

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

CASE NO. 2025070206

CASE NO. 2025070706

DECISION

DECEMBER 11, 2025

On July 7, 2025, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Ojai Unified School District, called Ojai, in OAH case number 2025070206. On July 18, 2025, Ojai filed a due process hearing request with OAH naming Student in OAH case number 2025070706. On August 18, 2025, OAH consolidated Student's and Ojai's cases. On August 18 and 27, 2025, OAH granted hearing continuances based on good cause. Administrative Law Judge Sabrina Kong heard this matter by videoconference on October 7, 8, 9, 14, 15, 16, 21, 22, and 23, 2025.

Attorney Joshua Cruz represented Student. Parent attended all hearing days on Student's behalf. Attorney Sarah Sutherland represented Ojai. Ojai's special education director Robin Monson attended all hearing days on Ojai's behalf.

At the parties' request, the matter was continued to November 17, 2025, for written closing briefs. The parties timely filed closing briefs. OAH closed the record and submitted the matter on November 17, 2025.

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

STUDENT'S ISSUES

1. Did Ojai deny Student a FAPE during the 2024-2025 school year by failing to assess Student for:
 - a. speech and language; and
 - b. educationally related mental health services?
2. Did Ojai deny Student a FAPE during the 2024-2025 school year by failing to offer appropriate:
 - a. counseling services;
 - b. home hospital instruction; and
 - c. placement?
3. Did Ojai deny Student a FAPE during the 2024-2025 school year by failing to materially implement:
 - a. counseling services; and
 - b. home hospital instruction?

4. Did Ojai deny Student a FAPE during the 2024-2025 school year by predetermining:
 - a. counseling; and
 - b. home hospital instruction?

5. Did Ojai deny Student a FAPE during the 2024-2025 school year by significantly impeding Parents' participation by failing to provide cogent responses to Parents' questions at IEP team meetings, specifically:
 - a. drivers' training at the November 6, 2024 IEP team meeting; and
 - b. nonpublic school placement at the December 17, 2024, March 5, 2025, and July 7, 2025 IEP team meetings?

6. Did Ojai deny Student a FAPE during the 2024-2025 school year by failing to make a clear offer of FAPE, specifically for:
 - a. specialized academic instruction; and
 - b. counseling services?

7. Did Ojai deny Student a FAPE during the 2024-2025 school year by offering vague IEP goals that lacked clear baselines in social emotional functioning?

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OJAI'S ISSUE

8. May Ojai assess Student pursuant to the May 6, 2025 assessment plan in all areas set forth in the plan, without parental consent or parental conditions?

On October 21, 2025, Student withdrew Issue 5c from the October 16, 2025 Order Clarifying Issues at Hearing, regarding significantly impeding Parents' participation by failing to provide cogent responses to Parents' questions regarding enrolling Student in a ceramics class at the December 17, 2024 IEP team meeting.

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) 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).) In this consolidated case, Student had the burden of proof on her issues and Ojai had the burden of proof on its issue. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 16 years old, in the tenth grade, and attended Nordhoff High School at the time of hearing. Student resided with Parent outside of Ojai's geographic boundaries and attended Ojai on an interdistrict attendance permit at all relevant times.

CLARIFICATION OF THE TERM HOME HOSPITAL INSTRUCTION

Home hospital instruction is an educational program provided to students at home, in a hospital, or other residential health facility. There are differences between home hospital instruction for general education and special education students.

General education students may receive individual instruction in their home, a hospital or other health facility when a temporary disability makes attendance in a regular program impossible or inadvisable. (Ed. Code, § 48206.3.) Education Code section 48206.3 governs home hospital instruction for students with temporary

disabilities. (Ed. Code, § 48206.3.) It equates one hour of teaching time of individual instruction to one day of attendance. (Ed. Code, § 48206.3, subds. (b)(2) and (c)(1).) A temporary disability shall not include a disability for which a student is identified as an individual with exceptional needs, or special education students. (Ed. Code, § 48206.3, subd. (b)(2).) While for both general education and special education students, in-home instruction and at home placements commonly use the term home hospital instruction, any in-home instruction or home placement for a disabled child under the IDEA must continue to provide a FAPE in the least restrictive environment. (34 C.F.R. § 300.115(b)(1); Cal. Code Regs., tit. 5, § 3051.4(d).)

The California Code of Regulations outlines the requirements for recommending home or hospital instruction for a student eligible for special education. It mandates that an IEP team must have a medical report from the student's physician, surgeon or psychologist, as appropriate, stating the diagnosed condition and certifying that the severity of the condition prevents the student from attending a less restrictive placement. The report shall include a projected calendar date for the pupil's return to school. The IEP team shall meet to reconsider the IEP prior to the projected calendar date for the pupil's return to school. (Cal. Code Regs., tit. 5, § 3051.4(a) through (d).)

The parties and witnesses used the term home hospital instruction throughout the hearing to refer to both Student's number of instructional hours and the placement in the least restrictive environment. In this Decision, before Student was found eligible for special education, the term home hospital instruction referred to both Student's instructional hours and placement without distinguishment. However, after Ojai found Student eligible for special education and based on Student's Issues distinguishing between the number of home hospital instruction hours and the home hospital

instruction placement, Student's instructional hours will be referred to as home hospital instruction hours or academic instruction and Student's placement in the least restrictive environment will be called home hospital instruction placement or home placement.

STUDENT RECEIVED HOME HOSPITAL INSTRUCTION ON A 504 PLAN IN THE 2024-2025 SCHOOL YEAR THROUGH NOVEMBER 2024, AND IN THE 2023-2024 SCHOOL YEAR

Student attended Ojai for the 2023-2024 school year. Ojai assessed Student in October 2023, but did not find her eligible for special education. Student had a history of social emotional needs including anxiety. By around spring 2024, Student refused to attend school due to anxiety. Due to her inability to attend school in person, Student was placed on home hospital instruction for the remainder of the 2023-2024 school year as a general education student on a 504 plan. 504 plans are governed by section 504 of the Rehabilitation Act of 1973, a federal civil rights statute that ensures equal access to education for students with disabilities who need accommodations, rather than special education and related services, to access the curriculum.

Shortly before the 2024-2025 school year started, the parties entered into a settlement agreement to resolve prior claims under which Ojai funded an independent educational evaluation by Dr. Pedro Olvera and private mental health services for Student. Ojai agreed to review Olvera's psychoeducational evaluation findings to determine if Student qualified for special education. The IDEA uses the term reevaluation and California statutes use the term reassessment. The terms reevaluation and reassessment have the same meaning and are used interchangeably in this Decision.

Student was in ninth grade for the 2024-2025 school year. She was placed at Nordhoff High School, the only high school in Ojai. Her ninth-grade teachers were informed of her anxiety and depression as part of her 504 plan. The first day of the 2024-2025 school year was August 21, 2024. On or around August 22, 2024, Student attempted to attend Nordhoff in person but did not exit the car when she arrived in the parking lot. A school psychologist, mental health clinician Beth Burke, and special education director Robin Monson met with Student and Parent in Nordhoff's parking lot, but were unsuccessful in persuading Student to exit the car. Burke and Monson communicated with Parent for several weeks about strategies to slowly get Student to attend school in person. However, their attempts were unsuccessful.

From early in the 2024-2025 school year, Parent requested and provided Ojai with documents from Student's health care providers requesting Student be educated in the home setting. On September 5, 2024, Student's health care provider, Kan-Sai Health Center, Inc., recommended Student remain home from school because of depression, anxiety, and knee pain.

On September 20, 2024, Student's psychiatric mental health nurse practitioner Alison Silva, from Ventura County Behavioral Health, recommended home hospital instruction for 90 days, from September 20, 2024, to December 23, 2024. Silva diagnosed Student with post-traumatic stress disorder, major depressive disorder, and generalized anxiety disorder with severe anxiety. Silva was familiar with Student's history of anxiety and trauma. Silva had been treating Student since fall 2023, when Student had an altercation with peers at her previous school. Shortly after September 20, 2024, Ojai approved home hospital instruction as part of Student's 504 plan accommodations.

During ninth grade, Student received home hospital instruction from general education teachers Greg Lepine and Francine Nelson. Nelson was credentialed to teach both general education students and students with special needs. Both Lepine and Nelson scheduled the home hospital instruction time through Parent based on Student's availability for instruction. Lepine taught Student math and integrated physical science. Nelson taught Student English and college and career foundations in the first semester and English and health in the second semester of the 2024-2025 school year. Student had independent study for physical education, for which she charted her physical activity time such as walking outside.

On September 26, 2024, Olvera completed his independent psychoeducational evaluation and report regarding Student. Olvera considered but concluded Student did not meet the special education eligibility for specific learning disability and other health impairment. Olvera concluded that Student met special education eligibility criteria for emotional disturbance, now referred to in California as emotional disability. Olvera did not testify at hearing.

OJAI FOUND STUDENT ELIGIBLE FOR SPECIAL EDUCATION AT THE NOVEMBER 6, 2024 IEP TEAM MEETING

Ojai held a November 6, 2024 initial IEP team meeting, with Olvera in attendance to discuss his findings and recommendations and to answer questions for the IEP team. Based on medical documents Parent provided to Ojai, Parent's input, and Olvera's assessment findings, the November 6, 2024 IEP team found Student eligible for special education under the eligibility category emotional disability.

The November 6, 2024 IEP recognized Student could not attend in-person school because of her severe anxiety and social emotional challenges. Olvera opined Student had good academic skills and despite her mood and emotional challenges was capable of a four-year college education. Olvera told the IEP team that Student needed to reintegrate back to in-person school with a slow and gradual reentry plan for school exposure and to peers with collaboration between school staff and the family. Olvera suggested participating in-person at school part of the school day or attending school on partial school days to increase the likelihood of success for in-person school reintegration or reentry. Olvera specified school personnel needed to handle school reentry little by little to match Student's comfort level.

Student's attorney attended the November 6, 2024 IEP team meeting and expressed concern over Student's math deficiencies and ability to advance academically because of anxiety. He noted Student's low math score in the psychoeducational assessment report. Olvera addressed Student's attorney's concern by explaining that raw scores were but data to help understand Student's needs and should not be viewed in isolation. Ojai representatives also explained at the IEP team meeting that a low math score did not mean Student had a math deficit requiring special education to access her education. Student's social emotional challenges in November 2024 did not make her incapable of accessing the general education curriculum. Lepine attended the November 6, 2024 IEP team meeting, and informed the team Student was doing well academically on home hospital instruction under the 504 plan. As of November 6, 2024, Student earned Cs in English and college and career foundations, Bs in math and integrated physical science, and a B+ in physical education.

At the November 6, 2024 IEP team meeting, Ojai offered special education services of 30 minutes monthly consultation and collaboration in specialized academic instruction to support Student's access to academic material based on her severe anxiety. It offered two hours monthly of individual school-based counseling to address Student's anxiety and one hour monthly of school-based group counseling on the school campus to slowly integrate and expose Student to in-person school. Group counseling was at Nordhoff in a supervised therapeutic environment with a small group of students who also had anxiety and social emotional needs. The IEP team considered group counseling a slow and safe introduction to interacting with high school peers. The IEP noted if Student was unable to access individual in-person counseling, Ojai would make the services available by telehealth. Ojai also offered 15 minutes monthly of college awareness and 15 minutes monthly of career awareness services in a special education class to work on post-secondary goals to transition to adult life.

The IEP team reviewed, discussed, and concluded Student would continue with the home hospital instruction begun in September 2024, with general education teachers working on the ninth-grade general education curriculum. The IEP team reviewed, discussed, and concluded the least restrictive environment for Student continued to be the home placement with gradual in-person school reentry.

At the November 6, 2024 IEP team meeting, Ojai representatives discussed the need to collaborate with Student's out of school doctors and therapists and requested Parent sign releases of information so school staff could speak with those providers. Collaboration with outside providers was important to coordinate mental health services Student needed to access her education consistent with, but separate from, Student's

medical treatment. Olvera assured the family that providing releases of information for school collaboration was a common practice. On November 22, 2024, Ojai sent a copy of the November 6, 2024 IEP, and information releases, for Parent's review and consent.

On December 3, 2024, Parent provided Ojai with Silva's written recommendation that Student's home hospital instruction be extended through the end of the 2024-2025 school year because of her severe anxiety. On December 5, 2024, Parent provided conditional consent to the November 6, 2024 IEP. Parent consented to Ojai starting IEP services, but disputed the November 6, 2024 IEP offered a FAPE, and stated Student needed help to return to in-person school to access her education.

ISSUES 1a AND 1b: DID OJAI DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO ASSESS STUDENT FOR SPEECH AND LANGUAGE AND EDUCATIONALLY RELATED MENTAL HEALTH SERVICES?

Student contends Ojai should have assessed Student for speech and language and educationally related mental health services during the 2024-2025 school year because Olvera recommended those assessments in his report and during the November 6, 2024 IEP team meeting.

Ojai contends it was not required to assess Student in speech and language during the 2024-2025 school year. It argued Olvera did not recommend a speech and language assessment, and speech and language was not an area of suspected need. Ojai also contends it did not need to assess Student's mental health during the

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2024-2025 school year because Olvera's assessment included a comprehensive social emotional assessment which informed the IEP team of all Student's educationally related mental health services needs.

Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) Assessments are required to determine eligibility for special education, and what type, frequency, and duration of specialized instruction and related services are required. In evaluating a child for special education eligibility and prior to the development of an IEP, a district must assess him in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).)

If a school district has notice that a child has exhibited symptoms of a disability covered under the IDEA, it must assess the child for special education, and cannot circumvent that responsibility by way of informal observations or the subjective opinion of a staff member. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1121 (*Timothy O.*)) The Ninth Circuit Court of Appeals in *Timothy O.* held a school district's failure to assess a child for autism using standardized tests and relying on informal staff observation during its initial evaluation of the child resulted in substantially hindering parents' ability to participate in the child's educational program, and seriously depriving the parents, teachers and district staff of the information necessary to develop an appropriate educational program with appropriate supports and services for the child. (*Id.*)

School district evaluations of students with disabilities under the IDEA serve two purposes:

- identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and
- helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.)

The IDEA provides for reevaluations 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); Ed. Code, § 56381, subd. (a)(2).)

A reassessment must be conducted more often than once every three years only if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reassessment, or if the student's parents or teacher requests a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i) & (ii); 34 C.F.R. § 300.303(a)(1) & (2); Ed. Code, § 56381, subd. (a)(1); *M.S. v. Lake Elsinore Unified School District* (9th Cir. 2017) 678 Fed. Appx. 543, 544 (nonpub. opn.) [no duty to reassess before the three-year reevaluation was due even where school district concluded the student's behaviors had worsened and were not being addressed sufficiently by the behavior plan].)

The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, and that special education services may be necessary to address the disability, must be evaluated in light of information that the district knew, or

had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, (citing *Fuhrmann v. East Hanover Board. of Education* (3rd Cir. 1993) 993 F.2d 1031)(Adams).)

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School District* (9th Cir. 2007) 464 F.3d 1025, 1031-1033 (*Park*).)

Procedural violations may constitute a denial of a FAPE if they:

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child;
or
3. caused a deprivation of educational benefits.

(20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

STUDENT DID NOT REQUIRE A SPEECH AND LANGUAGE ASSESSMENT IN THE 2024-2025 SCHOOL YEAR

Student did not present persuasive evidence that she required a speech and language assessment in the 2024-2025 school year. Instead, Student's argument relies on a typographical error in the IEP team meeting notes. The November 6, 2024 IEP team meeting notes stated in relevant part:

"The private assessor reviewed the assessment findings. He said [Student] has a good set of skills with verbal and nonverbal reasoning. She had difficulty with visual motor. He thinks that may be because of anxiety and

perfectionism. [Student] had difficulties with math computation and math reasoning. The attorney for the family asked about the lower scores and if [Student] needed a speech assessment. The private assessor explained that listening comprehension and oral expression were the scores that were most reliable to use and that he did recommend a speech assessment at this time.”

Student argued that, according to this note, Olvera recommended a speech and language assessment. Parent, Lepine and Monson attended the November 6, 2024 IEP team meeting but no one testified that Olvera recommended a speech and language assessment at that meeting. Ojai’s attorney questioned Parent if she recalled Olvera recommending a speech and language assessment at the November 6, 2024 IEP team meeting, and Parent hesitantly and unpersuasively represented she did not remember and referred Ojai’s attorney to the IEP team meeting notes. Both Lepine and Monson testified without hesitation that communication was not discussed as a suspected disability at the November 6, 2024 IEP team meeting. Further, Monson credibly stated Olvera did not recommend a speech and language assessment.

Monson explained the November 6, 2024 IEP team meeting notes contained a typographical error and should have stated Olvera did “not” recommend a speech and language assessment. Student unconvincingly attempted to discredit Monson because Monson initially testified the IEP team meeting notes were accurate, but reversed herself when shown the excerpt recommending a speech and language assessment. At hearing, Monson had a professional demeanor and answered all questions, from both attorneys, fully and thoughtfully. Monson’s responses were straightforward and reflective of

someone attempting to recall events and conversations that occurred almost a year ago. Her testimony that Olvera did not recommend a speech and language assessment was credible and convincing.

Olvera did not testify, but his report did not identify speech and language as an area of need for Student. Olvera administered a standardized test for oral language to Student, and Student scored average in both listening comprehension and oral expression. Olvera told the November 6, 2024 IEP team that these two areas were the most reliable to gauge Student's speech and language needs, as reflected in the excerpt quoted above. A contextual reading of the November 6, 2024 IEP team meeting notes with Olvera's September 26, 2024 report supported the reasonable and inevitable conclusion that Olvera did not recommend a speech and language assessment at the November 6, 2024 IEP team meeting.

No part of Olvera's September 26, 2024 report was evidence Student required a speech and language assessment. Olvera's behavioral observations of Student indicated he was not concerned about Student's listening or comprehension abilities. Olvera concluded Student asked appropriate questions to clarify testing instructions or tasks and actively listened to Olvera's explanations. Further, Olvera's recommendations in the report regarding Student's communication needs addressed Student's counseling and therapy expression, without identifying any speech and language deficits such as difficulty understanding or using spoken language, requiring assessment or intervention. For example, under the category of communication, Olvera recommended, "[Student] will learn and practice communication strategies to speak with a trusted adult when

feeling anxious.” Olvera’s report also summarized a speech and language evaluation conducted by another assessor which concluded Student’s communication skills were in the average range with typical abilities in

- articulation,
- voice,
- fluency, and
- expressive, receptive and pragmatic language skills.

Ojai successfully rebutted Student’s argument she required a speech and language assessment in the 2024-2025 school year. Student argued there were specific scores in Olvera’s report purporting to show she required a speech and language assessment. However, Student did not call an expert to interpret the scores to meet Student’s burden of proof. This argument was also contradicted by Olvera’s written report, which specifically stated that communication was not an identified area of need and that no other areas required further assessment. The statements in Olvera’s report corroborated Monson’s testimony that the November 6, 2024 IEP team meeting notes had a typographical error and omitted the word “not.” Olvera did not recommend a speech and language assessment for Student in his report or at the November 6, 2024 IEP team meeting.

Student did not prove Ojai denied her a FAPE in the 2024-2025 school year by not conducting a speech and language assessment.

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STUDENT DID NOT REQUIRE AN EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT IN THE 2024-2025 SCHOOL YEAR

Student did not present persuasive evidence she required an educationally related mental health services assessment in the 2024-2025 school year. Student argued in the closing brief that an educationally related mental health services assessment would have informed the November 6, 2024 IEP team of the debilitating nature of Student's anxiety. Student argued the IEP team would have recommended a higher level of care such as dialectical behavior and trauma-focused cognitive behavioral therapies to understand and help improve Student's anxieties regarding in-person school.

However, Student did not present any testimony to identify or explain what educationally related mental health services Student needed to receive a FAPE which Ojai did not consider. For example, Student did not offer testimony at hearing about dialectical behavior and trauma-focused cognitive behavioral therapies or that they were educationally related and Ojai was required to consider them for Student to receive a FAPE. Olvera mentioned dialectical behavior and trauma-focused cognitive behavioral therapies as possible therapy models for Student in his report, but did not state that Student required them to receive a FAPE. Olvera did not testify at hearing to add to his report.

Ojai successfully rebutted Student's contention she needed an educationally related mental health services assessment in the 2024-2025 school year. First, Olvera specified in his September 26, 2024 report that no other areas required further assessment. Second, Olvera evaluated Student's social emotional needs with standardized tests as part of his psychoeducational assessment. In addition to

cognitive assessments, Olvera's September 26, 2024 report showed he administered the Children's Depression Inventory, second edition, the Multidimensional Anxiety Scale for Children, second edition, and the Profile of Mood States, second edition, to both Student and Parent. The Children's Depression Inventory determined the presence and severity of depressive symptoms to understand and guide intervention decisions regarding Student. The Multidimensional Anxiety Scale for Children was a comprehensive assessment of anxiety dimensions in children and adolescents. The Profile of Mood States was a self-report assessment of Student's mood adaptable to capturing fluctuating feelings or relatively enduring affect which contributed to providing indications of potential mood disturbance. Olvera also interviewed Student and Parent and reviewed Student's records and past assessments documenting Student's history, diagnosis of anxiety and post-traumatic stress disorder, and eligibility for a 504 plan because of anxiety. Olvera concluded Student experienced a significant level of depressive symptoms and anxiety impacting her educational performance. He recommended therapy to address Student's post-traumatic stress disorder and trauma. Olvera concluded Student met the criteria for emotional disturbance through his social emotional evaluation and did not conclude that further testing of Student's mental health or social emotional functioning was necessary.

After assessing Student's social-emotional needs, rather than recommending further assessment, Olvera recommended social-emotional and mental health supports for implementation. They included a number of individual mental health therapies, counseling and therapy goals, and accommodations to decrease anxiety and strategies for emotional regulation. After the IEP team found Student eligible for special education services, Ojai offered the level of support Olvera recommended for Student to access her

education. Ojai offered mental health counseling from a qualified school therapist Dahlia Seroussi with supervision by Burke. Contrary to Student's argument, the November 6, 2024 IEP team was thoroughly informed of Student's social emotional needs from Olvera's independent and comprehensive assessment.

Third, throughout the 2024-2025 school year, Ojai collaborated with Student's outside mental health providers regarding her fluctuating anxiety and mental health challenges. Silva, Student's psychiatric mental health nurse through Ventura County Behavioral Health, managed Student's medication. Silva held psychiatry appointments with Student once a month, typically online, but also scheduled a couple of in-person appointments with Student to integrate her back to in-person therapy.

Associate marriage and family therapist Nicole Mosher, at times referred to as Nicole Harmon during hearing, provided out of school counseling to Student from September 19, 2024. Mosher provided therapy once a week, mostly online, to Student during the 2024-2025 school year.

Another outside therapist, Sharon Stone, also provided counseling services to Student sometime from the beginning of the 2024-2025 school year until around January 2025, when Mosher transitioned to becoming Student's primary therapist. Valerie Moore-Altavilla also provided individual psychotherapy sessions to Student from October 24, 2024. Stone and Moore-Altavilla did not testify at hearing.

None of Student's therapists or mental health providers requested or recommended an educationally related mental health assessment during the 2024-2025 school year. Mosher, Silva and Stone all attended meetings during the 2024-2025 school year with Student's IEP team members, including Parent, Burke and school therapist Seroussi, to

collaborate on Student's educationally related mental health services and social emotional needs. Mosher attended quarterly collaboration meetings during the 2024-2025 school year in addition to the December 17, 2024, January 27, 2025 and March 5, 2025 IEP team meetings, to discuss Student's mental health needs and collaborate with the IEP team on educationally related mental health services for Student to access her education. None of Student's mental health professionals indicated to Ojai that they had insufficient information to support Student's mental health and social emotional functioning.

Mosher scheduled in-person therapy every other week with Student but opined she mostly provided therapy online because Student was unable to tolerate in-person services during the 2024-2025 school year. Mosher reported to the IEP team that she worked on processing trauma and in-person activity anxieties with Student. Mosher shared at the December 17, 2024 IEP team meeting that Student was unable to complete a therapy session with Mosher in the office and had to complete the session in the car. At hearing, Mosher opined Student had a hard time engaging during in-person therapy because she feared spaces outside of the home. Mosher also opined that Student experienced severe anxiety when engaging with individuals outside of her immediate family and her teachers Lepine and Nelson.

Student's mental health providers who testified at hearing, Silva, Seroussi, and Burke, were all informed about Student's severe and fluctuating anxieties and agreed she required academic instruction at home. There was no evidence showing that Ojai was uninformed or underestimated Student's severe social emotional needs, educationally related or otherwise. Ojai was well informed about Student's educationally related

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mental health services needs and did not need to conduct an educationally related mental health services assessment in addition to the assessment Olvera conducted during the 2024-2025 school year.

Even if Student showed that Ojai failed to conduct an educationally related mental health services assessment, such failure would be a procedural violation and not automatically require a finding that a FAPE denial resulted. (See 20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2).) Student did not offer evidence that the absence of an educationally related mental health services assessment deprived Student of a FAPE, significantly impaired Student's ability to access her education, or deprived Parent meaningful opportunity to participate in the decision making process. (*Id.*) Ojai offered Student academic instruction at home to accommodate her mental health needs and ability to tolerate instruction because of her severe anxiety. Student earned Bs and Cs in the first semester of the 2024-2025 school year, and all As in the second semester, so was clearly accessing her education. Parent received a copy of Olvera's report, participated in all calls and meetings regarding Student, and attended all IEP team meetings with Student's attorney. Thus, Parent had meaningful opportunity to participate in developing all of Student's IEPs.

Student did not show Ojai denied her a FAPE in the 2024-2025 school year by failing to assess educationally related mental health services.

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ISSUE 2a, 2b, AND 2c: DID OJAI DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE COUNSELING SERVICES, HOME HOSPITAL INSTRUCTION, AND PLACEMENT?

Student contends Ojai did not offer appropriate counseling, home hospital instruction, or placement in the November 6, 2024, December 17, 2024, January 27, 2025 and March 5, 2025 IEPs. Student contends Ojai should have offered online group instead of in-person group counseling services and parent counseling services. Student also contends Ojai did not offer Student enough home hospital instruction hours or access to peers during the 2024-2025 school year. Student further contends Ojai did not offer an appropriate placement in the least restrictive environment because it failed to consider a nonpublic school or a full-day home program with more instructional hours.

Ojai contends it offered Student a FAPE in the 2024-2025 school year. Ojai contends it appropriately offered group counseling services based on Olvera's recommendations for slow and gradual school reentry. Ojai contends parent counseling was not an issue in Student's due process complaint and should not be considered at hearing. Ojai further contends it offered the appropriate amount of home hospital instruction hours and the home setting was an appropriate placement in the least restrictive environment for Student.

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STUDENT'S ANXIETY WORSENERD IN DECEMBER 2024

On December 6, 2024, as the 90-day period of home hospital instruction recommended by Silva was about to end, Student's attorney informed Ojai Student's anxiety had worsened, she required continued home hospital instruction, and she could not attend in-person school for academic instruction. Student's attorney also provided Ojai with a December 3, 2024 letter from Silva, certifying Student's continued severe anxiety and requesting an extension of home hospital instruction for Student until the end of the 2024-2025 school year. On December 6, 2024, Parent provided Ojai with consent for the release of information from Silva and Stone with the condition that Parents be included in all phone or video meetings or written communications with Student's therapists and medical providers.

In a December 6, 2024 email, Burke informed Parent that Student's once monthly group counseling would be at the Nordhoff campus and offered to schedule Student's first group counseling session. Burke followed up with another email regarding the group counseling session on December 11, 2024, when Parent did not respond. On December 11, 2024, Student's attorney informed Ojai that Student still could not attend in-person school for academic instruction and requested Ojai contact Parent to start counseling and other IEP services.

On December 12, 2024, Burke contacted Silva to schedule a collaboration meeting offering two dates in December 2024 and one on January 2025. Silva confirmed she could meet in January 2025. On December 13, 2024, Ojai approved Student's request for extension to receive home hospital instruction for up to five hours of academic instruction weekly until the end of the 2024-2025 school year.

On December 16, 2024, Mosher informed Ojai in writing that Student experienced intense anxiety with activities and meetings outside of the home and that Parent reported Student could not attend in-person to receive academic instruction. Like Silva, Mosher recommended continued home hospital instruction through the end of the 2024-2025 school year. Mosher also recommended breaks, as needed, and positive reinforcement for anxiety normalization, and other accommodations as identified by Student's therapists. In the same letter, Mosher stated that when Student was ready to return to in-person school, Student would benefit from a school or academic program with a small group of students and highly individualized support. Alternatively, Mosher recommended an online learning environment with the ability to take breaks outside and with positive reinforcements to normalize and ease anxiety.

A SECOND IEP TEAM MEETING WAS HELD ON DECEMBER 17, 2024

Mosher attended the December 17, 2024 IEP team meeting and shared the same recommendations stated in her December 16, 2024 letter. Additionally, Mosher shared Student was unable to be at school for an extended time and needed long term treatment to return to in-person academic school instruction. Mosher's opinions corroborated Olvera's November 2024 recommendations for slow and gradual school reentry.

The December 17, 2024 IEP team discussed the continuum of placement options for Student including a residential facility and nonpublic school, independent study, a full-day online school, and home hospital instruction. Student's attorney asked if Ojai had online one-on-one programs that were not independent study, a dual enrollment at Nordhoff, or an independent study program. Student's attorney also asked about

the availability of IEP services for students who enroll in independent study programs. Ojai responded it would look into the availability of online one-on-one programs that were not independent study, dual enrollment was available, and IEP services were available virtually to students in its independent study program.

Student's attorney opined that home hospital instruction should not be long-term, and asked for more instructional hours for Student at the December 17, 2024 IEP team meeting. Parent shared Student responded well to virtual learning but that Student showed signs of anxiety after receiving home hospital instruction. Student was making progress in accessing her education on December 17, 2024. Nelson scheduled and provided home hospital instruction hours to Student based on Student's anxiety levels and ability to tolerate instruction. On Mosher's and Silva's recommendations, and the reports of Parent and Student's attorney that Student could not obtain academic instruction in a school setting, Ojai offered home hospital instruction, or academic instruction at home, through the end of the 2024-2025 school year.

At the time of the December 17, 2024 IEP team meeting, Ojai still did not have a release of information permitting its representatives to discuss and collaborate with outside therapist Mosher regarding Student's needs. Ojai representatives shared implementation of individual counseling services in the November 6, 2024 IEP, could not start without coordination and collaboration with Student's outside mental health providers because all providers needed to be properly informed of the mental health services Student received. Parent confirmed Silva and Stone were not available for a collaboration meeting until January 2025.

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Parent told the December 17, 2024 IEP team meeting Student would stay with Mosher as her primary therapist and Parent would provide a release of information that included Mosher's new employer for Mosher to facilitate collaboration. Mosher was an associate marriage and family therapist and needed to be supervised by a licensed marriage and family therapist, so Parent's release of information needed to include Mosher's new employer who supervised Mosher.

On January 15, 2025, Parent sent a conditional release of information to Burke permitting Mosher to release only information about Student's diagnosis and treatment progress. Parent also conditioned the release on her being included in phone or video meetings or written communications with Student's therapists and medical providers. On January 22, 2025, Student started individual counseling with school therapist Seroussi. However, group counseling did not start because Parent did not believe Student was ready and refused to schedule group counseling for Student's participation.

A THIRD IEP TEAM MEETING WAS HELD ON JANUARY 27, 2025

Parent requested a third IEP team meeting that was convened on January 27, 2025. At the January 27, 2025 IEP team meeting, Parent stated Student distrusted others and was not ready to participate in group counseling because Student cried when Parent drove by Nordhoff. Parent shared Student was not comfortable, and still building trust with, school therapist Seroussi. Outside therapist Mosher attended the January 27, 2025 IEP team meeting, and told the IEP team about Student's progress during therapy, including that she worked with Student to process trauma.

Parent reported Student was doing well with home hospital instruction but took longer to complete math work. During instructional time, Lepine gave Student breaks and had her stretch and exercise to relax for anxiety reduction. Student received five hours weekly of home hospital instruction at the time of the January 27, 2025 IEP team meeting.

As of January 27, 2025, Mosher, Silva and Parent all reported that Student was unable to return to in-person school for academic instruction. Student's attorney requested Student be reintegrated to in-person school for academic instruction, and Ojai representatives shared that reintegration would be considered depending on Student's mental health progress. Alternatively, Student's attorney asked for more home hospital instruction hours. Ojai representatives were concerned about establishing a balance between instructional demands and Student's anxiety, noting that Student's anxiety was stabilizing and adding more instructional demands could increase Student's anxiety. Student's attorney discounted this concern, and opined Student could tolerate more instructional time online, even if Student was hesitant and anxious about attending a school setting.

At the January 27, 2025 IEP team meeting, neither Burke nor Mosher recommended more home hospital instruction hours. Mosher stated she would continue to work with Student during therapy before recommending the IEP team offer additional home hospital instruction hours. Mosher explained that Student experienced disassociation affecting her ability to pay attention during instructional time. Further, because Student used disassociation as a coping mechanism, it was difficult for her to acknowledge and state when she was unable to pay attention.

Throughout the January 27, 2025 IEP team meeting, Student's attorney pressed for different educational placements and more instructional hours for Student despite mental health providers opining Student was not ready for either. Ojai representatives reasonably offered to continue academic instruction at home to the end of the 2024-2025 school year, subject to Student's mental health providers recommending Student was ready for change. Student's IEP team considered various placement options, but Student's social emotional needs and anxiety level did not support an offer of other educational placements or increased academic instruction hours at the January 27, 2025 IEP team meeting.

On January 29, 2025, after speaking with Student during therapy, Mosher informed Monson, Burke and Parent, Student would benefit from an additional hour weekly of home hospital instruction to help with homework and to understand instructional material. Student preferred the additional hour be with her current teachers Lepine and Nelson who primarily provided in-person academic instruction at Student's home. If the additional hour were with a new teacher, Student preferred the academic instruction occur online. Mosher recommended only one additional hour of academic instruction because Student's anxiety, dissociation, and concentration difficulties prevented her from tolerating more academic instructional hours.

On February 4, 2025, in response to Mosher's updated information, Ojai offered to add an hour of home hospital instruction to Student's IEP. Monson advised Parent an additional hour of home hospital instruction would be provided to Student by Lepine and Nelson, each adding 30 minutes to their academic instruction. Parent

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responded on February 6, 2025, that Student was ready to add one hour of home hospital instruction. On February 12, 2025, Monson informed Parent the additional hour of academic instruction would begin that week.

A FOURTH IEP TEAM MEETING WAS HELD ON MARCH 5, 2025

The family requested a fourth IEP team meeting to discuss Student's placement and services, which Ojai convened on March 5, 2025. Seroussi and Mosher attended the March 5, 2025 IEP team meeting. Mosher shared she continued to build rapport with Student who continued to struggle with school related anxiety. Mosher opined that while Student would like to return and was working towards returning to in-person school for academic instruction, reintegration would not occur in the foreseeable future during the 2024-2025 school year. Echoing Mosher's opinion, Seroussi opined Student was stressed and anxious about integrating back into a comprehensive school for academic instruction. Parent opined Student was not mentally able to participate in and declined group counseling services.

Parent asked about placement options for the 2025-2026 school year. Ojai representatives explained slow and gradual integration to Nordhoff's more demanding independent study program or adding hours to academic instruction at home were placement options depending on Student's mental health progress. Student's attorney asked about a residential placement. Ojai responded that residential placement was the most restrictive setting and was not needed academically because Student was making good educational progress with instruction in the less restrictive home environment. Student was doing well in her math, science, health, college, and career classes. Student enjoyed reading *Of Mice and Men* and worked well on grade-level

curriculum. None of Student's mental health providers recommended or that Student needed to be removed from her home, her safe space, and placed in a residential treatment center without access to a typical school environment. The IEP team considered Student's attorney's request for residential placement, but as no mental health provider recommended that option, the March 5, 2025 IEP team reasonably declined to offer residential placement. Student's mental health providers all opined that Student was making slow incremental progress towards her goal of reentering the school environment, and they were working with her on participating in in-person services and a residential treatment center would not offer such an opportunity. All who attended the March 5, 2025 IEP team meeting, including mental health providers and teacher Lepine, agreed that Student could access the curriculum with her current IEP and one additional hour of academic instruction at home, and did not recommend a changed placement offer.

On April 7, 2025, Parent provided written consent to the March 5, 2025 IEP, which increased Student's home hospital instruction hours from five to six hours. In the written consent, Parent requested Student be provided with a full school day of educational services through in-home instruction or an online program. Parent's unsupported request, contrary to the opinions of Student's mental health providers, did not warrant an offer changing Student's placement.

Subsequently, Parent provided Ojai with a May 21, 2025 letter from Valeria Moore-Altavilla, who provided individual psychotherapy to Student from October 24, 2024, recommending Student receive home school or an online program because of her mental health needs. Moore-Altavilla's recommendation further supported Ojai's offer of academic instruction at home in the March 5, 2025 IEP was appropriate.

IN-PERSON GROUP COUNSELING OFFERED IN THE NOVEMBER 6, 2024, DECEMBER 17, 2024, JANUARY 27, 2025 AND MARCH 5, 2025 IEP TEAM MEETINGS WAS APPROPRIATE UNDER ISSUE 2a

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 District v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School District RE-1* (2017) 580 U.S. 386, 402 (*Endrew F.*))

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. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)) 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. (*Id.*) 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 of educational services and/or placement must

be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Id.*)

If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*))

Student did not prove that Ojai's offer of one hour monthly of in-person group counseling was inappropriate in any of the IEPs during the 2024-2025 school year. Student argued that Parent's refusal to schedule group counseling sessions, reporting that Student cried when passing Nordhoff, and informing members at IEP team meetings that Student was not ready to attend in-person school, established the offers of group counseling were inappropriate. Student also argued that Mosher's and Silva's recommendations of home hospital instruction also demonstrated that in-person group counseling was inappropriate. Student further argued Ojai should have offered online group counseling.

Student's arguments were unpersuasive to support the one hour monthly of in-person counseling was not a FAPE. Parent was the only witness who opined Student could not participate in-person for group counseling. However, Parent was not an educational or mental health specialist and did not have any knowledge regarding what FAPE entailed. Therapists Mosher and Silva opined Student was unable to

access extended in-person academic instruction during the 2024-2025 school year, and appropriately abstained from opining as to what was necessary for Student to receive a FAPE, as it was outside their area of expertise.

Parent's, Mosher's and Silva's opinions were considered by the November 6, 2024, December 17, 2024, January 27, 2025 and March 5, 2025 IEP teams when designing an educational program to meet Student's social emotional needs. Silva and Mosher provided the IEP team with important information about Student's mental health needs, and made recommendations regarding the amount of in-person academic instruction Student could tolerate. However, Mosher and Silva were not educational specialists and did not have any knowledge regarding what FAPE entailed and did not opine whether in-person group counseling offered Student a FAPE. At hearing, none of Student's mental health service providers or experts opined the one hour monthly in-person group counseling was inappropriate or that Student required online group counseling to receive a FAPE.

Ojai persuasively rebutted Student's unsupported arguments regarding the inappropriateness of in-person group counseling. At the initial November 6, 2024 IEP team meeting, Olvera recommended Student gradually and slowly participate in partial day in-person school exposure and Mosher agreed. Student's need for slow in-person school exposure did not change at the December 17, 2024, January 27, 2025 or March 5, 2025 IEP team meetings. Mosher worked with Student using a modified form of exposure therapy, including therapy in the office and in the car, to help Student build resilience and reduce anxiety towards in-person activities throughout the 2023-2024 school year. Beginning in January 2025, Seroussi worked with Student to establish trust

and manage anxiety for school based in-person activities. The one hour of monthly in-person group counseling also provided Student access to peers in a controlled therapeutic environment.

Further, Monson opined that in-group counseling was consistent with Student's need for peer access as a FAPE. Monson's opinion was uncontradicted and consistent with Olvera's recommendation for gradual in-person school exposure. Both Monson and Burke opined at hearing that in-person group counseling was appropriate for Student to work on her IEP social emotional behavior goals for participating in school based in-person activities and anxiety management throughout the 2024-2025 school year.

Monson and Burke were educated, trained, and experienced in supporting students with educationally related mental health needs and understood what FAPE entailed, so their uncontradicted opinions that in-person group counseling was FAPE for Student were persuasive. The information at the four IEP team meetings showed the one hour monthly in-person group counseling appropriately provided Student a necessary opportunity to manage her anxiety with access to peers in a controlled therapeutic environment.

Student did not show Ojai denied her a FAPE by offering one hour monthly of in-person group counseling services, instead of online group counseling services, during the 2024-2025 school year.

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OJAI DID NOT NEED TO OFFER PARENT COUNSELING IN THE
NOVEMBER 6, 2024, DECEMBER 17, 2024, JANUARY 27, 2025 AND
MARCH 5, 2025 IEP TEAM MEETINGS UNDER ISSUE 2a

Student did not prove Ojai needed to offer Parent counseling at the four IEP team meetings during the 2024-2025 school year. Student argued that Olvera recommended family therapy in the September 26, 2024 assessment report because Parent would benefit from understanding Student's social emotional strengths and challenges, required Ojai to offer Parent counseling as a FAPE. Student also argued that Ojai's offer of counseling to Parent in the July 7, 2025 IEP for the 2025-2026 school year, established Ojai should have offered Parent counseling at the November 6, 2024, December 17, 2024, January 27, 2025 and March 5, 2025 IEP team meetings.

Student's arguments were unsupported and unpersuasive. Although Olvera recommended therapy in his report that involved the entire family in treatment because Parent could benefit from understanding Student's social emotional strengths and weaknesses, he did not opine that Student required parental counseling to receive a FAPE. The standard for offering special education and related services is whether those services are individually designed to provide educational benefit and reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. At the time of each of the four IEP team meetings in the 2024-2025 school year, Student was making progress appropriate to her circumstances without the addition of parent counseling. An IEP is not required to offer every service from which a student with disabilities might benefit or that the parent prefers. (*Endrew F., supra*, 580 U.S. at pp. 386, 402.)

In addition, Student failed to present any witness to opine what school based parent counseling entailed or why Student required it to receive a FAPE. At hearing, Student's attorney asked a couple of leading questions to coach Parent into stating counseling would help her understand Student's services. Student also argued that Burke answered that Parent could benefit from counseling or training, as any parent would, demonstrated Ojai was required to offer Parent counseling. However, this evidence fell short of establishing what parent training encompassed, or why it was necessary for Student to make progress in her educational program.

Student's argument that Ojai's offer of parent counseling for the 2025-2026 school year established Ojai was required to offer parent counseling services during the 2024-2025 school year was unpersuasive. The offer of special education services, including parent counseling, must be considered based on the information known at the time of the offer. (See *Adams, supra*, 195 F.3d at p. 1149.) Student argued incorrectly in the closing brief that Ojai failed to explain why it did not offer parent counseling. However, Student had the burden of proof on this issue and had to prove why parent counseling was required, not the other way around. Student's vague reference that Ojai offered some type of parent counseling in an IEP team meeting outside the 2024-2025 school year, without any testimony or information as to what parent counseling entailed or that Student required it to receive a FAPE during the 2024-2025 school year, was insufficient to demonstrate that Ojai was required to offer it at the November 6, 2024, December 17, 2024, January 27, 2025 and March 5, 2025 IEP team meetings.

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Ojai's argument that parent counseling was not specified in Student's due process complaint and should not be considered at hearing was unpersuasive. The IDEA permits broadly pled complaints. Student's complaint pled that Ojai failed to offer appropriate IEP services under the IDEA and specified at the September 26, 2025 PHC that Ojai failed to offer appropriate counseling services in Issue 2a as reflected in the September 26, 2025 Order Following PHC. Further, both parties questioned Parent regarding parent counseling at hearing.

Student did not show Ojai denied her a FAPE by not offering parent counseling during the 2024-2025 school year.

HOME HOSPITAL INSTRUCTION HOURS OFFERED IN THE 2024-2025 SCHOOL YEAR WAS APPROPRIATE UNDER ISSUE 2b

Student argued the five hours of home hospital instruction, which was increased to six hours in January 2025, were insufficient and not individualized to her needs. Student's attorney requested more academic instruction hours at all four IEP team meetings during the 2024-2025 school year.

Student did not offer any testimony or expert opinion supporting Student could have tolerated more than the five hours of home hospital instruction, which was increased to six hours based on Mosher's opinion of Student's anxiety and instruction tolerance levels.

Student received home hospital instruction of up to five hours before she became eligible for special education and the November 6, 2024 IEP team determined the number of hours should continue after Ojai found Student eligible for special education. The November 6, 2024 IEP team considered all available information

including Parent's and Student's attorney's input, Student's anxiety, Olvera's assessment recommendations, and Lepine's opinion that Student was doing well academically.

Student's anxiety worsened by the time of the December 17, 2024 IEP team meeting. The information shared at the December 17, 2024 IEP team meeting did not support Student's home hospital instruction hours needed to be increased. Student's teachers Lepine and Nelson provided two to two and a half hours weekly of home hospital instruction, based on Student's anxiety levels and ability to tolerate instruction, and testified that in December 2024 Student was accessing the general education with passing grades. None of Student's teachers or service providers testified at hearing that Student needed an increase in instructional hours at the time of the December 17, 2024 IEP team meeting.

At the January 27, 2025 IEP team meeting, when Student attorney pressed to increase the number of home hospital instruction hours, Ojai representatives, Parent and Mosher expressed concerns that more instructional hours would trigger a rise in Student's anxiety levels. Mosher asked the IEP team not to increase the home hospital instruction hours until she spoke with Student in therapy. After speaking with Student, Mosher recommended adding only one hour of home hospital instruction because that was all Student could tolerate.

Therefore, Student's requests for a full school day of educational services at the March 5, 2025 IEP team meeting, and more instructional hours at each of the four IEP team meetings were unsupported by the evidence. At hearing, Student did not offer

any support that she required, or could tolerate, more home hospital instruction hours than Ojai offered at the November 6, 2024, December 17, 2024, January 27, 2025 and March 5, 2025 IEP team meetings.

In the closing brief, Student argued she needed more instructional hours to catch up academically and timely graduate in four years because during the 2024-2025 school year she earned only 50 credits towards the 225 credits needed for graduation. However, under *Endrew F.*, Ojai was required to offer Student individually designed instruction and services to make progress appropriate to her circumstances. (*Endrew F.*, *supra*, 580 U.S. at pp. 386, 402.) Overwhelming evidence supported that at the time of each of the IEP team meetings and in the 2024-2025 school year, Student was capable of accessing her education while working on balancing her anxiety and mental health challenges with the home hospital instruction hours Ojai offered. Under the IDEA, Ojai was not required to offer Student, against all available expert mental health advice, additional services to ensure Student's graduation on a particular date. Further, Monson provided uncontradicted testimony that Student was on track to timely graduate based on the number of credits she earned as a ninth grader in the 2024-2025 school year. Student's arguments for additional home hospital instruction hours to those Ojai offered were unsupported and unpersuasive.

Student did not show Ojai denied her a FAPE by failing to offer appropriate home hospital instruction hours during the 2024-2025 school year.

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OJAI OFFERED AN APPROPRIATE HOME PLACEMENT AT THE NOVEMBER 6, 2024, DECEMBER 17, 2024, JANUARY 27, 2025 AND MARCH 5, 2025 IEP TEAM MEETINGS UNDER ISSUE 2c

In determining the educational placement of a child with a disability a school district must ensure that:

1. 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 considers the requirement that children be educated in the least restrictive environment;
2. placement is determined annually, is based on the child's IEP and is as close as possible to the child's home;
3. unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled;
4. 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
5. 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.)

The continuum of the program options includes, but is not limited to,

- regular education,
- resource specialist programs,
- designated instruction and services,
- special classes,
- nonpublic, nonsectarian schools,
- state special schools,
- specially designed instruction in settings other than classrooms,
- itinerant instruction in settings other than classrooms, and
- instruction using telecommunication instruction in the home or instructions in hospitals or institutions.

(Ed. Code, § 56361.)

To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate:

1. that children with disabilities are educated with non-disabled peers; and
2. that special classes or separate schooling occur only if the nature or severity of the 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 could be satisfactorily educated in a regular education environment, the Ninth Circuit Court has balanced the following factors:

1. the educational benefits of placement full-time in a regular class;
2. the non-academic benefits of such placement;
3. the effect [the student] had on the teacher and children in the regular class; and
4. the costs of mainstreaming [the student].

(*Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R., supra*, 874 F.2d at pp. 1048-1050].)

If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.)

Student did not offer any testimony or expert opinion to support Student's argument she required a nonpublic school or a residential placement for Student's educationally related needs. Student did not show Ojai failed to consider the continuum of placement options for Student or that the least restrictive environment for Student was one other than the home setting. Rather, the evidence showed that despite Student's attorney requesting different placements without any support at all the IEP team meetings in the 2024-2025 school year, each of the Ojai IEP team members considered and explained why the available information supported that academic instruction at home was a FAPE for Student. Therefore, Student's unsupported arguments for a different placement were unpersuasive.

Ojai successfully rebutted Student's arguments with overwhelming evidence it offered an appropriate placement to Student during the 2024-2025 school year. Ojai properly considered the *Rachel H.* factors in determining that home hospital instruction with the offered related services, was the least restrictive environment. Throughout the 2024-2025 school year, Parent, Burke, Seroussi, Monson, Lepine, Nelson, and outside mental health providers Mosher and Silva all agreed Student had severe anxieties which impacted her ability to access an in-person, full-time, regular classroom placement. Ojai considered the mental health reports and recommendations of Olvera, Silva, and Mosher, Parent's reports of Student's fluctuating anxieties, and academic information from Lepine and Nelson. Parent requested and Mosher and Silva recommended home hospital instruction for Student in the 2024-2025 school year. Mosher was an associate marriage and family therapist and Student's outside therapist. Silva was a psychiatric nurse practitioner charged with prescribing medication for Student. Both worked with Student and were qualified to opine on Student's mental health needs and anxiety levels. Their opinions on Student's mental health needs were persuasive and informed the IEP team's decisions on Student's educationally related mental health needs.

The IEP team also considered information from California credentialed teachers Lepine and Nelson who provided mostly in-person home hospital instruction to Student before and after Ojai found Student eligible for special education. Lepine and Nelson provided a small percentage of the home hospital instruction online, as needed at Parent's request, to accommodate Student's anxiety and social emotional needs throughout the 2024-2025 school year. They were familiar with Student's academic needs and how Student's anxieties impacted her ability to access academic instruction.

Therefore, their opinions shared with each of the four IEP teams that Student did well and was capable of accessing her ninth-grade general education curriculum at home were persuasive.

The IEP team reviewed and discussed the least restrictive environment at each of the four IEP team meetings during the 2024-2025 school year, and concluded the appropriate placement for Student entailed working with general education teachers on the ninth-grade general education curriculum through academic instruction at home. The IEP team also recognized Student's need for, and encouraged, mainstreaming which for Student meant working towards slow and gradual in-person school reentry. (See *Daniel R.R., supra*, 874 F.2d at p. 1050.) Mosher opined that Student was making progress, albeit slowly, on managing her severe anxieties including gradual school reentry. Student was academically successful with five hours weekly of home hospital instruction, which increased to six hours weekly upon Mosher's report on Student's academic instruction tolerance abilities. Both individual and in-person group counseling was consistent with Student's need for gradual in-person school exposure, anxiety management, and peer access in a controlled therapeutic environment throughout the 2024-2025 school year.

Despite Student's fluctuating anxiety symptoms, worsening around the December 17, 2024 IEP team meeting, and stabilizing around the January 27, 2025 and March 5, 2025 IEP team meetings, the evidence did not show Student's educational needs varied to a point which rendered academic instruction in the home placement inappropriate during the 2024-2025 school year. Placement in the home setting allowed Student continued access to the general education curriculum and balanced the non-academic benefits of allowing flexibility in scheduling home hospital instruction based on

her anxiety levels. Ojai offered peer access in a controlled therapeutic environment of group in-person counseling at school as part of Student's gradual and slow reentry to an in-person academic environment. Because neither party offered evidence on the effect Student had on a regular general education classroom or mainstreaming costs, these two factors did not impact the *Rachel H.* analysis. Student did not prove that the home hospital instruction placement Ojai offered at each of the November 6, 2024, December 17, 2024, January 27, 2025 and March 5, 2025 IEP team meetings, was inappropriate. Rather, the evidence overwhelmingly established that academic instruction in the home setting provided a balance between Student's academic and mental health needs to access her education.

Student did not prove Ojai denied her a FAPE during the 2024-2025 school year by failing to offer appropriate counseling services, home hospital instruction, or placement.

ISSUES 3a AND 3b: DID OJAI DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO MATERIALLY IMPLEMENT COUNSELING SERVICES AND HOME HOSPITAL INSTRUCTION?

Student contends Ojai inappropriately delayed implementing Student's individual counseling services until January 22, 2025. Student also contends Ojai did not implement Student's in-person group counseling services because she was unable to access them during the 2024-2025 school year. Student further contends Ojai did not implement Student's home hospital instruction for the full five hours and for five times a week but inappropriately implemented them twice weekly.

Ojai contends it implemented all of Student's individual counseling services. Ojai also contends that while Parent did not schedule in-person group counseling for Student, Ojai had them available for Student throughout the 2024-2025 school year. Ojai further contends it appropriately implemented the home hospital instruction based on Student's needs.

Minor failures by a school district in implementing an IEP should not automatically be treated as violations of the IDEA. (*Van Duyn v. Baker School District* (9th Cir. 2007) 502 F. 3d 811, 821 (*Van Duyn*)). Rather, a material failure to implement an IEP violates the IDEA. (*Id.* at p. 822.) A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. (*Id.*) The materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. (*Id.*)

OJAI MATERIALLY IMPLEMENTED STUDENT'S INDIVIDUAL COUNSELING SERVICES

Student received the individual counseling services offered during the 2024-2025 school year. Ojai offered two hours monthly of individual counseling services to Student starting on December 5, 2024, the day Parent consented to implementing the services offered in the November 6, 2024 IEP. December 5, 2024, through June 11, 2025, Ojai's last school day for the 2024-2025 school year, totaled six months of services. During that period, Ojai had approximately one month of non-school days, including holidays, winter break, President's week break, and spring break. Therefore, Ojai was required to deliver a total of five months, or 10 hours, of individual counseling services to Student from December 5, 2024, to June 11, 2025.

Seroussi provided individual counseling services to Student from January 22, 2025, to May 28, 2025. The individual counseling services logs showed a total of 10 and a half hours of individual counseling including two make-up sessions were available to Student. Seroussi made up for individual counseling sessions which required making up.

Student attended all the individual counseling sessions except for three which she refused to attend on February 5, 12, and April 30, 2025, totaling one and a half hours. Student did not offer any evidence that Ojai was required to make-up for Student's unexcused refusal of services. Also, there was no evidence that Student's refusal of service on those three days should have been excused. Nonetheless, Ojai therapist Seroussi was ready, willing and available to deliver 10 and a half hours of individual counseling services to Student, more than the 10 hours Ojai was required to deliver to Student pursuant to the November 6, 2024 IEP. The evidence showed that Student's decision to access only nine hours of individual counseling, instead of 10 hours required under the IEP, or the 10 and a half hours Seroussi made available to Student, did not mean Ojai failed to materially implement the individual counseling service under *Van Duyn*.

Student did not show Ojai denied Student a FAPE by materially failing to implement Student's individual counseling services.

OJAI DID NOT MATERIALLY FAIL TO IMPLEMENT STUDENT'S IN-PERSON GROUP COUNSELING SERVICES

Student did not offer any persuasive evidence that Ojai failed to implement the in-person group counseling services.

As discussed under Issue 2a, the IEP team agreed Student needed gradual in-person school exposure, anxiety management, and peer access in a controlled therapeutic environment to access her education. Therefore, Ojai offered in-person group counseling services as a school based means to address Student's educational needs. However, Parent was resistant to sending Student to in-person group counseling during the 2024-2025 school year, and did not schedule them despite Ojai's multiple attempts to do so.

On December 6, 2024, a day after Parent consented to implementing the November 6, 2024 IEP, Burke informed Parent by email that group counseling would be on the Nordhoff campus and offered to schedule Student's first group counseling session. Parent did not respond, and on December 11, 2024, Burke followed up with another email regarding the group counseling session. Parent repeatedly refused to cooperate in Ojai's attempts to schedule in-person group counseling despite none of Student's outside or school based therapists opined that Student's anxiety prevented her from attending one session of in-person group counseling per month.

In-person group counseling services appropriately remained on Student's December 17, 2024, January 27, 2025 and March 5, 2025 IEPs. Although Parent declined group counseling in the March 5, 2025 IEP, the evidence did not support that Ojai failed to make that appropriately offered service available. Ojai was ready to implement and made available to Student in-person group counseling as a component of her FAPE which required slow, gradual in-person school re-entry and exposure, anxiety management, and peer access throughout the 2024-2025 school year.

Student did not show Ojai denied Student a FAPE by materially failing to implement Student's in-person group counseling services.

OJAI DID NOT MATERIALLY FAIL TO IMPLEMENT STUDENT'S HOME HOSPITAL INSTRUCTION HOURS

Student did not offer persuasive evidence that Ojai materially failed to implement Student's home hospital instruction hours.

Student received home hospital instruction from Lepine and Nelson both before and after Ojai found Student eligible for special education. As of December 5, 2024, Student's individualized needs were determined by her IEP, not the home hospital instruction governing non-special education students under Education Code section 48206.3. Student argued Nelson provided only two hours weekly instead of two and a half hours to Student based on a statement Nelson made at the December 17, 2024 IEP team meeting. At the December 17, 2024 IEP team meeting, Nelson stated she provided two hours weekly of home hospital instruction hours at some point to Student. Student failed to elicit clarification from Nelson at hearing when she provided the two hours weekly home hospital instruction, specifically whether it was before or after Student became eligible for special education services. Student also failed to elicit clarification from Nelson at hearing whether she provided the two hours weekly home hospital instruction before or after Parent conditionally consented to the IEP on December 5, 2024. Without information about the contextual time frame of Nelson's statement, there was no evidence Nelson was required to provide the 30 minutes Student argued was allegedly not provided under Student's IEP. Nelson's statement could have referenced academic instruction she provided to Student before Ojai found Student eligible for special education or before Parent conditionally consented to the IEP.

Parent, Nelson, Lepine, and Mosher testified at hearing that Student's ability to access home hospital instruction depended on her fluctuating anxiety levels. Student did not show she could access more home hospital instruction hours than what Nelson delivered from December 5, 2024. Even assuming Nelson failed to provide the 30 minutes of home hospital instruction to Student was during the period after Parent consented to implementing the IEP services, Student did not present any evidence at hearing on the total number of home hospital instruction hours Student missed.

Student also did not show that the total number of hours allegedly not provided amounted to a material failure to implement her IEP which violated the IDEA under *Van Duyn*. (See *Van Duyn, supra*, 502 F. 3d at p. 822.) Student's attorney's attempt to remedy the lack of evidence by tallying the total hours allegedly missed in the closing brief was not evidence. Absent crucial evidence at hearing, Student did not show that Ojai materially failed to implement the home hospital instruction hours offered in each of Student's four IEPs.

Student also argued home hospital instruction needed to be provided five days per week instead of the frequency provided by Nelson and Lepine. Student did not provide any credible evidence or law requiring the home hospital instruction to be provided one hour daily, five days weekly to special education students.

Ojai successfully rebutted Student's arguments by showing that home hospital instruction hours were implemented based on Student's IEP needs. As Parent confirmed, Student had increased anxiety symptoms after academic instruction, especially during December 2024. Lepine and Nelson scheduled home hospital instruction based on Student's availability for academic instruction and delivered five hours, then six hours

when the IEP team added one hour of home hospital instruction and Parent consented. Nelson and Lepine stopped instruction, took breaks, and enabled Student to walk outside to accommodate her anxiety symptoms. Lepine credibly testified that when Student was unable to tolerate instruction for the entire time of a scheduled session, due to her fluctuating anxiety levels, that time would be made up in another session, online or in-person, to accommodate Student's mental health needs. Accordingly, Ojai implemented all hours of offered home hospital instruction throughout the 2024-2025 school year. Student did not show Ojai denied Student a FAPE by materially failing to implement Student's home hospital instruction hours.

Student did not show Ojai denied Student a FAPE during the 2024-2025 school year by materially failing to implement counseling or home hospital instruction.

ISSUES 4a AND 4b: DID OJAI DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY PREDETERMINING COUNSELING AND HOME HOSPITAL INSTRUCTION?

Student contends Ojai predetermined its offer of counseling services by not considering parent counseling. Student also contends Ojai predetermined its offer of home hospital instruction by not offering more home hospital instruction hours and not considering a different placement other than the home setting.

Ojai contends that it did not predetermine any offers and considered the input and recommendations of Parent, Student's attorney, Student's independent assessor, and Student's outside service providers in determining a FAPE for Student. Ojai also contends Student did not request parent counseling at any IEP team meetings during the

2024-2025 school year. Ojai further contends it properly considered parental concerns and increased Student's home hospital instruction by one hour, from five to six hours weekly, based on Mosher's opinion that Student could tolerate increased instruction.

The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP 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; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

Predetermination occurs when an educational agency has decided on its offer prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP 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.) However, a school district has the right to select a program or service provider for a special education student, as long as the program or provider is able to meet the student's needs, the IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D.Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323.)

Parent meaningfully participated in the November 6, 2024, December 17, 2024, January 27, 2025 and March 5, 2025 IEP team meetings. Parent and Student's attorney attended all four IEP team meetings. They were informed of Student's problems, had the opportunity to ask questions, and asked questions.

Student's own chosen independent assessor Olvera attended the November 6, 2024 IEP team meeting, presented his assessment results to the IEP team, answered questions, and made recommendations regarding Student's needs. Student's outside therapist Mosher attended the December 17, 2024, January 27, 2025 and March 5, 2025 IEP team meetings, and shared Student's mental health needs and progress with the IEP team. Mosher answered questions and made recommendations about Student's fluctuating anxiety symptoms and their impact on Student's ability to access in-person activities, including school. Student's attorney often directed the discussion topics at the four IEP team meetings, had the opportunity to disagree with Ojai's IEP team members, and expressed disagreement.

The evidence did not support Ojai was unwilling to consider other recommendations or alternatives at, or decided the offer of counseling or home hospital instruction before, the November 6, 2024, December 17, 2024, January 27, 2025 or March 5, 2025 IEP team meetings.

OJAI DID NOT PREDETERMINE COUNSELING SERVICES

Student did not show that Ojai decided its offer of counseling services before the IEP team meetings and refused to consider parental counseling. Nobody acting on Student's behalf requested parent counseling at any of the four IEP team meetings during the 2024-2025 school year. Other than Parent's statement at hearing that parent

counseling would promote an understanding of Student's services prompted by a leading question from Student's attorney, Student did not offer any evidence regarding parent counseling. Student did not present any evidence that Ojai was unwilling to consider parent counseling or that it was requested, what parent counseling entailed, or that Student required it to receive a FAPE at any IEP team meeting during the 2024-2025 school year.

Student did not prove Ojai denied Student a FAPE by predetermining its offer of counseling services by not offering parent counseling during the 2024-2025 school year.

OJAI DID NOT PREDETERMINE HOME HOSPITAL INSTRUCTION

Student did not show that Ojai took a take it or leave it approach in its offer of home hospital instruction hours or the home placement to Student. At each of the four IEP team meetings, Ojai's IEP team members answered Student's attorney's questions, addressed Parent's concerns, and discussed Student's educational needs in the context of her anxiety and ability to tolerate academic instruction.

Student's argument Ojai predetermined home hospital instruction in the home setting and did not consider the continuum of placement options for Student was unpersuasive. As discussed in Issue 2c, the evidence did not support that the least restrictive environment was anything other than home hospital instruction in the home placement. Ojai was not required to place Student in a program preferred by a parent if it offered FAPE. (See *Gregory K., supra*, 811 F.2d at p. 1314.)

At the November 6, 2024 IEP team meeting, the IEP team determined a FAPE for Student was home hospital instruction in the home placement based on information Olvera, Parent, Student's attorney and Ojai representatives shared and discussed at the

meeting. Student was academically capable but suffered from severe anxieties regarding in-person activities and school. Lepine opined Student worked hard and was accessing home hospital instruction provided as a general education student under the 504 plan. The offer to continue home hospital instruction in the home placement was not predetermined but resulted from input from discussion amongst the IEP team members and Olvera, and consideration of Student's educational needs.

Despite Student's attorney's insistence at the December 17, 2024 IEP team meeting that home hospital instruction hours increase, Parent did not agree and was concerned about the increase because of Student's worsening anxieties in December 2024. Student's attorney also inquired about different placement options at the December 17, 2024 IEP team meeting. Ojai representatives answered Student's attorney's questions about online one-on-one programs, independent study, a dual enrollment at Nordhoff and an independent study program, and about the availability of IEP services for students of independent study programs. The IEP team considered the various options Student's attorney proposed and determined that Student was accessing her curriculum with in-person home hospital instruction Nelson and Lepine provided, and had the opportunity to mainstream through the monthly in-person group counseling.

Based on discussions about Student's worsening anxiety at the December 17, 2024 IEP team meeting and Silva extending her psychiatric recommendation for Student to continue receiving home hospital instruction, a FAPE for Student continued to be academic instruction in the home placement. Mosher also opined at the December 17, 2024 IEP team meeting that she agreed with Silva's recommendation that Student continue to receive academic instruction at home. The evidence did not show the December 17, 2024 IEP team's rejection of independent study, additional hours of home

hospital instruction, or other options Student's attorney presented were predetermined, but rather a result of consideration of information presented and discussed at the IEP team meeting.

At the January 27, 2025 IEP team meeting, Ojai IEP team members also answered Student's attorney's questions about in-person school reintegration and increasing home hospital instruction hours. They explained that in-person school reintegration would be considered depending on Student's mental health progress as Mosher, Silva and Parent all reported that Student was unable to return to in-person school for academic instruction as of January 27, 2025. The IEP team considered increasing home hospital instruction hours per Student's attorney's request. However, Student's mental health providers did not recommend an increase at that time, and the IEP team, including Parent, was concerned about Student's anxiety and destabilization symptoms. Mosher recommended checking with Student before increasing instructional hours. After checking with Student and based on Student's ability to tolerate increased instruction, Mosher informed the IEP team two days later that Student could tolerate one additional hour of home hospital instruction. Ojai then increased the home hospital instruction hours from five to six hours.

At the January 27, 2025 and March 5, 2025 IEP team meetings, the IEP team considered the nonpublic school and a residential placement requested by Student's attorney. Based on information shared by Student's mental health providers at the January 27, 2025 and March 5, 2025 IEP team meetings, the IEP team discussed that a nonpublic school and a residential placement would be too restrictive and inappropriate for Student because of her anxiety about leaving home to attend in-person school and fear of strangers. The January 27, 2025 and March 5, 2025 IEP teams also discussed that

Student was capable of accessing her education in the less restrictive environment of the home setting provided by Lepine and Nelson depending on Student's fluctuating anxiety symptoms and earned good grades.

The IEP team also considered that all of Student's mental health providers recommended home hospital instruction, and none recommended a nonpublic school or residential placement. The IEP teams considered at each IEP team meeting Parent's input, and corroborated by mental health providers, that Student could not attend in-person school for academic instruction and was anxious after academic instruction.

As discussed under Issue 2b and 2c above, Ojai properly considered and discussed Student's educational needs and considered Olvera's, Mosher's and Silva's recommendations at all four IEP team meetings before making each offer of home hospital instruction in the home setting to Student. The evidence did not demonstrate that Ojai IEP team members predetermined the number of home hospital instruction hours, or the placement, offered in the November 6, 2024, December 17, 2024, January 27, 2025 or March 5, 2025 IEPs.

Student did not prove Ojai denied Student a FAPE during the 2024-2025 school year by predetermining counseling or home hospital instruction.

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ISSUES 5a AND 5b: DID OJAI DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY SIGNIFICANTLY IMPEDING PARENTS' PARTICIPATION BY FAILING TO PROVIDE COGENT RESPONSES TO PARENTS' QUESTIONS AT IEP TEAM MEETINGS SPECIFICALLY: DRIVERS' TRAINING AT THE NOVEMBER 6, 2024 IEP TEAM MEETING; AND NONPUBLIC SCHOOL PLACEMENT AT THE DECEMBER 17, 2024, MARCH 5, 2025 AND JULY 7, 2025 IEP TEAM MEETINGS?

Student contends Ojai did not respond to Parent's questions regarding drivers' training for Student at the November 6, 2024 IEP team meeting. Student also contends Ojai did not appropriately respond to Parent's requests for a nonpublic school placement at the December 17, 2024, March 5, 2025 and July 7, 2025 IEP team meetings.

Ojai contends it properly discussed drivers' training at the November 6, 2024 IEP team meeting. Ojai also contends it appropriately responded to the nonpublic school placement requests at the IEP team meetings at issue.

THE JULY 7, 2025 IEP TEAM MEETING WAS NOT HELD DURING THE 2024-2025 SCHOOL YEAR AND NOT ENCOMPASSED WITHIN STUDENT'S ISSUE 5b

At hearing, the ALJ sought issue clarification as to the relevant IEP team meetings at issue including in Issue 5b that Ojai denied Student a FAPE during the 2024-2025 school year by not cogently responding to Parent's questions regarding nonpublic school placement. Student identified the IEP team meetings on December 17, 2024, March 5,

2025, and July 7, 2025. However, the 2024-2025 school year ended on June 11, 2025. The July 7, 2025 IEP team meeting did not take place during the 2024-2025 school year, and that IEP team meeting is not properly included in Issue 5b, not properly before OAH, and is not adjudicated in this Decision.

In addition, Student filed her due process complaint on July 7, 2025, at 8:52 a.m., before the July 7, 2025 IEP team meeting occurred. The conduct at the July 7, 2025 IEP team meeting could not have been part of Student's July 7, 2025 claims, as the claims had not yet arisen. Student could have, but did not, amend her complaint to add claims after the July 7, 2025 IEP team meeting. Under the legal framework of special education law, there are only two ways that a party can amend a pleading and neither occurred here.

Title 20 United States Code section 1415(c)(2)(E)(i) specifically provides that a party may amend its due process complaint notice only if:

1. the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or
2. the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than five days before a due process hearing occurs.

Title 20 United States Code section 1415(f)(1)(B) governs resolution sessions and states that a resolution session must be convened within 15 days of receiving notice of parents' complaint. (20 U.S.C. § 1415(f)(1)(B).)

The first time Student raised the issue of the July 7, 2025 IEP team meeting was after the hearing had begun. If an amendment were requested less than five days before the hearing, the ALJ does not have the power to grant any substantive amendment at that time. To the extent that Student's attempt at hearing to include the July 7, 2025 IEP as part of Issue 5b could be considered a request to amend the complaint, the ALJ did not have the power to grant any amendment because the hearing had begun.

Thus, for Student to be able to include the July 7, 2025 IEP team meeting in Issue 5b, Student was required to obtain Ojai's written consent, and the parties must have had the opportunity to first resolve the issue through a resolution session prior to the hearing. Ojai did not consent in writing to include the July 7, 2025 IEP team meeting for OAH's determination at hearing. Further, Ojai did not have an opportunity to resolve the issue regarding the July 7, 2025 IEP team meeting in a resolution session. Student never amended her complaint to include the July 7, 2025 IEP. Therefore, under the legislative and regulatory framework of special education law, the ALJ lacks the authority to determine the issue regarding the July 7, 2025 IEP team meeting which Student belatedly tried to include as part of Issue 5b at hearing.

A party who requests a due process hearing may not raise issues at the hearing that were not raised in the request, unless the opposing party agrees otherwise. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *County of San Diego v. California Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1465.) Here, Ojai did not agree and objected to adding the July 7, 2025 IEP team meeting to the existing issues at hearing.

The issue of whether Ojai denied Student a FAPE during the 2024-2025 school year by significantly impeding Parents' participation by failing to provide cogent responses to Parent's questions at the July 7, 2025 IEP team meeting was not properly before OAH at hearing despite Student's attempts to have the ALJ include it when the ALJ attempted to clarify the issues, and not adjudicated in this Decision. This Decision only addresses Issue 5b regarding the December 17, 2024 and March 5, 2025 IEP team meetings which occurred in the 2024-2025 school year.

OJAI RESPONDED APPROPRIATELY TO THE DRIVERS' TRAINING TOPIC

Ojai did not significantly impede Parent's participation by not responding to the drivers' training topic. At the initial November 6, 2024 IEP team meeting, Student's attorney raised the topic of drivers' training and shared it should be considered as a part of Student's IEP. Parent then stated she would speak with Student about obtaining a driver's license. Neither Student's attorney, nor Parent, asked Ojai any questions requiring a response about Student obtaining drivers' training at the November 6, 2024 IEP team meeting.

Monson testified at hearing that she interpreted Parent's statement that she would speak with Student about getting a driver's license as a request to discuss that topic after Parent determined if Student had any interest in driver's training or obtaining a driver's license. There was no evidence the drivers' training topic was ever brought up at subsequent IEP team meetings or that Parent ever shared Student was interested in obtaining a driver's license or drivers' training during the 2024-2025 school year.

Student did not show that Ojai was obligated to follow up with Parent on the topic of driver's training, or that the failure to follow up with Parent significantly impeded Parent's ability to participate in the IEP process. During the 2024-2025 school year, Student provided Ojai with letters from Silva and Mosher arguing she was working with multiple mental health providers to manage her severe anxiety and access her education and had difficulty leaving the house. Ojai had no reason, and no duty, to discuss obtaining a driver's license or drivers' training at any of Student's IEP team meetings. The totality of the evidence showed that Parent and Student's attorney had the opportunity to ask questions and participate in discussions at all IEP team meetings. Parent and Student's attorney primarily steered the IEP team discussions to home hospital instruction hours, placement and mental health topics, and did not ask any questions or follow up regarding Student's interest in drivers' training.

Student did not prove Ojai denied Student a FAPE by significantly impeding parental participation during the 2024-2025 school year by not responding cogently to Parent's questions regarding drivers' training.

OJAI RESPONDED APPROPRIATELY TO STUDENT'S REQUESTS FOR NONPUBLIC SCHOOL PLACEMENT

Ojai did not significantly impede Parent's participation by not appropriately responding or considering nonpublic school placement for Student at the December 17, 2024 and March 5, 2025 IEP team meetings.

Student's argument Ojai did not cogently respond to Student's request for a nonpublic school placement was not supported by evidence and unpersuasive. The December 17, 2024 IEP team discussed the continuum of placement options for Student

including a residential facility and nonpublic school, independent study, a full-day online school, and home hospital instruction. Ojai answered Student's attorney's questions regarding online one-on-one programs that were not independent study, a dual enrollment at Nordhoff and an independent study program. Parent shared Student responded well to virtual learning, but that Student showed signs of anxiety after receiving home hospital instruction. Nelson shared Student was making progress in accessing her education on December 17, 2024. Nelson scheduled and provided home hospital instruction hours to Student based on Student's anxiety levels and ability to tolerate instruction. On Mosher's and Silva's recommendations, and the reports of Parent and Student's attorney that Student could not obtain academic instruction in a school setting, Ojai offered academic instruction at home, through the end of the 2024-2025 school year.

Mosher and Seroussi shared at the March 5, 2025 IEP team meeting, that reintegration to in-person academic instruction was not likely during the 2024-2025 school year. Nelson reported Student was doing well in all classes. Parent asked about placement options for the 2025-2026 school year, and Ojai responded and explained slow and gradual integration to Nordhoff's more demanding independent study program or additional hours to academic instruction at home were available depending on Student's mental health progress. When Student's attorney asked about a residential placement, Ojai responded that residential placement was the most restrictive and was not needed academically because Student was making good educational progress with instruction in the less restrictive home environment. The March 5, 2025 IEP team considered Student's attorney's request for residential placement and responded that a change of the home placement to a more restrictive one was not supported by information shared by IEP team members.

As discussed under Issues 2b, 2c and 4b, after consideration and discussion, Ojai's IEP team members explained at the December 17, 2024 and March 5, 2025 IEP team meetings why nonpublic school placement was not a FAPE for Student. At both meetings, IEP team members discussed Student's anxiety, ability to access her education in the home setting, and the continuum of placement options including nonpublic school. Ojai also explained a nonpublic school placement would be too restrictive and inappropriate when Student's attorney requested a nonpublic school placement for Student.

Parent participated at the December 17, 2024 and March 5, 2025 IEP team meetings with Student's attorney asking questions and expressing disagreements. (See, *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d at 1036 [parent whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].) Parental participation did not mean Ojai had to agree to Student's requests for a nonpublic school placement and Ojai's rejection of that request for the reasons explained in Issue 2c did not mean that Ojai did not appropriately consider and respond to the request. Ojai did not impede parental participation by not responding cogently to requests for a nonpublic school placement. Ojai responded by disagreeing that a nonpublic school placement was the least restrictive environment for Student at the December 17, 2024 and March 5, 2025 IEP team meetings.

Student did not prove Ojai denied Student a FAPE during the 2024-2025 school year by significantly impeding parental participation by not providing cogent responses to Parent's questions regarding drivers' training or nonpublic school placement.

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ISSUES 6a AND 6b: DID OJAI DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO MAKE A CLEAR OFFER OF FAPE, SPECIFICALLY FOR SPECIALIZED ACADEMIC INSTRUCTION AND COUNSELING SERVICES?

Student contends that the November 6, 2024 IEP offer was unclear because it did not specify the amount of specialized academic instruction Student would receive in math or reading. Student also contends that the November 6, 2024 IEP offer was unclear because it did not include frequency and duration of the counseling services.

Ojai contends the November 6, 2024 IEP offer was clear regarding both specialized academic instruction and counseling services.

The procedural requirement of a formal written IEP offer creates a clear record and eliminates troublesome factual disputes years later about what placement and services were offered. (*Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 (*Union*)). A formal written offer is therefore more than a mere technicality, and this requirement should be rigorously enforced. (*Id.*) A formal, specific offer from a school district first alerts the parents of the need to consider seriously whether the proposed placement is appropriate under the IDEA, and secondly helps parents determine whether to reject or accept the placement with supplemental services. (See *Union, supra*, 15 F.3d at p. 1526.)

Although *Union* involved a district's failure to produce any formal written offer, numerous judicial decisions have invalidated IEPs that, although an offer was made, were insufficiently clear and specific to permit parents to make an intelligent decision

whether to agree, disagree, or seek relief through a due process hearing. (See, e.g., *Bend-Lepine School District v. K.H.* (D. Ore., June 2, 2005, No. 04-1468-AA) 2005 WL 1587241, p. 10; *Glendale Unified School District v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1107-1108 (*Glendale*); *E.M. v. Poway Unified School District* (S.D.Cal., Jan. 15, 2020, Case No.: 19cv689 MJ MSB) 2020 WL 229991, *13; see also *Marcus I. v. Department of Education* (D.Hawaii, May 9, 2011, No. 10-00381) 2011 WL 1833207, pp. 7-8.) *Union* requires “a clear, coherent offer which [parent] reasonably could evaluate and decide whether to accept or appeal.” (*Glendale, supra*, 122 F.Supp. 2d at p. 1108.)

The IEP must describe the services offered and their anticipated frequency, location and duration of services. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).) The IEP must also contain a statement of supplementary aids and program modifications or supports that will be provided, along with an explanation of the extent to which the pupil will not participate with nondisabled pupils in the regular class. (*Id.*) However, Parents were not denied opportunity to participate in developing an IEP where, though district failed to list the amount of service offered, everyone in the IEP team, including parents knew of how and the amount of IEP services were to be delivered. (*J.L. v. Mercer Island School District* (9th Cir. 2010) 592 F.3d 938, 953; see also *Los Angeles Unified School District v. A.O.* (9th Cir. 2024) 92 F.4th 1159, 1170 [The administrative law judge found the offer was unclear when neither the parents nor the district staff charged with implementing understood how the services were to be delivered.])

The November 6, 2024 IEP met the procedural requirement of clearly describing both the specialized academic instruction and counseling services offered and each’s anticipated frequency, location and duration. The November 6, 2024 IEP offered 30 minutes monthly of specialized academic instruction through academic consultation and

collaboration until November 6, 2025. Student's argument the IEP needed to specify the amount of specialized academic instruction consultation in each of Student's math and reading class was unsupported and unpersuasive. Ojai did not offer Student direct specialized academic instruction in math or reading. Ojai offered, and properly specified, the offer was for specialized academic instruction on a consultation and collaboration model.

The IEP team discussed with Parent home hospital instruction would continue to be administered by Lepine and Nelson, the teachers she had been successful working with before she became eligible. The IEP further discussed, and Monson testified the case manager would collaborate with the home hospital instruction teachers to understand Student's needs, goals and accommodations that Student required to access her education. Parent's testimony at hearing showed she understood the IEP services Ojai offered Student, including the specialized academic instruction collaboration and counseling. Student did not show the offer of consultation and collaboration specialized academic instruction was unclear.

The November 6, 2024 IEP also specified Student would receive two hours of monthly individual counseling and one-hour of monthly school-based group counseling on the school campus. The IEP team notes stated if Student was unable to access individual in-person counseling, Ojai would make the services available by telehealth. At hearing, Monson testified that the group counseling would be once a month as stated on the IEP document and depended on Student's ability to tolerate services based on fluctuating anxieties. Monson's testimony was also corroborated by the November 6,

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2024 IEP team meeting notes stating collaboration between school staff and the family was required for gradual in-person school exposure, anxiety management and peer access in a controlled therapeutic environment.

The evidence at hearing showed Parent understood the individual and group counseling services offered and that Parent's input and agreement was required to determine when, and if, Student participated in them because Parent controlled the scheduling of Student's services. Parent accepted individual counseling for Student which started on January 22, 2025. However, Parent changed her mind and informed the IEP team that Student was not ready to participate in group counseling and never scheduled any group counseling for Student throughout the 2024-2025 school year. Parent's decision to decline scheduling group counseling and scheduled individual counseling with Seroussi showed she understood each component of the counseling services Ojai offered at the November 6, 2024 IEP. Student did not show the offers of individual and group counseling were unclear.

The November 6, 2024 IEP offer of specialized academic instruction and counseling services were clear, coherent, and reasonably informed Parent the anticipated frequency, location, and duration of the services offered to Student. Parent could evaluate and decide, and did so, when looking at the specialized academic instruction and counseling services offered in the November 6, 2024 IEP, whether to accept or reject each of the services offered.

Student did not prove that Ojai failed to make a clear written offer of specialized academic instruction and counseling services at the November 6, 2024 IEP team meeting. Student also did not prove that lack of clarity in the November 6, 2024 IEP

offer significantly impeded meaningful parental participation, deprived Student educational benefits, or a FAPE. As discussed above, Parent and Student's attorney attended, discussed, and participated at the November 6, 2024 IEP team meeting. Parent reviewed, signed, and provided conditional consent to the November 6, 2024 IEP document. Parent allowed Student to participate in individual counseling with Seroussi and declined in-person group counseling.

Student did not prove Ojai denied Student a FAPE during the 2024-2025 school year by failing to make a clear offer of specialized academic instruction or counseling services.

ISSUE 7: DID OJAI DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY OFFERING VAGUE IEP GOALS THAT LACKED CLEAR BASELINES IN SOCIAL EMOTIONAL FUNCTIONING?

Student contends the two social emotional behavior goals offered in the November 6, 2024 IEP were inappropriate because they did not include baselines to reflect Student's social emotional functioning. Ojai contends its two social emotional behavior goals were appropriately developed with accurate baselines.

In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel, and which sets forth the child's needs, academic and functional goals related to those needs, and 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 non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

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; *Letter to Butler* (U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS 1988) 213 IDELR 118.) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

A failure to offer an appropriate goal is a procedural violation of the IDEA. (*Park, supra*, 464 F.3d at p. 1031). The IEP must describe how the student's progress toward meeting the annual goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III); see also 34 C.F.R. § 300.320(a)(3).) However, there is no specific form of measurement required by statute or caselaw. (*Capistrano Unified School District V. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1134, cert. denied sub nom. *S.B. v. Capistrano Unified School District* (2022) 143 S.Ct. 98; (*Capistrano*).) Goal measurement can be based on the teacher's subjective observations. (*Ibid.*, citing *R.P. ex rel. C.P. v. Prescott Unified School District* (9th Cir. 2011) 631 F.3d 1117, 1122.) Nor does the IDEA require a district to adopt the specific form of data collection preferred by the parent. (*Id.* at p. 1135.) The IDEA requires goals to target a student's needs but does not require an IEP to contain every goal from which a student might benefit. (*Capistrano, supra*, 21 F.4th at p. 1133.)

Student did not present any persuasive evidence to support the two social-emotional behavior goals in the November 6, 2024 IEP were inappropriate because of inaccurate baselines. Student argued in the closing brief that Ojai needed to include input from Nelson or Lepine to obtain accurate baselines for the goals and needed to specify the origin of Student's anxiety as trauma suffered at school in the baselines. Other than Student's attorney argument, there was no testimony at hearing that the baselines in the two goals inaccurately reflected Student's social emotional functioning level or would not allow measurement of progress.

Goal one provided that by November 6, 2025, when feeling anxious, Student would identify triggers to her anxiety strategies to reduce anxiety with prompts or assistance from school staff three out of five opportunities as measured by observation record. The goal specified anxiety reducing strategies included assignment postponement, asking for help and taking breaks. The baseline for goal one was that Student could not identify or incorporate anxiety reducing strategies, such as assignment postponement, asking for help and taking breaks. Goal one addressed Student's difficulty accessing school and the curriculum because of her anxiety.

Goal two provided that by November 6, 2025, on the school campus, Student would participate in a school-based group focusing on resilience and anxiety management, attending weekly sessions and applying learned techniques daily for three out of five opportunities, as measured by observation record and self-report. Student's baseline for goal two was that Student did not yet participate in any school-based counseling groups. Goal two was developed because Student struggled to engage in social interactions with peers on school campus.

Ojai rebutted Student's arguments with testimony at hearing. Mosher, Silva, Seroussi, Lepine, Nelson, Parent and Burke confirmed at hearing Student had the same baselines and social emotional needs identified in the two goals. School psychologist Madison Boucher and Burke collaborated to develop Student's social emotional behavior goals based on their understanding of Student's needs and recommendations from Olvera's September 26, 2024 report, and proposed those goals at the November 6, 2024 IEP team meeting. Burke observed Student's anxieties impacting her ability to attend school at the beginning of the 2024-2025 school year when she, Monson, and a school psychologist spoke with Student in the car parked on the Nordhoff parking lot.

The two social emotional behavior baselines were reflective of Student's social emotional function as Olvera presented in his report and confirmed through discussions by IEP team members that included Parent, Lepine and Monson at the November 6, 2024 IEP team meeting. Goal one measured Student's progress and ability to participate in anxiety reduction and management anxieties by asking for help and to take breaks. Goal two measured Student's progress and ability to manage and reduce anxiety through peer interaction at in-person group counseling. Therefore, the baselines on the two goals were useful tools for measuring Student's progress on each goal.

Student did not show Ojai denied Student a FAPE during the 2024-2025 school year by offering vague IEP goals that lacked clear baselines in social emotional functioning.

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ISSUE 8: MAY OJAI ASSESS STUDENT PURSUANT TO THE MAY 6, 2025 ASSESSMENT PLAN IN ALL AREAS SET FORTH IN THE PLAN, WITHOUT PARENT'S CONSENT OR CONDITIONS?

Ojai contends it last assessed Student two years ago and required updated assessments. Ojai also contends Student's educational needs changed since 2023 and since Olvera last assessed Student in 2024. Ojai further contends a comprehensive reassessment in all areas specified in the May 6, 2025 assessment plan was necessary to determine if Student required a more restrictive placement and reconcile Student's disputes with Ojai's offers of FAPE

Student contends she did not require all the assessments specified in the May 6, 2025 assessment plan because Ojai had information from Olvera's 2024 independent educational assessment. Student also contends Ojai assessed Student's vocational needs during the 2024-2025 school year, and was not entitled to reassess Student again within one year in that area without parental consent. Student contends Ojai should only be allowed to assess Student in the two areas of speech and language and educationally related mental health, to which Parent consented.

A reassessment must be conducted more often than once every three years if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reassessment, or if the student's parents or teacher requests a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i) & (ii); 34 C.F.R. § 300.303(a)(1) & (2); Ed. Code, § 56381, subd. (a)(1); *M.S. v. Lake Elsinore Unified School District*, *supra*, 678 Fed. Appx. at pp. 543, 544.)

Reassessment generally requires parental consent. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(i); Ed. Code, § 56381, subd. (f)(1).) To start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the student and parents. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, § 56321, subds. (a) & (b).) The notice consists of the proposed assessment plan and a copy of parental rights and procedural safeguards under the IDEA and companion state law. (*Ibid.*) The proposed assessment plan is required to contain certain information, including but not limited to, an explanation of the types of assessments to be conducted. (Ed. Code, § 56321, subd. (b).) The assessment may begin immediately upon receipt of the parent's consent but must generally be completed within 60 days. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f), 56302.1, subd. (a), 56321, subd. (c)(4).)

The assessment plan must be in a language easily understood by the general public. It must be provided in the native language of the parent or other mode of communication used by the parent. It must also explain the types of assessments the school district proposes to conduct and state that an IEP will not result from the assessment without the consent of the parent. (Ed. Code, § 56321, subds. (b)(1)-(4).) The school district must give the parent 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

Informed parental consent need not be obtained for the reassessment of an individual with exceptional needs if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent and the parent of the child has failed to respond. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) Consent

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means the parent has been fully informed, in the parent's native language, of all information relevant to the activity for which consent is sought, the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. (34 C.F.R. § 300.9(a), (b).)

Prior written notice is required to be given by the public agency to parents of a child with exceptional needs, upon initial referral for assessment, and a reasonable time before the public agency initiates or changes, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or provisions of FAPE. (Ed. Code, § 56500.4, subd. (a).) The notice is required to include a description of the action proposed, and an explanation why the agency proposes the action. (Ed. Code, § 56500.4, subd. (b)(1), (2).) It must also contain a description of each assessment procedure, assessment, record, or report used as a basis for the proposed action. (Ed. Code, § 56500.4, subd. (b)(3).)

Further, a prior written notice must include a statement that the parents of the individual with exceptional needs have protection under the procedural safeguards, the means by which a copy of the description of the safeguards can be obtained, and sources for parents to contact to obtain assistance. (Ed. Code, § 56500.4, subd. (b)(4), (5).) The notice must also include a description of any other options that the IEP team considered and the reasons why those options were rejected, and other factors relevant to the proposal or refusal of the agency. (Ed. Code, § 56500.4, subd. (b)(6).)

If a parent does not consent to a reassessment plan, the school district may, but is not required to, request a due process hearing to obtain permission to conduct the reassessment without parental consent by establishing that the assessment is necessary

and that the school district is lawfully entitled to reassess the student. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3), 56506, subd. (e).)

CIRCUMSTANCES WARRANTED REASSESSMENT OF STUDENT IN ALL AREAS SPECIFIED IN THE MAY 6, 2025 PROPOSED ASSESSMENT PLAN

Ojai proved Student required reassessment in all areas of need. On or around May 8, 2025, Ojai sent the May 6, 2025 proposed assessment plan to Parent, proposing to assess Student in:

- Pre-academic/academic achievement by a special education teacher to determine Student's current reading, writing, and math skills.
- Social/emotional behavior by a psychologist and intensive school-based therapist to evaluate Student's behavior, social and emotional function. Instruments may include measures of
 - attention,
 - executive functioning,
 - resiliency,
 - relationships and
 - mood.
- Self-help/adaptive skills by a psychologist to evaluate how Student functions in daily activities for the educational setting.

- Motor skills development by an occupational therapist and a psychologist to evaluate Student's small and large motor function and psycho-motor skills to access and perform in the educational environment.
- Language/speech/communication development by a speech and language pathologist to determine Student's ability to understand, relate and use language and speech clearly and appropriately.
- Intellectual development by a psychologist to determine how well Student remembers what she has seen and heard and how well Student uses information to solve problems, and to assist in predicting her learning rate. Verbal and performance instruments may be used as appropriate.
- Health by a school nurse and or school psychologist to evaluate development patterns and current health status relating to school function.
- Vocational/Prevocational by a special education teacher to determine Student's interest and aptitudes relating to future job and/or career.

Each of the assessors were professionals qualified to assess in the proposed area of assessment. A special education teacher was qualified to assess Student's pre-academic or academic achievement, vocational and prevocational interests and aptitudes. A psychologist and an intensive school-based therapist were qualified to assess Student's social emotional behavior. A psychologist was qualified to assess Student's intellectual development, self-help and adaptive skills in the educational setting. An occupational therapist and a psychologist were qualified to assess Student's

motor skills development and performance in the educational environment. A speech and language pathologist was qualified to assess Student's language, speech and communication development. A school nurse and or a psychologist was qualified to assess Student's health relating to school function.

School psychologist Madison Boucher developed the May 6, 2025 assessment plan but did not testify at hearing. As Ojai's special education director, Monson was involved in the settlement of Student's case with Ojai in 2024. Monson held general education and special education teaching credentials. Monson was knowledgeable about FAPE. Monson attended all of Student's IEP team meetings during the 2024-2025 school year, and was knowledgeable and familiar with Student's background, educational profile, IEPs, and needs. Therefore, Monson was qualified to opine on the assessments Student required.

At hearing, Monson opined Student required updated assessments in all areas of need specified in the May 6, 2025 proposed assessment plan because Ojai had not assessed Student in almost two years. When Ojai first assessed Student around October 2023, it did not find Student eligible for special education. In the intervening 17 months, from October 2023 to May 2025, Student had been independently assessed, found eligible for special education, and was being seen by multiple therapists for severe anxiety. Plans for gradual school reentry and in-person peer exposure developed by Student's IEP teams on November 6, 2024, December 17, 2024, January 27, 2025, and March 5, 2025, with input from Parent and Student's mental health providers had been unsuccessful. Ojai determined that it needed comprehensive information regarding all areas of Student's academic achievement and functional performance to address her anxiety and successfully integrate her into the in-person school environment. Ojai

needed to reassess all areas stated in the May 6, 2025 assessment plan, to observe, analyze, and review Student's educational needs from an educator's perspective, rather than rely exclusively on information provided by Parent and with Parent restricting the information the outside service providers could share with Ojai.

Monson testified credibly and persuasively that throughout the 2024-2025 school year, Parent controlled information regarding Student and left information gaps between Ojai and Student's outside mental health providers. For example, Parent's January 15, 2025 release of information for Mosher only permitted Mosher to share information about Student's diagnosis and treatment progress with Ojai. Further, Parent determined if and when to schedule Student's instruction and counseling services based on Parent's determination of Student's ability to access services. Ojai was entitled to conduct a comprehensive assessment of Student in all areas of suspected disability to offer her a FAPE because her needs had changed significantly since Ojai last assessed her in 2023.

Monson opined Ojai needed the assessments to determine all of Student's needs to offer an appropriate educational program and reconcile the differences between Ojai's offers of FAPE and Student's representatives' requests for placement and special education related services. For example, Ojai needed information to evaluate Student's repeated requests for a full day of educational services and for a nonpublic school and more restrictive placements than that Ojai representatives determined to be a FAPE in the least restrictive environment for Student.

Student's arguments that Ojai had all the information from the October 2023 assessment and from Olvera's 2024 independent educational assessment was unpersuasive. Student did not offer any expert testimony to rebut Monson's

testimony that Ojai needed updated assessments to offer Student a FAPE and to resolve Student's disputes regarding Ojai's offer of special education services and placement. Student argued in the closing brief that her educational needs remained unchanged but did not provide any testimony, expert or otherwise, at hearing from a witness with knowledge of FAPE to support her arguments.

The evidence showed Student's needs indeed changed. For example, Silva testified at hearing she observed depression in Student in fall 2023 when she started working with Student. However, Silva opined that by spring 2025, Student's depression was in remission. Likewise, at the November 6, 2024 IEP team meeting, Olvera suggested that Student was capable of attending school for a partial day and recommended a gradual in-person school reintegration. However, throughout the 2024-2025 school year, according to Parent, Student was unable to attend in-person group counseling for even one hour a month. These facts warranted reassessment by Ojai to examine the reason for the discrepancies between Olvera's recommendations, Silva's observations, and Student's in-person tolerance by the end of the 2024-2025 school year.

Student's argument that because Ojai assessed in 2023 it was not permitted to assess her again in less than three years was contrary to the IDEA. The IDEA prohibits reassessments more often than once a year without parental consent. However, the IDEA mandates that reassessments must be conducted more often than once every three years if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of a student warrant a reassessment. (See 20 U.S.C. § 1414(a)(2)(A)(i) & (ii) and (B); 34 C.F.R. § 300.303(a)(1) & (2) and (b); Ed. Code, § 56381, subds. (a)(1) and (a)(2).).

Here, Ojai sought reassessment in May 2025, over 17 months and the passage of almost two school years since its last assessment. Further, Ojai determined Student's educational and related services warranted a reassessment in all areas set forth in the May 6, 2025 assessment plan and supported its determination with Monson's testimony and persuasive evidence at hearing.

Student argued in the closing brief Student did not have any adaptive skills, self-help, occupational therapy, speech and language, or intellectual development needs and did not require assessments in those areas. Arguments were not evidence. Other than Student's attorney's arguments, Student did not offer expert testimony or any persuasive evidence for support.

Parent stated Ojai could not reassess Student in accordance with the May 6, 2025 assessment plan because Student was unable to go to school for the assessments. While Parent was a member of the IEP team and provided valuable insights into her view of Student's needs, Parent was not an educational or mental health specialist and had no expertise regarding Student's assessment needs. Parents who seek special education services must permit reassessment when the school district determined it was necessary. (*Gregory K., supra*, 811 F.2d at p. 1315.)

Additionally, as long as the statutory requirements for assessments are satisfied, parents may not put conditions on assessments, as selection of particular testing or evaluation instruments is left to the discretion of State and local educational authorities. (See *Letter to Anonymous* (U.S. Department of Education, Office of Special Education Programs (OSEP Sep. 17, 1993) 20 IDELR 542.) Ojai required updated assessments to

make informed decisions regarding Student's educational needs and the assessors qualified to conduct each of the assessments would decide the parameters of the assessments.

Equally unpersuasive were Student's arguments that Nelson already assessed Student's vocational skills and concluded Ojai was not allowed to reassess Student in the vocational/prevocational area. In fall 2024, Nelson asked Student to complete a career interest inventory and a skills questionnaire. Nelson testified the skills questionnaire was an informal survey of Student's interests for purposes having discussions with Student about career and college awareness. Student illogically argued that because the skills questionnaire was used by multiple educational agencies it must be a formal assessment. However, Nelson explained she did not conduct a formal vocational or prevocational assessment, and used the questionnaire as a starting point for conversations with Student about Student's interests. There was also no evidence that Nelson was tasked to, or conducted, a formal vocational assessment of Student.

Student also argued in the closing brief that the IDEA made no distinction between formal and informal assessments. However, the Ninth Circuit Court of Appeals specifically found that informal observations and subjective opinions were not appropriate substitutes for standardized testing and formal assessments. (See *Timothy O.*, *supra*, 822 F.3d at p. 1121.) Student did not offer any evidence to rebut Nelson's testimony that she did not conduct a formal vocational assessment of Student.

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Ojai proved that it had not assessed Student in approximately two years, and the IEP team required updated information to appropriately design an IEP for Student and assessment was warranted.

OJAI GAVE PROPER NOTICE OF THE MAY 6, 2025 PROPOSED ASSESSMENT PLAN TO PARENT AND THE PROPOSED ASSESSMENT PLAN COMPLIED WITH PROCEDURAL REQUIREMENTS

Ojai provided proper notice of the May 6, 2025 proposed assessment plan to Parent. This consisted of the May 6, 2025 proposed assessment plan and a copy of parent rights and procedural safeguards.

All notice documents were provided to Parent in English, Parent's native language. The May 6, 2025 proposed assessment plan was in a language easily understood by the general public. It explained the types of assessments Ojai proposed to conduct and identified the specialist evaluator for each assessment. The language on the assessment plan complied with the requirement that an IEP would not result from the assessment without Parent's consent. It also stated that Parent would be invited to attend the IEP team meeting to discuss the results and that no special education services would be provided to Student without Parent's written consent. Ojai gave Parent at least 15 days to review, sign and return the proposed assessment plan.

Ojai proved it gave appropriate notice to Parent of the May 6, 2025 proposed assessment plan as required by law. It also proved the proposed assessment plan complied with all legal requirements.

OJAI TOOK REASONABLE STEPS TO OBTAIN PARENT'S CONSENT

Ojai attempted to obtain Parent's consent to assess Student in the areas specified in the May 6, 2025 proposed assessment plan. The bottom of the May 6, 2025 assessment plan provided:

I understand the purpose of the proposed assessment plan and have received a copy of my Parent Rights. I authorize the use of a suitable interpreter or prerecorded tests in my child's primary language as appropriate. I further understand that no [IEP] will result from this assessment without my consent. The box(es) checked below indicated my decision(s).

One box option gave Ojai permission to assess and the other box option denied Ojai permission to assess Student.

On May 8, 2025, Ojai sent Parent a prior written notice explaining the need for comprehensive reassessment, with a copy of the May 6, 2025 proposed assessment plan, and a copy of the parent rights and procedural safeguards. On May 19, 2025, Student's attorney sent a letter to Ojai and represented Parent declined to consent to reassessment because Ojai's 2023 assessment and Olvera's 2024 assessment appropriately identified all of Student's educational needs.

On May 27, 2025, Ojai sent Parent another prior written notice explaining the need for a comprehensive reassessment, with a copy of the May 6, 2025 proposed assessment plan and a copy of the parent rights and procedural safeguards. Parent did not respond.

On July 15, 2025, Ojai sent Parent a third prior written notice explaining the need for comprehensive reassessment with a copy of the May 6, 2025 proposed assessment plan and a copy of the parent rights and procedural safeguards.

On July 16, 2025, Student's attorney wrote to Ojai that Parent consented to the speech and language and educationally related mental health assessments, but declined consent to all other areas in the May 6, 2025 assessment plan. The letter included a copy of the May 6, 2025 assessment plan with Parent's signature dated July 15, 2025. All the assessments on the May 6, 2025 assessment plan were blacked out except for social emotional behavior and language, speech and communication development assessments. Although Student's attorney represented Parent consented to the speech and language and educationally related mental health assessments, neither the yes, nor the no, box had been checked on the May 6, 2025 assessment plan.

All of Ojai's prior written notices and the proposed assessment plan described the proposed action, explained why Ojai proposed reevaluating Student and advised that Parents had protections under the procedural safeguards. The prior written notices and the parent rights and procedural safeguards included sources for parents to contact for assistance.

The prior written notices also summarized the importance of reassessing Student emphasizing the importance of having updated information to develop an IEP and offer her a FAPE. The May 8, 2025 prior written notice specifically stated reassessment was required to determine Student's current levels of functioning and to further develop an IEP. The May 27, 2025 prior written notice specifically stated reassessment was required to assess, analyze and understand the degree and entirety of Student's needs.

The July 15, 2025 prior written notice specifically stated reassessment was required to address Student's changed circumstances, update her present levels of performance and ensure Ojai developed an IEP for the 2025-2026 school year that offered a FAPE in the least restrictive environment. The July 15, 2025 prior written notice further informed Parent if Ojai did not receive consent for reassessment to the May 6, 2025 assessment plan, Ojai would obtain an order from OAH for the comprehensive reassessment of Student.

All the prior written notices explained the options the IEP team considered in lieu of reassessments to update Student's IEP, and why those options were rejected. The prior written notice also detailed the attempts taken by Ojai to obtain Parent's consent to the assessment plan and unconditional consents to the IEPs throughout the 2024-2025 school year, including details about the ongoing dispute regarding the placement and services Student required.

More than 15 days elapsed from May 8, 2025, when Ojai first sent Parent the May 6, 2025 proposed assessment plan along with the May 8, 2025 prior written notice, and July 18, 2025, the date Ojai filed its complaint with OAH. Ojai proved it took reasonable measures on numerous occasions to obtain Parent's consent to assess Student in all areas set forth in the May 6, 2025 proposed assessment plan but Parent continued to withhold consent. At hearing, Parent confirmed she had consented for Ojai to assess in speech and language and educationally related mental health services. Yet, in the closing brief, Student argued for the first time speech and language was not an area of need and Ojai was not entitled to assess in this area pursuant to the May 6, 2025 assessment plan. This contradicted Parent's testimony at hearing and Student's attorney's July 16, 2025 letter to Ojai. Despite Student's moving target on parental

consent to various assessments on the May 6, 2025 proposed assessment plan, Student failed to rebut Ojai's showing that it required comprehensive assessments to determine Student's educational needs.

Ojai proved it gave Parent proper notice of the May 6, 2025 proposed assessment plan and that the proposed assessment plan met all procedural requirements. Ojai also proved that all reassessments in the proposed assessment plan were warranted. Therefore, Ojai may assess Student in all areas set forth in the May 6, 2025 proposed assessment plan without parental consent or conditions. Ojai is not limited to only assess Student in the two areas Parent consented, speech and language and educationally related mental health services at hearing.

Ojai may assess Student in all areas set forth in the May 6, 2025 assessment plan without parental consent and without conditions.

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:

Ojai did not deny Student a FAPE during the 2024-2025 school year by failing to assess Student for speech and language.

Ojai prevailed on Issue 1a.

ISSUE 1b:

Ojai did not deny Student a FAPE during the 2024-2025 school year by failing to assess Student for educationally related mental health services.

Ojai prevailed on Issue 1b.

ISSUE 2a:

Ojai did not deny Student a FAPE during the 2024-2025 school year by failing to offer appropriate counseling services.

Ojai prevailed on Issue 2a.

ISSUE 2b:

Ojai did not deny Student a FAPE during the 2024-2025 school year by failing to offer appropriate home hospital instruction.

Ojai prevailed on Issue 2b.

ISSUE 2c:

Ojai did not deny Student a FAPE during the 2024-2025 school year by failing to offer appropriate placement.

Ojai prevailed on Issue 2c.

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ISSUE 3a:

Ojai did not deny Student a FAPE during the 2024-2025 school year by failing to materially implement counseling services.

Ojai prevailed on Issue 3a.

ISSUE 3b:

Ojai did not deny Student a FAPE during the 2024-2025 school year by failing to materially implement home hospital instruction.

Ojai prevailed on Issue 3b.

ISSUE 4a:

Ojai did not deny Student a FAPE during the 2024-2025 school year by predetermining counseling.

Ojai prevailed on Issue 4a.

ISSUE 4b:

Ojai did not deny Student a FAPE during the 2024-2025 school year by predetermining home hospital instruction.

Ojai prevailed on Issue 4b.

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ISSUE 5a:

Ojai did not deny Student a FAPE during the 2024-2025 school year by significantly impeding Parents' participation by failing to provide cogent responses to Parents' questions at IEP team meetings, specifically drivers' training at the November 6, 2024 IEP team meeting.

Ojai prevailed on Issue 5a.

ISSUE 5b:

Ojai did not deny Student a FAPE during the 2024-2025 school year by significantly impeding Parents' participation by failing to provide cogent responses to Parents' questions at IEP team meetings, specifically nonpublic school placement at the December 17, 2024 and March 5, 2025 IEP team meetings. The July 7, 2025 IEP team meeting did not occur during the 2024-2025 school year and was not addressed in this Decision.

Ojai prevailed on Issue 5b.

ISSUE 6a:

Ojai did not deny Student a FAPE during the 2024-2025 school year by failing to make a clear offer of FAPE, specifically for specialized academic instruction.

Ojai prevailed on Issue 6a.

ISSUE 6b:

Ojai did not deny Student a FAPE during the 2024-2025 school year by failing to make a clear offer of FAPE, specifically for counseling services.

Ojai prevailed on Issue 6b.

ISSUE 7:

Ojai did not deny Student a FAPE during the 2024-2025 school year by offering vague IEP goals that lacked clear baselines in social emotional functioning.

Ojai prevailed on Issue 7.

ISSUE 8:

Ojai may assess Student pursuant to the May 6, 2025 assessment plan in all areas set forth in the plan, without parental consent or parental conditions.

Ojai prevailed on Issue 8.

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REMEDIES

Ojai requests permission to assess Student in all areas set forth in the May 6, 2025 proposed assessment plan without Parent's consent or conditions.

Parent denied consent for Ojai to assess Student in all areas set forth in the May 6, 2025 proposed assessment plan. At hearing, Parent confirmed she consented to the speech and language and educationally related mental health services assessments. However, Ojai is not limited to only assess Student in speech and language and educationally related mental health services to which Parent consented.

Ojai may conduct a reassessment of Student without parental consent or conditions pursuant to the May 6, 2025 proposed assessment plan in:

- Pre-academic/academic achievement;
- Social/emotional behavior;
- Self-help/adaptive skills;
- Motor skills development;
- Language/speech/communication development;
- Intellectual development;
- Health; and
- Vocational/Prevocational.

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At hearing, Parent testified that Olvera was able to assess Student at a location other than the home and that Olvera permitted Parent to sit outside a room while he assessed Student. Parent shall make Student available for reassessment pursuant to the May 6, 2025 proposed assessment plan. Parent shall not dictate the terms or the conditions of the assessments including location of the assessments or whether the assessment would be conducted at home, at school, or online. However, Parent may request that the assessments be conducted at home, at school, online, or for the ability to sit outside a room while Student is assessed. Whether parental requests are granted shall be subject to each assessor's professional discretion and judgment. The assessor need not accommodate parental requests to the extent granting the request sacrifices the integrity of the assessment.

ORDER

1. All Student's requests for relief are denied.
2. Ojai may conduct a reassessment of Student without parental consent or conditions pursuant to the May 6, 2025 proposed assessment plan in:
 - Pre-academic/academic achievement;
 - Social/emotional behavior;
 - Self-help/adaptive skills;
 - Motor skills development;
 - Language/speech/communication development;
 - Intellectual development;

- Health; and
 - Vocational/Prevocational.
3. Within 10 school days of the date of this Decision, Ojai shall notify Parent when reassessment will start.
 4. Parent shall make Student available for reassessment pursuant to the May 6, 2025 proposed assessment plan and cooperate with reassessment. Making Student available for reassessment shall include responding to and scheduling assessment sessions as requested by the assessors and presenting Student at the site of the scheduled assessment. Parent's cooperation with reassessment shall include timely completing and returning any documents requested by the assessors as a part of the reassessment.
 5. Parent shall not dictate conditions of the assessments including the location of the assessments or whether the assessments will be conducted at home, at school, or online. However, Parent may request that the assessments be conducted at home, at school, online, or for the ability to sit outside the room while Student is assessed. Whether parental requests are granted shall be subject to each assessor's professional discretion and judgment. The assessor need not accommodate parental requests to the extent granting the request sacrifices the integrity of the assessment.

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RIGHT TO APPEAL THIS DECISION

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

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings