BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021030159

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

DECISION

July 14, 2021

On March 1, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming San Diego Unified School District. On April 14, 2021, OAH granted San Diego's request for a continuance. Administrative Law Judge Chris Butchko heard this matter by videoconference on May 18, 19, 20, 24, and 25, 2021.

Wendy Dumlao, Attorney at Law, represented Student. Student's parents attended all hearing days on Student's behalf. Amy Langerman, Parents' Educational Consultant, attended all days of hearing in support of Parents. Sarah Sutherland,

Attorney at Law, and Daniel Lowe, Attorney at Law, represented San Diego. Jennifer Parks-Orozco, San Diego's Director of Due Process, attended all hearing days on San Diego's behalf.

At the parties' request, OAH continued the matter to June 23, 2021, for written closing briefs. Following receipt of the briefs, OAH closed the record and took the matter under submission on June 23, 2021.

ISSUES

1. Did San Diego deny Student a free appropriate public education, known as FAPE, by materially impeding meaningful parental participation by preventing meaningful discussion of Student's educational plan at the individualized education program, known as an IEP, team meetings held on January 29, February 8, and February 22, 2021?
2. Has San Diego denied Student a FAPE since March 10, 2021, by failing to implement "stay put" for Student's March 9, 2020 IEP through failing to offer or contract with non-public agencies to provide services, including residential services?

On May 17, 2021, Student filed a request to correct Issue 2 as set out in the May 11, 2021, Prehearing Conference Order. Student contended that the ALJ's restatement of the issue improperly limited the scope of the issue. Student acknowledged that the ultimate issue was the allegation that San Diego had failed to implement stay put services for Student's IEP, but sought to add language specifying that the violation of Student's right to a FAPE was caused by San Diego's "failing to identify and offer stay put services and failing to offer and contract with any non-public

agencies" to provide residential and other services "resulting in a substantial failure to implement students Student's [sic] March 9, 2020 'stay put' IEP." The ALJ discussed the request with the parties at hearing.

Student further revised his proposed statement of this issue in his closing brief, dropping his proposed language referring to offering and contracting services with non-public agencies, and substituting the phrase "failing to identify and substantially implement Student's Stay Put March 9, 2020, IEP." Although Student asserts that this rewording is a necessary change to import a claim of failure to provide prior written notice to Parents, such language was not previously proposed by Student either in his complaint or in his prehearing conference statement, and is not properly presented here.

The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist*. (9th Cir. 2010) 626 F.3d 431, 442-443.) However, a party is entitled to frame the issues they wish to present and should not be put in the position of needing to contradict the presiding official and trier of fact. (*M.C. v. Antelope Valley Union High School District* (9th Cir. 2017) 858 F.3d 1189, 1196 fn. 2.) (*M.C.*) Although Student's proposed change is not adopted, it does not contradict the statement of issue in the Prehearing Conference Order.

As Student noted, the second issue seeks to determine the ultimate issue of whether San Diego failed to provide Student a FAPE during the stay put period by failing to meet Student's needs, including his need for residential services. Adding language regarding contracting with third parties or a substantial failure to implement both narrows and distracts from the issue of provision of FAPE. The issues will remain as presented in the Prehearing Conference Order.

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.) Unless otherwise stated, all references to the Code of Federal Regulations are to the 2006 version.

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).)

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 free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see

20 U.S.C. § 1415(i)(2)(C)(iii).) Student requested the hearing and therefore bears the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 22 years old and had aged out of special education services at the time of hearing. Student resided within San Diego Unified School District's geographic boundaries at all relevant times. Student was eligible for special education services due to autism. Student is an adult under a conservatorship held by Parents.

ISSUE 1: DID SAN DIEGO IMPEDE MEANINGFUL PARENTAL PARTICIPATION IN THE DISCUSSION OF STUDENT'S EDUCATIONAL PLAN?

Student contends that Parents were prevented from participating in the decision-making process regarding what would be Student's placement and services following his discharge from the residential treatment center he was attending. Student contends that San Diego staff members of the IEP team failed and refused to discuss with Parents the terms of the FAPE offers presented at the IEP team meetings held on January 29, February 8, and February 22, 2021.

San Diego counters that Parents refused to engage in any discussion with San Diego staff about or agree to any services after Parents were notified that Student was going to be released early from the residential treatment center he attended. Parents, San Diego asserts, predetermined that they would only consider their plan to simulate a residential treatment center on their property. Rather than having been denied participation, San Diego notes that Parents' counsel and their Educational Consultant spoke for long stretches without interruption. San Diego points out that it

held IEP team meetings upon Parents' request and convened four meetings between January 29 and March 8, 2021, spanning seven hours of meeting time. San Diego states that it duly considered and rejected Parents' preferred placement in Student's private residence.

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 are to work collaboratively to develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031,56032, 56341, 56345, subd. (a), 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, 300.501.) The main purposes of the IDEA are: (1) to ensure that 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 employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

In general, a child eligible for special education must be provided access to specialized instruction and related services individually designed to provide educational benefit through an IEP reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].) The Ninth Circuit further refined the standard, stating that that an IEP should be reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so as to enable the child to make progress in the curriculum, taking into account the child's potential. (*M.C.*, *supra*, 858 F.3d at 1201.)

Procedural violations of the IDEA do not automatically require a finding of a denial of FAPE. A procedural violation does not constitute a denial of FAPE unless the procedural inadequacy (a) impeded the child's right to a FAPE; (b) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of FAPE; or (c) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(i) & (ii); Ed. Code, § 56505, subd. (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.) (*Target Range*.)

One of the procedural requirements of IDEA is that the IEP team must include a parent (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.344(a)(1); Cal. Ed. Code, § 56341, subd. (b)(1)), and the IEP team must consider the concerns of the parent throughout the IEP process. (20 U.S.C. §§ 1414(c)(1)(B), (d)(3)(A)(i), (d)(4)(A)(ii)(III); 34 C.F.R. § 300.343(c)(2)(iii); Cal. Ed. Code, § 56341.1, subd. (a)(1).) Parents play a "significant role" in the development of the IEP and are required and vital members of the IEP team. (*Winkelman v. Parma City School Dist*. (2007) 550 U.S. 516, 524 (*Winkelman*); 20 U.S.C. § 1414(d)(1)(B)(i); 35 C.F.R. § 300.322; Cal. Ed. Code, § 56341, subd. (b)(1).) In the classic formulation, a parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Sch.* (6th Cir. 2003) 315 F.3d 688, 693.) (*N.L.*)

The Supreme Court places great emphasis on the importance the guarantee of parental participation:

> "[W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with

> procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard."

(*Rowley, supra,* 458 U.S. 176, 205-206.)

Parents and the San Diego staff team members agreed at an IEP team meeting on March 9, 2020, that Student needed placement at a residential treatment center. Student had previously attended public and private schools, but he had violent behaviors that those placements could not handle. He had been attending the Genesee Lake School in the state of Wisconsin since August 9, 2019, after a Californian non-public school decided it could not manage his behavioral outbursts. After several months' search. Genesee Lake School was found and it agreed to accept Student. Genesee Lake is certified by California as a residential treatment center and a non-public school. The March 9, 2020 IEP was the last agreed-upon and implemented IEP.

The March 9, 2020 IEP included related services to be delivered at the residential treatment center. Student was to receive specialized academic instruction for 345 minutes each school day. The IEP also offered Student 30 minutes per week of individual counseling, 240 minutes per month of language and speech services, and 30 minutes per month of occupational therapy. Parents were to receive 60 minutes per month of parent education and counseling. In addition, Student was to receive 1,440 minutes per day, or 24 hours per day, of residential mental health-related services. In practice, this meant that Genesee Lake provided 24-hour supervision and support for Student due to his explosive and aggressive behaviors.

Student was a tall and strong young man, and his behavioral outbursts were significant. At times, both in his previous placements and at Genesee Lake School,

school staff called the police to assist in managing him. Student presented a danger to himself, other students, and staff when his behavior problems manifested. Student had frequent behavior events at Genesee Lake School, particularly in the early months of his stay. Parents worried that Genesee Lake School might exercise its right to terminate Student's placement there, as did his previous non-public school.

In July or early August of 2020, Parents had a meeting with Genesee Lake School staff at which staff recommended that Parents start looking for a new placement for Student because he would "age out" from the placement on his 22nd birthday in March 2021. Parents sent an email to San Diego's Residential Coordinator asking whether that would happen in March, as they were expecting his return at the end of June. The Residential Coordinator assured Parents that San Diego was willing to pay for Student's placement at Genesee Lake School until the end of San Diego's school year on June 30, 2021, and that Student would stay at Genesee Lake School until then.

However, as part of the November 9, 2020 quarterly report on Student's individual service plan, Genesee Lake School informed Parents and San Diego that Student would be released from the school on March 10, 2021, Student's 22nd birthday. Retaining him past that date was not an option for Genesee Lake School because it was not licensed to work with adults over the age of 22.

San Diego's Residential Coordinator and Student's case manager met in early December 2020 with Genesee Lake about its plan to release Student. The San Diego staff were unable to persuade Genesee Lake to keep Student enrolled past his 22nd birthday. San Diego's Special Education Program Manager had never before encountered the situation where a residential treatment center insisted on releasing a student prior to the end of a full year. Under California law, students who turn 22

during the months of January through June are entitled to educational services, including the extended school year, through the end of the fiscal year in which they turn 22, but that is not a Federal entitlement or requirement under the IDEA. (Cal. Ed. Code, § 56026, subd. (c)(4)(A).)

San Diego informed Parents that Genesee Lake School intended to release Student before the end of San Diego's school year. Parents had earlier retained an Educational Consultant, an out-of-state attorney knowledgeable in education issues, who had been speaking for them in all their dealings with San Diego. The Educational Consultant believed there was no chance that another residential treatment center would accept a large and violent young man such as Student in the middle of the COVID-19 pandemic for a stay of three and a half months, and began planning an alternative program.

Parents had been planning for Student's expected return at the end of June, and had purchased a townhome to be his residence. They customized it to lessen the danger from his violent outbursts and were prepared to work with the Regional Center to have supportive staff in place on a 24-hour basis for Student's safety. Upon learning that Genesee would exit Student in March, Parents and the Educational Consultant devised an alternative plan for Student's early return, which involved using the townhome as a substitute residential treatment center. In this plan, Parents would provide the physical location and San Diego would deliver the educational and supportive services there, either by San Diego staff or through non-public agencies. In particular, Parents anticipated that San Diego or nonpublic agencies would provide what was to them the most material component of the residential services: around-the-clock aide support to deal with Student's behavior issues.

The Educational Consultant believed that she had an agreement in place with San Diego to implement that plan, but in fact there was no such agreement. San Diego was unwilling to accept Parents' proposal. Instead, San Diego initially proceeded on the belief that the appropriate course of action was to find another residential treatment center and continue Student's education in the new location with no change to his program. Parents and the Educational Consultant did not believe that this would be possible, and also thought that it was potentially harmful to Student. They believed that his autism made him resistant to change and that any transition would spur severe behavior episodes. They were willing to let San Diego try to find another residential treatment center, but through December and early January San Diego could not find any placement willing to accept Student.

San Diego convened an IEP team meeting on January 29, 2021. This meeting, like all subsequent meetings, was audio-recorded, and the recordings were entered into evidence.

The IEP listed the purpose of the meeting as "transition planning," and Parents expected that the team would be amending Student's IEP, perhaps to implement their plan. At the start of the meeting, San Diego's Case Manager for Student stated that "This is a discussion of residential treatment center placement and so on." However, San Diego's Program Manager then added,

> "But before we jump into that, I just want to confirm that today by the end of this meeting we will still have the, um, we're not going to change any offers of FAPE. We're going to continue with the residential treatment facility outside of California, but we will discuss any concerns or any considerations for next steps, but by the end of today, we're like, we're not

> ready to make any changes outside of what his current offer is …. We haven't assessed his needs enough in order to make any changes of placement outside of that."

Parents' Educational Consultant asked at the 48-minute mark of the meeting about working with the Regional Center for "at least a small window in March, for us to transition [Student] to a program in California- try to figure out how to provide the services he would need, here in San Diego." The Program Manager stopped her and would not respond because that proposal was "hypothetical."

The Educational Consultant tried to lead the representative of Genesee Lake Schools to say that two transitions in a few months would be bad for Student. The representative of Genesee Lake was "not super comfortable" offering such an opinion, asking to keep the conversation on what supports were currently working and what Genesee Lake School could do to support the transition.

Disappointed, Parent said to the Genesee Lake School representative,

> "We're trying to provide him with something appropriate to come back to. And I know you guys know what we're- what will work better for him as far as whether or not he goes to another placement or we make something work for him in San Diego."

At the 1:13 mark in the meeting recording, San Diego's Program Manager stated, "At this time, our plan is to find him a school, and I--, within the next couple of weeks" and, if not, to reconvene the team. In response, the Parents' attorney and the Educational Consultant described Parents' proposal to set up the equivalent of a residential treatment center in the townhouse Parents had prepared for Student. They

noted that, under their plan, "His IEP services do not change. The environment of his IEP services changes to 'separate settings/home,' and that the District contracts to supply those services."

The Program Manager then asked what the proposal would look like, if San Diego were to provide services in the townhome, as it would require San Diego to "create a different kind of program that we probably haven't had before." Parents' Educational Consultant then spoke for eight minutes. The Program Manager had no questions after that, but wanted to be sure that she was correctly summarizing the proposal in the notes of the IEP team meeting. Other than to clarify that Parents were "receptive" to related services being provided by San Diego, the Program Manager had no questions about Parents' proposed program. The team tabled the proposal pending some result from the search for another residential treatment center that would accept Student.

The IEP team met again on February 8, 2021, for Student's triennial IEP. San Diego gave Parents a draft of an IEP with a new offer of programs and services prior to the start of the meeting. At the start of the meeting the Educational Consultant said,

> "I reviewed your services that indicate that your intent is to bring him back in March to San Diego and to have District staff provide related services, apparently at Clairemont High …. But what you have failed to include are any residential services, and there is no one who has suggested that he would not need services in the home."

Rather than construct the equivalent of a residential treatment center program at Student's townhome, San Diego proposed to do so at a local school. The proposal was similar to what Parents had been suggesting, and, at some points in the January 29,

2021 IEP team meeting, Parents had expressed willingness to have some related services provided on a school campus. However, San Diego was not offering 24-hour support or any amount of residential services, which had been part of the previous agreed-upon IEP of March 8, 2020.

Approximately 50 minutes into the team meeting, Parents' Educational Consultant announced, "our formal request, is that his IEP services remain the same, we change the location, and we meet up 30 days upon his return" to assess how Student is doing.

In response, San Diego's Program Manager stated, "I'm, I'm typing up exactly what you're saying because I want to make sure our notes are accurate on what you're asking for." The Educational Consultant asked at the 52-minute mark, "Do you really disagree with this?" The Program Manager replied only, "I'm trying to cite exactly what you are asking for," as she typed into notes section of the meeting report.

Parents' Educational Consultant tried to ask again at the 54-minute mark if the Program Manager disagreed with Parents' proposal, and the Program Manager replied, "Can you stop talking so I can concentrate for just one second to type this because you keep talking, and I don't mean to be rude, but I can't, you can't do two cognitive tasks at once."

Parents' Educational Consultant insisted to the team that continued residential services were necessary because Student's aggressive and violent behaviors persisted. At the 58-minute mark, the Educational Consultant again asked "Do you believe that he could be transitioned from 100 percent of his residential services before he leaves and come here with nothing, or anyplace else with nothing? You really believe that?" The Program Manager replied only with "I'm, I'm literally taking the notes right now."

The team turned to the Genesee Lake School representative for an opinion whether continued residential services were still needed or if they could be "stepped down." Genesee Lake Schools could not "confidently say, one way or the other." Parents' Educational Consultant interpreted that to mean no change should be made. At the 1:01 mark, referring to Student's residential services, the Educational Consultant addressed the Program Manager, asserting "The services have to remain the same. So the [residential] services need to go back in the IEP draft. Do you disagree with that?"

The Program Manager replied, "So at this time what we have is the draft that we provided. We're more than willing to take into consideration the extra services for residential that you're requesting, but it needs to be investigated." The Educational Consultant asked what needed to be investigated. The Program Manager replied that she was documenting the request, but that San Diego needed to obtain more data by reviewing assessments and getting updates from Genesee Lake School. The Educational Consultant again asked what new data San Diego wanted or expected before deciding whether Student needed the residential services in his IEP. The Program Manager replied at 1:04,

> "[A]s a district, we really want to hear what Genesee Lake has to say with regard to assessments with how he's doing in the residential, making sure our assessments are accurate and updated, and, moving forward from there. I know you want to just want to jump into the offer, but I think there's more information that we need in order to make an offer of FAPE."

From that point in the IEP team meeting there was extensive discussion about San Diego's plan and how it would be implemented, including which campus entrances Student would use and the specific assistant and driver who would be assigned to

transport him to school. There was no discussion of residential support and no discussion of Parents' proposed placement in the townhouse. Rather than address Parents' suggestion or engage their concerns about his need for wrap-around behavior support upon his return, San Diego documented that Parents had concerns and moved on to the topics it chose to discuss. Although San Diego came into the IEP team meeting with an offer of FAPE that removed Student's residential services and support, it maintained the position that it could not discuss the elimination or restoration of those services without additional data and updates.

Parents had executed several releases of information for San Diego to contact residential treatment centers to try to find one that would accept Student for the last few months of the school year. As the date of Student's release from Genesee Lake School approached, Parents and their Educational Consultant became certain that a residential treatment center placement was not possible. They expected Student to return to his home on March 10, 2021, and wanted a program ready for his arrival. On February 22, 2021, San Diego convened another IEP team meeting to discuss the details of Student's return.

At the start of the meeting, Parents' Educational Consultant stated

> "We're formally requesting an offer of FAPE today to be made - a formal offer of FAPE, see, because it is February 22nd. [Student] has been rejected at every residential treatment center that has been requested. And as a result, we need a formal offer of FAPE today."

The Case Manager stated that the team had received a vocational progress report and present performance levels, and the Program Manager announced at the 12-minute

mark that San Diego would be bringing Student back to San Diego on March 10, 2021, "since we currently have no other residentials at this time that have accepted him."

The team discussed having Student's father accompany him on the trip back from Wisconsin, and then the Program Manager announced at the 18-minute mark that "So, at this time, the offer of FAPE remains what we discussed at the last IEP, which is moving forward with regards to the goals." There had been no discussion of Student's needs or services, and no discussion of any new data or updates that informed that decision. Rather than collaborate on an offer of FAPE, the Program Manager informed the team of its decision. It is not predetermination to enter an IEP team meeting with an offer in mind (*N.L., supra,* 315 F.3d at 694), and no predetermination claim was raised in Student's due process hearing request, but deciding Student's services without seeking input and participation from Parents deprives them of any opportunity to participate in the decision making process.

Parents' Educational Consultant asked at the 24-minute mark "[D]oes your formal offer of FAPE specifically preclude all residential services from March 10th to June 30th?" The Program Manager replied, "At this time yes, at this time, this is our offer." Parents announced they would not agree to an offer of FAPE that did not include residential services and supports. The Educational Consultant then asked at 25:30 what San Diego would put in place for stay put services. "What is your plan to implement those comparable [residential] services in San Diego, which is where we're bringing him home to?" The Program Manager did not answer. "At this time, this is our offer of FAPE. We're not in San Diego yet, so, at this time this is what our offer is." The conversation then turned to documenting Parents' concerns.

At the 43-minute mark, Parents' Educational Consultant told the team that Parents' concern was that San Diego "is unilaterally refusing to implement the IEP and unilaterally refusing to provide services and unilaterally refusing even to discuss why it isn't implementing its legally required comparable services." The Program Manager replied, "I am more than willing to document these concerns for sure."

The Educational Consultant again asked at 44:57, "Why have you refused service-residential services from March 10th to June 30th?" The Program Manager replied, "As he returns home, we are going to provide the educational services in, um, the format that we described. So it doesn't include residential, you're correct." The Educational Consultant pressed: "But you have not explained why you're not going to provide the residential services."

"Okay," the Program Manager acknowledged.

"Are you going to answer that now?" the Educational Consultant asked.

"No, I'm documenting parent concerns right now."

After the language the team would use to document Parents' concerns was worked out between the Educational Consultant and the Program Manager, the Educational Consultant again asked at 46:52, "What is your answer?" and the Program Manager again replied, "I am just documenting it at this point."

At 47:46, the Educational Consultant asked, "And again, we, you're not answering the specific question why are you refusing residential services directly or through stay put?" The Program Manager replied, "That, this is my answer at this time." There were no further discussion of residential services at this IEP team meeting.

On March 1, 2021, the Program Manager sent a letter to Parents restating the offer of FAPE proposed at the February 22, 2021 IEP team meeting. In the letter, the Program Manager stated that San Diego "continues to believe that an out of state residential facility is necessary for FAPE based on information available at this time," but San Diego was not offering any residential services. The lack of such services, she noted, "does not entail creating a residential treatment center in the home [Student] intends to live in after he is no longer eligible." She closed by noting that San Diego "will also convene another IEP meeting to discuss whether there is something other than the last agreed upon IEP that it believes can provide FAPE in absence of him returning home."

San Diego convened that meeting on March 8, 2021. Student has not included that IEP team meeting in the list of meetings for which he has asserted a denial of parental participation, but it is necessary to evaluate that meeting to see if San Diego enabled meaningful parental participation in Student's educational planning at that meeting. If San Diego ceased impeding Parental participation at the March 8, 2021 IEP team meeting, Student would not be denied FAPE as of that date before Student's return home.

At the 15th minute of that meeting Parents' Educational Consultant noted, "on the last agreed-upon IEP, there was 1,440 minutes of residential services. What is the plan to implement that on [Student's] first day?" The Residential Coordinator said, "No facility has been found today, there's still, um, efforts on identifying a residential facility that he would be accepted into."

The Educational Consultant acknowledged San Diego's continuing effort to find a residential treatment center, but again asked at 17:06: "So what is the plan to provide those 1,440 minutes of services in his home when he returns?" The Residential

Coordinator offered the same response, "The plan is to find a residential placement treatment center that would be able to have those services."

This continued for several more minutes: Educational Consultant: "What are you doing to provide the residential services at his house until your search pans out, if it does? What are you doing to provide the services at his house?"

Residential Coordinator: "We will continue to do the search for a residential treatment facility which is where services are provided."

Educational Consultant: "Okay, and, so are you telling me that you have not contracted with any agency to provide in-home services in San Diego? Is that true?"

Residential Coordinator: "I'm letting you know that the search for a residential treatment facility is continuing to be in play."

Educational Consultant: "Can you answer my question? My question was my question."

Residential Coordinator: "I answered that when he discharges from the current facility that he will go home. During that process, during that process the search for a residential treatment facility will continue to, to move forward."

Educational Consultant: "I get, I get- Just listen to my question. Has the district made any contractual arrangements to provide any residential services in [Student's] home until an RTC is located?"

Residential Coordinator: "The district - this residential treatment facility - the residential treatment services that the district, that the district provides are in a residential treatment facility. One has not been obtained yet. That search is in process."

Educational Consultant: "So because the district believes that the only residential services it provides are those that are in an RTC, it has not contracted for any in home residential services, correct?"

Residential Coordinator: "As I said, the district is continuing to search for a residential treatment facility to place [Student] in."

Educational Consultant: …. "That's 11 times I asked the question that they didn't answer.

The Educational Consultant came close to, but did not cross, the line into badgering the San Diego staff IEP team members. Nevertheless, Parents were entitled to information about why San Diego was proceeding with its plan and would not consider Parents' proposal or request for some form of residential services. Parents' ability to participate in the planning of their child's education was stymied by San Diego's refusal to do anything other than note their concerns. San Diego would not explain why it would not allow Parents to construct a residential treatment center for three months in the home they bought for Student. San Diego would not explain why it would not offer residential services and supports to Student, for which they acknowledged he had a continued need. San Diego expected that Parents would care for Student at home somehow when he was not at school until he aged out with none of the supports that Student had received in his residential placement.

San Diego did not raise, discuss, or ever revisit Parents' plan to replicate a residential treatment center in the townhouse Parents bought for Student. Parents' plan may not ultimately have been workable, sustainable, or even legal, but the important fact for this analysis is that it was never evaluated and discussed by the IEP team. In refusing to discuss Parents' plan, the San Diego members of the IEP team treated

Parents as less than full members of the team and materially impeded their ability to participate in the decision-making process regarding their son's education.

San Diego asserts it afforded Parents the opportunity to participate in the decision-making process. San Diego convened four IEP team meetings in this time period and offered two additional meetings which Parents declined. It invited third parties to the IEP team meetings at Parents' request, gave comprehensive and specific explanations of the services it offered, and allowed Parents' Educational Consultant to speak for long stretches without interruption. If anything was predetermined, San Diego asserts, it was Parents' opposition to the program San Diego proposed.

Parents did approach the initial meetings with a preferred outcome. The Educational Consultant thought she had arranged to have San Diego provide educational services at a residence, where Student would not be at risk of harming himself or other students through explosive and violent outbursts. Parents, just like school districts, may approach an IEP team meeting with an idea in mind. (*N.L., supra*, 315 F.3d at 694 ("predetermination is not synonymous with preparation.")). Parents, however, do not control the IEP process and lack the ability to put an offer on the table and demand that the school district take or leave it. Further, the law requires San Diego engage in an open discussion of Student's educational program and show a willingness to discuss options proffered by Parents. (*Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1054-1055.)

San Diego convened four IEP team meetings which cumulatively stretched over six hours of meeting time. San Diego is correct that it never cut off Parents or the Educational Consultant, who sometimes orated for lengthy periods of time.

San Diego is also correct in citing the law that an IEP does not need to "provide a child with the specific educational placement that her parents prefer" and school districts do not need "to accede to parents' demands without considering suitable alternatives." (*Blackmon ex rel. Blackmon v. Springfield R-XII School District* (8th Cir. 1999) 198 F.3d 648, 658; *N.T. v. Garden Grove Unified School Dist.* (C.D. Cal. May 19, 2016, No. SA CV 15-1013-GHK (JPRx)) 2016 WL 2984192, * 5.) What San Diego needed to do, however, and what it did not do here was to consider the program Parents proposed and discuss the practicality, effectiveness, and legality of Parents' proposal at the IEP team meetings. Instead, at every meeting San Diego refused to openly consider and respond to Parents' ideas. When Parents or their Educational Consultant asked questions, San Diego's staff would blankly note Parents' concerns in the record and move on to other business. Recording and ignoring Parents' proposals and questions does not meet the standard that parents are to meaningfully participate and have a significant role in an IEP team meeting. (*NL, supra,* 315 F.3d at 1198; *Winkelman, supra*, 550 U.S. at 524.) Noting parent concerns in the IEP without addressing them during the team meeting creates the impression that they were discussed, but does not satisfy the requirement that parents be treated as equal members of the team and have input into the planning of the child's educational program.

This was not a situation where Parents raised the same discredited idea multiple times. The team agreed that Student needed residential education, but San Diego could offer nothing except what could be provided by an unavailable or undiscovered residential treatment center. Parents suggested having San Diego staff, or contract with a non-public agency to staff, the 1,440 minutes per day of residential mental health-related services at Student's townhome. The IEP team agreed that Student needed such services to access his education. However, when San Diego could not find a residential

treatment center that would accept Student, it made a new offer of FAPE that did not include residential mental health services. San Diego made this change without a change in Student's needs, without new assessments of Student, and, most importantly, without meaningful participation by Parents in the decision-making process regarding their child's education.

San Diego had nearly four months to plan for Student's release from Genesee Lake School, which included the possibility that it would not be able to find a residential placement. While San Diego held several IEP team meetings with Parents, it failed to consider and explain to Parents why it could not implement their townhome proposal, which prevented Parents from meaningfully participating in Student's educational decision-making process. Therefore, San Diego violated the IDEA by materially impeding parental participation. (20 U.S.C. § 1415(f)(3)(E)(i) & (ii); Ed. Code, § 56505, subd. (j); *Target Range supra,* 960 F.2d at 1483-1484.)

ISSUE 2: DID SAN DIEGO DENY STUDENT FAPE BY FAILING TO IMPLEMENT RESIDENTIAL SERVICES UNDER STAY PUT?

Student received no residential mental health services from San Diego after Parents refused San Diego offers of FAPE and invoked stay put. The doctrine of stay put mandates that a student continue to receive the equivalent services that she was receiving under the last agreed-upon and implemented IEP. San Diego asserts that stay put is a matter of available providers and parental cooperation. It argues that residential mental health services were not available because it could not find a residential treatment center that would accept Student, and parental cooperation was lacking because Parents refused to accept the substitute educational program it crafted for Student at a local school.

The failure to offer required services under stay put is a substantive violation of the IDEA, as it involves a direct denial of services necessary for a child's education. "[T]he court need not reach the question of substantive compliance if the court finds procedural inadequacies that.... seriously infringe the parents' opportunity to participate in the IEP formulation process[.]" (*N.B. v. Hellgate Elementary Sch. Dist.* (9th Cir. 2008) 541 F.3d 1202, 1207 (citation and internal quotation marks omitted); see also *M.M. v. Lafayette Sch. Dist.,* 767 F.3d 842, 856 (9th Cir. 2014), as amended (Oct. 1, 2014) (declining to reach the issue of substantive compliance after finding a procedural violation that denied a FAPE); *Amanda J. v. Clark Cty. Sch. Dist*. (9th Cir. 2001) 267 F.3d 877, 895 (declining to reach the issue of substantive compliance after finding that the district denied a FAPE by failing to provide a specific offer of placement). However, in recognition of the interests of the parties in resolving the claim, this decision will rule on the issue.

Until due process hearing procedures are complete, a special education student is entitled to remain in her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Cal. Ed. Code, § 56505, subd. (d).) This is referred to as "stay put." In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).) For purposes of stay put, the current educational placement is typically the last agreed upon and implemented IEP placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

Under stay put, the student receives a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account

the changed circumstances. (*R.F. Frankel v. Delano Union School District,* (E.D. Cal 2016) 224 F. Supp. 3d, 979, *citing Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086.)

Minor failures by a school district in implementing an IEP should not automatically be treated as violations of the IDEA. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F. 3d 811, 821.) (*Van Duyn*.) Rather, only a material failure to implement an IEP violates the IDEA. (*Id*. at p. 822.) "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." (*Ibid*.) This standard does not require that the child suffer demonstrable educational harm for there to be a finding of a material failure. (*Ibid*.) However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided. (*Ibid*.)

The March 9, 2020 IEP was the last agreed-upon and implemented IEP. Student was given 345 minutes of specialized academic instruction each school day, 30 minutes per week of individual counseling, 240 minutes per month of language and speech services, and 30 minutes per month of occupational therapy. Parents were to receive 60 minutes per month of parent education and counseling. In addition, Student was to receive 24-hour residential mental health-related services of supervision and support for Student due to his explosive and aggressive behaviors.

San Diego did not provide any residential mental health services under stay put. The Program Manager and the Residential Coordinator refused to consider Parents' plan for supplying residential services. San Diego took the position at the IEP team meetings that no residential services were available because no residential treatment center agreed to take Student for the period between his release from Genesee Lake School

and the end of San Diego's school year in June 2021. San Diego would not offer to provide 24-hour service in a private residence by using its staff. Parents proposed to replicate the residential mental health services through a non-public agency, but San Diego did not agree to do so. Instead of attempting to replicate the placement that existed at the time the dispute arose, San Diego provided nothing.

San Diego's argument of impossibility fails, as Parents were able to find and employ services to replicate the residential mental health services. Even if it were impossible to staff 24-hour services, San Diego was required to replicate those services as closely as possible. Instead of any comparable mental health service, it provided nothing.

San Diego further argues that Parents were uncooperative in fashioning stay put because they would not agree to the successor IEPs that were crafted at the IEP team meetings in February and March 2021. Failure to agree to an IEP's offer of FAPE cannot be considered a lack of cooperation in the IEP process, as every request for stay put arises out of a failure to craft a mutually agreeable FAPE offer. (See *Tehachapi Unified School District v. K.M.* (E.D. Cal., Sept. 28, 2018, No. 1:16-cv-01942-DAD-JLT) 2018 WL 4735735, **7-8.)

Having found a violation of stay put, the remaining question is whether it was a material failure to provide educational services. San Diego argues that it was not. The lack of services was for a short time and it offered other services that Student did not accept. San Diego asserts that Student has not provided evidence of substantive harm from any denial of services under stay put, noting that he has put forth no evidence of failure to make educational progress or regression in behavior or academics. Evaluating

progress or regression is impossible here, as Parents provided the behavior support services at their own risk and expense.

However, under *Van Duyn* there is no requirement that a student demonstrate educational harm from a material failure to provide services. (502 F.3d at p. 822.) Educational harm is only relevant to determining whether or not a failure to replicate services is material. That question is not relevant where there has been a failure to provide any services at all. The other services offered by San Diego did not address his need for residential mental health support. The IEP team determined that Student had a need for residential mental health services and that need was unmet by San Diego's response to Student's request for stay put services. San Diego failed to meet its obligations under stay put by refusing to provide residential mental health services and substantively denied Student's right to FAPE.

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: San Diego denied Student a FAPE by materially impeding his Parents from participating at the IEP team meetings held on January 29, February 8, and February 22, 2021. Student prevailed on Issue 1.

Issue 2: San Diego denied Student a FAPE by failing to implement residential services as required under stay put. Student prevailed on Issue 2.

REMEDIES

Student prevailed on both issues heard. In his prehearing conference statement, Student stated that he was seeking reimbursement to Parents for special education services, including residential services, that Parents provided from March 10, 2021, and compensatory educational services. Student also sought services through the end of San Diego's extended school year. Under California law,

> "[a]ny person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the current fiscal year, including any extended school year program for individuals with exceptional needs:"

(Cal. Ed. Code, § 56026(c)(4)(A).) The fiscal year in California ends on June 30th. According to San Diego's 2020-2021 academic calendar, the extended school year runs from July 26 to August 20, which is beyond the end of the 2020-2021 fiscal year. In his briefing, Student disclaimed interest in an award of a block of hours of compensatory services, seeking instead a one-to-one "do over" that will provide him full services for a time period equivalent to the time from March 10, 2021, to the end of San Diego's school year.

San Diego asserts that the proposed "do over" plan has been rejected by Parents, that the residential mental health services Parents funded were delivered by unqualified and untrained staff, and that the invoices Student presented in support of Parents' expenses are untrustworthy. San Diego argues that the services Parents funded should be considered to be a "unilateral placement" and subject to the rules governing

unilateral placements of students in private schools. Lastly, San Diego argues that recovery should be barred because Parents were unreasonable and uncooperative in the IEP process.

Administrative law judges have broad latitude to fashion appropriate equitable remedies for FAPE denials. (*School Comm. Of Burlington v. Department of Educ*. (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed. 2d 385] (*Burlington*); *Parents of Student W. v. Puyallup Sch. Dist.*, No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496.) (*Puyallup*).) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of 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 1497.)

Student, having already aged out of his public education, is in an unusual position. He does not need a continued educational program. The only issue is what compensatory educational services and reimbursements should be awarded. Parents' Educational Consultant argued at hearing, and Student argues in briefing, that the most appropriate remedy is a "do over" of "replacement education," whereby Student would receive specialized academic instruction from a credentialed teacher supported by an aide trained in behavior management for 345 minutes per day. In addition, Student would receive 30 minutes per week of counseling, 60 minutes per week of speech and language services, and 30 minutes per month of consultation with an occupational therapist. Finally, Student seeks the implementation of all the accommodations, supports, and supplementary aids and services that were in the last agreed-upon IEP, including 1,440 minutes per day of residential mental health services.

Student's "do over" seeks the application of a mechanical formula to determine relief in this matter. That is not appropriate in the Ninth Circuit. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup*, *supra*, 31 F.3d 1489, 1497.) In seeking relief, Parents bear the burden of demonstrating the type, amount, duration, and need for any requested compensatory education, and were cautioned in those words in the Order Following Prehearing Conference dated May 11, 2021. Student presented no specific evidence as to these matters.

Compensatory educational services are awarded to put a student in the position she would have been in had the appropriate services been delivered at the appropriate time. This "entails a fact-specific, individualized assessment of a student's current needs." (*Cupertino Union Sch. Dist. v. K.A.* (N.D. Cal. 2014) 75 F.Supp.3d 1088, 1105–1106; see also *Puyallup*, supra, *supra*, 31 F.3d 1 at 1496; *School Comm. of Burlington v. Dep't of Educ*. (1985) 471 U.S. 359, 374.) Any award must be "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." (*Reid ex rel. Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) Student has made no such showing.

No evidence was presented at hearing about Student's program at Genesee Lake School. He received in-person instruction in his school residence at Corey House after a brief unsuccessful stint of video teaching, but Student did not offer evidence of the contents of his curriculum. Likewise, the other related services delivered were not described. In part perhaps due to the disruption caused by the COVID pandemic, testimony reported that Student was allowed to just stay in his room at the Corey House

dormitory for stretches of time. There is not enough material in the record to determine an appropriate package of compensatory services. Further, Student has stated that "Parents are NOT seeking a bank of hours to implement prospectively for compensatory education." (Emphasis in original.) Parents do not wish "to become case managers and search out providers," and they do not accept that burden. By not providing evidence of a remedy they do not desire, Parents may believe that they have limited their remedy to the remedy they desire. Unfortunately, Parents are incorrect, as the law grants the administrative law judge broad authority to determine an appropriate remedy, regardless of any party's demand or desire. Rather, Parents, by failing to offer evidence of what may be an appropriate remedy, have assumed the risk that their remedy, if any, will be limited.

As Student has not provided evidence supporting an award of compensatory services and Parents do not wish to be given one, none will be ordered. Student provided evidence, including bills and invoices, of expenses Parents incurred for supportive residential mental health services. These services were provided by Habita Behavior Care LLC, a small business founded by a Board Certified Behavior Analyst to provide behavior management services. Student provided evidence that Parents paid Habita $25,705 for behavior support services from Student's March 10, 2021 release from Genesee Lake School to April 30, 2021. Habita charged Parents $46 per hour for support from a staff member and $75 per hour for supervision services by one of the company's founders. When Habita was short-staffed, the founder would provide behavior support to Student at the rate of $46 per hour.

In addition, San Diego is ordered to reimburse Parents for the additional amounts paid to Habita for the months of May and June 2021 to the end of San Diego's fiscal year on June 30, 2021. For those time periods. Parents are awarded reimbursement for

up to 1,440 minutes of support per day at the rate of $46 per hour and up to ten hours per week of supervision by senior staff at $75 per hour.

San Diego objects to reimbursement for the cost of Habita's services because it considers Habita to be under-credentialed and lightly trained, and asserts that the bills for Habita's services have been manipulated by Parents' Educational Consultant.

San Diego may wish to hire more highly qualified providers to work with its students, but Parents were forced to contract with Habita because San Diego was not providing any services. The evidence reflected that Habita was able to manage Student's behaviors for nearly two months to the end of April 2021.

Contrary to San Diego Unified's contention, parentally-selected services and placements are not held to the same standards as those chosen by a school district. For example, parental placements need not meet the state standards that apply to public agencies to be appropriate. (34 C.F.R § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 14 [114 S. Ct. 36, 1126 L. Ed. 284] (despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found to be reimbursable).) Parents may receive reimbursement for their unilateral placement if the placement met the child's needs and provided the child with educational benefit, even if not all necessary educational benefits are provided. (*C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155, 1159.) Habita's services were necessary and effective. Consequently, Parents are entitled to recovery for their payments to Habita.

San Diego also asserts that Habita's bills were manipulated, pointing out that one of Parent's attorney's former clients paid a lower hourly rate than Parents were charged. That does not change the fact that Parents agreed to pay and did pay the rate charged

on the invoice, and did so entirely at their own risk. The one example of a changed invoice presented at hearing dealt with a charge that was submitted elsewhere, where the bill was split to remove charges that were not recoverable from the agency to which it was submitted. If any fees for services charged by Habita here were recovered from another funding source, such as an insurer or a Regional Center, Parents may not obtain a double recovery.

Parents' use of Habita to staff Student's townhouse is akin to a private school, San Diego argues, and should be treated as a unilateral parental placement in a private school. It asserts that Parents did not give required notice that they would be seeking reimbursement for the behavioral services, so the request should be denied. Reimbursement for the costs of a private school may be reduced or denied when the parents did not give written notice to the school district ten business days before removing their child from the public school rejecting the proposed placement, stating their concerns, and expressing their intent to enroll the student in a private school at public expense or when the parents have acted unreasonably. (20 U.S.C. § 1412(a)(10)(C)(iii); 34 C.F.R. § 300.148(d); Ed. Code, § 56176.) San Diego's analogy is far-fetched. No rule requires notice to schools before parents pay for supportive services for their children. Related services are not equivalent to private school tuition, as private schools raise issues of parental preference and extravagance. Those concerns do not apply here to Parents' provision of mental health support services. Further, Parents had indicated to San Diego at several IEP team meetings of their desire that services be provided to Student at the townhouse, so San Diego should not be shocked that Parents contracted with a private provider to provide Student with the services that San Diego failed to provide.

Similarly, Student's request in closing briefing for compensation to Parents for the time Parents spent with Student after his release from Genesee Lake School is not supported by the law in California. The IDEA does not authorize payment to parents for the time they devote to their children. The cases cited by Student are not precedent in this circuit, have not been adopted outside of Pennsylvania and Rhode Island, and have been distinguished in California. (*Ka.D. ex rel. Ky.D. v. Solana Beach Sch. Dist.,* No. 08-CV-622 W, 2010 WL 2925569, at *6 (S.D. Cal. July 23, 2010), *aff'd sub nom. Ka.D. ex rel. Ky.D. v. Nest*, (9th Cir. 2012) 475 F. App'x 658 (Finding no authority under IDEA to pay a parent for educating her child at home when the same services were available in their community).)

San Diego also contends Parents should be denied recovery because they were unreasonable and uncooperative in the IEP process. The evidence established that Parents' Educational Consultant was, at most, assertive and possibly abrasive. San Diego offered no evidence that Parents refused to assist San Diego in locating a new residential treatment center, or in any way frustrated the functioning of the IEP team. San Diego points out that it tried to schedule a fifth IEP team meeting, but Parents declined the meeting. The evidence reflected that Parents declined the meeting because they felt it would be futile and pointless, based upon their recent experiences at San Diego's IEP team meetings. San Diego then dropped the request. If San Diego believed it was important to hold an additional IEP team meeting, San Diego should have persisted in attempting to schedule it. The fact that it did not do so reflects that the IEP team meeting was not likely to be significant, and that Parents' unwillingness to attend did not demonstrate uncooperativeness. No denial or reduction of the Parents' recovery is justified on this ground.

ORDER

1. Within 30 calendar days of this decision, San Diego shall reimburse Parents $25,705 for behavior support services from Habita Behavioral Care LLC for the time period from March 10, 2021 to April 30, 2021. Student submitted sufficient documentation at hearing for San Diego to reimburse Parents for Habita's behavior support services.
2. San Diego shall reimburse Parents for up to 1,440 minutes of support per day from Habita Behavioral Care LLC at the rate of $46 per hour and an amount not to exceed ten hours per week of supervision by senior staff at the rate of $75 per hour for the months of May and June 2021 through June 30, 2021. San Diego shall reimburse Parents within 30 days of its receipt of adequate documentation of payment to Habita Behavioral Care LLC.

RIGHT TO APPEAL THIS DECISION

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

/s/
Chris Butchko
Administrative Law Judge
Office of Administrative Hearings