

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT.

CASE NO. 2023100346

DECISION

MARCH 7, 2024

On October 11, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student naming Manhattan Beach Unified School District, called Manhattan Beach. On November 16 and 29, 2023, and December 19, 2023, OAH granted Manhattan Beach's requests for a continuance, setting the hearing to start January 9, 2024. Administrative Law Judge Cararea Lucier heard this matter by videoconference on January 9, 10, 11, and 16, 2024.

Attorney Timothy Adams represented Student. Parents attended the first three days of the hearing on Student's behalf. Father also attended the fourth day of the hearing. Attorneys Christopher Fernandes and Jasey Mahon represented Manhattan Beach. Dr. Kristopher Vegas, Director of Special Education, attended all hearing days on Manhattan Beach's behalf.

At the parties' request, OAH continued the matter to February 5, 2024, for written closing briefs. The record was closed, and the matter submitted on February 5, 2024.

## ISSUES

A free appropriate public education is referred to as a FAPE. An individualized education program is referred to as an IEP.

1. Did Manhattan Beach deny Student a FAPE during the 2022-2023 school year, beginning on April 18, 2023, by failing to provide Parents with an assessment plan within 15 days of Parents' request on April 3, 2023?
2. Did Manhattan Beach deny Student a FAPE during the 2022-2023 school year, beginning on May 3, 2023, by failing to convene an IEP team meeting within 30 days of Parents' written requests on:
  - a. April 3, 2023;
  - b. May 3, 2023;
  - c. May 16, 2023; and
  - d. May 25, 2023?
3. Did Manhattan Beach deny Student a FAPE during the 2022-2023 school year, beginning on April 3, 2023, by failing to provide Parents with prior written notice in response to Parents' requests for IEP team meetings on:
  - a. April 3, 2023;
  - b. May 3, 2023;
  - c. May 16, 2023; and
  - d. May 25, 2023?

4. Did Manhattan Beach deny Student a FAPE during the 2022-2023 school year, beginning on April 3, 2023, by failing to provide Parents with prior written notice in response to Parents' request for assessment on April 3, 2023?
5. Did Manhattan Beach deny Student a FAPE during the 2022-2023 school year by failing to ensure an interim IEP was in place upon Student's enrollment?
6. Did Manhattan Beach deny Student a FAPE during the 2022-2023 school year by failing to convene the mandatory resolution meeting within 15 days of receiving notice of Student's request for due process in OAH Case No. 2023060356, filed on June 9, 2023?
7. Did Manhattan Beach deny Student a FAPE during the 2023-2024 school year by failing to have an IEP in place for Student prior to the 2023-2024 school year?

The issues have been re-ordered. No other changes have been made to the issues pled by Student and identified in the December 28, 2023, Order Following Prehearing Conference.

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, commonly referred to as the IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 et seq. (2006); Ed. Code, § 56000 et seq.; Cal.

Code Regs., tit. 5, § 3000 et seq.) All references to the Code of Federal Regulations will be to the 2006 version unless otherwise stated. The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a FAPE 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) and (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, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student had the burden of proof in this matter. (*J.G. v. Department of Education* (9th Cir. 2019) 772 Fed.Appx. 567.) 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 a 17-year-old private school student who resided with his parents and sibling within Manhattan Beach since April 2022. Student was a social and active teenager. He enjoyed playing basketball and getting boba drinks with his friends. He was diagnosed with attention deficit hyperactivity disorder, called ADHD. Student was identified as eligible for special education three times: in third grade by Wiseburn Unified School District, called Wiseburn; in seventh grade by Redondo Beach Unified School District, called Redondo Beach; and in 11th grade by Manhattan Beach. Student failed to offer any evidence at hearing that Parents ever consented to the initiation of special education services or that Student ever received special education services.

ISSUE 1: DID MANHATTAN BEACH DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, BEGINNING ON APRIL 18, 2023, BY FAILING TO PROVIDE PARENTS WITH AN ASSESSMENT PLAN WITHIN 15 DAYS OF PARENTS' REQUEST ON APRIL 3, 2023?

Student contends Manhattan Beach was legally obligated to provide Parents with an assessment plan within 15 days of their April 3, 2023, request. Student argues that if Manhattan Beach had done so, Parents could have consented to the assessment plan as early as April 18, 2023, and Manhattan Beach could have assessed Student and convened an IEP team meeting prior to the end of the 2022-2023 school year. Student contends that if Manhattan Beach had convened an IEP team meeting for Student before the end of the 2022-2023 school year, Parents may have opted to place Student at Mira Costa High School, a public school within Manhattan Beach, rather than continue his placement at Westmark School, a private school.

Manhattan Beach contends Parents devised a scheme to compel Manhattan Beach to fund Student's placement at Westmark School by feigning interest in the option of a public-school placement. Manhattan Beach argues that at the time of Parents' April 3, 2023, request for assessment, Manhattan Beach had no record of Student attending a Manhattan Beach school or residing within the geographical boundaries of Manhattan Beach. Manhattan Beach contends it was not obligated to provide Student with an assessment plan within 15 days of their request because Student was a parentally placed private school student with no individual entitlement to FAPE, and Parents did not intend on Student attending a Manhattan Beach school during the 2022-2023 school year.

Generally, under California law, the school district in which the parents of a child with a disability reside is responsible for the provision of FAPE to the child. (*B.H. v. Manhattan Beach Unified Sch. Dist.* (2019) 35 Cal.App.5th 563.) The IDEA recognizes two types of private school students: children unilaterally enrolled in a private school by their parents, and children placed in a private school by a school district. (*Capistrano Unified School District v. S.W. and C.W. on behalf of B.W.* (9th Cir. 2021) 21 F.4th 1125.)

For parentally placed private school students, a school district must assess a child residing within its boundaries and make a FAPE available to the child, if requested by the parents. (*Bellflower Unified School District v. Lua on behalf of K.L.* (9th Cir. 2020) 832 F.App'x 493, citing Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46,540, 46, 592 (Aug. 14, 2006).) A school district may not make enrollment in the school district a precondition to assessment if the child lives within its geographical boundaries. (*Id.*) This legal obligation to assess upon parent request is not absolved because a student attends a private school in another school district, which may also trigger the obligation of

that school district to assess under its "child find" responsibilities. (*Id.*, citing 34 C.F.R. § 300.131(a) and *J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 460.)

The term "assessment" used in the California Education Code has the same meaning as the term "evaluation" in the IDEA. (Ed. Code, § 56302.5.) A parent may refer a child for special education assessment. (Ed. Code, § 56029, subd. (a).)

A school district must reassess a child with a disability if the child's parent or teacher requests a reassessment. (34 C.F.R. § 300.303(a)(2); see (34 C.F.R. § 300.305(d)(1)(ii) and (d)(2).) A child with a disability must be reassessed every three years, and may not be assessed more than once per year, unless the parent and school district agree. (34 C.F.R. § 300.303(b).) If the school district refuses a parent's request for reassessment, it must provide the parent with prior written notice. (34 C.F.R. § 300.503(a)(2).) If a school district agrees to a parental request for reassessment, the school district must provide the parent with a written assessment plan within 15 calendar days of the written request, not counting days between school sessions or school vacation in excess of five school days. (Ed. Code, §§ 56321, subd. (a), and 56043, subd. (a).)

Student was first identified as eligible for special education in third grade while residing in Wiseburn. Parents did not consent to special education services or to the IEP Wiseburn drafted. Instead, Parents enrolled Student in fourth grade at The Prentice School, a private school. After Student's fourth grade year, Parents moved to a residence within Redondo Beach and enrolled Student in another private school, Rolling Hills Prep, Renaissance School, for fifth, sixth, and part of seventh grade. Student's seventh-grade year was the 2019-2020 school year, when most California schools shifted to remote learning due to the novel coronavirus called COVID-19. During Student's seventh-grade

year, Parents asked Redondo Beach to assess Student for special education. Redondo Beach conducted an initial assessment of Student and identified him as eligible for an IEP under the categories of other health impairment and specific learning disability. Student did not present any evidence that Parents consented to Redondo Beach's initial IEP for Student.

On November 19, 2021, Redondo Beach convened an IEP team meeting for Student. Parents did not consent to the November 19, 2021 IEP. Student continued to attend Redondo Union High School.

In April 2022, during Student's ninth-grade year, Parents and Student moved from their home in Redondo Beach to a new home they purchased in Manhattan Beach. The family closed on the purchase of their home on April 4, 2022, and were completely moved into the Manhattan Beach home on April 20, 2022. Parents did not notify Manhattan Beach that the family had moved into the district or request educational services from Manhattan Beach for the 2021-2022 school year.

On April 8, 2022, Parents signed an enrollment contract with Westmark School, a private school, to enroll Student in 10th grade for the 2022-2023 school year. Parents paid a nonrefundable deposit of \$4,020 and agreed to make a single tuition payment of \$53,820 by July 1, 2022. Student attended Westmark School for the 2022-2023 school year. Parents received \$41,000 in reimbursement for Westmark School tuition from Redondo Beach pursuant to a settlement agreement.

On March 23, 2023, Parents entered into an enrollment contract for Student to continue attending Westmark for the 2023-2024 school year for 11th grade and paid a nonrefundable deposit of \$4,020. Parents agreed to pay the remaining tuition in two payments: \$28,530 due on July 1, 2023, and December 1, 2023.



On April 3, 2023, Parents, through legal counsel, sent a letter to Manhattan Beach stating that Student was eligible for an IEP and resided within the boundaries of Manhattan Beach. Student's legal counsel attached to the letter a draft copy of a 2019 initial assessment of Student by Redondo Beach, and the unsigned November 10, 2021 IEP. The letter requested an interim IEP, a 30-day IEP team meeting, and a copy of Student's records. The letter also stated Student's three-year review assessments were due in November 2022, and requested a comprehensive assessment plan for Student's three-year review.

The letter from Student's counsel confused Manhattan Beach. It did not have any record of Student. He had never attended a Manhattan Beach school.

Between April 3, 2023, and June 15, 2023, the end of the 2022-2023 school year, Student's legal counsel and Manhattan Beach exchanged numerous emails. Student's counsel continued to ask for Student's records, an assessment, an interim IEP, and 30-day IEP team meeting. Manhattan Beach repeatedly told Student's counsel that the district did not have any of Student's records. On April 14, 2023, Dr. Kristopher Vegas, Director of Special Education for Manhattan Beach, called Student's counsel and left a message. He also followed up with an email asking for the Parents' address and if they attempted to enroll. Dr. Vegas offered to help the family enroll, and explained they had no record of Student residing within Manhattan Beach. On April 14, 2023, Student's counsel replied by email that the Parents would register with the school district and verify their residency as soon as possible.

On or around April 26, 2023, Mother attempted to enroll Student and his younger sibling at Mira Costa High School in Manhattan Beach for the 2023-2024 school year. She completed some, but not all steps of the enrollment process for Student. She

provided proof of Student's residency in Manhattan Beach, including the April 2022 purchase deed for their home, and a current utility bill. She included a copy of Student's birth certificate and immunization records, a copy of Mother's driver's license, and a request for student records from Westmark School. She failed to include other required documents including a signed online enrollment form, a copy of Student's IEP, previous school records and transcripts from Westmark School and Redondo Beach High School, and a copy of physical fitness testing. Mother included a handwritten note at the bottom of the enrollment checklist she provided to Manhattan Beach: "[Student] attends a private school and does not plan to attend school in the district but needs to be registered with the district because he has an IEP."

Manhattan Beach staff processed the enrollment for Student's sibling because Mother had completed all the enrollment steps and confirmed enrollment via email to Mother on April 27 and 28, 2023. Manhattan Beach staff set aside the partial enrollment forms for Student because they were not complete. On May 15, 2023, Dr. Vegas learned from Manhattan Beach staff they had set aside the paperwork for Student and obtained a copy. He understood that Parents had submitted proof of Student's residency within Manhattan Beach on April 26, 2023. Dr. Vegas interpreted Mother's handwritten note on the checklist as meaning Parents did not intend for Student to attend school within Manhattan Beach and would continue attending private school.

On June 9, 2023, Parents, via legal counsel, filed a due process complaint with OAH, naming Manhattan Beach. OAH designated the matter Case number 2023060356. On July 18, 2023, the parties met for a resolution session.

On August 16, 2023, Dr. Vegas sent Parents a prior written notice letter agreeing that Student was a resident of Manhattan Beach and offering to assess

Student. Dr. Vegas attached a copy of an assessment plan, releases of information, and a copy of parental rights and procedural safeguards. Parents objected to parts of the assessment plan. Although they had asked for a comprehensive assessment, they did not believe Student should be assessed in the areas of speech and language or occupational therapy. Manhattan Beach revised the assessment plan to reflect Parents' concerns. On September 7, 2023, Parents signed and returned the revised assessment plan and releases of information to Manhattan Beach. Manhattan Beach assessed Student and convened an IEP for him on November 3, 2023, identifying him as eligible for special education and offering him a placement within the district. Parents did not consent. Student continued to attend 11th grade at Westmark School for the 2023-2024 school year.

Manhattan Beach's obligation to assess Student, a parentally placed private school student, was triggered when it had: (1) verification that Student resided within the boundaries of Manhattan Beach; and (2) a written request for a special education assessment from Parents. On April 3, 2023, Manhattan Beach received a written request for assessment of Student on behalf of Parents. On April 26, 2023, Manhattan Beach had verification of Student's residency, including a current utility bill and the deed to their house. Manhattan Beach was required to provide Parents with an assessment plan within 15 days of April 26, 2023, which was May 11, 2023. Their failure to do so resulted in a procedural IDEA violation.

A procedural error results in a denial of a FAPE only if the violation:

- impeded the student's right to a FAPE,
- significantly impeded the parent's opportunity to participate in the decision-making process, or

- caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subds. (f)(2) & (j); W.G. v. Board of Trustees of Target Range School Dist. No. 23 (9th Cir. 1992) 960 F.2d 1479, 1484, superseded on other grounds by statute; L.M. v. Capistrano Unified School Dist. (9th Cir. 2009) 556 F.3d 900, 910.)

From May 12, 2023, through June 15, 2023, Manhattan Beach failed to offer Parents a written assessment plan in response to their request. This procedural violation denied Student a FAPE because it denied Parents the right to participate in the IEP process by delaying the assessment process. Parents had the right to a special education assessment of Student and an offer of FAPE from their school district of residence. They retained this right even as he attended a private school and was not properly enrolled in the district. Manhattan Beach offered Parents an assessment plan on August 16, 2023, one week before the beginning of the 2023-2024 school year. Nonetheless, Manhattan Beach improperly delayed providing Parents an assessment plan for approximately five weeks during the 2022-2023 school year, thereby denying Student a FAPE.

**ISSUE 2: DID MANHATTAN BEACH DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, BEGINNING ON MAY 3, 2023, BY FAILING TO CONVENE AN IEP TEAM MEETING WITHIN 30 DAYS OF PARENTS' WRITTEN REQUESTS ON APRIL 3, 2023, MAY 3, 2023, MAY 16, 2023, AND MAY 25, 2023?**

Student contends Parents were considering a placement within Manhattan Beach for the 2023-2024 school year. Student argues Manhattan Beach was required

to convene an IEP team meeting for Student within 30 days of Parents' requests during the last two months of the 2022-2023 school year so Student could have an IEP in place before the beginning of the 2023-2024 school year. Student contends that because Manhattan Beach did not convene an IEP team meeting within 30 days of Parents' requests, Parents were compelled to incur \$63,000 in private school tuition and thousands more dollars in transportation costs for the 2023-2024 school year.

Manhattan Beach contends Parents never intended on Student attending a Manhattan Beach school. Manhattan Beach argues that during the 2022-2023 school year Student was a parentally placed private school student with no individual entitlement to a FAPE. Manhattan Beach contends it was not required to convene an IEP team meeting for Student during the 2022-2023 school year.

A school district must convene an initial IEP team meeting after formal assessment for eligibility for special education. (Ed. Code, § 56302.1.) A school district may not take any action with respect to the initial placement of a child in special education instruction without first conducting a comprehensive assessment of the child in all areas of suspected disability conducted by qualified assessors. (Ed. Code, § 56320.)

A school district is prohibited from providing special education to a child if the parents refuse to consent to the initiation of special education services. (Ed. Code, § 56346, subd. (b).) If a parent refuses to consent to the initial provision of special education and related services, the school district does not violate the child's right to a FAPE by not providing services, is not required to develop subsequent IEPs or hold IEP team meetings and may not file a due process complaint to compel the parents to consent to the initial IEP. (Ed. Code, § 56346, subds. (b) and (c).)

For parentally placed private school students, a school district is not required to consider the child as eligible for special education services if the parents fail to respond to a request to provide initial consent. (Ed. Code, § 56346 subd. (g); 34 C.F.R § 300.300(d)(4).)

If the parents of a child with an operative IEP remove the child from the public school system and enroll the child in a private school, the school district is not required to convene annual IEP team meetings for the child. (*Capistrano Unified School District v. S.W. and C.W. on behalf of B.W.* (9th Cir. 2021) 21 F.4th 1125, 1138.) Furthermore, a school district is not required to make a FAPE available to a private school student residing within its boundaries if the parents make clear their intention to keep the child enrolled in the private school located in another local educational agency. (*Bellflower Unified School District v. Lua on behalf of K.L.* (9th Cir. 2020) 832 F.App'x 493, citing Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46,593 (Aug. 14, 2006).) However, parents may request an IEP team meeting: "To be sure, when parents withdraw a student from public school and place her in private school, all they have to do is ask for an IEP, and then the district must prepare one." (*Capistrano Unified School District v. S.W. and C.W. on behalf of B.W.* (9th Cir. 2021) 21 F.4th 1125, 1138.)

Student called two witnesses in his case-in-chief. Mother was Student's primary witness. Mother clearly loved Student and was devoted to obtaining the best possible education for him. However, Mother's testimony throughout the course of the hearing was not credible. She made demonstrably false statements about the nature of the claims Parents brought against Redondo Beach in OAH Case number 2022060038. She also made statements that were implausible given her experience as an attorney, such as that she did not understand the term "residence," or the difference between draft documents and final documents. She evaded most questions asked by Manhattan

Beach's counsel and frequently said she did not know or could not remember the answer to a question. Her testimony was frequently vague, relying on misrepresentations through omission. As such, Mother testimony was given little weight. (Evid. Code, § 780.)

Student also called Dr. Kristopher Vegas as a witness. Manhattan Beach employed Dr. Vegas as its Director of Special Education since July 2020. Dr. Vegas held a Bachelor of Arts degree in Psychology, a Master of Science degree in Educational Psychology, and a Doctor of Philosophy degree in Educational Psychology. He had over 20 years' experience as a school psychologist and administrator. At hearing, Dr. Vegas answered questions in a thoughtful and professional manner. He directly and candidly answered questions posed by Student's counsel, even when answering questions that showed Manhattan Beach did not meet timelines Student's counsel alleged were required. Accordingly, Dr. Vegas' testimony was highly credible and given substantial weight.

Parents' conduct was ambiguous with respect to whether they intended to keep Student enrolled in a private school. Parent signed a contract with Westmark School on March 23, 2023, to continue Student's enrollment in the private school for the 2023-2024 school year, with a nonrefundable deposit, before ever contacting Manhattan Beach to ask for an IEP. On the enrollment checklist Mother submitted on April 26, 2023, Mother added a handwritten note: "[Student] attends a private school and does not plan to attend school in the district but needs to be registered with the district because he has an IEP." At the resolution session on July 18, 2023, Mother told Manhattan Beach she did not complete the online enrollment forms for Student because he would be attending a private school and did not plan to attend public school in Manhattan Beach. (See *Letter to Cohen*, Office of Special Education Programs,

September 16, 2015: “Unlike mediation, the IDEA and the implementing regulations contain no requirement for discussions in resolution meetings to be kept confidential and not be introduced in a subsequent due process hearing or civil proceeding.”)

However, during the 2022-2023 school year, from April 3, 2023, through June 15, 2023, Parents’ attorneys repeatedly told Manhattan Beach that Student was eligible for special education and requested an IEP team meeting. This suggested Parents wanted an offer of FAPE from their school district of residence so they could consider placing Student in public school. Taken as a whole, Parents’ muddled communication to Manhattan Beach did not establish a clear intention to keep Student enrolled in a private school located in another local educational agency. (See *Bellflower Unified School District v. Lua on behalf of K.L.* (9th Cir. 2020) 832 F.App’x 493.)

However, Student did not meet his burden of proof that Manhattan Beach was required to convene an IEP team meeting for Student during the 2022-2023 school year. Parents, through their attorneys, only provided Manhattan Beach with a draft copy of a November 15, 2019, initial assessment of Student and the unsigned November 10, 2021 IEP, both developed by Redondo Beach. These documents were insufficient to establish Parents had consented to the initial provision of special education or that Student had ever received special education services.

Student had the burden of proof in this matter. Student alleges Manhattan Beach failed to convene an IEP team meeting within 30 days of Parents’ request. Therefore, Student had the burden of proving Student was a private school student with a disability under the IDEA who was entitled to an IEP team meeting within 30 days of Parents’ request. Student established Student had been assessed by Redondo Beach and identified as eligible for special education. Student did not show Parents had ever



consented to the initiation of special education services. If Parents never consented to the initiation of special education services, Manhattan Beach was not legally required to consider him a child with a disability under the IDEA and convene an IEP team meeting for him. (Ed. Code, § 56346, subds. (b), (c), and (g); 34 C.F.R § 300.300(d)(4).) As such, Student failed to prove Student was a private school student with a disability under the IDEA entitled to an IEP team meeting within 30 days of Parents' request.

While it is possible that Student received special education services in Redondo Beach, Parents and their attorneys failed to provide documentation to Manhattan Beach that Student ever had an operative IEP to which Parents consented. The enrollment process at Manhattan Beach required Parents to submit Student's IEP, if applicable. Mother did not do so. The ambiguity as to Student's IEP status may have been inadvertent, but it also might have been strategic. Parents and their attorneys took actions that limited Manhattan Beach's knowledge of Student's educational history in Redondo Beach and Manhattan Beach's ability to communicate with Redondo Beach. For example, upon enrollment in Manhattan Beach, Mother failed to disclose Student's prior enrollment in Redondo Beach in ninth grade or sign a release of records with Redondo Beach, even though the instructions requested information about previous high school attendance. Parents' attorneys initially refused Manhattan Beach's August 16, 2023, request that Parents sign a release allowing Manhattan Beach to receive Student's records from Redondo Beach. Student's and Manhattan Beach's attorneys exchanged terse emails regarding Parents' refusal to sign a release for Redondo Beach until September 7, 2023, when Parents ultimately signed the release.

Student did not meet his burden of proof that Manhattan Beach was required to convene an IEP team meeting for Student during the 2022-2023 school year because Student failed to show Parents had ever consented to the initiation of special education

services. Student did not present any evidence at hearing that showed Parents ever consented to the initiation of special education services. Absent such a showing, Manhattan Beach had no obligation to treat Student as a child with a disability under the IDEA and convene IEP team meetings for him. (See Ed. Code, § 56346 subd. (g); 34 C.F.R. § 300.300(d)(4).)

Manhattan Beach was not obligated to convene an IEP team meeting for Student until Parents confirmed they had consented to the initial provision of special education services for Student, conferring on him the status of a child with a disability under the IDEA, or Manhattan Beach had completed their own initial assessment of Student. As such, Manhattan Beach did not deny Student a FAPE during the 2022-2023 school year when it did not convene an IEP team meeting within 30 days of Parents' written requests on April 3, 2023, May 3, 2023, May 16, 2023, and May 25, 2023.

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ISSUE 3: DID MANHATTAN BEACH DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, BEGINNING ON APRIL 3, 2023, BY FAILING TO PROVIDE PARENTS WITH PRIOR WRITTEN NOTICE IN RESPONSE TO PARENTS' REQUESTS FOR IEP TEAM MEETINGS ON APRIL 3, 2023, MAY 3, 2023, MAY 16, 2023, AND MAY 25, 2023?

ISSUE 4: DID MANHATTAN BEACH DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR, BEGINNING ON APRIL 3, 2023, BY FAILING TO PROVIDE PARENTS WITH PRIOR WRITTEN NOTICE IN RESPONSE TO PARENTS' REQUEST FOR ASSESSMENT ON APRIL 3, 2023?

Student contends Parents did not receive prior written notice from Manhattan Beach until August 16, 2023, over four months after Parents' April 3, 2023, request for assessment and an IEP team meeting. Student argues Manhattan Beach therefore failed to provide prior written notice in a reasonable time following their requests. Student contends that if Manhattan Beach had provided prior written notice earlier, Parents could have understood Manhattan Beach's actions and addressed them sooner, resulting in an offer of educational programming before the beginning of the 2023-2024 school year.

Manhattan Beach contends the timing of its August 16, 2023, prior written notice to Parents was reasonable based on Manhattan Beach's ongoing correspondence with Student's attorneys and the district's attempts to confirm Student's residency and obtain his educational records.

A district must provide parents of a child with a disability with prior written notice a reasonable time before it proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." (34 C.F.R. § 300.503.)

The written notice of procedural safeguards and any prior written notices must be provided in a language that is understandable to the general public and also in the native language of the parent unless it is clearly not feasible to do so. (34 C.F.R. § 300.503.)

Prior written notice should contain:

- a description of the action proposed or refused by the agency,
- an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action,
- a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained,
- sources for parents to contact to obtain assistance in understanding the provisions of this subchapter,

- a description of other options considered by the IEP Team and the reason why those options were rejected, and
- a description of the factors that are relevant to the agency's proposal or refusal. (20 U.S.C. § 1415(c)(1).)

Failure to provide prior written notice is "harmless" if it does "not result in a loss of educational opportunity or significantly restrict parental participation." (Marcus I. v. Dep't of Educ. (9th Cir. 2014) 583 Fed. App'x. 753, 755; see also J.P. ex rel. Popowitz v. Los Angeles Unified Sch. Dist., No. CV 09-01083 MMM MANX, 2011 WL 12697384 (C.D. Cal. Feb. 16, 2011) (finding plaintiffs were not prejudiced by the failure to provide a prior written notice because "the parents were active participants in the IEP meeting and contributed to and acquiesced in the conclusions reached and recommendations made.").)

During the 2022-2023 school year, Manhattan Beach was not required to provide prior written notice in response to Parents' request for assessment and IEP team meetings because it was not "proposing or refusing" to take any action with respect to Student from April 3, 2023, through June 15, 2023. On April 3, 2023, Parents, through their attorneys, requested a comprehensive assessment for Student's three-year review and a 30-day IEP team meeting. The evidence reflects that Manhattan Beach responded to Parents' requests promptly. On April 4, 2023, staff at Manhattan Beach replied to the request explaining the district did not have any records for Student. Student's attorneys' office replied saying they awaited an IEP team meeting notice and assessment plan. On April 14, 2023, Manhattan Beach staff replied that Student had never attended school within Manhattan Beach, and that Dr. Vegas would be in touch. Student's attorney replied that Parents would verify residency as soon as possible. On April 14, 2023, Dr. Vegas

replied that he had left a message with Student's attorney. He explained Manhattan Beach did not have any record of Student. He requested Student's address and offered to help the family enroll Student.

On April 26, 2023, Mother attempted to enroll Student in Manhattan Beach and provided proof of residency. On May 3, 2023, Student's attorney followed up with Dr. Vegas via email, and requested an IEP team meeting as soon as possible. On May 5, 2023, Dr. Vegas asked staff if they had any record of Student. Staff identified Student's sibling in the system but did not see enrollment for Student. Dr. Vegas explained to Student's attorney that Manhattan Beach still did not have a record of registration for Student and asked what name was provided on the enrollment forms, and who at the high school received the enrollment forms.

Dr. Vegas continued investigating the status of Student's residency and enrollment in Manhattan Beach. On May 15, 2023, Dr. Vegas learned that staff had set aside the enrollment paperwork Mother dropped off because the paperwork was incomplete.

On May 16, 2023, Student's attorneys followed up with another letter, asking for an IEP team meeting as soon as possible. Manhattan Beach staff replied the same day saying they had no record of Student. On May 25, 2023, Student's attorneys followed up with another email requesting an IEP team meeting, this time threatening to file a request for a due process hearing if Manhattan Beach did not convene an IEP team meeting for Student without further delay. On June 9, 2023, Parents filed a request for a due process hearing. Manhattan Beach met with Parents on July 18, 2023, in a resolution session for the due process case. On August 16, 2023, Manhattan Beach sent Parents a prior written

notice letter offering to assess Student. The assessment plan attached to the prior written notice explained Manhattan Beach would convene an IEP team meeting to discuss the assessment results.

Following Parents' April 3, 2023, request for assessment and requests for IEP team meetings on April 3, and May 3, 16, and 25, 2023, Manhattan Beach frequently communicated with Parents' attorneys to verify Student's residency and respond to their requests. Manhattan Beach was in a process of dialogue, investigation, and problem solving. Manhattan Beach did not agree, or refuse, to take any steps with respect to Student. Manhattan Beach's response to Parents' requests was reasonable and prompt.

As such, during the 2022-2023 school year Manhattan Beach was not required to send prior written notice in response to Parents' request for assessment on April 3, 2023, and Parents' requests for IEP team meetings on April 3, 2023, May 3, 2023, May 16, 2023, and May 25, 2023, and did not deny Student a FAPE for the 2022-2023 school year.

#### ISSUE 5: DID MANHATTAN BEACH DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO ENSURE AN INTERIM IEP WAS IN PLACE UPON STUDENT'S ENROLLMENT?

Student contends Manhattan Beach was obligated to develop an interim IEP for Student during the 2022-2023 school year. Student argues if Manhattan Beach was unclear as to whether the November 2021 IEP was Student's last implemented and consented to IEP, it was obligated to contact Redondo Beach to get more information.

Manhattan Beach contends it was not required to develop an interim IEP for Student because Parents deliberately did not complete the enrollment process for Student and did not intend for Student to attend a Manhattan Beach school for the 2022-2023 school year. Manhattan Beach also argues Student had no IEP in effect upon which Manhattan Beach could have developed an interim IEP because Student provided an unsigned IEP.

The IDEA describes the process for students who transfer school districts within an academic year. When a student transfers to a new school district within the same state and enrolls in a new school district during that academic year, the new school district must provide services comparable to the student's most recent IEP, in consultation with the parents, until the district either adopts the old IEP or develops and implements a new IEP for the student. (20 U.S.C. § 1414(d)(2)(C)(i)(I); 34 C.F.R. § 300.323(e).) California law limits the amount of time in which the new school district must provide comparable services or develop a new IEP, to 30 days. (Ed. Code, § 56325 subd. (a)(1).)

The interdistrict transfer provisions only apply when a student is transferring from one public school district to another public school district within the same academic year and has an IEP in effect. (*S.H. v. Mount Diablo Unified School District* (N.D.Cal. 2017) 263 F.Supp.3d 746, 758-759.) These laws do not apply to a private school student transferring to a public school. (*Id.*) Additionally, an unconsented to IEP cannot be the basis for providing interim services or developing an interim IEP. (*Id.*)

The laws regarding interim IEPs were not applicable to Student during the 2022-2023 school year because he was not transferring into Manhattan Beach from another public school district. For the 2022-2023 school year, Student was a parentally placed private school student. Although Redondo Beach funded part of his private school



tuition for the 2022-2023 school year, the settlement agreement was clear that he was a parentally placed private school student. Student was not enrolled in Redondo Beach during the 2022-2023 school year. Furthermore, Student did not have an operative IEP. Student's unsigned IEP from Redondo Beach was not a legal basis for an interim IEP from Manhattan Beach and therefore, Manhattan Beach was not obligated to offer Student an interim IEP. As such, Manhattan Beach did not deny Student a FAPE during the 2022-2023 school year by failing to ensure an interim IEP was in place upon Student's enrollment.

ISSUE 6: DID MANHATTAN BEACH DENY STUDENT A FAPE DURING THE 2022-2023 SCHOOL YEAR BY FAILING TO CONVENE THE MANDATORY RESOLUTION MEETING WITHIN 15 DAYS OF RECEIVING NOTICE OF STUDENT'S REQUEST FOR DUE PROCESS IN OAH CASE NO. 2023060356, FILED ON JUNE 9, 2023?

Student contends Manhattan Beach did not convene a resolution session for OAH case number 2023060356 until one month after the case was filed. Student argues in his closing brief that if Manhattan Beach had timely convened a resolution session in OAH case number 2023060356, the parties could have addressed many of Parents' concerns prior to the start of the 2023-2024 school year.

Manhattan Beach contends any alleged failure to timely convene a resolution session in OAH case number 2023060356 is not relevant to the current matter. Manhattan Beach also argues that the only remedy available to Student from this alleged failure would be for Student to ask OAH to begin the due process hearing timeline, but Student withdrew OAH case number 2023060356 on October 9, 2023.

Within 15 calendar days of receipt of a due process complaint from a parent a school district must convene a resolution meeting with the parent. (34 C.F.R. § 300.510(a).) The purpose of the meeting is to discuss the due process complaint and the facts that form the basis of the complaint so that the school district has the opportunity to resolve the dispute. (*Id.*) The school district does not need to hold the resolution meeting if the parties agree to waive the meeting or to use the mediation process instead. (*Id.*) If the school district does not resolve the dispute to the satisfaction of the parent within 30 days of receipt of the complaint, a due process hearing may occur. (34 C.F.R. § 300.510(b).) If the school district fails to hold the resolution session within 15 days of receipt of the due process complaint or fails to participate in a resolution session, the parent may ask the hearing officer to begin the due process hearing timeline. (*Id.*)

Manhattan Beach failed to convene a resolution session within 15 days of receiving notice of Student's request for due process hearing in OAH case number 2023060356. Student filed the due process complaint on June 9, 2023. Manhattan Beach was required to hold the mandatory resolution session by June 24, 2023. It did not do so. It convened a resolution session with Parents on July 18, 2023. On October 9, 2023, Student requested to dismiss OAH case number 2023060356 without prejudice, which OAH granted. On October 11, 2023, Student filed a request for due process hearing in the current matter. Manhattan Beach's failure to timely convene the mandatory resolution session in OAH case number 2023060356 was a procedural violation of the IDEA.

While Student proved Manhattan Beach failed to timely convene the resolution session in OAH case number 2023060356, he failed to present evidence as to the impact of this delay on Student or Parents. The remedy for a school district's failure to timely

convene a resolution session is for the parents to seek an order from the administrative law judge to start the due process hearing timelines. Student did not choose to avail himself of the available remedy in OAH case number 2023060356, but instead dismissed the case without prejudice. Furthermore, Student did not provide any evidence at hearing in the current matter that the timing of the resolution session in OAH case number 2023060356 impeded Student's right to a FAPE, significantly impeded Parents' opportunity to participate in the decision-making process, or deprived Student of educational benefits. Student failed to meet his burden of proof that Manhattan Beach's delay in convening the mandatory resolution session in OAH case number 2023060356 denied Student a FAPE.

#### ISSUE 7: DID MANHATTAN BEACH DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO HAVE AN IEP IN PLACE FOR STUDENT PRIOR TO THE 2023-2024 SCHOOL YEAR?

Student contends Manhattan Beach was required to have an IEP in place for Student prior to the start of the 2023-2024 school year. Student argues if Manhattan Beach had developed an IEP for Student before the start of the 2023-2024 school year, Parents may not have opted to send Student to Westmark School for the 2023-2024 school year.

Manhattan Beach contends it was not required to develop an IEP for Student prior to the start of the 2023-2024 school year because Parents had made clear their intention to keep Student enrolled in a private school.

At the beginning of each school year, a school district must have an IEP in place for each child with a disability within its jurisdiction. (20 U.S.C. § 1414(d)(2)(A).)

Manhattan Beach was not required to have an IEP in place for Student prior to the 2023-2024 school year. The evidence showed Student was identified as eligible for special education three times: in third grade by Wiseburn; in seventh grade by Redondo Beach, and in 11th grade by Manhattan Beach. Parents did not consent to the initial IEP from Wiseburn, the November 2021 IEP from Redondo Beach, or the November 2023 IEP from Manhattan Beach. If Parents ever consented to the initiation of special education services, such evidence was not offered at the due process hearing or to Manhattan Beach prior to the beginning of the 2023-2024 school year. As such, Manhattan Beach was not obligated to consider Student a child with a disability under the IDEA. (See Ed. Code, § 56346, subd. (g); 34 C.F.R § 300.300(d)(4).)

Manhattan Beach was required to assess Student and convene an initial IEP team meeting within the applicable timelines. These timelines did not require Manhattan Beach to convene an IEP team meeting before the beginning of the 2023-2024 school year. As discussed above, Manhattan Beach impermissibly delayed assessing Student during the end of the 2022-2023 school year.

However, even if Manhattan Beach had timely provided Parents with an assessment plan by May 11, 2023, the assessment process would likely not have been completed prior to the beginning of the 2023-2024 school year because Manhattan Beach would have had 60 days to assess Student not counting days between school sessions or school vacation in excess of five school days. (Ed. Code, § 56302.1, subd. (a).) The IEP team meeting to discuss the assessments would have occurred after the beginning of the 2023-2024 school year. As such, Manhattan Beach did not deny Student a FAPE, during the 2023-2024 school year, by failing to have an IEP in place for Student prior to the beginning of the 2023-2024 school year.

## CONCLUSIONS AND PREVAILING PARTY

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

### ISSUE 1:

Manhattan Beach denied Student a FAPE during the 2022-2023 school year by failing to provide Parents with an assessment plan within 15 days of Parents' request on April 3, 2023.

Student prevailed on Issue 1.

### ISSUE 2(a):

Manhattan Beach did not deny Student a FAPE during the 2022-2023 school year, beginning on May 3, 2023, by failing to convene an IEP team meeting within 30 days of Parents' written request on April 3, 2023.

Manhattan Beach prevailed on Issue 2(a).

### ISSUE 2(b):

Manhattan Beach did not deny Student a FAPE during the 2022-2023 school year, beginning on May 3, 2023, by failing to convene an IEP team meeting within 30 days of Parents' written request on May 3, 2023.

Manhattan Beach prevailed on Issue 2(b).

#### ISSUE 2(c):

Manhattan Beach did not deny Student a FAPE during the 2022-2023 school year, beginning on May 3, 2023, by failing to convene an IEP team meeting within 30 days of Parents' written request on May 16, 2023.

Manhattan Beach prevailed on Issue 2(c).

#### ISSUE 2(d):

Manhattan Beach did not deny Student a FAPE during the 2022-2023 school year, beginning on May 3, 2023, by failing to convene an IEP team meeting within 30 days of Parents' written request on May 25, 2023.

Manhattan Beach prevailed on Issue 2(d).

#### ISSUE 3(a):

Manhattan Beach did not deny Student a FAPE, during the 2022-2023 school year, beginning on April 3, 2023, by failing to provide Parents with prior written notice in response to Parents' request for an IEP team meeting on April 3, 2023.

Manhattan Beach prevailed on Issue 3(a).

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### ISSUE 3(b):

Manhattan Beach did not deny Student a FAPE, during the 2022-2023 school year, beginning on April 3, 2023, by failing to provide Parents with prior written notice in response to Parents' request for an IEP team meeting on May 3, 2023.

Manhattan Beach prevailed on Issue 3(b).

### ISSUE 3(c):

Manhattan Beach did not deny Student a FAPE, during the 2022-2023 school year, beginning on April 3, 2023, by failing to provide Parents with prior written notice in response to Parents' request for an IEP meeting on May 16, 2023.

Manhattan Beach prevailed on Issue 3(c).

### ISSUE 3(d):

Manhattan Beach did not deny Student a FAPE, during the 2022-2023 school year, beginning on April 3, 2023, by failing to provide Parents with prior written notice in response to Parents' request for an IEP team meeting on May 25, 2023.

Manhattan Beach prevailed on Issue 3(d).

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#### ISSUE 4:

Manhattan Beach did not deny Student a FAPE during the 2022-2023 school year, beginning on April 3, 2023, by failing to provide Parents with prior written notice in response to Parents' request for assessment on April 3, 2023.

Manhattan Beach prevailed on Issue 4.

#### ISSUE 5:

Manhattan Beach did not deny Student a FAPE during the 2022-2023 school year by failing to ensure an interim IEP was in place upon Student's enrollment.

Manhattan Beach prevailed on Issue 5.

#### ISSUE 6:

Manhattan Beach did not deny Student a FAPE during the 2022-2023 school year by failing to convene the mandatory resolution meeting within 15 days of receiving notice of Student's request for due process in OAH case No. 2023060356, filed on June 9, 2023.

Manhattan Beach prevailed on Issue 6.

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## ISSUE 7:

Manhattan Beach did not deny Student a FAPE during the 2023-2024 school year by failing to have an IEP in place for Student prior to the 2023-2024 school year.

Manhattan Beach prevailed on Issue 7.

## REMEDY

Manhattan Beach denied Student a FAPE when it delayed offering Parents an assessment plan during the 2022-2023 school year.

As a remedy, Student requests an Order requiring Manhattan Beach to reimburse Parents for the cost of Westmark School for the 2023-2024 school year, including transportation expenses. Westmark School billed Parents \$62,301.60 for Student's attendance for the 2023-2024 school year. Parents also spent around \$6,000 on transporting Student to and from Westmark School when Parents could not drive him.

Manhattan Beach contends Student should not be awarded reimbursement for the costs of Westmark School for the 2023-2024 school year. Manhattan Beach also argues that if Student is awarded any remedies, they should be limited to events occurring before October 11, 2023, the date Student filed this current matter.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 (*Burlington*).)

This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

In remedying a FAPE denial, the student is entitled to relief that is appropriate in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3) (2006).) The purpose of the IDEA is to provide students with disabilities a FAPE which emphasizes special education and related services to meet their unique needs. (*Burlington, supra*, 471 U.S. 359, 374.) Appropriate relief means relief designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1497 (*Puyallup*).) The award must be fact-specific and be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. (*Reid ex rel. Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Puyallup, supra*, 31 F.3d 1489, 1496.)

In some circumstances, parents of a child unilaterally placed in a private school may be reimbursed for the cost of the private school. Under the IDEA, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. (34 C.F.R. § 300.148 (c).)

Reimbursement for the costs of Westmark School, and related transportation, for the 2023-2024 school year is not an appropriate equitable remedy in this matter.

Parents are not eligible for reimbursement for their private school placement under title 34 Code of Federal Regulations section 300.148, subsection (c). Student attended Westmark School for 10th grade during the 2022-2023 school year. On March 23, 2023, Parents enrolled Student in Westmark for the 2023-2024 school year. Student was enrolled in the private school before the family first contacted Manhattan Beach through their attorneys on April 3, 2023. Manhattan Beach did not have the opportunity to make a FAPE available to Student before his Parents enrolled him in a private school, making title 34 Code of Federal Regulations section 300.148, subsection (c), inapplicable. Parents did not enroll Student in Westmark School for the 2023-2024 school year because Manhattan Beach did not make FAPE available to Student. Instead, the evidence strongly suggested Parents intended to maintain Student's enrollment at Westmark for the 2023-2024 school year regardless of whether Manhattan Beach offered Student a FAPE.

Additionally, the only issue on which Student prevailed related to Manhattan Beach's five-week delay in providing Parents with an assessment plan during the 2022-2023 school year. Manhattan Beach remedied this error prior to the beginning of the 2023-2024 school year when it provided Parents with an assessment plan on August 16, 2023. This Decision did not find that Manhattan Beach denied Student a FAPE during the 2023-2024 school year. As such, reimbursement for the 2023-2024 school year is not warranted.

Manhattan Beach's failure to timely provide Parents with an assessment plan was caused by the school district's confusion at receiving the request from a parentally placed private school student for whom they had no records. It did not have an efficient system for processing requests for assessments and an IEP team meeting from a student not in their database. As such, an appropriate equitable remedy for Manhattan Beach's

delay in offering Parents an assessment plan is training for administrators at Mira Costa High School on the school district's obligation to assess and make a FAPE available to parentally placed private school students residing within Manhattan Beach's boundaries.

## ORDER

1. Within 60 days of this Decision, Manhattan Beach shall provide a one-hour training to administrators at Mira Costa High School on the school district's obligation to assess and make a FAPE available to parentally placed private school students residing within Manhattan Beach's boundaries.
2. All of Student's other requests 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 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearing