

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

CASE NO. 2025020730

CASE NO. 2025030785

DECISION

AUGUST 21, 2025

On February 20, 2025, Parents on behalf of Student filed with the Office of Administrative Hearings, called OAH, a due process hearing request in OAH case number 2025020730, naming Mill Valley School District, called Mill Valley. On March 18, 2025, Mill Valley filed a due process hearing request with OAH naming Student, in OAH case number 2025030785. OAH consolidated the cases on March 25, 2025. On March 26, 2025, OAH granted the parties' request to continue this matter. Administrative Law Judge Cynthia Fritz heard this matter by videoconference on June 17, 18, 19, 20, 23, 24, 25, and 26, 2025.

Attorneys Evan Goldsen and Carly Christopher represented Student. Attorney Eric VerWest observed the hearing. Parent attended all hearing days on Student's behalf. Student did not attend the hearing.

Attorneys Rebecca Diddams and Lenore Silverman represented Mill Valley. Attorney Alicia Arman Brown observed the hearing. Director of Special Education Erin Conklin attended the hearing on Mill Valley's behalf.

At the parties' request, the matter was continued to July 25, 2025, for closing briefs. On July 25, 2025, the record was closed, and the matter submitted.

ISSUES

On June 17, 2025, before the evidentiary portion of the hearing began, the undersigned clarified the hearing issues with the parties. Student's motion to withdraw Student's Issues 1h and 2f as listed in the June 6, 2025 Order Following Prehearing Conference was granted. On June 24, 2025, Student's request to withdraw a portion of Student's Issues 1d and 2c related to multisensory writing interventions, and Student's Issue 1i, as listed in the June 6, 2025 Order Following Prehearing Conference was granted.

The issues below are renumbered and clarified to reflect the withdrawn issues. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

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STUDENT'S ISSUES

1. Did Mill Valley deny Student a FAPE during the 2023-2024 school year, from February 16, 2024, by:
 - a. failing to assess Student in the areas of pragmatic language and occupational therapy, including sensory processing;
 - b. predetermining Student's placement at Student's February 16, 2024, IEP team meeting;
 - c. failing to offer goals in the areas of executive functioning, attention, and social skills;
 - d. failing to offer sufficient mental health services, and any executive functioning services, occupational therapy, and social skills training;
 - e. failing to offer sufficient IEP accommodations;
 - f. failing to consider the continuum of placement options at Student's February 16 and April 16, 2024 IEP team meetings;
 - g. failing to offer placement in the least restrictive environment; and
 - h. preventing meaningful parent participation in Student's February 16 and April 16, 2024 IEP team meetings, by:
 - i. not considering Student's private mental health providers' recommendations;

- ii. minimizing Student's need for positive peer models;
and
 - iii. dismissing Parents' concerns regarding the restrictiveness of the Compass placement?
- 2. Did Mill Valley deny Student a FAPE during the 2024-2025 school year, up to February 20, 2025, by:
 - a. failing to assess Student in the areas of pragmatic language and occupational therapy, including sensory processing;
 - b. failing to offer goals in the areas of executive functioning, attention, and social skills;
 - c. failing to offer sufficient mental health services, and any executive functioning services, occupational therapy, and social skills training;
 - d. failing to offer sufficient IEP accommodations; and
 - e. failing to offer placement in the least restrictive environment?

MILL VALLEY'S ISSUE

Did Mill Valley's psychoeducational evaluation consented to by Parents on December 3, 2023, meet all legal requirements?

JURISDICTION

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

- all children with disabilities have available to them a 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 (2006); 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.Ed2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

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In this consolidated matter, Student bore the burden of proof on Student's issues and Mill Valley bore the burden of proof on its issue. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

At the time of hearing, Student was 12 years old and a rising sixth grader at Marin Horizon private school. Student resided with Parents within Mill Valley's geographic boundaries. Student was diagnosed with attention deficit hyperactivity disorder, called ADHD, generalized anxiety disorder, other specified trauma and stressor related disorder due to persistent complex bereavement, and other specified neurodevelopmental disorder. Mill Valley found Student special education eligible in the categories of other health impairment and emotional disability in February 2024.

BACKGROUND

In Student's first grade, during the 2019-2020 school year, while attending Mark Day private school, Student was on the playground when his friend was killed by a rolling gate that fell off its track. Student experienced mental health issues associated with the accident. Student received mental health services and appeared to process the loss normally and continued to attend Mark Day regularly. During Student's spring semester of third grade, the 2021-2022 school year, he began exhibiting escalating fears about his and others safety at school. Student began receiving more intense private mental health services with Psychiatrist Dr. Chelsea Young, and psychotropic medication.

By fourth grade, the 2022-2023 school year, Student began exhibiting school refusal and reluctance to participate in school activities because he felt too sad to go to school. In spring 2023, Young advised Parent to obtain a neuropsychological

assessment of Student due to his continued mental health decompensation and to obtain information about his neurodevelopmental profile. Parent then removed Student from Mark Day and enrolled him at Marin Primary for the 2023-2024 school year for fifth grade.

By fifth grade at Marin Primary, Student's mental health severely deteriorated. Student's school refusal increased although he went to school at times, made friends, was social, and met academic expectations; he began showing anxiety around new peers, expressed responsibility for his friend's death, and safety concerns for friends.

In October 2023, Board Certified Pediatric Neuropsychologist Doctor Diana Trichilo who was recommended by Young, completed Student's private neuropsychological assessment, which Mill Valley received on December 3, 2023. Although Student exhibited emotional distress during the assessment process including laying on the floor in the fetal position and walking out of testing on one occasion, the parties agreed that Trichilo's neuropsychological assessment was valid and reliable.

Trichilo found Student's full-range cognitive score placed him in the average range and pro-rated overall score in the superior range. Student had attention and executive functioning weaknesses in

- shifting,
- flexibility,
- emotional regulation,
- defiance,
- aggression,
- hyperactivity, and
- impulsiveness.

Student's social-emotional testing showed concerns in rigid thinking; difficulty adjusting to changes in routine; and difficulty in some social situations, such as initiating conversations and sharing equipment. Student had needs in

- mental health,
- social-emotional,
- attention,
- executive functioning,
- some social situations, and
- sensory processing.

Along with Student's previous diagnosis of attention deficit activity disorder, and generalized anxiety, Trichilo diagnosed Student with other specified trauma and stressor related disorder due to persistent complex bereavement disorder, and other, specified neurodevelopmental disorder. Trichilo opined at hearing that Student could not attend a comprehensive school campus at that time. Young also testified at hearing and opined similarly, that Student could not attend a comprehensive school campus during that time because of his severe mental health deterioration. Parent agreed.

In November 2023, Marin Primary asked Student to leave the school after winter break due to attendance issues. Young informed Parent that Student may need to attend a residential treatment program. Young also recommended as a possibility that Student enroll at All Children Academics, a small private school that serves children with disabilities. Young did not recommend a public school placement to Parent because she knew that Parent believed public schools were too big and under resourced for Student. Parent stated that same sentiments at hearing, although she had no experience with Student at a public school as he had never attended public school.

Despite this, on November 13, 2023, Parent requested Mill Valley assess Student for special education and inquired about a public school residential treatment placement. At the time of Parent's assessment request, Mill Valley requested information from Parent about Student to prepare for the assessment. Parent provided Mill Valley with Young's private neuropsychological assessment, a report card, and a Mill Valley developmental history form. On November 28, 2023, Mill Valley gave Parent an assessment plan for Student which Parent returned signed on December 4, 2023.

However, before Parent returned the assessment plan, Parent applied for Student to attend a different private school, All Children Academics, as recommended by Young. On December 1, 2023, Parent interviewed with the All Children Academics Director Shana Kenney. On December 3, 2023, Parent filled out the All Children Academics school application, and Kenney and Parent were coordinating a tour for Student which was confirmed the following day. On December 4, 2025, Parent told Kenney she wanted Student to stay as long as possible when touring All Children Academics. Parent also told Kenney Student would be curious and would tour the school on his own, despite his school refusal issues with Mark Day and Marin Primary.

Conversely, on December 5, 2023, Parent told Mill Valley that she would enroll Student in Mill Valley, but likely Student would not set foot inside whichever Mill Valley school he was assigned to. And later Parent stated to Mill Valley that there is no way Student would go to school because he is afraid of school due to school-related trauma.

While Parent explained at hearing that she only meant Student would not attend a public school without a feasible plan and special education services in place, given the assessment was not due until February 2024, this explanation was not credible. Parent enrolled Student in All Children Academics in December 2023, a school that did

not offer any special education, therapeutic, or related services. Yet, Student began attending All Children Academics on January 8, 2024, with no special education services in place.

Additionally, Parent shared detailed information with All Children Academics and withheld information from Mill Valley during this time. The developmental history form requested by Mill Valley was not completely filled out by Parent including contact information of private providers. This was contrary to the All Children Academics school application that Parent filled out around the same time, in December 2023. Parent filled out the All Children Academics school application form with provider contact information and much more specificity and information about Student than what was disclosed on Mill Valley's form. Although Parent had the information and shared it with All Children Academics, the same requested information was omitted from Mill Valley's developmental history form.

Thus, Parent was not cooperative with Mill Valley in providing and sharing complete information about Student during the assessment process. Parent's inconsistent statement to the two schools, combined with her conduct with sharing information and corroborated by the documentary and testimonial evidence, significantly undermined her credibility and demonstrated that she had no genuine interest in public school and to work with Mill Valley.

However, as legally required, Mill Valley began the assessment process with the information it had from Parent.

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MILL VALLEY'S ISSUE: THE LEGAL COMPLIANCE OF ITS PSYCHOEDUCATIONAL ASSESSMENT

Mill Valley's sole issue is the legal compliance of its psychoeducational assessment. Since some of Student's issues hinge, in part, on the legal compliance of the psychoeducational assessment, Mill Valley's issue is analyzed first.

Mill Valley asserts that its psychoeducational assessment complied with all legal requirements of state and federal law. Student contends the assessment failed to meet the requirements necessary to establish legal compliance. Mill Valley proved that its psychoeducational assessment was legally compliant.

An assessment must be sufficiently comprehensive to identify all the student's special education and related service needs, whether commonly linked to the disability category in which the child is classified. (34 C.F.R. § 300.304(c)(6) (2006).) School districts must conduct a full and individual evaluation before the initial provision of special education and related services. (34 C.F.R. § 300.301(a) (2007). In performing an assessment, a school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R., § 300.305 (2007); Ed. Code, § 56381, subd. (b)(1). It must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).)

In conducting an assessment, a school district must follow statutory guidelines. It must select and administer assessment materials that are in the student's native language and that are free of racial, cultural, and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i);

Ed. Code, § 56320, subd. (a).) The assessment materials must be valid and reliable for the purposes for which the assessments are used. (20 U.S.C. § 1414(b)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).) Trained, knowledgeable, and competent district personnel must administer the assessments. (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (b)(3), 56322.) The assessments must be sufficiently comprehensive and tailored to evaluate specific areas of educational need. (20 U.S.C. § 1414(b)(3)(C); Ed. Code, § 56320, subd. (c).) California law refers to evaluations as assessments and the terms assessment and evaluation will be used in this Decision interchangeably. (Ed. Code, § 56302.5)

A district cannot use a single measure or evaluation as the sole criteria for determining whether the pupil is a child with a disability. (Ed. Code, § 56320, subd. (e); see also 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2) (2006).) An assessment must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors, and administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(a)(2), (b) & (c); Ed. Code, §§ 56320, 56381, subd. (e).)

Student must be assessed in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) Psychological assessments must be conducted by a credentialed school psychologist. (Ed. Code, § 56324, subd. (a). The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158.)

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The personnel who assess the student must prepare a written report that must include the following:

- whether the student may need special education and related services;
- the basis for making that determination;
- the relevant behavior noted during the observation of the student in an appropriate setting;
- the relationship of that behavior to the student's academic and social functioning;
- the educationally relevant health, development, and medical findings, if any; and
- a determination of the effects of environmental, cultural, or economic disadvantage if appropriate.

(Ed. Code, § 56327.)

Mill Valley's assessment plan included testing in the areas of academics, social-emotional, behavioral development, and observations. Mill Valley conducted and wrote the assessment plan, assessment, and report in Student's primary language of English. Mill Valley completed the assessments by February 15, 2024, except for an observation which was completed by March 1, 2024. Student's IEP team developed an offer over two IEP team meetings on February 16, 2024, and April 16, 2024, where it reviewed the assessments, determined eligibility, and offered Student an IEP.

A psychoeducational assessment generally evaluates a student's cognitive, academic, and social-emotional functioning to understand their learning profile and identify areas of strengths and weaknesses. It includes various components such as interviews, observations, and standardized testing to gain a comprehensive understanding of how a Student learns and functions in an educational setting.

Mill Valley's purpose in conducting the assessment was determining if Student was special education eligible and if so, to offer Student a FAPE. Mill Valley's assessment team, Educational Specialist Heather Sappington and School Psychologist Evelyn Sundar,

- obtained input from Parent and Student's fifth-grade teachers at Marin Primary, Julie Gordon and Meike Wanberg;
- reviewed records including health and development history and questionnaire, prior therapies and services, educational history, attendance records, grades;
- observed Student at his new private school in class and out on the yard;
- collected Parent and teacher questionnaires; and
- conducted multiple standardized and informal assessment measures.

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THE ACADEMIC ACHIEVEMENT ASSESSMENT

Educational Specialist Sappington, credentialed in mild-moderate special education, conducted Student's academic assessment. She tested Student's academic abilities due to concerns with his writing and to test for a specific learning disability. Sappington was knowledgeable of Student's suspected disabilities, and qualified, trained, and competent to perform the academic evaluation.

Sappington reviewed records, the information gathered from Student's teachers, Parent's input, the observation information, and the data collected by Sundar. Additionally, she administered the Wechsler Individual Achievement Test, Fourth Edition, to measure Student's achievement in reading, writing, and mathematics. Mill Valley established that the test was tailored to assess specific areas of educational need based on Student's educational background and generated accurate academic results. Student's results showed composite scores within the average range for mathematics, above average range for reading, and the written composite was not obtained since he did not meet the minimum length requirements, so it was not scorable. Sappington's testing was used for purposes for which the test was intended and was valid and reliable. She followed the test protocols and instructions.

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, that may manifest itself in the imperfect ability to

- listen,
- think,
- speak,
- read,

- write,
- spell, or
- to do mathematical calculations.

(34 C.R.F. § 300.8(c)(10) (2017); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030(b)(10).) 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(b)(10).)

In California, a student is eligible for special education in the category of specific learning disability if, among other things, he exhibits a severe discrepancy between intellectual ability and achievement in

- oral expression,
- listening comprehension,
- written expression,
- basic reading skill,
- reading comprehension,
- mathematical calculation, or
- mathematical reasoning.

(Cal. Code Regs., tit. 5, § 3030(b)(10)(B).) A severe discrepancy exists if, on standardized tests, a student's scores show a standard deviation of 1.5 or more between ability and achievement according to a complex mathematical formula set forth by regulation.

(Ibid.)

The determination of whether a student suspected of having a specific learning disability is a child with a disability must be made by the student's parents and a team of qualified professionals including the child's teacher and at least one individual qualified to conduct assessments. (34 C.F.R. § 300.308 (2006).) The student must be observed in his learning environment to document the student's academic performance and behavior in his areas of difficulty, including in the regular classroom setting. (34 C.F.R. § 300.310(a) (2006); Ed. Code § 56341, subd. (c).)

Based on all the information Mill Valley had and the assessment results, Sappington opined that Student had a weakness in writing, but per the exclusionary factor such as poor school attendance, she did not believe he met criteria for specific learning disability. Sappington's opinions were well articulated and comprehensive at hearing. Sappington included her results and conclusions in the psychoeducational assessment. On February 16, 2024, Sappington shared her findings in the written report with the IEP team. No one questioned the validity of the academic testing and findings, or Sappington's qualifications at the IEP team meeting. Nor did anyone at the IEP team meeting request additional academic assessments.

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At hearing, no witness, including Student's experts, found fault in Sappington's academic testing of Student or academic reporting, and no contradictory documentary evidence was presented to refute Sappington's testing and opinions. Student's witnesses did not evince any defects in the academic achievement assessments. Thus, Sappington's opinions were credible, given great weight, and her testing deemed legally compliant.

THE SOCIAL-EMOTIONAL ASSESSMENT INCLUDING BEHAVIOR, ATTENTION, PROCESSING, AND COGNITION

A social-emotional assessment is not limited to an inquiry into a student's behavior. "Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, and cognitive abilities including association, conceptualization and expression." (Cal. Code Regs., tit. 5, § 3030, subd. (j)(1).)

Mill Valley chose licensed and credentialed educational school psychologist Sundar, who holds a master's degree in counseling, to conduct the social-emotional portions of the multidisciplinary assessment, and observe Student at school. Sundar conducted informal and formal testing, observed at All Children Academics, reviewed teacher and Parent input and documents shared by Parent.

Sundar gathered relevant functional, developmental, and behavioral information in preparing for her social-emotional assessments. She selected technically sound tools that assessed Student's social-emotional functioning. Sundar observed Student at All Children Academics on the playground and in the classroom, and gathered teacher and Parent input. These strategies helped her determine Student's strengths and weaknesses. The evidence established that all her tests were in conformance with instructions and protocols, generated results that reflected Student's current abilities,

and were tailored to measure his social-emotional abilities. Sundar was qualified to conduct the assessments based on her experience, knowledge, and training. Her responses were measured and thoughtful and given great weight as to the legal compliance of her assessments.

COGNITIVE FUNCTIONING

To measure Student's cognitive ability, Sundar utilized the testing conducted by Student's expert, Trichilo, since it was conducted only two months before Mill Valley began its assessments and there was no dispute that Trichilo's cognitive testing was accurate and valid when she administered the Wechsler Intelligence Scale for Children, Fifth Edition, which measures intellectual ability. The testing reflected average cognition and when pro-rated, in the superior range, with strength in visual spatial reasoning and weakness in fluid reasoning. No witness at hearing questioned the accuracy, validity, and results of Student's cognitive functioning testing.

BEHAVIOR, ATTENTION, PROCESSING, AND COGNITION

For social-emotional behavior, attention, processing, and adaptive functioning, Sundar used a variety of assessment tools. She administered the Behavior Assessment System for Children, Third Edition, which tests for emotional, and behavior disorders and requires completion of rating scales. Student, Parent, and two of Student's teachers at Marin Primary completed rating scales as Parent did not share with Mill Valley that Student was attended All Children Academics at that time.

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A clinically significant rating may warrant formal treatment. Student rated himself clinically significant in

- attention problems,
- relations with parents,
- interpersonal relations,
- self-esteem, and
- self-reliance.

One teacher rated him clinically significant in school problems, depression, and learning problems, while the other had clinically significant ratings in internalizing problems, anxiety, depression, and somatization. Parent rated him in the clinically significant range in

- externalizing problems,
- behavioral symptoms,
- aggression,
- anxiety,
- atypicality, and
- adaptability.

Sundar also administered the Beck Youth Inventories, Second Edition, to further investigate social-emotional concerns. This instrument assessed

- depression,
- anxiety,
- anger,
- disruptive behavior, and
- self-concept.

Student rated himself in the extremely elevated range in depression and moderately elevated range in anger and disruptive behavior. Based on her testing, Sundar surmised that Student had internalizing concerns with anxiety and depression and had atypical social-emotional concerns. Sundar included her results and conclusions in the psychoeducational assessment.

Other health impairment is defined, in relevant part, as 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 [a]dversely affects a child’s educational performance.”

(34 C.F.R. § 300.8(c)(9) (2006); see also Cal. Code Regs., tit. 5, § 3030, subd. (f); Ed. Code, § 56339, subd. (a).) Under the IDEA and California law, emotional disturbance, named emotional disability in California, is characteristics present over a long period of time that significantly impact a child’s education and include persistent unhappiness or depression, and physical symptoms linked to personal or school issues. (34 C.F.R. § 300.8(c)(4) (2006); Ed. Code, § 97.)

On February 16, 2024, Sundar shared her findings in the written report with the IEP team. No one questioned the validity of her testing and findings, or qualifications at the IEP team meeting. Nor did anyone at the IEP team meeting request additional assessments.

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Sundar opined and recommended to the Student's IEP team on February 16, 2024, that Student met special education criteria for other health impairment and emotional disability due to the testing results demonstrating clinically significant in depression and anxiety, his diagnoses of attention deficit activity disorder, generalized anxiety, other specified trauma and stressor related disorder due to persistent complex bereavement disorder, and other specified neurodevelopment disorder per Trichilo's report, and his inability to access his education due to school refusal because of his mental health and social-emotional issues.

Sundar assessed Student in all areas of suspected disability related to his unique needs in the cognitive and social-emotional areas. The results were valid representations of Student's abilities at the time and with the information provided by Parent which she shared with the IEP team, including Parent, on February 16, 2024.

Sundar had years of experience in administering social-emotional assessments and was comprehensive, and persuasive in explaining her methods and results. At hearing, no evidence contradicted Sundar's findings by any witness, and no one refuted her qualifications, her administration of the social-emotional assessment, the standardized testing instruments she chose, and her findings and recommendations. For these reasons, Sundar's opinions regarding the legal compliance of the psychoeducational assessment were credible and given great weight.

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OBSERVATION

A school district must ensure that the child is observed in the learning environment, including a regular classroom setting, to document academic performance and behavior in the areas of difficulty. (34 C.F.R. § 300.310(a) (2006).) Under California law, an assessment report must describe "relevant behavior noted during the observation of the pupil in an appropriate setting." (Ed. Code, § 56327, subd. (c).)

Here, after Parent informed Mill Valley around early February 2024 that Student had been attending All Children Academics since January 8, 2024, Mill Valley set up an observation. Sundar observed Student on March 1, 2024. At that time, Student participated in the fourth/fifth combination class at All Children Academics. Although Student had difficulties with school attendance when he first began there, he attended more regularly at the time of the March 1, 2024 observation.

Sundar observed Student for 25 minutes. Sundar first observed Student outside on his break jumping on a trampoline with two other students. During this observation, Student demonstrated positive social interactions with other peers. Sundar then observed Student in his classroom which consisted of five students, all boys. Student and his peers were watching a Forged in Fire episode where contestants compete in forging bladed weapons, while the teacher engaged the students with questions. Sundar observed Student make appropriate eye contact, smile, joke with the teacher and other peers, followed the teacher's directions, engaged in the conversation with the teacher and his peers, and appeared happy. Sundar did not see any behavior or social concerns during her observations at All Children Academics.

Mill Valley reliably reported on Student's educational and social-emotional functional performance as noted in both classroom and social observations in its report. The assessment team considered the observation at the April 16, 2024 IEP team meeting along with other data to determine Student's current educational needs for recommendations for eligibility, placement, services, accommodations, and interventions to the IEP team. It was not required that every assessor observe Student in his learning environment. Thus, Mill Valley's observation generated the required information about Student's classroom performance and behavior.

In sum, Mill Valley selected qualified, trained, and experienced assessors to conduct all assessments. The assessments were conducted in Student's native language and not discriminatory. The assessors did not rely on a sole criterion for the assessment or findings and used a variety of technically sound assessment tools including standardized and non-standardized instruments to evaluate Student. The tests were administered in accordance with protocols and instructions. The assessments comprehensively assessed Student's psychoeducational areas of need and suspected psychoeducational areas of need. Student was observed in the classroom and in social interactions. Mill Valley collected input from Student's Parent and two recent teachers. Student's assessors correctly determined that Student did not suffer from any environmental, cultural, or economic disadvantage that would impact the results.

The evidence established that Student had unique needs in written expression, social-emotional, anxiety, depression, attention, executive functioning, and the ability to attend school, and recommended eligibility under the categories of other health impairment and emotional disability. The assessment instruments chosen were

designed to provide information about Student's special education eligibility, placement, services, and accommodations, and were free of any racial, cultural, and sexual discrimination. The assessments were valid and reliable.

Mill Valley produced a psychoeducation report on February 15, 2024, and was updated on March 1, 2024, that included the findings and recommendations, which was shared with Parent during the February 16, 2024 and April 16, 2024 IEP team meetings. The report included

- Student's health, developmental, and educational background;
- records review;
- classroom and social observations with relevant behavior noted and relationship to Student's functioning, input from teacher, Parent, and Student;
- testing;
- results;
- recommendations for special education eligibility, including the basis for the recommendations;
- the relationship to Student's social and academic functioning; and
- the effects of environmental, cultural, and economics.

Thus, Mill Valley proved by a preponderance of the evidence that its psychoeducational assessment and report abided by all statutory requirements, and were legally compliant.

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STUDENT'S ISSUES 1a AND 2a: FAILING TO ASSESS IN OCCUPATIONAL THERAPY AND PRAGMATICS

Student contends Mill Valley denied Student a FAPE because it failed to assess him in all areas of suspected disability, specifically, pragmatic language and sensory perception. Mill Valley acknowledged that it did not assess for sensory processing and pragmatic language but maintains Student failed to establish that it had reason to suspect Student had disabilities in these areas. Student proved that Mill Valley needed to assess Student in sensory processing and pragmatics.

A local educational agency must evaluate a special education student in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4) (2006); Ed. Code, § 56320, subd. (f).) A disability is suspected, and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified Sch. Dist.*, (9th Cir. 2015) 822 F.3d 1105, 1119-1120.) That notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Id.* at pp. 1120-1121.)

Under the IDEA, pragmatic language is considered a component of speech or language impairment, a communication disorder. (34 C.F.R. § 300.8 (c)(11) (2017).) Pragmatic language concerns the social use of language including perspective taking,

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ability to initiate and maintain peer interactions appropriately, and overreacting to conflict and non-compliance. Occupational therapy is a field focused on addressing delays including

- fine motor skills,
- gross motor skills,
- sensory processing,
- vestibular function, and
- proprioception.

A neuropsychological assessment may give some indication of a suspected disability in areas like speech and language and occupational therapy. Although Trichilo did not assess Student in the areas of pragmatics and occupational therapy, her October 2023 assessment and report gave notice to Mill Valley that Student had suspected disabilities in sensory processing and pragmatic language.

In Trichilo's recommendations in her October 2023 assessment report, she proposed an additional assessment in sensory processing by an occupational therapist to better understand how sensory sensitivities may impact Student's self-regulation in various environments. Trichilo's opinion stemmed from her testing results that showed that Student had attention deficit, executive functioning, flexibility, and rigidity issues, and believed that a sensory processing assessment was necessary to determine if any sensory processing issues contributed to Student's flexibility issues. Student's occupational therapy notes summarized by Trichilo also noted the use of sensory tools to support self-calming. Trichilo's recommendation and occupational therapy summary in her report should have triggered Mill Valley to assess in this area.

Trichilo recommended in her assessment report that Student continue in his social skills group to support mental shifting, flexibility, and social experience. Student's 2022 and 2023 occupational therapy notes as summarized by Trichilo documenting concerns with:

- self-regulation,
- the ability to calm down unless provided additional time and adult support,
- shutting down in minor conflicts,
- challenges with asking novel peers for a turn or to advocate for himself,
- and perceptive taking.

This information should have triggered Mill Valley to assess in pragmatic language.

Mill Valley failed to offer an occupational therapy assessment, specifically sensory processing, and a speech and language assessment, specifically pragmatic language, in its initial evaluation of Student. Mill Valley argued in its closing brief that Sundar's observation of Student and teacher reports did not support any sensory processing or pragmatic language needs. However, Mill Valley's later reliance on a classroom observation and teacher reports to justify its decision to not act on the information it had at the time of the assessments, is misguided. Mill Valley had a duty to assess even when a disability was only suspected.

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Student demonstrated that Mill Valley's failure to assess Student for occupational therapy, specifically sensory processing, and pragmatic language is a procedural violation of the IDEA. (*Park, ex rel. Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032-1033.) A procedural violation only constitutes a denial of FAPE if the violation:

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

(20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2).(2006); Ed. Code, § 56505, subd. (f)(2).)

At the time of the assessments, suspected deficits were known, as indicated in Trichilo's report, but how to address them were not. Had assessments in these areas been conducted by Mill Valley, the IEP team, including Parent, would have information in these areas to determine if services or accommodations were needed, or to advocate for more or different services or accommodations.

This failure deprived the IEP team of data and Parent meaningful opportunity to participate in the IEP decision-making process. Thus, Student proved by a preponderance of the evidence that Mill Valley denied Student a FAPE during the 2023-2024 school year, beginning February 16, 2024, by failing to assess Student in sensory processing and pragmatic language.

STUDENT ISSUE 1b: PREDETERMINATION OF STUDENT'S PLACEMENT AT THE FEBRUARY 16, 2024 IEP TEAM MEETING

Student contends Mill Valley predetermined its placement offer at the February 16, 2024 IEP team meeting. Mill Valley disagrees and argues that no placement offer was made at that time. Student failed to meet his burden of proof on this issue.

The IDEA requires school districts to ensure that the parents of disabled children are members of any group that makes decisions about their child's educational placement. (34 C.F.R. § 300.327 (2006); 34 C.F.R. § 300.501 subd. (c)(1) (2006).) School districts may not unilaterally predetermine a child's special education and related services before an IEP team meeting. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858., cert. denied, 546 U.S. 936 (U.S. 2005).) School administrators and staff must enter the IEP team meeting with an open mind and must meaningfully consider the parents' input. (*H.B., et al. v. Las Virgenes Unified Sch. Dist.* (9th Cir. 2007) 239 Fed. Appx. 342, 344; see also, *Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas County Sch. Dist.* (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.)

However, school officials do not predetermine an IEP simply by meeting to discuss a child's programming in advance of an IEP team meeting. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688 at p. 693, fn. 3.) District IEP team members also may form opinions before IEP meetings. However, if the district goes beyond forming opinions and becomes "impermissibly and deeply wedded to a single course of action," this amounts to predetermination. (*P.C. v. Milford Exempted Village Schs* (S.D. Ohio,

Jan. 17, 2013, No. 1:11- CV-398) 2013 WL 209478, p.7.) A district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural FAPE denial. (*Deal, supra*, 392 F.3d 840, 858.)

To avoid a finding of predetermination, there must be evidence the district has an open mind and might possibly be swayed by the parents' opinions and support for the IEP provisions they believe are necessary for their child. (See *Deal, supra*, 392 F.3d at p. 858; *R.L. v. Miami-Dade County School Bd.* (11th Cir. 2014) 757 F.3d 1173, 1188–1189.) This inquiry is fact intensive.

Student failed to prove that Mill Valley predetermined the placement decision at the February 16, 2024 IEP team meeting. On February 16, 2024, Mill Valley convened an IEP team meeting to review its initial Student assessments and to offer Student a FAPE. At this meeting, Conklin suggested Student attend Marin County Office of Education's therapeutic day program, called Compass Academy. Conklin described the placement to the IEP team as a program which focuses on students with underlying mental health or emotional challenges and utilizes a therapeutic model with on-site intensive mental health support, occupational therapy, speech and language services, and small class sizes located on a separate school campus, with the goal of returning students to a comprehensive school environment. Conklin also described possible at home wrap around mental health services for the family outside of the school day.

No evidence presented at hearing demonstrated that Mill Valley engaged in any discussion or reached any determination regarding placement before convening the February 16, 2024 IEP team meeting. Neither documentary evidence nor witness testimony established that Mill Valley IEP team members had deliberated or agreed

upon a specific placement before the meeting. The February 2024 IEP document showed that general education with supports, including counseling and specialized academic instruction were considered.

Student argued in his closing brief that only one placement was discussed at the February 2024 IEP meeting, according to Parent. However, this contradicts the testimony of Conklin, Sundar, and Sappington as well as the information in the IEP document itself. Sundar explained that she collaborated with Sappington about Student's assessments and possible services before the IEP team meeting, but did not discuss placement, and did not even know about the Compass placement before it was presented by Conklin during the February 16, 2024 IEP team meeting. No evidence contradicted Sundar's statement or showed that any IEP team member knew of Conklin's placement recommendation before the February 16, 2024 IEP team meeting.

The evidence showed that the IEP team considered Parent's concerns about sending Student to a comprehensive school campus at that time and moved away from recommending a comprehensive general education public school placement to the Compass program. Thus, Parent's testimony was contradicted by documentary and testimonial evidence and was unpersuasive.

At the February 16, 2024 IEP team meeting, Conklin merely offered Parent an opportunity to tour the proposed Compass campus to assist her in evaluating it. This gesture was exploratory in nature and did not reflect a finalized placement. The evidence established that no decision regarding placement had been made before or during the February 2024 IEP team meeting. The evidence showed that the FAPE offer

to Student was made at the continued IEP team meeting on April 16, 2024, after Mill Valley sent a referral to Compass, Parent visiting Compass, and the IEP team discussed Parent's visit to the program.

Student presented no evidence of predetermination. Parent's subjective belief that the IEP team predetermined placement was not corroborated by evidence and was unsubstantiated. Student failed to prove by a preponderance of the evidence that Mill Valley engaged in any predetermination of Student's placement at the February 16, 2024 IEP team meeting.

STUDENT ISSUES 1c, Id, 1e, AND 2b, 2c, AND 2d: FAILING TO OFFER GOALS IN EXECUTIVE FUNCTIONING, ATTENTION, AND SOCIAL SKILLS; FAILING TO OFFER APPROPRIATE OR ANY SERVICES IN MENTAL HEALTH, EXECUTIVE FUNCTIONING, OCCUPATIONAL THERAPY, AND SOCIAL SKILLS; AND FAILING TO OFFER APPROPRIATE ACCOMMODATIONS

Student contends Mill Valley failed to offer goals to address Student's executive functioning, attention, and social skills needs; appropriate or any services in mental health, executive functioning, occupational therapy, and social skills; and appropriate accommodations; from February 16, 2024, through February 2025. Mill Valley asserts that it offered appropriate goals, services, and accommodations to Student at all relevant times. Student failed to meet his burden of proof on these issues.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) An IEP provides a statement of the special

education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, making progress in the general education curriculum, and participating in education with disabled and nondisabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a)(1)(A).)

The IEP document for each disabled child must include 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. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (2007).) It must also contain 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; how progress toward meeting annual goals will be measured, and when the periodic progress reports will be provided. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (2007); Ed. Code, § 56345, subd. (a)(2).)

The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (a)(2).) Although Student contends in his closing brief that a failure to offer goals addressing all areas of need constitutes a FAPE violation; this interpretation is not supported by legal authority and is unpersuasive.

The IDEA requires goals to target a student's needs, but the IDEA does not require an IEP to contain every goal from which a student might benefit. (Capistrano 09768 Unified Sch. Dist. v. S.W., 21 F.4th 1125, 1134-1135 (9th Cir. 2021), cert. denied sub nom. S.W. on Behalf of B. W. v. Capistrano Unified Sch. Dist., 143 S. Ct. 98 (2022).) The Second Circuit has

held that an IEP which does not specifically address goals and objectives toward a need but which has goals which enable a student to make progress in the area of the need may be substantively sufficient. (*L.O. ex rel. K.T. v. New York City Dep't of Educ.*, 822 F.3d 95, 118-19 (2nd Cir. 2016))

"[T]he IEP annual goals must meet a student's needs, but the IDEA does not require that they have a one-to-one correspondence with specific needs. So long as the goals, as a whole, address the student's needs and enable progress appropriate in light of the student's circumstances, the IEP is appropriate."

(*K.M. by & through Markham v. Tehachapi Unified Sch. Dist.*, 2017 WL 1348807, at *17 (E.D. Cal. April 5, 2017) (nonpub opin.).) Thus, a school district is not required to develop a specific IEP goal in which a student demonstrates a deficit. If a student's identified needs can be appropriately addressed through other goals, services, accommodations, placement, and the IEP goals as a whole are reasonably calculated to enable the student to make progress, the absence of a specific goal does not constitute a FAPE denial.

A child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate considering the child's circumstances. (*Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].) California law defines special education as instruction designed to meet the unique needs of the pupil coupled with related services as needed to enable the pupil to benefit from instruction. (Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from

special education and include psychological, counseling, behavior, occupational therapy, and speech and language services when appropriate. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34 (2006); Ed. Code, § 56363, subd. (a).)

Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

On February 16, 2024, following the review of Mill Valley's assessments of Student, the IEP team started developing Student's initial IEP offer. The IEP team identified Student's present levels of academic and functional performance, and determined Student required two written expression goals and one social-emotional goal, but did not have any specific goals for attention, executive functioning, and social skills. This did not change at the April 16, 2024 IEP team meeting through February 2025.

Mill Valley offered Student at the February 16, 2024 IEP and completed on April 16, 2024:

- 1800 minutes of group specialized academic instruction during the regular school year;
- 45 minutes weekly of individual counseling during the regular school year and extended school year;

- 120 minutes per week of group counseling and guidance during the regular school year and extended school year;
- 60 minutes per month of parent counseling during the regular school year and extended school year;
- 285 minutes per week of group day treatment services;
- 1050 minutes of group specialized academic instruction during extended school year.

Mill Valley did not offer any specific related services for executive functioning, occupational therapy, and social skills. The service offer did not change through February 2025.

Mill Valley offered Student four accommodations at the February and April 2024 IEP team meetings, specifically, extended time, chunking assignments, graphic organizers, and multiple and frequent breaks. The accommodations offer did not change through February 2025.

Student failed to present any evidence about what specific goals were required in his IEP. Student's experts Young and Trichilo, along with Student's mental health service provider Lisa Olson, all acknowledged their lack of knowledge regarding educational settings and did not opine on what goals Student needed.

Further, Young, Trichilo, and Olson had no firsthand knowledge of the offered Compass program, had never observed it, nor were they familiar with it. Thus, their opinion regarding the adequacy of FAPE offer to Student were not grounded in sufficient factual understanding to carry persuasive weight, and did not support a finding that Mill Valley needed additional or different goals, services, or accommodations.

ATTENTION GOALS AND EXECUTIVE FUNCTIONING GOALS AND SERVICES

Executive functioning is a process that enables an individual to plan, organize, initiate tasks, regulate emotions, manage time, and sustain attention. Attention refers to the ability to focus on relevant information and filter out distractions to engage with learning tasks. As discussed in Mill Valley's assessment issue, Mill Valley knew based on Trichilo's assessment, its assessment, and Student's ADHD diagnosis, that Student had some attention and executive functioning deficits. However, no Student expert or any witness opined that Student required an executive functioning or attention goal at the February and April 2024 IEP team meetings through the relevant time in this matter. No documentary evidence presented at hearing endorsed attention or executive functioning goals for Student at the February and April 2024 IEP team meetings through the relevant time. After the April 2024 IEP team meeting, Parent unilaterally placed Student at a different private school, Marin Horizon, and did not provide any further information about Student's needs until filing this matter.

In Trichilo's October 2023 assessment report, she recommended services and accommodations to address Student's executive functioning needs, specifically:

1. Organizational skill coach or educational specialist for Parent consult;
2. Weekly check-in with a resource teacher or designated staff to review Student's class assignments and deadlines, review work in progress, and guarantee that completed work gets turned in;
3. Teacher provided power point or outline before class lecture;

4. Give assistance by resource teacher to break down larger projects into manageable units, with separate deadlines for each, monitored by Student's teacher; and
5. Taking tests in smaller quieter room with fewer students.

Student's executive functioning needs were addressed through Student's two written expression goals, accommodations, other services, and supports, including the embedded supports through the Compass program.

Sappington opined that Student's written expression goal number three worked on Student's executive functioning skills. Student's annual goal number three for written expression prompted Student to use an editing checklist to correct mechanics errors to assist in improving Student's writing. Likewise, Student's annual goal number two included the use of a graph organizer to help write essays. The use of the editing checklist and graphic organizer in Student's written expression goals assisted Student with planning, organization, and task initiation. Sappington's opinion on this point was not contradicted at hearing and was based on years of experience drafting and reviewing academic goals as a resource specialist. Thus, Sappington's opinion was credible and persuasive. The two written expressions goals offered assisted with Student's executive functioning needs.

Mill Valley also offered Student graphic organizers, extended time, multiple and frequent breaks, and chunking or breaking down assignments with specific dates for each chunk or portion, as accommodations to Student. Both Sundar and Sappington described that the accommodations assisted with executive functioning and attention like organization, structuring information, planning, allowing for more time to sustain attention, and completing assignments. Additionally, the chunking accommodation was

the same accommodation recommended by Trichilo. Sundar considered Trichilo's recommendations and did not believe that all of them were required to address Student's needs. Yet, Student's IEP team included similar accommodations for Student that addressed his executive functioning needs.

Mill Valley offered 1800 minutes per week of group specialized academic instruction. Marin County Office of Education Director of Special Education and former Program Manager Stacey Tachiki opined that academics are individualized for each student at Compass, and the academics addresses both core content and executive functioning. Tachiki had extensive and first-hand knowledge about the Compass program, experience in special education, and the services offered to Student through the Compass program. Since Student's experts had no personal knowledge of the program, and Parent and Kenney had little knowledge of Compass besides the tour of the campus, Tachiki's opinion was persuasive and given great weight on this issue.

Tachiki described Compass as including three special education teachers, six paraeducators, two school psychologists, a counselor, program manager, speech therapist, occupational therapist, and school nurse, with a small student-to-teacher ratio to address Student's needs. Compass Program Manager Atinart Koonkongsatian explained Student's class would have five to eight students. Sundar opined that Compass Academy's program was embedded with executive functioning and attention supports, including its small school and class size. No witness contradicted Sundar's opinion on this point and Tachiki corroborated it, thus her opinion was afforded considerable weight on this issue.

Although Trichilo recommended a wide range of executive functioning services and supports, Student did not establish that attention and executive functioning goals and services were necessary for him to receive a FAPE given the goals, services, and accommodations offered by Mill Valley. The small class size offer provides the type of individualized attention and support that would otherwise be delivered through an educational specialist consultation as recommended by Trichilo. In smaller settings, teachers are more able to monitor student progress, provide redirection, and support executive functioning and attention in real-time. Thus, testing in smaller rooms was not necessary since the Compass program provided a small student-to-teacher ratio in each classroom.

As for the recommendation of an outline or a power point, the evidence showed that Student did not require this type of support at All Children Academics, his placement at that time, which also provided him with a small class size. Weekly check-in support would also not be needed in the small class environment at Compass with 1800 minutes weekly of specialized academic instruction where Student would be receiving more individualized attention and embedded executive functioning support than weekly check-ins. Thus, most of Trichilo's recommendations for services and accommodations were not required given the goals, services, placement, and program offered. Trichilo admitted the recommendations were made without a placement in mind.

Parent explained that Student required extensive prompting and scaffolding to complete even simple assignments, and that his attention frequently drifted unless tasks were broken into small, manageable steps. Mill Valley addressed Parent's concerns through the chunking, graphic organizer, frequent breaks, and extended

time accommodations, written expression goals, small classroom placement, and specialized academic instruction services it offered Student. Parent failed to share any further information about Student's needs with Mill Valley after the April 2024 IEP through the relevant time.

Student failed to show that Mill Valley should have offered any executive functioning goals and services and attention goals to him because the Mill Valley offered goals, services, and accommodations, and support addressed his executive functioning, and attention needs to allow Student to make progress in light of his circumstances. Accordingly, Student failed to prove by a preponderance of the evidence that Mill Valley denied Student a FAPE by failing to offer attention goals or executive functioning goals and services from February 16, 2024, through February 20, 2025.

SOCIAL SKILLS GOALS AND SERVICES

Social skills refer to learned behaviors and abilities necessary for a student to successfully interact, communicate, and build relationships with others. At the time of Student's assessment, he was attending a social skills group through a private occupational therapy provider and Parent had concerns with his social skills. Trichilo recommended in her assessment report that Student continue with his social skills class to work on specific peer interactions like initiating conversations and sharing equipment, but did not opine that Student required a social skills goal. Student contends that Trichilo's assessment report and testimony regarding Student's social skills demonstrated a need for a social skills goal and services.

At hearing, Trichilo's testimony did not align with her recommendation for social skills training and opinion on Student's pragmatics in her report. At hearing, Trichilo as

with her report, did not recommend a social skills goal, but also opined Student did not have problems with peers and although was a little hesitant to join groups, it seemed typical. She further opined that Student had no concerns with social responsiveness and the concerns by teachers with social communication, and rigidity were in the mild range. In her report, Trichlio recommended social skills training with the occupational therapist to assist with flexible and mental shifting. These are executive functioning issues that help with planning and managing tasks which were addressed as stated above. Additionally, Trichilo's inconsistencies regarding Student's social skills testimony as compared to her report greatly diminished her persuasiveness on this issue.

Additionally, Student maintained that the Director of Upper School at Marin Horizon Ben Fussimer endorsed social skills as a current need for Student during the 2024-2025 school year, and one comment on his fall 2025 report card also established the need for a social skills goal and services. However, Fussimer did not specifically endorse a goal or services for social skills or give any specificity regarding social skills as a need. In fact, his testimony was inconsistent. Fussimer opined that Student fit in socially and academically at Marin Horizon during the 2024-2025 school year, easily made friends, stayed out of drama, and was friendly, including winning an award for being the friendliest Student in his class. Fussimer's blanket comment about a social skills need through leading questioning did not comport with his own open-ended specific description of Student's pragmatics and social skills while at Marin Horizon, and thus, was given less weight.

Even if Fussimer's testimony could be construed as endorsing a social skills goal or services, this information was not available to Mill Valley during the February and April 2024 IEP team meetings, as Student attended Marin Horizon starting in August 2024. Parent never shared any information about Student's needs after the April 2024

IEP team meeting or asked for an IEP team meeting or new FAPE offer to discuss Student's current or changing needs. Mill Valley lacked any notice of any issues at Marin Horizon with Student that may have triggered modifying its FAPE offer to Student after April 2024.

The same goes for Student's argument about the Marin Horizon fall 2024 report card comment. A single isolated comment in Student's otherwise outstanding eight-page fall 2024 report card suggesting that Student handle the deletion of another student's work on a group project differently does not constitute a need for a social skills goal or services. And, as already stated, Mill Valley had no notice of this report card until after litigation ensued. Further, Student's additional argument that Student's school absences demonstrated the need for a social skills goal and services is unsupported by Student's own experts that opined that Student's school refusal stemmed from anxiety and depression associated with his presence at his friend's death on the playground at Mark Day. Thus, Student's contentions were unpersuasive.

Sundar and Sappington, Student's Mill Valley assessors, opined that Student did not require any additional IEP goals, including social skills, but Mill Valley failed to assess Student in pragmatics and did not have the information necessary to determine whether Student required goals and services in social skills. Despite this, Student presented no testimonial or documentary evidence that persuasively contradicted their opinions, or endorsed a social skills goal or services for Student. Much of the evidence presented by Student showed Student's pragmatic issues were moderate and typical.

Thus, Student failed to meet his burden of persuasion on this issue. Accordingly, Student failed to prove by a preponderance of the evidence that Mill Valley denied it a FAPE for failing to offer any social skills goals or services.

MENTAL HEALTH SERVICES

Student contends that Mill Valley should have offered trauma-based counseling and 45 minutes weekly of counseling for Student was insufficient. The evidence showed that Student was in severe emotional crisis in fall 2023 and required mental health services to access his education. At that time, Student received psychiatric services, psychotherapy, and psychotropic medications from private providers, but no mental health services were received through his schools Mark Day, Marin Primary, All Children Academics, or Marin Horizon.

In Trichilo's October 2023 assessment, she recommended Parents receive coaching support for Student's behaviors at home and psychotherapy, but did not specify the amount, duration, or frequency. Trichilo also opined that Student did not require a therapeutic placement and mental health school services but conceded her opinion was based on her belief that Parent would not utilize them because Parent wanted to continue with her private mental health providers. Olson, Student's mental health provider, opined that Student required a therapeutic placement and services with access to a school counselor or mental health provider every day and trauma-based counseling. Sundar also agreed that educationally related counseling on campus to assist with Student's real-time triggers and school issues was important for Student.

At the February 16, 2024 IEP team meeting, as stated, Conklin recommended the Marin County Compass therapeutic day treatment program that catered to students with mental health, social-emotional concerns, and internalizing behaviors. She also shared information about family counseling services with Parent.

Along with the Compass therapeutic program, Mill Valley offered 45 minutes weekly individual counseling; 120 minutes weekly group counseling and guidance; and 60 minutes monthly parent counseling. All services would be provided by a licensed mental health clinician and were offered for the school year and extended school year through February 15, 2025. Both Tachiki and Koonkongsatian explained that Compass has a full-time licensed marriage family therapist on campus daily, and that services were individualized and could address school refusal, thus focusing on the educationally based component of Student's underlying trauma. Contrary to Student's contention in his closing brief that it offered only 45 minutes of counseling to Student, Mill Valley also offered 120 minutes of group counseling and guidance weekly, and 60 minutes monthly of Parent counseling as recommended by Trichilo.

Student did not establish that Mill Valley's offered mental health services were inappropriate. Trichilo opined that all the Compass-based mental health services were unsuitable, but her opinion was not based on any deficiencies in the services themselves, but solely because Parent preferred to use private providers, and did not want Student to receive mental health services from any other providers. Thus, Trichilo did not think Compass or any therapeutic program and mental health school services were appropriate, due to Parent's preference. Under the IDEA, however, a school district is obligated to provide services necessary to address a student's educational needs within a school setting, and it cannot delegate the responsibility to outside providers selected by parents. (34 C.F.R. 300.320(a)(4) (2007); Ed Code 56345(a)(4).)

Trichilo's criticism was unpersuasive and legally misplaced. She acknowledged no specific deficiencies in the content, delivery, or frequency of Mill Valley's offered mental health services. Instead, her objection was based solely on the services being provided in school, which is not a valid basis for determining the appropriateness of services.

Trichilo failed to acknowledge that school-based mental health providers are trained to address social-emotional and behavioral challenges that solely affect the student's ability to access and benefit educationally, whereas private providers often focus on broader clinical or home-based issues outside the scope of the IDEA. Here, the evidence showed that Student's private mental health providers worked with Student on his behavior at home, issues associated with the accident he witnessed, and school refusal. Thus, Trichilo's opinion did not undermine Mill Valley's evidence showing the appropriateness of the mental health services offered to Student. Additionally, Olson's opinion endorsing a therapeutic placement and school-based mental health services supported Mill Valley's mental health service offer.

Parent's belief that the Mill Valley's mental health services were inappropriate was based on two concerns: (1) the services were delivered virtually for one month; and (2) Student should not receive support from both private and school-based mental health providers at the same time. Neither criticism supports a finding that Mill Valley failed to offer appropriate mental health services to Student. First the delivery of virtual mental health services occurred in March 2024 because a mental health provider left on medical leave. Mill Valley filled the position, and the service resumed in-person at the beginning of April 2024. Parent also made clear at both the February and April 2024 IEP team meetings that she did not plan to send Student to a public-school placement for Student's 2023-2024 school year. Thus, Parent's criticism of one month of virtual mental health services in March 2024 was neither relevant nor persuasive.

Second, students are not precluded from receiving both private and school-based mental health services. Mill Valley is obligated to provide services to meet Student's educational needs in the school setting. It is Parent's decision to pursue outside therapy for other issues, such as home-based behavior concerns, but does not

render or invalidate the school-based mental health services. Parent's disagreement based on personal preference or philosophical opposition to dual providers does not establish that Mill Valley's mental health service offer to Student was inappropriate.

After the April 2024 IEP team meeting, Parent did not provide any further information except for the unilateral placement notice to Mill Valley. Thus, Mill Valley had no further information regarding any changing needs of Student.

Accordingly, Student did not meet his burden of proving by a preponderance of the evidence that Mill Valley denied Student a FAPE from February 16, 2024, through February 20, 2025, for failing to offer appropriate mental health services.

OCCUPATIONAL THERAPY SERVICES

In Student's closing brief, Student argued that Mill Valley failed to offer any occupational therapy services to address Student's executive functioning needs. Although Mill Valley failed to assess in the area of occupational therapy, Mill Valley knew Student had executive functioning needs, and addressed those needs through other goals, services, accommodations, and supports as already determined. Student failed to present any testimony specifically opining as to what type of executive functioning services were needed by an occupational therapist.

The only evidence presented about occupational therapy services was Trichilo's recommendation for social skills training by Student's current occupational therapy provider. As already discussed, Trichilo's opinion on that issue was unpersuasive given her inconsistent statements. Parent provided no further information about Student's needs after April 2024. No evidence was presented that Student needed any sensory processing or other occupational therapy services.

Student failed to establish that Mill Valley failed to address Student's executive functioning needs in its February and April 2024 IEP offers or any occupational therapy needs. Accordingly, Student did not prove that Mill Valley denied Student a FAPE from February 16, 2024, through February 2025, by failing to offer occupational therapy services.

ACCOMMODATIONS

An IEP must contain a statement of supplementary aids and services, program modifications, and supports that will allow the student to advance toward goals, and access and make progress in the curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345, subd. (a)(4).) As already described, Mill Valley offered Student accommodations for extra time, chunking assignments, the use of a graphic organizer, and multiple and frequent breaks.

Trichilo recommended more and different school accommodations for Student to address his executive functioning needs as previously described. The evidence presented demonstrated Student failed to meet his burden that the accommodations were insufficient. Mill Valley witnesses believed that it offered Student a FAPE at the February and April 2024 IEP team meetings. The IDEA does not require that a school district provide every accommodation a parent or expert may recommend, or to optimize a student's potential, but rather that the educational program be tailored to the student's individual needs. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

Here, Mill Valley developed accommodations to address Student's attention and executive functioning needs based on the information it had at the time of the IEP team meeting as discussed. The accommodations would be implemented in the context of a

small class environment that further supported Student's need for reduced distractions, structure, and more individualized attention that addressed his executive functioning and attention needs.

Although Trichilo opined that additional accommodations were needed, she failed to establish that additional accommodations were educationally necessary, rather than simply beneficial. Educational benefit under the IDEA does not equate to maximizing a child's potential. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. (1987) 811 F.2d 1307, 1314.)

Further, Trichilo conceded at hearing that when making her recommendations in her report, she did not have a specific placement in mind, nor knowledge of Mill Valley's or the Compass placements and programs. Student did not introduce evidence from any other witness who was familiar with Compass that would support Student's need for additional accommodations given the therapeutic and embedded accommodations and supports in the program.

In Student's closing brief, Student also argued that the IEP did not identify a clearly designated safe space accommodation or procedures to access when he was overwhelmed by any sensory processing deficits. No witness at hearing testified Student required this accommodation. However, Tachiki opined that Compass has a sensory room that Student could access when overwhelmed as well as fidget tools in each classroom as embedded supports. Thus, this contention was unconvincing and unsupported by any proffered evidence.

Student further alleged in his closing brief that Student needed accommodations for transitions. The only transition accommodations that witnesses testified to were accommodations to transition to school due to school refusal. As explained by

Koonkongsatian, Compass is designed for students with internalizing problems and school refusal. Thus, accommodations for transitioning into a comprehensive school as Koonkongsatian and Tachiki described in detail at hearing, is part of the supports and accommodations embedded in the Compass program. The transition suggestions by Student's experts were not based on any knowledge of the Compass program and some, as described by Kenney, used physical interventions not in line with utilizing positive behavior interventions like mental health support, building trust, and gradual attendance as described by Koonkongsatian and Tachiki, for school refusal transitions. Thus, Student's contention for transition accommodations was unpersuasive.

The accommodations provided by Mill Valley coupled with the goals, services, placement, and supports offered addressed Student's needs. Accordingly, Student failed to meet his burden of proof that Mill Valley denied Student a FAPE for failing to offer appropriate accommodations at the February and April 2024 IEP team meeting. Parent never shared any information about Student's needs after the April 2024 IEP team meeting. Thus, Mill Valley lacked notice that may have triggered modifying its FAPE offer to Student after April 2024 through February 2025. Accordingly, Student failed to prove that Mill Valley denied Student a FAPE by failing to offer appropriate accommodations from February 16, 2024, through February 20, 2025.

STUDENT ISSUE 1f: FAILING TO CONSIDER THE CONTINUUM OF PLACEMENT OPTIONS AT THE FEBRUARY AND APRIL 2024 IEP TEAM MEETINGS

Student contends Mill Valley failed to consider the continuum of placement options at the February 16 and April 16, 2024 IEP team meetings. Student maintains that Mill Valley should have considered less restrictive options than a separate

therapeutic program. Mill Valley disagrees and argues that it considered all relevant continuum of placement options, but believed a separate therapeutic special day class was the appropriate placement in the least restrictive environment for Student given his severe emotional needs. Student failed to meet his burden of proof on this issue.

A school district must make available a continuum of placement options to meet the instructional and service needs of special education students. (34 C.F.R. § 300.115(a) (2017); Ed. Code, § 56360.) Under the IDEA and California law, this includes, from least restrictive to most restrictive: regular education programs; resource specialist programs; related services; special classes; nonpublic, nonsectarian school services; and other listed settings; to instruction in the home, in hospitals, and in other institutions. (34 C.F.R. § 300.115 (2017); Ed. Code, § 56361.) The continuum of placement options is to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive environment appropriate for them. (71 Fed. Reg. 46, 586-46, 587 (Aug. 14, 2006).)

Considering continuum of placement options plainly does not require discussion of every possible option at every IEP team meeting. There is no requirement that the IEP team members consider and discuss all placement options. (L.S. v. Newark Unified Sch. Dist. (N.D.Cal., May 22, 2006, No. C 0503241 JSW) 2006 WL 1390661, pp. 5 6 [nonpub. opn.]; Katherine G. v. Kentfield Sch. Dist. (N.D.Cal. 2003) 261. F.Supp.2d 1159, 1189-1190.) The purpose of the continuum is to have options available for consideration by the IEP team, including parents, when appropriate for consideration in a particular case. (T.R. v. Kingwood Township Bd. of Educ. (3d Cir. 2000) 205 F.3d 572, 579-580.)

At the time Parent contacted Mill Valley for a special education assessment in November 2023, she inquired about residential treatment because Student was in severe emotional crisis. Trichilo's October 2023 neuropsychological report did not recommend a placement option, but her assessment report did not support Student attending a comprehensive campus due to Student's mental health decline which Trichilo confirmed at hearing. At the February and April 2024 IEP team meetings, Parent denounced a comprehensive school site for Student as not appropriate to meet his needs, and believed public schools were too big and not safe for Student.

After Mill Valley completed its assessments of Student in February 2024 and considered Parent's input, it also agreed that Student should not attend a comprehensive school campus. Young and Olson, both service providers of Student at that time, supported this opinion at hearing. No witness at hearing endorsed Student attending a comprehensive general education school campus in any capacity, such as with services, supports, accommodations, or time in a separate classroom, during the 2023-2024 school year.

Around the beginning of February 2024, Parent informed Mill Valley that Student had been attending All Children Academics private school since January 8, 2024. This was not a comprehensive general education school campus. Instead, the school was a kindergarten through fifth-grade school consisting of less than 20 students in three classrooms, in a house on a church property. Student had four other boys in his fourth/fifth combination class, who all had special education needs. The school offered Student a small school environment and academics, although not up to California state standards, and did not offer any related services like mental health counseling, occupational therapy, and speech and language. The evidence established that while

Student continued to have some problems with school refusal at All Children Academics, his school refusal improved in this separate small special education private school environment.

At the February 2024 IEP team meeting, the Mill Valley assessment results were reviewed. The IEP team briefly discussed general education options with Parent, and she voiced concerns with a comprehensive general education school campus for Student. Parent also stated that Student was improving at All Children Academics, and she did not want to move Student to another placement that school year.

The IEP team considered her input, the assessment results, and other information it had about Student, and knew that Student continued to have serious mental health issues, and agreed that a comprehensive general education school campus was not appropriate for Student at that time as agreed by all witnesses at hearing. Thus, the next step on the continuum of placement options was a separate special education school setting.

Based on this new information provided by Parent at the February 2024 IEP team meeting, Mill Valley team members believed that residential treatment would be too restrictive as a placement option because Student was able to attend, although with some inconsistency, a small private day school. However, the new information provided by Parent also did not change Mill Valley IEP team member's opinions nor Parent's opinion that a comprehensive general education school campus was not appropriate, even with supports, and all witnesses agreed.

Thus, all uncontroverted evidence demonstrated that Student needed a small separate special education school program to meet his needs during the 2023-2024 school year.

Thus, at the February 2024 IEP team meeting, Conklin moved down the continuum of placement options and recommended to the IEP team the therapeutic Compass program through the Marin County Office of Education. Although Student alleged that Mill Valley failed to consider other less restrictive options, the February 16, 2024 IEP document showed a general education placement, specialized academic instruction, and counseling were considered on a comprehensive campus and was listed under special education service options considered by the team but was not an appropriate placement given the information that Mill Valley had at the time of the February 2024 IEP team meeting.

Student contended in his closing argument, that the IEP team should have considered a less restrictive environment than the Compass program. Not only was this completely contradictory to Student's experts' opinions and the Mill Valley IEP team members at that time, but as the evidence demonstrated, Mill Valley considered general education with varying services briefly before moving a step down to a separate school placement. Student failed to prove that Mill Valley did not consider the relevant continuum of placement options at the February 16, 2024 IEP team meeting.

The April 16, 2024 IEP team meeting was part two and a continuation of the February 16, 2024 IEP team meeting, to discuss the recommended Compass placement after Parent toured the campus and the observations at All Children Academics. Parent continued to voice concerns about Student attending a comprehensive general education campus during the April 2024 IEP team meeting and that she had no intention of moving Student out of All Children Academics during the 2023-2024 school year.

The school observation on March 1, 2024, at All Children Academics demonstrated that Student was able to attend a small private school with other students with disabilities. Student maintained that Student's progress at All Children Academics showed that Mill Valley should have offered a less restrictive placement than Compass.

However, as Sundar opined, improvement over a short period of time of less than six months should be interpreted with caution when considering a long-term mental health concern. Further, no other witnesses contradicted her or endorsed a comprehensive school campus during the 2023-2024 school year. Thus, Sundar's opinion was given considerable weight on this point.

Mill Valley did not need to review less restrictive placements options already deemed inappropriate for Student by Mill Valley based on the information it had at the April 2024 IEP team meeting. Although Parent did not like Compass, Mill Valley continued to believe it was an appropriate placement for Student in light of his circumstances.

Parent did not agree but did not understand that Mill Valley could not offer a private school because they do not meet state certification standards. Parent did not understand that Mill Valley needed to offer the least restrictive environment with all related services to Student to provide FAPE.

Parent did not want Student to utilize related services at school and wanted to put together her own program for Student. Mill Valley cannot legally rely on a parent providing related services for educationally related needs. Thus, it offered the Compass therapeutic placement for Student.

Accordingly, Student failed to prove by a preponderance of the evidence that Mill Valley denied Student a FAPE for failing to consider the continuum of placement options at the February 16, 2024 and April 16, 2024 IEP team meetings.

STUDENT ISSUES 1g AND 2e: FAILING TO OFFER THE LEAST RESTRICTIVE ENVIRONMENT

Student contends in his closing brief that he required a less restrictive environment than a separate therapeutic day school, such as general education with supports, partial inclusion, or resource specialist services. Mill Valley contends that Student could not be appropriately placed in a comprehensive campus and the Compass therapeutic program was the next least restrictive environment. Student failed to prove that Mill Valley did not offer the least restrictive environment during the relevant time in this matter, given the information it had.

The determination of an appropriate educational placement under the IDEA hinges on whether the placement provides Student with a FAPE in the least restrictive environment. 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 cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2) (2006); Ed. Code, § 56040.1.) The IDEA also requires, to the maximum extent appropriate, that a child with a disability must be educated with children who are not disabled. (*Ibid.*)

If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1050.) In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

The Ninth Circuit has stated a four-factor evaluation to determine whether a placement is the least restrictive environment. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*)) Those four factors are:

1. the educational benefits of placement full-time in a regular class;
2. the non-academic benefits of interaction with children who were not disabled;
3. the effect the child will have on the teacher and children in the regular class; and
4. the costs of mainstreaming the student. (*Ibid.*)

After Student was assessed, the placement Mill Valley offered Student at the February 16, 2024 as continued on April 16, 2024 IEP team meetings was the Marin County Compass therapeutic day class at a separate school with the primary focus for students with internalizing mental health issues, including school refusal, as described.

The uncontested testimony of Koonkongsatian and Tachiki, and the only two witnesses that had extensive and personal knowledge of the Compass program, established that Compass was a small school campus site, about 20 to 30 students total. During the 2023-2024 school year, Student would participate in a combination class third through fifth grade that consisted of five to eight students, like the class size and population of All Children Academics. The Compass program placement usually lasted around one semester to two years, and offered intensive mental health supports to enable Student to integrate into a comprehensive school site. Compass offered embedded mental health services, trauma-informed staff, therapeutic supports, and academics aligned with California grade-level academic standards. The evidence showed that Compass aligned with Student's internalizing emotional challenges and school refusal as previously described.

Compass is not located on a comprehensive campus which all witnesses endorsed as appropriate for the 2023-2024 school year for Student due to his severe mental health issues and school refusal at that time. Thus, Student's post-hearing contention that Mill Valley should have offered general education with support, partial inclusion into general education, or general education with resource support is wholly unsupported by the evidentiary record. Not a single witness, expert or otherwise, endorsed a comprehensive campus site for Student during the 2023-2024 school year. The evidence overwhelming demonstrated that such a setting would not have met Student's unique needs.

Student's reliance on inapposite OAH decisions and two Ninth Circuit decisions is also misplaced. Student cited *Doug C. v. Hawaii Dep't. of Educ.* (9th Cir. 2013) 720 F.3d 1038, which determined issues involving a parent's participation at an IEP team meeting,

and not issues related to least restrictive environment. *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir 2003) 337 F.3d 1115, the other case cited by Student, involved a student who was attending a comprehensive school campus without school refusal issues where Parent preferred more mainstreaming, but the court agreed with the more restrictive interim placement offered by the school. Thus, this case does not support Student's argument.

The OAH cases are also not helpful to Student. First, OAH decisions are not binding authority. (Cal. Code Regs., titl. 5 § 3085.) Even if they were, these cases are not relevant. Student cites *Student v. San Diego Unified Sch. Dist.* (2018) OAH Case Number 2018030844 claiming the decision supports its argument that Compass is not the least restrictive environment. However, that case does not have San Diego Unified School District as a party and was dismissed before hearing, so no decision was issued. Student's cite to *Student v. Irvine Unified Sch. Dist.* (2019) OAH Case Number 2019010300 is also a miscite as this is an Industrial Disability Retirement case that does not involve Irvine Unified School District as a party or involve special education issues. Here, Student and Mill Valley disagree on the placement offered to Student for the 2023-2024 school year, but all placements endorsed at hearing by Parent and Mill Valley were more restrictive than a comprehensive school site. Mill Valley endorsed Compass and Parent endorsed All Children Academics.

For the 2024-2025 school year, Student argued his success at Marin Horizon shows Mill Valley should have offered a less restrictive placement than Compass. Trichilo, Young, Olson, and Kenney endorsed Student attending a comprehensive campus with typical peers beginning August 2024, during the 2024-2025 school year, because of the progress he made at All Children Academics and especially during the summer when attending a private overnight camp. However, Parent did not share this

information with Mill Valley, including Student's progress after April 2024, his success at camp, the opinions of his providers, and success attending a new larger private school, Marin Horizon, with typical peers during the 2024-2025 school year, until litigation ensued. Thus, Mill Valley did not have any new information after the April 2024 IEP team meeting to consider. Thus, Mill Valley had no notice of Student's changed needs. Thus, Student's argument fails. As discussed below and based on the information Mill Valley had at the time, the *Rachel H.* factors favor Mill Valley's placement offer.

THE EDUCATIONAL BENEFITS OF PLACEMENT FULL-TIME IN A REGULAR CLASS

As stated, Student was in a severe emotional crisis with a history of school refusal, significantly impairing his ability to access the curriculum in a general education setting, even with supports. No witness recommended placement on a comprehensive public school campus with typical peers for the 2023-2024 school year, including placement in a separate special education classroom, or partial inclusion, on a comprehensive campus as already stated. The evidence showed that even in the small private school setting with only special education students at All Children Academics, Student emotionally improved but continued to struggle, demonstrating that a less restrictive environment, like a comprehensive campus would not meet his needs as agreed upon by all experts and witnesses, including Parent, at hearing.

This Decision concludes that given the available information, the overwhelming evidence showed Student's progress would not have been satisfactory in a comprehensive school site. The evidence showed that it was more likely that Student's progress would be satisfactory in separate special day class like Compass, a specialized therapeutic setting that could assist with his school refusal and educationally related mental health needs at

school rather than in a comprehensive campus with supplementary aids and supports, especially given that his own experts neither endorsed such a placement, nor believed he could be successful in it at that time.

Besides Olson, who endorsed a therapeutic placement for Student during the 2023-2024 school year, Trichilo, Young, Parent, and Kenney endorsed Parent's preferred placement, All Children Academics, as the appropriate placement for Student, which had no related services or therapeutic supports that all experts believed Student needed, and did not include Student attending any general education classes or inclusion with typical peers. Besides Olson and Mill Valley IEP team members, no Student witnesses endorsed any public-school placement option, only private school, and no option less restrictive than Compass.

Trichilo endorsed All Children Academics for the 2023-2024 school year. Her opinion was given little weight because she agreed that Parent should be able to utilize her own mental health team for Student outside of school and did not agree that he should receive both school and outside mental health services. Thus, Trichilo believed Compass was not appropriate because it offered therapeutic support at school. Trichilo did not understand what IEP teams are required to offer special education students to provide FAPE or the least restrictive environment obligation. This greatly diminished her persuasiveness that Compass was not appropriate.

The same goes for Young. She was Student's service provider who originally recommended All Children Academics to Parent and assumed Parent would not send Student to a public-school placement based on her understanding Parent's opinion of public schools.

Parent argued Compass was too restrictive and preferred All Children Academics but also did not believe a comprehensive campus was appropriate. Parent's primary objections to the therapeutic program were not its level of restrictiveness per se, but rather that it did not include the specific type of peers she envisioned for her son, the look of the campus, and online mental health services for the month of March 2024, before the placement was offered to Student.

Parent's testimony reflected a clear discomfort with Compass, particularly with the student population and look of the school. Her remarks conveyed a belief that the placement was not suitable for her son because of the nature of the other students, who, like Student, required intensive mental health support. Parent appeared to place an undue emphasis on a perceived social mismatch. While Parent is entitled to hold personal preferences, the IDEA does not require a school district to satisfy parental aesthetic or social expectations, but rather to offer a placement reasonably calculated to allow a student to make progress in the least restrictive environment appropriate to the student's unique needs.

It is not presumptive, but appropriate and evidence-based, to offer placement with similarly situated peers when the student's own intensive mental health and behavioral needs required specialized supports under these facts. The evidence established that Student could not participate with typical peers in a comprehensive campus at that time.

Instead of seeking a placement with embedded supports, Parent insisted on All Children Academics, a school with no typical peers, no embedded supports, and without a state standardized academic program. Parent approved of the other students and the

campus, and wanted to utilize her chosen private service providers for Student. However, Parent's own preference was more restrictive than the Compass program. Yet, Parent now complains that Compass was too restrictive.

A school district is not required to adopt a parent's preferred placement. (Gregory K. v. Longview Sch. Dist., *supra*, 811 F.2d at 1313-1314.) The law requires a school district offer a FAPE. Parent's opinion regarding the Compass placement was unconvincing.

Kenney, the director of All Children Academics, opined that All Children Academics was the appropriate placement for Student at that time. Kenney's opinion was not credible on this issue. She focused on Parent's preference during her one observation with Parent of Compass. Both Parent and Kenney repeatedly presented testimony that a certain aspect of Compass was unacceptable while treating the same features of All Children Academics as beneficial to Student like class size, unstructured academic instruction, and adult staff bonding over a shared activity. Yet, the theme of their testimony was an aversion to public school placement.

Neither Parent or Kenney presented credible or reliable testimony, based on one school observation that Compass was not appropriate or the least restrictive environment for Student, that Student would not make progress, or that Compass was not capable of implementing Student's IEP. Student failed to meet his burden on this issue as the evidence supported Mill Valley's placement offer for this factor as no witness endorsed a lesser restrictive environment or placement that Mill Valley could offer Student. Under these facts, Student failed to prove that he would have benefited

from placement in a full-time general education classroom, mainstreaming, on some inclusion during school for the 2023-2024 school year, or that a program less restrictive than Compass was appropriate.

As previously discussed, Parent did not provide updated information regarding Student's evolving needs since April 2024. Without timely notice, Mill Valley did not know to reconsider the offer for the 2024-2025 school year. Under these facts, the first factor weighs in favor of the Compass placement offer for the relevant time.

THE NON-ACADEMIC BENEFITS OF INTERACTION WITH CHILDREN WHO WERE NOT DISABLED

The Compass program allowed students to join after-school activities at their home school during the program, and worked with students' home school and school districts on a gradual integration into the comprehensive school site with partial school days at the district, when appropriate. Thus, there were some limited opportunities for interactions with typically developing peers. However, the core Compass school program was separate from typical peers and on a separate school campus.

While non-academic interaction with nondisabled peers is generally beneficial, here, it posed a barrier to Student's progress at that time of the February and April 2024 IEPs. Student's emotional dysregulation and ongoing mental health issues made it unlikely he could meaningfully engage with typical peers in a comprehensive general education school environment at that time as supported by all evidence. As seen at Marin Primary, Student completely decompensated at a comprehensive small private

school campus in fall 2023. As Trichilo explained, Student's school refusal behavior and heightened anxiety could be exacerbated by a larger school setting, precisely the conditions present in a comprehensive school campus.

In contrast, the Compass therapeutic program's small, structured, and supportive setting would allow Student to stabilize emotionally, build trusting adult and peer relationships, and develop the skills necessary for future reintegration. Thus, while the opportunity for typical peer interaction was limited at Compass, it is the only environment in which Student could temporarily access robust academics that followed state standards and intense therapeutic supports outside a comprehensive campus. Compass was a less restrictive placement than residential treatment, nonpublic school, or the private school endorsed by Student's witnesses, which had no opportunities to integrate with typical kids and receive any related service.

Student's success at All Children Academics did not trigger Mill Valley to offer a comprehensive school site, including with any type of services, supports, accommodations, or modifications, during the 2023-2024 school year as supported by all the evidence. And, it did not have any new information for the 2024-2025 school year to change the offer. Thus, this factor also supports Mill Valley's placement offer for the relevant time.

THE EFFECT THE CHILD WILL HAVE ON THE TEACHER AND CHILDREN IN THE REGULAR CLASS

No evidence presented demonstrated that Student's participation in a general education setting would have a negative impact on teachers or peers. Student was not disruptive or had any negative impact with teachers and peers while at comprehensive private school placements. Student made friends and was social with other students,

and participated in class, when he attended school. Student's behavior at school can be characterized more as internalizing behavior such as depression and anxiety and school refusal which did not affect teachers or peers. This factor does not support Mill Valley's placement offer.

THE COSTS OF MAINSTREAMING THE STUDENT

No evidence was presented regarding the cost of mainstreaming. This factor neither supports Student's nor Mill Valley's contentions.

Two of the four factors support Mill Valley's offered placement, and one factor does not. Neither party presented evidence on the fourth factor. The law does not require a quantitative analysis regarding the factors. If it did, however, Mill Valley's offer would be deemed the least restrictive environment for Student.

Even a more nuanced approach where the factors are balanced rather than tallied supports a finding that Mill Valley's offer was also the least restrictive placement for Student at that time. That Student would not have been disruptive in a less restrictive setting does not overcome the overwhelming evidence establishing that his emotional needs were so great, a small, therapeutic setting was indeed appropriate for Student.

Accordingly, Student failed to prove that Mill Valley denied Student a FAPE for failing to offer a placement in the least restrictive environment at the February 16, 2024 and April 16, 2024 IEP team meetings through February 20, 2025.

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STUDENT ISSUE 1h: PREVENTING MEANINGFUL PARENT PARTICIPATION AT THE FEBRUARY AND APRIL IEP TEAM MEETINGS

Student contends that Mill Valley failed to consider Student's private mental health providers' recommendations, minimized Student's need for positive peer models, and dismissed Parent's concerns regarding the restrictiveness of the Compass placement at the February and April 2024 IEP team meetings. Mill Valley argues that it allowed Parent to participate in both meetings and considered all information that was provided to them by Parent. Student failed to meet his burden of proof on this issue.

Federal and State law require that a district must afford parents of a child with a disability the opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511 (2006); Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The IEP team must consider the concerns of the parent for enhancing the student's education, as well as information provided by the parent about student's needs. (20 U.S.C. § 1414(d)(3)(A) and (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C) (2017); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904] ["[T]he informed involvement of parents" is central to the IEP process.]) Parental participation in the IEP process is considered "[a]mong the most important procedural safeguards." (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

A school district is required to conduct, not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485, superseded on other grounds by statute (*Target Range*); *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*).) "Participation must be more than a mere form; it must be *meaningful*." (*Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, 858 (emphasis in original).) A parent who has an opportunity to discuss a proposed IEP and suggest changes, and whose concerns are considered by the IEP team, has participated in the IEP development process in a meaningful way. (*Fuhrmann, supra*, 993 F.2d 1031, 1036.)

NOT CONSIDERING STUDENT'S PRIVATE MENTAL HEALTH PROVIDERS' RECOMMENDATIONS

The evidence showed that the only recommendations Mill Valley had at the time of its assessments was Trichilo's recommendations in her psychoeducational report. When presented with a private expert's evaluation report or independent educational evaluation at public expense, a school district must consider the results of the assessment, in any decision made with respect to the provision of FAPE to a student. (34 C.F.R. § 300.502(c)(1) (2006); Ed. Code, § 56329, subd. (c).) The district is not required to adopt the conclusions of such an evaluation. (*Ibid.*; *Michael P. v. Dept. of Educ.* (9th Cir. 2011) 656 F.3d 1057, 1066 (fn. 9) (*Michael P.*); *See T.S. v. Board of Education of Town of Ridgefield*, (2nd Cir. 1993) 10 F.3d 87.) Evidence that district IEP team members have considered a private evaluation include factors such as a lengthy discussion of the evaluation at an IEP team

meeting or alteration of IEP provisions in response to suggestions made by the private assessor. (*Michael P., supra*, at p. 1066 (fn. 9).); *B.S. v. Placentia-Yorba Linda Unified Sch. Dist.* (C.D. Cal., Aug. 1, 2007, No. SACV06847CJCMLGX) 2007 WL 9719115, at *3–4) [nonpub. opn.]

Student failed to prove that Mill Valley failed to consider Trichilo's assessment results. The evidence established through the IEP team meeting notes and testimony of Sundar, Sappington, and Conklin, that it reviewed Trichilo's neuropsychological assessment and results at the February 16, 2024 IEP team meeting.

Trichilo did not attend the IEP team meeting. However, on February 16, 2024, Sundar explained the results of the neuropsychological assessment report results, including the diagnosis, Student's needs determined by Trichilo, and his history of school refusal and absences. Her testimony was uncontradicted at hearing, and corroborated by other witness testimony and documentary evidence. Thus, Sundar's testimony regarding this issue was given great weight.

The evidence clearly showed Mill Valley included Trichilo's chunking recommendation as an accommodation and similar accommodations to some of Trichilo's recommendations at the February and April IEP offers, but it did not offer of them. Sundar explained that the IEP team did not agree with all of Trichilo's recommendations but considered them.

Student failed to prove by a preponderance of the evidence that Mill Valley did not allow parental participation and denied Student a FAPE by failing to consider Trichilo's results as legally required at the February 16, 2024 IEP team meeting.

At the April 16, 2024 IEP team meeting, Mill Valley had already considered mental health provider results at the February 16, 2024 IEP team meeting. Student presented no evidence that changes had been made to Trichilo's results from the time of February 2024 review, through the time of the April 2024 IEP team meeting. Student failed to present any legal authority requiring Mill Valley to consider the report again. Student failed to prove by a preponderance of the evidence that Mill Valley was required to consider mental health provider results again in April 2024. Student failed to prove by a preponderance of the evidence that Mill Valley denied parental participation and denied Student a FAPE by failing to consider Trichilo's results again at the April 2024 IEP team meeting.

Student also argued that Mill Valley should have made efforts to identify or contact Student's private service providers and then consider their recommendations. At hearing, Student elicited extensive testimony about whether Mill Valley contacted Student's service providers. However, the evidence showed that Parent did not provide contact information, reports, or documentation from any providers except Trichilo. Parent provided Trichilo's report, and the results were considered, but Parent listed psychological and counseling reports on the development history as "numerous" yet gave All Children Academics, names, locations, and phone numbers of service providers around the same time. Parent withheld the information from Mill Valley. Student provided no authority that supports Mill Valley was required to investigate the vague information Parent provided as Parent did not make the information reasonably available to it.

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Absent such information, Mill Valley relied on the information it had and was not obligated under the IDEA to investigate further information not provided by Parent. Mill Valley's obligations are measured based on the information reasonably available to it, and it cannot be held liable for Parent's failure to provide critical information. Student's argument fails.

MINIMIZING STUDENT'S NEED FOR POSITIVE PEER MODELS

Student argued that Mill Valley minimized the importance of access to typical positive peer role models by offering a placement in a separate therapeutic day program, with no general education students. However, the evidence does not support this contention.

As already stated, no expert or witness endorsed a comprehensive placement with typical peers at that time. The IEP team acknowledged in the IEP document itself that potential drawbacks of the therapeutic placement was the lack of exposure to typical peers and the possible impact on Student's self-esteem. This demonstrates that Mill Valley did not disregard or minimize the social-emotional implications of the placement, but rather carefully weighed them against Student's then-current needs.

Mill Valley appropriately concluded that the therapeutic placement, while more restrictive, was necessary due to student's significant emotional and behavioral challenges, including recent school refusal and difficulty functioning even in smaller, more supportive educational environments. The placement was designed to be temporary, with embedded mental health services and therapeutic supports intended to stabilize Student and build the skills necessary for a future transition to a less restrictive, comprehensive setting with general education peers.

Student failed to demonstrate that Mill Valley minimized the importance of access to positive peer models. Instead, Mill Valley balanced the IDEA's strong preference for inclusion with the requirement to offer a placement reasonably calculated to enable Student to make progress considering his circumstances.

Student failed to meet his burden on this issue.

DISMISSING PARENT'S CONCERNS REGARDING THE RESTRICTIVENESS OF THE COMPASS PLACEMENT?

Student contends that Mill Valley disregarded Parent's concerns regarding the restrictiveness of the Compass placement. The record does not support this claim. Here, the evidence established that Parent expressed that she did not believe a comprehensive school campus was appropriate for Student during the February and April IEP team meetings, a position aligned with all expert opinions and witness testimony presented in this case.

Parent's primary objections to the therapeutic program were not its level of restrictiveness per se, but rather that it did not include the specific type of peers she envisioned for her son, the look of the campus and online mental health services for the month of March 2024, before the placement was offered to Student. As already discussed in Issues 1f, 1g, and 2e, these arguments were unconvincing. Student failed to establish that Mill Valley denied Student a FAPE by dismissing Parent's concerns about the Compass placement.

Accordingly, Student failed to meet his burden of proof by a preponderance of the evidence that Mill Valley prevented meaningful parental participation at the February and April 2024 IEP team meetings.

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.

STUDENT'S ISSUE 1a:

Student proved by a preponderance of the evidence that Mill Valley denied Student a FAPE for failing to assess in occupational therapy, including sensory processing and pragmatic language.

Student prevailed on Student's Issue 1a.

STUDENT'S ISSUE 1b:

Student failed to prove that Mill Valley denied Student a FAPE during the 2023-2024 school year, from February 16, 2024, by predetermining Student's placement at Student's February 16, 2024 IEP team meeting.

Mill Valley prevailed on Student's Issue 1b.

STUDENT'S ISSUE 1c:

Student failed to prove that Mill Valley denied Student a FAPE during the 2023-2024 school year, from February 16, 2024, by failing to offer goals in the areas of executive functioning, attention, and social skills.

Mill Valley prevailed on Student's Issue 1c.

STUDENT'S ISSUE 1d:

Student failed to prove that Mill Valley denied Student a FAPE for failing to offer appropriate mental health services, or any executive functioning services, occupational therapy services, and social skills training.

Mill Valley prevailed on Student's Issue 1d.

STUDENT'S ISSUE 1e:

Student failed to prove that Mill Valley denied Student a FAPE during the 2023-2024 school year, from February 16, 2024, by failing to offer sufficient IEP accommodations.

Mill Valley prevailed on Student's Issue 1e.

STUDENT'S ISSUE 1f:

Student failed to prove that Mill Valley denied Student a FAPE during the 2023-2024 school year, from February 16, 2024, by failing to consider the continuum of placement options at Student's February 16 and April 16, 2024 IEP team meetings.

Mill Valley prevailed on Student's Issue 1f.

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STUDENT'S ISSUE 1g:

Student failed to prove that Mill Valley denied Student a FAPE during the 2023-2024 school year, from February 16, 2024, by failing to offer placement in the least restrictive environment.

Mill Valley prevailed on Student's Issue 1g.

STUDENT'S ISSUE 1h:

Student failed to prove that Mill Valley denied Student a FAPE during the 2023-2024 school year, from February 16, 2024, by preventing meaningful parent participation in Student's February 16 and April 16, 2024 IEP team meetings, by not considering Student's private mental health providers' recommendations; minimizing Student's need for positive peer models; and dismissing Parent's concerns regarding the restrictiveness of the Compass placement?

Mill Valley prevailed on Student's Issue 1h.

STUDENT'S ISSUE 2a:

Student proved by a preponderance of the evidence that Mill Valley denied Student a FAPE for failing to assess in occupational therapy, including sensory processing, and pragmatics.

Student prevailed on Issue 2a.

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STUDENT'S ISSUE 2b:

Student failed to prove that Mill Valley denied Student a FAPE during the 2024-2025 school year, up to February 20, 2025, by failing to offer goals in the areas of executive functioning, attention, and social skills.

Mill Valley prevailed on Student's Issue 2b.

STUDENT'S ISSUE 2c:

Student failed to prove that Mill Valley denied Student a FAPE during the 2024-2025 school year, up to February 20, 2025, by failing to offer sufficient mental health services, any executive functioning services, occupational therapy services, and social skills training.

Mill Valley prevailed on Student's Issue 2c.

STUDENT'S ISSUE 2d:

Student failed to prove that Mill Valley denied Student a FAPE during the 2024-2025 school year, up to February 20, 2025, by failing to offer sufficient IEP accommodations.

Mill Valley prevailed on Student's Issue 2d.

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STUDENT'S ISSUE 2e:

Student failed to prove that Mill Valley denied Student a FAPE during the 2024-2025 school year, up to February 20, 2025, by failing to offer placement in the least restrictive environment.

Mill Valley prevailed on Student's Issue 2e.

MILL VALLEY'S ISSUE:

Mill Valley proved by a preponderance of the evidence that its psychoeducational evaluation consented to by Parents on December 3, 2023, met all legal requirements.

Mill Valley prevailed on its sole issue.

REMEDIES

Student prevailed on Student's Issue 1a and 2a for failing to assess in sensory processing and pragmatics. Student requested reimbursement for private service providers and reimbursement for tuition at All Children Academics and Marin Horizon in the approximate amount of \$84,000. Mill Valley argued no remedies are warranted because it assessed Student properly and offered Student a FAPE.

Courts have broad equitable powers to remedy the failure of a local educational agency to provide a FAPE to a child with a disability. (20 U.S.C. § 1415(if)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct.1996] (*Burlington*); *Parents of Student W. v. Puyallup School Dist.*, No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).

The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) This broad equitable authority extends to an administrative law judge who hears and decides a special education administrative due process matter. (*Forest Grove, supra*, 638 F.3d. at p. 1239.)

In remedying a FAPE denial, the student is entitled to relief that is “appropriate” considering the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3)(2006).) Appropriate relief means “relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” (*Puyallup, supra*, 31 F.3d. at p. 1497.)

This Decision orders independent educational evaluations in occupational therapy, including sensory processing, and pragmatics as remedies.

FAILURE TO ASSESS SENSORY PROCESSING AND PRAGMATICS

Under certain conditions, a student is entitled to obtain an independent educational evaluation, called an IEE, at public expense. (20 U.S.C. § 1415(b)(1); Ed. Code, § 56329, subd. (b) Ed. Code, § 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an IEE].)

Mill Valley failed to assess for sensory processing and pragmatics although they were suspected disability at the time it assessed Student. An independent educational evaluation is the appropriate remedy when a school district fails to assess for a suspected disability.

This Decision orders Mill Valley to pay for an independent educational evaluation in occupational therapy, that includes sensory processing and an independent educational evaluation in speech and language, specifically, in pragmatics, at public expense and to pay for the assessors to present the results at an IEP team meeting not to exceed two hours.

Student's requested relief was carefully considered. In light of the particular denials found, reimbursement for Student's private placements is not warranted.

ORDER

1. Mill Valley must fund an independent educational assessment in occupational therapy that includes sensory processing with a qualified occupational therapist. Mill Valley will contract with a qualified assessor of Parent's choice who meets Mill Valley's independent educational evaluation requirements. If Parent wishes Mill Valley to consider the results of the independent educational evaluation, an IEP team meeting will be convened no later than 30 days after the date of the assessment report is served on Mill Valley. Mill Valley must pay for two hours of the assessor's time to participate in the IEP team meeting and present the results of the occupational therapy assessment.
2. Mill Valley must fund an independent educational assessment in pragmatics with a qualified speech and language pathologist. Mill Valley will contract with a qualified assessor of Parent's choice who meets Mill Valley's independent educational evaluation requirements. If Parent wishes Mill Valley to consider the results of the independent educational evaluation, an IEP team meeting will be convened no later

than 30 days after the date of the assessment report is served on Mill Valley. Mill Valley must pay for two hours of the assessor's time to participate at an IEP team meeting and present the results of the occupational therapy assessment.

3. All of Student's other requests for relief are denied.
4. Mill Valley's psychoeducational assessment is deemed legally compliant. Student is not entitled to an independent educational evaluation at public expense.

RIGHT TO APPEAL THIS DECISION

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

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings