

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

RESCUE UNION SCHOOL DISTRICT AND CENTER JOINT UNIFIED
SCHOOL DISTRICT.

CASE NO. 2025040092

DECISION

September 5, 2025

On April 1, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Rescue Union School District, called Rescue Union, and Center Joint Unified School District, called Center Joint. On April 29, 2025, OAH granted a continuance of the due process hearing to June 24, 2025. Administrative Law Judge Christine Arden heard this matter on June 24, 25, and 26, and July 1, 2, 3, 8 and 9, 2025.

Attorney Ryan Song represented Student. Parent attended all hearing days on Student's behalf. Attorneys Marcella Gutierrez and Tilman Heyer represented Rescue Union. Dustin Bailey, Rescue Union's director of student services and special education,

attended all hearing days on Rescue Union's behalf. Attorney Heather Edwards represented Center Joint. Michael Jordan, Center Joint's director of curriculum and instruction and special education, attended all hearing days on Center Joint's behalf.

At the parties' request the matter was continued to August 4, 2025, to provide time for submission of written closing briefs. The record was closed, and the matter was submitted on August 4, 2025.

ISSUES

The issues to be adjudicated in this case are set forth below. On June 25, 2025, at the start of the second hearing day, the parties agreed on the record to correct a typographical error in the IEP date in Issue 3, changing September 24, 2024 to September 4, 2024. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Rescue Union deny Student a FAPE in the IEP dated August 28, 2023, by failing to offer:
 - A. appropriate speech and language therapy services?
 - B. occupational therapy services?
 - C. behavior intervention services?
 - D. a one-to-one aide?
 - E. a secondary eligibility for special education of autism?
 - F. accommodations?
 - G. an applied behavior analysis program to be delivered at home?
 - H. behavior clinic meetings?

2. Did Rescue Union deny Student a FAPE in the IEP dated January 26, 2024 by:
 - A. failing to offer placement in a general education classroom for the maximum appropriate amount of time?
 - B. significantly impeding Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student by failing to consider Parent's request that Student be offered placement in a different general education classroom?
 - C. significantly impeding Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student by predetermining the least restrictive environment for Student's placement outside of the IEP team meetings held on January 26, 2024, and on February 15, 2024?
3. Did Center Joint District deny Student a FAPE in the September 4, 2024 IEP by failing to offer Student:
 - A. appropriate speech and language services?
 - B. occupational therapy services?
 - C. behavior intervention services?
 - D. a one-to-one aide?
 - E. a secondary eligibility for special education of autism?
 - F. accommodations?
 - G. an applied behavior analysis program to be delivered at home?
 - H. behavior clinic meetings?

- I. Parent training in addressing Student's communication deficits?
- J. Parent training in addressing Student's behavior deficits?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, or 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; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student had the burden of proof

in this case. 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 five years old, and residing with her Parents and brother within Center Joint's geographic boundaries. Student had recently completed the general education transition kindergarten, called TK, program class at Center Joint's Rex Fortune Elementary School, called Rex Fortune, during the 2024-2025 regular school year. Student resided with her Parents within Rescue Union's geographic boundaries from her birth in February 2020, until June 2024, when her family moved to Roseville, California. Student then transferred to Center Joint over the summer in 2024. In February 2023, when Student was three years old, she was initially found eligible for special education under the primary eligibility category of speech or language impairment. In August 2023, Student was also found eligible for special education under the secondary eligibility category of autism.

STUDENT'S BACKGROUND

STUDENT'S EARLY REGIONAL CENTER SERVICES AND PRIVATE DAYCARE PROGRAMS

As a toddler Student had slight delays in walking and speaking. In May 2021, Student became a client of the Alta California Regional Center, called the Regional Center, which provided services, such as occupational therapy, and speech therapy, to disabled young children through its Infant Development Program. That program served developmentally disabled children under three years old. El Dorado County Office of Education, called EDCOE, implemented the program on the Regional Center's behalf.

Student initially received an occupational therapy consultation once a month from the Regional Center to address concerns about Student's feeding. Before age three, Student also received services from a special education teacher every other week through the Regional Center. When Student started speaking it was sometimes difficult to understand her. In October 2021, the Regional Center added speech-language pathologist services to Student's program. Marjin Peeters, Student's Regional Center service coordinator, testified that, during the time Student was in the Regional Center's Infant Development Program, the only disabilities Peeters saw in Student were her speech and language deficits.

When Student was two years old she attended Omega 9 Child Enrichment Center, called Omega 9, a private child care facility, for about a year. From about the time Student turned three years old, until June 2024, Student attended Cadence Academy Preschool, called Cadence Academy, a private preschool and daycare facility. Student adjusted well to the routine at Cadence Academy and Parent was satisfied with Student's attendance there during preschool.

ISSUE 1A: DID RESCUE UNION DENY STUDENT A FAPE IN THE IEP DATED AUGUST 28, 2023, BY FAILING TO OFFER APPROPRIATE SPEECH AND LANGUAGE SERVICES?

Student contends the August 28, 2023 IEP amendment failed to offer her a sufficient amount of speech and language services to meet her communication needs. Rescue Union contends its offer of 20 minutes per week of speech and language services was appropriate to meet Student's speech and language needs on August 28, 2023.

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

The IEP is a written document for each child with a disability that includes a statement of the child's present levels of academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (a)(1).) An IEP must contain a statement of the special education and related services and supplementary aids and services to be provided to the pupil. An IEP must also describe the program modifications or supports which school personnel will provide to enable the child to advance appropriately toward attaining his annual goals. The program and supports outlined in an IEP should enable a child to be involved and make progress in the regular education curriculum. The program, services and supports offered in an IEP should enable the child to also participate in nonacademic activities, and to be educated and participate with other individuals with exceptional needs and nondisabled pupils. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345, subd. (a).)

Related services are those supportive services required to assist a child with a disability to benefit from special education. (34 C.F.R. § 300.34(a), Ed. Code § 56363(a) [in California, related services are also called "designated instruction and services"].) The IEP team determines when a child needs related services. (Cal. Code Regs., tit. 5 CCR § 3051, subd. (a)(2).) Speech-language pathology services are included in the list of related services. (Cal. Code Regs., tit. 5 CCR § 3051.1 subd. (a).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].) Under the IDEA and California special education law, school districts must offer an IEP to a pupil who turns three years of age. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a); Ed. Code, §§ 56001, subd. (b).) For the period between three and six years of age, California does not mandate compulsory education for typically developing preschool children. (Ed. Code, § 48200.) However, if a preschool child requires special education and related services in order to receive a FAPE, school districts must offer the child an appropriate program. (20 U.S.C. § 1414(d)(1)(A)(i)(bb); Ed. Code, § 56345, subd. (a)(1)(B).)

FEBRUARY 1, 2023 IEP – STUDENT'S INITIAL ELIGIBILITY FOR SPECIAL EDUCATION BY RESCUE UNION

About 90 days before Student turned three years old, Peeters, Student's Regional Center service coordinator, referred Student to Rescue Union, Student's then school district of residence, for assessment for special education eligibility. Rescue Union is located within a sparsely populated rural area of El Dorado County, California. In order to provide certain special education programs and services to its students, Rescue Union was a member of the El Dorado County Geographic Special Education Local Plan Area,

called the El Dorado SELPA. The El Dorado SELPA consisted of a consortium of EDCOE and 14 public school district's located in western El Dorado County. The El Dorado SELPA implemented certain special education programs and services to children with IEPs enrolled in its 14 member public school districts.

The El Dorado SELPA implemented the "full inclusion preschool program" on behalf of Rescue Union and the other El Dorado SELPA member school districts. The preschool full inclusion program had smaller class sizes than the general education preschool classes, and enrolled both neurotypical children and a smaller number of children with IEP's. Mother testified she wanted Student to be placed in a preschool full inclusion program class during the 2023-2024 school year.

Rescue Union contracted with EDCOE to assess its preschool aged children for special education eligibility and to act as Rescue Union's administrative designee at IEP team meetings held for preschoolers. Renee DeVetter, a licensed speech-language pathologist employed by the EDCOE, conducted an initial speech and language evaluation of Student on January 18, 2023, when Student was 2 years, 11 months old. That assessment was conducted for the purposes of determining and documenting Student's then present levels of functioning, and to determine if Student was eligible for special education under the IDEA.

The report documenting the results of that speech and language assessment indicated Student had areas of need in intelligibility, receptive language, and expressive language. Student was able to produce all age appropriate speech sounds. However, Student sometimes either omitted a sound, or incorrectly substituted several sounds. This decreased her intelligibility. DeVetter noted Student was a "gestalt language processor." This meant Student learned language through mastering phrases, rather

than single words. There is nothing wrong with being a gestalt language processor, but it may take a gestalt language processor a longer time to develop conversation skills. After her initial assessment of Student, DeVetter opined Student would have to learn more phrases before she could create novel spontaneous speech and be flexible enough to engage in back and forth conversations.

The assessment results indicated Student's expressive language skills fell in the average range for her age, but her receptive language skills fell in the below average range compared to other children her age. DeVetter concluded Student met the eligibility criteria for special education under the speech or language impairment category. The report of Student's initial speech and language evaluation recommended the IEP team consider offering Student 20 minutes per week of speech-language therapy services.

Student's initial IEP team meeting was held on February 1, 2023. Mother testified she did not remember much about that IEP team meeting. After reviewing DeVetter's speech and language assessment, the team found Student eligible for special education under the category of speech or language impairment. Based on the assessor's recommendation, the IEP team offered Student placement in a preschool full inclusion program class, two speech and language goals, and speech and language therapy services for 20 minutes per week.

Even after Student was found eligible for special education, Student continued to attend Cadence Academy for the balance of the 2022-2023 regular school year and for the 2023-2024 regular school year. Because Student was parentally placed in a private school, Rescue Union offered Student up to ten hours of speech and language therapy services per school year pursuant to an individual services plan. Individual services plans

can be offered to private school students but there is no FAPE requirement associated with such plans. (34 C.F.R. § 300.138.) Those speech therapy services were provided to Student at Valley View Charter Montessori, a school within the Buckeye Union School District, a member of the El Dorado SELPA. Parent brought Student to Valley View Charter Montessori School for speech therapy sessions provided by an EDCOE speech-language pathologist on behalf of Rescue Union.

THE MAY 5, 2023 REGIONAL CENTER PSYCHOLOGICAL EVALUATION OF STUDENT

Around the time Student was found eligible for special education, Peeters referred Student for a psychological assessment in the areas of autism and intellectual disability due to Student's weak receptive communication skills. Trishanjit K. Singh, a licensed clinical psychologist, conducted a psychological evaluation of Student on May 5, 2023, on behalf of the Regional Center. That evaluation was limited in scope to determine if Student met a medical diagnosis under the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, called the DSM-5, for either intellectual disability and/or autism spectrum disorder. Peeters opined at hearing that Student did not exhibit any problems related to emotional regulation and social skills when he worked with her.

Singh concluded Student met the criteria under the DSM-5 for a medical diagnosis of autism spectrum disorder, levels one and two. Under the DSM-5, there are three levels of autism spectrum disorder, with level three being the most severe level. Level one indicated a mild degree of autism. Level two indicated a moderate degree of autism. These levels predicted how much autism spectrum disorder would impact Student in the future. Around June 2023, Parent informed Rescue Union's

agents about Student's medical diagnosis of autism, but did not provide Singh's report to Rescue Union. According to Dustin Bailey, Rescue Union's director of student services and special education, Rescue Union first obtained a copy of Singh's report in June 2025 when Student shared her hearing exhibits with Respondents. However, the EDCOE preschool assessors who conducted additional assessments of Student on August 8, 2023, on Rescue Union's behalf, reviewed Singh's report as part of their review of Student's records.

After Peeters read Singh's assessment report he advised Parents to obtain applied behavior analysis therapy services for Student through her health insurance, which Parents did. As of the time of hearing Student continued to be a client of the Regional Center and to receive applied behavior analysis therapy services through her health insurance.

AUGUST 2023 ADDITIONAL MULTIDISCIPLINARY ASSESSMENT, AND AUGUST 28, 2023 IEP AMENDMENT OF FEBRUARY 1, 2023 IEP

Prior to Student's initial eligibility for special education on February 1, 2023, Student had only been assessed in the area of speech and language. In summer 2023 when the EDCOE preschool assessment team, on Rescue Union's behalf, became aware of Student's recent autism medical diagnosis, the team determined it was necessary to further assess Student for additional needs and to determine if she required additional IEP goals or services. Therefore, in July 2023 Rescue Union generated an assessment plan to evaluate Student in the areas of motor development, social emotional/behavior, and adaptive behavior. On about August 4, 2023, Mother gave Rescue Union her written consent to that assessment plan.

On August 8, 2023, when Student was three and one-half years old, EDCOE's preschool assessment team, consisting of School Psychologist Cara Crow, Early Childhood Special Educator Elise Neudeck, and Occupational Therapist Amy Bennett, conducted those additional assessments of Student on behalf of Rescue Union. The results of those additional assessments were memorialized in the Additional Assessment/Initial Multidisciplinary Team Evaluation report dated August 8, 2023, called the Multidisciplinary Team Evaluation report dated August 8, 2023.

The Multidisciplinary Team Evaluation report dated August 8, 2023, concluded Student's overall skills generally fell within the low average range compared to other children her same age. Student's cognitive skills fell in the low average range. However, her speech and language skills fell in the low range. Student's gross and fine motor skills, social emotional skills, and behavior all fell in the average range compared to same aged children.

Mother reported to the assessors that Student exhibited moderate sensory seeking behaviors at home. Assessment results found Student was considered "typical" in her home setting for social participation and motor planning skills. The Multidisciplinary Team Evaluation report dated August 8, 2023, concluded Student "... meets the eligibility criteria for Autism." However, the report stated the entire IEP team should discuss whether Student should be found eligible. The Multidisciplinary Team Evaluation report dated August 8, 2023, recommended the team consider offering Student specialized academic instruction.

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An IEP team amendment meeting was held on August 28, 2023. The following people attended:

- Mother;
- EDCOE preschool program administrator, Lisa Tuchsén;
- school psychologist, Crow;
- early childhood special educator, Neudeck;
- occupational therapist, Bennett; and
- Rescue Union's special education director, Bailey.

After the IEP team reviewed the Multidisciplinary Team Evaluation report dated August 8, 2023, it determined the "full inclusion preschool program" operated by EDCOE was the most appropriate placement for Student because Student needed some specialized academic instruction, which was not available in general education preschool classes.

During the 2023-2024 school year, two classes of the preschool full inclusion program were implemented. One class was held at Camerado Springs School, called Camerado Springs, and another class was held at William Brooks Elementary School, called William Brooks. Both of those schools were within the Buckeye Union School District. The members of IEP team believed a general education preschool program without specialized academic instruction and related services was not appropriate for Student. The IEP team also determined a special day class preschool program would be too restrictive for Student, because it did not include any neurotypical children.

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During the August 28, 2023 IEP meeting, the team amended Student's February 1, 2023 IEP, resulting in the following new offer of special education and related services for the 2023-2024 school year:

- maintaining speech or language impairment as primary eligibility;
- adding secondary eligibility of autism;
- keeping speech and language service sessions at 20 minutes per week to be provided in a separate classroom, and to be delivered either individually or in a group, depending on Student's ability to work with peers when given adult support;
- adding specialized academic instruction for 180 minutes per day for five days a week;
- offering placement in the "preschool full inclusion program" class implemented at Camerado Springs by EDCOE;
- adding three behavior goals in: following adult instructions; transitions; and peer/social interactions;
- keeping the two speech and language goals offered in the February 1, 2023 IEP;
- adding transportation services; and
- adding an extended school year program for summer 2024.

Rescue Union's offer of special education and related services was documented in the IEP amendment dated August 28, 2023, modifying the February 1, 2023 IEP. The offer of secondary eligibility under the autism category was included in the "notes"

portion of the IEP but was not set forth on the preprinted line in the form IEP for "secondary eligibility." The IEP team determined Student did not require any accommodations to access her education.

The following positive behavior interventions, strategies, and supports were offered on the Special Factors page of the IEP:

- individual daily visual schedule;
- visual response/cost system (First __, Then ____ visual or token chart) with reinforcement determined by reinforcer inventory;
- use of frequent reinforcement;
- predictable structured day;
- clear and consistent expectations;
- frequent verbal praise and reinforcement;
- redirection;
- verbal prompting accompanied with a gestural prompt or visual icon; and
- repeat directions as needed.

The "preschool full inclusion program" was three hours long per school day and took place in the mornings. The maximum class size in the preschool full inclusion program was 24 children, with up to eight children having IEP's and 16 neurotypical children. The class was co-taught by two teachers – a special education teacher, and a

general education teacher. There were three adult instructional aides assigned to each preschool full inclusion program class. The adult-to-student ratio was one adult to five children.

The preschool full inclusion program classes were more structured, with smaller class sizes and more adult supervision, than the general education preschool classes. General education preschool classes had class sizes of 30 children and were taught by one general education preschool teacher with fewer than three classroom aides. The preschool full inclusion program class was a more restrictive environment than a general education preschool program class. Because Student required a smaller class size with more structure and adult supervision than the general education preschool class offered, the team determined the preschool full inclusion program class was the appropriate placement for Student.

STUDENT DID NOT PROVE RESCUE UNION DENIED STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE SPEECH AND LANGUAGE SERVICES

In analyzing a claim that a school district failed to offer a necessary service or other necessary element of a program in an IEP, the district's action must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrman v. East Hanover Bd. of Education*. (3rd Cir. 1993) 993 F.2d 1031, 1041(*Fuhrman*).) Therefore, the information the IEP team knew about Student at the time the team developed and offered the IEP is material to a claim that an IEP failed to offer a FAPE.

DeVetter's January 18, 2023 initial speech and language assessment results established Student's expressive language skills fell in the average range for her age, but her receptive language skills fell in the below average range compared to other children her age. After reviewing the results of DeVetter's January 18, 2023 initial speech and language assessment report, the team developed Student's present levels of performance in communication development. Student's present levels of performance in communication as described in the August 28, 2023 IEP established Student had some moderate problems with receptive language. This sometimes made it difficult for Student to follow instructions or engage in conversations. However, Student's expressive language was at an average level for her age. Student had some problems with substituting and omitting certain sounds, but she was able to make all age appropriate sounds.

Based on the findings from the administration of two standardized testing instruments (Clinical Assessment of Articulation and Phonology, second edition, and Developmental Assessment of Young Children, second edition), Parent's report of her examination of the structure of Student's mouth and jaw, and DeVetter's observation of Student, DeVetter recommended Student be offered 20 minutes a week of speech and language services. After discussion, the August 28, 2023 IEP team determined to continue to offer Student 20 minutes per week of speech and language services to be delivered either individually or in a group, depending on Student's ability to work with peers when she was given adult support. No one on the team, including Mother, disagreed with this offer of speech and language services.

Student did not call a speech-language pathologist to testify at hearing to support Student's challenge to the appropriateness of the speech and language services offered in the August 28, 2023 IEP. The only witness Student called to testify at hearing

in support of her challenge to the inappropriateness of the 20 minutes per week of speech and language services offered in the August 28, 2023 amendment IEP, was Mother. When testifying Mother merely concluded that 20 minutes a week of speech therapy was not enough to address Student's communication needs. Mother did not explain the basis for that opinion. There was no evidence Mother had any education or professional expertise in speech and language therapy. Professionally, Mother operated a film production business. Mother admitted she did not know much about special education and related services. Consequently, Mother's testimony regarding the appropriateness of the offer of 20 minutes per week of speech and language services was given very little weight.

At the time of the August 28, 2023 IEP team meeting, the most credible evidence regarding Student's speech and language needs and the amount and nature of speech-language therapy services Student required to meet those needs was DeVetter's initial speech and language evaluation report dated January 18, 2023. That report recommended 20 minutes per week of speech services. DeVetter opined in her report that Student's expressive language skills were average, and only her receptive language skills were below average. That report also established the articulation problems Student had were minor. DeVetter was a licensed speech and language pathologist with a master's degree. Student offered no evidence to rebut the findings and recommendations in DeVetter's January 18, 2023 initial speech and language evaluation report. Student falsely stated in her closing argument that Student's language deficits worsened following the August 28, 2023 IEP team meeting. No evidence supported this statement.

Student offered no credible evidence to undermine the validity of DeVetter's speech and language assessment report and her recommendation for 20 minutes per week of speech and language services. The August 28, 2023 IEP team reasonably relied on that report and DeVetter's recommendation for speech and language services. There was no persuasive evidence proving 20 minutes a week of language and speech therapy services, delivered through either a group or individual model, was inappropriate to meet Student's needs. Therefore, Student did not prove Rescue Union denied her a FAPE by failing to offer appropriate speech and language services.

Student failed to meet her burden of proof on Issue 1A.

ISSUE 1B: DID RESCUE UNION DENY STUDENT A FAPE IN THE IEP DATED AUGUST 28, 2023, BY FAILING TO OFFER APPROPRIATE OCCUPATIONAL THERAPY SERVICES?

Student contends she needed occupational therapy services at school to access her education, and occupational therapy services were not offered in the August 28, 2023 amendment IEP. Rescue Union contends Student did not need occupational therapy services at school to benefit from special education and to access the preschool full inclusion program curriculum on August 28, 2023.

Occupational therapy is a related service "required to assist a child with a disability to benefit from special education." (34 C.F.R. § 300.34(a).) In May 2023, Mother reported to licensed clinical psychologist Singh that Student had age-appropriate motor skills, self-care, and leisure activity needs. Singh reasonably did not recommend Student receive occupational therapy services.

In connection with the initial multidisciplinary evaluation, the assessors administered the following instruments to Student on August 8, 2023:

- Developmental Assessment of Young Children, second edition;
- Autism Spectrum Rating Scale, Parent ratings; and
- Sensory Processing Measure, second edition, preschool home form.

The assessors also interviewed Parent, reviewed Student's records, and observed Student during testing. The Multidisciplinary Team Evaluation report dated August 8, 2023, indicated Student demonstrated average range ability in adaptive behavior, which addressed Student's ability to effectively handle tasks such as eating, dressing, functioning independently, and using technology. Student demonstrated average gross and fine motor skills.

The report further concluded Student demonstrated only moderate difficulties with sensory processing skills. Based upon these assessment results, the assessors did not recommend occupational therapy services for Student. After reviewing the Multidisciplinary Team Evaluation report dated August 8, 2023, the August 28, 2023 IEP team did not offer occupational therapy services to Student.

The August 28, 2023 IEP amendment documented Student's present levels of performance in both gross and fine motor skills as being in the average range, based upon the recent assessment. The IEP team noted Student walked, ran, and jumped well. Student climbed on playground equipment and walked up and down stairs both with and without handrails. She walked backward, and threw a ball with relative accuracy. Student walked forward heel to toe without losing her balance, jumped six inches high, and balanced on one foot for at least ten seconds.

Student drew effectively and properly held a marker. She used vertical, horizontal, and circular motions when drawing. She cut paper with a scissors, and used glue and paste neatly. She drank from an open cup and properly used a straw. She used silverware appropriately when eating. She washed her hands without help, dressed herself with help, and undressed herself. Student also demonstrated typical motor planning skills at home. During testing Student maneuvered around the playroom where testing occurred without difficulty.

At hearing, Mother testified she believed Student needed occupational therapy services because Student exhibited some sensory seeking behaviors at home. However, Mother did not share with the August 28, 2023 IEP team that Student exhibited significant sensory seeking behaviors at home. Moreover, there was no evidence Mother had any education or expertise in occupational therapy. Therefore, her opinion regarding Student's need for occupational therapy was given little weight.

Student did not call an occupational therapist to testify at hearing. The most credible evidence in the area of occupational therapy that was before the IEP team on August 28, 2023, was the Multidisciplinary Team Evaluation report dated August 8, 2023. That report did not indicate Student had deficits with fine or gross motor skills, or with sensory processing, that required occupational therapy. Student offered no persuasive evidence to rebut the credible findings and recommendations of the Multidisciplinary Team Evaluation report dated August 8, 2023, and the accuracy of Student's present levels of performance in motor skills as stated in the August 28, 2023 IEP. There was no convincing evidence presented that Student required occupational therapy services on

August 28, 2023, to access special education and the preschool full inclusion program curriculum. Therefore, the IEP team correctly determined Student did not require occupational therapy services to be offered in the August 28, 2023 IEP amendment.

Student failed to meet her burden of proof on Issue 1B.

ISSUE 1C: DID RESCUE UNION DENY STUDENT A FAPE IN THE IEP DATED AUGUST 28, 2023, BY FAILING TO OFFER BEHAVIOR INTERVENTION SERVICES?

Student contends she had significant behavioral needs, which required behavior intervention services at school to access her education, and behavior intervention services were not offered in the August 28, 2023 IEP amendment. Rescue Union contends Student's behavior deficits were minor and she did not need behavior intervention services at school to access special education and the preschool full inclusion program curriculum on August 28, 2023.

The IDEA requires IEP teams to consider the use of positive behavioral interventions and supports, and other strategies, to address behaviors that impede a student's learning or that of others. (20 U.S.C. § 1414 (d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).) A district's failure to develop positive behavior interventions can amount to a denial of FAPE. (See e.g., *Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028, 1029; *C.F. ex rel. R.F. v. New York City Dept. of Education* (2d Cir. 2014) 746 F.3d 68, 81.) The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social

and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

Student did not prove Student required behavior intervention services to benefit from special education or to access the curriculum. The information before the IEP team on August 28, 2023, established Student's behavior deficits were minor and could be managed through behavior goals. Student was easily redirected and responded well to prompts when she was off task.

There was no persuasive evidence presented regarding the specific sort of behavior interventions that Student contends should have been offered in the August 28, 2023 IEP amendment, apart from the issues in which Student claims she required a one-to-one aide, a home delivered applied behavior analysis program, and behavior clinic meetings, which are specifically addressed below in this Decision in the analysis of Issues 1D, 1G, and 1H, and will not be addressed here.

At hearing Mother claimed Student needed behavior interventions because Student wandered away from adults a few times outside of school. Mother also testified Student engaged in unsafe activities at home on a few occasions. These activities included putting inedible objects in her mouth and wrapping things around her neck. There was no evidence Student ever eloped or wandered away at either Omega 9 or Cadence Academy. Mother testified Student put inedible objects in her mouth twice at Omega 9, which she attended at age two, but she never did so while attending Cadence Academy. Mother admitted she could not recall if she ever told anyone affiliated with

Rescue Union or EDCOE about Student's dangerous behaviors. Mother also admitted at hearing that, after a few weeks of initial adjustment, Student behaved appropriately at both Omega 9 and Cadence Academy.

None of the documents admitted into evidence reflected that Mother told anyone during 2023 assessment interviews, or at the two IEP team meetings held in February and August 2023, about Student's unsafe conduct at home or at school. Specifically, Mother did not inform anyone with Rescue District or EDCOE, or any of the assessors who interviewed Mother in connection with the January 2023 speech and language assessment and the August 2023 multidisciplinary assessment, about Student's

- eloping,
- wandering away from adults,
- putting inedible objects in her mouth,
- wrapping things around her neck, or
- any other unsafe behavior.

There was no evidence Mother raised a concern about Student's safety at the August 28, 2023 IEP team meeting, other than mentioning Student had previously put inedible items in her mouth. No one at the August 28, 2023 IEP team meeting raised a concern that Student's behavior was so problematic she required behavior interventions to access the preschool full inclusion program's curriculum or special education.

The August 28, 2023 IEP team had no knowledge of Mother's unshared concerns about Student's allegedly unsafe conduct at home. Therefore, Rescue District was not responsible for information Parent failed to disclose to the assessors and the IEP team. Where parents have information relevant to the development of an IEP, and fail to share

it with the IEP team, they cannot later complain that the IEP is deficient under the IDEA for not addressing the withheld information. (*D.R. ex rel. Etsuko R. v. Dept. of Education, Hawaii* (D. Hawaii 2011) 827 F.Supp.2d 1161, 1170.) Furthermore, parents of a child eligible for special education under the IDEA may not withhold critical information from the IEP team, and then later claim the school district failed to offer their child a FAPE. (*Robert M. v. Hawaii*, Civ. No. 07–00432 HG–LEK, 2008 WL 5272779, at p. 15 (D. Haw. Dec. 19, 2008).)

As further addressed in Issues 1D, 1G and 1H below, Student offered no persuasive evidence to support her claim that the August 28, 2023 IEP amendment denied Student a FAPE by failing to offer her behavior interventions. In its case against Rescue Union Student called only Peeters, Student’s Regional Center case manager, Bailey, Resue Union’s special education administrator, and Mother, to testify at hearing. Student did not call an expert in early childhood behavior, or any behavior expert or psychologist, to testify at hearing. Both Peeters and Bailey had expertise in dealing with children with special needs, and special education and services to address those needs.

However, neither the testimony of Peeters, nor the testimony of Bailey, supported Student’s position that the IEP team erred in failing to offer Student behavior intervention services. There was no evidence Mother had any training or professional experience with behavior interventions for children with special needs. Moreover, no witness testimony or documentary evidence corroborated Mother’s claim that Student’s behavior was so problematic Student needed behavior interventions to access her education. For the foregoing reasons Mother’s testimony was given little weight.

Student failed to meet her burden of proof on Issue 1C.

ISSUE 1D: DID RESCUE UNION DENY STUDENT A FAPE IN THE IEP DATED AUGUST 28, 2023, BY FAILING TO OFFER A ONE-TO-ONE AIDE?

Student contends that due to Student's serious behavior deficits, Student needed a one-to-one aide at school to receive academic benefits in the preschool full inclusion program on August 28, 2023. Rescue Union contends Student had only minor behavior deficits, and did not have behavior needs that required the services of a one-to-one aide to obtain academic benefit in the preschool full inclusion program on August 28, 2023.

Student continued to attend Cadence Academy in August 2023. As discussed above in Issue 1C, on August 28, 2023, there was no information before the Rescue Union IEP team that Student had any serious behavior problems when she attended Omega 9 and/or Cadence Academy. The IEP team was also never apprised that Student had engaged in risky or problematic behaviors at home. Moreover, no one, not even Mother, raised the topic of whether Student required a one-to-one aide at the August 28, 2023 IEP team meeting.

The Multidisciplinary Team Evaluation report dated August 8, 2023, noted Student's social-emotional and behavioral present levels of performance were in the average range for her age. Student played with peers, but preferred to play alone. Student was very social and greeted people appropriately. The present levels of performance in the August 28, 2023 IEP amendment noted Student's behavior was in the average range for her age.

Student did not call a behaviorist or school psychologist to testify at hearing. The only evidence Student presented regarding Student's need for a one-to-one aide was Mother's testimony. Mother believed Student needed an aide in preschool because

outside of school Student eloped away from adults and engaged in dangerous activities a few times. However, this information was not before the IEP team on August 28, 2023. Moreover, there was no evidence Student ever engaged in any of these dangerous activities at either Omega 9 or Cadence Academy. Mother admitted she could not recall if she ever told anyone affiliated with Rescue Union or EDCOE about Student's dangerous behavior outside of school. Student offered no persuasive evidence that Student engaged in any behaviors that would necessitate the services of a one-to-one aide in the preschool full inclusion program class.

Other than mentioning Student had put inedible objects in her mouth on a few occasions, Mother did not inform anyone at EDCOE, the El Dorado SELPA, or Rescue Union that Student engaged in any other dangerous behaviors. No one at the August 28, 2023 IEP team meeting thought Student's behaviors impeded her or others' learning to such an extent that Student needed the services of a one-to-one aide. Moreover, none of the documents admitted into evidence at hearing reflected that Mother informed anyone affiliated with Rescue Union about Student's unsafe conduct outside of school. The August 28, 2023 IEP team members had no knowledge about Student's supposed unsafe behaviors at home. Therefore, the IEP team did not deny Student a FAPE by failing to offer Student a one-to-one aide in the August 28, 2023 IEP.

Student offered no persuasive evidence to support her claim that the August 28, 2023 IEP amendment denied Student a FAPE by failing to offer her a one-to-one aide. An IEP team is required to offer a child with special needs the least restrictive environment in which they can succeed. Generally, the appropriate placement option is the least

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restrictive environment in which the child can be educated. The IDEA requires school districts ensure that children with disabilities are educated alongside their nondisabled peers “[t]o the maximum extent appropriate.” (20 U.S.C. § 1412(a)(5)(A).) Because no one at the August 28, 2023 IEP team meeting, including Parent, mentioned Student’s behaviors necessitated services of an aide, it would have been improper for the IEP team to offer her that restrictive service.

Bailey, who had significant professional experience with behavioral strategies and techniques, convincingly testified that unnecessary aide services could negatively impact Student’s independence and growth. Student did not call an expert in behavior to rebut Bailey’s persuasive opinion on that issue. Student presented no evidence corroborating Mother’s claim that Student’s behavior was so problematic Student needed an aide to access the preschool full inclusion program curriculum.

Student failed to meet her burden of proof on Issue 1D.

ISSUE 1E: DID RESCUE UNION DENY STUDENT A FAPE IN THE IEP DATED AUGUST 28, 2023, BY FAILING TO OFFER AUTISM AS A SECONDARY ELIGIBILITY CATEGORY FOR SPECIAL EDUCATION?

Student contends the August 28, 2023 IEP should have offered Student a secondary eligibility of autism because Student had been medically diagnosed with autism in May 2023. Rescue Union contends it offered Student eligibility under the autism category, as documented in the notes section of the August 28, 2023 IEP amendment. Bailey testified that because the offer of a secondary eligibility in the autism category was documented in the notes section of the August 28, 2023 IEP, that offer of secondary eligibility was validly made.

A child's placement and related services are determined by his or her unique needs, not the eligibility category assigned to the child. (See, e.g., 20 U.S.C. § 1412(a)(3)(B)

["Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability ... is regarded as a child with a disability under this subchapter]; *Heather S. v. State of Wisconsin* (7th Cir. 1997) 125 F.3d 1045, 1055 (*Heather S.*) ["The IDEA concerns itself not with labels, but with whether a student is receiving a free and appropriate education ... tailored to the unique needs of that particular child."].)

Nothing in the IDEA requires a child be classified by the most accurate disability so long as each child who has an IDEA listed disability, and who, by reason of that disability needs special education and related services, be regarded as a child with a disability. (20 U.S.C. § 1412(a)(3)(B); 34 C.F.R. § 300.111(d) (2006); Ed. Code, § 56301, subd. (a).) The IDEA does not give a student the legal right to a proper disability classification. (*Weissburg v. Lancaster School Dist.* (9th Cir. 2010) 591 F.3d 1255, 1259.) The IDEA's overarching substantive goal is to ensure that all children with disabilities have available to them a FAPE designed to meet their unique needs. This is far more important than the form of an offer of a FAPE. (20 U.S.C. § 1400(d)(1)(A).)

In *Heather S.*, the parties disputed the appropriate eligibility categories for a child whose disability was hard to categorize. The Seventh Circuit Court of Appeals noted that the "IDEA charges the school with developing an appropriate education, not with coming up with a proper label with which to describe [student's] multiple disabilities." (*Heather S., supra*, 125 F.3d at p. 1055.) A federal district court in California applied the same principle. (See, *Timothy O v. Paso Robles Joint Unified School Dist.*, (C.D.Cal.,

April 21, 2014) 2014 WL 12675212, at p. 12, citing *Heather S.* [rejecting student's argument that a failure to classify student under the autistic-like category denied student a FAPE.]

While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School District*, (2001) 267 F.3d 877, 892.)

A preschool child between the ages of three and five years old qualifies for early childhood special education services if the child is identified as having one of the fourteen disabling conditions listed in California Education Code § 56441.11, subd. (b)(1), which include speech or language impairment, and autism. In addition to having one of those fourteen disabling conditions, to be eligible for special education, a preschool age child must also:

- have needs requiring specially designed instruction or services as defined in Ed. Code §§ 56441.2, and 56441.3;
- have needs that cannot be met with modification of a regular environment in the home or school, or both, without ongoing monitoring or support as determined by an individualized education program team; and
- meets the criteria for at least one of the eligibility categories listed in Education Code § 56441.11(b)(1).

(Ed. Code, § 56441.11.)

Bailey attended the August 28, 2023 IEP team meeting. Bailey testified the IEP team found Student secondarily eligible for special education under the autism category at that meeting. The August 28, 2023 IEP notes document that the IEP team determined to maintain Student's primary eligibility in the category of speech or language impairment, while acknowledging Student also met the special educational criteria under the autism eligibility category. Bailey conceded it may have been a clerical error to fail to include the secondary eligibility on the line on the form IEP for secondary eligibility, but secondary eligibility was offered and memorialized in the notes of the August 28, 2023 IEP amendment.

A required statement only need appear once in an IEP. The IDEA does not require the IEP to be in any particular format as long as all the required content is included somewhere in the document. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2); Ed Code, § 56345, subd. (h).) Neither state nor federal law require the IEP team to include information under one component of an IEP that is already contained under another component of the IEP. (*Ibid.*)

Because the notes of the August 28, 2023 IEP amendment document the IEP team's decision to find Student eligible for special education under the secondary category of autism, it was not necessary for the secondary eligibility of autism to also be written on the line in the IEP form customarily used to designate a secondary eligibility category. The team agreed at the August 28, 2023 that Student met eligibility for special education under the autism category. Consequently, Parent was aware, or reasonably should have been aware, that autism was offered as secondary eligibility for special education. Therefore, Student's premise for Issue 1E was incorrect.

At most, the failure to include autism eligibility on the line on the form for secondary eligibility was a procedural error. However, a procedural error does not automatically require a finding that FAPE was denied. A procedural violation results in a denial of FAPE only if the violation: (1) impeded the child's right to FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

The evidence did not prove that Rescue Union's failure to state the offer of autism as a secondary eligibility in a specific delineated line on the IEP form constituted a procedural error that: impeded Student's right to a FAPE, significantly impeded Parent's IEP participation opportunity, or deprived Student of educational benefits. Therefore, any procedural error that occurred because the secondary eligibility of autism was not written on the preprinted line provided for secondary eligibility on the form IEP did not constitute a denial of a FAPE.

Student failed to meet her burden of proof on Issue 1E.

ISSUE 1F: DID RESCUE UNION DENY STUDENT A FAPE IN THE IEP DATED AUGUST 28, 2023, BY FAILING TO OFFER ACCOMMODATIONS?

Student contends she needed accommodations to make progress in the preschool full inclusion program class, and none were offered in the August 28, 2023 IEP amendment. Rescue Union contends assessment results and the team members' discussion held at the August 28, 2023 IEP meeting established Student did not need accommodations to make progress in the preschool full inclusion program.

An IEP must include a statement of the special education, related services, and program modifications and accommodations that will be provided for the child. The IEP's purpose is to allow the child to advance in attaining goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

Accommodations are essential when a child's disability limits her access to classroom instruction and routines. Bailey convincingly testified that, after reviewing the August 8, 2023 Multidisciplinary Evaluation report, the August 28, 2023 IEP team discussed whether Student needed accommodations. No team members, including Mother, believed Student needed any accommodations to access the preschool full inclusion program curriculum.

Student presented no persuasive evidence or argument regarding Student's need for accommodations in the August 28, 2023 IEP amendment. Student's closing brief argued that because Student had autism and special needs, Rescue Union was required to offer Student accommodations in the August 28, 2023 IEP. However, Student did not specify what accommodations should have been offered. There was also no evidence that the failure to offer a particular accommodation prevented Student from making appropriate progress in light of Student's circumstances.

It is not the ALJ's responsibility to construct or develop a party's argument. (See *Independent Towers of Washington v. Washington* (9th Cir. 2003) 350 F.3d 925, 929-930 (*Independent Towers*) [the court cannot construct arguments for a party, and will only examine issues specifically and distinctly argued in a party's brief]; *Loewen v. Berryhill* (9th Cir. 2017) 707 Fed. Appx. 907, 908 (nonpub. opn.), citing *Carmickle v. Commissioner*

(9th Cir. 2008) 533 F.3d 1155, 1161, fn. 2 [the court is not required to address arguments made without specificity]; *In Re: Out of Network Substance Use Disorder Claims Against UnitedHealthcare* (C.D.Cal., October 14, 2022, 8:19-cv-02075-JVS(DFMx)) 2022 WL 17080378, fn. 2 [“The Court ‘is not a pig searching for truffles in a forest,’ and will ‘not perform the work of representing parties.’”]; *U.S. v. Winkelman* (M.D.Pa. 2008) 548 F. Supp. 2d 142, 150 [“[Judges] ... are not pigs searching for truffles and are unwilling to search through the massive record that has been developed in this case to find evidence of these alleged violations.”]; *Agarwal v. Oregon Mutual Insurance Company* (D.Nev. January 18, 2013, No. 2:11-cv-01384-LDG) 2013 WL 211093, at p. 3, quoting *Greenly v. Sara Lee Corporation* (E.D.Cal. April 30, 2008, No. CIV. S-06-1775 WBS EFB) 2008 WL 1925230, at fn. 26 [“... [I]t is not the responsibility of the judiciary ‘to sift through scattered papers in order to manufacture arguments for parties.’”].) It was not clear what specific accommodations Student contends she required in August 28, 2023 IEP amendment.

Student failed to meet her burden of proof on Issue 1F.

ISSUE 1G: DID RESCUE UNION DENY STUDENT A FAPE IN THE IEP DATED AUGUST 28, 2023, BY FAILING TO OFFER AN APPLIED BEHAVIOR ANALYSIS PROGRAM TO BE DELIVERED AT HOME?

Student contends she required an applied behavior analysis program delivered at home to access her education, and such a program was not offered in the August 28, 2023 IEP amendment. Rescue Union contends Student did not need an applied behavior analysis program delivered at home to access her education in the preschool full inclusion program on August 28, 2023.

Student's closing brief curiously relied on the testimony of Celina Mayorga Quant, Center Joint's board certified behavior analyst, who said it is "always good when autistic children get applied behavior analysis therapy services at home." Quant did not testify that all children medically diagnosed with autism should be offered applied behavior analysis therapy services in their IEPs. Quant merely stated generally it is positive for autistic children to get some applied behavior analysis services at home, which Student did through her health insurance. Quant did not state Student should have been offered applied behavior analysis services at home in the August 28, 2023 IEP amendment. Moreover, Quant was not familiar with Student until the 2024-2025 school year, so she could not have offered any persuasive opinions on whether Student should have been offered applied behavior analysis services to be delivered at home in the August 28, 2023 IEP amendment.

Student received some applied behavior analysis services weekly at home via virtual transmission through Student's health insurance. Those services followed a "parent-led" model. Student received half of those services directly from a behaviorist. The other half of those services were delivered by the behaviorist to Mother as training regarding how to use applied behavior analysis therapy techniques with Student.

There was no evidence presented that clarified what Student meant by an applied behavior analysis program to be delivered at home. No witness credibly testified that Student required an applied behavior analysis therapy program at home to access her education on August 28, 2023. Student did not call a behaviorist, a school psychologist, or anyone qualified to testify about Student's need for applied behavior analysis services

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as part of her IEP. Furthermore, there was no evidence Mother had expertise in applied behavior analysis. In fact, Mother was being trained herself on applied behavior therapy techniques through Student's health insurer.

Student failed to meet her burden of proof on Issue 1G.

ISSUE 1H: DID RESCUE UNION DENY STUDENT A FAPE IN THE IEP DATED AUGUST 28, 2023, BY FAILING TO OFFER BEHAVIOR CLINIC MEETINGS?

Student contends she required behavior clinic meetings to be offered in the August 28, 2023 IEP amendment so she could access her education because her behavior impeded her access to her education. Rescue Union contends Student had only minor behavior concerns at school that did not warrant behavior clinic meetings in the August 28, 2023 IEP amendment.

Student never explained either in evidence presented at hearing or in her closing brief what she meant by "behavior clinic meetings," or why Student needed them to access her education. Again, it is not the ALJ's responsibility to construct or develop a party's argument. (See e.g., *Independent Towers, supra*, 350 F.3d 925, 929.)

The evidence indicated Student had only minor behavior deficits. Also, Mother did not request behavior clinic meetings be added to Student's IEP at the August 28, 2023 IEP team meeting. The only evidence at hearing about Student having problematic behaviors was Mother's testimony regarding some of Student's behavior at home, which was discussed above in this Decision in the analysis of Issues 1B and 1C. Mother admitted Student behaved much better at school, than she did at home. In fact,

Mother was surprised about how well behaved and cooperative Student was at school. Moreover, as discussed above, Mother never informed Rescue Union of the few instances in which Student engaged in dangerous behaviors outside of school.

There was no persuasive testimony or documentary evidence that proved Student required behavior clinic meetings in order to access the curriculum in the preschool full inclusion program. There was no data or information before the August 28, 2023 IEP team that Student exhibited material behavior problems warranting behavior clinic meetings. Consequently, the evidence failed to establish behavior clinic meetings were necessary to regulate or modify Student's behavior at school.

Student failed to meet her burden of proof on Issue 1H.

ISSUE 2A: DID RESCUE UNION DENY STUDENT A FAPE IN THE IEP DATED JANUARY 26, 2024, BY FAILING TO OFFER PLACEMENT IN A GENERAL EDUCATION PRESCHOOL CLASSROOM FOR THE MAXIMUM APPROPRIATE AMOUNT OF TIME?

Student contends Rescue Union denied Student a FAPE in the January 26, 2024 IEP by failing to offer her placement in a general education preschool class for the maximum appropriate amount of time. Rescue Union contends there was no information before the IEP team on January 26, 2024, that established Student could successfully access the curriculum in a general education preschool class in light of Student's low-average range cognitive abilities and communication deficits. Rescue Union further contends, neither Parents, nor any other members of the IEP team, suggested Student's least restrictive placement was a general education preschool class.

A four-factor test must be applied to the evidence to determine whether a school district has complied with the least-restrictive-environment requirement. (*Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*)). The first and most important factor compares the academic benefits a child receives from placement in the regular classroom with the academic benefits available in a special education classroom. (*Id.* at p. 1400–1401.) The second factor considers the non-academic benefits a disabled child derives from being educated in a regular classroom, such as the development of social and communication skills from interaction with nondisabled peers. (*Rachel H.*, 14 F.3d at p. 1404; *Oberti v. Board of Education*, 995 F.2d 1204, 1216 (3d Cir. 1993).)

The third factor weighs the potential negative effects a disabled child’s presence may have on the education of other children in the classroom or the teacher. (*Rachel H.*, *supra*, 14 F.3d at p. 1404.) The fourth factor considers the costs to the school district of providing the supplementary aids and services necessary to educate a disabled child in the regular classroom. (*Ibid.*)

STUDENT ATTENDED ONE DAY OF THE PRESCHOOL FULL INCLUSION PROGRAM DURING THE 2023-2024 SCHOOL YEAR

Student attended the Camerado Springs preschool full inclusion program class for only one day, on October 30, 2023. Student’s initial day in that program went satisfactorily. However, on the following day, October 31, 2023, Student, who was accompanied by Mother, entered the preschool full inclusion program class before the teacher arrived. Mother testified the classroom aide then pushed Student out of the classroom while telling Student it was too early for her to enter the classroom. Rescue Union disputes that the aide pushed Student. Because Mother was unhappy with the

aide's conduct, Mother left with Student before the school day began on October 31, 2023, and Student never returned to the Camerado Springs preschool full inclusion program class.

About three weeks later, Lisa Tuchsén, EDCOE program administrator for special services, who was the director of the special education preschool programs implemented by the El Dorado SELPA, contacted Mother and offered Student placement in an identical preschool full inclusion program class at William Brooks. However, Mother never brought Student to that class at William Brooks because Mother did not want to "uproot" Student from her attendance at Cadence Academy. Mother was satisfied with Cadence Academy, because Student was accustomed to it, and Cadence Academy offered long and flexible day care hours.

JANUARY 26, 2024 IEP

The January 26, 2024 IEP team met for the purpose of conducting an annual review of Student's IEP. Present at that meeting were Mother, speech therapist Jen Rodrick, and Paul Stewart, Rescue Union's administrative designee. The team agreed to continue the meeting to February 15, 2024, because Mother wanted to explore placement options other than Camerado Springs and there was no one present at the meeting who was familiar with all preschool class options available.

The IEP meeting was reconvened on February 15, 2024, with the following team members present: Mother, Rodrick, and Julie Fellion, administrator for the EDCOE special education preschool programs. Fellion reported there was an opening at the Camerado Springs preschool full inclusion program class. However, Mother was not comfortable sending Student to the Camerado Springs class because she claimed

Student was pushed by a classroom aide assigned to that class on October 31, 2023. Fellion reported there were no longer any open spots in the William Brooks preschool full inclusion program class. However, Fellion said she would reach out to Mother if an opening occurred again in the preschool full inclusion program class implemented at William Brooks.

The IEP team then reviewed the following continuum of possible preschool placements for Student:

- general education class without special education;
- preschool full inclusion program class; and
- special day class.

(Ed. Code, § 56361.)

The IEP team reasonably determined a general education preschool class was not appropriate for Student because she needed specialized academic instruction and more supports than were available in the larger general education preschool class. The team further determined a special day class for autistic preschool children would be too restrictive for Student. After discussion, the team concluded the preschool full inclusion program class was the appropriate placement for Student for the entire three-hour duration of each school day due to the following differences between a general education preschool class, and the preschool full inclusion program class:

- the preschool full inclusion program had a smaller class size, by six children, than a general education preschool class;
- the preschool full inclusion program had more adult support and a greater adult to student ratio than the general education preschool classes; and

- the preschool full inclusion program class was co-taught by a general education teacher and a special education teacher, whereas a general education preschool class was taught by one general education teacher.

The most recent assessment information about Student before the IEP team was the August 8, 2023 Multidisciplinary Evaluation report. Following the team's review of that report, the team determined Student needed some specialized academic instruction, and more structure than was available in a general education preschool class. The team also determined to increase the amount of time offered in speech and language services in the August 28, 2023 IEP, from 20 minutes per week to 30 minutes per week in group or individual sessions depending on Student's ability to work with peers when given adult support.

Mother testified she wanted the preschool full inclusion program class placement for Student. There was no persuasive evidence that Mother, or anyone else at the two team meetings held for the January 26, 2024 IEP, suggested or believed a general education class without specialized academic instruction would have been appropriate for Student for any amount of time.

The team then discussed other possible programs for Student. The team agreed the preschool special day classes for autistic children were too restrictive for Student because she did not have serious behavior issues, and Student would benefit from being in a class with neurotypical peers. After considering the foregoing described continuum of preschool placements, the team determined a general education preschool class was

inappropriate for Student because she required specialized academic instruction and a smaller class size. The team then reasonably determined the appropriate placement for Student was the preschool full inclusion program class at Camerado Springs.

Mother testified at hearing that she wanted the “full inclusion preschool program” class for Student. During her testimony Mother did not say she ever told the IEP team she wanted the larger general education preschool class placement for Student for any amount of time. Moreover, according to notes of the August 28, 2023 IEP, as amended, the consensus of the IEP team was that a general education preschool class was not the least restrictive placement appropriate for Student.

The weight of evidence failed to establish that on January 26, 2024, Student would have been appropriately placed in a general education classroom for any amount of time.

APPLICATION OF FOUR FACTORS TO DETERMINE THE LEAST RESTRICTIVE PLACEMENT FOR STUDENT

The January 26, 2024 IEP team determined the least restrictive placement for Student by considering a continuum of preschool placements. In applying the four factors identified in *Rachel H.* to determine the least restrictive preschool placement for Student, the IEP team reasonably decided a general education preschool class was inappropriate for Student because she needed some specialized academic instruction to obtain academic benefit. The team noted specialized academic instruction would not be available to Student if she was in a general education preschool classroom. The team also correctly decided a special day class for autistic children was too restrictive an environment for Student to obtain academic benefits.

The January 26, 2024 IEP team also correctly determined Student would benefit from being in the preschool full inclusion program class by being exposed to neurotypical peers, who comprised two-thirds of the children enrolled in that class. The team properly noted Student's engagement with the neurotypical peers in the preschool full inclusion program class would help Student develop her social and communication skills. There was no information before the IEP team that Student's presence would have a detrimental effect on the education of other children, or the teacher, in the preschool full inclusion program. (See, *Rachel H.*, *supra*, 14 F.3d at p. 1404.) Lastly, there was no information before the IEP team on January 26, 2024, regarding the costs of providing supplementary aids and services necessary to educate Student in a general education preschool class. Those costs did not appear to be material in determining which placement was the least restrictive preschool environment for Student. In applying the four factors for determining a child's least restrictive environment as established in *Rachel H.*, it is clear the January 26, 2024 IEP team properly determined the preschool full inclusion program class was the least restrictive placement for Student.

Mother eventually provided her written consent to the January 26, 2024 IEP amendment on March 6, 2024, stating "... with the exception of the placement at Camerado. Would like alternative options. I am requesting another future placement of a full inclusion program." The foregoing handwritten exception is tantamount to an admission by Mother that she thought the preschool full inclusion program class, and not a general education preschool class for any amount of time, was the least restrictive appropriate placement for Student.

The preschool full inclusion program class offered Student exposure to neurotypical peers, while still providing her with specialized academic instruction, a more structured environment, and the additional adult support Student required to

access the preschool curriculum. No convincing evidence established that the larger general education preschool class was the least restrictive preschool placement for Student on January 26, 2024.

Student failed to meet her burden of proof on Issue 2A.

ISSUE 2B: DID RESCUE UNION DENY STUDENT A FAPE IN THE IEP DATED JANUARY 26, 2024, BY SIGNIFICANTLY IMPEDING PARENT'S OPPORTUNITY TO PARTICPATE IN THE DECISION-MAKING PROCESS REGARDING PROVISION OF A FAPE TO STUDENT BY FAILING TO CONSIDER PARENT'S REQUEST THAT STUDENT BE OFFERED PLACEMENT IN A DIFFERENT GENERAL EDUCATION CLASSROOM?

Student contends the January 26, 2024 IEP team denied Student a FAPE by significantly impeding Mother's opportunity to participate in the IEP process by failing to consider Mother's request that Student be offered placement in a different general education preschool classroom. Rescue Union contends Mother never requested Student be placed in a general education preschool classroom, or a different general education classroom. Therefore, Rescue Union argues it did not significantly impede Parent's opportunity to participate in the IEP process by failing to consider a request Mother never made.

The IDEA imposes upon the school district the duty to conduct a meaningful IEP meeting with the appropriate parties. (*W.G. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir.1992) 960 F2d 1479, 1485.)(*Target Range*.) To fulfill the goal of parental participation in the IEP process, the school district is required to conduct, not just an IEP team meeting, but a meaningful IEP team meeting. (*Ibid.*) A parent who has had an

opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way. (*Fuhrmann, supra*, 993 F.2d 1031, 1036.) Not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J., supra*, 267 F.3d 877 at p. 892.)

As discussed above, there was no evidence Mother ever requested Student be placed in a general education preschool class, let alone a “different” general education preschool classroom. Student offered no evidence or argument as to what was meant by a “different” general education preschool classroom. Student was never offered or attended any general education preschool classroom. At hearing, Mother conceded she did not remember much about the January 26, 2024 IEP or the two team meetings held in connection with it, other than that the team decided to increase the speech and language services offered to Student by ten minutes per week. Mother testified she wanted Student to be placed in the “full inclusion preschool program,” and the rest of the IEP team agreed with her. The meeting notes included in the January 26, 2024 IEP did not indicate that Mother, or anyone else, requested Student be placed in a general education preschool class for any amount of time.

Mother refused to bring Student back to the Camerado Springs preschool full inclusion program class after October 30, 2023, because Mother claimed a classroom aide pushed Student in the morning before school started on October 31, 2023. A few weeks later Tuchsien, EDCOE’s preschool program director, offered Student placement in a different full inclusion preschool class located at William Brooks. However, Mother never even observed the preschool full inclusion program class implemented at William Brooks because Student was settled and doing fine at Cadence Academy, which conveniently provided long daycare hours.

There was no evidence Mother made a request of the January 26, 2024 IEP team that Student be placed in a general education preschool class. Therefore, the premise of Issue 2B is erroneous. Because Mother did not raise a concern that Student should be placed in the larger general education preschool class with the January 26, 2024 IEP team, the team could not have significantly impeded Mother's opportunity to participate in the IEP process regarding provision of a FAPE to Student by failing to consider a concern she never raised.

Student failed to meet her burden of proof on Issue 2B.

ISSUE 2C: DID RESCUE UNION DENY STUDENT A FAPE IN THE IEP DATED JANUARY 26, 2024, BY SIGNIFICANTLY IMPEDING PARENT'S OPPORTUNITY TO PARTICIPATE IN THE DECISION-MAKING PROCESS REGARDING PROVISION OF A FAPE TO STUDENT BY PREDETERMINING THE LEAST RESTRICTIVE ENVIRONMENT FOR STUDENT'S PLACEMENT OUTSIDE OF THE IEP TEAM MEETINGS HELD ON JANUARY 26, 2024, AND ON FEBRUARY 15, 2024?

Student contends Rescue Union predetermined the least restrictive environment for Student's placement offer outside of the IEP team meetings held on January 26 and February 15, 2024. Rescue Union contends it did not predetermine the placement offer. Rescue Union further contends the IEP team collaboratively determined that the "full inclusion preschool program" class placement was the least restrictive environment for Student at the IEP team meetings held on January 26, 2024, and February 15, 2024, and this discussion and decision by the team was documented in the IEP dated January 26, 2024.

As discussed in section 2A above in this Decision, after balancing the four factors addressed in *Rachel H.*, an IEP team must offer a disabled child placement in the least-restrictive-environment requirement. (*Rachel H., supra.*, at 1404) Also, the school district is obligated to conduct a meaningful IEP meeting with the appropriate parties, including parents, who have the opportunity to participate in the meeting without being significantly impeded. (*Target Range, supra.*, at p. 1485.)

There was no persuasive evidence presented that anyone affiliated with Rescue Union predetermined the placement offer made in the January 26, 2024 IEP outside of the IEP team meetings held on January 26, 2024, and on February 15, 2024. Also, there was no evidence Rescue Union presented a “take it or leave it” offer of a FAPE, and significantly impeded upon Parent’s opportunity to participate in the decision-making process regarding provision of a FAPE to Student. Student did not even argue in her closing brief that the IEP team predetermined the placement offer outside of the January 26, 2024 IEP team meeting. There was also no evidence that the least restrictive preschool placement for Student was a general education preschool program class. The IEP team properly determined a general education preschool class was not appropriate for Student because she needed some specialized academic instruction, and a smaller class size with a greater adult to child ratio and more structure to obtain academic benefits.

Student failed to meet her burden of proof on Issue 2C.

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ISSUE 3A: DID CENTER JOINT DENY STUDENT A FAPE IN THE SEPTEMBER 4, 2024 IEP AMENDMENT BY FAILING TO OFFER STUDENT APPROPRIATE SPEECH AND LANGUAGE SERVICES?

Student contends she required more than 30 minutes a week of speech and language services in the September 4, 2024 IEP to make progress on her speech and language deficits. Center Joint contends 30 minutes a week of speech and language services constituted an appropriate amount of speech and language services, sufficient to support Student's progress on her speech and language goals and to enable Student to access the transitional kindergarten general education curriculum.

STUDENT TRANSFERRED TO CENTER JOINT DURING SUMMER 2024 BEFORE THE START OF THE 2024-2025 REGULAR SCHOOL YEAR

Around June 2024, when Student was four years old, her family moved to Roseville, California, which is located within Center Joint's geographic boundaries. Parents enrolled Student in Center Joint for the 2024-2025 school year. Parents anticipated Student would be placed in a general education transition kindergarten, called TK, class at the beginning of the 2024-2025 school year.

The IDEA, its implementing regulations, and the Education Code, are silent on the specific procedure by which a district is to provide a FAPE to a child with a disability who moves into the district during the summer, as is the case here. In its Comments to 2006 IDEA Regulations, the United States Department of Education addressed whether it needed to clarify the regulations regarding the responsibilities of a new school district for a child with a disability who transferred into the district during summer. The United States Department of Education declined to change the regulations, reasoning that the

rule requiring all school districts to have an IEP in place for each eligible child at the beginning of the school year applied, such that the new district could either adopt the prior IEP or develop a new one. (See *Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities*, 71 Fed. Reg. 46682 (2006).)

When a child is transferring districts within California during the regular school year the new district must adopt an IEP comparable to the child's last IEP from her former school district. However, when a child transfers to a new school district between school years, like happened in this case, the new district is not required to implement the former district's IEP or offer the child services "comparable" to those offered by the former district. Because there are no federal or state statutory provisions addressing the situation where a student transfers school districts between regular school years, California OAH decisions have determined that the new district need only develop, offer, and implement an IEP reasonably calculated to provide the child a FAPE based on the information available to the district. (See, *Clovis Unified School Dist. v. Parents on behalf of Student* (2009) OAH Case No. 2008110569; see also, *Adams, supra*, 195 F.3d 1141, 1149; 34 C.F.R. § 300.323(a) (2006).) Therefore, the child's new school district has the option, but not the obligation, to adopt the IEP developed for the child by the former district. (See, *Questions and Answers On Individualized Education Programs (IEPs), Evaluations, and Reevaluations* (OSERS Revised September 2011, p. 5-6).)

Neither Part B of the IDEA nor the regulations implementing Part B of the IDEA establish timelines for the new school district to adopt the child's IEP from the previous public agency or to develop and implement a new IEP. (See, *Questions and Answers On Individualized Education Programs (IEPs), Evaluations, and Reevaluations* (OSERS Revised September 2011, *supra*.) However, consistent with title 34 Code of Federal

Regulations sections 300.323(e) and (f), the new public agency must take these steps within a reasonable period of time to avoid any undue interruption in the provision of required special education and related services. The IDEA does not state when the receiving district must begin providing the student a FAPE, but the district must begin to do so as soon as possible based on the circumstances. (See, *Letter to State Director of Special Education* (OSEP January 19, 2013) [Whenever possible, school districts should attempt to complete evaluations and eligibility determinations for highly mobile children on an expedited time frame so they can receive a FAPE]; *N.B. v. State of Hawaii Dept. of Education* (D. Hawaii, July 21, 2014, No. CIV 13–00439 LEK–BMK) 2014 WL 3663452, p. 4 (enrollment triggers the obligation to provide a FAPE to a transfer student).)

When parents and district disagree on the appropriate placement for a transferring student, providing services in accordance with the Student’s previously implemented IEP pending further assessments effectuates the statute’s purpose of minimizing disruption to the student while the parents and the receiving school district resolve disagreements about proper placement. (*A.M. ex rel. Marshall v. Monrovia Unified School Dist.* (9th Cir. 2010) 627 F.3d 773, 778-779.) However, in this case the evidence established there was no disagreement between Parents and Center Joint regarding Student’s placement in the general education TK class for the 2024-2025 school year.

CENTER JOINT’S PLACEMENT AND SERVICES OFFERED TO STUDENT AT THE START OF THE 2024-2025 REGULAR SCHOOL YEAR

On August 5, 2024, Center Joint received access to Student’s special education file through the Special Education Information System, called SEIS, an electronic data

storage system for special education records used by many California public school districts. Student's home school in Center Joint was Rex Fortune Elementary School, called Rex Fortune.

Cynthia Wachob, an extremely experienced special education program specialist with Center Joint, reviewed Student's SEIS file to determine what comparable IEP placement and services to recommend for Student in a TK level class at the start of the 2024-2025 school year in the first week of August 2024. TK refers to the first of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate. (Ed. Code, § 48000, subd. (d).) Student's initial placement and services assigned by Center Joint at the beginning of the school year would be reviewed by the IEP team within 30 days to make sure they were appropriate for Student. The records Wachob reviewed included Student's most recent IEP dated January 26, 2024, signed by Mother on March 6, 2024, subject to the exception that Mother disagreed with placement at Camerado Springs, and Mother's request for another future placement in a full inclusion program.

The TK class at Rex Fortune started at 7:45 a.m. and ended at 2:00 p.m., whereas the preschool full inclusion program offered to Student by Rescue Union in the January 26, 2024 IEP was only three hours long. Therefore, it was necessary for Center Joint to make adjustments to Student's previous offer of a FAPE to accommodate Student's longer TK school day.

When reviewing Student's records Wachob read the notes to the January 26, 2024 IEP, which indicated Student was medically diagnosed with autism, and that Student also met eligibility criteria for special education under the autism category. However, autism was not listed on the line provided for "secondary eligibility" on the

January 26, 2024 IEP. Wachob testified convincingly that if Student's January 26, 2024 IEP had listed "autism" as a secondary eligibility on the preprinted line on the IEP form, Center Joint would not have changed the placement, specialized academic instruction, or related services offered to Student for her TK placement at the beginning of the 2024-2025 school year because Student's needs were the same regardless of eligibility categories offered.

After reviewing Student's records on SEIS Wachob spoke with Mother on the phone on or about August 5, 2024, to discuss Student's upcoming TK program. Wachob explained to Mother that if Student were to receive 180 minutes of specialized academic instruction per day, as was offered in the January 26, 2024 IEP, Student would typically be placed in a special day TK class. Mother told Wachob she wanted Student placed in a general education TK class instead, with speech and language therapy services. Mother and Wachob agreed that a TK special day class would be an overly restrictive placement for Student. Mother and Wachob also agreed a general education TK class was the most appropriate, least restrictive placement for Student. Wachob recommended 30-minute weekly pull out speech and language services. Wachob did not recommend Student receive occupational therapy or behavior intervention services based on her review of Student's SEIS file, which included the January 26, 2024 IEP and Rescue Union's assessment reports.

Mother and Wachob verbally agreed to this TK program for Student at the beginning of the 2024-2025 school year. Wachob was a certified resource special education services specialist, who had worked with children with a wide variety of special needs for 33 years. Wachob's testimony was very persuasive because she was extremely knowledgeable about IEPs, special education, and related services. Her

answers to questions at hearing were forthright, included meaningful details, and made sense. She also appeared to be honest. For those reasons, Wachob was a very credible, believable witness.

Tatyana Kut, Center Joint's special education teacher and resource specialist, was Student's case manager for the 2024-2025 school year. Around August 11, 2024, Kut reviewed Student's IEP dated January 26, 2024. Kut was concerned because that IEP offered Student 180 minutes per day of specialized academic instruction, but included no academic goals, which Kut thought was highly unusual. On August 13, 2024, Kut conferred by email with Tracy Ramirez, Center Joint's special education program specialist, about how the preschool program offered in the January 26, 2024 IEP was inappropriate for Student in TK during the 2024-2025 school year. Ramirez and Kut agreed Center Joint would have to assess Student to obtain her then accurate present levels of performance.

Ramirez recommended Student should begin the school year placed in a general education TK class at Rex Fortune with 120 minutes per week of specialized academic instruction to be delivered in 30-minute sessions four days a week. In addition, Student would receive 30 minutes a week of speech and language services in a group pull-out model. Kut and Ramirez agreed this program would be appropriate for Student until such time that Center Joint could assess Student.

Student started attending teacher Lexi Caentano's general education TK class at Rex Fortune on August 7, 2024, the first day of the 2024-2025 regular school year.

SEPTEMBER 4, 2024 IEP TEAM MEETING

After Student attended the general education TK class at Rex Fortune taught by Caentano for about four weeks, Center Joint convened a "30 Day" IEP team review meeting on September 4, 2024. The purpose of the meeting was to see if Student's interim placement and related services were appropriate and if any adjustments needed to be made to Student's IEP based on Student's performance during the first four weeks of the school year. All Center Joint staff who had worked with Student at Rex Fortune reported Student did very well during her first month in TK there. The following people attended the September 4, 2024 IEP team meeting:

- Center Joint administrative representative, Rex Fortune Principal Jason Farrel;
- Case Manager Kut;
- General Education TK Teacher Caentano;
- School Psychologist Natasha Kneff;
- Special Education Director Michael Jordan;
- Speech and Language Pathologist Robin Huebner;
- Program Specialist Wachob;
- Parents; and
- Student's home-based applied behavior therapy service providers, Elsa Elizaldemm and Nicole Lowther Lenard.

The notes of the September 4, 2024 IEP amendment document that Student's "services and goals to her full day of school in transitional kindergarten do not match her needs at this time. The goals were adjusted and removed." Specifically, Student had already met two of her three behavior goals offered in the January 26, 2024 IEP.

Consequently, the team removed Student's goal three on transitions, and goal four on participation in adult-led activities. Her one remaining behavior goal in peer interactions was adjusted to meet Student's present levels of performance, since she had already made progress on that goal.

The two speech and language goals were maintained on the September 4, 2024 IEP amendment. The team determined Student's least restrictive placement was in a general education TK class because she had done very well in that placement for the first month of school. The team also offered Student speech and language services for 30 minutes per week, and specialized academic instruction for 120 minutes per week to be delivered in four 30-minute sessions per week.

The central concern Parents expressed at that meeting was that Mother was not permitted to walk Student from the TK gate, where parents dropped off children for school, directly to her classroom, due to Center Joint's closed campus safety policy. That policy did not allow any adults on campus after the first three days of school, except for those adults who had signed in at the school office.

SPEECH AND LANGUAGE SERVICES OFFERED IN THE SEPTEMBER 4, 2024 IEP AMENDMENT WERE APPROPRIATE

After reviewing the available information about Student and her special needs, the IEP team offered Student 30 minutes per week of group speech and language services in the September 4, 2024 IEP amendment. California certified Speech-Language Pathologist Huebner, who was employed by Center Joint for the last seven years, was the only expert in the area of speech and language therapy and pathology who testified at hearing. Huebner persuasively opined that the 30 minutes per week of group speech

and language services offered to Student in the September 4, 2024 IEP amendment were appropriate to meet Student's needs. Huebner held both a bachelor's and master's degree in speech-language pathology, and a certificate of clinical competence in speech-language pathology from the American Speech Language Hearing Association. She also held a speech-language pathology credential from the California Commission on Teacher Credentialing.

Huebner had assessed hundreds of children in speech and language, and provided speech and language therapy services to almost 400 students throughout her career. Huebner was extremely knowledgeable about Student's communication needs because Huebner provided Student with 30 minutes per week of speech and language services throughout the 2024-2025 regular school year. Huebner reported Student expressed herself verbally, spoke in full sentences, and communicated well with peers. Huebner kept detailed records of the dates and times she worked with Student during the 2024-2025 school year. Furthermore, Huebner closely monitored Student's progress on her speech and language goals throughout that school year. Huebner was present at the September 4, 2024 IEP team meeting, and later attended Student's IEP team meeting held in May 2025.

Huebner was a very knowledgeable and credible witness, who answered questions posed to her confidently, without hesitation, and thoroughly. Huebner was an extremely well-qualified expert in the area of speech and language development. Her opinions regarding the appropriateness of the speech and language services offered to Student in the September 4, 2024 IEP amendment were very persuasive. Moreover, Student failed to offer evidence that effectively rebutted Huebner's opinions as discussed below.

Additionally, Student's report card from the 2024-2025 school year corroborated Huebner's opinions because, by the end of the regular school year, Student's spoken language in all five areas measured either exceeded or were at TK standards. This evidence was extremely persuasive. The law permits after acquired evidence to shed light on the objective reasonableness of a school district's actions at the time the school district rendered its decision. (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2011) 652 F.3d 999, 1006.) In that case the Ninth Circuit held that, when reviewing a school district's actions, courts may look to evidence not known to the decision makers at the time as "... additional data, discovered late in the evaluation process, may provide significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date." (*Ibid.*) The evidence was clear that Student's verbal communication skills improved throughout TK with the support offered in the September 4, 2024 IEP amendment.

Huebner convincingly stated Student did not require more than 30 minutes per week of speech and language services. Huebner further testified Student required her speech and language services to be delivered in a group setting, rather than individually. The group setting afforded Student opportunities to develop her communication skills with other children.

The only evidence presented regarding the alleged inappropriateness of the speech and language services offered in the September 4, 2024 IEP amendment was Mother's lay opinion that Student needed more speech and language therapy. Mother testified Student was occasionally confused during conversations, and that Mother sometimes had difficulty understanding something Student said. Mother did not testify as to how much more speech and language services she believed would have been appropriate for Student on September 4, 2024.

Mother's testimony was extremely vague and imprecise as to dates when Mother had certain concerns regarding Student's speech and language skills. Moreover, there was no evidence Mother had any expertise in the area of speech-language pathology. In fact, Mother stated repeatedly during her testimony that she had very little understanding, and no experience, regarding special education, related services and IEPs.

Student failed to present any persuasive evidence in rebuttal to Huebner's persuasive opinion that 30 minutes per week of speech and language therapy delivered in a group setting was the appropriate level of service to support Student's communication needs on September 4, 2024. In contrast to Huebner's confident, well-reasoned opinions based on professional expertise and experience, Mother's testimony on this issue was vague and unconvincing. Mother did not specify what level of speech and language services she believed Student needed. No witness called by Center Joint testified Student should have been offered more speech language therapy services in the September 4, 2024 IEP amendment than 30 minutes per week. There was no convincing evidence that an increase in the amount of speech and language services offered, or a different kind of speech and language services than those offered, would have been appropriate for Student on September 4, 2024.

Student failed to meet her burden of proof on Issue 3A.

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ISSUE 3B: DID CENTER JOINT DENY STUDENT A FAPE IN THE SEPTEMBER 4, 2024 IEP AMENDMENT BY FAILING TO OFFER STUDENT OCCUPATIONAL THERAPY SERVICES?

Student contends she was denied a FAPE in the September 4, 2024 IEP amendment because she required occupational therapy services to address her motor skill and sensory processing deficits. Center Joint contends Student did not need occupational therapy services to access her education and make academic progress in TK, and, therefore, it was appropriate that the September 4, 2024 IEP amendment did not offer her occupational therapy services.

During the IEP team meeting on September 4, 2024, the team discussed whether Student needed services to address her gross and fine motor development and determined that these were not areas of concern. The following September 4, 2024 update was added to the January 2024 IEP document: "9/4/2024: Age appropriate gross and fine motor development. This is not an area of concern." Moreover, neither Parents, nor any other team members, raised a concern at the September 4, 2024 IEP team meeting that Student needed occupational therapy services, or that Student was experiencing difficulties with her gross or fine motor skills or sensory processing.

Kneff, Center Joint's school psychologist, convincingly testified that on September 4, 2024, Student's motor development was not an area any member of the IEP team expressed concerned about. No Center Joint personnel who worked with Student at Rex Fortune and who testified at hearing opined Student had any motor skill or sensory processing deficits requiring occupational therapy services. The IEP team did not recommend Student have an occupational therapy assessment. In fact, when Kneff developed an assessment plan on September 13, 2024, in anticipation of Student's

then upcoming three-year IEP review, Kneff did not include an assessment to be conducted by an occupational therapist. Kneff persuasively opined Student did not need occupational therapy services on September 4, 2024, because Student did not have fine or gross motor skill deficits, or sensory processing problems, that interfered with her education.

Furthermore, by the end of TK in June 2025, Student received the highest marks on her report card for all three fine motor skills measured. These high marks in motor skills corroborated other evidence that Student did not require occupational therapy services to access the TK general education curriculum in September 2024. The weight of evidence did not establish that in the September 4, 2024 IEP amendment Center Joint denied Student a FAPE by failing to offer her occupational therapy services. There was no persuasive evidence Student had any motor skill or sensory processing difficulties in the TK general education classroom on September 4, 2024.

Student failed to meet her burden of proof on issue 3B.

ISSUE 3C: DID CENTER JOINT DENY STUDENT A FAPE IN THE SEPTEMBER 4, 2024 IEP AMENDMENT BY FAILING TO OFFER STUDENT BEHAVIOR INTERVENTION SERVICES?

Student contends she required behavior intervention services in the September 4, 2024 IEP amendment to address Student's

- significant behavioral needs,
- sensory processing difficulties,
- wandering tendencies,

- social-emotional deficits, and
- self-injurious behaviors.

Center Joint contends any minor behavior issues Student had were appropriately addressed in the September 4, 2024 IEP amendment by a behavior goal, and no behavior intervention services were necessary for Student to access the curriculum of the TK general education class or her special education.

A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.) However, a district's responsibility under the IDEA is to remedy the learning-related symptoms of a disability, not to treat other, non-learning related symptoms. (*Forest Grove School Dist. V. T.A.* (9th Cir. 2011) 638 F.3d 1234, 1238-39 [no abuse of discretion in denying parent reimbursement where district court found parent sought residential placement for student's drug abuse and behavior problems.]) A school district is not required to address a child's disability that does not interfere with her education.

The September 4, 2024 IEP team recognized Student had already met two of the three behavior goals she had been offered less than eight months earlier in the January 26, 2024 IEP. Student had also made progress toward meeting the third behavior goal addressing her peer interactions. There was no evidence Student received any behavior interventions or worked on her three behavior goals while she attended Cadence Academy from January 2024, through the end of the 2023-2024 regular school year.

However, even without any behavior interventions, Student made significant progress in the areas of peer interactions, transitions; and participation in adult-led activities by September 4, 2024.

Student's TK teacher, Caentano, reported at the September 4, 2024 IEP meeting that Student was becoming more vocal and less timid in class. Student was following directions and benefiting from watching her peers. Student was growing and making progress daily. Caentano gave Student an excellent report after attending the TK class for only one month.

The evidence failed to establish that Student's behavior at school impeded Student's learning or the learning of others when the September 4, 2024 IEP amendment was developed and offered. At that time Student exhibited grade-level performance in most areas and she was able to follow the TK general education curriculum and routines without any additional support. The September 4, 2024 IEP team noted Student was able to handle transitions, and participate in adult-led activities without behavior supports, other than those supports that were embedded in the TK general education classroom throughout the school day.

The testimony of all Center Joint's personnel who worked with Student at Rex Fortune established Student was cooperative, followed directions, participated in group activities, and asked for help when she needed it. Student had two TK teachers, Caentano and Stephanie Cook, during the 2024-2025 school year. Caentano was Student's TK teacher from the beginning of the 2024-2025 school year through mid-October, 2024, when Caentano went on maternity leave. Cook was the long-term substitute teacher who started teaching Student's TK class on October 24, 2024. Both Caentano and Cook testified Student's behavior at school was good, and did not require

behavior interventions, other than a behavior goal, to address Student's very minor behavior deficits, throughout the 2024-2025 school year. This was extremely persuasive evidence because it was based on the witnesses' first-hand knowledge of Student's behavior at school.

Moreover, corroborating that Student did not require behavior interventions not offered in the September 4, 2024 IEP amendment, Student's behavior improved throughout TK simply through Student's exposure to her neurotypical peers. Student's good behavior throughout TK was established by the high grades she received on her final TK report card in all eight specific tasks measured under the area of personal and social development. According to those grades, Student functioned at or above grade level expectations on all the behavioral areas evaluated by the end of the regular 2024-2025 school year.

Student relied solely on Mother's testimony regarding Student's supposed need for behavior intervention services. However, Mother's testimony was not convincing. Mother claimed Student's behavior was occasionally unregulated and unsafe at home. However, both Caentano and Cook opined Student's behavior at school was good and continued to improve throughout the school year. Mother acknowledged Student seemed to be much better behaved at school than she was at home. Mother said Student appeared to be a "different child" at school, than she was at home. When testifying Mother appeared to be surprised by the school personnels' consistent reports that Student behaved appropriately at school in her general education TK class.

There was no evidence Mother possessed expertise regarding behavior interventions. Mother's overall credibility was undermined because she was unable to accurately remember many key details, including who she spoke to, when certain

events occurred, if she ever received an IEP document, and if she provided her written consent to an IEP. Also, Mother never observed Student in her TK classroom, even though Farrel gave her permission to do so. Therefore, Mother had no first-hand knowledge about Student's behavior at school. Mother's opinion that Student needed behavior interventions not offered in the September 4, 2024 IEP amendment were merely speculative, not based on established facts, and were, therefore, given little weight.

In contrast, school psychologist, Kneff observed Student in her TK class close to the September 4, 2024 IEP team meeting. Kneff opined Student was "a sweetheart." Kneff found Student to be a happy, friendly child, who appropriately greeted others at school. Kneff described Student as a "typical little girl." Kneff further opined that after only one month in TK, Student had already integrated nicely into her TK class and she was "doing well." Kneff opined convincingly that Student did not need any kind of behavior intervention services on September 4, 2024. Kneff's opinion was believable and was not effectively rebutted or countered by any convincing evidence presented at hearing.

Center Joint was not required to offer behavior interventions when Student's behavior at school did not impede on her own or other children's learning. In fact, unnecessarily restrictive behavior interventions could have hampered Student's personal and social development growth, and her independence. Student also offered no persuasive evidence about the nature (other than those interventions specifically alleged in issues 3G and 3H below) and amount of behavior interventions Student contended Center Joint should have offered to meet her needs in the September 4, 2024 IEP amendment.

Additionally, Center Joint's behavior specialist, Quant, administered a functional behavior analysis assessment, and a special circumstances instructional assistance assessment to Student in January 2025. The results of those assessments established Student's behavior issues were so minor that they could be addressed through merely a behavior goal. No behavior services were necessary. Quant convincingly opined Student's behavior was grade-level appropriate, and any behavior issues could be successfully addressed with only a behavior goal. This was compelling corroborating evidence that no behavior interventions were needed in the September 4, 2024 IEP amendment.

Student failed to meet her burden of proof on Issue 3C.

ISSUE 3D: DID CENTER JOINT DENY STUDENT A FAPE IN THE SEPTEMBER 4, 2024 IEP AMENDMENT BY FAILING TO OFFER STUDENT A ONE-TO-ONE AIDE?

Student contends her behavior impeded her learning and she, therefore, required a one-to-one aide to access the TK general education curriculum on September 4, 2024. Center Joint contends Student had only minor behavior deficits on September 4, 2024, which did not require one-to-one aide services.

As discussed above in the analysis of Issue 3C, the evidence established Student's behavior at school was good with only minor deficiencies. Kneff testified that when she observed Student in her TK class shortly before the September 4, 2024 IEP team meeting, Student exhibited grade-level behavior. Student followed the teacher's directions appropriately. Kneff also noted Student had great social skills and she was appropriately self-sufficient. Kneff further observed Student's adaptive skills were

average for her age. Student did not exhibit repetitive behaviors sometimes associated with autism. In fact, Kneff determined later in the school year when she assessed Student in January 2025, that Student did not meet criteria for special education eligibility under the autism category. Kneff testified convincingly Student did not need a one-to-one aide on September 4, 2024. Kneff further convincingly opined it would have been a mistake to offer Student a one-to-one aide on September 4, 2024, because Student could improperly become dependent on an adult aide.

Mother's testimony was unconvincing on Issue 3D. Mother claimed Student had eloped from class in preschool, but Student never eloped from class at Rex Fortune. Mother claimed she requested a one-to-one aide for Student at some time. However, Mother never observed Student in her TK class, even though Rex Fortune principal, Farrel, gave Mother permission to do so.

There was no persuasive evidence that Student's behavior at school was so unregulated she needed a one-to-one aide. In fact, the evidence established that, after attending the general education TK class for only four weeks, Student was following directions, class routines and transitions well. She was also interacting appropriately with peers and adults at school without the assistance of a one-to-one aide. Therefore, the evidence established Student did not need the services of a one-to-one aide to access her education on September 4, 2024.

Student failed to meet her burden of proof on Issue 3D.

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ISSUE 3E: DID CENTER JOINT DENY STUDENT A FAPE IN THE SEPTEMBER 4, 2024 IEP AMENDMENT BY FAILING TO OFFER STUDENT A SECONDARY ELIGIBILITY FOR SPECIAL EDUCATION OF AUTISM?

Student contends she was denied a FAPE because Center Joint failed to identify her secondary eligibility for special education as autism on the September 4, 2024 IEP amendment. Center Joint contends Student was not denied a FAPE because she was offered a program which met all her needs in the September 4, 2024 IEP amendment, regardless of any omission of the label of autism as a secondary eligibility.

Kneff convincingly opined Student did not require a secondary eligibility category of autism in the September 4, 2024 IEP amendment because the goals, placement, and services offered to Student would not have changed if the team had offered that secondary eligibility. Kneff explained that Student's needs, not eligibility labels, drove the IEP team to offer specific goals, services and placement in the September 4, 2024 IEP amendment. Kneff further testified Student's needs, not the label of a secondary eligibility, led to the programming and placement offered in the September 4, 2024 IEP amendment. There was no persuasive evidence that the inclusion of a secondary eligibility under autism would have resulted in an offer of special education and related services different than those Center Joint made in the September 4, 2024 IEP amendment. In fact, Wachob persuasively testified that inclusion of autism as a secondary eligibility in the September 4, 2024 IEP amendment would not have otherwise changed the program offered.

Additionally, as discussed in Issue 1E, a procedural error does not automatically require a finding that a FAPE was denied. Consequently, even if Center Joint's failure to include "autism" as a secondary eligibility on the September 4, 2024 IEP amendment

constituted a procedural violation, there was no evidence that such a procedural error impeded Student's right to a FAPE because, as discussed above, all of Student's needs were appropriately met by the offer of a FAPE conveyed in that IEP. Moreover, the failure to include "autism" as a secondary eligibility in the September 4, 2024 IEP amendment, did not significantly impede Parents' opportunity to participate in the decision-making process regarding provision of a FAPE to Student because Parents participated without obstruction in the IEP team meeting, and all of Student's needs were met by the program offered in that IEP.

Student failed to meet her burden of proof on Issue 3E.

ISSUE 3F: DID CENTER JOINT DENY STUDENT A FAPE IN THE SEPTEMBER 4, 2024 IEP AMENDMENT BY FAILING TO OFFER STUDENT ACCOMMODATIONS?

Student contends she needed accommodations on September 4, 2024, due to her medical diagnosis of autism. Center Joint contends Student did not require accommodations, other than what was offered in the September 4, 2024 IEP amendment, to access her education.

Under IDEA, an IEP must include a statement of the accommodations necessary to enable the child to be involved in and make progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(VI); 34 C.F.R. § 300.320(a)(6); Ed. Code § 56345(a)(6).) Accommodations are essential when a student's disability limits access to classroom instruction, routines, or environments. Failure to provide them constitutes a procedural error which may result in the denial of a FAPE.

The September 4, 2024 IEP team discussed possible accommodations for Student during the IEP team meeting and determined Student required two types of accommodations. Specifically, Student's September 4, 2024 IEP amendment offered Student the following program accommodations:

- visual and/or verbal cues to support transitions as needed; and
- frequent checks for understanding.

Student failed to prove that these two accommodations were not sufficient to support Student so she could access the TK general education curriculum. The IEP team discussed Student's need for other accommodations and determined Student only required the two above specific accommodations.

Kneff testified persuasively Student did not need any accommodations, other than those offered in the September 4, 2024 IEP amendment, to access the TK general education curriculum. There was no persuasive evidence to rebut Kneff's convincing expert opinion regarding the sufficiency of the offered accommodations. Moreover, Student presented no evidence regarding the specific kind of accommodations Student allegedly needed, but was not offered, in the September 4, 2024 IEP amendment. Student's closing brief also failed to specify any types of accommodations Student supposedly required, but was not offered. Instead, Student argued that, because autism was not offered as a secondary eligibility category, needed accommodations were not offered in the September 4, 2024 IEP amendment. This argument did not make sense, had no basis in the evidence, and was not convincing.

Student failed to meet her burden of proof on Issue 3F.

ISSUE 3G: DID CENTER JOINT DENY STUDENT A FAPE IN THE SEPTEMBER 4, 2024 IEP AMENDMENT BY FAILING TO OFFER STUDENT AN APPLIED BEHAVIOR ANALYSIS PROGRAM TO BE DELIVERED AT HOME?

Student contends because she was medically diagnosed with autism she required an applied behavior analysis program delivered at home to support Student's access to the TK general education curriculum in the September 4, 2024 IEP amendment. Center Joint contends Student had only minor behavior deficits at school, and there was no information before the IEP team on September 4, 2024, indicating Student required an applied behavior analysis program delivered at home to enable Student to access the curriculum of the TK general education class, special education, and related services.

As discussed in the analysis of issues 3C, 3D, 3E, and 3F above, the evidence established Student exhibited only minor behavior issues during her first four weeks in TK. Caentano persuasively opined Student's behavior was age appropriate and improving daily after attending the general education TK class for only four weeks. Student had already met two of the three behavior goals offered to her in the January 26, 2024 IEP, and had made significant progress on her third behavior goal. Furthermore, Caentano reported at the September 4, 2024 IEP team meeting that Student's behavior was generally good, with only minor deficits, and was improving daily. Student followed directions and classroom routines, and handled transitions between tasks without problems. Student also interacted appropriately with peers and adults at school.

None of the Center Joint staff members who testified at hearing thought Student required an offer of an applied behavior analysis program to be delivered at home in the September 4, 2024 IEP amendment, including Quant, Kneff, and Caentano. For

example, Center Joint Board Certified Behavior Analyst Quant testified convincingly that Student did not require an applied behavior analysis program to be delivered at home because Student had only minor problematic behaviors at school at the time of the September 4, 2024 IEP team meeting. Quant had a master's degree in psychology with an emphasis in applied behavior analysis. Quant also had about 11 years of professional experience working with children on behavior issues. Quant's opinions about Student and Student's behavior needs were well informed and believable.

Kneff also persuasively opined Student did not need an applied behavior analysis program to be delivered at home at the time of the September 4, 2024 IEP amendment because Student had exhibited only minor behavioral deficits at school. The consistent agreement on this issue of all the Center Joint professionals who worked with Student was extremely convincing.

Student offered no persuasive evidence rebutting the persuasive testimony of Quant, Kneff, Caentano, and other Center Joint staff members, who all agreed Student's behavior issues were minor, Student's behavior at school was generally age appropriate, and Student did not need an applied behavior analysis program to be delivered at home on September 4, 2024. Student offered no persuasive evidence that Student required an applied behavior analysis program delivered at home to enable Student to access the curriculum of the TK general education class, special education, or related services.

Student failed to meet her burden of proof on Issue 3G.

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ISSUE 3H: DID CENTER JOINT DENY STUDENT A FAPE IN THE SEPTEMBER 4, 2024 IEP AMENDMENT BY FAILING TO OFFER STUDENT BEHAVIOR CLINIC MEETINGS?

Student contends she needed behavior clinic meetings to access the general education TK curriculum. Center Joint contends Student's behavior was good, she exhibited only minor behavioral deficits, and there was no information before the September 4, 2024 IEP team to suggest Student needed behavior clinic meetings to access her education or special education.

As in Issue 1H, Student offered no persuasive evidence explaining what she meant by "behavior clinic meetings." Student offered no evidence regarding who should attend such meetings, the purpose of such meetings, and the frequency and duration of such behavior meetings. Student offered no evidence explaining these material details regarding this issue. Student also failed to explain why Student allegedly needed behavior clinic meetings, given the undisputed evidence that her behavior at school was age appropriate. The evidence was clear Student's behavior at school did not impede her learning or her peers' learning on September 4, 2024.

Kneff believably opined Student did not need behavior clinic meetings to be offered in the September 4, 2024 IEP amendment because Student's behavior at school was good, with only minor deficits. Student had done well in all areas during her first month in a general education TK class. Student offered no persuasive evidence to rebut

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Kneff's convincing expert opinion that Student did not require behavior clinic meetings. Therefore, Student failed to establish she needed behavior clinic meetings for a FAPE in the September 4, 2024 IEP amendment.

Student failed to meet her burden of proof on Issue 3H.

ISSUE 3I: DID CENTER JOINT DENY STUDENT A FAPE IN THE SEPTEMBER 4, 2024 IEP AMENDMENT BY FAILING TO OFFER PARENT TRAINING IN ADDRESSING STUDENT'S COMMUNICATION DEFICITS?

Student contends she required Parent training in addressing Student's communication deficits to access the TK general education curriculum on September 4, 2024. Center Joint contends Student's communication needs were met by the speech and language therapy services offered in the September 4, 2024 IEP amendment, and no Parent training in that area was necessary for Student to access the TK general education curriculum.

Parent training and counseling can be included as related services to support a student with exceptional needs. (Ed. Code § 56363, subd. (b)(11).) Parent training means assisting a parent in understanding the special needs of the student, providing the parent with information about child development, and helping the parent acquire necessary skills to facilitate the implementation of the child's IEP. (34 C.F.R. § 300.34(c)(8)(i)-(iii).)

Student argued in her closing brief that because Mother received advice from the speech-language pathologist providing services to Student, it was clear Mother was willing to receive training regrading Student's special needs. However, Mother's willingness to receive training is irrelevant to whether Center Joint should have offered

training to Parents. Moreover, Student presented no evidence regarding the kind of specific Parent training Student required to make progress on her speech and language goals. Student offered no evidence explaining what she meant by “parent training to address Student’s communication deficits.” Student did not present evidence regarding what such parent training would look like, who should provide it, and the frequency and duration of such parent training.

Student failed to present persuasive evidence or arguments, both at hearing and in her closing brief, regarding why Student needed her Parents to be trained concerning Student’s communication deficits. Parents never requested training to address Student’s communication deficits. During her testimony, Mother did not say she needed training in any area to support Student’s progress at school. Father did not testify at hearing.

Student was successful in her general education TK class by September 4, 2024, so there was no reason for the IEP team to suspect Parents needed training to help Student address her communication deficits. Kneff observed Student in her TK class communicating effectively with peers and adults, and being easily redirected by the teacher when necessary. Kneff opined persuasively that Student did not need an offer of parent training regarding Student’s communication deficits in the September 4, 2024 IEP amendment.

Student offered no expert testimony from a speech-language pathologist, or any other witness with relevant expertise, in support of Student’s contention that she required Parent training to address Student’s communication deficits on September 4,

2024. Moreover, Student's positive grades on her report cards in areas of communication throughout TK corroborated that Student's communication deficits improved throughout TK without any such parent training services.

Student failed to meet her burden of proof on Issue 3I.

ISSUE 3J: DID CENTER JOINT DENY STUDENT A FAPE IN THE SEPTEMBER 4, 2024 IEP BY FAILING TO OFFER STUDENT PARENT TRAINING IN ADDRESSING STUDENT'S BEHAVIOR DEFICITS?

Student contends she needed her Parents to be trained in addressing Student's behavior deficits to access the TK general education curriculum because Student exhibited negative behaviors and unregulated emotions at home on September 4, 2024. Center Joint contends Student exhibited only minor behavioral deficits at school during her first four weeks in the general education TK class. Moreover, Parents did not inform the IEP team about the negative behaviors Student exhibited at home. Therefore, the IEP team had no reason to offer Parent training to address Student's behavior deficits in the September 4, 2024 IEP amendment.

Student offered no evidence explaining what she meant by Parent training to address Student's behavior deficits. Student also offered no evidence regarding the nature of this supposedly necessary Parent training, who should conduct it, and the frequency and duration of such training. Student also presented no evidence as to why Student required Parent training regarding Student's behavior deficits to access the general education TK curriculum.

Kneff opined convincingly Student did not need an offer of parent training to address Student's behavior deficits in the September 4, 2024 IEP amendment. Student's behavior was good, with only minor problems, after attending the TK general education class for only four weeks. Student offered no persuasive evidence to rebut Kneff's convincing expert opinion that parent training to address Student's behavior deficits was not needed by Student on September 4, 2024.

Student failed to meet her burden of proof on Issue 3J.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1A:

Rescue Union did not deny Student a FAPE in the IEP dated August 28, 2023, by failing to offer appropriate speech and language services.

Rescue Union prevailed on Issue 1A.

ISSUE 1B:

Rescue Union did not deny Student a FAPE in the IEP dated August 28, 2023, by failing to offer occupational therapy services.

Rescue Union prevailed on Issue 1B.

ISSUE 1C:

Rescue Union did not deny Student a FAPE in the IEP dated August 28, 2023, by failing to offer behavior intervention services.

Rescue Union prevailed on Issue 1C.

ISSUE 1D:

Rescue Union did not deny Student a FAPE in the IEP dated August 28, 2023, by failing to offer a one-to-one aide.

Rescue Union prevailed on Issue 1D.

ISSUE 1E:

Rescue Union did not deny Student a FAPE in the IEP dated August 28, 2023, by failing to offer a secondary eligibility for special education of autism.

Rescue Union prevailed on Issue 1E.

ISSUE 1F:

Rescue Union did not deny Student a FAPE in the IEP dated August 28, 2023, by failing to offer accommodations.

Rescue Union prevailed on Issue 1F.

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ISSUE 1G:

Rescue Union did not deny Student a FAPE in the IEP dated August 28, 2023, by failing to offer an applied behavior analysis program to be delivered at home.

Rescue Union prevailed on Issue 1G.

ISSUE 1H:

Rescue Union did not deny Student a FAPE in the IEP dated August 28, 2023, by failing to offer behavior clinic meetings.

Rescue Union prevailed on Issue 1H.

ISSUE 2A:

Rescue Union did not deny Student a FAPE in the IEP dated January 26, 2024, by failing to offer placement in a general education classroom for the maximum appropriate amount of time.

Rescue Union prevailed on Issue 2A.

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ISSUE 2B:

Rescue Union did not deny Student a FAPE in the IEP dated January 26, 2024, by significantly impeding Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student by failing to consider Parent's request that Student be offered placement in a different general education classroom.

Rescue Union prevailed on Issue 2B.

ISSUE 2C:

Rescue Union did not deny Student a FAPE in the IEP dated January 26, 2024, by significantly impeding Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student by predetermining the least restrictive environment for Student's placement outside of the IEP team meetings held on January 26, 2024, and on February 15, 2024.

Rescue Union prevailed on Issue 2C.

ISSUE 3A:

Center Joint did not deny Student a FAPE in the September 4, 2024 IEP amendment by failing to offer Student appropriate speech and language services.

Center Joint prevailed on Issue 3A.

ISSUE 3B:

Center Joint did not deny Student a FAPE in the September 4, 2024 IEP amendment by failing to offer Student occupational therapy services.

Center Joint prevailed on Issue 3B

ISSUE 3C:

Center Joint did not deny Student a FAPE in the September 4, 2024 IEP amendment by failing to offer Student behavior intervention services.

Center Joint prevailed on Issue 3C.

ISSUE 3D:

Center Joint did not deny Student a FAPE in the September 4, 2024 IEP amendment by failing to offer Student a one-to-one aide.

Center Joint prevailed on Issue 3D.

ISSUE 3E:

Center Joint did not deny Student a FAPE in the September 4, 2024 IEP amendment by failing to offer Student a secondary eligibility for special education of autism.

Center Joint prevailed on Issue 3E.

ISSUE 3F:

Center Joint did not deny Student a FAPE in the September 4, 2024 IEP amendment by failing to offer Student accommodations.

Center Joint prevailed on Issue 3F.

ISSUE 3G:

Center Joint did not deny Student a FAPE in the September 4, 2024 IEP amendment by failing to offer Student an applied behavior analysis program to be delivered at home.

Center Joint prevailed on Issue 3G.

ISSUE 3H:

Center Joint did not deny Student a FAPE in the September 4, 2024 IEP amendment by failing to offer Student behavior clinic meetings.

Center Joint prevailed on Issue 3H.

ISSUE 3I:

Center Joint did not deny Student a FAPE in the September 4, 2024 IEP amendment by failing to offer Student Parent training in addressing Student's communication deficits.

Center Joint prevailed on Issue 3I.

ISSUE 3J:

Center Joint did not deny Student a FAPE in the September 4, 2024 IEP amendment by failing to offer Student Parent training in addressing Student's behavior deficits.

Center Joint prevailed on Issue 3J.

ORDER

All relief sought by Student is denied.

RIGHT TO APPEAL THIS DECISION

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

CHRISTINE ARDEN

Administrative Law Judge

Office of Administrative Hearings