

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT.

CASE NO. 2024030579

DECISION

August 29, 2024

On March 18, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Huntington Beach Union High School District. OAH continued the matter for good cause on March 29, 2024. Administrative Law Judge Linda Dowd heard this matter by videoconference on July 9, 10, and 11, 2024.

Parent represented Student and was assisted by her adult daughter. Student did not attend the hearing. Attorney Melissa Hatch represented Huntington Beach Union. Douglas Siembieda, Huntington Beach Union's Special Education Executive Director, attended all hearing days on Huntington Beach Union's behalf.

At the parties' request, OAH continued the matter to July 29, 2024, for written closing arguments. The record was closed, and the matter was submitted on July 29, 2024.

ISSUES

In this Decision, a free appropriate public education is called FAPE. An individualized education program is called an IEP. At the start of the hearing, Student clarified he was not alleging a failure to assess or implement services during the 2021-2022 school year. Student also clarified he was only alleging Huntington Beach Union should have conducted speech and language, psychoeducation, and educationally related mental health services assessments during the 2022-2023 school year and 2023-2024 school year through March 18, 2024. Student further clarified his issue with the 2023 three-year review evaluation only related to psychoeducation and academics. OAH reorganized and renumbered the issues to reflect these changes.

1. Did Huntington Beach Union offer Student FAPE during extended school year 2022?
2. Did Huntington Beach Union have a duty to conduct speech and language, psychoeducation, and educationally related mental health services assessments for Student during the 2022-2023 school year?
3. Did Huntington Beach Union's 2023 three-year review evaluation in psychoeducation and academics comply with all legal requirements to appropriately assess Student?

4. Did Huntington Beach Union have a duty to conduct speech and language, psychoeducation, and educationally related mental health services assessments for Student from the beginning of the 2023-2024 school year through March 18, 2024?
5. Did Huntington Beach Union fail to offer Student FAPE through Student's relevant IEPs during the 2022-2023 school year?
6. Did Huntington Beach Union fail to offer Student FAPE through Student's relevant IEPs from the beginning of the 2023-2024 school year through March 18, 2024?

JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision

of 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 filed the complaint and has the burden of proof on 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).)

Student was 16 years old and in 10th grade at the time of hearing. Student resided within Huntington Beach Union's geographic boundaries at all relevant times.

ISSUE 1: DID HUNTINGTON BEACH UNION OFFER STUDENT FAPE DURING EXTENDED SCHOOL YEAR 2022?

Student contends Huntington Beach Union did not offer him services in the multisensory method he required for extended school year 2022. Student also alleges Huntington Beach Union should have held a follow-up IEP team meeting after the May 18, 2022 transition IEP team meeting to further discuss extended school year services for summer 2022 before Student entered high school.

Huntington Beach Union contends it offered a comprehensive extended school year program that included specialized literacy services with consultation from a literacy specialist and math services.

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

In resolving the question of whether a school district has offered FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the child's IEP, then the school district provided FAPE. (*Id.* at pp. 1313-1315.) An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 (IEP not required to provide for an "education ... designed according to the parent's desires").) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the child. (*Ibid.*)

A school district has the right to select the service provider so long as the provider can meet the student's needs. (*Slama v. Independent School Dist. No. 2580* (D.Minn. 2003) 259 F. Supp.2d 880, 885 [refusal to assign service providers of parent's choice does not result in a denial of FAPE.]; *N.R. v. San Ramon Valley Unified School Dist.* (N.D.Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323, at *7 [parents are not entitled to their preferred provider].) The IDEA does not empower parents to make unilateral decisions about programs funded by the public. (*Ibid.*) Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific

program or employ a specific methodology in providing education for a disabled child. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 208 [102 S.Ct. 3034] (*Rowley*).)

An IEP must state whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).) Extended school year services must be provided if the IEP team determines they are necessary for a student to receive FAPE. (34 C.F.R. § 300.106(a)(2).) Extended school year services are special education and related services that are provided beyond the normal school year, in accordance with the student's IEP, and at no cost to parents. (34 C.F.R. § 300.106(b).)

In California, extended school year services

"shall be provided for each student with exceptional needs who has disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the child's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely the child will attain the level of self-sufficiency and independence that otherwise would be expected in view of their disabling condition." (Cal. Code Regs., tit. 5, § 3043.)

During the 2021-2022 school year, Student attended eighth grade in the Ocean View School District. Student participated in a virtual program during middle school as well as a home hospital model where he received instruction at home from a private tutor pursuant to a settlement agreement with Ocean View.

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

Ocean View held a transition IEP team meeting for Student on May 18, 2022, to facilitate Student's transition from middle school to high school. Judy Goodhue, Jerry Simon, and Melissa Pattullo from Huntington Beach Union attended the May 18, 2022, IEP team meeting. Goodhue was a special education department chair, Simon was a special education teacher and would be Student's high school case manager, and Pattullo was a literacy specialist. The IEP team discussed Student's program modifications, services, and placement options for high school. The team also discussed extended school year. Parent shared with the team that Student was multiple grade levels behind, and Parent was concerned the high school would not be able to teach Student at his level.

The IEP team updated Student's services to reflect the transition to high school. Huntington Beach Union offered extended school year for summer 2022, which was 20 to 22 days beginning the week after the regular school year ended and continuing through mid to late July. Huntington Beach Union offered 90 minutes daily of specialized academic instruction in the literacy clinic and 90 minutes daily of specialized academic instruction in math for extended school year 2022.

Parent did not immediately consent to extended school year placement and services because she was concerned about Student being in a special education classroom. Student's previous experience in a special education classroom was not positive. Parent wanted Student to participate in a modified school day with academic instruction in English language arts and math provided in the home by Student's private tutor for one more year.

Huntington Beach Union acknowledged Parent's concerns but did not agree to offer Student extended school year services at home. Pattullo explained the literacy clinic would provide reading support in decoding and phonics. Pattullo also offered a

30-minute consultation between the literacy specialist, Student, and the IEP team for extended school year, which Huntington Beach Union added to the IEP. Both Simon and Pattullo opined that the extended school year services Huntington Beach Union offered were appropriate to meet Student's needs. Student did not introduce any evidence that contradicted Simon's and Pattullo's opinions, or that proved Huntington Beach Union did not offer Student FAPE for extended school year 2022.

At the end of the transition IEP team meeting Huntington Beach Union's next step was to finalize the IEP and send it to Parent to review. Student alleged Huntington Beach Union planned to follow up with a different program because Huntington Beach Union could not educate Student. Parent's testimony regarding Huntington Beach Union's follow-up was vague. Parent did not recall any specific details about the alleged follow-up, who was going to follow-up, or when Huntington Beach Union was going to follow-up. Both Simon and Pattullo disagreed that Huntington Beach Union was going to follow-up regarding any changes to the extended school year offer. Simon's and Pattullo's testimony that Huntington Beach Union was not going to reconvene the IEP team meeting to offer any other program was more persuasive than Parent's testimony because they were confident about their answers and remembered specific details about what they offered. Additionally, the IEP document corroborated that Huntington Beach Union planned to finalize the IEP and send it to Parent to review.

Parent did not request an additional IEP team meeting at the end of the May 18, 2022 transition IEP team meeting. Nor did Parent request an IEP team meeting at any time before the end of extended school year 2022. Student did not present any evidence that Parent contacted Huntington Beach Union for any reason until Parent requested an IEP team meeting on August 15, 2022. Parent's August 15, 2022 IEP team

meeting request was well after extended school year ended in mid to late July. Student did not prove Huntington Beach Union denied him FAPE by not scheduling a second IEP team meeting to discuss extended school year services.

Student did not prove Huntington Beach Union failed to offer him FAPE during extended school year 2022. Huntington Beach Union prevailed on Issue 1.

ISSUES 2 AND 3: DID HUNTINGTON BEACH UNION HAVE A DUTY TO CONDUCT SPEECH AND LANGUAGE, PSYCHOEDUCATION, AND EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENTS DURING THE 2022-2023 SCHOOL YEAR, AND DID HUNTINGTON BEACH UNION'S 2023 THREE-YEAR REVIEW EVALUATION IN PSYCHOEDUCATION AND ACADEMICS COMPLY WITH ALL LEGAL REQUIREMENTS TO APPROPRIATELY ASSESS STUDENT?

Student contends Huntington Beach Union should have conducted an educationally related mental health services assessment because of his anxiety. Student did not make any other arguments regarding Huntington Beach Union's duty to assess Student during the 2022-2023 school year or the appropriateness of the psychoeducational and academic portions of the three-year review reevaluation.

Huntington Beach Union contends it had a duty to conduct Student's three-year review assessment during the 2022-2023 school year, and it offered to conduct the assessment early. Huntington Beach Union contends it did not have a duty to conduct

an educationally related mental health assessment or a speech and language assessment. Huntington Beach Union contends its 2023 multidisciplinary assessment complied with all legal requirements.

HUNTINGTON BEACH UNION'S DUTY TO CONDUCT A PSYCHOEDUCATIONAL ASSESSMENT

After a child's initial assessments to establish special education eligibility, the school district has a duty to assess the student's needs, and continuing eligibility for special education every three years, unless the agency determines reevaluation is necessary prior to the next three-year review assessment, or a Parent, or teacher, requests an assessment. (20 U.S.C. § 1414(a)(2); Ed. Code, § 56381, subd. (a); see *M.S. v. Lake Elsinore Unified School Dist.*, (9th Cir. 2017) 678 Fed. Appx. 543, 544 (unpub. opn.) (*Lake Elsinore*)). The IDEA uses the term evaluation, while the California Education Code uses the term assessment. The two terms have the same meaning and are used interchangeably in this Decision. (34 C.F.R. § 300.300; Ed. Code, § 56302.5.)

Reassessments require parental consent. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(i); Ed. Code, § 56381, subd. (f)(1)). To obtain parental consent for a reassessment, the school district must provide proper notice to the parent. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); 34 C.F.R. § 300.304(a); Ed. Code, § 56321, subd. (a).) The notice consists of the proposed written assessment plan and a copy of the procedural safeguards under the IDEA and state law. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).) A school district must give the parent at least 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

Student began attending Huntington Beach Union as a ninth-grade student on August 31, 2022. Huntington Beach Union proposed to reassess Student for an early three-year review reassessment on September 13, 2022. Student was last reassessed on February 6, 2020, and his next reassessment was due February 5, 2023. Parent did not request the reassessment. Huntington Beach Union proposed to reassess Student early because he had not attended school in-person for the previous two years. Additionally, Parent disagreed with the May 18, 2022 FAPE offer. Huntington Beach Union thought an early reassessment would give the IEP team more information about Student's current needs. Thomas Mushaney, Huntington Beach Union's school psychologist reviewed Student's records before drafting an assessment plan. Huntington Beach Union's September 13, 2022 assessment plan proposed to assess Student in the areas of

- health,
- motor development,
- social emotional behavior,
- adaptive behavior,
- post-secondary transition, and
- assistive technology.

Huntington Beach Union proposed to reassess Student within two weeks of the start of the 2022-2023 school year. Parent did not sign the assessment plan until March 14, 2023. Huntington Beach Union assessed Student once Parent consented to the assessment plan and held an IEP team meeting on May 16, 2023, to review the multidisciplinary assessment report. The multidisciplinary assessment report encompassed both the psychoeducational assessment and the academic assessment. Student did not present any evidence or testimony that the delay in conducting Student's reassessment was a result of anything other than Parent's refusal to sign

the assessment plan. Huntington Beach Union had a duty to conduct Student's three-year review reassessment by February 5, 2023. Huntington Beach Union met its duty by giving Parent an assessment plan on September 13, 2022. Reassessments require parental consent and Parent did not timely consent. Under these circumstances, it would be unfair to hold Huntington Beach Union liable for a failure to assess, when Parent's actions prevented it from reassessing Student.

Accordingly, Huntington Beach Union timely conducted Student's three-year review assessment during the 2022-2023 school year.

HUNTINGTON BEACH UNION'S MAY 16, 2023 PSYCHOEDUCATIONAL AND ACADEMIC ASSESSMENTS MET ALL LEGAL REQUIREMENTS

In addition to the timing and parental consent requirements discussed, a local educational agency assessment is appropriate if it provides notice to parents, uses a variety of assessment tools and strategies, does not use any single measure or assessment as the sole criterion for determining an appropriate program for the student, and uses technically sound instruments. (20 U.S.C. § 1414(b)(2).) Additionally, the assessment must be administered by trained and knowledgeable personnel. (20 U.S.C. § 1414(b)(3)(A)(iv).)

ASSESSMENT PLAN AND PARENTAL CONSENT

The assessment plan must be written in the parent's native language and in terms easily understood by the general public. (Ed. Code, § 56321, subd. (b)(i), (ii).) The assessment plan must explain the types of assessments to be conducted. (Ed. Code, § 56321, subd. (b)(iii).) The assessment plan must also state that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 53621, subd. (b)(iv).)

The September 13, 2022 assessment plan proposed that a school psychologist would assess Student's intellectual development, social-emotional behavior functioning, and adaptive functioning. (20 U.S.C. § 1414(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).) A special education teacher would assess Student's academic achievement. A school nurse would gather Student's health information. An occupational therapist would assess Student's motor development. An assessment team including a transition specialist would gather information related to Student's post-secondary transition. An assistive technology specialist would conduct an assistive technology assessment. The assessment plan explained the assessment would include a review of school records, observations, and interviews. The assessors would also use standardized tests, interviews, record review, observations, and alternate assessments when necessary. The plan was in Parent's primary language of English, described the proposed assessments, and explained the assessments would be reviewed at an IEP team meeting before a program was proposed and, with Parent's consent, implemented. (34 C.F.R. § 300.300(a)(ii); Ed. Code, § 56321, subd. (b)(1)-(4).)

Huntington Beach Union's September 13, 2022 assessment plan met the procedural requirements under IDEA and the California Education Code.

TIMELINESS OF ASSESSMENT

School districts must complete special education assessments and hold an IEP team meeting to discuss the results of the assessment within 60 days of the date the school district receives the signed assessment plan unless the parent agrees in writing to an extension. (20 U.S.C. § 1414(a)(1)(c); 34 C.F.R. § 300.301(c)(1)(i), (ii); Ed. Code,

§§ 56043, subds. (c) & (f)(1); 56321.1, subd. (a), and 56344, subd. (a).) This timeline does not include the days between the student's regular school sessions, terms, or days of school vacation in excess of five school days. (Ed. Code, § 56043, subd. (f)(1).)

As discussed, Huntington Beach Union received the signed assessment plan from Parent on March 14, 2023. Huntington Beach Union completed the psychoeducational and academic assessments and held an IEP team meeting to discuss the assessment results on May 16, 2023. There were 64 calendar days between receipt of the signed assessment plan and the IEP team meeting. However, Huntington Beach Union's spring break was from April 8, through April 16, 2023, which totaled nine calendar days. Those days are not counted in the calculation. Therefore, Huntington Beach Union held the IEP team meeting to review the psychoeducational and academic assessments 55 days after Parent consented to the assessment plan.

Huntington Beach Union completed the psychoeducational and academic assessments and held the IEP team meeting within the statutorily required 60-day timeline.

ASSESSORS AND ASSESSMENT PROCEDURES

In conducting an assessment, a school district must follow statutory guidelines for the qualifications of the assessors and the procedures for the assessment. Individuals who are both knowledgeable of the student's disability and competent to perform the assessment, as determined by the school district, county office, or special education local plan area, must conduct assessments of students' suspected disabilities. (20 U.S.C. § 1414(b)(3)(B)(ii); Ed. Code, § 56320, subd. (g).) A psychological assessment must be

conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed. (Ed. Code, § 56324, subd. (a).)

Assessors are prohibited from relying on a single measure or assessment as the sole basis for determining whether a child is eligible for special education or the appropriate content of an eligible student's IEP. (20 U.S.C. § 1414 (b)(2)(A); Ed. Code, § 56320, subd. (e).) The evaluation must be sufficiently comprehensive to identify all the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (20 U.S.C. § 1414(b)(3); 34 C.F.R. § 300.304(c)(6); Ed. Code, § 56320, subd. (c).) The school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) The school district must select and administer assessment materials in the student's native language and that are free of racial, cultural, and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The assessment materials must be valid and reliable for the purposes for which the assessments are used. (20 U.S.C. § 1414(b)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).) They must be sufficiently comprehensive and tailored to evaluate specific areas of educational need. (20 U.S.C. § 1414(b)(3)(C); Ed. Code, § 56320, subd. (c).) Trained, knowledgeable, and competent personnel must administer the assessments in accordance with any instructions provided by the producers of such assessments. (20 U.S.C. § 1414(b)(A); 34 C.F.R. § 300.304(b)(1); Ed. Code, § 56320, subd. (b)(3).)

PSYCHOEDUCATIONAL ASSESSMENT

Mushaney conducted the intellectual development, social emotional, and adaptive behavioral portions of the assessment. Mushaney's portions of the assessment were the psychoeducational assessment. Mushaney was a licensed psychologist with a bachelor's and master's degrees in psychology. Mushaney completed all but his dissertation in a doctoral educational psychology program and held a pupil personnel services and school psychology credential. Mushaney had 30 years of experience as a school psychologist and worked for Huntington Beach Union for 13 years before retiring at the end of the 2022-2023 school year. Mushaney's education, credentials, and experience rendered him highly qualified him to conduct psychoeducational assessments, administer standardized tests, interpret the results, and prepare assessment reports.

At hearing, Mushaney answered questions candidly and was knowledgeable about assessment procedures and psychoeducational theory and practice. Mushaney's testimony regarding the assessment and his conclusions were well-reasoned and undisputed. Mushaney's testimony was credible and given significant weight.

Mushaney confirmed the assessment materials and procedures used during the psychoeducational assessment were selected not to be racially, culturally, or sexually discriminatory. The effects of environmental, cultural, or economic disadvantage were considered in the selection and administration of the instruments used. The materials and procedures were administered in Student's preferred language of English and validated for the specific purpose for which they were used. (20 U.S.C. § 1414(b)(3)(A)(i) and (iii); Ed. Code, § 56320, subds. (a) & (b).) A variety of tools and strategies, including Parent's and Student's input were used to assess Student's strengths, weaknesses, and

behavior. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) No single procedure was used as the sole criterion for determining eligibility. (20 U.S.C. § 1414 (b)(2)(A); Ed. Code, § 56320, subd. (e).)

Mushaney assessed Student in all areas of suspected disability. Mushaney considered whether Student met eligibility criteria under the special education categories specific learning disability, other health impairment, and emotional disability. The term “emotional disturbance,” as defined in section 300.8(c)(4) of title 34 of the Code of Federal Regulations, and used throughout this code and the California Code of Regulations, as that term relates to the provision of special education services, may also be known as “emotional disability” under state law. (Assem. Bill No. 2173 (2023-2024 Reg. Sess.) § 1.) There was no evidence that showed Student had any additional areas of suspected disability. Mushaney chose a variety of assessment tools to conduct Student’s psychoeducational assessment, including standardized tests, rating scales, and Student observations. Mushaney reviewed Student’s educational records, including his 2017 initial assessment and 2022 three-year review reassessment. Mushaney obtained Student’s background and health information through an educational records review and Parent’s input. Parent participated in an interview and completed assessment rating scales.

OBSERVATIONS AND INTERVIEWS

Mushaney observed Student during test sessions. Mushaney developed a good working rapport with Student and Student was compliant and cooperative. Mushaney watched for signs of anxiety, and Student did not show any serious testing anxiety. Student was engaged and deliberate, was not significantly hyperactive or impulsive, and completed all tasks.

Mushaney interviewed Student. Student was easy going, responsive, and engaged in reciprocal conversation. Student did not present with any overt anxiety or mood difficulties. Student acknowledged his attention and concentration difficulties. Student did not report anxiety or feelings of stress or panic, although he did report avoiding situations that cause him to worry.

Mushaney's intern observed Student in his math class. Student stared off or fidgeted with his pencil for most of the 20-minute observation. Student answered a question correctly when the teacher called on him and responded to individual feedback from the teacher. Overall, Student was off task unless the teacher spoke to him directly.

COGNITIVE TESTING

Mushaney selected the Differential Ability Scales, second edition, to compare Student's cognitive and learning ability with similarly aged peers. Mushaney assessed Student's cognitive and academic strengths and weaknesses to determine if Student had a specific learning disability. Student's verbal and nonverbal reasoning abilities were in the average range. Student's overall intellectual functioning was commensurate with his age expectations, but he had below average scores on numerical reasoning. Mushaney determined Student would have difficulties learning and applying mathematical strategies.

Mushaney assessed Student's visual-spatial processes to determine Student's ability to store and recall visual representations and think with visual patterns. Student's overall spatial abilities scores were in the average range for pattern construction and slightly below average for design recall. Mushaney determined Student's visual-spatial abilities should not impede his learning or academic performance.

Mushaney assessed Student's auditory processing to determine Student's ability to perceive, comprehend, analyze, synthesize, discriminate, encode, and manipulate auditory stimuli. Student scored in the 10-year-old range for phonological processing, which was lower than his chronological age of 15. As a result, Mushaney could not compute a standard score. Mushaney determined Student had average abilities on rhyming, blending, and sound deletion tasks, but struggled with phoneme segmentation which might impede his ability to decode and spell words.

Student's cognitive processing speed was average and his visual memory skills were age appropriate. However, his short-term working memory was below age expectations. Student struggled with recalling numbers in order both forwards and backwards. Mushaney determined Student's deficits in short-term working memory would negatively impact his classroom performance.

Student's long-term retrieval scores were mixed. Student's ability to immediately recall visual information was average, as was his ability to retrieve the same information a short time later. However, Student's retrieval fluency was below average. Mushaney determined Student's retrieval speed could impact his reading speed and comprehension.

Mushaney conducted a sufficiently comprehensive cognitive assessment using multiple measures to determine Student's needs and abilities. Student failed to prove the cognitive assessments were not a valid and accurate reflection of Student's abilities.

SOCIAL EMOTIONAL AND BEHAVIORAL ASSESSMENTS

Mushaney selected the Behavior Rating Scale for Children, third edition, Scales for Assessing Emotional Disturbance, third edition, and the Conners Rating Scale, third edition to assess Student's social emotional and behavioral functioning and adaptive

behaviors. Mushaney obtained ratings scales from Parent, Student, and two of Student's teachers. Student had a diagnosis of attention deficit hyperactivity disorder.

Parents reported at-risk and clinically significant ratings in

- hyperactivity,
- impulsivity,
- inattention,
- distractibility, and
- attention problems.

Student reported at-risk ratings in

- hyperactivity,
- impulsivity,
- inattention,
- distractibility, and
- attention problems.

Student's math teacher reported at-risk scores for inattention, clinically significant scores for learning problems, and average scores for hyperactivity. Student's English teacher reported clinically significant scores for inattention and learning problems and average scores for hyperactivity.

Mushaney analyzed the rating scales and determined there was a consensus that Student continued to exhibit characteristics of attention deficit hyperactivity disorder that could impede his academic functioning.

Three of Student's teachers filled out rating scales for emotional disability. One teacher indicated Student had an inability to learn, however, none of the other ratings were indicative of an emotional disability. Additionally, Student's teachers reported that he did not exhibit serious emotional difficulties.

Parent rated Student average for maladaptive behaviors such as

- aggression,
- conduct,
- anger control,
- emotional self-control,
- negative emotionality,
- bullying,
- atypicality, and
- withdrawal.

Student also rated himself average for anger control and atypicality. Both Parent and Student rated Student average for depression and somatization. Student rated himself average for self-esteem and ego strength and low average for sense of inadequacy.

Parent rated Student in the elevated range for anxiety. Student rated himself in the average range but did agree that he worried a lot and could not relax. Because of Parent's concern, Mushaney had Student complete the Diagnostic and Statistical Manual Severity Measure for Generalized Anxiety Disorder. Student rated himself in the non to mild range overall, but he occasionally avoided situations or left them early due to worries. Student also rated himself in the average range for test anxiety but did acknowledge that he hated taking tests and he could not think while taking tests.

Mushaney analyzed all the information and concluded that although Parent had concerns about Student's anxiety, Student and his teachers did not share Parent's concerns. Student did not exhibit characteristics of depression, anxiety, somatization, or social disorders.

ACADEMIC ASSESSMENT

Student did not prove Huntington Beach Union's academic assessment was inappropriate. Simon conducted the academic achievement assessment. Simon had been an educational specialist with Huntington Beach Union for 18 years. Simon held a bachelor's degree and an education specialist credential.

Simon was Student's case manager. Simon assessed Student using the Woodcock-Johnson Tests of Achievement, fourth edition. The Woodcock-Johnson is a norm-referenced standardized test of achievement used to assess basic academic skills.

Student scored in mostly the below average or well below average range on the academic composite areas, and in the underlying subtest areas. Mushaney analyzed Simon's testing results and concluded Student had a cognitive weakness and related academic weakness that were typical of a learning disability.

PSYCHOEDUCATIONAL AND ACADEMIC ASSESSMENT REPORT AND IEP TEAM MEETING

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 also

include relevant health and development, and medical findings, if any regarding the student. (Ed. Code, § 56327, subd. (e).) For a student with a learning disability, the report must explain whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services. (Ed. Code, § 56327, subd. (f).) 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).)

Mushaney produced a written psychoeducational assessment report that included Simon's academic assessment. The report detailed the basis of the assessment findings, and Mushaney's analysis of Student's suspected disabilities and areas of educational need. The assessment report included detailed information about Student's educational and health history, input from Parent, and a summary of Student's academic and social emotional needs. The report also included detailed tables, graphs, and written discussion and interpretations of the results from the various informal and standardized tests, as well as the assessors' behavioral observations during testing and the classroom observation.

The assessment report analyzed whether Student met eligibility for special education and related services under the categories specific learning disability, other health impairment, and emotional disability. (Cal. Code Regs., tit. 5, § 3030, subds. (a) & (b).) The report identified the legal eligibility criteria for each category. (*Id.*) Mushaney opined Student met eligibility for specific learning disability as a student with cognitive weaknesses in numerical reasoning, auditory processing, working memory, and rapid naming. Student had corresponding academic weaknesses in

- reading comprehension,
- oral reading,

- spelling,
- applied math word problems,
- number matrices, and
- academic fluency.

Mushaney opined these weaknesses were characteristics of a learning disability and Student continued to qualify for special education under specific learning disability.

Mushaney also found that Student's attention deficit hyperactivity disorder impacted his education. Student's inattention and concentration impeded his academic functioning. However, Mushaney did not opine that Student met the eligibility criteria for an emotional disability. Mushaney's testimony was undisputed.

On May 16, 2023, the IEP team met and discussed each component of the psychoeducational assessment report. Mushaney and Simon attended the IEP team meeting, and both presented their assessment results. (Ed. Code, § 56327, subds. (a) & (b).) Parent attended the meeting and had the opportunity to ask questions about the assessments.

Student did not prove Huntington Beach Union's psychoeducational and academic reassessment was not appropriately conducted or that the corresponding assessment report did not meet statutory legal requirements. Further, there was no evidence that contradicted Mushaney's and Simon's credible and persuasive testimony that the psychoeducational and academic assessments were valid and an accurate reflection of Student's abilities.

HUNTINGTON BEACH UNION'S DUTY TO CONDUCT A SPEECH AND LANGUAGE ASSESSMENT

Huntington Beach Union did not propose to conduct a speech and language assessment during the 2022-2023 school year because Student's 2020 reassessment exited him from speech services. Mushaney reviewed Student's records prior to drafting the assessment plan. Mushaney was knowledgeable about Student's past assessment and previous communication concerns. Student was initially evaluated for speech and language services in third grade. Student received speech and language services until sixth grade when he was reassessed and no longer qualified. There were no subsequent concerns noted in speech and language, and nothing in Student's records indicated speech and language was still a concern. Mushaney's testimony that there was no indication Student required a speech and language assessment was persuasive and uncontroverted. Student did not present any evidence or testimony to the contrary.

Student did not prove Huntington Beach Union had a duty to conduct a speech and language assessment during the 2022-2023 school year.

HUNTINGTON BEACH UNION'S DUTY TO CONDUCT AN EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT

Parent did not request an educationally related mental health services assessment during the 2022-2023 school year. An educationally related mental health services assessment is used to determine if a student requires mental health services to benefit from their education. None of Student's teachers reported concerns with Student's behavior or mental health. Additionally, Mushaney determined, based on

feedback from Student, Parent, and Student's teachers, that Student did not exhibit serious emotional or behavioral difficulties that impacted his academics or social functioning. Student did not present any evidence to the contrary. Student did not prove Huntington Beach Union had a duty to conduct an educationally related mental health services assessment during the 2022-2023 school year.

Huntington Beach Union prevailed on Issues 2 and 3.

ISSUE 4: DID HUNTINGTON BEACH UNION HAVE A DUTY TO CONDUCT SPEECH AND LANGUAGE, PSYCHOEDUCATION, AND EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENTS FROM THE BEGINNING OF THE 2023-2024 SCHOOL YEAR THROUGH MARCH 18, 2024?

Student did not make any specific allegations about Huntington Beach Union's duty to assess during the 2023-2024 school year except the general argument that Huntington Beach Union should have conducted an educationally related mental health services assessment because of Student's anxiety.

Huntington Beach Union contends it did not have a duty to conduct any additional assessments during the 2023-2024 school year.

As determined in Issues 2 and 3, Huntington Beach Union met its duty to assess Student during the 2022-2023 school year by presenting Parent with an assessment plan on September 13, 2022. Additionally, the psychoeducational and academic assessments Huntington Beach Union conducted in May 2023 met all legal requirements. Student did not present any evidence that Parent requested any additional assessments or that

any of Student's teacher determined additional assessments were necessary during the 2023-2024 school year. (*Lake Elsinore, supra*, 678 Fed.Appx. 543, 544.) Nor did Student present any evidence that his behavior or academic performance indicated he required any additional assessments. Student did not meet his burden that Huntington Beach Union had a duty to conduct speech and language, psychoeducation, or educationally related mental health services assessments during the 2023-2024 school year through March 18, 2024. Huntington Beach Union prevailed on Issue 4.

ISSUE 5: DID HUNTINGTON BEACH UNION FAIL TO OFFER STUDENT FAPE THROUGH STUDENT'S RELEVANT IEPs DURING THE 2022-2023 SCHOOL YEAR?

Student contends Huntington Beach Union denied him FAPE by failing to include a multisensory style of teaching in the IEPs during the 2022-2023 school year. Student also contends the IEP team excluded Parent from discussions and did not have appropriate administrative support. Student contends the goals developed in the January 2023 IEP were not measurable, and he did not actually meet his previous goals.

Huntington Beach Union contends it offered Student FAPE in the IEPs developed on May 18, 2022, January 25, 2023, and May 16, 2023. Huntington Beach Union further contends it did not commit any procedural or substantive violations in connection with those IEPs.

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

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

An IEP is a written statement for each child with a disability that should include:

- the child's present levels of academic achievement and functional performance,
- a statement of measurable annual goals,
- a description of how the child's progress on the annual goals will be measured,
- a statement of special education and related services,
- any program modifications or supports necessary to allow the child to make progress,
- an explanation of the extent to which the child will not be educated with nondisabled children in general education classes, and
- the frequency, location, and duration of the services. (20 U.S.C. § 1414(d)(1)(A); Ed. Code, § 56345, subd (a).)

Parents must have the opportunity to participate in IEP team meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to such child. (20 U.S.C. § 1415(b)(1).) In this regard, an educational agency must ensure that one or both of the parents of a child with a disability is present

at each IEP team meeting. (34 C.F.R. § 300.322(a); Ed. Code, §§ 56341.5, subd. (a), 56342.5.) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904]. Parental participation in the IEP process is also considered “(a)mong the most important procedural safeguards.” (*Amanda J. ex rel Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

A school district must ensure the IEP team includes all legally required participants. The IEP team must include:

- one or both of the student’s parents,
- no less than one general education teacher if the student is, or may be, participating in the regular education environment,
- no less than one special education teacher or, if appropriate, a special education provider for the student,
- a representative of the school district who is qualified to provide or supervise specially designed instruction, and is knowledgeable about the general education curriculum and the availability of district resources,
- an individual who can interpret instructional implications of assessment results,
- at the discretion of the parent or district, any other individual who has knowledge or special expertise regarding the student, including related services personnel, as appropriate, and

- whenever appropriate, the student with exceptional needs. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b).)

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).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (U.S. Dept. of Educ., Office of Special Education and Rehabilitation Services, March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges ex rel. F.B. v. Spartanburg County School Dist. Two* (D.S.C., Sept. 2, 2011, No. 7:10-CV-01873-JMC) 2011 WL 3882850 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].) "But there is no specific form of measurement required by statute or caselaw." (*Capistrano Unified School Dist. v. S.W.*, (9th Cir. 2021) 21 F.4th 1125, 1134, cert. denied, (*Capistrano*); *Cf. R.P. ex rel. C.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122 (goal measurement can be "based on teachers' subjective observations"). "Thus, goals could be measured ordinally (e.g., no improvement/some improvement/significant improvement), quantitatively, or in some other way." (*Capistrano, supra*, 21 F.4th at p. 1134.)

The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will

be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D.Cal., May 2, 2017, No. CV16-04356-BRO (MRWx)) 2017 WL 2864945; see also 20 U.S.C. § 1414(d)(1)(A)(i)(II) & (III); Ed. Code, § 56345, subd. (a)(2) & (3).) An examination of the goals in an IEP is central to the determination of whether a student received FAPE: “[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit.” (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

The IDEA requires IEP goals to target a student’s needs but does not require an IEP to contain every goal from which a student might benefit. (34 C.F.R. § 300.137; *Capistrano, supra*, 21 F.4th at p. 1133.) Moreover, a school district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (34 C.F.R. § 300, Appendix A – 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).)

An IEP must contain a statement of the related services, supplementary aides and services, program modifications, and supports that will allow the student to advance toward his goals, access and make progress in his curriculum, participate in activities, and to be educated with other disabled and nondisabled children. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.34 (2006); Ed. Code, § 56345, subd. (a)(4).)

Student’s operative IEP at the beginning of the 2022-2023 school year appeared to be the January 27, 2022 IEP developed by Ocean View, Student’s middle school district. However, neither Student nor Huntington Beach Union offered the January 27, 2022 IEP into evidence. Additionally, neither Student nor Huntington Beach Union

presented any testimony that Parent consented to the January 27, 2022 IEP. Ocean View held a transition IEP team meeting on May 18, 2022, to update Student's services for high school. Huntington Beach Union attended the May 18, 2022 IEP team meeting and made an offer of services for the 2022-2023 school year. The IEP team did not discuss or update Student's goals at the May 18, 2023 IEP team meeting. Parent did not consent to the May 18, 2022 amendment IEP.

Huntington Beach Union held Student's annual IEP team meeting on January 25, 2023. Huntington Beach Union held another IEP team meeting on May 16, 2023, to consider Student's three-year review assessment. Parent did not consent to either the January 25, or May 16, 2023 IEPs. Although Student's issue generally alleged the entire IEPs denied Student FAPE, at hearing Student only presented evidence about the goals, services, parental participation, and administrative support at the IEP team meetings. Therefore, this Decision only analyzes whether Huntington Beach Union failed to offer Student FAPE in these areas.

THE MAY 18, 2022, IEP

All required IEP team members were present at the May 18, 2022, IEP team meeting. Parent was present along with a general education teacher from the middle school and Student's home instructor. Administrators from Ocean View and Huntington Beach Union attended. Additionally, Huntington Beach Union's literacy specialist Pattullo and special education teacher and case manager Simon were present.

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

The IEP team did not discuss goals during the May 18, 2022 IEP, nor did Student present any evidence that the team should have updated Student's goals. The purpose of the May 18, 2022 IEP team meeting was to discuss Student's transition to high school.

The IEP team had an extensive discussion about placement options for Student in high school. Parent participated in the discussion and shared her concerns about Student being several grade levels behind academically and his ability to keep up with his classes. Huntington Beach Union proposed 250 minutes daily of specialized academic instruction in five special education classes for reading, English, math, science, and health, as well as general education physical education. Parent's main concern was for Student to focus on decoding and phonics. Pattullo explained Student would receive decoding and phonics support in the reading class. Additionally, Pattullo recommended 30 minutes monthly of consultation between the literacy specialist and the rest of Student's IEP team.

Parent did not consent to the May 18, 2022, IEP. Parent wanted Student to continue for one more year with a hybrid homeschool program where his home instructor taught him English and math at home instead of attending English and math at school. At hearing, Parent questioned Mushaney and Simon about Student's need for multisensory instruction that Student's home teacher provided. However, Student did not provide any evidence or testimony about how Student's home teacher implemented multisensory instruction and how it differed from the specialized academic instruction Huntington Beach Union offered. (*Rowley, supra*, 458 U.S. at p. 208.)

Both Mushaney and Simon opined that the services Huntington Beach Union offered were appropriate to meet Student's needs. Mushaney did not agree with Parent that Student was a kinesthetic learner. However, both Mushaney and Simon explained

Huntington Beach Union's proposed program used a multisensory approach, and both opined that a multisensory approach meant learning in multiple ways such as seeing, hearing, and touching. Conversely, Parent was unable to explain what she meant by Student required a multisensory approach and could not define the term. Consequently, Mushaney's and Simon's testimony was more persuasive than Parent's. Student did not prove the May 18, 2022, IEP failed to offer him FAPE related to goals, services, parental participation, and administrative support.

THE JANUARY 25, 2023, IEP

All required IEP team members were present at the January 25, 2023, IEP team meeting. Parent was present along with Student, a general education teacher, an administrator, Mushaney, and Simon. The IEP team reviewed Student's current performance, discussed class options, reviewed progress on Student's previous goals, drafted new goals, and discussed services, behavior, assistive technology, transportation, accommodations, testing, and extended school year. Parent participated in the IEP team meeting, asked questions, and expressed concerns about Student's performance. Parent however, did not consent to the January 25, 2023, IEP.

Simon discussed Student's progress with his current teachers and determined he met his previous goals. The IEP team discussed that Student met all his middle school goals and marked the goals as met on the IEP document. At hearing Parent disagreed that Student met his previous goals, but Parent did not raise that concern with the IEP team during the January 25, 2023 IEP team meeting. Additionally, Student did not present any evidence that he had not met his middle school goals.

Huntington Beach Union developed three goals for Student in reading, writing, and calculation. Although the goals were developed in areas to target Student's needs, they were not objectively measurable because the baselines lacked specific information about Student's present levels of academic achievement and functional performance.

Student's reading goal baseline stated he had a C+ to B- grade in English. The goal was when presented with appropriate materials and resources Student would demonstrate the ability to locate and report important information.

Student's writing goal baseline stated Student was enrolled in special education English class and had a B or C grade. The writing goal was following teacher led prewriting activities Student would compose multiple paragraphs including an introductory paragraph, supporting paragraphs, and a concluding paragraph with fewer than five errors in punctuation or grammar.

Student's calculation goal baseline stated he was enrolled in a special education algebra readiness class and had a B+ grade. Student's goal was when given 20 math problems involving rational numbers, fractions, positive and negative integers, and decimals, Student would solve using addition, subtraction, multiplication, and division.

None of the baselines provided any information about Student's academic achievement or functional performance. The lack of information about Student's abilities at the time made it impossible to determine if he could receive academic benefit from meeting the goals. In reading, it was unclear if Student could locate and report information, or how accurate he was at locating or reporting information. Additionally, without knowing Student's current reading level it would be impossible to determine what constituted appropriate materials and resources. As a result, a subsequent IEP team could not determine if Student made progress in reading.

The writing and calculation goals were similarly defective. It was unclear what types of compositions Student could write or math problems he could solve. As a result, the goals were immeasurable because a prospective IEP team could not determine if he made progress as there was no specific data upon which to measure progress.

Mushaney's explanation that the baselines were not specific because Parent had not yet consented to the three-year review reassessment was not persuasive. Although Parent did not consent to the reassessment, Student had been attending Huntington Beach Union since August 31, 2022. Huntington Beach Union had over four months to collect data on Student's reading, writing, and math abilities. Students' teachers could have provided more specific input regarding Student's abilities. Huntington Beach Union's failure to offer measurable goals was a procedural violation. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031.)

In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive FAPE only if the procedural violation did any of the following:

- impeded the right of the child to FAPE,
- significantly impeded the opportunity of the parents to participate in the decisionmaking process regarding the provision of FAPE to the child of the parents, or
- caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E); Ed Code, § 56505, subd. (f).)

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

Here, Huntington Beach Union's procedural violation significantly impeded Parent from making an informed decision how Student could achieve the goal within a year's time. Accordingly, Huntington Beach Union denied Student FAPE by failing to offer appropriate goals in reading, writing, and math in the January 25, 2023 IEP.

Despite the goals being unmeasurable, Huntington Beach Union offered services to support Student in English language arts, writing, and math. Huntington Beach Union proposed 150 minutes daily of specialized academic instruction in three 50-minute special education classes for English, math, and health. However, Huntington Beach Union failed to offer services to support Student's deficits in reading. Unlike the May 18, 2022 IEP team meeting, the January 25, 2023 IEP team failed to offer a reading intervention class. Mushaney opined this was an oversight, but nonetheless, the reading intervention class was not listed in the January 25, 2023 IEP services or notes.

Parent's main concern was Student's ability to read. While Parent does not have a right to compel Huntington Beach Union to provide a specific program or employ a specific methodology in providing services to Student, at the January 25, 2023 IEP team meeting, Huntington Beach Union failed to offer any reading services. (*Rowley, supra*, 458 U.S. at p. 208.) However, Student did not prove Huntington Beach Union denied him FAPE by failing to offer reading intervention services. Huntington Beach Union first offered Student reading intervention services in the May 18, 2022 transition IEP. Parent did not consent to that IEP, so Huntington Beach Union was not able to implement the reading intervention service. Furthermore, Parent only enrolled Student in five classes instead of the full six classes per day because Parent wanted Student to leave school early each day to receive tutoring at home. Because Student left early each day, he was not able to participate in the reading intervention program even if Parent had

consented to it. Huntington Beach Union's oversight in not offering a reading intervention class in the January 25, 2023 IEP was harmless because Parent prevented Student from receiving the service.

Additionally, Student did not prove any of the other services Huntington Beach Union offered were inappropriate, or that Student required additional services. Student did not present any evidence or testimony from anyone who worked with him that he required different services or what Huntington Beach Union offered would not have provided him educational benefit.

Student proved the January 25, 2023 IEP failed to offer him FAPE because the goals were immeasurable and significantly impeded Parent's ability to participate in the decisionmaking process. Student did not prove the January 25, 2023 IEP failed to offer him FAPE related to the services Huntington Beach Union offered or the administrative support present at the IEP team meeting.

THE MAY 16, 2023 IEP

All required IEP team members were present at the May 16, 2023 IEP team meeting. Parent was present with Student, a general education teacher, an administrator, and Simon. Additionally, Mushaney, attended to review the three-year review reassessment along with the transition specialist, occupational therapist, and the assistive technology specialist. The IEP team reviewed Student's current performance and the reassessment data as well as discussed class options, updated goal baselines, and added one new goal. Parent participated in the IEP team meeting, asked questions, and expressed concerns about Student's performance.

The team updated Student's reading goal baseline to reflect Student had a D grade in English and tested below grade level in reading comprehension and reading fluency. The team did not make any changes to the reading goal.

Student's writing goal baseline was updated to change that he now had a D grade in English and tested below grade level in written language, written expression, and spelling. The writing goal was updated to allow fewer than 10 errors in punctuation or grammar.

Student's calculation goal baseline was updated to reflect he had a B grade in algebra readiness and tested below grade level in math calculation and math fluency facts. Student's calculation goal was not changed.

Huntington Beach Union added a reading comprehension goal. The baseline reflected that Student had a D grade in English and tested below grade level in reading comprehension. The reading comprehension goal was when given a text at his current reading level Student would demonstrate comprehension skills by making predictions, comparing and contrasting, and distinguishing between cause and effect and fact and opinion.

Although Huntington Beach Union updated the goal baselines, it did not correct the deficiencies from the January 25, 2023, IEP. The goals were still not measurable because the baselines failed to specify what Student could do. The new reading comprehension goal simply stated Student was reading below grade level but did not specify at what grade level he was reading. The goal stated when given a text at his current reading level, but the neither the baseline nor goal specified what that grade level was. Because the goals were still immeasurable, this continued to significantly

impeded Parent from making an informed decision how Student could achieve the goal within a year's time. Accordingly, Huntington Beach Union denied Student FAPE by failing to offer appropriate goals in reading, writing, and math in the May 16, 2023 IEP.

Huntington Beach Union corrected its error in services by offering an additional special education reading class. The IEP team discussed that Huntington Beach Union continued to recommend a reading intervention class. Student had not yet had the opportunity to benefit from the reading intervention class because Parent did not consent to the May 18, 2022 IEP that offered reading intervention services.

Parent testified regarding her desire for Student to have a multisensory approach to learning but did not have anyone testify to explain why Student required a specific methodology. Nor did Student present any evidence that what Huntington Beach Union offered was not appropriate.

Student proved Huntington Beach Union failed to offer him FAPE in the May 16, 2023 IEP by including goals that were not measurable and impeding parental participation. Student did not prove any of the services Huntington Beach Union offered in the May 16, 2023 IEP were deficient, or that Student required additional services. Additionally, Student did not prove Huntington Beach Union failed to offer him FAPE in the May 16, 2023 IEP related to administrative support.

Student prevailed on Issue 5.

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

ISSUE 6: DID HUNTINGTON BEACH UNION FAIL TO OFFER STUDENT FAPE THROUGH STUDENT'S RELEVANT IEPs FROM THE BEGINNING OF THE 2023-2024 SCHOOL YEAR THROUGH MARCH 18, 2024?

Student did not make any specific contentions regarding the 2023-2024 school year. Huntington Beach Union contends the May 16, 2023 IEP offered Student FAPE and that was the operative IEP for the 2023-2024 school year through March 18, 2024.

Huntington Beach Union did not hold an IEP team meeting or update Student's IEP during the 2023-2024 school year prior to March 18, 2024. Although Huntington Beach Union denied Student FAPE in the January 25, 2023 and May 16, 2023 IEPs by not offering measurable goals, Parent did not consent to either of those IEPs. Because Parent did not consent to either IEP with deficient goals, Huntington Beach Union should not have been implementing the deficient goals. Neither Student nor Huntington Beach Union introduced any evidence establishing what Student's operative IEP was for the 2023-2024 school year. Therefore, Student failed to prove Huntington Beach Union denied Student FAPE through Student's relevant IEPs from the beginning of the 2023-2024 school year through March 18, 2024.

Huntington Beach Union prevailed on Issue 6.

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:

Huntington Beach Union offered Student FAPE during extended school year 2022.

Huntington Beach Union prevailed on Issue 1.

ISSUE 2:

Huntington Beach Union did not have a duty to conduct speech and language, or educationally related mental health services assessments during the 2022-2023 school year. Huntington Beach Union met its duty to conduct a psychoeducation assessment during the 2022-2023 school year.

Huntington Beach Union prevailed on Issue 2.

ISSUE 3:

Huntington Beach Union's 2023 three-year review evaluation in psychoeducation and academics complied with all legal requirements to appropriately assess Student.

Huntington Beach Union prevailed on Issue 3.

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

ISSUE 4:

Huntington Beach Union did not have a duty to conduct speech and language, psychoeducation, or educationally related mental health services assessments from the beginning of the 2023-2024 school year through March 18, 2024.

Huntington Beach Union prevailed on Issue 4.

ISSUE 5:

Huntington Beach Union failed to offer Student FAPE through Student's relevant IEPs during the 2022-2023 school year.

Student prevailed on Issue 5.

ISSUE 6:

Huntington Beach Union offered Student FAPE through Student's relevant IEPs from the beginning of the 2023-2024 school year through March 18, 2024.

Huntington Beach Union prevailed on Issue 6.

REMEDIES

Student proved Huntington Beach Union denied him FAPE by failing to offer him measurable goals in the January 25, 2023, and May 16, 2023, IEPs.

Administrative Law Judges have broad latitude to fashion appropriate equitable remedies for the denial of FAPE. (*School Comm. of Burlington v. Dept. of Educ.* (1985) 471 U.S. 359, 370 (*Burlington*); *Parents of Student W. v. Puyallup School Dist., No. 3*

(9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*.) In remedying a FAPE denial, the student is entitled to relief that is “appropriate” in light of the purposes of the IDEA, specifically providing Student with FAPE which emphasizes special education and related services to meet Student’s unique needs. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Burlington, supra*, 471 U.S. at p. 374.)

School districts may be ordered to provide compensatory education or additional services to a student who has been denied FAPE. (*Puyallup, supra*, 31 F.3d at p. 1496.) The authority to order such relief extends to hearing officers. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484].) These are equitable remedies that courts and hearing officers may employ to craft “appropriate relief” for a party. (*Puyallup, supra*, 31 F.3d at p. 1496.) An award of compensatory education need not provide “day-for-day compensation.” (*Id.* at p.1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid v. Dist. of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 524.) The award must be fact specific. (*Ibid.*)

Student prevailed on Issue 5. Student is entitled to a remedy for Huntington Beach Union’s failure to offer measurable goals in the January 25, 2023 and May 16, 2023 IEPs. To remedy its failure to offer measurable goals, Huntington Beach Union shall hold an IEP team meeting within 30 days of the date of this Decision to update the baselines for Student’s goals to include specific information about Student’s present levels of academic achievement and functional performance for each goal.

ORDER

1. Huntington Beach Union shall hold an IEP team meeting within 30 days of the date of this Decision to update the baselines for Student's present levels of academic achievement and functional performance for each goal and review Student's goals to ensure they are objectively measurable.
2. All other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings