increase Student's academic demands by moving her to first grade, stating Student would likely be more engaged. Principal Dolid explained that asynchronous time substantially increased in first grade. First graders were expected to complete their academic tasks on their own time at home.

In the 2021 spring semester, Piedmont Unified offered a hybrid, in-person school schedule. Program specialist Siebert urged Parents to consider having Student return to some in-person learning. Student would have more opportunity to work on her goals and build her capacity to tolerate a new environment like following routines and separating from Parents. Parents said they did not see the hybrid, in-person option being realistic for their family that school year.

Parents wanted to move Student to first grade and focus on plans to support Student in distance learning for the remainder of 2020-2021 school year. The team agreed to move Student to first grade. The team adjusted some goals at Parents's request. The meeting ended. The Parents agreed to the IEP offer of FAPE on January 26, 2021.

The IEP team subsequently met on May 11, 2021, to discuss Student's progress, adjust emphasis of some goals, and strategized about Student's transition to full-time school in Spring. Student had made progress academically and on all her goals. Student completed the 2020-2021 school year in first grade, with excellent grades.

The IEP was later amended on August 10, 2021, with Parent's permission, to correct the inadvertent removal of goals 4 and 5 in the IEP paperwork.

2021-2022 SCHOOL YEAR – SECOND GRADE

On August 9, 2021, Student started second grade, in-person, at a Havens general education classroom. Student was six years old. Her general education teacher was Melissa Arata.

THE SCHOOL INCIDENTS DID NOT DEMONSTRATE INADEQUATE SUPPORT BY UNTRAINED PARAEDUCATORS

Parents contended that Student soon began to feel increasingly anxious because of multiple school incidents which compromised Student's safety, confused Student, and made her feel demeaned and picked upon. Parents generally used these incidents to assert that paraeducators were not properly trained and the support was inadequate to keep Student safe. Parents wanted a dedicated one-on-one paraeducator to assure

Student's anxiety was properly monitored and addressed. Piedmont Unified argued that every incident brought up by Parents was addressed by staff, Student's safety was not compromised, and Student's anxiety was often generated by her sensory sensitivity and struggles to properly interpret another's intent or desire in social exchanges, which were being addressed by Student's IEP's goals, services, accommodations, and supports.

Two weeks into the new school year, on August 20, 2021. Student got separated from her class for a short period of time when the class was transitioning to physical education. Student joined another class on the playground, which was discovered as Student lined up to get lunch. When another teacher directed Student to where she was supposed to be, Student got confused. Mother emailed teacher Arata about the incident. Arata apologized, and assured Mother that Student would not wander on her own again. Arata would talk with the paraeducator, but assured Mother that Student was never in any danger. Such an incident did not reoccur.

In early October 2021, Parents met with teacher Arata and case manager Coffey-Smith, about rambunctious boys in the classroom who distracted Student and had harmed her by their running and jumping. Parents were understandably concerned that Student was in an unsafe situation. Student was on the carpet during community circle when one of the boys bumped his head against Student's face, causing her pain. The next day, one of the boys jumped over Student and kicked her in the back of the head; the same boy jumped over Student's head and hit her nose. Student told teacher Arata, who announced that jumping over people's heads was not allowed. Mother also wrote an email to principal Dolid, basically characterizing the classroom as an unsafe learning environment.

Principal Dolid responded to Parents' email, noting she was aware of the specifics and the classroom dynamics. She was pleased to see Student advocate for herself with teacher Arata, who had been working to separate the rambunctious boy from Student.

Principal Dolid testified at the hearing. She had been Havens' principal for 10 years, and had 17 years of school administrative experience, with credentials in English and administrative services. As principal, Dolid was the administrative designee on more than half of the special education students' IEP's, attending four to eight IEP meetings per month. As the designee, she also supported the special education educators and service providers, and assured that IEP's were followed.

Havens had about 430 students. About 15 percent had IEP's, making for a neurodiverse student body, with different cognitive abilities, strengths, and weaknesses. This included children with autism and anxiety disorders. Pupils with IEP's were supported by the classroom teachers, special education teachers, paraeducators, and service providers. Staff was trained on serving neurodiverse students. Staff had monthly meetings with trainings and two-hour development sessions. Training and consultation were especially focused as students returned to in-person schooling after the pandemic.

In her email reply to Parents, Principal Dolid explained that all teachers were dealing with challenges similar to those in Student's classroom, at the beginning of the 2021-2022 school year. Children had not been in a school environment for more than a year, and all were learning to renegotiate in a school setting. Some, like Student, had a quieter, calmer environment than school during Covid distance learning. Others spent the time wrestling and tussling with siblings. Children had different amounts of parental

involvement. All of this made for a challenging fall, with staff supporting teachers in a variety of ways, as teachers and paraeducators navigate novel classroom situations related to the children returning to in-person schooling.

Here, program specialist Siebert observed Student's class more than eight times in support of those with IEP's. Staff confirmed that the physical contact was in the course of classroom transitions. Dolid understood how it must have felt to Student. She told Parents that teacher Arata and case manager Coffey-Smith would adjust where Student had a spot on the rug, where no one passes her, or allow Student to play or work at her desk instead. Student was moved to a quieter place on the carpet for circle time.

On October 14, 2021, Mother emailed teacher Arata, and copied case manager Coffey-Smith, about Student not receiving the hot lunch that Parents ordered, and only being given sides. Mother said that Student could not advocate for herself, and expressed concern that the paraeducator was not there to help her in what was a teaching moment. Student also told Mother that Student waited for teacher Arata before saying anything about not getting her entrée. Mother thanked Arata for then getting Student a full lunch.

Teacher Arata responded immediately, stating that she was not with the students at lunch and that she did not get any food for Student. Arata said that there were three adults at the lunch table assisting children getting their main lunch. Children then retrieved their sides. The classroom paraeducator, who was there at lunch to assist the children, took Student to get her missing lunch. When Student and the paraeducator returned to class, neither indicated there was anything amiss.

Mother said that Student tried to eat the sausage pancake lunch, but that it made her itchy and she did not finish eating it. Student's IEP reflected that Student was allergic to nuts and had grown out of allergic reactions to sprouted bread and eggs. The substitute lunch provided to Student did not have any nuts and Parents never indicated any other allergy-like reactions to any other food.

This email exchange was emblematic of many emails from Parents to Piedmont Unified staff, throughout the year. Parents accepted Student's narrative of events without question, then authored emails to staff reacting to, and sometimes expressly judging, staff based on Parents' understanding of events.

On October 19, 2021, teacher Arata emailed Mother to say that Student was upset after lunch because another girl made up something that Student did not say. Arata comforted Student, who then went for a walk with the paraeducator. Student returned and happily drew her favorite candy, as part of an assignment. Arata contacted the school counselor, who was going to have Student and the other girl do a conflict resolution meeting.

Parents wrote back, and included case manager Coffey-Smith and principal Dolid, and indicated that Student had reported that this other girl had been teasing Student about what her lunch looked like, made up rumors about Student having a crush on another boy, and calling Student annoying or a pest when playing together. Also, the other girl grabbed Student's glasses multiple times, saying it was daily, and Student had to repeatedly ask for their return and clean them. Parents said this was 100 percent unacceptable behavior and wanted this bullying behavior to stop.

Principal Dolid responded, stating that the described behaviors were unacceptable, and Student's team would mitigate reoccurrence. The school contacted the other girl's parents, who were fully informed of what occurred and who were following up with the other girl at home. School counselor Morris held a restorative counseling session between Student and the other girl, the day before. Father wrote counselor Morris the next day, saying that the other girl commented to Student that her lunch looked "gross." Father said the restorative practices would not work. He asked that the other girl be separated from Student at lunch. Teacher Arata responded, saying the Student was moved to another table, with two girls she knew. Arata checked on Student after lunch and confirmed Student ate.

Parents repeatedly referred to these October 2021 incidents with the other girl in subsequent meetings, IEP teams meetings, and to their private providers. Yet, Piedmont Unified communicated with Parents, directly intervened, and the conduct ended.

In late March 2021, Student had a toileting accident at school. Student was embarrassed, but did well in discreetly taking care of herself. Coffey-Smith informed the Parents. Student told Parents it happened because she was caught up in reading her book, she did not notice her friend approaching and, startled, she soiled herself. Parents, however, said it was because Student did not feel safe and was overly anxious. Basically, Parents said school staff should know that Student became laser-focused, unaware of her surroundings, and should have kept her further away or made Student pay attention to nearby action. Student did not have another toileting accident while at Havens.

Student did not show that these incidents were the result of inadequate supervision or that a dedicated one-to-one aide would have prevented them. Student was in a public-school general education classroom, with neurodiverse students. Some accidents did happen, and Havens' staff always responded. Havens' staff were receptive and accommodating to Parent's concerns. The primary incident in October 2021, of another girl teasing Student and taking her glasses, was fully addressed and did not reoccur. And, as the school year progressed, the children became more attuned to in-person school. Student failed to prove by a preponderance of the evidence that these incidents meant Student was in an unsafe environment and inadequately supported by staff.

SCIA ASSESSMENT AND OCTOBER 26, 2021 IEP TEAM MEETING

Program specialist Jessica Siebert conducted a Special Circumstance Instructional Assistance evaluation, commonly referred to as a SCIA assessment, issuing a report dated October 22, 2021. SCIA assessments examined when additional adult aide support was needed for students with disabilities, to meet their goals and objectives.

Specialist Siebert testified at the hearing and, at that time, was the vice principal of Ruby Bridges Elementary School, Alameda Unified School District, in Alameda, California. She had a Master of Arts in teaching from University of San Francisco, in 2004, and held a mild to moderate education specialist credential and a preliminary administrative services credential. From 2014 through 2023, Siebert was a program specialist and teacher on special assignment for multi-tiered systems of support, at

Piedmont Unified. She was formally trained in behavioral and social-emotional needs of children with autism and had more than 20 years of special education teaching experience, including coaching new teachers.

While at Piedmont Unified, she led district-wide special education meetings and monthly site meetings. She planned and facilitated training for the paraeducators. Siebert had conducted about 20 to 30 SCIA assessments. Siebert's education, training, and experience qualified her to conduct Student's SCIA assessment.

Siebert examined Student's ability to function independently, participating and following instructions in class, and participating in activities during lunch and recesses. She was aware of documented challenges in engaging in class activities, and interacting with peers.

