

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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

CASE NO. 2025110436

CASE NO. 2025090038

DECISION

March 6, 2026

On August 29, 2025, Parent on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, in case number 2025090038, naming Stockton Unified School District, called Stockton. Student amended the complaint on October 7, 2025. On November 13, 2025, Stockton filed a complaint with OAH in case number 2025110436, naming Student. On November 17, 2025, OAH granted Stockton's request to consolidate the cases and designated Stockton's case as the primary case for the consolidated matter. On December 1, 2025, OAH granted Student's request for continuance. Administrative Law Judge Paul H. Kamoroff heard this matter by videoconference on January 21, 22, 28, 29, and February 3, 2026.

Attorneys Rebecca Diddams and James Largent represented Stockton. Stockton's Director of Special Education, Stephanie Reeves, and Stockton's special education administrator, Barbara Lachendor, attended all hearing days on Stockton's behalf. Attorney Robert Warwick represented Student. Parent attended all hearing days on Student's behalf.

At the parties' request, the matter was continued to February 27, 2026, for written closing briefs. The record was closed, and the matter was submitted on February 27, 2026.

## ISSUES

### STOCKTON'S ISSUE

1. May Stockton exit Student from special education without parental consent because Student no longer meets eligibility criteria?

### STUDENT'S ISSUES

2. Did Stockton fail its child find duties from August 3, 2023, until December 13, 2023, for Student?
3. Did Stockton deny Student a free appropriate public education, called FAPE, from January 6, 2025, through May 29, 2025, by failing to implement the speech therapy services offered in Student's December 13, 2023 individualized education program, called IEP?

4. Did Stockton deny Student a FAPE from April 16, 2025, through August 26, 2025, by failing to offer Student a toileting/health support plan in Student's IEP?
5. Did Stockton deny Student a FAPE from March 17, 2024, through August 26, 2025, by failing to address bullying of Student by peers?
6. Did Stockton deny Student a FAPE pursuant to an August 26, 2025, IEP, by offering to exit Student from special education?
7. Did Stockton deny Student a FAPE by:
  - a. failing to timely respond to Parent's January 2025 request for assessments;
  - b. failing to timely respond to Parent's March 2025 request for assessments;
  - c. failing to provide prior written notice in response to Parent's January 2025 request for assessments; and
  - d. failing to provide prior written notice in response to Parent's March 2025 request for assessments?

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## JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; 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).) Stockton had the burden of proof for its issue, and Student had the burden of proof for her issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was seven years old and in first grade at the time of hearing. Student resided within Stockton's geographic boundaries at all relevant times. Beginning December 13, 2023, Student was eligible for special education under speech or language impairment due to dysfluent speech patterns. On August 26, 2025, Stockton determined Student was no longer eligible for special education. Student disputed that finding.

### ISSUE 1: MAY STOCKTON EXIT STUDENT FROM SPECIAL EDUCATION WITHOUT PARENTAL CONSENT BECAUSE STUDENT NO LONGER MEETS ELIGIBILITY CRITERIA?

Stockton complains that Student no longer meets eligibility criteria for special education. Stockton previously found Student eligible for special education and related services under speech or language impairment, based upon a speech dysfluency demonstrated as a mild stutter. Based upon recent testing, Stockton found Student no longer demonstrates a disability that impacts her ability to access her education and therefore seeks to exit her from special education. Student disputes this finding and desires to maintain Student's eligibility for special education.

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

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

Stockton first evaluated Student for special education in fall 2023, when she was four years old and enrolled in transitional kindergarten. The assessment followed Parent's request for a 504 Plan. A 504 Plan, named after Section 504 of the Rehabilitation Act, is a legal document that provides accommodations to students who have a physical or mental impairment that substantially limits a major life activity, but who do not otherwise qualify for an IEP. In response, Stockton assessed Student for special education, which included a psychoeducational evaluation, a nursing assessment, and a speech and language assessment.

The psychoeducational evaluation included record review, classroom observations, interviews with Parent and teacher, and standardized testing in

- cognitive ability,
- visual-motor integration,
- adaptive skills,
- behavior, and
- autism characteristics.

At school, Student was social, bright, and engaged. She had friends, participated in discussions, volunteered answers, and demonstrated no behavioral concerns. Testing showed above-average verbal comprehension and generally average abilities across other domains, with borderline processing speed. Although Student had received an autism diagnosis at age two through a remote clinical evaluation, Stockton found no evidence that autism, or any other condition, adversely affected her educational performance.

The nursing assessment identified asthma, allergies, and constipation, but concluded these needs could be addressed through a health plan and did not limit her access to education.

Stockton conducted a speech and language assessment for Student during the same time period in fall 2023. Stockton's speech and language assessment found Student had average skills in:

- Oral Expression
- Written Language
- Receptive and Expressive Language
- Pragmatics and Social Skills

The only area of need identified in the speech and language assessment was moderate dysfluency characterized by a mild stutter.

Stockton held Student's initial IEP team meeting on December 13, 2023. Stockton reviewed Student's initial assessments with Parent, and the IEP team determined Student qualified for special education under the category speech or

language impairment due to dysfluent speech patterns. There was no secondary eligibility for Student. The IEP offered Student one fluency goal and 60 minutes per month of group speech therapy. Parent consented to the IEP.

By her annual IEP on January 31, 2025, Student was five years old and attending kindergarten in general education. She was performing at or above grade level and demonstrated age-appropriate social, behavioral, motor, and daily living skills. Both Parent and teacher described her as smart, independent, and socially successful. Although she had not met her prior fluency goal due to frequent absences, the team continued the same speech goal and monthly service. Student remained eligible only under speech or language impairment, and Parent again consented to the IEP.

On March 11, 2025, Parent requested a reevaluation to determine whether autism or constipation adversely affected Student's education. On March 26, 2025, Stockton provided an assessment plan proposing evaluations in

- academic achievement,
- health,
- intellectual development,
- motor development,
- social/emotional functioning,
- adaptive behavior, and
- speech and language.

Parent consented to the assessment plan on April 4, 2025.

Stockton conducted a nursing reassessment on April 14, 2025. Sinap Nguyen, a credentialed school nurse, conducted the assessment and completed a written health report on April 26, 2025. Nguyen met with Parent and Student, and observed Student in the classroom several times as part of her assessment. Student passed hearing and vision screening tests and had no health needs outside of the asthma and constipation previously reported by Parent. The health reassessment confirmed Student's diagnoses of autism, asthma, febrile seizures, and chronic constipation, but found no need for health-related IEP services. Student had successfully accessed her general education classroom without the need for IEP related nursing services.

On August 22, 2025, Stockton completed a psychoeducational evaluation. Stockton conducted the psychoeducation reassessment over three days in May 2025. Stockton selected school psychologist Kate Clark to perform the assessment. Clark reviewed Student's records, observed Student two times in the classroom, and interviewed Student, Parent, and Student's kindergarten teacher. Clark also conducted standardized and non-standardized testing including:

- Review of Records
- Behavior Observations
- Interviews with Student, Teacher and Parent
- The Comprehensive Test of Phonological Processing, Second Edition
- Kaufman Assessment Battery for Children, Second Edition

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- Wide Range Assessment of Memory and Learning
- Berry Visual Motor Integration, Sixth Edition
- Autism Rating Scales

Clark was a qualified school psychologist since 2017. She was knowledgeable and trained to administer the testing instruments. Each assessment was valid and used for the purpose for which it was designed. Clark followed the test instructions provided by the producer of the assessments. All tests were selected and administered to best ensure they produced accurate reflections of Student's abilities and yielded valid and reliable results.

In the classroom, Student made appropriate eye contact, followed instructions, was friendly, and communicated well with peers and school staff. She consistently had positive social engagement, followed routines, and transitioned smoothly between activities. Student's ability to follow instructions, maintain attention, and actively participate demonstrated her ability to function appropriately in a general education classroom without special education supports or services.

Based on standardized testing, Student was performing above grade level in math and reading. Student had average to above average abilities in

- attention,
- intelligence,
- fine motor,

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- fluid reasoning,
- visual spatial processing, and
- working memory.

Clark, in collaboration with the special education teacher, called a resource specialist, found that Student demonstrated average to above-average cognitive abilities and above-average to superior academic achievement in all areas tested, including:

- Oral Expression
- Listening Comprehension
- Basic Reading Skills
- Reading Comprehension
- Reading Fluency
- Math Calculation Skills
- Math Problem Solving Skills
- Written Expression

Although Student was diagnosed with autism at age two, Student's teachers did not observe autistic-like behaviors at school. To the contrary, Student

- was attentive,
- easily followed instructions,

- did not self-stimulate,
- made appropriate eye contact, and
- communicated well with peers and school staff.

The psychoeducational assessment was comprehensive, obtained valid results, and did not identify any areas of disability for Student.

Stockton's speech language pathologist Santanya Touch reassessed Student's speech and language needs on August 11, 13, and 15, 2025. She compiled her findings in a written report dated August 22, 2025. She interviewed Parent and Student's teacher and observed Student several times in the classroom.

Touch was an experienced and certified speech language pathologist. She was knowledgeable and trained to administer the testing instruments used for Student's reassessment. Each assessment was valid and used for the purpose for which it was designed. Touch followed the test instructions provided by the producer of the assessments. All tests were selected and administered to best ensure they produced accurate reflections of Student's abilities and yielded valid and reliable results.

Touch administered an oral motor exam that revealed no abnormalities of speech functioning. Touch also conducted a standardized test of articulation, which resulted in average scores for Student. Touch conducted oral and written language scales to assess

- Students semantics,
- morphology,
- syntax,
- pragmatics, and comprehension of figurative language,

- logical responses, and
- higher thinking skills.

Student received average scores in each area tested. Touch administered a listening comprehension scale to measure receptive language, which also resulted in average scores. Based upon standardized assessment, Student's receptive and expressive language skills were in the average range.

Touch also administered a language sample that showed Student had a complex vocabulary and high-level ability to express her wants, needs, and ideas. Further testing showed Student had normal voice for her age and gender during oral communication tasks, and had average pragmatic language skills.

Touch conducted the Stuttering Severity Instrument, Fourth Edition, to assess parameters of dysfluent speech, including frequency, duration, and physical problems. Results showed Student had no abnormalities. Her stutter was determined to be very mild to not noticeable. Touch concluded Student no longer had a communication disorder and did not require speech services.

Stockton convened an IEP team meeting on August 26, 2025, to review the evaluation results. Parent attended the meeting with a representative from Valley Mountain Regional Center. The school's assistant principal, Student's general education teacher Sysouphanh Nhongvongsouthy, resource teacher James Tyrone, program specialist Waynesha Fultcher, Touch, Clark, and Nguyen, also attended the IEP team meeting.

Stockton provided Parent her notice of rights and IDEA procedural safeguards. The team discussed Student's present levels of performance and the results from Stockton's recent assessments. Student's voice, pragmatic language, and fluency were average and appropriate for her age. Her stuttering was not noticeable to others. She had average abilities in social interactions, classroom interactions, and personal interactions. She followed instructions and interacted appropriately with others during class, recess, and breaks. She engaged appropriately with peers and adults throughout the school day. She did not present any communication, academic, or behavior delays.

Based on the evaluation results and team discussion, Stockton determined that Student did not meet eligibility criteria under any disability category, including autism, specific learning disability, other health impairment, or speech or language impairment. Since January 2025, Student met her speech fluency goal and did not demonstrate disability-related needs requiring special education or related services to access her education. Parent's concerns regarding constipation were addressed through a health care plan maintained in Student's school file. Stockton recommended exiting Student from special education. Parent did not consent to the IEP.

On November 13, 2025, Stockton filed for due process to exit Student from special education without Parent's consent. During the four-day hearing, multiple qualified professionals, including her general education teacher, school psychologist, speech language pathologist, and school nurse, testified consistently that Student functioned successfully in the classroom. She read above grade level, maintained friendships, followed routines, transitioned appropriately with minimal general education supports, and showed no academic, behavioral, or communication deficits requiring special education.

Each of Stockton's witnesses was qualified to testify. For example, Touch was an experienced and certified speech language pathologist who directly assessed Student and observed her during multiple occasions inside and outside of the classroom. Clark was an experienced and qualified school psychologist who directedly assessed Student and observed her over multiple days in the classroom. Nhungvongsouthy was Student's general education teacher. She had taught general education since 2001, with a multiple subject teaching credential. She directly taught Student and observed her each school day inside and outside of the classroom. Nguyen was a credentialed school nurse since 2016. She directly assessed Student and observed her multiple times in the classroom. Each of these witnesses was familiar with Student's unique needs and provided persuasive testimony during the hearing. In addition, Stockton's special education administrator Barbara Lachendro testified during the hearing. While she was not directly familiar with Student, she was an experienced school administrator and provided credible testimony regarding Stockton's policies and procedures.

