

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**IN THE CONSOLIDATED MATTERS OF  
PARENT ON BEHALF OF STUDENT**

**v.**

**REDONDO BEACH UNIFIED SCHOOL DISTRICT.  
OAH CASE NUMBER 2019020379**

**and**

**REDONDO BEACH UNIFIED SCHOOL DISTRICT**

**v.**

**PARENT ON BEHALF OF STUDENT.  
OAH CASE NUMBER 2019020539**

**DECISION**

Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, referred to as OAH, on February 8, 2019, naming Redondo Beach Unified School District. Redondo Beach filed a due process complaint with OAH on February 14, 2019, naming Student. On February 22, 2019, OAH granted Redondo

Beach's request to consolidate the cases. On February 21, 2019, and August 9, 2019, OAH granted Student's requests to amend her complaint.

Administrative Law Judge Paul H. Kamoroff heard this matter in Redondo Beach, California, on October 1, 2, 3, 8, and 10, 2019.

Attorney Rosa K. Hirji represented Student. Student's Mother and Father attended the hearing. Student did not attend the hearing.

Attorney Sundee M. Johnson represented Redondo Beach Unified School District. Jessica Silberling, Executive Director of Special Education, attended the hearing on behalf of Redondo Beach.

At the parties' request, OAH granted a continuance to October 28, 2019, to file written closing briefs. The briefs were timely filed, the record closed, and the matter submitted for decision.

## **ISSUES**

The issues set forth below have been clarified consistent with *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443. The issues do not include those withdrawn by Student at the start of the due process hearing. No substantive changes have been made to the remaining issues.

### **STUDENT'S ISSUES**

1. Did Redondo Beach deny Student a free appropriate public education, called a FAPE, by failing to fulfill its Child Find obligations by:
  - a. Failing to offer a timely assessment plan; and

- b. Failing to timely identify Student as a child with a disability under the Individuals with Disabilities Education Act?
- 2. Did Redondo Beach deny Student a FAPE by failing to properly evaluate Student for special education both procedurally and substantively, by:
  - a. Failing to assess Student in a timely manner;
  - b. Failing to perform assessments in a legally sufficient manner; and
  - c. Failing to assess Student in all areas of suspected disability?
- 3. Did the September 27, 2018 individualized educational program, called an IEP, deny Student a FAPE, by:
  - a. Failing to make Student eligible for special education and related services under the IDEA; and
  - b. Failing to offer Student an IEP?
- 4. Did the June 4, 2019 IEP deny Student a FAPE, by:
  - a. Failing to include a statement of updated present levels of performance;
  - b. Offering inadequate goals in the areas of social-emotional needs and executive functioning;
  - c. Failing to offer goals in all areas of unique need;
  - d. Failing to offer a special education program and related services that was individualized and or reasonably calculated to remediate Student's executive functioning; and
  - e. Failing to offer related services in the form of psychotherapy and in an amount and frequency reasonably calculated to address Student's social-emotional needs?

## **REDONDO BEACH'S ISSUE**

5. Was Redondo Beach's September 27, 2018 initial psychoeducational assessment legally sufficient so as to preclude public funding of the neuropsychological independent educational evaluation requested by Student?

## **SUMMARY OF DECISION**

Student had a moderate attention disorder and delays in executive functioning. As a result, she had difficulty managing and turning in homework. Redondo Beach satisfactorily addressed Student's needs through general education accommodations and a section 504 plan. Student did not require special education or related services as a result of a disability. Consequently, the Decision finds that Redondo Beach did not deny Student a FAPE by failing to find her eligible for special education prior to June 2019.

The Decision also holds that Redondo Beach's September 2018 assessment met legal requirements. Finally, the Decision finds that the June 2019 IEP was appropriate in light of Student's circumstances.

## **FACTUAL FINDINGS**

### **THE STUDENT**

Student was a 17 years old girl who resided with her parents within Redondo Beach's boundaries. Student was first found eligible for special education in an IEP dated June 4, 2019, under the eligibility category of other health impairment due to

difficulty in executive functioning. Parents did not consent to the IEP. As of the hearing, Student had not received special education or related services.

Executive functioning are mental processes related to organization, planning, and self-management. Student demonstrated difficulty planning, organizing, and turning in homework assignments. Notwithstanding this difficulty, Student completed in-class assignments and tests, participated during classroom discussions, and interacted with peers. She had friends, played on the school volleyball team, took Honors and Advanced Placement classes, and was beloved by her teachers. Student did not demonstrate academic or behavior problems at school.

### **STUDENT'S EDUCATIONAL HISTORY**

Student had some difficulty with attention, distractibility, and forgetfulness since she was a young child, but was able to perform well academically. She attended general education classes at private, parochial schools, during elementary and middle school. She began her freshman year of high school, the 2016-2017 school year, in general education classes at a private, parochial high school. Student did well at each school and received high grades.

During high school, Student demonstrated greater difficulty in managing and turning in homework. She continued to perform well in class, but was often late in turning in completed homework assignments. As a result, Parents retained various educational therapists to help Student organize and manage her homework.

## **DR. GITI'S ASSESSMENT**

In December 2016, Parents retained Dr. Shahrzad Giti, M.M., Psy.D., to assess Student's educational functioning. Dr. Giti completed a written report on January 26, 2017. Dr. Giti was an experienced educational assessor who was familiar with eligibility criteria for special education. She did not testify during the hearing.

Dr. Giti comprehensively assessed Student over three days in December 2016. She used standardized and non-standardized tests to measure Student's cognitive, academic, behavior, attention, social-emotional, and executive functioning abilities. Student was pleasant and cooperative during testing. She had an appropriate affect and did not demonstrate any emotional difficulty. Neither Student nor Parents reported that Student experienced emotional problems.

Cognitively, Student had above average scores in verbal comprehension, visual spatial skills, fluid reasoning, working memory, and an average score in processing speed. Student had above average scores in visual motor integration. She was also above average in each academic area tested, including reading, writing, and math. Student did not demonstrate any cognitive or academic problems.

Student, Parents, and a teacher completed rating scales to measure Student's attention, behavior, and social emotional functioning. Student did not demonstrate problems in behavior or social emotional functioning. However, scores from Parents and Student showed problems in attention. Rating scales by Parent and Student also showed problems in executive functioning.

Based upon her assessment, Dr. Giti diagnosed Student with Attention-Deficit Hyperactivity Disorder, referred to as ADHD. Student did not demonstrate hyperactivity,

but presented with moderate inattention. To treat this delay, Dr. Giti recommended accommodations through a "504 Plan at Redondo Beach High School."

A 504 plan stems from Section 504 of the Rehabilitation Act of 1973, which protects the rights of persons with disabilities in public schools. It is normal for a 504 plan to be a written document that provides accommodations to disabled pupils in general education. A 504 plan can also provide related services. Dr. Giti was familiar with both IEPs and section 504 plans, and determined that Student required classroom accommodations through a 504 plan. She did not recommend special education, related services, or an IEP for Student.

Parents took Dr. Giti's recommendations seriously. Following her assessment, Parents withdrew Student from parochial school and enrolled her at Redondo Beach High School, a public school in Redondo Beach.

On February 6, 2017, Student began attending school in Redondo Beach, the second semester of her 9th grade. By email on February 27, 2017, Parents requested a 504 plan.

### **THE 2017 504 PLAN**

Redondo Beach timely responded to Parent's request and proposed dates to hold a 504 plan meeting. In preparation for the meeting, school counselor Deanna Johnston interviewed Parents and teachers at Redondo Beach. She also reviewed Student's educational records and Dr. Giti's assessment. On this basis, she agreed that Student qualified for a 504 plan because of ADHD, an impairment that substantially limited a major life activity. Ms. Johnston did not believe that additional assessments were necessary for Student, and Parents did not request any assessments.

On April 4, 2017, Redondo Beach held a 504 plan team meeting. Student was 14 years old and a freshman at Redondo Beach High School. 504 plan team members included Parents, Student, family advocate and educational therapist Natalie Zuppardi, Ms. Johnston, a general education teacher, and an assistant principal. The team reviewed Dr. Giti's assessment and reports from Student's teachers at Redondo Beach High School. Reports were provided by Student's English, Biology, Chorus, and Career Preparation teachers. The team thoroughly discussed Student's educational needs and performance during her limited time at Redondo Beach High School.

Student was bright and motivated, but had difficulty turning in homework. She performed well in class and was able to access the classroom curriculum, including following instructions and earning passing grades. However, those grades were deflated by missing or late homework assignments. To address Student's difficulty managing and turning in homework, Redondo Beach adopted Dr. Giti and Ms. Johnston's recommendation to find Student eligible for a 504 plan.

The 504 team, including Parents, Student, and their advocate, developed accommodations to support Student in general education. Accommodations included extended time to turn in homework, extended time for tests, the option to take tests in an alternate setting, preferential seating near the point of instruction, the use of a daily planner to write down assignments, initialed by the teacher, and for Student to take pictures of homework assignment instructions. In addition, Student had access to an internet portal where each teacher reported daily homework assignments.

Parents consented to the 504 plan. None of the 504 plan team members, including Parent or their advocate, recommended an assessment, special education, or related services for Student.



Ms. Johnston was Student's school counselor and case carrier during the 2016-2017 school year at Redondo Beach. She was an experienced and vigilant educator who persuasively testified during the hearing. Ms. Johnston ensured that each teacher was informed of the 504 plan and related accommodations. Ms. Johnston collaborated with each teacher to ensure that the accommodations were implemented with fidelity. For example, she frequently consulted with classroom teachers to identify missing homework assignments. She ensured that each teacher accepted late homework for full credit, following Parents' consent to the 504 plan. Ms. Johnston also routinely communicated with Parents to ensure that missing assignments were identified and turned in.

Assistant principal Marvin Brown, who had experience in special education, also helped ensure the accommodations were available and implemented with care. For example, he determined that an alternate testing location was too noisy, and located a quieter location for Student. Like Ms. Johnston, he frequently communicated with Parents regarding Student's education and accommodations.

In addition, Student was a strong self-advocate. For example, it was normal for Student to directly contact teachers to request extra time for assignments or to request an alternate location for tests. Student was sometimes reluctant to have the teacher initial her daily planner in front of peers, but easily accessed the homework portal whenever her homework planner notes were incomplete.

The 504 plan accommodations were effective. Following the implementation of the 504 plan in April 2017, Student was able to better manage her homework and turn in late assignments. Each teacher gave Student credit for late homework, and her grades improved in accord with that credit. Student's final grades for the 2017 spring

semester, her first semester at Redondo Beach High School were an A in Volleyball, B in Chorus, B plus in Career Preparation, C in Geometry, D in Honor's Biology, and C in Honor's English.

Student could satisfactorily access general education with the accommodations afforded her in the section 504 plan. She did not require special education or related services from February 2017, through the end of the school year, and neither Student's teachers, Parents, or their advocate, made such recommendations.

### **THE 2017-2018 SCHOOL YEAR**

Student continued to perform satisfactorily at school during the 2017-2018 school year, 10th grade. She followed instructions in class, participated in classroom discussions, and performed well in class. She easily accessed the school curriculum, had friends, and played on the school's volleyball team. Student did not demonstrate any academic, social, or emotional problems at school.

Student demonstrated difficulty organizing and turning in homework. It was normal for Student's grades to drop during the semester because of missing homework, and for those grades to improve by the end of the semester, after Student turned in the missing assignments. Student took advantage of her general education accommodations, and teachers routinely provided full credit for late homework. Other than difficulty turning in homework, Student did not exhibit any educational disorder.

Kerrie Eastham was Student's Honor's English teacher during the 2017-2018 school year. Ms. Eastham was an experienced teacher and familiar with 504 plans and IEPs. She persuasively testified during the hearing that Student adequately benefited from general education without special education and related services. Student

understood the classroom material, followed instructions, and participated during class. Student organized and completed in-class assignments, and improved her ability to turn in homework assignments over the course of the school year. Student used a daily planner for notes, accessed the homework portal, and received credit for late home work. With the general education accommodations in her 504 plan, Student easily accessed the Honors level general education curriculum and earned passing grades.

Ms. Eastham's testimony was similar to testimony by Student's case carrier Ms. Johnston, who frequently consulted with Student's teachers regarding Student's accommodations and school performance. It also aligned with testimony from assistant principal Mr. Brown, who carefully followed Student's school program and progress. Each school witness thoughtfully and persuasively described that Student performed well in general education and did not demonstrate a need for special education.

In sum, Student could satisfactorily access general education. She understood classroom material and participated during classroom discussions. She was polite and cooperative. She did not exhibit any behavioral or emotional delays. Like the prior school year, the general education accommodations were effective in addressing Student's executive functioning problems. Student earned passing grades for the first semester of 2017-2018 school year, including an A in Volleyball, C plus in Spanish 2, B minus in Algebra 2, D plus in Chemistry, C minus in Advanced Placement European History, C in Advancement Via Individual Determination, called AVID, a college preparation course, and C minus in Honors English.

Student's grades improved during the second semester, and included an A in Volleyball, B in Spanish 2, B minus in Algebra 2, C minus in Chemistry, C minus in Advanced Placement European History, B minus in AVID, and B minus in Honors English.

Student continued to follow classroom instructions, participate during class, have friends, play volleyball, and easily access her education. Student benefited from general education accommodations and satisfactorily accessed her education during the 2017-2018 school year.

Nonetheless, Parents were concerned that Student was not achieving higher grades. Parents believed that Student was intellectually gifted and should be earning A's in each class. As a result, Parents retained educational therapist Stephanie Pitts. Ms. Pitts did not tutor Student. Student understood her classroom material and did not require specialized academic instruction. Rather, like Ms. Zuppari, Parents retained Ms. Pitts to help Student manage her homework and organize her backpack.

Parents frequently emailed teachers, administrators, and Student's case carrier regarding Student's homework, accommodations, and school assignments. School staff promptly responded to each email. For example, Ms. Johnston would quickly consult with teachers regarding missing assignments and then provide Mother a detailed description of each assignment. Mr. Brown met with Mother and teachers outside of the 504 plan meetings to discuss more effective ways of addressing Student's difficulty organizing homework.

Redondo Beach staff were careful educators who diligently responded to Parents' concerns and Student's needs. Supervised by a case carrier and an active vice principal, each teacher ensured that the accommodations were implemented or available for Student, and that Student was able to benefit from her education.

## **DR. BROWN'S REPORT**

In October 2017, Mother consulted with clinical psychologist Thomas Brown regarding Student's educational needs. Dr. Brown prepared a written consultation report on October 23, 2017. Dr. Brown did not testify during the hearing and Mother did not share his report with Redondo Beach until just before the hearing.

Dr. Brown reviewed Student's educational file and interviewed Parents and Student. He found that Student was bright and strongly motivated, but had difficulty in executive functioning, including self-management. He recommended medication for ADHD, and that Student "might benefit" from psychotherapy. Dr. Brown did not recommend special education, related services, or any changes to Student's educational program.

## **THE MAY 29, 2018 504 PLAN**

On May 29, 2018, Redondo Beach held an annual review of Student's 504 Plan. Student was 15 years old and finishing 10th grade at Redondo Beach High school. Parents attended with an advocate. Each of Student's six teachers attended, along with Student's case carrier Ms. Shlomo, and an assistant principal. The team agreed that Student continued to qualify for a 504 plan due to ADHD.

The teachers reported that Student was smart and well liked. She performed well in each class, including Advanced Placement European History, a college level class normally reserved for advanced 12th graders. In AVID, Student actively participated and used the Socratic method, meaning she stood when called upon. Student had positive relationships with peers and teachers. It was normal for Student to self-advocate and directly approach a teacher when she needed help or an accommodation. In some

classes, Student still had difficulty turning in homework on time. Consequently, Student's grades sometimes still fell during the semester because of missing homework. Final semester grades were higher, because they included homework that was received and graded late.

After careful consideration of all of Students academic, social, emotional, and functional skills, the team concluded that Student's only problem was managing homework.

With input from Parents and their advocate, Redondo Beach developed various general education accommodations. Accommodations included preferential seating near the point of instruction, daily class notes from the teacher, extended time for assignments, permission to email late assignments, access to the online homework portal for Student and Parents, weekly communication between Parents, case carrier, and teachers, the chunking of assignments, meaning reducing a large assignment to smaller assignments, reducing repetitious work, extended time for tests, the option to take tests in an alternate setting, a daily homework planner, initialed by teachers, and a second set of textbooks for each class.

However, Parents were still concerned that Student was not receiving higher grades. In response, Redondo Beach recommended that Student take a Learning Strategies Management class, referred to as LSM. During the 504 plan meeting, the school psychologist Holly Hunt described LSM to Parents and their advocate. Ms. Hunt, the LSM teacher Gina Natividad, and assistant principal Mr. Brown, persuasively described the class during hearing testimony.

LSM was a class within special education that was offered to pupils with a 504 plan in lieu of an elective. LSM was designed to support students with executive functioning problems, including problems managing and turning in homework. The class syllabus was built around teaching organization and management, tracking grades and missing assignments, and study skills. The class consisted of a small group of students with a teacher and an aide. The LSM teacher provided direct instruction to teach executive functioning skills, including organization and time management. Following direct instruction, the teacher provided each student individual assistance, including organizing backpacks and tracking missing assignments. The LSM teacher consulted with pupils' other teachers to track grades and missing assignments. LSM often had advanced pupils like Student, who performed well in general education but had difficulty managing homework.

Parents consented to the 504 plan, but not to the LSM class.

### **PARENT'S REQUEST FOR ASSESSMENT**

By letter on May 10, 2018, Parents requested that Redondo Beach assess Student to determine if she was eligible for special education.

On May 23, 2018, Redondo Beach timely provided Parents an assessment plan. Redondo Beach proposed assessments to determine Student's present levels of performance and eligibility for special education. The assessment plan was in language easily understood by the general public and provided in Parents' native language of English. The plan explained the types of assessments to be conducted, and indicated that no educational placement or services would result from the assessment without the consent of the parent. The plan clearly denoted areas of assessment, including

academic, health, intellectual development, motor development, social, emotional, behavior, and post-secondary transition. The plan also identified assessment examiners, including teachers, school psychologist, school nurse, parents, and work ability staff. Combined, the assessments were referred to as a Multidisciplinary Evaluation.

On May 24, 2018, Parents signed consent to the assessment plan, and returned the signed plan to Redondo Beach on May 25, 2018. School district's normally have 60 days to complete an assessment, not including extended breaks. The 2017-2018 school year ended on June 20, 2018, and the 2018-2019 school year began on August 29, 2018. Hence, Redondo Beach timely completed the assessments by September 27, 2018, and held an IEP team meeting to review the assessments the same day.

### **THE SEPTEMBER 27, 2018 MULTIDISCIPLINARY EVALUATION**

Redondo Beach selected school psychologist Ms. Hunt to conduct the Multidisciplinary Evaluation for Student. Special Education Department Chair Jeffrey Rosadini, ten teachers, and a school nurse, assisted with the assessments. The assessment team recorded their testing in a written report dated September 27, 2018.

Ms. Hunt was an experienced school psychologist. She had a masters in school psychology and had conducted over 100 school assessments. She had training and experience in the areas she assessed and was a careful and conscientious assessor.

Ms. Hunt reviewed Student's school records, observed Student in several classes, interviewed Student, Parents and each of Student's teachers and counselor. She consulted with each teacher following the completion of her report to solicit any



additional information that may have arisen. She selected a combination of seven standardized and non-standardized tests to comprehensively assess Student.

Ms. Hunt was qualified to administer those assessments. She correctly followed the protocols for testing, used valid and properly normed testing material, and conducted the testing in English, in a racially unbiased manner. Testing measures included a review of records, interviews, observations, tests for cognitive functioning, academic achievement, behavior assessment, depression, multidimensional anxiety, attention, social emotional, executive functioning, health, and vision and hearing screening. Ms. Hunt completed each test with fidelity and obtained valid testing results. During hearing, Ms. Hunt persuasively testified in support of her testing and report.

Standardized tests in the area of cognition showed that Student had an intelligence quotient of 117, with 100 being an average score. Student had high average scores in verbal intelligence, nonverbal intelligence, composite memory, and an average score in processing speed. Cognitive testing did not reveal any disability or concerns.

Teacher interviews revealed that Student performed well at school. For example, Student's Pre-Calculus/Trigonometry teacher reported that Student frequently completed quizzes and work before the allotted time expired. And Student self-advocated by requesting additional time for assignments when needed. Student's Chemistry teacher reported that Student participated during class, understood the material, followed instructions, and helped others in the class. She was social, could work independently or with others, and produced quality work.

Rating scales submitted by teachers reflected the teacher interviews, and showed that Student did not have problems in the areas of academics, social, emotional, or behavior.

Ms. Hunt also interviewed Ms. Shlomo, who had taken over Ms. Johnston's role as Student's counselor and case carrier. Student was often permitted to take Honors or Advance Placement classes. Ms. Shlomo was concerned that Student could achieve higher grades in regular classes, thereby increasing her ability to be accepted to a preferred college. Other than this advice, Ms. Shlomo did not report any concerns regarding Student.

Ms. Hunt's classroom observations were consistent with the teacher interviews. Student was organized and engaged in class. She had all necessary materials on her desk and was focused towards the lesson presented. She followed instructions, understood the lesson, participated in class, and appropriately socialized with classmates and teachers. Student accessed her education and benefited from general education. Overall, Student performed well. She participated, followed instructions, and understood the classroom material. No concerns were noted during Ms. Hunt's observations or reported by teachers.

During her interview with Ms. Hunt, Mother described Student as articulate, thoughtful, and kind. She did not report any social, emotional, or behavioral problems. Student completed chores, had positive relationships, and was respectful towards others. Mother was primarily concerned that Student needed guidance starting her homework.

Classroom observations and interviews with Student's teachers, counselor, and Parents did not reveal a disability that warranted special education or related services.

Ms. Hunt provided Parents, Student, and her teachers various rating scales to measure Student's behavior, attention, social-emotional development, depression, and anxiety. No significant problems were noted by Student or her teachers. Mother reported problems in attention and anxiety.

Per a rating scale for executive functioning, Student and all of her teachers rated Student as average. Mother reported Student had significant problems in executive functioning. Ms. Hunt also assessed Student's executive functioning through observations. In class, Student was organized, had all of her materials, and completed classroom assignments, quizzes, and tests within the allotted time frame.

Mr. Rosadini assessed Student's academic achievement. He was an experienced assessor with a masters' in special education. Mr. Rosadini selected standardized assessments to assess Student in the areas of reading, mathematics, written language, and academic achievement. Mr. Rosadini had training and experience in the areas he assessed and followed the testing protocols. Like Ms. Hunt, he was a careful assessor and obtained valid testing results. Mr. Rosadini provided insightful and persuasive testimony during hearing.

Testing showed that Student had high average to superior abilities in each area tested. The written assessment report included the cluster scores for broad reading, basic reading skills, reading fluency, broad mathematics, math calculation skills, broad written language, written expression, and broad achievement. Testing protocols, made available to Parents, also included subtest scores. Academic testing did not reveal any disability or educational problems.

Following the assessments, Ms. Hunt carefully considered areas of special education eligibly for Student. She considered eligibility for specific learning disability, emotional disturbance, and other health impairment.

For specific learning disability, Student had high average scores in each area tested but processing speed, which was average. The discrepancy between the high average scores and average score was not severe. Therefore, Ms. Hunt properly found that Student did not qualify for special education under specific learning disability.

For emotional disturbance, Student did not exhibit any of the six factors that would warrant eligibility. For example, Student did not exhibit an inability to learn or have satisfactory interpersonal relationships. She did not have inappropriate behaviors or a general, pervasive mood of unhappiness or depression. She did not exhibit physical symptoms of fear or schizophrenia. Student did not meet eligibility criteria for emotional disturbance.

For other health impairment, Ms. Hunt acknowledged that Student had a prior diagnosis of ADHD, and heightened scores on her testing for inattention. Student's inattention impacted her executive functioning to the extent she had difficulty managing homework. Despite these challenges, Student successfully accessed general education classes without special education or related services. This was evidenced by her academic progress, teacher reports, state and standardized assessments, and her enrollment in Advanced Placement and Honors classes. Consequently, Student did not qualify for special education under other health impairment.

Based upon the testing results, Student did not meet the eligibility criteria for special education or related services.

## **THE SEPTEMBER 27, 2018 IEP TEAM MEETING**

On September 27, 2018, Redondo Beach held an IEP team meeting to review the Multidisciplinary Evaluation and determine Student's eligibility for special education. Parents, Student, and their advocate attended the meeting. All necessary school staff, including Ms. Hunt, Ms. Shlomo, Mr. Brown, Mr. Rosadini, program specialist Jessica Olshan, and Barbara Bein, who taught Student's Advanced Placement United States History class, also attended. Student was 16 years old and in 11th grade at Redondo Beach High School. Redondo Beach provided Parents a copy of Parent Rights at the beginning of the meeting.

The team first considered Student's present levels of performance. Team administrators and assessors reported that Student was poised, thoughtful, and a joy to work with. Teacher reports from each class cited Student as respectful, articulate, participatory, and understanding of class material. Student completed tasks on time in class, and often completed quizzes and in-class work before the allotted time. Student was sweet natured and well liked. Student had A's in Advanced Placement English, Spanish 3, Physics, and Chemistry. She had a B plus in Advanced Placement United States History, and a D plus in Pre-calculus/Trigonometry. Teacher reports and Student's school performance did not identify that Student had a disability.

The team did not identify any problems in the area of gross or fine motor development. To the contrary, Student was an active athlete who independently navigated the school campus. She also produced neat, legible work.

At the time of the IEP team meeting, Student continued to exhibit appropriate social and emotional development. She had friends inside and outside of class, played team sports, and was observed by teachers and staff socializing on campus. Student

was respected and well-liked by teachers and peers. Vocationally, Student produced quality work, worked well independently and in groups, and provided insightful contributions to class discussions. Finally, Student passed all health screenings.

Student did not have a disability or discernable problems based upon her present levels of performance.

Ms. Hunt reviewed the Multidisciplinary Evaluation during the IEP team meeting. She carefully explained each part of the report, from its referral to conclusion. She thoughtfully answered questions from Parents and their advocate. Ms. Hunt explained the basis of each area of eligibility, and why she found that Student did not meet the criteria for special education eligibility.

After careful consideration and deliberation from the IEP team, Redondo Beach determined that Student did not meet eligibility criteria for special education. Redondo Beach assured Parents that Student would still receive accommodations and a 504 plan. Redondo Beach offered to add 504 plan accommodations and to hold another 504 plan meeting. Redondo Beach again recommended the LSM class, which could be provided outside of an IEP. Redondo Beach offered to modify the LSM class to provide more individual instruction, as Parents complained Student was too bright for the group instruction provided in the class.

Parents and their advocate disagreed with the Multidisciplinary Evaluation. They disagreed that Student was not eligible for special education. And they alleged the 504 plan accommodations had not been effective or implemented. Parents believed that Student was brilliant and should therefore be achieving higher grades. They perceived Student's failure to achieve higher grades as evidence that Student required eligibility for special education. Parents did not agree with the IEP.

## **THE OCTOBER 29, 2019 504 PLAN**

On October 29, 2018, Redondo Beach held another 504 plan meeting for Student. Parents attended with their advocate. Mr. Brown, Ms. Hunt, Ms. Shlomo, and a general education teacher attended for Redondo Beach.

Redondo Beach held the meeting to address Mother's concern that Redondo Beach was not doing enough to support Student's needs in executive functioning. Parents believed Student was being "penalized for her disability." Redondo Beach reviewed and revised the 504 Plan accommodations to correlate with all of Parents requests. For example, in addition to a second set of textbooks, Redondo Beach agreed to provide Student two Chromebooks, a small computer device.

The school psychologist further described the LSM class and how it directly taught executive functioning skills, including organizing, planning, and management of homework. Mr. Brown described how the LSM class could be modified to meet Parents' concerns, while still complying with the class curriculum.

In addition to the LSM class, Redondo Beach offered Student 15 minutes weekly, for 16 weeks, of direct services by a school psychologist to address executive functioning skills.

Parents did not consent to the 504 plan. They believed Student required an IEP to meet her executive functioning needs. Parents would not agree to the LSM class or any services not included in an IEP.

## **PARENTS' REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATION**

By letter on January 17, 2019, Parents requested that Redondo Beach fund an independent neuropsychological educational evaluation for Student. Parents asserted the school's September 27, 2018 Multidisciplinary Evaluation was defective because Ms. Hunt did not sufficiently explain the testing scores. They also complained that Ms. Shlomo's interview was too broad. Finally, Parents asserted the evaluation should have found Student eligible for special education.

By letter on February 14, 2019, Redondo Beach denied Parents' request for an independent educational evaluation. On the same day, Redondo Beach filed a complaint with OAH to defend its Multidisciplinary Evaluation.

## **DR. SIMUN'S EVALUATION**

Parents retained Ann Simun, Psy.D., to conduct a private neuropsychological evaluation. Dr. Simun was an experienced assessor with a bachelor of arts in psychology, a master of science in school psychology, and a Doctorate in neuropsychology. She assessed Student over two days in February 2019, and completed a written report on April 22, 2019.

Dr. Simun interviewed Mother and Student, reviewed records, and observed Student at school. Dr. Simun used non-standardized tests, including Parent, teacher, and Student behavior rating scales. She also used standardized cognitive and academic tests.



During interviews, Mother was concerned with Student's executive functioning. She did not report any other concerns. Student was smart, participatory, and had high verbal ability. She was relaxed, pleasant, and had no problems following multistep directions. Student did not exhibit any disorder.

Dr. Simun received rating scales from Student's Advanced Placement History teacher. The teacher reported that Student was bright, motivated, and a delight to have in class. Student sometimes did not have her materials in class and sometimes took longer to complete a task compared to her peers. No other concerns were reported by the teacher.

Dr. Simun observed student at school during Chemistry and Advanced Placement History classes. In Chemistry, Student voluntarily participated and appropriately communicated with the teacher and peers. She was engaged in the classroom work, including writing notes, and enjoyed working with a small group of peers to complete a lesson. Dr. Simun was impressed by the teacher and Student's performance.

In Advanced Placement History, Student was attentive, had her materials, and focused on her work. Student did not exhibit any educational problems.

Based upon her observations, Dr. Simun concluded Student had no problems in attention or executive functioning, or a disorder of any kind, in the classroom.

Cognitive testing yielded similar results to Redondo Beach's Multidisciplinary Evaluation. Student was above average in verbal comprehension, perceptual reasoning, and working memory, and average in processing speed. Student's overall intelligence quotient was 124.

Standardized academic testing was also similar to the multidisciplinary evaluation. Student was advanced in reading, writing, and math. She had high abilities in language, memory, impulse control, and sustained attention, during testing. Student did not have any deficits in academics, phonological processing, visual motor integration, or fine motor skills.

Dr. Simun found Student had moderate problems in executive functioning. On this basis, she determined that Student qualified for an IEP for executive dysfunction and attention problems related to ADHD.

In significant part, Dr. Simun's assessment did not deviate from Redondo Beach's Multidisciplinary Evaluation. Each assessment found Student had high cognitive and academic abilities. Neither assessment found emotional or behavioral problems. Both assessments identified moderate problems in executive functioning. Yet, both assessments found Student was smart, social, and productive at school. Despite Dr. Simun's recommendation that Student qualified for an IEP, her testing results and observations found that Student could access general education without special education or related services.

### **THE JUNE 4, 2019 IEP**

On June 4, 2019, Redondo Beach held an IEP team meeting to review Dr. Simun's independent evaluation. Student was 17 years old and finishing the 11th grade at Redondo Beach High School. Parents, their attorney, and Dr. Simun attended the meeting. For Redondo Beach, Ms. Olshan; Mr. Rosadini; Ms. Hunt, Ms. Shlomo; Mr. Brown; Alexander Topham, Student's general education Physics teacher; and the school's attorney attended. Redondo Beach provided Parents a copy of Parent's Rights and Procedural Safeguards at the commencement of the meeting.

The team first reviewed Student's present levels of performance and current grades. Student was still satisfactorily accessing general education with accommodations. For example, classroom teachers reported Student performed well in class. She understood classroom material, participated during classroom discussions, and did well on tests and quizzes. She was social and well liked. Student accessed general education and exhibited no educational problems at school.

Dr. Simun reviewed her assessment with the IEP team. She misrepresented the results of her assessment by reporting that Student suffered from a short attention span, poor distractibility, problems with independence, and depression. She correctly reported that Student exhibited problems organizing homework. Dr. Simun recommended eligibility for special education, with specialized academic instruction, educational therapy, counseling, various accommodations, and reduced demands for Student's schedule.

Dr. Simun's evaluation results did not deviate substantially from Redondo Beach's Multidisciplinary Evaluation. And Student's needs had not changed since the September 27, 2018 IEP team meeting, when Student did not demonstrate a need for special education. Nonetheless, at the June 2019 meeting, Redondo Beach agreed to find Student eligible for special education under other health impairment based upon needs in executive functioning.

During hearing, Ms. Hunt, Mr. Brown, Ms. Olshan, and Mr. Rosadini, persuasively testified that Redondo Beach could have continued satisfactorily serving Student's needs through a 504 plan at the time of June 4, 2019 IEP. However, Redondo Beach offered Student eligibility for special education in an attempt to work with Parents. In

particular, Redondo Beach educators believed Student would benefit from the LSM class. While the LSM class could be provided by a 504 plan, Parents made clear they would not accept the class unless it was offered in an IEP.

With input from Dr. Simun, Parents, and their attorney, the IEP team jointly developed accommodations similar to the 504 plan accommodations. The IEP accommodations included preferential seating next to the point of instruction, class notes from the teacher, teacher provided material if Student forgot something, extended time for assignments, permission for Student to email teachers late assignments, the posting of all assignments on the internet portal, Student and Parent access to the portal, chunking of assignments, shortened assignments for repetitive work, and extended time for tests.

The June 2019 IEP included an individual transition plan because Student was over 16 years old. The individual transition plan was based upon a school survey completed by Student. It examined Student's strengths, high school performance, postsecondary education plans, and career plans. It included college, career, and independent living goals. The plan thoughtfully addressed Student's transition needs.

With input from Dr. Simun, Parents, and their attorney, the IEP team jointly developed goals. Each goal addressed Student's executive functioning needs, specifically in the area of managing homework.

The first goal was in the area of social-emotional and self-advocacy. The goal called for Student to advocate to use accommodations and to keep appointments to make up test or assignments, 80 percent of the time. Measurement of the goal was based upon teacher observations and data records.

Goal two was in the area of specialized academic instruction and executive functioning. The goal required Student to use the online grading portal to check missing assignments, prioritize what was missing, and make a plan to complete missing assignments each week, 80 percent of the time. The goal was measured by teacher observations and data records.

The third goal was in the area of social emotional and coping skills. The goal sought for Student to use coping skills when given a frustrating or difficult assignment, 80 percent of the time, and included various coping strategies. Goal three was also measured by teacher observations and data records.

The persons responsible for implementing each goal were clearly identified with the goals, and included a general education teacher, special education teacher, and the school counselor.

To meet the goals, Redondo Beach offered specialized academic instruction, 265 minutes weekly. The group instruction was offered in the LSM class, to address executive functioning deficits. The IEP also offered individual counseling by a school psychologist, 30 minutes per session, twice monthly. The counseling would address Student's executive functioning needs, and any stress caused by that delay.

The June 2019 IEP offered a thoughtful and comprehensive plan to address Student's unique needs. Redondo Beach had qualified and caring educators, who were considerate of Student's needs, Parents' concerns, and Dr. Simun's recommendations. No area of concern was left unaddressed.

Parents agreed that Student qualified for special education but did not consent to the IEP. Parents and Dr. Simun did not believe the IEP sufficiently addressed Student's executive functioning needs.

In June 2019, Student completed the second semester of the 2018-2019 school year with the following grades: B in Advanced Placement English, B minus in Advanced Placement United States History, C in Physics, C minus in Math, C in Spanish 3, and A in Volleyball. Student earned 200 of the 230 school credits necessary to obtain a regular high school diploma, ahead of the expected credit requirement for an 11th grader.

Parents believed that Student's academic progress indicated that Redondo Beach had denied her educational rights. As a result, Parents filed the complaint for this matter on February 8, 2019.

During the hearing, Redondo Beach called Ms. Olshan, Ms. Hunt, Mr. Rosadini, Ms. Eastham, and Julie Ferron to testify. The parties jointly called Ms. Johnston, Mr. Brown, Ms. Natividad, and Keely Pompa. Together, the witnesses persuasively supported the appropriateness of the school's assessments and IEPs.

### **STUDENT'S WITNESSES**

Student also submitted testimony from Stephanie Pitts, Eryn Yolac, Amy Barranco, Marina Braff, Mother, and Dr. Simun, referred to as Student's witnesses. Student's witnesses did not show that Student required special education, or that Redondo Beach's assessments or IEPs were defective.

### **Ms. Pitts' Testimony**

Stephanie Pitts was one of a series of privately retained educational therapists. She worked with Student from May 2017 to February 2018. Parents retained several private educational therapists and advocates over the past three years. The educational therapists did not assist Student's understanding of classroom material. Rather, they helped Student organize and prioritize her homework.

Ms. Pitts was not an educational expert and not qualified to opine whether Student met eligibility criteria for special education. Ms. Pitts did not attend the June 2019 IEP team meeting and was not familiar with the IEP offer. For example, she complained that Student required accommodations that included extra time for tests and homework, preferential seating, and access to a school counselor. Yet, the June 2019 IEP included all those accommodations, and a school counselor. Finally, she was not familiar with the LSM class, and incorrectly asserted it did not address executive functioning skills.

As a result, Ms. Pitts' testimony was not persuasive in establishing that Redondo Beach failed to offer Student a FAPE.

### **Eryn Yolac's Testimony**

Eryn Yolac was another educational therapist retained by Parents. She worked with Student following Ms. Pitts, until October 2018. Like Ms. Pitts, Ms. Yolac did not tutor Student. Rather, she helped Student organize and prioritize her homework. Ms. Yolac also described herself as an educational advocate. She had not assessed

Student or observed her at school. She had not met with Student since October 2018, and was not familiar with the June 2019 IEP. Ms. Yolac's testimony was incoherent and unpersuasive.

By email on September 6, 2018, Ms. Yolac requested that Redondo Beach stop implementing the 504 plan accommodations, because doing so "humiliate[d]" Student. She misstated that Student had an intelligence quotient of 155, and suggested that Redondo Beach "educate yourself" regarding "twice exceptional learners," a term for disabled students who are intellectually gifted. Ms. Yolac had not observed Student in class, and there was no evidence that Student was humiliated by the accommodations. To the contrary, observations by Ms. Hunt and Dr. Simun showed that Student enjoyed class and was a strong self-advocate for the accommodations.

Ms. Yolac also complained that Redondo Beach failed to implement accommodations, despite her request for Redondo Beach to stop implementing accommodations. However, there was no evidence that Redondo Beach heeded Ms. Yolac's request. Rather, a preponderance of evidence showed Redondo Beach carefully and consistently implemented the accommodations.

Although Ms. Yolac testified Student was humiliated by having accommodations provided in front of her peers, she recommended that Redondo Beach provide Student a full time, individual, executive function "coach" in each class. It was unclear why Student would be humiliated by classroom accommodations, but not by an adult aide following her throughout the school day.

In October 2018, Mr. Brown requested a list of recommendations Ms. Yolac would like addressed in the LSM class, so the teacher and aide could tailor the executive



functioning instruction to Student's needs. However, Ms. Yolac refused to provide Mr. Brown her recommendations. During testimony, she explained it "wasn't my job" to assist Redondo Beach educate Student, despite that being precisely her job.

Mr. Brown also invited Ms. Yolac to observe the LSM class. Mr. Brown was certified to teach special education and had previously taught the LSM class. He was familiar with Student's needs and persuasively testified the LSM class directly taught executive functioning skills. It was normal for pupils, like Student, who otherwise performed well in school but had difficulty organizing and managing homework, to take the LSM class to support that difficulty. Mr. Brown was a competent educator who believed Student would benefit from the LSM class. As such, he wanted Parents and their advocate to feel comfortable with Student taking the class. However, Ms. Yolac refused to observe the LSM class.

Ms. Yolac was not familiar with the LSM class, yet testified the class was not appropriate. She primarily complained the class did not identify a specific executive functioning curriculum. However, Ms. Yolac struggled to identify a specific executive functioning curriculum.

Ms. Yolac was also critical of the counseling services. The counseling services were first offered during the September 27, 2018 IEP team meeting, as part of Student's 504 plan. Ms. Yolac attended the meeting and asserted the counseling was unacceptable because it was not clearly described by Redondo Beach during the meeting. This testimony was refuted by a transcript of the IEP team meeting, wherein Ms. Shlomo and Ms. Hunt clearly described the counseling services.

Consequently, Ms. Yolac was not a credible witness. Little weight was given to her testimony.

### **Ms. Barranco's Testimony**

Amy Barranco taught the LSM class during the 2017-2018 school year. She never met, taught, or assessed Student. Ms. Barranco was no longer employed by Redondo Beach, testified briefly, and appeared agitated during testimony.

Ms. Barranco confirmed the LSM class taught organization and planning to students with 504 plans and IEPs. Mr. Brown contacted her during the 2017-2018 school year to determine if the LSM class could be tailored to Student's needs, given Parents' concerns that Student was too bright for the classes' direct instruction. She agreed to Mr. Brown's request, but suggested that Ms. Natividad, a more experienced LSM teacher, was a better fit to teach Student's LSM class. In sum, Ms. Barranco did not support any of Student's contentions for this matter.

### **Ms. Braff's Testimony**

Marina Braff was a licensed marriage and family therapist who counseled Student from November 2017, to May 2018. She had not seen Student since May 2018. Ms. Braff had not assessed Student or observed her at school. She was not familiar with Student's school assessments, program, and IEP. Overall, Ms. Braff had no opinion or recommendations regarding Student's educational program.

### **Mother's Testimony**

Mother was a loving parent who considered Student brilliant and twice exceptional. Parents were sensitive to Student's difficulty with homework and grades.

They frequently emailed school staff regarding school work and missing assignments. School staff promptly responded to each email.

Mother considered Student a high achiever who should obtain A's in each class. She believed that when Student received less than an A, it meant Student had a disability that was not being adequately addressed by the school district.

Parents refused the LSM class when Redondo Beach offered it in a 504 plan, because it did not include goals. Parents also believed the class failed to address executive functioning skills, despite evidence to the contrary. Parents refused to consent to the LSM class when offered in the June 2019 IEP, with goals, because the class was not tailored to Student's high intellect. Also, Parents continued to believe the LSM class failed to address executive functioning.

To address Student's executive functioning problems, Parents wanted a qualified teacher to provide Student individual educational therapy in a private location for an hour each day. It was important the teacher used an executive functioning curriculum, although Student's witnesses were uncertain what that meant.

Parents paid thousands of dollars to a series of private, self-identified educational therapists over the past three years. Mother testified the educational therapy was not effective, but wanted Redondo Beach to reimburse those costs as part of the remedies requested for this matter.

Mother testified she made a written request for Redondo Beach to assess Student for special education eligibility in September 2017, which Redondo Beach ignored. Mother could not recall who she sent the request to. However, Student offered no evidence at hearing of any written request for assessment before the May 10, 2018

letter. During hearing, Redondo Beach denied it had received a request to assess Student until Parents' May 2018 letter. Redondo Beach quickly responded to each Parent email and request. It was incongruent for Redondo Beach to ignore a request for assessment.

Mother's testimony was not reliable. For example, she testified she informed Redondo Beach that Student suffered from suicidal ideation during an April 18, 2018 504 plan team meeting. She asserted the 504 team discussed Student's suicidal ideation, but Redondo Beach failed to take steps to address this concern. However, the 504 plan meeting notes had no discussion of suicidal ideation, or emotional problems. The meeting notes were meticulously recorded by Father. Upon reviewing the notes during hearing, Mother testified that Father left the meeting early, which was why the notes failed to include the discussion regarding suicidal ideation. However, Mother later admitted that Father had not left the 504 plan meeting early, and she had not reported that Student experienced suicidal ideation during the meeting. Mother also admitted that Student did not exhibit suicidal thoughts or ideation. Mother's explicit misrepresentation of such a serious charge diminished her ability to be a reliable witness for this matter. Consequently, little weight was given to her testimony.

### **Dr. Simun's Testimony**

Dr. Simun was an experienced assessor. However, she failed to offer persuasive testimony for this matter.

Dr. Simun offered trivial criticisms of Redondo Beach's Multidisciplinary Evaluation. For example, she complained the assessment did not describe the type of population the standardized testing scores were normed for. However, as pointed out

by Ms. Hunt, all standardized tests in the Multidisciplinary Evaluation, and Dr. Simun's assessment, followed testing protocols normed for a general education population of peers the same age as Student. Ms. Hunt followed the testing protocols and did not deviate from the norming requirements.

Dr. Simun asserted the Multidisciplinary Evaluation was inappropriate because Ms. Hunt failed to include "t scores" on a graph for a behavior assessment rating scale. A "t score" is one form of a standardized test statistic. However, Dr. Simun admitted there was no requirement for the evaluation to include the graph or "t scores." Ms. Hunt more persuasively testified that she included an easier description of the test statistics for the graph because she found "t scores" were confusing to parents. Ms. Hunt reported the scores using average, at-risk, and clinically significant range descriptions on the graph, with a written description of the categories below the graph. The manner in which Ms. Hunt reported the scores did not deviate from testing protocols or invalidate the testing results.

Dr. Simun complained that Ms. Shlomo's interview in the evaluation was too broad. As Student's case carrier and counselor, Ms. Shlomo was concerned that Student could obtain higher grades in regular classes than in Advanced Placement or Honors classes. Ms. Shlomo's concern regarding Student's grade point average and ability to be accepted by a preferred college was consistent with her role as Student's case carrier and counselor. Dr. Simun was not clear why this interview was not sufficiently narrow for Student, or why that invalidated the assessment.

Finally, Dr. Simun complained that the Multidisciplinary Evaluation included academic composite scores, but failed to list subtest scores. Ms. Hunt and Mr. Rosadini more persuasively testified that eligibility related to academic testing was based upon

composite scores, not individual subtests. Individual subtest scores were made available to Parents in the testing protocols and were not necessary to validate the evaluation report.

Overall, Dr. Simun's testimony regarding Redondo Beach's 2018 Multidisciplinary Evaluation was inconsequential to the validity of the evaluation. Dr. Simun failed to show any problems with the qualifications of the assessors, the assessments selected, or the manner in which the testing was conducted.

Dr. Simun's opinions regarding Student's educational program were similarly unpersuasive. For example, Dr. Simun testified that Redondo Beach failed to implement the 504 accommodations. Ms. Hunt, Ms. Johnston, and Ms. Eastham more persuasively testified that Redondo Beach consistently implemented Students' accommodations. Documentary evidence, including voluminous emails and school records, also showed that Redondo Beach implemented accommodations with fidelity. Grades also reflected that teachers accepted and gave credit for late homework.

Dr. Simun opined that Student's final semester grades, which were normally higher than mid-semester grades, was evidence of nefarious conduct by teachers who inflated grades to avoid providing disabled students IEPs. This testimony was unfounded speculation. It also ignored Student's 504 plan meeting notes, various emails, and teacher notes, showing that Student's grades improved after she turned in late homework, an accommodation agreed upon in Student's 504 plan.

Dr. Simun complained the June 2019 IEP failed to offer services to address Student's executive functioning delays. In particular, Dr. Simun opined the LSM class did not address executive functioning skills. However, Dr. Simun was not familiar with the LSM class. She had not observed the class or reviewed its syllabus. The LSM teacher,

Ms. Natividad, along with Mr. Rosadini, Mr. Brown, and Ms. Hunt, more persuasively testified the LSM class was specifically designed to address executive functioning skills. Each was directly familiar with the LSM class, including the program's design and course work. There was no question the class directly taught executive functioning skills. In fact, the written course description stated the class directly worked on "executive functioning such as organization and time management."

Dr. Simun complained the LSM class and individual counseling services for executive functioning offered in the June 2019 IEP, were inappropriate because they failed to offer a specific curriculum for executive functioning. However, Dr. Simun was unable to identify a specific curriculum for executive functioning.

Dr. Simun asserted the June 2019 IEP was defective because it failed to include a transition plan for Student's postsecondary education, a requirement for IEPs for pupils over 16 years of age. Yet, a comprehensive transition plan, titled, in bold, "Individual Transition Plan" was on pages 12, 13, and 14, of the 23 page IEP document.

Dr. Simun complained the June 2019 IEP goals were defective because Redondo Beach failed to identify persons responsible for implementing the goals. However, each goal clearly identified the persons responsible for implementing the goal, including a general education teacher, special education teacher, and the school counselor.

Dr. Simun opined the 504 plans had failed, and the June 2019 IEP would fail, because Student did not have a case carrier to ensure coordination between school staff. This testimony overlooked Student's case carriers Ms. Johnston and Ms. Shlomo, who ensured coordination between school staff. The case carriers informed teachers of Student's accommodations. They regularly consulted with each teacher and Parents

regarding Student's school performance and access to accommodations. Parents frequently communicated with the case carriers and were aware of their role in Student's education.

Based upon the foregoing, Dr. Simun was not persuasive. A summation of witness testimony, and a preponderance of evidence, failed to support Student's issues.

## **LEGAL CONCLUSIONS**

### **INTRODUCTION – USE OF LEGAL CONCEPTS THROUGHOUT THE DECISION**

In this discussion, unless otherwise indicated, this introduction's legal citations are incorporated into each issue's conclusion. All references to the Code of Federal Regulations are to the 2006 version.

### **LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

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 Individuals with Disabilities Education Act is often referred to as the "IDEA." 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 further education, 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).)

A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective or supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

In general, an IEP is a written statement that is developed by parents and school personnel using the IDEA's procedures. The IEP describes the child's present levels of performance, needs, and academic and functional goals related to those needs. It also provides a statement of the special education; related services, which include transportation and other supportive services; and program modifications and accommodations that will be provided for the child to work towards the stated goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14) and (26), 1414(d)(1)(A); Ed. Code, §§ 56031, 56032, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.17, 300.34, 300.39 Cal. Code Regs., tit. 5, § 3001, subd. (p).)

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the IDEA consists of access to specialized instruction and related services which are individually designed to provide

educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.)

In *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000] (*Endrew F.*), the Supreme Court held that a child’s “educational program must be appropriately ambitious in light of his circumstances.” “Every child should have a chance to meet challenging objectives.” (*Ibid.*) *Endrew F.* explained that “this standard is markedly more demanding than the ‘merely more than de minimis’ test... The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at pp. 1000-1001.) The Court noted that “any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” (*Id.* at p.999.) However, the Supreme Court did not define a new FAPE standard in *Endrew F.*. The Court acknowledged that Congress had not materially changed the statutory definition of a FAPE since *Rowley* was decided and so declined to change the definition itself. The Ninth Circuit affirmed that its FAPE standard comports with *Endrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a

FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Generally, a party is limited to filing a request for due process two years from the date the person knew or should have known of the facts which form the basis for the request for a due process hearing.

At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Schaffer*); see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, the matter was consolidated. Student had the burden of proof for her issues and Redondo Beach had the burden of proof for its issue.

### **ISSUE 1: REDONDO BEACH’S CHILD FIND DUTY**

Student complains Redondo Beach failed to fulfill its child find obligation by failing to timely offer an assessment plan and find Student as a child with a disability under the IDEA. Student argues that conditions warranted an assessment plan prior to Parents’ May 10, 2018 assessment request. Redondo Beach responds that conditions did not warrant an assessment before Parents’ May 2018 assessment request.

#### **Child Find**

School districts have an affirmative, ongoing duty to actively and systematically seek out, identify, locate, and evaluate all children with disabilities residing within their boundaries who may be in need of special education and related services. (20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a); Ed. Code, §§ 56171, 56300 et seq.) This ongoing duty to seek and serve children with disabilities is referred to as “child find.” California

law specifically incorporates child find in Education Code section 56301. (Ed. Code, § 56301, subds. (a), (b).)

A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability and reason to suspect that special education services may be needed to address that disability. (*Timothy O. v. Paso Robles Unified School District* (9th Cir. 2016) F.3d., 2016 WL 2957215, \*10-12; *Department of Educ., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F. Supp. 2d 1190, 1194 (*Cari Rae S.*)). The threshold for suspecting that a child has a disability is relatively low. (*Cari Rae S.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

Child find does not guarantee eligibility for special education and related services under the IDEA. It is merely a locating and screening process used to identify those children who are potentially in need of special education and related services. Once a child is identified as potentially needing specialized instruction and services, the district must conduct an initial evaluation to determine the child's eligibility for special education. (34 C.F.R § 300.301; Ed. Code, § 56302.1.)

Here, Student received general education at private, parochial schools prior to her enrollment at Redondo Beach High School. Student did not submit any evidence that would have triggered Redondo Beach's child find duty while she attended private schools.

In January 2017, Dr. Giti independently completed a psychoeducational assessment. She assessed Student in multiple areas including verbal comprehension, visual spatial skills, fluid reasoning, working memory, and processing speed. In each

area tested, Student received scores ranging from average to superior ability. Academic testing similarly yielded above average scores in every area tested, including reading, writing and math. Finally, testing results showed Student did not have behavioral or social emotional deficits.

Dr. Giti found Student had a moderate attention disorder, without hyperactivity. She did not diagnose Student with a severe discrepancy between her cognitive ability and performance, an emotional disorder, or other health impairment. Dr. Giti did not suggest that Student qualified for special education under any area of disability. Finally, Dr. Giti did not refer Student for special education services. Rather, Dr. Giti described Student as a bright child who would benefit from a 504 plan. Consequently, Dr. Giti's assessment did not trigger Redondo Beach's child find obligation.

On February 6, 2017, Parents enrolled Student at Redondo Beach High School, a public school in Redondo Beach. Upon enrollment, Parents did not identify Student as disabled.

On February 27, 2017, Parents requested a 504 plan. On April 4, 2017, Redondo Beach timely convened a 504 plan team meeting for Student. Based upon a review of Student's records, Parent interview, Dr. Giti's assessment, and reports from Student's teachers, Redondo beach found Student eligible for a 504 plan.

The April 4, 2017 504 plan did note signs of educational difficulty. Student had difficulty turning in homework assignments. However, it is not unreasonable for a school district to attempt to consider, and utilize, resources in the general educational program prior to referring a pupil for special education. (Ed. Code 56303; *Panama-Buena Vista Union School Dist. A.V.* (E.D. Cal. Dec. 5, 2017, No. 1:15-cv-01375-MCE-JLT) 2017 WL 6017014, \*\*5-6.) It was therefore reasonable for Redondo Beach to attempt to

remediate Student's problems through a 504 plan and classroom accommodations in the general education program.

Redondo Beach's determination that Student could be served by a 504 plan was in accord with Dr. Giti's assessment, which specifically recommended a 504 plan. Although Dr. Giti was familiar with IEPs, she did not believe Student's moderate attention disorder warranted special education and related services. Similarly, Parents, their advocate, the school's counselor, administrator, and each of Student's teachers, believed Student could be served in general education with accommodations and a 504 plan. While Student had a moderate attention disorder and difficulty managing homework, she was bright, social, and performed satisfactorily in general education, the least restrictive environment for Student in light of her circumstances. Consequently, Student's circumstances did not trigger Redondo Beach's child find duty during the 2016-2017 school year.

In October 2018, Dr. Brown independently examined Student. Dr. Brown found Student was bright and motivated. Dr. Brown did not identify Student with a disability or suggest Student required special education or related services. Had Parents timely provided Redondo Beach his report, it would not have triggered its child find duty.

Student performed satisfactorily in general education during the 2017-2018 school year. She was selected for Honors and Advanced Placement classes, understood classroom instruction, participated during classroom discussions, and completed work in class during the allotted time frame. Student played on the volleyball team, was social, and had appropriate relations with peer and teachers. Student's sole educational problem, difficulty turning in homework, was adequately managed through accommodations afforded in her 504 plan. The accommodations were effective and

Student earned passing grades each semester. A preponderance of evidence did not demonstrate that Redondo Beach's child find duty was triggered by Students' school performance.

On May 10, 2018, Parents requested for Redondo Beach to assess Student for special education eligibility, and Redondo Beach timely responded to the request. Prior to that request, neither Parents, their advocate, independent assessors, the school counselor, school administrators, or any teacher, requested an assessment, special education, or related services for Student. Nor did circumstances warrant an assessment, special education, or related services.

Student argues that Mother made a written request for special education assessment in September 2017, which triggered Redondo Beach's child find duty. Student asserts Redondo Beach unlawfully ignored the request. Redondo Beach claims it did not receive any request to assess Student until Parents' May 10, 2018 letter.

Student failed to prove that Mother made the September 2017 request for assessment. The only evidence offered by Student to support this claim was Mother's testimony. However, Mother was not a reliable witness. During testimony, she misrepresented statements she made during a 504 plan meeting, including a false description that Student suffered from suicidal ideation. Consequently, little weight was given to her testimony.

For the foregoing reasons, Student failed to show by a preponderance of evidence that Redondo Beach denied her a FAPE by failing to fulfill its child find duty.

## **ISSUES 2 AND 5: THE SEPTEMBER 27, 2018 MULTIDISCIPLINARY EVALUATION**

Student alleges that Redondo Beach denied her a FAPE by failing to assess her in a timely manner, perform assessments that were legally sufficient, and failing to assess in all areas of suspected disability. Because Redondo Beach did not deny Student educational rights by failing to assess her before Parents' May 10, 2018 assessment request, Student's issues pertain solely to Redondo Beach's September 27, 2018 Multidisciplinary Evaluation.

Redondo Beach alleges its Multidisciplinary Evaluation was legally sufficient so as to preclude public funding of the independent neuropsychological evaluation requested by Parents.

### **Parents' Request for an Independent Educational Evaluation**

On January 17, 2019, Parents disagreed with the Multidisciplinary Evaluation and requested that Redondo Beach fund an independent neuropsychological evaluation.

When a parent disagrees with a school district's assessment, he or she may request an independent educational evaluation at public expense. The school district must either provide the independent educational evaluation at public expense, or initiate a due process hearing without unnecessary delay. (34 C.F.R. § 300.502(b).)

On February 14, 2019, Redondo Beach sent Parents a prior written notice that it would not fund their requested independent neuropsychological evaluation. On the same day Redondo Beach filed a complaint for due process to defend its assessment.

Redondo Beach's complaint was filed without unnecessary delay, just 28 days following Parents request for an independent educational evaluation. Therefore, the



issue at hand is whether Redondo Beach's Multidisciplinary Evaluation met legal requirements.

### **The Assessment Notice**

To obtain parental consent for an assessment, the school district must provide proper notice to the student and his or her parent. (20 U.S.C. § 1414(b)(1); 20 U.S.C. § 1415(b)(3),(c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and related state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be in a language easily understood by the public and the native language of the student; explain the assessments that the district proposes to conduct; and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).)

On May 10, 2018, Parents made an initial request for Redondo Beach to assess Student to determine if she was eligible for special education.

On May 23, 2018, Redondo Beach timely responded to Parents initial request for assessment by providing Parents an assessment plan. Redondo Beach gave the assessment plan to Parents and there was no allegation that Parents did not receive a copy of the procedural rights at the same time. The assessment plan was in language easily understood by the general public, was provided in Parents' native language of English, explained the types of assessments to be conducted, and indicated that no educational placement or services would result from the assessment without the consent of the parent. All statutory requirements of notice were met and the assessment plan complied with the applicable statutes. On May 25, 2018, Parents returned their signed consent for the assessment plan to Redondo Beach.

Redondo Beach's assessment notice complied with legal requirements.

### **Timeline for the IEP Team Meeting to Review the Evaluation**

A school district is required to complete an assessment and hold an IEP team meeting to review the results within 60 days of receiving parental consent to assess, exclusive of school vacations in excess of five schooldays and other specified days. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f)(1), 56302.1, subd. (a), and 56344, subd. (a).)

Here, Redondo Beach received Parents' consent to assess Student on May 25, 2018. Redondo Beach had 60 days to complete the Multidisciplinary Evaluation and hold an IEP team meeting to review the Multidisciplinary Evaluation, not including the summer break. The 2017-2018 school year ended on June 20, 2018, and the 2018-2019 school year began on August 29, 2018. Redondo Beach timely completed the assessments by September 27, 2018. The same day, Redondo beach held an IEP team meeting with Parents, their advocate, and all necessary IEP team members to review the Multidisciplinary Evaluation. (20 U.S.C. §§ 1401(14), 1414(d)(1)(B)(i); Ed. Code, § 56342.5.)

Consequently, Redondo Beach met the necessary statutory timelines for the Multidisciplinary Evaluation.

### **The Multidisciplinary Evaluation was Conducted by Competent Persons**

Assessments must be conducted by persons competent to perform them, as determined by the local educational agency. (20 U.S.C. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); Ed. Code, § 56322.) Any psychological assessments of pupils shall be made in accordance with Education Code section 56320 and shall be conducted by a

credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, §§ 56322, 56324, subd. (a).)

Here, all the assessments that were conducted as part of the Multidisciplinary Evaluation were conducted by persons competent to conduct them. The evidence established that each assigned assessor had the licensure and training required to conduct the assessment to which she or he was assigned.

For example, the cognitive, behavior, executive functioning, attention, and social-emotional assessments were performed by a credentialed school psychologist, Ms. Hunt. Ms. Hunt had training and experience in the areas she assessed and was a careful assessor.

Special Education Department Chair Mr. Rosadini assessed Student in academic achievement. He was an experienced assessor with a masters' in special education. Mr. Rosadini selected standardized assessments to assess Student in the areas of reading, mathematics, written language, and academic achievement. Mr. Rosadini had training and experience in the areas he assessed and followed the testing protocols. Like Ms. Hunt, he was a careful assessor and obtained valid testing results. A school nurse performed the health, vision, and hearing screenings.

The qualifications of Redondo Beach's assessors complied with legal requirements and were not disputed by Student.

### **Requirement for Written Report**

To aid the IEP team in determining eligibility, an assessor must produce a written report of each assessment that includes whether the student may need special education and related service and the basis for making that determination. (Ed. Code § 56327). The report must be furnished to a student without cost. School districts are required to provide to students, upon request, an explanation of interpretation of any answer sheet or other records related to the tests a student has completed. (Ed. Code § 56327 (a)(3).)

On September 27, 2018, Redondo Beach produced a written report of each assessment included in the Multidisciplinary Evaluation. The written report was timely provided to Parents at no cost.

### **The Multidisciplinary Evaluation Met All Legal Requirements**

An assessment must be conducted in a way that:

1. uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent;
2. does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and
3. uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Further, the assessments used must be:

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

(20 U.S.C. § 1414 subds. (b)& (c)(5); Ed. Code, § 56320, subds. (a) & (b).)

Redondo Beach's administration of the Multidisciplinary Evaluation met all of the applicable legal standards. The report did not rely only on a single criterion for determining whether Student had a disability. The instruments were not administered in a manner that was racially or culturally biased and were provided in Student's native language of English. The assessments were administered by trained personnel. Finally, Redondo Beach used a variety of assessment tools and strategies to gather relevant information.

For example, Ms. Hunt reviewed records, interviewed Parents, Student, her case carrier, and all of Student's teachers. Ms. Hunt observed Student during testing and in class, and conducted a variety of standardized and non-standardized tests. Testing results yielded relevant and valid information regarding Student's cognition, academic achievement, attention, executive functioning, classroom performance, health, and

social-emotional development. The Multidisciplinary Evaluation assessed each area of suspected disability for Student.

Ms. Hunt assessed Student's cognitive ability using standardized intellectual testing. She followed testing protocols and administered the test according to recommendations of the test publisher. Scores ranged from average to superior. There was not a statistical difference between the scores and no further cognitive testing was necessary. Ms. Hunt assessed Student's academic achievement by reviewing grades, conducting interviews with each teacher, and reviewing academic achievement testing by Mr. Rosadini.

Mr. Rosadini assessed Student's academic achievement through administration of standardized academic achievement tests. He followed testing protocols and administered the test according to recommendations of the test publisher. He testified the scores represented an accurate depiction of Student's academic abilities. Student's scores ranged from high average to superior in each area tested. Ms. Hunt and Mr. Rosadini persuasively testified that composite scores were included in the report, but not subtest scores, because individual subtest scores were not used to determine eligibility for special education. Moreover, Mr. Rosadini credibly testified that the individual subtest scores were consistent with the composite scores and did not demonstrate any academic concerns.

Ms. Hunt observed Student in Pre-calculus/Trigonometry and Advanced Placement English classes to assess Student in the areas of social, emotional, and behavior. She interviewed Student, Mother, the school counselor, and teachers. She analyzed results from rating scales submitted by Mother, Student, and each teacher, in the areas of behavior, executive functioning, depression, attention, and anxiety.

Ms. Hunt was a careful assessor who methodically assessed each area of suspected disability for Student.

Finally, Ms. Hunt cautiously considered areas of special education eligibility for Student. She considered eligibility for specific learning disability, emotional disturbance, and other health impairment. In accord with the testing results, the Multidisciplinary Evaluation did not find Student eligible for special education or related services under any category. Given Student's testing results, Ms. Hunt's determination denying special education eligibility was correct at that time.

Based upon the foregoing, Redondo Beach met its burden to show that its September 27, 2019 Multidisciplinary Evaluation met all necessary legal requirements.

Student failed to meet her burden to prove otherwise. For example, Dr. Simun was unpersuasive in her attempts to discredit the Multidisciplinary Evaluation. She offered only trivial and incorrect criticisms of the evaluation. She incorrectly asserted a behavior graph was invalid because it described the statistical data with narration instead of "t-score". She complained the interview with the school counselor was too broad because it focused on Student's grades and college preparation. She incorrectly suggested that testing was not properly normed. She incorrectly opined the evaluation was invalid because it included composite academic scores, rather than subtest scores. Ms. Hunt and Mr. Rosadini more persuasively testified that all testing was valid, administered in accordance with the testing protocols, and performed with fidelity.

Dr. Simun's testimony failed to show any problems with the qualifications of the assessors, the assessments selected, or the manner in which the testing was conducted. Consequently, little weight was given to her opinions.

Student failed to meet her burden to show that Redondo Beach failed to timely or appropriately assess her. In contrast, Redondo Beach met its burden to show its September 27, 2018 Multidisciplinary Evaluation met all legal requirements such that it is not required to fund the independent neuropsychological evaluation requested by Parents.

### **ISSUE 3: REDONDO BEACH CORRECTLY DETERMINED THAT STUDENT WAS NOT ELIGIBLE FOR SPECIAL EDUCATION PURSUANT TO THE SEPTEMBER 27, 2018 IEP**

Student complains that Redondo Beach failed to find her eligible for special education during the September 27, 2018 IEP team meeting. Student asserts that Redondo Beach should have found Student eligible for special education as a child with other health impairment due to ADHD, and offered an IEP on that basis. Redondo Beach responds that Student did not meet eligibility criteria at that time.

The September 27, 2018 IEP team meeting was held to review the Multidisciplinary Evaluation and determine if Student qualified for special education. Redondo Beach's September 27, 2018 Multidisciplinary Evaluation met all legal requirements. Consequently, the issue at hand is whether Redondo Beach should have found Student eligible for special education based upon the Multidisciplinary Evaluation, or other factors considered during the September 2018 IEP team meeting.

Upon completion of an initial assessment, the determination of whether the child is a child with a disability must be made by a team of qualified professionals and the parent of the child. (20 U.S.C. § 1414(b)(4)(A)). The IEP team, or other qualified professionals must review the existing data regarding the student and determine, with parental input, what additional data is needed to determine questions regarding



whether a student is a “child with a disability,” the present level of achievement and related developmental needs of the student, and whether the student needs special education and related services. (20 U.S.C. §§ 1414(c)(1)(A)&(B).)

A student “whose educational performance is adversely affected by a suspected or diagnosed attention deficit disorder or attention deficit hyperactivity disorder” and who meets the eligibility criteria for other health impairment under Education Code section 56337 and California Code of Regulations, tit. 5, section 3030, subdivision (b)(9), is entitled to special education and related services. (Ed. Code, § 56339, subd. (a).) “Other health impairment” is defined, in relevant part, as “having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that . . . is due to chronic or acute health problems such as . . . attention deficit disorder or attention deficit hyperactivity disorder . . . and [a]dversely affects a child’s educational performance.” (34 C.F.R. § 300.8(c)(9); see also Cal. Code Regs., tit. 5, § 3030, subd. (b)(9).)

Under section 504, school districts have a duty to provide “regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met.” (34 C.F.R. § 104.33.) Although section 504 and IDEA eligibility may overlap, the eligibility criteria, services, and procedures under the IDEA are distinct. Consequently, a school district’s determination that a student qualifies for a 504 plan does not mean the student also qualifies for an IEP.

Here, on September 27, 2018, Redondo Beach timely held an IEP team meeting to review its Multidisciplinary Evaluation of the same date. The purpose of the meeting was to determine Student’s eligibility for special education. Parents, Student, and their

advocate attended the meeting. All necessary school staff, including Ms. Hunt, Ms. Shlomo, Mr. Brown, Mr. Rosadini, Ms. Olshan, and Ms. Bein, who taught Student's Advanced Placement United States History Class, also attended.

Redondo Beach IEP team members were qualified professionals and familiar with Student's unique needs. For example, Ms. Hunt was an experienced school psychologist who directly observed, interviewed and assessed Student. Mr. Rosadini was an experienced educator and the chair of Redondo Beach's special education department. He also directly assessed Student. Ms. Shlomo was an experienced school counselor and Student's case carrier. As Student's case carrier, Ms. Shlomo frequently consulted with Parents and teachers regarding Student's educational performance and unique needs. Mr. Brown was an experienced school administrator who had taught special education classes. As an experienced and knowledgeable program specialist, Ms. Olshan was familiar with the continuum of placements and services available for special education students. Ms. Bein was an experienced teacher and directly taught Student during the school year. Each team member was qualified to discuss Student's present levels of performance, unique needs, and help determine her eligibility for special education.

The IEP team reviewed the Multidisciplinary Evaluation and all existing data regarding Student available to Redondo Beach at that time. The team reviewed Student's grades and present levels of performance reported by each teacher.

The school psychologist, case carrier, and six teachers reported Student was poised, insightful, and a hard worker. She participated in class, displayed leadership qualities, and led complex class discussion. Student was an attentive, motivated pupil

who engaged in classroom discussion and work. She self-advocated for accommodations, was happy, and made people happy around her.

Student completed tasks on time in class, and often completed quizzes and in-class work before the allotted time. She earned passing grades in general education classes, including Honors and Advanced Placement classes. She did not exhibit any social, emotional, or behavioral problems at school. There were no discernable problems based upon Student's grades, classroom performance, or social interactions.

The team did not identify any problems in the area of motor or vocational development. To the contrary, Student was an athlete, independently navigated the school campus, and produced neat, legible work. She produced quality work, worked well independently and in groups, and provided insightful contributions to class discussions. Finally, Student passed all health screenings.

Student's did not have a disability or discernable problems based upon her present levels of performance.

Ms. Hunt reviewed the Multidisciplinary Evaluation during the IEP team meeting. She carefully explained each part of the report, from its referral to conclusion. She thoughtfully answered questions from Parents and their advocate. Ms. Hunt explained the basis of each area of eligibility, and why she found that Student did not meet the criteria for special education eligibility.

After careful consideration and deliberation from the IEP team, Redondo Beach determined that Student did not meet eligibility for special education under any eligibility category.

For other health impairment, Redondo Beach IEP team members acknowledged that Student had a prior diagnosis of ADHD, for moderate inattention not hyperactivity. The team considered that Student's inattention impacted her executive functioning to the extent she had difficulty organizing homework. However, despite this difficulty, Student successfully accessed general education classes. This was evidenced by her academic progress, teacher reports, state and standardized assessments, and her enrollment in Advanced Placement and Honors classes. Student earned passing grades and progressed academically, socially, and emotionally, commensurate with her typical peers and abilities. She satisfactorily accessed general education, the least restrictive environment, without special education or related services.

Student's moderate attention disorder was satisfactorily addressed through general education accommodations. On this basis, Redondo Beach correctly determined that Student did not qualify for special education under other health impairment due to ADHD.

Student argues that her classroom performance and Redondo Beach's failure to consistently implement 504 plan accommodations warranted a finding that Student was eligible for special education prior to June 4, 2019. However, a preponderance of evidence showed that Student performed well at school.

Student also errs regarding her argument that Redondo Beach failed to implement the 504 accommodations on several grounds. First, failure to implement 504 accommodations did not fall within OAH's jurisdiction and was not an issue for this case. Second, a school district's failure to implement general education accommodations does not mean a student is eligible for an IEP. Thirdly, there was no credible evidence submitted during hearing that supported Student's argument that Redondo Beach did

not implement the accommodations. To the contrary, evidence overwhelmingly showed that Redondo Beach ensured that accommodations were implemented or available to Student throughout her tenure at Redondo Beach High School.

Rather, the primary basis for Student's allegations was not evidentiary. As testified by Mother, Dr. Simun, and Ms. Yolac, Student's allegations were based upon a fundamental belief that Student was brilliant and therefore should achieve higher grades. Parents, Dr. Simun, and Ms. Yolac, erroneously perceived Student's failure to achieve higher grades as evidence that Redondo Beach was negligent, either in its provision of accommodations or denial of eligibility for special education. Student overlooks that the law does not guarantee A's, even for intellectually gifted students. More importantly, Student failed to meet her burden of persuasion that Redondo Beach denied her educational rights by failing to find her eligible for special education.

For the foregoing reasons, Student failed to prove by a preponderance of evidence that Redondo Beach denied her a FAPE by failing to timely provide eligibility for special education.

#### **ISSUE 4: THE JUNE 4, 2019 IEP**

Student alleges the June 4, 2019 IEP denied her a FAPE, by failing to include appropriate present levels of performance, goals, and related services. Redondo Beach argues the June 2019 IEP met all legal requirements and offered Student a FAPE.

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in

hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) School districts need to “offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” (*Endrew F., supra*, 580 U.S.\_\_\_\_ [137 S.Ct. at p.999].)

### **The Present Levels of Performance**

In developing the IEP, the IEP team is mandated to consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child, and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).)

Here, on June 4, 2019, Redondo Beach held an IEP team meeting to review Dr. Simun’s independent evaluation. Parents, their attorney, and Dr. Simun attended the meeting. Qualified professionals from Redondo Beach, including Ms. Olshan, Mr. Rosadini, Ms. Hunt, Ms. Shlomo, Mr. Brown, and Mr. Topham, also attended the meeting.

The team first reviewed Student’s present levels of performance and current grades. Mr. Topham was Student’s Physics teacher during the 2018-2019 school year and was directly familiar with her present levels of performance in the classroom. He reported that Student performed well in class. She understood the classroom material, regularly participated during classroom discussions, and made academic progress. He had no concerns regarding Student’s classroom abilities or behaviors.

Ms. Shlomo also reported Student’s present levels of performance. As Student’s case carrier, Ms. Shlomo regularly consulted with each of Student’s teachers and reported those findings to the IEP team. The June 4, 2019 IEP document also included

teacher reports and assessment findings from the September 27, 2018 IEP. A paragraph narration of Student's present levels of performance, from each of Student's six teachers, was included in the June 4, 2019 IEP.

The IEP team also provided Parents, their expert, and their attorney, an opportunity to share concerns regarding Student's present levels of performance. During the meeting, Parents and their attorney expressed concerns regarding Student's executive functioning skills and whether Redondo Beach could meet those needs. No one from Redondo Beach prevented Parents, their attorney, or Dr. Simun, from sharing any information or concerns they had regarding Student. To the contrary, Dr. Simun reviewed her report during the IEP team meeting, which included a description of Student's present levels of performance based upon her recent assessment.

Finally, the IEP team jointly developed three annual goals during the IEP team meeting. Each goal included a detailed and measurable description of Student's baselines, a present level of performance.

Given the foregoing, there was no merit to Student's allegation that the June 4 2019 IEP failed to include present levels of performance.

### **The IEP Goals**

An annual IEP must contain a statement of measurable annual goals designed to:

1. meet the individual's needs that result from the individual's disability, to enable the pupil to be involved in and make progress in the general curriculum; and
2. meet each of the pupil's other educational needs that result from the individual's disability.

(20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).)

Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).) The purpose of goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345.)

For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344.) By this standard, Student's June 4, 2019 initial IEP was required to contain a statement of measurable annual goals.

The June 4, 2019 IEP team meeting included Parents, their attorney, and Student's private expert, Dr. Simun. Along with qualified professionals from Redondo Beach, the IEP team jointly developed three, measurable, annual goals. Each goal addressed Student's executive functioning needs, specifically in the area of managing homework. Goals one and three also addressed areas of social-emotional and self-advocacy skills.

Each goal was based upon accurate baselines and described how progress towards the goal would be measured. The goals properly identified the persons responsible for implementing each goal, including a general education teacher, special education teacher, and the school counselor.



Evidence demonstrated that the June 4, 2019 IEP offered Student appropriate, measurable goals, based upon accurate present levels of performance. For example, Ms. Hunts, Ms. Olshan, Mr. Rosadini, and Mr. Brown credibly established that Redondo Beach offered appropriate goals to address all of Student's educational needs in light of Student's circumstances.

In contrast, Student's witnesses failed to credibly challenge the adequacy of those goals. For example, Dr. Simun mistakenly complained the IEP failed to identify persons responsible for implementing the goals.

Student did not prove that the goals were inappropriate. Had Student permitted Redondo Beach to implement the goals, it could have ensured tracking and progress in Student's areas of need.

Consequently, Student failed to prove that Redondo Beach denied her a FAPE by failing to offer accurate present levels of performance or appropriate goals.

### **The Related Services**

An IEP must include related services that are required to assist a child in benefiting from special education. Related services are:

transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services,

including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) . . . .

(20 U.S.C. § 1401(26)(A).) State law adopts this definition of related services, which are called “designated instruction and services.” (Ed. Code, § 56363, subd. (a).) The regulation that defines “mental health services” for the purpose of Chapter 26.5 includes psychotherapy. (Cal. Code Regs., tit. 2, § 60020, subd. (i).)

Here, the June 4, 2019 IEP offered a solid plan to address Student’s unique needs. Beginning with appropriate goals based on accurate present levels of performance, Redondo Beach offered Student a variety of accommodations and substantive related services. Redondo Beach offered specialized academic instruction, 265 minutes weekly. The group instruction was offered in the LSM class, a program designed to address executive functioning problems, Student’s only identified delay.

The IEP also offered individual counseling by a school psychologist, 30 minutes per session, twice monthly. The counseling would address Student’s executive functioning needs, and any anxiety caused by that delay.

In light of Student’s unique needs, Redondo Beach witnesses, including Ms. Hunt, Mr. Brown, Mr. Rosadini, and Ms. Olshan, credibly testified the June 4, 2019 IEP offered Student a FAPE.

In contrast to Redondo Beach witnesses who were knowledgeable of Student’s educational programs, Student’s witnesses, including Ms. Pitts, Ms. Braff, and Ms. Yolac, were unfamiliar with Student’s IEP. Dr. Simun claimed she was familiar with the IEP, but misrepresented the goals, services, accommodations, and transition plan included in the IEP.

Parents made clear their preference for Student to receive individual educational therapy each day by a teacher using an executive functioning curriculum. However, starting with *Rowley*, courts have held that an educational agency is not held to a standard of parental preference. (*Rowley, supra*, 458 U.S. at p. 197, fn. 21 [the IDEA does not require a potential-maximizing education]; see also *Blackmon v. Springfield R-XII School Dist.* (8th Cir. 1999) 198 F.3d 648, 658.) An appropriate education under the IDEA need not be “the *only* appropriate choice, or the choice of certain selected experts, or the child’s parents’ *first* choice, or even the best choice.” (*G.D. v. Westmoreland School Dist.* (1st Cir. 1999) 930 F.2d 942, 948 (italics in text).)

While daily, individual educational therapy by a personal teacher funded by Redondo Beach was desired by Parents, the proper focus is on Redondo Beach’s offered educational plan. Student failed to show that Redondo Beach’s educational plan was not reasonably calculated to confer Student with educational benefit in the least restrictive environment. (*Rowley, supra*, 458 U.S. at pp. 206-207.)

The weight of the evidence established that the June 4, 2019 IEP offered Student sufficient special education and related services, in light of her circumstances. Had Parents consented to the IEP, it would have enabled Student to receive educational benefit and advance through the general education curriculum. Consequently, Student failed to meet her burden to prove that Redondo Beach denied her a FAPE by failing to offer an appropriate IEP.

## **ORDER**

1. Redondo Beach’s September 27, 2018 Multidisciplinary Evaluation met all legal requirements such that Redondo Beach is not required to fund the independent neuropsychological evaluation requested by Parents.

2. All of Student's requests for relief are denied.

## **PREVAILING PARTY**

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

## **RIGHT TO APPEAL**

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: November 15, 2019

/S/  
Paul H. Kamoroff  
Administrative Law Judge  
Office of Administrative Hearings