

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2019050500

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PARENT ON BEHALF OF STUDENT,

v.

OXNARD UNION HIGH SCHOOL DISTRICT.

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DECISION

NOVEMBER 4, 2019

On May 10, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Oxnard Union High School District as respondent. OAH continued the matter for good cause on June 24, 2019. Administrative Law Judge, Cole Dalton, heard this matter in Oxnard on September 17, 18, and 19, 2019.

Attorney Scott Ayers represented Student. Student's Mother attended all hearing days on Student's behalf. Attorney Brianne Schuck represented Oxnard. Dr. Victoria Ruffin attended all hearing days on Oxnard's behalf.

At the parties' request the matter was continued until October 10, 2019, for written closing briefs. The briefs were timely filed, the record closed, and the matter submitted on October 10, 2019.

## ISSUES

1. Did Oxnard deny Student a free appropriate public education, referred to as FAPE, in individualized education programs dated May 21, 2018, October 18, 2018, November 16, 2018, February 15, 2019, and March 26, 2019, by failing to offer:
  - a. appropriate behavioral support and
  - b. an appropriate placement?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. §1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the "IDEA," are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. §1400(d)(1); See Ed. Code, §56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. §1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. §1415(i)(2)(C)(iii).) Here, Student filed the complaint and has the burden of proof on all issues. The factual statements below constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. sec. 1415(h)(4); Ed. Code, sec. 56505, subd. (e)(5).)

Student, 14 years old at the time of hearing, resided with his Mother within Oxnard Union High School District's attendance boundaries at all relevant times. Oxnard Union High School District is referred to as Oxnard. Student was born prematurely, with spina bifida and gastroparesis, and spent five months in neonatal intensive care. He has fed with a G-tube since infancy. Student required medication for anxiety, attention deficit hyper activity disorder, and emotional instability throughout the relevant time frame. Cognitively, Student functioned in the average range.

Student attended fifth through eighth grade at Oxnard School District. He was eligible for special education as a child with autism. Oxnard School District is referred to as Middle School. During his 2017-2018 school year, Middle School implemented placement from his November 17, 2017 triennial individualized education program. An individualized education program is referred to as an IEP. Student attended specialized academic instruction classes for core academics with mainstreaming in electives, passing

periods, lunch, and non-academic activities. Mother consented to the November 2017 IEP during an amendment meeting on March 15, 2018. Middle School held Student's transition to high school IEP on May 21, 2018. That IEP offered Student the same goals, accommodations, services, and placement as the November 2017 IEP. Mother consented to implementation of the IEP, although she disagreed with placement and that the IEP offered a FAPE. Student matriculated to Oxnard on August 29, 2018.

#### ISSUE 1(A): BEHAVIORAL SUPPORT

Student contends that Oxnard denied him a FAPE by failing to offer applied behavioral analysis throughout his school day. Student argues that he required a one-on-one aide and that Oxnard failed to offer appropriate accommodations, goals, and a behavior plan to meet his behavioral needs. In his closing brief, Student argues that Oxnard implemented a behavior plan from his May 2018 IEP, which lacked parental consent. Student bases his argument on the testimony of case manager Stephen Garretson, who believed he implemented the behavior plan from Student's November 2017 IEP and other witnesses, who testified they implemented the May 2018 behavior plan.

Oxnard contends that behavioral supports in the form of a behavior intervention plan, goals, and classroom supports appropriately addressed Student's negative behaviors. Oxnard argues that it implemented a program comparable to Student's last agreed upon and implemented program at Middle School.

In general, a child eligible for special education must be provided access to specialized instruction and related services, which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the*

*Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176; *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000]; *E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

For a child whose behavior impedes the child's learning or that of others, the IEP team must consider use of positive behavioral interventions and supports, and other strategies, to address such behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. 300.324(a)(i), Ed. Code, § 56341.1, subds. (b)(1) and (c).) Implementing regulations of the IDEA do not require the team to use any particular method, strategy, or technique. (71 Fed. Reg. 46,683 (Aug. 14, 2006).) The team may address the behavior through annual goals (34 CFR §300.320(a)(2)(i)), and may include modifications, support for teachers, and any related services necessary in the IEP to achieve those behavioral goals. (34 CFR § 300.320(a)(4).) An IEP that does not appropriately address a child's behavior that impedes learning denies that child a FAPE. (*Lathrop R-II School Dist. v. Gray* (8th Cir. 2010) 611 F.3d 419, 425-426 (*Lathrop*); see also, *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467-1468.)

Related services include academic, therapeutic, behavioral, or other services as may be required to assist a child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371, 82 L.Ed.2d. 664]; *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1527.) Related services, called designated instructional services in California, shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." (Ed. Code, § 56363, subd. (a).)

No federal or state statutory provisions address student transfers between school years, such as during summer vacation. In such situations, the new school district is required to provide transferring students with a FAPE. (See, 20 U.S.C. § 1415(d)(2)(a) requiring districts to have an IEP in place for a child at the beginning of the school year.) The new school district is not required to implement the former school district's IEP or provide the student with "comparable services." (*Clovis School Dist.* (OAH 2009) OAH No. 2008110569, 109 LRP 39517, 52 IDELR 236.) The new district's responsibility is to ensure that it develops an IEP for the child, adopts and implements the previous IEP, or develops, adopts, and implements a new IEP that meets all the requirements for an IEP. (71 Fed.Reg. 46682 (August 14, 2006).)

#### BEGINNING OF 2018-2019 SCHOOL YEAR

##### **Implementation of Correct IEP**

Student argues that Oxnard implemented the wrong behavior plan between August 29, 2018, and October 18, 2018. The issue is not before the ALJ in this hearing and fails for several reasons. First, Student did not allege a failure to implement any behavior plan in his request for due process and the parties did not agree to add implementation as an issue for hearing.

Second, at issue is whether Oxnard provided appropriate behavioral support from August 29, 2018, through October 18, 2018. Comparison of the November 2017 and May 2018 behavior plans demonstrate that both plans addressed the same behaviors through the same means. Student's behavior plan from the November 2017 IEP was somewhat simplified at the May 2018 IEP. However, both plans offered the same functionally equivalent replacement behavior to address self-management, work

completion, and following directions to begin a task. The plans identified the same reinforcement schedule and behavior intervention strategies. No substantive difference existed between the two behavior plans.

Third, Mother consented to implementation of both plans. She consented to the November 2017 plan during the March 2018 amendment meeting. She agreed to the May 2018 plan by signing agreement to implement that IEP.

The same reasoning negates Student's argument that Oxnard implemented the wrong accommodations. Middle School offered Student several accommodations, which remained the same between the November 2017 annual IEP and the May 2018 transition IEP. Mother agreed to implement the accommodations both at the March 2018 amendment IEP and the May 2018 IEP. Mother specifically initialed agreement to eligibility, goals, services, and provided consent to implement the May 2018 IEP.

Mother's testimony contradicted documentary evidence on consent to the November 2017 and May 2018 IEPs. Her testimony carried less weight than that of other witnesses because of historical inaccuracies noted throughout. For example, Mother testified that Student was so anxious at Oxnard he refused to eat. Documentary evidence showed that Student fed through a G-tube since infancy and historically did not feed himself, a fact that Mother did not divulge.

The facts do not support Student's argument that Oxnard provided Student with a program to which Mother had not consented in the beginning of the 2018-2019 school year.

### **August 29, 2018 Through October 18, 2018**

Consistent with state and federal law, Oxnard adopted and provided the goals, accommodations, and behavior plan from Student's May 21, 2018 IEP. Oxnard provided Student with a placement mirroring his last agreed upon and implemented placement at Middle School. Student attended specialized academic instruction in health and geography, science, English language arts, math, and social studies elective. Student attended general education mainstreaming during electives, passing periods, lunch, and extra-curricular activities.

Oxnard provided Student with social emotional goals to participate in on topic discussions with peers, increase social communication and self-advocacy, reduce argumentative comments when asked to perform a task, and increase eye contact when answering questions. Goals appropriately addressed Student's off task or task avoidance behaviors and social emotional needs.

Accommodations included access to fidget objects for sensory needs, advance warning of schedule changes, extra or immediate rewards for compliance, and seating in the front of the room. Accommodations appropriately addressed sensory needs, off task behaviors, and attention issues.

Student's behavior intervention plan, based upon a 2017 functional behavior assessment, defined the function of Student's behaviors as escape or task avoidance. The function of Student's behaviors was not in dispute. The behavior plan provided functionally equivalent replacement behaviors and strategies to reduce problem behavior and increase positive replacement behavior. It also included a reinforcement schedule and reactive strategies staff could implement at the onset of problem behavior to avoid escalation.



Student's progress during the first seven weeks of high school was typical of a teenager with autism. Student had just started attending a campus with over a thousand more students than Middle School, with many people he had never seen before, and with new expectations. Oxnard team members observed small changes in Student's behaviors, which indicated to them that Student was transitioning to his new environment appropriately.

Stephen Garretson was Student's case manager and taught health and geography in a class with 15 students. In the first several weeks of the school year, Mr. Garretson was concerned with Student's lack of work completion. Student sometimes put his head on his desk and refused to work. Other teachers reported that Student talked out of turn or without raising his hand, described as another means of task avoidance.

Student's English language arts teacher Melissa La Rochelle had extensive education and experience working as a clinician and teacher for children with autism, using applied behavior analysis. Her English class started the year with 18 students, six of whom transferred to general education English classes by the end of the school year. She taught the class with the help of a paraeducator. At times, Student used his phone excessively in class, sometimes watching inappropriate videos. He sometimes had his hood up and earphones in and infrequently made inappropriate comments. Ms. La Rochelle adeptly redirected Student during off task behaviors. Student had not monopolized her time to the detriment of others in her class, even at the beginning of the school year.

Student engaged in work refusal less frequently in Chad Meyring's woodshop class. He would put his head down and shut down once or twice a week for 15-20 minutes. Most other times, Student participated in class. He engaged in safety training,

which was required before he could work on projects. Student listened to instruction, familiarized himself with use of woodshop tools and safety protocols, and ultimately passed the safety test with a score of 100%.

The weight of the evidence demonstrated that Student accessed his curriculum without the need of a one-on-one aide. His teachers credibly demonstrated that his class sizes were sufficiently small such that he did not require an aide. Specialized academic instruction classes ranged from three to 18 students, while general education woodshop had approximately 23 students who were often broken into smaller working groups. Teachers were able to redirect Student and encouraged greater participation. Overall, his behavior was typical of a new high school student and teachers opined that he transitioned appropriately in light of his circumstances. Oxnard was required to and did appropriately address behaviors impeding learning. Oxnard was not required to extinguish such behaviors. (See *Lathrop*, 611 F.3d 419, 426.)

Ms. La Rochelle and other teachers provided data on Student's classroom behavior to Mr. Garretson. Teachers shared a Google document to collect behavior data on the type, frequency, and duration of various behaviors. Because of emails to Student's teachers, they knew the data would be used to develop a new behavior plan. Mr. Garretson reviewed teacher observations and noted the biggest concern was Student's work completion, which affected his grades. Student was failing many classes. To address these concerns, Oxnard held an IEP meeting.

#### OCTOBER 18, 2018 INDIVIDUALIZED EDUCATION PROGRAM

Oxnard held an IEP meeting on October 18, 2019, to address Student's transition and work production. The team discussed differences between Student's home and school behaviors. Mother described Student as being depressed and having bi-polar

schizophrenia. He cried a lot at home and told Mother he felt overwhelmed. According to his Sister, he thinks he is like others his age and wants to do what others are doing. Mother and Sister described an out of school incident where Student called the police on himself to avoid self-injury. In spite of daily private therapy, his anxiety increased over the beginning of the school year.

At school, Student displayed fewer anxiety related behaviors than reported by Mother and Sister. Teachers observed Student adapting to his new environment and expectations, though he was failing many classes due to low work completion. Student's initial work refusal resulted in missing or incomplete assignments, which led to low grades. It would take some time before improvements in Student's behavior impacted work completion and resulted in higher grades.

Though Student sometimes required prompts to put his phone away or lift his head from the table, he did ultimately comply. He did not threaten injury to himself or others at school. Mr. Garretson observed that Student made progress behaviorally, became very social, and made friends in his classroom. He opined that Student was comfortable in his class. In math, a relative weakness, Student put his head on his desk more frequently and demonstrated anxiety through foot tapping, but even so, showed improvement. The Oxnard team described Student's difficulties with transitions as being typical of children with autism.

The team reviewed Student's progress on social emotional goals. Student made some progress on his goal for participating in on topic discussions with peers by doing so with fewer prompts across more trials. He made progress on goals to maintain eye contact and use coping strategies to reduce frustration/anger by requiring fewer prompts. He did not make progress on his self-management support system goal,

telling Mr. Garretson he did not want to use the system. He attained his goal for reducing argumentative statements when presented with tasks by simply refusing to work without arguing.

Oxnard addressed Student's ongoing behavioral needs by updating goals, accommodations, and his behavior plan. A new goal addressed non-compliance by teaching use of coping strategies. Student demonstrated he could use appropriate coping strategies such as taking a deep breath, counting to ten, and asking for a break to self-regulate, when feeling angry or frustrated. Mr. Vanauker credibly explained at hearing that coping skills served as functionally equivalent replacement behaviors, supporting Student's behavior plan. Rather than refusing to work Student could self-regulate using such strategies, then return to task.

Mr. Vanauker, Mr. Garretson, and Ms. La Rochelle described situations that demonstrated Student learned coping strategies by observing other students and through direct instruction in class. For example, he saw other students stand up, move around, get a drink of water, or walk outside and began to use those strategies himself. Such activities lessened his anxiety so that he could initiate work. Moreover, when his teachers observed Student becoming frustrated or withdrawing they initiated a conversation asking Student how he felt and provided or elicited options for Student to appropriately address the situation.

The team updated accommodations by allowing extended time to complete assignments, extended time on tests, and seating away from distractions and noise. These accommodations addressed Student's distractibility or attention issues, anxiety, and work completion. They added an accommodation to ignore minor inappropriate behaviors, allowing Student an opportunity to self-correct. Oxnard removed use of

fidget toys, as Student, not wanting to stand out more, did not want to use them. The evidence did not demonstrate that Student required fidget toys to cope with his anxiety or frustration.

Student's updated behavior plan defined target behaviors as noncompliance, which occurred five times per week, with mild intensity, and lasted one to three minutes. Escape served as the function of noncompliant behaviors, which included Student putting his head down on his desk, putting his hood on, refusing to complete assignments, and interjecting off-topic comments or questions. As functionally equivalent replacement behavior, Student was allowed to ask for a short break of up to three minutes, no more than three times per class period. Breaks came with staff reminders of post-break expectations, such as assignment completion. Student could also raise his hand and ask for help, a socially appropriate means of staying on task.

The behavior plan identified strategies for staff to reduce problem behavior, which consisted of reminding Student of expectations and available coping strategies, providing preferential seating, speaking to Student in a calm tone, and having Student write off-topic questions down to be asked at a more appropriate time.

Student argues, in his closing brief, that Oxnard's behavior plan was flawed for failure to identify specific classroom expectations. Mr. Vanauker and Ms. La Rochelle persuasively explained that classroom expectations varied between teachers. Some teachers provided whole class reminders of class rules. Others wrote expectations on the white board. Some would approach student specifically to remind him to do things like raise his hand if he needs help.

Mother consented to implementation of goals, the behavior plan, sixth period elective for social skills, and use of a communication log. A special education teacher and paraeducator certified in applied behavior analysis taught the class. At hearing, Mother and Sister testified that Student was given the class in order to calm down before going home. Oxnard providers testified more persuasively on this point. Oxnard offered Student the social skills class to improve his use of socially appropriate communication and learn to discuss how he felt, which in turn would help improve self-advocacy and avoidance behaviors, which it did.

Mr. Powell opined, at hearing, that Oxnard did not offer appropriate behavior supports. Mr. Powell believed that Student required one-on-one applied behavior analysis therapy at school, based upon his clinical work with Student in the home setting.

Mr. Powell's testimony was unpersuasive for several reasons. Mr. Powell did not observe Student at school, review his grades or goal progress reports, or speak to any of his teachers. Mr. Powell held no degrees in education and was unaware of the size or structure of any of Student's classes. Mr. Powell simply opined that applied behavior analysis was the most evidence based approach to changing behavior and so was most appropriate for Student.

Mr. Powell agreed that a social skills class would benefit Student and acknowledged that Student's grades improved over the 2018-2019 school year. These factors did not impact his opinion that Student required one-on-one applied behavior analysis at school. Mr. Powell discussed Student's need to generalize skills learned at home to the school environment. At the same time, he seemed to ignore the fact that

Student was already acquiring social skills in his natural learning environment on a comprehensive high school campus.

Mr. Powell opined that Student's social emotional goals were deficient because they incorporated prompts, which Student would not receive in the outside world. He did not square this with the systematic use of prompting to obtain responses involved in the use of one-on-one applied behavior analysis therapy. Moreover, Ms. Chilingaryan agreed with Oxnard that use of prompts in Student's goals was appropriate for him. Mr. Powell labeled all aspects of Student's program as inappropriate. He did not provide specific examples of goals or behavior interventions more appropriate for Student. For these reasons, Mr. Powell's testimony was found less credible and carried little weight.

Mother, Sister, and Mr. Powell sought maintenance of Student's private services obtained via a settlement agreement with Middle School. This desire drove their testimony at hearing and was inconsistent with the weight of the evidence. Student's witnesses testified that, without the outside services, Student's in school performance would decline. However, Student's behaviors began improving moving into the October 18, 2018 IEP, before settlement agreement private services began. Student's progress supports the appropriateness of the behavioral supports provided by Oxnard. The law does not require a school district to provide outside services to enhance a child's education. Oxnard need only offer Student a FAPE, which the evidence shows it did.

#### NOVEMBER 16, 2018 INDIVIDUALIZED EDUCATION PROGRAM

Oxnard held Student's annual IEP meeting on November 16, 2018. The team reviewed Student's present levels of performance, new annual goals, services, and

placement. Mother expressed concerns over Student sleeping in class and his grades. Mother testified that Student's refusal to eat was a sign of his anxiety. By the time of his annual IEP, he was eating snacks during his social skills class and eating more food at home at night, demonstrating a decrease in anxiety.

Student also demonstrated progress on social emotional goals. Mr. Garretson described how Student met his social emotional goal for participating in on topic discussions with peers without prompts in his health class but required some prompts in other classes. Student made progress on his self-management goal by increasing desired behaviors through self-identification. He completed more in class assignments. He demonstrated progress on his goal for sustaining eye contact by needing fewer prompts. He made progress on his anger or frustration management goal by taking brief work breaks, self-regulating, and returning to work, sometimes without prompts.

The team drafted new social emotional goals to increase Student's work completion, on-task behaviors, written work product, and accepting teacher instruction, all with fewer prompts. New accommodations allowed teachers to reduce assignments once Student demonstrated task mastery and allowed Student to provide oral responses for classwork and tests.

Oxnard team members did not offer changes to Student's behavior plan as they determined Student made progress decreasing behaviors impeding learning and increasing positive replacement behaviors. Student's services and placement remained the same. Mother did not consent to the IEP.

After the November 2018 IEP, Student's work completion and grades began to rise in Mr. Garretson's class. Student required less attention in class. Mr. Vanauker



observed Student socializing with peers and engaging in instruction more, and he was passing classes.

The facts did not support Student's argument that Oxnard failed to provide him with appropriate behavioral supports. Implementation of the October 18, 2018 IEP resulted in measurable improvements in Student's on task behaviors, which allowed him to complete more class work, resulting in higher grades. He began engaging more, isolating less, and socializing with peers. Student developed coping skills and demonstrated greater independence by requiring fewer to no prompts.

#### FEBRUARY 15, 2019 INDIVIDUALIZED EDUCATION PROGRAM

Oxnard held an amendment IEP meeting on February 15, 2019, to review assistive technology and occupational therapy assessments. Mother expressed concern over Student's lack of progress. The team reviewed Student's grades, which showed he was passing all classes. Student accessed his dictation accommodation, which help him produce more work in class. Student demonstrated progress in written production as well. The assistive technology specialist recommended access to a typing application on a word processing device to help increase work completion with greater independence.

Student demonstrated progress appropriate in light of his circumstances. He made progress on social emotional goals for completing assignments neatly and on time and staying on task to complete a written assignment, by requiring fewer prompts to do so. He demonstrated inconsistency in accepting teacher directions by generally complying but sometimes requiring multiple prompts.

Student demonstrated progress in self-advocacy and socialization. He showed enthusiasm working on projects with Mr. Meyring. Student drew plans, brought in wood, made cuts, and sought out help when he needed specialized cuts. Student

often worked during his lunch break. He sometimes needed reminders to perform all required steps but worked in a safe and careful manner. In Mr. Garrett's class, Student sometimes responded to questions quickly or impulsively. However, with simple redirection, he demonstrated more thoughtfulness expressing himself.

Oxnard witnesses described several instances that showed Student made positive choices after a brief discussion of the consequences of his behaviors and available options. He chose to play games with friends in Ms. La Rochelle's class during lunch rather than hanging out with an "unsavory" group. He began to identify instances when others tried to take advantage of him. These facts demonstrated Student's progress using coping skills identified in both his behavior plan and goals.

On February 26, 2019, Mr. Ayers informed Mr. Garretson that Mother did not agree the November 16, 2018 IEP, as amended on February 15, 2019, offered Student a FAPE. Student sought placement at Passageway with applied behavior analysis throughout the school day and transportation. As a result, additional behavioral interventions and strategies offered in the February IEP could not be implemented.

By February, 2019, Student made progress through provision of his goals, accommodations, and behavior plan. He became more present, more often, which led to an increase in work product and, in turn, an increase in grades. He began to trust his environment and socialized more. In short, he made progress appropriate in light of his circumstances on a comprehensive high school campus. The facts did not show that Student required a one-on-one aide or individual applied behavior analysis instruction to support his behavioral needs.

## MARCH 26, 2019 INDIVIDUALIZED EDUCATION PROGRAM

The IEP team met on March 26, 2019, at Mother's request, to review Student's progress. To address Mother's concern, Oxnard offered a directed studies class, in which Student could make up missing assignments. Oxnard agreed to update Student's positive behavior support plan by conducting a reinforcement survey and introducing reinforcements for Student to turn work in on time. The IEP team discussed school-home communication to implement rewards across settings. Consistent with IDEA mandates, Oxnard considered and offered several positive behavioral interventions, supports, and strategies to address Student's behaviors impeding learning. (20 U.S.C. § 1414(d)(3)(B)(i).)

Ultimately, Mother did not agree to implement the March 26, 2019 IEP, again seeking placement at Passageway with applied behavior analysis. She believed only Passageway could address Student's behavior needs and assignment completion. While she agreed that Student's grades increased from his prior semester, she wanted her son to become independent and believed he would perform better in a one-on-one learning environment.

Mr. Garretson, at hearing, expressed relief that Student did not take directed studies class because he completed enough work to pass all of his classes. Directed studies would have replaced Mr. Garretson's geography class, which was a graduation requirement.

It is well settled that a parent's disagreement with a school district's educational methodology is insufficient to establish an IDEA violation. (*Carlson v. San Diego Unified School Dist.* (9th Cir. 2010, unpublished) 380 F. App'x 595; see also, *Lachman v. Illinois State Board of Education* (7th Cir. 1988) 852 F.2d 290, cert. denied at 488 U.S. 925

(holding that parents do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing for the education of a student with a disability).) An appropriate program "does not mean the absolutely best or potential maximizing" services for the child. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

Here, the evidence showed that Oxnard offered Student IEPs designed to enable Student to make progress appropriate in light of his circumstances. Student did not require smaller classes or one-on-one teaching in order to make such progress.

Student passed all of his classes and was on track to obtain his regular high school diploma. During his first semester, Student earned Ds in English language arts, common core math, and biology. He earned Cs in health and social skills and a B in woodshop. He improved grades by the end of the school year by earning a B in common core math, Cs in English language arts, geography, and social skills, and an A in woodshop. His grade point average increased from 1.67 to 2.33.

Student made progress on his social emotional goals. By the end of the school year, he made good progress on his goal for completing assignments neatly and on time. He did not meet the goal because he continued to require three or more prompts rather than less than three prompts. He made progress on accepting teacher instruction by requiring two or more prompts, 50-percent fewer prompts than his baseline. He did not meet the goal, which required two or fewer prompts.

Student demonstrated improved social skills and social emotional behavior in Mr. Meyring's wood shop class. Student did not come to class with his hood on or earphones in. He completed more projects than his classmates and took pride in his work. He no longer "checked out."

Student did not prove that Oxnard failed to offer appropriate positive behavior interventions, supports, and strategies. IEPs held throughout the 2018-2019 school year provided updated goals, accommodations, and other interventions to address Student's behavioral needs. IEPs both described Student's escape or avoidance behaviors and included a host of strategies to address them. (See *Lathrop*, 611 F.3d 419, 425.) Student made progress appropriate in light of his circumstances, which demonstrated that Oxnard appropriately addressed behaviors impeding learning.

## ISSUE 1(B): PLACEMENT

Student contends Oxnard denied him a FAPE by failing to offer placement in Passageway, or a similar nonpublic school, which offered applied behavior analysis methodology in a small structured setting throughout the school day. Oxnard contends Student made progress in a public high school, showing that he did not require a more restrictive placement at Passageway or a similar school.

In determining the educational placement of a child with a disability a school district must ensure that:

1. The placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment;
2. Placement is determined annually, is based on the child's IEP and is as close as possible to the child's home;
3. Unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled;

4. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
5. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116.)

A school district must make available a continuum of placement options. (20 U.S.C. § 1412(a)(5); 34 C.F.R. 300.115.) In California, this includes instruction in regular education programs, resource specialist programs, designated instruction and services, special classes, and nonpublic, nonsectarian school services, among others not at issue here. (Ed. Code, § 56361.) The continuum of alternative placements is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive environment appropriate for them. (71 Fed. Reg. 46,586-46,587 (2006).)

Mother's choice of placements was Passageway, a certified nonpublic nonsectarian school located in Newbury Park. Mother visited the school hoping to find the best possible educational solution for her son. She reported her observation of classes at Passageway, which had two adults and three to four children. Throughout the relevant time frame, Mother believed her son was not ready for high school, that Oxnard did not offer him a FAPE, and that he was not making appropriate progress. She believed he failed during the 2018-2019 school year and had few friends at school.

There was no evidence Passageway or any other nonpublic school was the least restrictive environment or an appropriate placement for Student. Student's witnesses had no specific knowledge of Passageway or other nonpublic school placements that

they believed might be appropriate. They based their opinions on an independent psychoeducational evaluation by Dr. Agnesa Papazyan dated March 13, 2018.

Dr. Papazyan based her conclusions on Student's behaviors during a different school year, in a different setting than offered by Oxnard. She observed Student at Middle School during the 2017-2018 school year. At that time, Student did not initiate or sustain peer interaction, struggled with joint attention, and was often withdrawn from peers and adults. He isolated, preferring to work and play alone. He engaged in behavioral refusal and aggression at school. Based upon her observations, Dr. Papazyan recommended a school setting tailored to helping children with mild symptoms of autism spectrum disorder to access the curriculum successfully. She described placement in small classrooms and the use of applied behavioral analysis.

None of Student's experts observed Student in his school program at Oxnard, which diminished the weight of their placement opinions. Student's argument that he only made progress because of his at home tutoring and other services did not negate the appropriateness of Oxnard's placement offer.

Oxnard's IEPs provided Student with an appropriate placement as evidenced by his progress. Student completed more work and raised his grade point average. He passed all of his classes and remained on track to obtain a regular high school diploma. He made appropriate progress on his social emotional goals, by meeting some of them and making progress on others. Socially, Student progressed. He started the school year wearing a hoodie and earbuds to isolate. By the time of his November 2018 annual IEP, he participated more in classes and socialized with peers during lunch breaks. By the end of the 2018-2019 school year, he developed friendships, took on leadership roles during some classes, and showed pride in the many projects completed in woodshop.

Student's progress during the 2018-2019 school year showed that he was appropriately placed in a public high school with access to typically developing peers. He did not require a more restrictive setting to make such progress.

## CONCLUSIONS AND PREVAILING PARTY

Student did not prove that any of the IEPs at issue failed to offer appropriate behavior support or an appropriate placement. 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. Oxnard prevailed on the issues heard and decided.

## ORDER

All of Student's claims for relief are denied.

## RIGHT TO APPEAL THIS DECISION

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

/S/  
Cole Dalton  
Administrative Law Judge  
Office of Administrative Hearing