

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

CHAMPS CHARTER HIGH SCHOOL OF THE ARTS.

CASE NO. 2023051061

DECISION

NOVEMBER 14, 2023

On May 30, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Los Angeles Unified School District and Champs Charter High School of the Arts. On June 28, 2023, OAH granted the parties' joint request for mediation and continuance. On September 13, 2023, OAH granted Student's request to dismiss Los Angeles as a party. Administrative Law Judge Rita Defilippis heard this matter via videoconference on September 26, 27, and 28, 2023.

Attorney David German represented Student. Law clerk, Brian Burns, attended all days of hearing. Father attended day one and the morning of day two of the hearing on Student's behalf. Attorney Joanne Buser represented Champs. Principal Jay San Agustin attended all hearing days on Champs's behalf.

At the parties' request, the matter was continued to October 20, 2023, for written closing briefs. The record was closed, and the matter was submitted on October 20, 2023.

## ISSUE

Free appropriate public education is referred to as FAPE. Individuals with Disabilities Education Act is referred to as IDEA. Individualized education program is referred to as IEP.

1. Did Champs deny Student a FAPE from August 16, 2022, to May 30, 2023, by:
  - a. failing to offer behavior support services that met Student's needs; and
  - b. failing to offer Student placements that met Student's needs?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R.

§ 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511(2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student requested hearing in this matter and has the burden of proof on the issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 15 years old and in 10th grade at the time of hearing. Student attended Champs from August 16, 2022, to February 23, 2023. Champs is an independent public charter high school and its own local education agency, or LEA, operating under Los Angeles Unified School District's Special Education Local Area Plan, called SELPA. Father signed a disenrollment form on February 24, 2023. The parties stipulated at the prehearing conference and confirmed the stipulation again during hearing, that Champs was responsible to provide Student a FAPE at all relevant times, despite the February 24, 2023, disenrollment. Student was eligible for special education under other health impairment based on Student's attention deficit hyperactivity disorder which affects Student's mood, thoughts, and behavior.

**ISSUE 1a AND 1b: DID CHAMPS DENY STUDENT A FAPE FROM AUGUST 16, 2022, TO MAY 30, 2023, BY FAILING TO OFFER BEHAVIOR SUPPORT SERVICES AND PLACEMENTS TO MEET STUDENT'S NEEDS?**

Student contends that Champs was aware, from the time of Student's enrollment, that Student required more intensive behavioral services in a small, structured, special education placement than Champs could provide. Student maintains that following his enrollment, his behavior worsened, yet Champs continued to offer insufficient behavioral supports and services, and a less restrictive environment than Student required. Student contends that Champs abandoned its duty to provide a FAPE to Student and instead continued to offer knowingly insufficient services and placement. Student argues that Champs denied a FAPE by acquiescing to Father's belief that Student was ready for a less restrictive environment, and his hope that Student would be successful.

Student's closing brief alleges Champs's failure to assess Student. Student did not include a failure to assess as an issue in his complaint. Therefore, no analysis or legal conclusions regarding any failure by Champs to assess Student are included in this decision.

Champs contends that Father unilaterally enrolled Student at Champs to give Student a chance to be successful in a less restrictive general education setting than he had previously attended. It contends Father knowingly accepted the behavior services Champ Charter could offer. Champs asserts that Parents were pleased with services and made a hasty unilateral decision to send Student to residential programs when Student began experiencing problems in the home. Champs asserts that this hasty decision left it with insufficient time to respond to Father's concerns about Student's placement at Champs. Champs maintains that it offered Student appropriate behavior services throughout the relevant timeframe.

The facts of this case are unique in that the issue of services cannot be separated from the issue of placement considering Student's needs as established at hearing. The evidence established that from September 8, 2022, to May 30, 2023, Champs failed to offer Student behavior support services and placements to meet Student's needs.

## STUDENT'S UNIQUE CIRCUMSTANCES AND BEHAVIORAL NEEDS LEADING UP TO HIS ENROLLMENT AT CHAMPS

Student has a long history of difficulty with self-regulation, impulsivity, and aggression. Since second grade, student has been placed per his IEPs in nonpublic special education schools. Early in his elementary years, Student required residential placement for a time. Student's disability of other health impairment, specifically his

attention deficit hyperactivity disorder, has resulted in his inability to access his education in public schools. He has had difficulty appropriately expressing his emotions and understanding the perspectives and reactions of his peers resulting in many verbal and physical altercations throughout his educational history.

Student's IEP implemented in the 2021-2022 school year offered a nonpublic school placement. In the 2021-2022 school year, the IEP was implemented at Summit View, a nonpublic school within The Help Group Nonprofit organization. The Help Group serves children, adolescents, and young adults with disabilities.

While at Summit View, Student had improved his impulse control through a

- rewards chart,
- physical activity,
- music,
- removing himself from a triggering situation, and
- counseling.

However, Student continued to struggle with peer interactions during unstructured time and in-between classes. Student failed to meet his annual behavior goal due to his inability to independently use coping strategies.

On May 31, 2022, Summit View gave Student a 20-day notice that it could no longer meet Student's educational needs due to Student's increased impulsivity, three recent behavior incidents, and safety concerns. The incidents involved a physical fight in the classroom, slapping a peer in the face, and striking a peer with a ball. Summit View determined that these incidents resulted from Student's disability-related impulsivity.

Summit View convened Student's annual IEP team meeting on June 2, 2022. The June 2, 2022, IEP established the significant impact that Student's disability continued to have on his ability to access his instruction in the nonpublic school, despite specialized instruction throughout the school day. Student had difficulty

- beginning and completing assignments,
- maintaining focus throughout long periods of time,
- refraining from distracting others such as by throwing pencils and paper,
- talking to peers,
- making negative or sarcastic comments, and
- arguing with peers and staff.

Although Student worked well one-to-one with staff outside the classroom; even with that support, he still required moderate assistance to complete assignments.

The IEP team determined that Student required a small, structured, therapeutic learning environment in a nonpublic school capable of immediate response to Student's off task, aggressive, and impulsive behavior, which Summit View could not provide. The June 2, 2022, IEP team offered Student continued placement at Summit View for the rest of the 2021-2022 school year, and another nonpublic school placement thereafter. The June 2, 2022, IEP offered Student 1500 minutes of specialized academic instruction and 60 minutes of educationally related intensive counseling services per week. Student' offered placement from June 16, 2022, to June 1, 2023, was North Hills Preparatory School, a nonpublic special education school which serves Students with significant behavioral and social-emotional therapeutic needs.

Father consented to all components of the June 2, 2022, IEP except for placement at North Hills Preparatory School. Father declined that school based on his negative

experience with the school when Student's sibling attended there years prior. Father was offered another placement subsequent to the June 2, 2022, IEP team meeting, which Father also declined after his observation, believing it was not a good fit for Student and would possibly worsen Student's behavior. Student finished the school year at Summit View.

Without an agreed upon placement for the 2022-2023 school year, through Los Angeles, Father pursued Student's placement at Champs, where Student's sibling attended. Champs is an independent public charter high school on a general education campus delivering instruction using the general education curriculum, with embedded arts curriculum. Champs has a special education team, including a director of special education, case managers, behavior intervention aides, paraeducators, and a school psychologist.

Father communicated with Ms. Erfan Marks, Champs's director of special education, about enrolling Student in Champs. Father felt Student's sibling was successful there. Despite Student's intense behavioral needs that escalated toward the end of the 2021-2022 school year, he wanted to give Student a chance to be educated in a general education setting. Father was candid with Marks regarding Student's needs and although he expressed his desire for Student to attend a general education placement, he did not minimize Student's behavioral needs. On July 27, 2022, Father emailed Marks to make sure that Champs had all the resources in place for Student before the school year began. Marks responded by email informing Father that Student would be receiving supports per Student's IEP. Resource minutes would be provided in the general education classroom, as Champs did not have a small, structured, special education class of 15 or less students, like the nonpublic school placements. She explained that Student would have access to other support, as needed,



with his case manager or counselor. Before Student's August 15, 2022, enrollment at Champs, Marks reviewed Student's June 2, 2022, IEP and communicated with the principal of Summit View nonpublic school to understand Student's needs more fully.

Prior to working at Champs in 2018, Marks worked for many years as a special education teacher, and later, assistant principal and principal at various special education nonprofit schools run by The Help Group. She was assistant principal at Pacific Ridge which later became North Hills Preparatory School. Marks had several former employees and colleagues who worked in The Help Group's schools with whom she was in constant communication. She was therefore familiar with the school programs within The Help Group.

Marks described the program at Summit View nonpublic school, which Student was asked to leave, as serving students with learning disabilities, mild behavior, emotional challenges, and attention deficit hyperactivity disorder. She described North Hills Preparatory School, the school offered in the June 2, 2022, IEP as serving more severely impacted students. It serves students with emotional disturbance, offering social emotional, mental health, and behavioral therapeutic supports in a comprehensive therapeutic environment. The supports included educationally related intensive counseling, mental health support, immediate behavior support, small class size, low teacher to student ratio, classroom aides, behavior interventionists, and therapists. All special education services were embedded in the special education classes throughout the day.

When questioned at hearing about the difference between the services available at Champs, and the services available at North Hills Preparatory School, Marks acknowledged that Champs's services were significantly less intense. Champs only had

general education classes. Champs did not have small, structured special education classes, low teacher to student ratio, or specialized academic instruction embedded in classes throughout the day. Champs had no board-certified behavior analyst or other trained behaviorists. Marks supervised and had oversight over all special education service providers. Marks was surprised by Father's choice to enroll Student at Champs. She felt it part of her job to explain to Father what services Champs could provide to Student, given these significant differences, so that Father could make an informed decision to place Student at Champs.

STUDENT FAILED TO PROVE THAT CHAMPS DENIED STUDENT A FAPE  
FOR FAILING TO OFFER BEHAVIOR SUPPORT SERVICES AND PLACEMENT  
TO MEET STUDENT'S NEEDS FROM AUGUST 16, 2022, THROUGH  
SEPTEMBER 7, 2022

At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a) (2006); Ed. Code 56344, subd. (c).) If a child with a disability, who had an IEP in effect in a previous public agency, transfers to a new public agency in the same state and enrolls in a new school within the same school year, the new agency, in consultation with parents, must provide a FAPE to the child including services comparable to those described in the child's IEP from the previous public agency. (20 U.S.C. § 1414(d)(2)(C)(i)(I); 34 C.F.R. 300.323(e) (2006).) When promulgating the 2006 regulations, the Department of Education declined to clarify whether these protections apply to a child who transfers to a new public agency in a state between school years. (71 Fed. Reg. 46,682 (2006).) In the case of *R.F. v. Delano Union School District* (2016) 224 F.Supp.3d, 979, the U.S. District Court opined, "... the silence as to the effects of a

student changing districts between school years in the federal Department of Education's regulations does not demand the inference that the department intended to exempt such students from [these protections]." (*id.* at p. 988-989.)

In California, for Student's transferring from one California school district, to another California school district in the same SELPA as the district in which the child was last enrolled, the new district shall continue, without delay, to provide services comparable to those described in the existing approved IEP, unless the parent and the local educational agency agree to develop, adopt, and implement a new IEP that is consistent with federal and state law. (Ed. Code § 56325, subd. (a)(2).)

Student enrolled in Champs, on August 15, 2022, between the 2021-2022 and 2022-2023 school years. Both Champs and Summit View operate under Los Angeles Unified School District SELPA. Student began attending Champs on August 16, 2022, which was the first day of classes for students for the 2022-2023 school year. Champs was required to provide comparable services to those in Student's June 2, 2022, IEP without delay, until a new IEP was developed, adopted, and implemented, consistent with federal and state law. Champs developed a new IEP on September 8, 2022, at Student's 30-day IEP team meeting.

Whether or not Champs offered comparable services from August 16, 2022, through September 7, 2022, was not raised by Student as an issue and is therefore beyond the scope of this decision. In addition, Student cited no legal authority for his contention that Champs was obligated to make a new offer of a FAPE to Student from August 16, 2022, through September 7, 2022. Accordingly, no findings or analysis of

whether the IEP services provided by Champs from August 16, 2022, through September 7, 2022, were comparable to those of Student's last approved IEP, or offered Student a FAPE, are contained in this decision.

CHAMPS FAILED TO OFFER BEHAVIOR SUPPORT SERVICES AND  
PLACEMENT REASONABLY CALCULATED TO ENABLE STUDENT TO MAKE  
PROGRESS IN LIGHT OF HIS CIRCUMSTANCES FROM SEPTEMBER 8,  
2022, TO MAY 30, 2023

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321 (2007), and 300.501 (2006).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386.) The adequacy of an IEP turns on the unique circumstances of the child for whom it was created. (*Endrew F.*, *supra*, at p. 404.) The process of determining whether an IEP is reasonably calculated to enable a student to make progress requires a prospective judgement by school officials and

involves a fact intensive exercise informed by the expertise of school officials and the input of parents. (*Ibid.* at p. 399, citing *Rowley*, pp. 207-209.) Accordingly, upon judicial review of the appropriateness of an IEP, School officials should be prepared to articulate a "cogent and responsive" explanation for their decisions as to why the IEP was reasonably calculated to enable the student to make progress. (*Ibid.* at p. 404.)

When considering placement decisions, a school district must educate a child in the least restrictive environment, which means to the maximum extent appropriate, children with disabilities are educated with nondisabled peers; and that special classes or separate schooling occur only if the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a) (2006).)

Student's last implemented June 2, 2022, IEP, just over two months before his Champs enrollment, offered 1500 minutes of specialized academic instruction and 60 minutes per week of educationally related intensive mental health services, at a 100 percent special education nonpublic school. Student's offered placement in a nonpublic school was consistent with Student's prior IEP offers since he was in second grade. Like Student's past IEP teams, the June 2, 2022, IEP team determined that the nature and severity of Student's disability was such that his education in the regular classes with the use of supplementary aids and services could not be achieved satisfactorily. Father did not disagree. Rather, he rejected the specific placement offered based on his prior experience with the school. Father, not having any expertise in the education field, sought an alternative placement. He had a prior positive experience at Champs, which led him to investigate it as an option for Student, despite Student's ongoing behavioral needs.

Soon after Student began at Champs, his teachers reported behavior concerns. Student's off-task behavior was affecting his progress in all his classes. Student came to Champs with the June 2, 2022, IEP behavior goal and behavior intervention plan to facilitate that goal. The goal required Student to use self-management strategies, identified as raising his hand to request a break, to demonstrate his coping mechanisms to complete in-class assignments with minimal support of his teacher, in two out of three trials. Student's goal for behavior required daily charting of Student's behavior to evaluate Student's progress. The behavior goal and behavior intervention plan targeted Student's off-task behavior of throwing small objects, talking out, and arguing with peers and staff, which resulted in a lack of work production, disruption of others, lost instructional time, and negative interactions with peers. The June 2, 2022, IEP proposed behavior intervention plan established that Student was engaging in off-task behavior 15 minutes per hour, or a quarter of each school day. The behavior intervention plan was intended to be implemented in a small, structured, special education classroom.

#### CHAMPS'S SEPTEMBER 8, 2022, IEP FAILED TO OFFER BEHAVIOR SUPPORT SERVICES AND PLACEMENT TO MEET STUDENT'S NEEDS

On September 8, 2022, Champs convened an IEP team meeting and made Student an offer of FAPE. The September 8, 2022, IEP team, which included Marks, knew that Student required a more restrictive environment and that he would not benefit from educational services, even with supplementary special education aids and services, in the general education setting. The September 8, 2022, IEP team ignored Student's need for a more restrictive setting and offered only services that Champs had available at the time on the Champs general education campus. Champs made a new offer abandoning the June 2, 2022, placement offer of 100 percent special education to three

percent special education. The evidence established that a general education setting 97 percent of the day was not restrictive enough to meet Student's needs. The placement was offered to fit Champ's school structure rather than Student's needs.

Champs also reduced Student's specialized academic instruction from 1500 minutes per week to 340 minutes per week in the general education classroom with 30 to 32 students. Champs offered a behavior intervention plan to be implemented in the general education classrooms knowing that Student had recently been unable to achieve a similar goal given a small, structured special education classroom for his entire school day. In the few weeks at Champs, Student's behavior had already almost doubled from June 2, 2022. Student's off-task behavior had increased from 15 minutes per hour to 25 minutes per hour. Student was off task, being defiant, disrupting the instruction of himself and his peers, or leaving class, for almost half of each school day. Given the abundance of information provided in Student's June 2, 2022, IEP, and Student's behavior the first weeks of school, any behavior support services that Champs offered would not enable Student to benefit from his services if implemented at Champs.

The September 8, 2022, IEP team developed a behavior goal and behavior intervention plan to implement the goal. Similar to the June 2, 2022, IEP proposed behavior goal and behavior intervention plan, Champs' behavior goal and behavior intervention plan targeted Student's off-task behavior now identified as arguing with teachers, talking out loud to peers, and leaving the classroom without permission. The behavior goal required Student to utilize coping mechanisms and self-management strategies to complete assignments with minimal staff support in three out of five trials

with 70 percent accuracy as measured by teacher observation and student report. The behavior intervention plan was destined for failure as it was implemented in a general education classroom with 30 to 32 students.

Unlike Student's prior behavior intervention plan from Summit View, Champs's behavior goal abandoned daily charting of Student's behavior to monitor progress. It was not reasonable that Student's progress on his behavior goal could be determined without daily charting of his behavior and only the observations of his general education teachers and case managers, given that Student's behaviors occurred for half of every school day. Furthermore, Champs September 8, 2022, IEP team determined that Student's off task behavior was sensory related in contrast to the behavior intervention plan offered at Student's June 2, 2022, IEP team meeting which determined Student's off-task behavior to be for the purpose of getting attention. When questioned at hearing about this change, Marks conceded that speculating about the function of a student's behavior without supportive data, is not consistent with best practices for behavior analysis.

There was no evidence presented at hearing that the September 8, 2022, IEP team engaged in a discussion regarding its decision to drastically change Student's IEP placement. There was no evidence presented at hearing that Student had gained skills and progressed in his prior placement to indicate that he could benefit from less intensive services and a less restrictive placement than Summit View had considered appropriate to offer. To the contrary, the information available to the September 8, 2022, IEP team indicated that Student's behaviors were worse than when he was at



Summit View, at which time he was already not able to access his education, and required even more intensive therapeutic services in a small, structured setting with specialized behavioral and mental health supports.

Champs offered no cogent and responsive explanation at hearing as to how Student's September 8, 2022, IEP services and placement were reasonably calculated to enable Student to make progress in light of his circumstances. (See *Endrew F. v. Douglas County School Dist. RE-1*, *supra*, 580 U.S. 386, 400, (*discussing expectations of a reviewing court for school officials*.) Instead, the September 8, 2022, IEP team checked the boxes in Student's IEP to indicate that Student's disability needs could be met in the general education setting to comply with Father's desire to place Student at Champs. However, as noted by the Court in *Endrew F. v. Douglas County School Dist. RE-1*, *supra*, 580 U.S. 386:

"The instruction offered must be "*specially* designed" to meet a child's "*unique* needs" through an [*i*]ndividualized education program. [Citations] An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." (Ibid. at p. 400.)

Champs denied Student a FAPE by catering to Father and offering Student an IEP that was not appropriately designed to confer educational benefit given Student's unique circumstances.

## SEPTEMBER TO NOVEMBER

Mid-September 2022, Champs hired School Psychologist, Leyla Khadem. This was Khadem's first job as a school psychologist after completing her education. Khadem came to know Student and Student's family very well because she was responsible for Student's educationally related intensive counseling services. Student was frequently in her office as teachers would send Student to her when he could not self-regulate in class. She had a good relationship with Student and Student's family.

Following the September 8, 2022, IEP team meeting, Student's behavior became worse. Champs called Father approximately 10 times regarding Student's behaviors and frequently asked him to come to the school. Vice Principal Jessica De La O, also known as Jessica Hanson, asked Student to sign a behavior contract whereby Student promised to improve his disability-related behavior or else risk detention, suspension, or recommendation for expulsion. Student was failing many of his classes. Father also discovered that Student was "using drugs at school and reported this to administrators." In response, administrators informed him that it is difficult to control student use of illegal substances in the bathroom. Student was increasingly defiant and disruptive in class, talking and play fighting with other students during instructional time. Teachers frequently asked Student to leave class. Student got detention and was no longer allowed to get hall passes due to his disappearing for unreasonable amounts of time. Student was spending more than 60 minutes per week in Khadem's office than his September 8, 2022, IEP authorized.

## STUDENT'S NOVEMBER 10, 2022, IEP FAILED TO OFFER BEHAVIOR SUPPORT SERVICES AND PLACEMENT TO MEET STUDENT'S NEEDS

On November 10, 2022, Champs convened an IEP team meeting to discuss Student's suspension the day before for a physical altercation with another student with whom he had a history of increasing verbal aggression. The team also discussed Student's increasing behaviors and continued illegal substance use.

The only changes to the November 10, 2022, IEP were the replacement of Student's behavior goal and behavior intervention plan and the development of a plan to help Student take his medicine for attention deficit hyperactivity disorder more consistently. Student's direct services and placement remained the same as offered in the September 8, 2022, IEP.

The November 10, 2022, IEP team decided to target Student's verbal and physical aggression against the peer with whom he had increasing altercations. The November 10, 2022, IEP team abandoned Student's September 8, 2022, IEP behavior goal and behavior intervention plan which addressed Student's defiance, leaving class without permission, and disruptive behavior. The new goal targeted Student's escalating pattern of aggression defined as engaging in verbal and physical altercations with this one student two to three times per week. The new behavior intervention plan required Student to seek a trusted adult when faced with a triggering situation, to discuss the incident and calm down. The person responsible to provide Student personal space and calming discussions was Khadem, who was also Student's preferred trusted adult. At the time of the behavior intervention plan development, Student's aggressive behavior, with this one other student, was occurring two to three times per

week, each lasting five minutes. That is only 15 minutes per week compared to Student's off-task behavior which had increased since September 8, 2022, at which time he was off task for almost half of every school day.

The decisions made regarding behavior support services at the November 10, 2022, IEP team meeting evidenced Champs's lack of acknowledgment of the seriousness of Student's behaviors, and the lack of experience and expertise of the IEP team members in identifying Student's behavior interfering with his instruction. When Marks was asked at hearing why the team abandoned Student's goal to address Student's off-task behavior due to defiance and elopement, she stated those issues were no longer relevant, given the new physical altercation behavior. Marks's explanation was unreasonable given uncontroverted evidence establishing that Student's defiance, leaving class, and disruptive off-task behavior was increasing and was the primary reason that Student was not accessing his instruction. This undermined Marks' credibility. Student's need for a behavior goal and intervention plan to address those behaviors continued. Therefore, the behavior support services offered at the November 10, 2022, IEP meeting failed to meet Student's needs.

Moreover, the evidence established that Champs's proposed new goal was not designed to meet Student's needs. For the two months prior, Student was spending more than 60 minutes per week in Khadem's office calmly and respectfully discussing his repeated behavior incidents including alternative ways he could have handled the incidents. Khadem emphasized at hearing that she never observed Student's defiant and disruptive behavior as he was always polite and cooperative when he came to her office. Yet, despite Khadem's support, there was no corresponding improvement in Student's behavior in the classroom or during unstructured times in the moment that

these incidents occurred. Additionally, the new goal would likely increase Student's time in Khadem's office and away from instruction. Instead, the evidence established that Student required behavior support services capable of immediate behavior intervention responses throughout his school day, including in the classroom and during unstructured times, in the moments Student was engaging in the inappropriate behavior. Furthermore, Student's need for a more restrictive placement to implement those services continued.

Student's November 10, 2022, IEP failed to offer Student behavior support services to meet his needs. Despite Student's behaviors continuing from the beginning of the school year, now manifesting as physical aggression, there was no evidence presented at hearing that Champs consulted with behavior specialists or employed a board-certified behavior analyst to assist the IEP team to develop a behavior intervention plan to address Student's escalating behaviors. Instead, the evidence portrayed a haphazard approach to Champs's identification of Student's target behavior and selection of behavior interventions.

Student's service providers failure to acknowledge the seriousness of Student's behaviors also contributed to Student's continued lack of appropriate behavior support services and placement. Khadem, a well-meaning but inexperienced school psychologist, opined at hearing that Student had typical behavior problems, impulsivity, and interrelationship issues, compared to other high school students. Khadem repeatedly opined at hearing that Champs was providing appropriate behavior services and, if given more time on his new behavior goal, Student would have made adequate behavior progress. Her failure to identify the seriousness of Student's behaviors and the extent of his impulsivity related to his disability, demonstrated that she lacked the training and experience required to assist Student

to manage his disability related impulsivity and lack of emotional self-regulation. Her conclusion that Student's behavior would have improved given more time is rejected as unpersuasive in light of Student's extensive educational history and worsening behaviors over time.

Marks acknowledged Student's serious impulsivity but did not think a more structured behavior plan or restrictive placement was necessary. The evidence established otherwise.

Student's academic counselor Sean Humphrey testified that Student's grades were typical for freshman students and not of concern to him because Student could make up for his failing grades in summer school. His opinion is unpersuasive as it normalized and minimized Student's academic struggles, ignored Student's deteriorating behavior at school, and significant educational history of Student's needs.

#### STUDENT'S DECLINING BEHAVIOR AFTER THE NOVEMBER 10, 2022, IEP TEAM MEETING

Between the November 10, 2022, IEP team meeting and winter break 2022, Khadem, De La O, and Marks had informal discussions regarding Student's need for a one-to-one aide due to Student's persistent behavior problems of defiance, leaving class and campus, and verbal and physical altercations with peers. In one discussion, Marks told Del La O that Student needed a one-to-one aide. Student was never offered a one-to-one aide. Champs was aware that Student needed more behavior services but failed to offer them. This established that Champs failed to offer behavior supports that it knew Student required.

On December 15, 2022, two days before winter break, Student got into another physical altercation at lunchtime with the same student involved in past altercations. Four adults separated the students and escorted them to separate places. This behavior incident did not trigger any changes in Student's placement or behavior support services.

The first day back to school on January 9, 2023, Father informed Special Education Director Marks of Parents' decision to place Student in an outpatient drug rehabilitation program, beginning the next day on January 10, 2023. Student completed the 10-day drug rehabilitation program. The outpatient rehabilitation program recommended Student for residential treatment which Father declined fearing that Student would fall too far behind in school.

Student returned to Champs on January 23, 2023. On January 24, 2023, a re-entry meeting was held with both Parents, Khadem, and Assistant Principal De La O, so that Champs could get an update on Student. Parents were open about Student's use of illegal substances. Champs reviewed its rules with Parents. De La O informed Parents that Student could be searched upon a reasonable suspicion of illegal drugs. Parents understood and agreed. Mother tearfully informed Champs that Student left the drug rehabilitation program early and returning was not an option. Champs did not know that the program had recommended residential treatment. Champs wrongly assumed that Student left early because he did not complete the outpatient program. However, Khadem knew that Student left the program because it was difficult for Student.

In weeks following Student's return to school, Student was deteriorating, did not look well, and appeared to his service providers to be a completely different student than he was first semester. Khadem and Father were communicating extensively

regarding Student. Assistant Principal De La O informed Father that she stopped documenting Student's behavior incidents and detentions because she did not want to suspend Student.

At this point, Student's behavior had deteriorated. Champs's behavior supports failed to address Student's worsening behavior needs and academic decline. Champs did not modify its offer of services or placement.

One day, in late January or early February, Student walked out of detention without permission declaring, "This life is not for me." Champs called Father to the school for a meeting with Khadem, and De La O. De La O informed Father of Student's announcement. Student did not look well at school. At times his eyes were glassy, he was slow moving, and he lacked control over his body. De La O advised Father of the disciplinary measures that Champs could take based on Student's behavior of drug use and defiance. Father believed that Champs was going to expel Student. The evidence was unclear whether De La O was in the meeting at the time, but Father asked that no action be taken against Student at that time because he was working with an educational consultant and was in the process of identifying a wilderness program. Father told Khadem that if he did not immediately place Student in a residential program it may be too late. Khadem told Father that she supported his decision. She also conceded at hearing that she told him that because Student's behavior was out of control at school and home. Yet Champs failed to hold an IEP team meeting to offer a residential placement to meet Student's urgent placement need at that time.

Champs failure to offer Student behavior support services and placement to meet his needs, while Student declined, was a denial of Champs duty to offer Student a FAPE. Champ service providers minimized Student's behaviors throughout the relevant time.



Champs claims in its closing brief that Student's behavior since the September 8, 2022, IEP team meeting improved and consisted of only one suspension, and Student's need for a behavior contract, are rejected as unpersuasive. Khadem knew Student better than any other service provider and spent a significant amount of time with Student. Khadem conceded that Student's behaviors necessitating the September 8, 2022, behavior intervention plan, continued throughout Student's attendance at Champs.

There was no evidence presented at hearing to indicate that Champs was specifically documenting any of its behavior services or Student's behavior incidents in or out of the classroom, which would be needed to determine Student's progress and behavior needs. Since the November 10, 2022, IEP team meeting, Champs was no longer monitoring Student's off-task, defiant, disruptive and elopement behavior, as there was no longer a goal or behavior intervention plan to address it. Champs also stopped documenting behavior incidents and detentions. For this reason, Champs's argument that Student's behavior improved is without merit. Champs failure to offer Student behavior support services and placements to meet Student's needs from September 8, 2022, deprived Student of educational benefit and denied him a FAPE.

## WRITTEN NOTICE OF UNILATERAL PLACEMENT

On February 19, 2023, Father emailed Marks and De La O requesting an emergency IEP team meeting and informing them of his decision to place student in a wilderness program that week, followed by a residential placement center. Attached to the email was a letter dated February 20, 2023, addressed to Champs's Principal Jay San Agustin. The letter informed San Agustin that Parents did not believe that Student's most recent IEP provided him an appropriate placement and program sufficient to address the range and severity of Student's disability-related challenges. Father advised,

for those reasons, Parents would be providing Student with ongoing placement at a highly structured private therapeutic facility for the remainder of the 2022-2023 and the 2023-2024 regular school year. Father also included notice that Parents would be seeking reimbursement for Student's tuition and program costs, related services, and transportation incurred in providing Student with an appropriate placement.

## PRIOR WRITTEN NOTICE

On February 21, 2023, Marks sent Parents a letter entitled "Prior Written Notice Regarding Request for Assessment" confirming receipt of Parents' notice of intent to enroll Student in a wilderness program and then a residential treatment center and denying payment for both programs. The prior written notice offered to reassess Student as soon as an emergency IEP was convened. The prior written notice denied payment for the wilderness and residential treatment programs based on its reasoning that Champs had not been provided the opportunity to discuss, evaluate, and offer appropriate placement.

## FEBRUARY 24, 2023, MEETING

On February 24, 2023, Champs convened a meeting with Father, Marks, and Principal San Agustin. Although the reasons for the meeting were unclear, the evidence established that Champs knew that Student's services and placement were not meeting Student's needs before the February 24, 2023. meeting.

Father shared with the team that Student had been transported to the wilderness program the night before the meeting. Father signed a disenrollment form. Student attended Elements Wilderness Program in Utah from February 24 to May 11, 2023. Student attended Telos Residential Treatment Center from May 12, 2023, through

hearing. Following the February 24, 2023, meeting at Champs, there was no communication between Champs and the wilderness program or the residential treatment program.

## CONCLUSIONS AND PREVAILING PARTY

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

### ISSUE 1a:

Student established that Champs denied him a FAPE from September 8, 2022, to May 30, 2023, by failing to offer Student behavior support services to meet Student's needs. Student did not establish a FAPE denial on this basis from August 16, through September 8, 2022.

Student significantly prevailed on issue 1a.

### ISSUE 1b:

Student established the Champs denied him a FAPE from September 8, 2022, to May 30, 2023, by failing to offer Student placements to meet Student's needs. Student did not establish a FAPE denial on this basis from August 16, through September 8, 2022.

Student significantly prevailed on Issue 1b.

## REMEDIES

Student proved that Champs denied Student a FAPE from September 8, 2022, to May 30, 2023, by failing to offer Student behavior support services and placements to meet Student's needs. Student attended Elements Wilderness Program in Utah from February 24, 2023, to May 11, 2023. Student immediately transferred to Telos Residential Treatment Center and attended there from May 12 through the time of hearing. Los Angeles Unified School District was a named respondent in Student's complaint. Los Angeles was dismissed by OAH as a party at the request of Student on September 13, 2023, pursuant to a settlement agreement. As part of the settlement agreement, Los Angeles took responsibility for the provision of a FAPE to Student from September 1, 2023. As a remedy for Champs denials of a FAPE to Student, Student requests Champs to reimburse Parents for tuition and related travel costs for Student's placement at Elements Wilderness Program, and for tuition costs for Student's placement at Telos Residential Treatment Center through August 31, 2023.

Student contends reimbursement for costs of the Elements and Telos placements should be granted as an equitable remedy for Champs' denials of a FAPE to Student because the placements provided Student with both educational and therapeutic services to meet his educational needs and provided educational benefit to Student. Student also contends reimbursement of tuition is proper as Parents acted reasonably in placing Student in Elements less than 10 days from Parent's written notice because Student's safety was at risk due to his engagement in high-risk behaviors at school and at home.

Champs contends that reimbursement should be denied because Parents placed Student at Elements and Telos for noneducational therapeutic purposes related only to

home problems. Champs also contends that reimbursement should be denied because Parents acted unreasonably in giving less than 10-days' notice of the unilateral placements which left Champs with insufficient time to discuss, evaluate and offer appropriate placement.

Courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, n. 11.)

When a school district fails to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. at p. 369-371.) Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the school district has failed to provide a FAPE. (*Ibid*; *Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F. 3d 1489, 1496.)

A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c) (2006); Ed. Code, § 56175; (see also *Burlington, supra*, 471 U.S. at pp. 369-370 [reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a

FAPE.]) The private school placement need not meet the state standards that apply to public agencies to be appropriate. (*Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 13-14, [114 S.Ct. 361] (*Florence County*).)

The ruling in *Burlington* is not so narrow as to permit reimbursement only when the placement or services chosen by the parent are found to be the exact proper placement or services required under the IDEA. (*Alamo Heights Independent School Dist. v. State Board of Education* (5th Cir. 1986) 790 F.2d 1153, 1161; *J.P. ex rel. Popowitz v. Los Angeles Unified School Dist.* (C.D. Cal. Feb. 16, 2011, No. CV 09-01083 MMM MANX) 2011 WL 12697384, at \*23.) Although the parents' placement need not be a "state approved" placement, it still must meet certain basic requirements of the IDEA, such as the requirement that the placement address the child's needs and provide them educational benefit. (34 C.F.R. § 300.148(c); *Florence County, supra*, 510 U.S. at p. 14.)

In *C.B. v. Garden Grove Unified School Dist.* (9th Cir. 2011) 635 F.3d 1155, the Ninth Circuit set forth the standards to be applied in determining whether a private placement is appropriate for the purpose of reimbursement. There, a student had benefited substantially from a private placement, but parents were awarded only partial reimbursement because the placement did not address all of the student's special education needs. (*Id.* at pp. 1157-1158.) The Court of Appeals held that parents were entitled to full reimbursement because the IDEA "does not require that a private school placement provide all services that a disabled student needs in order to permit full reimbursement." (*Id.* at p. 1158.) The Court concluded that, for a parent to qualify for reimbursement, parents need not show that a private placement furnished every special service necessary to maximize their child's potential. They need only to demonstrate that the placement provided educational instruction specially designed to meet the

unique needs of a child with a disability, supported by such services as are necessary to permit the child to benefit from instruction. (*Id.* at p. 1159 [quoting *Frank G. v. Board of Education* (2d Cir. 2006) 459 F.3d 356, 365 (citations and emphases omitted)].)

Student substantially prevailed on Issues 1a and 1b. Having established Champs's denial of a FAPE to Student, Student is entitled to reimbursement for costs related to Student's unilateral placements at Elements and Telos if Student proved that those placements provided educational instruction specially designed to meet Student's unique disability needs and provided support services necessary to permit Student to benefit from instruction.

After considering the evidence presented at hearing regarding the two placements, reimbursement of tuition for Student's placement at Telos is the appropriate remedy for Champs's failure to offer behavior support services and placements to meet Student's needs.

## ELEMENTS WILDERNESS PROGRAM

Student began his placement at Elements on February 24, 2023, and remained in the placement through May 11, 2023. The only documentary evidence presented at hearing regarding Student's time at Elements was a psychological assessment report authored by Abby Jenkins, PhD, a licensed clinical psychologist; a discharge summary, authored by JJ Freedlund, licensed clinical social worker and Student's therapist at Elements; and an unsigned official transcript from Dorius Academy operating in partnership with Elements. There was no testimony at hearing from Dr. Jenkins or Freedlund to authenticate their reports, or to discuss their training and experience with

Student or the Elements Program itself. There was also no testimony to authenticate the Dorius transcript, or to discuss who provided instruction, how educational services were provided, and Student's performance evaluated.

The only testimony regarding the Elements Program, was provided by Arthur Kleinfelder, Student's therapist from Telos, and Father. Kleinfelder had no direct experience with Elements but was familiar with the typical purpose of wilderness programs in general. Father also had only a general sense of the Elements Program. Father did not know how Student received the credits purported to be earned from Dorius. Kleinfelder's and Father's testimony were consistent, each stating that Elements focused on noneducational therapeutic and behavioral services. Kleinfelder opined that wilderness programs typically focus on breaking established and ineffective patterns of behavior and ineffective coping strategies so that participants are able and ready to develop more effective and appropriate coping skills through therapeutic services. Father testified that Student did not go to Elements voluntarily, and the transition from home to Elements was understandably traumatic. Therefore, Elements' therapeutic services to stabilize Student took precedence over academic instruction.

Elements is a wilderness program in Utah. The evidence established that young people placed there are always in nature and must survive in the wilderness without any of the usual comforts of home. There are no classrooms, teachers, or special education service providers at Elements. Participants must work together to accomplish tasks of daily living. They engage in physically and mentally challenging tasks, while receiving



therapeutic supports to break old patterns and learn new ones by focusing on themselves, their group, and their therapy, away from the distractions of family dynamics, technology, and other things that may have contributed to old patterns of behavior.

Student failed to sustain the burden to prove that Student's placement at Elements was appropriate and provided educational instruction and supports specially designed to meet Student's unique educational needs. Accordingly, reimbursement for Element's tuition and related travel is denied.

Evidence from Elements was relevant to determining the appropriateness of Student's placement at Telos, upon which Telos relied and validated as consistent with Telos's experience with Student. Elements conducted a psychological assessment, discharge summary, and intake conversation between JJ Freedlund, licensed clinical social worker and Student's therapist at Elements. Freedlund made corresponding clinical recommendations for Student.

## TELOS RESIDENTIAL TREATMENT CENTER

Kleinfelder received a Bachelor of Science Degree in Behavioral Science with an emphasis in Psychology from Utah Valley University in December 2012, and a master's degree in clinical mental health counseling from Argosy University in February 2015. Kleinfelder completed 4,000 hours of supervised therapy as part of his internship and has been fully licensed as a clinical mental health counselor in the state of Utah, since January 2021. He has and continues to work as a therapist at Telos since July 2022.

Kleinfelder started his career working in the Utah State Prison System, followed by a job providing evaluations, individual, group and family therapy for juveniles referred from juvenile drug court. From 2018 to December 2021, he worked at Discovery Academy, a residential treatment center like Telos, and another program called Connections for Boys, which served male youth with more significant behaviors indicative of what he described as "criminal thinking". In December 2021, just before working at Telos, he became clinical director at Newport Academy in Utah.

Kleinfelder's testimony was credible and is accorded great weight based on his education, extensive therapy training and experience, and work with individuals with similar disabilities as Student. His testimony was directly responsive to questions and evidenced his ability to identify Student's skill deficits. He established the therapeutic prescriptions needed to address Student's lack of success accessing his educational services, and the underlying issues negatively impacting Student's relationships with peers, teachers, and family members.

Student transitioned from his placement at Elements directly to Telos on May 12, 2023. Telos is a residential placement for teenage boys with a wide range of diagnoses such as

- depression,
- anxiety,
- autism spectrum disorder,
- attention deficit hyperactivity disorder and
- related behavior problems.

Most of the youth placed at Telos have a history of home and school problems, peer and family relationship issues, and struggles with substance abuse. Telos is located within a typical city, which, unlike Elements, is more like the setting students were in before coming to Telos.

At the time of hearing, Kleinfelder had been Student's primary therapist for four and a half months, along with other youth in Student's group, with a maximum caseload of six. Kleinfelder provided an hour of individual therapy to Student, an hour and a half of family therapy, and two group therapy sessions per week. In addition, he checked in each morning with residence staff to get an update on Student so that he was aware of any problems or struggles that may impact his work with Student. Student also attended classes at Telos from approximately 8:00 AM to 3:00 PM in a small class of three to five Students and one teacher. Student had behavioral supports throughout his school day. Kleinfelder authenticated Student's Telos transcript establishing that by the time of hearing, Student had successfully completed and passed coursework at Telos in classes including applied math (grade C), English (Grade D-), fine arts (Grade A), game design (grade A), integrated sciences (grade C), modern history (grade C), and physical education (grade A). At the time of hearing, Student was taking classes at Telos required for a high school diploma using the general education curriculum. Lastly, Student participates in two and a half hours per week of group therapy to address substance abuse and recovery.

Element's psychological assessment, discharge summary, and intake conversation with Element's therapist, informed Kleinfelder's therapeutic goals for Student. Kleinfelder's work with Student since that time corroborated Freedlund's clinical experience with Student and the accuracy of Freedlund's clinical

recommendations for Student. There was nothing in Freedlund's discharge summary, Dr. Jenkin's psychological report, or Jenkin's clinical experience and recommendations for Student that Kleinfelder disagreed with after working with Student at Telos.

Student's primary need for the Telos residential placement was to address Student's impulsivity related to his attention deficit hyperactivity disorder, and his inability to regulate his own emotions. At Telos, Student typically demonstrated his impulsivity and lack of emotional regulation by impulsively making a verbal comment, which was usually degrading to the receiver, without realizing or considering the effect that his comment might have on the other person. This behavior resulted in verbal and physical fights.

Student historically engaged in the same behaviors at his nonpublic school placement and at Champs. There, once caught up in the resulting emotional fallout from inappropriate interactions with peers or teachers, Student was unable to regulate his emotions. This usually resulted in Student either walking out or being removed from the tumultuous environment by way of detentions, suspensions, or eventually as here, residential placement. Student engaged in this pattern of behavior throughout his educational history. It remains as Student's biggest obstacle to school success and positive and rewarding relationships. Student engaged in this pattern of behavior, and used ineffective coping mechanisms, including self-medication and defiance and resistance to adult controls, without appropriate interventions. As a result, he now requires the restrictive setting of Telos, and 24-hour therapeutic supports to finally develop replacement behaviors and coping skills to successfully return home and navigate an educational setting less restrictive than Telos.

Telos has provided appropriate intensive therapeutic supports which specifically address the problematic behavior which has been historically interfering with Student's access to educational instruction and healthy interpersonal relationships. These supports include therapy to assist Student to understand his disability and the coping mechanisms that he has employed thus far in dealing with the effects of his disability. Student has trained adult support at Telos, including during school instruction, to prompt Student when needed to recognize potential triggering situations and to identify when he is becoming dysregulated. With that immediate prompting, Student is learning that he can adjust his behavior and take steps to de-escalate his emotions, without self-medication and running away.

Student has benefitted from Telos's behavioral supports and services in the short time he has been in the placement. Student has had only one physical altercation with a peer at Telos, which occurred early in his placement, and which Kleinfelder later determined upon review of the incident, was done by Student in self-defense. Student never required physical restraints or separation for others in his group. When Student engages in attention seeking verbal statements, he is given immediate feedback from adults and his peers which assists Student to work through the discord in a way that facilitates his own growth and self-awareness, and improved relationships. These behavioral prompts are provided throughout the day and at school.

Student received educational benefit at Telos as a direct result of the therapeutic and educational services provided. Student earned passing grades at Telos and is earning credits towards a high school diploma. Student gained insight about his disability and skill deficits. He now sees that his drug use was how he had been coping

with his disability-related lack of focus, emotional regulation deficits, and frequent anger. Student acknowledged that physical exercise and use of fidgets result in his increased focus and self-regulation.

The evidence presented at hearing established that Telos is an appropriate placement as it provides educational instruction in a small, structured classroom specially designed, with behavioral supports, to meet Student's unique disability needs and to permit Student to benefit from instruction. The Telos placement further provides individual, group, and family therapeutic services for Student to increase Student's successful transition back home and to a less restrictive non-residential educational setting. Lastly, Telos' services provide Student with support specific to promote Student's recovery from alcohol and drug dependence as a coping mechanism for his disability-related symptoms.

The issues in this matter involve the time period of August 16, 2022, to May 30, 2023. However, because Champs knowingly ignored Student's placement and behavior support needs from September 8, 2022, Student's behavior significantly regressed. Student's out-of-control behavior and substance use, led to his eventual need for residential placement. Student was in a worse position by the time of his disenrollment from Champs than he was at the end of the 2021-2022 school year. In June 2022, he required a nonpublic school placement to meet his needs; by February 2023, he needed a residential placement to meet his needs. Student required, during the time period at issue in this case, placement at Telos to undo Student's pattern of behavior which has been ongoing for years. Accordingly, Student is entitled to the equitable remedy of reimbursement for the costs of Telos tuition through August 31, 2023.

Champs claim that Student was placed at Telos for noneducational purposes is unpersuasive. It is contrary to the evidence of Student's deteriorating behaviors at school and lack of appropriate services and placement to address his behaviors interfering with his access to educational services. Champs cites the case of *Ashland Sch. Dist. v. Parents of Student R.J* (9th Cir. 2009) 588 F.3d 1004, in support of its position, the facts of which are distinguishable from the facts of the case here. The student in *Ashland* was diagnosed with attention deficit hyperactivity disorder and found eligible for special education. (*Ibid.* at p. 1005.) She was inattentive at school and had difficulty turning in assignments on time, but earned good grades, was well regarded by her teachers, was not disruptive in school, and was able to learn in her regular classes and benefit from the education provided to her by the school. (*Ibid.* at p. 1010.) The court denied reimbursement because the private placement was not necessary to provide special education and related services, or any educational reason. (*Ibid.* at p. 1010.) Here, Student's disability-related deteriorating behaviors were evidenced in school and were clearly preventing him from accessing his instruction. His lack of emotional regulation, and behaviors, were intertwined and caused Student's inability to access his instruction at Champs. Parents' private placement of Student was necessary to directly target these obstacles so that Student could access his educational instruction.

Similarly, Champs argument that reimbursement should be denied due to Parents' actions in unilaterally placing Student earlier than 10-days from their written notice of such, is also unpersuasive. Reimbursement may be reduced or denied in a variety of circumstances, including whether a parent acted reasonably with respect to the unilateral private placement. (20 U.S.C. § 1412(a)(10)(C)(iii); 34 C.F.R. § 300.148(d) (2006); Ed. Code § 56176.) These rules may be equitable in nature, but they are based in

statute. The cost of reimbursement for private placement may be reduced or denied if the parent or guardian did not give written notice at least 10 business days including any holidays that occur on a business day, prior to the removal of the child from the public school. (20 U.S.C. § 1412(a)(10)(c)(iii)(bb); 34 C.F.R. § 300.148(d)(ii) (2006); Ed. Code, § 56176, subd. (b).) However, the cost or reimbursement shall not be so reduced or denied if compliance with the notice requirement would likely result in harm to the child. (20 U.S.C. § 1412 (a)(10)(C)(iv)(bb), Ed. Code, § 56177, subd. (a)(3).)

Here, the fact that Father gave verbal notice of his intent to place Student in a residential placement, before written notice of such, lessens Champs argument claiming insufficient time to discuss Student's appropriate placement. Father was in constant communication with Khadem throughout his Champs enrollment and was open and transparent in communicating Student's deteriorating behavior at home and at school. Furthermore, Father informed Khadem, De La O, and Marks that if he did not immediately place Student in a residential facility, it may be too late, meaning his life would be in jeopardy. Parents acted reasonably in placing Student in Elements based on their reasonable belief that delaying his placement would result in harm to Student. Accordingly, reimbursement of Parents' cost of tuition at Telos remains a proper equitable remedy for Champs's failure to offer Student a FAPE.

Father submitted invoices from Telos and bank statements showing Parents' payment for the costs of tuition from May 12, 2023, to August 31, 2023, totaling sixty-six thousand, two hundred and sixty-six dollars, (\$66,266.00). Parents' request for full tuition reimbursement for the Telos placement is reasonable. Parents do not request reimbursement for transportation costs related to the Telos placement or the costs of hiring an educational consultant in finding and securing the placement at Telos. Parents' request for reimbursement of the full amount of tuition is granted.



## ORDER

1. Champs is ordered to reimburse Parents sixty-six thousand, two hundred and sixty-six dollars (\$66,266.00), to reimburse Parents for their out-of-pocket tuition expenses for Student's placement at Telos from March 12, 2023, through August 31, 2023, within 30 days of the date of this decision.

## RIGHT TO APPEAL THIS DECISION

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

RITA DEFILIPPIS

Administrative Law Judge

Office of Administrative Hearings