

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT.

CASE NO. 2024010630

DECISION

September 20, 2024

On January 19, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student naming Clovis Unified School District, called Clovis, and Fresno Unified School District, called Fresno. On February 20, 2024, Student submitted a First Amended Complaint and OAH reset the calendar timelines. On February 27, 2024, OAH granted the parties' first joint request for a continuance. On April 18, 2024, OAH granted Student's request to dismiss Fresno without prejudice. Administrative Law Judge Cararea Lucier heard this matter by videoconference on April 30, 2024, May 1, 2, 7, 8, 9, 14, 15, 28, 29, and 30, 2024, June 4, 5, 10, 24, 25, 26, and 27, 2024, and July 9 and 10, 2024.

Attorney Andrea Marcus represented Student, assisted by paralegal Ashley Casanova. Parent attended all hearing days on Student's behalf. Attorneys Kathleen Anderson and Amanda D'Amico represented Clovis. Theresa Pafford, Special Education Local Plan Area Administrator, attended all hearing days on Clovis's behalf.

At the parties' request, OAH continued the matter to September 3, 2024, for written closing briefs due August 12, 2024, and reply briefs due September 3, 2024. The parties were given a 75-page limit for closing briefs, not inclusive of cover sheets, tables of contents, tables of authorities, or appendices. Clovis timely filed a 72-page closing brief at 4:58 p.m. on August 12, 2024. At 5:00 p.m. on August 12, 2024, Student filed a 169-page document titled "Addendum." At 5:08 p.m. on August 12, 2024, Student filed a 210-page document titled "Petitioner's Closing Brief." Student's closing brief appears to consist of 39 pages of a non-final draft document, followed by the 168-page "Addendum." Student's closing brief and the proof of service on Student's closing brief are dated August 13, 2024.

On August 14, 2024, Clovis moved to strike Student's closing brief for grossly exceeding the page limit. On August 19, 2024, Student filed an opposition to Clovis's motion to strike and a request to submit his "Closing Brief Final" with appendices.

Student's closing brief was filed eight minutes past the deadline of 5:00 p.m. on August 12, 2024. The brief will not be disregarded on the basis of this minor filing error. However, the parties were given a 75-page limit for their closing briefs. Student submitted a 210-page document. Clovis's motion to strike is therefore granted with respect to the pages exceeding the 75-page limit. Only the first 75 pages of Student's closing brief are considered within this Decision. Student's motion to submit a "Closing Brief Final" on August 19, 2024, is denied.

On September 3, 2024, both parties timely submitted reply briefs, which complied with all instructions and were fully reviewed and considered. The record was closed, and the matter submitted on September 3, 2024.

ISSUES

A free appropriate public education is referred to as a FAPE. An individualized education program is referred to as an IEP.

1. Did Clovis deny Student a FAPE in the 2022-2023 school year from August 22, 2022, by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's IEP dated May 25, 2022, as amended, and the March 28, 2023 IEP, as amended, and by:
 - a. Failing to offer adequate social communication and behavior support;
 - b. Failing to offer frequency, duration, or specify group or individual, for counseling and psychological services;
 - c. Failing to address all areas of educational need by failing to offer speech and language and social skills services;
 - d. Failing to properly consider additional supports and services which would facilitate Student's educational placement with non-disabled children to the maximum extent appropriate; and
 - e. Failing to address Student's unique needs regarding transportation?

2. Did Clovis deny Student a FAPE in the 2023-2024 school year, through January 19, 2024, by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's March 28, 2023 IEP, as amended, and by:
 - a. Failing to offer adequate social communication and behavior support;
 - b. Failing to offer frequency, duration, or specify group or individual, for counseling and psychological services;
 - c. Failing to address all areas of educational need by failing to offer speech and language and social skills services;
 - d. Failing to properly consider additional supports and services which would facilitate Student's educational placement with non-disabled children to the maximum extent appropriate; and
 - e. Failing to address Student's unique needs regarding transportation?
3. Did Clovis deny Student a FAPE in the 2022-2023 and 2023-2024 school years, through January 19, 2024, by failing to properly address Student's and Parent's concerns regarding bullying and Student's bruises and injuries at school?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, commonly referred to as the IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 et seq. (2006); Ed. Code,

§ 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All references to the Code of Federal Regulations will be to the 2006 version unless otherwise stated. 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).)

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 (2006).) 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. § 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].)

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) and (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 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 had the burden of proof in this matter. (*J.G. v. Department of Education* (9th Cir. 2019) 772 Fed.Appx. 567.) 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 a 13-year-old boy who qualified for special education and related services under the eligibility categories of emotional disability, formerly called emotional disturbance, and other health impairment. He was diagnosed with attention deficit hyperactivity disorder, called ADHD, and autism. Student resided with Parent within the boundaries of Clovis at all times relevant to the issues in this matter.

Student was an inquisitive and clever child who enjoyed science and learning about ancient Egypt. He could engage in lengthy conversations on topics he found interesting. He loved being outside. Student disliked school, individuals with disabilities, and African Americans, resulting in many challenges for Student and the children and adults around him.

Student had a complex psychoeducational profile. He had below average functioning across educational domains. Student fell in the below average range in cognition and communication. He demonstrated very delayed academic skills and significant behavioral issues, including verbal and physical aggression.

ISSUE 1(a): DID CLOVIS DENY STUDENT A FAPE IN THE 2022-2023 SCHOOL YEAR FROM AUGUST 22, 2022, BY FAILING TO OFFER IEPS REASONABLY CALCULATED TO RENDER EDUCATIONAL BENEFIT IN STUDENT'S LEAST RESTRICTIVE ENVIRONMENT IN STUDENT'S IEP DATED MAY 25, 2022, AS AMENDED, AND THE MARCH 28, 2023 IEP, AS AMENDED, BY FAILING TO OFFER ADEQUATE SOCIAL COMMUNICATION AND BEHAVIOR SUPPORT?

Student contends Clovis pushed Student into the "school-to-prison pipeline" from Clovis's first IEP team meeting for Student, held on September 16, 2022. Student contends Clovis used racially and ability based punitive responses to Student's behaviors in school in lieu of providing education, behavior support, and staff training. Student contends Clovis should have responded to Student's behaviors with intensive support, rapport building, positive interventions based on motivation, and more time in general education.

Clovis contends Student had an abundance and great variety of behavior supports from the day he enrolled in Clovis in August 2022. Clovis contends Student demonstrated the skills to engage in positive communication and did not need to be taught social communication skills. Clovis also contends Student was offered appropriate social communication and behavior supports, including social, emotional, and behavior goals and services, and a behavior intervention plan.

A student's unique needs that must be addressed under the IDEA may include behavior, social-emotional functioning, and mental health. (County of San Diego v. California Special Education Hearing Office (9th Cir. 1996) 93 F.3d 1458, 1467.)

The United States Department of Education's Office of Special Education and Rehabilitative Services has developed policy guidance regarding positive behavior supports in schools. While not law, this federal policy guidance is helpful in understanding the framework for implementing positive behavior supports in public schools. According to the Office of Special Education and Rehabilitative Services, it is crucial for schools and early childhood programs to

1. support the social, emotional, academic, and behavioral needs of children with disabilities;
2. consider the harmful effects that inappropriate and ineffective discipline can have on child development and outcomes; and
3. invest in alternative strategies and supports to address learning
4. and behavioral needs. (Positive, Proactive Approaches to Supporting Children With Disabilities: A Guide for Stakeholders, U.S. Department of Education, Office of Special Education Programs (OSEP) Policy Support 22-01 (Office of Special Education and Rehabilitative Services, July 19, 2022).)

Proactive systematic approaches to behavior that focus on instruction and supports, and that are implemented with fidelity and cultural responsiveness, are likely to address disparities, reduce the use of exclusionary discipline, and result in positive developmental, academic, and behavioral outcomes for all children including those with disabilities. (Ibid.)

An IEP team must consider the use of positive behavioral interventions and supports, and other behavioral strategies, when a child's behavior impedes his learning or the learning of others. (20 U.S.C. § 1414(d)(3)(B); 34 C.F.R. § 300.324(a)(2)(i).)

Intensive, individualized positive behavioral supports include

- conducting a functional behavioral assessment;
- implementing a behavior intervention plan;
- providing wrap around services;
- and individual counseling. (Positive, Proactive Approaches to Supporting Children With Disabilities: A Guide for Stakeholders, *supra*.)

A functional behavioral assessment is a process for identifying the reasons behind, or factors contributing to, a child's behavior. The functional behavioral assessment process is rooted in the understanding that behavior is a form of communication. A functional behavioral assessment leads to the development of appropriate, effective behavioral interventions that address the root cause of the behavior rather than using a punitive approach to stop or reduce the behavior. (Ibid.)

A behavior intervention plan takes an individualized, proactive, and preventative approach to addressing the interfering behavior. A behavior intervention plan describes how antecedents that trigger the interfering behavior will be addressed and how new skills and replacement behaviors will be taught and reinforced. (Ibid.)

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Local educational agencies are responsible for providing social emotional and educationally related mental health services which include

- counseling and guidance services,
- parental counseling and training,
- psychological services,
- social work services, and
- behavior interventions. (Ed. Code, §§ 56836.07 and 56363.)

STUDENT'S HISTORY OF SIGNIFICANT BEHAVIOR ISSUES

From the beginning of his educational tenure, Student displayed significant behavior problems at school. The first time he attacked another student at school was in his first month of first grade, within Fresno. On September 22, 2017, Student teased another student until the child cried. Student then hid under a table and stabbed the child with a pencil. Student was suspended for half a day for the incident.

During first grade, Student was suspended four additional times, three of which were for assaulting other children. Student's attacks were usually unprovoked. On one occasion, on June 6, 2018, Student approached three girls on the playground. He punched one girl in the chest, punched the second in the left eye, and punched the third in the stomach and bit her arm. He explained that the girls did not do anything to him, but he did not like the game they were playing. Fresno assessed Student for eligibility for special education but determined he was not eligible for an IEP during first grade.

Student was suspended 12 times during the 2018-2019 school year, when Student was in second grade. In September 2018 Student choked a boy in the restroom, hit two other students, and threatened to kill a child. In October 2018, Student assaulted other

children on two dates, including one occasion when he approached a girl from the back and shoved her into a wall. In November 2018, Student was climbing a wall and fell down. When a peer asked, "What happened?" Student punched the child in the face. In December 2018, Student attempted to steal items from two boys, and when they refused to hand over the items, he hit them. He also called a teacher a "bitch," called students in his second-grade classroom "fuckers" and "bitches," and threatened to kill a girl. In March 2019, at lunch time, Student threw his milk carton at a girl, hitting her nose and causing it to bleed. In April 2019, when his teacher said good morning to him, he flipped her off. He also kicked a female student, called the reading intervention assistant "stupid" and damaged school property. When asked why he damaged school property he responded: "for no reason." In May of 2019 Student ripped a boy's tee shirt, and punched a girl while waiting to get on the bus. Fresno reevaluated Student and found him eligible for an IEP during second grade.

Student was suspended eight times during the 2019-2020 school year, while in third grade. In September 2019, Student hit several students, causing injury. When one of the injured students was leaving the nurse's office, Student kicked his leg out, tripping the girl. In October 2019, Student assaulted other students on two occasions. He also flipped off a teacher. In December 2019, Student made inappropriate lewd comments to several girls in his third-grade classroom, commenting on their breasts and buttocks and making moaning noises. In January 2020, Student threatened to shoot two girls in their private parts, and stole an item from another child. On another occasion, Student made a noose out of a jumping rope on the playground and attempted to choke a boy. Student purposefully tripped the behavior intervention specialist walking next to him, causing her to stumble and twist her ankle. When she told Student she was hurt he replied: "I don't care." In March 2020 Student assaulted a boy by choking, kicking, and pinching the child.

Due to the novel coronavirus, COVID-19 pandemic, Student's school transitioned to remote learning for the remainder of the 2019-2020 school year, and for the entirety of the 2020-2021 school year.

During the 2021-2022 school year, Student's fifth grade year, Parent requested an independent educational evaluation of Student at public expense. Fresno agreed. Dr. Jason Christopherson assessed Student. Dr. Christopherson did not administer any autism assessments or rating scales. Dr. Christopherson diagnosed Student with autism. He recommended Fresno update Student's IEP to add autism as an eligibility category and to consider additional interventions to assist with autism symptomology.

Fresno disagreed that Student was eligible for special education under the category of autism and declined to add autism as a qualifying disability for Student. Student's fifth grade teacher did not see Student exhibiting symptoms of autism at school. Fresno believed Student's behavior reflected ADHD, defiance, poor social skills, and difficulties with expressive communication.

On May 25, 2022, Fresno convened an IEP team meeting to review Student's three-year evaluations. The IEP team developed a behavior intervention plan for Student based upon data collection. The behaviors impeding Student's learning in May 2022 included

- classroom disruption (tapping pencils, tapping fingers, humming, stomping feet, running out of the room without permission) and
- defiance (ignoring directives or questions from adults, refusing to attempt work, refusing to participate in discussions, and physical or verbal aggression toward others).

The behaviors occurred three or more times per hour and could last up to 30 minutes.

The IEP team identified three antecedents to the behavior:

1. when Student was presented with work that he perceived as too difficult;
2. when Student was asked to do something he did not want to do; and
3. when Student was trying to engage peers in interactions.

The team theorized that Student engaged in these behaviors because when he ignored directives and refused to work, he got free time. Another function of Student's behavior was escape, which allowed him to avoid hard or boring schoolwork. Student also engaged in these behaviors to receive attention from adults and peers. Student relished negative attention.

The IEP team developed functionally equivalent replacement behaviors, such as:

- asking for a break by saying "I need a minute";
- asking for help by saying "Can you help me?";
- appropriately engaging peers by saying "Would you like to see my Pokémon cards?"; and
- verbally expressing his feeling by saying "This is unfair" or "I don't like that."

The Fresno team also listed teaching strategies for Student, reinforcement procedures, and strategies for school staff to use to respond to Student's behaviors.

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Student also exhibited many positive behaviors while attending fifth grade within Fresno. The IEP team noted that Student could be polite, kind, and well-mannered. He could follow directions from adults and, at times, did his best to finish class assignments. He had friends.

Fresno offered Student placement in a mild-moderate special day class with aide support "as needed." The team noted that Student did not pay attention to the aide who was supposed to help him.

Fresno had been providing Student with educationally related mental health services counseling based on a settlement agreement with Parent. At the May 2022 IEP team meeting, Student's therapist reported Student did not engage in sessions. Student told his therapist he did not want to attend therapy. The therapist did not believe continued services would benefit Student. However, the IEP team offered Student 60 minutes per week of individualized mental health counseling. Fresno also offered Student 30 minutes per week of individualized behavior intervention services.

It was important to Parent that Student's behavior be viewed through the lens of autism rather than as a conduct disorder. She disagreed with many aspects of the May 25, 2022 IEP. She believed Student should have been found eligible under the category of autism. She was concerned about his placement and questioned whether it was a program for students with behavior disorders, rather than one designed for autism. She wanted Student to have an aide, but not the aide that was working with him in the classroom because Student did not get along with that aide.

On August 22, 2022, Parent gave limited consent to Fresno's May 25, 2022 IEP. She agreed to implementation of the IEP but did not agree it provided Student a FAPE. She requested a one-to-one aide for Student.

Parent and Student moved to a residence within Clovis, and on August 25, 2022, Parent enrolled him in Clovis.

SEPTEMBER 16, 2022 IEP AMENDMENT

For the 2022-2023 school year, Student attended special and general education classes in sixth grade at Copper Hills Elementary School within Clovis. Special education teacher Jamie Fernandes taught Student's functional life skills special day class, which Student did not want to attend. He did not want to be associated with the other children in the class, whom he called "retarded" and "losers."

Student attended general education three times during his school day: 30-minutes at 8:00 a.m., 15 minutes before lunch, and physical education. Cynthia Delgado taught the general education class, including sixth grade physical education.

School Psychologist Maria Puopolo trained the Copper Hills teachers and staff on Student's behavior intervention plan and behavioral strategies before his first day of school in Clovis. Ms. Fernandes also met with Ms. Delgado to review Student's behavior intervention plan and coordinate behavioral strategies.

On September 16, October 6, and November 14, 2022, Clovis convened IEP team meetings to discuss Student's first 30 days at Copper Hills. The IEP team discussed Student's behavior and social communication. The IEP team's primary concern was that Student only completed 50 percent of the assigned work each week. He refused to participate in activities he did not enjoy. He said mean things to peers and laughed when they made mistakes. He was very aware of social groups at school and tried to sit away from students he perceived as academically lower than him.

The IEP described Student's social communication skills as weak, including poor conversation skills and nonverbal communication, based upon information from Fresno. Copper Hills staff noticed Student liked attention from peers and staff, but inappropriately sought such attention through behaviors such as making noises, faces, or teasing students. Copper Hills staff offered to implement a whole group social skills curriculum weekly in Student's special education classroom.

The IEP team updated Student's behavior intervention plan based upon what they observed in his first 30 days at Copper Hills. Student had not exhibited verbal or physical aggression at Copper Hills, so the team removed those problem behaviors in his behavior intervention plan. The team identified Student's problem behavior as work refusal, defined as

- actively refusing to attempt work,
- pushing tasks away from him,
- playing with school supplies,
- orienting his body away from instruction,
- tapping loudly on his desk,
- singing, and
- humming.

He refused to complete schoolwork two to six times each school day. This behavior lasted anywhere from 10 to 30 minutes.

One antecedent to Student exhibiting work refusal was Student being presented with a work task, especially those involving paper and pencil. The IEP team also noted Student's behaviors tended to happen more often in his special education class, during small group instruction, and in situations with many peers present such as general education physical education and choir.

With respect to the function of the behavior, the team at Copper Hills agreed with Fresno's theory that Student's behavior allowed him to avoid hard or boring schoolwork. Copper Hills also believed Student engaged in work refusal to receive attention and reactions from adults. The IEP team developed a proposed functionally equivalent replacement behavior of Student completing small amounts of academic tasks to earn reinforcements.

Ms. Puopolo embedded applied behavioral analysis strategies into Student's behavior intervention plan. She emphasized Student's ability to earn positive reinforcement. The behavior intervention plan also included public praise for work completion, adjustment of the environment to gain compliance, and first-then contingencies such as "First you finish your math facts page, then you can go on the iPad."

The IEP team decided Student could choose his reinforcements and the school team would provide them as immediately as possible. Student had completed a preferred items survey and chose being outside, watching YouTube videos, and various snacks as reinforcers. They also updated his behavior goal to state that Student would complete 80 percent of his classroom work per week.

Laurice Seely provided expert witness testimony on behalf of Student. Ms. Seely was a Board-Certified Behavior Analyst. She had a pupil personnel services credential in school psychology. In her opinion, behavior science showed that all human behaviors had a function. Ms. Seely recommended addressing maladaptive behavior by teaching replacement behaviors when a student was calm and regulated. The environment had an important role. In her opinion, behaviors did not occur in a vacuum and a behaviorist should consider anything in the environment, including relationships. She opined applied behavior analysis was the gold standard for behavioral change. Ms. Seely believed fidelity checks were important for behavior plans.

Ms. Seely based her opinions of Student on an assessment she conducted as well as observations of Student on two days, November 17, 2023, and December 1, 2023. She conducted a private functional behavior assessment of Student, which was not finished or reviewed by Clovis within the time period for the issues in this due process matter. Ms. Seely's final report was not in evidence in this hearing. Nonetheless, her opinions and conclusions carried significant weight because of her credentials and experience, as well as her credible and articulate testimony on theories of behavior and their application to Student. Ms. Seely's perspectives and opinions aligned with federal guidance from the United States Department of Education's Office of Special Education and Rehabilitative Services.

In Ms. Seely's opinion, Clovis failed to offer Student an effective behavior intervention plan in the September 16, 2022 IEP. School staff did not address all the antecedents for Student's behaviors, such as pen and paper tasks and instruction in small groups. She persuasively opined that the proposed replacement behavior of completing small tasks for reinforcements did not meet Student's need for escape and attention. Completing work for reinforcers did not allow Student to avoid hard or boring work, and

it did not gain him appropriate attention and reaction from adults. Ms. Puopolo unconvincingly testified that the functionally equivalent replacement behavior was intentionally left vague because there were multiple causes to his behavior. However, Student was more reinforced by negative attention than any snack or reward on his chart, making the focus of the behavior intervention plan ineffective. The behavior intervention plan was therefore not effective for Student because it failed to provide him a functionally equivalent replacement behavior that created positive behavioral momentum by focusing on Student's positive behaviors while still meeting Student's need for attention and escape.

With respect to social communication, Clovis failed to provide the significant support in social communication Student required. Clovis offered Student a social skills curriculum in his classroom and an annual goal requiring Student to make positive statements of encouragement to peers or staff. However, Clovis had a large amount of information about Student's deficits in social communication and how it impacted his education as well as the education of those around him. Student's social communication deficits were intertwined with his maladaptive behaviors. He engaged in verbal aggression to get attention from peers and adults. Clovis erred in removing verbal aggression from Student's behavior intervention plan, which led to Clovis offering an insufficient level of targeted supports for Student's social communication deficits.

Overall, the evidence showed Clovis failed to offer Student adequate social communication and behavior support in the September 16, 2022, October 6, 2022, and November 14, 2022 30-day review IEP team meetings. Clovis failed to offer Student an appropriate behavior intervention plan. As Ms. Seely correctly noted, the proposed functionally equivalent replacement behavior did not address Student's needs and Clovis failed to address several antecedents for Student's behaviors. Clovis also prematurely

removed verbal and physical aggression from Student's behavior intervention plan. The IEP team neglected to consider Student's long history of verbal and physical aggression at Fresno. As such, Clovis's failure to offer Student an appropriate behavior intervention plan in the September 16, 2022 IEP denied Student a FAPE because the IEP was not reasonably calculated to enable Student to make progress appropriate in light of his circumstances.

POST SEPTEMBER 16, 2022 EVENTS

In mid-September 2022, Ms. Fernandes went on maternity leave and was replaced with Jennifer Tonkinson, a long-term substitute teacher. Ms. Fernandes left Ms. Tonkinson a large binder with daily lesson plans and the students' behavior intervention plans. Ms. Puopolo trained Ms. Tonkinson on Student's behavior intervention plan before she began teaching the class.

On October 11, 2022, Student inappropriately put his hands on other students in choir and made lewd hand gestures. The music teacher called Ms. Tonkinson to remove Student from choir. Parent told administrator Gabrielle Worden she was concerned Student's behaviors were increasing at school. She also requested that Student have a self-advocacy goal.

On October 18, 2022, Student hit a girl in his special education class and pushed students in the general education class. He was angry that the girl in general education was telling him what to do. Ms. Delgado counseled Student about the pushing. He responded by pushing the girl again. He became angry at Ms. Delgado and said he did not want her telling him what to do either. He did not need a babysitter. As a result, school staff gave him a consequence of missing recess. He also became angry at the

teacher in special education. He tried to access a horror movie, "Anabelle" on his computer. The teacher observed this through a monitoring program and closed his browser windows. Student huffed and tried again until he became frustrated and closed his computer.

On October 20, 2022, Student chased another student, tackled him, and pinched him. Student insisted they were playing a zombie game. Ms. Tonkinson walked him to the main office at lunch for detention. He was required to sit at a table in administrator Melissa Holdener's office and eat his lunch there. That day Student also ripped up his behavior chart in the classroom.

Parent again told the school she was concerned Student's behaviors were escalating. She noticed he came home from school with a bruise. She also relayed Student's comments to her that he was bored at school. He did not want to be in special education. He felt that he was being treated unfairly and like a baby. He wanted to be in general education. He asked his mother, "Why am I here in this classroom with these children?"

On October 24, 2022, Student hid on a playground structure where no one could find him. School staff searched for him and eventually located him. Student asked School Principal Matt Papendorf what would happen if he did leave campus and was told the school would call the police.

On November 8, 2022, Ms. Puopolo concluded Student had not made progress with respect to his behavior. Ms. Puopolo spent a significant amount of time analyzing his daily behavior charts and reviewing the data. She found his level of work completion in November 2022 similar to the baseline in his IEP goals. She saw an increase in physical aggression since the September 16, 2022 IEP.

On November 16, 2022, Student defaced the white board in his special education classroom, writing "Luzr," "Oh Shet," and "ya Bayby." He intended to convey the words "loser," "oh shit," and "yeah baby." He repeated the word "shit" at his teacher.

On November 18, 2022, Student was angry that he did not go on the sixth-grade overnight science fieldtrip and called a classmate "retarded." The teacher scolded Student, so he threw his schoolwork on the floor.

On December 1, 2022, the parent of a child in Student's special education classroom informed the school that Student was bullying the child. As a result, the child refused to come to school. Also, on this date Student kicked two students at recess, and then ran into another student with his shoulder, knocking her to the ground. In response, Ms. Puopolo implemented a two-times warning system for Student to lose recess as well as a reward for controlling his mouth with candy.

On December 9, 2022, Ms. Worden and Parent learned that Student was hiding his behavior charts on the bus rather than giving them to Parent. Each afternoon Ms. Tonkinson watched Student put the envelope with the behavior chart in his backpack. Student told Ms. Tonkinson he placed the envelope on the dining room table at home. He told Parent the teacher did not give him behavior charts at school. The bus driver found envelopes with Student's behavior charts stuffed between the bus seats and wall.

On December 20, 2022, Parent returned the signature page for the 30-day review IEP and gave limited consent. She also requested a one-to-one aide for Student.

On December 23, 2022, Student used a racial slur, the n-word, in his classroom. He also hit other children on the head, and broke a chair and mirror. Student told Parent he had become upset in general education that day. He said when he came into the special

education classroom, the teacher took his backpack, threw it across the room, and made him pick it up like trash. He said the other students laughed at him and called him a loser, so he turned over chairs. Student reported the teacher called him a jerk. He felt he was being unfairly punished and that the only rewards he could earn at school were sweets. He told his mother he did not trust the teachers and they were out to get him.

Ms. Worden investigated the allegations. She found that no one took Student's backpack. He threw his backpack on the floor and kicked it. No one called him names. He called other students names, including "loser" and a racial slur, the n-word. The teacher had lifted a hand mirror to show him his facial expression because she was trying to show him that he looked mad, as a way of diffusing the situation and processing his feelings. Student knocked the mirror out of her hand, breaking it, and then left the classroom. Student told Mr. Papendorf he liked getting in trouble. Clovis suspended Student for one day.

Parent was not satisfied with Ms. Worden's investigation. She believed her son. She thought the investigation was dishonest because it made her son look dishonest.

On January 5, 2023, Parent requested a comprehensive reassessment of Student including in the areas of psychoeducation, functional behavior, communication, and mental health.

On January 17, 2023, Student stole a doorbell from a classroom and another child's toy. The incident was captured by a school security video camera system. At first Student denied stealing the doorbell. When confronted with the video, Student admitted he had done it and showed Mr. Papendorf where he dumped the doorbell in a pile of leaves. They found the stolen toy in Student's backpack. Student lost a recess as a consequence

of the thefts. Parent was upset at the school's response to the incident. Student told Parent he felt punished because he was sent to the office. He felt the school treated him like a bad child. Parent believed this was harming Student emotionally.

On January 19, 2023, Student knocked over a Lego tower a child built in his special education classroom.

Parent emailed Ms. Delgado to ask how Student was behaving in general education. On January 25, 2023, Ms. Delgado explained to Parent that Student usually behaved well in her general education class, but recently had been smearing nasal mucous and boogers across his desk to get a reaction from his peers.

Ms. Seely saw Clovis's behavioral interventions for Student during this time period as reactive rather than proactive. She also felt school staff had a negative view of Student and had not built a good, trusting, relationship with him. She believed school staff should have offered Student five positive interactions for every corrective action to build a trusting relationship. She saw Student and school staff in a power struggle and thought school staff treated Student in a punitive manner. This, in turn, served only to reinforce Student's negative behavior.

Overall, the evidence confirmed the day-to-day responses from Copper Hills' staff showered Student with negative attention, which is what he sought. Clovis' behavioral strategies reinforced Student's negative behaviors. Rather than deter him, they incentivized him.

JANUARY 25, 2023 IEP AMENDMENT

On January 25, 2023, Clovis convened an IEP team meeting to discuss Student's behavior and Parent's request for assessments. Clovis agreed to conduct a comprehensive reassessment of Student. At the IEP team meeting, Parent complained Copper Hills staff treated Student poorly. She described Student as an intelligent, sensitive child who needed praise and recognition. She believed school staff were not building positive relationships with Student and this caused him to misbehave. She felt the school focused on Student's bad behavior rather than the good. And she did not believe Student should be punished by being sent to the office. Ms. Puopolo told Parent Student would continue to receive disciplinary actions as a consequence for verbal or physical aggression to peers.

The IEP team discussed Student's behavior. Parent defended Student's behavior on December 23, 2022, when he used a racial slur. She believed Student had been provoked by school staff and his behavior was understandable given the situation. School staff working with Student believed internal factors were at play in causing Student's behavior rather than the environment or staff.

Parent reported Student told her he was not allowed to take breaks at school. School staff explained that he could take breaks, but they were limited to five minutes. Student had recently been making no effort to complete work and would tell school staff: "I'm not going to, you can't make me." In response, the school limited Student's ability to participate in "Fun Friday" activities if his work was not complete. The IEP team discussed positive reinforcers for Student and providing him with more opportunities to earn rewards but did not update his behavior intervention plan.

The IEP team also discussed Student's progress on his annual IEP goals. Student's behavior and work refusal negatively impacted his academics. Goal one required Student to answer reading comprehension questions after reading a second-grade level text. In October 2022, Student met his benchmark and could answer reading comprehension questions with 75 percent accuracy in four out of five trials. By January 20, 2023, Student could only answer reading compression questions with 75 percent accuracy in three out of five trials. As such, Student slightly regressed in reading comprehension after October 2022 and was not making progress on the annual goal.

Student regressed in writing. Goal two required Student to write at least three sentences when asked about his opinion. In October 2022, Student could write three sentences about his opinion in one out of five trials. By January 20, 2023, Student could only write one sentence expressing his opinion in one trial and refused to expand his writing in four other trials.

Student regressed in mathematics. Goal three required Student to solve 10 mathematics problems involving addition and subtraction. In October 2022, Student could solve 10 mathematics problems with 80 to 90 percent accuracy in two out of five trials. By January 20, 2023, Student could solve 10 mathematics problems with only 70 percent accuracy in two out of five trials.

Student regressed in work completion. Goal four required Student to complete 80 percent of his classroom assignments each week. In October 2022, Student turned in an average of 70 percent of his classroom assignments each week. By January 20, 2023, Student turned in an average of 60 percent of his classroom assignments each week.

Student made great progress on his speech and language goal. He made adequate progress and met his objectives for his social emotional goals. Copper Hills staff noted he gave compliments when prompted on two out of five occasions, and also gave four unprompted compliments. The IEP team did not adjust Student's IEP to reflect the many incidents of verbal aggression following the September 16, 2022 IEP, or add any additional social communication supports.

The evidence showed Clovis failed to offer Student adequate social communication and behavior support in the January 25, 2023 IEP. The progress reports on Student's annual goals showed that the escalation in Student's behavior was interfering with his ability to access his education to such an extent that he was regressing in reading, writing, and mathematics. This should have been a red flag to the IEP team that Student required additional behavior and social communication and that the strategies in his behavior intervention plan were not working. The IEP team did not add any behavior supports, adjust Student's behavior intervention plan, or add any supports or services to address his social communication needs at the January 25, 2023 IEP, thereby denying him a FAPE.

POST JANUARY 25, 2023 EVENTS

On January 30, 2023, Parent signed the assessment plan. She also complained to Ms. Worden that Student was being injured at school. Parent said Student came home from school with bruises, complaining of pain. Student told Parent other boys threatened to punch him in the restroom. She attached pictures of Student with apparent bruises. Mr. Papendorf investigated. Student told Papendorf he received the bruises while playing a game with other boys where they kicked and pushed each other in the boys' restroom at recess.

On January 30, 2023, long term substitute teacher Desiree Pruett complained to Mr. Papendorf that Student was making the classroom environment impossible to work in. Student threw objects at classmates, disrespected classmates' belongings, and made loud sounds targeted at certain special education peers. Even when he was removed from the classroom, he continued to disrupt the classroom by kicking the door.

On January 31, 2023, Ms. Puopolo observed Student in his general and special education classrooms as part of her psychological-educational assessment of Student. In his general education classroom, Student did not complete any classwork. He was on task approximately 10 percent of the time. Student sang, made drumming noises on his desk, and pretended to shoot classmates. In his special education classroom, Student refused to participate in the class or attempt any work. He was on task zero percent of the time. Student picked up his worksheet, scrunched it into a ball, and threw it on the floor.

On February 1, 2023, Student choked another child on the playground. When informed of the incident Parent replied that she was concerned Student was coming home from school with bruises and that she suspected he was watching horror movies while at school. Student told Parent he had just been playing when the choking incident occurred.

On February 7, 2023, Ms. Puopolo observed Student in his special education classroom as part of her assessment of Student. The teacher played a video for the class. After two minutes Student said, "this is boring" and began banging on his desk chanting "change the video!" When the video was completed, Student participated in a discussion with his class about the video. He laughed and mocked a peer who answered a question, resulting in the child yelling "leave me alone!" to Student. Student replied by making monkey noises at the child. Student was on task 65 percent of the time during Ms. Puopolo's observation.

On February 7, 2023, Student attacked another child at school. Video camera footage showed Student chasing down another student, catching him, and punching the child numerous times. Student then put the child in a chokehold and pulled him to the ground. When the child tried to get up Student pushed him down and started punching him again. A third student pulled Student off the child. On February 8, 2023, Ms. Delgado confiscated a note Student had written with the name of a female classmate and the word "bitch" on it. Clovis suspended Student for one day for causing physical injury to another person and using profanity.

In response to the suspension notice, Parent complained to Ms. Holdener that Student was being hurt at school. Student told Parent other students made fun of him, which made him sad, and that is why he chased the boy. Parent complained Student came home from school with a swollen knee, complaining of pain in his stomach and ribs. Student also told Parent some students stole his shoes at school. Parent was upset because the shoes at issue were a pair of Crocs Student received as a Christmas gift from his aunt.

On February 14, 2023, Ms. Puopolo observed Student in his special education classroom as part of her assessments of Student. The class was working on an art project. Student sat at his desk throwing school supplies. He went to the classroom sink, turned on the water, looked at the teacher, laughed, and sat back at his desk. The teacher turned the water off. Student grabbed a laptop computer and brought it to his desk. When the instructional assistant told Student he could not use the computer at that time, Student returned the computer by slamming it on top of other laptop computers. Student then sat in a corner of the room quietly until it was time for a holiday party. Student ate a cookie and answered questions about Valentine's Day. He was on task for approximately one percent of the time during Ms. Puopolo's observation.

On February 22, 2022, Ms. Worden observed Student in his general education and special education classrooms. In general education, Student refused to complete any work. He started breaking pencils and made faces at other students. When he transitioned to the special education classroom Student went to the back of the room and grabbed a snack pack. He proceeded to drop crackers on the floor and ground them into the carpet with his foot. When Ms. Pruett and instructional assistant Garrett Mason asked him to stop, he replied, "What are you going to do about it?" He picked up a stick off the ground and shoved it into the classroom door keyhole. Student then sat on a bean bag in the corner and participated in classroom discussions about the weather, news video, and calendar. Student asked to go to the restroom, which was allowed. However, he refused to come back to the classroom and spent 15 minutes running away from Mr. Mason and school administrators. When Student re-entered the classroom, he called Ms. Pruett "stupid," turned off the classroom lights, and hit a student in the back. He sat at his desk and threw items at classmates while calling them "loser," "fat," and "bald." Mr. Mason removed Student from the classroom and walked him to the office. Student refused to complete any work in the office. He told Mr. Mason: "You can't make me do anything."

In February 2023, Ms. Fernandes returned from maternity leave and resumed teaching Student's sixth grade class.

On February 23, 2023, Parent emailed Worden and Papendorf requesting that Student be moved to the general education classroom for at least half his day. Student did not want to be in a special education classroom. He did not like the disabled children and complained they made too much noise and stared at him. He felt the class was boring. Parent believed Student was frustrated with his special education classroom and this

frustration was causing his behaviors. Ms. Worden replied that Student exhibited behaviors in both general and special education, but that the team would discuss the issue at a meeting.

On March 2, 2023, Ms. Puopolo observed Student in his special education classroom as part of her assessments of Student. The class had free time, and Student chose to watch an educational program. Student yelled at a school staff member "Get out of here! You are annoying me!" when the staff walked near Student's screen. Student changed the settings on his computer so that what he was watching could not easily be seen by others, looked at the staff member and smiled. However, Student complied with the directive to restore the computer settings. Student then used the internet search function to look for ways to bypass school restrictions. Student was on task approximately 45 percent of the time.

On March 14, 2023, Student stole two hundred dollars from his parents and tried to buy headphones from a peer at school. Mr. Pappendorf stopped the transaction and returned 180 dollars back to Student's parents.

On March 23, 2023, during English language arts class Student threatened to make a bomb and blow up the classroom. He also ripped up paper and threw it into the sink. He called students names and screamed profanity at them. He removed cling wrap from the trash can and wrapped it around his neck. As a consequence, he was sent to the office.

MARCH 28, 2023 ANNUAL IEP

On March 28, 2023, Clovis convened an annual IEP team meeting to discuss the recent comprehensive assessments of Student. Parent attended the meeting.

The IEP team discussed Ms. Puopolo's psychological-educational evaluation of Student and Ms. Worden and Ms. Fernandes' educational evaluation report. Ms. Pruett shared that Student's behavior was highly variable. He was capable of engaging in tasks when they related to science or animals. Student liked to talk about his family, his uncle's farm, and his adventures outside. Student had difficulties with peers, frequently calling his special education classmates "losers," "stupid," "dumb," "lame," "fat," "bald," or "babies." When redirected by staff, Student responded: "I don't care what you say," and "What are you going to do about it?" and "You can't make me."

Ms. Fernandes shared Student was highly engaged during science lessons. Behaviorally, she was concerned that he kicked wheelchairs of other students, pulled chairs out from students, and teased students. His conduct towards three particular students had risen to the level of bullying. He did not show remorse.

Ms. Delgado shared Student attempted to interact with peers in the general education classroom. However, he did so by bringing up horror movies, touching classmates, eating paper, or throwing items at classmates. These interactions were not successful socially.

Parent shared Student loved playing outside, going to the park, and taking care of his pets. Parent was concerned with Student's withdrawal in the classroom and high level of task refusal. In the assessment process Parent did not offer any indication of trauma, injuries, or genetic factors contributing to Student's disabilities. She believed autism caused Student's behaviors.

Parent did not raise the issue of Student's eligibility category in this case. As such, Parent's concerns regarding a potential autism eligibility are included as background, but are not at issue in this Decision.

Student provided his own perspective in an interview with Ms. Worden on March 9, 2023. Student preferred to be in Ms. Delgado's general education classroom over Ms. Fernandes' special education classroom because his friends were in general education. However, he only wanted to spend more time in general education if it meant he did not have to do any work there. He found reading and math hard but enjoyed science. He would rather be at home all day than go to school because he could play all day at home. Student shared that one thing he did not like about school was that he was treated unfairly. He felt that he got in to trouble for behaviors that other students did not get into trouble for. He stated that sometimes he did not do his work because it was too hard, and other times he just wanted to do something else instead.

Student's scores on cognitive standardized testing showed him to be lower functioning than he appeared in the classroom. Student's full-scale intelligence quotient, called IQ, was in the low range, with a standard score of 53, in the first percentile. Ms. Puopolo believed Student's deficits in fluid reasoning significantly impacted his IQ score. She calculated the mean of Student's processing scores as a standard score of 77. In her estimation, the score of 77, which was below average, more accurately reflected Student's cognitive ability than the score of 53, which was in the low range.

Behaviorally, Student exhibited clinically significant symptoms in the areas of hyperactivity, aggression, conduct problems, withdrawal, social skills, and study skills according to the rating scales in the Behavior Assessment for Children, Third Edition. These findings demonstrated Student's conduct problems at school were so extreme it made it difficult for him to make academic progress.

Student scored a seven on the Autism Diagnostic Observation Schedule Second Edition. This score reflected a low level of autism spectrum behaviors but not autism. Despite his elevated scores, Ms. Puopolo determined Student's behaviors at school were not the direct result of autism. Rather, she viewed Student's behaviors as reflecting oppositional behavior, a social-emotional disorder, and delays in overall functioning. Ms. Puopolo credibly testified Student's scores should be interpreted with caution because Student did not cooperate with testing and was frequently defiant. For example, when testing probes asked him to discuss his thoughts, feelings, or experience, Student often responded, "this is boring," or "I don't want to talk about this."

Student's standardized testing in academics ranged from low to very low. He received standard scores of 60 in basic reading skills, 45 in reading fluency, and 62 in reading comprehension. In mathematics he received standard scores of 46 in math computation and 40 in math fluency. Overall, his scores showed his academic functioning to be significantly lower than his same-age peers.

In writing, he received standard scores of 49 in written expression and 50 in writing fluency, showing he performed lower than 99.9 percent of his same-age peers. When asked to write a paragraph about his favorite sport, Student wrote one sentence: "I like boxing becuse you get to punch peopl to dath and your are get verry srong." He verbally stated what he wrote was "I like boxing because you get to punch people to death and you can get very strong." He said he watched boxing at his uncle's house and would like to be a boxer when he was older.

The IEP team determined Student was eligible for special education under the categories of emotional disability and other health impairment.

The IEP team discussed the assessment for educationally related mental health services conducted by Allison Johnson. Student did not cooperate with the assessment. He was often distracted by intrusive thoughts or interests he wanted to share with the assessor. The assessment showed Student displayed symptoms of anxiety. However, on the assessment for anxiety symptoms Student became bored. He asked the assessor, "How much longer?" The assessor said they had five more questions and then he would be done. Student replied, "I will just say very true for the rest. There, I'm done." As such, the scores are interpreted with caution. Ms. Johnson recommended that Student continue to receive mental health counseling to support his self-regulation, emotional identification, and social skills.

The IEP team discussed the special circumstances independence assessment conducted by Ms. Puopolo and Ms. Fernandes. The assessment included a chart listing each time period within Student's school day and whether he required additional staff support. The school day at Copper Hills began at 8:00 a.m. and ended at 2:45 p.m. The assessment concluded that Student required one-to-one support for every period of his school day. He required one-to-one instruction during all academic tasks in both the special education and general education classrooms. He required one-to-one support for supervision during recess and lunch to make sure he

- kept his hands to himself,
- used appropriate language toward staff and students,
- maintained appropriate conversations, and
- stayed within recess boundaries.

He required one-to-one support during choir and physical education to make sure he

- followed directions,
- kept his hands to himself,
- used school supplies appropriately,
- used appropriate language toward staff and students,
- maintained appropriate conversations, and
- stayed within the designated areas.

At the end of the day, he required a one-to-one aide to supervise him walking to the bus and boarding.

These findings were consistent with Student's behavioral data preceding the IEP. However, contrary to these findings, the assessment summarily recommended for Student to receive a one-to-one aide, which Clovis also called a Special Circumstances Independence Facilitator, for only 5.5 hours per day/27.5 hours per week. At hearing, none of the Copper Hills school staff could adequately explain the recommendation for partial day one-to-one aide support when the assessment report determined he needed full-time one-to-one aide support for the entirety of his school day, from 8:00 a.m. to 2:45 p.m.

The IEP team discussed the functional behavior assessment of Student conducted by Ms. Puopolo. The assessment included a highly optimistic framing of Student's progress on annual goals as the basis for concluding the behavior strategies in place at Copper Hills had been mild to moderately successful. Ms. Puopolo relied on comparing the baselines from the September 2022 IEP with the progress from the data in the January 20, 2023 progress report on Student's annual IEP goals. Student made brief progress on his goals in September and October 2022. From October 2022 through

March 2023, Student made little to no progress on his academic and work completion goals. The functional behavior assessment recommended a behavior intervention plan for Student.

The IEP team updated Student's behavior intervention plan based upon the functional behavior assessment, data collection, the mental health assessments, and a review of previous behavior intervention plans. The team identified Student's problem behavior as:

- physical aggression, defined as hitting, pushing, putting in head lock, and tackling others, occurring approximately 12 times per month;
- verbal aggression, defined as name calling, negative comments of others, and laughing at other's mistakes, occurring approximately 35 times per month; and
- work refusal, defined as refusing to attempt work, pushing tasks away from him, playing with school supplies, orienting his body away from instruction, tapping loudly on his desk, singing, humming and getting out of his seat and roaming the classroom, occurring approximately 26 times per month.

The behavior intervention plan listed two types of antecedents: those identified by the functional behavior assessment, and those reported by school staff. According to the functional behavior assessment, the problem behaviors were more likely to occur

- earlier in the morning,
- when Student was seated at his desk,

- during whole group or independent tasks, and
- during weekly goal assessments.

According to staff reports, Student's problem behaviors were more likely to occur

- when Student was required to produce written work,
- when the topic assigned was not of personal interest to Student,
- when there were many peers present,
- when there was a change of staff or schedule, and
- when he arrived at school upset about something that happened before school.

With respect to the function of the behavior, the team theorized that Student engaged in these problem behaviors to gain access to computer time or access to other electronics. He also engaged in the problem behaviors to avoid difficult academic work, perceived social disrespect, and boring or tedious academic work. Additionally, Student engaged in problem behaviors to obtain attention from peers and adults. Student perceived that he gained social status from peers by obtaining attention. The IEP team continued to propose a functionally equivalent replacement behavior of Student completing small amounts of academic tasks to earn reinforcements. The team also listed asking for breaks and obtaining attention by complimenting peers as two additional functionally equivalent replacement behaviors for Student.

The IEP team developed two new behavior goals for Student. Goal One required Student to reduce incidents of physical aggression to no more than five instances per month. Goal Two required Student to reduce incidents of verbal aggression to no more than 15 incidents per month. The IEP team updated his work completion goal to require him to complete 75 percent of assigned tasks. These three goals each mandated

behavioral changes from Student without embedded strategies to assist him in changing his behaviors. As such, they were inappropriate and not designed to provide Student with educational benefit.

The team developed also two social emotional goals for Student to address his frustration levels, and one goal to address perspective taking of others.

For the remainder of the 2022-2023 school year, Clovis offered Student continued placement in the functional life skills special day classroom at Copper Hills for 1,175 minutes per week. This educational setting offered Student a high student to staff ratio to assist with instruction and behavioral redirection. Teachers and staff were trained in Student's behavior intervention plan. However, as described above, Student struggled behaviorally and in social communication in this classroom.

Clovis offered Student 790 minutes per week in the general education environment for

- morning work,
- music,
- morning recess,
- lunch and lunch recess,
- physical education, and
- science.

Within general education, Student attended the Positivity Project, a social emotional learning program with his peers. The Positivity Project focused on pillars of character.

Students watched videos and answered questions on how to display the positive characteristics. However, Student refused to answer questions or actively participate in the lessons.

For the 2023-2024 school year, Student would transition to seventh grade. Clovis offered Student placement in the resource specialist program direct instruction program for 1,030 minutes per week. The resource specialist program direct instruction program included special education instruction for classes in English, math, science and history, plus a weekly social skills group for 30 minutes. Clovis offered Student general education for physical education, an elective, lunch, and break.

Clovis offered Student a one-to-one aide for 5.5 hours per school day. The one-to-one aide would assist Student with behavior and social communication by helping him

- follow directions,
- keep his hands to himself,
- use school supplies appropriately,
- use appropriate language toward staff and students,
- maintain appropriate conversations, and
- stay within the designated areas.

Clovis did not offer Student speech services, which Student previously had been receiving. Clovis offered Student individual counseling for 300 minutes per month (240 minutes direct, 60 minutes consultation), and psychological services for 120 minutes per month, to be delivered in a consultation model. The counseling and psychological services were designed to support Student's behavior and social communication.

Ms. Fernandes discussed the strategies the school staff used to reduce Student's behaviors, including art projects, taking walks, throwing a baseball with an instructional assistant, word searches, science, choosing the class video, working in different locations, candy and snacks, and allowing Student the choice of how to produce his work (white board, pencil/paper, or verbally).

Parent requested Student spend more time in general education. School staff discussed Student's behavior in general education. He had recently thrown his morning workbook into the classroom sink and turned on the water, destroying the workbook. He was physically separated from the general education students because he had been stealing students' supplies, poking them with pencils, destroying their work, and throwing things at their head.

Parent complained about the school physically separating Student from other children in general education. She said this made Student feel like he did not belong in the class.

Overall, the evidence showed Clovis failed to offer Student adequate social communication and behavior support at the March 28, 2023 annual IEP team meeting. Clovis improved the behavior intervention plan by adding two additional functionally equivalent replacement behaviors. However, Clovis had sufficient data at this point in time to realize the behavior strategies in Student's behavior intervention plan were not effective for him. His behaviors had escalated from the beginning of the school year, and he was not making progress on most of his IEP goals. Clovis also failed to offer Student a full-time one-to-one aide despite their assessment which showed he needed support for the entirety of his school day to support both his behavior and his social communication.

As such, the March 28, 2023 IEP was not reasonably calculated to enable Student to make progress appropriate in light of his child's circumstances and denied Student a FAPE.

POST MARCH 28, 2023 EVENTS

Toward the end of April 2023, Student was involved in an incident with another Student. For "Fun Friday" both students brought to school dolls of the character "Woody" from the movie Toy Story. The dolls were similar but not identical, with different sized cowboy hats. The students played together with their dolls, then exchanged them on the afternoon bus. Student told Parent he left the other child's toy on the school bus. The other child took Student's doll home for the weekend. The following Monday the other child brought Student's doll back to school. Student did not bring a doll back. Student told Ms. Fernandes he did not know where the other doll was. Ms. Fernandes confiscated Student's Woody doll by putting it on her desk until Student returned the other child's doll. He never did. On June 6, 2023, Ms. Fernandes gave Student his Woody doll from her desk. The other child never received his doll back.

Ms. Fernandes believed Student stole the other child's Woody toy and was dishonest about the incident. Parent felt strongly Student was a victim in the incident. She was very upset. Parent believed Student felt unjustly accused and sad. He became irritable. He was not eating or sleeping well. She believed Student was being bullied and she was angry the school staff believed the version of events told by the other child rather than believe Student.

On May 3 and 4, 2023, Parent emailed school staff complaining Student was injured at school. Student told Parent Mr. Mason hit Student in the head with a baseball. Student

told Parent Mr. Mason hit him with a baseball a second time the next day, and this time hit him harder. She also believed Student was hit in the head with a baseball on a third occasion.

Mr. Papendorf met with Student. Student told Papendorf he tackled a friend in physical education and the friend pushed him. Student said they were just playing, and he was not injured. Student also told Mr. Papendorf that Mr. Mason hit Student in the head with a baseball. Mr. Mason denied the accusations.

On May 8, 2023, Student disrupted the special education classroom during state testing. He looked at a disabled peer and said, "you can't walk, you're dumb." He threw a small block across the room and said to his teacher, "go get it doggy." He then banged on cabinets and hit a water fountain such that water sprayed into the room. He crunched a snack in his hand and put it into the testing laptop.

On May 9, 2023, a volleyball bounced on the ground and hit Student on the head while he was at recess. Mr. Mason took Student to the nurse's office. Licensed vocational nurse Denell Huckleberry examined Student. He did not have a bump. He seemed fine. He did not want any ice. Two hours later, registered nurse Scarlett Lee called Parent and left a voicemail. Nurse Lee erroneously told Parent Student had been hit in the head with a softball. She explained a ball bounced on the ground and hit his head, but it was not hard, and Student was fine.

On May 15, 2023, Student disrupted his special education classroom. He climbed the ledge of the class window and jumped off. He jumped on a table and kicked over chairs. He grabbed art supplies and painted the cabinet and counter. He was kept in the classroom for recess. He then called his teacher a "dumbass." When the students returned

from recess he said “you’re stupid” to each of his classmates as they entered the room. He continuously climbed on his chair and jumped off. School staff took his chair from him. He started hitting the wall and said, “I’m going to blow this place up. I’m going to destroy everything in here.”

MAY 26, 2023 IEP AMENDMENT AND THE END OF THE 2022-2023 SCHOOL YEAR

On May 26, 2023, Clovis convened an IEP team meeting for Student to discuss Parent’s concerns. Parent was very upset. At home, Student showed Parent a baseball and said it was the baseball that Mr. Mason had thrown at his head at school. Parent brought the baseball to the IEP team meeting. Toward the end of the meeting, she retrieved the ball from her purse and put it on the table as evidence. The school staff members of the team just stared at the baseball. They did not believe Mr. Mason hit Student in the head with this baseball at school, which left Parent even more dissatisfied.

The IEP team agreed to have a different instructional assistant supervise Student, although Mr. Mason continued working in the classroom. The IEP team also revised Student’s IEP to offer an accommodation that school staff would check in with Student during unstructured times and would bring him to the nurse if he reported any injuries or discomfort.

At the IEP team meeting, Parent also complained that Ms. Fernandes had called Student “ugly,” “idiot,” and a few other things. Ms. Fernandes asked Parent if she believed this. Parent replied yes, she believed her son.

The IEP team did not revise Student's behavior intervention plan or offer any additional behavior or social communication supports at the May 26, 2023 IEP, despite the overwhelming evidence Student's behaviors were escalating and that the strategies in the behavior intervention plan were not effective for Student.

On May 26, 2023, Student disrupted the classroom. He threw his schoolwork on the floor and banged and kicked the doors. He called students in his special education class "fat ass," "idiot," "stupid," "dummy," and "loser." The teacher sent him to the office. In the office, he called Mr. Mason "fat ass," drew on his own arm, and made noises.

On May 31, 2023, Student looked at a student in his special education class and said "retard!" He then made his hand into the shape of a gun, aimed it at another student, and mimicked shooting the child. He told Ms. Fernandes to "shut the fuck up." As a consequence, she sent him to the office. He responded by yelling, "Yes! The office!" and ran out the door.

The preponderance of the evidence showed Clovis denied Student a FAPE from September 16, 2022, through the end of the 2022-2023 school year, by failing to offer adequate social communication and behavior support in Student's IEPs. Clovis' failure to offer Student adequate social communication and behavior support during the 2022-2023 school year denied him a FAPE because it impacted his ability to access the general education curriculum. Student refused to complete most of his schoolwork and frequently did not participate in either of his classrooms. As such, he made minimal to no progress on most of his annual IEP goals, including all of his academic goals, and did not receive a FAPE.

ISSUE 2(a): DID CLOVIS DENY STUDENT A FAPE IN THE 2023-2024 SCHOOL YEAR, THROUGH JANUARY 19, 2024, BY FAILING TO OFFER IEPS REASONABLY CALCULATED TO RENDER EDUCATIONAL BENEFIT IN STUDENT'S LEAST RESTRICTIVE ENVIRONMENT IN STUDENT'S MARCH 28, 2023 IEP, AS AMENDED, BY FAILING TO OFFER ADEQUATE SOCIAL COMMUNICATION AND BEHAVIOR SUPPORT?

AUGUST 18, 2023 IEP AMENDMENT

For the 2023-2024 school year, Student transitioned to Kastner Intermediate School within Clovis for seventh grade, because Copper Hills only served students through sixth grade. Kastner served approximately 1,200 students and was significantly larger than Copper Hills.

School staff at Copper Hills coordinated with their colleagues at Kastner to prepare them for Student's attendance. On May 31, 2023, Ms. Puopolo emailed Kastner staff explaining "this is a complex case" and "mom has been very difficult." In May 2023, Kastner school psychologist Bernadette Rodarte and special education teacher Brittany Lee went to Copper Hills to observe Student and meet him before he transitioned to their school. However, they found Parent in the classroom and suspected they would not get a valid observation of Student, so they left after 10 minutes.

On July 26, 2023, Parent emailed school staff with her limited consent to the March 28, 2023 IEP, as amended May 26, 2023. She included handwritten notes in Spanish on the signature page. Parent agreed to the implementation of the services offered so Student could attend school. She did not agree with the IEP because there was no

consensus that Student was autistic. She did not believe the IEP helped him with his needs. She did not agree with Student being placed in classes with children with disabilities. She wanted him to be in the general education environment.

On August 18, 2023, Clovis convened an IEP team meeting for Student with school staff from Kastner to get clarification as to Parent's limited consent to the March 28, 2023 IEP, and to answer any questions Parent had. At the meeting, Parent reminded school staff Student had a medical diagnosis of autism. She did not agree with Student's eligibility under emotional disability and other health impairment. She believed the correct eligibility category for Student was autism. She told the IEP team Student received applied behavior analysis in the home setting. She believed he needed a one-to-one aide at school. She asked why Student was still in special education classes when she did not approve. However, she verbally agreed to the implementation of the services in Student's March 28, 2023 IEP, including 1,020 minutes per week of specialized academic instruction through the resource specialist program direct instruction program at Kastner. The IEP team did not make any changes to the March 28, 2023 IEP, as amended May 26, 2023.

Clovis denied Student a FAPE at the August 18, 2023 IEP, by failing to offer Student adequate behavior support. The IEP did not offer him an effective behavior intervention plan or a full-time one-to-one aide, which Student required.

However, Student did not meet his burden of proof that Clovis failed to offer Student adequate social communication support for the 2023-2024 school year. The IEP included a weekly social skills group for Student at Kastner. Ms. Lee and Ms. Rodarte taught Student's weekly social skills class, along with a speech pathologist. The class taught strategies for making and maintaining friendships and appropriate verbal

exchanges. The class focused on social language and pragmatic speech. This social skills group was reasonably calculated to enable Student to make progress in social communication.

Because Clovis offered Student the weekly social skills group, it did not fail to offer Student adequate social communication support for the 2023-2024 school year.

POST AUGUST 18, 2023 EVENTS

On August 21, 2023, Ms. Lee, Learning Director Allison Giacobbe, and Student's math teacher Sarah Giersch discussed Student's first week of attendance at Kastner. Kastner did not have a one-to-one aide available for Student, so they discussed the need to find supervision for him at all times until they had an instructional assistant available. School staff had doubts about the appropriateness of Student's placement given Student's behavioral needs. Ms. Giersch wrote: "It is popular opinion that he does not belong in [Resource Specialist Program direct instruction] classes. He is very low and destructive unless someone is there with him to tell him to stop." Ms. Lee replied, "How interesting! During his transition meeting we thought his scores were far too low for [Resource Specialist Program direct instruction]."

Parent did not raise issues regarding implementation of Student's IEPs or the appropriateness of Student's placement in this case. As such, those issues are not addressed in this Decision and these facts are included only as relevant to Student's social communication and behavior needs during the 2023-2024 school year.

On August 25, 2023, Student called an instructional assistant a “bitch.” He then told the teacher “I don’t give a fuck,” and called the teacher a “bitch.” Clovis suspended Student for two days.

Parent was concerned about this incident. She felt that it was unusual for Student to use profanity. Student told Parent he was overwhelmed in math class when the teacher was giving directions. He felt bad, bored, and irritated. He wanted to leave but was not allowed to. Student said the teacher yelled at him, which made him nervous, and that is why he said a bad word.

On September 15, 2023, Student threatened to drown a peer in the school pool during physical education. Ms. Giacobbe and Ms. Lee came to physical education to monitor the class and prevent any incidents. Instructional assistant Arsheel Washington stayed in the water with Student. When Ms. Lee spoke to Student about the threats, he replied that he did not care and wanted the peer to drown.

On September 20, 2023, Student disrupted his classroom and the school site. He put his pencil in his mouth and hit the pencil. Ms. Lee was concerned he would injure himself. She took the pencil away. In response, Student began yelling at the other students in the class. Ms. Lee offered him a break. Outside, Student ran away from the instructional assistant, across the blacktop and through classrooms. He finally sat under a tree and started digging up the dirt. Ms. Lee offered Student a continued break outside or the opportunity to go to the P9 classroom. P9 was where students attended detention during the school day. Student asked to go to P9. He enjoyed being in P9 because it was where the “bad kids” were. Student told Ms. Lee he enjoyed misbehaving and being a bully. Ms. Rodarte theorized that being in the P9 room reinforced Student’s negative behaviors.

Vincent Orazé supervised the P9 classroom. Initially, Mr. Orazé provided Student with a computer while he was in P9. However, Student used the computer to make google searches on weapons, specifically AR-15 and AK-47 guns. As a consequence, Mr. Orazé stopped giving Student access to a computer.

On September 21, 2023, Student made hand gestures in the form of a gun, pointed at students, and made gun noises as if shooting the students. Internally, school staff discussed they were unable to fill the position for Student's one-to-one aide.

Parent was concerned about Student's safety at school. He had bruises on his body which she suspected came from incidents at school. Student told Parent instructional assistant Mr. Washington and school resource officer Rose grabbed him by the arms to get him down off a wall. Parent believed Student was intimidated by school staff. She took photos of his bruises as evidence and emailed them to the school.

On September 27, 2023, Student wrote a note to a teacher that stated, "Take that shit, bitch." He was angry his teacher had denied him access to games on the computer.

SEPTEMBER 27, 2023 IEP AMENDMENT

On September 27, 2023, Clovis convened an IEP team meeting for Student to discuss Parent's concerns. Parent expressed concern that Student left classes, refused work, and said inappropriate things to teachers. Parent was also confused and concerned that Student was no longer receiving speech services. She requested that he receive speech again.

School staff members of the IEP team also expressed concerns. In his academic classes, he was not accessing his education because he refused to participate or complete work. The teachers believed the classwork was above his level and too challenging. He was using swear words, escaping from the classrooms, and throwing objects. Student bothered other students by flicking boogers, spitting, and throwing objects at them. Student refused to access his services or participate in the weekly social skills group and individual mental health counseling. Student refused to complete schoolwork in every class period, every day. He engaged in verbal aggression every day.

Ms. Lee suggested Student needed a more restrictive placement. School staff members of the IEP team agreed Student required more supports than could be offered at his current placement at Kastner. The team discussed the possibility of a placement in a nonpublic school called Creative Alternatives. Parent asked to look at the school.

At the September 27, 2023 IEP team meeting, Clovis did not make any changes to Student's IEP or behavior intervention plan. Clovis continued to offer Student appropriate weekly social skills services to support his social communication, but Student refused to participate.

Clovis denied Student a FAPE at the September 27, 2023 IEP by failing to offer Student adequate behavior support. The IEP did not offer him an appropriate behavior intervention plan with effective behavior strategies or a full-time one-to-one aide, which Student required at Kastner to receive educational benefit.

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POST SEPTEMBER 27, 2023 EVENTS

On September 28, 2023, school staff discussed Student's behavior via internal emails. School staff believed Student's behavior plan was lengthy, appropriate, and being implemented. However, Student did "not respond to the accommodations or supports in the [behavior support plan]."

On September 29, 2023, Student threatened to stab another student with a pencil.

On October 4, 2023, school staff exchanged internal emails discussing Student's behaviors, including possible nonpublic school placements. Administrator Stacey Tafoya wrote, "His [oppositional defiance disorder] is concerning He does have a [behavior intervention plan] in place and it is being followed however is not working because there is no motivation for him in the school setting."

On October 4, 2023, Student refused to go to any of his classes. He told Ms. Lee, "I will do what I want to, I don't have to go." When she asked him why he did not want to go to class he replied, "I can do what I want. School is boring." Student spent the day in the P9 classroom.

On October 5, 2023, Student left his physical education class without permission. For approximately one hour Student ran under bleachers, climbed a chain link fence, played in woodchips, hid in bushes, and attempted to jump over fences to get to restricted areas on the campus. The instructional assistant asked for help, so Ms. Tafoya and a school resource officer followed Student in a golf cart.

On October 6, 2023, Student head-butted a peer so hard he nearly knocked the peer over. He had been verbally picking on the peer all week.

On October 9, 2023, Student left his first period class at 8:40 a.m. and refused to go to any of his classes. He walked around campus and climbed walls, fences, and bleachers. Eventually Student agreed to go to the P9 classroom, where he spent the remainder of the day.

On October 10 and 11, 2023, Student refused to go to his classes. He sat in the mud. He spent the remainder of the days in the P9 classroom, where he also refused to do academic work. In P9, Student picked his nose and rubbed mucous all over his desk and the surrounding areas.

On October 11, 2023, Parent took pictures of bruises on Student's body. She was collecting evidence to support her theory that Student was not safe at school. Student told Parent school staff treated him poorly, yelled at him, chased him in a golf cart, and grabbed his arm. He did not want to go to school. At hearing, Parent described her feeling at that time, "What mother would send their son to a place he gets bruises and is not safe?"

On October 16, 2023, Student attended his classes until lunch time. Then, he ran around the baseball fields. He entered Ms. Lee's classroom, broke supplies, erased student and teacher work on the white board, and ran off again. Eventually he sat in the school office, refusing to do work.

OCTOBER 18, 2023 IEP AMENDMENT

On October 18, 2023, Clovis convened an IEP team meeting to discuss Student's progress, services, and placement. Student completed less than 10 percent of his assigned classwork. School staff stated Student was not benefitting or making progress in his

current educational setting. They again suggested Student needed a more restrictive placement. Ms. Tafoya believed Student needed a smaller setting with behavior and mental health services embedded in the program.

Parent was very concerned about Student. He was not sleeping or eating well. She agreed he was not making progress at school.

However, school staff and Parent had very different perspectives on the cause of Student's difficulties. School staff discussed an incident the day before, where Student ran away from staff, hit windows, kicked bookshelves, and crawled under desks and tables. Student told Parent none of this was true. He also complained to Parent that school staff took pictures and recordings of him. He told Parent Ms. Lee threw his backpack. School staff told Parent Student's statements were not true. They offered Parent paperwork to make an official complaint.

At the October 18, 2023 IEP team meeting, Clovis did not make any changes to Student's IEP, behavior intervention plan, or social skills services. Clovis denied Student a FAPE at the October 18, 2023 IEP team meeting by failing to offer Student appropriate behavior support. Student's negative behaviors were escalating. The IEP did not offer him an effective behavior intervention plan or a full-time one-to-one aide, which Student required on a comprehensive school campus to receive educational benefit.

POST OCTOBER 18, 2023 EVENTS

On October 20, 2023, Student told his aide to "back the fuck up" and flipped him off. He also called another student "retarded" and swung his hands like he was going to hit a peer. Clovis suspended Student for one day.

On October 25, 2023, Student threatened a peer by saying he would break the peer's arm. Student spent the remainder of the day in the P9 classroom. On the bus ride home, Student hit another student on the head.

On November 1, 2023, Student called a teacher an "asshole" and the students in the class "dumbasses." He then told the class to "go to hell." He threatened a teacher by saying, "wait and see what happens when you do it again." He bullied two students throughout the day, taking their personal items, turning off their computers, and making noises at them. He laughed when asked about it and accused school staff of lying about the incidents. On the bus ride home, Student hit another student on the head multiple times. Clovis suspended Student for one day.

On November 6, 2023, Ms. Lee informed Parent Student refused to go to class and spent the day in P9. Parent responded by complaining that other students were bothering Student, and one student had scratched a bad word on Student's boot.

On November 8, 2023, Student spit on the classroom floor, called another student a "pig" and made noises at the student. The teacher asked him to stop. Student then threatened to stab the teacher with a pencil. Student stabbed his pencil in the air conditioning unit and ran out of the classroom. Clovis suspended Student for five days and referred him for expulsion.

On November 13, 2023, Clovis convened a manifestation determination review meeting to discuss a proposal to expel Student for threatening to stab his teacher with a pencil. Clovis' staff reviewed Student's past behavior and disciplinary records.

School staff and Parent continued to express differing perspectives on Student's behaviors. Parent believed autism might be causing Student's behaviors. Student told Parent school staff yelled at him, making him nervous. She was worried he was not happy to return to school at Kastner and was afraid of the adults.

School staff believed oppositional defiance disorder was causing Student's behaviors. They did not observe Student display symptoms of autism. School staff did not believe Student was afraid of the adults, but rather it was a game to him. They suggested Student required a placement in a more restrictive setting, a nonpublic school.

All attendees of the manifestation determination review, including Parent, agreed Student's behavior of threatening to stab his teacher with a pencil was a manifestation of his disability. He was allowed to return to Kastner following his five-day suspension.

NOVEMBER 15, 2023 IEP AMENDMENT

On November 15, 2023, Clovis convened an IEP team meeting to discuss Parent's concerns, Student's progress, services, and placement. The IEP team updated Student's present levels of performance. Regarding Student's social, emotional, and behavior needs, the IEP noted that reinforcers were not working well, and Student did not accept replacement behaviors. Student displayed physical aggression three times per week, verbal aggression 12 times per week, and eloping 24 times per week. The IEP team reviewed Student's progress on his 11 annual IEP goals. Student made no progress or regressed on nine of his goals, including all academic goals. The IEP stated Student made some progress on two goals, physical aggression and verbal aggression, but the data was inconsistent with the present levels of performance, which showed Student made no progress in rates of physical aggression and regressed in rates of verbal aggression.

The IEP team made two revisions to Student's behavior intervention plan. First, the IEP team revised the definition of work refusal to include eloping behavior. Second, they updated the frequency as to Student's behaviors. Student displayed physical aggression 12 times per month, at approximately the same level as in the March 28, 2023 IEP. However, Student's verbal aggression and work refusal increased significantly at Kastner. Student engaged in verbal aggression 48 times per month. Previously, his behavior intervention plan stated he engaged in verbal aggression 35 times per month. He engaged in work refusal 24 times per week, compared to 26 times per month at the March 28, 2023, IEP. The team intended to discuss more changes to Student's behavior intervention plan but ran out of time.

At the November 15, 2023 IEP team meeting, Clovis offered Student a placement in a nonpublic school with 405 minutes per day of specialized academic instruction. Clovis continued to offer Student 300 minutes per month of individual mental health counseling. Clovis offered Student 45 minutes per month of psychological services.

Ms. Rodarte believed Student's behavior intervention plan would be effective in a nonpublic school environment, in a smaller class with fewer students. She believed his behavior intervention plan was comprehensive, thorough, and addressed all his needs. However, attention was reinforcing for Student and the Kastner school staff did not feel they could ignore his unsafe behavior. A nonpublic school would provide a self-contained class on a gated campus, which would minimize the safety risks when Student engaged in unsafe behavior. Ms. Tafoya also believed it was clear Student needed a smaller environment with embedded supports to allow him to build relationships and access counseling.

Parent did not agree to a change of placement. Student would not have access to general education peers in a nonpublic school setting. She wanted Student in general education, not a more restrictive special education setting.

Parent did not consent to the IEP. She did not want Student in a segregated special education setting. Student told her he wanted to be in general education. Parent did not want Student to attend Kastner and she no longer trusted Clovis. She hoped Student could be placed in a different educational environment, such as a different public-school site or a private Christian school, with a full-time one-to-one applied behavior analysis aide.

Student had the burden of proof in this matter. Student did not offer evidence as to the social communication and behavior supports in the nonpublic school setting offered. Clovis provided evidence the nonpublic school offered Student the embedded behavior and social communication supports he needed to access his education, which Student failed to rebut.

This Decision makes no determination as to whether the placement offer of a nonpublic school was an appropriate placement for Student in the least restrictive environment. Placement was not at issue.

However, the question of whether Clovis offered Student adequate social communication and behavior support was at issue, and Student did not meet his burden of proof on this issue as of the November 15, 2023 IEP team meeting. As such, Student did not meet his burden of proof that Clovis denied Student a FAPE at the November 15, 2023 IEP team meeting, by failing to offer appropriate social communication and behavior support.

POST NOVEMBER 15, 2023 EVENTS

On December 1, 2023, Student pushed Ms. Lee, who was pregnant at the time. He called her a "witch" and wrote on a piece of paper "stupid teachers." He refused to participate in any of his classes that day. He walked around campus, including on top of bleachers and school fences. He banged on windows. He picked up garbage off the ground and put it in his mouth.

On December 5, 2023, school staff discussed internally whether they could provide Student with clay as a reinforcer. Student loved clay and Play-Doh and he was observed behaving very appropriately and respectfully when given Play-Doh.

On December 7, 2023, Student threatened to shoot his instructional assistant and made racial slurs. Student was in the P9 classroom with his instructional assistant, Mr. Washington. Mr. Washington was African American. Student stated he intended to bring a toy, a remote-controlled car, to school. Mr. Washinton reminded Student that was not allowed. Student said there was nothing Mr. Washington could do about it and threatened to shoot Mr. Washington with bullets. He told Mr. Washington his skin color was the color of poop, and Mr. Washinton's mother's skin color was the color of poop. He made whipping gestures and stated Mr. Washington should be whipped like a slave, like Harriet Tubman. Mr. Washington replied that his skin color was not very different from Student's skin color. Student replied that he and his mother were Mexican and did not like African American people.

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Student told Parent school staff lied about the December 7, 2023 incident. He said Mr. Washington told Student he looked like the cartoon character Sponge Bob. He said Mr. Washington was always bothering him. Student cried and told Parent no one would help him at school, and he wished he was dead. Parent decided she could not send him back to this school where he was suffering.

Student has not attended Kastner, or any school, since December 7, 2023. Student shared with his expert witness Dr. Christine Villareal his delight at having been out of school for this lengthy period of time.

On December 14, 2023, Clovis convened a manifestation determination review to consider whether Student's behavior on December 7, 2023, was a manifestation of his disability. Parent attended, along with legal counsel, and his independent assessors, Dr. Gilbertson, Dr. Villareal, and Ms. Seely. All members at the review meeting agreed Student's behavior on December 7, 2023, was a manifestation of his disability. However, school staff, Parent, and Parent's representatives, had vastly different perspectives on the incident.

Parent and her representatives felt Student was the victim in the December 7, 2023 incident. Dr. Gilbertson believed Student's comments were evidence of language issues and writing difficulties. Student's attorney stated that school staff did not understand autism. They were penalizing Student for his misunderstanding and not being able to express himself. Student's attorney suggested school staff did not like Student and were trying to get him out of the school. Although school staff denied telling Student they did not like him or want him at the school, Dr. Gilbertson explained there were multiple ways kids could pick up whether school staff liked them or wanted them in the classroom.

Student's attorney alleged that abuse, neglect, and lack of supervision by school staff contributed to Student's behavior on December 7, 2023. Parent would not send Student back to Kastner, which she believed was an unsafe learning environment for him.

From August 21, 2023, through November 14, 2023, Clovis denied Student a FAPE by failing to offer adequate behavior support in the March 28, 2023 IEP, as amended on August 18, 2023, September 27, 2023, and October 18, 2023. The IEPs did not offer Student an effective behavior intervention plan, or a full-time one-to-one aide, which Student required while attending Kastner to receive educational benefit.

As a result of Clovis's failure to provide Student appropriate behavior support, Student made no progress academically or behaviorally during this time period. He did not appear to learn anything at school other than that increasingly extreme negative behaviors could allow him to escape classwork, and eventually, school.

Student did not meet his burden of proof that Clovis failed to provide appropriate social communication support for the 2023-2024 school year, through January 19, 2024. Clovis continued to offer Student a social skills group for 30 minutes per week. This social skills group was reasonably calculated to enable Student to make educational progress.

Student did not meet his burden of proof that Clovis failed to provide appropriate behavior support in the November 15, 2023 IEP. Student failed to rebut the evidence Clovis provided that the nonpublic school offered Student the embedded mental health, behavioral, and social communication supports he needed to access his education.

ISSUE 1(b): DID CLOVIS DENY STUDENT A FAPE IN THE 2022-2023 SCHOOL YEAR FROM AUGUST 22, 2022 BY FAILING TO OFFER IEPS REASONABLY CALCULATED TO RENDER EDUCATIONAL BENEFIT IN STUDENT'S LEAST RESTRICTIVE ENVIRONMENT IN STUDENT'S IEP DATED MAY 25, 2022, AS AMENDED, AND THE MARCH 28, 2023 IEP, AS AMENDED, BY FAILING TO OFFER FREQUENCY, DURATION, OR SPECIFY GROUP OR INDIVIDUAL, FOR COUNSELING AND PSYCHOLOGICAL SERVICES?

Student's contentions as to this Issue were unclear at the due process hearing and in his closing brief. However, in his amended complaint, Student alleged Clovis failed to offer Student IEPs with the frequency and duration of counseling and psychological services, and failed to specify if the services were offered on an individual or group basis.

Clovis contends the counseling services and psychological services in Student's IEPs included the frequency and duration of the services and indicated whether the services would be delivered individually or in a group. Clovis contends there is no legal authority that states the number of sessions for a service must be identified, and such a requirement would prevent the service provider from having flexibility.

A school district must make a formal, written offer of placement and services in the IEP document. (Union v. Smith (9th Cir. 1994) 15 F.3d 1519, 1526.) Additionally, an IEP must include the projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(7).) Broad frequency ranges for IEP services, designed to provide flexibility to school staff, fall short of the requirements of the IDEA.

(Los Angeles Unified School Dist. v. A.O. (9th Cir. 2024) 92 F.4th 1159, 1170 (*A.O.*)). Using broad frequency ranges for IEP services may deny a student a FAPE when the parents do not understand how frequently the student will receive the services. (*Id.*) A school district's failure to state in an IEP whether a service will be provided in an individual or group setting is a procedural violation of the IDEA. (*Id.* at 1179.)

Harmless procedural errors do not constitute a denial of FAPE. (*L.M. v. Capistrano Unified Sch. Dist.* (9th Cir. 2008) 556 F.3d. 900, 910.) Procedural violations of the IDEA are a violation of FAPE if they impede the child's right to FAPE, significantly impede the parents' opportunity to participate in the decision making process, or cause a deprivation of educational benefit. (See *N.B. v. Hellgate Elem. Sch. Dist.* (9th Cir. 2008) 541 F.3d 1202; see also Ed. Code, 56505, subd. (f)(2).)

At Student's 30-day review IEP team meetings, held on September 16, October 6, and November 14, 2022, Clovis offered Student 300 minutes per month of individual counseling services. The IEP document clarified that 240 minutes per month would be provided directly to Student and 60 minutes per month would be consultation between staff. The IEP team meeting notes stated that the 300 minutes monthly equated to an hour a week of individual therapy. The 30-day review IEP also offered Student 120 minutes per month of individual psychological services, with the comment "Consultation with school staff to support behavior intervention plan implementation and progress on behavior goals."

Allison Johnson provided mental health counseling at Copper Hills for the 2022-2023 school year. She did not specify the number of counseling sessions to be provided within the 240 minutes per month to provide flexibility. She wanted to be flexible

because either she or Student might occasionally be sick or absent, or there might be events at school. She also factored in that at times Student did not want to attend therapy sessions.

At the January 25, 2023, March 28, 2023, and May 26, 2023 IEP team meetings, Clovis did not change its offer of counseling and psychological services to Student.

At hearing, Parent did not offer any testimony or evidence that she did not understand the offer of counseling and psychological services. Parent did not demonstrate that Clovis's technical error impeded her opportunity to participate in the decision-making process regarding Student's IEPs.

Clovis committed a procedural violation of the IDEA by offering Student 300 minutes per month of individual counseling and 120 minutes per month of individual psychological services in Student's IEPs during the 2022-2023 school year. Clovis's failure to include the number of sessions offered fell short of the requirements of the IDEA. (*A.O.*, *supra*, *at. pp.* 1159, 1170.)

However, the evidence did not show this technical procedural violation impeded Parent's participation in the decision-making process or caused a deprivation of educational benefit to Student. Specifically, the evidence did not show Parent did not understand the offer of services or that Student's education was impacted.

Student failed to meet his burden of proof that this procedural violation denied Student a FAPE for the 2022-2023 school year.

ISSUE 2(b): DID CLOVIS DENY STUDENT A FAPE IN THE 2023-2024 SCHOOL YEAR, THROUGH JANUARY 19, 2024, BY FAILING TO OFFER IEPS REASONABLY CALCULATED TO RENDER EDUCATIONAL BENEFIT IN STUDENT'S LEAST RESTRICTIVE ENVIRONMENT IN STUDENT'S MARCH 28, 2023 IEP, AS AMENDED, BY FAILING TO OFFER FREQUENCY, DURATION, OR SPECIFY GROUP OR INDIVIDUAL, FOR COUNSELING AND PSYCHOLOGICAL SERVICES?

During the 2023-2024 school year, until January 19, 2024, Clovis did not change the offer of counseling services from those offered the March 28, 2023 IEP. The August 18, 2023, September 27, 2023, October 18, 2023, and November 15, 2023 IEPs continued to offer 300 minutes per month of individual mental health counseling services, with 240 minutes of monthly services directly to Student and 60 per minutes of monthly consultation between staff.

The August 18, 2023, September 27, 2023, and October 18, 2023 IEPs offered Student 120 minutes per month of individual psychological services via consultation between staff. At the November 15, 2023 IEP, Clovis changed the offer of psychological services to 45 minutes per month of consultation on an individualized basis.

At hearing, Parent did not offer any testimony or evidence that she did not understand the offer of counseling and psychological services in the August 18, 2023, September 27, 2023, October 18, 2023, or November 15, 2023 IEPs.

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Clovis committed a procedural violation of the IDEA by failing to delineate the number of sessions of individual counseling and psychological services Student would receive during the 2023-2024 school year, through January 19, 2024. However, the evidence did not show Parent did not understand the offer of services or that Student's education was impacted.

Student failed to meet his burden of proof that this procedural violation denied Student a FAPE during the 2023-2024 school year, through January 19, 2024.

ISSUE 1(c): DID CLOVIS DENY STUDENT A FAPE IN THE 2022-2023 SCHOOL YEAR FROM AUGUST 22, 2022 BY FAILING TO OFFER IEPS REASONABLY CALCULATED TO RENDER EDUCATIONAL BENEFIT IN STUDENT'S LEAST RESTRICTIVE ENVIRONMENT IN STUDENT'S IEP DATED MAY 25, 2022, AS AMENDED, AND THE MARCH 28, 2023 IEP, AS AMENDED, BY FAILING TO ADDRESS ALL AREAS OF EDUCATIONAL NEED BY FAILING TO OFFER SPEECH AND LANGUAGE AND SOCIAL SKILLS SERVICES?

Student contends he required speech services because he had difficulty with expressive and receptive language. Student contends Clovis's failure to offer speech and social skills services hindered Student's ability to benefit from his education.

Clovis contends it offered Student speech services from August 2022 until April 14, 2023. Clovis contends that, at the due process hearing, speech and language pathologist Lindsay Rigby provided cogent and responsive explanations for her decisions and recommendation that Student no longer qualified for speech services following the March 28, 2023 IEP team meeting, which was held over numerous dates.

A child may be eligible for special education under the category of speech or language impairment. A speech or language impairment is a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. (34 C.F.R. § 300.8(c)(10).)

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

"Related services" are supportive services that a disabled student requires to benefit from special education. (34 C.F.R. § 300.34.) Related services include developmental, corrective, and supportive services, including transportation. (*Ibid.*) Speech and language services are related services under the IDEA. (34 C.F.R. § 300.34.)

Although the actions of a school system cannot be judged exclusively in hindsight, subsequent additional data and evaluation reports may shed some light on a child's condition and the reasonableness of a school district's actions at an earlier date. (*E.M. v. Pajaro Valley Unified Sch. Dist.* (9th Cir. 2011) 652 F.3d 999.)

At Student's 30-day review IEP team meetings, held on September 16, October 6, and November 14, 2022, Clovis offered Student 120 minutes per month of group language and speech services to address Student's communication goal. The goal targeted Student's receptive and expressive language deficits. The goal required Student to independently use self-generated language to retell a story with 80 percent accuracy using at least three utterances. Student made excellent progress on his communication goal and achieved the targeted outcome by March 28, 2023. Clovis did not offer Student social skills services, other than the supports embedded in the special education and general education classrooms.

On March 28, 2023, the IEP team discussed Clovis' reassessment of Student's speech, language, and communication skills. Speech pathologists Lindsay Rigby and Jessica Naranjo assessed Student. Parent provided input. She explained Student's strength was that when he liked something he could talk about it for a long time. Parent was concerned that Student did not listen to others and struggled with social skills.

Ms. Naranjo interviewed Student in Spanish. He told Ms. Naranjo he did not speak Spanish. He said that at home Parent spoke to him in English. When Ms. Naranjo continued speaking to Student in Spanish he told her, "Stop talking in Spanish, I don't like it!" Ms. Naranjo attempted to conduct standardized testing of Student's communication in Spanish. However, 90 percent of his responses were in English, so Ms. Naranjo could not obtain a valid standardized score. She deemed English to be his dominant language.

Ms. Rigby assessed Student in English using standardized testing instruments. In articulation, he scored in the average range. Student scored in the below average range in receptive language, expressive language, and social communication. When Ms. Rigby observed Student in his special education classroom, he displayed higher levels of expressive and receptive language than reflected in the standardized testing. Receptively, Student could follow directions and appeared to understand what the teacher was saying. Expressively, Student engaged in a conversation with his teacher about gravity and the moon.

Ms. Rigby concluded Student was not eligible for special education under the category of speech or language impairment. She also recommended Clovis dismiss Student from speech services. Ms. Rigby opined Student's deficits in receptive language

reflected attentional concerns which were best addressed through classroom accommodations. She believed his delays in social skills would be better addressed through mental health counseling. She believed Student had adequate language skills to progress in his current educational setting of a functional life skills special day classroom. Based on the report and recommendation, Clovis did not offer Student speech services in the March 28, 2023 annual IEP. Clovis offered Student social skills services for the 2023-2024 school year in seventh grade, but not for the remainder of his sixth-grade year.

Student's expert witness, Dr. Villareal, observed Student at Kastner on November 7, 2023. She described Student as "soft-spoken" at school. She recorded Student's utterances in a conversation Student had with Mr. Washington. Student referred to a Sharpie marker and said, "It's mine." Mr. Washington responded, "Did you bring it from home?" Student replied, "No. From the store, Office Depot. It's near Madera. That's the part where you head to San Jose. I never go. It sucks. I just know about it." Mr. Washington asked Student if he liked Santa Cruz. Student responded, "No, that's stupid. I don't like Santa Cruz." Mr. Washington then asked Student if there were any places he liked. Student replied, "All the places that belong to Los Angeles. Do you know the Cowboys stadium is in Texas? Do you know my favorite state – it's Georgia. Georgia's like 15 times going to New York. New York sucks. Halloween sucks."

Dr. Villareal did not have the opportunity to observe Student converse with peers at school. She described Student as having poor situational pragmatic skills. He

displayed adequate pragmatic language at home and church, but not at school. She credibly opined Student required speech and language services in his school setting to address vocabulary, pragmatic language, and increasing the intensity of his voice.

Clovis denied Student a FAPE by failing to offer speech and social skills services from March 28, 2023, through the end of the 2022-2023 school year and extended school year. Clovis's March 28, 2023, assessment revealed Student had deficits in receptive language, expressive language, and social communication. Clovis erred in tying whether Student required speech services to whether Student met IDEA eligibility requirements under speech or language impairment. Educational interventions are not siloed by eligibility categories. All educational interventions and methodologies are options for all special education students. Whether a student requires a particular educational intervention is made on an individualized basis. (See *Rowley, supra*, at pp. 201-204; *Endrew F., supra*, 580 U.S. 386 [137 S.Ct. 988, 1000]: 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.) There is no dispute Student qualified for an IEP. Once a child is eligible for an IEP the local educational agency is required to address all the child's needs that result from the disability. (See 34 C.F.R. § 300.320(a)(2).)

Student had complex needs across many areas. Clovis was required to address Student's needs in receptive language, expressive language, and social communication regardless of whether the disability causing his deficits was an emotional disability,

ADHD, autism, or a separate communication disorder. Clovis failed to offer speech and social skills services following the March 28, 2023, IEP, denying Student a FAPE for the remainder of the 2022-2023 school year.

ISSUE 2(c): DID CLOVIS DENY STUDENT A FAPE IN THE 2023-2024 SCHOOL YEAR, THROUGH JANUARY 19, 2024, BY FAILING TO OFFER IEPs REASONABLY CALCULATED TO RENDER EDUCATIONAL BENEFIT IN STUDENT'S LEAST RESTRICTIVE ENVIRONMENT IN STUDENT'S MARCH 28, 2023 IEP, AS AMENDED, BY FAILING TO ADDRESS ALL AREAS OF EDUCATIONAL NEED BY FAILING TO OFFER SPEECH AND LANGUAGE AND SOCIAL SKILLS SERVICES?

Clovis did not offer Student speech services in the August 18, 2023, September 27, 2023, October 18, 2023, and November 15, 2023 IEPs. The March 28, 2023, speech and language assessment showed Student had deficits in receptive language, expressive language, and social communication. Student continued to require speech services to benefit from his educational program during the 2023-2024 school year. As such, Clovis denied Student a FAPE by failing to offer speech services for the 2023-2024 school year through January 19, 2024.

At the March 28, 2023, annual IEP team meeting, Clovis offered Student social skills services in a group setting for 30 minutes per week for the 2023-2024 school year. Therefore, Student did not meet his burden of proof that Clovis denied Student a FAPE for the 2023-2024 school year through January 19, 2024, by failing to offer social skills services.

ISSUE 1(d): DID CLOVIS DENY STUDENT A FAPE IN THE 2022-2023 SCHOOL YEAR FROM AUGUST 22, 2022, BY FAILING TO OFFER IEPS REASONABLY CALCULATED TO RENDER EDUCATIONAL BENEFIT IN STUDENT'S LEAST RESTRICTIVE ENVIRONMENT IN STUDENT'S IEP DATED MAY 25, 2022, AS AMENDED, AND THE MARCH 28, 2023 IEP, AS AMENDED, BY FAILING TO PROPERLY CONSIDER ADDITIONAL SUPPORTS AND SERVICES WHICH WOULD FACILITATE STUDENT'S EDUCATIONAL PLACEMENT WITH NON-DISABLED CHILDREN TO THE MAXIMUM EXTENT APPROPRIATE?

Student contends Clovis documented Student's preference for being in general education but failed to consider it in any of its IEP team meetings or offer supports and services that would facilitate Student being included with non-disabled children for more of his school day. Student contends Clovis failed to properly consider supplementary aids and services to support Student's inclusion in mainstream settings, denying him the opportunity to be educated alongside non-disabled peers to the maximum extent appropriate.

Clovis contends the IEP team considered mainstreaming across IEP team meetings during the 2022-2023 school year, and also considered and developed goals, services, accommodations, supports, and a behavior intervention plan to facilitate successful mainstreaming.

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An IEP must include:

- a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and;
- a statement of the program modifications or supports for school personnel that will be provided to enable the child
 - to advance appropriately toward attaining the annual goals,
 - to be involved in and make progress in the general education curriculum, and
 - to participate in extracurricular and other nonacademic activities; and
 - to be educated and participate with other children with disabilities and nondisabled children. (34 C.F.R. § 300.320(a)(4).)

An IEP must include an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class. (34 C.F.R. § 300.320(a)(5).)

A child with a disability should not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum. (34 C.F.R. § 300.116(e).)

School districts must ensure that children with disabilities are educated alongside their non-disabled peers to the maximum extent appropriate. (20 U.S.C. § 1412(a)(5)(a).) School officials may remove a disabled child from the regular classroom "only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (*Id.*) The IDEA reflects a "strong preference" for educating children with disabilities in a regular classroom environment. (*D.R. v. Redondo Beach Unified Sch. Dist.* (9th Cir. 2022) 56 f.4th 636, 643, citing *Poolaw v. Bishop* (9th Cir. 1995) 67 f.3d 830, 834.)

At Student's 30-day review IEP team meetings, held on September 16, October 6, and November 14, 2022, the IEP team considered a variety of service options for Student, including

- general education,
- general education with resource specialist support,
- functional life skills special day class,
- speech and language services,
- individual counseling services, and
- psychological services.

Clovis offered Student 685 minutes per week of mainstreaming in the general education environment, which included:

- 150 minutes per week of morning work;
- 90 minutes per week of music;
- 75 minutes per week of morning recess;
- 250 minutes per week of lunch and lunch recess; and
- 120 minutes per week of physical education.

Clovis also offered Student 60 minutes per month of consultation between the mental health counselor and school staff, and 120 minutes per month of consultation between the school psychologist and school staff.

Clovis offered Student an instructional assistant from the special education classroom to attend general education mainstreaming with Student to support academic modifications, simplify directions, support behavioral redirections, and support with classwork. Clovis offered Student visual supports for expected behavior across educational settings, including in general education. Clovis also offered Student 21 additional program modifications across educational settings, including in general education:

- reduced/shortened assignments;
- checks for understanding;
- cues, prompts, and reminders of school and classroom expectations;
- preferential seating; and
- speech to text tools.

Clovis offered Student six accommodations for assessments. To support Student's behavior, Clovis offered program modifications:

- responding to defiance with a calm tone and neutral facial expression;
- providing frequent opportunities to earn tangible reinforcements;
- reminding Student of agreed upon behavioral contingencies;
- providing choices whenever appropriate;
- using "first/then" language when presenting a work task;

- chunking work tasks into smaller amounts;
- praising Student when he was behaving appropriately and complying;
- praising other students engaging in appropriate classroom behavior;
- labeling unkind statements and modeling alternative statements; and
- weekly behavior point sheets.

Clovis also offered Student modified curriculum in all academic areas across educational settings, including in general education.

At the January 25, 2023 IEP team meeting, Clovis did not change Student's placement, services, or supports.

At the March 28, 2023 annual IEP team meeting, Clovis considered a variety of service options for Student for the remainder of the 2022-2023 school year. The team considered

- general education,
- general education with resource specialist program support,
- functional life skills special day class,
- speech and language services,
- individual counseling services,
- psychological services, and
- occupational therapy services.

Clovis offered Student 790 minutes per week of mainstreaming time in the general education environment, which included:

- 150 minutes per week of morning work;
- 90 minutes per week of music;
- 75 minutes per week of morning recess;
- 250 minutes per week of lunch and lunch recess;
- 120 minutes per week of physical education; and
- 105 minutes per week of general education science.

Clovis also continued to offer 60 minutes per month of consultation between the mental health counselor and school staff, and 120 minutes per month of consultation between the school psychologist and school staff.

Clovis added several program accommodations and modifications. In addition to the supports offered at the September 16, 2022 IEP team meeting, Clovis offered Student:

- the opportunity to provide alternative responses (verbal rather than written, for example);
- a calculator;
- word prediction software; and
- reminders to speak up with clarity when he was mumbling.

To support Student's behavior, Clovis offered

- increased verbal redirections (privately when possible),
- ignoring low level behaviors such as playing with school supplies, offering teacher assistance with tasks,

- scaffolding tasks to a level consistent with Student's proficiency; and
- integrating Student's areas of interest into academic tasks.

Clovis also added one-to-one aide support for 5.5 hours per day, and consultation between the occupational therapist and classroom staff for sensory supports and environmental modifications.

At the May 26, 2023 IEP team meeting, Clovis added an additional support across educational settings, of checking with Student after unstructured times and bringing him to the nurse's office if he reported any injuries or concerns.

Ms. Delgado was Student's general education teacher for the 2022-2023 school year. She had good rapport with Student. Each morning, she personally welcomed him to make him feel included. Ms. Delgado believed Student was more capable than he let on. He was eager to learn, but only when he wanted to and on his terms. However, Student did not work on his IEP goals in the general education classroom. During the 2022-2023 school year, Student did very little academic work in Ms. Delgado's general education classroom. However, he did well on a project involving ancient Egypt after Ms. Delgado provided him with one-to-one assistance. In her opinion, Student did not require more supports or services to benefit from general education during his sixth-grade year.

Ms. Delgado was aware Student preferred to be in her general education classroom rather than the special education classroom. From her perspective, Student preferred to be in the general education classroom because he felt the activities in the special education classroom were beneath him.

Student failed to meet his burden of proof that Clovis denied him a FAPE during the 2022-2023 school year by failing to properly consider additional supports and services which would facilitate Student's educational placement with non-disabled children to the maximum extent appropriate. The IEP team considered and offered dozens of supports and services to facilitate Student's educational placement, including his time with non-disabled peers in the general education environment. Student preferred to be in general education because he disliked disabled children. He was embarrassed to be associated with them. However, he did not work on his IEP goals or make educational progress within general education. He clearly stated his perspective that he would only like to be in general education more if he did not have to do work there.

The preponderance of the evidence showed for the 2022-2023 school year Clovis provided thoughtful supports to allow Student to be educated with non-disabled children to the maximum extent appropriate for Student, and thereby did not deny him a FAPE.

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ISSUE 2(d): DID CLOVIS DENY STUDENT A FAPE IN THE 2023-2024 SCHOOL YEAR, THROUGH JANUARY 19, 2024, BY FAILING TO OFFER IEPs REASONABLY CALCULATED TO RENDER EDUCATIONAL BENEFIT IN STUDENT'S LEAST RESTRICTIVE ENVIRONMENT IN STUDENT'S MARCH 28, 2023 IEP, AS AMENDED, BY FAILING TO PROPERLY CONSIDER ADDITIONAL SUPPORTS AND SERVICES WHICH WOULD FACILITATE STUDENT'S EDUCATIONAL PLACEMENT WITH NON-DISABLED CHILDREN TO THE MAXIMUM EXTENT APPROPRIATE?

During the 2023-2024 school year until November 15, 2023, Clovis continued to offer Student the placement, services, accommodations, and modifications in the March 28, 2023 annual IEP. At the November 15, 2023 IEP team meeting, Clovis offered Student a placement in a nonpublic school, which was 100 percent of the time in special education.

Parent was clear during the 2023-2024 school year through January 19, 2024, that she wanted Student in general education, not special education. At hearing, Student argued he required a trained and skilled one-to-one applied behavior analysis aide for the entirety of his school day, with supervision from a Board-Certified Behavior Analyst.

None of the Clovis staff testified they believed Student needed additional supports and services to facilitate his placement in general education to the maximum extent appropriate. To the contrary, from his first day at Kastner, school staff believed Student needed a more restrictive placement, not less.

Student failed to meet his burden of proof that Clovis denied him a FAPE during the 2023-2024 school year through January 19, 2024, by failing to properly consider additional supports and services which would facilitate Student's educational placement with non-disabled children to the maximum extent appropriate. The IEP team considered and continued to offer dozens of supports and services to facilitate Student's educational placement, including his time with non-disabled peers in the general education environment.

The preponderance of the evidence showed for the 2023-2024 school year through January 19, 2024, Clovis continued to provide thoughtful supports to allow Student to be educated with non-disabled children to the maximum extent appropriate for Student, and thereby did not deny him a FAPE.

ISSUE 1(e): DID CLOVIS DENY STUDENT A FAPE IN THE 2022-2023 SCHOOL YEAR FROM AUGUST 22, 2022, BY FAILING TO OFFER IEPS REASONABLY CALCULATED TO RENDER EDUCATIONAL BENEFIT IN STUDENT'S LEAST RESTRICTIVE ENVIRONMENT IN STUDENT'S IEP DATED MAY 25, 2022, AS AMENDED, AND THE MARCH 28, 2023 IEP, AS AMENDED, BY FAILING TO ADDRESS STUDENT'S UNIQUE NEEDS REGARDING TRANSPORTATION?

Student contends he needed one-to-one support on the school bus to address his behavior but Clovis failed to discuss or include transportation supports at IEP team meetings. Student contends the failure to even consider support for Student on the bus exemplifies Clovis's neglect in addressing all areas of Student's educational needs.

Clovis contends Student did not have unique needs requiring support on school transportation. Clovis contends the few incidents on the bus were easily and effectively

addressed by a seating change, prohibiting toys on the bus, and returning the stolen money to Student's parents. Clovis contends Student's behaviors on the bus did not constitute a pattern and placing an instructional assistant on the bus would have been overly restrictive.

Transportation is a related service under the IDEA. (34 C.F.R. § 300.34.) IEP teams decide on a case-by-case basis whether an eligible student requires special education transportation to benefit from their education and the nature of any additional transportation support.

Clovis offered Student special education transportation for the 2022-2023 school year in the IEPs of September 16, 2022, January 25, 2023, March 28, 2023, and May 26, 2023. This was because, for his sixth-grade year, the IEP team offered Student placement in a functional life skills special day classroom. Clovis did not have this program available at Student's school of residence, Fort Washington Elementary School. As such, the IEP team offered Student special education transportation to and from Copper Hills as part of the offer of FAPE.

Parent did not raise concerns with Student's special education transportation at any of the IEP team meetings during the 2022-2023 school year. Throughout the school year, Parent was aware of certain behavior issues Student had on the bus. Early in the school year school staff discovered Student was stuffing his behavior charts between the seats and walls of the bus rather than taking them home to Parent. On two or three occasions during the 2022-2023 school year Student had a conflict with a specific child on the bus. The school staff responded by separating the children, so they no longer sat near each other on the bus. And in the spring 2023, Student exchanged "Woody" dolls with another child and did not return the doll, leading to an accusation by school staff

that Student stole the other child's toy. On July 11, 2023, Parent emailed Student's extended school year teacher raising concerns that Student told Parent he did not stay in his seat on the bus.

Overall, Student had some occasional minor behavior issues while riding special education transportation during the 2022-2023 school year. However, the preponderance of the evidence showed Student continued to ride the bus and that he was not denied access to his education due to lack of an aide or other additional supports on the bus. Student failed to meet his burden of proof that Clovis denied Student a FAPE during the 2022-2023 school year by failing to address Student's unique needs regarding transportation.

ISSUE 2(e): DID CLOVIS DENY STUDENT A FAPE IN THE 2023-2024 SCHOOL YEAR, THROUGH JANUARY 19, 2024, BY FAILING TO OFFER IEPs REASONABLY CALCULATED TO RENDER EDUCATIONAL BENEFIT IN STUDENT'S LEAST RESTRICTIVE ENVIRONMENT IN STUDENT'S MARCH 28, 2023 IEP, AS AMENDED, BY FAILING TO ADDRESS STUDENT'S UNIQUE NEEDS REGARDING TRANSPORTATION?

Clovis offered Student special education transportation for the 2023-2024 school year in the August 18, 2023, September 27, 2023, October 18, 2023, and November 15, 2023 IEPs. Student had two behavioral incidents on his school bus during this time period. On October 25, 2023, and November 2, 2023, Student hit another child on the head while riding the school bus. School staff did not see these two incidents as rising to a level of a pattern of behavior requiring additional support on the bus.

Parent did not raise any concerns about Student accessing his special education transportation during the time period at issue. At the November 15, 2023 IEP team meeting, the team discussed that Student sometimes refused to get on the bus at the end of the day. When that happened, school staff called his parents to pick him up.

However, this non-compliant behavior occurred on the school site and not the school bus, and is therefore encompassed within Issue 2(a) and the related remedy. The evidence did not show Student required a one-to-one aide or any additional support while riding special education transportation. Student failed to meet his burden of proof that Clovis denied Student a FAPE during the 2022-2023 school year, through January 19, 2024, by failing to address Student's unique needs regarding transportation.

ISSUE 3: DID CLOVIS DENY STUDENT A FAPE IN THE 2022-2023 AND 2023-2024 SCHOOL YEARS, THROUGH JANUARY 19, 2024, BY FAILING TO PROPERLY ADDRESS STUDENT'S AND PARENT'S CONCERNS REGARDING BULLYING AND STUDENT'S BRUISES AND INJURIES AT SCHOOL?

Student contends he returned home from school regularly with reports of bullying by Clovis staff. Student contends Clovis failed to provide written reports to Parent regarding Student's and Parent's claims of injuries and verbal abuse from Clovis staff.

Clovis contends the evidence unquestionably demonstrated that Clovis took seriously Student's safety at school and addressed every single allegation Parent made that Student was bruised or injured at school at the hands of school staff or was bullied by staff. Clovis contends multiple witnesses testified they had not witnessed or heard

any staff person being verbally or physically aggressive toward Student, yelling at Student, calling him names, or in any way behaving inappropriately with Student.

In Issue 3, Student raises the allegation Clovis denied Student a FAPE by failing to address Student's and Parent's concerns. The issue is whether Clovis denied Student a FAPE by denying Parent participation in the IEP process by not adequately addressing Student's and Parent's concerns. However, to consider whether Clovis appropriately responded to the concerns one must consider the subject matter and context of the concerns. Parent was concerned that Student was mistreated at school and becoming bruised and injured as a result of this mistreatment. In his amended complaint, Student refers to Parent's concerns of mistreatment as concerns regarding bullying.

California Education Code section 48900, subdivision (r)(1) defines "bullying" as any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more of the acts committed by a pupil or a group of pupils as defined in sections 48900.2 (sexual harassment), 48900.3 (hate violence) or 48900.4 (intentional harassment, threats, or intimidation), directed toward one or more pupils that has or can be reasonably predicted to have the effect of one of more of the following:

- placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property,
- causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health,
- causing a reasonable pupil to experience substantial interference with the pupil's academic performance, or

- causing a reasonable pupil to experience substantial interference with the pupil's ability to participate in or benefit from the services, activities, or privileges provided by a school.

A reasonable pupil means a pupil, including, but not limited to, a pupil with exceptional needs, who exercises average care, skill, and judgment in conduct for a person of that age, or for a person of that age with the pupil's exceptional needs. (Ed. Code, § 48900, subd. (r)(3.)

Under Education Code section 48900.4, harassment, threats, or intimidation is defined as intentional conduct that is that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.

In 2013, the United States Office of Special Education and Rehabilitative Services, called OSERS, and the United States Office of Special Education Programs issued a joint letter providing guidance on the IDEA regarding bullying. (*Dear Colleague Letter* (August 20, 2013).) Bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied. (*Ibid.*) In its guidance, OSERS and OSEP defined bullying as "... aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time." (*Ibid.*) Bullying can involve overt physical behavior or verbal, emotional, or social behaviors and can range from blatant aggression to far more subtle and covert behaviors. (*Ibid.*) In footnote 4, OSERS and OSEP stated that the focus of their joint letter was peer-to-peer bullying, but they acknowledged that teachers and

school staff could be a party to school bullying. (*Ibid.*) The United States Department of Education's "Dear Colleague Letters" are not binding authority, and their application is limited. (*Csutoras v. Paradise High School* (9th Cir. 2021) 12 F.4th 960, 967-968.)

In *T.K., et. al v. New York City Dept. of Education*, the Second Circuit found a denial of FAPE and awarded tuition reimbursement where the school consistently rebuffed the parent's attempts to discuss the bullying of their daughter. (*T.K., et. al v. New York City Dept. of Education* (E.D.N.Y. 2011) 779 F.Supp.2d 289, 317.) In *T.K.*, the student's schoolmates bullied her so severely that she came home crying and complained to her parents on a near-daily basis. The bullying was corroborated by the testimony of three of the student's one-to-one special itinerant teachers. (*Ibid.*) A neurodevelopmental pediatrician found that the "minimal interactions" the student had with her classmates were "mostly negative." (*Ibid.*) The witnesses supported these generalized assessments by describing specific instances of bullying, including

- calling the student names,
- drawing demeaning pictures of her,
- tripping her,
- laughing at her,
- pinching her hard enough to cause a bruise,
- stomping on her toes,
- ostracizing her,
- refusing to touch a pencil because she had touched it, and
- making a prank phone call to her home. (*Ibid.*)

Two of the itinerant teachers explained that the classroom teachers ignored their own concerns about the bullying. Her father described her as emotionally unavailable to learn as a result of the bullying and his assessment was supported by other facts in the

record. (*Ibid.*; see *M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 650 [If a teacher is deliberately indifferent to the teasing of a child with a disability and the abuse is so severe that the child can derive no benefit from the services that he is offered by the school district, the child has been denied FAPE.])

The IDEA guarantees parents the right to participate in meetings regarding the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. (34 C.F.R. § 300.501(b).) Under the IDEA, parental participation does not end when the parent signs the IEP. Parents must be able to use the IEP to monitor and enforce the services that their child is to receive. (*M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d. 1189.)

School administrators and staff must enter the IEP team meeting with an open mind and must meaningfully consider the parents' input. (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed. Appx. 342, 344; see also, *Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.)

Overall, the evidence did not corroborate Student's claims of mistreatment at school during the 2022-2023 and 2023-2024 school years through January 19, 2024.

Parent observed bruises on Student's body during the time period at issue. However, she did not observe him being injured at school. Except for a few incidents when Student was choosing to participate in rough play or fighting with peers, none of the school staff at Copper Hills or Kastner observed Student being injured at school such that he would receive bruises. Student failed to prove school staff at Copper Hills or Kastner touched Student. Student did not prove any school staff at Copper Hills or Kastner ever intentionally physically harmed Student such as to cause bruises.

Student told Parent that instructional assistant Garrett Mason intentionally hit him on the head with a baseball on two occasions. Parent testified that she suspected he was hit in the head with a baseball three times. Mr. Mason was Student's primary instructional assistant as well as the assistant coach of the baseball team. At hearing, Clovis school staff denied that Student and Mr. Mason ever played with a baseball. These denials were contradicted by the documentary evidence. The evidence showed Mr. Mason and Student played with a baseball on occasion. The March 28, 2023, annual IEP cited playing with a baseball with his instructional assistant as a strategy for reducing Student's behavior that Copper Hills was using. On April 19, 2023, Student's daily point sheet said he "threw baseball around with [instructional assistant]." However, the evidence did not show anyone ever hit Student with a baseball, either accidentally or intentionally.

Student told Parent school staff called him names. Parent did not observe school staff calling Student names. School staff did not observe anyone calling Student names.

Student told Parent school staff took his personal property on several occasions. Parent did not observe school staff taking his personal property. School staff did not observe anyone taking Student's personal property. Parent was also concerned that children at school may have stolen Student's shoes, his Crocs, and damaged his boots. There was no evidence any student stole Student's Crocs. Mr. Orazo observed Student damaging his own boots in the P9 classroom.

Student told Parent school staff recorded him and took pictures. Parent did not observe school staff recording Student or taking pictures of him. The school sites had security cameras in certain areas, which recorded all students within sight. Except for

school wide security cameras, school staff did not observe anyone recording Student or taking pictures of him. At hearing, Student did not present any images or recordings of Student that school staff allegedly took.

Student told Parent staff yelled at him and chased him. Parent did not observe school staff yelling at Student or chasing him. School staff did not observe anyone yelling at Student or chasing him. When Student eloped from the classroom school staff followed Student to ensure he was supervised and safe. This was reasonable and appropriate.

The evidence showed Clovis investigated Parent's concerns and reported on their conclusions to Parent via email. Clovis also convened at least 10 IEP team meetings from August 2022 through January 2024 and frequently had lengthy discussions addressing Parent's concerns. Parent was frequently unhappy that school staff did not believe Student's account of the incidents. However, Clovis appropriately investigated and responded to Parent's concerns whenever she raised them.

Student failed to meet his burden of proof Clovis denied Student a FAPE in the 2022-2023 and 2023-2024 school years, through January 19, 2024, by failing to properly address Student's and Parent's concerns regarding bullying and Student's bruises and injuries at school.

CONCLUSIONS AND PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

ISSUE 1(a):

From August 25, 2022, through September 15, 2022, Clovis did not deny Student a FAPE by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's IEP dated May 25, 2022, as amended, by failing to offer adequate social communication and behavior support.

From September 16, 2022, through the end of the 2022-2023 school year, Clovis denied Student a FAPE by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's IEP dated May 25, 2022, as amended, and the March 28, 2023 IEP, as amended, by failing to offer adequate social communication and behavior support.

Student prevailed on Issue 1, subdivision (a).

ISSUE 1(b):

Clovis did not deny Student a FAPE in the 2022-2023 school year from August 22, 2022 by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's IEP dated May 25, 2022, as amended, and the March 28, 2023 IEP, as amended, by failing to offer the frequency, duration, or specify group or individual, for counseling and psychological services.

Clovis prevailed on Issue 1, subdivision (b).

ISSUE 1(c):

From August 25, 2022, through March 27, 2023, Clovis did not deny Student a FAPE by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's IEP dated May 25, 2022, as amended, by failing to address all areas of educational need by failing to offer speech and language services.

From March 28, 2023, through the end of the 2022-2023 school year, Clovis denied Student a FAPE by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's March 28, 2023, IEP, as amended, by failing to address all areas of educational need by failing to offer speech and language services.

Clovis denied Student a FAPE in the 2022-2023 school year from August 22, 2022, by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's IEP dated May 25, 2022, as amended and the March 28, 2023 IEP, as amended, by failing to offer social skills services.

Student prevailed on Issue 1, subdivision (c).

ISSUE 1(d):

Clovis did not deny Student a FAPE in the 2022-2023 school year from August 22, 2022, by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's IEP dated May 25, 2022, as amended, and the March 28, 2023 IEP, as amended, by failing to properly

consider additional supports and services which would facilitate Student's educational placement with non-disabled children to the maximum extent appropriate.

Clovis prevailed on Issue 1, subdivision (d).

ISSUE 1(e):

Clovis did not deny Student a FAPE in the 2022-2023 school year from August 22, 2022, by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's IEP dated May 25, 2022, as amended, and the March 28, 2023 IEP, as amended, by failing to address Student's unique needs regarding transportation.

Clovis prevailed on Issue 1, subdivision (e).

ISSUE 2(a):

From the beginning of the 2023-2024 school year, through November 14, 2023, Clovis denied Student a FAPE by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's March 28, 2023 IEP, as amended, by failing to offer adequate behavior support.

From November 15, 2023, through January 19, 2024, Clovis did not deny Student a FAPE by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's March 28, 2023 IEP, as amended, by failing to offer adequate behavior support.

Clovis did not deny Student a FAPE in the 2023-2024 school year, through January 19, 2024, by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's March 28, 2023 IEP, as amended, by failing to offer social communication support.

Student prevailed on Issue 2, subdivision (a).

ISSUE 2(b):

Clovis did not deny Student a FAPE in the 2023-2024 school year, through January 19, 2024, by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's March 28, 2023 IEP, as amended, by failing to offer the frequency, duration, or specify group or individual, for counseling and psychological services.

Clovis prevailed on Issue 2, subdivision (b).

ISSUE 2(c):

Clovis denied Student a FAPE in the 2023-2024 school year, through January 19, 2024, by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's March 28, 2023 IEP, as amended, by failing to address all areas of educational need by failing to offer speech and language services.

Clovis did not deny Student a FAPE in the 2023-2024 school year, through January 19, 2024, by failing to offer IEPs reasonably calculated to render educational

benefit in Student's least restrictive environment in Student's March 28, 2023 IEP, as amended, by failing to address all areas of educational need by failing to offer social skills services.

Student prevailed on Issue 2, subdivision (c).

ISSUE 2(d):

Clovis did not deny Student a FAPE in the 2023-2024 school year, through January 19, 2024, by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's March 28, 2023 IEP, as amended, by failing to consider additional supports and services which would facilitate Student's educational placement with non-disabled children to the maximum extent appropriate.

Clovis prevailed on Issue 2, subdivision (d).

ISSUE 2(e):

Clovis did not deny Student a FAPE in the 2023-2024 school year, through January 19, 2024, by failing to offer IEPs reasonably calculated to render educational benefit in Student's least restrictive environment in Student's March 28, 2023 IEP, as amended, by failing to address Student's unique needs regarding transportation.

Clovis prevailed on Issue 2, subdivision (e).

ISSUE 3:

Clovis did not deny Student a FAPE in the 2022-2023 and 2023-2024 school years, through January 19, 2024, by failing to properly address Student's and his mother's concerns regarding bullying and Student's bruises and injuries at school.

Clovis prevailed on Issue 3.

REMEDY

Student substantially prevailed on Issue 1, subsection (a), and partially prevailed on Issue 1, subsection (c), and Issue 2 subsections (a), and (c).

As a remedy, Student requests an Order directing Clovis to make changes to Student's IEP. Student requests a new school site, preferably a parochial school, with extensive opportunities for general education inclusion. Student requests individualized academic instruction. He requests a one-to-one applied behavior analysis aide on the school bus and throughout his school day, and supervision by a Board-Certified Behavior Analyst. Student requests mandated fidelity checks for his behavior plan and supports.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 (*Burlington*).) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

In remedying a FAPE denial, the student is entitled to relief that is appropriate in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3) (2006).) The purpose of the IDEA is to provide students with disabilities a FAPE which emphasizes special education and related services to meet their unique needs. (*Burlington, supra*, 471 U.S. 359, 374.) Appropriate relief means relief designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1497 (*Puyallup*).) The award must be fact-specific and be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. (*Reid ex rel. Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Puyallup, supra*, 31 F.3d 1489, 1496.)

An independent educational evaluation at public expense may be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (*Los Angeles Unified School Dist. v. D.L.* (C.D. Cal. 2008) 548 F.Supp.2d 815, 822-23.)

A school district also may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Park, supra*, 464 F.3d at p. 1033.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265; *Orange Unified School Dist. v. C.K.* (C.D.Cal. June 4, 2012, No. SACV 11-1253 JVS(MLGx)) 2012 WL 2478389, *12.) An award of compensatory education need not provide day-for-day compensation. (*Puyallup, supra*, 31 F.3d 1489, 1496-1497.)

Clovis denied Student a FAPE for most of the 2022-2023 school year and extended school year, from September 16, 2022, by failing to offer adequate social communication and behavior support in Student's IEPs. This amounts to a denial of FAPE for approximately 38 school weeks. From August 21, 2023, through November 14, 2023, Clovis denied Student a FAPE by failing to offer adequate behavior support in the March 28, 2023 IEP, as amended on August 18, 2023, September 27, 2023, and October 18, 2023. This amounts to a denial of FAPE for approximately 12 school weeks.

Ms. Seely opined Student should not return to Kastner, given his relationships with school staff. She believed he would be successful in a private parochial school general education setting or at a different middle school. In either type of setting, Ms. Seely believed Student required a full-time one-to-one applied behavior analysis aide and Board-Certified Behavior Analyst supervision. She believed Student should be systematically eased into a new school setting. For example, she suggested he join a new school for lunchtime only for several weeks, then add a preferred class, and add more classes until he was attending a full school day.

Student's expert Dr. David Gilbertson also opined Student required a general education setting with a full-time one-to-one applied behavioral analysis aide and Board-Certified Behavior Analyst supervision. He believed Student needed a fresh start.

In this matter, it is equitable to award Student the equivalent of five hours of intense individualized compensatory education for each school week in which he was denied a FAPE because Clovis failed to offer him adequate social communication and behavior support, which was 50 weeks. As such, Student is awarded the equivalent of 250

hours of compensatory education for Clovis' failure to offer Student adequate social communication and behavior support during the 2022-2023 and 2023-2024 school years through January 19, 2024.

Clovis denied Student a FAPE by failing to offer speech and social skills services from March 28, 2023, through the end of the 2022-2023 school year and extended school year. This amounted to a denial of FAPE for 10 school weeks. Clovis also denied Student a FAPE by failing to offer speech services from the beginning of the 2023-2024 school year through January 19, 2024. This amounts to a denial of FAPE for 19 school weeks.

Dr. Villareal opined Student needed individualized speech and language two times per week, 40 minutes per session.

However, the record showed Student benefitted and made great progress in speech when he received 30 minutes per week of speech services. As such, Student is awarded the equivalent of 30 minutes of compensatory speech services for the 29 weeks in which Clovis failed to offer Student speech services, which amounts to 14.5 hours.

Student has a complex educational profile. He also has been out of school for nine months. Engaging him in compensatory services in a manner that is meaningful to Student may require flexibility and nuance. Accordingly, the hours of compensatory education awarded to Student are to be converted into an educational fund allowing for a sum of money to be used for compensatory education.

Student did not provide any evidence as to rates for compensatory education. The undersigned ALJ finds \$180 per hour to be a reasonable rate for compensatory education services in California for 2024 through 2026. Each hour of compensatory education shall be valued at \$180 per hour. Student is entitled to the equivalent of 264.5 hours of

compensatory education at a rate of \$180 per hour, amounting to a total compensatory education fund of \$47,610, to be used under the conditions and limitations set forth in the Order below.

ORDER

1. Within 30 days of the issuance of this Decision, Clovis shall establish and maintain a compensatory education fund for Student's use in the amount of \$47,610.
2. Parent shall have until September 23, 2026, to access the compensatory education fund to obtain educational services and supports for Student, including
 - speech and language services,
 - academic intervention and supports,
 - applied behavioral analysis services and supervision,
 - private school tuition,
 - social skills development,
 - behavioral services,
 - mental health services,
 - private assessments,
 - education consultant services, and
 - mileage reimbursement for transporting Student to and from these services, or a school site, and Student's home.

This fund shall not be available for the purchase of computers, electronic devices, phones, or toys.

3. Services shall be provided by a certified nonpublic school or nonpublic agency, or private schools registered with the California Department of Education, or providers with the requisite license, credential, or certificate in the service delivered, for Parent to access the compensatory education fund.
4. Parent may access the compensatory education fund by seeking reimbursement from Clovis or by requesting that Clovis directly pay the provider. Parent shall provide Clovis with invoices for each service, with the date, type, and cost of service, and proof of payment by Parent in the form of cancelled checks, bank statements, or credit card statements before receiving reimbursement. Mileage reimbursement shall be at the Internal Revenue Service rate for the year the transportation takes place. Parent shall submit proof of attendance to receive mileage reimbursement for each day of Student's attendance at a school or service. Clovis shall reimburse Parent within 60 days of receiving proof of payment.
5. If Parent elects for Clovis to directly contract with a nonpublic school or nonpublic agency, Parent shall provide Clovis with written notice requesting Clovis contract with the selected provider and provide Clovis with the provider's contact information. Clovis shall either contract with the nonpublic school or nonpublic agency within 30 days or notify Parent in writing if Clovis is unable to contract with the nonpublic school or nonpublic agency. If the selected provider does not wish to contract with Clovis, Parent may identify an alternative provider.
6. All of Student's other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearing