

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL DISTRICT.

CASE NO. 2024050109

DECISION

AUGUST 30, 2024

On May 2, 2024, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Stockton Unified School District, called Stockton. Administrative Law Judge Deborah Myers-Cregar heard this matter by videoconference on June 25, 26, 27, July 2, 3, 9, 10, and 11, 2024.

Michelle Wilkolaski, Attorney at Law, represented Student. Parent attended all hearing days on Student's behalf, except for part of June 25 and all of July 10, 2024. Dee Anna Hassanpour, Emily Goldberg, and Rebecca Diddams, Attorneys at Law, represented Stockton. Barbara Lachendro, special education administrator, attended all hearing days on Stockton's behalf.

At the parties' request, the matter was continued to August 19, 2024, for written closing briefs. The record was closed, and the matter submitted on August 19, 2024.

ISSUES

1. Did Stockton deny Student a free appropriate public education, or FAPE, for the 2022-2023 school year by failing to assess Student in the areas of behavior and vocational skills?
2. Did Stockton deny Student a FAPE by failing to offer Student a one-to-one aide at school and applied behavior analysis services at home in the September 29, 2023 individualized education program, or IEP?
3. Did Stockton deny Student a FAPE by failing to offer Student behavior, articulation, and phonology goals in the September 29, 2023 IEP?
4. Did Stockton deny Student a FAPE by failing to offer parent training in the September 29, 2023 IEP?
5. Did Stockton deny Student a FAPE by failing to agree to Parent's requested changes in Student's September 29, 2023 IEP?
6. Did Stockton deny Student a FAPE by failing to offer Student an adequate individual transition plan with post-secondary goals, independent living support, and college and career awareness services in the September 29, 2023 IEP?

JURISDICTION

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

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

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

Student was 17 years old and had completed 12th grade with a certificate of completion at the time of hearing. Student resided within Stockton's geographic boundaries at all relevant times. Student had Down syndrome and was eligible for special education under the category of intellectual disability.

ISSUE 1: DID STOCKTON DENY STUDENT A FAPE FOR THE 2022-2023 SCHOOL YEAR BY FAILING TO ASSESS STUDENT IN THE AREAS OF BEHAVIOR AND VOCATIONAL SKILLS?

Student alleges she had behavior issues and deficits in vocational skills that required an assessment, and that Stockton failed to assess her.

Stockton contends it had no obligation to assess Student at any time during the 2022-2023 school year.

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 which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the*

Hendrick Hudson Central School Dist. v. Rowley (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

A school district must reassess a student every three years unless the parent and the local education agency agree in writing, that a reassessment is unnecessary, pursuant to Education Code section 56381. (34 C.F.R. § 300.303 (b)(2); Ed. Code, § 56043, subd. (k).) A student must be reassessed if the school district determines that the educational or related service needs, including improved academic achievement and functional performance, of the student warrant assessment, or if the parents or teacher request an assessment. (Ed. Code, § 56381, subds. (a), (b).) The assessment can begin immediately after receipt of parental consent. (Ed. Code, § 56211, subds. (c)(1), (4).) Initial evaluations must be conducted within 60 days of parental consent. (34 C.F.R. § 300.301(c). (20 U.S.C. § 1414(a)(2)(A)(i) & (ii); 34 C.F.R. § 300.303(a)(1) & (2); *M.S. v. Lake Elsinore Unified School Dist.* (9th Cir. 2017) 678 Fed. Appx. 543, 544 (*Lake Elsinore*) (nonpub. opn.).)

Once a school district has notice that a student displayed symptoms of an eligible disability, it must assess the student in all areas of that disability with reliable, standardized testing instruments, utilizing procedures that meet the statutory requirements. The lack of information from such a failure to assess may deny educational opportunities and substantially hinder parents' ability to participate in the IEP process. (*Timothy O. v. Paso Robles Unified School. Dist.* (9th Cir. 2016) 822 F.3d 1105, 1120-1121 (*Timothy O.*)

The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D.Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 (*Vasheresse*).)

The IEP team shall consider all the relevant material which is available on the child. No single score or product of scores shall be used as the sole criterion for the decision of the IEP team as to the child's eligibility for special education, or developing an appropriate program. (20 U.S.C. § 1414(b)(2)(B); Ed. Code, § 56320, subd. (e); Cal. Code Regs., tit. 5, § 3030, subd. (a).)

A school district's failure to conduct appropriate assessments or reassess in all areas of suspected disability may constitute a procedural denial of FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033 (*Park*).)

A procedural violation results in liability for denial of a FAPE only if the violation impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484. (*Target Range*))

Student had a full-scale intelligence quotient, called IQ, of 44, performed in the extremely low range of intellectual abilities, and was delayed in all areas of general development. She attended the moderate-to-severe special education program. Student was friendly, well-liked, and did not demonstrate behavioral problems. Due to her disabilities, Student had limited language skills. Student communicated using at least five-to-six-word sentences appropriate to the conversation, gestures, and her cell phone. Teachers described her as a happy, and sweet girl who laughed often, and loved music, fashion, and make-up. She also liked playing games in class.

During the 2021-2022 school year, when Student was in 10th grade, Stockton held Student's three-year review IEP on December 1, 2021. Stockton determined Student's present levels of performance for the IEP based upon comprehensive assessments, which included

- academic achievement,
- health,
- language and speech,
- motor development, and
- post-secondary transition.

Stockton did not reassess for intellectual development due to Student's long history with Down syndrome. It did not assess Student for behavior because she had no behavioral concerns. It did not assess her for vocational skills because she was not yet 16 years old. Student continued to be eligible for special education under the category of intellectual disability. Student's next three-year evaluation was not due until October 13, 2024. Stockton's claim the next three-year evaluation was not due until October 13, 2025, appears to be a clerical error as it was not supported by the evidence.

During the 2022-2023 school year, when Student was in 11th grade, Stockton was not required to conduct a reevaluation of Student until October 13, 2024, unless it determined Student's educational or related services needs, including improved academic achievement and functional performance, warranted a reassessment, or if a parent or teacher requested a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i) & (ii); 34 C.F.R. § 300.303(a)(1) & (2); Ed. Code, § 56381, subd. (a)(1); *Lake Elsinore, supra*, 678 Fed. Appx. 543, 544.)

In *Lake Elsinore*, a student challenged the school district's failure to identify all the student's disabilities or suspected disabilities. That student's behaviors had become progressively more aggressive and posed a threat to her health and safety. At a 2011 IEP team meeting, the parents expressed their concern the student had become more aggressive at home and with tutors, and she sometimes attacked strangers in public. The student engaged in self-harm and harm to others. She had also

- begun ripping off her toenails and fingernails,
- had a one-inch bald spot on her scalp from pulling out her own hair,
- manipulated her fingers, and
- violently scratched, pinched, and grabbed people's necks.

She screamed and cursed at random intervals. At a May 2012 IEP team meeting, the parents further noted the student exhibited significant echolalia and perseveration and had developed other troubling behavior such as swiping objects off a table and breaking them. At a July 2012 IEP team meeting, even the school district concluded the student's behaviors had worsened and were not being addressed sufficiently by the behavior plan that had been in place up until that time. (*M.S. v. Lake Elsinore* (C.D. Cal., July 24, 2015, Case No. 13-CV-01484-CAS (SPx) 2015 WL 4511947, at *7.) The district court held that the school district denied Student a FAPE by failing to assess Student's behavior during the period at issue, because Student's functional performance warranted a reevaluation. (Id. at *8.)

The Ninth Circuit reversed. It held that the school district had no duty to conduct a reevaluation of the student because it did not determine that reevaluation was necessary, the student's parents had not requested a reevaluation, the student's teacher had not requested a reevaluation, and fewer than three years had elapsed since

the student's last evaluation. The court held the district court erred in holding that the school district had a duty to reevaluate the student under these circumstances, and the school district had not procedurally violated the IDEA by failing to do so. (*Lake Elsinore, supra*, 678 Fed. Appx. 543, 544.)

Here, the Ninth Circuit's holding in *Lake Elsinore* supports a finding that Stockton had no duty to assess Student during the 2022-2023 school year. Student did not have concerning behaviors or any academic or functional needs like the student in *Lake Elsinore*. Additionally, while Stockton did not determine Student required a reevaluation during the 2022-2023 school year, it timely responded to Parent's request for reassessment in April 2023.

JULY 29, 2022 THROUGH APRIL 20, 2023

The 2022-2023 school year began on July 29, 2022, and ended on May 26, 2023. Stockton held Student's annual IEP team meeting on October 14, 2022. The October 14, 2022 IEP team determined Student did not have needs in behavior or vocational skills. Behaviorally, Student was progressing socially and enjoyed working with others. Student loved to be with her classmates and often took on a leadership role. Student's behavior did not impede her learning or the learning of others. Parent stated at home, Student was generally independent, followed routines, and knew what step was next.

Vocationally, Student was learning some job skills for future employment in a job service class taught by educational specialist Sandra Monroe. The classroom model was called the Titan Cafe and the students prepared orders and sold snack items to teachers. Student was learning to prepare the snacks for sale by looking at the ticket order and

filling the order with the requested items. Student could identify coins and their values with 85 percent accuracy. She could follow multi-step directions but still needed some prompting and redirection. Student was friendly, attentive, and stayed on task.

After high school, Parent wanted Student to attend the Young Adult Program, a four-year post-secondary program coordinated by Stockton and the Department of Rehabilitation that trained students for assisted employment. The Department of Rehabilitation often provided on-site job coaches for paid employment opportunities. Stockton documented this information in Student's individual transition plan as part of Student's IEP.

Student did not prove there was a request for a functional behavior assessment or a functional vocational assessment by a Parent or teacher, or that Stockton determined Student's educational or related services needs warranted reevaluation at the October 14, 2022 IEP team meeting, or at any time up to Parent's April 2023 request.

APRIL 20, 2023 TO MAY 26, 2023

On an undisclosed date in April 2023, Parent requested reassessment. On April 17, 2023, Stockton sent Parent an assessment plan which proposed the following assessments:

- Academic achievement assessments by its school psychologist to determine Student's current levels of academic achievement. The assessment would include formal and informal measures for reading, arithmetic, oral and written language skills, and general knowledge.

- Intellectual development assessments by the school psychologist to evaluate general intellectual functioning.
- Speech and language assessments by a qualified speech and language pathologist to determine Student's present functioning levels in receptive, expressive, and pragmatic language skills.
- Social emotional adaptive behavior assessments by the school psychologist to determine Student's current social emotional and adaptive classroom behavior.
- Health assessments to be conducted by the district nurse to determine how Student's health or medical issues affected school performance.
- Motor development assessments to be conducted by the school psychologist and adapted physical education specialist.
- Post-secondary transition assessments by an education specialist to evaluate Student's needs in training, education, employment, and independent living skills to be conducted by an education specialist.

Stockton's assessment plan addressed each of the areas in which Parent requested assessments. Stockton proposed assessments in a variety of areas by qualified assessors. Stockton proposed to use a variety of assessment measures and scores to evaluate Student's eligibility for special education, and to develop an appropriate program. (20 U.S.C. § 1414(b)(2)(B); Ed. Code, § 56320, subd. (e); Cal. Code Regs., tit. 5, § 3030, subd. (a).)

Parent unilaterally made changes to the assessment plan. In the section where Stockton offered a post-secondary transition plan assessment, Parent inserted the words "a vocational assessment" in blue ink. Student contends this was a request for a specific vocation assessment. However, the evidence demonstrated the post-secondary transition assessment was the same as the vocational assessment. The original assessment plan was appropriate to address Parent's concerns. Stockton's assessment plan offered to, and did assess, Student's needs in the areas of vocation through the post-secondary transition assessment plan assessment.

Parent gave written consent to the assessment plan on April 20, 2023. Stockton had 60 days from April 20, 2023, to complete the assessments. The 2022-2023 school year ended on May 26, 2023. Therefore, Stockton was not required to complete the assessment until school was back in session for the 2023-2024 school year.

The 2023-2024 school year began August 3, 2023. Stockton conducted the multidisciplinary assessments. Stockton held two IEP team meetings to discuss those assessments on September 29, and November 7, 2023. The timeliness of the assessment is not at issue. The continuation of the IEP on November 7, 2023, was necessary to complete the assessment review, address Parent's concerns, and present the offer of FAPE. This Decision addresses the offer of FAPE Stockton made during these two IEP team meetings in Issues 2 through 6.

Neither Parent nor Student's teachers requested a behavior assessment during the 2022-2023 school year. The evidence did not demonstrate that Student's behavior warranted a behavior assessment. In her closing brief, Student argued she required one

because she preferred to scroll through her cell phone and look at fashion magazines during class. However, based on Student's teachers, social media and cell phone use was typical for peers her age and developmental level. Student's argument lacks merit.

Student did not prove there was a request for a vocational skills assessment by a teacher, or that Stockton determined Student's educational or related services needs warranted reevaluation. Stockton's April 2023 assessment plan offered to assess her needs in vocation through the post-secondary transition plan assessment, which addressed the same areas of suspected disability Parent requested.

Student did not prove Stockton denied her a FAPE for the 2022-2023 school year by failing to assess in the areas of behavior and vocational skills. The preponderance of the evidence showed Stockton did not have a duty to assess Student's behavior or vocational skills during the 2022-2023 school year prior to Parent's April 2023 request for reassessment. Stockton timely presented Parent with an assessment plan after the request and assessed Student's social emotional, adaptive behavior, and vocational skills through multidisciplinary assessments completed at the beginning of the 2023-2024 school year.

ISSUE 2: DID STOCKTON DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT A ONE-TO-ONE AIDE AT SCHOOL AND APPLIED BEHAVIOR ANALYSIS SERVICES AT HOME IN THE SEPTEMBER 29, 2023 IEP?

Student contends Stockton denied her a FAPE by failing to offer a full-time one-to-one aide. Student contends she required a one-to-one aide throughout the school day to assist with toileting and mobility concerns. Student asserts she needed applied behavioral analysis in the home setting to make meaningful progress.

Stockton contends Student did not require a one-to-one aide because she was too intellectually high functioning. Stockton argues Student had no specific behavioral problems necessitating applied behavior analysis therapy in the school or the home setting.

Related services means developmental, corrective, or other supportive services designated to enable an individual with special needs to receive a FAPE as described in their IEP, and as may be required to assist the student to benefit from special education. (Ed. Code, § 56363, subd. (a).) Related services, when needed are determined by the IEP. (Cal.Code Regs., tit. 5, 3051, subs. (a)(1).) The IEP must show a direct relationship between present levels of performance, goals, and specific educational services to be provided. (Cal. Code Regs., tit. 5, 3040, subs. (b).) Though not specifically delineated by statute, a one-to-one aide may be required to assist a child with exceptional needs to benefit from special education.

ONE-TO-ONE AIDE

As discussed in Issue 1, Stockton held two IEP team meetings on September 29, and November 7, 2023, to discuss Student's reassessment results and make a new offer of FAPE. These two IEPs will collectively be referred to as the September 29, 2023 IEP. Student failed to prove the September 29, and November 7, 2023 IEPs denied her a FAPE by failing to offer support in the form of a one-to-one aide. Student did not establish she had deficits which required a one-to-one aide to access her academic program.

The September 29, 2023 IEP offered Student 240 minutes per day for 1,977 minutes per week of specialized academic instruction, 90 minutes per week of adapted physical education, 30 minutes per month of college awareness, 30 minutes per month of career awareness, 60 minutes per month of counseling and guidance, transportation, and extended school year services. Student would participate in highly structured specialized academic instruction for 90 percent of her school day. Student's class ranged in size. Most of her classes had at least two to three paraprofessionals and a teacher. Jonathan Whitford, Student's teacher and case manager, described his class with up to 18 students with a high adult ratio including a teacher, and six paraprofessionals, including several dedicated one-to-one aides for other students. Another class had nine students, a teacher, and a paraprofessional who assisted the students.

During the assessment process at the start of the 2023-2024 school year, Pancella, the school psychologist, reviewed Student's records and observed her in class. Pancella interviewed Student, Parent, and two of Student's teachers, Stephanie Cortinas-Rodriguez, and Sarah Eaton. Pancella evaluated the Developmental Profile Teacher checklist completed by Cortinas-Rodriguez and Whitford. Student had Down syndrome with global delays. She attended three special education classes and one general education elective. None of her teachers reported any concerns with behavior or toileting. Student had no other self-care needs. Stockton provided assistance for Student as she traveled between classes, to ensure she could navigate across the campus.

The evidence demonstrated that Student participated in her program without the need for a one-to-one aide. Cortinas-Rodriguez, an educational specialist, taught math, English, and daily living skills. She taught Student one class per semester since January

2022, and never thought Student required an aide. Student could get all the supplies she needed for an assignment, came to the board, and pointed at correct answers. By her senior year, Student was more compliant. She occasionally refused to work, but not consistently. Student had no issues with toileting, mobility, or behavior in her classroom.

Whitford taught Student in her life skills class every semester since the beginning of the 2020-2021 school year. He had six staff adults including several one-to-one aides for other students in his classroom. Two were general aides, and four were assigned to other students. Most of his students had difficulty with communication. Whitford could understand Student when she spoke to him. Student was physically heavyset, and it took her a long time to walk. She had no visible mobility or balance issues. She went to urgent care for a knee dislocation, and it was resolved. In February 2024, Stockton provided Student with a wheelchair to help her transition between several classes. Whitford and his staff pushed her wheelchair as needed. Whitford stated Student occasionally needed an escort to make sure she went to the correct classroom, but she could physically walk.

Whitford credibly opined Student did not need a one-to-one aide because her disability did not warrant it. The wheelchair was for Student's convenience when her classes were farther apart at the end of the day. Student did not exhibit aggressive behavior or leave class without permission. He and his staff met her toileting needs, including when she occasionally soiled herself. His classroom had specific toileting schedules and Student used the toilet independently. For these reasons, he opined, there was no need for an additional aide.

Whitford credibly opined that during the 2023-2024 school year Student did not require a one-to-one aide because she was too intellectually high functioning. He opined it would hinder her independent living skills, which they wanted to promote. He believed that if Student had a one-to-one aide, she would have relied upon that person more than she needed.

At hearing, several teachers opined that it was not appropriate for Student to have a one-to-one aide as a senior in high school because it created a more restrictive environment. None of her teachers described difficulties requiring Student to have a one-to-one aide in the school setting. Student participated in the reassessment at the start of the 2023-2024 school year without a one-to-one aide. The assessors described Student as pleasant and friendly. Student did not act out, leave her seat, or leave the room. There was no suggestion from Parent or any IEP team member during the September 29, 2023 IEP team meeting that Student required a one-to-one aide.

Student did not provide credible expert testimony establishing she required a one-to-one aide. Student's expert witness Dr. Abbe Irshay held a teaching credential, a master's degree in education, and a doctorate degree in educational leadership. She was a retired assistant principal. Dr. Irshay had no special education credentials and was not qualified to conduct special education assessments or provide special education services. Dr. Irshay was hired several days before the hearing started. Dr. Irshay did not meet with Student or Parent and did not interview them. Dr. Irshay read the due process complaint and Student's IEP. While she knew that Student was capable of going one place to another place on campus independently, she did not know if Student was able to navigate a big campus on her own.

Dr. Irshay opined that after a student completes fourth through sixth grade, one-to-one aides are not desirable. Dr. Irshay opined older students were often stigmatized if they had a one-to-one aide, so it was preferred to have an aide who helped two to three students at a time. Dr. Irshay did not know if Student had other needs that made a one-to-one aide appropriate. Dr. Irshay had minimal knowledge of Student, as she lacked any personal interaction, assessment, or observation of Student, and was not acquainted with Student's needs and current program. Moreover, Dr. Irshay lacked experience with special needs students. For these reasons, Dr. Irshay's testimony was given little weight and did not support a finding that Student required a one-to-one aide.

Student's expert witness Dr. Sookyung Shin, held master's and doctoral degrees in special education. Student hired her during the due process hearing. Dr. Shin interviewed Student and Parent on a videocall for 90 minutes and reviewed hearing exhibits. Dr. Shin recalled she informally assessed Student but did not prepare a written report because she was hired as an expert witness. Dr. Shin opined Student had fecal incontinence and mobility issues which required the use of a one-to-one aide. However, Shin also had minimal knowledge of Student, as she lacked any personal interaction, assessment, or observation of Student, and was not acquainted with Student's needs and current program. Shin's testimony was given little weight as she did not provide any credible evidence Student required a one-to-one aide.

The record established Student had very few toileting accidents, and neither Parent nor her teachers reported it as a concern. The record also established Student did not require mobility assistance at the time of the IEP. Student was ambulatory and Stockton provided an assistant to help Student navigate to her classes.

There was no persuasive evidence that Student required a one-to-one aide. Based upon the teacher interview, the credible testimony of Stockton's assessors, and the information known to the September 29, and November 7, 2023 IEP team, Student did not have deficits which required a one-to-one aide.

APPLIED BEHAVIOR ANALYSIS AT-HOME SERVICES

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 generally known as a specialized behavior modification therapy typically utilized for students with autism with significant behavioral challenges. Student failed to establish the need for an applied behavior analysis therapy program at home. Student did not present any evidence explaining the nature of applied behavior analysis therapy, its relevance to any specific behavioral issues, or why applied behavior analysis therapy at home was necessary to provide Student a FAPE.

Student was described as a social, fun student who enjoyed laughing and having free time with her classmates. Student got along well with her peers and was starting to take a leadership role. She loved using the computer and could often complete her classwork without needing constant reminders. Student sometimes shut down from

paying attention to instruction and distracted herself with her cell phone, headphones, and magazines, which was common for a 12th-grade student her age and developmental level. She could work independently on worksheets when she was familiar with the material.

During the September 29, 2023 assessment, Parent did not report that Student exhibited behavior difficulties at home, either in inventory checklists, or interviews. In Parent's written list of concerns attached to the September 2023 IEP, Parent failed to mention behavior concerns at home. Finally, at hearing, Parent did not testify about Student having problematic behavior at home.

Whitford credibly opined that Student did not require applied behavior analysis therapy at home because she did not have autism or problematic behaviors. Parent did not request applied behavior analysis therapy at home.

Student provided no evidence describing the applied behavior analysis process or any behavioral service. Additionally, Student provided no specific behavioral problems necessitating that intervention or how applied behavior analysis therapy would address these concerns. Furthermore, no evidence was put forth to support the necessity of in-home services.

Neither Parent nor her expert witnesses reported Student having problem behaviors. Student did not throw tantrums or act out. This was corroborated by the reports of Student's teacher who reported Student got along with her peers and was learning to take a leadership role.

While Student's adaptive skills and social-emotional skills were in the delayed range, she was cooperative and actively participated in the assessment process and in her school program. Student was friendly and maintained eye contact. Student was

calm and answered the assessment questions to the best of her ability. None of Student's teachers observed Student to have behaviors indicative of autism, and Parent did not report concerns with autism or other problem behaviors. Student did not act out, leave her seat, or leave the room, and Student's behaviors did not interfere with Student completing the assessments or in her school program.

Based upon the teacher interview and the credible testimony of the assessors, and what the September 29, and November 7, 2023, IEP team knew at the time, Student did not have deficits which required specialized services and home applied behavior analysis during the 2023-2024 school year.

Dr. Shin testified that based on her limited interaction and informal assessment of Student, she thought a functional behavior assessment would have been beneficial for Student. Although Dr. Shin was hired to testify about Student's need for a functional behavior assessment, Dr. Shin was not a board-certified behavior analyst. She was not qualified to conduct special education assessments or provide special education services. Moreover, Dr. Shin did not provide any credible evidence Student required applied behavior analysis therapy at home. Dr. Shin had minimal knowledge of Student, as she lacked any personal interaction, assessment, or observation of Student, and was not acquainted with Student's needs and current program. Dr. Shin did not provide any credible evidence Student required applied behavior analysis therapy at home.

Similarly, Dr. Irshay did not provide any credible evidence Student required applied behavior analysis therapy at home.

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.

Student failed to show by a preponderance of the evidence that Stockton denied Student a FAPE by failing to offer a one-to-one aide at school or a home applied behavior analysis therapy program in the September 29, 2023 IEP.

ISSUE 3: DID STOCKTON DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT BEHAVIOR, ARTICULATION, AND PHONOLOGY GOALS IN THE SEPTEMBER 29, 2023 IEP?

Student alleges Stockton failed to offer behavior goals to address her using her cell phone during class. Student asserts Stockton failed to offer articulation and phonology goals to address her articulation disorder.

Stockton contends it developed appropriate goals in all areas of need. Stockton argues Student did not establish needs in the areas of behavior, articulation, or phonology, requiring annual goals.

Failing to develop goals in areas of need constitutes a procedural defect in the development of an IEP. A procedural violation results in a denial of FAPE only if the violation impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *Target Range, supra*, 960 F.2d 1479, 1484.)

Whether a student was offered or denied a FAPE is determined by looking at what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, (*Adams*), citing *Furhman v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) This is known as the “snapshot rule.”

The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. An IEP must include a statement of measurable, annual academic and functional goals designed to meet the needs of the student to enable the student to be involved in and make progress in the general education curriculum. An IEP must also include a description of how the student’s progress toward annual goals will be measured. (Ed. Code, §56345, subds. (a)(2) & (3).)

BEHAVIOR GOALS

Student asserts she scrolled through her cell phone and fashion magazines in class. Student alleges Stockton should have developed a behavior goal for her to stay engaged in class.

Stockton asserts it did in fact offer Student an In Class Behavior/Task Initiation Goal to encourage Student to engage in class and reduce her preferred activity with her cell phone distractions.

At the September 29, and November 7, 2023 IEP, Stockton offered Student a transition and independent living goal to address Student’s off-task behavior in class. The proposed In Class Behavior/Task Initiation Goal projected that by November 2024, Student would enter class, use a picture schedule, and complete three on-task behaviors such as entering the room calmly, taking off her jacket and quietly sitting in her chair,

within two minutes of entering class, with no more than two teacher verbal or gestural prompts, without exhibiting non-compliant behavior such as task refusal or ignoring staff, during four out of five morning routines. The proposed goal also had two short-term objectives to measure Student's progress by February and May 2024. By February 2024, Student would enter class, use a picture schedule, and partner with a preferred classmate to work toward the goal. By May 2024, Student would do so without being partnered with a preferred classmate. Student's teachers and staff would be responsible for implementing this goal.

Student did not challenge the adequacy of the In Class Behavior/Task Initiation Goal. That goal directly addresses Parent's identified concern. Student presented no evidence regarding any other behaviors which required a goal. None of Student's three expert witnesses offered credible testimony that demonstrated Student had other behavior needs requiring a goal.

ARTICULATION AND PHONOLOGY GOALS

Brianna Andrade Cardenas, Stockton's speech pathologist, provided speech and language services to Student during the 2020-2021 school year. She assessed Student in 2021 and 2023. With Parent's approval, Student was exited from speech and language services at the 2021 IEP team meeting because Student was not making progress. In April 2023, Parent requested another speech and language assessment which was presented at the September 29, 2023 IEP team meeting. Stockton also agreed to an independent educational evaluation in speech and language, completed on February 25, 2024. The appropriateness of those assessments was not at issue.

Cardenas credibly testified that Student's speech errors were developmental and consistent with her Down syndrome diagnosis. The mechanical movement of Student's mouth was present since birth. As a result, Student had speech substitutions, distortions, and omissions. In Student's case, the speech services Cardenas previously provided did not result in a consistent difference, and Student was not improving. Student was not actively participating in the correction of her speech errors. When Cardenas prompted Student to correct her speech errors, Student would not attempt to make the speech correction. Cardenas' attempts to correct speech articulation and phonological errors would only benefit a student who had self-awareness of their speech sound errors.

Cardenas explained that articulation goals were targeted to remediate speech sound errors. Phonology goals were targeted for the phonological process of substituting incorrect sounds for correct sounds. For articulation and phonology goals to be appropriate at the high school level, the student must be able to actively participate and attempt to correct the errors, and the errors had to negatively impact them. Cardenas did not believe Student had the ability to be aware of and make corrections. After several years of speech and language therapy, Student did not demonstrate the ability to actively participate and attempt to correct speech errors.

Cardenas opined Student could communicate adequately in her community environment. Student also used gestures and her cell phone technology to communicate effectively with the assessors, teachers, and her peers. Cell phone use was a very common form of communication among senior high school students. Student's intelligibility was high overall in spite of her speech sound errors. Student's speech substitutions did not affect her ability to communicate with her friends because she was always talking and laughing with them. Student's articulation and phonology disorders did not impede her ability to access her education.

Cadenas opined Student could still have communication goals even if she was not receiving direct speech services. Student's communication was targeted by all special education professionals.

Whitford credibly testified he could understand Student when she spoke. Student was more articulate when she spoke about a preferred topic. Student's teachers could understand her, and used a combination of asking Student questions, referencing her preferred activities, and using pictures on her cell phone to communicate with her.

None of Student's three expert witnesses had a special education teaching credential or a speech and language credential. Student provided no evidence that speech articulation and phonology goals were necessary. Student did not establish she required a goal and had an identified, important area of unique need in articulation and phonology. There was no persuasive evidence that Student required a goal in this area. Among other things, Student provided no teacher report or expert testimony that demonstrated she required a goal in articulation or phonology.

The totality of Student's highly structured and integrated special day class program was sufficient to address Student's articulation and phonology needs. She was immersed in an interactive program with highly trained and credentialed teachers focusing on her daily living and workability skills. Student did not demonstrate she required articulation or phonology goals.

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ISSUE 4: DID STOCKTON DENY STUDENT A FAPE BY FAILING TO OFFER PARENT TRAINING IN THE SEPTEMBER 29, 2023 IEP?

Student asserts that Stockton failed to offer Parent training to address Student's Down syndrome, her support programs, curriculum, transition, and post-secondary vocation options.

Stockton asserts Parent did not require training for Student to access her special education program.

Related services required to assist a student with exceptional needs to benefit from special education may include parent counseling and 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).)

Parent testified she did not know she could ask for parent training until her attorney informed her. She wanted training to understand how to monitor an activity checklist that Whitford sent home. However, Parent did not provide reasoning behind her belief that she required training. Parent was already using a checklist for Student at home for Student's daily tasks. Parent did not need training to monitor a checklist routine she was already using with Student. Student failed to prove that Stockton denied Student a FAPE in the September 29, and November 7, 2023 IEP by failing to offer parent training.

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Additionally, Stockton provided social skills services to Parent and Student. The September 29, and November 7, 2023 IEP offered counseling and guidance for two 30-minute sessions per month by a social services case manager to include individual and small group participation, consultation with the classroom teacher, communication, and support to Parent, and collaboration with the IEP team.

Tinka Lebed, Stockton's social services case manager, credibly testified and explained how she provided social skills services to Student and Parent. Lebed and Parent were in communication frequently, by telephone and email. Lebed worked as a parent liaison with Student's social skills. Lebed provided more than twice the amount of recommended services to try to connect with Student. Parent provided photos and videos of Student's hair and make-up to help Lebed facilitate communication and conversation with Student. Student was very motivated during sessions with Lebed. Student was 100 percent understandable and more articulate when she had a preferred topic or activity. Lebed saw progress and believed the social services she provided to Student were adequate to meet her needs.

Student failed to establish Parent required training to support her academic curriculum, or for her transition and post-secondary vocation options. Jennifer Garcia, Student's workability coach for the 2023-2024 school year, provided job readiness, coaching, and placement services. She credibly testified that 50 percent of the time, Student would refuse to work in her class because she distracted herself with her cell phone, headphones, and the magazines she brought from home. Garcia asked Parent to support Student by not bringing those items to school. However, Parent refused Garcia's request and continued to allow Student to bring them to school. Garcia tried to keep Student engaged by alternating between Student's preferred activities and the workability activities.

To the extent Parent requested training to help implement Student's goals, Parent refused to cooperate when requested. Parent refused to cooperate with Garcia and continued to allow Student to bring her cell phone, headphones, and her fashion magazines from home. Parent did not establish she needed parent training to teach her how to cooperate with Student's teachers to work toward the In Class Behavior/Task Initiation Goal to support her academics.

Nonetheless, Garcia told Parent how to support Student in completing her worksheets and accessing the online programs. The email correspondence between Garcia and Parent demonstrated how Garcia sent workability worksheets for Student to work on at home. In the emails, Garcia explained to Parent how Student was positively engaged in the online vocational games, such as the Xello program. Garcia explained to Parent how Student accessed the online vocational games independently.

Parent responded positively and praised Garcia for her work with Student. Parent stated that whatever Garcia was doing seemed to be working well because Student enjoyed the activities and was progressing. Parent remarked how Student was engaged and thriving with the one-on-one instruction with Garcia, and the repetitive and consistent exposure to the workability curriculum at school and at home.

Parent did not require parent training to use a checklist she already used. Parent did not require parent training to assist with Student's curriculum because Stockton provided appropriate direct social skills and workability skills services to Student and Parent to address Student's Down syndrome, support programs, curriculum, transition, and post-secondary vocation options. Student did not establish that Stockton denied her a FAPE by failing to offer parent training in the September 29, 2023 IEP.

ISSUE 5: DID STOCKTON DENY STUDENT A FAPE BY FAILING TO AGREE TO PARENT'S REQUESTED CHANGES IN STUDENT'S SEPTEMBER 29, 2023 IEP?

Student alleges Stockton denied Parent meaningful parental participation because when she expressed concerns about the IEP not being appropriate, Stockton did not change the IEP to comport with her requests.

Stockton alleges it did not impede Parent's opportunity to meaningfully participate in the IEP process because it facilitated Parent's and her advocate's participation by including their concerns in the IEP document and discussing those concerns over two IEP team meetings.

The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(b).)

A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP team meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693-5 (*N.L.*); *Fuhrmann v. East Hanover Bd. Of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036.)

Parental participation in the IEP and the educational placement process is critical to the organization of the IDEA. (*Doug C. v. Hawaii Dept. of Education* (9th Cir. 2013) 720 F. 3d 1038, 1043, (*Doug C.*.) Parental participation safeguards are "[a]mong the most important procedural safeguards" in the IDEA and "[p]rocedural violations that

interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA.” (*Doug C., supra*, 720 F. 3d at p. 1044, citing *Amanda J., supra*, 267 F.3d at 882, 892.)

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 is able to 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.)

Whitford, Student’s case manager, drafted the IEP document and included Parent’s seven written concerns:

- a discussion of the new alternative diploma
- Student’s communication and language difficulties
- Student’s social skills and a discussion of goals around social communication
- a discussion of the curriculum being used in reading, writing, and math

- Student's daily living and adaptive skills and a discussion of life skills goals
- A discussion of the workability program and the transition services offered through Stockton and the Department of Rehabilitation

Whitford credibly testified regarding Parent's and her advocate's input and concerns that Stockton considered at the September 29, and November 7, 2023 IEP team meetings. The new alternative diploma was not offered that school year, and Student was on an appropriate certificate of completion track. Student's language development was typical for a student with Down syndrome. Most of his students struggled with communication. Student was well liked and worked well with others. Whitford and other IEP team members discussed the reading, writing, and math subjects they taught to Student. Whitford taught Student life skills as adaptive skills, such as day-to-day hygiene, behavior in public, and personal space. Student never had an outburst and had no issues requiring emotional regulation and self-calming techniques. Whitford reviewed the workability program through the Young Adult Program, and he arranged for Parent to tour the school. Once she completed her high school certificate, Student would be eligible to attend the community-based education program until she reached age 22.

Parent and her advocate actively participated in the IEP team meeting, by asking questions and requesting changes. In several instances, the IEP document was changed at Parent's request:

- The IEP team added an In Class Behavior/Task Initiation Goal at Parent's request to address Student shutting down, disengaging from class instruction, and not wanting to answer questions.

- Cardenas reviewed her report with the IEP team and agreed to clarify an ambiguity based on additional Parent input. Cardenas clarified that Student was able to communicate adequately in her community environment, which could include another adult or support person. Without the support person, Student could answer “who, what, why, when, where” questions using one-to-five-word sentences.

Both Parent and her advocate actively participated during the September 29, and November 7, 2023 IEP team meetings. During the IEP team meetings, they engaged with teachers, administrators, and service providers to help shape goals, accommodations, and services. Their concerns were delineated in the IEP document. Parent’s advocate wanted Student placed at a non-public school, a more restrictive placement, which Stockton did not believe was appropriate.

Stockton’s IEP team members generally described Parent’s advocate, Cari Edwards, as

- accusatory,
- angry,
- argumentative,
- aggressive,
- derogatory,
- condescending, and
- critical of the teachers, assessors, and placement.

For example, Edwards accused Stockton of running a sweatshop because Student was not paid in her vocational training classroom when she was learning job skills. Parent later withdrew Student from the class and placed her in a general education elective dance class which Student did not enjoy.

Stockton's IEP team members all confirmed Edwards' interruptions and outbursts made it difficult and uncomfortable to get through the IEP team meetings in an orderly fashion. Nonetheless, the IEP team allowed Parent's advocate to voice their criticisms and paused to seek input or address any questions before moving on to the next topic. The IEP team scheduled a continuation meeting on November 7, 2023, to allow more time to complete the discussions.

All witnesses, including Parent, affirmed that Parent and her advocate were actively engaged participants during the September 29, and November 7, 2023 IEP team meetings. This comprehensive testimony corroborates that there was no denial of FAPE.

Student failed to show by a preponderance of the evidence that Stockton denied Student a FAPE at the September 29, 2023 IEP team meeting by failing to agree to Parent's requested changes.

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ISSUE 6: DID STOCKTON DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT AN ADEQUATE INDIVIDUAL TRANSITION PLAN WITH POST-SECONDARY GOALS, INDEPENDENT LIVING SUPPORT, AND COLLEGE AND CAREER AWARENESS SERVICES IN THE SEPTEMBER 29, 2023 IEP?

Student argues Stockton did not provide an appropriate individual transition plan and services that would enable her to meet her training, education, and employment goals. Student argues Stockton merely steered Student in the direction of transition resources and expected Student to research and pursue the options herself.

Stockton argues its individual transition plan with post-secondary goals for the Young Adult Program was appropriate. It argues its extensive and meaningful transition plan appropriately supported Student.

The IEP in effect when a student reaches 16 years of age must include appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (Ed. Code, §§ 56043, subd. (g)(1); 56345, subd. (a)(8).) The IEP must also offer transition services, including courses of study, needed to assist the student in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8).)

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Transition services are defined as a coordinated set of activities designed within a results-oriented process, focused on improving the academic and functional achievement of the individual to facilitate movement from school to post-school activities, including post-secondary education, vocational education, and integrated employment, including

- supported employment,
- continuing and adult education,
- adult services,
- independent living, or
- community participation.

Transition services are to be based upon individual needs, taking into account individual strengths, preferences, and interests. Transition services include

- instruction,
- related services,
- community experiences,
- development of employment and other post-school adult living objectives, and, if appropriate,
- acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services may be special education, if provided as specially designed instruction, or related services. (20 U.S.C. § 1401(34); 34 C.F.R. § 300.43; Ed. Code, § 56345.1.)

A flawed or missing transition plan is generally regarded as a procedural error. (*Board of Educ. v. Ross* (7th Cir. 2007) 486 F.3d 267, 276.) When a transition plan fails to comply with the procedural requirements, but the individual transition plan or the IEP

provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural violation is harmless. (*Virginia S. v. Dept. of Education* (D. Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, *10.) Therefore, a transition plan that is procedurally deficient but does not result in a loss of educational opportunity, does not result in a denial of FAPE.

INDIVIDUAL TRANSITION PLAN

Whitford conducted an individual transition plan for Student and presented it at the September 29, 2023 IEP team meeting. It offered several goals to assist with her transition, employment skills, and independent living skills. Whitford worked with Student's workability coach Monroe to develop the plan. Whitford also arranged for Parent to tour the Young Adult Program.

Whitford taught Student each semester since 10th grade. In the 2023-2024 school year, he taught her daily living skills. Some of their activities included sorting and folding laundry, food menus, and money basics. Whitford administered the California Career Zone Quick Assessment, designed to screen for career interests. Student selected social, realistic, and artistic jobs. Student appeared to be interested in cosmetology and fashion related jobs. Whitford recommended Student attend the Young Adult Program after she completed high school, to help her develop employment skills and find a job. The post-secondary independent living skills goal was for her to continue to live at home.

The Young Adult Program was a transitional service for special education students with a certificate of completion, which they could attend until age 22. It was community-based education offered through Stockton and the California Department

of Rehabilitation. The Department of Rehabilitation often provided on-site job coaches for paid employment opportunities. Student had no criticism of the Young Adult Program.

Student failed to establish that this was not an adequate individual transition plan. Whitford's, Monroe's, and Garcia's testimony was persuasive because they worked with Student to develop her transition and job skills over several months and several years. They had detailed knowledge and information about Student's job interests and job skills. Whitford administered the California Career Zone Quick Assessment, an adequate assessment to screen for career interests. The transition plan with the Young Adult Program was adequate because it was designed to help Student develop her employment skills and find a job, while living at home.

Moreover, Stockton also agreed to an independent educational evaluation in the area of vocational, completed on May 7, 2024. The appropriateness of that assessment is not at issue.

POST-SECONDARY GOALS WITH INDEPENDENT LIVING SUPPORT

Post-secondary, or transition goals, must be measurable and be designed to address a child's needs related to training, education, employment, and, as appropriate, independent living skills. (Ed. Code, § 56345.) Transition goals are different from other annual goals because they reflect the desires and plans of the student. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a)(2).)

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Here, Stockton offered Student post-secondary goals in

- functional academics,
- post-secondary education,
- training,
- employment, and
- independent living.

For the September 2023 IEP, Whitford drafted several transition goals:

- Student would accurately identify 10-coin values with 100 percent accuracy.
- Student would attend the Young Adult Program after her senior year.
- Student would start the vocations curriculum with the workability program to learn job interview skills.
- Student would follow three multi-step instructions with 90-percent accuracy.
- Student would start social service counseling to become a better advocate for herself.
- Student would choose when she wanted to participate in class.
- Student would use a checklist at home for her daily tasks.
- Student would continue living at home.

Here, the individual transition plan with post-secondary goals reflected Student's desires and plans. Whitford recommended an adequate transition plan with the Young Adult Program after she completed high school. The community-based program was designed to help develop her employment skills and find a

job. The post-secondary independent living skills goals were also adequate because Parent wanted Student to continue to live at home. Whitford's testimony was persuasive because he taught Student for several years, administered the California Career Zone Quick Assessment, and collaborated with Student's workability teachers. Student did not introduce any documentary evidence or witness testimony that contradicted the adequacy of the transition plan or Whitford's recommendations.

Student failed to establish that the post-secondary goals with independent living support were not adequate.

COLLEGE AND CAREER AWARENESS SERVICES

The goal of transition services is planned movement from secondary education to adult life that provides opportunities which maximize economic and social independence in the least restrictive environment. (Ed. Code, § 56460.) Transition services can include

- in-service training programs,
- resource materials,
- handbooks that identify transition programs,
- coordination of the roles of other agencies with the family,
- resources,
- provision of work skills trainings,
- multiple employment options,
- instructional learning strategies, and
- the development of a vocational educational curriculum.

(Ed. Code, § 56462.)

Stockton also offered 30-minutes per month of college awareness and 30-minutes per month of career awareness to help her work toward the skills needed in the Young Adult Program.

Student was enrolled in Monroe's vocational training class that ran the Titan Cafe. The vocational training class was designed to help students with IEPs learn kitchen and restaurant skills by preparing food for the staff. Student had participated in it at least two semesters, in addition to other life skills classes. Student was making progress in her independent living and workability skills.

Additionally, Garcia, Student's workability coach who provided the college awareness and career awareness services, credibly testified how she provided Student the services.

The testimony of Garcia and Monroe was persuasive because they had worked with Student on her college and career awareness transition goals and services. Student failed to establish the college and career awareness services offered were not adequate.

Student failed to establish that this was not an adequate individual transition plan with post-secondary goals, independent living support, and college and career awareness services. Student's expert witness, Judith Imperatore, was hired two days before her testimony, during the due process hearing. She was hired to provide an expert opinion before she met with Student. She spoke with Parent and Student for two hours, conducted a parent survey, and a transition planning inventory. Imperatore also made an unofficial telephone call to the Young Adult Program but did not recall who she spoke to. Imperatore had no independent knowledge of the Young Adult Program and did not make any specific criticisms about the program.

Imperatore did not speak with Student's case manager or any of Student's teachers. Imperatore was not familiar with Student's high school program. Imperatore never observed Student in a classroom setting or in the life skills classroom or the Titan Cafe. She was not aware that Stockton agreed to fund an independent vocational assessment for Student, and she did not read the assessment. She was not familiar with the career and college awareness program at Student's high school, Stockton's practice of reviewing old goals, and had not reviewed Student's other IEPs.

Imperatore's resume indicated she never worked for either a public school district, a non-public school, or a private school. Imperatore testified she was hired to give an opinion on whether the individual transition plans offered Student were legally compliant. Imperatore does not have a law degree and is not admitted to practice law as an attorney in California or any other state.

Imperatore's brief and superficial interactions with Student undermined the credibility of her opinions regarding the alleged inadequacy of Student's individual transition plan and post-secondary goals.

Student failed to establish that Stockton denied Student a FAPE by failing to offer an adequate individual transition plan with post-secondary goals, independent living support, and college and career awareness services in the September 29, 2023 IEP.

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:

Stockton did not deny Student a FAPE for the 2022-2023 school year by failing to assess Student in the areas of behavior and vocational skills.

Stockton prevailed on Issue 1.

ISSUE 2:

Stockton did not deny Student a FAPE by failing to offer Student a one-to-one aide at school and applied behavior analysis services at home in the September 29, 2023 IEP.

Stockton prevailed on Issue 2.

ISSUE 3:

Stockton did not deny Student a FAPE by failing to offer Student behavior, articulation, and phonology goals in the September 29, 2023 IEP.

Stockton prevailed on Issue 3.

ISSUE 4:

Stockton did not deny Student a FAPE by failing to offer parent training in the September 29, 2023 IEP.

Stockton prevailed on Issue 4.

ISSUE 5:

Stockton did not deny Student a FAPE by failing to agree to Parent's requested changes in the September 29, 2023 IEP.

Stockton prevailed on Issue 5.

ISSUE 6:

Stockton did not deny Student a FAPE by failing to offer Student an appropriate individual transition plan with post-secondary goals, independent living support, and college and career awareness services in the September 29, 2023 IEP.

Stockton prevailed on Issue 6.

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REMEDIES

All of Student's claims 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.

Deborah Myers-Cregar
Administrative Law Judge
Office of Administrative Hearings