A summation of Stockton's witnesses' testimony showed Student did not meet eligibility criteria under any disability category, and did not require special education or related services to access or benefit from her education.

Parent testified on behalf of Student. Parent expressed concerns about morning transitions, constipation, and bullying by peers. However, testimony by Parent, Clark, Nguyen, and Nhungvongsouthy established that Student's difficulty with morning transitions were minor and resolved through simple general education supports, including having an adult or peer greet her in the morning. Student's constipation was also addressed through general education supports including a health plan allowing

restroom access and water. Finally, evidence showed that Parent's alleged bullying consisted of an isolated toy-related incident that was promptly handled by staff and did not recur.

The documentary evidence, including assessments, IEPs, and progress reports, corroborated the testimony of Stockton's witnesses and substantial weight was given to their testimony. In contrast, Student failed to submit any documentary evidence during the hearing or to call any witness other than Parent. While Parent's testimony was credible, it did not contradict Stockton's evidence or prove that Student should not be exited from special education. Overall, the record demonstrated that Student did not meet eligibility criteria under any disability category and did not require special education or related services to access or benefit from her education.

Stockton proved by a preponderance of the evidence that it may exit Student from special education without parental consent because Student no longer meets eligibility criteria.

## ISSUE 2: DID STOCTON FAIL ITS CHILD FIND DUTIES FROM AUGUST 3, 2023, UNTIL DECEMBER 13, 2023, FOR STUDENT?

Student complains that Stockton failed its child find duty from August 3, 2023, through December 13, 2023. Stockton responds that it did not violate child find.

The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and assess all children with disabilities residing in the state who are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a); Ed. Code, § 56301, subd. (a).) This duty is commonly referred to as "child

find.” The purpose of child find is to provide access to special education. (*Fitzgerald v. Camdenton R-III School Dist.* (8th Cir. 2006) 439 F.3d 773, 776.) A child find violation is a procedural violation of the IDEA that can result in a substantive denial of a FAPE only if the student ultimately would have been found eligible for special education. (*R.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007) 496 F.3d 932, 942 (“[A] procedural violation cannot qualify an otherwise ineligible student for IDEA relief.”).)

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency’s withholding of information from the parent that was required to be provided to the parent.

Student filed her complaint on August 29, 2025. Based on the two-year statute of limitations, Student was limited to claims arising on or after August 29, 2023. Student presented no evidence to demonstrate that an exception to the statute of limitations applied during the hearing. Therefore, Student’s claims, including Issue 2, are limited to beginning on August 29, 2023.

On August 3, 2023, Parent enrolled Student in a transitional kindergarten program in Stockton. Student was four years old and had not previously attended public school or been found eligible for special education.

On August 10, 2023, Parent emailed Stockton stating that Student was diagnosed with autism at age two and had toileting concerns. Parent requested a Section 504 meeting to discuss accommodations. Over the following days, Stockton discussed the request with Parent and proposed first assessing Student for special education eligibility and then consider a 504 plan if Student did not qualify for special education.

On August 30, 2023, Stockton provided Parent a written plan proposing to assess Student in the following areas for special education:

- Academic achievement by a resource specialist teacher
- Health by a school nurse
- Intellectual Development by a school psychologist
- Speech, language, and communication by a speech pathologist
- Motor development by a school psychologist
- Social, emotional, and behavior functioning by a school psychologist
- Adaptive behavior by a teacher and school psychologist

Parent agreed to the assessments and returned the signed assessment plan to Stockton on September 18, 2023. Stockton conducted its assessments in September, October, and November 2023.

On December 13, 2023, Stockton convened Student's initial IEP team meeting and reviewed the psychoeducational, nursing, and speech language assessment reports with Parent. The team determined that Student exhibited a fluency disorder and found her eligible for special education under the category of speech or language impairment.

The team did not find eligibility under any other category. The IEP included one speech fluency goal and offered a FAPE consisting of placement in general education with speech and language services. Parent consented to the IEP on December 13, 2023.

There was no evidence submitted at hearing that Stockton should have identified Student as eligible for special education before Parent's August 10, 2023 email. After receiving that email, Stockton acted reasonably by initiating a special education assessment rather than proceeding directly to a 504 plan. This process resulted in Student being found eligible for special education services. Student did not present evidence challenging the appropriateness or adequacy of Stockton's actions at hearing.

Student failed to prove by a preponderance of the evidence that Stockton failed its child find duty.

**ISSUE 3: DID STOCKTON DENY STUDENT A FAPE FROM JANUARY 6, 2025, THROUGH MAY 29, 2025, BY FAILING TO IMPLEMENT THE SPEECH AND LANGUAGE SERVICES OFFERED IN STUDENT'S DECEMBER 13, 2023 IEP?**

Student contends that Stockton failed to implement Student's speech and language services from January 6, 2025, through May 29, 2025. Stockton responds that it materially implemented those services and provided make-up services for missed sessions.

A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822. (*Van Duyn*)). However, "[T]he

materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*) The *Van Duyn* court emphasized that IEPs are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute, and "not to decide on its own no longer to implement part or all of the IEP." (*Ibid.*)

Student's operative IEPs for January 6, 2025, through May 29, 2025, were dated December 13, 2023, and January 31, 2025. Each IEP required Stockton to provide 60 minutes per month of speech and language services and included one fluency goal. Parent consented to both IEPs.

To defend this issue, Stockton presented testimony from speech language pathologist Touch, who provided Student's services during the 2024–2025 school year, and special education administrator Lachendro. Stockton also submitted service logs to document implementation. Student presented no evidence for this issue.

Under the IEPs, Stockton was required to provide 60 minutes of speech services per month. To meet this obligation, Stockton scheduled three to five sessions per month, typically one per week.

The evidence showed:

- In January 2025, Student was absent for three sessions and received 30 minutes of services.
- In February 2025, Student was absent for three sessions; Stockton nevertheless provided 60 minutes of services.
- In March 2025, Stockton provided 60 minutes.

- In April 2025, Stockton provided 90 minutes.
- In May 2025, Stockton provided no services due to Touch's absence and school activities, including testing.

Overall, Stockton provided four of the five required hours of service during the relevant period.

Lachendro testified that Stockton provided two hours of compensatory services in fall 2025. However, a November 18, 2025 prior written notice stated those services compensated for sessions missed between October 1 and November 14, 2025. There was no evidence that Stockton made up services missed in spring 2025.

Stockton's failure to provide any services in May 2025, which represented 20 percent of the required services during the relevant period, constitutes a material failure to implement the IEP. Although Student did not present evidence of educational harm, proof of demonstrable harm is not required to prevail on this claim.

Accordingly, Student prevailed on Issue 3.

**ISSUE 4: DID STOCKTON DENY STUDENT A FAPE, FROM APRIL 16, 2025, THROUGH AUGUST 26, 2025, BY FAILING TO OFFER STUDENT TOILETING/HEALTH SUPPORT PLAN IN STUDENT'S IEP?**

Student complains that Stockton denied her a FAPE by failing to have a health plan to address her toileting needs. Stockton responds that it provided Student a health plan that addressed Student's toileting needs during the time period in dispute.

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.)

In California, related services include health and nursing services. (Ed. Code, § 56363, subd. (b)(12).) Health and nursing related services include managing an individual's health problems on the school site. (Cal. Code Regs., tit. 5, § 3051.12(a)(2).) Schools must provide appropriate accommodations for the safety and necessary physical care for individuals with disabilities, while simultaneously assuring the personal privacy and dignity of such individuals. (Cal. Code Regs., tit. 5, § 3051.12(b)(3)(B).)

Stockton presented testimony from school nurse Nguyen and teacher Nhungvongsouthy, and submitted Student's health care plan, to show that a health plan was in place throughout the 2024–2025 school year, including the period at issue.

The health care plan specifically addressed Student's toileting needs by providing unlimited and unrestricted access to the restroom and water. Nguyen developed the plan with input from Parent and updated it during the school year in response to Parent's requests, including adding access to a staff restroom. Nguyen and Nhungvongsouthy persuasively testified that the plan was consistently implemented.

Although Parent testified that Student's constipation was a serious medical concern, she failed to describe why the health plan was inadequate to meet this concern. Student presented no additional evidence challenging the adequacy or implementation of the health care plan.

Student also failed to establish that the health care plan was required to be included in her IEP to provide a FAPE. Although Parent testified that toileting accidents affected Student's access to education, the evidence showed only two reported accidents during Student's time in public school. Student was in transitional kindergarten in the 2023–2024 school year and kindergarten in 2024–2025 school year. Nguyen and Nhungvongsouthy persuasively testified that occasional toileting accidents are not uncommon at that age and that Student did not require IEP related services to address this concern.

Student failed to prove by a preponderance of the evidence that Stockton denied her a FAPE from April 16, 2025, through August 26, 2025, by failing to offer a toileting/health support plan in Student's IEP.

#### ISSUE 5: DID STOCKTON DENY STUDENT A FAPE FROM MARCH 17, 2024, THROUGH AUGUST 26, 2025, BY FAILING TO ADDRESS BULLYING OF STUDENT BY PEERS?

Student complains that Stockton denied her a FAPE by failing to stop Student from being bullied while at school. Stockton responds that Student was not bullied at school.

If the bullying of a student with a disability deprives the student of meaningful educational benefit, it can constitute a denial of a FAPE under the IDEA. (*Dear Colleague Letter*, U.S. Dept. of Education, Office of Special Education and Rehabilitative Services

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(August 20, 2013) 61 IDELR 263.) It does not matter whether the bullying is related to the student's disability. (*Id.* at p. 2.) Therefore, a determination of whether bullying has denied a student a FAPE requires a two-step analysis: whether bullying occurred, and whether the bullying resulted in the student not receiving educational benefit. There is a strong likelihood that bullying of a disabled student will result in the denial of a FAPE. (*Dear Colleague Letter*, U.(October 21, 2014) 464 IDELR 115 \*2.).

Student failed to establish that she was bullied at school. Although Parent expressed concern about bullying, she did not identify any specific incidents, dates, or conduct.

Teacher Nhongvongsouthy was familiar with Student's daily interactions with peers and persuasively testified that she never observed Student being bullied. Rather, Student was social, had many friends, and effectively advocated for herself. School psychologist Clark recalled a single toy-related incident during the prior school year, which staff promptly addressed and which did not recur.

There was no evidence presented during the hearing that showed Student experienced bullying that denied her an educational benefit. Student failed to prove by a preponderance of the evidence that Stockton denied her a FAPE from March 17, 2024, through August 26, 2025, by failing to address bullying of Student by peers.

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ISSUE 6: DID STOCKTON DENY STUDENT A FAPE PURSUANT TO AN AUGUST 26, 2025 IEP, BY OFFERING TO EXIT STUDENT FROM SPECIAL EDUCATION?

Student alleges Stockton denied her a FAPE by no longer finding her eligible for special education and proposing to exit her from special education pursuant to the August 26, 2025 IEP. Stockton responds that Student was no longer eligible for special education and it correctly exited her from special education during the August 26, 2025 IEP team meeting.

As found in Issue 1, Stockton's determination that Student was no longer eligible for special education was based on recent and adequate assessments, and its decision during the August 26, 2025 IEP team meeting to exit her from special education was lawful.

Student failed to prove by a preponderance of the evidence that Stockton denied her a FAPE pursuant to an August 26, 2025, IEP, by offering to exit Student from special education.

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ISSUE 7(a), (b), (c), AND (d): DID STOCKTON DENY STUDENT A FAPE BY:

- a. FAILING TO TIMELY RESPOND TO PARENT'S JANUARY 2025 REQUEST FOR ASSESSMENTS;
- b. FAILING TO TIMELY RESPOND TO PARENT'S MARCH 2025 REQUEST FOR ASSESSMENTS;
- c. FAILING TO PROVIDE PRIOR WRITTEN NOTICE IN RESPONSE TO PARENT'S JANUARY 2025 REQUEST FOR ASSESSMENTS;
- d. FAILING TO PROVIDE PRIOR WRITTEN NOTICE TO PARENT'S MARCH 2025 REQUEST FOR ASSESSMENTS?

Student complains that Stockton failed to timely respond to Parent's request for assessments in January and March 2025, and to provide prior written notice in response to those requests. Stockton responds that Parent did not request an assessment in January 2025, and it timely and adequately responded to Parent's request for an assessment in March 2025.

A district receiving a referral for assessment of a child has 15 days to provide the parent a written proposed assessment plan and explanation of the IDEA's procedural safeguards, including

- information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing;
- the timelines for completing each process;

- whether the process is optional; and
- the type of representative who may be invited to participate. (Ed. Code, § 56321, subd. (a).)

The IDEA requires written prior notice to parent when a school district proposes or refuses to change the educational placement of a child with a disability or the provision of a FAPE. (20 U.S.C. § 1415(b)(3).)

## JANUARY 2025

Stockton held an IEP team meeting on January 31, 2025. The team discussed Parent's concern that Student had difficulty transitioning to school in the mornings and considered whether a psychoeducational reassessment was needed. The team determined that a reassessment was not necessary and instead agreed that school staff would provide support for Student's morning transition. Parent agreed to this plan and consented to the IEP. Student did not establish that the January 2025 IEP team discussion constituted a referral for an assessment.

Student did not submit any documentary evidence or witness testimony during the hearing to show that Parents requested an assessment in January 2025. Moreover, Student's closing brief admits Parent did not request an assessment until March 2025.

Accordingly, Parent did not make any requests that required an assessment plan or prior written notice in January 2025, as alleged in Student's issues 7(a) and (c).

## MARCH 2025

On March 11, 2025, Parent emailed Stockton requesting a psychoeducational assessment. On March 26, 2025, within 15 days of the request, Stockton provided an assessment plan proposing to assess Student in psychoeducation and other areas. Parent consented to the assessment plan and returned the signed plan to Stockton on April 4, 2025. Stockton therefore met its obligation to provide a timely assessment plan.

Student did not attempt to show any defects with the assessment plan itself. Student also failed to present evidence or law to show that prior written notice was required, in addition to the assessment plan, to respond to Parent's request for an assessment. Finally, Student did not offer any evidence to show Parent had requested assessments outside of the March 11, 2025 email.

Student failed to show by a preponderance of the evidence that Stockton denied Student a FAPE by (a) failing to timely respond to Parent's January 2025 request for assessments; (b) failing to timely respond to Parent's March 2025 request for assessments; (c) failing to provide prior written notice in response to Parent's January 2025 request for assessments; and (d) failing to provide prior written notice in response to Parent's March 2025 request for assessments.

## CONCLUSIONS AND PREVAILING PARTY

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

#### ISSUE 1:

Stockton may exit Student from special education without parental consent because Student no longer meets eligibility criteria.

Stockton prevailed on Issue 1.

#### ISSUE 2:

Stockton did not fail its child find duties From August 3, 2023, until December 13, 2023, for Student.

Stockton prevailed on Issue 2.

#### ISSUE 3:

Stockton denied Student a FAPE, from January 6, 2025, through May 29, 2025, by failing to implement the speech therapy services offered in Student's December 13, 2023 IEP.

Student prevailed on Issue 3.

#### ISSUE 4:

Stockton did not deny Student a FAPE, from April 16, 2025, through August 26, 2025, by failing to offer Student a toileting/health support plan in Student's IEP.

Stockton prevailed on Issue 4.

## ISSUE 5:

Stockton did not deny Student a FAPE from March 17, 2024, through August 26, 2025, by failing to address bullying of Student by peers.

Stockton prevailed on Issue 5.

## ISSUE 6:

Stockton did not deny Student a FAPE pursuant to an August 26, 2025 IEP, by offering to exit Student from special education.

Stockton prevailed on Issue 6.

## ISSUE 7, SUBSECTIONS (a), (b), (c), AND (d):

Stockton did not deny Student a FAPE by (a) failing to timely respond to Parent's January 2025 request for assessments; (b) failing to timely respond to Parent's March 2025 request for assessments; (c) failing to provide prior written notice in response to Parent's January 2025 request for assessments; and (d) failing to provide prior written notice in response to Parent's March 2025 request for assessments.

Stockton prevailed on Issue 7, subsections, (a), (b), (c), and (d).

## REMEDIES

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town*

*of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

An Administrative Law Judge can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265.)

Stockton failed to materially implement Student's speech and language services. Student failed to present any evidence regarding the type, amount, duration, and need for any requested compensatory education, as required by OAH's Prehearing Conference Order. Nonetheless, Student is entitled to a compensatory remedy. Therefore, Stockton shall provide Student one hour of speech and language services, in three, 20-minute sessions, the exact duration of services it failed to provide Student.

## ORDER

1. Within 45 days of this Decision, Stockton shall provide Student one hour of speech and language services, consisting of three, 20-minute sessions, by a qualified provider selected by Stockton.
2. All other requested remedies are 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.

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearings