

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

STOCKTON UNIFIED SCHOOL DISTRICT.

CASE NO. 2025121086

DECISION

APRIL 10, 2026

On December 30, 2025, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Stockton Unified School District, called Stockton Unified. Administrative Law Judge Cynthia Fritz, called ALJ, heard this matter via videoconference on February 19, 24, 25, and 26, 2026, and March 3, 4, and 5, 2026.

Attorney Leah Zabel represented Student. Parent attended all hearing days. Attorneys Rebecca Diddams and Kelly Chacon represented Stockton Unified. Executive Director Stephanie Reeves, Administrator Angela Dunne, and Administrator Barbara

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Lachendro, attended various hearing days on Stockton Unified's behalf. A Spanish language interpreter interpreted the due process hearing proceeding each day for Parent.

At the parties' request, the ALJ continued the matter to March 26, 2026, for closing briefs. On March 26, 2026, the record was closed, and the matter submitted.

## PENDING MOTIONS

### THE ALJ DENIED STOCKTON UNIFIED'S REQUEST TO EXCLUDE EXHIBITS FOR UNTIMELINESS

On February 17, 2026, before the due process hearing commenced, Stockton Unified moved to exclude several of Student's exhibits for failure to comply with the five-business-day disclosure rule. (Ed. Code, § 56505, subd. (e)(7).) Student exchanged approximately eight exhibits one to three days late. Following the parties' arguments at hearing regarding this motion, and Student's submission of additional evidence in opposition to the motion, the ALJ denied Stockton Unified's motion to exclude exhibits for untimeliness.

Stockton did not prove any prejudice. OAH scheduled the due process to begin on February 18, 2026. Due to interpreter scheduling issues, the due process hearing began on February 19, 2026. The initial one-day delay allowed Stockton Unified additional time to review the late exchanged exhibits, mitigating the impact of the missed deadline. Further, any discussions regarding issues related to the exhibits exchanged three days late were not presented until the following week, giving Stockton

Unified the weekend and additional time to review and prepare their response to those specific documents. Thus, the ALJ determined that any exclusion of exhibits for untimeliness was not warranted. Stockton Unified was not prevented from making objections throughout the hearing regarding these exhibits on other grounds. The exclusion of any exhibit at hearing was based on substantive grounds rather than a failure to meet disclosure deadlines.

### THE ALJ DENIED STUDENT'S REQUEST FOR JUDICIAL NOTICE

On February 18, 2026, before the due process hearing commenced, Student moved to take judicial notice, called official notice in administrative hearings, of a Stockton Unified exhibit uploaded to Case Center, OAH's exhibit upload system, in a previous matter between the parties. In that matter, Student withdrew the case before the hearing commenced. Following the parties arguments at hearing regarding this motion, and Student's additional evidence submitted in support of the motion, Student's motion for judicial notice was denied.

Judicial notice is generally called official notice when taken by an administrative tribunal. (See Gov. Code, § 11515.) No specific statute or regulation governs the taking of official notice in special education due process proceedings. For guidance in such situations, OAH often looks to the California Evidence Code section 452 of the Code, which allows, in part, the taking of judicial notice of regulations and legislative enactments issued by any public entity, official acts of the legislative, executive, and judicial departments of any state, and the records of any court. (Evid. Code, § 452, subds. (b),(c), & (d).) Section 452, subdivision (h) further allows judicial notice of "Facts and propositions that are not reasonably subject to dispute and are capable of

immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h).) The party seeking judicial notice has the burden of furnishing sufficient information to enable the court to take judicial notice of the requested matters. (Evid. Code, § 453, subd. (b).)

The Case Center system is an exhibit upload electronic application that the parties can use to exchange exhibits for an OAH due process hearing. Once the hearing commences, the Case Center exhibits are the official exhibits used during the hearing. Once the hearing ends and a decision is rendered, the admitted and excluded exhibits become a part of the OAH administrative record.

Student’s request for judicial notice of this document is denied because it was merely an exhibit in a prior proceeding that concluded without a hearing, cross-examination, or a rendered decision, and was not a part of the administrative record of that matter. Additionally, as the parties raised conflicting factual arguments concerning the exhibit, it remained factually disputed and ineligible for official notice. Accordingly, the Student’s request for judicial notice was denied. This denial was issued without prejudice, and although the Student was granted leave to submit supplemental authority, no further briefing was provided by Student’s counsel.

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## ISSUES

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

1. Did Stockton Unified deny Student a FAPE from December 30, 2023, through the 2024-2025 school year, by failing to assess Student in:
  - a. functional behavior;
  - b. augmentative and alternative communication; and
  - c. assistive technology?
2. Did Stockton Unified deny Student a FAPE from December 30, 2023, through the 2023-2024 school year, by failing to conduct an audiological assessment?
3. Did Stockton Unified deny Student a FAPE from May 2, 2024, through July 31, 2025, by failing to appropriately assess Student for low-incidence disability?
4. Did Stockton Unified deny Student a FAPE during the 2024-2025 school year by failing to:
  - a. conduct an educationally related mental health services assessment; and
  - b. timely conduct an appropriate occupational therapy assessment?

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5. Did Stockton Unified deny Student a FAPE from December 30, 2023, through the 2023-2024 school year by failing to offer:
  - a. an appropriate behavior intervention plan;
  - b. appropriate behavior intervention services;
  - c. appropriate speech and language services;
  - d. educationally related mental health services; and
  - e. occupational therapy services?
  
6. Did Stockton Unified deny Student a FAPE during the 2024-2025 school year by failing to offer:
  - a. an appropriate behavior intervention plan;
  - b. appropriate behavior intervention services;
  - c. appropriate speech and language services;
  - d. educationally related mental health services; and
  - e. occupational therapy services?
  
7. Did Stockton Unified deny Student a FAPE by failing to offer appropriate specialized academic instruction in the May 2, October 1, November 20, and December 19, 2024 IEPs?

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8. Did Stockton Unified deny Student a FAPE from December 30, 2023, through the 2023-2024 school year, by denying Parents the opportunity to meaningfully participate in the decision-making process, specifically by:
  - a. predetermining the services offered to support his hearing disability; and
  - b. failing to provide Parent with IEP related documents in Parent's native language?
  
9. Did Stockton Unified deny Student a FAPE during the 2024-2025 school year, by denying Parents the opportunity to meaningfully participate in the decision-making process, specifically by:
  - a. predetermining the services offered to support his hearing disability; and
  - b. failing to provide Parent with IEP related documents in Parent's native language?

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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 (2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student bore the burden of proof in this matter. 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).) The Decision does not cite to the administrative record because it was not available before the issuance of this Decision, and OAH policy is that decisions do not include citations to the record.

At the time of hearing, Student was six years old and resided with Parents within Stockton Unified's geographic boundaries at all relevant times. In August 2022, Stockton Unified found Student special education eligible in the primary category of autism and the secondary category of deaf and hard of hearing. Student attended Stockton Unified from August 2022 through the 2024-2025 school year. Student then disenrolled from Stockton Unified and is currently attending a charter school within a different local educational agency. The issues are discussed chronologically for clarity.

#### 2023-2024 SCHOOL YEAR – PRESCHOOL ASSESSMENT ISSUES 1(a), 1(b), 1(c), 2, AND 3: FAILING TO ASSESS IN FUNCTIONAL BEHAVIOR, AUGMENTATIVE AND ALTERNATIVE COMMUNICATION, ASSISTIVE TECHNOLOGY, AUDIOLOGY, AND LOW INCIDENCE

Student contends Stockton Unified should have assessed Student in functional behavior, augmentative and alternative communication, assistive technology, audiology, and low incidence disability, from December 30, 2023, through the 2023-2024 school year, and low incidence disability beginning May 2, 2024. Stockton Unified maintains that it conducted appropriate initial special education assessments of Student in August 2022, and any changes to Student's needs did not warrant reassessment before the August 2025 triennial evaluation due date.

A student must be assessed in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) Once a school district is on notice that a child has displayed symptoms of a disability, the district must assess the child to determine the child's educational needs. (*Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1118 - 1120 (9th Cir. 2016).) Such notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Id.* at p. 1120 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796 and *N.B. v. Hellgate Elementary Sch. Dist.*, (9th Cir. 2008) 541 F.3d 1202].)

For a child who is already eligible for special education, the IDEA provides for reevaluations to be conducted no more frequently than once a year, but at least once every three years, unless the parents and the school district agree that it is unnecessary. (20 U.S.C. §§ 1414(a)(2)(B)(ii), 1414(c)(4); 34 C.F.R. § 300.303(b)(2) (2006); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).) The IDEA uses the term evaluation, while the California Education Code uses the term assessment. The terms are interchangeable. (20 U.S.C. § 1414(a); Ed. Code, § 56302.5.)

In California, a school district is not required to reassess more often than every three years unless one of the following occurs: (a) a parent requested reassessment; (b) a teacher requested reassessment; or (c) a school district or local educational agency determined the educational or related services needs of the child, including improved academic achievement and functional performance, warrant a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1) (2006); Ed. Code, § 56381, subd. (a)(1),(2).)

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An assessment is required to formulate the type, duration, and frequency of a related service. (20 U.S.C. § 1414(b)(2)&(3); 34 C.F.R. § 300.304(b)(2) (2006), (c)(4); Ed. Code, § 56320, subds. (e), (f).) A school district's actions, involving its knowledge of, or reason to suspect a disability, and that special education services that may be necessary to address the disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031.)

Stockton Unified completed Student's initial special education assessments in August 2022. Stockton Unified assessed Student in the areas of

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

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Stockton Unified needed to complete Student's next triennial review by August 2025, which is outside of the time at issue in this matter. No evidence presented demonstrated that Parent or any Stockton Unified teacher or staff member requested assessments in the areas of functional behavior, augmentative and alternative communication, assistive technology, audiology, and low incidence disability after the initial August 2022 assessments through the 2024-2025 school year. Thus, the question is whether a change in Student's needs occurred during the relevant time necessitating reassessment, or a new suspected disability emerged.

## PRESCHOOL - BACKGROUND, STUDENT'S NEEDS, EDUCATIONAL PROGRAMS, AND PROGRESS

In August 2022, when Student was three years old, Stockton Unified completed initial assessments to determine Student's then present levels of functioning, educational needs, and special education eligibility. The Stockton Unified assessors found Student had deficits in

- adaptive skills,
- communication,
- autism-like characteristics,
- academic progress, and
- hearing.

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Student was deaf in one ear, functionally preverbal, and did not use functional communication. Functional communication is the ability to convey basic wants, needs, and feelings. In August 2022, Student's IEP team found Student eligible under the primary category of autism and the secondary category of deaf and hard of hearing, and determined Student had needs in

- communication,
- self-help,
- play and motor,
- cognitive,
- behavior, and
- hearing and listening.

Student began attending Stockton Unified during the 2022-2023 school year for preschool. Student attended a special day classroom through Stockton Unified's Preschool Assessment and Autism Center Program, called PAAC. Student attended his first year of preschool at Marshall Elementary. Student had excessive absences, some school refusal, and school anxiety. Parent requested a school site change. Stockton Unified agreed to move Student to a PAAC preschool program on a different campus for his second preschool year to assist with his behavior and social-emotional issues.

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For the 2023-2024 school year, Student participated in a second preschool year with Stockton Unified, and attended its St. Bernadette campus PAAC special day program. On August 16, 2023, Stockton Unified held Student's IEP team meeting. Student's IEP team determined Student had needs in

- communication,
- self-help,
- play and social,
- motor,
- behavior,
- hearing and listening, and
- functional communication.

Special Education Administrator and School Psychologist Dr. Jose Avila demonstrated that PAAC had three special day classroom program levels: highly structured, structured, and collaborative, during the 2023-2024 school year. Based on Student's then present levels of performance and needs, Student began the 2023-2024 school year in the most restrictive and supportive special day classroom, the highly structured classroom. Dr. Avila showed that the highly structured classroom served students working on

- functional communication skills,
- self-help skills,
- familiarization with classroom routines,
- self-regulation,

- joint attention,
- language development, and
- social skills.

The structured classroom is less restrictive than the highly structured classroom, and serviced students who have relatively higher communication, attention, and social skills. The collaborative classroom, the least restrictive PAAC preschool program, was a general education classroom with less staff and supports.

Both the highly structured and structured PAAC special day classrooms for the 2023-2024 school year were five and one-half hours daily, and served a maximum of 14 students, with a low student to teacher ratio. Both classrooms had one special education teacher and five paraprofessionals, and support from a speech and language pathologist, occupational therapist, and autism specialist who is a Board Certified Behavior Analyst. The highly structured and structured classrooms incorporated applied behavior analysis strategies, and embedded supports for behavior, communication, social skills, and occupational therapy. It included embedded augmentative and alternative communication and assistive technology supports, positive behavior interventions, and intensive small group instruction to meet the needs of students with autism-like characteristics. Dr. Avila's testimony regarding the different PAAC preschool programs was uncontroverted.

Speech and Language Pathologist Harpreet Kalirai established that Student made significant progress in the highly structured PAAC special day classroom. Because of Student's significant progress, he was transferred to the structured PAAC special day

classroom, based on his present levels of performance and needs. No testimony or documentary evidence disputed Student's progress in the highly structured PAAC classroom during the 2023-2024 school year.

Student began attending the PAAC structured special day classroom around November 2023, shortly before the time period at issue in this matter, December 30, 2023. Students in the PAAC structured special day classroom program had more self-regulation and communication skills than the PAAC highly structured special day classroom. Students were able to follow directions and focus for a longer period. Much like the highly structured classroom, the structured special day classroom included a multi-disciplinary approach, advantageous student to teacher ratio, significant intensive supports that addressed

- behavior,
- social-emotional,
- motor,
- communication, and
- pre-academics.

During the 2023-2024 school year, Preschool Teacher Sokanha Bartholomy taught Student in the PAAC structured special day classroom. Bartholomy's opinions were particularly compelling regarding the classroom structure and Student's experience in the PAAC structured special day classroom during the 2023-2024 school year. Bartholomy provided great detail on Student's progress in behaviors, communication skills, ability to utilize augmentative and alternative communication and assistive technology tools, Student's multi-modality skills, joint attention, self-regulation, and pre-academic skills.

Bartholomy demonstrated significant personal knowledge of Student's unique needs at that time. Bartholomy's opinions were not persuasively undermined following cross-examination.

Bartholomy's opinions were corroborated by the opinions of Autism Specialist and Board Certified Behavior Analyst Jessica Baldwin, Kalirai, and Deaf and Hard of Hearing Intern Gina Rodriguez, who worked with Student during the 2023-2024 school year. Parent also confirmed that Student went to school happy and returned home after school happy during the 2023-2024 school year. Because Bartholomy was genuine and meticulous in her recollections, had vast and varied experience as a preschool teacher and with Student, and corroborated testimony, with the service providers working with Student that year, the ALJ found Bartholomy to be a highly credible witness and according her testimony substantial weight.

Bartholomy described Student's initial transition to the structured classroom as challenging which she explained was common for preschoolers. Once Student acclimated to the classroom and structure, Bartholomy observed that Student did amazing in her classroom approximately 90 percent of the time. At times, after absences, Student would dysregulate and engage in tantrum behavior upon his return, but the behavior resolved quickly. Student had approximately three difficult days during his time in her classroom where he was dysregulated and kicking the ground with his toes that needed additional support. Bartholomy sought direct additional support from the Kalirai, and Baldwin during this three-day period. Both assisted Student with additional supports and interventions, and Student returned to his baseline by the fourth day.

While Student did become dysregulated after absences, Bartholomy considered Student a model student in her classroom who did not have maladaptive behaviors most of the time. Bartholomy established Student achieved skills in joint attention, self-regulation, pre-academics, social communication, and motor, was able to communicate using multi-modalities such as picture cards, board, gestures, pointing, and signing, and was potty-trained. Bartholomy recommended that Student attend the less restrictive generalized kindergarten classroom the following year due to his significant progress in the PAAC structured preschool special day classroom during the 2023-2024 school year. Student made meaningful progress during the 2023-2024 school year.

**ISSUE 1(a): STUDENT DID NOT PROVE STOCKTON UNIFIED FAILED TO ASSESS IN FUNCTIONAL BEHAVIOR FROM DECEMBER 30, 2023, THROUGH THE 2024-2025 SCHOOL YEAR**

The term "functional behavior assessment" is not defined by the IDEA or California state law. The Office of Special Education Programs, called OSEP, determined that a functional behavior assessment reevaluation is necessary to determine "whether the positive behavioral interventions and supports set out in the current IEP for a particular child with a disability would be effective in enabling the child to make progress toward the child's IEP goals/objectives, or to determine whether the behavioral component of the child's IEP would need to be revised" (Letter to Sarzynski, 51 IDELR ¶ 193 (OSEP 2008).) As explained by Board Certified Behavior Analysts Kelly Hand and Baldwin, a functional behavior assessment is an informal assessment that determines what functions trigger maladaptive behaviors and determines the true purpose behind each behavior to develop interventions to encourage replacement behaviors.

The IDEA regulations only require a functional behavior assessment in certain disciplinary situations. (20 U.S.C. § 1415 (k)(1)(F); 34 C.F.R. § 300.530(f)(1)(i) (2006).) The Ninth Circuit held that a functional behavior analysis is only required when a child is removed from a current placement due to behavioral issues. (*Butte Sch. Dist. No. 1 v. C.S.* (9th Cir. 2020) 817 Fed.Appx. 321.) Here, Stockton Unified did not remove Student from his current placement.

When a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies, including positive behavioral interventions, and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) & (b) (2017); Ed. Code, § 56341.1, subd. (b)(1).) The legislature intended that children with serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions. (Ed. Code, § 56520, subd. (b)(1).) An IEP that does not appropriately address behaviors that impede a child's learning denies a student a FAPE. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467-68.)

The fact that Stockton Unified did not conduct a functional behavior assessment is undisputed. Student failed to present any persuasive evidence that Student's behavior from December 30, 2023, through the 2024-2025 school year warranted an assessment, including a functional behavior assessment.

In Student's closing brief, Student argued Bartholomy's observations of Student's behavioral challenges for a short period of time during the 2023-2024 school year triggered the obligation for a functional behavior assessment. The preponderance of the evidence did not support Student's contention that Student's behavior warranted a functional behavior assessment at that time.

As previously determined, Student's teacher, Bartholomy, established his behaviors were mostly appropriate. While Student exhibited some maladaptive behaviors after absences, these subsided rapidly except for one three-day period. The behavior was neither frequent nor prominent, and did not impede Student's academic or functional progress, or his ability to derive meaningful educational benefit. This finding was further corroborated by the opinions of Baldwin, Rodriguez, and Kalirai, who worked with Student during the 2023-2024 school year.

Student did not prove by a preponderance of the evidence that Stockton Unified denied Student a FAPE by failing to conduct a functional behavior assessment from December 30, 2023, through the 2023-2024 school year.

ISSUES 1(b) AND 1(c): STUDENT DID NOT PROVE THAT STOCKTON UNIFIED FAILED TO ASSESS IN ASSISTIVE TECHNOLOGY, INCLUDING AUGMENTATIVE AND ALTERNATIVE COMMUNICATION FROM DECEMBER 30, 2023, THROUGH THE 2024-2025 SCHOOL YEAR

An assistive technology device means any item, piece of equipment, or product system that is used to increase, maintain, or improve functional capabilities of a child with a disability, but excludes medical devices surgically implanted or replacement of such device. (20 U.S.C. § 1401(1); 34 C.F.R. § 300.5 (2006); Ed. Code, § 56020.5.) Assistive Technology services means any service that directly assists a child with a disability in the selections, acquisition, or use of an assistive technology device, including evaluating the needs of the child. (20 U.S.C. § 1401(2); 34 C.F.R. § 300.6 (2006); Cal. Code Regs., tit. 5, § 3051.19, subd. (a).)

A school district is required to provide any assistive technology device that is necessary to provide a FAPE to a child with a disability. (20 U.S.C. § 1412(a)(12)(B)(i); 34 C.F.R. § 300.105 (2017); Ed. Code, § 56341.1, subd. (b)(5).) An IEP team must consider whether a child requires assistive technology devices or services. (20 U.S.C. § 1414(d)(3)(B)(v); 34 C.F.R. § 300.324(a)(2)(v) (2017); Ed. Code, § 56341.1, subd. (b)(5).)

Augmentative and alternative communication does not have its own definition under the IDEA; however, it is covered broadly under the assistive technology statutes above. Augmentative and alternative communication is a subset of assistive technology specifically related to tools and strategies that support or replace spoken communication. In the case of a child who is deaf or hard of hearing, the IEP team should consider the (a) child's language and communication needs, (b) opportunities for direct communications with peers and professional personnel in the child's language and communication mode, and (c) opportunities for direct instruction in the child's language and communication mode. (34 C.F.R. § 300.324(a)(2)(iv) (2017).) Stockton Unified did not assess student for assistive technology and augmentative and alternative communication during this time.

For the 2023-2024 school year, Student's needs included

- functional communication,
- communication,
- behavior,
- hearing, and
- listening.

During the 2023-2024 school year, while Student was in preschool, Bartholomy, Rodriquez, and Kalirai established that Student was an emerging verbal communicator who used multiple modes of communication including

- using body language,
- pointing,
- gesturing,
- signs,
- pictures, and
- some words.

Student's August 2023 IEP team developed goals to increase Student's use of functional communication, and offered Student assistive technology and augmentative and alternative communication supports, specifically,

- first/then cards,
- visual schedule,
- picture icons,
- break icons,
- visual timer, and
- social stories.

These are low technology supports as opposed to higher technology electronic supports. Student utilized the low technology Picture Exchange Communication System, PECS, an evidence-based, low-tech, functional communication approach that allows non-verbal or

limited-speech students to independently request items and initiate interaction. Student also had access to a high technology assistive technology device, a classroom tablet.

Student's structured special day classroom in preschool had numerous embedded assistive technology and augmentative and alternative communication supports that he utilized. Bartholomy, Rodrigues, Baldwin, and Kalirai established that the offered assistive technology and augmentative and alternative communication supports were individually implemented to meet Student's needs, helped manage Student's behaviors such that Student made meaningful progress on his goals and significantly improved in his

- behavior,
- communication,
- functional communication,
- functioning,
- hearing and listening, and
- academics.

Student failed to demonstrate that Student had suspected disabilities in assistive technology and augmentative and alternative communication warranting assessment. Student did not prove by a preponderance of the evidence that Stockton Unified denied Student a FAPE from December 30, 2023, through the 2023-2024 school year.

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ISSUES 2 AND 3: STUDENT DID NOT PROVE THAT STOCKTON UNIFIED FAILED TO ASSESS STUDENT IN AUDIOLOGY AND LOW INCIDENCE DURING THE 2023-2024 SCHOOL YEAR

A significant portion of the due process hearing focused on Student's contention that Stockton Unified was required to screen Student's hearing and assess Student in audiology in 2022, for Student's initial assessment for special education eligibility, and before the time at issue. Student's closing brief cites support for this proposition and maintains that because required hearing screenings and an audiological assessment never occurred before the time at issue here, it continued to be a FAPE violation.

As a preliminary matter, this Decision makes no findings regarding the 2022 initial assessments' sufficiency or any failures for screening Student's hearing, as claims related to that period fall outside of the applicable statute of limitations. The undersigned utilized the 2022 multidisciplinary assessment in this Decision for purposes of showing Student's needs before the 2023-2024 school year. The narrow issues presented for these issues is whether Stockton Unified was required to assess Student in audiology from December 2023 through the 2023-2024 school year and low incidence beginning May 2, 2024.

Audiology is the study, diagnoses, and treatment of hearing and related disorders. A low-incidence disability includes a visual or (a) hearing impairment, (b) simultaneous visual and hearing impairments, (c) significant cognitive impairment,

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and any (d) impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a FAPE. (20 U.S.C. § 1462(c)(3).) In California,

“‘low-incidence disability’ means a severe disabling condition with an expected incidence rate of less than one percent of the total statewide enrollment in kindergarten through grade 12. For purposes of this definition, severe disabling conditions are hearing impairments, vision impairments, and severe orthopedic impairments, or any combination thereof.” (Ed. Code, § 56026.5.)

Low-incidence assessments for hearing impaired students include assessments to determine how hearing deficits impact a student’s ability to access communication and learning in school. The evidence demonstrated that this could include assessments for (a) audiology, (b) deaf and hard of hearing, (c) assistive technology, and (d) augmentative and alternative communication. Stockton Unified did not conduct an audiology or any low-incidence assessments. The assistive technology and augmentative and alternative communication assessments were discussed above.

Stockton Unified found Student eligible under the category of deaf and hard of hearing in August 2022, and determined Student had needs related to hearing and listening during the relevant time. Because neither Stockton Unified staff nor Parents requested an audiology or low-incidence assessments, the inquiry turns on whether Student’s evolving educational needs demonstrated a change in circumstances that would have triggered Stockton Unified’s obligation to assess in these areas. Student failed to meet his burden of proof on this issue.

As already determined, Student made meaningful progress and received educational benefit from December 2023 through the 2024-2025 school year. Student's preschool teacher Bartholomy found Student's hearing impairment was sufficiently accommodated such that it did not adversely impact his education in her classroom. Stockton Unified assigned Rodriguez, a deaf and hard of hearing intern, to Student for the 2023-2024 and 2024-2025 school years.

Rodriguez worked with Student conducting his deaf and hard of hearing consultation services and implementing his goals 30 minutes a month, and more often for extended school year in the summer. Rodriguez knew of Student's hearing loss, tubes in his ears, and one surgery for fluid in his ears. Rodriguez recognized that fluid in the ears can affect a person's hearing. Some Stockton Unified staff were aware of Student's previous ear operations, some ear infections, and that Student qualified for a cochlear implant in his left ear.

During the 2023-2024 school year, Rodriguez checked to see if Student was correctly seated in the classroom to assist with hearing. Rodriguez observed Student in the classroom to determine how far Student could hear, and determined that Student could hear mostly up to 12 feet. Rodriguez also directly communicated with Student during consultation services using multi-modalities of communication and explained in detail his progress in functional communication and ability to hear in the structured preschool special day class. Rodriguez had no new hearing concerns for Student. When Rodriguez consulted with the teacher and staff in his classroom, no hearing concerns were raised.

Rodriguez possessed direct, personal knowledge of Student's functioning related to her consultation services with him during that time, and provided specific accounts of Student's functioning. Rodriguez's opinion was consistent with Bartholomy and Kalirai regarding Student's ability to assess his education and related services and belief that he had no new hearing issues that impeded his ability to access his education that school year. Rodriguez's opinion was notably sincere as she answered questions directly and without evasion. Accordingly, the ALJ found Rodriguez credible and afforded her testimony great weight.

Student did not present any witnesses or documentary evidence that demonstrated Student needed an audiological assessment from December 2023 through the 2024-2025 school year, or low-incidence assessments beginning May 2, 2024. Student argued due to Student's changed medical conditions that year, specifically his absences, with some absences related to ear infections and fluid in his ears, Stockton Unified should have assessed him in audiology and low incidence. Parent credibly testified to Student's medical issues throughout this time.

However, the evidence showed that while he had ear-related medical issues and numerous absences, it did not affect his access to learning, and ability to receive educational benefit from December 30, 2023, through the 2023-2024 school year. Nor did the absences related to Student's medical condition, including ear infections, trigger the obligation to conduct the assessments.

Student's special education program and related services were effective. Student progressed and met his hearing and listening goal. Stockon Unified offered Student extended school year services and Rodriguez worked with him for that time. Rodriguez established Student's extended school year deaf and hard of hearing services were

successful and productive. Student's medical issues did not inform Stockton Unified of a suspected disability in audiology given his significant success in school that school year.

Student did not prove by a preponderance of the evidence that Stockton Unified failed to assess in audiology from December 30, 2023, and low incidence from May 2, 2024, through the 2023-2024 school year.

2023-2024 SCHOOL YEAR – PRESCHOOL SERVICES ISSUES 5(a), 5(b), 5(c), 5(d), and 5(e): FAILING TO OFFER AN APPROPRIATE BEHAVIOR INTERVENTION PLAN, AND APPROPRIATE BEHAVIOR INTERVENTION, SPEECH AND LANGUAGE, EDUCATIONALLY RELATED MENTAL HEALTH, AND OCCUPATIONAL THERAPY SERVICES

In Student's closing brief, Student contends that Stockton Unified failed to offer an appropriate behavior intervention plan, and behavior intervention services based on Student's escalating maladaptive behaviors. Student further argued that Student did not meet his functional communication goal, and then Stockton Unified increased his speech and language services, showing the speech and language services had been inappropriate. Student did not address educationally related mental health, and occupational therapy services in his closing brief. Stockton Unified maintains it offered appropriate services to Student at all times from December 30, 2023, through the 2023-2024 school year.

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

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

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

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

An IEP's appropriateness is judged by whether it was objectively reasonable and tailored to the student's needs at the time of creation. (*Adams, supra*, 195 F.3d at p. 1149.) In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

ISSUES 5(a), 5(b) AND 5(d): STUDENT DID NOT PROVE THAT STOCKTON UNIFIED FAILED TO PROVIDE AN APPROPRIATE BEHAVIOR INTERVENTION PLAN, AND BEHAVIOR INTERVENTION AND EDUCATIONALLY RELATED MENTAL HEALTH SERVICES FROM DECEMBER 30, 2023, THROUGH THE 2023-2024 SCHOOL YEAR

The IDEA requires an IEP team to consider the use of positive behavior interventions and supports, and other strategies, when a child's behavior impedes his own learning or the learning of others (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324 (a)(2)(1) (2006).) California law requires that children exhibiting serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions in accordance with the IDEA. (Ed. Code, § 56520 (b)(1).) Psychological services include developing positive behavioral intervention strategies. (34 C.F.R. § 300.34(10) (2006).)

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The federal regulations implementing the IDEA require the IEP team to consider the use of positive behavior interventions, supports and other strategies, but they do not specify the interventions, supports or strategies that must be used. (71 Fed. Reg. 46683 (Aug. 14, 2006).) The team may address the behavior through annual goals (34 C.F.R. § 300.320(a)(2)(i) (2007).) And, the team may include modifications, support for teachers, and any related services necessary in the IEP to achieve those behavioral goals. (34 C.F.R. § 300.320(a)(4) (2007).)

Student failed to establish that Student's behaviors required a behavior intervention plan, and different or additional behavior intervention services and mental health services from December 2023 through the 2023-2024 school year. Neither Parent nor any Stockton Unified staff member or private provider recommended a behavior intervention plan, or any additional behavior or mental health interventions or supports at that time.

Student did not have a behavior intervention plan. However, Stockton Unified appropriately addressed Student's behaviors during that time. The August 16, 2023 IEP offer included goals, services, accommodations, supports, and program and placement with embedded behavior interventions, supports, and strategies to support Student's behavior needs. The IEP team developed goals in

- functional communication,
- comprehension,
- social,
- initiating,
- sitting,

- tracing,
- hearing and listening, and a
- deaf and hard of hearing functional communication goal.

In support of these goals, the IEP team offered

- specialized academic instruction,
- speech and language services,
- a program with four paraprofessionals,
- behavior intervention strategies, and
- Board Certified Behavior Analyst support.

Baldwin worked with Bartholomy, Student's paraprofessionals, and at times with Student to teach behavioral strategies to support Student and help him reach his goals. Baldwin did not observe any concerning behaviors during observations of Student in Bartholomy's classroom.

The accommodations in Student's IEP included

- preferential seating,
- picture icons,
- break icons,
- a specific classroom break area,
- visual schedule,
- first/then visual,

- visual timer,
- sensory breaks, and
- social stories.

Witnesses Bartholomy, Baldwin, and Kalirai established that the behavior intervention strategies and supports were individually implemented to meet Student's needs. These positive behavior interventions, supports and strategies were reasonably calculated to, and did, manage Student's behaviors. Student made progress and met all of his behavior goals. All Stockton Unified witnesses, as already opined, that although Student had a rough start at the beginning of his transition to the structured special day classroom, his behavior was manageable with the services, supports, interventions, and accommodations, offered. As determined, any maladaptive behaviors during this time were infrequent brief episodes. Thus, Student's argument that Student's behavior during this school year required a behavior intervention plan or additional behavior interventions and mental health services was not persuasive.

Student significantly improved in his behavior and functioning. Stockton Unified's behavior interventions, supports, and services were reasonably calculated to allow Student to make progress and address his needs. Student did not meet his burden of proof by a preponderance of the evidence that Stockton Unified denied Student a FAPE by failing to offer a behavior intervention plan and appropriate behavior intervention and mental health services.

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ISSUE 5(c): STUDENT DID NOT PROVE THAT STOCKTON UNIFIED  
FAILED TO OFFER APPROPRIATE SPEECH AND LANGUAGE SERVICES  
FROM DECEMBER 30, 2023, THROUGH THE 2023-2024 SCHOOL YEAR

Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance. (34 C.F.R. 300.8(c)(11) (2017).) Under California law, a speech and language impairment is defined as a disorder in language, articulation, voice, or fluency that significantly impacts educational performance. (Ed. Code, § 56333)

Student failed to establish that Student required different speech and language services than what was offered from December 2023 through the 2023-2024 school year. Student had needs in communication, functional communication, and behavior from December 30, 2023, through the 2023-2024 school year, but Stockton Unified addressed those needs through its offered

- goals,
- services,
- interventions,
- supports,
- accommodations, and
- program.

The August 16, 2023 IEP offer included speech and language goals in functional communication, comprehension, and social. In support of these goals, the IEP team offered 30 minutes monthly group speech and language services. It also offered a program with four paraprofessionals, behavior intervention strategies, and Board Certified Behavioral Analyst support to help him reach his goals, including in communication. The accommodations offered by the IEP team included preferential seating, picture icons, break icons, visual schedule, first/then visual, visual timer, and social stories to support Student's communication.

Speech and language pathologist Kalirai, who provided services to Student that year, established that Student's use of the PECS system assisted in his functional communication skills that year. Kalirai also established that Student utilized a multi-modal communication approach, incorporating picture icon boards, basic sign language, gestures, and pointing to engage during activities. The current low-tech tools remained effective for promoting independence and initiation. Kalirai further established that Student progressed on his functional communication goal. Student met his comprehension and social speech and language goals.

Kalirai's opinions were detailed, consistent with other evidence, based on personal knowledge, not diminished through cross-examination, and corroborated by documentary and testimonial evidence. Bartholomy, Baldwin, and Rodriguez made similar opinions regarding Student's communication progress that year. Thus, Kalirai's opinions were given great weight.

Student contended because Student did not meet his functional communication goal, the services were inappropriate and denied Student a FAPE. This argument fails. The failure to attain a specific goal does not render prior related services a FAPE denial.

Meeting every IEP goal is not required; the standard is whether the IEP was reasonably calculated to enable the child to make progress in light of the child's circumstances. (*Endrew, supra*, 580 U.S. 386.) Student demonstrated meaningful progress by meeting all of his goals except one and making progress on the goal not met.

Parent requested additional services at the May 2, 2024 IEP team meeting, and Stockton Unified increased Student's speech and language services for the following school year based on Parent's request. Kalirai agreed with Parent to increase Student's speech and language services. The fact that Stockton Unified subsequently increased Student's speech and language service minutes, at Parent's request, does not constitute an admission that the prior offer was inappropriate. If that were true, every time a school district increased services, the prior offer would be a FAPE denial. Student's argument is unpersuasive absent evidence demonstrating that the increase in services was necessitated by previously inappropriate services. Student failed to make such a showing. An IEP must be developed based on the information available to the IEP team at the time it was drafted. Student failed to show that the services offered were not reasonably calculated for Student to make progress.

Student made meaningful progress on his goals, and significantly improved in his speech and language including his functional communication, comprehension, and social skills, in the 2023-2024 school year, beginning December 30, 2023. Student did not meet his burden of proof by a preponderance of the evidence that Stockton Unified denied Student a FAPE by failing to offer appropriate speech and language services from December 30, 2023, through the 2023-2024 school year.

ISSUE 5(e): STUDENT DID NOT PROVE THAT STOCKTON UNIFIED  
FAILED TO OFFER APPROPRIATE OCCUPATIONAL THERAPY SERVICES  
FROM DECEMBER 30, 2023, THROUGH THE 2023-2024 SCHOOL YEAR

Occupational therapy as a related service means services provided by a qualified occupational therapist, and includes:

- improving, developing, or restoring functions impaired or lost through illness, injury or deprivation;
- improving ability to perform tasks for independent functioning if functions are impaired or lost; and
- preventing, through early intervention, initial or further impairment or loss of function. (34 C.R.F. § 300.34 (c)(6) (2006).)

Occupational therapy addresses delays including

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

Student failed to establish that Stockton Unified did not offer appropriate occupational therapy services from December 2023 through the 2023-2024 school year. No Stockton Unified staff member recommended occupational therapy services. No expert recommended occupational therapy services. Parent believed Student had issues with his handwriting.

Student had a need in fine motor skills from December 30, 2023, through the 2023-2024 school year; however, Student failed to show that Stockton Unified did not appropriately address this need. Stockton Unified offered an occupational therapy motor goal in tracing to work on Student's pincer grasp, and also offered specialized academic instruction to assist with the goal. One of Student's specialized academic instruction daily sessions in the classroom focused on fine motor skills. Student met his tracing goal that year.

Parent testified that Student received private occupational therapy services during some portion of his time while attending Stockton Unified. Student failed to prove that Stockton Unified was aware of his private occupational therapy services. Regardless, private occupational therapy services, absent a link to educational needs or academic progress, does not establish an educational need for occupational services.

No evidence was presented about what Student worked on in his private occupational therapy sessions. No occupational therapy private provider, occupational therapy assessments, or provider notes were introduced or discussed during the hearing. No occupational therapist testified at hearing. No witness testified that the supports offered to Student to assist with his tracing and grasp were inappropriate or that Student needed any other occupational therapy services and supports. Student did not provide sufficient evidence to meet his burden on this issue.

Accordingly, Student failed to prove that Stockton Unified failed to offer appropriate occupational therapy services from December 30, 2023, through the 2023-2024 school year.

2024-2025 SCHOOL YEAR – KINDERGARTEN ASSESSMENTS ISSUES 1(a), 1(b), 1(c), 3, 4(a) AND 4(b): FAILING TO ASSESS IN FUNCTIONAL BEHAVIOR, AUGMENTATIVE AND ALTERNATIVE COMMUNICATION, ASSISTIVE TECHNOLOGY, LOW INCIDENCE, EDUCATIONALLY RELATED MENTAL HEALTH SERVICES, AND OCCUPATIONAL THERAPY

Student argues that Stockton Unified was required to assess Student during the 2024-2025 school year in the following areas:

- functional behavior;
- assistive technology;
- augmentative and alternative communication;
- low incidence disability, educationally related mental health services; and
- failed to timely assess in occupational therapy.

Stockton Unified contends it did not need to assess in these areas. Further, Stockton Unified asserts it provided Parent an occupational therapy assessment plan, but Parent never returned it so it could not conduct an occupational therapy assessment.

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## STUDENT'S EDUCATIONAL PROGRAM AND PROGRESS

On May 2, 2024, Stockton Unified held Student's annual IEP team meeting.

Student's IEP team determined Student had needs in

- communication,
- self-help,
- play and social,
- motor,
- behavior,
- functional communication, and
- hearing and listening.

In August 2024, Student began kindergarten.

Student attended a kindergarten through second grade generalized special day classroom at Pulliam Elementary. Pulliam had three special day kindergarten through second grade classroom program levels: highly structured, structured, and generalized, for students who present with autistic-like characteristics. The highly structured and structured kindergarten through second grade classrooms were similar to their preschool counterparts in terms of staffing, embedded supports, and targeted skills.

The generalized kindergarten through second grade special day classroom, unlike the preschool collaborative classroom, is a separate special education setting, but the students can be mainstreamed in general education classrooms with same-aged peers when ready. The Pulliam generalized special day classroom was a six hour daily program that served a maximum of 14 students, with one special education teacher and

three paraprofessionals. The instruction included applied behavioral analysis strategies, speech and language therapy, and assistance by a Board Certified Behavior Analyst, and a variety of augmentative and alternative communication and assistive technology support, but to a lesser extent than the structured and highly structured classrooms.

The generalized program offered a higher level of academic rigor than the structured or highly structured special day class alternatives. It utilized small group rotating centers where one paraprofessional provided instruction to two students. Students in this setting typically demonstrated greater independence and smoother transitions in preparation to mainstream to the general education setting. Because of the students' ability to be more independent in the classroom with a less structured day than the highly structured and structured classrooms, the generalized classroom maintained a higher level of ambient noise.

Stockton Unified witnesses that observed and worked with Student during the 2024-2025 school year were:

- Board Certified Behavior Analyst Kelly Hand,
- Speech and Language Pathologist Kristen Moradian,
- Rodriguez, and
- Program Specialist Beatriz Perez.

These witnesses opined that Student struggled in this placement from the onset and throughout the school year. Student regularly exhibited maladaptive behaviors including

- screaming,
- crying,

- tantrums,
- falling to the floor,
- lying on the ground,
- kicking feet on the ground and the walls,
- the inability to transition,
- inability to work when prompted or redirected,
- noncompliance, and
- challenges with the group and routine.

Student had difficulties accessing the larger group activities and smaller group activities if the task was challenging or nonpreferred. Moradian believed his behavior was a potential safety issue while transitioning from activities. Student's behavior did not align with the other students in the classroom causing significant disruption. Student's behaviors throughout the school year impeded his ability to access his education, learning, and related services. Student did not make meaningful progress during the 2024-2025 school year.

The ALJ afforded great weight to the testimony of the Stockton Unified witnesses Hand, Moradian, Rodriguez, and Perez, regarding their opinions about Student's behaviors and progress at Pulliam during the 2024-2025 school year, because they observed and worked with Student that year and had personal knowledge of the events. Their opinions regarding his behavior and progress were consistent with each other, and corroborated by the documentary evidence and each other's opinions. Thus, their collective testimony was persuasive and credible.

ISSUE 1(a): STUDENT PROVED THAT STOCKTON UNIFIED FAILED TO ASSESS IN FUNCTIONAL BEHAVIOR FROM OCTOBER 1, 2024, THROUGH THE 2024-2025 SCHOOL YEAR

Student's maladaptive behaviors increased in frequency and intensity beginning at the start of the 2024-2025 school year. During the first week of the 2024-2025 school year, Perez observed Student disengaged from instruction, lying down in the back of the classroom, and unwilling to join the group. Over the course of the next month Perez observed Student typically in close proximity to a classroom paraprofessional providing him support, but his behavior continued to interfere with his ability to participate in the generalized classroom instruction. At the beginning of the school year, Moradian observed Student tantrum, unable to transition to tables and lunch, and expressed concern for his communication. Moradian conceded that it is common for students with language delays to develop behaviors. Rodriguez, who worked with Student in preschool and kindergarten noticed increased tantrums beginning in kindergarten and that he was no longer responding to her, in stark contrast to her productive interactions with Student in preschool and extended school year.

Perez asked Hand to take data of the duration and frequency of Student's behavior, as well as the antecedents and consequences to look for behavior patterns to figure out why he was exhibiting maladaptive behaviors. In response, Hand began data collection to identify the triggers and functions of Student's behavior, including the tantrums, within the classroom setting, although it was not a formal functional behavior assessment. Hand did not consider if Student was having trouble understanding or processing the visual aids but later in her testimony clarified that statement stating it was ruled out because the visuals were made very simple. However, this does

not demonstrate that Hand assessed whether Student had trouble processing or understanding the visual aids in the classroom. No Stockton Unified staff determined through a formal assessment if Student was accessing his interventions and supports and if they were appropriate for him in this classroom or contributed to his significant increase in maladaptive behaviors, or knew the function of his behavior.

By October 1, 2024, despite the informal behavior data collection, Stockton Unified remained unable to determine the precise functions of Student's behavior. This should have triggered a formal functional behavior assessment. Instead, Stockton Unified convened an IEP team meeting on October 1, 2024, to discuss Student's minimal participation in the generalized classroom and lack of work completion noting that the level and pace of the classroom seemed too high for his current abilities. It offered Student a change of placement to the highly structured classroom. This change meant Student would not step down to the more restrictive structured classroom but take two steps down to the most restrictive special day classroom.

Parent did not consent to the move. So, Stockton Unified attempted different behavior interventions and visual strategies, which were unsuccessful. This also should have triggered a functional behavior assessment.

Student was not making appropriate progress soon after entering kindergarten which continued despite the informal data collection and attempts with different behavioral strategies. Stockton Unified wanted to change Student's placement to the most restrictive special day classroom placement without conducting further formal assessments to objectively identify Student's ongoing needs. After Parent's request

in December 2024 for a behavior intervention plan, Hand developed a behavior intervention plan, without a functional behavior assessment in February 2025. Despite the behavior intervention plan, Student's maladaptive behavior did not improve.

Hand opined that a functional behavior assessment was not required for Student. Hand asserted that after developing the behavior intervention plan, Stockton Unified possessed sufficient data to understand Student's triggers and the necessary supports. However, Hand did not conduct a formal assessment. The informal behavior assessment was not comprehensive. The behavior intervention plan only utilized the strategies and supports available in the generalized classroom that were previously not working with Student. Baldwin opined that a functional behavior assessment may be warranted if repeated informal data collection and observations with subsequent strategies and supports based on that data fail to decrease the behavior. Dr. Avila agreed that a functional behavior assessment is appropriate when interventions are not working and you need to know why. Baldwin and Dr. Avila's opinions were more persuasive than Hand's opinion on this point.

Here, informal data collection, and continued observation proved ineffective and failed to yield successful intervention in remediating Student's escalating behaviors. Stockton Unified contended that it was Student's current placement in the generalized classroom that remained inappropriate, not the behavior interventions and strategies offered. However, assessments drive services and supports. (20 U.S.C. § 1414(b)(2)&(3); 34 C.F.R. § 300.304(b)(2) (2006), (c)(4); Ed. Code, § 56320, subds. (e), (f).) Stockton Unified never assessed Student in functional behavior to find out his behavior functions to determine appropriate behavior interventions and strategies.

By October 1, 2024, when Stockton Unified offered to place Student to a more restrictive classroom, it should have conducted a functional behavior assessment so that it could accurately identify the requisite triggers, functions, and Student's needs. Further, a change to a more restrictive environment should be supported by objective data and formal assessment that demonstrates less restrictive interventions and supports are insufficient. Stockton Unified lacked the necessary evaluative data to demonstrate that less restrictive supports and strategies were non-viable or had been exhausted. Stockton Unified was required to assess Student in functional behavior by October 1, 2024, under these facts.

The failure to conduct a timely assessment is a procedural violation of the IDEA. (*Park, ex rel. Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2006) 464 F.3d, 1025, pp.1032-1033 (*Park*)). A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

By failing to conduct a functional behavior assessment, it deprived Parent of critical data regarding Student's behavior needs and impeded Parent's ability to meaningfully participate in the decision-making process. Parent could not make an informed decision of whether the highly structured classroom was necessary or if Student's needs could be met through different behavioral strategies and supports in a less restrictive environment.

Student proved by a preponderance of the evidence that Stockton Unified denied Student a FAPE by failing to assess Student in functional behavior from October 1, 2024, through the end of the 2024-2025 school year.

1(b) AND 1(c): STUDENT PROVED THAT STOCKTON UNIFIED FAILED TO ASSESS IN ASSISTIVE TECHNOLOGY, INCLUDING AUGMENTATIVE AND ALTERNATIVE COMMUNICATION FROM OCTOBER 1, 2024, THROUGH THE 2024-2025 SCHOOL YEAR

Student's needs included behavior, functional communication, and hearing and listening. At the August 2024 IEP team meeting, Stockton Unified offered Student goals to support these needs, and augmentative and alternative communication supports, specifically,

- first/then cards,
- visual schedule,
- picture icons,
- break icons,
- visual timer, and
- social stories.

As already described, Student's maladaptive behaviors significantly increased, and Student had difficulty accessing his education and the offered assistive technology and augmentative and alternative communication.

Once Stockton Unified offered to change Student's placement to a more restrictive special day classroom on October 1, 2024, it should have conducted an assistive technology assessment to identify alternative supports that may be connected to Student's hearing and listening, since the generalized classroom had more ambient noise, as well as identify assistive technology to assist with his functional communication. Rodriguez explained that Stockton Unified had a speaker system, amplifiers, Bluetooth connectivity, and headsets available to Student if he would wear them. No evidence was presented demonstrating Stockton Unified determined if these devices or other alternative devices were viable options for Student and if they could facilitate Student's access to his curriculum in the generalized special day classroom. Stockton Unified failed to investigate the potential correlation between possible unaddressed hearing deficits in the louder generalized classroom and the possible relationship to his maladaptive behaviors before offering a more restrictive special day classroom. At that time, Stockton Unified should have suspected that Student may have required additional or different assistive technology to access his education, especially given his success the previous year with assistive technology.

Stockton Unified maintained significant augmentative and alternative communication tools and devices in the generalized kindergarten classroom during the 2024-2025 school year. Student's ability to access the augmentative and alternative communication supports significantly declined in kindergarten. Moradian did not believe Student was aptly accessing his low technology augmentative and alternative communication supports or appropriately functioning in the generalized classroom. Rodriguez believed Student worked better with the PECS system and sign language; however, the generalized classroom did not use the PECS system. Hand tried different visual strategies to help with Student's tantrums, but they were unsuccessful. Perez

reached out for different strategies and was told Student needed pictures and visuals not available in the generalized classroom. This should have triggered an assessment, as Stockton Unified should have suspected Student may have required additional or different augmentative and alternative communication supports as it related to Student's increased maladaptive behavior, especially since Student was able to access these supports the previous year.

While Stockton Unified's opinion regarding placement in the highly structured special day class may have some merit, the recommendation was not supported by sufficient assessment. Kalirai even testified that if existing supports were not meeting a student's needs, she would look at other augmentative and alternative communication supports through formal assessment. Stockton Unified did not determine if different or additional augmentative and alternative communication supports could be provided in the generalized classroom before offering a more restrictive placement. Student should have been assessed in augmentative and alternative communication by October 1, 2024, when it offered a more restrictive placement.

By failing to assess Student in assistive technology and augmentative and alternative communication needs, Stockton Unified lacked the evaluative data necessary to determine that it could not support Student in the generalized special day classroom. For same reasons above, this procedural failure deprived Parent of meaningful participation in the IEP decision-making process.

Student proved by the preponderance of the evidence that Stockton Unified denied Student a FAPE by failing to assess in assistive technology and augmentative and alternative communication from October 1, 2024, through the 2024-2025 school year.

### ISSUE 3: STUDENT PROVED THAT STOCKTON UNIFIED FAILED TO ASSESS STUDENT IN LOW INCIDENCE, FROM OCTOBER 1, 2024, THROUGH JULY 31, 2025

As already described above, Student's behavioral functioning significantly decreased at school during the 2024-2025 school year. Unlike other Stockton Unified witnesses, Rodriguez worked with Student during the 2023-2024 and 2024-2025 school years providing his deaf and hard of hearing consultation services, and provided a unique longitudinal perspective on Student's early meaningful progress and then Students' significant behavior decline during the 2024-2025 school year. Rodriguez's opinion of Student's functioning was marked by stark and significant divergence between the two years. Rodriguez candidly revealed the services she provided were successful during the 2023-2024 school year, yet the same or similar services were not effective the following year. Rodriguez's opinion aligned with the other Stockton Unified witnesses' opinions, Hand, Perez, Moradian, that Student worked with during the 2024-2025 school year and agreed Student had difficulty assessing his related services and functioning in the classroom. Student did not meet his hearing/listening, functional communication, communication goals, and had less than expected results. Some notes showed that he was unable to work on his goals at all due to his behavior.

While Stockton Unified attributed Student's struggles to the less structured and more academically rigorous program in the generalized special day classroom, this consensus should have triggered its legal obligation to assess Student. Rodriguez performed some educational related hearing/listening testing through her consultation services with Student. However, Stockton Unified never assessed in educational audiology and deaf and hard of hearing, although assessment would serve as the foundation for

supports and services because they identify a student's unique needs. (20 U.S.C. § 1414(b)(2)&(3); 34 C.F.R. § 300.304(b)(2) (2006), (c)(4); Ed. Code, § 56320, subds. (e), (f).) Stockton Unified's reliance on informal assessment and data collection proved to be ineffective. Rodriguez's deaf and hard of hearing consultation services were not based on any assessment data as Stockton Unified had not performed any low-incidence assessments.

By October 1, 2024, Student's behaviors required Stockton Unified to formally assess in educational audiology/deaf and hard of hearing to see if Student's hearing levels changed, as well as assess for functional listening, speech perception, and analyze the classroom acoustics and environment to determine if Student's behavior difficulties were related to his hearing and listening in the classroom. It was unclear from the evidence if an educational audiologist or deaf and hard of hearing specialist, or both, are the professionals with the correct qualifications to conduct these assessments. However, Stockton Unified should have assessed in these areas.

For the same reasons above, this procedural failure to assess in low incidence deprived Parent of meaningful participation in the decision-making process. Accordingly, Student proved by the preponderance of the evidence that Stockton Unified failed to assess in low incidence, specifically in educational audiology/deaf and hard of hearing from October 1, 2024, through the end of the 2024-2025 school year.

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ISSUE 4(a): STUDENT PROVED THAT STOCKTON UNIFIED FAILED TO ASSESS STUDENT IN EDUCATIONALLY RELATED MENTAL HEALTH FROM OCTOBER 1, 2024, THROUGH THE 2024-2025 SCHOOL YEAR

Psychological and mental health services include

- administering psychological and educational tests and other assessment procedures;
  - interpreting assessment results;
  - obtaining, integrating, and interpreting information about child behavior and conditions related to learning;
  - consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
  - planning and managing a program of psychological services, including psychological counseling for children and parents; and
  - assisting in developing positive behavioral intervention strategies.
- (34 C.F.R. § 300.34 (c)(10) (2006).)

In August 2022, Stockton Unified assessed Student in social-emotional functioning. Stockton Unified knew Student had school related anxiety during the 2022-2023 school year but it had significantly reduced during the 2023-2024 school year. However, in August 2024, Stockton Unified determined Student continued to have some needs in behavior, despite his significant behavioral progress the previous year.

As stated, Student's maladaptive behavior increased significantly and his functional performance deteriorated during the 2024-2025 school year, impeding his learning as confirmed by Stockton Unified witnesses: Hand, Perez, Moradian, and Rodriguez. No witness endorsed a mental health assessment. However, the threshold for a suspected disability is relatively low.

Student's known 2022-2023 school related anxiety which necessitated a change in school location, combined with significant escalation of maladaptive behaviors during the 2024-2025 school year and Stockton Unified's subsequent offer on October 1, 2024, of the more restrictive highly structured special day class, should have placed Stockton Unified on notice of a suspected disability in educationally related mental health. Stockton Unified's proposal to transition Student to a more restrictive special day class constitutes an acknowledgement that his unique needs were not being met in the generalized kindergarten classroom. Stockton Unified's witnesses consistently opined that the generalized kindergarten class lacked the requisite structure and presented too much academic rigor for Student, and the transition to highly structured classroom would assist in ameliorating his maladaptive behaviors.

However, Stockton Unified failed to fulfill its threshold obligation to conduct a mental health reassessment with his significantly changed behaviors to determine the extent to which, if any, his emotional and functional performance deteriorated during the 2024-2025 school year. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R § 300.303(a)(1) (2006); Ed. Code, § 56381, subd. (a)(1),(2).) Stockton Unified's failure to assess in mental health impeded Parent's ability to meaningfully participate in the decision-making progress for Student's education.

Student proved by a preponderance of the evidence that Stockton Unified denied Student a FAPE by failing to assess in mental health from October 1, 2024, through the 2024-2025 school year.

ISSUE 4(b): STUDENT DID NOT PROVE THAT STOCKTON UNIFIED FAILED TO TIMELY ASSESS IN OCCUPATIONAL THERAPY DURING THE 2024-2025 SCHOOL YEAR

Student contends Stockton Unified failed to timely conduct an occupational therapy assessment after Parent's request. Stockton Unified maintains that it did not receive the assessment plan for the occupational therapy assessment from Parent and thus, was unable to assess Student. Student did not meet his burden of persuasion on this issue.

If a Parent requests an assessment, a school district is not required to assess, but must follow formal procedures to either initiate the assessment or provide a legal justification for a refusal. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503 (2006); Ed. Code, § 56500.4, subd. (a).) A reassessment of a student requires parental consent. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1) (2008); Ed. Code, § 56381, subd. (f)(1).)

Specifically, the parent must be given a proposed assessment plan, in writing, within 15 days of the assessment referral, along with a notice of IDEA and Education Code procedural rights. (Ed. Code, §56321, subd. (a).) The school district must give parents 15 days to review, sign, and return the proposed assessment plan, and may begin the assessment upon receipt of parental consent. (Ed. Code, § 56321, subd. (a).) Once parental consent is obtained, the assessment must be completed, and an IEP team meeting convened to discuss the results within 60 days of the school district's receipt

of a parent's written consent to the assessment plan, not counting days between the pupil's regular school session, terms, or days of school vacation in excess of five schooldays. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56344, subd. (a), 56043, subd. (f)(1).)

In Spring 2024, Parent requested an occupational therapy assessment. In response, Dr. Avila generated a proposed assessment plan, in Spanish, to Parent, and second assessment plan, in Spanish, on April 19, 2024, to Parent. The April 19, 2024 email to Parent explained that the correspondence was a follow-up and requested Parent to review the assessment plan, sign it, and return it to school. At the May 2, 2024 IEP team meeting, as corroborated in the IEP team meeting notes, Stockton Unified also explained to Parent that it was ready to proceed with the occupational therapy assessment once the assessment plan was signed and returned by Parent. A Spanish interpreter was present assisting Parent at this IEP team meeting.

Parent testified that she returned the assessment plan to Stockton Unified but did not give any specificity about when it was returned, how, and to whom it was provided. Parent's testimony regarding this issue was not corroborated by any other evidence. No signed assessment plan was presented at the hearing. No communication showed Parent had returned the assessment plan. Stockton Unified contends it did not receive a signed assessment plan to begin the occupational therapy assessment. The only corroborating evidence regarding this dispute is the email and IEP meeting notes demonstrating that Stockton Unified had not received the signed assessment plan.

Without any persuasive proof of the assessment plan being returned, Stockton Unified cannot be held liable for a failure to timely assess in occupational therapy under these facts. Student did not meet his burden of persuasion on this issue.

Student failed to prove by the preponderance of the evidence that Stockton Unified failed to timely assess in occupational therapy during the 2024-2025 school year.

2024-2025 SCHOOL YEAR – KINDERGARTEN SERVICES ISSUES 6(a), 6(b), 6(c), 6(d) AND 6(e): FAILING TO OFFER AN APPROPRIATE BEHAVIOR INTERVENTION PLAN, APPROPRIATE SERVICES IN BEHAVIOR INTERVENTION, SPEECH AND LANGUAGE, EDUCATIONALLY RELATED MENTAL HEALTH, AND INTERVENTION, SPEECH AND LANGUAGE, EDUCATIONALLY RELATED MENTAL HEALTH, AND OCCUPATIONAL THERAPY

ISSUE 6(a), 6(b), AND 6(d): STUDENT PROVED THAT STOCKTON UNIFIED FAILED TO OFFER AN APPROPRIATE BEHAVIOR INTERVENTION PLAN, BEHAVIOR INTERVENTION, AND EDUCATIONALLY RELATED MENTAL HEALTH SERVICES FROM OCTOBER 1, 2024, THROUGH THE 2024-2025 SCHOOL YEAR

Student contends that Stockton Unified failed to offer an appropriate behavior intervention plan and behavior intervention services and educationally related mental health services during the 2024-2025 school year. Stockton Unified maintains it offered an appropriate behavior intervention plan and numerous behavior interventions to meet Student's behavior and mental health needs but believed Student needed the highly structured special day class.

Student continued to have needs during the 2024-2025 school year in behavior, and after Parent's request in December 2024, Hand agreed to develop a behavior intervention plan. In support of developing a behavior intervention plan, Hand relied on informal data and trial and error strategies to assist Student. In some instances, this can be effective. Here, it was not. Hand developed a behavior intervention plan that aligned to the strategies already in place in the generalized classroom, even though she and other Stockton Unified staff knew these behavior strategies were not working for Student. Hand opined that the classroom staff were already implementing appropriate strategies to address Student's behaviors but believed the instructional level of the classroom was beyond his abilities. Thus, the behavior intervention plan did not appropriately address his escalated behaviors. Instead, the behavior intervention plan was developed around the behavior interventions already available in the generalized classroom that were not working.

Not surprisingly, at the May 2025 IEP, the IEP team determined that the behavior intervention plan did not resolve Student's behaviors. Stockton Unified did not develop an appropriate behavior intervention plan. As determined, Stockton Unified should have conducted a functional behavior assessment to inform it on developing the behavior intervention plan before offering a more restrictive placement.

In the absence of needed, up-to-date, comprehensive assessment data, Stockton Unified could not identify Student's current behavioral needs, rendering the behavior intervention plan inappropriate, and the behavior intervention supports and services, not reasonably calculated to enable Student to make meaningful progress.

As determined above, Stockton Unified should have assessed for mental health beginning October 1, 2024. Without an assessment, Stockton Unified could not accurately identify if Student's struggles were behavior problems, underlying mental health conditions such as anxiety, or something else. Student previously exhibited anxiety during his first year of preschool while at school. Thus, Student's mental health offer which included behavior intervention and supports, and specialized academic instruction to include working generally on Student's functioning was not reasonably calculated to enable Student to make meaningful progress. And Student did not make meaningful progress during the 2024-2025 school year.

Student proved by the preponderance of the evidence that Stockton Unified denied Student a FAPE by failing to offer an appropriate behavior intervention plan, behavior intervention, and educationally related mental health services from October 1, 2024, through the 2024-2025 school year.

#### ISSUE 6(c): STUDENT PROVED THAT STOCKTON UNIFIED FAILED TO OFFER APPROPRIATE SPEECH AND LANGUAGE SERVICES

Student maintains that without appropriate assessments, Stockton Unified could not determine the appropriate speech and language services. Stockton Unified maintains that its speech and language service offer was appropriate and Student did not meet his burden of proof on this issue, emphasizing the absence of expert testimony endorsing an inappropriate service offer.

At the May 2024 IEP team meeting, Stockton Unified offered speech and language goals in communication, comprehension, and behavior and 20 minutes weekly of direct group speech and language instruction. This service offer did not

change throughout the entirety of the 2024-2025 school year. It also offered a program with paraprofessional support, behavior intervention strategies, and Board Certified Behavioral Analyst support to help him reach his goals, including in communication. The accommodations offered by the IEP team to support Student's communication included

- preferential seating,
- picture icons,
- break icons,
- visual schedule,
- first/then visual,
- visual timer, and
- social stories.

As already determined, Stockton failed to conduct assessments in

- functional behavior,
- assistive technology,
- augmentative and alternative communication, and
- educational audiology/deaf and hard of hearing.

Student did not allege, and this Decision does not address, a failure to assess in the area of speech and language. Student also did not request a speech and language assessment as a remedy. Instead, Student argued that Stockton Unified's failures to assess in other areas rendered the speech and language services inappropriate because these

assessments could determine Student needs for interventions related to communication related behaviors, and without that information, Stockton Unified would not know if Student's speech and language services were appropriate.

A lack of a functional behavior assessment, and assessments in assistive technology, augmentative and alternative communication, and educational audiology/deaf and hard of hearing, does not automatically make existing speech services insufficient. However, under the facts here, the lack of assessments led to an inappropriate speech and language service offer. Here, Moradian could not implement Student's speech and language services due to start at the beginning of the 2024-2025 school year and through the duration of that school year due to Student's increased maladaptive behaviors. Student did not meaningful progress on his speech and language goals.

Moradian opined that students with communication delays can develop behaviors, and behaviors like crying and tantrums are communication. Moradian also knew that Student accessed his augmentative and alternative communication through

- PECS,
- pictures,
- cards,
- sign language, and
- some words.

However, PECS was not offered to Student in the generalized special day classroom, although one witness, Rodriguez believed it could be implemented in large group environment or mainstream classroom. Moradian attempted to introduce new

augmentative and alternative communication supports through the use of a tablet, but Student's dysregulation prevented him from meaningfully engaging with the tablet. The evidence demonstrated that Student's maladaptive behaviors and inability to access his augmentative and alternative communication interventions contributed to Student's inability to access his speech and language services, which are inextricably intertwined, especially given that Student had emerging functional communication and relied heavily on the augmentative and alternative communication supports the previous year.

Thus, Student's failure to make meaningful progress in his speech and language skills and goals and inability to access his speech and language services during the 2024-2025 school year cannot be viewed in isolation. Without assessing Student in functional behavioral, augmentative and alternative communication needs, assistive technology, and audiology deaf and hard of hearing, Stockton Unified could not know if Student's speech and language services were appropriate. These areas can affect a student's access to communication, especially for Student, who had unique needs in communication as a deaf and hard of hearing with autistic-like characteristics.

Stockton Unified's failure to assess in multiple critical areas that affect communication, undermined its ability to design services tailored to Student's unique needs in speech and language. Assessments are foundational to the development of appropriate services. Without adequate assessment data, Stockton Unified could not ensure that its speech and language services were reasonably calculated to enable Student to progress, and Student did not make meaningful progress in communication during the 2024-2025 school year.

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Under these facts, Student established a nexus between the lack of assessments and the appropriateness of the speech and language services once it requested a change of placement on October 1, 2024. Student met his burden of proof by a preponderance of the evidence that Stockton Unified denied Student a FAPE for failing to offer appropriate speech and language services from October 1, 2024, through the 2024-2025 school year.

ISSUE 6(e): STUDENT DID NOT PROVE THAT STOCKTON UNIFIED  
FAILED TO OFFER APPROPRIATE OCCUPATIONAL THERAPY SERVICES  
DURING THE 2024-2025 SCHOOL YEAR

Student did not address this issue in his closing brief or request any remedies related to occupational therapy. Stockton Unified contends that it appropriately addressed Student's occupational therapy issues.

No Stockton Unified witness or any expert witness endorsed occupational therapy services during the 2024-2025 school year. Parent believed Student had issues with his handwriting.

Student had a need in fine motor during the 2024-2025 school year. Stockton Unified did not offer Student any specific occupational therapy services during the relevant time, but offered Student a goal in fine motor to work on independently copying his name using a pincer grasp and offered specialized academic instruction to assist with this goal.

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Parent raised concerns regarding Student's handwriting. However, as already determined, Parent did not prove that she provided consent to assess in occupational therapy after making the request in Spring 2024. Student cannot now credibly assert that Stockton Unified failed to offer appropriate occupational therapy services when it was unable to assess in this area. Additionally, Student failed to present sufficient evidence that Student's handwriting was deficient relative to age expectations or inconsistent with Student's unique needs requiring different or additional services.

Accordingly, Student failed to meet his burden of proof by a preponderance of the evidence that Stockton Unified failed to offer appropriate occupational therapy services during the 2024-2025 school year. Stockton prevailed on Issue 6(e).

#### ISSUE 7: STUDENT PROVED THAT STOCKTON UNIFIED FAILED TO OFFER APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION IN THE OCTOBER 1, NOVEMBER 20, AND DECEMBER 19, 2024 IEPS

Student contends that Stockton Unified failed to offer Student appropriate specialized academic instruction in the May, October, November, and December 2024 IEPs. Stockton Unified maintains its specialized academic instruction was reasonably calculated to enable Student to receive meaningful educational benefit. Student proved Stockton Unified failed to offer appropriate specialized academic instruction from October 1, 2024, through the end of the 2024-2025 school year.

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Under the IDEA, specialized academic instruction, also referred to as specially designed instruction, means adapting the content, methodology, or delivery of instruction to address the unique needs of a child with a disability, and ensures access to the general curriculum to enable the student to meet educational standards. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39(b)(3) (2007); Ed. Code, § 56031)

## MAY 2024 IEP PRESCHOOL SPECIALIZED ACADEMIC INSTRUCTION OFFER

At the May 2, 2024 IEP team meeting, Stockton Unified offered Student 330 minutes, five days a week, for a total of 1,650 minutes weekly, group academic instruction that assisted with functional communication, pre-academics, academics, and functional support, for the remainder of Student's 2024-2025 preschool year. Stockton Unified's specialized academic instruction offer was unchanged from the August 2023 specialized academic instruction offer to Student.

Student failed to introduce any persuasive evidence that Stockton Unified's offer for specialized academic instruction was inappropriate. Student's general arguments about native language, primary mode of communication, and home hospital instruction relied solely on information obtained after Stockton Unified made its offer, rather than on information made at the time the offer was made. Evidence acquired after the IEP team meeting may not be used exclusively to second guess Stockton Unified's offer and to establish a FAPE denial. (*Adams, supra*, 195 F.3d at p. 1149.) Regardless, the arguments also did not establish that the May 2024 offer was not reasonably calculated to enable Student to receive educational benefit

Here, Stockton Unified presented persuasive evidence, as already described, from multiple credible Stockton Unified providers and his teacher during the 2023-2024 school year, affirming that his services, including specialized academic instruction were appropriate. Student made meaningful educational progress and met all but one of his annual goals during the 2023-2024 school year. In light of his progress, it was reasonable for the subsequent IEP team to continue the same specialized academic instruction offer for the remainder of the school year, which was about one month. Stockton Unified's specialized academic instruction in the May 2024 offer for the remainder of the 2023-2024 school year was reasonably calculated to enable Student to receive educational benefit, and the evidence confirmed that Student in fact derived such benefit from the specialized academic instruction services provided to Student.

Student did not meet his burden by the preponderance of the evidence that Stockton Unified denied Student a FAPE for failing to offer appropriate specialized academic instruction from the May 2, 2024 IEP team meeting through the end of the 2023-2024 school year.

#### MAY 2024 KINDERGARTEN SPECIALIZED ACADEMIC INSTRUCTION OFFER

Stockton Unified offered Student 360 minutes, five days a week, for a total of 1800 minutes weekly, group academic instruction from July 1, 2024, through May 1, 2025, in functional communication, pre-academics, academics, and functional skills for kindergarten. Student's October 2024, November 2024, and December 2024 IEP offers did not change Student's specialized academic instruction offer. The offer for the

2024-2025 school year reflected a full calendar week for elementary school, and Student received all instructions through specialized academic instruction, and was supported by paraprofessionals during that time.

At the May 2024 IEP team meeting, the IEP team considered Student's placement for kindergarten. The IEP team had conducted observations of Student and solicited input from the team regarding his behavior, functional communication, pre-academics, and social skills. The team recommended Student move from the structured special day preschool classroom to the generalized kindergarten special day classroom. The skills Student exhibited in his structured special day classroom demonstrated that he would be able to receive educational benefit in the generalized kindergarten special day classroom.

The IEP team also considered Parent's goal to have Student mainstream into general education, which was possible in the generalized kindergarten special day classroom. Based on the evidence regarding Student's meaningful progress in the structured preschool special day classroom, Stockton Unified's specialized academic instruction offer for the 2024-2025 school year was reasonably calculated to enable Student to receive an educational benefit.

Student failed to prove that Stockton Unified denied Student a FAPE by failing to offer appropriate specialized academic instruction services at the May 2024 IEP team meeting for the 2024-2025 school year.

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## SPECIALIZED ACADEMIC INSTRUCTION OCTOBER, NOVEMBER, AND DECEMBER 2024 KINDERGARTEN OFFERS

At the October 2024, November 2024, and December 2024 IEP team meetings, Stockton Unified's offers did not change Student's specialized academic instruction offer of 360 minutes, five days a week, for a total of 1800 minutes weekly, group academic instruction. However, Stockton Unified changed the environment in which it would be delivered.

At the October 2024 IEP team meeting, Student demonstrated unexpected difficulty accessing his education in the generalized kindergarten special day classroom as already described. The October, November, and December IEP teams offered Student's specialized academic instruction in the highly structured special day class.

Despite Stockton Unified witnesses' opinions that a change to the most restrictive special day classroom was appropriate with his specialized academic instruction delivered in the highly structured class because of the benefits of more structure, staff, and embedded supports and interventions, the argument fails.

Here, Stockton Unified should have assessed Student as already described. The functional behavior assessment was crucial to know the why behind his behaviors. And the assistive technology, augmentative and alternate communication, and educational audiology/deaf and hard of hearing assessments were needed to determine what the appropriate supports and interventions were required to assist in Student's behavior and communication needs. This was especially important for a deaf and hard of hearing student that was mostly non-verbal with emerging functional communication. The

offers focused on what was already available in the highly structured day class without thorough consideration for Student's needs and if they could be accommodating in a lesser restrictive environment.

Here, Student's behaviors and communication issues were intertwined with Student's specialized academic instruction. The specialized academic instruction worked on functional communication. By the October 2024 IEP team meeting, Stockton Unified knew that Student was not accessing his education and specialized academic instruction due to maladaptive behaviors that interfered with his communication. Despite this knowledge, Stockton Unified did not conduct further assessments and instead proposed a more restrictive environment. At this point the specialized academic instruction was no longer calculated to enable Student to make meaningful educational progress. Stockton Unified lacked the critical information to make that determination.

Although Student had previously been placed in a similar, more restrictive setting when his behaviors were less severe, now, Student's maladaptive behaviors had increased in both in frequency and intensity. Because the underlying causes of the behavior were not properly identified, it remained unclear whether the specialized academic instruction would address Student's needs and enable him to receive educational benefit with his changed behavioral communication needs.

Student proved by a preponderance of the evidence that Stockton Unified denied Student a FAPE by failing to offer appropriate specialized academic instruction at the October, November, and December 2024 IEP team meetings.

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ISSUES 8(a) AND 9(a): STUDENT DID NOT PROVE THAT STOCKTON UNIFIED PREDETERMINED STUDENT'S SERVICE OFFERS TO SUPPORT STUDENT'S HEARING DISABILITY IMPEDING PARENT'S ABILITY TO PARTICIPATE IN THE IEP DECISION-MAKING PROCESS FROM DECEMBER 30, 2023, THROUGH THE 2024-2025 SCHOOL YEAR

Student failed to prove that Stockton Unified denied student a FAPE by denying Parents the opportunity to meaningfully participate in the decision-making process by predetermining student's service offers related to Student's hearing disability from December 30, 2023, through the 2024-2025 school year.

Student contended in its due process hearing request that Stockton Unified predetermined Student's services related to his hearing disability through the time at issue in this matter. Student did not address this allegation in his closing brief. Stockton Unified disagrees and maintains that its service offers to Student regarding Student's hearing disability were not predetermined as no evidence supports Student's contention.

The IDEA requires school districts to ensure that the parents of disabled children are members of any group that makes decisions about their child's educational placement. (34 C.F.R. § 300.327 (2006); 34 C.F.R. § 300.501 subd. (c)(1) (2006).) Thus, IEP team meetings should include the parents of a child with a disability. (20 U.S.C. § 1414(d)(1)(B)(i), 34 C.F.R. § 300.321(a)(1) (2007), Ed. Code, § 56341, subd. (b)(1).)

School districts may not unilaterally predetermine a child's special education and related services before an IEP team meeting. (*Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, 858., *cert. denied*, 546 U.S. 936 (U.S. 2005).) School administrators and staff must enter the IEP team meeting with an open mind and must meaningfully consider the parents' input. (*H.B., et al. v. Las Virgenes Unified Sch. Dist.* (9th Cir. 2007) 239 Fed. Appx. 342, 344; see also, *Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas County Sch. Dist.* (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.)

However, school officials do not predetermine an IEP simply by meeting to discuss a child's programming in advance of an IEP team meeting. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688 at p. 693, fn. 3.) District IEP team members also may form opinions before IEP meetings. However, if the district goes beyond forming opinions and becomes "impermissibly and deeply wedded to a single course of action," this amounts to predetermination. (*P.C. v. Milford Exempted Village Schs* (S.D. Ohio, Jan. 17, 2013, No. 1:11- CV-398) 2013 WL 209478, p.7.) A district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural FAPE denial. (*Deal, supra*, 392 F.3d 840, 858.)

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

Student did not meet his burden of proof on this issue. Student failed to provide any evidence to support this predetermination claim. During the time at issue, Stockton Unified conducted IEP team meetings in May, October, November, and December 2024, and February and May 2025. Stockton Unified offered Student 30 minutes of deaf and hard of hearing consultation services from the May 2024 IEP team meeting through the May 2025 IEP team meeting. At the May 2025 IEP team meeting, Stockton Unified offered Student 60 minutes monthly, direct individual deaf and hard of hearing services.

At all times, the evidence showed Parent raised no concerns regarding Student's deaf and hard of hearing services, audiological services, or other services to address hearing loss, and failed to provide any evidence that he required additional services related to his hearing disability. Student introduced no evidence that Stockton Unified came to a final conclusion on Student's deaf and hard of hearing or any other services to address hearing loss at any IEP team meeting during the relevant time. Student presented no testimonial or documentary evidence at hearing demonstrating Stockton Unified engaged in any types of communications, written or oral, demonstrating Stockton Unified reached any determination or agreement, or was closed to discussions regarding Student's hearing services before convening IEP team meetings during the relevant time. Additionally, Student further failed to prove that he suffered any harm from any alleged predetermination of hearing services.

Student bears the burden of proving that Stockton Unified was unwilling to listen to Parent because it had already predetermined the hearing service offers and that it impeded Parent's ability to meaningfully participate in the IEP decision-making process. Here, the record is devoid of evidence of predetermination and replete with evidence of parental participation in Student's IEP team meetings.

Student failed to prove by a preponderance of the evidence that Stockton Unified engaged in predetermination regarding Student's hearing services and impeded Parent's participation in the decision-making process, from December 30, 2023, through the 2024-2025 school year.

Stockton Unified prevailed on Student's Issues 8(a) and 9(a).

ISSUES 8(b) AND 9(b): STUDENT DID NOT PROVE THAT STOCKTON UNIFIED DENIED STUDENT A FAPE BY DENYING PARENTS THE OPPORTUNITY TO MEANINGFULLY PARTICIPATE IN THE DECISION-MAKING PROCESS BY FAILING TO PROVIDE PARENTS WITH IEP RELATED DOCUMENTS IN PARENT'S NATIVE LANGUAGE FROM DECEMBER 30, 2023, THROUGH THE 2024-2025 SCHOOL YEAR

The IDEA and California law does not automatically require a school district to provide IEP documents from English to a parent's native language. Federal and state education law requires school districts take any necessary action to ensure that the parent or guardian understands the IEP team meeting proceedings, including arranging for an interpreter if necessary. (34 C.F.R. § 300.322(e) (2006); Ed. Code, § 56341.5, subd. (i).) However, a school district must give the parents or guardians an IEP copy in their primary language upon their request. (Cal. Code Regs., tit. 5, § 3040, subd. (a).)

Stockton Unified knew at the time of Student's enrollment in 2022 that Parent was a Spanish speaker and indicated in writing that Parent wanted communications in Spanish. Stockton Unified explained their translation service procedure during the relevant time. Typically, soon after the IEP team meeting, Stockton Unified would give Parent a copy of the English version of the IEP document. Then, Stockton Unified would

provide Parent a partially translated IEP document that had all of the fillable portions of the IEP document in Spanish but the standard titles and language in the IEP document in English. Then, Stockton Unified would receive the completed translated IEP document and provide it to Parent. This process occurred if Parent requested the IEP document to be translated. Stockton Unified, however, did not keep the translated versions of the IEP document in its files.

From December 30, 2023, through the 2023-2024 school year, Stockton Unified conducted one IEP team meeting on May 2, 2024. Stockton Unified established that this IEP meeting had Spanish interpreter services for Parent during the meeting.

Stockton Unified contended Parent received a fully translated Spanish version IEP document after the IEP team meeting that Student's teacher gave to Parent. Student argued in his closing brief that Parent only received a partially translated version of the May 2024 IEP meeting. Parent maintained at hearing that if she requested an IEP document to be translated, a translated copy would be provided to her. Parent further testified that she always received the Spanish translated documents during the time in question. Student failed to meet his burden of persuasion on this issue.

Regardless, even if a procedural violation could be deduced from these facts, it did not rise to the level of a FAPE denial. The evidence demonstrated that Parent ultimately understood what occurred at the May 2024 IEP team meeting and the substance of the IEP offer.

At hearing, Parent testified that although she did not initially understand all aspects of the IEP, she asked multiple questions during the IEP team meeting and thereafter gained an understanding of Stockton Unified's offer to Student. For example,

Parent understood that Student was offered a less structured classroom that assisted with transitions into a general education classroom. Parent also understood her May 2024 IEP signature meant that she agreed with what was discussed at the meeting.

Parent's testimony was sincere and forthright. She presented as a strong advocate for Student and did not consistently agree with leading questions posed by either her own counsel or opposing counsel. Parent appeared to genuinely consider each question before responding and was careful not to allow her testimony to be misconstrued by either side. Based on her demeanor and the substance of her responses, Parent was a credible witness and given great weight regarding this issue.

Student failed to prove that Stockton Unified denied Student a FAPE for impeding Parent's participation in the decision-making process for failing to provide IEP documents in Parent's native language from December 30, 2023, through the 2024-2025 school year by failing to provide IEP related documents in her native language.

Stockton Unified prevailed on Issue 8(b).

During the 2024-2025 school year, Stockton Unified conducted Student IEP team meetings in October, November, December 2024, and February and May 2025. Parent requested and Stockton Unified provided the fully Spanish translated IEP documents for the December 2024 and May 2025 IEP team meetings. Parent requested, and Stockton Unified provided only a partial Spanish translated IEP document for the February 2025 IEP team meeting. Thus, Stockton Unified committed a procedural violation by failing to provide a fully translated IEP document for the February 2025 IEP team meeting as requested. Parent also only received partial Spanish translated documents for the October 2024 and November 2024 IEP team meetings.

Even if the absence of fully translated IEP documents for the October and November 2024, and February 2025 IEP team meetings as a procedural violation, Student failed to establish that the violations impeded Parent's ability to meaningfully participate in the IEP decision-making process.

In Student's closing brief, Student argued that Parent could not understand what services were actually being provided and by whom, and needed the translated documents to have a reference when she tried to determine progress, and whether services are appropriate at a later time and how to address misunderstandings regarding the meaning of the offer. However, Student failed to elicit evidence at hearing to support these contentions. To the contrary, the evidence demonstrated that Parent was consistently supported through the IEP process, meaningfully participated in the IEP decision-making process, and understood the IEP offers to Student.

Parent received Spanish interpreter services during all IEP team meetings during the 2024-2025 school year. Additionally, Spanish speaking IEP team members spoke with Parent in Spanish during the IEP team meetings at times.

Parent frequently attended IEP team meetings during this time with one or two advocates and private services providers. The record further reflects that Parent actively and effectively advocated for Student. She did not agree with the Student being moved to the highly structured classroom. She requested different supports toward the end of 2024, like a behavior intervention plan and one-to-one aide. She did not agree with the classroom move to the highly structured classroom, asked questions about the behavior intervention plan, and declined to consent to IEP offers. Based on the totality of the evidence, Parent was informed, capable and meaningfully participated in the IEP

decision-making progress during the 2024-2025 school year, such that it did not impede Parent's ability to participate in the decision-making process. Student failed to prove by a preponderance of the evidence that Stockton Unified denied Student a FAPE for failing to provide IEP related documents in her native language during the 2024-2025 school year.

## 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(a):

Student did not prove that Stockton Unified denied Student a FAPE for failing to assess Student in functional behavior from December 30, 2023, through September 30, 2024. Student proved that Stockton Unified denied Student a FAPE from October 1, 2024, through the 2024-2025 school year by failing to assess in functional behavior.

Student partially prevailed on Issue 1(a). Stockton Unified partially prevailed on Issue 1(a).

### ISSUE 1(b):

Student did not prove that Stockton Unified denied Student a FAPE for failing to assess Student in augmentative and alternative communication from December 30, 2023, through September 30, 2024. Student proved that Stockton

Unified denied Student a FAPE for failing to assess Student in augmentative and alternative communication from October 1, 2024, through the 2024-2025 school year.

Student partially prevailed on Issue 1(b). Stockton Unified partially prevailed on Issue 1(b).

#### ISSUE 1(c):

Student did not prove that Stockton Unified denied Student a FAPE for failing to assess Student in assistive technology from December 30, 2023, through September 30, 2024. Student proved that Stockton Unified denied Student a FAPE from October 1, 2024, through the 2024-2025 school year by failing to assess Student in assistive technology.

Student partially prevailed on Issue 1(c). Stockton Unified partially prevailed on Issue 1(c).

#### ISSUE 2:

Student did not prove that Stockton Unified denied Student a FAPE for failing to conduct an audiological assessment from December 30, 2023, through the 2023-2024 school year.

Stockton Unified prevailed on Issue 2.

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### ISSUE 3:

Student did not prove that Stockton Unified denied Student a FAPE for failing to appropriately assess Student for low-incidence disability from May 2, 2024, through September 30, 2024. Student proved that Stockton Unified denied Student a FAPE by failing to appropriately assess Student for low-incidence disability from October 1, 2024, through the end of the 2024-2025 school year.

Student partially prevailed on Issue 3. Stockton Unified partially prevailed on Issue 3.

### ISSUE 4(a):

Student did not prove that Stockton Unified denied Student a FAPE for failing to conduct an educationally related mental health services assessment from the beginning of the 2024-2025 school year through September 30, 2024. Student proved that Stockton Unified failed to conduct an educationally related mental health services assessment from October 1, 2024, through the 2024-2025 school year.

Student partially prevailed on Issue 4(a). Stockton Unified partially prevailed on Issue 4(a).

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ISSUE 4(b):

Student did not prove that Stockton Unified denied Student a FAPE for failing to timely conduct an appropriate occupational therapy assessment during the 2024-2025 school year.

Stockton Unified prevailed on Issue 4(b).

ISSUE 5(a):

Student did not prove that Stockton Unified denied Student a FAPE for failing to offer an appropriate behavior intervention plan from December 30, 2023, through the 2023-2024 school year.

Stockton Unified prevailed on Issue 5(a).

ISSUE 5(b):

Student did not prove that Stockton Unified denied Student a FAPE for failing to offer appropriate behavior intervention services from December 30, 2023, through the 2023-2024 school year.

Stockton Unified prevailed on Issue 5(b).

ISSUE 5(c):

Student did not prove that Stockton Unified denied Student a FAPE for failing to offer appropriate speech and language services from December 30, 2023, through the 2023-2024 school year.

Stockton Unified prevailed on Issue 5(c).

ISSUE 5(d):

Student did not prove that Stockton Unified denied Student a FAPE for failing to offer appropriate educationally related mental health services from December 30, 2023, through the 2023-2024 school year.

Stockton Unified prevailed on Issue 5(d).

ISSUE 5(e):

Student did not prove that Stockton Unified denied Student a FAPE for failing to offer appropriate occupational therapy services from December 30, 2023, through the 2023-2024 school year.

Stockton Unified prevailed on Issue 5(e).

ISSUE 6(a):

Student did not prove that Stockton Unified denied Student a FAPE from the beginning of the 2024-2025 school year through September 30, 2024, by failing to offer an appropriate behavior intervention plan. Student proved that Stockton Unified denied Student a FAPE from October 1, 2024, through the 2024-2025 school year by failing to offer an appropriate behavior intervention plan.

Student partially prevailed on Issue 6(a). Stockton Unified partially prevailed on Issue 6(a).

#### ISSUE 6(b):

Student did not prove that Stockton Unified denied Student a FAPE from the beginning of the 2024-2025 school year through September 30, 2024, by failing to offer appropriate behavior intervention services. Student proved that Stockton Unified denied Student a FAPE from October 1, 2024, through the 2024-2025 school year by failing to offer appropriate behavior intervention services.

Student partially prevailed on Issue 6(b). Stockton Unified partially prevailed 6(b).

#### ISSUE 6(c):

Student did not prove that Stockton Unified denied Student a FAPE from the beginning of the 2024-2025 school year through September 30, 2024, by failing to offer appropriate speech and language services. Student proved that Stockton Unified denied Student a FAPE from October 1, 2024, through the 2024-2025 school year by failing to offer appropriate speech and language services.

Student partially prevailed on Issue 6(c). Stockton Unified partially prevailed on Issue 6(c).

#### ISSUE 6(d):

Student did not prove that Stockton Unified denied Student a FAPE from the beginning of the 2024-2025 school year through September 30, 2024, by failing to offer appropriate educationally related mental health services. Student

proved that Stockton Unified denied Student a FAPE from October 1, 2024, through the 2024-2025 school year by failing to offer appropriate educationally related mental health services.

Student partially prevailed on Issue 6(d). Stockton Unified partially prevailed on Issue 6(d).

#### ISSUE 6(e):

Student did not prove that Stockton Unified denied Student a FAPE during the 2024-2025 school year by failing to offer appropriate occupational therapy services.

Stockton Unified prevailed on Issue 6(e).

#### ISSUE 7

Student did not prove that Stockton Unified denied Student a FAPE by failing to offer appropriate specialized academic instruction at the May 2, 2024, IEP team meeting. Student proved that Stockton Unified denied Student a FAPE by failing to offer appropriate specialized academic instruction at the October 1, November 20, and December 19, 2024, IEP team meetings.

Student partially prevailed on Issue 7. Stockton Unified partially prevailed on Issue 7.

ISSUE 8(a):

Student did not prove that Stockton Unified denied Student a FAPE from December 30, 2023, through the 2023-2024 school year by predetermining the services offered to support Student's hearing disability.

Stockton Unified prevailed on Issue 8(a).

ISSUE 8(b):

Student did not prove that Stockton Unified denied Student a FAPE from December 30, 2023, through the 2023-2024 school year, by failing to provide IEP documents in Parent's native language.

Stockton Unified prevailed on Issue 8(b).

ISSUE 9(a):

Student did not prove that Stockton Unified denied Student a FAPE during the 2024-2025 school year by predetermining the services offered to support Student's hearing disability.

Stockton Unified prevailed on Issue 9(a).

ISSUE 9(b):

Student did not prove that Stockton Unified denied Student a FAPE during the 2024-2025 school year by failing to provide Parent with IEP related documents in Parent's native language.

Stockton Unified prevailed on Issue 9(b).

## REMEDIES

Student partially prevailed on Issues 1(a), 1(b), 1(c), 3, 4(a) 6(a), 6(b), 6(c), 6(d), and 7, for

- failing to assess in
  - functional behavior,
  - assistive technology,
  - augmentative and alternative communication,
  - educational audiology/deaf and hard of hearing,
  - educationally related mental health, and
- failing to offer from October 1, 2024, through the end of the 2024-2025 school year
  - an appropriate behavior intervention plan,
  - behavior intervention services,
  - speech and language services,
  - educationally related mental health, and
  - specialized academic instruction.

Student requests assessments in

- functional behavior,
- augmentative and alternative communication,
- assistive technology,

- audiology,
- functional behavior, and
- one-to-one aide support.

Student requests training. Student requests compensatory education in the areas and amounts as follows:

- Speech and language – 80 minutes monthly from December 30, 2024, through the 2024-2025 school year;
- Specialized Academic Instruction – 1510 hours from December 20, 2023, through the 2023-2024 school year, and 1710 hours for the 2024-2025 school year, for a total amount of 3220 hours;
- Deaf and hard of hearing – 4 hours weekly from December 30, 2024, through the 2024-2025 school

Stockton Unified maintains no relief should be given to Student.

Courts have broad equitable powers to remedy the failure of a local educational agency to provide a FAPE to a child with a disability. (20 U.S.C. § 1415(if)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct.1996]; *Parents of Student W. v. Puyallup School Dist.*, No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) This broad equitable authority extends to an administrative law judge who hears and decides a special education administrative due process matter. (*Forest Grove, supra*, 638 F.3d. at p. 1239.)

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

FAILURE TO ASSESS IN FUNCTIONAL BEHAVIOR, ASSISTIVE TECHNOLOGY, AUGMENTATIVE AND ALTERNATIVE COMMUNICATION, EDUCATIONAL AUDIOLOGY/DEAF AND HARD OF HEARING, AND EDUCATIONALLY RELATED MENTAL HEALTH

Student proved Stockton Unified failed to assess, from October 1, 2024, through the 2024-2025 school year, in

- functional behavior,
- assistive technology,
- augmentative and alternative
- communication,
- educational audiology/deaf and
- hard of hearing.

Student failed to submit any evidence addressing compensation for failing to assess Student. Ultimately, the undersigned relied upon equitable judicial discretion to craft an appropriate remedy.

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

Stockton Unified failed to assess for functional behavior, assistive technology, augmentative and alternative communication, and educational audiology/deaf and hard of hearing, once Student's functional performance and behaviors escalated during the 2024-2025 school year to the point that it offered to change Student's placement to a more restrictive environment. IEEs can be the appropriate remedy when a school district fails to assess for a suspected disability. Here, IEEs are not the appropriate remedy under these circumstances.

Student is no longer enrolled at Stockton Unified, having disenrolled around the end of the 2024-2025 school year, and subsequently enrolled in a charter school operated by a different local educational agency.

There is insufficient evidence regarding Student's current educational program to determine if IEEs would be appropriate for Student or useful to his current IEP team, including Parent. Specifically, no information was presented as to whether Student has since been assessed by the new local educational agency, what evaluations, if any, have been conducted, or whether Student's present levels of performance or areas of suspected disability remain the same. As a result, the evidentiary record does not establish that independent educational evaluations would be necessary or appropriate to address Student's current circumstances.

Because of the purpose of an IEE is to assess a student's present educational needs and inform appropriate programming, ordering IEEs in the absence of current information and where another local education agency, not a party to this matter, now holds responsibility for assessing Student, would be speculative and potentially duplicative. Accordingly, IEEs are not warranted as a remedy in this matter.

However, the evidence supports that Stockton Unified staff who worked with Student require additional training. The FAPE denial was predicated on failing to assess Student's needs in

- functional behavior,
- assistive technology,
- augmentative and alternative communication, and
- educational audiology/deaf and hard of hearing.

This was a failure by the individual service providers assigned to Pulliam Elementary School, as well as the special education administration who oversees the program. Accordingly, all Stockton Unified employees currently assigned to assess students at Pulliam Elementary School in functional behavior, assistive technology, augmentative and alternative communication, and audiology, deaf and hard of hearing, and low-incidence disabilities will attend three hours of training, regarding the obligation to appropriately assess student in all areas of suspected disability, including low-incidence students. Additionally, Stockton Unified's special education administrative staff who directly oversee the Pulliam special education assessors in the above areas must also attend the training.

FAILURE TO OFFER AN APPROPRIATE BEHAVIOR INTERVENTION PLAN, BEHAVIOR INTERVENTION SERVICES, EDUCATIONALLY RELATED MENTAL HEALTH SERVICES, SPEECH AND LANGUAGE, AND SPECIALIZED ACADEMIC INSTRUCTION

Student proved Stockton Unified failed to offer, from October 1, 2024, through 2024-2025 school year, a) an appropriate behavior intervention plan, b) behavior intervention services, c) speech and language, and d) specialized academic instruction.

Student failed to submit any evidence that addressed compensatory education including frequency, amounts, and duration as ordered in the Order Following Prehearing Conference in this matter. Student attempted to submit after close of evidence, hourly rate sheets pulled from the internet by her paralegal. The information was without any testimony to explain it, or ability to cross-examine. It was not relevant since it did not include any information about amounts, duration, and frequency, but only generic rate sheets by some non-public agencies. Thus, the information was excluded. Ultimately, the undersigned relied upon equitable judicial discretion to craft an appropriate compensatory education remedy.

An administrative law judge can award compensatory education as a form of equitable relief. (*Park, supra*, 464 F.3d at p. 1033.) School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Ibid.; Puyallup, supra*, 31F.3d at p.1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory

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education need not provide a “day-for-day compensation.” (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.)

Compensatory education is a prospective award of educational services designed to catch-up the student to where the student should have been absent the FAPE denial. (*Brennan v. Regional Sch. Dist. No. 1* (D. Conn. 2008) 531 F.Supp.2d 245, 265.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific and “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*)

BEHAVIOR INTERVENTION PLAN/BEHAVIOR INTERVENTION  
SERVICES/EDUCATIONALLY RELATED MENTAL HEALTH  
SERVICES

This Decision finds that Stockton Unified should have offered an appropriate behavior intervention plan, mental health services, and appropriate behavior services since October 1, 2024. Based upon Stockton Unified 2024-2025 calendar, from October 1, 2024, through the end of the 2024-2025 school year, excluding school breaks five days or more, the time amounts to 30 weeks. Student’s maladaptive behavior during the 2024-2025 school year, resulted in minimal progress and his inability to access his education. Stockton Unified embedded Student’s behavior interventions and supports in his program, and Student received at times some

consultative support from the classroom Board Certified Behavior Analyst. The behavior intervention plan, interventions and supports were implemented at various times and by various providers throughout the day, rather than delivered during a discrete, designated service period. However, Student needed more or different behavior interventions, supports, and services to access his education.

The FAPE denial persisted for approximately 30 weeks. Student's inability to behaviorally function was the main reason he could not access his education during this time. Student did not request any remedies for these FAPE denials. As equitable remedies, Student will receive 30 hours of behavior or mental health counseling services through a non-public agency.

## SPEECH AND LANGUAGE SERVICES

This Decision finds that Stockton Unified should have offered appropriate speech and language services beginning October 1, 2024, through the 2024-2025 school year. Student requests 80 minutes monthly of speech and language services as a remedy. Stockton Unified offered Student 80 minutes monthly of group speech and language services. It is unclear if Student is requesting group or individual minutes as a remedy. The time from October 1, 2024, through May 29, 2025, the last school day for the 2024-2025 school year, is eight months. This amounts to 10 hours and 40 minutes.

To make up for the FAPE violation, this order will be for individual services, and not group services. Thus, the 80 minutes monthly, group speech and language will be reduced because individual instruction is generally more intensive, and tailored. Further, the crux of the FAPE denials was Student's behavioral needs and lack of appropriate assessments, in other areas than speech and language. However, District's failure to

assess in these areas was intrinsically linked to Student's inability to access his speech and language services, which ultimately made Stockton Unified's speech and language offers inappropriate because it knew Student could not access it, and lacked accurate information to offer appropriate speech and language services.

Accordingly, because of the primary areas of need underlying the denial were behavior and communication access supports, any award of compensatory education for standalone speech and language compensatory education is ordered but reduced to reflect the group delivery Stockton Unified offered. Student will receive four hours of individual speech and language services from a non-public agency.

## SPECIALIZED ACADEMIC INSTRUCTION

This Decision finds that Stockton Unified should have offered specialized academic instruction beginning October 1, 2024, through the 2024-2025 school year, for a total of 30 weeks. Student was offered 1800 minutes weekly of group specialized academic instruction during this time. This amounts to 900 hours of group specialized academic instruction for 30 weeks. Student requested 3320 hours of specialized academic instruction, but did not specify if it was group or individual services.

Compensatory education is meant to be remedial, not punitive. Compensatory education is intended to place Student in a position he would have occupied but for the FAPE denial, not to provide a windfall. The compensatory education award is reduced in light of the individualized hourly award and nature of the denial. As discussed, the crux of Stockton Unified's FAPE denials was its failure to appropriately assess and address Student's behavioral needs and provide appropriate communication behavior access, in light of Student's unique needs as a deaf and hard of hearing student with autistic-like

characteristics. However, Stockton Unified's failure to assess and provide appropriate services adversely impacted his ability to access specialized academic instruction. Despite Stockton Unified knowing Student could not access his specialized academic instruction, and lacking accurate information to make an informed offer, the specialized academic instruction beginning October 2024 was inappropriate.

In crafting an equitable remedy, consideration is given to Student's age and educational context. At the time of the denial, Student was six years old and in kindergarten. Young students have limited stamina for extended instructional periods, which can lead to fatigue, frustration, and diminished educational benefit. Also considered is that Student must, at the same time, attend a full day of school, then receive his compensatory education after school. An excessive award in duration or intensity risks overwhelming Student and undermining the effectiveness. Frustration and maladaptive behaviors were demonstrated by Student during the 2024-2025 school year when faced with educational challenges; thus, Student's unique needs were analyzed, based on what would be developmentally appropriate and beneficial for Student. Also considered was that the specialized academic instruction offer was for group delivery and not individual delivery of the specialized academic instruction.

An hour-for-hour calculation does not fully capture the multifaceted nature of this service or the impact of the denial. Accordingly, based on the totality of the circumstances, Student will receive one hour daily or five hours weekly of individual tutoring services, or 150 hours of individual tutoring services, to address the educational harm from Student's FAPE denial.

Student's additional requests were carefully considered. In light of the particular denials found, no further remedies are ordered.

## ORDER

1. Within 60 days of this Decision, Stockton Unified must provide a minimum of three hours of training to all Stockton Unified staff currently assigned to assess special education students at Pulliam Elementary in
  - a. functional behavior,
  - b. assistive technology,
  - c. augmentative and alternative communication,
  - d. educational audiology/deaf and hard of hearing, and
  - e. low-incidence disabilities.

This training shall also include all administrative staff who directly oversee the Pulliam assessors in the above areas. The Stockton Unified staff above will attend three hours of training. The training must address the duty to assess in all areas of suspected disability, including assessment requirements for

- a) functional behavior,
- b) assistive technology,
- c) augmentative and alternative communication,
- d) educational audiology/deaf and hard of hearing, and
- e) low incidence.

The training must be conducted by a qualified professional with expertise in special education law and assessment practices. Stockton Unified must maintain documentation of attendance and training content.

2. Stockton Unified must fund a total of 30 hours of behavior counseling services from a certified non-public agency of Parent's choice.
3. Stockton Unified must fund a total of four hours of speech and language therapy from a certified non-public agency of Parent's choice.
4. Stockton Unified must fund a total of 150 hours of tutoring from a certified non-public agency of Parent's choice.
5. Within 30 days of the date of this Decision, Stockton Unified must give Parent a list of non-public agencies it has contracts with to provide the compensatory services. If Parent selects a non-public agency Stockton Unified does not have a contract with, Stockton Unified must establish direct payment to the certified non-public agency Parent selected. The compensatory hours awarded will be available to Student until April 15, 2028, and will be forfeited thereafter.
6. Stockton Unified must reimburse Parent at the federal mileage rate for transportation costs for one round trip for each session of behavior counseling services, speech and language, and tutoring.
7. All of Student's other requests for relief are denied.

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## RIGHT TO APPEAL THIS DECISION

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

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings