

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

CLASSICAL ACADEMY HIGH SCHOOL.

CASE NO. 2023100812

CORRECTED DECISION

JULY 10, 2024

This Corrected Decision removes the blank page 3 that was inserted. No other changes have been made.

On October 20, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Classical Academy High School, El Dorado County Charter Special Education Local Plan Area, and El Dorado Union High School District.

On November 8, 2023, OAH dismissed El Dorado County Charter SELPA and El Dorado Union. OAH continued the hearing for good cause on November 15, 2023, and again on February 5, 2024.

Administrative Law Judge Rommel P. Cruz heard this matter by videoconference on April 30, and May 1, 2, 7, 8, 9, 13, 15, 16, 21, and 22, 2024.

Attorney Alexander Rodriguez represented Student. Parent attended all hearing days on Student's behalf. Attorney Jim Sanft represented Classical Academy. Program Specialist Janice Medina attended all hearing days on Classical Academy's behalf. Director of Student Support Services Corinna Coffey attended most of the hearing on Classical Academy's behalf.

At the parties' request, the matter was continued to June 21, 2024, for written closing briefs. The record was closed, and the matter was submitted on June 21, 2024.

## ISSUES

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

1. Did Classical Academy deny Student a FAPE from October 20, 2021, through the end of the 2021-2022 school year, by failing to conduct an appropriate occupational therapy assessment dated September 23, 2021?
2. Did Classical Academy deny Student a FAPE during 2021-2022 school year, because the October 22, 2021, psychoeducational assessment failed to:
  - a. include formal, standardized structured observations of Student; and
  - b. determine and measure Student's history of progress towards IEP goals?

3. Did Classical Academy deny Student a FAPE during the 2021-2022 school year by failing to conduct an appropriate speech and language assessment dated November 5, 2021?
4. Did Classical Academy deny Student a FAPE from October 20, 2021, through the 2021-2022 school year, by:
  - a. failing to conduct a functional behavior assessment;
  - b. failing to conduct a comprehensive, accurate speech and language assessment;
  - c. failing to conduct a comprehensive, accurate occupational therapy assessment;
  - d. failing to offer goals in reading, writing, and math;
  - e. failing to offer goals in social-emotional and behavioral functioning;
  - f. failing to offer goals in expressive, receptive, and pragmatic language;
  - g. failing to offer goals in executive functioning;
  - h. failing to develop an updated behavior intervention plan;
  - i. failing to offer specialized academic instruction reasonably calculated to permit Student to make academic progress;
  - j. failing to offer behavior intervention services reasonably calculated to permit Student to make social-emotional and behavioral progress;
  - k. failing to offer therapeutic services reasonably calculated to permit Student to make social-emotional and behavioral progress;
  - l. failing to offer speech and language services reasonably calculated to permit Student to make progress;

- m. failing to offer occupational therapy services reasonably calculated to permit Student to make progress;
  - n. failing to implement therapeutic services;
  - o. failing to implement behavior intervention services;
  - p. failing to implement specialized academic instruction;
  - q. failing to implement speech and language services;
  - r. failing to implement occupational therapy services;
  - s. failing to allow Parent participation in developing the October 22, 2021 IEP, before removing behavior intervention services during unstructured time;
  - t. reducing speech and language services in the October 22, 2021 IEP; and
  - u. reducing occupational therapy services in the October 22, 2021 IEP?
5. Did Classical Academy deny Student a FAPE during the 2022-2023 school year, by failing to comprehensively assess Student after he suffered a concussion and a traumatic brain injury on August 31, 2022?
6. Did Classical Academy deny Student a FAPE during the 2022-2023 school year, by failing to investigate and offer a safety plan to address bullying?
7. Did Classical Academy deny Student a FAPE during the 2022-2023 school year, because the November 15, 2022 functional behavior assessment was not comprehensive and accurate?

8. Did Classical Academy deny Student a FAPE during the 2022-2023 school year, by failing to:
- a. offer goals in reading, writing, and math;
  - b. offer goals in social-emotional and behavioral functioning;
  - c. offer goals in expressive, receptive, and pragmatic language;
  - d. offer goals in executive functioning;
  - e. offer specialized academic instruction reasonably calculated to permit Student to make academic progress;
  - f. offer behavior intervention services reasonably calculated to permit Student to make social-emotional and behavioral progress;
  - g. offer therapeutic services reasonably calculated to permit Student to make social-emotional and behavioral progress;
  - h. offer speech and language services reasonably calculated to permit Student to make progress;
  - i. offer occupational therapy services reasonably calculated to permit Student to make progress;
  - j. develop an updated behavior intervention plan;
  - k. implement specialized academic instruction;
  - l. implement behavior intervention services;
  - m. implement therapeutic services;
  - n. implement speech and language services; and
  - o. implement occupational therapy services?

9. Did Classical Academy deny Student a FAPE during the 2023-2024 school year, through October 20, 2023, by failing to amend the October 18, 2022 IEP following the IEP team meetings held from February 8, 2023, through May 5, 2023, specifically, amendments to the IEP's offer of:
- a. goals,
  - b. services, and
  - c. placement?

## JURISDICTION

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

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

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

§§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student requested the hearing and had the burden of proof as to the issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

At the time of the hearing, Student was 16 years old, in 10th grade and not enrolled in Classical Academy. Classical Academy was a public charter school operating as its own independent local educational agency within the El Dorado County Charter SELPA. Students who attend public charter schools, and their parents, retain all the rights under the IDEA and California special education laws. (34 C.F.R. § 300.209.)

Student was enrolled at Classical Academy for the 2021-2022 and 2022-2023 school years. Student was not enrolled at Classical Academy for the 2023-2024 school year, and instead attended Fusion Academy, a private school. Student was still enrolled at Fusion Academy at the time of hearing. Student was eligible for special education under the categories of autism and other health impairment due to a deficit in his attention, and his hyperactivity.

## TRANSITION FROM NONPUBLIC SCHOOL TO CLASSICAL ACADEMY

Student's school district of residence held an annual and 30-day IEP review on June 3, 2021. Student was attending a nonpublic school at the time of the meeting.

The June 3, 2021 IEP team found Student had a low threshold for stress, experienced anxiety, and needed to feel safe. Student had difficulty paying attention and committing what he learned to memory, and struggled to recall and retrieve information. As a result, Student became frustrated and dysregulated.

Student also had difficulty organizing his speech to express himself, had a slower rate of processing, and had executive functioning deficits that impacted his organization and written expression. In addition, Student had problems picking up nonverbal cues, sarcasm, teasing, and inferring the intent of others. The IEP team determined Student continued to qualify for special education services under the categories of autism and emotional disturbance.

The June 3, 2021 IEP offered goals in

- social pragmatics,
- self-regulation,
- mathematics,
- written expression,
- emotional regulation,
- executive functioning,
- reading comprehension,
- receptive language to follow multi-step directions, and
- self-advocacy.

In addition, the IEP stated Student's behavior impeded his learning or the learning of others. Specifically, Student was easily distracted, had difficulty focusing on tasks, and inconsistently participated in group activities. Student put his head down on the desk, did not respond to verbal requests, and made statements to end conversations.



The June 3, 2021 IEP included a behavior intervention plan. The behavior intervention plan described Student's problem behaviors as off-task behaviors during academic work, involving laughing, shouting, and talking to peers.

The June 3, 2021 IEP offered specialized academic instruction, counseling and guidance, occupational therapy, and speech and language services. The IEP offered continued placement in a nonpublic school. Parent provided written consent to the IEP on June 16, 2021.

At hearing, Parent opined the nonpublic school was not meeting Student's needs, and therefore, disenrolled Student from his district of residence and enrolled Student at Classical Academy in August 2021, prior to the start of the 2021-2022 school year. Classical Academy's first day of instruction for the 2021-2022 school year was August 18, 2021. Student was in ninth grade.

Student enrolled in Classical Academy's Personal Learning Center for the 2021-2022 school year. The Personal Learning Center offered an independent study program, with lessons delivered through an online platform called Summit, which students used to access their curriculum in school and at home. Summit did not use textbooks.

Student attended workshops, also referred to as classes, at the Personal Learning Center campus, Tuesdays through Thursdays, as part of the independent study program. Student was enrolled in six classes in fall 2021, and five classes in spring 2022. Each class was 60 minutes. Class attendance was not mandatory. The remainder of Student's instruction would occur in the home, where Parent was his primary teacher. Student had access to his Classical Academy teachers virtually from home if requested.

Classical Academy offered Student an interim IEP at the start of the 2021-2022 school year. To support Student's June 3, 2021 IEP goals, the interim IEP offered 30 minutes of group, and 15 minutes of individual, speech and language services a week. The interim IEP also offered 30 minutes of group, and 15 minutes of individual, occupational therapy services a week. In addition, the interim IEP offered Student 30 minutes of group, and 30 minutes of individual, counseling services a week. The interim IEP offered 180 minutes of specialized academic instruction a week to be delivered in Student's Skills and Instruction class.

The interim IEP also offered Student a one-to-one aide to support him for the entire school day on campus. Program specialist Amber Allen developed the interim IEP offer. Allen testified that a one-to-one aide was offered to help support Student's transition from the nonpublic school to the larger Personal Learning Center campus.

On August 24, 2021, Parent gave Allen a letter addressed to a program specialist at Student's last school district, dated June 9, 2021. The letter requested comprehensive assessments in assistive technology, auditory processing, visual processing, and occupational therapy. Classical Academy gave Parent an assessment plan dated August 30, 2021, for Student's three-year-review reassessments. The assessment plan proposed to assess Student in

- academic achievement,
- intellectual development,
- language and speech communication development,
- motor development,

- social-emotional and behavioral functioning,
- assistive technology, and
- post-secondary transition.

Parent provided written consent to the assessment plan on August 31, 2021.

Classical Academy convened IEP team meetings on September 14 and 21, 2021. Among those who attended the meetings were Parent, occupational therapist Angela Collins, and speech-language pathologist Shelby Larson. The IEP team agreed the June 3, 2021 IEP, as amended on September 21, 2021, would continue through the next annual IEP review. The goals in the June 3, 2021 IEP remained the same.

To support the June 3, 2021 IEP goals, the September 21, 2021 IEP amendment offered 60 minutes of group specialized academic instruction twice a week, totaling 120 minutes. Student would be pulled out of his Skills and Instruction class for 30 minutes of group, and 15 minutes of individual, speech and language services a week, 30 minutes of individual occupational therapy services a week, and 30 minutes of individual social work services a week. The IEP amendment also offered 1,080 minutes a week of individual behavior intervention services.

The individual behavior intervention services was a dedicated one-to-one aide who supported Student for the entire school day, including the lunch period, for 360 minutes each day, for the three days Student attended classes at the school. The aide helped Student stay on task, provided academic support, and supported his social engagement with peers and adults. On September 28, 2021, Parent provided written consent to the June 3, 2021 IEP, as amended on September 21, 2021.

## ISSUE 1: DID CLASSICAL ACADEMY FAIL TO CONDUCT AN APPROPRIATE OCCUPATIONAL THERAPY ASSESSMENT DATED SEPTEMBER 23, 2021?

Student contends the September 23, 2021 occupational therapy assessment failed to meet legal requirements, and did not provide relevant information about Student's occupational therapy needs. Classical Academy contends the September 23, 2021 occupational therapy assessment met legal requirements and did not deny Student a FAPE.

The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year, unless the parent and local educational agency agree otherwise, but at least once every three years unless the parent and local educational agency agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A local educational agency must assess a special education student in all areas of suspected disability, including, if appropriate,

- health,
- motor abilities,
- language function,
- general intelligence,
- academic performance,
- communicative status,
- self-help, and
- social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).)

In assessing a child with a disability, the assessment must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

Assessments must be conducted by individuals who are knowledgeable of the student's disability. (Ed. Code, § 56320, subd. (g).) The assessments must also be conducted by persons competent to perform the assessment. (Ed. Code, § 56322.) The competency of an assessor is determined by the local educational agency. (*Ibid.*)

Tests and assessment materials must be used for the purposes for which they are valid and reliable, and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b)(3)(A)(iii)-(v); Ed. Code, § 56320, subd. (b)(2), (3).) Tests must be selected and administered to produce results that accurately reflect the student's aptitude, achievement level, or any other factors the test purports to measure. (Ed. Code, § 56320, subd. (d).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D.Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech and language testing where the concern prompting the assessment was reading skills deficit].)

Local educational agencies are required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that would assist in determining the educational needs of a child. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) Assessments must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, along with physical or developmental

factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need. (34 C.F.R. § 300.304(c)(2).) No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2)(B); Ed. Code, § 56320, subd. (e).)

Tests and assessment materials must be selected and administered so as not to be racially, culturally, or sexually discriminatory. (20 U.S.C. § 1414(a)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The materials must also be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(ii); Ed. Code, § 56320, subd. (a).)

An assessor must produce a written report of each assessment that includes whether the student may need special education and related services and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).) The report must be provided to the parent after the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

A failure to conduct a legally compliant assessment is a procedural violation of the IDEA. However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the parent's child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).)

The September 23, 2021 occupational therapy assessment and assessment report were not comprehensive. Occupational therapist Angela Collins assessed Student's posture, motor development, and sensory needs. Collins testified at the hearing. She performed over 200 occupational therapy assessments in her career.

Collins also provided Student direct occupational therapy services, 30 minutes a week, at the start of the 2021-2022 school year. She held five therapy sessions with Student before she completed her assessment.

Collins presented her findings and conclusions in a written report, referred to as the September 23, 2021 occupational therapy assessment report, which was not reviewed by the IEP team until October 22, 2021. Collins found Student's sensory regulation skills impacted his academic performance and ability to participate in his educational curriculum.

Classical Academy convened an IEP team meeting on October 22, 2021, to review the assessments completed by Classical Academy pursuant to the August 30, 2021 assessment plan, including the September 23, 2021 occupational therapy assessment report. Among those who attended the meeting was Parent, speech-language pathologist Larson, and school psychologist Michael Kester.

Collins presented her September 23, 2021 occupational therapy assessment report to Parent and program specialist Allen in a meeting before October 22, 2021. Parent excused Collins's attendance at, and Collins did not attend, the October 22, 2021 IEP team meeting.

The evidence established the assessment tools and strategies Collins relied on were not comprehensive. As a consequence, the information Collins gathered from her assessment offered no insight on how Student's sensory regulation skills impacted his academic performance and ability to participate in his educational curriculum.

Collins administered one standardized assessment; a ratings scale completed by Student to measure his behavioral responses to everyday sensory experiences. The sensory ratings scale helped identify an individual's sensory processing patterns, and if, and how, those patterns affect the individual's daily life. The results of Student's sensory ratings showed his behavioral responses were similar to most people, indicating no sensory regulation concerns. Collins failed to ask Parent or any of Student's teachers to rate Student's responses to sensory experiences.

Student called Susanne Smith Roley, Ph.D., to testify about her concerns with the September 23, 2021 occupational therapy assessment. Dr. Smith Roley had a doctorate in occupational therapy, and was a licensed occupational therapist. She was board certified by the National Board of Certification for Occupational Therapy since 1976.

Dr. Smith Roley was in private practice since 1991, primarily conducting independent occupational therapy evaluations, paid for by school districts. She conducted about 90 independent occupational therapy evaluations a year, and regularly attended IEP team meetings to present her evaluations.

Dr. Smith Roley was familiar with Student's occupational therapy needs. She conducted an independent occupational therapy evaluation at the request of Parent, paid for by Classical Academy. Dr. Smith Roley assessed Student in fall 2022. Her



findings, conclusions, and recommendations were contained in a written report, referred to as the November 14, 2022 occupational therapy evaluation report. Dr. Smith Roley presented her report to Student's IEP team on February 8, 2023.

Dr. Smith Roley had extensive education, training, and experience in the field of occupational therapy, especially in the area of sensory integration. Sensory integration is a person's ability to take information through their senses and integrate the information to understand their body and the environment. Effective integration of sensory information enables a person to function efficiently and effectively in their surroundings. Dr. Smith Roley was knowledgeable in her field, and her testimony was confident and informative. Her assessment and testimony were persuasive and given substantial weight.

At hearing, Dr. Smith Roley criticized Collins's reliance on Student's sensory ratings because Student may have overestimated his sensory responses, which the results suggested. Dr. Smith Roley was critical of Collins's decision not to administer ratings scales to Parent and a teacher to obtain a more objective view of Student's behavioral responses to everyday sensory experiences.

Instead, Collins emailed Student's teachers asking if they believed Student's sensory needs were being met. Two teachers provided feedback in response. Neither teacher reported concerns about Student's sensory regulation. Neither the input from Student's self-ratings, nor feedback from his teachers explained how Student's sensory regulation skills impacted his academic performance or ability to fully participate in his education.

In her report, Collins referenced the June 9, 2021 letter Parent sent to program specialist Allen on August 24, 2021. In that letter, Parent reported Student struggled to focus in school, and during distance learning, due to sounds in the environment. He could not filter out noise in his environment and could not focus on instruction or his work. Student became dysregulated during and after school because he was overstimulated and overwhelmed. Student struggled to keep his place in reading and often saw letters in the wrong place or backwards, which made Student anxious and stressed.

However, Student was attending a nonpublic school at the time Parent wrote the June 9, 2021 letter. Collins did not interview Parent about more recent concerns following Student's transition to Classical Academy and his in-person, on-campus classes, as well as Student's independent study and homeschool programs.

Collins failed to investigate the concerns Parent reported in the June 9, 2021 letter. Collins relied on her observations of Student in her therapy sessions with him, and one observation of Student working on a computer. Collins did not observe Student in the classroom engaged in group activities, in louder, busier settings such as the lunch period or during passing time between classes, or any other settings where noise was common and could be a problem for Student. As a result, her observations failed to explain how Student's sensory regulation skills impacted his academic performance or ability to fully participate in his education.

(This space is intentionally left blank. Text continues on the following page.)

At hearing, Collins testified that she also relied on input from Student's one-to-one aide Erica Boitano to explain her conclusion. In the assessment report, Boitano reported Student needed one to three breaks a day, which Student self-initiated 90 percent of the time. Other times, Boitano suggested he take a break when she noticed him agitated or frustrated. His breaks lasted seven to 15 minutes.

However, Collins indicated in her assessment report that Collins was unclear as to why Student needed breaks, and attributed it to possibly Student being tired in the morning or being anxious. Furthermore, Collins opined in her assessment summary that Student did not overly present as a student who had significant sensory-avoiding or -seeking behaviors. Collins failed to explain how Boitano's report was evidence that Student's sensory regulation skills impacted his academic performance or ability to fully participate in his education. Dr. Smith Roley persuasively opined the September 23, 2021 occupational therapy assessment failed to explain how the data described in the report supported Collins's conclusion that Student's sensory regulation skills impacted his academic performance or ability to fully participate in his education.

At hearing, Collins also explained the June 3, 2021 IEP supported her conclusion because the IEP identified sensory regulation as an area of need and offered a goal in the area. However, Collins did not discuss the June 3, 2021 IEP in her report. Her testimony only confirmed that Collins relied solely on the determinations made by the June 3, 2021 IEP team, and not her assessment findings, to support her conclusion that Student's sensory regulation skills impacted his academic performance or ability to fully participate in his education.

Collins failed to use a variety of strategies and tools to properly assess Student's sensory-regulation skills. As a consequence, her assessment failed to gather relevant information on how Student's sensory-regulation skills impacted his academic performance or his ability to fully participate in his education. Accordingly, a preponderance of the evidence established the September 23, 2021 occupational therapy assessment failed to meet legal requirements, a procedural violation of the IDEA.

The evidence also established the procedural violation denied Student a FAPE. Parent and the rest of the IEP team did not have the necessary information from the assessment to make an informed decision on how to address Student's sensory needs at Classical Academy. As a result, the deficient assessment significantly impeded Parent's opportunity to meaningfully participate in the development of the October 22, 2021 IEP, denying Student a FAPE.

Student proved by a preponderance of the evidence Classical Academy denied him a FAPE during the 2021-2022 school year by failing to conduct an appropriate occupational therapy assessment dated September 23, 2021. Accordingly, Student prevailed on Issue 1.

(This space is intentionally left blank. Text continues on the following page.)

ISSUES 2a AND 2b: DID THE OCTOBER 22, 2021 PSYCHOEDUCATIONAL ASSESSMENT FAIL TO INCLUDE FORMAL, STANDARDIZED STRUCTURED OBSERVATIONS OF STUDENT, AND FAIL TO DETERMINE AND MEASURE STUDENT'S HISTORY OF PROGRESS TOWARDS IEP GOALS?

Student contends the October 22, 2021 psychoeducational assessment failed to sufficiently assess Student's functioning and needs. Specifically, Student argues the psychoeducational assessment was legally flawed because it failed to include formal, standardized structured observations of Student and failed to determine and measure the history of his progress towards IEP goals.

Classical Academy contends the October 22, 2021 psychoeducational assessment's observations were appropriate, and the assessment's review of Student's progress on IEP goals was proper. Therefore, Classical Academy argues Student was not denied a FAPE as a result.

Credentialed school psychologist Kester assessed Student's intellectual development and social-emotional and behavioral functioning pursuant to the August 30, 2021 assessment plan. His findings and conclusions were contained in written report, referred to as the October 22, 2021 psychoeducational assessment report.

(This space is intentionally left blank. Text continues on the following page.)

Kester found Student eligible for special education services under the categories of autism and other health impairment because of hyperactivity and a deficit in attention. He also found Student eligible under the category of emotional disturbance. He presented his assessment report at the October 22, 2021 IEP team meeting.

Kester reviewed Student's school records and development history. He considered input from Parent, Student, and Student's teachers. He administered standardized tests that measured Student's cognitive abilities, processing skills, and social-emotional and behavioral functioning.

## ISSUE 2a: OBSERVATIONS

The observations in the October 22, 2021 psychoeducational assessment did not deny Student a FAPE. During assessment testing, Kester observed Student to be energetic. Student took breaks between tests and engaged in lighthearted conversations with Kester. Student did not need redirection or encouragement during testing.

Kester also observed Student in the classroom on two occasions. Each classroom observation lasted about 30 minutes.

Kester's first classroom observation of Student occurred in Student's math class. Student sat next to his aide. He sought support from his aide while he worked on his laptop. When the aide left his side briefly, Student continued to work independently, pausing briefly to fidget with his pencil.

Kester's second observation of Student occurred in Student's English class. Student responded accordingly when his aide prompted him to turn off his phone and take out his laptop. He paid attention when his English teacher Kellye Bojorquez presented a lesson. Student independently worked on a reading assignment and was not distracted by his phone.

The evidence established the October 22, 2021 psychoeducational assessment did not deny Student a FAPE because it did not include formal structured observations of Student. Student offered no testimony or documentary evidence establishing the absence of formal, structured observations of Student deprived him of an educational benefit, impeded his right to a FAPE, or significantly impeded Parent's opportunity to meaningfully participate in the development of Student's IEP.

Student failed to meet his burden of proving the October 22, 2021 psychoeducational assessment denied him a FAPE because the assessment failed to include formal, structured observations. Accordingly, Classical Academy prevailed on Issue 2a.

## ISSUE 2b: HISTORY OF PROGRESS ON IEP GOALS

Student failed to prove the October 22, 2021 psychoeducational assessment failed to determine and measure Student's progress on IEP goals. At hearing, Kester explained that part of the school records he reviewed were Student's prior IEPs. He reviewed Student's progress on prior IEP goals and noted in the October 22, 2021 psychoeducational assessment report that Student made steady progress on his IEP goals since the last three-year-review reassessments. As a result, Kester noted in his report that Student's service minutes had gradually reduced.

Student failed to prove the October 22, 2021 psychoeducational assessment denied him a FAPE by failing determine and measure Student's progress on IEP goals. Student offered no testimony or documentary evidence that the assessment report required a more detailed discussion of Student's historical progress on IEP goals. Student also failed to prove how the lack of a more detailed discussion in the report deprived him of an educational benefit, impeded his right to a FAPE, or significantly impeded Parent's opportunity to meaningful participate in the development of Student's IEP.

Student failed to prove the October 22, 2021 psychoeducation assessment denied him a FAPE by failing to determine and measure Student's history of progress on IEP goals. Accordingly, Classical Academy prevailed on Issue 2b.

### ISSUE 3: DID CLASSICAL ACADEMY FAIL TO CONDUCT AN APPROPRIATE SPEECH AND LANGUAGE ASSESSMENT DATED NOVEMBER 5, 2021?

Student contends the November 5, 2021 speech and language assessment failed to gather relevant information about Student's speech and language skills, denying Student a FAPE. Classical Academy contends the November 5, 2021 speech and language assessment met legal requirements and did not deny Student a FAPE.

Student's June 3, 2021 IEP team found Student had difficulty organizing his speech for expressive language and struggled to follow multi-step directions, a receptive language skill. At the September 14, 2021 IEP team meeting, Parent requested Classical Academy perform more thorough testing of Student's expressive and receptive language abilities. That did not occur.



Speech-language pathologist Larson assessed Student's communication development pursuant to the August 30, 2021 assessment plan. Larson's findings and conclusions were contained in a written report, referred to as the November 5, 2021 speech and language assessment report. Larson did not testify at the hearing.

Relying on informal assessments, Larson found Student's articulation skills, voice, and vocal quality to be in the normal range. Larson also found Student's rate of speech to be appropriate.

Larson assessed Student's social language skills with a standardized assessment that showed Student had average abilities to make inferences, interpret social language, and problem solve, and had average social interactions skills. However, Student performed very low compared to same-aged peers in his ability to interpret ironic statements, demonstrating a deficit in recognizing sarcasm and irony. Larson determined Student had a deficit in social pragmatic language skills.

Larson concluded Student had no expressive or receptive language deficits, and Student only qualified for special education services due to deficits in social pragmatic language. However, her assessment failed to comprehensively assess Student's expressive and receptive language skills to rule out the deficits.

Student's expert speech-language pathologist Christine Himstreet testified about Student's expressive and receptive language needs. Himstreet had a master's degree in speech and language pathology. She was licensed and credentialed, and held a Certification of Clinical Competency with the American Speech Language Hearing Association. She was a speech-language pathologist for 25 years.

In her career, Himstreet completed over 500 independent educationally related speech and language assessments, paid for by school districts. She also presented her assessment reports in hundreds of IEP team meetings. Himstreet's education, training, and experience were extensive, and her testimony was thoughtful and measured. Accordingly, her assessment and testimony were credible, persuasive, and given substantial weight.

Parent selected Himstreet to conduct an independent educational evaluation of Student's speech and language functioning, which Classical Academy paid for. Himstreet prepared a written report dated March 16, 2023, containing her findings, conclusions, and recommendations. Student's IEP team reviewed her assessment report on March 20, 2023.

Himstreet's 2023 assessment revealed Student's expressive and receptive language skills remained areas of concern. Himstreet found Student often talked around subjects, mazed, or stuttered. Himstreet opined this impeded his ability to efficiently express his thoughts and ideas. Student also made a lot of errors in his oral language, which Himstreet opined was impacted by his stuttering. Himstreet reported Student did not stutter in school because he did not often speak, or stopped speaking to avoid stuttering.

Receptively, Himstreet found Student struggled with information that was orally presented to him. He had difficulty answering comprehension questions about long passages with open-ended questions, and with following directions.

Himstreet offered credible criticism of the November 5, 2021 speech and language assessment. Larson's assessment of Student's expressive and receptive language skills was limited to one standardized assessment measure, the Comprehensive Assessment of

Spoken Language, Second Edition, that showed Student's general language abilities were average. Student performed in the average range for receptive and expressive language skills. Solely based on Student's performance on the one measure, Larson concluded Student's receptive and expressive language skills were not areas of concern.

Himstreet criticized Larson's reliance on the Comprehensive Assessment of Spoken Language to rule out expressive and receptive language deficits because the assessment tool was not sensitive enough, meaning it could fail to identify a deficit that is present. Himstreet opined the Comprehensive Assessment of Spoken Language had a sensitivity of 72 percent, meaning only 72 percent of the people administered the test who in fact had a deficit were correctly identified by that tool as having a deficit.

Himstreet also criticized the assessment for failing to consider input from Parent and Student's teacher to understand how Student's speech and language affected him in school. Himstreet's criticism was persuasive.

According to the November 5, 2021 assessment report, Larson purportedly reviewed Student's records, and considered Parent's input in her assessment. However, the assessment report failed to describe the records Larson purportedly reviewed, or input from Parent that Larson purportedly considered. Larson did not interview Parent or any of Student's teachers at Classical Academy.

The November 5, 2021 speech and language assessment report offered no discussion or explanation about any other criterion Larson relied on to rule out Student's deficits in expressive and receptive language, despite findings by the June 3, 2021 IEP team Student had deficits in expressive and receptive language. The assessment report failed to describe any information from Parent, Student's teachers, or service providers on which Larson relied.

Though Larson's speech and language assessment report was dated November 5, 2021, Larson presented the report at the October 22, 2021 IEP team meeting. Larson opined at the meeting that Student no longer required receptive and expressive language goals in his IEP. Parent disagreed, opining that Student's receptive and expressive language skills remained a concern. Parent provided written consent to the October 22, 2021 IEP, but noted her disagreement with the November 5, 2021 speech and language assessment, and Classical Academy's determination that Student met his prior expressive and receptive language goals.

Classical Academy relied on the testimony of program specialist Regina Darling to defend the November 5, 2021 speech and language assessment report. Darling joined Classical Academy as a speech-language pathologist in March 2018, and held the position of lead speech-language pathologist for Classical Academy from August 2020 through July 2022.

At hearing, Darling assumed Larson's assessment also relied on information gathered through Larson's speech and language therapy sessions with Student, as well as Larson's observations of Student on campus because Larson worked at the same school Student attended. Darling's assumptions were not persuasive.

The November 5, 2021 speech and language assessment report offered no discussion about Larson's therapy sessions with Student, or how she relied on those sessions in her assessment. Larson also failed to explain at the October 22, 2021 IEP team meeting how she considered the information from Student's therapy sessions in her assessment.

Furthermore, Larson relied only on her observations of Student during her assessment testing. During testing, Larson noted that Student was focused and cooperative, and put forth his best effort. Larson also noted Student appeared to enjoy casual conversations between taking subtests.

The November 5, 2021 speech and language assessment failed to describe how those observations supported Larson's conclusion that Student had no expressive or receptive language needs. The assessment also offered no discussion about any other observations of Student by Larson, outside of her testing, to support her findings.

The evidence established the November 5, 2021 speech and language assessment failed to use a variety of assessment tools and strategies to gather relevant information about Student's expressive and receptive language skills. Larson's reliance on a single procedure, the Comprehensive Assessment of Spoken Language, coupled with her failure to consider information from Parent, Student's teachers, or from any other source to rule out Student's deficits in expressive and receptive language was inadequate, and a procedural violation of the IDEA.

The evidence established the procedural violation in the November 5, 2021 speech and language assessment deprived Parent of critical, reliable information about Student's expressive and receptive language skills. As a result, the violation significantly impeded Parent from meaningfully participating in the decision making process in developing Student's IEP. Accordingly, Student proved by a preponderance of the evidence that the November 5, 2021 speech and language assessment denied him a FAPE. Student prevailed on Issue 3.

ISSUE 4a: DID CLASSICAL ACADEMY FAIL TO CONDUCT A FUNCTIONAL BEHAVIOR ASSESSMENT OF STUDENT FROM OCTOBER 20, 2021, THROUGH THE 2021-2022 SCHOOL YEAR?

Student contends Classical Academy failed to conduct a functional behavior assessment to update Student's behavior intervention plan. Classical Academy contends a functional behavior assessment was not warranted during the 2021-2022 school year because Student's behaviors at Classical Academy were not interfering with his ability to access his curriculum or interact with peers.

A functional behavior assessment focuses on identifying the function or purpose behind a child's behavior. (United States Department of Education Office of Special Education and Rehabilitative Services (OSERS) *Questions and Answers on Discipline Procedures*, June 1, 2009, Q. E-2 (*OSERS Q & A*).) The process typically involves looking closely at a wide range of child-specific factors such as social, affective, and environmental. (*Ibid.*) The functional behavior assessment assists the IEP team in determining the extent of the special education and related services that the child needs, including a behavior intervention plan to help reduce or eliminate the problem behavior. (*Id.* at Q. E-4)

The evidence established Classical Academy denied Student a FAPE by failing to conduct a functional behavior assessment during the 2021-2022 school year. The October 22, 2021 IEP, as did the June 3, 2021 IEP, identified that Student was easily distracted, had difficulty focusing on tasks, and inconsistently participated in group activities. Student put his head down on the desk, did not respond to verbal requests,

and made statements to end conversations. The October 22, 2021 IEP team found those behaviors impeded Student's learning or the learning of others, and documented this conclusion on the special factors page of the IEP.

The October 22, 2021 IEP also included the same behavior intervention plan that was offered in the June 3, 2021 IEP that had been developed to support Student in the more restrictive, structured nonpublic school. The behavior intervention plan offered in the October 22, 2021 IEP identified the same off-task behaviors, proposed the same functionally equivalent replacement behavior, and offered the same strategies and reinforcements.

School psychologist Kester testified Classical Academy staff did not observe Student's off-task behaviors, and the IEP team decided to include the June 3, 2021 behavior intervention plan in the October 22, 2021 IEP in an abundance of caution in the event Student began to display the same problem behaviors that were observed at the nonpublic school. However, Classical Academy's rationale did not excuse its failure to conduct a functional behavior assessment.

Classical Academy was required to assess all areas of need as part of Student's three-year-review reassessment. (34 C.F.R. § 300.304(c)(6).) Student's behavior was identified as an area of need by the October 22, 2021 IEP team. Despite Classical Academy having no record of Student's problem behaviors at its school, Student's IEP team still determined Student's problem behaviors impeded his learning. The October 22, 2021 IEP offered a behavior intervention plan to reduce problem behaviors, with no evidence that Student had problem behaviors at Classical Academy to reduce.

Accordingly, Classical Academy should have conducted a functional behavior assessment to identify Student's problem behaviors, if any, and the functions of any identified behaviors to reduce their impediment to his learning.

The evidence established Classical Academy's procedural violation in failing to conduct a functional behavior assessment during the 2021-2022 school year denied Student a FAPE. As a consequence of the violation, Parent and Student's IEP team had no information to accurately determine if, how, and why, Student's behaviors at Classical Academy impeded his learning. Parent's ability to meaningfully participate in the development of Student's IEP was significantly impeded because she was denied accurate, reliable information about Student's behaviors at school to make an informed decision about the proper behavioral interventions and supports, such as a behavior intervention plan, that Student may have needed in his IEP.

Accordingly, Student proved by a preponderance of the evidence that Classical Academy denied him a FAPE from October 20, 2021, through the 2021-2022 school year by failing to conduct a functional behavior assessment. Student prevailed on Issue 4a.

#### ISSUES 4b AND 4c: DID CLASSICAL ACADEMY FAIL TO CONDUCT COMPREHENSIVE, ACCURATE ASSESSMENTS IN SPEECH AND LANGUAGE AND OCCUPATIONAL THERAPY FROM OCTOBER 20, 2021, THROUGH THE 2021-2022 SCHOOL YEAR?

Student contends the September 23, 2021 occupational therapy assessment and November 5, 2021 speech and language assessment failed to provide relevant information about Student's needs. Therefore, Student argues Classical Academy



should have conducted additional assessments in speech and language, and occupational therapy, during the 2021-2022 school year. Student contends Classical Academy's failure to do so denied him a FAPE.

Classical Academy contends the September 23, 2021 occupational therapy assessment and November 5, 2021 speech and language assessment were comprehensive and accurate. Therefore, Classical Academy argues additional assessments in those areas were not necessary during the 2021-2022 school year.

Student proved Classical Academy denied him a FAPE by failing to conduct comprehensive and accurate assessments in speech and language and occupational therapy during the 2021-2022 school year. As discussed in Issues 1 and 3, the September 23, 2021 occupational therapy assessment and November 5, 2021 speech and language assessment denied Student a FAPE because they were not comprehensive.

By May 19, 2022, Student's IEP team had credible information that Student continued to have needs in expressive and receptive language. On May 19, 2022, Student's IEP team reviewed a central auditory processing evaluation report, dated October 2, 2021, prepared by audiologist Catherine Fabian, Au.D.

The evidence did not support Parent's testimony that she provided the October 2, 2021 central auditory processing evaluation report to Classical Academy on or about October 2, 2021. At hearing, program specialist Allen recalled reviewing the report in or about late March or early April 2022. Furthermore, neither Parent nor any other IEP team member mentioned the report at the October 22, 2021 IEP team meeting. In addition, Parent did not reference the report in any of her numerous communications with Classical Academy leading up to the May 19, 2022 IEP team meeting.

Furthermore, Classical Academy timely responded to information and requests from Parent throughout the relevant period. Student's IEP teams timely reviewed the November 4, 2021 visual information processing evaluation and the publicly funded independent educational evaluations Parent obtained in 2023. Classical Academy also timely provided prior written notices in response to Parent's many requests. Therefore, Classical Academy, more likely than not, received the October 2, 2021 central auditory processing evaluation in late March or early April 2022, and timely held an IEP team meeting to review Dr. Fabian's report.

Dr. Fabian presented her report to the IEP team on May 19, 2022. Dr. Fabian did not testify.

Dr. Fabian diagnosed Student with a central auditory processing disorder. She found a disparity in the information processed from Student's left ear, referred to as left amblyaudia. Dr. Fabian opined Student's central auditory processing disorder had a significant impact to his listening and learning. Dr. Fabian reported that individuals with Student's type of central auditory processing disorder had difficulty knowing when and where to pay attention without explicit instruction, remembering what they read or were told, and coordinating thoughts and actions to express themselves verbally and in writing. Dr. Fabian found that Student's left amblyaudia impeded his ability to receive instruction presented through verbal instruction and reading, and recommended Student receive a multi-sensory reading program such as Orton-Gillingham, or Seeing Stars by Lindamood Bell.

Dr. Fabian reported to the IEP team how Student's central auditory processing disorder impacted his expressive and receptive language skills. Yet, Classical Academy failed to conduct additional assessments of Student's expressive and receptive language skills.

Classical Academy failed to conduct additional speech and language, and occupational therapy assessments in the 2021-2022 school year to remedy the failures of their prior assessments. The failures to conduct comprehensive speech and language, and occupational therapy assessments during the 2021-2022 school year were procedural violations that significantly impeded Parent from meaningfully participating in the development of Student's IEP. The absence of a comprehensive speech and language assessment deprived Parent of critical information about Student's expressive and receptive language skills. The absence of a comprehensive occupational therapy assessment deprived Parent of critical information regarding Student's sensory regulation needs at Classical Academy.

Accordingly, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE from October 20, 2021, through the 2021-2022 school year by failing to conduct comprehensive, accurate speech and language, and occupational therapy, assessments. Student prevailed on Issues 4b and 4c.

(This space is intentionally left blank. Text continues on the following page.)

ISSUES 4d, 4e, 4f, AND 4g: DID CLASSICAL ACADEMY FAIL TO OFFER GOALS IN READING, WRITING, MATH, SOCIAL-EMOTIONAL AND BEHAVIORAL FUNCTIONING, EXPRESSIVE, RECEPTIVE, AND PRAGMATIC LANGUAGE, AND EXECUTIVE FUNCTIONING FROM OCTOBER 20, 2021, THROUGH THE 2021-2022 SCHOOL YEAR?

Student contends Classical Academy denied him a FAPE by failing to offer him an IEP with appropriate goals to meet his academic and functional needs. Classical Academy contends the goals offered in the October 22, 2021 IEP were measurable and appropriate to meet Student's identified areas of need. Classical Academy also contends Student's expressive and receptive language skills were not areas of need at the time of the October 22, 2021 IEP team meeting. Therefore, Classical Academy argues Student did not require goals in expressive and receptive language to receive 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.) 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; Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

In general, a child eligible for special education must be provided access to specialized instruction and related services that are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 [102 S.Ct. 3034] (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].) The IEP is the centerpiece of the IDEA's education delivery system for disabled children and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345.)

The IEP is a comprehensive statement of the educational needs of a child with a disability, and the specially designed instruction and related services to be employed to meet those needs. (*School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996] (*Burlington*).) An IEP is a written document for each child with exceptional needs that includes a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

The IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) Additionally, the IEP must contain statements of how the child's goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).) The IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.)

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. In *Capistrano Unified School Dist. v. S.W., et al.* (9th Cir. 2021) 21 F.4th 1125, 1133 (*Capistrano*), the court stated the IDEA required IEP goals to target a student's needs, but the IDEA did not require an IEP to contain every goal from which a student might benefit. Moreover, a local educational agency is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (Fed. Regs., Appendix A, Part 300 - Assistance to States for the Education of Children with Disabilities (1999), discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C. § 1414(d)(1)(A)(i)(II).)

In resolving the question of whether a local educational agency has offered a FAPE, the focus is on the adequacy of the local educational agency's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Fuhrmann v. East Hanover Board of Educ.* (3d Cir. 1993) 993 F.2d 1031 (*Fuhrmann*).) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

On October 22, 2021, following the review of Classical Academy's assessments of Student, the IEP team developed Student's annual IEP. The IEP team identified Student's present levels of academic and functional performance, and determined Student required IEP goals in

- social pragmatics,
- self-regulation,
- math,
- writing,
- reading,
- behavior,
- executive functioning, and
- social-emotional functioning.

(This space is intentionally left blank. Text continues on the following page.)

The IEP team also determined Student's behaviors impeded his learning, and offered a behavior intervention plan. The October 22, 2021 IEP's offer of services included

- specialized academic instruction,
- occupational therapy,
- speech and language therapy,
- counseling, and
- behavior intervention services.

The IEP also offered 30 sessions of vision therapy services, including vision reevaluations. The vision therapy services were offered following the IEP team's review of a visual information processing evaluation dated November 4, 2021, prepared by Carl Hillier, O.D. Dr. Hillier found Student had visual challenges that involved visual acuity, eye movement control, focusing, and eye teaming which caused double vision. Dr. Hillier recommended one hour of weekly vision therapy. Dr. Hillier and his associates provided the vision therapy services.

The IEP team determined Student would spend 13 percent of his school day on campus out of the regular classroom to receive direct instruction from the specialized academic teacher, occupational therapist, speech-language pathologist, and school social worker to work on his IEP goals.

Parent provided written consent to the October 22, 2021 IEP on November 15, 2021, with three exceptions. As one exception, Parent disagreed with the speech and language assessment's finding that Student no longer had deficits in his receptive and



expressive language skills. The October 22, 2021 IEP did not offer goals in expressive and receptive language, but Parent believed receptive and expressive language continued to be areas of concern for Student that required IEP goals.

The IEP team met two more times during 2021-2022 school year, on March 7, 2022, and again on May 19, 2022. The IEP team did not make any changes to the October 22, 2021 IEP on March 7, 2022. On May 19, 2022, Classical Academy amended the October 22, 2021 IEP to reflect Student's diagnosis of a central auditory processing disorder. The IEP was also amended to add additional accommodations to include video or audio recording of classroom lessons for Student to review, testing in a quiet space, and scaffolded notes to be provided to Student. No changes to the October 22, 2021 IEP's goals and services were made on May 19, 2022.

Academically, Student was far behind his same-aged peers. Based on a computer-adaptive assessment, referred to as STAR, taken at the start of the 2021-2022 school year, Student was reading at a third-grade level. Additional STAR reading assessments determined Student read and comprehended texts at the first-grade level. He understood academic vocabulary words at the sixth-grade level. His overall reading fluency proficiency, based on comprehension and vocabulary levels and reading rate, was at the first-grade level.

Student read 79 words per minute when reading silently. 79 words per minute fell in the zero percentile compared to other students in the same grade, meaning everyone else read more words per minute than Student did.

Based on STAR results, Student's math skills were at a fifth-grade level at the start of the school year. Student struggled to identify corresponding decimals and fractions, understand decimal place values, and how to divide with regrouping. Student also struggled to solve word problems with rational numbers that involved multiple steps.

In writing, Student produced a variety of writing that was developed, organized, and the appropriate style for the type of assignment, purpose of the writing, and intended audience. However, Student only produced such writings with 70 percent accuracy over three consecutive opportunities.

Specialized academic instructor Kelsey White assessed Student's academic achievement pursuant to the August 30, 2021 assessment plan. Student's performance on the standardized academic achievement assessment showed poor skills in sentence - reading fluency and math-facts fluency. Student performed in the average range in written language. White's findings were contained in the October 22, 2021 psychoeducational assessment report, and shared with the IEP team on October 22, 2021. The October 22, 2021 IEP team determined Student had academic needs in reading, writing, and math and offered five academic goals.

#### ISSUE 4d: READING, WRITING, AND MATH GOALS

##### READING

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (h); see also 20 U.S.C. § 1415(f)(3)(C).) Common law or equitable exceptions to the statute of limitations do not apply to IDEA cases. (*D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F. 3d 233, 248.) In particular, the common law

exception to the statute of limitations that applies when a violation is continuing is not applicable in IDEA cases. Thus, a party may not challenge the appropriateness of an IEP created outside of the statute of limitations period even though the IEP's provisions were in effect within the limitations period. (*K.P., etc., v. Salinas Union High School Dist.* (N.D.Cal. April 8, 2016, Case No.5:08-cv-03076-HRL) 2016 WL 1394377, interpreting the California statute of limitations, Ed. Code, § 56505, subd. (j).)

Student's IEP goals and services in effect on October 20 and 21, 2021, were offered in the June 3, 2021 IEP, as amended on September 21, 2021. The June 3, 2021 IEP, as amended on September 21, 2021, was developed outside the two-year statute of limitations. Accordingly, each of Student's claims involving the offer of goals and services in effect on October 20 and 21, 2021, are barred by the two-year statute of limitations.

The October 22, 2021 IEP offered two reading goals, each of which were measurable and reasonably calculated to help Student improve his reading comprehension and overall reading proficiency. To improve Student's overall reading proficiency, the first reading goal tasked Student to highlight important information, and cite two pieces of textual evidence to support his analysis of what a text explicitly stated, as well as inferred, and explain the relevance of the text. Student was to reread a passage after the passage was read in a small group or independently by Student. To meet the goal, Student had to accomplish the task with 80 percent accuracy on three consecutive trials.

The second reading goal required Student to determine the theme or central idea of a text, analyze the development of the theme or idea, and write an objective summary. Student could use a graphic organizer. Student had to perform the task with 80 percent accuracy over three trials to meet the goal.

Each of the reading goals would be measured using Student's work samples. Special education teachers and staff, along with the general education teachers and staff, were responsible for the goals.

A preponderance of the evidence established the reading goals offered on October 22, 2021, were measurable and reasonably calculated to permit Student to make progress on reading comprehension and overall reading proficiency. Student offered no evidence that he required additional goals in reading. Accordingly, Student failed to prove Classical Academy denied him a FAPE from October 20, 2021, through the 2021-2022 school year by failing to offer reading goals.

## WRITING

The October 22, 2021 IEP offered one writing goal, which was measurable and reasonably calculated to improve Student's ability to develop, organize, and write in different styles. To meet the writing goal, Student had to produce writings that were developed, organized, and appropriate to the style, purpose, and audience of the assignment. After a class discussion, Student would receive a writing prompt. Student could use a graphic organizer with sentence starters, guided questions, and an editing checklist. Student needed to demonstrate 80 percent accuracy on three consecutive trials to meet the goal.

Student's writing progress was measured by Student's work samples, and a teacher-made rubric. Student's special education and general education teachers and staff were responsible for the goal.

A preponderance of the evidence established the writing goal was measurable and reasonably calculated to improve Student's writing skills. Student offered no evidence he needed additional writing goals. Accordingly, Student failed to prove Classical Academy denied him a FAPE from October 22, 2021, through the 2021-2022 school year by failing to offer a writing goal.

## MATH

The October 22, 2021 IEP offered two math goals, which were both measurable and reasonably calculated to address Student's math deficits. The first math goal required Student to correctly add, subtract, multiply, or divide simple or complex fraction problems. Student had to use his strategy notebook consistently, and correct his work with a calculator. Student had to successfully solve 80 percent of the problems on three consecutive trials to meet the goal.

For the second math goal, Student had to correctly add, subtract, multiply, or divide a series of multi-step, real-world word problems involving rational numbers such as fractions, percents, or decimals. Student was expected to consistently use his strategy notebook, use a graphic tool, and correct his work using a calculator. Student had to be 80 percent accurate on three consecutive trials to meet the goal.

Each math goal was measured using Student's work samples. Special education teachers and staff, along with the general education teachers and staff were responsible for the goals.

A preponderance of the evidence established the math goals were measurable and reasonably calculated to address Student's difficulty applying math operations and solving fractions and word problems. Student offered no evidence that he required additional math goals. Accordingly, Student failed to prove Classical Academy denied him a FAPE from October 22, 2021, through the 2021-2022 school year by failing to offer math goals.

In sum, Student failed to prove Classical Academy denied him a FAPE by failing to offer goals in reading, writing, and math, from October 22, 2021, through the 2021-2022 school year. Accordingly, Classical Academy prevailed on Issue 4d.

## ISSUE 4e: SOCIAL-EMOTIONAL AND BEHAVIORAL FUNCTIONING GOALS

### SOCIAL-EMOTIONAL FUNCTIONING

The October 22, 2021 IEP team found Student became anxious at school when he worried about what other students thought of him. He also got overwhelmed when his sensory needs were unmet. When Student was anxious, stressed, or overwhelmed he frequently took sensory breaks, which he initiated 70 percent of the time, by leaving the classroom for seven to 15 minutes at a time. For some sensory breaks, Student used a weighted blanket or vest.

Student only advocated for himself 50 percent of the time when he faced a challenging situation. He also used positive self-talk 60 percent of the time to respond to emotionally and academically challenging situations.

Despite the September 23, 2021 occupational therapy assessment's failures, the October 22, 2021 IEP team had sufficient data to identify sensory regulation as an area of need and to develop an appropriate goal. The sensory regulation goal offered in the June 3, 2021 IEP was fairly recent, and had only been implemented for the short period Student was at Classical Academy as of October 22, 2021. Accordingly, it was reasonable for the IEP team to continue the sensory regulation goal from the June 3, 2021 IEP for the remainder of the school year.

The October 22, 2021 IEP offered three goals to help Student manage his anxiety and cope with challenging situations. Each of the goals were measurable and reasonably calculated to help Student when anxious or overwhelmed.

The first social-emotional goal required Student to use positive self-talk with 80 percent accuracy in three out of three trials. The second goal required Student to identify challenging emotional or academic situations and to use self-advocacy skills to appropriately respond to the situation. Self-advocacy skills could involve Student asking for help, asking for directions to be repeated, accepting help, and requesting short breaks. Student had to successfully apply self-advocacy skills with 80 percent accuracy in three out of three trials to meet the goal.

Student's progress on the two goals were measured through observations by a school counselor, teachers, and Student. The counseling team and the special education teacher were responsible for the goal. The first two social-emotional goals were measurable and reasonably calculated to help Student overcome challenging situations that could make him feel insecure and self-conscious, and help him self-advocate in challenging situations.

The third social-emotional goal, referred to as self-regulation in the IEP, required Student to rely on self-advocacy skills when anxious or dysregulated, to identify his emotional state, and to choose an appropriate strategy to return to the classroom activity. Student could rely on a predetermined list of sensory strategies. He had to apply appropriate self-advocacy skills, and select the appropriate strategy with 90 percent accuracy to meet the goal. Goal progress would be measured using data collected and observations by an occupational therapist. The goal was measurable and reasonably calculated to help Student relax when anxious or dysregulated.

A preponderance of the evidence established the social-emotional and self-regulation goals were measurable and reasonably calculated to help Student when he was overwhelmed, anxious, worried, self-conscious, and dysregulated. Student offered no evidence that he required additional goals to support his social-emotional needs. Accordingly, Student failed to prove Classical Academy denied him a FAPE by failing to offer social-emotional goals from October 22, 2021, through the 2021-2022 school year.

## BEHAVIORAL FUNCTIONING

Classical Academy failed to offer a behavior goal in the October 22, 2021 IEP. As discussed in Issue 4a, the October 22, 2021 IEP team determined Student's behavior was an area of need necessitating an IEP goal, and documented on the IEP's special factors page notation that Student's problem behaviors impeded his learning. The October 22, 2021 IEP offered a behavior intervention plan to reduce or eliminate problem behaviors. Accordingly, Classical Academy was required to offer a behavior goal in the October 22, 2021 IEP. Classical Academy failed to do so.



Classical Academy did not offer a behavior goal in the October 22, 2021 IEP, or at any time throughout the remainder of the 2021-2022 school year. If Classical Academy did not believe Student required a behavior goal, or a behavior intervention plan, then Classical Academy should not have offered an IEP that said otherwise.

The evidence established Classical Academy failed to offer a behavior goal during the 2021-2022 school year, which deprived Student of an IEP reasonably calculated to address his problem behaviors identified in the October 22, 2021 IEP. Accordingly, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE from October 22, 2021, through the 2021-2022 school year, by failing to offer a goal in behavioral functioning. Student and Classical Academy each prevailed in part on Issue 4e.

#### ISSUE 4f: EXPRESSIVE, RECEPTIVE, AND PRAGMATIC LANGUAGE GOALS

##### EXPRESSIVE AND RECEPTIVE LANGUAGE

As discussed in Issue 3, Classical Academy failed to conduct a comprehensive speech and language assessment in preparation for Student's annual IEP team meeting on October 22, 2021. The November 5, 2021 speech and language assessment failed to use a variety of strategies and tools, including information from Parent and teachers, to rule out deficits in expressive and receptive language, which were identified as areas of need in Student's June 3, 2021 IEP, and its amendment on September 14, 2021.

As a result of the November 5, 2021 speech and language assessment's failure to comprehensively assess Student's expressive and receptive language skills, the October 22, 2021 IEP team lacked the necessary information to make an informed

decision about Student's expressive and receptive language needs. The October 22, 2021 IEP team had no reliable information with which to rule out concerns about Student's expressive and receptive language skills. Therefore, Classical Academy's decision not to offer an expressive or receptive language goal had no direct relationship to Student's expressive and receptive language skills because those skills were not accurately identified by the October 22, 2021 IEP team.

Classical Academy did not offer expressive or receptive language goals during the 2021-2022 school year, following the October 22, 2021 IEP team meeting. Classical Academy did not conduct additional assessments of Student's expressive and receptive language skills, and received no information during the 2021-2022 school year to justify its rejection of Parent's request to include expressive and receptive language goals in Student's IEP.

A preponderance of the evidence established Classical Academy's failure to accurately identify Student's expressive and receptive language skills, resulting in the absence of IEP goals in those areas, were procedural violations that significantly impeded Parent's opportunity to meaningfully participate in the development of Student's IEP. Accordingly, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE from October 22, 2021, through the 2021-2022 school year by failing to offer goals in expressive and receptive language.

## PRAGMATIC LANGUAGE

Student continued to struggle with social language, including engaging in conversations and interpreting nonverbal communication. In small group instruction, Student asked and answered open-ended questions from peers and the speech -

language pathologist. He sustained those conversations over three conventional turns independently using bridging questions and comments during conversations. Student improved his ability to read nonverbal cues, including facial expressions and body language. However, he still needed help predicting a person's motivation or intent based on nonverbal communication.

The October 22, 2021 IEP team identified social pragmatics as an area of need and offered two goals to be implemented by a speech-language pathologist. The first social pragmatic goal required Student to hold a conversation with a peer about a topic chosen by the peer. Student was required to ask his speaking partner questions, use bridging comments, and sustain the conversation on the topic for at least five conversational turns. To meet the goal, Student would be allowed no more than one prompt, demonstrating 80 percent accuracy in asking questions, using bridging comments, and sustaining the conversation for at least five conversational turns, over two consecutive opportunities.

The second social pragmatic goal required Student to describe nonverbal communication that was presented to him in photographs, videos, pictures, and real-life scenarios, and to predict a person's motivation or intent. To meet the goal, Student had to demonstrate 80 percent accuracy over three consecutive opportunities.

A preponderance of the evidence established that the social pragmatic goals offered from October 22, 2021, through the remainder of the 2021-2022 school year were measurable and reasonably calculated to enable Student to successfully engage in conversations and interpret nonverbal communications. Student offered no evidence he

required additional pragmatic language goals. Accordingly, Student failed to prove Classical Academy denied him a FAPE from October 22, 2021, through the 2021-2022 school year by failing to offer goals in pragmatics language.

Student proved Classical Academy denied him a FAPE from October 22, 2021, through the 2021-2022 school year by failing to offer goals in expressive and receptive language. Student failed to prove Classical Academy denied him a FAPE by failing to offer pragmatic language goals from October 22, 2021, through the 2021-2022 school year. Accordingly, Student prevailed on Issue 4f.

#### ISSUE 4g: EXECUTIVE FUNCTIONING GOAL

The June 3, 2021 IEP, as amended on September 14, 2021, offered an executive functioning goal to support Student's struggles with following his schedule, transitioning between classes, and organizing class materials. At the time of the October 22, 2021 IEP team meeting, Student's executive functioning challenges continued. Student had difficulty identifying the assignments he needed to work on, but could work independently once he was given a list of his assignments.

The October 22, 2021 IEP offered one goal to address Student's executive functioning needs. The executive functioning goal required Student to use the school's online platform calendar to create a list of at least five tasks he needed to work on during homeschool days. He also had to write questions to ask his teachers. He would be provided a visual checklist and receive prompts from adults to support him in the goal. Student had to accomplish the task in four out of five opportunities based on data collected by the special education teacher or occupational therapist.

A preponderance of the evidence established the executive functioning goal offered in the October 22, 2021 IEP, through the remainder of the 2021-2022 school year, was measurable and reasonably calculated to help Student organize his assignments. Student offered no evidence that he required additional goals in executive functioning. Accordingly, Student failed to prove Classical Academy denied him a FAPE from October 20, 2021, through the 2021-2022 school year by failing to offer a goal in executive functioning. Classical Academy prevailed on Issue 4g.

#### ISSUE 4h: DID CLASSICAL ACADEMY FAIL TO DEVELOP AN UPDATED BEHAVIOR INTERVENTION PLAN FROM OCTOBER 22, 2021, THROUGH THE 2021-2022 SCHOOL YEAR?

Student contends Classical Academy offered him an inadequate behavior intervention plan that required an update. Student argues Classical Academy's failure to offer an updated behavior intervention plan deprived him of goals and services to support his social-emotional and behavioral needs.

Classical Academy contends Student did not require a behavior intervention plan during the 2021-2022 school year because Student's behaviors at Classical Academy were not interfering with his ability to access his curriculum or interact with peers.

Whenever a child's behavior impedes his learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (20 U.S.C. § 1414(d)(3)(B); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) However, the implementing regulations of the IDEA do not require the IEP team to use any particular method, strategy, or technique. (71 Fed. Reg. 46683 (Aug. 14, 2006).) If the IEP team finds that a

behavior intervention plan is appropriate for a child with a disability whose behaviors impede the child's learning, then the child's IEP must include a behavior intervention plan. (*OSERS Q & A, supra*, at Q E-2.)

As discussed in Issue 4a, the October 22, 2021 IEP's special factors page documented that the IEP team concluded Student was easily distracted, had difficulty focusing on tasks, and inconsistently participated in group activities. Student put his head down on the desk, did not respond to verbal requests, and made statements to end conversations. The IEP stated these behaviors impeded Student's learning or the learning of others. Therefore, having made that determination, Classical Academy should have offered a behavior intervention plan designed to reduce or eliminate those behaviors. It did not.

According to the October 22, 2021 IEP, Student displayed behaviors of withdrawing and disengaging. Yet, the behavior intervention plan included in the October 22, 2021 IEP was identical to the plan offered in the June 3, 2021 IEP. The plan was designed to reduce off-task behaviors during academic work, defined as laughing, shouting, and talking to peers; behaviors which were inconsistent with and different than the behaviors determined to be impeding Student's learning.

Classical Academy claims its staff did not observe Student display behaviors that impeded his learning and contends it included the June 3, 2021 behavior intervention plan in the October 22, 2021 IEP in an abundance of caution, in the event Student began to display the same problem behaviors that were observed at the nonpublic school. Classical Academy's rationale did not excuse Classical Academy's failure to update Student's behavior intervention plan.

Having determined that Student's behaviors impeded his learning and identified those behaviors in the October 22, 2021 IEP, Classical Academy was required to offer a behavior intervention plan reasonably calculated to reduce or eliminate the identified problem behaviors. If Classical Academy believed Student had no behaviors that impeded his or others' learning, and therefore, Student did not require an updated behavior intervention plan, then Classical Academy should not have offered an IEP that said otherwise.

Classical Academy committed a procedural violation by failing to offer an updated behavior intervention plan. Classical Academy's procedural violation denied Student a FAPE because it deprived him the opportunity to learn appropriate behaviors to replace his problem behaviors. Though Student's off-task behaviors were manageable with the support of his aide, Student was not provided the opportunity through an appropriate behavior intervention plan to learn positive behaviors to reduce his reliance on his aide for behavioral support.

Accordingly, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE from October 22, 2021, through the 2021-2022 school year by failing to develop an updated behavior intervention plan. Student prevailed on Issue 4h.

(This space is intentionally left blank. Text continues on the following page.)

ISSUES 4i, 4j, 4k, 4l, 4m, 4t, AND 4u: DID CLASSICAL ACADEMY FAIL TO OFFER APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION, AND BEHAVIOR INTERVENTION, THERAPEUTIC, SPEECH AND LANGUAGE, AND OCCUPATIONAL THERAPY SERVICES FROM OCTOBER 22, 2021, THROUGH THE 2021-2022 SCHOOL YEAR?

Student contends Classical Academy failed to offer appropriate special education and related services because of Classical Academy's failure to conduct appropriate assessments and develop proper IEP goals. Student also argues Classical Academy denied him a FAPE by reducing the service minutes for speech and language, and occupational therapy, services in the October 22, 2021 IEP.

Classical Academy contends it offered Student sufficient minutes of appropriate specialized academic instruction during the 2021-2022 school year, as demonstrated by the academic progress he made during the school year. Classical Academy also contends Student failed to meet his burden of proving the behavior intervention services offered to Student during the 2021-2022 school year were inadequate.

Further, Classical Academy contends it offered Student sufficient minutes of appropriate counseling and speech and language services during the 2021-2022 school year. Classical Academy also contends the offer of 30 minutes a month of occupational therapy consultation services was appropriate to support Student's self-regulation and executive functioning goals for which the occupational therapist was responsible for, during the 2021-2022 school year.



In California, related services such as specialized academic instruction are also called designated instruction services, and are generally understood to have the same meaning as specially designed instruction described in federal law. (20 U.S.C. § 1401(29); Ed. Code, § 56031; see, e.g.; Cal. Legislative Analyst, Overview of Special Education in California (Jan. 3, 2013).) Specially designed instruction means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability, and to ensure access of the child to the general curriculum, so that the child can meet the educational standards. (34 C.F.R. § 300.39(b)(3).) The methodology used to implement an IEP is left to the local educational agency's discretion so long as it meets a student's needs and is reasonably calculated to provide an educational benefit. (*Rowley, supra*, 458 U.S. at p. 208; *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950, citing *T.B. v. Warwick School Commission* (1st Cir. 2004) 361 F.3d 80, 84.).

#### ISSUE 4i: SPECIALIZED ACADEMIC INSTRUCTION

Classical Academy failed to offer appropriate specialized academic instruction following the May 19, 2022 IEP team meeting. The October 22, 2021 IEP offered 120 minutes of specialized academic instruction a week in a group setting. The IEP offered to deliver the specialized academic instruction in Student's Skills and Instruction class, which occurred on Tuesdays, Wednesdays, and Thursdays.

Specialized academic instructor White was Student's Skills and Instruction class teacher during the 2021-2022 school year and delivered the specialized academic instruction. Though the IEP indicated the 120 minutes of the weekly specialized academic instruction would be delivered over two 60 minute sessions, White provided

the 120 minutes of specialized academic instruction within the three days of Skills and Instruction classes each week. Each period of Skills and Instructions class was 60 minutes, totaling 180 minutes per week.

The evidence established that 120 minutes a week of specialized academic instruction in a group setting was appropriate to enable Student to meet his academic needs. Student offered no evidence that he required more than 120 minutes a week of specialized academic instruction, or individual instruction, at the time of the October 22, 2021 IEP team meeting.

The IEP team convened on March 7, 2022, to review Student's progress. Parent attended the meeting, along with her advocate. Student's math teacher attended as well.

At the meeting, Parent shared her concern about Student's lack of academic progress, especially in his math class. Parent requested additional specialized academic instruction or tutoring services for Student. Instead, Classical Academy's IEP team members recommended to trial an online resource for math, a program called Teaching Textbook Pre-Algebra. Classical Academy proposed to reconvene as an IEP team if Student did not make adequate progress.

At the hearing, Parent testified that she was also concerned Student was not provided printed materials, which she opined were necessary for him to access his curriculum because of his vision problems. The evidence did not support Parent's

claim. The November 4, 2021 visual information processing evaluation report did not recommend Student receive only printed materials. The evaluation report's recommendations focused on

- posture,
- distance,
- reading lights,
- seating location,
- reducing distractions, and
- reading print that was widely spaced and in large font.

The report did not recommend the use of printed materials only. Student offered no evidence that Student required only printed materials to access his curriculum at the time of the March 7, 2022 IEP team meeting. Student's October 22, 2021 IEP did not require specialized academic instruction through the use of printed materials, and no later-acquired information indicated the IEP needed to be changed during the 2021-2022 school year to require only printed materials.

There was also no evidence at the time of the March 7, 2022 IEP team meeting indicating it was necessary to amend the offer of specialized academic instruction from group to individual, or to increase the minutes of instruction. Student's January 28, 2022 progress report showed he made some progress towards his academic IEP goals. Therefore, in light of the information available to the IEP team on March 7, 2022, the offer of specialized academic instruction remained appropriate.

(This space is intentionally left blank. Text continues on the following page.)

However, by May 19, 2022, Student's IEP team had credible information that Student's specialized academic instruction required a multi-sensory, structured approach. On May 19, 2022, Dr. Fabian reported to the IEP team that Student's left amblyaudia impeded his ability to receive instruction presented through verbal instruction and reading, and recommended Student receive a multi-sensory reading program such as Orton-Gillingham, or Seeing Stars by Lindamood Bell.

Following the review of Dr. Fabian's assessment report, Classical Academy failed to amend the October 22, 2021 IEP to offer specialized academic instruction using explicit, multi-sensory interventions to support Student's auditory processing deficits. Classical Academy offered no evidence challenging Dr. Fabian's findings and recommendations for explicit, multi-sensory instruction. The program delivered to Student at Classical Academy was primarily online, with packets of materials for certain subjects. Classical Academy's specialized academic instruction was not delivered using explicit, multi-sensory interventions.

Classical Academy contends the specialized academic instruction offered was appropriate because Student showed substantial progress towards his IEP goals and demonstrated improved reading skills from a first-grade level at the start of school year, to a fourth-grade level by February 2022. Classical Academy's contention was not persuasive.

On May 25, 2022, Student's math teacher emailed Parent that Student may have to repeat his math class. It was clear to the math teacher that Student was not prepared to advance from Math Foundations to the next math class, Math 1. The teacher opined that Student had a "long way to go to catch up to grade-level" to qualify for Math 1, which the teacher hoped could occur when Student reached the 11th grade. Despite

the obvious lack of progress in Math Foundations, Student received a B grade in the class, allowing him to advance to Math 1, which he did in 10th grade in the 2022-2023 school year.

Furthermore, the evidence demonstrated Student's marked improvement in reading within the short period was due to his improved vision, rather than the specialized academic instruction. Student was prescribed glasses, and began vision therapy in December 2021.

On February 1, 2022, Parent reported to Student's reading teacher, Bojorquez, that Student had made substantial progress in reading. Parent credited Student's use of glasses, the visual therapy he received, and the support Bojorquez, other teachers, and Student's aide had given Student. By March 24, 2022, Student's binocular skills improved and his double vision when reading had decreased significantly. Parent reported that Student's willingness to read as result had significantly improved.

The inadequacy of the specialized academic instruction became evident when Student's reading skills became stagnant in spring 2022. Student's reading performance on a STAR assessment taken on February 3, 2022, showed Student's instructional reading skills at the sixth month of fourth-grade level. By May 2022, Student's instructional reading skills remained at the sixth month of fourth-grade level according to another STAR reading assessment. The objective scores from the STAR showed no progress in reading over the latter half of the school year. Based on objective assessments and teacher reports, the purported achievement and progress claimed by Classical Academy as a result of the specialized academic instruction it delivered to Student was not sustained.

In light of Dr. Fabian's findings and recommendations, Classical Academy failed to offer specialized academic instruction using explicit, multi-sensory interventions, following the May 19, 2022 IEP team meeting. Accordingly, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE from May 19, 2022, through the 2021-2022 school year by failing to offer specialized academic instruction reasonably calculated to permit Student to make academic progress. Student prevailed on Issue 4i.

#### ISSUE 4j: BEHAVIOR INTERVENTION SERVICES

Classical Academy failed to offer Student behavior intervention services from a qualified behavior analyst to develop, review, and supervise the implementation of his behavior intervention plan during the 2021-2022 school year. The October 22, 2021 IEP offered 1,080 minutes a week of individual behavior intervention services in the form of a one-to-one aide. The aide supported Student 360 minutes each day, for the three days Student attended classes at the school. The aide helped Student stay on task, offered academic support, and helped him engage socially with peers and adults.

Boitano testified she helped Student access breaks and understand lessons and assignments. Boitano also helped Student understand what his peers may have meant or felt during social interactions, which helped Student develop friendships. The evidence established the offer for a dedicated one-to-one aide for the entirety of the three on-campus school days for a total of 1,080 minutes each week was reasonably calculated to support Student's behavioral, social, and academic needs.

However, the October 22, 2021 IEP failed to offer services to develop, review, and supervise the implementation of Student's behavior intervention plan. Classical Academy's behavior analyst David Urban testified at the hearing. Urban was a board certified behavior analyst, called a BCBA, who conducted a functional behavior assessment of Student in November 2022. Urban conducted about 100 functional behavior assessments since receiving his board certification. Urban also developed behavior intervention plans, and trained and supervised staff in the implementation of the plans.

Urban testified that Student required the services of a BCBA to provide ongoing development and supervision of Student's behavior intervention plan. The BCBA would supervise the accurate collection of behavior data, modify the plan as needed, and ensure the plan was implemented with fidelity. Urban opined accurate behavior data collection was crucial in evaluating the effectiveness of a behavior intervention plan.

As discussed in Issue 4h, Classical Academy failed to update Student's behavior intervention plan to address behaviors that were impeding his learning at Classical Academy. The plan included in the October 22, 2021 IEP was not reasonably calculated to enable Student to benefit behaviorally. The evidence established Student required a qualified behavior analyst to provide ongoing services to develop, review, and supervise the implementation of, Student's behavior intervention plan. The October 22, 2021 IEP failed to offer behavior intervention services by a qualified behavior analyst during the 2021-2022 school year. Accordingly, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE from October 22, 2021, through the

2021-2022 school year by failing to offer behavior intervention services reasonably calculated to permit Student to make social-emotional and behavioral progress. Student prevailed on Issue 4j.

#### ISSUE 4k: THERAPEUTIC SERVICES

The October 22, 2021 IEP's offer of therapeutic services, referred to in the IEP as social work services, was appropriate. School social work services were implemented by a special education social worker who provided individual counseling services to students in need of behavior and social-emotional support. The IEP offered social work services for individual counseling 30 minutes each week to help Student improve his positive self-talk and self-advocacy skills to cope with challenging situations.

School social worker Erin Cobos testified that 30 minutes a week of social work services was sufficient to permit Student to make social-emotional and behavioral progress, which Student did. By June 3, 2022, Student could use positive self-talk with 65 percent accuracy in two out of three trials. By the same date, Student could identify challenging situations and use self-advocacy skills with 70 percent accuracy. The evidence established the 30 minutes a week of social work services were reasonably calculated to enable Student to meet his social-emotional and behavioral goals.

Student failed to prove Classical Academy denied him a FAPE from October 22, 2021, through the 2021-2022 school year by failing to offer therapeutic services reasonably calculated to enable Student to make social-emotional and behavioral progress. Accordingly, Classical Academy prevailed on Issue 4k.



## ISSUES 4I AND 4t: SPEECH AND LANGUAGE SERVICES

A local educational agency is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d 1479, 1485; *Fuhrmann, supra*, 993 F.2d 1031, 1036.) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss an IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

Classical Academy failed to offer an IEP reasonably calculated to address Student's speech and language needs. The June 3, 2021 IEP team found deficits in Student's expressive and receptive language skills. The September 21, 2021 IEP team offered Student 45 minutes, 30 minutes in group and 15 minutes individually, of speech and language services to support his expressive, receptive, and pragmatic language needs.

At the October 22, 2021 IEP team meeting, speech-language pathologist Larson reported Student no longer had needs in expressive and receptive language. However, as discussed in Issue 3, Larson's November 5, 2021 speech and language assessment

failed to properly assess and identify Student's expressive and receptive language skills. Parent protested against reducing Student's speech and language services and reported that expressive and receptive language continued to be challenging areas for Student.

Despite the findings by prior IEP teams and Parent's concerns, Classical Academy's IEP team members reduced the weekly speech and language services without proper justification from 45 minutes total to 30 minutes of group services, for pragmatic language only. The 30 minutes of group speech and language services was not reasonably calculated to confer educational benefit, because the October 22, 2021 IEP team could not rule out Student's deficits in expressive and receptive language that necessitated additional individual speech and language service minutes.

On May 19, 2022, Dr. Fabian reported to the IEP team how Student's central auditory processing disorder impacted his expressive and receptive language skills. Yet, Classical Academy failed to conduct additional assessments of Student's expressive and receptive language skills, and ignored Parent's request to amend the IEP to include goals in expressive and receptive language.

Accordingly, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE by reducing speech and language services in the October 22, 2021 IEP, and failing to offer speech and language services reasonably calculated to permit Student to make progress through the 2021-2022 school year. Student prevailed on Issues 4l and 4t.

## ISSUES 4m AND 4u: OCCUPATIONAL THERAPY SERVICES

The evidence established the October 22, 2021 IEP's offer of occupational therapy services was not reasonably calculated to support Student's self-regulation and executive functioning goals. The October 22, 2021 IEP offered the same goals for sensory regulation and executive functioning as the June 3, 2021 IEP, now with the occupational therapist identified as the responsible person. The September 21, 2021 IEP amendment offered 30 minutes a week of individual occupational therapy services to support the same self-regulation and executive functioning goals.

Without justification, Classical Academy reduced occupational therapy services by discontinuing the 30 minutes of weekly individual occupational therapy services. Instead, the October 22, 2021 IEP only offered 30 minutes a month of occupational therapy consultation services to "check-in" on Student and to consult with other members of Student's IEP team.

Classical Academy did not have the data to support its decision to discontinue Student's individual occupational therapy sessions. As discussed in Issue 4a, the September 23, 2021 occupational therapy assessment could not be relied on, and Collins did not attend the October 22, 2021 IEP team meeting to explain her recommendation to discontinue individual occupational therapy services.

The October 22, 2021 IEP team did have information that Student had needs in sensory regulation and executive functioning that required goals and the services of an occupational therapist to implement them. The IEP team also knew 30 minutes of

individual occupational therapy services was necessary to help Student meet his self-regulation and executive functioning goals, according to the September 21, 2021 IEP team. Therefore, the October 22, 2021 IEP's offer to limit occupational therapy services to 30 minutes a month had no direct relation to what was known about Student's sensory regulation and executive functioning needs.

In light of the credible information available to the October 22, 2021 IEP team, Classical Academy's offer to limit occupational therapy services to 30 minutes a month of consultations, and discontinuing any individual therapy sessions, was not reasonably calculated to enable Student to make progress towards his self-regulation and executive functioning goals. As a result, Student was denied a FAPE.

Classical Academy did not amend the October 22, 2021 IEP's offer of occupational therapy services during the 2021-2022 school year. Accordingly, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE from October 22, 2021, through the 2021-2022 school year, by failing to offer occupational therapy services reasonably calculated to permit Student to make progress. Student also proved by a preponderance of the evidence Classical Academy denied him a FAPE by reducing occupational therapy services in the October 22, 2021 IEP. Student prevailed on Issues 4m and 4u.

(This space is intentionally left blank. Text continues on the following page.)

## ISSUES 4n, 4o, 4p, 4q, AND 4r: DID CLASSICAL ACADEMY FAIL TO IMPLEMENT THERAPUETIC, BEHAVIOR INTERVENTION, SPECIALIZED ACADEMIC INSTRUCTION, SPEECH AND LANGUAGE, AND OCCUPATIONAL THERAPY SERVICES FROM OCTOBER 20, 2021, THROUGH THE 2021-2022 SCHOOL YEAR?

Student contends Classical Academy denied him a FAPE by materially failing to implement his IEP services during the 2021-2022 school year. Classical Academy contends it did not materially fail to implement Student's IEP services during the 2021-2022 school year.

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

### ISSUE 4n: THERAPEUTIC SERVICES

Classical Academy did not materially fail to implement therapeutic services during the 2021-2022 school year. The June 3, 2021 IEP, as amended on September 21, 2021, offered 30 minutes a week of individual social work services, to be implemented

through the time Parent consented to the October 22, 2021 IEP on November 15, 2021. The October 22, 2021 IEP also offered 30 minutes a week of social work services to provide Student individual counseling.

School social worker Cobos delivered Student's social work services during the 2021-2022 school year. Cobos was qualified to deliver therapeutic services. Cobos had a master's degree in school social work and held a pupil personnel services credential in school social work, and school child welfare and attendance. She provided mental health services to students with behavioral and social-emotional needs at Classical Academy since 2017.

Cobos testified that she provided 30 minutes of social work services to Student each week during the 2021-2022 school year to work on Student's social-emotional goals. The services occurred in Cobos' office, on an individual basis. Student offered no testimony or documentary evidence to demonstrate Cobos materially failed to implement Student's social work services during the 2021-2022 school year. Accordingly, Student failed to prove Classical Academy denied him a FAPE by failing to implement therapeutic services from October 20, 2021, through the 2021-2022 school year. Classical Academy prevailed on Issue 4n.

#### ISSUE 4o: BEHAVIOR INTERVENTION SERVICES

Classical Academy implemented the behavior intervention services in accordance with Student's IEPs during the 2021-2022 school year. The June 3, 2021 IEP, as amended on September 21, 2021, offered 1,080 minutes a week of behavior intervention services in

the form of a one-to-one aide, to be implemented through the time Parent consented to the October 22, 2021 IEP on November 15, 2021. The October 22, 2021 IEP offered the same minutes and type of behavior intervention services.

Boitano testified that she provided the one-to-one aide service to Student in accordance with Student's IEPs. She supported Student academically, to remain on task, with social interactions, and to access breaks. She supported him in class and during unstructured time such as the lunch period.

On October 22, 2021, Student's IEP team, including Parent, agreed to gradually reduce Student's aide support during the lunch period to give Student more independence with his friends. The aide would remain in the lunch area, but not provide direct support. Student claims Parent did not agree with reducing aide support during the lunch period. Student's claim was not persuasive.

Specialized academic instructor White delivered Student's specialized academic instruction during the 2021-2022 school year. White was also Student's case manager through September 2022. White credibly testified Parent agreed to reduce the aide support during the lunch period. White also testified Student was told about the plan to reduce his aide support during lunch and was reassured that his aide would be in close proximity, and that other staff members were immediately available to support him as needed.

Boitano credibly testified Parent was aware Boitano was no longer providing aide support to Student during lunch by February 2022. Parent testified that she spoke to Boitano frequently and regularly in-person about Student's day in school. Parent testified that Boitano "shared everything with her." Boitano reported to Parent about all

aspects of Student's day, such as his behaviors, things Student said, whether he ate, wore his glasses, etc. Therefore, more likely than not, Boitano shared her level of supervision of Student with Parent, and discussed with Parent the gradual reduction of her support for Student during lunch.

Furthermore, the October 22, 2021 IEP team meeting notes stated a fade-out plan for lunch support would be followed up by the IEP team. Parent did not express any concerns about the fade-out plan after she reviewed the IEP.

Parent also spoke with Student regularly about all aspects of his day in school. Parent did not report any concerns about the level of aide support provided during the lunch period in the 2021-2022 school year. Therefore, the evidence demonstrated Parent knew about the plan and agreed to reducing aide support during lunch.

A preponderance of the evidence established Parent agreed with the gradual reduction of aide support during the lunch period, and understood that Student would receive less than 1,080 minutes of aide support as a result. The evidence also established Classical Academy's decision to implement less than 1,080 minutes of behavior intervention services each week was not a material failure to implement Student's IEP, and did not deny Student a FAPE.

Student failed to prove Classical Academy denied him a FAPE from October 20, 2021, through the 2021-2022 school year by failing to implement behavior intervention services. Accordingly, Classical Academy prevailed on Issue 4o.



## ISSUE 4p: SPECIALIZED ACADEMIC INSTRUCTION

Classical Academy materially failed to implement Student's specialized academic instruction prior to November 15, 2021. The June 3, 2021 IEP, as amended on September 21, 2021, offered 120 minutes a week of specialized academic instruction, as 60 minutes twice a week during Student's Skills and Instruction class. Student was in Skills and Instruction class three times a week with each class 60 minutes in duration, for a total of 180 minutes a week.

The September 21, 2021 IEP amendment also required Student to leave the Skills and Instruction class for a total of 105 minutes a week to receive speech therapy, counseling, and occupational therapy. Therefore, Student was only in his Skills and Instruction class for 75 minutes each week. As a result, Student only received, at most, 75 minutes a week of specialized academic instruction.

From October 20, 2021, to the time Parent consented to the October 22, 2021 IEP on November 15, 2021, Classical Academy failed to provide Student 45 minutes of specialized academic instruction each week, totaling 135 minutes of specialized academic instruction lost to Student. The evidence established Classical Academy's failure to provide Student 135 minutes of specialized academic instruction over the course of three weeks was more than a minor discrepancy between the specialized academic instruction provided to Student and those required by his IEP. As a result, Classical Academy materially failed to implement the specialized academic instruction from October 20, 2021, through November 15, 2021, as required by Student's June 3, 2021 IEP, as amended on September 21, 2021.

The October 22, 2021 IEP continued to offer 120 minutes a week of specialized academic instruction each week to be delivered in the Skills and Instruction class. The October 22, 2021 IEP reduced the time Student was pulled out of the Skills and Instruction class for related services because the IEP offered less speech therapy and less occupational therapy. In total Student was pulled out of the Skills and Instruction class for 60 minutes each week, in some weeks slightly more because of the 30 minutes a month of occupational therapy consultation services. Student still received 120 minutes a week of specialized academic instruction in the Skills and Instruction class in most weeks from November 15, 2021, through the 2021-2022 school year.

Specialized academic instructor White was qualified to deliver the specialized academic instruction. She had a master's degree in special education and was credentialed to teach special education. She was a specialized academic instructor with Classical Academy since May 2018. White testified she delivered Student's specialized academic instruction in the Skills and Instruction class in accordance with Student's IEP.

In some weeks, Student received less than 120 minutes of specialized academic instruction because he was pulled out for a short period to receive occupational therapy consultation services. However, the evidence established the slight reduction of specialized academic instruction as a result was a minor discrepancy from the instructional minutes required by the IEP. Classical Academy did not materially fail to implement Student's specialized academic instruction from November 15, 2021, through the 2021-2022 school year.

In sum, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE by materially failing to implement specialized academic instruction from October 20, 2021, through November 15, 2021, depriving him of 135 minutes over three weeks. Student did not prove Classical Academy committed the same violation from November 16, 2021, through the 2021-2022 school year. Accordingly, Student prevailed on Issue 4p.

#### ISSUE 4q: SPEECH AND LANGUAGE SERVICES

Student did not prove Classical Academy materially failed to implement speech and language services during the 2021-2022 school year. The June 3, 2021 IEP, as amended on September 21, 2021, offered 45 minutes of speech and language services each week, to be implemented through the time Parent consented to the October 22, 2021 IEP on November 15, 2021. The weekly speech and language services consisted of 30 minutes of speech therapy with a group of other students, and 15 minutes individually. The October 22, 2021 IEP only offered 30 minutes of group speech and language services.

Speech-language pathologist Larson delivered the speech and language services in Student's IEPs. Student failed to offer any testimony or documentary evidence that Larson was not qualified to implement Student's speech and language services. In addition, Student offered no evidence Classical Academy materially failed to implement the speech and language services required in Student's IEPs during the 2021-2022

school year. Therefore, Student failed to meet his burden of proving Classical Academy denied him a FAPE from October 20, 2021, through the 2021-2022 school year by failing to implement speech and language services. Accordingly, Classical Academy prevailed on Issue 4q.

#### ISSUE 4r: OCCUPATIONAL THERAPY SERVICES

Classical Academy did not materially fail to implement Student's occupational therapy services from October 20, 2021, through the 2021-2022 school year. The June 3, 2021 IEP, as amended on September 21, 2021, offered 30 minutes a week of individual occupational therapy services. The purpose of the weekly occupational therapy was to review a sensory menu with Student, and to consult with Student's aide to help support Student in the classroom using learned sensory strategies. The October 22, 2021 IEP only offered 30 minutes a month of consultation services by an occupational therapist.

The evidence established Classical Academy implemented the occupational therapy services in accordance with the June 3, 2021 IEP, as amended on September 21, 2021, and the October 22, 2021 IEP. Occupational therapist Collins provided individual occupational therapy to Student and consulted with Student's aide for 30 minutes each week until Parent consented to the October 22, 2021 IEP on November 15, 2021. From November 15, 2021, through the 2021-2022 school year, Collins spent 30 minutes a month consulting with Boitano and other members of Student's IEP team.

(This space is intentionally left blank. Text continues on the following page.)

Collins was qualified to implement Student's occupational therapy. Collins was a school-based occupational therapist for Classical Academy from November 2015 to June 2023, providing direct therapy services to improve sensory processing deficits, fine motor coordination, and handwriting skills, among other occupational therapy needs.

Student failed to offer any evidence that demonstrated Collins was not qualified to deliver, or materially failed to implement, the occupational therapy services as required in Student's IEPs during the 2021-2022 school year. Therefore, Student failed to meet his burden of proving Classical Academy denied him a FAPE by failing to implement occupational therapy services from October 20, 2021, through the 2021-2022 school year. Accordingly, Classical Academy prevailed on Issue 4r.

#### ISSUE 4s: DID CLASSICAL ACADEMY IMPEDE PARENT'S ABILITY TO PARTICIPATE IN THE DEVELOPMENT OF THE OCTOBER 22, 2021 IEP BEFORE REMOVING BEHAVIOR INTERVENTION SERVICES DURING UNSTRUCTURED TIME?

Student contends Parent did not agree to reducing Student's aide support during unstructured time in school. Therefore, Student argues Classical Academy impeded Parent's ability to participate in developing Student's IEP when Student's aide gradually reduced support during Student's lunch period. Classical Academy contends it did not impede Parent's ability to participate in the development of the October 22, 2021 IEP, specifically in regard to the reduction of aide support during Student's lunch period.

As discussed in Issue 4o, the evidence established Parent meaningfully participated in the discussion at the October 22, 2021 IEP team meeting to reduce aide support during the lunch period. Parent agreed with the plan. Student offered no persuasive testimony or documentary evidence to the contrary. Therefore, Student failed to prove Classical Academy significantly impeded Parent's ability to participate in the development of the October 22, 2021 IEP before reducing behavior intervention services during unstructured time. Classical Academy prevailed on Issue 4s.

#### ISSUE 5: DID CLASSICAL ACADEMY FAIL TO COMPREHENSIVELY ASSESS STUDENT AFTER HE SUFFERED A CONCUSSION AND A TRAUMATIC BRAIN INJURY ON AUGUST 31, 2022?

Student contends Classical Academy failed to assess him after he suffered a concussion on August 31, 2022, which left Student's concussion-related needs unaddressed during the 2022-2023 school year. Classical Academy contends additional assessment of Student by Classical Academy after he suffered a concussion on August 31, 2022, was not warranted. Classical Academy argues it adequately supported Student's concussion-related needs without the need for additional assessments.

Student failed to prove Classical Academy denied him a FAPE by not comprehensively assessing him after he suffered a concussion at Personal Learning Center on August 31, 2022. Student was diagnosed and treated for his concussion, and Student's IEP team received recommendations from medical professionals on how to support Student at school and at home. Student failed to demonstrate what additional

information was needed through assessments following August 31, 2022, that was necessary to develop an educational program to support Student after he suffered a concussion.

Student was treated by Regina Mangine, M.D., after school on August 31, 2022. Dr. Mangine diagnosed Student with a concussion, a type of traumatic brain injury. Student reported experiencing headaches, dizziness, blurred vision, and neck pain. He also had trouble concentrating, and felt fatigued. Dr. Mangine recommended Student remain home from school for two days, and could attempt to return for part of the school day on September 6, 2022.

To help Student cope with headaches, difficulty concentrating, and fatigue, Dr. Mangine recommended reducing his homework, postponing classroom and standardized assessments, providing extended time to complete classwork, homework, and tests, and offering Student a quiet space to take rest breaks throughout the day. Dr. Mangine also recommended Student spend less screen time using computers and tablets, and to take pain medication to alleviate his headaches.

Dr. Mangine further recommended written notes for lessons and assignments because of Student's fatigue and difficulty concentrating. The written notes, as well as sunglasses and hats, were also recommended because of Student's vision problems and sensitivity to light.

Dr. Mangine wrote a letter dated August 31, 2022, with her diagnosis and recommendations. Parent provided the letter to Classical Academy on September 1, 2022.

In a letter dated September 6, 2022, Dr. Mangine reported Student continued to experience symptoms that made it difficult for him to attend school. Dr. Mangine could not estimate when Student would be well enough to return to school, but recommended if Student could, he begin by returning for half the school day. Parent provided the September 6, 2022 letter to Classical Academy on or about September 6, 2022.

On September 13, 2022, Student attended another medical appointment with Rady Children's for his concussion. His treating physician prescribed Student medication for headaches, and recommended returning to school with accommodations, with the goal of working towards attending an entire school day. The physician referred Student to physical therapy for neck pain and spasms, and a neuropsychology evaluation.

Justin Matsuura, O.D., wrote a letter dated September 21, 2022, regarding Student's vision therapy needs following his concussion. Dr. Matsuura was an associate of Dr. Hillier, and their office provided vision therapy to Student as required by the October 22, 2021 IEP.

In the September 21, 2022 letter, Dr. Matsuura explained he evaluated Student a week after the concussion injury. At that time, Student reported double vision, headaches, dizziness, blurry vision, and neck pain. Parent reported Student had difficulty with executive functioning skills and reading.

As of September 21, 2022, Dr. Matsuura reported Student's concussion recovery was ongoing. Student still experienced significant difficulty with headaches and reading without visual symptoms. Regarding his vision, the frequency of Student's double vision when reading was declining, however he still had problems with sustained focus and



near-far focus flexibility. Student's ability to maintain clarity for near-point details without significant visual fatigue and eye strain had worsened compared to testing Dr. Matsuura administered in February 2022.

Dr. Matsuura recommended limiting Student's visual demands for reading and computer work to essential learning only. Dr. Matsuura strongly recommended visual breaks after 20 minutes of consecutive near-point reading to allow Student's eyes to recover. Dr. Matsuura suggested using a slanted board and modifying Student's working distance from his eyes to his reading and writing material to prioritize visual comfort and clarity with Student's prescription glasses. Dr. Matsuura also recommended reducing bright lights in Student's academic setting, especially fluorescent lighting due to Student's sensitivity to brightness.

The IEP team met on October 18, 2022, for Student's annual IEP review. Parent, program specialist Medina, school social worker Cobos, occupational therapist Collins, school psychologist Kester, and Student's specialized academic instructor Merrie Candice Salenieks attended the meeting. The IEP team

- reviewed Student's present levels of academic and functional performance,
- identified areas of need,
- developed goals, and
- determined necessary accommodations, program modification, instruction and related services, and educational setting.

The October 18, 2022 IEP offered each accommodation recommended by Dr. Mangine and Dr. Matsuura in their September 2022 letters.

One week later, in a letter dated October 26, 2022, Dr. Matsuura reported Student still had significant difficulty with headaches, visual fatigue, and double vision. Student reported no improvement in his double vision, and his ability to sustain near focus and near-far focus flexibility remained reduced. Dr. Matsuura continued to recommend visual breaks after 20 minutes of consecutive near-point reading, use of a slanted board and modification of working distance from his eyes to his material, and limiting Student's exposure to bright lights. Dr. Matsuura also recommended to temporarily provide a larger font size of 14, and to prioritize printed material over smaller digital text. If digital devices were required for academic purposes, Dr. Matsuura recommended a screen size of at least 15 inches diagonal.

The October 18, 2022 IEP was amended to add Dr. Matsuura's recommendation for larger font size and prioritizing printed material over smaller digital text. In addition, program specialist Medina informed Parent on October 28, 2022, Classical Academy would provide Student with a laptop with a 17-inch diagonal screen. Further, Classical Academy provided Parent prior written notice dated November 14, 2022, agreeing to Parent's request to fund an additional 12 weekly sessions of vision therapy.

Student's IEP team also received regular updates and recommendations from Dr. Matsuura and Student's concussion doctor. Student's concussion doctor wrote on November 28, 2022, that returning to school with supports and accommodations would help Student in his recovery. The doctor recommended continued counseling and an IEP. The doctor also referred Student for a neuropsychological assessment to further assess and offer suggestions for his IEP. The doctor recommended Student receive 5-to-10-minute breaks during class time, a quiet space to alleviate headaches, water,

and snack breaks. The doctor also recommended to allow Student extra time to complete assignments, not to administer tests to Student unless he was caught up on the content, and extra time on tests, or to administer tests in parts, for the first two tests.

Dr. Matsuura reported in a letter dated March 1, 2023, Student showed marked improvement in his visual skills recovery. Student no longer experienced double vision when completing his school assignments, but still had episodes of visual fatigue and eye strain from prolonged periods of reading and writing. Dr. Matsuura continued to recommend the same accommodations as in his prior letters.

Student relied on the expert testimony of Lisa Davidson, Ph.D., to support his claim Classical Academy denied him a FAPE by failing to comprehensively assess him after he suffered a concussion. Dr. Davidson had a doctorate degree in clinical psychology and a master's degree in counseling psychology. She had extensive training and experience diagnosing and treating traumatic brain injuries, and learning disorders. Dr. Davidson also conducted over 1,000 neuropsychological evaluations used for educational purposes, and attended over 1,000 IEP team meetings to present her findings and recommendations, and to offer her expert opinion.

Dr. Davidson was familiar with Student's disabilities and unique needs. Dr. Davidson first conducted a neuropsychological evaluation of Student in 2017. She also began providing Student psychotherapy services to support his post-concussive symptoms in July 2023. At the time of the hearing, Dr. Davidson was still treating Student.

Dr. Davidson conducted the independent neuropsychological evaluation funded by Classical Academy at Parent's request. Dr. Davidson's most recent neuropsychological evaluation began in April 2023. However, Dr. Davidson's assessment report, referred to as the June 3, 2023 neuropsychological evaluation report, was not completed prior to the 2023-2024 school year. Dr. Davidson did not present her assessment report to Student's IEP team, and Classical Academy did not receive the final version of the June 3, 2023 neuropsychological evaluation report until the due process hearing in this matter.

At hearing, Dr. Davidson opined Classical Academy should have assessed Student to determine the effect of his concussion after his brain had time to rest and heal. She opined that such an assessment should occur within the first three months, because it was critical to provide services as soon as possible to help the brain heal, and allow the patient to recuperate. However, Dr. Davidson failed to explain what additional information through assessments Classical Academy failed to gather that was not already provided in the letters by Dr. Matsuura and Student's concussion doctor. Accordingly, Dr. Davidson's criticism of Classical Academy for not assessing Student following his concussion was not persuasive.

The evidence established Student's IEP team had sufficient information from Dr. Matsuura and Student's concussion doctor to develop an IEP with necessary accommodations to support Student's concussion symptoms. Student's IEP team did not require Classical Academy to conduct additional assessments after he suffered a concussion on August 31, 2022.

Student also failed to prove the absence of comprehensive assessments by Classical Academy after he suffered a concussion deprived him of an educational benefit or impeded his right to a FAPE. Dr. Davidson did not opine that Student's IEPs

for the 2022-2023 school failed to address Student's needs in any way as a result of Classical Academy's failure to assess Student after he suffered a concussion. The only IEP-related recommendations Dr. Davidson had, as described in her June 3, 2022 neuropsychological evaluation report, and as testified to by Dr. Davidson, was to continue any and all additional services in his IEP, and to continue vision therapy services with Dr. Matsuura. The evidence did not establish Student was deprived of an educational benefit or was impeded in receiving a FAPE because Classical Academy did not comprehensively assess him after he suffered a concussion.

Furthermore, Classical Academy did not significantly impede Parent from meaningfully participating in the development of Student's IEP because of the lack of comprehensive assessments after Student suffered a concussion. The IEP team met on September 27, 2022, to discuss Student's needs because of his concussion, among other matters. At the meeting, Parent made several requests, none of which included additional assessments of Student because of his concussion. Also, Parent did not request additional assessments at the October 18, 2022 IEP team meeting.

Classical Academy provided Parent with two assessment plans, one dated October 10, 2022, the other October 20, 2022, to assess Student's auditory processing and functional behavior. Parent consented to the assessment plans without requesting additional assessment on either of the plans.

Parent provided Classical Academy with a letter dated January 17, 2023, requesting a publicly funded independent neuropsychological evaluation of Student because of Student's regression in all academic areas. Parent's letter did not reference

Student's concussion. Classical Academy provided Parent prior written notice on January 23, 2023, agreeing to fund Parent's request for an independent educational evaluation in neuropsychology, which Dr. Davidson conducted.

Student's IEP team met three more times after October 18, 2022. Parent did not request additional assessment because of Student's concussion at any of the three meetings. Parent also did not request assessments because of Student's concussion in any of her communications with Classical Academy during the remainder of the 2022-2023 school year.

Student offered no testimony or evidence that Parent was significantly impeded from meaningfully participating in the development of Student's IEP because she lacked more information from additional assessments to understand the impact of Student's concussion on his education. The evidence established that Parent had enough information about Student's concussion and the impact it had on his education to meaningfully participate in the development of Student's IEP without the need for comprehensive assessments by Classical Academy related to his concussion.

Student failed to prove Classical Academy denied him a FAPE during the 2022-2023 school year by failing to comprehensively assess him after he suffered a concussion and a traumatic brain injury on August 31, 2022. Accordingly, Classical Academy prevailed on Issue 5.

## ISSUE 6: DID CLASSICAL ACADEMY FAIL TO INVESTIGATE AND OFFER A SAFETY PLAN TO ADDRESS BULLYING?

Student contends he was bullied by other students during the 2022-2023 school year. Student argues the failure by Classical Academy to properly investigate and offer a safety plan left Student in fear and impeded his ability to access his education.

Classical Academy contends Student was not bullied at its school during the 2022-2023 school year. Classical Academy also contends it properly investigated the alleged bullying of Student, and offered a proper safety plan to satisfy Parent's concerns.

In a 2013 joint letter providing guidance on the IDEA, the U.S. Department of Education's Office of Special Education and Rehabilitative Services and Office of Special Education Programs described bullying as the use of real or perceived power over a target where the aggression is repeated, or has the potential to be repeated, over time. Acts of bullying include physical, verbal, emotional, or social behaviors ranging from blatant aggression to subtle and covert behaviors. (*Dear Colleague Letter*, (OSERS/OSEP August 20, 2013) (*Dear Colleague 2013*).)

The California Education Code defines bullying as any severe or pervasive physical or verbal act or conduct by a pupil or group of pupils directed toward one or more pupils that causes or is reasonably predicted to cause a reasonable student to experience one or more of the following:

- fear of harm to his or her person or property;
- a substantially detrimental effect on his or her physical or mental health;

- a substantial interference with his or her academic performance; or
- a substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

(Ed. Code, § 48900, subd. (r).) A reasonable student is a student, including an exceptional - needs student, who exercises average care, skill, and judgement in conduct for a person of his or her age, and with his or her special needs. (Ed. Code, § 48900, subd. (r)(3).) The bullying of a student with a disability that results in the student not receiving meaningful educational benefit may constitute a denial of a FAPE under the IDEA. (*Dear Colleague 2013, supra*, at p. 2.)

The evidence established Student was not bullied at Classical Academy. Therefore, Classical Academy was not required to investigate an incident of bullying of Student, or develop a safety plan to protect Student from bullying.

Student received a concussion on August 31, 2022, while at school. Three videos of the incident were admitted into evidence. The videos consisted of short clips ranging from 29 seconds to one minute and 29 seconds in length. The videos did not have audio.

The videos showed a group of six students on a lawn, one of whom was Student. The first video showed one student grab Student from behind and use his leg to bring him to the ground. Student did not fall to the ground with force. While on the ground, another student placed his foot on Student's chest area briefly. Student then rolled back up.



The second video recorded events that occurred approximately two minutes later. Student was still on the lawn with the same students. One student approached Student and poked him on the shoulder. Student did not protest. Then another Student swung his hand towards Student partially without making contact, then Student pretended to use his leg to sweep that other student's leg. The other student went to the ground, as well as Student. The other student laid on the ground appearing to be relaxed. Another student pretended to kick Student on the leg while he was still on the ground. Student did not protest and bounced back on his feet. Neither Student or any of his peers displayed signs of aggression, and they all appeared to be play-fighting.

The third video captured events that occurred five minutes after the second video. Student and his peers continued to play-fight. At one point, one student play-slapped Student, who turned his head into a block pillar. Student held his head and fell to the ground. Student stood up, and one of the students appeared concerned for him and directed him towards the school building. The same concerned student was present throughout the third video and did not appear to have been concerned about the interactions between Student and the others before Student hit his head on the pillar.

The videos clearly established Student was not bullied on August 31, 2022. Classical Academy's Director of Safety and Security Jared Baez came to the same conclusion after he viewed the videos and investigated the incident. Baez offered credible testimony at the hearing. In addition to viewing the videos, Baez interviewed the school counselor, another security member at the school campus, the school principal, and the school nurse, and reviewed other interview reports gathered by the school principal.

Baez found that Student and the other students were friends who regularly engaged in play-fighting in the same area. Student and his friends had been admonished numerous times by staff not to play roughly, and have told staff that they were part of a fight or mixed martial arts club.

Baez also considered the opinion of the school resource officer, a police officer in the city's police department. The school resource officer also viewed the videos and concluded no bullying had occurred. The school resource officer concluded Student and his friends were play-fighting. Classical Academy properly investigated the incident and accurately concluded that the Student was not bullied on August 31, 2022.

On September 6, 2022, Parent reported to the school resource officer and to Classical Academy's staff the other student made threatening comments to Student prior to August 31, 2022. The comments included statements of "I'll get you bitch" and "You broke my model, so I am going to break you." Student told Parent about the statements.

However, Student had difficulty interpreting nonverbal communications, and reading the motivation and intent by others. Parent provided no context about the alleged statements by the other student, or any other statements Parent claimed were threatening or harassing. Parent had no information to confirm if, and why, the other student made the statements.

The evidence established Student was not in danger of being bullied at school. Nevertheless, despite no evidence that reasonably predicted Student was and would be bullied at Classical Academy, Classical Academy agreed to Parent's request for a safety plan to not allow any contact between the other students involved in the events on August 31, 2022, and Student.

On October 13, 2022, Parent accused the other students of violating the safety plan by calling and leaving a voice message for Student. That did not happen. Baez investigated Parent's report by interviewing the other students who reported not having had any contact with Student. Baez also listened to the voice message and opined at hearing that it sounded like minors being silly.

At hearing, Baez testified that he also spoke to Student on October 13, 2022, and asked him if he felt bullied on campus at any time. Student responded he had not felt bullied at school. Baez also asked Student if he felt bullied by the voice message he recently received. Student responded that he did not feel bullied by the voice message. Student did not report being upset by the voice message.

Boitano credibly testified that Student and the other students involved in the August 31, 2022 injury, became friends during the 2021-2022 school year. Boitano did not observe any bullying against Student during the 2021-2022 school year, or had any reason to fear for Student's safety at Classical Academy.

Parent's claims of threats and harassment by other students did not constitute a form of repeated aggression that was severe or pervasive to cause Student to fear for his safety or his property. The evidence also did not establish Student was detrimentally affected physically or mentally by the statements, or that the statements interfered with his academic performance; or substantially interfered with his ability to participate in or benefit from the services, activities, or privileges provided by a school. Accordingly, Parent's claims of threats and harassment against Student did not constitute bullying.

A preponderance of the evidence established Student was not bullied during the 2022-2023 school year. The evidence also established Classical Academy properly investigated the alleged bullying of Student reported by Parent, and offered an appropriate safety plan involving no contact between the other students and Student.

Student failed to meet his burden of proving Classical Academy denied him a FAPE during the 2022-2023 school year by failing to investigate and offer a safety plan to address bullying. Accordingly, Classical Academy prevailed on Issue 6.

#### ISSUE 7: DID CLASSICAL ACADEMY'S NOVEMBER 15, 2022 FUNCTIONAL BEHAVIOR ASSESSMENT FAIL TO COMPREHENSIVELY AND ACCURATELY ASSESS STUDENT?

Student contends the November 15, 2022 functional behavior assessment was inappropriate because it relied on insufficient and inaccurate data, thereby misidentifying Student's behavioral needs. Classical Academy contends the November 15, 2022 functional behavior assessment was legally compliant.

Classical Academy gave Parent an assessment plan dated October 20, 2022, which proposed to conduct a functional behavior assessment to update the behavior intervention plan. Parent consented to the plan on October 20, 2022.

Behavior analyst Urban conducted the functional behavior assessment. His findings, conclusions, and recommendations were contained in a written report, referred to as the November 15, 2022 functional behavior assessment report.

The November 15, 2022 functional behavior assessment failed to accurately identify and comprehensively assess Student's problem behaviors at school. As a consequence, the November 15, 2022 functional behavior assessment failed to provide Student's IEP team with reliable information to properly update Student's behavior intervention plan.

Urban identified and defined Student's elopement and school refusal as target behaviors to assess. He defined elopement as Student leaving the home or designated area in school without adult permission. He defined school refusal as Student leaving school before 2:00 PM, unless it was prearranged that he leave early.

Urban wrongly identified Student's elopement as a problem behavior. Urban testified he relied solely on Parent's report of Student's elopement as a problem behavior. Parent reported Student eloped from the home because Student felt misunderstood, did not know what to do, or had no friends online to play games with. However, Parent did not report Student eloped during instruction time at home, or that his elopement impeded his learning. In addition, Urban also testified Student's behavior intervention plan was to be implemented in school, not in the home.

In addition, Urban did not receive any reports from any of Student's teachers, his aide, or any staff at school that Student left a designated area at school without adult permission. Urban interviewed Student's aide, Joey Lee. Lee did not report Student leaving his designated area without permission. The evidence showed Student sought and received permission when he took breaks to regulate himself, an accommodation offered in his IEP. He did not elope.

Also, Urban did not see Student elope during his observations. Urban observed Student on three occasions in the classroom, for a total of 2 hours and 30 minutes. Student did not elope during those observations. School psychologist Kester also observed Student in the classroom. Kester did not observe Student elope during his 30-minute observation.

Urban had no information to support his analysis that Student's elopement at school, where Student's behavior intervention plan would be implemented, was a problem behavior that needed to be reduced or eliminated through special education and related services, including a behavior intervention plan. (OSERS Q & A, Q. E-4.) As a result, the November 15, 2022 functional behavior assessment wrongly identified and improperly assessed elopement as a problem behavior for Student.

The November 15, 2022 functional behavior assessment also failed to accurately identify, and properly assess, school refusal as a problem behavior for Student. Urban had no information from Student's teachers, his aide, or any other staff at school that Student left school early because he refused to participate in school. Urban relied solely on Parent's report to conclude Student left school early because he refused to be in school.

Urban reported that he observed one incident on November 2, 2022, which he identified as school refusal. That observation could not be relied on. Urban did not know whether Student had prearranged for an early release on November 2, 2022.

In addition, Urban also inaccurately identified the frequency and duration of the school refusal by simply reviewing Student's attendance record that showed days Student left school early. Based on Urban's review of Student's attendance records, Urban found Student engaged in school refusal 50 percent of the time in September 2022, 100 percent

of the time in October 2022, and 12 percent of the time in November 2022. Urban then concluded Student engaged in school refusal one to six times a month, each occurring 20 minutes to four hours before the end of the school day.

Urban's determination of the frequency and duration of Student's purported school refusal was also unreliable. As discussed in Issue 5, Student was recovering from a concussion that he suffered on August 31, 2022, and his doctors recommended he return to school for part of the school day to start, with the plan to gradually increase his time at school to a full day. Parent reported to Urban that Student continued to receive vision therapy and treatment from a concussion clinic because of lingering concussion symptoms. A review of Student's 2022-2023 school year attendance record did not indicate what days Student left school early to recover from his concussion, prearranged an early departure for other reasons, or what days, if any, he left early because he refused to participate in school. Therefore, Urban's determination that Student engaged in school refusal, and the frequency and duration of his school refusal, if any, was unreliable.

The November 15, 2022 functional behavior assessment's findings that elopement from school and school refusal were problem behaviors that required special education and related services, including a behavior intervention plan, to be reduced or eliminated were unreliable. The assessment also failed to accurately determine the frequency and duration of the purported problem behaviors to help develop an appropriate behavior intervention plan to track the anticipated reduction of the problem behaviors.

The November 15, 2022 functional behavior assessment's failure to comprehensively and accurately assess Student's behavior was a procedural violation that denied Student a FAPE. The assessment failed to provide Parent and the rest of Student's IEP team with

reliable, accurate information about Student's problem behaviors to help the IEP team determine a need for, and if necessary, properly develop an effective, behavior intervention plan. As a result, the November 15, 2022 functional behavior assessment significantly impeded Parent's ability to meaningfully participate in the development of Student's IEP and behavior intervention plan.

Student proved by a preponderance of the evidence Classical Academy denied him a FAPE because the November 15, 2022 functional behavior assessment was not comprehensive and accurate. Accordingly, Student prevailed on Issue 7.

#### ISSUES 8a, 8b, 8c, 8d, AND 8e: DID CLASSICAL ACADEMY FAIL TO OFFER APPROPRIATE READING, WRITING, MATH, SOCIAL-EMOTIONAL AND BEHAVIORAL FUNCTIONING, EXPRESSIVE, RECEPTIVE, AND PRAGMATIC LANGUAGE, AND EXECUTIVE FUNCTIONING GOALS DURING THE 2022-2023 SCHOOL YEAR?

Student contends Classical Academy failed to offer appropriate goals in

- reading,
- writing,
- math,
- social-emotional and behavioral functioning,
- expressive, receptive, and pragmatic language, and
- executive functioning.

Classical Academy contends each of the contested goals offered in the October 18, 2022 IEP, and as amended through the 2022-2023 school year, were measurable and appropriate to meet Student's academic and functional needs.



## ISSUE 8a: READING, WRITING, AND MATH GOALS

As discussed in Issue 4d, the evidence established the October 22, 2021 IEP offered appropriate reading, writing, and math goals. Classical Academy continued to offer those academic goals through October 18, 2022, when Student's IEP team reconvened to develop Student's annual IEP. Student had not met his October 22, 2021 IEP's reading, writing, and math goals by the start of the 2022-2023 school year.

Parent, specialized academic instructor Salenieks, and program specialist Medina were among those who attended the October 18, 2022 IEP team meeting. The IEP team identified Student's levels of academic and functional performance and determined reading, writing, math, post-secondary transition, task completion, self-advocacy, social-emotional functioning, behavior, and speech and language were areas of need for which Student required IEP goals.

Academically, Student remained significantly behind in reading, writing, and math. At the start of the 2022-2023 school year, Student's 10th-grade year, Classical Academy administered Student another STAR reading assessment. The results showed Student's instructional reading level at the second month of fifth-grade level. The STAR assessment report determined Student needed urgent interventions.

Student's performance compared to other 10th graders on the STAR reading assessment fell in the 15th percentile in the area of Integration of Knowledge and Ideas, and in the 22nd percentile in the area of Range of Reading and Level of Complexity. The Integration of Knowledge and Ideas involved skills in comparing a story that was read versus a story that was heard. It also involved skills in understanding different genre of texts that had similar themes. Range of Reading and Level of Complexity

involved skills analyzing characters of different texts, reading independently in grade - appropriate texts, applying repair strategies to adjust understanding, and reading informational texts at ATOS range 8.0-9.0. No testimony or documentary evidence was offered to explain ATOS.

The STAR reading assessment report suggested Student was ready to receive sixth-grade level instruction and practice in the area of Integration of Knowledge and Ideas. The STAR reading assessment report also suggested Student was ready to receive sixth- to seventh-grade level instruction and practice in the area of Range of Reading and Level of Complexity.

In writing, progress on the prior IEP's writing goal showed Student produced a variety of writings that were developed, organized, and styled appropriately to the task, purpose, and audience with 76 percent accuracy over three opportunities. Student did not meet his prior writing goal, which required 80 percent accuracy on three consecutive trials.

At the October 18, 2022 IEP team meeting, Student's reading teacher reported Student was reading below grade level and did not demonstrate the ability to write a paragraph or essay in her class. In a paragraph-writing assignment, the teacher reported Student only answered prompting questions with an incomplete sentence.

In math, Student's teacher reported at the meeting that Student was below fifth-grade level math. Student could only add, subtract, multiple, or divide fractions with 61 percent accuracy if given three opportunities. In addition, Student's performance on the STAR math assessment fell in the ninth percentile compared to same grade peers in the areas of Creating Equations, which involved solving math word problems, and Geometric Measurement and Proportion, which involved geometric math problems.

At the IEP team meeting, Parent shared her concern that Student's academic progress was too limited. To support Student's academic needs, the October 18, 2022 IEP offered six academic goals, with two in reading, one in writing, and three in math.

The October 18, 2022 IEP was amended on November 8, 2022, and consented to by Parent on November 9, 2022. The IEP was amended to include Parent's 24 exceptions to her consent. Parent's exceptions to the October 18, 2022 IEP, as amended on November 8, 2022, were contained in a letter dated November 9, 2022, referred to as Parent's November 9, 2022 IEP Exceptions, and incorporated into the IEP.

## READING

The evidence established the October 18, 2022 IEP's reading goals were not measurable and not reasonably calculated to enable Student to make progress in reading. Among the disagreements listed in the Parent's November 9, 2022 IEP Exceptions was Parent's concern that the reading goals required Student to read grade-level text, but Student could only read at the fifth-grade level.

The first reading goal as written in the October 18, 2022 IEP required Student to cite strong and thorough textual evidence to support his analysis of the explicit message of a grade-level passage he was asked to read, as well as inferences from the text. The second goal required Student to analyze how complex characters develop, interact, and advance the plot in a grade-level text. The goals were not reasonably calculated to provide Student appropriate educational benefit because Student could not read at grade level. His reading skills were five grade levels behind at the time of the October 18, 2022 IEP team meeting. Classical Academy's failure to offer appropriate

reading goals was a procedural violation that significantly impeded Parent from making an informed decision as to how Student would achieve the goal within a year's time. Accordingly, Classical Academy denied Student a FAPE by failing to offer an appropriate reading goal in the October 18, 2022 IEP.

Classical Academy amended the October 18, 2022 IEP on November 28, 2022, to cure the violation. The first reading goal was amended to specify the text Student was tasked to read be equivalent to a fifth-grade, six-month level text, and the second reading goal was also amended to reflect the text to be read be equivalent to a sixth-grade-level text. Both goal amendments cured the procedural violation.

The remaining parts of the first reading goal required Student to answer comprehension questions, or provide an objective summary of the text. Both reading goals were measured by curriculum-based assessments and work samples, with oral assessments to also measure Student's progress on the second reading goal. To accomplish the goals, Student had to perform the tasks with 80 percent accuracy over four out of five trials. Both goals as amended were measurable and reasonably calculated to enable Student to improve his reading skills.

Student also failed to offer any evidence that the reading goals as amended, deprived him of an educational benefit, impeded his right to a FAPE, or significantly impeded Parent's opportunity from meaningful participating in the development of Student's IEP. Accordingly, Student proved Classical Academy denied him a FAPE during the 2022-2023 school year by failing to offer appropriate reading goals from October 18 to November 28, 2022.

## WRITING

The October 18, 2022 IEP's writing goal was measurable and reasonably calculated to enable Student to improve his writing. The writing goal required Student to produce writings that were developed, organized, and appropriate to the style, purpose, and audience of the assignment, with 80 percent accuracy on three consecutive trials. Student would produce the writing when given a writing prompt following a class discussion and using a graphic organizer. The graphic organizer could include sentence starters, guided questions, and an editing checklist. Student's goal progress was to be measured by Student's work samples and a teacher-made rubric.

Student failed to offer any testimony or documentary evidence that Student required additional goals in writing. Student also failed to offer any evidence that the proposed writing goal deprived him of an educational benefit, impeded his right to a FAPE, or significantly impeded Parent's opportunity from meaningful participating in the development of Student's IEP. Accordingly, Student failed to prove Classical Academy denied him a FAPE during the 2022-2023 school year by failing to offer goals in writing.

## MATH

The October 18, 2022 IEP offered three math goals, each measurable and reasonably calculated to address Student's math deficits. The first math goal required Student to solve multi-step problems involving whole numbers, fractions, and decimals, by adding, subtracting, multiplying or dividing. To meet the goal, Student had to demonstrate 85 percent accuracy in four out of five opportunities through work samples.

The second math goal required Student to solve word problems by creating equations with at least one variable, and use them to solve problems. To meet the goal, Student had to demonstrate 75 percent accuracy in three out of four opportunities. Student's progress was to be measured by curriculum-based assessments and his work samples.

The third math goal focused on solving real-world and mathematical problems involving area, volume, circumference, radius, and surface area of two – or – three – dimensional geometric objects. The objects included y

- triangles,
- quadrilaterals,
- polygons,
- cubes,
- circles, and
- right prisms.

Student had to demonstrate 75 percent accuracy in four out of five opportunities, through curriculum-based assessments and work samples, to meet the goal.

The evidence established that the October 18, 2022 IEP's math goals were measurable and reasonably calculated to enable Student to make progress on his identified math needs. Further, Student failed to offer any evidence that additional math goals were needed.

(This space is intentionally left blank. Text continues on the following page.)

Student also failed to offer any evidence that the math goals deprived him of an educational benefit, impeded his right to a FAPE, or significantly impeded Parent's opportunity from meaningful participating in the development of Student's IEP. Accordingly, Student failed to prove Classical Academy denied him a FAPE during the 2022-2023 school year by failing to offer goals in math.

In sum, Student failed to prove Classical Academy denied him a FAPE during the 2022-2023 school year by failing to offer goals in writing and math. Student proved Classical Academy denied him a FAPE from October 18, to November 28, 2022, by failing to offer appropriate goals in reading. Accordingly, Student prevailed on Issue 8a.

## ISSUE 8b: SOCIAL-EMOTIONAL AND BEHAVIORAL FUNCTIONING GOALS

### SOCIAL-EMOTIONAL FUNCTIONING

The October 22, 2021 IEP goals were in effect for one year until Student's annual IEP review on October 18, 2022. Student continued to struggle with anxiety and dysregulation.

The October 18, 2022 IEP team calculated Student left the classroom two out of 38 possible class sessions during the 2022-2023 school year because he was dysregulated or upset. Student also worried about what his peers thought of him, and sometimes felt he was not accepted by them. Student used positive self-talk, which the IEP team estimated he could do successfully 70 percent of the time, to cope with anxiety, but his anxiety still impacted his self-confidence at school.

The October 18, 2022 IEP offered two goals to support Student's social-emotional needs, both of which were appropriate. The first social-emotional goal, described in the IEP as a sensory regulation goal, required Student to use predetermined lists of sensory strategies to identify his emotional state when he was anxious or dysregulated, and choose an appropriate strategy to return to the classroom activity 100 percent of the time. The goal would be measured by data collected and observations by an occupational therapist. The sensory regulation goal was measurable and reasonably calculated to help Student use sensory strategies to successfully return to the classroom when anxious or dysregulated. Dr. Smith Roley recommended to continue the goal as offered.

The second social-emotional goal asked Student to rate his level of anxiety on a scale of one to 10 and identify events and triggers of the anxiety. Student was then required to think of coping strategies, and use the strategies when faced with anxiety inducing situations. To achieve the goal, Student had to successfully apply the coping strategies in three out of five trials, after rating his anxiety level and identifying the event or triggers of the anxiety. The goal was measurable and reasonably calculated to help Student identify the causes of, and to use strategies to successfully cope with, his anxiety.

The IEP amendment dated November 28, 2022, added a third social-emotional goal, identified as a self-advocacy and self-check goal, to be implemented by the school social worker. The IEP did not explain why the IEP team added this goal.



The self-advocacy and self-check goal was not measurable. The goal required Student to assess his personal rights and safety in a particular real-life or hypothetical social situation, and to practice stopping, thinking, and responding to the situations. To meet the goal, Student had to successfully accomplish the task with 80 percent accuracy in four out of six opportunities.

However, the IEP did not identify the baseline frequency or accuracy at which Student already accomplished the self-advocacy and self-check task. The baseline for the goal simply stated that Student struggled in social situations to always understand what an appropriate response would be and understand his personal rights in the social situations. Therefore, the IEP team could not confidently measure progress on, and reasonably calculate successful completion of, the self-advocacy and self-check goal. The evidence established that the lack of measurability of the self-advocacy and self-check goal also significantly impeded Parent's opportunity to participate in the development and monitoring of Student's IEP because progress on the goal could not be reliably measured, resulting in a denial of a FAPE.

Student's IEP was again amended on February 8, 2023, to add a social participation goal. Dr. Smith Roley testified that Student had difficulty fitting in, was self-isolating, and struggled with peer relationships. She recommended a social participation goal to address this concern, which the IEP team adopted. Student at the time of the IEP team meeting was not involved in extracurricular activities at or outside of school, other than his elective class in leadership.

The social participation goal was measurable and reasonably calculated to enable Student to improve his peer relationships and increase his involvement in extracurricular activities, thereby becoming less isolated. The goal required Student to identify clubs or

sports of interests and try out for the activity. Student would receive support from an adult to explore his interests. To meet the goal, Student would identify and try out an activity of interest in four out of five opportunities. Progress would be measured by observation and data collected by a school psychologist, special education staff, and an occupational therapist.

In sum, Classical Academy offered one social-emotional goal that was not measurable which denied Student a FAPE. Accordingly, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE during the 2022-2023 school year by failing to offer appropriate goals in social-emotional functioning.

## BEHAVIORAL FUNCTIONING

As discussed in Issue 4e, Classical Academy failed to offer an appropriate behavior goal during the 2021-2022 school year. Classical Academy also failed to offer an appropriate behavior goal during 2022-2023 school year.

The October 18, 2022 IEP team identified Student's behavior as an area of need requiring a goal. The October 18, 2022 IEP's special factors page indicated that a behavior goal was part of the October 18, 2022 IEP, and a behavior intervention plan was attached to the IEP. However, the behavior plan attached to the October 18, 2022 IEP was the same outdated behavior plan discussed in Issue 4h. Furthermore, the October 18, 2022 IEP failed to offer a behavior goal to address the problem behaviors described in the IEP's special factors page.

The October 18, 2022 IEP was amended on November 28, 2022. The amendments on November 28, 2022, did not cure Classical Academy's failure to offer an appropriate behavior goal. The IEP's special factors page was amended to state that Student struggled to communicate entirely, as an additional behavior associated with avoidance. However, the November 28, 2022 amendments to the IEP did not add a behavior goal.

The October 18, 2022 IEP was again amended on December 5, 2022, to add a behavior goal to address Student's purported school refusal behavior. The amendments on December 5, 2022, did not cure Classical Academy's failure to offer an appropriate behavior goal because the amendments did not include a behavior goal to target Student's problem behaviors described in the IEP's special factors page.

In addition, the behavior goal added, identified as goal number 22, was not a measurable, reliable goal because it was based on the limited and inaccurate November 15, 2022 functional behavior assessment. The behavior goal's baseline simply stated Student left early 50 percent of the days in September, 100 percent of the days in October, and 12 percent of the days in November 2022. Based on the reasons explained in Issue 4h, the baseline was not a reliable calculation of how many days Student demonstrated school refusal. Therefore, the goal for Student to stay in school through the entire school day, with the exception of illness or pre-planned early dismissal, for 80 percent of the school days in four out of five months was not reasonably calculated to enable Student to make progress on that purported problem behavior. Furthermore, Student's purported school refusal behavior was not identified in the IEP's special factors page as a behavior impeding his learning.

The October 18, 2022 IEP, as amended, did not include an appropriate behavior goal during the 2022-2023 school year. The IEP failed to include a behavior goal to address the behaviors that impeded his learning described in the IEP's special factors page. The IEP also failed to offer an accurate, measurable goal to track any changes in Student's school refusal behaviors. The evidence established Classical Academy's failure to offer an appropriate behavior goal during the 2022-2023 school year deprived Student of an educational program to support Student's behavioral needs, which the IEP team determined were impeding his learning. As a result, Classical Academy denied Student a FAPE.

In all, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE during the 2022-2023 school year by failing to offer goals in social-emotional and behavioral functioning. Accordingly, Student prevailed on Issue 8b.

## ISSUE 8c: EXPRESSIVE, RECEPTIVE, AND PRAGMATIC LANGUAGE GOALS

### EXPRESSIVE AND RECEPTIVE LANGUAGE

The October 22, 2021 IEP, as amended during the 2021-2022 school year, offered the same pragmatic language goals, but still lacked an expressive or receptive language goal. As discussed in Issue 4I, the October 22, 2021 IEP, as amended, was not appropriate because it failed to include expressive or receptive language goals because the IEP team did not have reliable information when it ruled out Student's needs in

expressive and receptive language. Therefore, the October 22, 2021 IEP, as amended, also denied Student a FAPE during the 2022-2023 school year, until the October 18, 2022 IEP team meeting.

Classical Academy's failure on October 22, 2021, to offer an IEP reasonably calculated to meet Student's speech and language needs continued through the 2022-2023 school year. The October 18, 2022 IEP excluded goals in receptive and expressive language without justification. Parent's November 9, 2022 IEP Exceptions included her request to reinstate IEP goals for expressive and receptive language because Student had unmet needs in those areas. The October 18, 2022 IEP team still had no reliable information on which to rule out Student's previously identified needs in expressive and expressive language.

The IEP team reconvened on November 28, 2022, and added what the IEP described as an expressive and receptive language goal, but it was not measurable. The goal required Student to use strategies that included verbally repeating information and writing checklists to increase his understanding of three-step directions, and afforded Student adequate processing time. To meet the goal, Student had to accomplish the task with 80 percent accuracy in four out of five opportunities over three sessions. The goal would be implemented and measured by a speech-language pathologist.

Independent speech-language pathologist Himstreet thought Student's ability to verbally repeat information and write checklists to increase his understanding of three-step directions was a good objective, but she did not opine whether the goal as written was measurable. The IEP, as amended on November 28, 2022, failed to identify the

baseline frequency that Student could already perform the required task and understand three-step directions. Therefore, the IEP team could not confidently measure progress, and reasonably calculate successful completion, of the receptive and expressive language goal.

The evidence established that the lack of measurability of the receptive and expressive language goal significantly impeded Parent's opportunity to participate in the development and monitoring of Student's IEP because progress on the goal could not be reliably measured. As a consequence, Student was denied a FAPE.

Classical Academy made no changes to its offer of speech and language goals following the November 28, 2022 IEP team meeting, until March 20, 2023. On March 20, 2023, the IEP team met to review Himstreet's independent speech and language evaluation report.

The March 20, 2023 IEP team added two new speech and language goals based on Himstreet's findings, as discussed in Issue 3. Student knew little about stuttering and believed his stuttering would significantly interfere with his education. Himstreet recommended Student receive stuttering intervention to include education and counseling about stuttering.

Himstreet also recommended Student receive direct instruction in organizing his thoughts for expression. Himstreet recommended instruction on different discourse forms, such as narrative structures that involve the elements of storytelling, with a visual graphic organizer to support the instruction.

The IEP, as amended on March 20, 2023, offered a fluency goal to help Student learn more about his stuttering. The goal was measurable and reasonably calculated to support his fluency needs. The goal required Student to demonstrate understanding and awareness of fluency by explaining three operations in the speech mechanism. Student was also expected to identify three speech-fluency strategies or techniques, and when to use them. He was also required to identify three resources in the community from which he could seek support for his stuttering. Student would be provided verbal and visual prompts to support the goal. To meet the goal, Student had to demonstrate 80 percent accuracy given no more than two prompts, over two sessions with a speech-language pathologist in a structured speech setting.

The March 20, 2023 IEP team also added a measurable expressive language goal, referred to as narrative or story retell. The narrative or story retell goal required Student to read sixth-grade level text, and retell the story using at least five out of six story elements. The story elements were

- character,
- setting,
- problem,
- inferences and perspectives,
- action, and
- ending or resolution.

Student would have access to a graphic organizer for visual support. To meet the goal Student had to demonstrate 80 percent accuracy with no more than two prompts, over three sessions with a speech-language pathologist. This goal was reasonably calculated to enable Student to improve his ability to organize his thoughts for expressing them.

However, Student's IEP, as amended on March 20, 2023, continued to offer the same receptive and expressive language goal added on November 28, 2022, that was not measurable. Therefore, Student's IEP as of March 20, 2023, continued to deny Student a FAPE as a result of the inadequate receptive and expressive language goal, specifically in the area of receptive language to understand multi-step directions. In addition, Classical Academy made no other changes to its offer of speech and language goals after the March 20, 2023 IEP team meeting.

Student proved by a preponderance of the evidence Classical Academy denied him a FAPE during the 2022-2023 school year, through March 20, 2023, by failing to offer a goal in expressive language. Student also proved by a preponderance of the evidence Classical Academy denied him a FAPE during the 2022-2023 school year, by failing to offer a goal in receptive language.

## PRAGMATIC LANGUAGE

As discussed in Issue 4f, the October 22, 2021 IEP, as amended during the 2021-2022 school year, offered appropriate pragmatic language goals. Those goals continued through October 18, 2022.

The October 18, 2022 IEP team discussed Student's progress on social and pragmatic communication skills. The speech-language pathologist opined Student met his conversational goal. However, Student reported that speaking to adults was easier than speaking to his peers and felt he could further improve his conversations with his peers. As of October 18, 2022, Student spoke to someone about a topic and maintained the conversation for at least five conversational turns given no more than one prompt with 80 percent accuracy.



At the meeting, the speech-language pathologist also opined Student met his goal in interpreting nonverbal social language, but could benefit from instruction in interpreting social situations involving conflicts and identifying appropriate ways to respond. Student identified a social conflict and explained the most appropriate resolution to the conflict with 60 percent accuracy over five trials.

The October 18, 2022 IEP offered two goals in pragmatic language, both measurable and reasonably calculated to improve Student's social communication. The first social pragmatics goal aimed to build on Student's conversational skills. It required Student to maintain a conversation for at least seven turns given no more than two prompts with 80 percent accuracy over two consecutive sessions with the speech-language pathologist. The conversations had to involve a topic chosen by his conversation partner and Student had to ask partner-focused questions and use bridging comments.

The second social pragmatic goal required Student to identify social conflict and learn appropriate responses to the conflict. To meet the goal, Student had to demonstrate 80 percent accuracy, with no more than one prompt, in four out of five opportunities over two sessions with the speech-language pathologist.

Parent disagreed that two sessions were sufficient to measure the goals. On December 5, 2022, Classical Academy amended the two social pragmatics goals to measure successful achievement of the goals over three sessions to accommodate Parent's request. Student offered no evidence proving Student was denied a FAPE between October 18, 2022, through December 5, 2022, because the successful completion of the goals were proposed to be measured over two sessions.

In Parent's November 9, 2022 IEP Exceptions, Parent disagreed that Student met his goal in interpreting nonverbal social language. The October 18, 2022 IEP did not offer a goal in interpreting nonverbal social language until it was amended on December 5, 2022.

At the time of the December 5, 2022 IEP team meeting, Student successfully described nonverbal communication and predicted a person's motivation and intention with 83 percent accuracy with no more than one prompt over the three most recent opportunities measured by the speech-language pathologist. The nonverbal communication goal was similar to Student's prior IEP goal, but aimed to increase Student's accuracy. The new goal was measurable. The new goal required Student to describe nonverbal communication that was presented to him, and to predict a person's motivation or intent. To meet the goal Student had to demonstrate 90 percent accuracy in four out of five opportunities over three sessions. This goal was reasonably calculated to improve Student's ability to interpret nonverbal communication.

Student offered no evidence that the delay in adding the nonverbal communication goal to the October 18, 2022 IEP until December 5, 2022, denied him a FAPE, considering he could successfully interpret nonverbal communications at a high rate. Student offered no testimony or documentary evidence to show the delay deprived Student of an educational benefit, impeded his right to a FAPE, or significantly impeded Parent's opportunity to meaningfully participate in the development of Student's IEP. The evidence established Student demonstrated adequate skills in interpreting nonverbal communication by October 18, 2022, and the goal was added on December 5, 2022, simply to accommodate Parent's request to further improve Student's skills.

Student's October 18, 2022 IEP, as amended through the 2022-2023 school year, did not amend the pragmatic language goals after the December 5, 2022 IEP team meeting. Student failed to offer any persuasive evidence that the pragmatic goals offered in the October 18, 2022 IEP and as amended through the 2022-2023 school year were not appropriate, or that additional pragmatic goals should have been added.

Accordingly, Student failed to prove Classical Academy denied him a FAPE during the 2022-2023 school year by failing to offer goals in pragmatic language. However, Student prevailed on Issue 8c because Classical Academy denied him a FAPE by failing to offer appropriate goals in expressive and receptive language.

#### ISSUE 8d: EXECUTIVE FUNCTIONING GOAL

The executive functioning goal in the October 22, 2021 IEP was implemented through October 18, 2022. That goal was appropriate. By October 18, 2022, Student had not met his prior executive functioning goal.

The October 18, 2022 IEP offered another executive functioning goal, referred to as a planning goal, that was also appropriate. Student was asked to create a list of his assignments to be worked on at home during homeschool days. Student had to input his list on a Google Docs online document that could be accessed by Parent, Student's aide, and the special education teacher. To meet the goal, Student had to create and input the list as required in four out of five opportunities per day.

Dr. Smith Roley recommended to continue the planning goal as written. Student offered no persuasive evidence that the planning goal was not measurable or reasonably calculated to help Student organize his assignments.

On December 5, 2022, the IEP team amended the IEP to add a new goal to help Student track the due dates of his assignments and to turn in assignments on time. Student offered no evidence that he was denied a FAPE because the goal was not added to his IEP before December 5, 2022.

As recommended by Dr. Smith Roley, the October 18, 2022 IEP was again amended on February 8, 2023, to offer two new goals for Student to organize his backpack and notebook to help him to timely turn in homework assignments, and to initiate classroom assignments. Though Dr. Smith Roley testified that the need should have been addressed sooner in Student's IEP, she offered no testimony to establish the absence of the goals prior to February 8, 2023, denied Student a FAPE.

Furthermore, the evidence established the IEP's two other planning and assignment goals addressed Student's need for better organization and timely completion of assignments. Student's IEP was not required to contain every executive functioning goal from which Student could benefit from. (*Capistrano, supra*, 21 F.4th at p. 1133.) Therefore, Student was not denied a FAPE for lack of executive functioning goals.

Student failed to prove Classical Academy denied him a FAPE during the 2022-2023 school year by failing to offer appropriate goals in executive functioning. Accordingly, Classical Academy prevailed on Issue 8d.

(This space is intentionally left blank. Text continues on the following page.)

ISSUES 8e, 8f, 8g, 8h, AND 8i: DID CLASSICAL ACADEMY FAIL TO OFFER APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION, AND BEHAVIOR INTERVENTION, THERAPEUTIC, SPEECH AND LANGUAGE, AND OCCUPATIONAL THERAPY SERVICES DURING THE 2022-2023 SCHOOL YEAR?

Student contends Classical Academy failed to offer him appropriate special education and related services during the 2022-2023 school year because of Classical Academy's failure to conduct appropriate assessments and develop proper IEP goals.

Classical Academy contends it offered Student sufficient minutes of appropriate specialized academic instruction during the 2022-2023 school year, as demonstrated by the academic progress he made during the school year. Classical Academy also contends Student failed to meet his burden of proving the behavior intervention services offered to Student during the 2022-2023 school year were inadequate.

Further, Classical Academy contends it offered Student sufficient minutes of appropriate counseling and speech and language services during the 2022-2023 school year. Classical Academy also contends the offer of occupational therapy services was appropriate to support Student's occupational therapy-related goals during the 2022-2023 school year.

(This space is intentionally left blank. Text continues on the following page.)

## ISSUE 8e: SPECIALIZED ACADEMIC INSTRUCTION

As discussed in Issue 4i, Classical Academy failed to offer specialized academic instruction using explicit, multi-sensory interventions following the May 19, 2022 IEP team meeting, a substantive violation of the IDEA that denied Student a FAPE. Classical Academy also failed to offer appropriate specialized academic instruction during the 2022-2023 school year.

The October 18, 2022 IEP also failed to offer specialized academic instruction using explicit, multi-sensory interventions. As the school year proceeded, it became more evident that the specialized academic instruction Classical Academy delivered to Student was inadequate.

At the March 20, 2023 IEP team meeting, specialized academic instructor Salenieks reported she was primarily working on interventions with Student, but had not had enough time during the school day to work with Student on his writing or any other goals.

At the meeting, Parent raised concerns that interventions by Classical Academy were not working, and again requested intervention from a reading specialist using the Orton-Gillingham methodology. Parent also requested a math tutor.

On March 27, 2023, Classical Academy provided Parent prior written notice in response to Parent's request for reading and math interventions. Classical Academy agreed to fund educational therapy, by reimbursing Parent for two hours a week for eight weeks of reading, math, and brain integration services. Parent selected Learning for All to deliver the intervention services. Student's IEP offer of FAPE was not amended to include the educational therapy services through Learning for All.

Licensed educational therapist Erin Sensibaugh, M.Ed., was the clinical director of Learning for All. Learning for All provided educational therapy services to help individuals with academic and cognitive challenges. Sensibaugh assessed Student on April 4, 2023, and prepared a report, referred to as the April 4, 2023 functional screening observations report. Sensibaugh did not testify at the hearing.

Sensibaugh found Student had learning challenges related to language-based processing, autism, and attention deficit hyperactivity disorder. His areas of need included

- comprehension,
- auditory memory,
- auditory processing,
- visual processing,
- processing speed,
- verbal perception, and
- flexible thinking.

Sensibaugh opined that Student's needs impacted his reading comprehension, written expression, mathematical reasoning, and executive functioning skills.

Sensibaugh recommended Student receive one-to-one therapy that was explicit, multi-sensory, systematic, fully integrated, and intensive. She opined he would need three hours a day, five days a week of remediation to target basic skills in English language arts and math. She also recommended continued individual therapy over the summer break. Parent provided Classical Academy with the April 4, 2023 functional screening observation report on May 4, 2024.

The IEP team met on May 5, 2023. At the meeting, Parent renewed her request for in-person, one-to-one intervention services for reading and math. She also requested Classical Academy provide Student three hours a day, for five days a week of therapy and intervention services from Learning for All, immediately, through the summer, and continuing through the next school year.

The evidence did not establish that Sensibaugh's recommended three hours of daily education therapy, five days a week, was required for Student to meet his specific IEP academic and executive functioning goals. However, a preponderance of the evidence did demonstrate that the specialized academic instruction Student required had to be explicit, multi-sensory, systematic, fully integrated, and intensive. Classical Academy's IEP team members did not challenge Sensibaugh's findings and recommendations. In addition, Classical Academy offered no testimony or documentary evidence to challenge Sensibaugh's opinion that Student required one-to-one instruction that was explicit, multi-sensory, systematic, fully integrated, and intensive for his academic deficits. Classical Academy did not amend its offer of specialized academic instruction after the May 5, 2023 IEP team meeting.

On May 10, 2023, Classical Academy provided Parent another prior written notice agreeing to reimburse Parent for additional educational therapy services with Learning for All, 10 hours a week from June 5 to August 22, 2024. Again, Classical Academy did not amend Student's IEP offer of specialized academic instruction, or include educational therapy services through Learning for All in the offer of FAPE.

By May 5, 2023, the evidence further established Classical Academy's offer of specialized academic instruction could not meet Student's academic needs. Nearing the end of his 10th-grade year, Student was still performing at the fifth-grade level in math



and reading. Student would remain five grade levels behind in math and reading, at best, entering 11th grade; demonstrating the gap in his academic deficits was not closing.

A preponderance of the evidence demonstrated that Student required individual specialized academic instruction using interventions that were explicit, multi-sensory, systematic, fully integrated, and intensive to address his severe reading, writing, and math deficits. Classical Academy used a computer-based curriculum. Its specialized academic instruction was not one-to-one. The instruction was also not explicit, multi-sensory, systematic, fully integrated, and intensive. In light of the information available to the IEP team on May 5, 2023, the 120 minutes a week of group specialized academic instruction that was not explicit, multi-sensory, systematic, fully integrated, and intensive, could not meet Student's reading, writing, and math needs.

The evidence established the October 18, 2022 IEP's offer of specialized academic instruction was not meeting Student's academic needs based on the information known to the IEP team since May 19, 2022, and it became more apparent on May 5, 2023. Student required one-to-one instruction in math and reading that was explicit, multi-sensory, systematic, fully integrated, and intensive, to meet his academic needs. Accordingly, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE during the 2022-2023 school year by failing to offer specialized academic instruction reasonably calculated to permit Student to make academic progress appropriate in light of his circumstances. Student prevailed on Issue 8e.

## ISSUE 8f: BEHAVIOR INTERVENTION SERVICES

Classical Academy's failure to offer appropriate behavior intervention services to develop, review, and supervise the implementation of Student's behavior intervention plan continued through the 2022-2023 school year. The October 18, 2022 IEP did not remedy the failures from the prior school year. The IEP only offered 360 minutes a day of behavior intervention services in the form of a one-to-one aide. The IEP again failed to offer behavior intervention services by qualified staff, such as a BCBA, to offer ongoing development and supervision of Student's behavior intervention plan to ensure its proper implementation and effectiveness.

Furthermore, the behavior goal added to the Student's IEP on December 5, 2022, identified the social worker and behavior analyst as the people responsible for the goal. Yet, the IEP amendment on December 5, 2022, did not offer services from a behavior analyst.

Classical Academy failed to offer behavior intervention services by a qualified behavior analyst to offer ongoing development and supervision of Student's behavior intervention plan to ensure its proper implementation and effectiveness. The failure denied Student a FAPE. Accordingly, Student proved by a preponderance of the evidence Classical Academy denied him a FAPE during the 2022-2023 school year by failing to offer behavior intervention services reasonably calculated to permit Student to make social-emotional and behavioral progress appropriate in light of his circumstances. Student prevailed on Issue 8f.

## ISSUE 8g: THERAPEUTIC SERVICES

The social work services offered in the October 22, 2021 IEP, as amended through the 2021-2022 school year, continued to offer Student appropriate counseling services through October 18, 2022. The October 18, 2022 IEP continued to offer 30 minutes a week of social work services to support Student's social-emotional needs.

The IEP amendment dated November 28, 2022, added an additional role for the school social worker that did not necessitate additional social work services. The school social worker was also tasked to implement the behavior goal added on November 28, 2022. However, the evidence did not establish the additional responsibility to support Student's purported school refusal behavior could not be addressed within the 30 minutes of weekly counseling services. School social worker Cobos did not provide ongoing development and supervision of Student's behavior intervention plan.

The October 18, 2022 IEP's offer of social work services remained the same through the 2022-2023 school year. The evidence demonstrated the 30 minutes of weekly social work services were reasonably calculated to help Student's difficulties with anxiety, self-confidence, and self-advocacy. Student offered no evidence that his IEP required more social work services, or a different type of therapeutic service to support his social-emotional and behavioral needs. Accordingly, Student failed to prove Classical Academy denied him a FAPE during the 2022-2023 school year by failing to offer therapeutic services reasonably calculated to permit Student to make social-emotional and behavioral progress appropriate in light of his circumstances. Classical Academy prevailed on Issue 8g.

## ISSUE 8h: SPEECH AND LANGUAGE SERVICES

As discussed in Issue 4l, Classical Academy failed to offer speech and language services from October 22, 2021, through the 2021-2022 school year, that were reasonably calculated to address Student's speech and language needs. That failure continued to March 20, 2023.

The October 18, 2022 IEP, and its amendments on November 28, 2022, and February 8, 2023, failed to offer more than 30 minutes of group speech and language services, despite the addition of a receptive and expressive language goal on November 28, 2022. The June 3, 2021 IEP, as amended on September 21, 2021, provided Student 15 minutes a week of individual speech and language services to support his expressive and receptive language needs. Therefore, the October 18, 2022 IEP, as amended on November 28, 2022, still failed to offer sufficient individual speech and language services to support Student's expressive and receptive language needs. The ongoing failure denied Student a FAPE until March 20, 2023.

The October 18, 2022 IEP was again amended on March 20, 2023. The March 20, 2023 IEP amendment added 30 minutes a week of individual speech and language services, for a total of 60 minutes a week of speech and language services. The evidence established the 60 minutes a week of speech and language services allocated equally between group and individual services was reasonably calculated to enable Student to make progress towards each of his speech and language goals. Student failed to prove the 30 minutes of group and 30 minutes of individual speech therapy each week was insufficient.

Student proved by a preponderance of the evidence that Classical Academy denied him a FAPE by failing to offer speech and language services reasonably calculated to permit Student to make appropriate progress during the 2022-2023 school year, to March 20, 2023. Accordingly, Student prevailed on Issue 8h.

## ISSUE 8i: OCCUPATIONAL THERAPY SERVICES

Classical Academy failed to offer occupational therapy services reasonably calculated to meet Student's occupational therapy needs during the 2022-2023 school year, to February 8, 2023. As discussed in Issue 4m, the October 22, 2021 IEP team, and the teams throughout the 2021-2022 school year, could not reliably determine Student's occupational therapy needs because of the inadequate September 23, 2021 occupational therapy assessment. Classical Academy offered no evidence that additional information about Student's occupational therapy needs came to light following the assessment to support its decision to discontinue direct occupational therapy.

The October 18, 2022 IEP again offered only 30 minutes a month of occupational therapy consultation services. No individual occupational therapy was offered. The October 18, 2022 IEP team had no information to support the lack of individual occupational therapy. Therefore, the October 18, 2022 IEP failed to show a direct relationship between Student's occupational therapy needs and the type of occupational therapy service offered, specifically consultation only and no individual occupational therapy.

(This space is intentionally left blank. Text continues on the following page.)

The October 18, 2022 IEP, as amended on November 8 and 28, and December 5, 2022, also failed to show a direct relationship with the 30 minutes a month of occupational therapy consultations to what was known about Student's sensory regulation and executive functioning needs. Those IEP teams had no information to support limiting occupational therapy services to only consultations, and excluding individual therapy. Classical Academy continued to deny Student a FAPE by failing to offer occupational therapy services reasonably calculated and directly related to Student's occupational therapy needs. Classical Academy's failure remained until February 8, 2023.

Following the February 8, 2023 IEP team's review of Dr. Smith Roley's independent occupational therapy assessment report, the IEP team added 30 minutes a week of individual occupational therapy. Classical Academy continued to offer 30 minutes of consultation service a month. At hearing, Dr. Smith Roley testified the occupational therapy minutes as offered, though not exact to her recommendations, were reasonable.

The evidence established 30 minutes a week of individual occupational therapy and 30 minutes a month of occupational therapy consultation service were reasonably calculated to enable Student to meet his sensory regulation, social participation, organization, and task monitoring goals. Student offered no persuasive evidence that Student required more minutes of occupational therapy services, either weekly individual or monthly consultations. The offer in the October 28, 2022 IEP, as amended on February 8, 2023, of occupational therapy services remained in effect through the 2022-2023 school year. In sum, Classical Academy denied Student a FAPE by failing to make a reasonably calculated offer of occupational therapy services during the 2022-2023 school year, to February 8, 2023.

Student proved by a preponderance of the evidence Classical Academy denied him a FAPE during the 2022-2023 school year, to February 8, 2023, by failing to offer occupational therapy services reasonably calculated to permit Student to make progress appropriate in light of his circumstances. Accordingly, Student prevailed on Issue 8i.

#### ISSUE 8j: DID CLASSICAL ACADEMY FAIL TO OFFER AN UPDATED BEHAVIOR INTERVENTION PLAN DURING THE 2022-2023 SCHOOL YEAR?

Student contends Classical Academy failed to offer an appropriate behavior intervention plan during the 2022-2023 school year. Classical Academy's closing brief did not offer a specific contention on whether it failed to offer an updated behavior intervention plan during the 2022-2023 school year.

Classical Academy failed to offer Student an appropriate updated behavior intervention plan during the 2022-2023 school year. The October 18, 2022 IEP offered the same inadequate behavior intervention plan from the October 22, 2021 IEP.

As discussed in Issue 7, the November 28, 2022 IEP team reviewed the November 15, 2022 functional behavior assessment report. That report failed to provide Student's IEP team reliable, accurate information about Student's problem behaviors to help the IEP team properly develop an effective behavior intervention plan.

The IEP, as amended on November 28, 2022, offered an updated behavior plan, referred to as the November 28, 2022 behavior intervention plan. The plan was not reasonably calculated to reduce or eliminate Student's problem behaviors. The November 28, 2022 behavior intervention plan was based on the November 15, 2022

functional behavior assessment, and therefore inaccurately and unreliably identified elopement and school refusal as problem behaviors Student displayed at school that required an intervention plan.

Furthermore, the special factors page of October 18, 2022 IEP, as amended on November 28, 2022, described problems impeding Student's learning that differed from the targeted behaviors in the plan. The special factors page indicated Student was easily distracted and had difficulty maintaining attention to task. He did not consistently participate in group activities, especially in math. The special factors page also noted Student exhibited avoidance-motivated behaviors by placing his head down on the desk, not responding to verbal interventions, or making statements to end a conversation. Therefore, the plan as offered was not reasonably calculated to address the problem behaviors identified on the special factors page. The November 28, 2022 behavior intervention plan was wholly inadequate, and resulted in a procedural violation of the IDEA.

Classical Academy added a behavior goal to Student's IEP on December 5, 2022, and amended the November 28, 2022 behavior intervention plan to coordinate the plan to the new behavior goal. The amendments did not cure the procedural violation. As discussed in Issue 8b, the behavior goal added on December 5, 2022 was not appropriate because it too was based on the inadequate November 15, 2022 functional behavior assessment. Classical Academy took no action to cure the November 28, 2022 behavior intervention plan following the December 5, 2022 IEP team meeting, through the 2022-2023 school year.



The evidence established that Classical Academy's procedural violation in failing to offer an appropriate behavior intervention plan during 2022-2023 school year deprived Student of positive behavior interventions and supports to address the problem behaviors his IEP determined impeded his learning, and therefore deprived him of educational benefits. As a consequence, Student was denied a FAPE.

Student proved by a preponderance of the evidence that Classical Academy denied him a FAPE during the 2022-2023 school year by failing to offer an updated behavior intervention plan. Accordingly, Student prevailed on Issue 8j.

#### ISSUES 8k, 8l, 8m, 8n, 8o: DID CLASSICAL ACADEMY FAIL TO IMPLEMENT SPECIALIZED ACADEMIC INSTRUCTION, AND BEHAVIOR INTERVENTION, THERAPEUTIC, SPEECH AND LANGUAGE, AND OCCUPATIONAL THERAPY SERVICES DURING THE 2022-2023 SCHOOL YEAR?

Student contends Classical Academy denied him a FAPE by materially failing to implement his IEP services during the 2022-2023 school year. Classical Academy contends it did not materially fail to implement Student's IEP services during the 2022-2023 school year.

#### ISSUE 8k: SPECIALIZED ACADEMIC INSTRUCTION

Student proved by a preponderance of the evidence Classical Academy materially failed to implement his specialized academic instruction from September 28, 2022, through the 2022-2023 school year. Specialized academic instructor White delivered Student's specialized academic instruction as required by his IEP from the start of the school year until Student suffered a concussion on August 31, 2022.

Student missed school to recover from his concussion and returned to campus on September 28, 2022. Student offered no evidence to demonstrate that Student could access or benefit from specialized academic instruction during his recovery from a concussion before he returned to school on September 28, 2022.

Specialized academic instructor Salenieks was Student's Skills and Instruction and Marine Science class teacher for the 2022-2023 school year. Marine Science was a general education course that students worked on through packets in Salenieks' Skills and Instruction class.

Parent requested White be removed as Student's case manager claiming White was not serving Student's individual needs. Classical Academy accommodated the request. Salenieks assumed the responsibility of delivering Student's specialized academic instruction after Salenieks became his case manager in September 2022. Student returned to school on September 28, 2022, after his extended absence recovering from a concussion.

The evidence showed Salenieks materially failed to implement Student's specialized academic instruction from September 28, 2022, through the 2022-2023 school year. At hearing, Salenieks testified she provided support for Student upon his return, but failed to offer any persuasive testimony to distinguish the support she delivered, and the specialized academic instruction she was responsible for. The evidence demonstrated Student primarily worked on Marine Science packets in the Skills and Instruction class. For specialized academic instruction, Salenieks testified she checked in on Student during Skills and Instruction classes when he needed help. She also testified that Student's one-to-one aide was the "main person" working with Student. Student's one-to-one aide Lee was not a credentialed special education

teacher, so Lee was not qualified to deliver specialized academic instruction. A preponderance of the evidence established that Salenieks failed to deliver the specialized academic instruction that adapted, as appropriate to Student's needs, the content, methodology, or delivery of instruction.

Furthermore, Salenieks testified that she did not implement Student's 2021 IEP following the October 18, 2022 IEP team meeting, until Parent provided written consent to the October 18, 2022 IEP on November 9, 2022. Salenieks testified that she was unclear about her responsibility to implement a current IEP pending consent from a parent on a new IEP offer of FAPE. Salenieks referred to the period of uncertainty when a new IEP was offered until the time a parent provided consent to the new IEP as a "gray area" when she did not implement the prior consented-to IEP. Salenieks testified she "supported" Student's academic needs but did not implement Student's consented-to IEP goals and specialized academic instruction until Parent provided consent to the October 18, 2022 IEP on November 9, 2022. A preponderance of the evidence established Salenieks' failure to implement specialized academic instruction for more than three weeks, following the October 18, 2022 IEP team meeting until November 9, 2022, was a material failure by Classical Academy to implement Student's specialized academic instruction.

A preponderance of the evidence established Classical Academy failed to implement Student's specialized academic instruction following Parent's consent to the October 18, 2022 IEP for the remainder of the 2022-2023 school year. Salenieks reported to the March 20, 2023 IEP team she had not worked on Student's IEP goals because she had no time, despite Student receiving a second Skills and Instruction class with Salenieks in January 2023. Salenieks explained to the IEP team that she delivered interventions, but had no time to work on Student's writing and other goals.

At the April 19, 2023 IEP team meeting, Salenieks clarified that she worked with Student on some of the IEP goals through the interventions she delivered, but some goals were not tied to interventions, such as Student's writing goal. Salenieks failed to clarify and explain at the April 19, 2023 IEP team meeting, and at hearing, the type of interventions she delivered, and whether the interventions were specialized academic instruction, or simply support for Student as needed. Accordingly, Salenieks' testimony was not persuasive and did not support Classical Academy's assertion that it provided Student appropriate specialized academic instruction for 120 minutes a week as called for in his IEP.

Classical Academy relied on an exhibit that merely summarized the minutes of specialized academic instruction Salenieks provided Student from October 19, 2022, through June 1, 2023. The exhibit was not persuasive and did not support Classical Academy's assertion that it implemented the specialized academic instruction as required. A preponderance of the evidence demonstrated that Salenieks primarily supported Student as needed, relied on his one-to-one aide to deliver academic support, and did not deliver 120 minutes of instruction that adapted the content, methodology, or delivery of the lessons. Classical Academy failed to show that Salenieks delivered the required minutes of specialized academic instruction to address each of Student's IEP goals she was tasked with implementing during the 2022- 2023 school year. Therefore, a preponderance of the evidence established Classical Academy failed to provide Student the 120 minutes a week of specialized academic instruction required by his IEP from September 28, 2022, through the 2022-2023 school year.

Accordingly, Student proved Classical Academy denied him a FAPE from September 28, 2022, through the 2022-2023 school year by failing to implement specialized academic instruction. Student prevailed on Issue 8k.

## ISSUE 8l: BEHAVIOR INTERVENTION SERVICES

Student proved by a preponderance of the evidence Classical Academy failed to implement behavior intervention services from the start of the 2022-2023 school year, through August 31, 2022. The first day of instruction for the 2022-2023 school year was Wednesday, August 17, 2022. Student continued to come to school on Tuesdays, Wednesdays, and Thursdays. From August 17 through 31, 2022, Student came to school on seven days. Classical Academy did not provide Student behavioral intervention services in the form of a one-to-one aide during those seven school days as required in Student's October 22, 2021 IEP.

The IEP team convened on September 27, 2022. Among the concerns discussed by the IEP team was the one-to-one aide support. Though Classical Academy's IEP team members claimed the behavior intervention services as written did not specify a one-to-one aide, the testimony from Parent and Boitano established that the IEP did require a one-to-one aide. Specialized academic instructor White also acknowledged at hearing that the aide support Student received at the start of the 2022-2023 school year, through August 31, 2022, was not a one-to-one aide dedicated to Student.

(This space is intentionally left blank. Text continues on the following page.)

Student's October 22, 2021 IEP, as amended through the 2021-2022 school year, entitled him to 1,080 minutes a week of behavior intervention services, equally allocated for 360 minutes each day he came to school. Therefore, Classical Academy's failure to implement behavior interventions services for seven days, totaling 2,520 minutes of one-to-one aide support, was a material failure to implement the IEP.

However, Student failed to prove Classical Academy failed to implement behavior intervention services from September 28, 2022, through the 2022-2023 school year. Student did not return to school after suffering a concussion until September 28, 2022. Joey Lee was assigned to provide aide support to Student when Student returned to school on September 28, 2022. In the spring of 2023, Classical Academy assigned another aide for Student, and Lee and the other aide took turns delivering the one-on-one aide support.

Parent testified that Student reported to her that his aides during the 2022-2023 school year at times were not attentive to his needs, and not providing proper supervision. However, Student failed to offer testimony or documentary evidence of how often and for how long Student's aides were not supporting Student. Therefore, whether the alleged failure by the aides to support Student was more than a minor discrepancy from the IEP's requirement cannot be determined. Student failed to offer any persuasive evidence that Classical Academy materially failed to implement Student's one-to-one aide support as required in his IEP after August 31, 2022.

(This space is intentionally left blank. Text continues on the following page.)

Student proved by preponderance of the evidence Classical Academy denied him a FAPE by materially failing to implement behavior intervention services from August 17, 2022, through August 31, 2022. Student failed to prove Classical Academy denied him a FAPE from September 28, 2022, through the 2022-2023 school year, by failing to implement behavior intervention services. Accordingly, Student prevailed on Issue 8l.

#### ISSUE 8m: THERAPEUTIC SERVICES

Student failed to prove Classical Academy failed to implement 30 minutes a week of social work services during the 2022-2023 school year. Student failed to demonstrate through testimony or documentary evidence that Student was well enough to receive social work services before September 28, 2022, while he was absent recovering from his concussion. Furthermore, school social worker Cobos testified she delivered the social work services as required until Parent requested to remove Cobos as Student's school social worker.

The evidence demonstrated Cobos and Student had a good relationship until Parent falsely accused Cobos of retaliating against Parent. On March 29, 2023, Parent wrote Classical Academy falsely accusing Cobos of making a report to child welfare services regarding Student. Parent claimed the report was in retaliation. Parent shared with Student that Cobos' false allegation was unethical and unprofessional. Parent reported that Student became upset and no longer wanted to work with Cobos. Parent requested Cobos not contact Student and that counseling service be provided by school psychologist Kester or a nonpublic agency. Student refused to attend counseling with Cobos on March 29, 2023.

Parent's accusation against Cobos was baseless, and her request to remove Cobos from Student's IEP team was careless. Student offered no persuasive evidence that Cobos was the reporting party. At hearing, Student's counsel questioned Lee if she was the reporting party, which demonstrated Parent's doubts that Cobos was the reporting party. Cobos testified at hearing, and firmly denied that she made the report. Parent, not Cobos, was to blame for Student's lack of trust in Cobos.

Cobos was qualified, willing, and able to provide the social work services called for in Student's IEPs. Therefore, Classical Academy properly denied Parent's request with a prior written notice dated March 31, 2023, to remove Cobos from delivering counseling services. Parent insisted Cobos not have contact with Student and on April 12, 2023, program specialist Medina confirmed Cobos would not have further contact with Student. School psychologist Kester provided Student counseling services from May 11 to 25, 2023.

The evidence established Classical Academy did not materially fail to implement social work services during the 2022-2023 school year. Parent's unsubstantiated accusation against Cobos and negligent request to remove Cobos as Student's school social worker impeded Classical Academy from implementing the social work services required in Student's IEP. Any gap in counseling services delivered to Student was not the fault of Classical Academy. Accordingly, Student failed to prove Classical Academy denied him a FAPE during the 2022-2023 school year by failing to implement therapeutic services. Classical Academy prevailed on Issue 8m.



## ISSUE 8n: SPEECH AND LANGUAGE SERVICES

None of the 26 witnesses who testified at hearing established that Classical Academy failed to implement Student's speech and language services as required in his IEPs during the 2022-2023 school year. Further, Student failed to offer any documentary evidence to support his claim. Student also failed to demonstrate through testimony or documentary evidence that Student was well enough to receive speech and language services before September 28, 2022, while he recovered from his concussion.

Accordingly, Student failed to meet his burden of proving Classical Academy denied him a FAPE during the 2022-2023 school year by failing to implement speech and language services. Classical Academy prevailed on Issue 8n.

## ISSUE 8o: OCCUPATIONAL THERAPY SERVICES

Classical Academy did not materially fail to implement the occupational therapy services offered and consented to in Student's IEPs during the 2022-2023 school year. At the August 26, 2022 IEP team meeting, Parent requested a new occupational therapist for Student. Parent claimed occupational therapist Collins failed to develop rapport with Student and Student had an aversion to working with her. Parent alleged that the aversion stemmed from her use of a strong perfume that bothered Student.

Collins credibly testified that she stopped using the perfume in fall 2021, after she learned it bothered Student. In addition, Student's aversion to occupational therapy services with Collins had nothing to do with Collins herself, but rather Student did not like being pulled out of class for the service. Hence, Parent's request to remove Collins as one of Student's service providers was unwarranted.

Collins was qualified, able, and willing to provide the occupational therapy services offered in Student's IEPs during the 2022-2023 school year. Therefore, Classical Academy's August 29, 2022 prior written notice denying Parent's request to remove Collins as Student's occupational therapist was proper.

The evidence established Collins continued to provide occupational therapy consultation services until Parent revoked consent for occupational therapy services on November 9, 2022. Parent did not consent to occupational therapy services until the IEP team reviewed Dr. Smith Roley's independent occupational therapy assessment and amended the October 18, 2022 IEP on February 8, 2023, to add individual occupational therapy services, along with the 30 minutes of monthly consultation services. At the meeting, Parent requested a nonpublic agency provide the occupational therapy services. Classical Academy properly denied the request for a nonpublic agency provider in a prior written notice dated March 6, 2023.

Nevertheless, Classical Academy accommodated Parent's request to remove Collins, and assigned a certified occupational therapy assistant, supervised by a licensed occupational therapist, to deliver Student's occupational therapy services. Licensed occupational therapist Trina Woldt supervised the delivery of Student's occupational therapy services following the February 8, 2023 IEP team meeting. Woldt was the lead occupational therapist at Classical Academy, and was qualified to supervise the certified occupational therapy assistant. Student failed to offer any evidence that Classical Academy failed to implement occupational therapy services after February 8, 2023.

Student offered no persuasive testimony or documentary evidence that Classical Academy failed to implement occupational therapy services according to Student's IEPs during periods when parental consent was given. Accordingly, Student

failed to prove Classical Academy denied him a FAPE during the 2022-2023 school year by failing to implement occupational therapy services. Classical Academy prevailed on Issue 8o.

ISSUES 9a, 9b, AND 9c: DID CLASSICAL ACADEMY DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR THROUGH OCTOBER 20, 2023, BY FAILING TO AMEND THE OCTOBER 18, 2022 IEP'S OFFER OF GOALS, SERVICES, AND PLACEMENT FOLLOWING THE IEP TEAM MEETINGS FROM FEBRUARY 8, 2023, THROUGH MAY 5, 2023?

Student contends Classical Academy was the responsible local education agency for the 2023-2024 school year. Classical Academy contends it did not deny Student a FAPE during the 2023-2024 school year because Student was not enrolled at Classical Academy for that period.

Public charter schools do not admit students based on the student's place of residency or the residency of the student's parent or legal guardian. (Ed. Code, § 47605, subd. (e)(1).) Charter schools must admit each student who seeks to enroll in the charter school, except when the number of interested students exceeds the charter school's capacity. (Ed. Code, § 47605, subd. (e)(2)(A) and (B) [attendance shall be determined by a public random drawing].) For students who seek enrollment in a charter school's independent study program scheduled for more than 14 school days, an agreement must be signed by the student and the student's parent or legal guardian before the commencement of the independent study. (Ed. Code, § 51747, subd. (g)(9).)

On August 14, 2023, Parent provided Classical Academy a letter notifying Classical Academy of her intent to enroll Student at Fusion Academy, a private school. On August 18, 2023, Parent emailed program specialist Medina confirming Student would not be attending Classical Academy at the start of the 2023-2024 school year. Parent completed Student's registration with Fusion Academy on August 23, 2023. Student's first day of instruction at Fusion Academy was August 28, 2023.

Parent and Student did not sign a master agreement to reenroll Student in Classical Academy's independent study program for the 2023-2024 school year as required by Classical Academy's policies and procedures. As a result, Classical Academy disenrolled Student from its program prior to August 23, 2024, Classical Academy's first day of instruction for 2023-2024 school year.

Student was not enrolled in, and did not attend, Classical Academy during the 2023-2024 school year. Furthermore, Parent did not request an IEP from Classical Academy after Student was disenrolled from Classical Academy. Accordingly, Classical Academy was not responsible for offering Student a FAPE for the 2023-2024 school year, through October 20, 2023. (*Capistrano, supra*, 21 F.4th at p. 1138.) Student failed to offer any legal authority establishing otherwise.

As a result, Classical Academy did not deny Student a FAPE during the 2023-2024 school year, through October 20, 2023, by failing to amend the October 18, 2022 IEP's offer of goals, services, and placement following the IEP team meetings held from February 8, 2023, through May 5, 2023. Classical Academy prevailed on Issues 9a, 9b, and 9c.

## 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:

Classical Academy denied Student a FAPE from October 20, 2021, through the end of the 2021-2022 school year, by failing to conduct an appropriate occupational therapy assessment dated September 21, 2021.

Student prevailed on Issue 1.

### ISSUE 2:

Classical Academy did not deny Student a FAPE during 2021-2022 school year, because the October 22, 2021 psychoeducational assessment did not fail to include formal, standardized structured observations of Student or to determine and measure Student's history of progress towards IEP goals.

Classical Academy prevailed on Issue 2.

### ISSUE 3:

Classical Academy denied Student a FAPE during the 2021-2022 school year by failing to conduct an appropriate speech and language assessment dated November 5, 2021.

Student prevailed on Issue 3.

#### ISSUES 4a, 4b, AND 4c:

Classical Academy denied Student a FAPE from October 20, 2021, through the 2021-2022 school year, by failing to conduct a functional behavior assessment, and comprehensive and accurate speech and language and occupational therapy assessments.

Student prevailed on Issues 4a, 4b, 4c.

#### ISSUE 4d:

Classical Academy did not deny Student a FAPE from October 20, 2021, through the 2021-2022 school year, by failing to offer goals in reading, writing, and math.

Classical Academy prevailed on Issue 4d.

#### ISSUE 4e:

Classical Academy did not deny Student a FAPE by failing to offer goals in social-emotional functioning, but denied Student a FAPE by failing to offer a goal in behavior from October 22, 2021, through the 2021-2022 school year.

Student prevailed on Issue 4e.

(This space is intentionally left blank. Text continues on the following page.)

#### ISSUE 4f:

Classical Academy denied Student a FAPE by failing to offer goals in expressive and receptive language, but did not deny Student a FAPE by failing to offer goals in pragmatic language from October 22, 2021, through the 2021-2022 school year.

Student prevailed on Issue 4f.

#### ISSUE 4g:

Classical Academy did not deny Student a FAPE by failing to offer goals in executive functioning from October 22, 2021, through the 2021-2022 school year.

Classical Academy prevailed on Issue 4g.

#### ISSUE 4h:

Classical Academy denied Student a FAPE from October 22, 2021, through the 2021-2022 school, by failing to develop an updated behavior intervention plan.

Student prevailed on Issue 4h.

(This space is intentionally left blank. Text continues on the following page.)

#### ISSUE 4i:

Classical Academy denied Student a FAPE from May 19, 2022, through the 2021-2022 school by failing to offer specialized academic instruction reasonably calculated to permit Student to make academic progress.

Student prevailed on Issue 4i.

#### ISSUE 4j:

Classical Academy denied Student a FAPE from October 22, 2021, through the 2021-2022 school year by failing to offer behavior intervention services reasonably calculated to permit Student to make social-emotional and behavioral progress.

Student prevailed on Issue 4j.

#### ISSUE 4k:

Classical Academy did not deny Student a FAPE from October 22, 2021, through the 2021-2022 school year by failing to offer therapeutic services reasonably calculated to permit Student to make social-emotional and behavioral progress.

Classical Academy prevailed on Issue 4k.

(This space is intentionally left blank. Text continues on the following page.)



#### ISSUES 4l AND 4t:

Classical Academy denied Student a FAPE from October 22, 2021, through the 2021-2022 school year by failing to offer speech and language services reasonably calculated to permit Student to make progress and by reducing speech and language services in the October 22, 2021 IEP.

Student prevailed on Issues 4l and 4t.

#### ISSUES 4m AND 4u:

Classical Academy denied Student a FAPE from October 22, 2021, through the 2021-2022 school, by failing to offer occupational therapy services reasonably calculated to permit Student to make progress and by reducing occupational therapy services in the October 22, 2021 IEP.

Student prevailed on Issues 4m and 4u.

#### ISSUES 4n, 4o, 4q, 4r, AND 4s:

Classical Academy did not deny Student a FAPE from October 20, 2021, through the 2021-2022 school year by failing to implement therapeutic, behavior intervention, speech and language, and occupational therapy services, or fail to allow Parent participation in developing the October 22, 2021 IEP before removing behavior intervention services during unstructured time.

Classical Academy prevailed on Issues 4n, 4o, 4q, 4r and 4s.

#### ISSUE 4p:

Classical Academy denied Student a FAPE from October 20, 2021, through November 15, 2021, by failing to implement specialized academic instruction.

Student prevailed on Issue 4p.

#### ISSUE 5:

Classical Academy did not deny Student a FAPE during the 2022-2023 school year by failing to comprehensively assess Student after he suffered a concussion and a traumatic brain injury on August 31, 2022.

Classical Academy prevailed on Issue 5.

#### ISSUE 6:

Classical Academy did not deny Student a FAPE during the 2022-2023 school year by failing to investigate and offer a safety plan to address bullying.

Classical Academy prevailed on Issue 6.

#### ISSUE 7:

Classical Academy denied Student a FAPE during the 2022-2023 school year because the November 15, 2022 functional behavior assessment was not comprehensive and accurate.

Student prevailed on Issue 7.

#### ISSUE 8a:

Classical Academy did not deny Student a FAPE during the 2022-2023 school year by failing to offer goals in writing and math. Classical Academy denied Student a FAPE from October 18, 2022, to November 28, 2022, by failing to offer goals in reading.

Student prevailed on Issue 8a.

#### ISSUE 8b:

Classical Academy denied Student a FAPE during the 2022-2023 school year by failing to offer goals in social-emotional and behavioral functioning.

Student prevailed on Issue 8b.

#### ISSUE 8c:

Classical Academy did not deny Student a FAPE during the 2022-2023 school year by failing to offer goals in pragmatic language. Classical Academy denied Student a FAPE during the 2022-2023 school year by failing to offer goals in expressive and receptive language.

Student prevailed on Issue 8c.

#### ISSUE 8d:

Classical Academy did not deny Student a FAPE during the 2022-2023 school year by failing to offer goals in executive functioning.

Classical Academy prevailed on Issue 8d.

#### ISSUE 8e:

Classical Academy denied Student a FAPE during the 2022-2023 school year by failing to offer specialized academic instruction reasonably calculated to permit Student to make academic progress.

Student prevailed on Issue 8e.

#### ISSUE 8f:

Classical Academy denied Student a FAPE during the 2022-2023 school year by failing to offer behavior intervention services reasonably calculated to permit Student to make social-emotional and behavioral progress.

Student prevailed on Issue 8f.

#### ISSUE 8g:

Classical Academy did not deny Student a FAPE during the 2022-2023 school year by failing to offer therapeutic services reasonably calculated to permit Student to make social-emotional and behavioral progress.

Classical Academy prevailed on Issue 8g.

#### ISSUE 8h:

Classical Academy denied Student a FAPE during the 2022-2023 school year to March 20, 2023 by failing to offer speech and language services reasonably calculated to permit Student to make progress.

Student prevailed on Issue 8h.

#### ISSUE 8i:

Classical Academy denied Student a FAPE during the 2022-2023 school year to February 8, 2023, by failing to offer occupational therapy services reasonably calculated to permit Student to make progress.

Student prevailed on Issue 8i.

#### ISSUE 8j:

Classical Academy denied Student a FAPE during the 2022-2023 school year by failing to offer an updated behavior intervention plan.

Student prevailed on Issue 8j.

#### ISSUE 8k:

Classical Academy denied Student a FAPE during the 2022-2023 school year by failing to implement specialized academic instruction.

Student prevailed on Issue 8k.

#### ISSUE 8l:

Classical Academy denied Student a FAPE by failing to implement behavior intervention services from August 17, 2022, through August 31, 2022.

Student prevailed on Issue 8l.

ISSUE 8m:

Classical Academy did not deny Student a FAPE during the 2022-2023 school year by failing to implement therapeutic services.

Classical Academy prevailed on Issue 8m.

ISSUE 8n:

Classical Academy did not deny Student a FAPE during the 2022-2023 school year by failing to implement speech and language services.

Classical Academy prevailed on Issue 8n.

ISSUE 8o:

Classical Academy did not deny Student a FAPE during the 2022-2023 school year by failing to implement occupational therapy services.

Classical Academy prevailed on Issue 8o.

ISSUE 9:

Classical Academy did not deny Student a FAPE during the 2023-2024 school year, through October 20, 2023, by failing to amend the October 18, 2022 IEP's offer of goals, services, and placement following the IEP team meetings held from February 8, 2023, through May 5, 2023.

Classical Academy prevailed on Issues 9a, 9b, and 9c.

## REMEDIES

As remedies, Student requests publicly funded independent educational evaluations in educationally related mental health services and functional behavior. Student also seeks compensatory educational services by a nonpublic agency for

- 200 hours of academic instruction,
- 200 hours of behavior intervention services,
- 80 hours of social skills services,
- 80 hours of counseling services,
- 80 hours of occupational therapy services, and
- 80 hours of speech and language services.

Student also requests Classical Academy reimburse Parent for mileage in the amount of \$1,823.52, for transporting Student to and from Learning for All. Student also seeks reimbursement for the cost of Student's attendance at Fusion Academy in the amount of \$76,243.00.

Classical Academy contends Student is not entitled to any remedies. Classical Academy also claims Fusion Academy is not an appropriate placement for Student.

Under federal and state law, courts have broad equitable powers to remedy the failure of a local educational agency to provide FAPE to a disabled child. (20 U.S.C. § 1415(i); see *Burlington, supra*, 471 U.S. 359, 369.) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) When a local educational agency fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief that is appropriate in light

of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. 359, 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at the hearing. (*Id.* at p. 374.)

Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the local educational agency has failed to provide a FAPE. (*Burlington, supra*, 471 U.S. at p. 374; *Parents of Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local educational agency if the parents prove at a due process hearing that the local educational agency had not made a FAPE available to the student in a timely manner prior to the placement, and that the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra*, 471 U.S. at pp. 369-370 [reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE].) The private school placement need not meet the state standards that apply to public agencies to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 11, 14 [114 S.Ct. 361, 126 L.Ed.2d 284] [despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement found to be reimbursable where it had substantially complied with the IDEA by conducting quarterly evaluations of the student, had a plan that permitted the student to progress from grade to grade, and where expert testimony showed that the student made substantial progress].)

The IDEA does not require that a private school placement provide all services that a disabled student needs as a condition to full reimbursement. To qualify for reimbursement under the IDEA, parents need not show that a private placement



furnishes every special service necessary to maximize their child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction. (*C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155, 1158-1159; see also, *S.L. v. Upland Unified Sch. Dist.* (9th Cir. 2014) 747 F.3d 1155, 1159; *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1048.)

An ALJ can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. Bd. of Educ.* (D.Conn. 2008) 531 F.Supp.2d 245, 265.) The award must be fact-specific and reasonably calculated to provide the educational benefits that likely would have accrued from special education services the local educational agency should have supplied in the first place. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) Compensatory education awards depend upon the needs of the disabled child, and can take different forms. (*R.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1126.) Typically, an award of compensatory education involves extra schooling, in which case generalized awards are not appropriate. (*Puyallup, supra*, 31 F.3d at p. 1497.) There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Ibid.*)

## INDEPENDENT EDUCATIONAL EVALUATIONS

Student did not prove Classical Academy failed to address his mental health needs to justify a publicly funded educationally related mental health services evaluation. Student's IEPs offered appropriate goals to help him with anxiety and insecurity, and Classical Academy implemented social work services in accordance with his IEPs. In addition, Student did not contend and establish Classical Academy failed to assess his need for educationally related mental health services. Accordingly, an award for a publicly funded independent educationally related mental health services evaluation is not equitable, and is therefore denied.

Student proved by a preponderance of the evidence Classical Academy denied him a FAPE by failing to timely and appropriately assess the functions of his problem behaviors at school from October 20, 2021, through the 2022-2023 school year. Accordingly, an award for a publicly funded independent functional behavior assessment is an equitable remedy, and is granted.

## COMPENSATORY EDUCATIONAL SERVICES

### COUNSELING SERVICES

An award for compensatory counseling services is not equitable. Student's IEPs offered appropriate goals to help him with anxiety and insecurity, and Classical Academy implemented social work services in accordance with his IEPs. In addition, Student failed to offer any evidence that Classical Academy failed to assess his need for educationally related mental health services. Student failed to prove Classical Academy owed him compensatory counseling services. Therefore, the request for compensatory counseling services is denied.

## SPEECH AND LANGUAGE SERVICES

The March 20, 2023 IEP team determined Student's expressive and receptive language needs required 30 minutes a week of individual speech and language services. Classical Academy denied Student a FAPE by failing to offer an IEP reasonably calculated to support Student's expressive and receptive language needs from October 22, 2021, through March 20, 2023, for a total of 53 school weeks. The 53 weeks considers the weeks Student was unavailable to receive related services due to illness or other reasons. A reasonable estimation finds Classical Academy deprived Student of 26.5 hours of individual speech and language services over the span of 53 weeks. Accordingly, 26.5 hours of compensatory speech and language services is an equitable award to remedy Classical Academy's violation.

Student did not establish that an award for compensatory social skills services is warranted. Classical Academy offered appropriate goals and services to help Student's social and pragmatic communication skills. Student also had opportunities to develop peer relations at Classical Academy. Classical Academy did not deny Student a FAPE by failing to offer social skills services. Therefore, an award for compensatory social skills services is not justified and is denied.

## OCCUPATIONAL THERAPY SERVICES

The February 8, 2023 IEP team determined Student required 30 minutes a week of individual occupational therapy services to receive a FAPE. Classical Academy denied Student a FAPE by failing to offer an IEP reasonably calculated to support Student's occupational therapy needs from October 22, 2021, to February 8, 2023, for a total of 47 school weeks. The 47 weeks accounts for the weeks Student was unavailable to

receive related services due to illness or other absences. A fair estimation finds Classical Academy deprived Student 23.5 hours of individual occupational therapy services. Accordingly, an award of 23.5 hours of compensatory occupational therapy services is equitable to remedy Classical Academy's violation.

## SPECIALIZED ACADEMIC INSTRUCTION

Classical Academy denied Student a FAPE by failing to provide 135 minutes of specialized academic instruction from October 20, 2021, to November 15, 2021. Classical Academy also failed to implement specialized academic instruction from September 28, 2022, through the 2022-2023 school year, for a total of 32 weeks. The 32 weeks accounts for weeks Student was unavailable to receive instruction due to illness or other absences.

Classical Academy also denied Student a FAPE by failing to offer specialized academic instruction that was explicit and multi-sensory from May 20, 2022, through the 2022-2023 school year, for a total of 40 weeks in the regular school years. The 40 weeks accounts for the weeks Student was unavailable to receive related services due to illness or other absences.

Student's IEPs also offered 120 minutes a week of specialized academic instruction during each of the 2022 and 2023 extended school years. Each extended school year was five weeks, for a total of 10 weeks of extended school year services. In sum, Student's IEPs denied Student appropriate specialized academic instruction over the span of 50 weeks, from May 20, 2022, through the 2023 extended school year, for a total of 100 hours, in addition to the 135 minutes of lost specialized academic instruction from October 20, 2021, to November 15, 2021.

At the request of Parent, Classical Academy funded 107 hours of individual educational therapy from Learning for All, from May 13, 2023, through August 19, 2023. Learning for All delivered to Student individual educational therapy services using explicit, multi-sensory, systematic, fully integrated, and intensive interventions consistent with the recommendations from the April 4, 2023 functional screening observations report. The 107 hours of educational therapy from Learning for All was fair and adequate to remedy Classical Academy's failure to implement and offer Student appropriate specialized academic instruction from May 20, 2022, through the 2022-2023 school year and 2023 extended school year. Accordingly, an award for any additional hours of compensatory specialized academic instruction is not equitable, and is denied.

## BEHAVIOR INTERVENTION SERVICES

The evidence established Classical Academy failed to offer positive behavioral interventions and supports, including an appropriate behavior intervention plan, to address Student's problem behaviors at school from October 22, 2021, through the 2022-2023 school year, for a total of 18 months. Specifically, Classical Academy failed to offer behavior intervention services from a qualified behavior analyst to develop, review, and supervise Student's behavior intervention plan to ensure its proper implementation and effectiveness.

One hour a month for a board certified behavior analyst to develop, review, and supervise Student's behavior intervention plan is a reasonable calculation of the behavior intervention services Classical Academy denied Student. Therefore, an award of 18 hours of compensatory services for a board certified behavior analyst to develop, review, and supervise the implementation of a behavior intervention plan is a reasonable and appropriate remedy.

## REIMBURSEMENTS

### FUSION ACADEMY

Student contends Parent should be awarded reimbursement for the costs of Student's attendance at Fusion Academy to compensate him for Classical Academy's failures. The evidence does not support an award for reimbursement for Fusion Academy.

Reimbursing Parent for the cost of Student's attendance at Fusion Academy for the 2023-2024 school year must be denied for several reasons. First, as discussed in Issues 9a, 9b, and 9c, Classical Academy did not deny Student a FAPE during the 2023-2024 school year. Therefore, denying reimbursement for the cost of Student's attendance in Fusion Academy for the 2023-2024 school year is appropriate for that reason.

Second, Classical Academy already funded 107 hours of educational therapy with Learning for All to fairly compensate Student for Classical Academy's failures to support him academically. Therefore, denying reimbursement for Fusion Academy is equitable for that reason.

Third, Student failed to prove Fusion Academy provided him educational instruction specially designed to meet his unique needs, or the necessary services to enable him to benefit from instruction. Therefore, denying reimbursement for Fusion Academy is appropriate for that reason.

Fusion Academy is a private school that delivered academic instruction through one-to-one instruction. Student called four witnesses from Fusion Academy. Their testimony established none of Student's one-to-one instructors were credentialed in special education, and many had no teaching credential. Student's instructors were not trained in delivering specialized academic instruction using explicit, multi-sensory, systematic, fully integrated, and intensive interventions. Further, Student's instructors did not work on the academic and functional deficits identified by Student's IEP teams.

Fusion Academy also did not provide Student behavior intervention services, a behavior intervention plan, any speech and language therapy, any occupational therapy, or counseling services to support Student's multitude of needs. Fusion Academy's social-emotional support staff was not licensed and credentialed to provide Student counseling services.

Though Student received passing grades from Fusion Academy, those grades alone offered little insight to the specific academic skills Student acquired through Fusion Academy's instruction. For example, Student's ability to successfully solve math word problems was an identified area of need for Student. However, Student's Fusion Academy math instructor, who had no teaching credential, testified that Student's deficit in math word problems was not a focus of her instruction with him. Yet, Student received an A grade in his Fusion Academy math courses. Accordingly, the grades Student earned at Fusion Academy were questionable, and therefore carried little weight.

Student had significant deficits in reading, writing, and math. However, Fusion Academy's witnesses offered no testimony about the academic skills Student acquired through their courses, nor did Student offer any documentary evidence of test results or

work samples that demonstrated progress in academic areas during his time at Fusion Academy. Student failed to prove Fusion Academy provided Student educational instruction specially designed to meet Student's unique needs, supported by necessary services, that enabled Student to benefit from instruction.

An award to reimburse Parent for the costs of Student's attendance at Fusion Academy would not be equitable for the reasons described. Accordingly, Student's request for reimbursement for the cost of his attendance at Fusion Academy is denied.

### MILEAGE FOR LEARNING FOR ALL SERVICES

An award for mileage reimbursement to and from Learning for All is appropriate. Parent incurred expenses transporting Student to and from educational therapy sessions with Learning for All, from May 13, through August 19, 2023. Parent transported Student 48 miles for each roundtrip, on 58 occasions for educational therapy sessions. At the Internal Revenue Service mileage rate of \$0.655 per mile in 2023, the total mileage reimbursement was \$1,823.52.

The 107 hours of educational therapy services from Learning for All was an equitable remedy for Classical Academy's failure to implement and offer appropriate specialized academic instruction. Therefore, reimbursing Parent for the expense of transporting Student to and from educational therapy sessions to receive services that Classical Academy should have provided to Student at its school site is fair. Accordingly, an award for \$1,823.52 to reimburse Parent for one roundtrip to transport Student to and from the home and Learning for All is equitable, and the request is therefore granted.



## ORDER

1. Classical Academy shall provide Student 26.5 hours of compensatory speech and language services. Student shall be allowed to access these services through July 30, 2026, or the services will be forfeited. Speech and language services shall be provided by a certified nonpublic agency of Parent's choice. Classical Academy shall provide Parent within 10 days of this Decision, a list of certified nonpublic agencies to consider.
2. Classical Academy shall provide Student 23.5 hours of compensatory occupational therapy services. Student shall be allowed to access these services through July 30, 2026, or the services will be forfeited. Occupational therapy services shall be provided by a certified nonpublic agency of Parent's choice. Classical Academy shall provide Parent within 10 days of this Decision, a list of certified nonpublic agencies to consider.
3. Classical Academy shall fund an independent educational evaluation in functional behavior by a board certified behavior analyst of Parent's choice. The cost of the independent educational evaluation shall not exceed \$3,000, or the maximum allowable charge for an independent functional behavior assessment established by El Dorado County Charter SELPA, whichever is less. Parent shall identify an assessor by July 30, 2025, or forfeit the evaluation. Within 10 days of Parent providing Classical Academy with the name and contact information of an assessor, Classical Academy shall contact the identified assessor to initiate a contract. Classical Academy shall additionally fund the attendance, by telephone, video, or in person, of the assessor to an IEP team meeting(s) convened by

the local educational agency responsible for Student at the time the IEP team meeting is held, to present the results of their independent educational evaluation, for a total of four hours, including travel.

4. Classical Academy shall provide Student 18 hours of compensatory behavior intervention design and implementation services. Student shall be allowed to access these services through July 30, 2026, or the services will be forfeited. Behavior intervention design and implementation services shall be provided by a board certified behavior analyst of Parent's choice.
5. Within 10 days of Parent providing Classical Academy with the name and contact information of a certified nonpublic agency and board certified behavior analyst, Classical Academy shall contact the identified provider to initiate a contract, at a rate not to exceed \$200 per hour for each type of service. The timing and delivery of the services shall be coordinated by Parent and the provider(s).
6. Classical Academy shall reimburse Parent for one round trip, at the Internal Revenue Service rate per mile, for transporting Student to and from these compensatory services and Student's home. Parent shall submit proof of attendance to receive mileage reimbursement for each day of Student's attendance. Classical Academy shall reimburse Parent within 60 days of receiving proof of attendance.

7. Within 14 days of this Decision, Classical Academy shall reimburse Parent mileage for transporting Student to and from Learning for All, in the amount of \$1,823.52. Student provided evidence of his attendance to the services to support the reimbursement.
8. All other relief sought by Student is 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.

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings