

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL DISTRICT.

CASE NO. 2024050098

DECISION

AUGUST 16, 2024

On May 2, 2024, Parents on behalf of Student filed a due process hearing request, called complaint, with the Office of Administrative Hearings, called OAH, naming Stockton Unified School District, called Stockton.

Administrative Law Judge Paul H. Kamoroff heard this matter by videoconference in California on June 11, 12, 13, 18, 19, 20, and 25, 2024.

Attorney Ryan Song represented Student. Parent attended the hearing on behalf of Student. Attorneys Rebecca A. Diddams and Dee Anna Hassanpour represented Stockton. Angela Dunne, Stockton's special education administrator, attended the hearing on behalf of Stockton.

At the parties' request, OAH continued the matter to July 22, 2024, for written closing briefs. The record was closed, and the matter was submitted on July 22, 2024.

## ISSUES

1. Did Stockton deny Student a free appropriate public education, called FAPE, in the October 12, 2022 individualized education program, called IEP, by failing to develop an IEP that was reasonably calculated to enable Student to receive an educational benefit by failing to:
  - a. develop adequate goals in each of the goals offered;
  - b. offer home applied behavior analysis therapy and clinic meetings;
  - c. offer parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior;
  - d. offer an educationally related mental health services assessment; and
  - e. offer occupational therapy goals and services?
  
2. Did Stockton deny Student a FAPE in the April 21, 2023 IEP by failing to develop an IEP that was reasonably calculated to enable Student to receive an educational benefit by failing to:
  - a. develop adequate goals in each of the goals offered;
  - b. offer parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior; and
  - c. offer occupational therapy goals and services?

3. Did Stockton deny Student a FAPE in the November 27, 2023 IEP by failing to develop an IEP that was reasonably calculated to enable Student to receive educational benefit by failing to:
  - a. develop adequate goals in each of the goals offered;
  - b. offer home applied behavior analysis therapy and clinic meetings;
  - c. offer parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior;
  - d. offer an educationally related mental health services assessment; and
  - e. offer occupational therapy goals and services?
4. Did Stockton deny Student a FAPE by failing to allow Parents to meaningfully participate in the IEP process and educational decision-making at the September 27, 2022, October 22, 2022, and January 25, 2023 IEP team meetings?
5. Did Stockton deny Student a FAPE by failing to ensure that all necessary IEP team members attended the September 27, 2022 IEP team meeting?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All

citations to the Code of Federal Regulations are to the 2006 version, unless otherwise noted. The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) As the petitioning party, Student had the burden of proof for each issue. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

## THE STUDENT

Student was six years old and had just completed kindergarten at the time of hearing. Student resided with Parents within Stockton's geographic boundaries at all relevant times. Student was eligible for special education under autism. Autism is a neurological and developmental disorder that resulted in developmental delays for Student.

During the 2021-2022 school year, Student attended a special day class at the Preschool Autism Assessment Center, a school operated by Stockton. Student did well in this placement, and, in February 2022, Parents agreed to place Student in a less restrictive placement, a full-inclusion, collaborative preschool at Madison Elementary School, called Madison, a Stockton school.

On August 1, 2022, Student began the 2022-2023 school year at the same placement. Student did well at Madison and, pursuant to an August 26, 2022 IEP, Parents agreed to place Student in a regular education, transition-kindergarten classroom at George W. Bush Elementary School, called Bush, a Stockton school.

On August 30, 2022, Student began attending Bush. On September 21, 2022, Student accidentally cut another student with scissors. On September 29, 2022, Student eloped from the school campus. Following these incidents, Parents refused to return Student to Bush and Student did not attend school for several weeks.

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Pursuant to a November 9, 2022 IEP, Parents agreed to place Student in a full-inclusion, collaborative preschool class at August Elementary School, called August, a Stockton School. Student attended August through the remainder of the 2022-2023 school year.

For the 2023-2024 school year, Parents agreed to place Student in a special day class entitled generalized autism kindergarten classroom, at Pulliam Elementary School, called Pulliam, a Stockton school. Student was attending this placement at the time of the hearing.

## ISSUE 1: THE OCTOBER 12, 2022 IEP

Student complains that Stockton denied Student a FAPE, pursuant to the October 12, 2022 IEP, by failing to:

- a. develop adequate goals;
- b. offer home applied behavior analysis therapy and clinic meetings;
- c. offer parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior;
- d. offer an educationally related mental health services assessment;  
and
- e. offer occupational therapy goals and services.

Stockton responds that the October 12, 2022 IEP offered adequate goals and Student did not require home applied behavior analysis therapy with clinic meetings, parent training, a mental health assessment, or occupational therapy 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.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services 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]; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

## EVENTS LEADING UP TO THE OCTOBER 12, 2022 IEP

Student began the 2022-2023 school year in a full-inclusion, collaborative preschool at Madison. In late August 2022, Parents and Stockton believed Student met academic and behavioral criteria to advance to a general education, transition-kindergarten class at Bush.

On August 30, 2022, Student began attending the general education placement at Bush. Initially, Student sometimes experienced separation anxiety when Parents dropped him off at school in the morning. However, once in class, Student followed teacher instructions, participated well with classmates, and could be redirected by the teacher when needed.

On September 21, 2022, Student accidentally cut a classmate with scissors. In response, Parents requested an emergency IEP team meeting to discuss this incident. Stockton agreed and convened an addendum IEP team meeting on September 28, 2022. During this meeting, the IEP team determined that the incident was unintentional and not a result of maladaptive behavior. Following this meeting, Stockton provided Student with scissors equipped with a plastic guard as a precaution and there were no further incidents of Student cutting himself or others.

On September 29, 2022, Student eloped from the school campus. The Bush campus was gated, but Student followed another family who was exiting the gate. After this incident, Bush assigned an adult staff member to monitor the gate. There were no previous or subsequent attempts by Student to elope from a school campus. Nonetheless, Parents were upset by the incident and immediately withdrew Student from Bush. As a result, Student did not attend school for several weeks after the incident.

On November 9, 2022, Stockton proposed placing Student in a more structured classroom environment, a full-inclusion, collaborative preschool class at August. Parents agreed, and Student started this new placement on November 28, 2022. After transitioning to the new setting at August, Student did not exhibit elopement tendencies, separation anxiety, or any other behavioral issues.

## THE OCTOBER 12, 2022 IEP

Stockton began Student's annual IEP team meeting on October 12, 2022. To permit more time to complete assessments and consider placements, the IEP team agreed to reconvene the meeting, and the annual IEP team meeting was held on



November 9, 2022, December 14, 2022, and January 25, 2023. Collectively, these meetings are referred to as the October 12, 2022 IEP. Student turned five years old in late October 2022, and was eligible for special education under the autism category. At each meeting, a parent was present with an educational advocate.

The Stockton IEP team consisted of

- autism specialist Jessica Baldwin,
- school psychologist Scott Fry,
- occupational therapist Sophia Comparan-Del Real,
- general education teacher Victoria Gonzales,
- special education teacher Joanna Gama,
- board certified behavior analysts Jessica Baldwin and Nick Rammer,
- speech-language pathologists Natalie Mangrum and Stephanie Herold, and
- inclusion specialist Samantha Ancrile.

Additionally, a coordinator from the Valley Mountain Regional Center participated in the IEP team meetings.

The IEP team reviewed recent assessments including psychoeducational, academics, speech and language, occupational therapy, and behavior. Qualified therapists and educators from Stockton evaluated Student in each area and presented their findings to the IEP team. Both Parent and Student's educational advocate actively participated in the IEP team discussions and in formulating the IEP offer.

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During the discussions, which included Parent and Student's advocate, the IEP team extensively covered

- Student's strengths,
- weaknesses,
- current performance levels,
- recent observations, and
- test results.

Student was kind and affectionate, able to communicate and interact well with peers and teachers and exhibited positive behavior in the classroom.

#### ISSUE 1(a): THE IEP GOALS

Student complains Stockton denied him a FAPE by failing to develop adequate goals in each of the goals offered. Stockton responds the goals were appropriate, the result of collaboration between Stockton, Parents, and Student's advocate, and agreed upon by Parents.

For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345.) The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable.

In *Capistrano Unified School Dist. v. S.W., et al.* (9th Cir. 2021) 21 F.4th 1125, 1133 (*Capistrano*), the court stated that 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 school district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (Fed. Regs., Appendix A, Part 300 - Assistance to States for the Education of Children with Disabilities (1999), discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C. § 1414(d)(1)(A)(i)(II).)

The IEP team thoroughly considered Student's

- progress toward previous annual goals,
- present levels of performance,
- recent evaluations in various areas,
- teacher and staff observations, as well as
- input from Parent and Student's advocate.

Student had made academic and communication advancements since the last annual IEP review. Although Student had eloped from school once, a recent behavior assessment and teacher reports indicated this was an isolated incident and did not necessitate targeted intervention.

Based on their review, the IEP team determined Student would benefit from special education interventions focused on academics and communication. To address these needs, Stockton proposed 13 annual goals. Four goals were designated for

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speech and language, encompassing objectives related to intelligibility, expressive language, and receptive language. The remaining nine goals related to specialized academic instruction, targeting

- vocational skills,
- social skills,
- reading decoding,
- reading literacy,
- cognitive skills, and
- classroom attention.

Each goal included a baseline that identified Student's present level of performance in an area of weakness, a clear and ambitious target to address that area of need, measurable short-term benchmarks, and specified special education staff responsible for supporting Student in achieving the goal. The goals were developed by qualified IEP team members who possessed direct familiarity with Student's specific needs.

The goal formulation process involved creating an initial draft goal, which was then reviewed by the entire IEP team. Input from Parents and their educational advocate was actively solicited, leading to modifications until all IEP team members were satisfied with the final goal. This collaborative approach ensured that each goal was carefully crafted, accurately reflected Student's abilities, and targeted areas of need in an ambitious manner with progress towards the goal that could be easily measured.

Each witness who testified about the goals affirmed the appropriateness of the goals. These witnesses included

- autism and behavior specialist Baldwin,
- behavior specialist Rammer,
- school psychologist Fry,
- general education teacher Gonzales,
- special education teacher Gama, and
- speech-language pathologist Kristan Moradian.

Each were experienced educators or therapists who were directly familiar with Student and his unique needs.

Gama, Student's special day class teacher, testified that the goals were developed through a collaborative process involving Parent and the rest of the IEP team. She detailed each of Student's academic and classroom goals, noting the baselines were created using both formal and informal assessments. Gama persuasively testified the goals were designed to be specific, measurable, and achievable within a year.

Moradian, a speech-language pathologist with extensive experience and knowledge of IEP procedures, persuasively testified that although she did not participate in the October 12, 2022 IEP team meetings, each goal was clear and feasible to implement and measure. Moradian observed that the intelligibility goal seemed to reflect a skill nearing mastery but was included either to continue monitoring or due to a family request. She confirmed the first expressive language goal was appropriate, addressing Student's difficulties with pronouns, and was measurable and implementable.

The second expressive language goal required Student to name 30 listed adjectives. The goal accurately reflected an area of need and was easy to measure.

Lastly, the receptive language goal effectively addressed Student's difficulties with following directions and comprehension. The goal was appropriate, implementable, and measurable.

In addition, Parent provided testimony in support of the goals. Parent testified that during the December 14, 2022 IEP team meeting, she felt the goals lacked sufficient detail for tracking progress and data. Consequently, after the meeting, Parent with her advocate's assistance provided extensive written feedback on all proposed goals, including detailed revisions and additional goal suggestions.

The IEP, revised on January 25, 2023, incorporated Parent's requested changes, and Parent testified she had no further concerns once her feedback was included in the final goals offered in the IEP. Parent and her advocate actively engaged the IEP team during the IEP team meetings regarding the formulation of the goals and sent written input between the IEP team meetings. Stockton agreed to Parent's input, which resulted in goals that Parent and the rest of the IEP team agreed were comprehensive and appropriate.

Throughout the seven-day hearing, Student failed to present any evidence to demonstrate the inadequacy of any goal offered in the IEP. Student had the burden of proving this issue, and failed to present any witness testimony, data, or assessment that called into question the adequacy of the goals.

Student failed to meet his burden of proving by a preponderance of the evidence that Stockton denied Student a FAPE by failing to develop adequate goals in each of the goals offered in the October 12, 2022 IEP.

### ISSUE 1(b): AT-HOME APPLIED BEHAVIOR ANALYSIS THERAPY AND CLINIC MEETINGS

Student complains that Stockton denied him a FAPE by failing to offer at-home applied behavior analysis therapy and clinic meetings. Stockton responds that Student did not demonstrate behaviors that required at-home applied behavior analysis therapy and clinic meetings.

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

Applied behavior analysis is a specialized and intensive psychological behavior modification therapy sometimes used for children with autism who manifest significant behavioral challenges, including self-harm. In sum, applied behavior analysis therapy is a specific behavior modification therapy. Yet, Student did not present any evidence explaining the nature of applied behavior analysis therapy, its relevance to Student's unique needs, what specific behavioral issue it would address, or why applied behavior analysis therapy, in Student's home, was necessary to provide Student a FAPE.

Evidence of behavior problems was limited to the single scissor-cutting incident in September 2022, and the single elopement during the same month. Additionally, Parent testified that Student experienced separation anxiety when he briefly attended

Bush. However, Student did not present any evidence to support the necessity of applied behavior analysis therapy, in Student's home, to address these limited concerns.

On December 1, 2022, behavior specialist Baldwin completed a behavior assessment and report for Student. Baldwin was an experienced board-certified behavior analyst and autism specialist with a background in early childhood education. Baldwin reviewed Student's school records, directly assessed him, and interviewed Parent and four of Student's teachers from both Bush and Madison. She was familiar with Student's unique needs and provided credible testimony during the hearing that Student did not require behavior services, including applied behavior analysis.

As part of her assessment, Baldwin observed Student at school over three hours on November 30, 2022. Baldwin observed Student at August in both the classroom and during recess. Student independently said goodbye to his mother and transitioned to the classroom line with his peers. In the classroom, Student actively participated during circle time by raising his hand and answering questions. Student smoothly transitioned from whole-group to small-group activities without assistance, remaining engaged and participating fully. At lunch, Student washed his hands, retrieved his meal, and independently requested help when needed. Student transitioned back to class and then to recess, where he played appropriately with peers. Student lined up without prompting when the bell rang and engaged in classroom activities until pick-up, showing no concerning behaviors throughout the observation.

Teacher interviews aligned with Baldwin's direct observations of Student. Baldwin interviewed Tracy Seabron, Student's transition-kindergarten teacher at Bush, Rae Danielle Anderson, Student's preschool teacher at Madison, and Britney Hood and Kam Tankhamvang, who were both preschool, general education teachers at Madison. All



reported no behavioral issues and noted Student's independence in demonstrating age-appropriate, pre-academic and academic skills. They described Student as friendly and helpful in the classroom, consistently following instructions and routines. Anderson highlighted that Student often spent most of his time with general education peers and staff due to his independence and strong academic skills.

Baldwin provided behavior rating scales to Student's teachers and Parent, which indicated no behavioral problems. The teacher ratings consistently showed that Student maintained his independence in the educational setting and engaged in academics with minimal prompting. Through record reviews, teacher interviews, and direct observations, Student displayed minimal behavioral issues. Data Baldwin collected from teacher reports confirmed no areas of concern, and Baldwin observed no behaviors during the direct observation. On this basis, Baldwin did not recommend a behavior plan, as Student had no problem behavior that could be targeted by a behavior plan. Nor did Baldwin recommend behavior services, applied behavior analysis or otherwise, as Student did not require behavior services to access his education.

Student failed to present any evidence that impugned Baldwin's testimony or report. Student's case lacked any evidence regarding applied behavior analysis therapy or any related behavioral services. Additionally, Student presented no specifics outlining the behavioral problems necessitating intervention or how applied behavior analysis therapy would address these concerns. Furthermore, Student put forth no evidence to support the necessity of in-home services.

The only testimony during the hearing in support of applied behavior analysis therapy for Student came from Parent, who stated she was unaware of Student's entitlement to home-based applied behavior analysis therapy until she consulted with

Student's attorneys. However, she did not explain why she believed this therapy was necessary following her discussions with the attorneys. Although Parent expressed concern about the scissor-cutting incident and the single elopement at Bush, her testimony did not connect these limited incidents to a need for at-home applied behavior analysis therapy or clinic meetings.

Student failed to present any substantiating data, assessments, or witness testimony pertinent to Student's need for an applied behavior analysis therapy program. As the petitioner, Student bore the burden of proof for all matters raised but failed to present a case for this issue during the hearing.

For the foregoing reasons, Student failed to show by a preponderance of the evidence that Stockton denied Student a FAPE pursuant to the October 12, 2022 IEP, by failing to offer at-home applied behavior analysis therapy and clinic meetings.

#### ISSUE 1(c): PARENT TRAINING

Student complains Stockton denied him a FAPE in the October 12, 2022 IEP by failing to offer Parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior. Stockton responds that Student's IEP did not require Parent training as a specific service to offer a FAPE.

Related services required to assist a student with exceptional needs to benefit from special education may include parent training. (Ed. Code, § 56363, subd. (b)(11).) Parent training means assisting a parent in understanding the special needs of the student, providing the parent with information about child development, and helping the parent acquire necessary skills to facilitate the implementation of the student's IEP. (34 C.F.R. § 300.34(c)(8)(i)-(iii).)

Stockton did not deny Student a FAPE by not offering Parent training in the October 12, 2022 IEP. There was no evidence presented indicating Parents needed training for Student to access his special education. There was no evidence presented that Student was deprived an educational benefit because of an alleged failure to provide such training. Additionally, uncontested evidence established Parents never requested this kind of training. While a parent is not required to request a service to establish the service was necessary, in this case the absence of any request by Parents for training indicates it more than likely was not required.

Stockton provided Student weekly speech and language services from a qualified speech-language pathologist to address expressive and receptive communication skills, as specified in his IEP. Student consistently progressed towards his goals, and no additional speech and language services were recommended during the October 12, 2022 IEP team meetings, or during the hearing. The management of these goals remained within the responsibility of the school's speech-language pathologist, and the IEP did not designate Parents as responsible for their implementation. In sum, there was no evidence suggesting that Student needed further speech and language services, including parental training, to receive a FAPE.

There was no evidence indicating that Student exhibited behaviors that impeded his own educational access or that of others, thereby negating the necessity for autism training for parents. Similarly, there was no evidence demonstrating that Student's behaviors hindered his educational access or that of others, thus indicating that behavior support services, including Parent training for behavior, were not required for Student to receive a FAPE.

Testimony from Parent confirmed that no one, including Parents and Student's lay advocate, had suggested that Parents required training in autism, speech and language, or in behavior for Student to receive a FAPE. Parent's testimony regarding this issue was a brief statement expressing that she was unaware of Parents' entitlement to training until engaging Student's attorneys. However, Parent did not provide reasoning behind her belief that Parents required training following her interaction with the attorneys.

Moreover, testimony from Stockton's program specialist Erica Hampton and Parent elicited that Stockton provided monthly training in various areas to parents of special-needs students and Parent had availed herself of this training. Stockton offered parent training through its Preschool Autism Assessment Center program, covering topics like behavior, language, sensory processing, and other areas. Stockton also provided parent training through Community Action Committee meetings, which Parent confirmed attending. Student failed to present any evidence whatsoever to show Parent required additional training in any area for Student to receive a FAPE.

For the foregoing reasons, Student failed to prove by a preponderance of the evidence that Stockton denied Student a FAPE, pursuant to the October 12, 2022 IEP, by failing to offer Parent training regarding autism spectrum disorder, expressive and receptive communication skills, and behavior.

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## ISSUE 1(d): EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT

Student contends Stockton denied him a FAPE pursuant to the October 12, 2022 IEP, because Stockton failed to offer an educationally related mental health services assessment. Stockton responds that Student did not have mental health problems and therefore did not require an educationally related mental health services assessment to receive a FAPE.

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

An educationally related mental health services assessment is used to determine if a student qualifies for educationally related mental health services. Educationally related mental health services are provided to students receiving special education services when the student has significant social, emotional, and/or behavioral needs that impede their ability to benefit from their special education services, supports, and placement.

Student did not have a history of mental health problems. He had never taken mental health-related medication and was never hospitalized for mental health problems. Student never threatened to hurt himself or others or displayed any

emotional or behavioral problems at school. Student did not present any persuasive evidence at the hearing that Student had social, emotional, or behavioral needs that impeded his ability to benefit from special education services, supports, and placement.

Neither Parents nor Student's advocate requested an educationally related mental health services assessment at any time prior to or during the October 12, 2022 IEP team meeting. In fact, Parents failed to raise it as a desired area of assessment until Stockton received Student's complaint for this due process hearing. Student failed to submit any evidence to show that any person recommended or requested an educationally related mental health services assessment for Student at any time prior to the hearing, or that one was necessary in light of Student's circumstances.

Moreover, on December 1, 2022, experienced school psychologist Waynesha Fultcher completed a psychoeducational assessment report for Student. Fultcher's assessment consisted of a review of Student's records including past assessments, interviews with Parent and Student's teachers, observation of Student in class, and the administration of several testing instruments, including tools to measure social and emotional functioning.

While Parent's rating scale showed she believed Student had problems with anxiety, teacher rating scales along with reports by teachers and staff more persuasively showed that Student demonstrated appropriate social and emotional functioning in the classroom and during school activities. Overall, there was no indication that emotional issues interfered with Student's learning or that Student required further testing for mental health. To the contrary, evidence showed that Student was happy and easily accessed his educational program without mental health services.

Fultcher credibly testified in support of her assessment and findings that Student did not require mental health services or testing for mental health problems. Student failed to present any persuasive evidence that discredited Fultcher's testimony, assessment, or findings.

Student called 19 witnesses during the seven-day hearing. Yet, none of the witnesses testified that Student required an educationally related mental health services assessment. Student abandoned this issue during the hearing.

Given the foregoing, Student failed to show by a preponderance of the evidence that Stockton denied him a FAPE by failing to assess his mental health.

#### ISSUE 1(e): OCCUPATIONAL THERAPY GOALS AND SERVICES

Student complains Stockton denied him a FAPE in the October 12, 2022 IEP, by failing to offer occupational therapy goals and services. Stockton responds that Student did not require occupational therapy to receive a FAPE.

Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. Related services may include occupational therapy when appropriate. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a))

Occupational therapy is a related service designed to improve a student's fine motor, coordination, and sensory processing skills.

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Stockton evaluated Student in occupational therapy in fall 2022. Sophia Comparan-Del Real, an experienced occupational therapist selected by Stockton, conducted the assessment, and determined that Student did not require occupational therapy as a related service.

Comparan-Del Real presented her findings during the December 14, 2022 IEP team meeting. She described Student's strengths in fine motor skills, visual-motor skills, positive attitude towards learning, willingness to follow directions, and openness to adjustments. Comparan-Del Real also observed some sensory processing variations in Student, such as chewing on his sweater sleeves or covering his ears during fire alarms. However, these sensory issues did not significantly impact Student's educational access, leading to the recommendation against direct occupational therapy services.

At the IEP team meeting, Student's teacher Gama affirmed Comparan-Del Real's classroom observations. Although Student's advocate raised concerns about handwriting, Comparan-Del Real and Student's teachers explained that the collaborative classroom environment already integrated occupational therapy principles. This setup included monthly occupational therapy consultation sessions lasting from 30 to 90 minutes, addressing staff concerns and offering recommendations like incorporating sensory supports or fine motor activities. Student's handwriting was addressed through the curriculum, and he had shown improvement in handwriting and fine motor skills throughout each school year.

During the seven-day hearing, Student did not present any evidence supporting the need for additional occupational therapy services beyond those already embedded in Student's placement to ensure access to education or a FAPE. None of the witnesses recommended additional occupational therapy services for Student beyond what



Stockton had already provided. Student failed to present any evidence to support his claim that he required different goals or additional occupational therapy services outside of what was embedded in his placement to access his education or receive a FAPE. Student failed to submit any data, assessment, report, or testimony that supported Student's claim he needed occupational therapy as a direct related service.

Student failed to show by a preponderance of the evidence that Stockton denied him a FAPE in the October 12, 2022 IEP, by failing to offer occupational therapy goals or services.

## ISSUE 2: THE APRIL 21, 2023 IEP

Student complains Stockton denied him a FAPE in the April 21, 2023 IEP, by failing to develop an IEP that was reasonably calculated to enable Student to receive an educational benefit by failing to develop adequate IEP goals, parent training, and occupational therapy goals and services. Stockton responds that the April 21, 2023 IEP was an amendment held for the narrow purpose of assisting Student's transition to kindergarten, and it was not obligated to modify Student's annual goals at this IEP team meeting. Stockton again responds that Student did not require parent training or occupational therapy to access his education or receive a FAPE.

### ISSUE 2(a): THE IEP GOALS

Student complains Stockton denied Student a FAPE by failing to develop adequate goals as part of the April 21, 2023 IEP.

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The April 21, 2023 IEP team meeting was held to prepare for Student's transition to kindergarten. This meeting was conducted as an amendment, focusing only on specific parts of the IEP for review and updates. The IEP team considered Student's progress towards his IEP goals to determine an appropriate kindergarten placement. Stockton did not propose any new goals during the April 21, 2023 IEP amendment, and neither Parent nor Student's advocate requested additional goals.

Student's goals were developed at his annual IEP, identified as the October 12, 2022 IEP. As determined herein in Issue 1(a), those goals were adequate and did not deny Student a FAPE. The anticipated end date for these goals was October 12, 2023, and Student did not present any evidence indicating the need to develop new goals at the April 21, 2023 amendment IEP team meeting to receive a FAPE.

Based on the foregoing, Student failed to show by a preponderance of the evidence that Stockton denied him a FAPE by failing to develop adequate goals at the April 21, 2023 amendment IEP team meeting.

## ISSUE 2(b): PARENT TRAINING

Student complains that Stockton denied him a FAPE by failing to offer parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior as part of the April 21, 2023 amendment IEP.

As found in Issue 1(c), Stockton did not deny Student a FAPE by failing to offer Parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior, at the October 12, 2022, annual IEP team meeting. Student did not

provide evidence that Student's needs had changed by the April 21, 2023 amendment IEP, to require parent training for Student to access his special education or that Student was denied educational benefit because of a failure to offer such training.

Parent testified that Student has five siblings, four have IEPs, and three have autism. Parent was accompanied by an advocate during each IEP team meeting and demonstrated extensive knowledge of Student's needs, autism, and the IEP process. Significantly, none of the sections in Student's IEP required parent training for implementation at home.

Furthermore, neither Parents nor their advocate requested parent training. Parent testified she was unaware she could request parent training at any time prior to the hearing, including when the complaint was filed on her behalf, and only learned of this possibility through other witnesses' testimony. It therefore appears this issue was manufactured by Student's attorneys.

As testified by Student's teacher Gama, Student was making significant progress on his IEP goals and benefiting socially and academically from his educational program at the time of the April 21, 2023 IEP team meeting. Consequently, it was not necessary for Stockton to modify Student's IEP by offering new services such as parent training at that time.

Student failed to show by a preponderance of the evidence that Stockton denied Student a FAPE by failing to offer parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior as part of the April 21, 2023 amendment IEP.

## ISSUE 2(c): OCCUPATIONAL THERAPY GOALS AND SERVICES

Student complains Stockton denied him a FAPE at the April 21, 2023 amendment IEP team meeting by failing to offer occupational therapy goals and services.

As part of the evaluations Stockton conducted for Student's three-year-review assessment in fall 2022, Stockton assessed Student's need for occupational therapy. An experienced occupational therapist determined Student did not require direct occupational therapy services. Parent, accompanied by an advocate, agreed with this determination, and consented to the IEP. As found in Issue 1(e), Stockton did not deny Student a FAPE by failing to offer occupational therapy goals or services as part of Student's October 12, 2022 annual IEP, which was completed in January 2023.

Student did not present any evidence suggesting that Stockton was obligated to reassess Student's eligibility for occupational therapy services less than five months later, for the April 2023 IEP amendment. Student failed to present any assessment, data, or testimony to support this issue. Given the absence of a demonstrated need for occupational therapy, it was unnecessary for Stockton to include occupational therapy as a related service in Student's April 21, 2023 amendment IEP.

For the foregoing reasons, Student failed to show by a preponderance of the evidence that Stockton denied him a FAPE by failing to offer occupational therapy goals or services as part of the April 21, 2023 IEP amendment.

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### ISSUE 3: THE NOVEMBER 27, 2023 IEP

Student complains Stockton denied him a FAPE in the November 27, 2023 IEP, by failing to:

- a. develop adequate goals;
- b. offer home applied behavior analysis therapy and clinic meetings;
- c. offer parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior;
- d. offer an educationally related mental health services assessment;  
and
- e. offer occupational therapy goals and services.

Stockton responds that the November 27, 2023 IEP offered Student a FAPE.

Stockton held Student's annual IEP team meeting over two days, November 27, 2023, and January 17, 2024. Student was six years old and attending kindergarten. He remained eligible for special education and related services under the primary disability category of autism and secondary category of speech or language impairment. Stockton presented Parent a draft IEP document during the November 27, 2023 meeting, and, at Parent's request, continued the IEP team meeting to January 17, 2024, to allow Parent time to review the draft IEP and contribute her input to the IEP. The final IEP document was the January 17, 2024 version.

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Parent actively participated in both IEP team meetings, with support from her advocate. Stockton IEP team members included Student's special day class teacher Tiena Sok, speech-language pathologist Moradian, and program specialist Beatriz Perez. The IEP team reviewed Student's strengths and weaknesses, present levels of performance, and progress towards his prior annual goals.

At home, Student was friendly and loving, and always offered a helping hand. Student enjoyed being with others. He read, had strong memory skills, and enjoyed using electronic items.

At school, Student was happy and came to school daily with a smile on his face. He greeted his teachers and peers the moment he arrived at class, participated during circle time, and enjoyed singing and dancing. Student played well with others and particularly enjoyed playing tag and acting with his classmates during recess.

Student met 10 of his prior annual goals, including goals for

- speech and language,
- vocational,
- social skills,
- reading,
- cognition, and
- attention.

Student made meaningful progress towards the remaining goals, including goals for speech and language and reading. The IEP team agreed that Student was making meaningful educational progress.

The IEP team identified areas of deficit in

- receptive and expressive language,
- turn-taking,
- listening comprehension,
- reading,
- math,
- writing, and
- hand-raising.

No additional concerns were suggested by anyone during the IEP team meeting. To address the identified concerns, Stockton offered 13 goals, identified in the IEP as speech and language goals one through five, and specialized academic goals one through eight. To meet those goals, Stockton offered various accommodations and related services. Related services included group speech and language therapy, 30 minutes per session, eight times monthly, and specialized academic instruction, 360 minutes daily, five days per week. Stockton offered Student continued placement in a generalized autism kindergarten classroom at Pulliam. Parent, with the advice of her advocate, consented to the IEP offer without exceptions on January 17, 2024. Parent failed to describe any flaws with the IEP offer during her testimony.

### ISSUE 3(a): THE IEP GOALS

Student complains the goals developed in the IEP were inadequate.

Stockton presented Parent draft goals before and during the November 27, 2023 IEP team meeting. Between the November 27, 2023 IEP team meeting and the January 17, 2024 IEP team meeting, Parent provided Stockton detailed revisions for

each goal. Student's generalized autism special day class teacher Sok communicated extensively with Parent throughout this time to incorporate Parent's input before the IEP team finalized the IEP during the January 17, 2024 IEP team meeting.

Sok was an experienced special education teacher who was directly familiar with Student's unique needs, having taught him during the 2023-2024 school year. She gave persuasive and credible testimony during the hearing.

Sok drafted each classroom and academic goal and integrated Parent's suggestions into the final versions. During her testimony, Parent confirmed that she provided input for the development of each goal and was satisfied with each of the final goals included in the IEP.

Specialized academic instruction goals one through three were largely formulated due to Parent's requests. Parent specifically requested the listening comprehension goal, goal one, which the IEP team agreed to incorporate into the IEP because it was beneficial for Student to continue focusing on this skill. The IEP team developed the baseline and objectives after considering Parent's recommendations and input.

Similarly, Parent requested the first reading goal, specialized academic instruction goal two. Sok provided the baseline, noting Student's above-average performance in reading, ability to rhyme words, and use of sight words, but identified a need for improvement in blending sounds. The goal was measurable through observation and listening to Student's oral reading and appeared achievable within one year.

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Parent also requested the second reading goal, specialized academic instruction goal three, specifically focusing on rhyming grade-level words. The goal was measurable through observation and data collection and seemed suitable for achieving within a year as it targeted grade-level vocabulary.

The remaining specialized academic instruction goals were initially drafted by Sok and later revised based on detailed written input from Parent. Specialized academic instruction goal four, focusing on math skills, was developed using data on Student's current abilities in counting. The goal aimed to progress Student to the next skill level of adding and subtracting, with additional challenge. Each goal was written clearly, specific in its objectives, and measurable.

Specialized academic instruction goal five, also in math, built upon Sok's observations and data regarding Student's proficiency in counting but difficulties in writing numbers. The goal was crafted to be specific, measurable, and achievable within a year.

Specialized academic instruction goal six, focusing on writing, addressed concerns raised by Parent regarding the legibility of Student's handwriting. Sok incorporated observations, work samples, and recommendations from consultation with an occupational therapist, including sensory-motor activities before writing. The baseline indicated Student could form letters but struggled with consistent legibility.

Specialized academic instruction goal seven targeted self-awareness and sought to decrease Student's occasional behavior of blurting out an answer during class instead of raising his hand and waiting to be called on. Sok testified that while this behavior

was not uncommon in her class, the IEP team agreed the goal would help Student develop the skill of quietly raising his hand. The goal was clear and measurable.

Specialized academic instruction goal eight addressed self-management, specifically focusing on Student's on-task behavior. Despite Student's ability to work independently for 15 minutes, the IEP team agreed this goal was appropriate since most class lessons lasted 20 minutes. The goal was clear and measurable.

Sok persuasively testified that each goal was thoughtfully developed, addressed an identified area of need, was based on appropriate baselines, and was measurable, ambitious, and achievable within a year. In addition, each goal identified special education staff who were responsible for Student achieving the goal. Student failed to present any evidence to dispute Sok's testimony or call into question the adequacy of the goals.

Moradian was an experienced speech-language pathologist who provided Student direct speech and language services during the 2023-2024 school year. She gave credible and persuasive testimony during the hearing.

Moradian developed Student's speech and language goals for the November 27, 2023 annual IEP, collaborating with the IEP team and incorporating significant input from Parent for the final goals, offered on January 17, 2024. Moradian considered Student's prior baselines, goals, and progress, as well as skills observed during therapy sessions, in formulating new goals, all of which were clear and measurable.

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Speech and language goal one focused on receptive language, requiring Student to demonstrate understanding of prepositional phrases. Moradian noted this was a challenging skill for Student but believed it was achievable with consistent effort over multiple sessions.

Speech and language goal two addressed the use of present progressive verbs, aiming to bridge gaps between what Student says and what he means. Speech and language goal three focused on pronoun usage, a continued area of need from Student's previous IEPs. Moradian incorporated input from the IEP team, including Parent's feedback, in deciding to continue this goal.

Speech and language goal four targeted expressive language, specifically enhancing Student's use of adjectives. Speech and language goal five addressed turn-taking skills, considering Student's occasional difficulty in maintaining attention and staying seated. The goal aimed to extend the duration for which Student could wait during activities like turn-taking games.

Moradian persuasively testified that each goal was carefully developed, addressed an identified area of need, was based on appropriate baselines, and was measurable, ambitious, and achievable within a year. In addition, each goal identified special education staff who were responsible for helping Student achieving the goal. Student failed to present any evidence to challenge Moradian's testimony or call into question the adequacy of the goals.

The IEP team, including Parent and her advocate, agreed each final goal was appropriate when offered at the IEP team meeting.

Parent testified she initially had concerns about the draft goals provided before or at the November 27, 2023 IEP team meeting. However, after Stockton integrated her feedback into the final version of the January 17, 2024 IEP, Parent was satisfied with each goal. Parent testified she had no further concerns regarding any of the goals offered in the January 17, 2024 IEP. Parent's testimony that she was satisfied with the final goals highlighted the effectiveness of Stockton's goal formulation process, which included input from qualified staff familiar with Student's unique needs and Parent's input.

Student failed to present any evidence to address this issue. There was no data, assessment, or witness testimony suggesting that the goals were inadequate in any way. With Parent testifying to her satisfaction with the goals, and Student's lack of evidence to challenge their appropriateness, this issue was frivolous.

Student failed to prove by a preponderance of the evidence that Stockton denied Student a FAPE in the November 27, 2023 IEP by failing to develop an IEP that was reasonably calculated to enable Student to receive educational benefit by failing to develop adequate goals in each of the goals offered.

### ISSUE 3(b): AT-HOME APPLIED BEHAVIOR ANALYSIS THERAPY AND CLINIC MEETINGS

Student complains Stockton denied him a FAPE in the November 27, 2023 IEP by failing to offer home applied behavior analysis therapy and clinic meetings. Stockton responds that Student did not demonstrate behavior issues at school that called for behavior intervention services.

As determined in Issue 1(b), Student did not present any evidence during the hearing explaining the nature of applied behavior analysis therapy, its relevance to Student's unique needs, what specific behavioral issue it would address, or why applied behavior analysis therapy was necessary to provide Student a FAPE.

Stockton assessed Student's behavior in fall 2022 and found that Student did not demonstrate any problem behavior that could be targeted by a behavior plan or behavior services. As found in issue 1(b), Stockton did not deny Student a FAPE by failing to offer home applied behavior analysis therapy and clinic meetings as part of the October 12, 2022 annual IEP. There was no evidence of any behavior problems after that IEP.

Student's classroom teacher for the 2023-2024 school year, Sok, testified Student did not display any problematic behaviors in class. She mentioned that the only disruptive behavior observed was occasionally calling out "teacher," which occurred once or twice a day and decreased over time. Sok also confirmed there were no instances of tantrums or attempts to leave the classroom or school. Student failed to present any evidence that impugned Sok's testimony.

During the IEP team meetings on November 27, 2023, and January 17, 2024, Parent did not request any behavioral services, nor was there any recommendation from other IEP team members for such services. Parent consented to the IEP without exceptions on January 17, 2024. During the hearing, Student did not present any evidence explaining why applied behavior analysis, specifically, would be necessary for Student, or why Student required at-home behavior services to access his education.

Student failed to show by a preponderance of the evidence that Stockton denied him a FAPE in the November 27, 2023 IEP by failing to develop an IEP that was reasonably calculated to enable Student to receive educational benefit by failing to offer home applied behavior analysis therapy and clinic meetings.

### ISSUE 3(c): PARENT TRAINING

Student alleges Stockton denied him a FAPE in the November 27, 2023 IEP by failing to offer parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior. Stockton responds that Parents did not require training for Student to receive a FAPE.

Stockton did not deny Student a FAPE by not offering Parent training during the November 27, 2023, and January 17, 2024 annual IEP. There was no evidence indicating Parents needed training for Student to access his special education. Additionally, there was no evidence showing that Student was deprived of educational benefits due to any alleged failure to provide such training. Furthermore, it was uncontested that neither Parents nor any other IEP team member requested or recommended that parent training be included in Student's IEP.

Student received weekly speech and language services from a qualified speech-language pathologist and weekly specialized academic instruction, as specified in his IEP. He consistently made progress towards his goals, and there were no recommendations for additional services during the IEP team meetings. The responsibility for managing the speech and language goals remained with the school's

speech-language pathologist and special education teacher, and Parents were not designated as responsible for their implementation. In summary, there was no evidence suggesting Student required his parents to receive training for him to receive a FAPE.

There was also no evidence indicating Student's behaviors obstructed his own or others' educational access. This lack of evidence negated Student's assertion he needed autism training for Parents or any behavior support services, including parental training regarding behavior, for Student to receive a FAPE.

Parent testified she did not request parent training during any IEP team meeting, nor did any other IEP team member suggest that parent training was necessary for Student to receive a FAPE. This issue was raised for the first time in Student's complaint and unsubstantiated during the hearing.

Student failed to show by a preponderance of the evidence that Stockton denied him a FAPE in the November 27, 2023 IEP by failing to develop an IEP that was reasonably calculated to enable Student to receive educational benefit by failing to offer parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior.

### ISSUE 3(d): EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT

Student complains Stockton denied him a FAPE in the November 27, 2023 IEP by failing to offer an educationally related mental health services assessment. Stockton

responds that Student did not exhibit any mental health problems that would indicate an educationally related mental health services assessment was necessary for Student to receive a FAPE.

As determined in Issue 1(d), Stockton did not deny Student a FAPE by failing to offer an educationally related mental health services assessment in the October 12, 2022 IEP. After that IEP, there was no evidence Student demonstrated mental health or behavioral concerns that would warrant mental health services or an educationally related mental health services assessment.

Parent did not express any concerns about Student's mental health during the November 27, 2023, and January 17, 2024 IEP team meetings, despite providing extensive input. Furthermore, in Parent's multi-page input following the November 27, 2023 IEP team meeting and during the January 17, 2024 IEP team meeting, Parent did not raise any concerns regarding Student's mental health, nor did any other IEP team member. Student did not present any evidence indicating circumstances that would require Stockton to conduct an educationally related mental health services assessment.

Student failed to prove by a preponderance of the evidence that Stockton denied him a FAPE in the November 27, 2023 IEP by failing to develop an IEP that was reasonably calculated to enable Student to receive educational benefit by failing to offer an educationally related mental health services assessment.

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### ISSUE 3(e): OCCUPATIONAL THERAPY GOALS AND SERVICES

Student alleges Stockton denied him a FAPE in the November 27, 2023 IEP, by failing to offer occupational therapy goals and services. Stockton responds that Student did not require occupational therapy goals and direct occupational therapy services to receive FAPE.

Stockton assessed Student's need for occupational therapy in fall 2022. An experienced occupational therapist found that Student did not require direct occupational therapy services, other than what was already embedded in his special day classroom. As found in Issue 1(e), Stockton did not deny Student a FAPE by failing to offer occupational therapy goals and services. There were no additional occupational therapy assessments following the fall 2022 assessment.

During the November 27, 2023, and January 17, 2024 IEP team meetings, Student's classroom teacher Sok reported that Student demonstrated functional fine motor skills and she worked with Student daily to improve his handwriting legibility. Student's placement included consultation with an occupational therapist, who provided Sok techniques and exercises to support Student in this area. The November 27, 2023, and January 17, 2024 IEPs included accommodations for a handwriting program and additional sensory supports. Sok persuasively testified these supports and consultation were adequate to meet Student's unique needs and that Student's handwriting ability progressed since the last annual IEP.

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The IEP team included a writing goal specifically addressing handwriting legibility. Sok collaborated with the occupational therapist to develop this goal. Parent reviewed the goal and requested revisions, which were incorporated by the IEP team. Parent consented to the IEP and did not request additional services or goals until the complaint was filed.

During the hearing, Student failed to present any evidence, such as an assessment or testimony by an occupational therapist, to show that he required additional goals or direct occupational therapy services.

Consequently, Student failed to show by a preponderance of the evidence that Stockton denied him a FAPE in the November 27, 2023 IEP by failing to develop an IEP that was reasonably calculated to enable Student to receive educational benefit by failing to offer occupational therapy goals and services.

#### ISSUE 4: PARENTS' MEANINGFUL PARTICIPATION IN THE IEP PROCESS

Student complains Stockton denied him a FAPE at the September 27, 2022, October 22, 2022, and January 25, 2023 IEP team meetings by failing to allow Parents to meaningfully participate in the IEP process. Stockton responds that Parents fully participated in the development of Student's educational program.

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23 Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1485 (*Target Range*), superseded in part by statute on other grounds.) Participation must be more than mere form; it must be meaningful. (*Deal v. Hamilton County Board of Educ.* (6th Cir. 2004)

392 F.3d 840, 858 [citations omitted] (*Deal*).) A school cannot independently develop an IEP, without meaningful participation, and then present the IEP to the parent for ratification. (*Target Range, supra*, 960 F.2d at p. 1484.) A school district that predetermines the child's program and does not consider parents' requests with an open mind has denied the parents' right to participate in the IEP process. (*Deal, supra*, 392 F.3d at p. 858.)

An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA did not 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 student. (*Ibid.*) A school district has the right to select the program offered, as long as the program can meet the student's needs, and the district is ultimately responsible for ensuring a FAPE is offered. (*Letter to Richards* (U.S. Dept. of Education, Office of Special Education Programs (OSEP) January 7, 2010).) The Ninth Circuit has held that while the school district must allow for meaningful parental participation, it has no obligation to grant the parent a veto over any individual IEP provision. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.)

Student's claim that Parents were denied meaningful participation in the IEP process is baseless. Parent attended and was an active participant during each IEP team meeting reviewed during this hearing.

## THE SEPTEMBER 28, 2022 IEP TEAM MEETING

On September 21, 2022, following an incident at school where Student accidentally cut another student with scissors, Parent requested an emergency IEP team meeting. Stockton agreed and held the amendment IEP team meeting on September 28, 2022. Student incorrectly alleged the meeting occurred on September 27, 2022. Parent attended the amendment IEP team meeting, which included Stockton staff such as

- Student's speech-language pathologist Stephanie Herold,
- school principal Toni Reed,
- general education teacher Tracy Seabron,
- special education teacher Rae Danielle Anderson,
- inclusion specialist Samantha Ancrile, and
- school psychologist Colette Rau.

Seabron, who was present when the incident occurred, reported that Student generally exhibited no behavior problems, and the cutting incident was an unintentional and isolated accident. Parent actively participated in the meeting, and her concerns were documented in the meeting notes. Reed and Seabron addressed Parent's questions during the meeting. As a result, Parent's participation in the September 28, 2022 IEP team meeting was both full and meaningful.

The IEP team determined the incident did not necessitate any changes to Student's IEP, and no modifications were proposed or requested. Parent initially agreed to the IEP verbally but later withdrew consent, mistakenly believing that a program specialist was required to attend the meeting and that the meeting was therefore unlawful without one. Despite this, Parent admitted in her testimony to actively participating in the IEP team meeting and failed to describe what changes she would

have made to the IEP had this claim been substantiated. Student did not provide any evidence of Parents being denied meaningful participation during any IEP team meeting. Rather, Parent's testimony confirmed that Stockton properly addressed Parents' concerns.

## THE OCTOBER 12, 2022 AND JANUARY 25, 2023 IEPS

Student's annual IEP team meeting began on October 12, 2022, and was held on November 9, 2022, December 14, 2022, and January 25, 2023. At each meeting, Parent attended with an educational advocate.

The Stockton members of the IEP team included

- autism and behavior specialist Baldwin,
- behavior specialist Rammer,
- school psychologist Fry,
- occupational therapist Comparan-Del Real,
- general education teacher Gonzales,
- special education teacher Gama,
- speech-language pathologists Mangrum and Herold, and
- inclusion specialist Ancrile.

Additionally, a coordinator from the Valley Mountain Regional Center participated in the meetings.

The IEP team extensively covered Student's strengths, weaknesses, current performance levels, recent observations, and test results. Parent attended each meeting with advocate Cari Edwards, who significantly contributed to the discussions. The IEP team addressed and documented Parent's concerns, focusing on Parent's request for

additional supports such as allowing a tangible item in class, providing staff assistance during drop-off, and adding transportation to the IEP. Neither Parent nor the advocate raised concerns about Student exhibiting mental health concerns during these meetings. Stockton staff welcomed Parent's input and allowed the advocate to make suggestions and requests, including adding and revising goals.

Before the December 14, 2022, and January 25, 2023 IEP team meetings, Parent submitted written feedback, which Stockton reviewed and incorporated into the IEP. After the December 14, 2022 IEP team meeting, Parent provided detailed input on draft goals and other concerns. Parent demonstrated extensive knowledge of Student's needs and IEP procedures, showing a willingness to request specific services. Notably, Parent did not request services related to anxiety, school refusal, or elopement. The IEP team reconvened on January 25, 2023<sup>4</sup>, to review and integrate Parent's recommendations.

Parent was highly involved in the IEP process and had significant influence over the development of the IEP, including detailed revisions of goals and specific service requests. This input was thoroughly discussed and largely incorporated into the IEP offer. Parent testified that her concerns were addressed by the IEP team and included in the final IEP offer.

All witnesses who testified regarding this issue, such as Gama, Hampton, and Parent, affirmed that Parent was an actively engaged participant during each IEP team meeting. Parent's testimony in particular illustrated Parent had no discernable concerns regarding her opportunity and ability to participate during the IEP team meetings. Student failed to present any evidence to support this issue during the hearing.

Student failed to prove by a preponderance of the evidence that Stockton denied Student a FAPE by failing to allow Parents to meaningfully participate in the IEP process and educational decision-making at the September 27, 2022, October 22, 2022, and January 25, 2023 IEP team meetings.

#### ISSUE 5: NECESSARY IEP TEAM MEMBERS AT THE SEPTEMBER 27, 2022 IEP TEAM MEETING

Student claims Stockton denied him a FAPE by failing to ensure that all necessary IEP team members attended the September 27, 2022 IEP team meeting. Stockton responds that all necessary IEP team members participated during this IEP team meeting.

Each meeting to develop, review, or revise the IEP of an individual with exceptional needs must be conducted by an IEP team. (Ed. Code, § 56341, subd. (a).) The IEP team must include:

- one or both of the parents or a representative chosen by the parents;
- not less than one regular education teacher if the pupil is, or may be, participating in the regular education environment;
- not less than one special education teacher, or where appropriate, one special education provider to the student; a representative of the school district who is (a) qualified to provide, or supervise the provision of, specially designed instruction to meet the unique

needs of the student, (b) knowledgeable about the general education curriculum, and (c) knowledgeable about the availability of school district resources;

- an individual who can interpret the instructional implications of assessment results;
- at the discretion of the parent, guardian or school district, other individuals with knowledge or special expertise regarding the student; and
- if appropriate, the student. (20 U.S.C., § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).)

On September 28, 2022, Stockton convened an addendum IEP team meeting in response to Parent's request, seven days earlier, for an IEP team meeting. Parents requested the addendum IEP team meeting to address an incident at school where Student accidentally cut another student with scissors. Student incorrectly alleged the meeting occurred on September 27, 2022. The meeting was limited to addressing the cutting incident and no new assessments were reviewed during this meeting.

Stockton included all required IEP team members, including:

- special education teacher Rae Danielle Anderson;
- general education teacher Tracy Seabron;
- Parent; and
- Stockton administrator Toni Reed.



The IEP team also included additional participants:

- speech-language pathologist Stephanie Herold;
- inclusion specialist Samantha Ancrile; and
- school psychologist Colette Rau.

Each IEP team member was directly familiar with Student and his unique needs, and programs and services offered by Stockton.

Student's claim is limited to Stockton's failure to include a program specialist at the IEP team meeting. Student failed to present legal authority to show that a program specialist was required to attend the IEP team meeting. As persuasively testified by Hampton, Reed, and Seabron, Stockton ensured that representatives of the school district who were present were qualified to provide, or supervise the provision of, specially designed instruction to meet Student's unique needs, knowledgeable about the general education curriculum, and knowledgeable about the availability of school district resources. Notably, Reed met all legal requirements to serve as Stockton's representative and routinely attended IEP team meetings in that capacity. Seabron, who was Student's teacher and present when the incident occurred, was able to answer Parent's question regarding Student's educational program and the incident itself, which was the specific purpose for the IEP team meeting on September 28, 2022.

Stockton also had a school psychologist and inclusion specialist present to answer any additional questions Parent may have had regarding Student's conduct and school resources. Parent actively participated in the meeting, and her concerns were documented in the IEP team meeting notes. The IEP meeting team participants addressed Parent's questions during the meeting. The IEP team determined that the incident did not necessitate any changes to Student's IEP, and no modifications were

proposed or requested. Parent admitted in her testimony to actively participating in the IEP team meeting and failed to describe what changes she would have made to the IEP had a program specialist attended the meeting. Regardless, there was no evidence that an additional participant was necessary for the September 28, 2022 addendum IEP team meeting.

In his closing brief, Student stated this issue was “withdrawn.” Code of Civil Procedure section 581, et seq., addresses motions to withdraw complaints and issues. Section 581, subdivision (c), states that the filing party may dismiss his or her complaint, or any portion of it, with or without prejudice prior to the actual commencement of trial. Section 581, subdivision (e), states that after the actual commencement of a trial, a court will dismiss a complaint, or any portion of it, with prejudice upon a plaintiff’s request, unless all parties consent to dismissal without prejudice or unless the court finds good cause for a dismissal without prejudice. Here, Student failed to withdraw this issue prior to or during the hearing. Student also did not request to dismiss this issue in a motion or to have that request granted by the Administrative Law Judge. Stating “withdrawn” below an issue in Student’s closing brief is not considered a valid motion to dismiss or withdraw, especially after a seven-day hearing. Student’s Issue 5 is therefore deemed fully litigated.

Student failed to prove by a preponderance of the evidence that Stockton denied Student a FAPE by failing to ensure that all necessary IEP team members attended the September 27, 2022 IEP team meeting.

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## STUDENT'S FAILURE TO PRESENT EVIDENCE

During the seven-day hearing, Student failed to present any documentary evidence, including data, reports, or assessments of any kind, to support any issues pleaded in this matter.

Moreover, Student called 19 witnesses to testify during the hearing, none of whom supported Student's issues. 16 witnesses called by Student were school employees who testified in direct contravention to Student's claims. These witnesses included

- school psychologists Fry and Fultcher,
- special education director Dunne,
- special education teachers Gama, Sok, and Teresa Flores,
- special education program specialists Perez and Hampton,
- general education teachers Gonzales and Seabron,
- board-certified behavior analysts Rammer and Baldwin,
- speech-language pathologist Moradian,
- school administrator Reed,
- social services case manager Veronica Chavez, and
- occupational therapist Comparan-Del Real.

Yet, none of these witnesses supported any of Student's claims. To the contrary, each witness who was familiar with Student supported Stockton's programs, services, and IEPs.

Additionally, Student called Parent, Abbe Irshay, Ed.D., and Sookyung Shin, Ph.D., as witnesses. However, neither Dr. Irshay nor Dr. Shin had met, assessed, or observed Student, or interviewed Parents. Each were retained by Student's attorney after the commencement of the hearing, and just prior to their testimony. Neither were familiar with Student, his educational program, Student's unique needs, or the issues in dispute for this matter.

Dr. Irshay was a principal at elementary and middle schools in another school district for 11 years, until 2018, when she left following a dispute with that school district. She had not worked since 2018 and retired in 2023. She did not have experience or credentials that would qualify her as an expert in an area relevant for this case. Dr. Irshay did not conduct independent or school assessments. She had never assessed, taught, or provided related services to students with disabilities. She never independently developed IEP goals, nor implemented goals and services in any area of special education or related services. She was not a

- licensed or credentialed school psychologist,
- general education teacher,
- special education teacher,
- speech-language pathologist,
- physical therapist,
- behavior specialist,
- mental health specialist, or
- occupational therapist.

She was not qualified to provide an expert opinion for any issue in this matter. Additionally, as she had never met, assessed, or observed Student, she was unable to provide any percipient testimony.

Moreover, when it was discovered Dr. Irshay had not met Student or his Parents, she declined the Administrative Law Judge's offer to reschedule her testimony to give her an opportunity to do so. Dr. Irshay stated that it was not necessary for her to meet with Student or Parents to testify. Yet it was unclear what she was called to testify about. There was no weight given to her testimony.

Dr. Shin had a doctorate in special education. However, her experience was in special education policy. Dr. Shin had never conducted an independent educational evaluation, and testified she was not qualified to interpret the data and results of independent educational evaluations. She had also never conducted an assessment for a school district and testified she was not qualified to interpret the data and results of school district assessments. Dr. Shin had never assessed, taught, or provided related services to students with disabilities. She had never implemented goals and services in any area of special education or related services. She was not a

- licensed or credentialed school psychologist,
- general education teacher,
- special education teacher,
- speech-language pathologist,
- physical therapist,
- behavior specialist,
- mental health specialist, or
- occupational therapist.

Ultimately Dr. Shin did not attempt to provide an expert opinion for this matter in any area. Additionally, as she had never met, assessed, or observed Student, Dr. Shin was unable to provide any percipient testimony. Dr. Shin did not provide any relevant testimony during the hearing and no weight was given to her testimony.

Parent's testimony did not support Student's claims. For instance, Parent expressed satisfaction with the final IEP goals, which contradicted Student's issues that the goals were inadequate. Additionally, Parent did not provide evidence that Student needed additional IEP services or assessments, nor did she clarify why these issues were brought up in this hearing. Parent acknowledged that Student made academic, social, and behavioral progress during the period in question, and it was unclear what specific changes Student was requesting be made to the IEP or why those changes were necessary. Finally, neither Parent nor any witness provided testimony regarding the specific remedies Student sought or the reasons for these requests.

In summary, Student did not provide evidence to support any of the issues raised. This lack of evidence, despite having had ample opportunity to present it, highlighted the insufficiency of Student's claims.

## 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.

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ISSUE 1, SUBSECTIONS (a), (b), (c), (d), and (e):

Stockton did not deny Student a FAPE in the October 12, 2022, IEP by failing to develop an IEP that was reasonably calculated to enable Student to receive an educational benefit, by failing to

- a) develop adequate goals in each of the goals offered;
- b) offer home applied behavior analysis therapy and clinic meetings;
- c) offer parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior;
- d) offer an educationally related mental health services assessment; and
- e) offer occupational therapy goals and services.

Stockton prevailed on Issue 1, subsections (a), (b), (c), (d), and (e).

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## ISSUE 2, SUBSECTIONS (a), (b), AND (c):

Stockton did not deny Student a FAPE in the April 21, 2023 IEP by failing to develop an IEP that was reasonably calculated to enable Student to receive an educational benefit by failing to

- a) develop adequate goals in each of the goals offered;
- b) offer parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior; and
- c) offer occupational therapy goals and services.

Stockton prevailed on Issue 2, subsections (a), (b), and (c).

## ISSUE 3, SUBSECTIONS (a), (b), (c), (d), and (e):

Stockton did not deny Student a FAPE in the November 27, 2023 IEP by failing to develop an IEP that was reasonably calculated to enable Student to receive educational benefit by failing to

- a) develop adequate goals in each of the goals offered;
- b) offer home applied behavior analysis therapy and clinic meetings;
- c) offer parent training in autism spectrum disorder, expressive and receptive communication skills, and behavior;
- d) offer an educationally related mental health services assessment; and
- e) offer occupational therapy goals and services.

Stockton prevailed on Issue 3, subsections (a), (b), (c), (d), and (e).



#### ISSUE 4:

Stockton did not deny Student a FAPE by failing to allow Parents to meaningfully participate in the IEP process and educational decision-making at the September 27, 2022, October 22, 2022, and January 25, 2023 IEP team meetings.

Stockton prevailed on Issue 4.

#### ISSUE 5:

Stockton did not deny Student a FAPE by failing to ensure that all necessary IEP team members attended the September 27, 2022 IEP team meeting.

Stockton prevailed on Issue 5.

#### ORDER

All of Student's requests for relief are denied.

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## RIGHT TO APPEAL THIS DECISION

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

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearings