

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

CENTER JOINT UNIFIED SCHOOL DISTRICT,

V.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2024041090

DECISION

July 5, 2024

On April 26, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Center Joint Unified School District, called Center, naming Parents on behalf of Student. Administrative Law Judge Theresa Ravandi heard this matter by videoconference on May 22, and 23, 2024.

Attorney Heather Edwards represented Center. Attorney Cristina Quinonez was also present. Center's Special Education Director Mike Jordan attended hearing on Center's behalf. Mother, referred to as Parent, appeared on behalf of Student both hearing days. Father and Student were not present.

At the parties' request, the matter was continued to June 24, 2024, for written closing briefs. Both parties timely filed a closing brief, but Parent failed to include a proof of service despite being advised of this requirement at hearing. The OAH case manager left Parent a voicemail message on June 24, 2024, advising her of the need to submit a proof of service. Parent did not submit proof of serving Center a copy of Student's closing brief. Therefore, Student's one-page closing statement was not considered. The record was closed, and the matter was submitted on June 24, 2024.

## ISSUE

Did Center's April 10, 2024 individualized education program, called IEP, offer Student a free appropriate public education in the least restrictive environment such that it may implement the IEP without parental consent?

## 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).) Here, Center requested the due process hearing and had the burden of proof. 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 14 years old and in eighth grade at the time of hearing. At the beginning of the 2023-2024 school year, Student lived with Parent in a neighboring school district. As of December 2023, Student resided with Father within Center's geographic boundaries. Sometime before April 10, 2024, Student went to live with a friend. Center believed Student was eligible for federal protections afforded homeless youth under the McKinney-Vento Homeless Assistance Act of 1987 (42 U.S.C. § 11301 et. seq.). Center considered Student a resident of its boundaries entitled to attend the middle school he had been attending before losing his permanent housing. Center

found Student eligible for special education and related services under the primary category of emotional disturbance and the secondary category of other health impairment in the April 10, 2024 IEP.

## ISSUE: DID CENTER'S APRIL 10, 2024 IEP OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT SUCH THAT IT MAY IMPLEMENT THE IEP WITHOUT PARENTAL CONSENT?

Center contends its offered IEP, which was developed at IEP team meetings held on April 10, and 19, 2024, collectively called the April 2024 IEP, was procedurally compliant with the IDEA and related state law. Center additionally asserts its IEP substantively offered Student a FAPE in the least restrictive environment.

Student contends the April 2024 IEP was flawed because it sought to remove Student from general education. Student asserts the IEP should not be implemented over parental objection because the offered placement, a separate special education program on an isolated campus with no access to general education peers, is too restrictive.

A FAPE means special education and related services available to an eligible child that meet state educational standards and are provided at no charge to the parent. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) In general, an IEP is a written statement for each child with a disability that is developed with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and the child's special education program and related services. (20 U.S.C. §1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).) A parent must consent to the IEP in

writing before it can be implemented. (20. U.S.C. § 1414(a)(1)(D)(i); 34 C.F.R. § 300.9(b) (2008); Ed. Code, § 56021.1, subd. (b).) If the parent consents to special education eligibility for their child and the delivery of services, but refuses to consent to an IEP program component the school district believes is necessary to provide the student a FAPE, the district must file a due process hearing request. (Ed. Code, § 56346, subd. (f); *I.R. v Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1167-1168.)

On April 23, 2024, Parent partially consented to Center's proposed IEP, including eligibility and services, but did not agree to the placement offer. Center believed the offered placement was necessary to provide Student a FAPE. Thus, Center filed a due process hearing request on April 26, 2024, to implement its IEP without parental consent.

When a school district seeks to demonstrate that it offered a FAPE to a particular student, it must first show that it complied with the procedural requirements of the IDEA. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S.176, 206-207)(*Rowley*.) Second, the district must show that the IEP developed through those procedures was designed to meet the child's unique needs and reasonably calculated to enable the child to make progress appropriate in light of their circumstances. (*Ibid.*; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 197 L.Ed.2d 335] (*Endrew F.*.)

The IDEA outlines numerous procedural requirements that a school district must follow regarding initial assessments, IEP team meetings, and the IEP document itself, and places great importance on procedural compliance. (20 U.S.C. § 1415 et seq.; *Rowley, supra*, 458 U.S. 176, 206-207.) Here, it is not necessary to analyze Center's

compliance with these procedural requirements. This Decision begins and ends with the least restrictive environment requirement. Center failed to meet its burden of proving that Student could not be satisfactorily educated in the general education setting with appropriate supplemental aids and services and that a separate special education school with no access to typical peers was Student's least restrictive setting. As such, no determinations are made as to the procedural compliance of the April 2024 IEP or the appropriateness of any other substantive components like the offered goals, accommodations, or services.

## THE LEAST RESTRICTIVE ENVIRONMENT MANDATE

Center argues Student must be placed at Leo A. Palmiter, called Palmiter, a separate special education school operated by the Sacramento County Office of Education, to receive a FAPE. Center contends Student requires the embedded supports available at Palmier to make progress on his goals. Parent asserts Student should be allowed to continue to participate in the general education setting with the support of an IEP and appropriate behavior strategies.

For a school district's IEP to constitute a FAPE under the IDEA, its offer of educational services and placement must be reasonably calculated to provide the student educational benefit appropriate to his circumstances. (*Rowley, supra*, 458 U.S. 176, 202-204; *Endrew F., supra*, 580 U.S. 386, 404.) The "educational benefit" to be provided to a student requiring special education is not limited to addressing the student's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 (*San Diego*).) Both federal

and state law require a school district to provide a special education program in the least restrictive environment appropriate to meet the student's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a) (2006); Ed. Code, § 56040.1.)

"Congress imposed the least restrictive environment requirement because it found that children with disabilities were often 'excluded entirely from the public school system and from being educated with their peers,' even though decades of research and experience have shown that the education of children with disabilities can be made more effective by ... ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible." (*D. R. v. Redondo Beach Unified School Dist.* (9th Cir. 2022) 56 F.4th 636, 641[internal citations omitted] (*D.R.*.)

In contrast to the vague legal mandate that districts must provide students with a FAPE, there is "one very specific directive prescribing the educational environment" for students with disabilities. (*Daniel R.R. v. State Board of Educ.* (5th Cir. 1989) 874 F.2d 1036, 1044 (*Daniel R.R.*.) A school district must educate a special needs student with peers without disabilities to the maximum extent appropriate, and may only remove the student from the general education environment when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. (*Id.*; 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a) (2006); Ed. Code, § 56040.1.) "This provision reflects the IDEA's 'strong preference' for educating children with disabilities in a regular classroom environment." (*D.R., supra*, 56 F.4th 636, 643, citing *Poolaw v. Bishop*, (9th Cir. 1995) 67 F.3d 830, 834; *Daniel R.R., supra*, 874 F.2d 1036, 1044.)

Federal and state law define supplementary aids and services as “aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.” (20 U.S.C. § 1401 (33); 34 C.F.R. § 300.42 (2006); see Ed. Code, § 56033.5.) Some examples include a full-time one-to-one behavioral aide, modified general education curriculum, and special education instruction. (*D.R., supra*, 56 F.4th 636, 642.) Token efforts to accommodate a student do not meet the law’s broad requirement for modifying and supplementing regular education. (*Daniel R.R., supra*, 874 F.2d 1036, 1048.)

A student’s behavior is an important factor in determining whether he can be satisfactorily educated in the general education classroom. When a child’s behaviors impede his learning or that of others, the IDEA requires that the IEP team consider the use of positive behavioral interventions and supports and other strategies to address the behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) (2017).) A behavior intervention plan is designed to address behaviors that interfere with the student’s learning and that of others in his school environment. (*Questions and Answers: Addressing the Needs of Children with Disabilities and the IDEA’s Discipline Provisions* (Office of Special Education and Rehabilitative Services, July 19, 2022).)

The first inquiry when determining the least restrictive setting is whether the student with a disability can receive educational benefit in the general education setting with the provision of appropriate supplemental aids and services. (*Daniel R.R., supra*, 874 F.2d 1036, 1048.) If a student cannot receive educational benefit in the general education setting, the second inquiry is whether the district has mainstreamed the student to the maximum extent appropriate. (*Ibid.*) The analysis is “an individualized,



fact-specific inquiry” requiring careful examination of the nature and severity of the student’s disability, needs, and abilities, and the school’s response or interventions to meet the student’s needs. (*Ibid.*)

## CENTER FAILED TO PROVE STUDENT WAS UNABLE TO RECEIVE EDUCATIONAL BENEFIT IN GENERAL EDUCATION IF APPROPRIATELY SUPPORTED

The first consideration in analyzing Student’s least restrictive environment, is whether he can be appropriately supported in the regular class setting to enable him to receive educational benefit. An understanding of Student’s educational needs and Center’s response to his needs is key.

## INEFFECTIVE ACCOMMODATIONS

In sixth grade, the 2021-2022 school year, Student showed the ability to do well in class but was inconsistent in listening to directions and completing his work. Center provided Student a behavior chart to support him in following rules, practicing self-control, and showing respect. Student attended seventh grade, the 2022-2023 school year, at his neighborhood middle school. Center provided Student accommodations through a “Section 504 Plan.” A Section 504 plan is an educational program created under the federal anti-discrimination law known as Section 504 of the Rehabilitation Act of 1973. (29 U.S.C. § 794; see 34 C.F.R. § 104.1 et seq. (2000).) Generally, this law requires a school district to provide program modifications and

accommodations to children who have physical or mental impairments that substantially limit a major life activity, such as learning. Student's 504 Plans consisted of accommodations only, not specialized academic instruction or special education related services.

Center offered Student an initial Section 504 Plan because of behaviors related to his oppositional defiant disorder diagnosis. Student struggled with being respectful, participating in class, working collaboratively, and managing his emotions and behaviors. The evidence did not show which specific accommodations Student's seventh grade Section 504 Plan provided him. Student participated in a school-wide, general education behavior progress monitoring program in seventh grade. Jessica Elmer, a program specialist with Center since August 2023, was Student's check-in and check-out coordinator for this support program. Elmer held an education specialist credential and had 10 years of experience as a resource specialist teacher.

Student met with Elmer in the morning to get his daily behavior goal tracking sheets for his teachers to fill out. He met with Elmer at the end of the day to exchange points he earned for appropriate behavior, for rewards. Student often went to Elmer's office during the day to take a break from class demands and regulate his behavior. At times, he stayed in Elmer's office to complete class work. Elmer had a hard time encouraging Student to return to class. As such, these breaks impeded Student's academic and social progress because he missed instructional time and class activities.

Despite the behavior monitoring program, Student's seventh grade discipline record showed frequent disruptive and defiant behaviors including using his cellphone, playing music, talking, laughing, and roughhousing with peers during instruction;

refusing to take his seat, participate, or follow directions; and being argumentative, using profanity, and roaming campus with friends instead of attending class. Center suspended Student six times for a total of 15 days during the 2022-2023 school year. His disciplinary conduct included possessing and using tobacco and a vape pen, using obscene language and profanity directed toward staff, throwing a shoe at a peer, and fighting with a peer. Student had 15 unexcused absences; 17 truancies, which meant being more than 30 minutes late; and 40 tardies, which meant being less than 30 minutes late. Student completed seventh grade with four F's and four D's.

Near the start of the 2023-2024 school year, Student went to live with Parent in a neighboring school district where he began eighth grade. Student returned to Center and re-enrolled in his prior middle school on December 8, 2023. At the end of the first semester, he had A's in P.E., fitness, and team sports; a C- in science; and F's in social studies, math, and English.

Center convened a Section 504 meeting on January 31, 2024, and offered Student a new 504 Plan. This plan identified Student's impairment as disruptive mood dysregulation disorder which manifested as near daily behavior excesses that impeded his learning and that of others. This disorder is characterized by severe, recurrent, verbal or physical temper outbursts that are out of proportion in intensity or duration to the situation. Student became anxious and easily frustrated when challenged academically or behaviorally, and he would become defiant and argumentative or would shut down. Unaware of how to process his emotions, Student either left class or disengaged, using his phone or hiding under his hoodie. He benefitted from a cooling down period.

Student was academically at grade level but would not initiate or complete tasks and rushed through challenging assignments. Student's eighth grade Section 504 Plan offered behavioral and academic accommodations, specifically,

- a separate testing setting;
- extra time on assignments and tests;
- a break pass to go to a designated area;
- preferential seating;
- reduced work;
- printed materials to supplement online text; and
- access to the general education study skills class and the school counselor.

The 504 Plan identified physical contact as a trauma trigger for Student, and it called for staff to give Student space by maintaining an arms-length boundary.

Of the 75 days enrolled at the middle school from December 8, 2023, through April 19, 2024, Student had 25 suspension days, 4 unexcused days, 16 truant days, and 50 tardies to class. His disciplinary offenses resulting in suspension included

- a mutual physical fight with a peer,
- threatening to punch staff,
- slapping a student several times,
- screaming profanity at staff, and
- threatening a student.

Student displayed the same defiant and disruptive behaviors as he had in seventh grade. He defied teacher directions, used his cellphone against school rules, and interrupted instruction with his profanity, music, and boisterous conduct. Student

was occasionally verbally and physically aggressive towards peers. During eighth grade, there was no evidence Center implemented a behavior monitoring program. Teachers frequently sent Student to the office. When he would not go, teachers called office staff to come get him. The principal or vice-principal would sit next to Student in class, at times allowing him to sit wherever he wanted, contrary to teacher directives. Student continued to roam campus with friends, running and hiding in the halls and stairwells, instead of attending class. Because the “roamers” as they were referred to disrupted instruction, the school instituted a policy of locking classroom doors. Student and his friends would then knock and kick on the locked doors. Center staff prompted Student to return to class or to work independently in a separate designated area, but they did not enforce these expectations. Instead, office staff and campus monitors followed Student around the campus. As the year progressed, Student spent the majority of his time in the bathrooms and hallways with friends, with virtually no consequence and without any special education and related services, including behavior support.

Principal Brett Homesley testified at hearing. Homesley held an education specialist and administrative services credential and had worked six years as a special education teacher and eight years as an administrator. He had been the assistant principal at Student’s middle school for three years through the 2020-2021 school year. The school called Homesley back to be the principal in January 2024. Center tasked him with “cleaning up” the middle school’s climate of vaping, disrespect, and truancy. Maintaining a safe and respectful school culture was one of Homesley’s primary job duties. Homesley acknowledged that several students at the middle school, not just Student, were truant from class, ran around the campus during class time, disrupted instruction, and hung out in the bathrooms vaping. It was his job to lay down the law

and enforce the school's code of conduct. However, Homesley conceded that Student did what he wanted, when he wanted. Despite this, Center staff failed to implement behavior intervention or prevention strategies. Rather, they were enabling Student's maladaptive behaviors.

Center did not identify or approach Student's needs from a services-based perspective. There is no issue in this case regarding whether Student was eligible for special education at any point prior the IEP team's eligibility determination. Accordingly, no findings are made that specialized supports and services should have been implemented. The fact remains, however, that Center did not provide Student any specialized supports in the regular education environment.

Rather, Center offered Student general accommodations under a Section 504 plan. Student's 504 accommodations did not curtail his maladaptive behaviors. He

- continued to miss class,
- refused to complete his work,
- was failing three classes,
- was emotionally dysregulated and defiant when re-directed, and
- displayed behavioral excesses.

Student needed more robust interventions than what was provide.

When the Section 504 Plan proved ineffective, Center presumed it could not meet Student's needs in a general education setting. Its presumption was not factually or legally supported. That accommodations alone failed to reduce Student's maladaptive behaviors did not prove he required a more restrictive placement, especially given Center's failure to offer more intense special education services and interventions to

support him in general education. A Section 504 plan is not an adequate substitute for an IEP. (*Muller v. Committee on Special Educ.* (2d Cir.1998) 145 F.3d 95, 105; *Moser v. Bret Harte Union School Dist.* (E.D.Cal.2005) 366 F.Supp.2d 944, 971.)

Staff became frustrated by Student's dysregulation and seemed surprised Student could not self-regulate. Center incorrectly placed the onus on Student to get better, do better, and follow the program or face removal. Homesley's testimony about a February 2024 meeting with Parent and Student reflected this mindset. Student had an emotional outburst and was yelling in class. Homesley and Parent met with Student and asked him what they could do to help. Student expressed, "No one can help me. Only I can help myself." At hearing, Homesley applauded Student's response as showing profound insight and taking ownership. However, Student needed help, and more than his accommodations offered.

Center approached Student's needs from a placement perspective. Center witnesses testified that Student's poor educational performance and disruptive behaviors demonstrated he required a more restrictive placement to receive educational benefit. Their testimony was not persuasive as it was predicated on the faulty premise that Center had tried to appropriately support Student in general education with supplemental aids and services. Center's ineffective attempts to curb Student's behaviors through its Section 504 Plan accommodations did not constitute appropriate supplementary aids and services.

Center did not appropriately support Student in the general education setting. Not unexpectedly, Student was not successful. Still, this did not establish that Student could not benefit from general education if appropriately supported.

## INITIAL SPECIAL EDUCATION ELIGIBILITY

On March 19, 2024, Center prepared an initial special education assessment plan proposing to conduct a psychoeducational and a behavior assessment of Student. Parent consented that same day. The next day, March 20, 2024, Student fought with a peer on campus but was not the aggressor. After initially suspending Student for two days, Homesley extended Student's suspension and recommended expulsion. Center expedited Student's initial special education assessment because Student was pending a Section 504 manifestation determination review and an expulsion recommendation. Student was unavailable for classroom observations during the expedited assessment period because of his extended suspension.

Center convened Student's initial IEP team meeting on April 10, 2024. The IEP team discussed Student's many strengths. Despite his emotional and behavioral challenges, Student was intelligent, athletic, helpful, and charismatic. Student demonstrated the desire to meet school expectations, but he lacked self-awareness and coping skills. School psychologist Anne-Marie Farr and Elmer completed Student's psychoeducational assessment and reviewed the results with the IEP team. Farr held a pupil personnel services credential and had been a school psychologist for five years.

Elmer tested Student's academic achievement abilities. She noted that in the one-to-one test setting with direct prompts, reassurance, and a reward of snacks at the end, Student generally persisted with difficult tasks despite initial protest. He showed solid basic academic skills with some gaps. Specifically, he struggled to complete lengthier writing assignments and had deficits in math application skills. Student struggled with academic stamina and concentration. He told Elmer that he could not



pay attention in class for more than 40 minutes. The middle school classes were 80 minutes long. Student described feeling himself lose focus and how this would upset him to the point that he needed to leave.

Farr assessed Student's intellectual development, social-emotional and behavioral functioning, and adaptive skills. Student's overall cognitive functioning scores were in the low range. Student's low listening comprehension scores showed he struggled to understand what was said and to remember spoken instructions. This negatively impacted his ability to comprehend and follow verbal directions. Center's Section 504 Plans had not addressed this area of need. Student did not meet criteria for having a specific learning disability or an intellectual disability. He demonstrated poor adaptive skills. Teacher rating scales showed significant attention, executive functioning, behavior, and emotional regulation concerns at school.

Student's IEP team found him eligible for special education and related services under the primary category of emotional disturbance, and secondarily, as a child with an other health impairment based on his mood dysregulation disorder. Having found Student eligible for special education, Center concurrently held Student's Section 504 manifestation determination review. Team members determined Student's March 20, 2024 disciplinary conduct was a manifestation of his disability. Student was allowed to return to school the following week. The IEP team agreed that completing a functional behavior assessment of Student was a top priority.

Farr recommended several strategies and supports to help Student participate more successfully in general education. These included:

- enforcing clear rules and boundaries with predictable and known consequences,
- behavior check-ins with a trusted adult,
- positive reinforcement,
- visual reminders for task and attention,
- movement breaks,
- written directions,
- providing information in multisensory ways,
- group counseling,
- educationally related mental health services to address emotional regulation and social skills deficits, and to teach coping skills, and
- a behavior intervention plan to support Student and staff.

All these recommendations could be provided in general education or as a separate pull-out service to support Student in the regular class setting. These recommendations were examples of supplemental aids and services. Center failed to provide any of these supplemental supports to Student during the 2023-2024 school year. Center offered Student two of these recommended supports in seventh grade, namely, behavior check-ins with Elmer and a reward system.

Despite her recommendations, Farr opined that Student's needs were too great to be met in the general education setting. Aside from her assessment of Student, Farr had no experience with him and had never worked with a student with his medical

diagnosis. Her opinion was largely based on Student's unsuccessful school experience with his Section 504 Plan accommodations. Farr noted in her report that Student would not likely benefit from lower-level tier one or tier two supports, in part, because he had "refused to attend check-in check-out or counseling."

No evidence supported that Student refused to participate in counseling or a behavior check-in system. Conversely, significant evidence supported that Center had not implemented a behavior intervention system or otherwise helped Student regulate his behavior. Rather than focusing on supporting Student in general education, Center adopted Farr's final recommendation to consider a more restrictive placement to provide Student a higher level of support.

## DELAYED FUNCTIONAL BEHAVIOR ASSESSMENT

Because of concerns that Student's behavior excesses, lack of motivation, and inappropriate socialization were impeding his education, Center proposed a functional behavior assessment by its behavior specialist as part of Student's initial special education evaluation. Center assigned board certified behavior analyst Elisa Boldt to conduct Student's functional behavior assessment. Boldt received her certification as a behavior analyst in 2014 and had worked in the field for nearly 10 years. The purpose of the functional behavior assessment was to identify behaviors that impeded Student's education, determine the function of each behavior, and recommend specific prevention and intervention strategies to reduce the target behaviors. Student was on an extended suspension and not available for class observations during the expedited assessment

period. Boldt conceded that without directly observing Student, she could not complete a functional behavior assessment. Boldt prepared a preliminary report dated April 8, 2024, and reviewed this at Student's initial IEP team meeting.

Based on record review and Parent and teacher surveys, Boldt identified five target behaviors Student exhibited:

- elopement from class and truancy,
- disruptive behavior,
- non-compliance,
- threatening behaviors, and
- physical aggression.

Boldt acknowledged in her initial report and testimony, that absent direct observation, she could not specifically

- define Student's target behaviors,
- identify their antecedents and consequences,
- determine the functions of the behaviors, or
- recommend functionally equivalent replacement behaviors to teach Student.

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Because she could not hypothesize the functions of Student's behaviors, Boldt was unable to develop a behavior intervention plan designed to reduce Student's challenging behaviors. Rather, Boldt identified general, best practice behavior strategies, which were not individualized to Student, for the IEP team's consideration. These included:

- building rapport,
- identifying and using motivating reinforcers,
- teaching and reinforcing alternative behaviors,
- frequent feedback,
- establishing clear expectations and following through with positive outcomes and negative consequences,
- using visual supports,
- providing frequent non-contingent breaks, and
- incorporating choice.

Center failed to implement these positive behavior strategies to support Student in general education. Consistent with Farr's suggestions, Boldt also recommended Student receive mental health services to better understand his behaviors, increase his motivation to change his behaviors, and to learn coping skills. While Student's January 2024 Section 504 Plan offered access to school-based counseling, it was left up to Student to request this service. Consequently, Center did not provide Student any counseling services.

The April 2024 IEP special factors page noted that Student's behavior impeded his learning and that of others. The IEP document required the IEP team to specify positive behavior interventions, strategies, and supports to address behaviors impeding learning. Center acknowledged it could not identify specific interventions because it had not completed Student's functional behavior assessment. Instead, the IEP referenced Boldt's general strategies that might prove useful in reducing difficult behaviors.

Boldt completed Student's functional behavior assessment after Center finalized its April 2024 IEP offer for Student. Boldt prepared an assessment report and a proposed behavior intervention plan dated May 10, 2024.

Student's IEP team had not reviewed this assessment or proposed behavior plan as of the time of hearing. Center relied on this after-acquired assessment and proposed behavior plan to support the reasonableness of its April 2024 IEP placement offer. For example, Center contended a high staff to student ratio and small class size would support rapport building, collaboration, and implementation of behavioral strategies with fidelity, and a small campus would enable monitoring while giving Student space to re-regulate. While Center's actions "cannot be judged exclusively in hindsight," (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149), the Ninth Circuit has observed that after-acquired evidence may shed light on the objective reasonableness of a school district's actions at the time the district made its decision. (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2011) 652 F.3d 999, 1006.) Just as it is important to look back in

time to consider Student's educational functioning and any past interventions, it is also important to look ahead and consider Boldt's functional behavior assessment results and proposed behavior intervention plan.

In her May 2024 report and testimony, Boldt noted that Student's most significant behavior was his failure to go to class and stay there. His truancy and elopement went hand in hand with his disruptive and non-compliant behaviors. These three behaviors occurred on a daily basis. The frequency and intensity of these behaviors negatively impacted Student's education. Boldt hypothesized that Student's behaviors generally provided him with attention or escape from a non-preferred situation. Minimal instances of threatening and physically aggressive behaviors were observed during the assessment and data collection period, two of which appeared to be playful.

Boldt developed and recommended the adoption of a formal behavior intervention plan that incorporated a set of systematic interventions and supports to reduce Student's target behaviors and teach appropriate replacement behaviors that served the same function. Boldt established that the plan was not so intense as to require a specially assigned aide to implement it. Rather, a teacher could reasonably be expected to implement the proposed behavior plan. In both of her reports, she recommended that Student's general education teachers not be required to collect behavior data for a formal intervention and monitoring program. As such, Boldt anticipated that Center would provide Student behavior interventions within the general education setting.

Student declined an interview with Boldt during her assessment. Boldt identified Student's lack of buy-in and refusal to use current supports, such as taking breaks in the designated location or attending a study skills class, as challenges to implementing a behavior plan. Boldt cautioned that the IEP team would need to identify and address environmental conditions that might impact the success of the behavior plan.

At the time of hearing, Student's IEP team had not reviewed Boldt's May 2024 assessment report, or proposed or offered a behavior intervention plan.

## THE OFFERED GOALS, ACCOMMODATIONS, AND SERVICES

Student's IEP team identified Student's areas of educational need as

- written expression,
- math equations,
- task initiation and completion,
- behavior,
- attendance, and
- emotional regulation.

Center offered goals in each of these areas. Center proposed two academic goals targeting Student's written expression and equations deficits, one task initiation goal, one behavior goal, and one attendance goal. These five goals all identified the general education teacher as one of the persons responsible for supporting and implementing the goal and tracking Student's progress. As such, these goals were capable of being implemented in the general education setting.



The proposed behavior goal called for Student to request a break. Boldt testified she could not and did not recommend this or any behavior goal at the time of the IEP team meetings because she had not directly assessed Student during the expedited evaluation period. Having completed Student's functional behavior assessment just before hearing, Boldt testified that the proposed behavior goal was appropriate. She had determined that escape was one of the functions of Student's truancy and elopement. Requesting a break was a functionally equivalent replacement behavior to teach and reinforce with Student.

Center also offered a coping skills goal of identifying feelings and appropriate strategies, and an emotional regulation goal of practicing breathing exercises. These two goals were specific to the counseling setting and the mental health provider would implement them.

Center offered numerous accommodations, most of which had been a part of Student's Section 504 Plan. One new accommodation was the "5 to 1 Rule." This accommodation called for staff to provide Student five positive comments for every corrective statement. Center also included as an accommodation that staff would use Boldt's general behavior strategies until Student's IEP team adopted a behavior intervention plan. Center did not identify any need for program modifications. It offered behavior specialist consultation with staff to help them support Student.

Center offered 360 minutes per day of group specialized academic instruction and 30 weekly minutes of individual and group counseling and guidance for a total of 120 monthly minutes. The location for both services was a "separate school or special education center or facility."

## THE OFFERED PLACEMENT

The April 2024 IEP included a detailed written description of four program options Center considered, noting potential benefits and harmful effects for each. Option One was general education with appropriate accommodations. Option Two was general education with appropriate accommodations, plus guidance and counseling services. Option Three was general education with appropriate accommodations, guidance and counseling, plus one period of specialized academic instruction provided as a push-in service in a study skills class. Option Four was the County-run special education school at Palmiter junior/senior high school campus.

Options One and Two were essentially what Student had received pursuant to his Section 504 Plan. Center identified Option Three as a Level One support, commonly referred to as a resource support program. Center identified the County program as a Level Three support program that addressed the extensive needs of students with a specific profile.

There was no description of a Level Two support, nor did Center consider or describe any program option between one period of resource support and a separate, stand-alone, special education school. Center's identification of potential programming appropriate to Student's needs was driven by the availability of discrete program options.

When Student was present and engaged, he demonstrated the academic skills to succeed in the regular class setting and participate at grade level in the general education curriculum, despite some math and writing gaps. However, the April 2024 IEP

noted that Student required social, emotional, and behavioral supports that were not offered at his local school. Center proposed that Student's goals and services would be best implemented at Palmiter. Center offered transportation. The bus ride would range from 30 to 60 minutes each way depending on the bus route and traffic. Student would be outside of the regular class and extracurricular and non-academic activities 100 percent of the time. The April 2024 IEP indicated Student would have no access to general education peers because his "frustration and difficulties with emotional regulation and behavioral needs require small group instruction on a small campus where behavioral and social/emotional supports are embedded throughout the school day and are available at any time."

Center reconvened Student's IEP team on April 19, 2024, to address Parent's exceptions to the IEP. Parent was an informed and strong advocate for Student. She acknowledged Student's challenges and need for assistance. Parent was surprised by, and disagreed with, Center's proposal to remove Student from general education, given it had not implemented positive behavior supports or provide staff specific guidance on how to support Student in the regular classroom. Center continued to offer placement at Palmiter. It specified in the April 19, 2024 IEP that it believed the potential benefits of Palmiter were greater than those of the other three options, and the potential harmful effects would be less impactful to Student's educational and social and behavioral progress when compared to the potential benefits. Parent disagreed that Palmiter was the least restrictive environment for Student.

Center chose to rush Student's initial special education assessment. By doing so, Center did not have the benefit of its functional behavior assessment at the time it completed Student's initial IEP. The IEP team did not have data on the functions of

Student's behaviors. If a school district does not understand why a student engages in certain behaviors, it is unlikely it can offer effective strategies to address the behaviors. Center did not provide appropriate supports in the regular classroom to address Student's behaviors that impeded his learning and engagement. Indeed, Center did not know how to address Student's behaviors. Teachers continually redirected Student even though they knew redirection triggered him. Staff did not provide Student clear expectations or instructions prohibiting his phone use in class, for instance, or the requirement that he go to a specified break location if he left class, rather than roam with friends. Center staff did not reinforce their expectations and school rules with positive outcomes and negative consequences. Both Farr and Boldt specifically recommended such clarity and consistent follow through as a key strategy to reduce Student's behaviors. Administrators attempted to babysit Student in class and around campus. Their attempts to curb Student's behaviors ended up enabling his behaviors. A description by the United States District Court for the Middle District of Pennsylvania captures Center's efforts to address Student's needs:

"The informal, unsupervised, and patchwork supports that the District offered were uncoordinated and intermittent, and largely depended on [student] taking the initiative to take advantage of them. Indeed, these supports lacked the accountability, measurable goals, and progress monitoring that an IEP would have provided." (*Jana K. v. Annville-Cleona School Dist.* (M.D. Penn. 2014) 39 F.Supp.3d 584, 604.)

Center's reactions to Student's behaviors were fundamentally at odds with the behavior intervention plan Boldt developed in May 2024.

Center IEP team members proposed sending Student out of general education because he had not been successful there. However, Center failed to offer appropriate supplemental aids and services to support Student in the general education setting. It did not provide Student mental health services to learn coping skills and how to manage his emotions. It did not support Student with systematic behavior interventions. It did not adopt and had not previously implemented Farr's recommended strategies to support Student in general education. Center did not develop, review, or offer a behavior intervention plan as part of its April 2024 initial IEP.

Boldt opined that Student's most significant behavior impeding learning was his failure to attend class. She developed a behavior intervention plan to reduce this behavior by teaching appropriate replacement behaviors. While there might be environmental challenges associated with implementing a behavior intervention plan with fidelity in the general education setting on a comprehensive campus, Center never even offered a plan. That it might be easier to implement a behavior intervention plan in a small, special education school on a separate campus, did not establish that Center could not implement an intervention plan to support Student within general education. While this Decision makes no determination of the procedural validity of the IEP or the substantive validity of the offered goals, accommodations, and services, it does find that Center failed to meet its burden of proving that Student could not be satisfactorily educated in the general education setting with appropriate supplemental aids and services, such as a behavior intervention plan.

The Ninth Circuit has concluded, "Whenever feasible, a school district must push support services into the regular classroom rather than pull students out of it." (*D.R., supra*, 56 F.4th 636, 646 citing *Greer v. Rome City School District* (11th Cir. 1991) 950

F.2d 688, 696, withdrawn and reinstated in relevant part, (11th Cir. 1992) 956 F.2d 1025(*Greer*).) Contrary to Ninth Circuit precedent, Center focused on pulling Student out of general education as opposed to pushing services in to support him. For example, while Center witnesses praised Student's self-awareness of his struggle to focus for more than 40 minutes, Center did not offer a modified schedule or a systematically reinforced break schedule. Rather, Center used Student's reduced attentional capacity to justify why he could not receive academic benefit from 80-minute-long general education middle school classes, let alone high school classes.

Instead of looking to support Student within general education, Center proposed a more restrictive placement. Center needed to first overcome the legal presumption that Student could be satisfactorily educated in his local general education program with the support of appropriate supplementary aids and services such as those identified by its assessors. It failed to do so. Center did not meet its burden of proof that Student was unable to receive educational benefit in the general education setting with appropriate supplemental aids and services.

Even so, this Decision does not find that general education is Student's least restrictive setting. This tribunal will not usurp the role of Student's IEP team to determine an appropriate program going forward.

### THE *RACHEL H.* FACTORS ARE NOT AT ISSUE

The Ninth Circuit adopted a four-part balancing test to determine whether a student is placed in the least restrictive environment. (*Sacramento City Unified School*

*Dist., Board of Education v. Rachel H.* (9th 1994) 14 F.3d 1398 (*Rachel H.*.) The factors that must be evaluated and balanced are:

1. the educational benefits of full-time placement in a regular classroom supplemented with appropriate aids and services;
2. the non-academic benefits of full-time placement in a regular classroom;
3. the effects the student with a disability has on the teacher and students in a regular classroom; and
4. the cost of placing the student with a disability fulltime in a regular classroom. (*Id.* at pp.1401, 1404.)

However, the *Rachel H.* factors need not be analyzed in this case for two reasons. First, the *Rachel H.* balancing test presupposes the school district has provided the student appropriate supplemental aids and services in the general education setting. Specifically, the academic and non-academic benefits afforded the student in general education, and the student's impact on the teacher and class, are evaluated in light of the provision of appropriate supplemental aids and services. (*Rachel H., supra*, 14 F.3d 1398, 1401, 1404 [Ninth Circuit adopted district court test]; *Clyde K. v. Puyallup School Dist., No.3* (9th Cir. 1994) 35 F.3d 1396, 1401, superseded by statute on other grounds.) Center introduced evidence that Student was not deriving any substantial educational benefit in the general education setting and was significantly disrupting class activities. However, as already determined, Center did not establish it supplemented the general

education setting by providing Student appropriate aids and services. Student's failure to derive any significant educational benefit from general education under a Section 504 Plan did not prove he required removal from the regular class environment.

Second, the *Rachel H.* factors are balanced to determine a student's least restrictive setting. Here, Center failed to meet its burden of proving that Student could not be educated in the general education setting if appropriately supported. Even if Center had established that Student required a more restrictive setting than general education, it still needed to prove its offered placement at Palmiter was Student's least restrictive environment. As determined next, Center did not meet its burden of proof, and, therefore, it may not implement the April 2024 IEP over Parent objection. Identifying whether, and to what extent, Student requires a more restrictive setting than general education is not at issue.

As such, this Decision does not balance the *Rachel H.* factors nor determine what constitutes Student's least restrictive environment. Rather, Student's IEP team must make that determination consistent with this Decision.

## CENTER DID NOT PROVE PALMITER WAS STUDENT'S LEAST RESTRICTIVE SETTING

If a student cannot receive educational benefit in the general education setting, the second inquiry is whether the district has mainstreamed the student to the maximum extent appropriate. (*Daniel R.R.*, *supra*, 874 F.2d 1036, 1048.) Even assuming Center was correct that Student could not benefit from a general education setting,



Center needed to prove that placement in a separate special education school for 100 percent of the school day, with no access to typical peers, was Student's least restrictive environment.

At hearing, program specialist Tracie Daubenmire described Palmiter. She held pupil personnel and administrative services credentials and had worked for Center since 1996. For 23 of those years, she was a school psychologist. Daubenmire was highly familiar with Palmiter and believed it could best serve Student's needs. Palmiter served students with emotional and behavioral issues who required intense support. It offered a standards-based curriculum leading to a diploma. Center identified Palmiter as having the supports Student required embedded in its program and regularly provided these to all of its students who all had similar profiles. Palmiter had a small student body of approximately 37 students, all of whom had an IEP. Twenty of the 37 students were from Center and on Daubenmire's caseload. Each class was capped at 12 students, though many had only four students. Palmiter had five credentialed teachers, two school psychologists, two behavior management technicians, six paraprofessional aides, one program specialist, and one principal. This staffing afforded individualized attention and support for emotional regulation, and flexible programming. The campus was small, and the building layout allowed for direct, line-of-sight supervision.

The context surrounding Center's April 2024 IEP placement offer sheds light on its rationale for recommending a significantly more restrictive placement. Center's decision to place Student at a separate special education school was made against the backdrop of its commitment to clean up the climate of disrespect at its middle school and crack down on truancy and code of conduct violations. This heightened rigor to lay

down the law was evidenced by Homesley rescinding Student's two-day suspension for engaging in a mutual fight and instead recommending expulsion. Center's proposal to remove Student from general education also came in the midst of a rushed initial assessment process. While Center may have expedited the assessment process to timely conduct a manifestation determination review, this resulted in the inability to complete and review Student's functional behavior assessment at the time it developed his initial IEP. Additionally, Center's offer of a separate special education school with no mainstreaming was made within the context of its practice of sending challenging students to Palmiter. At the time of hearing, Center had placed 20 of its students there, more than half of Palmiter's student body.

School districts, as part of a special education local plan area, must have available a continuum of program options to meet the instructional and service needs of special education students. (34 C.F.R. § 300.115(a) (2017); Ed. Code, § 56360.) In determining placement, a school district must consider a continuum of alternative placements. (34 C.F.R. § 300.115(b) (2017); Ed. Code, § 56342, subd. (b).) This continuum of program options must include, but is not limited to, regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, non-sectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication in the home, hospitals, or institutions. (34 C.F.R. § 300.115 (2017); Ed. Code, § 56361.)

Center had the following program options at Student's middle school: general education, resource specialist program, and a functional skills special day class for students on an alternate curriculum. Similarly, Student's local high school offered a

support Level One study skills class; a Level Two special education classes taught by credentialed special education teachers; and a Level Three functional and adaptive skills special education classroom. All these options could be supplemented with supports and services.

The continuum of program options consists of steps between the programs from the least restrictive, to the most restrictive. "The IDEA specifically contemplates intermediary steps between a student being educated in a special education classroom, and a student being educated in a general education classroom without any specialized assistance." (*Los Angeles Unified School Dist. v. A.O.* (9th Cir. 2024) 92 F.4th 1159, 1176.) The law presumes a school district will take intermediate steps, where appropriate, between placement options, rather than jumping from one end of the continuum to the other. (*Daniel R.R.*, *supra*, 874 F.2d 1036, 1050; *Greer*, *supra*, 950 F.2d 688, 698-699 [finding school district's consideration of three limited options, namely, regular classroom with no supplementary aids, regular class with speech therapy, and a self-contained special education classroom, did not comply with federal mandates].)

The federal regulations do not require that a student must fail in the less restrictive options on the continuum before being placed in a setting that is appropriate to his needs. (*Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities* (March 12, 1999), 64 Fed. Reg. 12406, 12638.) Rather, the IDEA requires mainstreaming to the maximum extent appropriate to meet the student's needs. (20 U.S.C. § 1412(a)(5); see *San Diego*, *supra*, 93 F.3d 1458, 1468 ["While every effort is to be made to place a student in the least restrictive environment, it must be the least restrictive environment which also meets the child's IEP goals."].) Having watched Student fail in general

education, Center identified the general education setting as inappropriate to Student's needs. Center blamed the general education setting's significantly larger student body, high student-to-staff ratio, and large, sprawling campus for Student's lack of success, rather than its failure to appropriately support him. These inherent environmental challenges of regular education made it more difficult to support Student's needs and implement consistent behavior strategies. However, this did not establish Student could not be appropriately supported, especially given Center's failure to try.

Center was required to offer the least restrictive option appropriate to Student's needs. Center witnesses testified that no intermediary steps between general education and complete removal to a separate special education campus were feasible given Student's needs, behaviors, and failure to derive any significant educational benefit in the general education setting with the support of a Section 504 Plan. Their testimony was not persuasive as it incorrectly assumed Center had appropriately supported Student in the regular classroom. This Decision finds Student's failure to derive any significant educational benefit in the general education setting under a Section 504 Plan did not establish he required 100 percent placement outside the general education setting to receive a FAPE.

The April 2024 IEP's specialized services and supports were not offered for the general education setting. The offered supplemental aids and services were not implemented and given a chance to take hold so that Student's IEP team could determine if they were effective in supporting Student in general education. Rather than implement its newly recommended "5 to 1" accommodation for staff to build rapport with Student, Center recommended sending Student away to a small, specialized school to experience rapport. Center approached Student's needs from

a placement perspective, not a services-based perspective. As such, Center jumped from offering Student Section 504 accommodations in general education to offering a special day class on a separate campus with no access to general education peers for 100 percent of the school day. Center's placement offer was erroneously driven by the discrete program options it had available.

Center focused on Palmiter because it regularly supported students with emotional and behavioral excesses like those Student displayed. Palmiter had a school-wide behavior reinforcement system, daily behavior tracking, and specialized staff trained to work with dysregulated students and capable of teaching coping skills in the moment. Center's focus was misplaced as it overlooked the starting point of a proper least restrictive setting analysis, namely, the general education setting. Center emphasized that the supports Student required were embedded in the County-run program at Palmiter and were not as readily available on a comprehensive campus. The proper analysis was not whether Student could receive benefit or even greater benefit in a more restrictive setting. That would be tantamount to requiring Student to earn his way out of the more restrictive program and back to general education. The IDEA presumes the reverse.

Additionally, the analysis does not rest on whether it would be easier to address Student's needs in a small, separate specialized school as opposed to a comprehensive campus. In determining the least restrictive setting, a school district must consider any potential harmful effects on the student or on the quality of services that he needs. (34 C.F.R. § 300.116 (d) (2006).) Fidelity and efficacy of behavior interventions may suffer on a large comprehensive campus. Even so, this did not establish that Student's least restrictive environment was Palmiter. Center's contention that the physical size and

staffing levels of a comprehensive general education campus hampered its ability to support Student was not persuasive as it had not tried. Center never provided Student appropriate behavior interventions.

Center maintained that the potential benefits of Palmiter were greater than those of its other available options, and the potential harmful effects would be less impactful to Student's academic, social, and behavioral progress when compared to the potential benefits. Homesley opined Student would not earn a high school diploma if he remained in general education. Similarly, Elmer feared Student would quickly become credit deficient given the greater high school expectations, and he would drop out if he continued in general education. Center inflated the benefit of Palmiter, identifying it as Student's ticket to a diploma. This demonstrates Center's misunderstanding of the mainstreaming requirement, as it erroneously substituted a risk-reward analysis.

Center did not meet its burden of proof by a preponderance of the evidence that Palmiter, with no access to general education peers, was Student's least restrictive setting.

## 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:

Center's April 10, 2024 IEP did not offer Student a FAPE in the least restrictive environment. Center may not implement the IEP without parental consent.

Student prevailed on the sole Issue.

## ORDER

1. Center's April 10, 2024 IEP did not offer Student a FAPE in the least restrictive environment.
2. Center may not implement the April 10, 2024 IEP without Parent consent.

## RIGHT TO APPEAL THIS DECISION

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

THERESA RAVANDI

Administrative Law Judge

Office of Administrative Hearings