Siebert reviewed records and evaluated the classroom environment. Student's class followed a regular schedule, was well organized with materials readily available for learning. The class transitioned quickly and smoothly between activities, and teacher Arata used clear signals to get the children's attention. Arata stated Student rarely needed assistance with learning. Assistance for Student usually had to do with managing materials in her backpack and reminders about what to do when finished with her work or to use her eye patch. Student's library, art, and music teachers all stated that Student acted independently, followed instructions, participated in class, and stayed on task. The physical education teacher said Student sometimes needed to be directed, by the teacher, but otherwise participated well.

Siebert interviewed the three paraeducators who worked directly with Student. All three reported that Student operates independently and needed very little support from them. Teacher Arata later commented that Student often indicated a desire not to be directed by an adult.

Program specialist Siebert conducted seven observations of Student, on five different days in September and October 2021,

- in the general education classroom,
- at physical education,
- during music class,
- at morning snack and recess, and
- during lunch and recess.

She then used a Special Circumstances Instructional Assistance rubric, rating Student's needs in five domains – health, self-help/adaptive skills, behavior, socialization/communication, and academics.

Siebert concluded that Student was showing success navigating through all parts of her schedule independently. Student needed some prompts, but from teachers, which was a sufficient level of support to easily correct or finish whatever was expected of Student. Siebert thought that Student did not appear to require the full-time support of a shared paraeducator to successfully navigate or engage in any part of her school program.

Piedmont Unified convened a virtual IEP team meeting on October 26, 2021, to review the SCIA evaluation. All requisite IEP team members were present, including Parents, Dr. McCarthy, and Parents' advocate. Siebert presented her SCIA evaluation report.

Parents strongly disagreed with not having a full-time paraeducator. Mother and Father expressed frustration at the school incidents, strongly stating that Student was not being supported at school. Parents' advocate said that many of Student's challenges are invisible at school. Student was now hesitant to go to school, showing a lot of anxiety at home. Father was critical of the support, asserting that school staff misread Student. For example, when staff mentioned that Student's shrinking away often meant that Student did not like something or the situation, Father said that meant Student did not feel safe. Both Father and Mother again recounted the issues with the other girl, especially about her glasses being taken. Parents also recounted the other incidents. Parents repeatedly questioned Student's safety at school. Parents distrusted the school staff's report of Student's well-being. Mother wondered how Parents were supposed to know what the kids were saying to each other. Dr. McCarthy was working with Student on self-assertion skills.

Speech pathologist Paige Rosano reported working with Student on social pragmatic goals. She suggested adding a goal for self-advocacy at upcoming annual IEP team meeting. Rosano also supported Student during snack recess and has not seen any challenges with other children. When done with her snack, Student joined a group of peers, whom she regularly plays, and appeared to be enjoying herself.

Dolid observed that there was a disconnect between what Student was reporting and what school staff were observing. Student had good friendships with other children, with whom she played, ate snack and lunch, and interacted in class. In some social situations, Student will feel differently about what some peers might be doing. So, the question was how to support her in building social pragmatic skills.

Father forcefully stated that he did not believe Student was misreporting. Father said the school team simply did not see the things that happened. Father said he wanted the school team to say that they believe Student. Mother said they lost faith in the school team's ability to keep Student safe.

Program specialist Siebert shared that some of the Parents concerns regarding Student having dedicated adult one-on-one support was inconsistent with building Student's awareness and independence. Student needed to tune into the whole class reminders, notice what her peers were doing, and respond with more independence. Student successfully navigated most classroom directions throughout the day, demonstrating that she had the capacity to develop these skills.

Principal Dolid suggested adding school-based counseling, with counselor Lori Morris, to assist Student. Siebert agreed that having counseling as a general education support would be a good intervention for Student, while she works on her social pragmatic skills with pathologist Rosano. Dr. McCarthy agreed, saying that she had worked with counselor Morris for years. Dr. McCarthy said that having Student relate with Morris would open communication between what was happening at home and the school team. Siebert confirmed that the school could have counselor Morris connect with Dr. McCarthy, and start working with Student. Piedmont Unified would leave the full-time shared educator in place, provide more coaching support with the counseling,

and evaluate at the upcoming annual IEP. Counselor Morris would work with the team to monitor Student. Parents never accepted Piedmont Unified's offer of school counseling with Morris, though recommended by Student's long-standing private therapist Dr. McCarthy.

Parents said they still did not feel safe. Father asked for reports. The team agreed that case manager Coffey-Smith would provide a weekly email to Parents, updating how Student was doing during the week. The meeting ended.

Following Student's October 2021 IEP, Coffey-Smith used the daily data, the paraeducators' reports, and her own observations to send Parents the Friday updates on Student's week in school. Parents had asked for data regarding Student and, at hearing, claimed they never received any. However, Parents acknowledged receiving the Friday updates, which were based on multiple data gathering sources. Father was dismissive of the reports, concluding that the school staff simply did not see Student's anxiety and needs. Father acknowledged at hearing he did not trust the accuracy or reliability of the reports.

Coffey-Smith was aware of the morning struggles that resulted in Student being tardy. She offered transition support for Student at school. Parents said that the tardiness related to the school refusal, which was before Student arrived at school.

Parents retained the services of Allissa Greenberg, PhD, BCBA-D, in December 2020. When Dr. Greenberg testified at the hearing, Parents and Student were no longer her clients. Dr. Greenberg was a licensed psychologist since 2013. She had a Claremont Graduate School doctorate in psychology in 2011 and a master's degree in psychology in 2009. She became a BCBA in 2009, which was changed to a doctorate level board

certified behavior analyst in 2011. Dr. Greenberg owned Focused Behavior Solutions, Berkeley, California, providing psychological services and behavioral parent training, for families of children with behavioral challenges.

Dr. Greenberg observed Student in her classroom at Havens on December 1, 2021, for a half an hour. In the classroom, Student was interacting with the teacher at a computer, with another child, and answered teacher's question. Student picked at her nails and, returning to desk, picked at her stress ball. Student looked at computer and worked on her drawing assignment. Paraeducator approached and had a conversation with Student, who kept her eyes down. Paraeducator asked if Student would like to go for a walk. Student said yes and they went for a five-minute walk. They returned, picked out a book, which Student took to her desk. At recess, Student played with other children, building with blocks. The paraeducator initially prompted the girls to play. The paraeducator was within 10 feet at all times. Student was animated and at ease when playing with her peer.

Dr. Greenberg concluded that Student continued to require a one-on-one paraeducator throughout the day, who was trained and supported by a psychologist and board certified behavior analyst. Dr. Greenberg's recommended goals, or variations thereon, were already in Student's IEP, except for the self-advocacy goal. However, at the October 2021 IEP meeting, the IEP team had already decided to add a self-advocacy goal at the December 2021 annual IEP team meeting.

Though Parents had expressed Student's drop-off at school as being a major issue at that time, Dr. Greenberg's observational report did not mention Student's struggles with timely getting to school. She did not report observing the morning routine in Student's home or drop-off at school.

DECEMBER 7, 2021 ANNUAL IEP TEAM MEETINGS

Piedmont convened Student's annual IEP team meeting on December 7, 2021. All requisite attendees were present, including Parents, Dr. McCarthy and Parents' advocate.

The team reviewed Student's present levels of performance, with reports from teacher Arata, the occupational therapist, and speech pathologist. Student met six of her eight goals, making progress on her expressive language and independent skills of initiating and joining play. The team discussed five proposed new goals in

- self-advocacy,
- social pragmatics,
- articulation,
- phonological articulation, and
- sensory regulation.

Accommodations included sensory breaks, promotion of movement activities, and checks throughout the day regarding Student's emotional zones, regarding assistance and regulation.

The IEP offered a full-time shared paraeducator. All staff and providers, which included teacher, occupational therapist, speech pathologist, and paraeducators working with Student, were required to regularly consult with each other regarding Student. The IEP offered individual occupational therapy for 30 minutes per week, and language and speech therapy for 50 minutes a week with another pupil. 96 percent of Student's school day was in the general education environment, while four percent of Student's day was in special education.

Parents asked that the paraeducator be trained and supervised by a psychologist and BCBA. Program specialist Siebert reviewed the extensive training and experience of case manager Coffey-Smith with autistic students. Coffey-Smith reviewed the daily data that is gathered and the regular training of the paraeducators to address Student's evolving needs.

The team again discussed counselor Morris, who had reached out to Parents a few times since the last IEP team meeting. Siebert encouraged Parent to consider the counseling option. As Student transitioned to a new grade level, with new teachers and staff, having an additional adult on site with whom Student felt safe and processed challenges, would be very helpful. Dr. McCarthy restated that she thought the counseling would help Student. Mother said that Student already had Dr. McCarthy and Parents did not know Morris. They had not agreed to the counseling. The meeting concluded.

Following winter break, which was December 20, 2021 to January 5, 2022, Student was absent from school for more than a month, the beginning of February 2022, due to Parents' concerns regarding a Covid surge.

At Parents' request, Piedmont Unified convened an IEP team meeting on January 18, 2022. All requisite participants attended, including Parents, Dr. McCarthy, Dr. Greenberg, and Parents' advocate. Parents formally requested that Student's IEP include a full-time, one-to-one paraeducator, who is trained by and received support from a psychologist with expertise working with autistic children. The psychologist should also provide training to additional school team members, including the teacher and service providers.

Dr. Greenberg referred to her 30-minute, December 2021 observation of Student in support of her conclusion that Student required a one-to-one paraeducator, who was trained by a psychologist to focus on teaching Student how to independently identify when Student was starting to feel anxious and when she needs to use a coping skill. Dr. Greenberg felt that a full-time dedicated paraeducator was important for Student to develop a trusting relationship with over time. Dr. Greenberg's short presentation generally questioned the training and expertise of Havens' staff, in working with children on the spectrum.

Parents emphasized they want one paraeducator, not several, to support Student. Principal Dolid noted that she had often been the one to support Student to transition into her classroom on mornings when Student was tardy. Student articulated she did not want adult help, and politely asked adults to back off. She would go to class on her own. During the school day, Student similarly often told her paraeducators and other adults that she did not want their assistance, but did indicate when she would like their support.

Program specialist Siebert noted that the paraeducator training had been discussed at the last meeting. They were supervised by a program specialist Coffey-Smith, who reviewed her decades of experience with autistic children, including the training and use of Social Thinking. School staff have not been able to implement additional and modified goals and accommodations proposed in the December 2021 annual IEP because Parents have not given consent. Siebert encouraged Parents to consider the IEP offer and sign what they were willing to agree to, explaining how they could consent with exceptions.

Piedmont Unified convened an IEP team meeting on February 7, 2022. All requisite participants attended, including Parents, Dr. McCarthy, Dr. Greenberg, and Parents' advocate. Havens' staff reported on Student's speech, social pragmatics, and occupational therapy goal. Case manager Coffey-Smith stated that Student was comfortable and involved during recess and the paraeducator remained in close proximity, without hovering too closely. Program specialist Siebert said the goal for Student, who struggles with social interactions, was to develop relationships with a variety of adults to whom Student could approach for support. The Havens' team scaffolded opportunities for Student to talk to these adults through check-ins so Student gains familiarity. Mother responded that since a paraeducator was not always present, many learning opportunities had been missed. Mother again referred to past incidents, stating that she did not feel that Student was safe at school. The team agreed that Coffey-Smith's weekly summaries would start again the following Friday.

The team discussed a morning transition plan when Student was tardy. Parents did not accept Piedmont Unified's offer to work with Parents in building structure and strategies to support morning drop-off.

The occupational therapist proposed a revised goal about Student taking breaks during the day, with a baseline of Student taking breaks one to four times a day, with which no one disagreed. However, by March 2022, Mother said that Student did not want to take breaks, because she was followed by the paraeducator or had another child with her. Coffey-Smith responded that breaks were supported because they help Student regulate, and will talk with the team about Student taking short breaks by herself. However, Coffey-Smith stated that the school cannot have a child move about campus unsupervised.

The meeting concluded with discussion of when to begin Piedmont Unified's functional behavior assessment and social-emotional assessment, since Student had just returned to school the previous Friday. Havens' staff would forward an assessment plan for Parents' signature, so Piedmont Unified could start the assessment process.

On March 3, 2022, Parents returned a signed consent to the amended IEP, with exceptions, requesting a "consistent" one-on-one paraprofessional, with school psychologist supervision. The exception did not mention a BCBA or ABA training. Parents also returned the signed assessment plan.

Dr. Harter sent Parents a prior written notice regarding Parents' request for a full-time, one-to-one, paraeducator. A parent has a right to receive prior written notice when the school district initiates or refuses their request to initiate a change in their child's identification, assessment, or educational placement in special education. (Ed. Code § 56500.4.) The prior written notice restated the reasons, as explained by staff at the IEP team meeting, why Piedmont Unified declined Student's request.

APRIL 2022 FUNCTIONAL BEHAVIOR ASSESSMENT

Piedmont Unified's BCBA, Austin J. Lambe, conducted Student's functional behavior assessment, issuing an April 25, 2022 report. He testified at the hearing. Lambe had a 1982 bachelor's degree in psychology and a 1983 master's degree in clinical psychology, from the University College, Dublin, Ireland, which enabled him to work as a clinical psychologist in Ireland. Lambe earned a 1987 master's degree in behavior analysis and therapy, from Southern Illinois University, Carbondale, Illinois. He became a BCBA in 2000 and worked as a behavioral analyst for Piedmont Unified from 2015 to 2022. BCBA Lambe had almost 37 years of experience assessing children and

adults with behavior issues. He had been a program director for developmentally delayed adults with severe behavioral issues, and a clinical coordinator and clinician at multiple nonpublic and private schools for autistic children with behavior needs and programs. He was director of behavioral services at a nonpublic private school, training staff, developing behavior support policy and individual behavior plans for more than 90 children. Before starting at Piedmont Unified, Lambe was the executive director for Oakes Children's Center, San Francisco, California, a community mental health provider for 170 special needs children and families, in nonpublic schools, from 2008 to 2015.

BCBA Lambe's testimony was persuasive. When he gave an opinion, he gave a clear reason and basis. His report and testimony reflected a professional intent to fully evaluate Student's needs, so she could receive the support necessary to benefit from her educational program.

Lambe began Student's assessment by interviewing both Parents. He also had them complete an open-ended Functional Assessment Interview questionnaire and a Screening Tool, which identified four separate areas of concern:

- inflexibility and reluctance to do new things or things differently;
- not responding verbally to questions and not making eye contact;
- avoidance; and
- shutting down.

Lambe interviewed teacher Arata and the two paraeducators that worked with Student. Arata said Student always paid attention, was very independent, advocated for herself, and asked questions in class. Arata identified two very good friends with whom Student played. Student did not like physical touch or feeling crowded. Arata mentioned a toileting accident, but saw this as an isolated occurrence, not untypical for a second

grader, which Student handled well. The paraeducators also did not see any of the targeted behaviors and, since the turn of the year, saw Student improve socially in class and play. In the past, Student would become frustrated when it was loud in class, but they were not seeing the frustration.

Lambe formally observed Student on six separate days, in April 2022. Each observation was not less than 45 minutes. He observed Student in her

- classroom time,
- writers' workshop,
- story time,
- group time,
- music class,
- art class,
- technology class,
- recess,
- lunch time,
- lunch recess, and
- transitions.

Lambe paid particular attention to free play and recess. Lambe did not observe any target behaviors or concerns.

He also did informal direct observations, during multiple lunches and recess periods. Student actively sought out and played, usually with the same two friends. Their play involved fantasy, running, laughing, smiling, and talking. During lunch,

Student interacted with her peers and initiated interactions with the adults at the table. She responded and made eye contact, especially with her two good friends. Student was often one of the model students,

- paying attention,
- following directions,
- correctly using materials,
- completing assignments,
- blocking out distractions, and
- remaining on task.

Lambe saw Student "toe walk" at times, during structured and unstructured times. Also, when Student was chosen as class "Star of the Week," she was a little nervous sitting in front of the class, and tugged at her clothes. But Student remained seated and answered a range of questions from her peers. Student was commended by teacher and paraeducators on how well she presented herself.

During two observations when class was engaged in typical class work, Lambe compared Student and a randomly selected same gender peer, using 44 separate probes. Student and peer were engaged or unengaged with peers essentially the same amount of time. Student was engaged with a staff person somewhat more than her peer.

After four observations, and not seeing any targeted behaviors of concern, Lambe reinterviewed the Parents to see if he was missing something. They suggested that he talk to Dr. Greenberg. Dr. Greenberg suggested some anxiety might show itself

in finger picking, averting her gaze when spoken to directly, or hunching her shoulders. Lambe did two more observations, but none of the problem behaviors were observed or reported by staff.

Lambe found no reason for a behavior intervention plan. Student was very responsive to what interventions were being used. Paraeducators let Student know they were available. Student was responsive to adults, in structured and unstructured time.

At hearing, Lambe stated that Student did not require one-to-one support from adults with specific ABA training. The paraeducators did not require supervision from a psychologist or BCBA.

Parents never mentioned anything to Lambe about difficulty with Student drop-offs in the morning. Dr. Greenberg said nothing about morning drop-offs. If they had, he would have put it in his April 2022 report and inquired further.

APRIL 2022 SOCIAL/EMOTIONAL ASSESSMENTS

School psychologist Marianne Peirce conducted a psychoeducational evaluation of Student, focusing on Parents' request for further evaluation of Student's social-emotional concerns. Peirce testified at the hearing. She has a master's degree in psychology from San Francisco State University, post-graduate certification in school neuropsychology, and pupil personnel services credentials in school psychology and school counseling. Peirce had been a school psychologist for 17 years and had worked as Piedmont Unified's school psychologist at Havens since 2014. She did 20 to 40

assessments a year, program design and development, facilitated social skills groups, developed behavior intervention plans, and was an IEP team member for many of the children.

Peirce reviewed Student's records and interviewed Parents twice. Parents discussed triggers that could lead to Student becoming anxious, including sensory experiences, social situations, and unpredictability. Student's anxiety was variable each day. Signs of anxiety include picking at her hands and fingers, going quiet, hiding behind a parent, and "shrinking away" body language, as she withdraws. Parents acknowledged that Student had shown a lot of improvement from the challenges that she experienced the past winter.

Peirce interviewed Dr. McCarthy, who reported that Student seemed to have recovered from setbacks over the winter, and had successfully reacclimated to the school environment. Dr. McCarthy said Student felt more engaged in the school setting. Student's guardedness and withdrawal behaviors had decreased, and Student was presenting as more happy and joyful. Dr. McCarthy saw a tremendous positive shift as Student felt more trusting of the school environment and was feeling more socially and emotionally connected. Dr. McCarthy was optimistic that Student would continue to thrive. Peirce interviewed Dr. Greenberg, who reported that Student's anxiety appeared less pronounced than several months ago. Dr. Greenberg stated that Student had a better relationship with peers and that Student was not showing school refusal behaviors.

Parents said nothing about morning drop-off or tardies. Dr. McCarthy and Dr. Greenberg did not say morning drop-off was an issue. If any one of them indicated that the tardies were a problem, Peirce would have researched the issue and included it in her report.

Peirce conducted six observations of Student over three different days. In the classroom, Student navigated the assigned tasks, including transitions. Peirce did not see any apparent emotional distress, but some subtle indications of anxiety. Student was able to move past such signs and fully participate. Peirce saw no concerns on the yard, where Student happily played and engaged with friends. At physical education, Student similarly fully participated. Peirce observed Student to deal well with some unexpected loud noises.

Peirce conducted a structured interview of Student. Student was talkative, connecting well with Peirce. Student insightfully shared how she felt about school, her fellow students, and her general feelings about how things were going. Nothing suggested that Student was stressed or anxious.

Peirce had Parents and Student's paraeducator complete the Children's Depression Inventory, Second edition, which looked at any depression Student might be experiencing for emotional or functional problems. Both responders consistently reported that depression was not a concern. On the Behavior Assessment Scale for Children, Third Edition, Mother and the paraeducator generated cohesive ratings, with Mother indicating withdrawal as the only area of clinical significance.

Peirce suggested visual charts for coping, bands for Student's chair, increasing structure where possible, and participating in a friendship group.

MAY 3, 2022 AMENDMENT IEP TEAM MEETING

On May 3, 2022, behavior analyst Lambe and school psychologist Peirce presented their reports at Student's IEP team meeting. All requisite team members attended, including Dr. McCarthy, Dr. Greenberg, and Parents' advocate. None of the team members expressed any disagreement with the assessments. The team agreed to add four accommodations, and include friendship group counseling of 30 minutes per week. Mother said that Student got upset because a teacher used negative language. At hearing, Parents admitted they did not confirm with the teacher, who denied using the language. Parents alleged that Student did not have any trusted adult at school and that her emotions were blocking her access to her education.

Piedmont Unified's offer of FAPE included a full-time, shared paraeducator. All staff and providers, which included teacher, occupational therapist, speech pathologist, and paraeducators working with Student, were required to regularly consult with each other regarding Student. The May 3, 2022 amendment IEP offer was for the remainder of the 2021-2022 school year and the beginning of the 2022-2023 school year.

Siebert reminded Parents that formal goal progress updates would be issued in a few weeks. She will update the IEP paperwork and send it home for Parents to review.

Student ended the 2021-2022 year strong, making progress on all her IEP goals and receiving the highest grades available on all of her academic classes.

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UNILATERAL PLACEMENT AT ECOLE BILINGUE

By March 30, 2022, the private French immersion school, Ecole Bilingue, had accepted Student into its program for the next school year. Thereafter, through April and May 2022, Parents and Ecole Bilingue staff communicated about preparing for Student's return to Ecole Bilingue.

On June 24, 2022, Parents wrote Dr. Harter, stating that Piedmont Unified had not provided appropriate services and that she had not made progress. Parents stated they intended to place Student in private school and requested reimbursement for tuition and all related educational costs for summer 2022 and 2022-2023 school year. Parents returned Student to Ecole Bilingue for third grade.

STUDENT'S TARDIES WERE NOT EVIDENCE OF INADEQUATE PARAEDUCATOR SUPPORT

Student argued that Student's tardies evidenced Piedmont Unified's inadequate program and paraeducator support. Student claimed that Student's late drop-offs were never addressed by the school, even though they increased.

School drop-off had been an issue for Parents and Student, long before starting at Havens. When Student was in transitional kindergarten and kindergarten at Ecole Bilingue, Student was often tardy. Ecole Bilingue teacher Aliz Koliha, who knew Student three years, said that morning drop-offs were very challenging. Teacher Fatima Fall, who taught Student for two years, reported that Student often arrived late to school.

Parents told Spivey that the Student was tardy because Student's inflexibility impacted her morning routine and, once at school, Student experienced a great deal of separation anxiety.

In 2021-2022, if Student arrived late for school, Parents had to take Student through Haven's front office to enter school and go to class. The school staff who were present in the school offices, during the times that Student was tardy, testified that Student would eventually go to class. Usually, Student transitioned to class within a few minutes. On occasion, Student would take longer. If Student was hesitating, a teacher or principal would distract Student, sometimes with a school pet lizard. But Student would typically soon go to class. Sometimes the paraeducator would be called, but Student seemed to prefer going to class on her own. However, after Student returned to school in the first week of February 2022, Student was going to class by herself with no resistance.

At hearing, Father and Mother did not clearly explain why they could not timely transport Student to school, which was two blocks from their home. Father spoke of a morning routine, where he and Student would get up early, read some together, and have something to eat. But when Student was anxious, Father said he had trouble getting her to dress, or eat, or gather her school materials, because Student said she did not want to go to school.

Student argued there was a direct causative link between Student's struggles in school and the increasing number of Student's tardies, as the school year progressed. Student had 57 tardies for the school year. The highest numbers were 15 tardies in March 2022 and 10 in April 2022. However, the number of tardies increased during the time that Student was making significant progress in school.

On March 21, 2022, Father wrote Havens' staff that when Parents dropped Student off late, Student went to class by herself, no longer showing resistance, since the new year. In early April 2022, Dr. McCarthy reported to school psychologist Peirce that Student seemed to have recovered from setbacks over the winter, and had successfully reacclimated to the school environment. Dr. McCarthy said Student felt more engaged in the school setting, her guardedness and withdrawal behaviors had decreased, and she was more happy and joyful. Dr. McCarthy saw a tremendous positive shift as Student felt more trusting of the school environment and was feeling more socially and emotionally connected. Dr. McCarthy was optimistic that Student would continue to thrive. Dr. Greenberg reported to Peirce that Student's anxiety appeared less pronounced than several months ago, Student had a better relationship with peers, and was not showing school refusal behaviors. In April 2022, BCBA Lambe and school psychologist Peirce observed Student for many hours at school, in every setting. Both reported that Student was attentive, on task, seldom needed adult support, interacted with peers in class, followed the teachers' directions with little adult support, had at least two good friends with whom she regularly played, and was increasing her ability to positively interact with other peers.

At the February 7, 2022 IEP team meeting, program specialist Siebert discussed agreeing upon a morning transition routine. Student had just returned to school the prior Friday, after being out for winter break and the month of January. Siebert said the school team wanted to support Parents in transitioning Student to school. But Parents said dealing with morning drop-offs was just a band-aid because it did not address Student's trauma about being hurt at school. Siebert reminded Parents that counselor Morris remained available and encouraged Parents to reconsider. This would add another trusted adult at school who could assist with drop-off transitions. Havens'

staff remained available to brainstorm on any ways to set up structure or strategies to support morning drop-offs. Parents never accepted the school's offer to work with them to address the morning drop-off issues, perhaps because Student was no longer resisting going to class, when Parents dopped Student off late.

Parents struggled getting Student to school on time for years before starting second grade at Havens, so difficult morning drop-offs were not the mere product of Student's Havens experience. When Student had incidents at the beginning of the school year, especially October 2021, Student had the least number of tardies. When Student made great strides after returning to school in early February 2022, her tardies increased, but Student went to class on her own without resistance. Also, the tardies continued in third grade at Ecole Bilingue. Therefore, the increasing tardies were not directly correlated with Student's school experiences. Student did not prove by a preponderance of the evidence that Student's tardies were the result of Piedmont Unified's inadequate program and paraeducator support.

STUDENT DID NOT REQUIRE AN ABA TRAINED ONE-ON-ONE AIDE, WITH WEEKLY BEHAVIORAL SUPERVISION BY A MASTER'S LEVEL OR PHD LEVEL BOARD CERTIFIED BEHAVIOR ANALYST, TO RECEIVE FAPE

Parents contended that Student internalized her anxiety and that Piedmont Unified's paraeducators did not have the training, or proper supervision, to perceive and address Student's anxiety, diminishing Student's ability to access and benefit from her education. Student asserted that a dedicated one-to-one aide, with ABA training, supervised by a master's or doctorate level BCBA, was necessary to provide Student with a FAPE.

PARAEDUCATORS WERE TRAINED AND MANAGED BY STAFF EXPERIENCED WITH AUTISTIC CHILDREN

Dr. Greenberg testified that Student required a one-to-one aide, trained in ABA, supervised by a BCBA, referring to her December 2021, half-hour observation. Dr. Greenberg said that Student's anxiety showed up in different ways, such as not making eye contact. Student could not talk about her feelings and the things that made her uncomfortable, impacting her social relationships. Dr. Greenberg said it was important that the one-on-one paraeducator could identify when Student became anxious, saying this required training.

Dr. Greenberg said that if she were supervising Student, she would have collected data on:

- All of Student's IEP goals;
- Student's breaks, how often, how long;
- Indicators of anxiety, like skin-picking, and how often; and
- Verbal responses as opposed to nonverbal responses.

Dr Greenberg emphasized that gathering data was the only way to assure that Student was acquiring and generalizing skills. If Dr. Greenberg was the supervisor, she would have made personal observations, a minimum of one hour a week, which would enable continued training of the Student's one-on-one paraeducator.

Hear, though, Havens' supervising case manager had daily gathered data, which was used to continually train the paraeducators and adjust the program as Student's needs evolved through the year.

Case manager Coffey-Smith testified at the hearing. She was the elementary program specialist for Piedmont Unified, since October 2023, following the departure of program specialist Siebert. Before, she had been the resource specialist for Havens for two years and, before Havens, had been the program specialist at another Piedmont Unified elementary school. She had been with Piedmont Unified for 14 years, having also worked as an inclusion specialist for more impacted students, in a special day class, and teacher. Before coming to Piedmont Unified, she worked in public education for 11 years, holding similar positions for special education students. Coffey-Smith worked with special education students for 25 years. Coffey-Smith received her master's degree in special education, which included training in autism, in 1999. Her 1996 bachelor's degree was in human development and psychology.

Coffey-Smith worked with autistic children throughout her career. She had an autism certificate, with her credentials, and had regularly participated in professional development regarding best practices involving autism spectrum disorder. Coffey-Smith was trained in the Michelle Garcia Winner's Social Thinking curriculum, which she had continued to update through the curriculum's substantial materials. Coffey-Smith applied the Social Thinking curriculum and concepts in her work at Piedmont Unified.

As Student's case manager, Coffey-Smith was very familiar with Student's IEP's, having attended the 2021-2022 team meetings. Student's IEP provided Student with a full-time, shared paraeducator. The paraeducator was assigned to Student and one other child. Over the course of a day, two to three paraeducators would provide support to Student, depending upon the schedules. Student's general education classroom had a paraprofessional, but Student's paraeducators were part of the special education department.

Coffey-Smith gathered information regarding Student for purposes of reporting IEP goal progress. She and the occupational therapist created categories of information and data, which Student's paraeducators gathered each day. This included Student's independence versus needing support and what zones of anxiety Student experienced. The paraeducators tracked the sensory interventions Student used during the day. Paraeducators reported how often, when, and what length were Student's breaks, indicating if Student was regulated upon return.

The paraeducators who supported Student were instructed as to their role for each of Student's IEP goals and accommodations. Paraeducators received specific instruction to watch Student's interactions with peers, and look for unmet expectations by Student. Paraeducators were taught to look for signs of anxiety, being sensitive to Student's body language, which may indicate Student's possible withdrawal. Paraeducators had a list of break options for Student and prompted Student to use breaks, or accommodations, when helpful. The paraeducators would listen to class instructions and offer guidance if Student requested or accepted. Sometimes Student did not want help. Paraeducators were trained to use as little words as possible, being clear and concise.

The special education paraeducators met with Coffey-Smith every Wednesday to report on each child they served. Student was a frequent subject at these meetings. Coffey-Smith also checked in with the paraeducators daily, saw Student every day at school, and observed the paraeducators working with Student.

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Piedmont Unified

- gathered the essential data regarding Student's school day,
- shared and evaluated the data to track goal progress and needed changes to support Student, and
- used the data to persistently train the paraeducators.

Coffey-Smith was well suited by her education, training, and experience of working with children with autism and anxiety, to evaluate the data, and to supervise Student's paraeducators' continued training.

ONE-ON-ONE PARAEDUCATOR

Parents, Student's therapists, and Piedmont Unified assessors, teachers, and providers all agreed that Student functioned best with trusted adults. Student contended that a dedicated one-on-one paraeducator, would enable Student to develop a deep, trusting relationship. Without such singularly dedicated aide support, Parents asserted that Student would continue to internalize her anxieties, hampering her ability to acquire and generalize needed skills. Parents contended a one-on-one paraeducator would be more attuned to reading the subtle signs of Student's anxiety, and effectively intervene or support.

Program specialist Siebert told Parents, and testified at the hearing, that their concerns regarding Student having a dedicated, one-to-one adult support was inconsistent with building Student's awareness and independence. For example, Parents were concerned about an incident when the paraeducator did not step in when Student failed to notice and get her water bottle, as instructed by the teacher when she was in line at physical education. Siebert told Parents that these were not the type of situations

for a paraeducator's intervention. Student eventually figured out the situation, responded to the teacher's cues, and retrieved her water bottle. Student needed to tune into the whole-class reminders, notice what her peers were doing, and respond with more independence. Student successfully navigated most classroom directions throughout the day, demonstrating that she had the capacity to develop these skills. A one-on-one paraeducator, upon whom Student was exclusively relying, would delay Student from developing increased awareness of her situation, which was necessary to build independence.

A public or private school cannot guarantee that a particular individual will remain as a service provider. An assigned person can change jobs, get a promotion, become ill, or go on maternity leave. Having a one-on-one paraeducator meant, if the person fulfilling that role suddenly departed, Student would not have a trusted adult upon whom she could rely. The shared paraeducators provided by Piedmont Unified assured that Student would continue to have a trusted, trained adult paraeducator, if one should suddenly depart. Despite Parents' statements to the contrary, Student did not present evidence that Student did not have trusting relationships with the two paraeducators who served her most of 2021-2022 school year.

The benefit of multiple, trusted adult relationships for Student was recognized by Dr. McCarthy, when Piedmont Unified offered counselor Morris' services at the October 2021 IEP. Dr. McCarthy knew Morris, had worked with her for years, and said she would help Student and Morris build a trusting relationship. At the December 2021 annual IEP, Siebert encouraged Parents to accept the standing offer of counselor Morris' services. Dr. McCarthy again stated it would be helpful. Student's advocate even thought that scaffolding of an additional trusted adult would be beneficial. Parents did not accept the counseling.

Since returning to school in early February 2022, Student made substantial gains toward her goals, independence, peer relationships, and executive functioning, as detailed above, with her shared paraeducators. Parents failed to demonstrate, by the preponderance of the evidence, that Student required a one-on-one paraeducator to receive a FAPE.

ABA TRAINED PARAEDUCATORS, SUPERVISED BY A MASTER'S
OR DOCTORAL LEVEL BCBA OR PSYCHOLOGIST, WAS NOT
NECESSARY FOR A FAPE

Dr. Greenberg attended some of Student's IEP meetings in 2021-2022 and felt that Piedmont Unified had a different view of the severity of Student's anxiety, because it did not believe that the paraeducators needed to be ABA trained and supervised by a psychologist or BCBA with expertise in autism. The persuasiveness of Dr. Greenberg's testimony in this regard was tempered by her statements to school psychologist Peirce, in April 2022, that Student's anxiety had decreased, she had better peer relationships, and she was not showing school refusal behaviors.

Student did not demonstrate that Piedmont Unified had a different view of Student's serious anxiety disorder. Instead, Piedmont Unified believed that shared paraeducators, with autism trained experienced supervision and support, enabled Student to fulfill her goals of acquiring and generalizing skills for emotional regulation, executive functioning, social interaction, and greater independence. ABA therapy, with BCBA or psychologist supervision, was not necessary to provide Student with FAPE.

In developing an IEP, the IEP team must consider

- the strengths of the child,
- the concerns of the parents for enhancing the child's education,
- the results of the most recent evaluations of the child, and
- the academic, developmental, and functional needs of the child.

(20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a).)

A student's unique needs that must be addressed under the IDEA may include behavior, social-emotional functioning, and mental health. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467-1468.) School districts are required to consider the use of positive behavioral interventions and supports, and other strategies when a child's behavior impedes the child's own learning or that of others. (20 U.S.C. § 1414(d)(3)(B)(i).) Courts have held that a school district satisfies this requirement, even in the absence of a functional behavior assessment, in cases where a student's IEP adequately identifies a student's behavioral impediments and implements strategies to address that behavior. (*B.S. v. Waxahachie Independent School Dist.* (5th Cir., March 23, 2023, No. 22-10443) 2023 WL 2609320, fn. 27 (*Waxahachie*), quoting *M.W. ex rel. S.W. v. N.Y.C. Dept. of Education* (2d Cir. 2013) 725 F.3d 131, 140.) The IDEA does not entitle a student to an IEP that remediates the student's behavioral problems in every instance. (*Waxahachie, supra*, 2023 WL 2609320, at *10.) An IEP must simply "aim to enable a child to make progress," and "the 'standard is not perfection.'" (*Ibid.*)

As discussed above, Piedmont Unified conducted psychoeducational, speech and language, and occupational therapy assessments for Student's December 2020 initial IEP. Piedmont Unified conducted a Special Circumstance Instructional Assistant

assessment in October 2021, a functional behavior assessment in April 2022, and a focused social-emotional assessment in April 2022. All of these assessments included an evaluation of Student's behavior, associated with her autism and social anxiety disorder. The assessments were adequate to inform Student's IEP teams, including Parents, of critical information about Student's behaviors impacting her ability to access her education.

No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203, fn. 25.) A student may derive educational benefit under *Rowley* if some of the goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. A student's failure to perform at grade level is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. (*Walczak v. Florida Union Free School Dist.* (2nd Cir. 1998) 142 F.3d 119, 130; *E.S. v. Independent School Dist, No. 196* (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *El Paso Independent School Dist. v. Robert W.* (W.D.Tex. 1995) 898 F.Supp. 442, 449-450; *M.P. v. Poway Unified School Dist.* (S.D.Cal., July 12, 2010, No. 09 CV 1627 JLS(NLS)) 2010 WL 2735759, at *11-12.)

Student failed to prove that Student required a one-on-one, ABA trained aide, with weekly behavioral supervision by a master's or doctorate level BCBA, to receive FAPE, during the 2021-2022 school year. At the IEP team meetings, Piedmont Unified offered and implemented strategies to address Student's behaviors, which included the full-time, shared paraeducators, supervised and trained by an experienced case manager, supporting Student in progressing on her IEP goals. Student consistently made progress on her goals, especially since returning to school in early February 2022. Student felt more engaged in the school setting, her guardedness and withdrawal

behaviors had decreased, and she was more happy and joyful. By April 2022, Student's long-term therapist Dr. McCarthy saw a tremendous positive shift. Student felt more trusting of the school environment and was feeling more socially and emotionally connected. The functional behavior and social-emotional assessments confirmed Student's progress.

Student did not prove by a preponderance of the evidence that Student required a one-on-one aide, trained in applied behavior analysis, who was weekly supervised by a BCBA, with a master's or doctoral degree, at any time during the 2021-2022 school year, including after the May 2022 IEP, beginning December 6, 2021. Piedmont Unified prevailed on Issue 1(a) and Issue 1(b).

ISSUE 2 (a): DID PIEDMONT UNIFIED DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, 2023 EXTENDED SCHOOL YEAR, AND THE 2023-2024 SCHOOL YEAR, THROUGH THE DATE OF FILING THE DUE PROCESS COMPLAINT, BY FAILING TO PROVIDE STUDENT WITH AN ABA TRAINED ONE-ON-ONE AIDE, AND TO PROVIDE WEEKLY BEHAVIORAL SUPERVISION BY A MASTER'S LEVEL OR PHD LEVEL BOARD CERTIFIED BEHAVIOR ANALYST?

Student asserted that for the 2022-2023 school year and extended school year, as well as the 2023-2024 school year, Piedmont Unified denied Student a FAPE, because Student required an ABA-trained one-to-one aide, who was weekly supervised by a BCBA, with a master's or doctoral degree. Piedmont Unified asserted that it was not required to provide Student a FAPE in 2022-2023 because Student was a parentally placed private school child. As for the 2023-2024 school year, Piedmont Unified's May

2023 IEP did not fail to offer Student a FAPE, because it did not provide ABA-trained one-to-one aide, who was weekly supervised by a BCBA, with a master's or doctoral degree.

Following Parents' June 24, 2022 notice of unilateral placement, Student attended the private French immersion school, Ecole Bilingue, for the third grade in the 2022-2023 school year and fourth grade in the 2023-2024 school year, through the time of hearing. The head of Ecole Bilingue's primary school, Magali Noth, testified at the hearing. The primary school served children from age two through fifth grade, had 230 elementary students, and operated under both the American and French academic systems. Noth knew Student from when Student was a kindergartener at Ecole Bilingue.

Ecole Bilingue did not have a special education program. Ecole Bilingue provided French and English academic support, French language speech support, and school counseling. Ecole Bilingue did not offer or provide any specialized academic instruction or special education related services, such as mental health counselors, speech and language pathologist, occupational therapist, or behaviorists. Parents and Ecole Bilingue agreed that Parents would provide the specialized services and supports, which included a

- part-time paraprofessional,
- speech and language therapist,
- occupational therapy, and a
- therapist working on Student's social thinking.

Ecole Bilingue did not independently evaluate and determine the type or amount of specialized support provided to Student.

Dr. Susan Nachand was a licensed, clinical psychologist, who was a team leader and supervisor for Whole Child Psychological Services since 2010. She testified at the hearing. Dr. Nachand first met Student in January 2021, when Parents inquired about services to address Student's behaviors and rigidity. Dr. Nachand and Whole Child started providing direct, in-person services to Student in June 2021.

Dr. Nachand and Whole Child provided and supervised Student's individualized behavior support, the paraeducators, and developed Student's treatment plan, at Ecole Bilingue. Dr. Nachand could not recall if Parents provided her with Student's IEP's and other assessments. Dr. Nachand did not review BCBA Lambe's functional behavior assessment or school psychologist Peirce's social/emotional evaluation. She did not speak to any Havens' staff in developing the treatment plan.

Parents' health insurance paid for Whole Child's services supporting Student at Ecole Bilingue. Dr. Nachand assisted Parents in applying to their insurance carrier for coverage. Parents' health insurance carrier would pay for paraprofessional support only if the support required supervision by a BCBA or psychologist. Whole Child applied for 25 hours a week of paraprofessional support, but Parents' insurance carrier approved 20 hours a week, with two hours a week of supervision.

Student's Ecole Bilingue's third-grade class had 10 to 15 students. Student's school day was six and a half hours. The paraeducator was at school with Student from 9:00 a.m. to 1:30 p.m. For the remainder of the day, the only other adult in Student's class was the teacher. Student was able to function at Ecole Bilingue when Student's only adult support was from the classroom teacher.

2022-2023 REGULAR AND EXTENDED SCHOOL YEAR

The May 3, 2022 IEP was an amendment to Student December 7, 2021 IEP. Student correctly stated that the May 3, 2022 offer of FAPE was the controlling FAPE offer for the 2022-2023 school year. If Student had been enrolled at Piedmont Unified for third grade, Piedmont Unified would have implemented the May 3, 2022 amendment IEP. However, Parents did not accept the offer and unilaterally placed Student in a private school.

For public school children with disabilities, school districts make a FAPE available by having an IEP in effect at the beginning of each school year. (34 C.F.R. § 300.323(a).) Private school children with disabilities, however, do not have an individual entitlement to a FAPE. (34 C.F.R. § 300.137; *Capistrano Unified Sch. Dist. v. S.W.*, 21 F.4th 1125, 1138 (9th Cir. 2021), cert. denied, (“*Capistrano*”).)

Title 34, section 300.130, of the Code of Federal Regulations defines parentally placed private school children with disabilities as children with disabilities enrolled by their parents in private schools or facilities. (20 U.S.C. § 1412(a)(10)(A).) Section 300.137(a) states “no parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.” (*Id.*) These regulations and statutes do not distinguish between private school students who are privately placed as a result of a dispute over an IEP or those privately placed as a matter of preference. (*Capistrano, supra*, 21 F.4th at pp. 1138-40.) Consequently, once a parent unilaterally enrolls the student in private school, the student meets the definition of a private school child with a disability and does not have an individual entitlement to special education and related services. (*Id.*)

Parents unilaterally enrolled Student in Ecole Bilingue, which was a private school. Therefore, Piedmont Unified was not obligated to provide Student a FAPE for the 2022-2023 regular and extended school year.

However, parents who unilaterally place a child in private school may seek reimbursement for the costs of special education and related services. (See 20 U.S.C. § 1415. “[C]ourts may grant reimbursement under § 1415(i)(2)(C)(iii) only when a school district fails to provide a FAPE and the private-school placement is appropriate.” *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 242 n.9, 129 S.Ct. 2484, 174 L.Ed.2d 168 (2009).)

Here, as determined in Issue 1, above, the controlling May 3, 2022 amendment IEP did not fail to offer Student a FAPE because it did not include an ABA-trained one-to-one aide, who was weekly supervised by a BCBA, with a master’s or doctoral degree. Therefore, Student is not entitled to reimbursement for the costs of special education and related services for the 2022-2023 regular and extended school year.

2023-2024 REGULAR SCHOOL YEAR

Parents continued to send Student to Ecole Bilingue for Student’s fourth grade in the 2023-2024 school year. Student contends that Piedmont Unified’s May 16, 2023 IEP offer denied Student a FAPE for the 2023-2024 school year by not providing Student with an ABA-trained one-to-one aide, who was weekly supervised by a BCBA, with a master’s or doctoral degree.

As 2022 ended, Parents proposed a meeting with Piedmont Unified so the staff, who had been evaluating or working with Student at Ecole Bilingue, could present updated information and data. This included an evaluation by Dr. Cynthia Peterson.

DR. PETERSON'S NEUROPSYCHOLOGICAL EVALUATION

In November and December 2022, Dr. Peterson evaluated Student at Parents' request. Dr. Peterson testified at the hearing. She had a 1996 doctorate in clinical psychology, had met the American Psychologist Association credentialing for neuropsychology, and was a licensed psychologist. Before her assessment, Dr. Peterson did not know Student.

For her evaluation, Dr. Peterson said she reviewed all documents, including Student's IEP's, school records, and assessments. She provided a review of relevant history, and was very critical of Havens' staff. However, Dr. Peterson did not talk to any Havens' staff who worked with Student during second grade and did not talk to any professionals who observed Student at Havens. Dr. Peterson reviewed the incidents involving Student at Havens, but this was based on Parents' email exchanges, acknowledging that she did not know how Havens' staff responded other than the emails. And when Dr. Peterson included information from documents, some statements were inaccurate and other relevant information was ignored.

For example, Dr. Peterson reviewed incidents from October 2021, as described in Parents' emails, accepting as fact the descriptions as relayed by Student to Parents to Havens' staff. As discussed under Issue 1, above, many incidents simply did not occur as described. Dr. Nachand, who provided behavior services to Student since June 2021, said that Student could embellish and misinterpret social interactions, and could "over interpret" or "backfill" with a reason.

Dr. Peterson concluded that Havens' staff largely dismissed or ignored Parents' emailed concerns. Havens' staff dutifully responded to Parents' concerns; Parents' were not ignored. Dr. Peterson said the Havens' staff required Student to sit and have lunch with her bully; this was untrue. Dr. Peterson said Havens' staff told Parents that Student was "too sensitive" and needed to be "toughened up." No record or testimony supported this assertion. Dr. Peterson acknowledged on cross-examination, when shown the document Dr. Peterson referred to as indicating Student was taking one to one and a half hours a day of breaks, that the document did not actually say that.

Dr. Peterson concluded that school refusal became a progressive issue, as indicated by the increasing number of tardies. As discussed above in Issue 1, this was not correct. Dr. Peterson testified that she reviewed the April 2022 BCBA Lambe's functional behavior assessment and school psychologist Peirce's social-emotional evaluation. These two reports contained detailed descriptions of many hours of multiple observations of Student, across all settings, over weeks. Dr. Peterson, who never observed Student at Havens, did not include any summary of the observations and did not attempt to talk to the assessors.

Dr. Peterson did not interview Student's long-time, private personal therapists, Dr. McCarthy and Dr. Greenberg. School psychologist Peirce did, in April 2022. They reported that Student recovered from setbacks over the winter, had successfully reacclimated to the school environment, and was more engaged in the school setting, with decreased guardedness and withdrawal behaviors. Student's anxiety was less pronounced than several months before, had a better relationship with peers, and was not showing school refusal behaviors. Student's private therapist's statements were in the Peirce social-emotional evaluation. Dr. Peterson did not mention them in her report.

Dr. Peterson administered a battery of standardized tests in

- intellectual functioning,
- executive functioning,
- verbal abilities,
- visual perceptual motor,
- academic functioning, and
- social-emotional functioning.

The test results generally coincided with Piedmont Unified's testing of Student and did not demonstrate any additional areas of need. Dr. Peterson observed Student at Ecole Bilingue. Dr. Peterson summarized her findings. In making her recommendations, Dr. Peterson thought it necessary to say the Student did not benefit from the rotating aides at Havens, who did not have weekly oversight or supervision. Dr. Peterson said that, at Havens, the increasing school refusal indicated Student had regressed. As discussed above in Issue 1, these statements were not correct.

Dr. Peterson reviewed Student's Ecole Bilingue program and stated that Student required the support of a one-on-one, ABA paraprofessional, a minimum of 20-hours a week, four hours daily, with two hours weekly of direct professional supervision, from a nonpublic school agency, like Whole Child. Dr. Peterson also said that Student, if she returned to public school, required a different school setting.

MARCH 7, 2023 IEP TEAM MEETING

Piedmont Unified convened a virtual IEP meeting, which Parents requested, on March 7, 2023. Student's private therapists Dr. Greenberg and Dr. McCarthy were not present.

Dr. Peterson presented her report. Dr. Nachand presented a summary of Student's services at Ecole Bilingue, answering the teams' questions. Dr. Harter was present and said that Piedmont Unified would need an opportunity to review the information, and conduct observations and assessments of Student, before making a public offer of FAPE, if Parents were requesting an offer. The IEP team calendared a follow-up meeting for May 16, 2023, when Piedmont Unified would make an offer of FAPE for the 2023-2024 school year, after conducting further assessments. Piedmont Unified thereafter started assessing Student.

DR. NACHAND'S OPINION THAT STUDENT WOULD BENEFIT FROM HAVING MORE THAN ONE PARAEDUCATOR

On March 4, 2023, a few days before the March 7, 2023 meeting with Piedmont Unified, Parent wrote a strongly worded email to Dr. Nachand, copying Whole Child's executive director Dr. Lauren Tolk. Parents were very upset because Dr. Nachand had informed Parents that Whole Child was adding a second paraeducator to work with Student. This email exchange was found in Whole Child's response to Piedmont Unified's subpoena duces tecum.

Parents said they considered a full-time, dedicated one-on-one to be what Student needed and they were very upset that Dr. Nachand would do something contrary to their views. Parents reminded Dr. Nachand that a single, consistent paraeducator was a priority request at the following week's meeting with Piedmont Unified. Parents' statements indicated a belief that Whole Child's assignment of a second paraeducator to Student would jeopardize their request.

Dr. Nachand responded, saying that it was important that Student be able to work with more than one paraeducator. Dr. Nachand said that most of Whole Child's cases had at least two paraeducators, to assure generalization of skills and to have adequate resources in place for substitutes, if needed. These were the same reasons that program specialist Siebert and principal Dolid told Parents, when explaining why a single, dedicated, full-time one-on-one paraeducator was not consistent with Student's need to generalize her acquired skills and have additional trusted adult support. The email exchange demonstrated that Parents were unwilling to consider any proposal which was contrary to what they wanted in the way of paraeducator support.

DR. LYNCH'S PSYCHOEDUCATIONAL ASSESSMENT AND REPORT

Piedmont Unified's school psychologist, Dr. Shelly Lynch, conducted a psychoeducational evaluation of Student during April and May 2023 in preparation for the May 16, 2023 IEP team meeting. She testified at the hearing. Dr. Lynch had a 1999 master's degree in educational psychology, and a 2003 doctorate in educational psychology, both from the University of California, Berkeley. She was a licensed educational psychologist and a credentialed school psychologist. Dr. Lynch had worked at Piedmont Unified for 10 years. Her duties included assessments, counseling, and team collaboration with teachers and support staff to ensure successful student outcomes. Dr. Lynch's research included autism, twice exceptional children, neuro-developmental learning difference, and anxiety reduction. Dr. Lynch was also a private practitioner, as an educational psychologist, conducting assessments of school-age children, who were parentally placed in private school. She was an educational psychology instructor and lecturer at University of California.

Dr. Lynch did not conduct any cognitive testing, noting that Student's prior cognitive functioning profile results in December 2020 and December 2022 were consistent. Dr. Lynch reviewed Student's education records from Havens and Ecole Bilingue. She reviewed and compared every Student assessment from Dr. Buhrmann's February 2020 medical evaluation through Dr. Peterson's December 2022 evaluation.

Student's first semester Ecole Bilingue's progress report described Student as a role model to her classmates. Student needed to increase the frequency of her oral participation in class, speaking louder and clearer. Student was taking breaks when needed, and utilizing tools and strategies to succeed in classroom. Student read above grade level, with good fluency and comprehension. For the first semester, Student met or exceeded in all areas for English and in many areas for French. Student scored in the high level for reading and the low average to average level for math, on the Measures of Academic Progress computer adaptive testing, given by Ecole Bilingue.

Dr. Lynch interviewed Parents, and Student's Ecole Bilingue teachers and school counselor. Parents expressed concerns for Student's flexible thinking, self-advocating, and executive functioning. They said Student benefited from a small school environment, where she does not get physically hurt. As in years past, Parents said that when Student became anxious, she internalized, became quieter, and withdrew within herself.

Ecole Bilingue's school counselor Raina Lawler said, at the beginning of the year, she met with Student individually, building a trusting relationship. Student participated in a weekly social group with three same-aged girls and Student's aide. Over the year, Lawler shifted the model of support to check-ins by Student, which Student had been doing less and less. Lawler participated in weekly team meetings with Ecole Bilingue's student support coordinator and the head of primary Magali Noth.

Dr. Lynch interviewed Student's English-speaking teacher Emilie Crofton, who noted Student's shyness and strong academics. Student followed directions, had good test taking skills, and paid attention. Student often missed homework due dates. Student's French-speaking teacher Florian Franceschini noted Student needed to take breaks and liked a quiet environment. She did not like being touched by others. When Student got challenged, the teacher checked in with her and ensured that she knew what to do. Student's work completion in class, ability to follow verbal directions, and attitude to learning were excellent.

Both teachers volunteered that Student was often tardy to school. Ecole Bilingue's 2022-2023 attendance records showed that student was absent from school for seven days. However, the school attendance records did not indicate how many days Student was tardy getting to school. Piedmont Unified requested the information from Ecole Bilingue, but the tardy data was never provided.

Dr. Lynch observed Student in her classroom, which had 13 students, one teacher, and Student's paraeducator. Student was doing a math assignment, and she occasionally used a sensory band around the legs of her chair. Student showed some signs of anxiety in interaction with the teacher, but she moved through the moments and continued with her work. Student did not appear to have any visual supports, other than a ruler with French words for the colors. The class transitioned from doing math to practicing a skit. Student was composed and interested in reading the script, then left with two other girls to practice. Student and the two girls returned to the classroom and performed their skit in front of the class. Student showed a few signs of anxiety, but she performed well, having more lines than the other two girls.

Dr. Lynch observed Student at recess. Student sat with her paraeducator, having a snack and talking to another girl. The other girl left, and Student talked and gestured with her paraeducator, smiling. Student primarily played with one girl, though the paraeducator initiated some interaction with others. When the bell rang, Student and her friend lined-up to return to class.

Dr. Lynch administered the Behavior Rating Inventory of Executive Function, Second Edition, which evaluated Student's executive functioning. Mother and teacher Franceschini completed the questionnaires. She then compared the results, in table form, with prior responses to the same test, by Mother in December 2020 and Father in December 2022. Teacher rated Student within normal limits in all areas of executive functioning, which was consistent with the classroom observations. Student was able to tolerate some levels of discomfort in the classroom, and move through the anxious moment to remain productively engaged. In contrast, Mother's ratings were elevated on all indexes, with the emotional regulation index and global executive composite clinically elevated. The magnitude of the differences between the teacher and parent ratings was remarkably large. This suggested small events could trigger big reactions for Student at home.

Dr. Lynch had Mother and Student's other teacher, Crofton, complete the rating scales from the Behavior Assessment System for Children, Third Edition, to evaluate Student's social-emotional/behavioral functioning. She similarly compared the results with past scores. Mother had Student's withdrawal in the clinically significant range, which was of some concern for the teacher, who had withdrawal in the at-risk range. However, teacher's ratings for all other areas, were in the age-expectant range.

Since Mother had elevated anxiety ratings for Student, Dr. Lynch chose to have Mother complete the Multidimensional Scale for Children, Second Edition, Parent Report, which was a comprehensive assessment of various aspects of anxiety. Parent's responses indicated a very high probability Student had anxiety disorder, consistent with her diagnosis.

Dr. Lynch summarized Student's learning profile, which was generally consistent with Student's prior assessments for her emotions and behaviors. Student's teachers did not see any clinically significant issues, while reactivity, anxiety, and rigidity continued to be home concerns. The standardized instruments indicated that Student's withdrawal behaviors at school had slightly increased from the prior year at Havens. Student's anxiety at school decreased but, across time and schools, anxiety ratings have not fallen within the clinically significant range. Social skills consistently fall within the age-expectant range.

Dr. Lynch's recommendations included preferential seating, continued use of short breaks for self-regulation, one-on-one teacher check-ins, an executive function action plan to improve self-advocacy, self-regulation tools like the chair band, structured and practiced social activities, scaffolding for open-ended assignments, and allow Student to pursue her interest by choosing topic to research and write when possible. Based upon teacher's expressed concerns, Student needed to get to school on time.

Piedmont Unified also conducted speech and language and occupational therapy evaluations, and behavioral observations by its behavioral analyst.

MAY 16 AND 30, 2023 IEP TEAM MEETINGS

The IEP team met on May 16 and May 30, 2023. In the first session, Parents gave their input regarding Student's strengths, indicating there was not too much to update.

Student was very good at identifying her feelings and expressing when she's anxious. Dr. Lynch presented her report, which Parents received and reviewed before the meeting. They discussed a proposed counseling goal. The meeting ended.

The IEP team reconvened on May 30, 2023. Program specialist Siebert reminded the team that the IEP meetings were also a reassessment of eligibility.

Piedmont Unified's licensed behavior analyst, Gloria Dubinsky, summarized her observations, sharing that the paraeducator prompting was too heavy handed and that Student should have greater opportunity to initiate social interactions and ask for teacher support, independently. The team discussed the observations. Pathologist Schonberg presented her speech and language report. Student did not challenge the Piedmont Unified assessments.

The team reviewed proposed goals for

- social anxiety/executive functioning to be overseen by the school counselor,
- self-advocacy to be overseen by the pathologist, occupational therapist and special education staff, and
- three goals on social pragmatics, overseen by the pathologist.

The team reviewed and discussed numerous proposed accommodations and some modifications. Student did not challenge the goals, accommodations, and modifications. Piedmont Unified offered language and speech service of 50 minutes a week, consisting of a group session and a recess session. Counseling and guidance were 30 minutes a week. Student did not challenge these related services.

The IEP team confirmed that Student remained eligible for special education under the primary disability category of autism and secondary category of speech and language impairment. Student would be in a general education classroom, with only four percent of her school time outside general education, for delivery of the related services. Piedmont Unified offered a full-time shared paraeducator in Student's general education settings. Also, upon Student's reenrollment, Piedmont offered consultation between the behavior analyst and the rest of Student's IEP team and the paraeducators, as well as additional school counseling, to support Student in transitioning back to a public school general education setting.

STUDENT DID NOT REQUIRE AN ABA TRAINED ONE-ON-ONE AIDE, WITH WEEKLY BEHAVIORAL SUPERVISION BY A MASTER'S LEVEL OR PHD LEVEL BOARD CERTIFIED BEHAVIOR ANALYST, TO RECEIVE FAPE FOR 2023-2024 YEAR

Student did not demonstrate that Student required a dedicated, one-on-one ABA trained aide, or paraeducator, supervised by a master's or doctoral level BCBA, to receive FAPE for the 2023-2024 school year. Student's disability-related needs remained essentially the same as the previous year. Student needed to continue to develop and generalize her social pragmatic and executive functioning skills, while developing and using strategies to manage her emotions and self-regulation.

At hearing, Dr. Greenberg and Dr. McCarthy supported Student's contentions. But as discussed in Issue 1, above, both of Student's private therapists contemporaneously acknowledged that Student was benefiting and thriving in her public general education

placement, with a shared paraeducator, in Spring 2022. Dr. Greenberg and Dr. McCarthy did not participate in the 2023 IEP process and, their opinions regarding 2023-2024 paraeducator was not persuasive.

Dr. Peterson's opinions were tempered by the nature of the neuropsychological report. The report's tone, selective review of records, and failure to contact and talk to professional providers and Student's private therapists, did not reflect a true desire to seek a balanced understanding of Student's educational and behavior support history and needs. Dr. Peterson did not clearly explain why ABA trained paraeducators were necessary to provide the recommended supports, in order for Student to receive FAPE in a public school general education setting. In contrast, BCBA Lambe reviewed Dr. Nachand's February 27, 2023 summary of treatment and services Student was receiving at Ecole Bilingue, and explained that none of the listed accommodations required ABA training or direct supervision by a BCBA or psychologist. All could be provided by a teacher, a push-in special education teacher, an instructional aide, or speech and language pathologist. Dr. Peterson's opinion regarding Student's paraeducator needs was not persuasive.

Student's general arguments in support of her demand were also compromised by their inconsistency. In 2021-2022, Parents argued that Student's tardies showed Student's increasing school refusal, because she was unsafe, evidencing the insufficiency of Piedmont Unified's program. Yet, Student continued to have multiple tardies during 2022-2023. Student's Ecole Bilingue teachers each cited Student's regular lateness as a major concern. Ecole Bilingue never produced the promised number and frequency of Student's tardies, and Student did not contend the multiple tardies indicated any weakness in Student's Ecole Bilingue program.

Also, Dr. Nachand told Parents that Student needed to have multiple paraeducators to assure generalization of skills and to have adequate resources in place for substitutes. Piedmont Unified's staff explained this to Parents the previous year. Having just one, dedicated, full-time paraeducator compromised Student's opportunities to generalize her acquired skills in executive functioning and self-regulation. And it denied Student the needed additional support from trusted adults.

Student did not prove, by a preponderance of the evidence, that she was denied a FAPE because Piedmont did not offer a one-on-one ABA trained aide, or paraeducator, supervised by a master's or doctoral level BCBA, to receive FAPE for the 2022-2023 regular and extended school year, and the 2023-2024 school year, through the date of the filing of the due process complaint. Piedmont Unified prevailed on Issue 2 (a).

ISSUE 2 (b): DID PIEDMONT UNIFIED DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, 2023 EXTENDED SCHOOL YEAR, AND THE 2023-2024 SCHOOL YEAR, THROUGH THE DATE OF FILING THE DUE PROCESS COMPLAINT, BY FAILING TO OFFER STUDENT AN APPROPRIATE PUBLIC-SCHOOL PLACEMENT

Student contended the May 2022 and May 2023 IEP offers did not provide a FAPE because they were for Havens, and not another of Piedmont Unified's elementary schools. Student argued that her school refusal, which started in late October 2021 and continued throughout the entire school year, demonstrated that Piedmont Unified should have offered her a school site, smaller than Havens, for the 2022-2023 and 2023-2024 school years, as indicated by the 31 tardies the last couple of months in Havens.

Piedmont Unified responded that it did not deny Student's request to be in another general education class at another Piedmont Unified elementary school campus.

The tardies did not indicate that Student's program was unsuccessful. In April 2022, Student's private therapists Dr. Greenberg and Dr. McCarthy said Student was substantively progressing in the school environment, not showing signs of school refusal, had decreased withdrawal behaviors, and had made a tremendous positive shift. Also, in 2022-2023, Student continued to have multiple tardies while at Ecole Bilingue. The tardies were not causally related to Student's success in the school environment.

Student contended that Ms. Noth and Ecole Bilingue teacher Benedicte Cambon testified that Student's success at Ecole Bilingue was due to Student being at a smaller school site than Havens. Their testimony, however, was in the nature of saying that Student was doing well in their small school setting. They were not special educators and did not testify that Student required a smaller school setting to receive a FAPE in a public school general education program. Dr. Peterson's testimony regarding Student requiring a small school or small class setting for a FAPE was not persuasive, primarily because she did not fully review Student's performance at Havens, ignoring the record that Student was progressing while in the public general education class, at Havens. As for Dr. Nachand, her testimony that Student should be in a small setting was not persuasive. Dr. Nachand did not testify that she had told Parents that Student needed to have more than one paraeducator for generalization and additional trusted adult support, which contrasted with her March 5, 2023 email to Parents. So, it was unclear if Dr. Nachand was giving an informed, expert opinion.

Parents never challenged that general education was the appropriate educational setting for Student. At the May 30, 2023 IEP team meeting, Parents inquired about Student attending another of Piedmont Unified's elementary schools. Piedmont Unified did not reject the request but, instead, promised to support the transfer.

Havens was Student's home school and, therefore, Student's general education class was at Havens. (*See* 34 C.F.R. § 300.116(b)(3).) A special education IEP team was not empowered to unilaterally place a student in a general education class, at another Piedmont Unified elementary school campus, that was not the student's home school. At the May 30, 2023, IEP team meeting, Piedmont Unified explained the process of requesting an interdistrict transfer to another of Piedmont Unified's elementary schools. Piedmont Unified stated that Piedmont Unified IEP team members would follow up with administrators, upon Student's enrollment, and support Parent's request for a transfer. Also, while Student remained in public school following the May 2022 IEP offer, Student could have similarly requested an interdistrict transfer to another Piedmont Unified elementary school. But Parents unilaterally placed Student in a private school.

Student made meaningful progress in her public, general education class at Havens. Piedmont Unified's offers of placement, in May 2022 and May 2023, were reasonably calculated to enable Student to make appropriate progress in light of the Student's circumstances. (*Andrew F, supra*, 580 U.S. p 406.) And, if Parents' wanted Student to attend another of Piedmont Unified's elementary schools, Piedmont Unified committed to guide, assist, and support Parents' request. Student did not prove by a preponderance of the evidence that Student required a small school setting to receive a FAPE in the 2022-2023 regular and extended school year, and the 2023-2024 school year, through December 6, 2023. Piedmont Unified prevailed on Issue 2(b).

ISSUE 2 (c): DID PIEDMONT UNIFIED DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, 2023 EXTENDED SCHOOL YEAR, AND THE 2023-2024 SCHOOL YEAR, THROUGH THE DATE OF FILING THE DUE PROCESS COMPLAINT, BY PREDETERMINING STUDENT'S SCHOOL PLACEMENT?

Student contended that Piedmont Unified denied Student a FAPE by predetermining that it would not offer a dedicated, full-time one-to-one, ABA trained paraeducator, with weekly behavioral supervision by a master's level or doctorate level BCBA for the 2022-23 regular and extended school year, and the 2023-2024 school year. Student asserted that Piedmont Unified showed a "take it or leave it attitude," never responded to Parents' requests, and denied Parents an opportunity to fully participate in the IEP development process. Similarly, Student contended that Piedmont Unified predetermined that it was only going to offer Havens as the placement.

Piedmont Unified contended that it conducted multiple assessments by qualified assessors in 2021, 2022, and 2023, convening seven IEP meetings in 2021-2022, alone, demonstrating a concerted effort to hear Parents' concerns and make informed offers of FAPE. Many of the IEP team meetings were at Parents' request. Piedmont Unified asserted that it regularly listened to Parents' requests, including other areas of Student's IEP's, such as goals and accommodations. If Piedmont Unified disagreed with a Parents' request, it explained why, typically referring to assessments and observations. Piedmont Unified did not predetermine the Student's offer of FAPE.

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23, Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1485 ("*Target Range*").)

"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 ("*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.)

For IEP team meetings, predetermination occurs when an educational agency has decided on its offer prior to the meeting and is unwilling to consider other alternatives. (*Deal, supra*, 392 F.3d at p. 857-858.) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn.10.) Although school district personnel may bring a draft of the IEP to the meeting, the 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.) School officials may permissibly form opinions prior to IEP team meetings.

Student's assertion that Piedmont Unified predetermined its offer of FAPE, and did not consider Parents' opinion, was not supported by the record. As discussed in the analysis of Issue 1, Piedmont Unified's offer of full-time, shared paraeducator support was based upon reliable assessments, many requested by Parents, which included hours of observations, testing, and interviews, by multiple assessors. As discussed in Issue 1 and Issue 2(a), Parents' request for a full-time, one-on-one ABA trained paraeducator, with master's and doctorate level BCBA supervision, was not necessary for a FAPE, for the 2022-2023 regular and extended school year, nor the 2023-23 school year.

Piedmont Unified did not ignore Parents, their private providers or experts. The IEP team meeting notes, and participants' testimony, evidenced robust conversations involving Parents, their advocate, and private providers, about their demand for a dedicated full-time, one-on-one, ABA trained paraeducator, with BCBA supervision. The May 3, 2022 amendment IEP was the FAPE offer for the 2022-2023 school year. There, Piedmont Unified had BCBA Lambe conduct a functional behavior assessment and school psychologist Peirce do an updated social-emotional evaluation in April and May 2022, at Parents' request. Piedmont Unified convened the May 3, 2022 IEP team meeting, the assessors presented their reviews, and the IEP team discussed the reports. Both assessments confirmed Student's growth in independence, executive functioning, and social pragmatics. A full-time, dedicated one-to one aide would diminish Student's generalization of these acquired skills. Piedmont Unified had offered counseling by the school counselor, as a means of bringing an additional trusted adult into Student's school orbit, which Student's private therapist thought would be helpful. Piedmont Unified offered to strategize with Parents about a plan to reduce Student's tardies. Parents repeatedly declined. Parents were not ignored.

For the May 16 and May 30, 2023 IEP team meetings, Piedmont Unified conducted a psychoeducational, occupational therapy, and speech and language assessments, in addition to its behavioral analyst's behavioral observations. Student criticizes Dr. Lynch's psychoeducational assessment because she did not interview Student. However, Dr. Lynch interviewed Parents, Student's Ecole Bilingue's French and English teacher, and school counselor. Dr. Lynch reviewed all of Student's educational records, IEPs, and assessments, including Dr. Peterson's December 22, 2022 neuropsychological report. Dr. Lynch carefully considered all of Student's standardized assessments. Dr. Lynch also

included the Parents in every standardized instrument she administered and analyzed. Dr. Lynch's assessment and accompanying report were legally sufficient. (Ed. Code, §§ 56320 and 56327; 34 C.F.R. §§ 300.304 and 300.305.)

Further, there was no persuasive evidence that the May 2023 assessors ignored Parents' concerns. Dr. Lynch's assessment and accompanying report were thorough, and the accrued information supported the conclusion that the assessment was fair, honest, and professional. The reports were discussed by all the team members, including Parents, Dr. Nachand, Dr. Peterson, and Parents' advocate, at the May 2023 IEP team meetings. And, as analyzed in Issue 2(a), Piedmont Unified's May 2023 offer of FAPE was based upon the assessments, which included a reaffirmation of Student's eligibility under autism and speech language impairment.

Student claimed that Piedmont Unified ignored Student's private experts Dr. McCarthy, Dr. Greenberg, Dr. Nachand, and Dr. Peterson. These experts were not ignored; their opinions and input were considered by Piedmont Unified. But, as discussed elsewhere in this decision, their opinions as to the FAPE necessity of an ABA trained one-on-one aide, with weekly behavioral supervision by a master's or doctorate level BCBA, were unpersuasive.

Student asserted that Piedmont Unified assessors' regular use of the phrase "when Student reenrolls," in their assessments and IEP discussions, evidenced predetermination. However, Parents' unilaterally enrolled Student in Ecole Bilingue, which was a private school, for 2022-2023. Student was no longer a public school Student. (*Capistrano*) Parents requested that Piedmont Unified make an offer of FAPE for the 2023-2024 school

year. Piedmont Unified reassessed Student, and made the May 2023 offer of FAPE. However, Student was still a privately placed student. And Piedmont Unified could not implement any portion of its IEP until Student reenrolled in public school. This was merely a correct statement of fact, not evidence of predetermination.

Student did not prove by a preponderance of the evidence that Piedmont Unified predetermined its FAPE offer by independently developing an IEP, without meaningful Parental participation, and then present the IEP to Parents for ratification. (*Target Range, supra*, 960 F.2d at p. 1484.) Piedmont Unified prevailed on Issue 1 (c).

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 (a):

Did Piedmont Unified deny Student a FAPE during the 2021-2022 school year, from December 6, 2021, through the 2022 extended school year, by failing to provide Student with an ABA trained one-on-one aide?

Piedmont Unified School District prevailed on Issue 1 (a).

ISSUE 1 (b):

Did Piedmont Unified deny Student a FAPE during the 2021-2022 school year, from December 6, 2021, through the 2022 extended school year, by failing to provide weekly behavioral supervision by a master's level or PhD level Board Certified Behavior Analyst?

Piedmont Unified School District prevailed on Issue 1 (b).

ISSUE 2 (a):

Did Piedmont Unified deny Student a FAPE during the 2022-2023 school year, 2023 extended school year, and the 2023-2024 school year, through the date of filing the due process complaint, by failing to provide Student with an ABA trained one-on-one aide, and to provide weekly behavioral supervision by a master's level or PhD level Board Certified Behavior Analyst?

Piedmont Unified School District prevailed on Issue 2 (a).

ISSUE 2 (b):

Did Piedmont Unified deny Student a FAPE during the 2022-2023 school year, 2023 extended school year, and the 2023-2024 school year, through the date of filing the due process complaint, by failing to offer Student an appropriate public-school placement?

Piedmont Unified School District prevailed on Issue 2 (b).

ISSUE 2 (c):

Did Piedmont Unified deny Student a FAPE during the 2022-2023 school year, 2023 extended school year, and the 2023-2024 school year, through the date of filing the due process complaint, by predetermining Student's school placement?

Piedmont Unified School District prevailed on Issue 2 (c).

ORDER

All of Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings