

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

CASE NO. 2023080036

DECISION

NOVEMBER 3, 2023

On August 1, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Long Beach Unified School District. Administrative Law Judge Chris Butchko heard this matter by videoconference on September 19, 20, 21, 26, 27, and 28, 2023.

Attorney Allison Hertog represented Student. Parent attended all hearing days on Student's behalf. Attorney Meagan Kinsey represented Long Beach.

Dr. Rachel Heenan, Long Beach's Director of Special Education, attended all hearing days on behalf of Long Beach.

At the parties' request the matter was continued until October 17, 2023, for written closing briefs. The briefs were timely filed, the record closed, and the matter submitted on October 17, 2023.

ISSUES

A free appropriate public education is known as FAPE. An individualized education program is known as an IEP.

1. Did Long Beach deny Student a FAPE during the 2021-2022 school year by failing to address Student's fine motor deficits?

2. Did Long Beach deny Student a FAPE by failing to include a general education teacher at IEP team meetings held during the 2021-2022 school year?

3. Did Long Beach deny Student a FAPE during the 2022-2023 school year by failing to conduct a comprehensive three-year review assessment that assessed Student in:
 - a. occupational therapy;
 - b. specific learning disability; and
 - c. autism?

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4. Did Long Beach deny Student a FAPE during the 2022-2023 school year by failing to offer goals in:
 - a. safety;
 - b. self-care; and
 - c. social skills?

5. Did Long Beach deny Student a FAPE during the 2022-2023 school year by failing to offer sufficient minutes of speech and language services?

6. Did Long Beach deny Student a FAPE during the 2022-2023 school year by failing to offer social skills services?

7. Did Long Beach deny Student a FAPE from September 26, 2022, through the 2022-2023 school year by offering Student to spend 100 percent of his time outside of the regular education classroom?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, 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 Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education 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).)

Student was seven years old and in second grade at the time of hearing. Student resided within Long Beach's geographic boundaries and attended kindergarten and first grade at Bryant Elementary School at all relevant times for these issues. Parent withdrew Student from Bryant toward the end of first grade in 2023 and placed him at an online school. At all relevant times, Student was eligible for special education as a child with autism.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14) and (26), 1414(d)(1)(A); Ed. Code, §§ 56031, 56032, 56345, subd. (a), and 56363 subd. (a); 34 C.F.R. §§ 300.17, 300.34, 300.39; Cal. Code Regs., tit. 5, § 3001, subd. (p).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176 [102 S.Ct. 3034]; *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. 386 [137 S.Ct. 988] (*Endrew F.*))

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 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, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

ISSUE 1: DID LONG BEACH DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR BY FAILING TO ADDRESS STUDENT'S FINE MOTOR DEFICITS?

Student contends he had fine motor skills deficits that Long Beach did not address. He asserts his pencil grip and handwriting skills were so deficient that they impacted his ability to progress academically. Long Beach counters that the IEP team was aware Student needed improvement in his handwriting and the relevant IEPs offered appropriate goals and supports that his teachers implemented.

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 School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program might result in greater educational benefit to the child. FAPE has been offered when an IEP meets the student's needs due to disability in a manner reasonably calculated to enable the child to make progress appropriate in light of his circumstances. (*Andrew F., supra*, 580 U.S. at p. 399.) As restated by the Ninth Circuit, an IEP should be reasonably

calculated to remediate and, if appropriate, accommodate the child's disabilities to enable the child to make progress in the curriculum, taking into account the child's potential. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1194, 1200-1201.)

To evaluate the adequacy of an IEP's offer, the Ninth Circuit has endorsed the "snapshot" rule, explaining that the actions of the school cannot "be judged exclusively in hindsight [A]n IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." (*Adams v. Oregon* (1999) 195 F.3d 1141, 1149 (*Adams*), quoting *Fuhrmann v. East Hanover Board of Educ.* (3d Cir.1993) 993 F.2d 1031, 1041.) The sufficiency of any educational plan is measured at the time it was created. (*Ibid.*)

STUDENT'S HANDWRITING NEEDS

Long Beach held an IEP team meeting for Student on May 26, 2021, prior to his entry into kindergarten in the 2021-2022 school year. The IEP team noted Student could only write the first letter of his first name at that time, and a goal was offered for him to legibly write his first and last name by May 2022. By the time Student entered kindergarten, he could write his first name acceptably but not his first and last name together.

Student began the 2021-2022 school year late, following a disagreement between Parent and Long Beach over his placement. Long Beach placed Student at Whittier Elementary in a general education class co-taught by a special education teacher, but Parent wanted him placed in a special day class because it would be smaller and quieter. Parent held Student out of school at the start of the school year, believing

Whittier was an inappropriate placement. Long Beach granted Parent's preference and placed Student in Bryant Elementary in a special education class for students with mild-to-moderate disabilities. Parent did not find out about the placement offer until around September 30, 2021, and Student began attending Bryant shortly afterward.

Student's kindergarten teacher at Bryant worked with him on his IEP goals and had him practice writing every day. She noted that by November 2021 he had progressed to writing his first name without struggle, but that the letters wavered above and below a straight line. Student missed 70 of 73 days of school between November 1, 2021, and March 7, 2022, due to another dispute between Parent and school administrators. When Student returned after that absence, his teacher found that his writing ability had not progressed. However, by the end of the 2021-2022 school year, he met grade-level expectations for general education students of writing his full name and forming letters, but he was behind in writing numerals. His teacher believed Student's remaining writing delay was due to the substantial amount of school he missed and not due to any fine motor problem. She did not observe Student to switch between hands as he wrote, even though it was common for kindergarten students to do so when they became tired. Hand dominance, or right- or left-handedness, is usually established by the end of kindergarten.

Student attended Bryant for first grade in the 2022-2023 school year. Student's first grade teacher observed Student hold a pencil in a finger grip "nicely" with a good grip on it. She saw him make progress in his writing as the year progressed. She did not see that his handwriting had any impact on his ability to participate in class and make academic progress. She felt Student still had work to do on letter formation to equal the average general education first grade student, but he was very close to their level. He made a lot of progress in her class in his perseverance and could sit and write

for a longer period as the school year progressed. He had clear hand dominance and did not switch from hand to hand. She believed he would have peers at his handwriting level in a first-grade general education class.

Parent had a different view of Student's writing abilities. She believed he would do anything to get out of a writing assignment and that he became frustrated and shut down when asked to write. She asserted at hearing that he had difficulty writing because he had fine motor skill issues that made writing difficult. Parent believed Student could only make scribbles when he was in kindergarten.

Long Beach held two IEP team meetings while Student attended Bryant. The first was held on May 25 and 26, 2022. Because the meeting on May 25, 2022, only accomplished Parent's agreement to meet the next day, the meetings will be referred to collectively as the May 26, 2022 IEP team meeting. At the meeting, Parent expressed concern to the IEP team that Student wrote with both hands. In response, his kindergarten teacher, who had not seen him write with both hands in her class, agreed to monitor his writing and to consult with an occupational therapist if warranted. The May 26, 2022 IEP reported that Student was "able to [write] his first name independently and writes his last name following a model. He is able to write all letters independently or following a model." The IEP team determined no further goal was needed in letter writing, and the IEP team set a new goal in sentence writing.

There was no other evidence presented about this issue. There were no reports about whether Student could write letters, that he switched hands while writing, or any other indicators of deficits in fine motor skills impacting his writing. Long Beach held a second IEP team meeting on September 26, 2022, for the single purpose of discussing

Parent's objection to the IEP team's decision to stop providing direct speech and language services to Student. Parent did not raise any discussion of Student's fine motor abilities at that meeting.

Long Beach sent Parent a notice for an IEP team meeting for May 2023, but received no response from Parent. Due to another dispute with the school site following an event on March 3, 2023, Parent again held Student out of school because Parent believed Student was not safe at Bryant. Parent subsequently enrolled him at California Connections Academy, an online school.

Student's closing brief argued Student still holds a pencil "like a dagger" when writing. Both of his classroom teachers disagreed. His first-grade teacher specifically testified Student used a pincer or finger grip to write and had good control of his pencil. In such a dispute, neither side is automatically more credible than the other. Samples of Student's first-grade writing were presented at hearing, and the first-grade teacher testified Student's handwriting ability would not be unique in a first-grade general education classroom.

Student bears the burden of proof, but presented nothing more than Parent's lay opinion that Student had an unaddressed deficit in motor control, having observed at home that Student held a writing implement in his palm and could not work zippers or buttons. Other than a single mention in the May 2022 IEP team meeting of the progress Student made in effectively using a writing implement to form written letters, there was no further mention of issues with Student's fine motor skills or control.

TOILETING ISSUES

Parent contended at hearing that Student lacked the fine motor control to work zippers or buttons. Parent testified that Student had issues with toileting, as he could not open and close zippers or buttons on his pants before and after toileting. Eventually, Parent sent Student to school in oversized pants or sweatpants so that unzipping or unbuttoning was not a problem.

Student's teachers did not observe any such problems. Student's kindergarten teacher did not see any difficulties, and the male aide who assisted at the toilet did not report any problem to her. The kindergarten teacher said it was very common for students to have difficulties with buttons or hooks at that age, but it would be an uncommon problem in first grade. Student's first-grade teacher also received no reports from the male aide about toileting issues and did not recall Student wearing oversized pants.

Student's closing brief does not argue Student had difficulty with zippers and buttons evidencing fine motor control issues. Student contends in a different section of the brief that Student needed intervention for self-care issues, asserting that Student still cannot use utensils, pull up his pants, or use zippers or buttons. That contention was based solely upon Parent's testimony that he could not do these things. Nothing in the record corroborated Parent's testimony or showed that Long Beach was aware of any difficulty in these areas.

LONG BEACH'S RESPONSES TO STUDENT'S HANDWRITING DIFFICULTIES

Student's May 26, 2021 pre-kindergarten IEP had a writing goal for Student to improve the legibility of his writing and to write his full name independently. By the

time of the next annual IEP team meeting in May 2022, Student could write his first name independently and his last name when following a model. Student's letter legibility was still developing but age-appropriate, even in a general education context. When Parent reported a concern about Student's writing and grip at the May 26, 2022 IEP team meeting, his teacher agreed to monitor him for a problem she had not seen him display and would bring in an occupational therapist if she saw the problem. Student's teachers saw no problems with his writing from that point, finding that he made steady progress.

Parent demonstrated deep involvement with Student and attention to his needs. However, the record did not contain any support for the contention that Student's fine motor abilities were a concern at school or that Parent raised them with the IEP team. Beyond the notes in the May 26, 2022 IEP, the record contained numerous emails sent by Parent to Long Beach employees. Nothing in the record showed that Parent ever again expressed concern to Long Beach after May 2022 about Student's fine motor skills. Lacking such corroboration, Parent's testimony alone is insufficient to carry Student's burden of proof.

Long Beach developed IEPs for Student that addressed the needs known to it at the time. Student's need for support to make his handwriting legible was addressed by the May 26, 2021 IEP and implemented as extra support and attention from his kindergarten teacher. When Parent expressed concerns at the May 26, 2022 IEP team meeting, the IEP team agreed Student's teachers would monitor his writing to look for problems and bring in additional support if needed. The teachers did not see that Student had such needs and saw him make progress. There were no unmet needs in the area of fine motor skill development.

On the record presented, Long Beach responded in an objectively reasonable manner to Student's needs and Parent's concerns. The May 26, 2021 and May 26, 2022 IEPs offered sufficient intervention to address Student's fine motor skills needs during the 2021-2022 school year. Long Beach did not fail to address Student's fine motor skills needs and did not deny Student a FAPE.

ISSUE 2: DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO INCLUDE A GENERAL EDUCATION TEACHER AT IEP TEAM MEETINGS HELD DURING THE 2021-2022 SCHOOL YEAR?

Student contends Long Beach did not have a general education teacher attend the IEP team meetings on May 26, 2021, or September 10, 2021. In Student's briefing of what was Issue 9 of his complaint, an issue withdrawn at the start of hearing, he asserts that there was no general education teacher present at the May 26, 2022 IEP team meeting. Long Beach counters that there were general education teachers present at all IEP team meetings.

An IEP team must include

- one or both of the student's parents;
- at least one regular education teacher if the child is, or may be, participating in the regular education environment;
- at least one special education teacher;
- a representative of the local educational agency who is qualified to provide, or supervise the provision of, specially designed instruction

to meet the unique needs of children with disabilities and is knowledgeable about the general education curriculum;

- an individual who can interpret the instructional implications of evaluation results, who may be one of the persons described above; and
- at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, § 56341.)

Regular education and general education refer to the same thing and are used interchangeably.

A member of the IEP team may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related service if

- the parent and the school district consent to the excusal,
- the excused member submits written input to the team prior to the meeting for development of the IEP, and
- the parent's consent is given in writing. (20 U.S.C. § 1414(d)(1)(C)(ii) and (iii).)

The IDEA contemplates the possibility that a single person may play more than one role on an IEP team. (See 34 C.F.R. § 300.321(a)(5) (noting that a general education teacher, a special education teacher or provider, a district representative, or another individual with knowledge or special expertise about the child may also be an individual

who can interpret the instructional implications of evaluation results); and 34 C.F.R. § 300.321(d) (noting that the district may designate another district member of the IEP team to serve as the district representative, so long as that individual satisfies all of the criteria set forth at title 34 Code of Federal Regulations part 300.321(a)(4)). A school administrator with a general education teaching credential may also serve as the general education teacher at the IEP meeting within the meaning of the statute and regulations, if the administrator is involved in the education of students in the school. (*R.B. v. Napa Valley Unified School District* (9th Circuit 2007) 496 F.3d 932, 939, fn. 6.)

The statute of limitations for actions under the IDEA in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (j); see also 20 U.S.C. § 1415(f)(3)(C).) An action must be filed within two years from the date a party knew or had reason to know of the facts underlying the action. (Ed. Code, § 56505, subd. (j), see also 20 U.S.C. § 1415(f)(3)(C) (“knew or should have known about the alleged action that forms the basis of the complaint.”).) The law contains exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency, but otherwise the statute of limitations for due process complaints in California precludes claims that occurred more than two years prior to the date of filing the request for due process. (Ed. Code, § 56505, subd. (j); 20 U.S.C. § 1415(f)(3)(c); *M.M. v. Lafayette School District* (9th Cir. 2014) 767 F.3d 842, 309.)

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THE MAY 26, 2021 IEP TEAM MEETING

Student contends the only two participants at the May 26, 2021 IEP team meeting were Parent and a substitute special education teacher. Student asserts the meeting notes that list four attendees were falsified. Long Beach did not address this IEP team meeting in its briefing.

There are two insurmountable obstacles to Student's claim concerning the May 26, 2021 IEP team meeting. First, that meeting did not take place during the 2021-2022 school year. May 2021 is part of the 2020-2021 school year. This hearing is limited to the issues alleged in the complaint, and there has been no agreement to widen them. (20 U.S.C. § 1415(f)(3)(B).) Further, the May 26, 2021 IEP team meeting took place more than two years before the August 1, 2023 filing of the complaint. To have this claim heard, Student would have had to file an action no later than May 26, 2023. Consideration of any claim connected with the composition of the May 26, 2021 IEP team is barred by the two-year statute of limitations applicable to cases under the IDEA in California.

THE SEPTEMBER 10, 2021 IEP TEAM MEETING

Student contends the only people present at the September 10, 2021 IEP team meeting were Parent and the case manager, who was a special education teacher at Whittier Elementary. Long Beach disputes this, asserting that the case manager was a general education teacher and that a second general education teacher also attended the meeting.

The May 26, 2021 IEP placed Student at Whittier Elementary. Specifically, he was placed in the case manager's collaborative co-taught general education class, but Parent testified Long Beach did not inform Parent of the placement or that it was a collaborative co-taught class until late in the summer. Parent believed a co-taught general education placement was inappropriate for Student because of the class size and his distractibility. Parent kept Student out of school from the start of the 2021-2022 school year waiting to be offered a different placement. The September 10, 2021 IEP team meeting was held to consider Parent's request to move Student out of the co-taught general education class and into his home school, where his brother attended, for a smaller special day class for students with mild-to-moderate disabilities.

Parent testified that she did not attend the September 10, 2021 IEP team meeting, either in-person or by telephone or videoconference. In Student's closing brief, he concedes that a "legally compliant" IEP team meeting may have been held via Zoom teleconference on September 10, "2023." The reference to 2023 is clearly a typographical error in the section discussing the 2021 meeting. Student's concession is at odds with Parent's testimony. Parent signed the IEP team meeting report as a participant, but testified she did so after the meeting had been held. If Parent did not attend the meeting, Parent would have no basis of knowledge to assert that no general education teacher was present at the meeting. Student did not present the different issue that an IEP team meeting was held without Parent's presence or waiver of presence. The issue is only whether a general education teacher was present. If Parent was present, her assertion about the lack of a general education teacher cannot be given significant weight due to her earlier denial of her own attendance.

Long Beach presented both testimony and corroborating documentation regarding the composition of the IEP team on September 10, 2021. Student's case

manager was credentialed to teach both special education and general education. She testified she was present at the IEP team meeting along with her co-teacher, who was credentialed to teach general education and provided the general education instruction in the co-taught class. The co-teacher also testified she attended the IEP team meeting, although she did not specifically recall the meeting. The "reconvene" notes for that IEP team meeting recorded that a special education teacher, general education teacher, and administrator were present for the meeting with Parent, and that a "speech teacher" joined late.

The IEP document for the May 26, 2021 IEP team meeting and the September 10, 2021 "reconvene" meeting are combined in a single document, and there is one signature page for both meetings. Only the signatures of Parent and the case manager were dated, as September 10, 2021. The other attendees were noted as "attended via teleconference" in their signature blocks. A contemporaneous email attested that the IEP team handled the reconvene meeting on September 10, 2021, and relayed a question they received from Parent about how soon Student could begin attending the new placement. Although not sufficient in itself, the email corroborated the testimony of the teachers, the "reconvene" IEP team meeting notes, and the attendance signatures. A general education teacher was present at the September 10, 2021 IEP team meeting.

THE MAY 26, 2022 IEP TEAM MEETING

Student briefed this issue as part of the complaint's withdrawn Issue 9, alleging failure to include a general education teacher in IEP team meetings held in the 2022-2023 school year. Long Beach moved to strike Student's briefing on Issue 9 because Student withdrew the issue at the start of hearing. Student did not oppose the motion. However, Student's briefing of Issue 9 discussed the May 26, 2022 IEP team meeting, which was

held in the 2021-2022 school year. Accordingly, it is proper to consider Student's arguments. Long Beach is not prejudiced because it also included argument relating to the May 26, 2022 IEP team meeting in its closing brief.

Student contends that no general education teacher attended the May 26, 2022 IEP team meeting, and that Parent had questions for a general education teacher that went unasked. Parent wanted to know whether Student was "on track" with the general education curriculum and would have questioned a general education teacher to see if Student would be behind if he transferred to general education.

Long Beach presented the testimony of Deanne Miller, a kindergarten general education teacher at Bryant. Miller attended the IEP team meeting on May 26, 2022. Because Long Beach changed the IEP team meeting time to accommodate Parent's childcare needs, Miller asked to leave the meeting early. If Parent had objected, Miller would have stayed. Miller did not recall Parent having any questions for her. The IEP team meeting notes documented the attendance and early departure of the general education teacher, and Miller's title of general education teacher was stated by Miller's name on the signature page. Further, Student's kindergarten teacher recalled Miller being present at the meeting and leaving early.

Parent testified Miller was not at the May 26, 2022 IEP team meeting either in-person or by telephone or videoconference. Parent also did not recall seeing the school psychologist at the meeting, who presented a psychoeducational assessment report. Student's closing brief argued Miller was not a "regular education teacher" for Student because she had never worked with Student and did not know him. Student contends the teacher of the other kindergarten class should have attended, as she was "assigned" to Student. That teacher also did not know and had not met Student.

Further, the IEP team meeting notes stated Miller left the meeting after 31 minutes, missing over an hour of the meeting. All these things, Student argues, invalidate Miller's participation in the IEP team meeting.

If a student is participating in general education, one of the student's general education teachers must attend the IEP. There is no requirement that the general education teacher at an IEP for a student who does not participate in general education be anything other than knowledgeable about the general education curriculum. Miller did not need to be "assigned" to Student to fulfill the role of general education teacher.

If a student has not been participating in the general education environment and there are no plans for the student to do so, a representative of the local educational agency knowledgeable about the general education curriculum fulfills the role of resource for questions about general education. Student did not participate in the general education environment. He was being included with general education students at recess, lunch, and for assemblies, but he was not participating in the general education classes. There was no general education teacher who had instructed Student in kindergarten. There was no plan to put Student in general education classes because he was not yet ready to do so and Parent had strongly resisted having him in general education classes, such as the collaborative co-taught general education kindergarten class at Whittier, because of their size and his distractibility. Even after Miller left the meeting, any questions from Parent about general education could have been answered by Student's kindergarten teacher or school counselor, who was the administrative designee, as qualified people knowledgeable about the general education curriculum.

Student did not raise a claim that Miller's early departure violated the procedural requirements for excusing a team member, a different issue from whether a required

team member was in attendance. Student's claim that Miller was not acceptable as a general education teacher because she was not Student's general education teacher fails because Student had no general education teachers. The parties have not addressed the issue whether a general education teacher needed to be in attendance at all at the IEP team meetings, given that Student was not participating academically in the general education environment and it was not contemplated that he would be. The evidence showed that a general education teacher did attend to the extent required by law.

Student's assertion that a general education teacher was not present at the May 21, 2021 IEP team meeting is barred by the applicable statute of limitations. A general education teacher was present at both of Student's IEPs in the 2021-2022 school year, on September 10, 2021, and May 26, 2022. Long Beach did not deny Student a FAPE by failing to have a general education teacher attend his IEP team meetings in the 2021-2022 school year.

ISSUE 3: DID LONG BEACH DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO CONDUCT A COMPREHENSIVE THREE-YEAR REVIEW ASSESSMENT THAT ASSESSED STUDENT IN OCCUPATIONAL THERAPY, SPECIFIC LEARNING DISABILITY, OR AUTISM?

Student contends assessments needed to be done because he displayed fine motor skills issues, his academic performance did not match his potential, and Long Beach needed to understand the effect his autism had on his ability to benefit from his education. Long Beach argues it had conducted a three-year reevaluation of Student with comprehensive assessments for the May 26, 2022 IEP team meeting and did not

have to conduct another reevaluation until 2025. Further, Long Beach argues there was no reason to assess Student's need for occupational therapy services or possible specific learning disability, and it did assess Student's autism.

Assessments are required to determine eligibility for special education, and what type, frequency, and duration of specialized instruction and related services are required. In evaluating a child for special education eligibility and prior to the development of an IEP, a district must assess him in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).)

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

- health and development,
- vision,
- hearing,
- motor abilities,
- language function,
- general intelligence,
- academic performance,
- communicative status,
- self-help,
- orientation and mobility skills,

- career and vocational abilities and interests, and
- social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).)

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.) The suspicion that a student may have an impairment that is affecting the student's educational performance, and requires special education, is sufficient to trigger a need to assess. (Id. at p. 1032 (citing Ed. Code, § 56320).) A disability is "suspected," and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified School District* (9th Cir. 2016) 822 F.3d 1105, 1119-21.) That notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. The determination of what assessments are required is made based on information known at the time. (See *Vasherresse v. Laguna Salada Union School Dist.* (N.D.Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [failure to perform a speech and language testing not a violation where the concern prompting assessment was a reading skills deficit].)

OCCUPATIONAL THERAPY NEEDS

Student asserts Long Beach should have conducted an occupational therapy assessment because Student had difficulty in kindergarten holding a pencil correctly, which difficulty persisted through his first-grade year. Although Student presented evidence that Parent saw Student having difficulty working zippers and buttons, Student

did not assert that difficulty as a reason to suspect a need for occupational therapy. In addition, Student contends his kindergarten teacher did not follow through on the commitment she made at the IEP team meeting to monitor his grip. Long Beach counters that it had no reason to suspect Student needed occupational therapy, and therefore there was no reason to assess him.

Occupational therapy is used to

- improve, develop, or restore functions impaired or lost through illness, injury, or deprivation,
- improve ability to perform tasks for independent functioning if functions are impaired or lost, and
- prevent, through early intervention, initial or further impairment or loss of function. (34 C.F.R. § 300.34(c)(6).)

Parent saw that Student was unwilling to do writing homework and he would write with both hands. Parent raised this issue at the May 26, 2022 IEP team meeting, and Student's kindergarten teacher said she would monitor Student's grip to see if Student was writing with both hands. Although it was common for kindergarten students to switch hands while writing, Student's kindergarten teacher had not seen him do this. She said she would refer Student for evaluation by an occupational therapist if she saw a problem. Student's first grade teacher did not see Student having any problem with his pencil grip or changing hands when he wrote. Student's first grade class was occasionally monitored by an occupational therapist to see if any of the students might have issues that possibly needed therapy. The occupational therapist did not identify Student as needing support. He did not have difficulty doing or completing classwork due to fine motor issues.

Other than the single mention of Student's hand-switching when writing, nothing in the record shows that anyone reported a problem with Student's fine motor skills to Long Beach. Long Beach reacted to Parent's report of the problem by agreeing to monitor Student's handwriting, which had not been noticed as a problem by any school personnel. Parent contends Student used a grossly inappropriate grip when writing, but teachers observing him in school found he used a proper finger grip, did not switch hands when writing, and completed schoolwork without any adverse effect from any fine motor issues. The school psychologist observed Student as part of the May 26, 2022 psychoeducational assessment and saw that he colored pictures with age-appropriate skill and manipulated a small water toy.

A teacher's report is entitled to no greater deference than a parent's report, but here, Parent's report of an issue is based upon in-home observation, was shared with the school only once, and is uncorroborated by any source, including any follow-up whatsoever by Parent on this issue. In addition, Parent's description of Student's handwriting issue was contradicted by Student's kindergarten and first grade teachers as well as the school psychologist. No other testimony or documentation supported the contention that Student's handwriting raised or should have raised a concern requiring an assessment or that there were other deficiencies related to occupational therapy. To the extent that a problem was reported to Long Beach, an appropriate and proportionate response was formulated. Student failed to meet the burden of persuasion that Long Beach should have assessed his need for occupational therapy services.

SPECIFIC LEARNING DISABILITY

Student argues Long Beach should have assessed him for a specific learning disability because, despite having average cognition, he performed below grade-level

norms academically. Long Beach counters that Student showed no signs of a specific learning disability, in that there was no severe discrepancy between his cognitive skills and his academic achievement in either classroom performance or standardized testing.

A local educational agency must assess a special education student in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f.) A student may be eligible for special education on the basis of a specific learning disability if the student has

“a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may have manifested itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations...” (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10); *see* 20 U.S.C. §1401(30); Ed. Code, § 56337, subd. (a).)

One method is to evaluate whether a student has a “pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability.” (Cal. Code Regs., tit. 5, § 3030 (b)(10)(C)(2)(ii).) Alternatively, a district may consider whether a student has a severe discrepancy between intellectual ability and achievement in

- oral expression,
- listening comprehension,
- written expression,
- basic reading skill,

- reading comprehension,
- mathematical calculation, or
- mathematical reasoning. (Cal. Code Regs., tit. 5, § 3030 (b)(10)(B); see 20 U.S.C. § 1414(b)(6)(A).)

A district may also establish eligibility if the student does not achieve adequately to meet grade level standards in oral expression; listening comprehension; written expression; reading; and mathematics; and fails to make sufficient progress when provided scientific, research-based intervention. (Cal. Code Regs., tit. 5, § 3030 (b)(10)(C)(1) & (2)(i); see 20 U.S.C. § 1414(b)(6)(B).)

Specific learning disability eligibility does not include a learning problem “that is primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage.” (Ed. Code, § 56337, subd. (a).) In addition, a discrepancy “shall not be primarily the result of limited school experience or poor school attendance.” (Cal. Code Regs., tit. 5, § 3030(b)(10)(B)(4).)

As part of the May 26, 2022 psychoeducational assessment, Long Beach’s school psychologist administered to Student portions of the Wechsler Individual Achievement Test weeks after Student returned to school after missing 70 of 73 days of school between November 1, 2021, and March 7, 2022. Student, a kindergartener, tested at an early kindergarten level in most domains, with a lower score in alphabet writing fluency. No overall intelligence quotient was scored or estimated in the report.

Student was given standardized i-Ready testing in reading and mathematics in June 2022 at the end of his kindergarten year. He tested as "approaching grade K" in all areas in both subjects. That score was the second of four levels, higher than "needs improvement" and beneath "at grade level" and "above grade level." In January 2023, Student's i-Ready scores as a first grader were at the "needs improvement" and "approaching grade 1" levels, with lower scores in reading skills, but Student's scores improved between tests in September and January. Student stopped attending school at Bryant Elementary in March 2023.

Student argues his performance below grade norms was a reason to suspect he had a specific learning disability because he has average intelligence. Student's closing brief noted the school psychologist testified that "despite" Student's extensive absences from school he could still have a specific learning disability. Absenteeism, Student notes, is not included in the listing of factors under title 34 Code of Federal Regulations part 300.8(10)(ii) that would prevent an IEP team from finding that a student had a specific learning disability, such as intellectual disability or cultural factors. On that basis, Student argues Long Beach was derelict for not assessing him for a specific learning disability.

Long Beach counters that no one, from Student's teachers to the school psychologist who assessed him, found any reason to suspect that he had a specific learning disability. Student performed within the range of grade level expectations according to his teachers. Based on the instruments the school psychologist administered, he estimated Student's cognitive ability was "within the low average to average range." He did not find Student's achievement levels in either classwork or on standardized testing to evidence a severe discrepancy between ability and achievement.

Long Beach stresses two important considerations regarding the assessment's ratings of Student's achievement. Student did not consistently focus on the testing, with the school psychologist concluding that Student was sometimes just guessing at answers. Secondly, the school psychologist said Student's absences had to be considered in evaluating Student. Given the amount of school Student missed, the school psychologist believed he should "absolutely not" consider the possibility of a specific learning disability. He believed it would have been "borderline reckless" to consider Student as possibly having a specific learning disability because of his limited exposure to the academic curriculum.

Student did not present evidence of his intellectual capacity, other than that people generally regarded him as having average intelligence. Student's academic achievement was not significantly at odds with his estimated cognitive ability, either through kindergarten or into first grade. Further, chronic absenteeism is recognized as a disqualifying factor for specific learning disability by California law. A student with low-average-to-average cognitive ability displaying low average levels of academic achievement while missing substantial amounts of class time does not raise a suspicion of a specific learning disability. Student failed to meet the burden of persuasion that Long Beach should have assessed him for a specific learning disability.

AUTISM

Student asserts Long Beach failed to conduct an assessment to consider whether Student continued to be eligible for special education as a student with autism. He contends that the assessment done by the school psychologist did not consider whether Student had regressed or progressed on the elements that confer eligibility as a student

with autism. Long Beach counters that the school psychologist's psychoeducational assessment of Student included evaluation of Student's degree of autism and its impact on his academic progress.

A local educational agency must assess a special education student in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).) A formal assessment is required in all areas of suspected disability before a decision may be reached on whether a student needs special education services. (*Timothy O., supra*, 822 F.3d at p. 1121 (eligibility denial may not be based on informal observation by school staff when school is on notice of the possibility of autism: "A school district cannot disregard a non-frivolous suspicion of which it becomes aware simply because of the subjective views of its staff.") A psychoeducational assessment looks at a student's cognitive, academic, and social-emotional functioning.

Harbor Regional Center clinically diagnosed Student with autism in 2019. An IEP team for Student met in 2019 and found, following Long Beach's own assessments, that Student qualified for special education services. As part of the May 26, 2022 IEP team meeting, Long Beach's school psychologist prepared a psychoeducational assessment report. As part of the assessment, the school psychologist reviewed

- Student's records,
- took input from Parent and teachers,
- interviewed and observed Student,
- tested Student with portions of the Weschler Individual Achievement Test,
- conducted the Child and Adolescent Memory profile test,

- distributed the questionnaire for the Behavior Assessment System for Children to Parent, and
- gave the Adaptive Behavior Assessment System, third edition, survey to Parent to evaluate Student's autistic characteristics.

The school psychologist examined and considered Student's social skills and peer interactions, his communication abilities, his affect, and his ability to engage with others. The school psychologist noted in his report Student's repetitive behaviors and finger movements, which can be indicative of autism. His report concluded that Student, who was a kindergartener at the time of assessment, continued to be eligible for special education as a student with autism, but noted that although he had made some progress since his diagnosis, greater progress was hindered by the COVID-19 pandemic and Student's "considerable amount of absences at times during this school year." Student missed 70 of 73 days of school from November 2021 to March 2022. The IEP team, including Parent, agreed with the school psychologist's conclusion regarding Student's autism eligibility.

Student contends the May 26, 2022 psychoeducational assessment failed to consider whether he continued to be eligible as a child with autism. He asserts that the school psychologist relied too heavily on the Harbor Regional Center's autism diagnosis and did not include information on whether Student had regressed or progressed on the elements which make up eligibility for autism.

Student's arguments are not well-taken. As noted by Long Beach, the assessment considered the question of eligibility on the basis of autism and examined Student's behaviors, interactions, and abilities in reaching its conclusion. The report found that Student had made progress, but ultimately recommended keeping Student in his

current educational setting. The report did not simply defer to the findings of the Harbor Regional Center or to the 2019 IEP team's determination. The report noted that Student had progressed since 2019 and had the potential to have made much greater progress under better circumstances. The May 26, 2022 psychoeducational assessment independently considered Student's degree of autism and reported on his strengths, weaknesses, and progress.

Student further contends in briefing that the May 26, 2022 psychoeducational assessment denied him FAPE because it failed to obtain responses on normed surveys from his teachers and failed to observe him in general education settings. Those charges may support a claim that the psychoeducational assessment was not appropriately administered, but do not support an assertion that no assessment for autism was done. Student did not meet his burden of persuasion that Long Beach failed to assess for autism.

ISSUE 4: DID LONG BEACH DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO OFFER GOALS IN SAFETY, SELF-CARE, AND SOCIAL SKILLS?

ISSUE 6: DID LONG BEACH DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO OFFER SOCIAL SKILLS SERVICES?

Student contends Long Beach failed to address his deficits in safety, self-care, and social skills because the May 26, 2022 IEP did not offer him goals in those areas or services in social skills. Long Beach counters that those were not areas of educational need.

An IEP must include a statement of measurable annual goals, both academic and functional, designed to meet the student's educational needs that result from disability. (34 C.F.R. § 300.320(a)(2).) An IEP developed for a child with special needs must contain measurable annual goals, including benchmarks or short-term objectives, related to the child's needs. (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a).) The purpose of goals and measurable objectives is to permit the IEP team and parents to determine whether the pupil is making progress in an area of need. (34 C.F.R. § 300.347(a)(2), (7); Ed. Code, § 56345.)

An IEP is not required to contain every goal from which a student might benefit. (*Capistrano Unified School District v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1133, cert. denied *sub nom. S.W. v. Capistrano Unified School District* (2022) ___ U.S. ___ [143 S.Ct. 98, 214 L.Ed.2d 20].) Courts outside of the Ninth Circuit also have found it "inconsistent with the longstanding interpretation of the IDEA to find that providing a FAPE requires designing specific monitoring goals for every single recognized need of a disabled student." (*Coleman v. Pottstown School Dist.* (E.D.Pa. 2013) 983 F.Supp.2d 543, 572-573 (aff'd in relevant part, *Coleman v. Pottstown School Dist.* (3d Cir. 2014) 581 Fed.Appx. 141, 147-148).)

SAFETY

Student supports his argument that safety goals were required with reference to scattered events. According to Parent, Student once walked away from the pick-up area when his other Parent was there to pick him up, and Student frequently came home with unexplained bruises and cuts, which Parent attributed to playing unsafely in the play yard. The May 26, 2022 psychoeducational assessment report included Parent's

depiction of Student on surveys and questionnaires as having extremely low safety awareness. Further, his closing briefing notes Student had a different dismissal procedure in first grade from other students.

Long Beach notes that Student did not display a lack of safety awareness at school. Neither his kindergarten teacher nor first grade teacher observed him to leave areas without permission. His first-grade teacher considered him to be a rule follower and felt he set a good example for others. His kindergarten teacher did not recall him getting hurt unusually often in the play yard, although he was exceptionally active, and his first-grade teacher, who frequently watched him at play, did not recall him doing anything dangerous. No safety issues were displayed at school.

Without specifying what goals would appropriately address the purported safety issues, Student asserts Long Beach's failure to respond to these events and circumstances with goals denied him FAPE. Long Beach notes that Student did not demonstrate a need for support in safety skills. Student's dismissal procedure was arranged at Parent's request so that he could be picked up early, and Student faithfully followed the procedure with little supervision.

The information Parent reported to the school psychologist as part of Parent's assessment input was Parent's subjective perspective. That information, submitted as rating scales and impressions, did not report specific needs. Parent cited nothing in her testimony that showed Long Beach was given notice of specific dangerous acts or behavior by Student that needed correction. An IEP team's decisions about what needs exist and what goals are written are considered in light of the information available to it. (*Adams, supra*, 195 F.3d at p. 1149 (a "snapshot" of the IEP team's knowledge at a point

in time).) Nothing in the record established that Long Beach had knowledge of any safety issues and should have created goals for Student regarding safety. Long Beach did not deny Student a FAPE by failing to draft goals in safety skills.

SELF-CARE

Student contends he lacked self-care skills because he could not use eating utensils, pull up his pants, or button and unbutton his pants. Parent saw these issues in the home. Accordingly, Student argues Long Beach should have developed IEP goals in self-care skills. Long Beach responds these issues were not seen at school and they were not reported at any IEP team meeting.

Goals are written based upon the information an IEP team has about a student's disability-related academic and functional needs. Student failed to show that Student had self-care needs in school or that Long Beach suspected Student had deficits in self-care needs. Further, Parent never reported Student had self-care needs to Student's IEP team. Therefore, Long Beach had no duty to write any self-care goals. (*Adams, supra*, 195 F.3d at p. 1149.) Long Beach did not deny Student a FAPE by failing to draft goals in self-care skills.

SOCIAL SKILLS

Student contends autism inevitably brings with it a deficit in social interaction, and that deficit requires social skills goals and services. Long Beach argues social skills were an area of strength for Student, and that all evidence to the contrary comes only from Parent's reports about his behavior at home.

Autism is “a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child’s educational performance.” (34 C.F.R. § 300.8; Cal. Code Regs, tit. 5, § 3030(b)(1).) Harbor Regional Center diagnosed Student with autism in 2019 and Long Beach confirmed his eligibility for special education and related services on that basis following assessments in 2019 and 2022. Despite his autism, Student demonstrated a bright and pleasant personality at school. His kindergarten teacher saw him as a leader, even in his interactions with peers in general education, and believed his social skills were age-appropriate.

Student entered the May 26, 2022 IEP team meeting with two social skills goals, in sharing and turn-taking. At the May 26, 2022 IEP team meeting, both social skills goals were reported as fully achieved, and no new social skill goals were proposed. Student’s social skills abilities were described as age-appropriate, and the goal progress reports documented that he communicated clearly, took turns, played with friends, shared, and advocated for himself when he felt he was treated unfairly.

During the May 26, 2022 IEP team meeting, Parent expressed concern about Student’s socialization, aversion to making eye contact, and social skills. The psychoeducational and speech and language assessments presented at the IEP team meeting both included reports that Student had social skills deficits. The speech assessment reported Student had significant pragmatic language deficits, based upon Parent’s reporting on a checklist. Likewise, the psychoeducational assessment informed the IEP team that Student had highly problematic social skills as compared to same-age peers, also according to Parent’s reporting.

Student's first grade teacher saw him as a happy child who was a classroom leader and very social and kind. She talked with him every morning and saw him as having the same social skills as general education students of his age. Student spoke up in class and had many friends.

Student's closing brief noted Parent's reports of pragmatic language difficulty and problematic social skills and that Parent did not observe Student interacting with general education peers when she observed him in school and out of school. Student argues that because he had autism, which generally includes social deficits, the failure to include social skills goals and services in the May 26, 2022 IEP denied him FAPE in the 2022-2023 school year. He asserts he should have had specialized academic instruction in social skills with general education peers and services to improve his social skills.

Student offers no specifics as to what his deficits were and what, other than generically described specialized instruction and services, needed to be done to help him overcome those deficits. Student did not carry his burden to prove he had deficits, specifically what those deficits were, and what sort of services would have helped him overcome them.

Goals are written so the IEP team and, particularly, parents can tell if the services provided are helping a student to make progress in an area of need. Rather than present evidence of a concrete need and provide suggestions as to how progress can be monitored, Student relied on Parent's reports and a general belief that all people with autism must need some level of social skills support. Autism exists on a spectrum, both in terms of impact on functioning and upon the areas it affects. By the evidence presented, social skills were an area of strength for Student. Student failed to prove autism adversely impacted his academic performance, which includes socialization and

peer relationships. Student may in fact have had some social difficulties or areas needing improvement, but none existed that impeded his ability to benefit from his education. Long Beach did not deny Student FAPE by failing to offer him goals and services in social skills.

ISSUE 5: DID LONG BEACH DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL BY FAILING TO OFFER SUFFICIENT MINUTES OF SPEECH AND LANGUAGE SERVICES?

Student contends Long Beach reduced his speech services without proper cause at the May 26, 2022 IEP team meeting and left implementation of his speech goal in the hands of an inexperienced classroom teacher. Long Beach counters that Student had no need for speech and language services.

Student's initial IEP in 2019 found him eligible for special education services due to a speech and language impairment as well as autism. No new speech assessment was prepared for the May 26, 2021 IEP team meeting, and his eligibility for speech services was not reevaluated. At the May 26, 2021 IEP team meeting, the team determined Student could answer "where" questions with 70 percent accuracy including the spatial concepts between, next to, and above using at least three words when provided with pictures and objects. He also understood routine directions and simple what, who, and where questions. He used one or two-word utterances at home and generated three or four-word statements with moderate prompting and occasionally independently. The IEP team set goals for Student to respond to what-is, what-doing, who, and where questions with three to four words 70 percent of the time with no more

than one prompt, and to produce four or five-word utterances during structured activities involving descriptions while using adjectives with no more than one prompt. The May 26, 2021 IEP offered Student seven 20-minute sessions of direct speech and language service per month.

The next annual IEP team meeting on May 26, 2022, reconsidered Student's need for direct speech services. Long Beach's speech pathologist reassessed Student in preparation for the meeting. The speech pathologist

- reviewed Student's records,
- took input from Parent and Student's teacher,
- examined Student's oral musculature and structure,
- administered the Clinical Evaluation of Language Fundamentals, fifth edition, and
- observed Student in the playground, classroom, and library.

She saw no articulation problems and no difficulty using language with teachers and peers. The standardized testing revealed Student's language skills ranged from the bottom limit of low average in sentence formation to average ability in sentence comprehension. The speech pathologist's assessment report stated Student's intelligibility was good, although at times his voice was too quiet for listener understanding. His ability to generate complex sentences was good for his age, and his pragmatics and social language skills were developing well. The speech pathologist believed Student no longer qualified for speech and language services as a student with a speech and language impairment.

After receiving the speech pathologist's assessment report, the Long Beach members of the IEP team agreed to eliminate Student's direct speech services and replace them with three 15-minute sessions per school year of consultative service to Student's teacher. The IEP team determined Student had achieved 70 to 80 percent of his prior speech goals. Student's pragmatics and social language were appropriate, his intelligibility in connected sentences was also good, and he was doing well in the classroom setting. They reported Parent's expressed concerns about

- Student's use of social language,
- taking turns in conversation,
- participating in groups,
- asking for help,
- making eye contact, and
- articulation.

Parent expressed concern that Student would regress and noted he had missed a lot of school that year. The team noted that articulation had never been an area of concern and Student's kindergarten teacher considered him to have good social skills and adequate communication ability, although sometimes his voice would be too soft. Parent objected strenuously to the reduction in speech services and requested that Student retain his direct speech services. Long Beach did not change its offer of FAPE.

In response to Parent's continued vigorous advocacy for more speech service after the May 26, 2022 IEP team meeting, the team convened an amendment IEP team meeting on September 26, 2022, specifically to address Parent's concerns about speech. Again, Long Beach declined to offer Student direct speech service, but did agree to add a speech goal in intelligibility and pragmatics. The goal was to maintain Student's level

of speech intelligibility at 90 percent and to participate and take turns 80 percent of the time in group discussions, conversations, and games. Student's first grade teacher, who was present at the meeting, was designated to oversee Student's progress toward the goal.

Student argues that the elimination of direct speech services deprived him of the services he needed to make academic progress and benefit from his education. He argues that the speech assessment should have found him eligible for services because he scored below the seventh percentile in the formulated sentences index of the Clinical Evaluation of Language Fundamentals. Student's citation to the record does not support his assertion. Student had a scaled score of six in formulated sentences, which placed him in the ninth percentile, at the low end of low average ability. Scoring below the seventh percentile would have put him 1.5 standard deviations below the mean, which is usually the threshold for special education services. (See Cal. Code Regs., tit. 5, § 3030(b)(11)(D).) Student was above that level and thus did not qualify as impaired.

Student contends the speech and language assessment found he was "doing well in the context of his classroom setting," and did not compare his language abilities to general education peers or observe him interacting with general education students. The Clinical Evaluation of Language Fundamentals is normed on neurotypical students, so Student's use of language was compared to general education peers. Student cited no authority requiring an assessment of a special education student's language skills to include an observation of interaction with a general education student.

Student contends the speech pathologist improperly delegated monitoring Student's progress on his 2022-2023 speech goal to his first-grade teacher, a novice entering her second year teaching special education. He asserts she would have been

unable to remediate Student's deficits because she was not trained in speech and language pathology. Student misrepresents the purpose of creating goals. Goals are a means of measuring progress and thereby assessing the progress of a student's abilities. Student's first grade teacher did not need to be a licensed speech pathologist to monitor Student's level of speech intelligibility and his ability to participate and take turns in group activities. Such monitoring is appropriately assigned to a credentialed teacher. The sole problem with Student's speech recognized by Student's teacher and assessor was that he sometimes spoke quietly, which was not an articulation or pragmatics issue and which could be remediated by reminding him to talk louder.

Student lastly asserts that, because Long Beach granted Student an independent educational evaluation in speech and language in response to Parent's objections to the May 26, 2022 speech assessment and Long Beach's proposal to eliminate direct speech services, it "effectively agreed" with Student that the assessment was inappropriate. Consequently, Student argues, the removal of his direct services was based upon an inappropriate assessment and thus caused a deprivation of FAPE. Student's argument is not persuasive. A school's decision to grant a request for an independent evaluation does not establish or concede anything about the contested evaluation. Student's complaint did not allege the speech assessment was inappropriate. Therefore, this Decision will not analyze whether the assessment was appropriate or entertain Student's argument that the alleged inappropriate assessment led to Long Beach's decision to end his direct speech services and thereby denied him FAPE.

Student offered no evidence that as of May 26, 2022 he had speech and language deficits other than Parent's reporting. While there is no reason to disbelieve Parent's observations of Student's language difficulties in the home setting and occasional

observations at school, the preponderance of the evidence included contrary viewpoints held by educational professionals at the school, including by a licensed speech and language pathologist.

Weighing the evidence, including both the number of sources and degree of expertise of those sources, Student did not carry his burden of persuasion that Long Beach denied him FAPE by failing to offer sufficient minutes of speech and language services.

ISSUE 7: DID LONG BEACH DENY STUDENT A FAPE FROM SEPTEMBER 26, 2022, THROUGH THE 2022-2023 SCHOOL YEAR BY OFFERING STUDENT TO SPEND 100 PERCENT OF HIS TIME OUTSIDE THE GENERAL EDUCATION CLASSROOM?

Student argues Long Beach denied him a FAPE because the amendment IEP developed on September 26, 2022, offered him a placement that would put him outside of the general education setting 100 percent of the time. Student asserts this violated his right to be educated in the least restrictive environment. Long Beach responds that the page describing Student's placement as 100 percent outside of the general education environment was a clerical error, and Student was maintained at the same level of participation in the general education environment that Long Beach previously offered in the May 26, 2022 annual IEP and continuously implemented thereafter.

Recognizing that including special education students with their general education peers benefits both groups, the IDEA requires students with disabilities be educated with general education students to the maximum extent appropriate. (34 C.F.R. § 300.114(a)(2).) This is referred to as the least restrictive environment.

Student failed to present any evidence that his access to the general education environment changed in any way following the September 26, 2022 IEP team meeting. Long Beach presented compelling testimony that the error happened because the note-taker for the IEP team meeting, operating the computer program for the second time, mistakenly failed to mark a field in the electronic IEP program, and consequently, it defaulted to reporting Student would be outside the general education setting 100 percent of the time.

Student contends this explanation was not credible, as otherwise that error would be seen much more often. Student's speculation is not well-founded and does not explain why that error should be more common. Additionally, Student does not reconcile the argument that this was an intentional change with the contrasting information on the same page stating Student would participate in general education for lunch, recess, passing periods, and school day activities, or that he would not participate in the general education setting during those times when he was "receiving instruction in a setting that provides small group, individualized instruction to best meet his needs."

It is not persuasive to argue that Long Beach intended to change Student's participation in general education by making a single change in a checkbox on one page that conflicted with the text elsewhere on that page but never implemented that placement change. Student did not show that the erroneous notation that he would

be 100 percent outside of the general education environment affected his services or education. Student did not raise the different issues that he was not educated in the least restrictive environment or that Long Beach's error made its offer of FAPE unclear. Instead, he asserts Long Beach offered him an educational placement 100 percent of the time outside of the general education environment. The facts do not support that interpretation.

Long Beach did not deny Student a FAPE by offering him a placement 100 percent of the time outside of the general education environment in the offer made at the September 26, 2022 IEP team meeting.

CONCLUSIONS AND PREVAILING PARTY

Pursuant to 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. Long Beach prevailed on the issues heard and decided.

ISSUE 1:

Long Beach did not deny Student a FAPE during the 2021-2022 school year by failing to address Student's fine motor deficits.

Long Beach prevailed on Issue 1.

ISSUE 2:

Long Beach did not deny Student a FAPE by failing to include a general education teacher at IEP team meetings held during the 2021-2022 school year.

Long Beach prevailed on Issue 2.

ISSUE 3:

Long Beach did not deny Student a FAPE during the 2022-2023 school year by failing to conduct a comprehensive three-year review assessment that assessed Student in occupational therapy, specific learning disability, or autism.

Long Beach prevailed on Issue 3.

ISSUE 4:

Long Beach did not deny Student a FAPE during the 2022-2023 school year by failing to offer goals in safety, self-care, or social skills.

Long Beach prevailed on Issue 4.

ISSUE 5:

Long Beach did not deny Student a FAPE during the 2022-2023 school year by failing to offer sufficient minutes of speech and language services.

Long Beach prevailed on Issue 5.

ISSUE 6:

Long Beach did not deny Student a FAPE during the 2022-2023 school year by failing to offer social skills services.

Long Beach prevailed on Issue 6.

ISSUE 7:

Long Beach did not deny Student a FAPE from September 26, 2022, through the 2022-2023 school year by offering Student to spend 100 percent of his time outside of the general education classroom.

Long Beach prevailed on Issue 7.

ORDER

All Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Chris Butchko

Administrative Law Judge

Office of Administrative Hearings