

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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

CASE NO. 2024101050

CASE NO. 2024070165

DECISION

MAY 22, 2025

On July 5, 2024, Saddleback Valley Unified School District, called Saddleback, filed a Request for Due Process Hearing naming Student, with the Office of Administrative hearings, called OAH. OAH designated the case number 2024070165.

On October 29, 2024, Student filed with OAH a Request for Due Process Hearing in OAH case number 2024101050, naming Saddleback. On October 29, 2024, Student filed a Motion to Consolidate Student's case and Saddleback's case. On October 31,

2024, OAH granted consolidation and designated Student's case, OAH case number 2024101050, as the primary case to control the 45-day timeline for issuance of the decision in the consolidated cases.

On December 4, 2024, OAH continued the matter for good cause and set the hearing to commence on February 25, 26 and 27, 2025. On February 11, 2025, Student moved to amend the complaint in Student's case. On February 13, 2025, OAH granted Student's motion to amend. This had the effect of re-setting the hearing dates to commence on April 2, 2025.

On March 19, 2025, Saddleback moved to amend its complaint. OAH granted the motion on March 24, 2025. OAH's order deemed Saddleback's amended complaint filed. However, Saddleback's amendment did not result in a new scheduling order, because Student's case remained the primary matter controlling all timelines. On April 1, 2025, Student withdrew and dismissed Student's complaint. This left only Saddleback's issues to be adjudicated.

Administrative Law Judge June R. Lehrman heard this matter via videoconference on April 2, 3 and 8, 2025. Alefia Mithaiwala represented Saddleback. Its Director of Special Education, Christine Arkadie, attended all hearing days on Saddleback's behalf. Timothy Adams represented Student. No one else attended the hearing on Student's behalf.

At the parties' request, OAH continued the matter to April 28, 2025 to allow the parties time to submit written closing briefs. The record closed, and the matter was submitted on April 28, 2025.

## ISSUES

1. Was Saddleback's April 26, 2024 multidisciplinary assessment in psychoeducation, speech and language, and occupational therapy appropriate?
2. Was Saddleback's April 26, 2024, and May 29, 2024 individualized education program offer, or IEP, as amended on February 10, 2025, reasonably calculated to provide Student a free appropriate public education, or FAPE, in the least restrictive environment, such that Saddleback may implement this IEP, notwithstanding lack of Parents' consent, if Parents continue to seek FAPE from the District?

## JURISDICTION

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

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected.

(20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Saddleback had the burden of proof on its issues, which were the only issues remaining to be adjudicated. 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 13 years old, placed in seventh grade at a nonpublic school, at the time of hearing. Student resided within Saddleback's geographic boundaries at all relevant times. Student had diagnoses of autism spectrum disorder and attention deficit hyperactivity disorder. He was first made eligible for special education and related services at the age of five, under the categories of autism and other health impairment. He previously enrolled at Saddleback schools through fourth grade. He then enrolled in the nonpublic school in the fifth and sixth grades, where he remained until the time of the hearing.

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## ISSUE 1: WAS SADDLEBACK'S APRIL 26, 2024 MULTIDISCIPLINARY ASSESSMENT IN PSYCHOEDUCATION, SPEECH AND LANGUAGE, AND OCCUPATIONAL THERAPY APPROPRIATE?

Saddleback contends its April 26, 2024 multidisciplinary assessment was appropriate, such that Student is not entitled to independent educational evaluations in the areas addressed therein at public expense. Student contends that the assessment did not accurately reflect Student's unique needs. Federal law uses the term "evaluation" instead of the term "assessment" used by California law, but the two terms have the same meaning and are used interchangeably in this Decision. (20 U.S.C. §1414; Ed. Code, § 56302.5.)

Pursuant to a settlement agreement dated on or around April 20, 2022, Saddleback agreed to fund tuition and other expenses for Student to attend the nonpublic school for the 2022-2023 and 2023-2024 regular and extended school years when Student was in fifth and sixth grade. Parents acknowledged that Student would undergo a re-evaluation to be completed during Spring 2024. Saddleback was to provide Parents with an assessment plan on or before February 16, 2024. Parents were to return written consent to the assessment plan within five school days. If they wished, they were also to request any additional areas they thought Saddleback should consider evaluating. The Parties agreed to mutually schedule and convene Student's next IEP team meeting to occur no later than May 3, 2024, for the purpose of reviewing the assessments and developing Student's post-settlement IEP for the 2024-2025 seventh-grade school year. Seventh grade was the first year of middle school at Saddleback schools.

On or around February 13, 2024, in accordance with the settlement agreement, Saddleback provided Parents with an assessment plan that proposed to assess Student's

- academic achievement,
- health,
- intellectual development,
- language and speech communication development,
- motor development,
- social emotional and behavioral needs, and
- adaptive behavior.

These areas were suggested by Saddleback's school psychologist Allison McCaughtry from her review of Student's records and Mother's concerns. The settlement agreement allowed Parents to request that Student be assessed in additional areas, but they did not make any such request. Parents did not consent within the stipulated five days, but, after several communications from Saddleback, they did ultimately sign consent to the assessment plan on or around March 1, 2024.

Saddleback then assessed Student in the agreed-upon areas and issued an assessment report on or around April 26, 2024. At the time of the assessments, Student attended sixth grade at the nonpublic school, through parental placement. All children at the nonpublic school had IEPs.

The IEP team discussed the contents of the assessment report at IEP team meetings held on April 26, 2024, and May 29, 2024. On or around June 6, 2024, Parents expressed disagreement with Saddleback's multidisciplinary assessment and requested independent educational evaluations in the areas of psychoeducation, speech and language, and occupational therapy.

By letter dated July 3, 2024, Saddleback declined to publicly fund the independent educational evaluations, and notified Parents that Saddleback was, therefore, legally required to file a request for due process to defend the appropriateness of its assessments. Saddleback filed its request for due process in this matter two days later on July 5, 2024.

The procedural safeguards of the IDEA provide that under certain conditions a parent is entitled to obtain an independent educational evaluation of a child at public expense. (20 U.S.C. § 1415(b)(1).) An independent evaluation is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) A parent may request an independent assessment at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an independent assessment at public expense, the school district must, without unnecessary delay, either initiate a due process hearing to show that its assessment is appropriate or provide the independent assessment at public expense. (34 C.F.R. § 300.502(b)(2).) The school district may inquire as to the reason why the parent disagrees with the district's assessment, but the district may not require the parent to provide an explanation and may not unreasonably delay its "fund or file" obligation to either provide the independent assessment at public expense or file its due process complaint to demonstrate the appropriateness of its assessment. (34 C.F.R. § 300.502(b)(4).)

A local educational agency must ensure that reevaluations of a child's needs are conducted if the district determines that the educational or related services needs of a child with special needs, including improved academic achievement and functional performance, warrant a reevaluation; or if the parent or teacher request a reevaluation. (20 U.S.C. § 1414 (a)(2)(A); 34 C.F.R. § 300.303.) Reevaluations must be conducted in

accordance with the procedural requirements of the IDEA. (20 U.S.C. § 1414 (a)(2)(A); 34 C.F.R. § 300.303.) Reevaluations must be conducted at least every three years and may not be performed more frequently than once a year unless both the district and the parents agree. (20 U.S.C. § 1414 (a)(2)(B).)

A local educational agency must assess a special education student in all areas of suspected disability, including, if appropriate:

- health and development,
- vision,
- hearing,
- motor abilities,
- language function,
- general intelligence,
- academic performance,
- communicative status,
- self-help,
- orientation and mobility skills,
- career and vocational abilities and interests, and
- social and emotional status.

(20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).)

A local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. (20 U.S.C. § 1414(b)(2)(A).) No single measure or assessment shall be the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) Assessments must be sufficiently



comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304 (c)(6).) The local educational agency must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) Assessments must be conducted by trained and knowledgeable individuals who are both "knowledgeable of [the student's] disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (g), 56322.) The assessments used must be:

- selected and administered so as not to be discriminatory on a racial, cultural, or sexual basis;
- provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;
- used for purposes for which the assessments are valid and reliable; and
- administered in accordance with any instructions provided by the producer of such assessments.

(20 U.S.C. § 1414(b)(3)(A); Ed. Code, § 56320, subds. (a) & (b).)

Any psychological assessment, including individually administered tests of intelligence and emotional functioning, must be conducted by a credentialed school psychologist. (Ed. Code, §§ 56324, subd. (a), 56320, subd. (b)(3).) The assessment must result in a written report that includes recommendations. (Ed. Code, § 56327). The report must be provided to the parent. (Ed. Code, § 56329, subd. (a)(3).) After assessments and other evaluation measures have produced the evaluation data needed to determine eligibility, a group of qualified professionals and the parents, generally constituting an IEP team, uses the data to determine the student's eligibility for special education. (Ed. Code, § 56330; 34 C.F.R. § 300.306.)

As long as statutory requirements for assessments are satisfied, the United States Department of Education, Office of Special Education Programs, called OSEP, advised that selection of particular testing or evaluation instruments is left to the discretion of State and local educational authorities. (*Letter to Anonymous* (OSEP Sept. 17, 1993), 120 IDELR 542; *Haowen Z. v. Poway Unified School Dist.* (S.D.Cal., August 14, 2013, No. 13-CV-1589-JM BLM) 2013 WL 4401673.)

For each of the assessments at issue here, as detailed below, Saddleback's assessments were appropriate. Saddleback assessed Student in all areas of suspected disability, used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, and did not rely on any single measure or assessment. Saddleback's assessments were sufficiently comprehensive to identify all of Student's special education and related service needs, whether or not commonly linked to a disability category. The testing instruments were technically sound and demonstrated the effect that cognitive, behavioral, physical, and developmental factors had on Student's functioning. The assessments were selected and administered so as

not to be discriminatory. The assessments were used for purposes for which they were intended and the assessments were valid and reliable. The assessment results were memorialized in a written report that included recommendations that was provided to Parents.

The assessments were administered in English, Student's native language. They were tailored to assess Student's specific areas of educational need, and selected and administered to ensure that the test results accurately reflected his aptitude. No single measure or assessment was used as the sole criterion for determining whether Student had exceptional needs.

The assessors were trained, knowledgeable, and qualified to administer and interpret the results of the tests they administered. Allison McCaughtry, Saddleback's school psychologist, conducted the psychoeducational evaluation. She held a graduate degree in school psychology and a pupil personnel services credential. Caitlin Robbins, Saddleback's licensed speech-language pathologist, conducted the speech and language assessment. Licensed and registered occupational therapist, Elaine Greene, conducted the occupational therapy assessment. Education Specialist Andrea Davidson completed the academic testing. All were properly licensed or credentialed and had conducted numerous assessments in their respective fields.

Each of the assessors testified at hearing. Their answers were straightforward and comprehensive, exhibiting their extensive background and expertise in the assessments they administered. They forthrightly acknowledged some limitations in the testing results. For example, Student's nonpublic school had strictly limited the assessors' observations and access to teachers. And, McCaughtry did not receive the testing responses she requested from nonpublic school teachers. When additional testing was

warranted due to such limitations, they undertook it. For example, McCaughtry administered an additional instrument to measure Student's self-reported levels of anxiety, one that did not require his teachers to complete rating scales. The results Saddleback obtained were all corroborated and substantiated by other assessment results, observations, report cards, and written teacher reports. Therefore, the assessments were appropriate such that Saddleback need not fund independent educational evaluations at public expense in the areas addressed below.

## PSYCHOEDUCATION

School psychologist McCaughtry investigated Student's intellectual development, social and emotional status, behavior, and adaptive behavior. She reviewed Student's records, conducted observations and interviews, and administered testing instruments.

## OBSERVATIONS AND INTERVIEWS

McCaughtry observed Student during testing sessions. She was impressed by his perseverance and ability to attend throughout the testing sessions without breaks or prompting. She observed him at his math class at his nonpublic school. She saw him participate and raise his hand. He appeared to be focused and attentive. She noted the high adult-to-student ratio at the nonpublic school. The setting appeared significant to her because, although she did not see Student accessing adult assistance, the structured environment had more adult assistance than would normally be available in a public school general education setting.

McCaughtry interviewed Student and Mother. Student appeared reserved when interviewed. Mother expressed concerns about his social etiquette and his hygiene. In

terms of hygiene, McCaughtry noted Student dressed sloppily and his hair was not always as clean as desired. However, this was not unusual when compared to the appearances of other boys Student's age.

The nonpublic school did not permit their teachers to be interviewed. Teachers were only permitted to submit written responses to a non-standardized "teacher input form." On the form, Student's math teacher shared that Student mastered the basic concepts of the four basic operations and could mentally calculate simple problems, such as "what is half of 172," without a calculator. He had a good understanding of coordinate planes, algebra, and geometry. His English teacher shared that he was "great at reading." He was working hard at processing his thoughts before starting to write. Over the prior school year, Student had made tremendous improvement on his pre-writing, writing, and editing skills.

The teachers also shared their concerns. Although Student had the capability to access grade-level curriculum, he often lost focus. He needed frequent attention checks of at least two-to-three times per class. He needed reminders to stay on task. He struggled with penmanship.

The teachers also shared that Student maintained good peer interactions with friends. He interacted with others in an age-appropriate manner. He followed directions from adults most of the time. He was polite and respectful. He needed prompts to say "thank you" or to initiate a greeting.

Teachers indicated he did not demonstrate abnormal sensory sensitivities. But, he picked at his hair, nose, and ears and then would eat whatever he picked from his skin.

## INTELLECTUAL DEVELOPMENT

McCaughtry assessed Student's intellectual functioning using the Wechsler Intelligence Scale for Children, Fifth Edition. This was a standardized, norm-referenced measure of intellectual ability that yielded an intelligence quotient composite score to represent a child's general intellectual ability. It also yielded composite scores that represent intellectual functioning in specific cognitive domains such as working memory and processing speed.

Student's overall intellectual functioning fell within the average range with a standard score of 103. This score was similar to his previous assessment results, which consistently found that his cognition was not an area of concern. His verbal comprehension and fluid reasoning were also within the average range. He demonstrated strength in visual spatial ability, which should support his performance in math and science.

His working memory and processing speed fell within the low average range. His relative weakness in working memory and processing speed were associated with attention deficits. These weaknesses might impact his ability to remember teacher directions or work quickly and efficiently on assignments or tests. McCaughtry considered this to be consistent with his attention deficit hyperactivity disorder. Overall, she found that Student's cognitive and processing abilities should allow him to access the general education curriculum and make meaningful progress. However, he might require accommodations to support his working memory, such as frequent repetition and access to memory aids such as multiplication tables and visual supports. Due to his

slower processing speed, he might also have difficulty completing tasks within the allotted time and would benefit from having extended time on tests and assignments. McCaughtry recommended accommodations to support him in these areas.

## ADAPTIVE, SOCIAL-EMOTIONAL AND BEHAVIORAL FUNCTIONING

McCaughtry received no responses from the nonpublic school teachers to any of the four social-emotional testing instruments she attempted to administer, specifically the:

- Conners, Fourth Edition;
- Autism Spectrum Rating Scale;
- Vineland Adaptive Behavior Scales, Third Edition; and the
- Behavior Assessment Scale for Children, Third Edition.

Moreover, Parents also did not respond to the Conners or the Autism Spectrum Rating Scales. Receiving no responses from either Parents or teachers, McCaughtry could not complete the protocols for these two instruments, even though she considered them to be the most relevant to Student's suspected disabilities. The Conners is used to assess symptoms of attention deficit hyperactivity disorder and related disorders. The Autism Spectrum Rating Scale is used to assess autism.

Parent did, however, respond to the other two instruments McCaughtry attempted, the Vineland Adaptive Behavior Scales, and the Behavior Assessment Scale for Children. The Vineland was a rating scale that measured adaptive behavior, or the things that people need to do to function in their everyday lives. As a norm-based instrument, the examinee's adaptive functioning was compared to that of others his age.

Parent's responses to the Vineland rated Student's overall adaptive behavior as moderately low with a standard score of 76. His communication rated with a standard score of 85, just below the "adequate" range that starts at 86. Parents reported weaknesses in his daily living skills with a standard score of 71 and socialization with a standard score of 78. These results indicated he presented with deficits in adaptive behavior in the home setting in the areas of daily living skills and socialization.

Although Student's nonpublic school teachers did not complete any teacher rating scales, they did provide written input on a non-standardized "teacher input form" that suggested Student had generally adequate school-related adaptive behavior. He could independently meet his basic needs. He could

- feed himself,
- use the restroom,
- wash his hands,
- manage his belongings, and
- navigate the school environment.

However, teachers noted concerns with his picking at his nose and skin. Based on this input and her own observations, McCaughtry opined that in the school setting, Student did not exhibit problematic adaptive or self-care needs. She expected him to continue to require a more restrictive placement than a typical general education classroom with a higher staff-to-student ratio.

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The Behavior Assessment Scale For Children was an assessment rating scale. Parents reported clinically significant concerns in the areas of hyperactivity, attention problems, and activities of daily living in the home setting. They reported additional “at-risk” concerns regarding Student’s

- aggression,
- conduct problems,
- atypicality,
- withdrawal,
- adaptability,
- social skills,
- leadership, and
- functional communication.

On the Behavior Assessment Scale for Children self-report, Student endorsed clinically significant levels of atypicality, attention problems, hyperactivity, and a reduced sense of control. He also recognized his mild levels of social stress and anxiety.

To further investigate Student’s self-reported anxiety, McCaughtry also administered the Revised Children’s Manifest Anxiety Scale, Second Edition, which required input only from Student and not Parents or teachers. This instrument measured self-reported symptoms of anxiety and yielded a ‘total anxiety’ score. Student’s self-report indicated that his worries, fears, and anxieties were within normal limits for his age.

Overall, McCaughtry opined that in the school setting, Student did not exhibit problematic behaviors. He presented with needs in attention and socialization. His difficulties with attention impacted his ability to sustain attention to classroom

instruction and complete classwork without frequent teacher prompting. McCaughtry felt he benefitted from the structured environment and small class size at the nonpublic school. His social differences impacted his ability to determine socially appropriate behavior, and to navigate more complex social situations. When assessing his social-emotional and behavioral functioning, McCaughtry felt it important to consider the nonpublic school's structured and specialized setting with a high staff-to-student ratio and embedded behavioral components. Thus, his current presentation suggested to her that, in a public school setting, he would likely require specific behavioral accommodations and supports, as well as specialized academic instruction to support his attention and socialization.

## ACADEMICS

Education Specialist Andrea Davidson completed Student's testing for academic achievement. She observed him during his testing session and in class, reviewed school records, and administered the Woodcock-Johnson Tests of Achievement, Fourth Edition.

## OBSERVATIONS

In his small class of 12 students, Davidson observed that Student quietly participated and appeared to be following the class instruction. He did not require a lot of adult support. He gave a correct answer. He completed the classroom assignment. He was generally compliant and on task. His nonpublic school report cards showed he received average to above average grades across all subjects.

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During the academic testing portion of the assessment, Student engaged in some notable behaviors throughout, including self-scratching. He put his feet up on the chair. Davidson had to repeat directions because Student failed to understand some of them. At one point, she had to stop the assessment because Student did not follow directions.

## TESTING INSTRUMENT

The Standard Battery of the Woodcock-Johnson contains 11 subtests measuring performance in reading, mathematics, and written language. Student performed overall within the low-to-average range. In reading, Student demonstrated average decoding and comprehension skills and low average reading fluency skills. Student could read with sufficient fluency to support comprehension, but struggled with making inferences and filling in gaps in the text. Davidson concluded these deficits might impact his ability to draw independent conclusions and answer questions requiring inferences when compared to his same age peers.

In the area of writing, Student demonstrated average basic writing skills and very low written expression skills at the sentence level on this assessment. Davidson interpreted his performance on the Written Expression cluster with caution as Student failed to consistently follow the task directions. Overall, Student could identify and correct errors in spelling, punctuation, and capitalization at a level similar to his same age peers. When presented with lengthy writing tasks, Student could generate complete sentences, but might require explicit directions and modeling as well as graphic organizers.

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In the area of mathematics, Student demonstrated low math calculation skills with a standard score of 74, and average math problem solving skills. He demonstrated difficulty solving equations in isolation, but could solve real world problems and numerical puzzles at a level similar to his same age peers. Davidson concluded Student would benefit from supports such as visual models, repeated practice with key concepts, and access to a calculator.

Overall, Student could meet grade-level expectations in the areas of reading, writing, and mathematics, but he would benefit from supports to maintain attention and support his continuing engagement and work completion. Davidson concluded that Student might continue to experience some barriers when accessing the general education curriculum and he would benefit from additional support and interventions. She generated a detailed list of recommendations, supported at hearing by her detailed, thoughtful reasoning and analysis of data she gathered during the academic assessment.

These recommendations were listed in the assessment report and discussed at IEP team meetings as detailed below.

## SPEECH AND LANGUAGE

Caitlin Robbins, speech-language pathologist, held a master's degree in communication sciences and disorders, and a California license as a speech-language pathologist, as well as a speech language services credential. Robbins observed Student during testing sessions and in his nonpublic school physical education class. She conducted interviews and administered standardized and non-standardized testing instruments.

## OBSERVATIONS AND INTERVIEWS

During testing, Student answered questions but had difficulty remaining on topic. He routinely interrupted Robbins. He displayed a flat affect and reduced eye contact. He exhibited a high level of activity. He pulled a string on his shirt, spun around in his chair and fidgeted. He made some inappropriate and out-of-context comments and yelled out. It was challenging to follow his train of thought on higher level comprehension questions. He exhibited difficulty making a clear point. During social tasks he would pause for 10-15 seconds and remark that he was "trying to think of something appropriate to say."

Robbins observed him at his nonpublic school playing a game of ultimate frisbee during his physical education class. She observed that Student participated in the flow of the class routine. He followed directions to put on his jersey. He seemed to be following the rules of the game. He occasionally chatted with peers. He engaged in some unique behavior such as flailing his arms and legs as he was running around. At one point, he attempted to get the attention of others by yelling out. His behavior with peers struck Robbins as immature, not age appropriate, and less than successful.

Robbins also interviewed Student. Although he indicated that he had online friends, it became clear to Robbins that he was unsure what constituted a friend, versus a casual acquaintance with whom he might occasionally play on-line games or see in passing in class. He could not explain to Robbins what a friend was, and he could not explain how he knew that somebody was a friend. He did not feel comfortable sharing personal topics with peers he considered to be friends. He also exhibited some self-awareness. He mentioned that in the past, he used to be annoying and did not understand sarcasm. However, he felt he had really improved in those areas.

## TESTING INSTRUMENTS

Robbins administered the

- Clinical Evaluation of Language Fundamentals, Fifth Edition;
- Test of Problem Solving, Second Edition–Adolescent;
- Social Language Development Test, Adolescent: Normative Update;  
and
- Social Responsiveness Scale, Second Edition.

The Clinical Evaluation of Language Fundamentals was a comprehensive language assessment that obtained information about a student's expressive and receptive language abilities in the areas of sentence structure, grammar, and vocabulary. Student overall scored within the average range. Subscores across the board were all average. Robbins did not have any significant concerns about those basic receptive and expressive language skills. The average scores indicated that Student should be able to acquire academic vocabulary in the classroom, understand and follow basic directions, formulate grammatical sentences to communicate knowledge, thoughts, wants and needs.

The Test of Problem Solving–Adolescent was a diagnostic test of problem-solving and critical thinking, designed to assess a student's language-based critical thinking skills. It addressed critical thinking abilities using logic and experience. Questions focused on a broad range of critical thinking skills, including

- clarifying,
- analyzing,
- generating solutions,

- evaluating, and
- affective thinking.

The assessment included subtests in

- making inferences,
- determining solutions,
- problem solving,
- interpreting perspectives, and
- transferring insights.

It delved into the ability to evaluate claims, reason, analyze information, make inferences, and take the perspective of characters after listening to an oral text.

Student earned a standard score of 70, in the below average range, which indicated he had weaknesses in language-based critical thinking skills. These weaknesses would impact his ability to read a novel and understand the perspective of a character, or analyze themes, or take a lesson learned in a novel and transfer it to a different topic. Robbins often saw children who had social weaknesses struggle in such areas. She inferred that the difficulty related to their ability to comprehend what was going on around them socially with peers.

Robbins also administered the Social Language Development Test, Adolescent: Normative Update. This was a diagnostic test assessing language-based social development of students ages 12 through 17. It yielded a composite score called the Social Language Development Index. It specifically measured students' ability to make inferences and interpret and respond to social interactions. Performance on the test

differentiated typically developing students from those with autism spectrum disorder. It examined five skills important to the development of social language during adolescence. These skills included

- making correct inferences;
- interpreting social language;
- problem-solving with peers;
- taking someone else's perspective; and
- understanding idioms, irony, and sarcasm.

It looked at a student's ability to interpret non-verbal cues like body language, eye contact, and gestures. It looked at a student's ability to interpret social vocabulary and figurative language. For example, it asked Student to explain what it meant to compromise, smirk, and why it was important to listen to a conversation.

Overall, Student scored in the borderline impaired or delayed range. He earned a standard score of 77, which was below the average range. He struggled with social vocabulary. He could not always tell what a posture was, or what a different posture might mean given a context. He could not describe what a sneer meant. He could not say what a compromise was. He struggled to vary his vocal tone to communicate. For example, he could not model an "irritated" tone of voice. He had a difficult time providing logical solutions and sometimes provided inappropriate solutions and had difficulty justifying them using critical reasoning. He had significant difficulty interpreting non-verbal cues. He could not articulate how one would know if someone felt upset. He could not articulate consistently those various aspects of body language that would have indicated to him that someone was upset.



Robbins also administered the Social Responsiveness Scale, Second Edition, which identified the presence and severity of social impairment within the autism spectrum and differentiated it from that which occurs in other disorders. It was designed to measure various dimensions of interpersonal behavior, communication and repetitive/stereotypic behaviors characteristic of autism spectrum disorders.

Father and Student's nonpublic school teacher responded to the rating scales. The teacher rated him within normal limits overall, which indicated no social impairments in the classroom setting. Those responses indicated no social or pragmatic language difficulties. Robbins thought these responses contradicted data from the rest of the assessment, from Parents, and from all the Saddleback examiners. She hypothesized that the nonpublic school teacher taught only children on IEP's and might have been considering Student in comparison not to typically developing peers but only to the other students in her class.

Robbins therefore used her clinical judgment and reasoning to determine the likeliest interpretation of the results. Father rated Student overall in the severe range, which would indicate Student presented with a severe social impairment in his home setting. Typically, there might be discrepancies between a teacher's and a parent's views on this particular measure, but Robbins felt it unusual to have this degree of difference between a teacher's and a parent's impressions.

Overall, she discounted the teacher's finding of no social impairment. She opined Student presented with weaknesses both in higher-level language skills, and in his understanding and use of pragmatic language. Weaknesses in his language-based critical thinking would impact his ability to interpret text in the classroom, evaluate claims, cite evidence, or take perspective and analyze. His difficulty with understanding

and using social communication would impact his ability to understand the perspective of others, interpret social cues, evaluate and solve social conflicts, and use expected verbal communication for social purposes. These deficits could hinder his peer relationships.

## OCCUPATIONAL THERAPY

Occupational therapist Elaine Greene observed Student during testing and did a classroom observation. She submitted the School Companion Sensory Profile to Student's math teacher. This instrument assessed motor performance linked to sensory processing. Sensory processing refers to the neurological process of perceiving information from one's body and environment through the senses, organizing this information, and using it to plan and execute adaptive responses to different challenges.

Teachers noted his skin picking, and Parents reported sensory sensitivities to tags and certain clothing. Greene observed Student scratch and touch his face. She observed no other sensory sensitivities during either testing or class. Student scored average on all the tasks observed during the structured observation of sensory integration. He did better with certain tasks on the second try, and needed assistance getting into certain positions such as striding with arms and legs moving reciprocally. The teacher's responses to the School Companion indicated Student might not hear or understand directions when given initially, and might benefit from a quieter environment, less visual stimuli, and more frequent breaks. Overall, Greene opined Student might need accommodations, but his sensory processing needs were not impacting him directly in the classroom setting.

She also administered the Fine Manual Control Composite of the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition. This was an individually administered test that assessed the motor functioning of children four to 21 years of age. The Fine Manual Control Composite of the test consisted of two subtests: Fine Motor Precision and Fine Motor Integration. The Fine Motor Precision subtest measured activities that required precise control of finger and hand movement. It included such tasks as

- filling in shapes,
- drawing lines through narrow mazes,
- connecting dots,
- folding paper, and
- cutting out a circle.

The Fine Motor Integration subtest required the examinee to reproduce drawings of various geometric shapes that ranged in complexity from a simple circle to overlapping pencils. Student showed very precise accuracy in this task. Overall, Student received a standard score of 53, which placed him in the average range of functioning.

Greene also administered the Beery-Buktenica Developmental Test of Visual Motor Integration, Sixth Edition, to further assess Student's visual-motor skills. This was an individually administered, norm-referenced and standardized assessment. It was designed to assess the extent to which individuals can integrate their visual and motor abilities, commonly referred to as eye-hand coordination. Student scored in the average range overall. However, he scored below average on the Motor Coordination subtest. That subtest looked at the student's ability to maintain pencil strokes within double-lined narrow paths of increasingly complex figures within a five-minute period. Greene

opined that Student scored lower due to the timing limit of the test. He received full credit for remaining within the boundaries of narrow pathways for 20 out of 21 items, but he could not answer the last six items in the subtest due to its five-minute time limit.

Greene also did a handwriting analysis and reviewed Student's written work samples. She concluded Student presented with below average to above average motor coordination skills, fine motor precision, and fine motor integration skills. Student's fine motor skills did not impact his ability to manage personal belongings or use classroom materials.

Greene recommended accommodations, including access to a fidget device with tactile mediums, such as a Velcro strip on his desk, for increased tactile input in the classroom setting. She also suggested movement breaks that include both vestibular and proprioceptive input before and after sitting. She recommended decreased visual stimuli on worksheets and in his workspace to prevent visual distractions. She recommended Student be provided a quiet environment to support his work completion. She suggested giving Student additional time for tests and assignments, and repetitions to practice new motor coordination tasks. Overall, she opined Student might benefit from these sensory accommodations to improve his attention and self-regulation throughout his school day.

She did not recommend any specific occupational therapy goals or related services, which she opined Student did not need to access his education.

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## ELIGIBILITY CATEGORIES

For a child to be eligible for special education in California, the child must have a disability as defined by state and federal law. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8; Ed. Code, § 56026, subd. (d).) Section 3030 of title 5 of the California Code of Regulations defines the various eligibility categories under California law. Here, Saddleback investigated the special education eligibility categories of other health impairment, autism, specific learning disability, and speech or language impairment.

These were the appropriate eligibility categories to consider for Student. No evidence suggested Student was intellectually disabled, emotionally disturbed, orthopedically impaired or eligible under any of the other legal categories.

## OTHER HEALTH IMPAIRMENT

Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems such as attention deficit hyperactivity disorder, and that adversely affects a child's educational performance. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(9).)

McCaughy recommended eligibility under this category because, according to the results of the Behavior Assessment for Children, Student demonstrated limited alertness, inattention and hyperactivity attributable to his diagnosis of attention deficit hyperactivity disorder. Student needed teacher prompting to attend to classroom instruction and complete classwork. Teacher input indicated that, despite having the

capability to access grade-level curriculum, he was inhibited by his difficulties focusing. Similarly, his working memory and processing speed were notably lower than his other cognitive abilities, which impacted his performance across academic tasks.

## AUTISM

Under California law, autism is a developmental disability that significantly affects verbal and nonverbal communication and social interaction, generally evident before age three, which adversely affects a child's educational performance. Characteristics often associated with autism are repetitive activities, stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).)

McCaughtry and Robbins recommended eligibility under this category. According to the speech and language testing, Student had difficulty interpreting social language and considering social norms when verbally interacting with others. He also exhibited weaknesses in his ability to use language to solve social conflicts. He demonstrated reduced social reciprocity during conversation and social interactions. He had difficulty remaining on topic when asking questions or making comments directed at the examiner. At times, his verbal communication was challenging to follow as he had difficulty expressing the main idea of his intended message. He also presented with differences in his use and understanding of nonverbal communication. His ability to interpret nonverbal cues was below average.

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The assessors concluded that Student's autism impacted his ability to navigate more complex social relationships and understand appropriate or expected social behavior. The assessment results indicated Student continued to meet the eligibility criteria for autism.

## LANGUAGE OR SPEECH DISORDER

A student is eligible for special education and related services under the category of language or speech disorder if the student demonstrates difficulty understanding or using spoken language under specified criteria and to such an extent that it adversely affects his or her educational performance, which cannot be corrected without special education. (Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).) Federal law uses the term speech or language "impairment" rather than "disorder," but there is no material difference in the California criteria. (34 C.F.R. § 300.8 (11).)

The specified criteria are articulation, voice, fluency, or language disorder. An articulation disorder is when the student displays reduced intelligibility or an inability to use the speech mechanism, which significantly interferes with communication and attracts adverse attention. (Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).) Abnormal voice is characterized by persistent, defective voice quality, pitch, or loudness. (Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).) A student has a fluency disorder when the flow of verbal expression, including rate and rhythm of speech, adversely affects communication between the student and listener. (Ed. Code, § 56333; Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).)

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Robbins considered and screened Student's articulation, fluency, and voice, but after observing him she ruled these out as areas of suspected disability. She focused her assessment on the criteria category of language disorder, specifically focusing on Student's needs in receptive and expressive language, and pragmatics.

When, as here, standardized tests are considered to be valid for the specific student, a student has an expressive or receptive language disorder when he or she scores at least 1.5 standard deviations below the mean, or below the seventh percentile for his chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).)

Robbins found that Student had expressive and/or receptive language deficits in language development, specifically pragmatics. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).) Pragmatics is the social use of language and conversation. Student had difficulty interpreting nonverbal communication. He presented with weaknesses in his higher level language abilities which impacted his comprehension of grade-level text.

## SPECIFIC LEARNING DISABILITY

A specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, write, spell, or perform mathematical calculations. (20 U.S.C. § 1401(30); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd (a).) The basic psychological processes include:

- attention,
- visual processing,



- auditory processing,
- phonological processing,
- sensory-motor skills, and
- cognitive abilities, including
- association,
- conceptualization, and
- expression.

(Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

The assessors determined Student had a basic psychological processing disorder in the area of attention, and a significant discrepancy between his ability and achievement. They relied on his average standard IQ score of 103, as compared to his math calculation standard score of 74.

However, although Saddleback found Student eligible under four separate categories including language or speech disorder and specific learning disability, Robbins, McCaughtry and Davidson all recommended that Student's primary eligibility category should be autism, and the secondary category should be other health impairment. Robbins used her clinical judgment to inform this analysis, because Student met the language disorder criteria for pragmatic language. But, in both Robbins' and McCaughtry's opinion, autism was the best descriptor of his needs, due to his social differences and weaknesses. They felt it would be redundant to advocate for a language or speech impairment as a primary or secondary category. McCaughtry and Robbins both credibly opined that Student's social and attention deficits were the causes of his most significant educational needs.

## RECOMMENDATIONS

As required by law, the assessment report included recommendations. (Ed. Code, § 56327). McCaughtry recommended that the IEP team consider behavioral accommodations and supports, supports in the area of socialization and attention, as well as a setting with a lower staff-to-student ratio than a general education classroom. Davidson, Robbins, and Greene recommended academic, social, and sensory supports including:

- Multi-modal instruction
- Visual supports
- Reading supports
- Writing supports
- Math supports
- Frequent checks for understanding
- Clear, concise directions, repeated as needed
- Verbal and gestural prompting to support attention
- Option to demonstrate understanding in multiple ways
- Break longer directions and assignments down into smaller segments chunks with completion checkpoints
- Additional time on tests and assignments
- Repeated practice with key concepts

- Frontloading of time parameters and changes to routine or schedule
- Preferential seating near the front of room, point of instruction, or near peer models, and away from distractions
- Option to take breaks
- Access to fidgets with explicit directions for use
- Positive reinforcement of appropriate behaviors
- Pair with peer role models for projects and collaborative assignments
- Weekly check-in to review assignments and work completion
- Encourage Student to join clubs, sports, and/or provide him with leadership opportunities in the classroom in order to expose him to social opportunities with peers
- Promote self-advocacy to protest, express overstimulation, request assistance, indicate sensory needs, state preferred ways to socialize, play, and communicate
- Encourage reflection on social situations
- Encourage and facilitate social interactions between Student and peers
- Decreased visual stimuli on worksheets and workspace
- Option to complete work in a quiet environment

- Access to fidget devices with a variety of tactile mediums such as Velcro strips
- Functional movement breaks before and after seated tasks.

Each of the assessors gave thoughtful and detailed testimony concerning their reasons for making these suggestions. For some examples, Robbins aimed to enhance his social skills by pairing him with peers, encouraging him to play sports and join clubs, and reflect on social situations. Davidson thought multimodal instruction and visual supports would support his attention and participation and increase work completion, by providing a variety of ways in which the information was presented.

In conclusion, the assessments were appropriate and comprehensive, and the multidisciplinary assessment report was legally compliant. Therefore, Student is not entitled to independent assessments at public expense.

ISSUE 2: WAS SADDLEBACK'S APRIL 26, 2024, AND MAY 29, 2024 IEP, AS AMENDED ON FEBRUARY 10, 2025, REASONABLY CALCULATED TO PROVIDE STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT, SUCH THAT SADDLEBACK MAY IMPLEMENT THIS IEP, NOTWITHSTANDING LACK OF PARENTS' CONSENT, IF PARENTS CONTINUE TO SEEK A FAPE, FROM THE DISTRICT?

Saddleback argues it complied with all procedural requirements in the development of the April 26, 2024, and May 29, 2024 IEPs, as amended on February 10, 2025. Specifically, Saddleback contends it held properly noticed and timely IEP team meetings on mutually agreeable dates, obtained attendance of all required team

members, provided Parents with notice of their rights and procedural safeguards, provided Parents the opportunity to meaningfully participate in the IEP team meetings, considered the opinions of assessors and independent evaluators, and developed a clear written offer of FAPE based upon recent assessments and Parents' input.

Student argues that the offer of placement was too restrictive for him, and that he should have been offered a placement with greater access to general education peers.

Substantively, Saddleback argues it offered Student a FAPE in the least restrictive environment appropriate for him, specifically placement in four academic "basic" or special day classes, providing specialized academic grade-level instruction. It also offered access to typically developing peers during lunch, recess, physical education and an elective, related services of group speech and language therapy for two sessions per week of 30 minutes each, and accommodations. Saddleback argues that a public school placement with access to typically developing peers was less restrictive than the nonpublic school Student was attending.

When a school district seeks to demonstrate it offered a FAPE to a particular student, it must first show that it complied with the procedural requirements of the IDEA. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S.176, 206-207)(*Rowley*.) Second, the school district must show that the IEP developed through those procedures was designed to meet the child's unique needs and was reasonably calculated to enable the child to make progress appropriate in light of their circumstances. (*Ibid.*; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 998-999])(*Endrew F.*)

## SADDLEBACK COMPLIED WITH ALL PROCEDURAL REQUIREMENTS IN DEVELOPING THE IEP

### OPPORTUNITY TO PARTICIPATE

Procedurally, 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. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. §§ 300.322, 300.510(b); Ed. Code, § 56341.5.) Here Saddleback provided timely and appropriate notice of each applicable IEP team meeting, and both Parents attended each meeting with counsel.

The parties' April 20, 2022 settlement agreement required Saddleback to present an assessment plan to Parents on or before February 16, 2024, and Saddleback complied on February 13, 2024. Parents did not consent within five days as stipulated in the agreement, but consented on March 1, 2024, after Saddleback issued a prior written notice to Parents on February 26, 2024. Another prior written notice letter dated April 10, 2024, outlined Saddleback's attempts to schedule Student for the assessment. Parents did not make Student available for assessment until on or around April 16, 2024.

Parents also did not provide a signed release of information allowing Saddleback to get information from Student's nonpublic school until after April 26, 2024. These circumstances constitute an exception to the rule requiring an IEP to be completed within 60 days of consent to the assessment. (Ed. Code, § 56302.1, subd. (b)(2).) Saddleback scheduled an initial IEP team meeting for April 26, 2024, by mutual consent. There, the team discussed the portions of the psychoeducational assessment that had been

completed up to that date. After final completion of the assessments, Saddleback sent a notice dated May 20, 2024, scheduling part two of the IEP team meeting for May 29, 2024, which Parents attended with counsel.

Each of the assessors recalled that when asked, Parents had no questions regarding any of the assessments. McCaughtry recalled Parents' agreement to the eligibility categories determination. Parents were given ample opportunities to participate in the decision-making process regarding provision of a FAPE to Student. There was no contrary evidence. Although Parents' counsel cross-examined Saddleback witnesses, the witnesses' credibility was not undermined by the cross-examination, and Parents did not appear at hearing or call any contrary witnesses of their own. Student presented no evidence of any procedural deficiencies regarding timeliness, notice, attendance or documentation. Parents were given the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of Student and the provision of a FAPE to the Student.

A 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. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036)(*Fuhrmann*).) In summary, Saddleback

- provided Student with timely and appropriate notice of IEP team meetings,
- scheduled the meetings on mutually agreeable dates and times,
- solicited Parents' feedback,

- invited all required participants to the IEP team meetings, and
- documented the meetings appropriately.

## NECESSARY MEMBERS

The IEP team is required to include

- one or both of the student's parents or their representative,
- a regular education teacher if a student is, or may be, participating in the regular education environment,
- a special education teacher,
- a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum and is knowledgeable about available resources.

(34 C.F.R. § 300.321(a); Ed. Code, § 56341, subds. (a), (b).)

The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a)(5); Ed. Code, § 56341, subd. (b)(1).) Finally, whenever appropriate, the child with the disability should be present. (34 C.F.R. § 300.321(a)(7); Ed. Code, § 56341, subd. (b)(7).)



Here, each of the IEP team meetings included Parents, their counsel, a district representative with knowledge of district programs, and individuals to interpret the instructional implications of the assessment results presented at the meetings. A general education teacher did not attend the initial April 26, 2024 meeting, but both general and special education teachers attended the May 29, 2024 meeting at which the offer of FAPE was discussed and made. Parents excused the school nurse from the May 29, 2024 meeting.

In summary, all necessary team members participated.

## CONSIDERATION OF RECENT ASSESSMENTS

In developing the IEP, the IEP team must consider

- the strengths of the child,
- the concerns of the parents for enhancing the child's education,
- the result of the most recent evaluation of the child, and
- the academic, developmental, and functional needs of the child.

(20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a). Ed. Code § 56341.1, subd. (d)(2).)

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Saddleback considered the results of its recent assessments of Student in development of the IEP. The team reviewed the assessment during the IEP team meetings. On April 26, 2024, McCaughtry reviewed the portions of the psychoeducational assessment that had been completed up to that point. On May 29, 2024, the rest of the completed assessments were reviewed with each assessor presenting their report.

Saddleback IEP team members considered Student's academic strengths and Parents' concerns regarding his social etiquette, behaviors, hygiene, and sensory sensitivities.

## IEP CONTENTS

An IEP is a written document for each child with a disability that includes:

- a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; and
- a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability.

(20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320; Ed. Code, § 56345.)

The IEP should include:

- a description of how the child's progress toward meeting the annual goals will be measured,
- when periodic reports of the child's progress will be issued to the parent, and
- a statement of the special education and related services to be provided to the child.

(20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320; Ed. Code, § 56345.)

The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code § 56345, subd. (a)(7).)

An IEP must include a post-secondary transition plan during the school year in which the child turns 16 years old. (Ed. Code, § 56043, subd. (g)(1); Ed. Code, § 56345, subd. (a)(8).) Student did not require transition services, because of his age.

An IEP must provide a description of how the IEP will be provided under emergency conditions in which instruction or services, or both, cannot be provided to a student either at school or in person for more than 10 school days. (Ed. Code, § 56345, subd. (a)(9)(A).) Here, Saddleback offered an emergency plan for specialized academic instruction twice a week for 30 minutes, and speech language therapy 10 minutes a week.

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The IEP need only include the information set forth in title 20 United States Code section 1414(d)(1)(A)(i), and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code § 56345, subds. (h) and (i).) Here, the IEP contained all required elements, the contents of which are discussed further below.

In summary, Saddleback procedurally complied.

### SADDLEBACK'S OFFER WAS APPROPRIATE

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.) 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. (*Rowley*, supra, 458 U.S. 176, 201-204; *Endrew*, supra, 580 U.S. 386, 402).

Substantively, an IEP must offer access to an education that is sufficient to confer some educational benefit upon a child. (*Rowley*, supra, 458 U.S. 176, 200.) An IEP is evaluated in light of the information available to the IEP team at the time it was developed and not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.*, citing *Fuhrman*, supra, 993 F.2d 1031, 1041.) Whether a student was denied a FAPE is ultimately evaluated in terms of what was objectively reasonable at the time the IEP was developed. (*Adams*, supra, 195 F.3d 1141, 1149.)

## SADDLEBACK OFFERED APPROPRIATE ANNUAL GOALS

An IEP must contain a statement of measurable annual goals related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum and meeting each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(III); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(III); 34 C.F.R. § 300.320(a)(3); 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. (b).)

Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, U.S. Dept. of Education, Office of Special Education and Rehabilitative Services, March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 Regulations).)

Based upon recent assessments, review of progress on prior goals, and input from the nonpublic school staff and Parents, Saddleback determined that Student had ongoing needs in pragmatic communication skills, academics, attention, and executive functioning. Saddleback drafted eight appropriate goals based upon Student's present levels of academic achievement and functional performance that were measurable, and which Student could be expected to meet or make appropriate progress towards within a year's time. Witnesses also testified the goals could be appropriately implemented in the offered placement. The goals in the IEP had a direct relationship to Student's present levels of performance and educational needs.

Communication goal one provided that Student, after watching a video or listening to a social scenario, would demonstrate perspective-taking skills by indicating which verbal or nonverbal response might be expected to produce negative or positive feedback. The speech-language pathologist would measure this goal for 80-percent accuracy across two trial periods. Student's baseline at about 30-percent, indicated he had difficulty discerning what comments would garner what responses.

Communication goal two provided that Student would, in a small group setting, reflect on his own relationships and identify who he considered a friend or acquaintance, as well as determine three ways he could strengthen his relationships. The speech-language pathologist would measure this goal via roleplays, aiming for accuracy in four out of five opportunities across two trial periods.

Communication goal three provided that after listening to an orally presented short passage at his independent reading level, Student should identify a problem and propose at least two potential solutions, as well as evaluate the most practical solution. The speech-language pathologist would measure this goal for success in four out of five opportunities across two trial periods.

Robbins wrote these goals to help Student increase his awareness of his social environment and how what he says or does may impact the thoughts of others. She also wanted to help him understand what a friend is, and how to strengthen or initiate new relationships, via roleplays. Several different pieces of data led her to craft these goals, including his performance on certain subtests on the social language development test, that assessed his abilities to make inferences and use social language appropriately. These, as well as her observations, demonstrated Student's weaknesses in interpreting the perspective of others.

Davidson proposed three academic goals in the areas of reading, writing, and math. She based the reading comprehension goal on his present levels taken from the passage comprehension scores on the Woodcock-Johnson. His score indicated to her that he had difficulty with context clues, which indicated an area of need, particularly for inferencing. The goal stated that following a teacher-led discussion of grade-level text, Student would refer back to the text to answer inferential questions with at least 70-percent accuracy in four out of five trials as measured by teacher collected data.

The second academic goal in the area of writing targeted Student's inconsistency in generating complete sentences when responding to writing prompts and failing to cite evidence supporting his answers. Davidson wanted to give him a structured format to respond to expository instructions and questions about information. The goal stated that following teacher-led discussion of grade-level text and when given an expository direction or informative question, Student would state a claim by restating a question, then answer with the results, in complete sentences. He would then develop the topic with facts and quotations by citing textual evidence. The goal aimed for 100-percent accuracy in three out of five trials as measured by the teacher.

The third academic goal in the area of math stated that when given a set of mixed number addition and subtraction equations, with and without common denominators, and using supports such as a multiplication table, calculator, or visual model, Student should solve the equations. It aimed for at least 70-percent accuracy in four out of five trials as measured by teacher-collected data. Davidson based this goal on his Woodcock-Johnson calculation math subtest scores. Davidson proposed this goal because, although smaller calculations along the way could be solved using a

calculator, the entire problem could not be solved with a calculator. She wanted Student to build on his own math skills to understand, on his own, how to add and subtract mixed numbers.

Saddleback proposed two goals in the area of attention and executive functioning. All of the assessors collaborated on these goals. The attention goal was based on his nonpublic school teacher's concerns about his loss of focus and his need for two to three teacher prompts per class in order to remain engaged. It aimed for Student to orient toward the speaker and maintain attention with no more than one prompt per class period. Teacher-collected data would chart his independent answers or work completion. It aimed for 70-percent success in charted opportunities over a six- week period. Saddleback proposed a final goal in the area of executive functioning and work completion. During observations and assessments, Student inconsistently followed directions. When presented with challenging and/or non-preferred tasks, he provided brief, inappropriate responses that did not meet expectations. The goal stated that following a teacher-led explanation and checks for understanding, Student would complete academic tasks in accordance with the grade-level expectations in four out of five consecutive opportunities over a six-week period, as measured by teacher-collected data.

The collective opinions of the Saddleback members of the IEP team provided persuasive evidence that Saddleback offered appropriate, measurable annual goals to address Student's needs. Moreover, the weight of the evidence established that Student

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could reasonably be expected to accomplish these ambitious goals within a year with the offer of placement, services and accommodations made to Student in the IEP. Student did not produce any evidence to the contrary.

In summary, the IEP contained a statement of annual goals related to Student's needs resulting from his disability, which enabled Student to be involved and make progress in the general education curriculum. The goals met each of Student's educational needs resulting from his disability. The goals properly identified staff responsible for measuring Student's progress on goals, how that progress would be measured, and provided progress reporting periods.

#### SADDLEBACK OFFERED APPROPRIATE SUPPLEMENTAL AIDS, PROGRAM MODIFICATIONS, AND SERVICES

In considering a child's academic, developmental, and functional needs, an IEP must include a statement of the special education and related services that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) That includes a statement of supplementary aids and services and other supports that are provided in education-related settings to enable the student to be educated with nondisabled children to the maximum extent appropriate. (20 U.S.C. § 1401(33); 34 C.R.F. § 300.42; Ed. Code § 56033.5.) Accommodations and modifications necessary for the student to receive a FAPE must also be included in the IEP. (Ed. Code § 56341.1, subd. (c).)

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To assist Student in meeting his goals, the IEP team offered accommodations addressing Student's needs and related services in speech and language. The team developed supplementary aids and services on their review of recent assessments. As accommodations, Saddleback offered:

- Multi-modal instruction, including visual, auditory, kinesthetic
- Visual supports, including pictures, graphic organizers, posters of key concepts or information
- Reading supports, including text-to-speech software, text read aloud and/or access to audio books
- Writing supports, including
  - access to speech-to-text software,
  - option to type written assignments,
  - graphic organizers,
  - editing or proofreading checklists,
  - access to word bank of key vocabulary,
  - access to rubric or model,
  - copy of teacher notes or presentation slides
- Math supports including multiplication chart, calculator, formula sheet
- Frequent checks for understanding before and during tasks
- Clear, concise directions with repetition as needed
- Verbal and gestural prompting to support attention

- Option to demonstrate understanding in multiple ways, such as written, verbal, one-on-one
- Break longer directions and/or assignments into smaller segments with completion checkpoints
- Additional time on tests and assignments
- Repeated practice with key concepts
- Frontloading of time parameters and changes to routine or schedule
- Preferential seating near front of room or point of instruction, near peer model, away from distractions
- Option to take breaks
- Access to fidget devices with a variety of tactile mediums with explicit directions for use
- Positive reinforcement of appropriate behaviors
- Pairing with peer role models for projects and collaborative assignments
- Weekly check-in to review assignments and work completion
- Option to take assessments in a separate setting to reduce distractions
- Embed functional movement breaks to include vestibular input and proprioceptive input throughout his school day

Student demonstrated challenges with on-task behaviors and required prompting and cueing to help him refocus his attention back to the teacher during instruction, or to do his work during independent work time. He transitioned slowly. When seated, he made noises or hummed to himself, fidgeted, and might wander away from the lesson. As positive behavior interventions, strategies, and supports, Saddleback recommended the academic and sensory supports listed above. They also recommended that Student be paired with peer role models for projects and collaborative assignments.

Saddleback did not offer an updated behavior plan at the time, because Student had not been recently assessed for behaviors in a public school environment. Therefore, Saddleback proposed to implement a previous behavior plan dated from Student's last public school attendance in 2022 that targeted inattention, fidgeting, noncompliance and aggression, even though it was admittedly out of date. Saddleback then proposed to hold a meeting after 45 days of implementation to determine if the behavior plan was still warranted, and if so, to update goals and recommendations. McCaughtry also recommended that Student be given the opportunity to meet with the school psychologist, school counselor, case manager, and speech-language pathologist to learn classroom locations and safe places to go when he needed help. Saddleback also offered transitional aide support to help Student navigate the campus, passing periods, physical education and his elective, as well as to implement the behavior plan.

McCaughtry, Davidson, Robbins, and Greene persuasively demonstrated that on the basis of what was known at the time, the IEP offer appropriately addressed Student's academic, social, and sensory needs to support his attention, participation, behavior, and work completion. Student presented no contrary evidence.

## RELATED SERVICES

Saddleback offered speech and language services in a group setting for two 30-minute sessions per week. Robbins persuasively opined it was essential for Student to work in a small group with peers to roleplay and practice the social goals that she wrote. The group setting with peers would be a more natural way to encourage the generalization of Student's social skills. The evidence demonstrated the services offered were appropriate to meeting Student's needs, and there was no contrary evidence presented.

The IEP included a start and end date for services and modifications and identified the frequency, location, and duration of all services offered. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) Accordingly, Saddleback's formal written offer created a clear record of the placement and services offered. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526.)

## LEAST RESTRICTIVE ENVIRONMENT

Saddleback offered placement in four academic "basic classes" in math, English, science, and history at Student's home middle school. The "basic" classes, otherwise known as special day classes, were taught by a special education teacher with a teaching credential for mild to moderate disabilities. Mainstreaming into general education would occur at lunch, recess, physical education, and during an elective class. Student would be in general education settings for 51-percent of the school day, and he would be in special education settings for 49-percent of the school day.

Federal and state laws require school districts to provide a program in the least restrictive environment to each special education student. (Ed. Code, §§56031; 56033.5; 34 C.F.R. § 300.114.) A special education student must be educated with non-disabled peers to the maximum extent appropriate and may be removed from the regular education environment only when the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. § 300.114(a)(2).)

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

- the educational benefits of placement full-time in a regular class;
- the non-academic benefits of such placement;
- the effect the student had on the teacher and other children in the regular class; and
- the costs of mainstreaming the student.

(*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402.)

If it is determined that a child cannot be educated in a general education environment, then the 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 Ed., supra*, 874 F.2d at p. 1050.)

A continuum of program options must be available for special education students. (Ed. Code, § 56360.) The continuum of program options shall include, but is not necessarily limited to:

- Regular education programs
- A resource specialist program
- Designated instruction and services
- Special classes
- Nonpublic, nonsectarian school services
- State special schools
- Instruction in settings other than classrooms where specially designed instruction may occur
- Itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially designed instruction may occur
- Instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions.

(Ed. Code, § 56361.)

Saddleback IEP team members were mindful that Student had been assessed while attending the smaller class sizes and structured environment at Student's nonpublic school. Special day classes offered by Saddleback were less restrictive on the continuum than Student's placement in a nonpublic school setting, where he had no access to typically developing peers. Student's overall average academic achievement

might have suggested placement in the even less restrictive environment of general education, but those classes had 35 students and minimal support. Saddleback also considered what they called “collab” classes taught by general education teachers with instructional assistants. But the assessors thought Student needed a smaller and more supportive structured class to address his focus and attention, working memory, processing speed, and social skills. Thus, although he could access the content academically, he might not be able to keep pace with a general education or a “collab” classroom.

The key difference between the placement Saddleback offered and the nonpublic school was that all students in the nonpublic school were on IEPs. Thus, Student had no opportunity to interact with typically developing peers in a nonpublic school. He needed the exposure to typically developing peers to learn to generalize social skills in less restrictive environments.

The “basic” classes, otherwise known as special day classes, allowed access to same academic content with similar scaffolding and supports to what the nonpublic school had provided. Thus, Saddleback considered them appropriate. Student argues that the “basic” classes were too restrictive of an environment, but presented no evidence to support that contention.

The IDEA expresses a clear policy preference for inclusion to the maximum extent appropriate as an aspiration for all children with special needs. (See 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. §§ 300.114 & 300.116; Ed. Code, § 56031.) School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student’s disabilities is such that education in regular classes



with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56031.) Here, Saddleback established that Student could appropriately be educated in a less restrictive environment than a nonpublic school, and that the combination of structured classes with some access to typical peers was his least restrictive environment.

Applying the *Rowley* standard, as restated and affirmed in *Endrew F.*, the weight of the evidence established that the supplemental aids, program modifications, special education and related services, and placement offered in the IEP were designed to meet Student's unique needs and were reasonably calculated to enable him to make progress appropriate in light of his circumstances.

## FEBRUARY 2025 IEP AMENDMENT

Saddleback held an amendment IEP team meeting on February 10, 2025. All necessary team members were present. The team considered an outside assessment Parents had obtained, and offered amended services, which continued to offer Student a FAPE.

In the summer of 2024, Parents funded their own independent neuropsychology assessment by licensed educational psychologist Diane Wiest, the results of which were memorialized in a written report dated September 17, 2024. Parents sent the assessment to Saddleback on or around October 24, 2024. By mutual agreement, the parties scheduled an IEP team meeting as an amendment to the April 26, 2024, and May 29, 2024 meetings, to review that assessment report on February 10, 2025. Wiest,

Parents, their counsel, and all necessary Saddleback members of the IEP team attended. McCaughtry confirmed that the team reviewed the report prior to the meeting and considered it at the meeting.

Wiest's assessment report is pertinent here because procedurally, Saddleback was obligated to review it at an IEP meeting, which they did. (34 C.F.R. § 300.502(c)(1); Ed. Code, § 56329, subds. (b) & (c).) However, its contents were not authenticated at trial. Wiest did not testify, nor did any other witness authenticate the report's contents. Thus, no information at hearing established Wiest's credentials, nor the assessment tools used, nor the results obtained, nor the validity of the recommendations made in the report. Thus, its findings and recommendations were not persuasive.

Wiest's report determined that Student had more significant mental health and anxiety-related needs than McCaughtry's psychoeducational assessment had found. Wiest's opinion was that Student should remain at the nonpublic school because he could not navigate a comprehensive campus, and would be a target for bullying due to his poor hygiene and picking behaviors.

McCaughtry disagreed with Wiest's conclusions. Given the lack of supporting evidence for Wiest's opinion, McCaughtry's position is adjudged to be more credible. Moreover, Wiest's view that Student should remain in the more restrictive nonpublic school setting is at odds with Student's current argument that he should have been offered an even less restrictive placement in general education or "collab" classes.

Saddleback nevertheless modified its offer of FAPE to address Wiest's concerns. Saddleback offered two additional IEP goals in the areas of demonstrating social awareness and flexibility via roleplay. Wiest concluded Student needed the counseling

services that were available at the nonpublic school. Saddleback, therefore, added individual weekly counseling services consisting of 30 minutes per session to Saddleback's FAPE offer. Saddleback also offered social work services to the family, in a group, for 60-minutes monthly as wraparound services to generalize Student's improved social skills at home.

Saddleback also modified the offer to address the fact that in February 2025, the first year of middle school was already in progress. The prior offer, made in May 2024, had anticipated Student would enter middle school at the beginning of the 2024-2025 school year with his incoming class. Saddleback had already offered temporary aide services to support that transition in the May 2024 IEP. The February amendment reiterated that offer to commence when Student started attending the public middle school, and also suggested a functional behavior assessment and a special circumstances instructional assistant assessment to assess whether ongoing aide support would be appropriate for Student.

In conclusion, Saddleback appropriately considered the results of independent educational evaluations at the February 10, 2025 IEP amendment team meeting, and continued to offer Student an appropriate placement and services with the additions offered in February. Thus, the April 26, 2024 and May 29, 2024 IEP, as amended on February 10, 2025, was reasonably calculated to provide student a FAPE in the least restrictive environment, such that Saddleback may implement this IEP, notwithstanding lack of Parents' consent, if Parents continue to seek a FAPE from the district.

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## CONCLUSIONS AND PREVAILING PARTY

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

### ISSUE 1:

Saddleback's April 26, 2024 multidisciplinary assessment in psychoeducation, speech and language, and occupational therapy was appropriate.

Saddleback prevailed on issue 1.

### ISSUE 2:

Saddleback's April 26, 2024 and May 29, 2024 IEP offer, as amended on February 10, 2025, was reasonably calculated to provide Student a FAPE in the least restrictive environment, such that Saddleback may implement this IEP, notwithstanding a lack of Parents' consent, if Parents continue to seek a free appropriate public education from the district.

Saddleback prevailed on issue 2.

## ORDER

1. Saddleback need not fund independent educational evaluations in the areas of psychoeducation, speech and language, and occupational therapy.

2. Saddleback may implement the April 26, 2024 and May 29, 2024 individualized education program offer, as amended on February 10, 2025, notwithstanding lack of Parents' consent, if Parents continue to seek a free appropriate public education from the district.

## 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.

June R. Lehrman

Administrative Law Judge

Office of Administrative Hearings