

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

STOCKTON UNIFIED SCHOOL DISTRICT.

CASE NO. 2024050547

DECISION

SEPTEMBER 25, 2024

On May 10, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Stockton Unified School District, called Stockton. The due process hearing was continued for good cause on June 11, 2024. Administrative Law Judge Alexa Hohensee heard this matter by videoconference on July 16, 17, 18, 25, 30 and 31, and August 1, 2024.

Attorney Michelle Wilkolaski represented Student. One parent attended each hearing day on Student's behalf. Attorneys Dee Anna Hassanpour and Rebecca Diddams represented Stockton. Barbara Lachendro, a Stockton special education administrator, attended all hearing days on Stockton's behalf.

At the parties' request, the matter was continued to August 23, 2024, for written closing briefs. The record was closed, and the matter was submitted on August 23, 2024.

ISSUES

The issues at the due process hearing, as alleged in the due process hearing request and clarified by the parties and the ALJ during the July 8, 2024 prehearing conference, are stated below. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Stockton deny Student a FAPE from the beginning of the 2023-2024 regular school year through May 10, 2024, by failing to assess Student in all areas of suspected need, specifically in the areas of:
 - a. academics?
 - b. social emotional?
 - c. assistive technology, including Student's need for the Clicker 8 technology requested by Parents?
 - d. behavior, specifically a functional behavior assessment?
2. Did Stockton deny Student a FAPE by failing to conduct an independent educational evaluation for educationally related mental health services at Parent's November 8, 2023 request?
3. Did Stockton deny Student a FAPE by failing to develop appropriate goals in the November 8, 2023 IEP, specifically in the areas of:
 - a. emotional regulation?
 - b. social skills?

- c. behavior?
 - d. academics, specifically in reading comprehension, math, and handwriting?
- 4. Did Stockton deny Student a FAPE because the November 8, 2023 IEP did not offer:
 - a. individual speech and language services?
 - b. a one-to-one aide throughout the school day?
 - c. applied behavior analysis services?
 - d. transportation to and from school?
 - e. parent training in autism, speech or language impairment, use of Student's assistive technology, support programs, applied behavior analysis, data collection, or curriculum?
- 5. Did Stockton deny Student a FAPE at the November 8, 2023 IEP team meeting by offering a predetermined IEP and not addressing Parent's stated concerns about support for Student's disabilities, addressing academic and behavioral concerns, change in schools, and by failing to modify the IEP at Parent's request?

JURISDICTION

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

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

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

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

Student was nine years old and entering fourth grade at the time of hearing. Student resided with Parents in Stockton's geographic boundaries at all relevant times. Student was diagnosed with autism and attention deficit hyperactivity disorder, called

ADHD, which resulted in communication delays and distractibility. Student was eligible for special education under the primary eligibility of autism and a secondary eligibility of speech or language impairment.

ISSUES 1a–1d: DID STOCKTON DENY STUDENT A FAPE FROM THE BEGINNING OF THE 2023-2024 REGULAR SCHOOL YEAR THROUGH MAY 10, 2024, BY FAILING TO ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY?

Student contends Stockton denied him a FAPE during the 2023-2024 school year through May 10, 2024, by failing to assess him in all areas of suspected disability, specifically in the areas of academics, social emotional functioning, assistive technology, and functional behavior.

Stockton contends Student was appropriately assessed in April 2022, and there was no determination that reassessment was warranted before the next scheduled three-year review in April 2025. Stockton also contends there were no requests for assessment except in assistive technology, which was promptly assessed.

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

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

Reevaluations serve the purpose of helping IEP teams identify the special education and related services required by an eligible student as their education progresses. (34 C.F.R. §§ 300.301 (2007), 300.303; see *Comments*, 71 Fed. Reg. 46,640 (Aug. 14, 2006).) Reevaluations must be sufficiently comprehensive to identify all the child's special education and related service needs, whether commonly linked to the child's disability category or not. (34 C.F.R. § 300.304(c)(6).) California law refers to evaluations as assessments (Ed. Code, § 56302.5), and the terms assessment and evaluation will be used in this Decision interchangeably.

The IDEA requires reassessments be conducted no more frequently than once a year, but at least once every three years, unless the parent and school district agree otherwise. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).)

A reassessment must be conducted if the school district determines that the educational or related service needs, including improved academic achievement and functional performance, of the student warrant a reassessment, or if the student's parents or teacher request a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1); *M.S. v. Lake Elsinore Unified School District* (9th Cir. 2017) 678 Fed. Appx. 543, 544 (*Lake Elsinore*) (nonpub. opn.).)

ISSUE 1a: ACADEMICS

Unless Stockton determined that a reassessment was warranted, or Parent or Student's teachers requested an assessment, Stockton had no duty to conduct an academic reassessment until April 2025, because his last three-year review assessment was April 2022. (*Lake Elsinore, supra*, 678 Fed. Appx. at p. 544.)

The April 2022 assessments included psychoeducational, speech and language, and occupational therapy. The psychoeducational assessment contained cognitive ability, academic achievement, social emotional, and behavioral components. Student had average cognitive ability, but his autism resulted in difficulty with abstract concepts, articulation difficulties, language delays, and social interaction deficits. Student got along well with his peers and responded to classmates in the classroom and on the playground, but was shy and did not initiate interaction.

Student failed to establish the statutory conditions necessary to trigger Stockton's obligation to reassess Student's academics prior to his April 2025 three-year review. None of Student's teachers requested an academic assessment during the 2023-2024 school year, and there was no evidence that Stockton ever determined that an academic reassessment was warranted.

Parent requested independent assessments when Student was in second grade, as discussed at Issue 2, but did not request an academic assessment during the 2023-2024 school year prior to May 10, 2024. Although a district must honor a parent's request for a reevaluation if it has not evaluated the student in the previous 12 months, this obligation hinges on the parents making such a request. (*Lake Elsinore, supra*, 678 Fed. Appx. at p. 544.)

At the beginning of the 2023-2024 school year, Stockton was implementing Student's April 18, 2023 IEP. That IEP identified Student's areas of need as math, attention, handwriting, articulation, and social language, with goals to address those needs. Under that IEP, Student was placed in general education and received:

- specialized academic instruction for 270 minutes per week,
- speech and language services in six, 25-minute small group sessions per month, and
- occupational therapy in three, 30-minute sessions per month.

At the beginning of the 2023-2024 school year, Student attended Bush Elementary School in Carrie Mueller's third grade general education classroom with approximately 22 other students.

Mueller tested all her students at the beginning of the 2023-2024 school year on iReady, a computer program that determined the level of each student's basic reading and math skills. Student was at grade level in rote skills such as decoding words and reading fluency, but behind in reading comprehension. Student struggled with basic math facts, and with both the physical act of handwriting and the organization of his thoughts.

Sanda Ramirez, a credentialed special education teacher and resource specialist, provided Student's specialized academic instruction. Ramirez helped Student inside Mueller's classroom during math, and Student went to Ramirez's resource classroom for help with math and English language arts, three times per week. Ramirez worked with Student on math, reading comprehension, and writing goals.

Mueller and Ramirez testified at hearing. Mueller was a credentialed general education teacher who taught third grade for over 20 years. Her informal testing and observations identified Student as below grade level in reading comprehension, math, and writing, consistent with Student's areas of need identified in Student's April 2022 three-year assessment results.

Ramirez was credentialed to teach both general education students and students with mild to moderate disabilities, with 10 years of experience teaching in general education and another 10 years working with special education students. She tracked Student's progress on his academic goals. At the beginning of the 2023-2024 school year, her work with Student inside Mueller's classroom and in the resource room showed that Student was making slow and steady progress on his academic goals. However, although Student put forth effort to keep up with grade level academics, he needed extensive support to access third grade academic concepts.

At hearing, both Mueller and Ramirez had good recall of working with Student, answered questions readily and with detail, and provided thoughtful opinions with explanations and examples. Mueller was intimately familiar with Student's educational performance from day-to-day interactions with Student in her classroom. Ramirez worked with Student both in second grade for over four hours per week during the last trimester of the 2022-2023 school year, and three days per week during the 2023-2024 school year until Student transferred to an autism class at Peyton Elementary School on November 13, 2023. Mueller and Ramirez both displayed a calm and professional demeanor, and their testimony was credible and persuasive. Their opinions about Student's educational needs, and the educational program components to meet Student's needs as of November 8, 2023, were given significant weight.

Mueller and Ramirez opined persuasively that at the time of the November 8, 2023 IEP team meeting, Student's struggles with math, reading comprehension, and writing were accurately reported to the November 8, 2023 IEP team and it had sufficient information regarding Student's academic performance to appropriately review Student's educational program. From the beginning of the 2023-2024 school year through the November 8, 2023 IEP team meeting, Stockton did not determine that Student's academic achievement warranted reassessment, and neither Student's teachers nor Parents requested an academic assessment.

At the November 8, 2023 IEP team meeting, Stockton offered a change of placement for Student to an autism special day class at Peyton Elementary School, called Peyton. The autism classroom had fewer students, a higher adult-to-student ratio, and many embedded services to support students with autism. Stockton increased its April 18, 2023 IEP offer of specialized academic instruction from 270 minutes per week to 240 minutes per day to reflect the change from resource support to placement in a special day class. Parent consented to the placement change, and Student transferred to Peyton on or about November 13, 2023.

At Peyton, Student received specialized academic instruction throughout the day in Davina Yadon's autism classroom. Yadon had three adult assistants and 17 students ranging from third through fifth grades. Her classroom was highly structured with a focus on academics, communication, and social skills. The class was supported by a physical therapist, a speech pathologist, a behaviorist, a school counselor, an assistive technology specialist, and a general education teacher, all of whom could consult with Yadon and provide assistance on request. Yadon tracked her students' academic progress with regular data tracking, iReady testing, and Statewide testing in spring.

For purposes of mainstreaming with typical peers, starting in December 2023, Student went to Jennifer Lehon's general education classroom four days per week for about an hour during English language arts and reading instruction. A paraprofessional from Yadon's class accompanied Student and another student and helped them during Lehon's class. Lehon gave Student some tests and exams and relayed the results to Yadon, but Yadon was responsible for tracking Student's progress and grading him.

By the second trimester of the 2023-2024 school year, Student was near benchmark on many third-grade curriculum subjects, but was still below standard in reading comprehension, language, writing, and math, his identified areas of need. As discussed later in this Decision, Stockton held IEP team meetings on January 18, 2024, to add transportation, and on February 2, 2024, and March 7, 2024, to review assessments in speech and assistive technology, prior to Student's one-year program review on April 23, 2024. Academics were not discussed at those meetings, and there was no evidence that anyone requested an academic assessment or that Stockton determined an academic assessment was warranted from November 8, 2023, through April 22, 2024.

On April 23, 2024, Stockton convened an IEP team meeting for Student's one-year program review. At that meeting, Yadon reported extensively on Student's winter iReady scores, and then-current informal testing on

- phonological awareness,
- phonics,
- vocabulary,
- reading comprehension,
- number operations,

- algebra and algebraic thinking,
- measurements, and
- geometry.

Student's academic skills ranged from second to third grade level, and Student's academic needs were identified from this information. Stockton did not determine further reassessment was warranted, and neither Student's teachers or Parent requested an academic reassessment at the April 23, 2024 IEP or at any time through May 10, 2024, the end of the relevant period for this issue.

At the end of the previous school year, 2022-2023, Parent had requested an independent psychoeducational assessment, which would have had an academic component, but was not yet complete at the time of hearing. Parent did not make the pending independent psychoeducational assessment request during the 2023-2024 school year.

To put the pending assessment in context, Parent requested an independent psychoeducational evaluation on March 1, 2023, during Student's second grade year, because Parent disagreed with Stockton's April 2022 psychoeducational assessment. Stockton agreed on March 24, 2023, to fund an independent psychoeducational assessment by the assessor of Parent's choice but had no control over Parent or Parent's chosen assessor's completion of the assessment. Although school districts have timelines to complete and review an assessment (Ed. Code, § 56344, subd. (a)), school districts cannot impose timelines related to obtaining an independent evaluation at public expense. (34 C.F.R. § 300.502(e)(2).)

Mitchell Flores was Student's case manager during the 2022-2023 and 2023-2024 school years. Flores credibly testified that once Stockton agreed to fund an independent educational assessment, received Parent's consent to the independent assessment and exchange of information, confirmed the assessor was qualified, and contracted with the assessor, it was Parent's responsibility to make the student available for assessment. Stockton would arrange classroom observations and make teachers available to complete interviews and questionnaires at an independent assessor's request.

Parent's vague, uncorroborated, and conclusory statements during testimony that Stockton was responsible for any delay in completing Student's independent psychoeducational assessment were insufficient to establish that Stockton had not timely followed all steps to complete a contract for or fund the independent assessment. Relevant here, Stockton did not determine that the pending status of an independent educational assessment agreed to during the 2022-2023 school year warranted another assessment of Student's academics during the 2023-2024 school year.

Student failed to meet his burden of proving by a preponderance of the evidence that Stockton denied him a FAPE from the beginning of the 2023-2024 regular school year through May 10, 2024, by failing to assess him in all areas of suspected need, specifically academics.

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ISSUE 1b: SOCIAL EMOTIONAL FUNCTIONING

Student contends that he was chewing on his clothes and having soiling accidents at school due to anxiety and should have been further assessed for social emotional functioning during the 2023-2024 school year. Stockton argues no reassessment determination was made, and neither Parent nor his teachers requested a social emotional assessment.

The evidence did not establish that Stockton determined Student's social emotional functioning should be reassessed, or that anyone requested Student's social emotional needs be reassessed, during the 2023-2024 school year.

A psychoeducational assessment with a social emotional functioning component had been completed in April 2022 as part of Student's three-year review. Stockton agreed in March 2023 to fund Parent's request for an independent psychoeducational assessment. In April 2023, Stockton also conducted an educationally related mental health services assessment, and a social services observation, to identify if Student had unidentified social emotional needs or required additional services to address his social emotional functioning. Both were reviewed at IEP team meetings in April and May 2023, during the 2022-2023 school year. Stockton did not determine that a reassessment of Student's social emotional functioning was warranted during the 2023-2024 school year prior to the November 8, 2023 IEP team meeting.

At the November 8, 2023 IEP team meeting, Parent disagreed with Stockton's educationally related mental health services assessment and asked for an independent assessment. Stockton agreed to fund an independent educationally related mental health services assessment with an assessor of Parent's choice on November 30, 2023,

discussed in detail at Issue 2. That independent assessment too, as with the independent psychoeducational assessment, had not been completed by the time of hearing, and there was no evidence that any delay was Stockton's fault. Other than this Parent request, which Stockton timely granted, Parent made no other request for assessment of Student's social emotional functioning during the 2023-2024 school year. For the remainder of the 2023-2024 school year, Stockton did not determine that Student's social emotional functioning required reassessment, and no teacher requested reassessment.

Student failed to meet his burden of proving by a preponderance of the evidence that Stockton denied him a FAPE from the beginning of the 2023-2024 regular school year through May 10, 2024, by failing to assess him in all areas of suspected need, specifically social emotional functioning.

ISSUE 1c: ASSISTIVE TECHNOLOGY

Student contends his November 2023 assistive technology assessment should have included an assessment of whether the Clicker 8 computer program would have been beneficial to Student. Stockton contends that Student did not need to be assessed separately on the Clicker 8 program.

Assistive technology is any item, piece of equipment, software program, or product system that is used to increase, maintain, or improve the functional capabilities of persons with disabilities. (20 U.S.C. § 1401(1); Ed. Code, § 56020.5.)

A school district has a duty during a reassessment to assess the student in all areas of suspected disability. (20 U.S.C. §§ 1414(b)(3)(b); 34 C.F.R. § 300.304(c)(4) and (6); Ed. Code, §§ 56320, subd. (f), 56381, subd. (a)(1); see *Timothy O. v. Paso Robles Unified*

Sch. Dist. (9th Cir. 2016) 822 F.3d 1105, 1119 (*Timothy O.*.) A disability is suspected when the district has notice that the child has displayed symptoms of that disability. (*Timothy O., supra*, 822 F.3d at 1119.)

Parent testified that early in the 2023-2024 school year, another parent of a student in Stockton had shown her the Clicker 8 program on the other student's iPad. Parent was impressed with the program, which she believed had more features to help students with writing than the standard programs loaded onto the Chromebooks issued to all Stockton students, including Student. Parent promptly requested that Student's Chromebook be loaded with the Clicker 8 program and Stockton responded by conducting an assistive technology assessment in November 2023.

Brandon Taylor, called B. Taylor, conducted the assistive technology assessment in October 2023. The report was completed, and a copy sent to Parents, on November 11, 2023. The assistive technology assessment was reviewed at an IEP team meeting on March 7, 2024. B. Taylor was credentialed to teach students with mild to moderate disabilities, with an additional credential in augmentative and alternative communication. B. Taylor also possessed an assistive technology credential through the Rehabilitation Engineering and Assistive Technology Society of North America and had been an assistive technology specialist for over six years. B. Taylor was very articulate and informative in his testimony about assistive technology and its role in helping students to access curriculum. His opinions on Student's assistive technology needs, assessment for those needs, and the assistive technology to meet Student's educational needs was persuasive and uncontradicted by any other expert at hearing.

As part of his assessment, B. Taylor spoke to Parent about her request for Student to have the Clicker 8 program. He obtained information from teacher Mueller and resource program specialist Ramirez that Student fatigued during handwriting but was eager and adept at using the programs on his Chromebook. B. Taylor used a series of standardized assessment tools and determined that Student had no physical barriers to using his Chromebook and could communicate with his own voice. Student used a keyboard with two fingers and preferred a physical keyboard over an on-screen keyboard. Student produced written work faster using dictation. Although Student made multiple spelling and grammar mistakes, those errors were easily corrected using spelling and grammar tools embedded into the Chromebook. Student told B. Taylor that he was familiar with the Chromebook's spelling and grammar tools and demonstrated he could use them independently.

B. Taylor contacted the manufacturer of Clicker 8, reviewed the Clicker 8 materials, and took a two-hour online course on using Clicker 8. He also completed a two-hour trial of the Clicker 8 program. Clicker 8 was one of hundreds of digital fluency tools. It provided nothing above and beyond the programs already loaded into the Chromebook Stockton provided to Student.

B. Taylor concluded that Student's access to the curriculum could be improved by assistive technology in the form of computer literacy tools. Student needed assistance in reading provided by text-to-speech, highlighting, and digital dictionary features. Student needed help organizing his thoughts for writing, which could be done with scaffolding, word prediction, spelling correction, and grammar correction. The physical act of writing could be done with a computer and keyboard to avoid fatigue. Student was proficient at using computer technology, and used the programs embedded in the

school-issued Chromebook in his classroom. To meet Student's assistive technology needs, B. Taylor's assessment report recommended 30 minutes per month of direct services and consultation in assistive technology training for Student and his teachers to learn the functionality of the school technology provided to Student.

Student failed to submit evidence of any other assessment or evaluation Stockton could have administered to determine Student's assistive technology needs, or that any assistive technology needs were not identified. Stockton was required to assess Student in an area of disability in which Student displayed symptoms (*Timothy O., supra*, 822 F.3d at 1119), not to assess Student on a software program of Parent's choice.

Student alleges the marketing materials for Clicker 8 stated it was a word processor designed to make reading and writing more appealing and was good for building confidence and promoting engagement. That is, that Clicker 8 was a better tool to meet Student's needs than those Stockton provided. This is not an unidentified need allegation, but one of parental program preference.

The IDEA does not require Stockton to provide an educational methodology preferred by Parents to address Student's educational needs. (See *Croft v. Issaquah School District No. 411* (9th Cir. 2022) 22 F.4th 1048, 1056.) School districts are entitled to deference in deciding what programming is appropriate as a matter of educational policy. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 945 fn.5; see also *Rowley, supra*, 458 U.S. at p. 208.) Stockton was not required to assess whether Clicker 8 was a better program than those embedded in the Chromebook issued to Student, once it determined that the programs embedded in the Chromebook would meet Student's assistive technology needs.

B. Taylor opined persuasively that Student could, and was, accessing his curriculum with the school-issued Chromebook embedded programs in November 2023. Mueller, Ramirez, Yadon, and Lehon testified consistently and convincingly that, throughout the 2023-2024 school year, Student completed his assignments using programs embedded in his Chromebook and did so happily and without difficulty. There was no evidence that, after November 2023, Stockton determined that a further assistive technology assessment was warranted, or that Student's teachers requested a reassessment.

Parent did continue to demand Clicker 8 for Student throughout the 2023-2024 school year, but those demands did not constitute another request for assessment. Parent wrote to Stockton on March 29, 2024, demanding Student receive Clicker 8 because B. Taylor, when presenting the assistive technology assessment report at an IEP team meeting on March 7, 2024, had not presented the Clicker 8 program to the IEP team or given an explanation why Stockton did not consider it an appropriate fit for Student. Stockton denied Parent's request on April 12, 2024, because Clicker 8 was not required to meet Student's educational needs.

Student cites no authority requiring a school district to assess a student on the methodology of Parent's choice. Stockton had no duty to reassess Student incorporating Parent's preferred technology, better technology, or the best technology, because the literacy programs embedded in the Chromebook issued to all students, including Student, met Student's educational needs.

Student called as an expert Sookyung Shin, Ph.D., who opined Clicker 8 would benefit Student because she believed it had functions the programs embedded into the Chromebook did not. Dr. Shin had master's and doctorate degrees in special education.

Dr. Shin extensively researched parent rights under the IDEA, although she was not an attorney. She wrote numerous articles on disability-related topics, some on the IDEA, some on other topics. She attended over 200 IEP team meetings as a parent advocate. Dr. Shin was not a credentialed teacher and had no professional teaching experience except with graduate students. Shin never taught general education elementary school students or special education elementary school students. She was not a

- credentialed school psychologist,
- licensed psychologist,
- licensed clinical therapist,
- licensed speech-language pathologist,
- speech-language pathologist's assistant, or a
- board-certified behavior analyst.

She had no training or experience in assistive technology. Her willingness to venture opinions at hearing in each of these professional fields without the necessary education, training, or experience, adversely impacted her credibility.

Dr. Shin was a parent advocate who wrote academic papers, generally with little to no relevance to the proceedings in this case. The firm representing Student repeatedly hired Dr. Shin as an expert witness for due process proceedings. Student's attorneys were apparently so confident that Dr. Shin would testify in support of Student's claims they identified Dr. Shin as Student's expert witness in a prehearing conference statement filed July 2, 2024, before Dr. Shin was even aware of Student. Dr. Shin first reviewed documents pertaining to this case, and spoke with Parent, on or about July 27, 2024, a few days before her testimony on July 31, 2024. Dr. Shin spoke with Parent by phone for approximately one and a half hours, and with Student for less

than 30 minutes on the same call. Dr. Shin relied exclusively on Parent for information about Stockton's school programs. Dr. Shin reviewed educational documents offered into evidence, but at hearing

- did not know which IEPs or services had been consented to and implemented,
- was not familiar with Stockton's educational programs,
- did not know the composition of any of Student's past or proposed classes, and
- did not attempt to contact any of Student's assessors, teachers, or service providers for program information.

Dr. Shin was not qualified to offer a professional opinion on any of Student's issues for hearing. Dr. Shin's heavy reliance on Parent's view of Student's educational performance, lack of familiarity with Student's educational records, lack of knowledge of Stockton's programs, and Dr. Shin's willingness to offer opinions in fields in which she lacked education, training, or experience, all rendered her opinions uninformed and unpersuasive. Her lay research into IDEA rights, academic publications, and participation in the IEP team meetings of other children did not qualify her to offer relevant opinions on the assessment issues, interpret specialized assessment results, or offer expert opinions regarding Student's academic, social emotional, assistive technology, behavioral or mental health needs, or the appropriateness of the November 8, 2023 IEP and team meeting.

Lastly, Dr. Shin's close relationship with Student's attorneys, including their confidence that Dr. Shin would testify in Student's favor without adequate preparation or expertise, and her extensive resume as a parent advocate, strongly suggested the

existence of bias. (See Evid. Code, § 722, subd. (b).) For all of these reasons, Dr. Shin's opinions regarding Student's educational needs, and the educational program to meet those needs, were given no weight.

Dr. Shin was not familiar with the Clicker 8 program, or the programs embedded in the Stockton-issued Chromebook. Her opinions on Student's technology needs, or the need for assessment on any particular technology, were accorded no weight.

Student failed to meet his burden of proving by a preponderance of the evidence that Stockton denied him a FAPE from the beginning of the 2023-2024 regular school year through May 10, 2024, by failing to assess him in all areas of suspected need, specifically assistive technology, including the Clicker 8 program.

ISSUE 1d: FUNCTIONAL BEHAVIOR

Student contends he required a functional behavior assessment during the 2023-2024 school year to determine the reason for his behaviors, which included

- chewing on his sleeves,
- tapping his pencil,
- bouncing his leg,
- toileting accidents, and
- using the bathroom more often than his toileting schedule.

In his due process hearing request, Student alleged that Stockton should have conducted a functional behavior assessment to provide a measure of safety for Student, staff, and peers in the event of a violent tantrum, which is sometimes associated with autism. Stockton contends Student did not exhibit behaviors that precluded Student or his peers

from accessing their education, so Stockton did not determine Student needed a functional behavior assessment, and neither Student's teachers nor Parents requested a functional behavior assessment, during the 2023-2024 school year.

When a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies, including positive behavioral interventions and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) & (b)(2017); Ed. Code, § 56341.1, subd. (b)(1).)

The IDEA only requires a functional behavior assessment as part of the procedures a school district must follow when suspending or expelling a special education student for a violation of a code of student conduct or when the school district is placing a special education student in an interim alternative educational setting. (20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(d)(1)(ii).)

The Legislature intended that children with serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions. (Ed. Code, § 56520, subd. (b)(1).) An IEP that does not appropriately address behaviors that impede a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029; *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467-68.)

There was no evidence that Stockton determined Student's behavioral needs warranted assessment, or that Student's teachers or Parent requested Stockton conduct a functional behavior assessment of Student, during the 2023-2024 school year. Parent's request for a functional behavior assessment during the 2022-2023 school year, which Stockton denied on February 27, 2023, is not an issue here.

During the 2023-2024 school year, the evidence overwhelmingly indicated that Student was a sweet, kind, and easy-going child who got along well with his peers, participated in activities in classroom and on the playground, and completed his classwork. There was no evidence that Student had a violent tantrum or threatened the safety of students or adult during the 2023-2024 school year. Bouncing a leg or tapping a pencil are not serious behavioral challenges, and neither Mueller, Ramirez, Yadon, Lehon, or other Stockton witnesses recalled seeing Student bounce his legs or tap his pencil excessively.

Throughout the 2023-2024 school year, Student sometimes lost focus and could be frustrated when learning new skills, but was easily redirected and grew more confident with additional instruction and skills practice. Student kept a basket of sensory items from Stockton's occupational therapist at his desk in Mueller's and Yadon's classrooms, including an item to chew on, which met Student's sensory needs and were effective at increasing his attention to task.

Student had toileting accidents at the beginning of the 2023-2024 school year that were addressed in the November 8, 2023 IEP with bathroom breaks every 20 minutes. Student did not submit to Stockton, or at hearing, evidence that his toileting accidents were not the result of medical issues. Student had a history of chronic constipation, and his accidents typically occurred after recess or lunch. To the extent Student's toileting accidents could be characterized as a behavior, the supports to address that behavior were successful by the end of the first trimester of the 2023-2024 school year.

During the 2023-2024 school year, Student did not have serious behavioral challenges, did not exhibit behaviors that interfered with his learning or that of others, and responded well to redirection. Stockton did not determine that Student's behavior warranted assessment during the 2023-2024 school year, by a functional behavior assessment or otherwise. Neither Parent nor Student's teachers requested an assessment of Student's behavior during the 2023-2024 school year.

Student did not have disciplinary incidents, and Stockton did not take disciplinary action against Student, during the 2023-2024 school year. Accordingly, Stockton was not required to conduct a functional behavior assessment for disciplinary reasons.

Student did not prove by a preponderance of the evidence that Stockton denied Student a FAPE from the beginning of the 2023-2024 school year through May 10, 2024, by failing to assess him in all areas of suspected need, specifically behavior with a functional behavior assessment.

ISSUE 2: DID STOCKTON DENY STUDENT A FAPE BY FAILING TO CONDUCT AN INDEPENDENT EDUCATIONAL EVALUATION FOR EDUCATIONALLY RELATED MENTAL HEALTH SERVICES AT PARENT'S NOVEMBER 8, 2023 REQUEST?

In the due process hearing request, Student alleged Parent made a request for an independent educationally related mental health services assessment at the November 8, 2023 IEP team meeting that was denied. In his closing brief, Student argues instead that the independent educationally related mental health services assessment was requested on March 1, 2023, and Student was denied a FAPE because Stockton did not give Parent

a consent form for the assessment until November 30, 2023, almost eight months later. Stockton contends it responded to Parent's November 8, 2023 request for an independent educationally related mental health services assessment without unnecessary delay.

A student may be entitled to an independent educational evaluation if he or she disagrees with an evaluation obtained by the public agency and requests an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(a)(1), (b)(1) & (2); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c).)

An independent educational evaluation is an assessment conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. (34 C.F.R. § 300.502(a)(3)(i).)

When a parent requests an independent educational evaluation at public expense, the school district must either proceed without unnecessary delay to ensure that the evaluation is provided at public expense or file a due process complaint without unnecessary delay to request a hearing to show that its evaluation is appropriate. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).)

The term unnecessary delay as used in title 34 Code of Federal Regulations part 300.502(b)(2) is not defined in the regulations. It permits a reasonably flexible, though normally brief, period of time that could accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an independent evaluation. (*Letter to Anonymous*, U.S. Dept. of Education, Office of Special Education Programs (August 13, 2010).)

Some delay in the provision of an independent evaluation is reasonable if the school district and the parents are engaging in active communications, negotiations, or other attempts to resolve the matter. (See *Horne v. Potomac Preparatory P.C.S.* (D.D.C. 2016) 209 F.Supp.3d 146, 153-155.) The determination of unnecessary delay is a fact-specific inquiry. (*Ibid.*; see e.g., *J.P. v. Ripon Unified School Dist.* (E.D.Cal., Apr. 15, 2009, No. 2:07-CV-02084-MCE-DAD) 2009 WL 1034993, *7-8 [due process request filed more than two months after the request for an independent evaluation was timely, as the parties were communicating regarding the request for the evaluation in the interim, and did not come to an impasse on the issue until less than three weeks before the school district's filing].)

Districts may not impose conditions or timelines on independent educational evaluations at public expense that they do not require for their own evaluations. (34 C.F.R. § 300.502(e)(2).)

When Student was in second grade during the 2022-2023 school year, Parent disagreed with parts of Stockton's April 2022 three-year assessments. On March 1, 2023, Parent wrote a request for independent assessments in psychoeducation and speech and language. Stockton initially denied the request in writing, but after Parent wrote again to demand the independent assessments, Stockton agreed to fund the requested assessments in writing on March 24, 2023. The timeliness of the response in the 2022-2023 school year is not an issue in this case.

Each of Parent's letters and Stockton's written responses expressly identified the independent educational assessments requested as independent psychoeducational and speech and language assessments. Both Parent's March 1, 2023, and March 17, 2023 letters highlighted in bold letters that she was requesting a "psychoeducational IEE" and

a “speech and language IEE.” Student’s attempt to now characterize the March 2023 request as one for an independent educationally related mental health services assessment is contrary to the explicit correspondence between the parties. Parent did not request an educationally related mental health services assessment prior to November 8, 2023.

Instead of requesting an independent educationally related mental health services assessment on March 1, 2023, Parent signed an assessment plan for Stockton to conduct its own educationally related mental health services assessment. The assessment plan clearly identified the assessment would be done by a school psychologist, and expressly stated that it was prepared in response to Parent’s request for an educationally related mental health services assessment at a February 22, 2023 IEP team meeting. Mental health clinician Heather Taylor, called H. Taylor, was identified in the plan as the school district contact, and Parent interviewed with H. Taylor as part of the assessment. Student’s attempt now to recharacterize Parent’s consent to an assessment plan for an educationally related mental health assessment by Stockton as a request for an independent educational evaluation is disingenuous and unconvincing.

Stockton completed the educationally related mental health services assessment and gave Parent a copy at the April 18, 2023 IEP team meeting, where it was reviewed. The evidence established that Parent disagreed with Stockton’s assessment results and requested an independent educationally related mental health services assessment at the November 8, 2023 IEP team meeting, as alleged in Student’s complaint. Stockton agreed on November 30, 2023, to fund an independent educationally related mental health services assessment with an assessor of Parent’s choice. Stockton promptly

approved Parent's request for an independent educationally related mental health services assessment after Stockton students and staff returned from a holiday break from November 20 through 24, 2023, without unnecessary delay.

No evidence was submitted to establish that Stockton had not complied with its obligation to contract with the independent assessor, or that the independent assessor had not had an opportunity to observe Student at school. Student did not present evidence or law imposing a contractual or statutory duty on Stockton to take specific action in the event of a delay by the independent assessor.

Parent's testimony that the independent educationally related mental health services assessment had not yet been completed at the time of the hearing was insufficient to establish that the delay was due to any action or inaction by Stockton. Student did not expressly question Stockton witnesses regarding the contract with the independent assessor or call the independent assessor to testify. Student bore the burden of proof on this issue and failed to present evidence of a failure on Stockton's part in approving, funding, or enforcing a contract with the independent educationally related mental health services assessor chosen by Parent.

Student did not meet his burden of proving by a preponderance of the evidence that Stockton denied Student a FAPE by failing to conduct an independent educational evaluation for educationally related mental health services at Parent's November 8, 2023 request.

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ISSUES 3a – 3d: DID STOCKTON DENY STUDENT A FAPE BY FAILING TO DEVELOP APPROPRIATE GOALS IN THE NOVEMBER 8, 2023 IEP, SPECIFICALLY IN THE AREAS OF EMOTIONAL REGULATION, SOCIAL SKILLS, BEHAVIOR, AND ACADEMICS?

Student contends he was denied a FAPE because the November 8, 2023 IEP did not contain appropriate goals in the areas of emotional regulation, social skills, behavior, and academics, specifically reading comprehension, math, and handwriting. Stockton argues that the November 8, 2023 IEP team meeting was convened at Parent's request to discuss placement, and the IEP team did not determine that changes to Student's goals were necessary at that time.

For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345.) The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).)

An IEP team does not need to draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Capistrano Unified School Dist. v. S.W., et al.* (9th Cir. 2021) 21 F.4th 1125, 1133.) The IDEA requires IEP goals to target a student's needs but does not require an IEP to contain every goal from which a student might benefit. (*Id.* at p. 1133.) Moreover, a school district is not required to develop goals for areas covered by the general curriculum for which the student needs

only accommodations and modifications. (Fed. Reg., *Appendix A, Part 300 – Assistance to States for the Education of Children with Disabilities* (1999), [discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C. § 1414(d)(1)(A)(i)(II)].)

An IEP is evaluated on information available to the IEP team at the time it was developed and not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP is a snapshot, not a retrospective. (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) The IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Ibid.*)

ISSUE 3a: EMOTIONAL REGULATION GOALS

Student's closing brief did not cite to any evidence that Student's social emotional status had changed between development of his then-current IEP goals at the IEP team meetings on April 18, 2023, and May 19, 2023, and the IEP team meeting on November 8, 2023. Instead, Student referenced Lehon's testimony about Student's academics, although Lehon was not Student's teacher until after November 8, 2023.

H. Taylor, a licensed marriage and family therapist, conducted Student's educationally related mental health services assessment to assess Student's social emotional functioning and need for mental health services prior to Student's one-year program review in April 2023. She completed the assessment report on April 18, 2023. H. Taylor reviewed Student's records, including a report by a private psychologist who diagnosed Student with ADHD and recommended Student be monitored for possible unspecified anxiety based on Parent report. Student's second grade teacher reported that Student enjoyed school and actively participated in class but needed prompting to

stay on task and lacked confidence. H. Taylor interviewed Student, who was engaging, happy and friendly, and responded well to H. Taylor coaching him to turn negative self-talk into positive thoughts.

Parent reported concerns to H. Taylor about Student's poor focus, anxiousness when completing homework, toileting problems, and inability to make friends. H. Taylor observed Student over multiple days, at multiple times both in the classroom and on the playground. H. Taylor reported that Student exhibited low confidence, particularly in peer interactions, initiation of conversation, and self-advocacy, which appeared to interfere with Student's ability to form meaningful and lasting friendships. Her report stated that Student might benefit from practicing social skills, organization, and self-regulation coping strategies to help improve relationships, reduce self-stimulating behaviors, and create replacement alternatives for chewing on clothing. She concluded that Student did not need educationally related mental health services at that time but recommended that Student be referred for social services to develop skills for self-advocacy and improving confidence with his peers.

The educationally related mental health services assessment report was reviewed at a May 19, 2023 IEP team meeting, and goals in peer interaction and self-advocacy were added at that time to the April 18, 2023 IEP. The peer interaction goal was for Student to balance the role of self as a speaker and listener and follow the rules of conversation with 80 percent accuracy in two out of three trials. The self-advocacy goal, proposed by Parent and adopted into the April 18, 2023 IEP, was for Student to raise his hand during classroom instruction and wait at least one minute for an adult to respond without maladaptive behaviors like blurting out, in four of five requests for assistance across two weeks of data. Both Student's general education and special education teachers were responsible for working on these goals with Student. The social services

case manager recommended social services to boost Student's social skills, and social services were added to Student's April 18, 2023 IEP for 30-minute sessions, twice a month, both group and individual, under the category of other supports.

No convincing evidence was offered that by November 8, 2023, Student needed an additional goal to address anxiety as reported by Parent, or to address any other unidentified social emotional functioning need. No doctor or therapist testified that Student suffered from clinical anxiety, and no documentary evidence was offered that Student had ever been diagnosed with anxiety. Student contends that his toileting accidents and stomach upsets in Mueller's classroom, which occurred at least weekly, were a sign of anxiety. However, Student had a history of chronic constipation from early childhood and was under medical care for signs of encopresis. Stockton staff had repeatedly asked Parent to check with a doctor that the toileting accidents and stomach complaints were not a medical problem, particularly as Student usually soiled his pants or was sick after eating at recess or lunch. Parent's testimony that a gastrointestinal doctor had diagnosed Student's accidents as being due to stress and anxiety was uncorroborated. It is more likely that a gastroenterologist would have referred Student to a psychologist to make such a diagnosis.

There was no convincing evidence that Student chewing on his sleeve or buttons was a new sign of anxiety arising between May 19, 2023, and November 8, 2023, requiring a new goal. An occupational therapist's sensory consultation report from May 2021 demonstrated that Student put nonfood items into his mouth as a sensory-seeking activity, a common characteristic of autism. The sensory consultation report recommended sensory chew items, which were provided to Student at school during the 2022-2023 and 2023-2024 school years, and which Student's teachers testified were effective and helped Student concentrate.

At Peyton, social services case manager Ladily Licea Murillo worked with Student on his peer interaction goal beginning in November 2023, by teaching him strategies to feel confident in communications with peers and at play. She worked on Student's self-advocacy goal by teaching him not to hesitate, to ask questions when needed, to raise his hand for the teacher's attention, and to ask for breaks when needed.

Licea Murillo testified with professional demeanor and answered questions readily and thoroughly. She had good recall of her work and observations of Student and had read Student's educational records to provide social services to Student. She was familiar with Student's social emotional functioning, and her opinion regarding Student's social emotional needs, need for assessment, and program components to meet those needs was very persuasive and uncontradicted by any other expert.

Licea Murillo testified convincingly that when Student transferred to Peyton soon after the November 8, 2023 IEP, Student did not display anxiety that interfered with his ability to benefit from his social services sessions. When questioned about Student tapping a pen or shaking a leg, she stated that neither of those were out of the ordinary for a third grader, or necessarily a sign of anxiety. Licea Murillo was not concerned about Student's social emotional functioning during the 2023-2024 school year. She opined persuasively that Student's peer interaction and self-advocacy goals were still appropriate on November 8, 2023.

Student did not have an unidentified emotional regulation need on November 8, 2023, that required an additional goal. The evidence was overwhelming that Student was happy doing his classwork and interacting with his peers. Parent's non-expert testimony that she worried Student lacked sufficient social emotional skills in November

2023, and Dr. Shin's unqualified opinion parroting Parent's concerns, were insufficient to identify a change in Student's emotional regulation in November 2023 requiring an additional or different goals to address emotional regulation.

Student did not prove by a preponderance of the evidence that Stockton denied him a FAPE by failing to develop appropriate goals in the November 8, 2023 IEP in the area of emotional regulation.

ISSUE 3b: SOCIAL SKILLS GOAL

Student's closing brief argues that the November 8, 2023 IEP did not properly address Student's difficulties with peer interactions. Stockton responds that the peer interaction goal in the April 18, 2023 IEP appropriately addressed Student's social skills deficits.

The April 18, 2023 IEP contained a social services goal that expressly addressed Student's difficulty with peer interaction. Student liked to converse about his own topics of interest and responded to peer inquiries with one-word answers with only 50 percent accuracy. The peer interaction goal was for Student to balance his role as a speaker and a listener and follow the rules of conversation, which addressed his lack of reciprocity in social skills. Mental health clinician H. Taylor recommended this goal after observing Student's peer interactions as part of the March 2023 educationally related mental health services assessment and opined that it was still appropriate on November 8, 2023. There was no evidence that the goal was no longer appropriate, or that Student had unaddressed social skill needs, on November 8, 2023.

Stockton approved Parent's request for an independent psychoeducational assessment in March 2023, that arguably could have provided additional social skills information for the November 8, 2023 IEP team. But that assessment was not completed, and the IEP team had no new assessment results, on November 8, 2023, identifying new social skills needs or requiring new social skills goals.

Student's November 8, 2023 IEP team was aware that Student had deficits in his social skills because of his autism and language delays and addressed them with appropriate peer interaction and self-advocacy goals. The evidence did not establish that Student's IEP team should have developed new or different social skills goals on November 8, 2023.

Student did not prove by a preponderance of the evidence that Stockton denied Student a FAPE by failing to develop appropriate goals in the November 8, 2023 IEP in the area of social skills.

ISSUE 3c: BEHAVIOR GOAL

Student's closing brief did not cite any evidence that Student had behavior needs, or required a behavior goal, on November 8, 2023. Stockton contends behavior was not identified as an area of need in the educational setting.

Student's fall 2023 general education teacher Mueller, and special education teacher Ramirez, testified consistently and convincingly that Student had no serious behaviors in the classroom. Student's ADHD caused him to often be unfocused and off-task, but he was easily redirected. Student also blurted out answers during class instruction. The April 18, 2023 IEP team identified Student's need to focus, particularly on unpreferred assignments, and included a time on task goal for Student to focus and

be on task for both preferred and nonpreferred academic activities with no more than two prompts in 80 percent of given opportunities across three consecutive days. A self-advocacy goal in the April 18, 2023 IEP, proposed by Parent and adopted by the IEP team, required Student to raise his hand and wait for at least one minute for an adult response without behaviors such as blurting out in four of five trials over two weeks. There was no evidence that Student had unidentified or unaddressed behavior needs on November 8, 2023, that required new or different behavior goals.

There was no evidence that Student's behaviors changed between the April 18, 2023, and November 8, 2023 IEP team meetings. Both Mueller and Ramirez persuasively opined that in November 2023, Student's off-task behavior was readily addressed with prompting or classroom behavior interventions. The evidence did not demonstrate that in November 2023, Student had maladaptive behaviors requiring a behavior goal or behavior services beyond those embedded in the autism program and its curriculum.

Student did not prove by a preponderance of the evidence that Stockton denied Student a FAPE by failing to develop appropriate goals in the November 8, 2023 IEP in the area of behavior.

ISSUE 3d: ACADEMIC GOALS

Student contends he was below grade level in reading comprehension and math, and had difficulties with reading, writing, and math, and therefore, appropriate goals should have been developed to address those academic needs in the November 8, 2023 IEP. Stockton contends Student did no more than show that he was below grade level, without evidence that the goals were inappropriate to address his academic deficits.

Student presented no evidence that Student's academic needs had changed between April 2023 and November 2023, requiring Stockton to write new or different academic goals at the November 8, 2023 IEP. Parent may have wanted Student's goals written in a different way on November 8, 2023, but that is irrelevant so long as the goals addressed all of Student's areas of identified need, as they did here.

Ramirez, who had assessed Student in academics for his April 2022 three-year assessment and worked with him since April 2022, drafted the April 18, 2023 IEP math calculation skills goal 1 for Student to solve two-digit addition and subtraction problems with 80 percent accuracy over three consecutive trials. This addressed Student's below grade level math achievement by teaching him foundational math skills. Ramirez drafted the reading comprehension goal 3, which Parent modified before the IEP team adopted it, for Student to independently answer three open-ended questions about a second-grade level text with 80 percent accuracy. This goal addressed Student's low reading comprehension scores in both the April 2022 psychoeducational assessment and then-current informal testing.

Parent attended the April 18, 2023, and May 19, 2023 IEP team meetings, and drafted and proposed additional academic goals written into the April 18, 2023 IEP. Math goal 4 was for Student to count forward to 120 from any number below that with no more than two prompts, math goal 5 was for Student to line up numbers by place value and compare each digit, and writing goal 6 was for Student to write a complete sentence in response to a question across three writing activities. These goals addressed Student's identified math, reading comprehension, and writing difficulties.

Student's April 18, 2023 IEP also contained semantics speech goal 2 for Student to answer wh-questions about an item or activity with the item's name, function, and at least one attribute with 75 percent accuracy, and syntax speech goal 2 for Student to independently answer wh-questions with correct subject-verb agreement with 75 percent accuracy. These goals were to teach Student fundamentals of language which would assist in reading comprehension, as well as communication and social interaction.

In summary, the April 18, 2023 IEP contained academic goals for math, math calculation skills, reading comprehension, and writing, which were Student's identified areas of academic need. Ramirez opined persuasively that these goals were still appropriate to address Student's areas of academic need in November 2023. The evidence did not establish that Student had any change in academic need that required new or different academic goals on November 8, 2023.

Student did not prove by a preponderance of the evidence that Stockton denied him a FAPE by failing to develop appropriate goals in the November 8, 2023 IEP in the area of academics.

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ISSUE 4a-e: DID STOCKTON DENY STUDENT A FAPE BECAUSE THE NOVEMBER 8, 2023 IEP DID NOT OFFER INDIVIDUAL SPEECH AND LANGUAGE SERVICES, A ONE-TO-ONE AIDE THROUGHOUT THE SCHOOL DAY, APPLIED BEHAVIOR ANALYSIS SERVICES, TRANSPORTATION, OR PARENT TRAINING?

Student contends that the November 8, 2023 IEP did not offer a FAPE because it did not offer individual speech and language services. Student contends his lack of ability to stay focused on tasks and his toileting accidents warranted applied behavior analysis services and a one-to-one aide throughout the school day. Student argues he was not timely offered transportation to and from school to address his leaving campus without permission. Lastly, Student contends that Parents needed training in his disabilities of autism and speech or language impairment, as well as training in

- use of Student's assistive technology,
- support programs,
- applied behavior analysis,
- data collection, and
- curriculum.

Stockton contends that the November 2023 IEP offer of group speech services appropriately addressed Student's need to acquire social language. It contends the small class size and high ratio of adults to students in Student's special day class

provided the support he needed for redirection to tasks and toileting accidents. It contends Student was timely offered transportation and assistive technology training for Parents, and that Parent training in other areas was not necessary for Student to receive a FAPE.

Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. Related services may include speech and language services when appropriate. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [in California, related services are also called designated instruction and services].)

ISSUE 4a: INDIVIDUAL SPEECH AND LANGUAGE SERVICES

Student contends that the independent educational speech and language assessment completed by speech-language pathologist Elizabeth Perry on October 20, 2023, recommended individual speech services, and the November 8, 2023 IEP team should have considered her findings and offered individual speech services based on that recommendation. Stockton contends Student was making progress on his speech goals in a small group and did not require individual services.

On November 8, 2023, Student was receiving 20-minute sessions of speech therapy weekly in a small two-person group, as reported by Student's speech-language pathologist to the IEP team. Student's articulation speech goal from April 18, 2023, was

to produce the th, t, and r sounds in words and phrases with 80 percent accuracy with one to two prompts. The speech-language pathologist reported that Student was producing the r sound with 90 to 100 percent accuracy with minimal prompts.

Student's semantics speech goal was to answer wh-questions regarding an item's name, its function, and one attribute, with 75 percent accuracy, which Student could meet except for how or why questions which still needed to be scaffolded into multiple choice questions. The syntax goal was to identify similarities and differences between items with subject-verb agreement with 75 percent accuracy, and Student was at 70 percent accuracy. Student was engaged and competitive with the other student in his small two-person speech therapy group, enjoyed the activities, and seemed very comfortable, but his speech-language pathologist concluded Student needed more time to work on his April 18, 2023 goals due to his low language and articulation skills.

The November 8, 2023 IEP team, with Parent and lay advocate input, increased Student's speech services to eight, 20-minute small group sessions per month, or 160 minutes per month, and added speech-language pathologist consultation with Student's teachers for 30 minutes once per month. The November 8, 2023 IEP also expressly limited Student's small group sessions to two students. The evidence did not show that Student required individual speech services on November 8, 2023.

Elizabeth Perry conducted an independent speech and language assessment that was completed on October 20, 2023. There was no evidence of when Stockton received the assessment report, and Perry did not present her report to Student's IEP team until February 2, 2024. There was no evidence that Parent, the lay advocate, or Stockton

IEP team members had seen the report by November 8, 2023. Student bore the burden of proving that Stockton could have, and should have, considered Perry's service recommendations at the November 8, 2023 IEP, but the evidence was insufficient to establish that.

Perry testified at hearing with a professional demeanor. She answered questions regarding her assessment completely and with examples, but as discussed below, she was unfamiliar with Student's educational program, which IEPs had been consented to, or how Student's speech services were being implemented. Perry was a highly qualified and licensed speech-language pathologist, however, the persuasiveness of her recommendation for services was diminished by her lack of familiarity with Student's educational program or how it was being delivered.

Perry's assessment report concluded that Student had delayed receptive, expressive, and pragmatic language skills. Pragmatic language refers to social language when interacting with others. Perry recommended maintaining the three April 18, 2023 language goals for articulation, semantics, and syntax, as well as the social services goal for peer interaction. She proposed a pragmatic language goal for Student to initiate a topic with a peer and maintain the topic for three conversational exchanges with minimal clinician support. Perry also recommended that Student's speech and language services be provided in individual, rather than group, sessions for increased attention and more direct one-to-one teaching, supplemented by a monthly social skills group to increase opportunities to socialize with peers in a supported setting.

At hearing, Perry admitted that she had not observed any of Student's speech therapy sessions, did not know the size of his speech group, and did not recall speaking with Student's speech therapist. She correctly assumed that Stockton's service providers were working on Student's April 18, 2023 goals but did not know in what manner Student's special education teacher, speech provider, or mental health clinician were working with Student on his language deficits or peer interactions. When Perry was queried if the amount of one-to-one attention she recommended could be provided within a two-person speech group, she conceded that it possibly could.

Stockton speech-language pathologist Carrie Beck was highly qualified, with a degree, license, and credential in speech-language pathology. Beck worked with Student on his speech and language goals twice a week from his transfer to Peyton in November 2023, through the time of hearing. By April 2024, Student met his semantics goal and made progress on his syntax goal. Beck opined that Student's two-person small group speech sessions provided Student with adequate attention and one-to-one instruction to meet Perry's concerns, which was particularly persuasive in light of Perry's opinion that such a delivery model might meet Student's speech and language needs. Beck's professional opinion that small group speech services were appropriate for Student on November 8, 2023, and that Student did not require individual speech services to make appropriate progress on his language goals, was persuasive, and given greater weight than Perry's less informed opinion that individual speech services were necessary for Student to make progress on his language goals.

The opinion of Dr. Shin, who was not a speech-language pathologist, that Student needed individual speech services to make progress on his language goals was given no weight.

Student failed to prove by a preponderance of the evidence that Stockton denied Student a FAPE because the November 8, 2023 IEP team failed to offer individual speech and language services.

ISSUE 4b: ONE-TO-ONE AIDE THROUGHOUT THE SCHOOL DAY

Student contends that the November 8, 2023 IEP should have offered a dedicated one-to-one aide to accompany Student throughout the school day to bridge the academic and peer interaction gap between Student and his schoolmates, and to help with toileting. Stockton contends Student presented no evidence that he needed a one-to-one aide to access his education.

The November 8, 2023 IEP offered Student placement in a special day classroom for students with autism. Instruction was at each student's pace and instructional level with lots of individual attention and support. Stockton members of the November 8, 2023 IEP team believed that the supports offered by the autism classroom addressed Student's frustration with increasingly difficult curriculum and provided him with significant and appropriate adult attention and support. The evidence did not show that Student also required a one-to-one aide throughout the school day.

Student did not need a one-to-one aide in November 2023 to help him bridge the academic gap between him and his peers. At the beginning of the 2023-2024 school year, Student enjoyed participating in classroom activities and made good effort. Student was a happy student, enjoyed sharing his thoughts in front of the class, and had a good relationship with his peers. Student frequently became distracted during academic tasks but was easily redirected.

However, the third-grade curriculum was difficult for Student due to his struggles with reading comprehension, math, and writing. The November 8, 2023 IEP team offered Student placement in a special education autism classroom that taught third-grade curriculum at a slower pace, with full day specialized academic instruction, fewer students, more adult support, and a focus on communication and social skills. With these supports in place, the November 8, 2023 IEP team reasonably calculated that Student would make progress appropriate to his circumstances, without the need for a one-to-one aide.

The reasonableness of this calculation was corroborated by Student's progress in the autism classroom at Peyton after his transfer on November 13, 2023. Student made progress on his reading, math, and writing goals, and was near standard in his other subjects. He stayed engaged and always did his work. For the most part, Student was also able to keep up in Lehon's general education English language arts class with the support of specialized academic instruction in Yadon's class and the paraprofessional from Yadon's class who accompanied Yadon's students to Lehon's class, without the need for a dedicated one-to-one aide.

Student did not need a one-to-one aide on November 8, 2023, to close the peer interaction gap. At the beginning of the 2023-2024 school year, Student had a good relationship with his classmates and initiated conversations on his own topics of interest. As discussed at Issues 3b and 4a, by November 8, 2023, Student was making progress on his speech goals in articulation, semantics, and syntax, which contributed to Student having no noticeable speech impediment and a better understanding of the parts of language for communication. In August 2023, Stockton's social services case manager noted that Student readily participated in his social services sessions to boost his confidence and improve his social skills as part of his peer interaction goal.

However, the November 8, 2023 IEP team recognized that Student had pragmatic language and social skills deficits due to his autism and put supports in place reasonably calculated to enable Student to make appropriate progress in communication and peer interaction. The November 8, 2023 IEP offered Student placement in an autism classroom with a focus and supports on communication and social skills. Student's speech services were increased to give him more time on speech goals and social interaction practice in small group speech sessions with a peer. Social services were documented in the November 8, 2023 IEP to support the peer interaction goal.

That these services were reasonably calculated to enable Student to make appropriate progress on peer interaction was corroborated by his actual progress after the November 8, 2023 IEP was implemented. In Yadon's autism class, Student became more communicative, raised his hand more often, spoke with peers, demonstrated better receptive language, and began initiating more conversations. In Lehon's general education class, Student talked with his peers, worked with them in class, was receptive to help from others and helped others, and engaged in nonverbal peer interactions such as waving and fist-bumping. With social services support, Student learned emotional regulation, how to advocate for himself, and to feel confident initiating communication and play. Student made progress in bridging the peer interaction gap between him and his schoolmates without the need for a dedicated one-to-one aide.

Parent testified that a one-to-one aide could have helped Student with his toileting needs to minimize missed instructional time. However, Mueller testified credibly and persuasively that at the time of the November 8, 2023 IEP, Student was fully capable of going to the bathroom, changing his clothes, and returning to class

by himself when Parent sent Student to school with a change of clothes. Mueller encouraged Student to take a bathroom break every 30 minutes, which he could do independently or with a buddy. The evidence did not establish that Student required a one-to-one aide to assist him with toileting.

Student soiled himself twice during specialized academic instruction with Ramirez, once during pull-out services in the resource room and once while she was working with him individually in Mueller's class. Student did not appear to know he had soiled himself until there was a puddle on his seat. The November 8, 2023 IEP team added an accommodation to Student's IEP for regular 20-minute bathroom breaks. Given Student's childhood history of chronic constipation and suspected medical condition of encopresis, it is unclear how Parent expected a one-to-one aide to do more than encourage regular bathroom breaks as already provided in the November 8, 2023 IEP, and implemented by school staff.

Notably, soon after the regular bathroom breaks every 20 minutes were implemented under the November 8, 2023 IEP, Student's soiling incidents decreased and stopped. There were a few accidents in the first month of Yadon's class, and none in Lehon's class. After December 2023, Student had no further toileting accidents during the 2023-2024 school year without the need for a dedicated one-to-one aide to assist in a toileting schedule.

At hearing, Dr. Shin opined that a one-to-one aide would be beneficial for Student because one-to-one aides often helped students keep up academically and interact with their peers and can be discontinued when no longer needed. Dr. Shin

lacked preparation or familiarity with Student's needs and educational program, lacked teaching experience or credentials, and her opinion that a service beneficial to other students would be appropriate for Student was unsupported, speculative, and unpersuasive.

Dr. Shin's opinion was also outweighed by the opinions of Ramirez and H. Taylor that Student did not need a dedicated one-to-one aide throughout the school day to make appropriate progress. Ramirez worked with Student twice a day, three times per week, during the 2023-2024 school year from August 3, 2023, through November 10, 2023, and understood Student's academic needs on November 8, 2023. H. Taylor conducted an educationally related mental health services assessment of Student for review at the April 18, 2023 IEP team meeting, and testified that she did not recommend a one-to-one aide for Student because Student had begun initiating peer interactions on his own, which needed to be encouraged.

Student did not prove by a preponderance of the evidence that Stockton denied him a FAPE because the November 8, 2023 IEP did not offer a one-to-one aide throughout the school day.

ISSUE 4c: APPLIED BEHAVIOR ANALYSIS SERVICES

Student made no argument, and cited no evidence in his closing brief, supporting the claim that applied behavior analysis services should have been offered in the November 8, 2023 IEP. Stockton contends Student did not display any behaviors at school that impeded his education for which applied behavior analysis therapy would be appropriate.

Student did not offer into evidence a description of applied behavior analysis services, let alone an opinion by any witness that Student required applied behavior analysis to make appropriate educational progress when the November 8, 2023 IEP was developed. Nick Rammer, a board-certified behavior analyst for Stockton, attended Student's March 7, 2024 IEP team meeting. He had no independent recall of the meeting, was not familiar with Student, and testified he had insufficient information to form an opinion on whether Student needed applied behavior analysis services at any time.

Parent testified that Student had applied behavior analysis services in the home through medical insurance, but did not explain why she thought such services were necessary in the school setting. Parent also admitted that she had never requested applied behavior analysis services from Stockton. Dr. Shin was not educated, trained or experienced in applied behavior analysis, and was not questioned about, and did not offer an opinion on, whether such services were appropriate for Student.

Student failed to prove by a preponderance of the evidence that Stockton denied Student a FAPE because the November 8, 2023 IEP did not offer applied behavior analysis services.

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ISSUE 4d: TRANSPORTATION

Student did not discuss transportation in his closing brief. In his due process hearing request, Student simply alleged, without explanation, that transportation should have been offered in the November 8, 2023 IEP. Stockton contends that it was age appropriate for Student to walk to school or be driven by Parents, and Student did not demonstrate that any impact of his disability interfered with his ability to get to and from school.

Taking into consideration local transportation policies, a district must provide transportation or other related services only if a student with a disability requires it to benefit from his or her special education. (20 U.S.C § 1401(26)(A); 34 C.F.R. § 300.34(a); Ed. Code, §§ 56342, subd. (a) & 56363, subd. (a).) A student may require specialized transportation as part of the related services that accompany special education if the student's unique disability-related needs make it especially problematic to get to school in the same manner as non-disabled students. (*Letter to Hamilton* (U.S. Dept. of Education, Office of Special Education Programs (September 12, 1996).)

As a matter of policy, Stockton did not offer transportation for non-disabled elementary school students who attend and live within a mile of their home school. Flores, Student's case manager, credibly testified that it was age appropriate for elementary school students to walk or be driven by their parents to school and back. Parent's residence was less than a mile from both Bush Elementary and Peyton Elementary.

Prior to the 2023-2024 school year, Parents drove Student to school at Bush Elementary and back for several years. In first grade, Student got on a bus after school one day and could not be immediately located when Parent arrived to pick him up. That did not happen again in first grade, or in second grade.

At the November 8, 2023 IEP team meeting, Parent requested transportation for Student to his new school, Peyton. Student was fascinated by buses and wanted to ride one. His sibling attended a distant school and was picked up and dropped off at Student's home by a Stockton school bus that also stopped at Peyton to pick up and drop off other students. Parent's reason for requesting transportation was not disability related, but to please her child and for convenience.

On November 8, 2023, Student had no disability-related needs that made it problematic to get to school in the same manner as non-disabled students. Student had no disability-related reason he required transportation as a related service to benefit from his special education.

Student did not establish that he required transportation on November 8, 2023, by the fact that transportation was subsequently added to his April 18, 2023 IEP in a January 18, 2024 amendment. Stockton added transportation to Student's IEP after, one day in or around December 2023, Student stepped into the line for bus transportation after school and almost got on a bus. As of November 8, 2023, there had only been one incident of Student lining up incorrectly after school over two years in the past. That one incident did not establish that it was problematic for Student to get to school in the same manner as non-disabled students, or that Student required daily transportation to benefit from special education on November 8, 2023.

Student did not prove that Stockton denied Student a FAPE because the November 8, 2023 IEP did not offer transportation to and from school.

ISSUE 4e: PARENT TRAINING

Student contends Parent did not know she could request parent training, and that Stockton made general trainings on disabilities broadly available to all special education parents but did not offer individual training to Parent. Stockton contends there was no evidence that Parents needed training for Student to access his special education placement or services.

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

Student did not offer evidence that on November 8, 2023, Parent needed training in autism, speech or language impairment, use of assistive technology, support programs, applied behavior analysis, data collection, or curriculum, to understand Student's special needs, become familiar with child development, or to acquire necessary skills to implement Student's IEP. In addition to failing to submit evidence of what parent training was needed, or why, Student failed to submit evidence of the type, amount, or duration of training Student contends should have been included in his November 8, 2023 IEP.

Parent did not request training of any sort from Stockton staff or administration prior to or at the November 8, 2023 IEP team meeting. Dr. Shin opined Parent should have received Clicker 8 training, but as discussed at Issue 1c, Student did not need, and was not offered, Clicker 8, so there was no need to train Parent on that program.

On November 8, 2023, Student was making progress on all his academic, speech, and social interaction goals without the need for parent training on Student's disabilities or curriculum. Student was adept at using his Chromebook's programs independently, and Parents did not need training to assist Student with that technology. Student was not offered and did not prove that he needed applied behavior analysis for which Parent would need training. Ramirez sent weekly notes home with Student that she created with Parent's input to rate Student's daily attention to task, toileting, and attendance. This was an accommodation requested by Parent and included in the November 8, 2023 IEP that did not require Parents to be trained in data collection to facilitate implementation of that IEP.

Student did not prove by a preponderance of the evidence that Stockton denied him a FAPE because the November 8, 2023 IEP did not offer parent training in

- autism,
- speech or language impairment,
- use of Student's assistive technology,
- support programs,
- applied behavior analysis,
- data collection, or
- curriculum.

ISSUE 5: DID STOCKTON DENY STUDENT A FAPE AT THE NOVEMBER 8, 2023 IEP TEAM MEETING BY OFFERING A PREDETERMINED IEP AND NOT ADDRESSING PARENT'S STATED CONCERNS?

Student contends that the offer of placement in a special day class at Peyton in the November 8, 2023 IEP was a take-it-or-leave-it predetermined offer. Student also contends that the other members of the November 8, 2023 IEP team did not consider or modify the IEP to address Parent's concerns about support for Student's disabilities, academics, or maladaptive behaviors, or the change of schools.

Stockton contends Student's placement was decided as a collaborative process with the entire IEP team.

THE NOVEMBER 8, 2023 IEP OFFER WAS NOT PREDETERMINED

Predetermination occurs when an educational agency has decided on its offer prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP team meeting with a take it or leave it offer. (*JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.)

Although school district personnel may bring a draft of the IEP to the meeting, the parents are entitled to bring to an IEP team meeting their questions, concerns, and recommendations as part of a full discussion of a child's needs and the services to be provided to meet those needs before the IEP is finalized. (*Assistance to States for the Education of Children Disabilities, supra*, 64 Fed. Reg. 12478-12479.)

A school district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of a FAPE. Substantive harm occurs when parents are denied meaningful participation in a student's IEP development. (*Deal, supra*, 392 F.3d at p. 859.)

Changing Student's placement from a general education classroom with resource support to a special education classroom for students with mild to moderate disabilities was first discussed at the May 19, 2023 IEP team meeting. Parent favored keeping Student in general education with push-in and pull-out specialized academic instruction and Student's placement was not changed at that time.

After the 2023-2024 school year began, Parent wanted to look at other programs and asked Stockton administration to allow her to view placement options throughout the school district, but Stockton declined. This was not evidence that Stockton had predetermined Student's placement offer. Rather, Stockton administrators properly informed Parent that she could request an IEP team meeting to discuss placement options for Student because placement was an IEP team decision, and Stockton would not decide which programs Parent should consider prior to a discussion at an IEP team meeting.

At Parent's request, Stockton convened an IEP team meeting on September 20, 2023, to consider placement. At the meeting, Student's lay advocate requested Student be given more supports to remain in a general education classroom. There was significant discussion at the IEP team meeting regarding whether a general education classroom with supports continued to be sufficient to meet Student's needs, and

whether supports such as a one-to-one aide would be appropriate for Student. The meeting ended before a placement decision was reached and was scheduled to be reconvened. In the interim, Parent was given an opportunity to view the autism program at Peyton, which Stockton IEP team members suggested could meet Student's needs in a smaller classroom, with adult support, slower curriculum pace, and a focus on communication and social skills.

At the November 8, 2023 IEP team meeting, Parent was amenable to transferring Student to the autism program at Peyton. There was further discussion about having an inclusion specialist help Student with the transition to the new school. Parent was not given a take-it-or-leave-it offer of placement for Student at the November 8, 2023 IEP team meeting. There was no evidence that Stockton IEP team members had decided on the offer of the autism class at Peyton prior to the November 8, 2023 IEP team meeting, and refused to consider other alternatives. Parent brought her placement questions, concerns, and recommendations to the September 20, 2023, and November 8, 2023 IEP team meetings, and there was a full discussion of Student's needs and the services to meet those needs before Stockton finalized the November 8, 2023 IEP offer.

Student did not prove by a preponderance of the evidence that Stockton denied him a FAPE at the November 8, 2023 IEP team meeting by offering a predetermined IEP.

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PARENT WAS NOT DENIED MEANINGFUL PARTICIPATION

Parental participation in the development of an IEP is essential to the IDEA. (*Winkleman v. Parma City School Dist.* (2007) 550 U.S. 516, 524.) It is among the most important procedural safeguards in the Act. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) A parent has meaningfully participated in the development of an IEP when the parent

- is informed of the child's problems,
- attends the IEP meeting,
- expresses disagreement regarding the IEP team's conclusions, and
- requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693.)

An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp. 2d 127, 139 [the IDEA does not provide for an education designed according to the parent's desires.]) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) A school district has the right to select the program offered, as long as the program is able to meet the student's needs, and the district is ultimately responsible for ensuring a FAPE is offered. (*Letter to Richards*, U.S. Dept. of Education, Office of Special Education Programs (January 7, 2010).)

The evidence established that Parent, through Student's lay advocate, was very involved in discussions concerning all components of Student's educational program. Parent brought a lay advocate to the April 18, 2023, May 19, 2023, September 20, 2023, and November 8, 2023 IEP team meetings. The witnesses who were present at these

meetings consistently testified that Student's lay advocate was dismissive, condescending, and contentious, and often interfered with Stockton's attempts to conduct a collaborative meeting. Nonetheless, evidence of the lay advocate's disagreements and demands was evidence Parent was informed of Student's problems, expressed disagreement regarding the IEP team's conclusions, and requested revisions in the IEPs, including the November 8, 2023 IEP.

The evidence overwhelmingly established that Parent meaningfully participated in the development of Student's educational program at the November 8, 2023 IEP team meeting. Parent attended the meeting and was informed of Student's academic, communication, attention, and toileting problems. Parent expressed disagreement with the IEP team's conclusions, and requested revisions, at the IEP team meeting and in writing on the November 8, 2023 IEP itself.

Parent told the November 8, 2023 IEP team that Student was having stomach pains and toileting accidents because he was seeking ways to escape due to high anxiety and stress from the school environment. Parent's opinion was inconsistent with the March 2023 educationally related mental health services assessment and Parent requested an independent assessment at the November 8, 2023 IEP team meeting. As discussed at Issue 2, Stockton timely approved Parent's request for an independent educationally related mental health services assessment on November 30, 2023.

Special education teacher Ramirez shared with the November 8, 2023 IEP team that Student was at grade level in some academic areas, but struggling with reading comprehension, math, handwriting, and attention to task. Student's lay advocate opined that Student needed behavioral support so as not to avoid tasks and to create consistency. General education teacher Mueller described how she helped Student

maintain attention to task with breaks when Student was frustrated and strategies for fostering independent work completion. Although the IEP ultimately did not offer a behavior aide, whether or not Student needed additional behavior support was discussed and considered in response to Parent's request.

Parent requested assistive technology to bridge the gap in adaptive literacy and reading comprehension, specifically the Clicker 8 program, at the November 8, 2023 IEP team meeting. Stockton responded by creating an assessment plan to assess Student's assistive technology needs, obtaining Parent's consent, and assessing Student within two weeks of the request. B. Taylor completed an assistive technology assessment and report on November 16, 2023. As discussed at Issue 1c, B. Taylor also investigated and trialed the Clicker 8 technology requested by Parent.

At the November 8, 2023 IEP team meeting, Stockton's speech-language pathologist reported on Student's progress on speech goals, Student's enthusiasm for activities in his small group, and her opinion that Student needed to continue to work on goals addressing language delays. Parent earlier had disagreed with reports of Student's progress in speech and language, and Stockton had agreed on March 24, 2023, to fund an independent speech and language assessment by speech language pathologist Perry. There was conflicting evidence at hearing whether Perry's assessment was completed by the time of the November 8, 2023 IEP team meeting. There was no evidence that Stockton had received the report by, or that Parent had the report to discuss at, the November 8, 2023 IEP team meeting.

At the November 8, 2023 IEP team meeting, Parent requested that Stockton provide Student transportation to Peyton, and a Stockton representative explained that Peyton was less than a mile from Student's home and Student was able to get to school

in the same manner as non-disabled elementary school students. Transportation was not offered in the November 8, 2023 IEP but was discussed at the IEP team meeting. Stockton considered Parent's request.

Student also contends Stockton was required to modify the November 8, 2023 IEP at Parent's request, but that is not the law. Stockton was required to give Parent an opportunity for meaningful participation in the development of Student's IEP, but had no obligation to grant Parent a veto over any individual IEP provision. (See *Ms. S ex rel. G v. Vashon Island* (9th Cir. 2003) 337 F.3d 1115, 1131.)

Stockton was not required to offer the Clicker 8 program. Parent was adamant at the November 8, 2023 IEP team meeting, in correspondence to Stockton, and at hearing that the Clicker 8 program was more effective than school-issued programs on Student's Chromebook to help Student with literacy skills. As discussed at Issue 1c, Stockton determined after review of the assistive technology assessment that the literacy tools already available at school appropriately met Student's needs. Stockton was not required to offer Clicker 8 because Parent preferred it, even if it would have resulted in greater educational benefit to Student. (*Shaw, supra*, 238 F.Supp. at p. 139; *Letter to Richards, supra*, U.S. Dept. of Education, Office of Special Education Programs (January 7, 2010).) The IDEA did not require Stockton to provide Student with the best education available to him, or to provide instruction or services that maximized Student's abilities. (See *Rowley, supra*, 458 U.S. at p. 198; reaffirmed by *Endrew F., supra*, 580 U.S. at p. 402.)

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Student did not prove by a preponderance of the evidence that Stockton denied him a FAPE at the November 8, 2023 IEP team meeting because Stockton did not address Parent's stated concerns about support for Student's disabilities, academic and behavioral concerns, change of schools, and by failing to modify the IEP at Parent's request.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1a:

Stockton did not deny Student a FAPE from the beginning of the 2023-2024 regular school year through May 10, 2024, by failing to assess Student in all areas of suspected need, specifically in academics.

Stockton prevailed on Issue 1a.

ISSUE 1b:

Stockton did not deny Student a FAPE from the beginning of the 2023-2024 regular school year through May 10, 2024, by failing to assess Student in all areas of suspected need, specifically in social emotional functioning.

Stockton prevailed on Issue 1b.

ISSUE 1c:

Stockton did not deny Student a FAPE from the beginning of the 2023-2024 regular school year through May 10, 2024, by failing to assess Student in all areas of suspected need, specifically in assistive technology, including Student's need for the Clicker 8 technology requested by Parents.

Stockton prevailed on Issue 1c.

ISSUE 1d:

Stockton did not deny Student a FAPE from the beginning of the 2023-2024 regular school year through May 10, 2024, by failing to assess Student in all areas of suspected need, specifically a functional behavior assessment.

Stockton prevailed on Issue 1d.

ISSUE 2:

Stockton did not deny Student a FAPE by failing to conduct an independent educational evaluation for educationally related mental health services at Parent's November 8, 2023 request.

Stockton prevailed on Issue 2.

ISSUE 3a:

Stockton did not deny Student a FAPE by failing to develop appropriate goals in the November 8, 2023 IEP, specifically in emotional regulation.

Stockton prevailed on Issue 3a.

ISSUE 3b:

Stockton did not deny Student a FAPE by failing to develop appropriate goals in the November 8, 2023 IEP, specifically in social skills.

Stockton prevailed on Issue 3b.

ISSUE 3c:

Stockton did not deny Student a FAPE by failing to develop appropriate goals in the November 8, 2023 IEP, specifically in behavior.

Stockton prevailed on Issue 3c.

ISSUE 3d:

Stockton did not deny Student a FAPE by failing to develop appropriate goals in the November 8, 2023 IEP, specifically in the academic areas of reading comprehension, math, and handwriting.

Stockton prevailed on Issue 3d.

ISSUE 4a:

Stockton did not deny Student a FAPE because the November 8, 2023 IEP did not offer individual speech and language services.

Stockton prevailed on Issue 4a.

ISSUE 4b:

Stockton did not deny Student a FAPE because the November 8, 2023 IEP did not offer a one-to-one aide throughout the school day.

Stockton prevailed on Issue 4b.

ISSUE 4c:

Stockton did not deny Student a FAPE because the November 8, 2023 IEP did not offer applied behavior analysis services.

Stockton prevailed on Issue 4c.

ISSUE 4d:

Stockton did not deny Student a FAPE because the November 8, 2023 IEP did not offer transportation to and from school.

Stockton prevailed on Issue 4d.

ISSUE 4e:

Stockton did not deny Student a FAPE because the November 8, 2023 IEP did not offer parent training in autism, speech or language impairment, use of Student's assistive technology, support programs, applied behavior analysis, data collection, or curriculum.

Stockton prevailed on Issue 4e.

ISSUE 5:

Stockton did not deny Student a FAPE at the November 8, 2023 IEP team meeting by offering a predetermined IEP and not addressing Parent's stated concerns about support for Student's disabilities, addressing academic and behavioral concerns, change of schools, and by failing to modify the IEP at Parent's request.

Stockton prevailed on Issue 5.

ORDER

All of Student's 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.

ALEXA HOHENSEE

Administrative Law Judge

Office of Administrative Hearings