

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

WALNUT CREEK UNIFIED SCHOOL DISTRICT,

V.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2026040029

DECISION

JUNE 11, 2026

On March 26, 2026, the Office of Administrative Hearings, called OAH, received a due process hearing request, referred to as a complaint, from Walnut Creek Unified School District, called Walnut Creek, naming Student as respondent. On April 20, 2026, Parents filed a request to continue the due process hearing scheduled for April 21, 2026. On April 21, 2026, Administrative Law Judge Deborah Myers-Cregar heard oral argument and granted Parents' request before the hearing began. ALJ Myers-Cregar heard this matter via videoconference on April 28, 29, 30, and May 12, 2026.

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Attorney Adrienne Nichelini represented Walnut Creek. Michael Corritone, Director of Special Education, attended all hearing days on Walnut Creek's behalf. Parents represented Student and attended all hearing days on Student's behalf. Parents' educational advocate, Kelly Gorman, also attended all hearing days.

At the parties' request, the matter was continued to May 26, 2026, for written closing briefs. The record was closed, and the matter was submitted on May 26, 2026.

ISSUE

Was Walnut Creek's December 18, 2025 functional behavior assessment report appropriate such that Walnut Creek is not required to fund an independent functional behavior evaluation at public expense?

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).)

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).) Here, Walnut Creek had the burden of proof on the sole issue alleged in its complaint. 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 five years old and in a general education kindergarten class at the time of hearing. Student resided within Walnut Creek's geographic boundaries at all relevant times. Student was eligible for special education since preschool under the categories of autism and other health impairment. He had a speech and language disorder with an articulation disorder. Student had average cognition. Walnut Creek reassessed him for his three-year review in December 2025.

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ISSUE: WAS WALNUT CREEK'S DECEMBER 18, 2025 FUNCTIONAL BEHAVIOR ASSESSMENT REPORT APPROPRIATE SUCH THAT WALNUT CREEK IS NOT REQUIRED TO FUND AN INDEPENDENT FUNCTIONAL BEHAVIOR EVALUATION AT PUBLIC EXPENSE?

Walnut Creek contends its December 18, 2025 functional behavior assessment was appropriate and legally compliant. Walnut Creek contends its board certified behavior analyst was qualified to conduct the analysis and completed a thorough report using appropriate assessment methods, parent and teacher interviews, and direct observations in multiple school settings.

Parents contend Walnut Creek did not conduct its functional behavior assessment appropriately because:

- it was conducted by an inexperienced and unqualified behaviorist;
- it was not a comprehensive analysis of the actual behaviors interfering with Student's educational access to learning across all settings;
- it did not assess in all areas of suspected disability because it limited the scope to three areas of behavior;
- it used an arbitrary time frame to observe Student;
- it did not include interviews of his related service providers;

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- it used an arbitrary time limit to define behavior during observations; and
- it included one inaccurate date referencing Student's final day in a classroom.

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 individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

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

The parent of a child already eligible for special education has the right to request a district reassessment of their child. A reassessment shall occur at least every three years unless the parents and the local educational agency agree in writing it is not necessary. (Ed. Code, § 56381, subds. (a)(1), (a)(2). Reassessments must be conducted in accordance with Education Code section 56320. (Ed. Code, § 56381, subd. (e).)

Legally compliant assessments are conducted by qualified assessors who select valid, reliable assessment instruments, and other means of evaluation, that avoid discrimination based on sex, race, or culture. Assessments must be conducted by trained and knowledgeable individuals who are both “knowledgeable of [the student’s] disability” and “competent to perform the assessment, as determined by the school district, county office, or special education local plan area.” (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (g), 56322.) The assessments used must be:

- selected and administered so as not to be discriminatory on a racial,
- cultural, or sexual basis;
- provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally;
- used for purposes for which the assessments are valid and reliable; and
- administered in accordance with any instructions provided by the producer of such assessments.

(20 U.S.C. § 1414(b)(3)(A)(v); Ed. Code, § 56320, subds. (a) & (b).)

Assessors are required to use a variety of technically sound assessment tools and strategies to gather relevant information, including information provided by a parent, to assist in determining whether the child has a disability; and, if so, the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors. (Ed. Code, § 56320, subd. (b); 20 U.S.C. § 1414(b)(2)(A).) Assessors are prohibited from relying

on a single measure or assessment as the sole basis for determining whether a child is eligible for special education or the appropriate content of an eligible student's IEP. (Ed Code, § 56320, subd. (e); 20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(2).)

A parent or guardian has the statutory right

"to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists ... if the parent or guardian disagrees with an assessment obtained by the public education agency, in accordance with [part] 300.502 of Title 34 of the Code of Federal Regulations." (Ed. Code, § 56329, subd. (b).)

Under California law, the term "assessment" has the same meaning as the term "evaluation" in the IDEA, as the term is used in section 1414 of title 20 of the United States Code. (Ed. Code, § 56302.5.)

In response to a parent's request for an independent educational evaluation, a district must, without unnecessary delay, either ensure the student receives the independent educational evaluation at public expense or file a due process hearing request seeking a determination that its assessment was appropriate. (Ed. Code, § 56329, subd. (c), 34 C.F.R. § 300.502(b).) If the district fails to prove its assessment was appropriate, it must provide the independent assessment.

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STUDENT'S GENERAL EDUCATION KINDERGARTEN PLACEMENT AND CURRICULUM

Student became eligible for special education with an IEP on May 4, 2023, and attended a special education preschool. Student attended a transition kindergarten for the 2024-2025 school year. Student made progress and transitioned into a general education kindergarten class with resource support for the 2025-2026 school year. His special education resource teacher provided him with 30 minutes per day of specialized academic instruction in the classroom with several other students. Student received speech therapy 60 minutes per week, and occupational therapy 30 minutes per week. He did not require an adult aide to participate in general education. The teacher supported Student using the accommodations in his IEP including redirection and preferred seating.

Student's curriculum in the general education kindergarten class consisted of:

- Learning to use classroom tools:
 - a pencil,
 - scissors,
 - glue, and a
 - paintbrush in arts and crafts;
- Following teacher directions and classroom routines:
 - sitting down as a class during carpet time during reading time and singing,
 - sitting at desks during instruction,

- placing his lunch and backpack in his cubby,
 - lining up to follow his peers to recess and lunch, and
 - return with his class;
- Communicating: interacting with his teacher and with peers, in class and on the playground;
- Narrative writing:
 - drawings,
 - labels and sentence frames, and
 - phonics and sight words to begin reading skills;
- Reading:
 - understanding complex sentences,
 - comprehending a wide range of vocabulary words, and
 - identifying and reading sight words;
- Art:
 - identifying colors and shapes;
 - drawing, coloring, cutting, gluing and painting with arts and crafts; and
- Math: learning to count from one to one hundred.

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THE DECEMBER 18, 2025 FUNCTIONAL BEHAVIOR ASSESSMENT

Student was due for a three-year reassessment and Walnut Creek scheduled an IEP team meeting for December 18, 2025. On October 9, 2025, Parents requested a functional behavior assessment. Student was not exhibiting significant maladaptive behaviors at school involving destruction of property, or other disciplinary concerns such as injury to himself or others. Parents were concerned about an incident on October 1, 2025, at the end of a speech therapy session in which Student pinched his finger between a marker and the marker cap and became upset and dysregulated. His speech pathologist walked him back to his classroom and stayed briefly. Student's teacher allegedly left him alone outside the classroom for a minute or two while the after-school program staff came to pick him up. This is the only incident Parents reported at the time.

Shortly after Parents' request, Walnut Creek's school psychologist Khalilah Fortenberry began conducting a psychoeducational assessment of Student to review his special education eligibility as an incoming kindergarten student. Her assessment included

- general cognition,
- comprehension,
- conceptual reasoning,
- working memory,
- phonological processes,
- attention, executive function,

- social functioning, adaptive skills,
- behavior, and
- characteristics of autism.

She also began compiling a multidisciplinary report for Student's December 18, 2025 IEP team meeting.

On November 4, 2025, before the IEP team meeting, Parents renewed their request for a functional behavior assessment after Student bumped his ankle on the playground. According to Parent, who was present at school, Student refused to enter the classroom and tried to run away from the door. Parent reported she used verbal and physical support to help him join his classmates on the carpet area. Parent estimated he became regulated after seven minutes.

On November 12, 2025, Walnut Creek sent Parents an assessment plan for a functional behavior assessment. On November 12, 2025, Parents signed the assessment plan providing consent. Walnut Creek planned to complete the functional behavior assessment in time for the December 18, 2025 IEP team meeting.

No state or federal laws or regulations define a functional behavioral assessment. A functional behavior assessment measures a student's behavioral, social, and emotional strengths and needs. Through observations, interviews, review of records, assessments, and data analysis, the behaviorist will identify and observe problem behaviors, take data as to their intensity and frequency, and analyze and hypothesize their function or purpose. A behavior intervention plan can then be developed to promote more appropriate function based skills using positive behavior support to replace or extinguish maladaptive behavior.

Clarissa Moran-Herrera worked for Walnut Creek as a behavior specialist during the 2025-2026 school year. She was a board certified behavior analyst who conducted Student's functional behavior assessment. Moran-Herrera emailed Parents and interviewed them in English, their primary language. She discussed the questions with Parents and recorded their responses. Moran-Herrera administered two questionnaires to Parents: the Functional Analysis Screening Tool and the Questions About Behavioral Function. She interviewed Student's two general education kindergarten teachers and the director of his after-school program. She observed Student over four school days for a total of 10.5 hours.

Moran-Herrera interviewed Parents during a virtual meeting that lasted between one and two hours. Parents identified their three main areas of behavioral concern at school as withdrawal, or shutting down; vocal outbursts, including crying and screaming when Student cannot communicate his needs; and inability to self-regulate. At home, Student became triggered by sensory disturbances from fabrics or by changes in his schedule. Parents reported he screamed and cried when he could not communicate his needs, and it took 30 to 40 minutes to regulate himself. Parents reported Student would occasionally engage in non-compliance at home, including refusing to engage in a task. Mother also reported one occasion when she volunteered at school, and he attempted to leave the classroom without permission. Although Student had never eloped, or ran away, at home or at school before, Parent was concerned Student would try to leave the classroom again. Parents were also concerned about Student's inability to compromise and maintain sportsmanlike behavior with peers.

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Moran-Herrera developed the scope and parameters of her functional behavior assessment to include three areas of behavioral concern in school, based on Parents' concerns. The report defined the target behaviors as:

- **Vocal Outbursts:** Any instance in which Student vocalized louder than normal communication for longer than 30 seconds, including crying, screaming, yelling, or whining.
- **Withdrawal:** Any instance in which Student physically or verbally refused to follow instructions, complete a task, or respond to interactions or help when offered. This included when Student did not move his body, or moved his body away from others in a reclusive manner, refused to speak or respond to others, or actively protested when given an instruction or demand for more than five minutes.
- **Inappropriate Peer Interactions:** Any instance in which Student physically engaged in unwanted touching of peers or invading their personal space.

Moran-Herrera interviewed Blanca McCarthy, Student's general education teacher, on November 21, 2025, the week he transitioned into a new classroom. McCarthy reported Student was playful, engaged socially with his peers, followed instructions well, and enjoyed following the classroom routine. She had no concerns about Student's behavior. She saw him cry only twice: once on the playground when he got hurt and his Parent consoled him; and a second time when he returned from

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speech therapy, after he had pinched his finger in a marker top, and briefly cried and babbled for Parent. Otherwise, McCarthy had no concerns about Student crying in her classroom. McCarthy reported Student's behaviors did not impede his learning.

Moran-Herrera also interviewed Student's new general education teacher, Missy Kunz, on December 16, 2025, after he transitioned into her classroom, and two days before the IEP team meeting. Kunz described Student as a friendly, active, independent young boy who enjoyed social settings with older peers. Kunz reported Student was generally happy and sometimes silly, and she believed he was getting more comfortable in her classroom. Student actively participated in the classroom and engaged with his peers, despite only joining the class two weeks earlier. Student did an excellent job transitioning back and integrating into her classroom after returning from his related services sessions, like speech and language. Kunz reported at times he would lay on the floor during carpet time, and she needed to remind him to sit up, or he would get silly and flop his body around on the floor.

Kunz reported that Student would occasionally wander during moments of unstructured time and she needed to give him several reminders to join the class on the carpet. However, Kunz emphasized the reminders she gave him were no more frequent than the reminders she gave to her other kindergarten students. Kunz did not observe Student crying in her class. She saw him whine twice, and recalled a time when Parents dropped him off and he stuttered briefly, but happily joined the classroom. Kunz did not believe Student's behaviors impeded his learning. Kunz reported Student missed class work when he was pulled out for services and assessments. He was resilient and completed his work when he could. She allowed him to bring unfinished work home to complete and bring back to display on the classroom walls like other students.

Moran-Herrera administered the Functional Analysis Screening Tool. It is a survey form, also known as a rating scale, that obtained information on what function and purpose was served by each of Student's behaviors. It was designed to identify factors influencing the occurrence of problem behaviors, such as

- social reinforcement-attention and preferred items;
- social reinforcement-escape;
- automatic reinforcement-sensory stimulation; and
- automatic reinforcement-pain attenuation functions.

Moran-Herrera administered the survey form to Parents, explained the questions, and recorded their answers and scores. Student's teachers reported he did not exhibit these behaviors in the classroom, and therefore, had no information to add on the rating scale.

Moran-Herrera analyzed Parents' responses which suggested that Student's vocal outbursts served the function of escape and a secondary function of access to tangible objects. The results suggested withdrawal served the function of escape and access to tangible objects. The results also suggested that inappropriate peer interactions served the function of attention.

Moran-Herrera administered the Questions About Behavioral Function. It was a survey form, or rating scale, which obtained information about what functions or purpose each of Student's behaviors could serve. It assessed 25 items which yielded five categories and reflected the behavioral functions of

- attention,
- escape,

- physical,
- tangible, and
- non-social functions.

The possible responses included frequency descriptors of never, rarely, some, and often. Moran-Herrera administered the rating scale to Parents, explained the questions, and recorded their answers and scores. Student's teachers reported he did not exhibit these behaviors in the classroom, and therefore, they had no information to add on the rating scale.

Moran-Herrera analyzed the results of Parents' responses which suggested Student's vocal outbursts served the function of physical factors, with a secondary function of escape. Parent's responses suggested that withdrawal served the function of physical factors, with a secondary function of escape. Their responses suggested that inappropriate peer interactions served the function of non-social, with a secondary function of attention and access to tangible objects.

On November 17, 21, December 2, and 4, 2025, Moran-Herrera observed Student in the classroom, lunchroom, playground, and speech therapy room for a total of 10.5 hours. She used a timer and her cellphone to time the length of any behavioral incidents observed. During those observations, she did not observe any of the three defined behaviors. She noted one instance when Student said his ear was still hurting after he visited the nurse and he wandered to the back of the class, and his teacher gave him eight reminders within five minutes before he returned to the carpet with his class.

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Moran-Herrera's observations are detailed fully below to address Parents' objection as to the absence of observable behaviors she discussed in her assessment report. While she did note several instances in which he required redirection, none of those instances exceeded the time frame defined in the assessment. Overall, he was

- emotionally regulated,
- engaged in classroom activities,
- complied with his teacher's instructions,
- followed classroom routines,
- was easily redirected, and
- appropriately socialized with his peers in the classroom and the playground.

Moran-Herrera considered his behavior to be developmentally appropriate for his age based on the social norms of a kindergarten student.

The first observation occurred on Monday, November 17, 2025, for two hours in two classrooms, snack time, and recess. Moran-Herrera did not see Student engage in any behavioral incidents. She observed Student for five to 10 minutes in Kunz's classroom using a computer with headphones. After a five-minute warning, Student put the computer away and went to McCarthy's classroom with the resource specialist teacher. Student followed multiple directions easily. He knocked on the door and transitioned smoothly to join his classmates. He followed McCarthy's instructions to repeat phrases, copy gestures, and raise his hand to be called on. Student lined up easily with his classmates for snack and recess, following directions to take his jacket. He negotiated a peer conflict well, asking the peer to "stop" and "move," and when

the peer did not, Student himself moved around the peer. During recess, McCarthy asked the students to go to indoor recess because it was raining. Student joined his classmates inside and played with puppets. When she asked them to line up, he picked up his toys, put them away, and followed the teacher and classmates to art class.

The second observation took place on Friday, November 21, 2025, for three hours in Kunz's classroom and in speech therapy. Moran-Herrera did not observe Student engage in any behavioral incidents. Student said goodbye to Parent and followed his teacher's directions to put his backpack in his cubby. He joined the carpet area with his class, took a book, and began to talk and read with his classmates. He said "look at my book," and shared the book with a classmate. During art lessons, he tugged on his ear and asked to go to the nurse. He returned to class with a warm compress and followed the teacher's directions to continue his painting activity. He followed the teacher's instructions and joined his classmates on the carpet. He stood up and walked to the back of the classroom. He rejoined the class after the teacher gave him two verbal reminders to return. Student walked to the assessor and mentioned his ear was still hurting, and she redirected him to the teacher. He walked to the back of the classroom instead. Moran-Herrera noted that the teacher gave him eight reminders to rejoin the class on the carpet, and he complied within the five-minute timeframe.

Shortly after he rejoined the class, Student met a third-grade buddy for the first time for a group activity, and he smiled, laughed, and engaged in conversation. He hugged the third graders as they left the classroom. Student followed directions, grabbed his snack, and lined up for recess. He joined peers at a table. At first, he kicked

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a ball by himself, but joined three peers who approached him to play. He ran around with them, and took turns on the slide. He lined up and followed his classmates back to class.

Student transitioned easily to his speech therapy session with another student. At first, he did not respond to the speech therapist's request to repeat the letter "s" sound. Once she read a story and showed him a picture of a snowman, he complied and actively engaged and responded to her story. Student asked permission to read the next page. He repeated the words the speech therapist modeled. Student rang the office bell as the left, and when staff asked him to only press the bell once, he responded "okay" and walked away.

The third observation occurred on Tuesday, December 2, 2025, for four hours in Kunz's classroom and in speech therapy. Moran-Herrera did not observe Student engage in any behavioral incidents. Student entered the classroom and put his backpack in his cubby. He approached the assessor and walked around the classroom. He responded to the teacher's reminder to pick a book and sit on the carpet after she modeled doing so for him. Student called out three to four times and complied when the teacher reminded him to raise his hand. He laid down on the carpet and complied when the teacher reminded him to sit up. Student engaged with his class repeating letters and sounds and writing on the whiteboard. He transitioned into a new speech therapy room by asking questions about the location. He sat on a chair and responded appropriately to her requests and corrections, exclaiming "that was so easy." Student transitioned into the classroom, sat at his desk, and followed the teacher's instructions to start the current project. He responded to the teacher's clean up warning to put his project away. He did not respond to her instruction to join the class on the carpet for music after three

reminders until she instructed him to sit in a designated seat on the carpet, which he followed. A music teacher entered his classroom for a lesson. He raised his hand to tell the music teacher he did not have his name on the popsicle sticks. He participated in the lesson, shook his bell instrument, and followed the instructions in the lesson.

For recess, Student followed instructions and waited until his row was called to line up. He took his lunch box and stood in line. Student followed directions to face forward and remain quiet while walking to the cafeteria. He went to the playground and chased and tagged classmates, ran through the play structure, and slid down the slide. Student followed directions to line up to return to his classroom. Student followed the teacher's instructions to participate in the read aloud lesson. He approached the assessor and asked for a new bandage for his finger, and she directed him to the teacher. Student walked toward his teacher, who provided him with a new bandage. He sat down on the carpet, took off the new bandage, and asked the teacher for a new one. She told him after carpet time. Student walked to the back of the class and sat in a chair and returned to the carpet after the teacher gave him two verbal reminders.

The fourth observation took place on Thursday, December 4, 2025, for one and a half hours, in Kunz's classroom. Moran-Herrera did not observe Student engage in any behavioral incidents. Student was preparing to transition to lunch time. He lined up with his classmates and followed his teacher and staff in the hallway and cafeteria. Student sat at a table with three peers and ate his lunch. He lined up and followed the line to the playground. Student appropriately played with three other students chasing them, running around the play structure, and going down the slide. He lined up in his spot and followed the teacher's directions back into the classroom.

During free choice time, Student chose a desk with Pokémon figures and toys. He shared the toys with four other students and played alongside them. Student followed his peers' example after they began cleaning up the toys by placing them in a bin. He stood up and walked around the classroom, watched his classmates playing, and peered into the bins on other tables. Student watched a table of five students coloring but did not join them. He shared a seat with a peer and hugged while they held each other's arms. Student followed the teacher's announcement to get ready for dismissal by grabbing his backpack, water bottle, and lunch box. He lined up at the door with his classmates, followed a staff member to the after-school program, and stayed in line.

Moran-Herrera did not observe or identify any target behaviors sufficient to complete a functional behavior assessment, and concluded that a behavior intervention plan was not necessary. Student did not display any behaviors that disrupted his learning, classroom environment, or classmates. Nor did he cause injury to himself, his peers, or destruction to classroom property. In all, Student knew the classroom routine and followed it well, without incident.

Moran-Herrera concluded in her assessment that Student was regulated 95 percent of the time during her observations, was able to follow teacher instructions, to comply with direct work demands, and to engage in appropriate peer interactions. During the five percent of the time when he was not regulated or he withdrew by looking down or away, as described above, his teacher provided additional strategies such as visual cards to address his needs and avoid any escalation. Student responded

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well to all reminders from teachers and staff. Moran-Herrera considered his behavior to be developmentally appropriate for his age based on the social norms of a kindergarten student.

Moran-Herrera recommended supports and accommodations, which were delineated in his IEP, including:

- visual supports to help teach new information;
- sensory tools and breaks;
- clear and concise directions;
- checking for understanding;
- models of functional language and social stories for behavioral expectation; and
- flexible seating.

Moran-Herrera compiled her findings into a written report and provided it to Parents and their educational advocate. She discussed the functional behavior assessment at the December 18, 2025 IEP team meeting. Parents and their advocate were allowed to ask questions about the functional behavior assessment, but they did not. The IEP team meeting was continued to January 22, 2026, to review the multidisciplinary assessment, as part of Student's three-year review reassessment.

Moran-Herrera attended the IEP team meeting on January 22, 2026, when Walnut Creek's school psychologist discussed the results of her psychoeducational assessment. Parents and their advocate were allowed to ask questions, but they did not.

On February 13, 2026, Parents' requested Walnut Creek provide an independent functional behavior assessment at public expense. On February 26, 2026, Walnut Creek provided Parents with a letter and prior written notice with procedural safeguards, informing them they did not agree that their functional behavior assessment was inappropriately conducted. On March 26, 2026, Walnut Creek filed this complaint with OAH, requesting a judicial determination that its functional behavior assessment was appropriate and legally compliant.

WALNUT CREEK'S FUNCTIONAL BEHAVIOR ASSESSMENT WAS APPROPRIATE

WALNUT CREEK'S RESPONSE TO PARENTS' REQUEST FOR AN INDEPENDENT EDUCATIONAL EVALUATION WAS TIMELY

Walnut Creek responded to Parents' request within 13 days with a letter denying the request and providing prior written notice and procedural safeguards for Parents. Walnut Creek filed this complaint within six weeks of Parents' request.

Walnut Creek's response to Parents' request and filing were timely.

WALNUT CREEK'S BOARD CERTIFIED BEHAVIOR ANALYST WAS A TRAINED AND KNOWLEDGEABLE ASSESSOR COMPETENT TO PERFORM THE FUNCTIONAL BEHAVIOR ASSESSMENT

Parent's contention that Moran-Herrera lacked adequate experience to complete a comprehensive assessment is not supported by the record. State and federal law require that an assessor must be "trained and knowledgeable" regarding

the assessment. (Ed. Code § 56320, subd. (a)(3); 20 U.S.C § 1414(3)(a)(iv); 34 C.F.R § 300.304(c)(1)(iv).) Assessments must be conducted by individuals who are knowledgeable of the student's disability and competent to perform the assessment, as determined by the local educational agency. (Ed. Code, §§ 56320, subd. (g), and 56322.) Moran-Herrera was a board certified behavior analyst who earned a Master of Arts degree in special education and applied behavior analysis. She worked as an assistant clinical manager at a behavioral agency for two years. She worked as an applied behavior analysis program manager at another behavioral agency for two years.

Moran-Herrera had five to six years' experience conducting functional behavior assessments, a master's degree in special education and applied behavioral analysis, and was certified as a board certified behavior analyst, and therefore was qualified to conduct Student's assessment.

WALNUT CREEK USED RELIABLE ASSESSMENT TOOLS, PARENT INTERVIEWS, AND SCHOOL BASED OBSERVATIONS

Moran-Herrera administered the assessment according to the screening tools guidelines and instructions, in Parents' native language, and in a form most likely to yield accurate results regarding the student's academic, developmental and functional abilities. The testing procedures she used satisfies state and federal requirements. (Ed. Code, § 56320, subd. (a) and (b)(3); 20 U.S.C. § 1414 (b)(3)(A). Moran-Herrera used a variety of technically sound assessment tools and strategies to gather relevant information, including information provided by a parent, to assist her in determining whether Student had behaviors which interfered with his ability to access his educational

curriculum. She relied on her education and experience working with his age group, and her interview with Parents, to determine three areas of behavior to assess. (Ed. Code § 56320, subd. (b); 20 U.S.C. § 1414(b)(2)(A).)

Moran-Herrera used valid, reliable assessment instruments which avoided discrimination, when she administered the Functional Analysis Screening Tool survey form and the Questions About Behavioral Function survey form to Parents, as reliable inventory tools commonly used in the field of applied behavior analysis. (Ed. Code, § 56381, subd. (a)(1).) Additionally, Moran-Herrera used valid and reliable assessment tools by interviewing Parents for one to two hours, interviewing both of Student's teachers and the after-school program administrator, and observing Student for 10.5 hours over four days in two classrooms, recess, lunch, and in his speech therapy session. She took data on the type of behavior, the function of behavior, the frequency of behavior, and the intensity of the behavior affecting Student's ability to access his academic curriculum. These screening tools were commonly used throughout the board-certified behavior analyst community for reliable functional behavior assessments.

Parents assert that the assessment was not comprehensive because Moran-Herrera did not observe behaviors that interfered with Student's ability to access his education within the classroom setting, recess, and lunch, when Parents and other outside private providers saw such behaviors in other settings.

The fact that Moran-Herrera did not observe the targeted behavior during her 10.5 hours observing Student is largely corroborated by the credible testimony of his two general education teachers, his special education teachers, and his speech and

language pathologist. Moran-Herrera was persuasive when she testified that although she did not see any behaviors interfering with Student's access to education, if she had, she would have noted them in her report as an area of concern. None of the professionals working directly with Student observed him engage in any of the defined behaviors in the classroom. The lack of observed behaviors did not invalidate the administration of assessment tools or the validity of the functional behavior assessment.

The evidence established that Student had relatively typical behavior for a general education kindergarten student. Both his general education teachers, who saw him daily, credibly and consistently testified that they reminded Student of classroom instructions and routines no more than they reminded other kindergarten students his age. Both Student's special education teacher Cassandra Jacobson and speech language pathologist Kate Grillo had worked with him for almost two years, and did not see any of the defined behaviors from Student. They worked with him 150 minutes per week, and 60 minutes per week, respectively, resulting in considerable firsthand knowledge working with Student. They both had substantial experience working with kindergarten students. They did not demonstrate a reason to downplay his behaviors.

Additionally, school psychologist Khalilah Fortenberry persuasively testified based on her education and experience working with kindergarten students, her psychoeducational assessment and observations of Student, and her review of the functional behavior assessment, that Student did not have any interfering behaviors which occurred with frequency nor intensity, and therefore, he did not require a behavior intervention plan. While she observed Student engage in some off-task

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behaviors, he responded appropriately to the accommodations in his IEP. The teachers' reminders and the accommodations and supports in place were sufficient to keep him engaged in the classroom.

In all, the testimony of Moran-Herrera, McCarthy, Kunz, Jacobson, Grillo, and Fortenberry, was consistent and persuasive.

WALNUT CREEK'S FUNCTIONAL BEHAVIOR ASSESSMENT WAS
SUFFICIENTLY COMPREHENSIVE AND DID NOT NEED TO
INCLUDE INTERVIEWS OF HIS SPECIAL EDUCATION TEACHER
AND HIS SPEECH AND LANGUAGE PATHOLOGIST

Parents assert the functional behavior assessment was not sufficiently comprehensive because it did not include interviews with other professionals who knew him well. Parents allege that the assessment was not comprehensive because Moran-Herrera did not interview Student's related service providers such as his special education resource specialist teacher and his speech therapist.

Moran-Herrera persuasively testified that she did not formally interview them because they did not raise or mention any behavioral concerns. The credible testimony of Cassandra Jacobson, Student's special education case manager, and Kate Grillo, his speech language pathologist, established they did not see the defined behavior interrupting his instruction. They had both directly worked with Student for almost two years, for 150 minutes per week, and 60 minutes per week respectively. This direct firsthand experience was valuable in understanding Student's behaviors over time, in the classroom, in small group instruction, and in his related service setting.

Cassandra Jacobson provided Moran-Herrera with basic background information for the functional behavior assessment as his case manager and special education teacher, but was not formally interviewed. She provided direct instruction to him since he was enrolled in transitional kindergarten the prior school year. She provided direct instruction to Student in kindergarten with two other students, 30 minutes per day, five days per week. Jacobson only needed to redirect him approximately three times in a 30-minute instructional session. She would pause her instruction, redirect him, and model for him by starting the task for him. He occasionally needed a fidget break, or bounced himself on a bean bag chair. She persuasively testified that it was common for kindergarten students to use movement breaks and fidget breaks. Her testimony was consistent with the testimony of his general education teachers and the behaviorist, which made it persuasive.

Jacobson persuasively testified Student knew the class routine and followed it very well. She was not worried about Student's executive function at his age level affecting his behavior, his planning, or tasks in the classroom. Jacobson saw him call out his answers like typical kindergarten students do, but she did not consider it a vocal outburst or a shout. She saw him appear sad when he separated from his parents in the morning, but she did not consider it to be withdrawal. Jacobson saw him roughhouse with other students like a typical kindergartener, but she did not consider it to be an inappropriate peer interaction. She did not observe any behaviors she was concerned about for him. Jacobson did not think Student's communication challenges affected his behavior or interfered with his learning. His speech was at times difficult to understand, but he made progress, related to peers, and accessed his education.

Kate Grillo also worked with Student for almost two years as his speech language pathologist. Grillo's speech session was observed by Moran-Herrera as 'observation number three.' Grillo credibly testified she had not seen Student engage in any vocal outbursts or inappropriate peer interactions. Grillo only recalled one time when he was lying on the carpet while the rest of the class was sitting on the carpet, but it lasted less than five minutes and she did not consider it to be withdrawal. Grillo persuasively opined that while Student has communication challenges and might briefly appear sad, he was not withdrawn, and those challenges did not impede his ability to access his education.

Both Jacobson and Grillo informally spoke to Moran-Herrera, who observed their interactions with Student during the development of the functional behavior assessment. Their credible and persuasive testimony aligned with the testimony of Student's general education teachers. None of the professionals working directly with him observed the targeted defined behavior. This is consistent with the observations in the functional behavior assessment report. In all, the testimony of Moran-Herrera, McCarthy, Kunz, Jacobson, Grillo, and Fortenberry, was consistent with the functional behavior report and was persuasive.

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WALNUT CREEK'S FUNCTIONAL BEHAVIOR ASSESSMENT WAS SUFFICIENTLY COMPREHENSIVE AND DID NOT NEED TO ASSESS IN ALL AREAS OF SUSPECTED DISABILITY

Parents contend Walnut Creek's functional behavior assessment was not comprehensive because it did not assess in all areas of suspected disability and was limited in its scope. Parents assert it should have included broader

- escape,
- avoidance,
- frustration,
- disengagement,
- repeated need for redirection, and
- difficulty sustaining attention behaviors and meltdowns caused by communication challenges.

Parents assert Walnut Creek's functional behavior assessment was not comprehensive because Moran-Herrera improperly limited the scope of the assessment to three behavioral areas.

A full evaluation of a child's needs in all areas is mandated only in connection with an initial evaluation. (20 U.S.C. § 1414(a)(1)(A).) Reevaluations must begin with an IEP team review of existing evaluation data, including classroom assessments, information provided by parents including an interview with the parents and observations of the student in the classroom and during related services. (20 U.S.C § 1414(c)(1).) Based on that review, input from the child's parents, and observations, the IEP team must identify

“what additional data, if any is needed to determine whether the student continues to have a disability and the educational needs of the child.” (20 U.S.C. § 1414(c)(1)(B).) To determine those needs, and following the initial steps of reviewing past evaluations, input from the parents and teachers and observations, the IDEA requires that a district “administer such assessments and other evaluation measures as may be needed” to produce data determined necessary by the IEP team. (20 U.S.C. § 1414(c)(2).) Thus, the IDEA does not mandate a full evaluation in all areas each time a parent, teacher, or other district representative determines a child may have a new need, or that a change in approach to addressing a previously identified need may be required. Instead, the language of the statute gives IEP teams the option to pursue only those assessments or “evaluation measures” necessary to determine a child’s needs in the areas in question. (20 U.S.C. §§ 1414(c)(1)(B) and (c)(2).)

Walnut Creek was not required to conduct a full comprehensive evaluation in all areas of suspected disability because the functional behavior assessment was not an initial evaluation. It was sufficient that the behaviorist focused on the behaviors which may be impacting his ability to access his academic curriculum in the classroom setting. It was sufficient that Moran-Herrera interviewed Parents for the purpose of determining their concerns about the intensity and frequency of the intended targeted behaviors. Based upon her own observations, Parents’ concerns, Student’s teachers’ lack of behavioral concerns, and the typical age-appropriate behaviors of kindergarten students, Moran-Herrera’s focus of the three targeted behaviors was appropriate.

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Moran-Herrera's direct observations lasting 10.5 hours provided her with ample time to consider whether Student engaged in

- escape,
- avoidance,
- frustration,
- disengagement,
- repeated need for redirection,
- difficulty sustaining attention, and
- meltdowns resulting from communication challenges.

During that time, she observed no such behaviors. Moran-Herrera credibly testified that if she had observed those behaviors, she would have noted them in her assessment report.

Parents assert the timing of Moran-Herrera's observations invalidate her report because she observed Student transitioning into his new classroom, and because Parents and teachers intentionally prepared him for the transition.

On November 4, 2025, Parents had requested a change in Student's classroom, based on their concerns over Student allegedly trying to leave the classroom without permission. The classroom change was an anticipated transition that Walnut Creek supported Student in making beginning Monday, November 17, 2025.

Moran-Herrera was required to complete a timely assessment, and completed it in less than the 60-day time frame permitted by statute. Parents consented to the functional behavior assessment on November 12, 2025, and the IEP team meeting was

scheduled for December 18, 2025. Moran-Herrera began her assessment before the November Thanksgiving holiday, and completed it just before the IEP team meeting. Moran-Herrera was required to provide a timely report and was logistically limited in time as to when she could observe Student to gather data for her analysis.

Moran-Herrera's testimony was persuasive when she explained that she chose to observe Student as he was transitioning between his two classrooms because it is typical for students to exhibit behavioral challenges as they are adjusting to new environments. Moran-Herrera was optimizing the opportunity to observe any struggles Student could be experiencing. Moran-Herrera observed Student for one day in McCarthy's classroom, and for three days in Kunz's classroom as he made the adjustment. This did not invalidate the observations. Rather, it supported Moran-Herrera's observations that Student was able to react well to the stress of a new classroom, when she would have expected any behaviors to escalate.

Parents raised concerns that the report contained an incorrect date, indicating Student started transitioning into Kunz's classroom on November 15, 2025. Parents questioned the reliability of the data in the report because this date was a Saturday, when school was not in session.

The clerical error Moran-Herrera made referencing the date Student began his transition into his new classroom did not invalidate the assessment. It did not impact the results of her interviews, her observations, her administration of the standardized checklists, or the recording of her data. Moran-Herrera was accurate in all other dates, including the date of the interviews, the dates of her observations, the date of

assessments, and the details of Parents' responses to the two standardized checklists. The single typographical error does not render the functional behavior assessment invalid.

WALNUT CREEK'S DECEMBER 18, 2025 FUNCTIONAL BEHAVIOR ASSESSMENT WAS APPROPRIATE SUCH THAT IT DOES NOT HAVE TO PROVIDE AN INDEPENDENT EDUCATIONAL EVALUATION AT PUBLIC EXPENSE

For all the reasons discussed in this Decision, Walnut Creek's December 18, 2025 functional behavior assessment was appropriate and legally compliant such that it is not required to provide an independent educational evaluation at public expense.

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

Walnut Creek's December 18, 2025 functional behavior assessment was appropriately conducted such that it is not required to fund an independent functional behavior evaluation at public expense.

Walnut Creek prevailed on the sole issue in this case.

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.

DEBORAH MYERS-CREGAR

Administrative Law Judge

Office of Administrative Hearings