

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

THE CONSOLIDATED MATTERS INVOLVING:  
MILPITAS UNIFIED SCHOOL DISTRICT, AND  
PARENT ON BEHALF OF STUDENT.

CASE NO. 2025060681

CASE NO. 2025030762

DECISION

NOVEMBER 24, 2025

On March 19, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Milpitas Unified School District, Milpitas, as respondent. On June 17, 2025, Milpitas filed a request for due process hearing and a motion to consolidate the cases, naming Student. On June 19, 2025, a motion to consolidate the cases was granted. A continuance was granted on September 3, 2025, to allow the parties to mediate. On September 9, 2025, Milpitas' motion to amend its complaint was granted. On October 9, 2025, Milpitas withdrew its complaint. This consolidated matter proceeded to hearing only as to Student's issues. Administrative Law Judge Tiffany Gilmartin heard this matter via videoconference on October 14 and 15, 2025.

Kristal Tidwell represented Milpitas. Mary Jude Doerpinghaus, executive director of inclusive services for all learners, attended on Milpitas' behalf. Parent represented Student.

At the parties' request, the matter was continued to November 3, 2025, for written closing briefs. The record was closed, and the matter was submitted on November 3, 2025.

A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

## ISSUES

1. Did Milpitas deny Student a FAPE, during the 2022-2023 school year from March 19, 2023, by:
  - a. Failing to assess in functional behavior, speech and language, and occupational therapy;
  - b. Failing to offer appropriate behavior supports and services;
  - c. Failing to offer a one-to-one aide;
  - d. Failing to offer transportation services;
  - e. Failing to offer an appropriate health plan;
  - f. Failing to offer an appropriate placement;

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- g. Failing to offer appropriate augmentative and alternative communication services; and;
    - h. Failing to implement Student's IEP, specifically, transportation services?
- 2. Did Milpitas deny Student a FAPE, during the 2023-2024 school year, by:
  - a. Failing to assess in functional behavior, speech and language, and, occupational therapy;
  - b. Failing to offer appropriate behavior supports and services;
  - c. Failing to offer a one-to-one aide;
  - d. Failing to offer transportation services;
  - e. Failing to offer an appropriate health plan;
  - f. Failing to offer an appropriate placement;
  - g. Failing to offer appropriate augmentative and alternative communication services; and;
  - h. Failing to implement Student's IEP, specifically, transportation services?
- 3. Did Milpitas deny Student a FAPE, during the 2024-2025 school year until March 19, 2025, by:
  - a. Failing to assess in functional behavior, speech and language, and, occupational therapy;
  - b. Failing to offer appropriate behavior supports and services;

- c. Failing to offer a one-to-one aide;
- d. Failing to offer transportation services;
- e. Failing to offer an appropriate health plan;
- f. Failing to offer an appropriate placement;
- g. Failing to offer appropriate augmentative and alternative communication services, and;
- h. Failing to implement Student's IEP, specifically transportation services?

## JURISDICTION

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

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

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

This matter proceeded exclusively on Student's issues, thus Student bore 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 seven years old and in second grade at the time of hearing. Student resided within the Milpitas Unified School District geographic boundaries at all relevant times. Student was eligible for special education under the category of autism with a secondary eligibility of speech and language.

Parent's closing brief raised new issues under the IDEA, section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the McKinney-Vento Act. Parent further raised allegations of negligence as related to implementation of Student's IEP and allegations Student's teacher failed to read his IEP documents. Parent's closing brief further raised allegations of retaliation and abuse of process.

This Decision makes no findings beyond claims identified in the Order Following Prehearing Conference. Moreover, OAH does not have jurisdiction over claims under section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the McKinney-Vento Act or for civil claims, such as negligence.

## PRELIMINARY ISSUE: DETERMINATION OF OPERATIVE INDIVIDUAL EDUCATION PROGRAM

Student presented no documentary evidence during the hearing. Student's case-in-chief centered on testimony from Parent and Grandparent. Student alleged in his closing brief that Milpitas failed to implement Student's signed IEP, obstructed parental participation, and retaliated against Parent for filing for due process.

Although there was sparse testimony, the documentary evidence admitted in this case established the following timeline. Student enrolled in Milpitas as a preschooler during the 2022-2023 school year. Student was assessed for initial eligibility for special education, and an IEP team meeting was held on March 25, 2022. An IEP team meeting was held and Milpitas made an offer of FAPE. Parent declined special education services at the time. Student, therefore, did not receive any special education services or support during the 2022-2023 school year. The following year as a kindergartner, Student was again assessed, an October 10, 2023 IEP team meeting held, Milpitas made an offer of FAPE, and Parent consented on November 6, 2023.

Milpitas held an IEP team meeting on November 7, 2024. This meeting was continued to November 20, 2024, where Milpitas made an offer of FAPE. Parent did not consent to this IEP.

The IEP is the “centerpiece of the [IDEA’s] education delivery system for disabled children” and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.ED.2d 686]; 20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 46032, 56345.) An IEP provides a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and nondisabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a)(1)(A).)

Parents must provide informed, written consent before a school can implement any changes to a student’s IEP offer. (34 C.F.R. § 300.300(b) (2008).) Consent means that the parent has been fully informed of all relevant information regarding the proposed action and understands and agrees to it in writing to it. (34 C.F.R. §§ 300.300(b) (2008); 300.9 (2008); Ed. Code, § 56021.1.)

### ISSUE 1a: STUDENT FAILED TO MEET HIS BURDEN PROVING MILPITAS FAILED TO ASSESS IN FUNCTIONAL BEHAVIOR, SPEECH AND LANGUAGE, AND OCCUPATIONAL THERAPY DURING THE 2022-2023 SCHOOL YEAR FROM MARCH 19, 2023

Student contends Milpitas failed to assess Student in functional behavior, speech and language, and occupational therapy. Milpitas contends, Student was initially assessed for special education and found eligible on March 25, 2022, under the category of autism with a secondary eligibility category in speech and language.

Before deciding whether a child qualifies for special education services, a school district must assess the child in all areas of suspected disability. (20 U.S.C. § 1414(a), (b)(3)(B); Ed. Code, §§ 56320, 56321.) A disability is “suspected,” and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or disorder. (*Timothy O. v. Paso Robles Unified Sch. Dist.* (9th Cir. 2016) 822F.3d 1105, 1119.) Such notice may come in the form of concerns expressed by parents about a child’s symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child’s behavior. (*Id.* at p. 1120 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796 and *N.B. v. Hellgate Elementary Sch. Dist.*, (9th Cir. 2008) 541 F.3d 1202].)

Parent alleges Student required assessment in the following areas during the 2022-2023 school year from March 19, 2023, speech and language, occupational therapy, and functional behavior.

## SPEECH AND LANGUAGE

Parent alleges Student required assessment in speech and language during the 2022-2023 school year. The evidence established Student was offered speech and language services and three goals in the March 25, 2022 IEP. While no evidence was proffered by either party to demonstrate Student was assessed in speech and language during the 2022-2023 school year, the presence of an offer of services and goals, irrespective of Parental consent, is dispositive of the fact a speech and language assessment was conducted.

Parent did not meet her burden to demonstrate Milpitas failed to assess in speech and language during the 2022-2023 school year from March 19, 2023.

## OCCUPATIONAL THERAPY

Occupational Therapy is a related service. Related services are required to assist a child with a disability to benefit from special education. (34 CFR 300.24.(a). The IDEA and California law requires occupational therapy assessments must be performed by someone competent to perform the assessment. (20 U.S. C. § 1414(b)(3)(A)(iv), Ed. Code § 56322.) Assessors must be knowledgeable about the student's suspected disability and must pay attention to the student's unique educational needs such as the need for specialized services, materials and equipment. (Ed. Code, § 56320, subd. (g).) Occupational Therapy will only be provided by a therapist licensed through the California Department of Consumer Affairs. (Cal. Code Regs., tit. 5, § 3051.6, subd (b)(2).)

Parent did not meet her burden of proof to establish Student had needs in occupational therapy. Neither Parent or Grandparent, nor Milpitas' team members testified or introduced any evidence Student had any needs in occupational therapy during the 2022-2023 school year from March 19, 2023.

## FUNCTIONAL BEHAVIOR

A functional behavior assessment is designed to isolate target behaviors and develop a hypothesis regarding the target behaviors. Once the hypothesis of the targeted behavior is developed, a positive behavior intervention plan is developed to support a student's behavior. The IDEA does not define who may conduct a functional behavior assessment. The law simply requires that assessments shall be conducted by persons competent to perform the assessment as determined by the local educational agency. (Ed Code, § 56322.)

Parent provided no testimony or documentary evidence to demonstrate Student had behavior needs that required a functional behavior assessment during the 2022-2023 school year from March 19, 2023.

Milpitas assessed in speech and language. Student failed to prove Milpitas failed to assess in occupational therapy, and functional behavior. Student entered Milpitas as a pre-kindergartner. Prior to Student's initial special education assessment, neither Parent, Grandparent, nor any of the educational professionals who testified, opined they suspected Student had speech, gross or fine motors needs, or behavior needs, that required additional assessments. Further, none of the witnesses testified that Student had speech, gross or fine motor, or behavior needs that required assessments other than those conducted by Milpitas.

Milpitas assessed in speech and language. Student did not meet his burden to demonstrate Milpitas failed to assess Student in functional behavior and occupational therapy, during the 2022-2023 school year from March 19, 2023.

**ISSUE 1b, 1c, 1d, 1e, AND 1g: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO OFFER APPROPRIATE BEHAVIOR SUPPORTS AND SERVICES, A ONE-TO-ONE AIDE, TRANSPORTATION SERVICES, AN APPROPRIATE HEALTH PLAN, AND APPROPRIATE AUGMENTATIVE AND ALTERNATIVE DEVICE SUPPORT DURING THE 2022-2023 SCHOOL YEAR FROM MARCH 19, 2023**

Neither Student, Parent, nor Grandparent provided any testimony or evidence as to Milpitas' initial March 25, 2022 IEP offer. The evidence supports Milpitas made an offer of FAPE to parent at the March 25, 2022 IEP team meeting. Parent did not consent

to this IEP. Moreover, Parent did not challenge anything that was offered in the IEP. Neither Parent or Grandparent attacked the appropriateness of the behavior services, a lack of a one-to-one aide, transportation services, an appropriate health plan, and an appropriate augmentative and alternative device support during the 2022-2023 school year from March 19, 2023.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363 subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321 (2006), and 300.501 (2006).)

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 considering the child's circumstances. (*Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Andrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*)

Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

Parent provided no testimony or evidence Student required additional behavior supports, a one-to-one aide, health plan or alternative augmentative communication during the 2022-2023 school year from March 19, 2023. Parent's case-in-chief centered on testimony of Parent and her mother. Neither Parent's nor Grandparent's testimony included any discussion of the 2022-2023 school year. Parent's concerns seemed primarily centered on issues that arose later during the statutory period. Parent and Grandparent's testimony will be addressed later in this decision.

Student did not meet his burden that Milpitas failed to offer a one-to-one aide, transportation, health plan, and augmentative and alternative communication device support during the 2022-2023 school year.

Milpitas prevailed on Issues 1b, 1c, 1d, 1e, and 1g.

#### ISSUE 1f: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO OFFER APPROPRIATE PLACEMENT DURING THE 2022-2023 SCHOOL YEAR FROM MARCH 19, 2023

Student contends he was not offered an appropriate placement during the 2022-2023 school year from March 19, 2023. Neither Parent, Grandparent nor any Milpitas team members testified or provided any evidence that Student's placement was not appropriate.

A school district must ensure that an educational program is designed following a number of general procedural requirements so that the student is placed in the least restrictive environment:

- The placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment;
- Placement is determined annually, is based on the child's IEP and is as close as possible to the child's home;
- Unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled;
- In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(34 C.F.R. § 300.116.)

To provide the least restrictive environment, school districts must first ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers; and second, that special classes or separate schooling occur only if

the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).)

To determine whether a special education student can be satisfactorily educated in a regular education environment, the Ninth Circuit United States Court of Appeals has balanced the following factors:

1. the educational benefits available in the general education classroom, supplemented with appropriate aids and services, as compared with the educational benefits of the special education classroom;
2. the nonacademic benefits of interaction with children without disabilities;
3. the effect the student has on the teacher and children in the regular class; and
4. the costs of mainstreaming the student.

(*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)].) Mainstreaming is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

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The evidence supports Student was offered a placement on a comprehensive campus in a special day class. Student failed to establish the Milpitas failed to offer an appropriate placement. Parent provided no evidence that would support her request for a more restrictive placement that would deprive Student of his ability to interact with typically developing peers.

Student did not meet his burden that Milpitas failed to offer an appropriate placement during the 2022-2023 school year.

ISSUE 1h: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO IMPLEMENT STUDENT'S IEP, SPECIFICALLY, TRANSPORTATION DURING THE 2022-2023 SCHOOL YEAR FROM MARCH 19, 2023

Student contends Milpitas failed to implement his IEP during the 2022-2023 school year, specifically, failing to provide transportation. Milpitas contends it was not obligated to implement Student's IEP services absent parental consent.

A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. (34 C.F.R. 300.300 (b)). If the Parent refuses consent, the public agency will not be considered in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent. (34 C.F.R. 300.300 (b) and (b)(ii)).

Parent refused consent to Student's initial IEP dated March 25, 2022, thus Milpitas had no obligation to implement Student's transportation services during the 2022-2023 school year.

Student failed to meet his burden that Milpitas failed to implement Student's IEP regarding transportation services during the 2022-2023 school year.

## ISSUE 2a: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO ASSESS IN FUNCTIONAL BEHAVIOR, SPEECH AND LANGUAGE, AND OCCUPATIONAL THERAPY DURING THE 2023-2024 SCHOOL YEAR

Student contends Milpitas should have assessed Student in functional behavior, speech and language, and occupational therapy. Milpitas contends Student was assessed in psychoeducation and speech and language at the beginning of the 2023-2024 school year. Milpitas further asserts, Student did not demonstrate any need for an occupational therapy or behavior assessment at the time.

Milpitas introduced as part of the October 10, 2023 IEP team meeting documentation a copy of the August 10, 2023 assessment plan proposing to assess Student in

- academics,
- health, speech and language,
- social emotional and behavior, and
- adaptive behavior.

Parent consented to this assessment plan on August 11, 2023.

Neither Parent nor Milpitas called any witnesses to testify to the assessments conducted on Student.

## SPEECH AND LANGUAGE

The IEP team reviewed Student's speech and language assessment results at the October 10, 2023 IEP team meeting. The team discussed Student's deficits in receptive and expressive language, and social-pragmatic skills. The evidence established Student was assessed in speech and language during the 2023-2024 school year.

Student did not offer any evidence supporting his contention Milpitas failed to assess him in speech and language during the 2023-2024 school year. No evidence was offered that different or additional assessments in speech and language should have been administered, nor that Student's needs changed during the 2023-2024 school year requiring additional assessments.

Student did not prove he was denied a FAPE based on a failure to assess in speech and language.

## OCCUPATIONAL THERAPY

Student also failed to prove Milpitas should have conducted an occupational therapy assessment. The October 10, 2023 IEP team discussed Student's motor skills development, specifically his fine motor skills, were still developing as he struggled to trace words and demonstrate his cutting skills. Student was offered a writing goal in writing to improve his ability to legibly form letters. No evidence was offered that

Student required an assessment in fine or gross motors skills, areas commonly evaluated by an occupational therapist. No witness, including Parent, Grandparent, or Milpitas' witnesses testified that they suspected Student's fine motor skills required assessment by an occupational therapist at the time.

Student failed to prove Milpitas should have assessed Student by an occupational therapist during the 2023-2024 school year.

## FUNCTIONAL BEHAVIOR

Student failed to prove that he required a functional behavior assessment. The October 10, 2023 IEP reviewed the social-emotional and behavior assessment conducted by the school psychologist. Student's October 10, 2023 IEP identified peer challenges and expressing needs and desires in relation to peers of similar age grouping. The IEP team also noted behaviors seemed more pronounced at home than school.

In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, "strategies, including positive behavioral interventions, strategies, and supports to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) (2006); Ed. Code, § 56341.1, subd. (b)(1).) Educational benefit is not limited to academic needs, but also includes the social and emotional needs that affect academic progress, school behavior, and socialization. (County of San Diego v. California Special Education Hearing Office, et al. (9th Cir. 1996) 93 F.3d 1458, 1467 (San Diego).)

Student did not prove that his behavior was an area of suspected disability that required different or additional assessments other than the behavior assessments conducted by Milpitas. The IEP noted Student required support in transitions. The IEP team offered him a transition goal to work on transitioning between desired and undesired activities.

Parent did not offer evidence of what behaviors were of concern at the time of the October 10, 2023 IEP team meeting, or anytime during the 2023-2024 school year. Parent did not testify or elicit testimony from Milpitas' witnesses proving that Milpitas should have suspected that Student required a functional behavior assessment.

Student did not meet his burden to demonstrate Milpitas failed to assess Student in speech and language, occupational therapy, and functional behavior during the 2023-2024 school year.

## ISSUE 2b: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO OFFER APPROPRIATE BEHAVIOR SUPPORTS AND SERVICES DURING THE 2023-2024 SCHOOL YEAR

Student asserted a need for additional behavior support. Milpitas maintained it offered Student appropriate behavior support.

Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education and may include counseling and behavior services when appropriate. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34 (2006); Ed. Code, § 56363, subd. (a) [in California, appropriate related services are also called designated instruction and services].)

At Student's October 10, 2023 IEP team meeting, the team reviewed the results of the Behavior Assessment System for Children, Third Edition and the Autism Spectrum Rating scales. The IEP team identified Student had challenges in peer interactions, expressing needs, energy regulation, and sensitivity to sensory experiences.

Student's October 10, 2023 IEP offered him accommodations such as visual supports, picture icons, schedules, first/then strategies, and choice boards to support positive behavior. Neither Parent nor Grandparent nor any Milpitas team members testified Student had any additional needs not covered by the supports offered. Student failed to prove by the preponderance of the evidence that Milpitas denied Student a FAPE by failing to offer appropriate behavior supports and services during the 2023-2024 school year.

Student failed to meet his burden of proving Milpitas denied him a FAPE by failing to offer appropriate behavior supports.

#### ISSUE 2c: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE HE REQUIRED A ONE-TO-ONE AIDE DURING THE 2023-2024 SCHOOL YEAR

Student asserted a need for a one-to-one aide. Milpitas maintained Student did not require a one-to-one aide and received appropriate support in his special day classroom where he spent 80 percent of his day. The October 10, 2023 IEP offered Student specialized academic instruction in a special day class for 264 minutes daily for a total of 1,320 minutes per week.

No evidence was presented to demonstrate Student struggled with attention and work completion that was outside the typical distractions of a student his age. Parent raised concerns about inattention during the IEP team meeting. Student did not

provide evidence that his needs required a one-to-one aide. No witnesses for Student nor Milpitas testified Student's behaviors were not manageable through the positive behavior interventions offered all students and the specific behavior accommodations provided through his IEP. No witnesses further testified, nor does any evidence support, Student required a one-to-one aide during this period.

Student did not meet his burden to demonstrate Milpitas should have offered him a one-to-one aide during the 2023-2024 school year.

#### ISSUE 2d: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO OFFER TRANSPORTATION SERVICES DURING THE 2023-2024 SCHOOL YEAR

Student contends he required transportation. Milpitas contends it offered transportation services. The October 10, 2023 IEP document reflect Student was offered Common Stop bussing transportation where Student would be picked up and dropped off at a common site. The evidence establishes Milpitas offered transportation services during the 2023-2024 school year.

#### ISSUE 2e: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO OFFER AN APPROPRIATE HEALTH PLAN DURING THE 2023-2024 SCHOOL YEAR

Student contends he required a health plan to receive a FAPE. Milpitas contends Student did not require a health plan. A health review was conducted as part of Student's psychoeducational assessment.

In California, related services include health and nursing services. (Ed. Code § 56363, subd. (b)(2).) Health and nursing services include managing an individual's health problems on the school site. (Cal. Code Regs., tit 5. § 3051.12(a)(2).)

Student was not identified as requiring any medications, had no history of significant illnesses, seizures, or hospitalizations. Neither Parent, Grandparent, nor any Milpitas witnesses testified there were any health concerns for Student on the school site. Student provided no evidence he required a health plan.

Student did not meet his burden to demonstrate Milpitas should have offered a health plan during the 2023-2024 school year.

## ISSUE 2f: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO OFFER AN APPROPRIATE PLACEMENT DURING THE 2023-2024 SCHOOL YEAR

Student contends he was not offered an appropriate placement. Milpitas contends Student's placement during the 2023-2024 school year was appropriate. The October 10, 2023 IEP offered Student placement in a special day class at a comprehensive elementary school campus where he would receive 1,320 minutes weekly of specialized academic instruction, 331 minutes weekly of general education, and 180 minutes per month of group speech.

The IEP team considered placement options for Student including a general education setting, a general education setting with supplemental aids and services. The IEP team determined those settings to not be supportive enough for Student's needs. The IEP team also considered a non-public school, residential school, hospital program,

and home instruction programs, but determined they were too restrictive for Student. Ultimately, Student was offered small group and specialized instruction outside the regular setting to work on his IEP goals with mainstreaming for 20 percent of the time.

Grandparent testified she believed Student required a non-public placement that specialized in autism. Grandparent had never observed Student at school, watched Student for the last two years, or participated in an IEP team meeting. Grandparent's testimony regarding the appropriateness of Student's placement was given little weight. Parent also testified she preferred a more restrictive placement for Student. The question is not whether Student's IEP could have successfully been implemented in a more restrictive placement. Rather, the question is whether Student's needs can be met, and the IEP implemented in a less restrictive placement, like what Milpitas offered.

Parental participation is an essential element of the group decision making regarding placement. The school district is ultimately responsible for ensuring the student is in an appropriate placement. Offering a student an inappropriate placement to honor parent's wishes is inconsistent with the IDEA. (*J.W. v. Fresno Unified School District*, (9th Circuit. 2010) 626 F. 3d 431, 442-443.)

Here, despite Mother's preference for a non-public school, no persuasive evidence was presented that Student required such. Parent did not attack the appropriateness of Student's placement, or why he required a more restrictive setting, with no access to typically developing peers. Student did not meet his burden of proof he was not offered an appropriate placement during the 2023-2024 school year.

ISSUE 2g: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE  
MILPITAS FAILED TO OFFER APPROPRIATE AUGMENTATIVE AND  
ALTERNATIVE DEVICE SUPPORT DURING THE 2023-2024 SCHOOL YEAR

Student contends he required an augmentative and alternative communication device to meet his communication needs in order to provide him a FAPE during the 2023-2024 school year. Milpitas contends it offered Student appropriate supports and services to address Student's communication needs at the time.

An augmentative alternative communication device is an assistive technology device used to increase, maintain, or improve the functional capabilities of a child with a disability, and if the child's IEP team determines the child needs the device in order to receive a FAPE. (34 C.F.R. 300.5.)

Student failed to offer documentary or testimonial evidence proving Student had a need for augmentative and alternative device support to receive a FAPE during the 2023-2024 school year. No evidence was offered that the October 10, 2023 IEP team determined Student had difficulty in speaking or communicating and required an augmentative and alternative device. Parent offered no testimony that she believed Student required augmentative and alternative device support during the 2023-2024 school year, or explained why she held this belief. Parent did not elicit testimony from any witness supporting a finding Student required such a device.

Student did not meet his burden of proving Milpitas denied him a FAPE during the 2023-2024 school year for failing to offer an augmentative and alternative device support.

ISSUE 2h: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO IMPLEMENT STUDENT'S IEP, SPECIFICALLY, TRANSPORTATION DURING THE 2023-2024 SCHOOL YEAR

Student contends Milpitas failed to implement his IEP, specifically, transportation during the 2023-2024 school year. Parent consented to the October 10, 2023 IEP on November 6, 2023. This IEP called for Student to receive transportation via Common Stop for pick up and drop off. Student raised concerns about the drop off location for transportation services, specifically, that the school bus left Student on days where he was delayed and not standing ready at the pickup site. Parent alleged the school bus would frequently delay departure for other students. Parent offered no evidence to demonstrate Milpitas failed to implement transportation services.

Parent failed to meet her burden that Milpitas failed to implement transportation services for the 2023-2024 school year.

ISSUE 3a: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO ASSESS IN FUNCTIONAL BEHAVIOR, SPEECH AND LANGUAGE, AND OCCUPATIONAL THERAPY DURING THE 2024-2025 SCHOOL YEAR UNTIL MARCH 19, 2025

Student contends Milpitas should have reassessed Student during the 2024-2025 school year. Milpitas maintains reassessment were not required as Student was assessed during the 2023-2024 school year. Student produced no evidence that occupational therapy or behavior were areas of suspected need that required assessment.

The IDEA provides for reevaluations, referred to as reassessments in California, to be conducted not more frequently than once a year unless the parent and school district agree otherwise, but at least once every three years unless the parent and school district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b) (2006); Ed. Code, § 56381, subd. (a)(2).) A reassessment must also be conducted if a school district determines that the educational or related service needs of a student warrant reassessment, or if the student's parents or teacher request a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); see also Ed. Code, § 56381, subd. (a)(1).)

Student provided no evidence Student required reassessment nor is there any evidence Parent or Student's teacher's requested reassessment. Student did not meet his burden to demonstrate Milpitas denied him a FAPE during the 2024-2025 school year by failing to assess Student in functional behavior, speech and language, and occupational therapy.

### ISSUE 3b: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO OFFER APPROPRIATE BEHAVIOR SUPPORTS AND SERVICES DURING THE 2024-2025 SCHOOL YEAR UNTIL MARCH 19, 2025

Student contends Milpitas denied him a FAPE by failing to offer appropriate behavior supports during the 2024-2025 school year. Milpitas maintained it offered Student appropriate behavior supports and services in the November 20, 2024 IEP, including a behavior intervention plan.

A school district must develop a behavior support plan if the IEP team finds that the child's behavior impedes his own learning or the learning of others. (34 C.F.R. § 300.324 (a)(2)(1) (2006).)

Milpitas developed a behavior intervention plan in preparation for the November 7, 2024 IEP team meeting. School Psychologist Mary Nichols developed the plan addressing areas of Student's non-compliance. Nichols observed Student's behavior to stem primarily from non-compliance in non-preferred activities. She also addressed Student's tendency to flop when asked to perform non-preferred activities. Finally, she addressed Student's Pica, which is an eating disorder where a person compulsively consumes non-food items. Nichols' testimony was consistent with the evidence and reflected strong knowledge of Student and his behavior issues, and given great weight.

Nichols' plan identified non-compliance, eloping, flopping, and Pica as the behavior impeding his learning. Nichols relied on observations in her role as school psychologist and data collection to capture the frequency, intensity, and duration of Student's most frequent behavior issues. Nichols testified she understood the function of Student's behaviors and did not believe a functional behavior assessment was necessary as a result.

Parent testified she was concerned about Student's behavior, specifically his elopement, Pica, and tendency to flop when faced with a non-preferred task. Parent relayed concerns about Student's behavior in his after-school program as well. Student's after-school program is outside of OAH's jurisdiction. Student's IEP would only address issues related to his educational program. Student's behavior plan addressed the antecedents for his behavior, environmental structures to reduce behaviors, replacement behaviors, and reinforcement procedures to support the replacement behaviors.

Parent's testimony was generally unpersuasive because it conflicted with other documentary evidence and the testimony of Milpitas' witnesses. Parent testified Student engaged in self-injurious behaviors, flopping, and the consequences of ingesting foreign objects. However, these behaviors were not observed by Student's special education or general education teachers or School Psychologist Nichols at school.

Parent did not consent to the November 7, 2024 IEP, thus the behavior plan was never implemented. All behavior support Student received continued to be the positive behavior support Milpitas implemented for all students and the accommodations and supports from Student's October 10, 2023 IEP.

Student did not meet his burden that Milpitas denied him a FAPE during the 2024-2025 school year by failing to offer appropriate behavior supports and services.

**ISSUE 3c: STUDENT FAILED TO PROVE MILPITAS FAILED TO OFFER A ONE-TO-ONE AIDE DURING THE 2024-2025 SCHOOL YEAR UNTIL MARCH 19, 2025**

Student asserted a need for a one-to-one aide all day. Parent contended Student's tendency to eat non-food matters, tripping, and non-compliant behaviors were sufficient to warrant additional supervision via a one-to-one aide. Parent contended Student had suffered injury at school including at least one injury requiring emergency medical attention. Milpitas maintained Student did not require a one-to-one aide and received appropriate support in his special day classroom where he spent 80 percent of his day. Milpitas offered Student specialized academic instruction in a special day class for 285 minutes per day for 1,425 minutes per week.

Parent raised many concerns about lack of Student support in his after-school program. The evidence shows these concerns were addressed at the IEP team meeting on November 7, 2024; however, not to Parent's satisfaction. Student's IEP does not cover the after-school program. Student attended an extended learning opportunities program, called ELOP, following his school day. Parent provided no evidence that Student's IEP was extended to the ELOP. This Decision makes no finding about services for Student's ELOP participation.

During the November 20, 2024 IEP team meeting, Parent raised a concern about a one-to-one aide for Student. Parent requested an aide due to concerns she had about Student's safety during recess and on campus. Assistant Principal Gina Sainten testified at hearing. Sainten was primarily responsible for all recess and lunch time supervision on campus. She spent approximately two hours a day outside with students while they participated in recess and lunch activities. Sainten described an incident where Student hurt himself during recess. She also testified that Student was generally safe on campus due to the protective scaffolding Milpitas personnel implemented around all students during break times. Sainten's testimony was given great weight.

Milpitas offered Student a behavior support plan that would have addressed many of the concerns Parent raised about Student. His behavior plan addressed elopement, flopping, and Pica. The behavior plan recognized Pica as a high intensity risk. It also recognized elopement and flopping as moderate risk. The behavior plan identified points of higher risk including transition to unstructured time and transitions to non-preferred tasks.

None of the Milpitas members of the IEP team thought Student required a one-to-one aide. Parent requested an aide or aide assessment. Milpitas did not offer Student a one-to-one aide, conduct a special assistance instructional aide assessment, or provide Parent with a prior written notice. The failure to conduct an assessment or respond to Parent's request was not at issue in this hearing and thus no findings are made regarding such.

Parent did not consent to the November 7, 2024 IEP and the behavior support plan could not be implemented. Nevertheless, Student continued to progress receiving the same supports and services from his October 10, 2023 IEP. Parent produced no evidence Student required a one-to-one aide to access his education during the 2024-2025 school year until March 19, 2025.

### ISSUE 3d: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO OFFER TRANSPORTATION SERVICES DURING THE 2024-2025 SCHOOL YEAR UNTIL MARCH 19, 2025

Student contends he required transportation. Milpitas contends it offered transportation services. The November 7, 2024 IEP document reflected Student was offered Common Stop bussing transportation where Student would be picked up and dropped off at a common site. The evidence established Student was offered transportation services.

An incident occurred in May 2025 where Student missed bus pick up in the morning. The incident was escalated through the Milpitas transportation and administrative staff. Parent and a Milpitas witness testified to the incident. This Decision makes no finding to that incident as it is outside to the period at issue.

ISSUE 3e: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO OFFER AN APPROPRIATE HEALTH PLAN DURING THE 2024-2025 SCHOOL YEAR UNTIL MARCH 19, 2025

Student contends he required a health plan to receive FAPE. Milpitas contends Student did not require a health plan. A health review was conducted as part of Student's psychoeducational assessment. Despite Parent's claim of Pica, no medical diagnosis of the disorder was ever provided to Milpitas. Moreover, as discussed above, Student did not provide any additional evidence Student required a health plan to access his education. Neither his Parent or Grandparent nor any Milpitas witnesses testified to any health concerns. He had no history of medications, illnesses or seizures.

Student provided no evidence he required a health plan. Student did not meet his burden to demonstrate Milpitas failed to offer an appropriate health plan during the 2024-2025 school year until March 19, 2025.

ISSUE 3f: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO OFFER AN APPROPRIATE PLACEMENT DURING THE 2024-2025 SCHOOL YEAR UNTIL MARCH 19, 2025

Student contends he was not offered an appropriate placement. Student argued for the first time in his closing brief he was unilaterally transferred to Student's home school, John Sinott Elementary School, thus denying Parental participation. This contention was not an issue for hearing. Thus, no findings are made in this Decision regarding a unilateral transfer or lack of parental participation based on such. Student's

last consented to and implemented IEP, dated October 10, 2023, and consented to by Parent on November 6, 2023, offered Student Placement at Joseph Weller Elementary School.

Milpitas argued Student's placement during the 2024-2025 school year was appropriate. Parent requested a non-public school that specialized in autism as placement for Student. The November 7, 2024 IEP offered Student placement in a self-contained special day class on a comprehensive campus. The November 7, 2024 IEP offered Student 1,425 minutes weekly of specialized academic instruction, 180 minutes per month of group speech. The IEP team considered the continuum of placement options for Student to include a general education setting, a general education setting with supplemental aids and services. The IEP team determined those settings to not be supportive enough for Student's needs. The IEP team also considered a non-public school, residential school, hospital program, and home instruction programs as too restrictive for Student.

Evidence demonstrated Parent wanted placement at the Pacific Autism Center for Education a more restrictive placement at the time of the November 7, 2024 IEP team meeting. Parent introduced no evidence or testimony to demonstrate Milpitas' placement offer was inappropriate. Moreover, no evidence supports Pacific Autism Center or the Big Minds Unschool that Parent requested in her closing brief would be appropriate placements for Student. The placements requested by Student are more restrictive than what was offered. As noted above, an IEP must offer Student placement in the least restrictive environment. Student did not present evidence establishing that

he required a more restrictive placement to meet his needs. Accordingly, Student did not meet his burden to establish he was not offered an appropriate placement during the 2024-2025 school year until March 19, 2025.

**ISSUE 3g: STUDENT FAILED TO MEET HIS BURDEN TO DEMONSTRATE MILPITAS FAILED TO OFFER APPROPRIATE AUGMENTATIVE AND ALTERNATIVE DEVICE SUPPORT DURING THE 2024-2025 SCHOOL YEAR UNTIL MARCH 19, 2025**

Student contends he required augmentative and alternative device support to access his education. Student was assessed for augmentative and alternative communication in November 2024.

The assessment was reviewed at the November 7, 2024 IEP team meeting. The assessment recommended Student receive a TouchChat with WordPower 60 Basic on a touchscreen device such as a 10.2-inch iPad.

It was also recommended Student could utilize a low incident communication booklet to facilitate education goals. School Psychologist Nichols helped fashion a sleeve communication device. Nichols testified the sleeve device was to facilitate communication during recess and active periods.

Student had three goals to support his communication needs. He had a receptive and expressive language goal that required him to combine two-to-three icons or speech to express himself while utilizing his speech generating device to communicate. He had an expressive language and social skills goal that required him to interact with peers during a structured group activity while utilizing his speech

generating device. Student also had a functional communication goal that required Student to utilize his speech generating device to communicate wants and needs with no more than two gestural cues at least 40 percent of the time over one month.

Parent did not consent to Student's November 7, 2024 IEP which precluded Milpitas from providing Student with the speech generating device. Student did not meet his burden that Milpitas denied Student a FAPE by failing to offer appropriate augmentative and alternative communication device.

### ISSUE 3h: STUDENT PROVED MILPITAS FAILED TO IMPLEMENT STUDENT'S IEP, SPECIFICALLY TRANSPORTATION DURING THE 2024-2025 SCHOOL YEAR

Student contends Milpitas failed to implement his IEP, specifically, transportation during the 2024-2025 school year. Parent consented to the October 10, 2023 IEP on November 6, 2023. This IEP offered Student transportation via Common Stop for pick up and drop off. Milpitas Special Education Director Michele Sherer, acknowledged Student did not receive transportation services for the first two weeks of the 2024-2025 school year which was seven school days. The evidence established that this was the only failure to implement transportation services during the time period at issue.

At the time Student was not receiving transportation services, Parent testified to the significant hardship she faced in providing foster care to a family member and meeting Student's transportation requirements.

Milpitas contends any failure to implement Student's transportation was a de minimis procedural violation and Student was not harmed by Milpitas' failure to provide transportation services for the first two weeks of the school year because Student did not miss any school as a result.

Where a student alleges a FAPE denial based on an IEP implementation failure, the student must prove that the failure was "material," which means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 502 F3d 811, 822.)

In this instance, the failure to provide Student with transportation during the first two weeks of the 2024-2025 school year was a material failure. Milpitas argues Student missed no school, and therefore, was not harmed by its failure to provide services at the start of the school year.

This argument is not persuasive. Essentially, Milpitas shifted the burden of ensuring Student was transported to school to Parent. A task Parent undertook despite significant hardship she faced necessitating travel between her home, her foster child's school, and Student's school. Due to the failure to provide bus services to Student, Parent was faced with the choice to travel extensively throughout the South Bay to ensure both children arrived at school or keep them out of school. Parent undertook the travel to ensure Student received his education for those first seven school days.

Parent resided 2.7 miles from Student's school. For the seven school days, Milpitas failed to implement Student's IEP a total of 37.8 miles. Parent met her burden Milpitas failed to implement Student's transportation from August 15, 2024, until August 23, 2024.

## 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:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE through the 2022-2023 school year from March 19, 2023, by failing to assess in functional behavior, speech and language, and occupational therapy.

Milpitas prevailed on this issue.

### ISSUE 1b:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2022-2023 school year from March 19, 2023, by failing to offer appropriate behavior supports and services.

Milpitas prevailed on this issue.

### ISSUE 1c:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2022-2023 school year from March 19, 2023, by failing to offer a one-to-one aide.

Milpitas prevailed on this issue.

ISSUE 1d:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2022-2023 school year from March 19, 2023, by failing to offer transportation services.

Milpitas prevailed on this issue.

ISSUE 1e:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2022-2023 school year from March 19, 2023, by failing to offer an appropriate health plan.

Milpitas prevailed on this issue.

ISSUE 1f:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2022-2023 school year from March 19, 2023, by failing to offer an appropriate placement.

Milpitas prevailed on this issue.

ISSUE 1g:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2022-2023 school year from March 19, 2023, by failing to offer an appropriate augmentative and alternative communication services.

Milpitas prevailed on this issue.

### ISSUE 1h:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2022-2023 school year from March 19, 2023, by failing to implement Student's individualized education program, specifically, transportation services.

Milpitas prevailed on this issue.

### ISSUE 2a:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2023-2024 school year, by failing to assess in functional behavior, speech and language, and occupational therapy.

Milpitas prevailed on this issue.

### ISSUE 2b:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2023-2024, by failing to offer appropriate behavior supports and services.

Milpitas prevailed on this issue.

### ISSUE 2c:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2023-2024 school year, by failing to offer a one-to-one aide.

Milpitas prevailed on this issue.

ISSUE 2d:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2023-2024 school year, by failing to offer transportation services.

Milpitas prevailed on this issue.

ISSUE 2e:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2023-2024 school year, by failing to offer an appropriate health plan.

Milpitas prevailed on this issue.

ISSUE 2f:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2023-2024 school year, by failing to offer an appropriate placement.

Milpitas prevailed on this issue.

ISSUE 2g:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2023-2024 school year, by failing to offer an appropriate augmentative and alternative communication services.

Milpitas prevailed on this issue.

## ISSUE 2h:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2023-2024, by failing to implement Student's individualized education program, specifically, transportation services.

Milpitas prevailed on this issue.

## ISSUE 3a:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2024-2025 school year until March 19, 2025, by failing to assess in functional behavior, speech and language, and occupational therapy.

Milpitas prevailed on this issue.

## ISSUE 3b:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2024-2025 school year until March 19, 2025, by failing to offer appropriate behavior supports and services.

Milpitas prevailed on this issue.

## ISSUE 3c:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2024-2025 school year until March 19, 2025, by failing to offer a one-to-one aide.

Milpitas prevailed on this issue.

ISSUE 3d:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2024-2025 school year until March 19, 2025, by failing to offer transportation services.

Milpitas prevailed on this issue.

ISSUE 3e:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during 2024-2025 school year until March 19, 2025, by failing to offer an appropriate health plan.

Milpitas prevailed on this issue.

ISSUE 3f:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2024-2025 school year until March 19, 2025, by failing to offer an appropriate placement.

Milpitas prevailed on this issue.

ISSUE 3g:

Student failed to meet his burden of proving that Milpitas denied Student a FAPE during the 2024-2025 school year until March 19, 2025, by failing to offer an appropriate augmentative and alternative communication services.

Milpitas prevailed on this issue.

### ISSUE 3h:

Student met his burden of proving that Milpitas denied Student a FAPE during the 2024-2025 school year until March 19, 2025, by failing to implement Student's individualized education program, specifically, transportation services.

Student prevailed on this issue.

### REMEDIES

Student prevailed on Issue 3h. Milpitas failed to implement Student's IEP, specifically, transportation services for seven days during the 2024-2025 school year. The evidence established that, in this case based on the impact to Parent, the failure was material. Thus, Student proved this denied him a FAPE.

As remedies, Student requested reimbursement to Parent for mileage and out-of-pocket costs related to days of transporting Student to school personally, beginning August 15, 2024, through November 3, 2025, with interest. As well as implementation of a District funded third-party transportation service of Parent's choice for the 2025-2026 school year. Parent further requested a placement at non-public agency like Big Minds Unschool including a full-time one-to-one aide.

Milpitas argued it provided Parent the necessary reimbursement documents to cure the transportation defect; however, Parent failed to complete and return the documents.

Courts have broad equitable powers to remedy the failure of a local educational agency to provide a FAPE to a child with a disability. (20 U.S.C. § 1415(if)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts*

*v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct.1996]; *Parents of Student W. v. Puyallup School Dist.*, No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove Sch. Dist., v. T.A.* (2009) 557 U.S. 230, 240 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

Student proved that Milpitas denied him a FAPE by failing to materially implement Student's transportation services from August 15, 2024, through August 23, 2024, Issue 3h.

Student was entitled to transportation services to and from school. Parent resided 2.7 miles from Student's school. For the seven school days, Milpitas failed to implement Student's IEP a total of 37.8 miles. Student failed to submit any evidence regarding reimbursement. Ultimately, the undersigned relied upon equitable judicial discretion to craft the reimbursement remedy.

Milpitas will reimburse Parent at the IRS rate for 37.8 miles traveled.

## ORDER

1. Within 30 days of this Decision, Milpitas will reimburse Parent for the cost of 37.8 miles traveled at the current IRS reimbursement rate.
2. Milpitas is not to require any additional documentation from Parent to be reimbursed.

## 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.

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings