

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

THE CONSOLIDATED MATTERS INVOLVING:
PARENTS ON BEHALF OF STUDENT, AND
ROSEDALE UNION SCHOOL DISTRICT

CASE NUMBER 2024040552

CASE NUMBER 2024050565

DECISION

AUGUST 16, 2024

On April 12, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Rosedale Union School District, called Rosedale. On May 14, 2024, OAH received a due process hearing request from Rosedale, naming Student.

On May 17, 2024, OAH consolidated the cases on Rosedale's request and ordered the 45-day timeline for issuance of the decision in the consolidated matter be based on the date of filing of the due process hearing request filed by Student. OAH continued the hearing in the consolidated matter on May 17, 2024.

Administrative Law Judge Chris Butchko heard this matter by videoconference on June 4, 5, 6, 12, 13, 14, 18, 19, and 20, 2024. Attorneys Michelle Wilkolaski and Ryan Song appeared on behalf of Student. Student's Custodial Parent attended all hearing days on Student's behalf. Attorneys Dee Anna Hassanpour, Lusine Nadzharyan, and Anisha Asher appeared on behalf of Rosedale. Tina Altergott, Rosedale's Director of Special Education, attended all hearing days on Rosedale's behalf.

At the parties' request the matter was continued to July 17, 2024, for written closing briefs. The record was closed and the matter was submitted on July 17, 2024.

ISSUES

A free appropriate public education is called a FAPE. An individualized education program is called an IEP. The issues for hearing are:

STUDENT'S ISSUES

1. Did Rosedale deny Student a FAPE during the 2022-2023 school year by failing to:
 - a. offer sufficient speech and language services; and
 - b. implement extended school year?

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2. Did Rosedale deny Student a FAPE at the September 13, 2022, IEP team meeting by failing to develop an IEP that was reasonably calculated to enable Student to receive educational benefits by failing to:
 - a. offer adequate communication goals;
 - b. address regression; and
 - c. offer parent training in speech and language?
3. Did Rosedale procedurally deny Student a FAPE at the September 13, 2022, IEP team meeting by predetermining the IEP by:
 - a. holding the IEP team meeting without Parents present;
and
 - b. failing to address Parents' concerns about Student's safety?
4. Did Rosedale deny Student a FAPE during the 2023-2024 school year by failing to conduct assessments in:
 - a. speech and language; and
 - b. psychoeducation?
5. Did Rosedale procedurally deny Student a FAPE at the October 5, 2023, IEP team meeting by predetermining the IEP by:
 - a. holding the IEP team meeting without Parents present;
 - b. altering Student's supports and services without parental consent;
 - c. failing to address bullying by Student's math teacher; and
 - d. failing to address Parents' concerns about Student's safety?

ROSEDALE'S ISSUE

6. May Rosedale assess Student pursuant to its September 11, 2023, assessment plan without Parents' 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, called the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 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] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

Student bears the burden of proof for the issues 1 through 5, and Rosedale bears the burden of proof on issue 6. 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).)

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

Student was 14 years old and had completed the eighth grade at the time of hearing. Student resided with Custodial Parent within the Rosedale geographic boundaries at all relevant times. Non-custodial Parent lives out of state. Student was eligible for special education due to a speech or language impairment.

The issues in the due process hearing request are discussed out of order. Issue 1, as the first issue chronologically, is resolved. Thereafter, Issue 3 and Issue 5 are analyzed. Student's remaining claims are then analyzed along with Rosedale's issue.

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ISSUE 1: FAILING TO OFFER SUFFICIENT SPEECH AND LANGUAGE SERVICES OR IMPLEMENT EXTENDED SCHOOL YEAR

Student contends Rosedale did not offer an adequate level of speech services in the 2022-2023 school year because he did not make adequate progress on his speech impediment over the course of the year. Student also contends extended school year services would have helped him manage his speech impediment and improved his communication skills and behavior.

Rosedale contends Student has not met his burden of proof on Issue 1, arguing that Student met his goals for speech and that Rosedale's speech and language professionals believed that Student's speech services were adequate and appropriate. Rosedale also contends Student did not demonstrate he needed extended school year services.

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*).)

An IEP for a disabled child must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 399.) The Supreme Court has noted that "[t]he core of the [IDEA] ... is the cooperative process that it establishes between parents and schools." (*Schaffer, supra*, 546 U.S. at p. 53.)

However, a school district has the right to select a program and/or service provider for a special education student, as long as the program and/or provider is able to meet the student's needs; the IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D.Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323; *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580* (D.Minn. 2003) 259 F.Supp.2d 880, 885.) An IEP is not required to conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education ... designed according to the parents' desires."], citing *Rowley, supra*, 458 U.S. at p. 207.)

SPEECH AND LANGUAGE

Student was eligible for speech and language services in the 2022-2023 school year, his seventh-grade year, due primarily to a stutter, although Student also had difficulty pronouncing "r" sounds at the end of words. Rosedale provided 160 minutes a month of speech services to Student during that school year. That level of services was maintained throughout that school year and was again offered in the IEP that would continue into the next school year. Student's services in the 2022-2023 school year were set by an IEP developed at a previous school district because Parents did not agree to implement a new IEP.

Student's seventh-grade math teacher noticed that he would stutter about half of the time he spoke and described it as a "heavy stutter." She also felt he would talk inappropriately loudly when participating in class, although she did not see him do so when talking to his friends. His stutter did not interfere with his ability to be understood

and did not impair his ability to make friends. He was confident in his abilities and liked to share with the class. The math teacher found his speech improved as the year progressed.

Student's seventh-grade English teacher also did not observe Student to stutter, but found his speech was sometimes unclear and he had trouble saying words that ended with "r." She also found that he could be loud in class when he was clowning around. He volunteered to read aloud in class quite often. The English teacher found that Student's speech impairment did not interfere with his academic performance and did not change significantly over the course of the year.

Rosedale's speech therapist found Student's stutter was extremely minor and was more concerned with his articulation. In her view, Student progressed enough over the course of the 2022-2023 school year to the point where he no longer needed speech services. She believed his speech impediment was mild and recommended in a September 2023 IEP that his direct speech services be discontinued.

Student's parents believed his impediment was severe. Custodial Parent observed a stutter, articulation issues, and vocal tics, and felt that "everyone" was concerned that Student was too loud when he talked. Custodial Parent saw his stutter worsen when he was excited, overstimulated, or upset, and believed Student's speech was only intelligible 50 to 75 percent of the time.

Non-custodial Parent felt that Student needed "quite a bit" of speech support, but did not know exactly what Student's speech problems were. Non-custodial Parent felt that Student did not exactly have a stutter, but there were certain words Student could not say. Non-custodial Parent felt the interruption in schooling and services

caused by the Covid-related school closures worsened Student's problems, and, although he saw a "little bit" of progress in Student's speech, it was not as much as he hoped.

Student argues in briefing that he made no noticeable progress on his speech in the 2022-2023 school year and that therefore it was evident that the level of service provided was insufficient. Rosedale counters that this argument is based entirely upon Parents' reports, which are contradicted by Rosedale's speech therapist. Further, Rosedale asserts that Student put forth no evidence that his speech needs impacted his access to the general education curriculum.

Student had the burden of proving by a preponderance of evidence that his speech services were inadequate. To do so, he relies on reports by his parents that his speech did not improve over the course of the school year. To a degree, that argument is supported by his English teacher's testimony, who found that Student's articulation did not change over the course of the year. However, that teacher did not observe any stuttering in Student's speech. In contrast, Student's math teacher and speech therapist reported progress in both his stutter and articulation.

Student did not produce any evidence that he was did not make academic progress appropriate in light of his circumstances. According to all of his teachers, Student participated actively in class and communicated with his peers. Parents' reports depict Student as having a speech impediment far more severe than that noticed by any of his teachers. Parents did not observe him in his academic setting and their views are not substantially corroborated or supported by any objective evidence. Further, Student

does not reference those parent reports in briefing and does not assert any educational impact from his speech issues. Accordingly, Student has not met his burden of proof that his speech services were insufficient.

EXTENDED SCHOOL YEAR

Although Student plead this issue as a failure to implement extended school year services, the parties presented at hearing and argued the issue in briefing as a failure to offer services. This Decision will analyze it as a failure to offer extended school year services.

Student's assertion that Rosedale should have offered him extended school year services does not meet his burden of proof. As Rosedale noted, extended school year services are required when it is established that a student has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have disabilities which are likely to continue indefinitely or for a prolonged period; and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition. (Cal. Code Regs., tit. 5, § 3043.) Rosedale did not offer Student extended school year services in any IEP in effect during this time period.

Student argues in briefing that Custodial Parent believed Student severely regressed in his speech while at Rosedale and that Student's elementary school speech therapist noted that stuttering may "come and go" and "change from day to day." Such anecdotal evidence falls far short of establishing that Student had unique needs that

required services in excess of those offered during the academic year or that the summer break would cause regression that would be impossible or unlikely for Student to recoup in the following school year.

Rosedale established Student did not regress academically following extended school breaks to warrant extended school year services. Student earned good grades following holiday and summer breaks in 2022 and 2023. There were no reports of regression in his speech following such breaks. Student has not met his burden of proof on his need for extended school year services.

Student failed to prove Rosedale denied him a FAPE during the 2022-2023 school year by failing to offer adequate speech services or by failing to offer or implement extended school year services.

Accordingly, Rosedale prevailed on Issue 1.

ISSUE 3: HOLDING THE SEPTEMBER 13, 2022 IEP TEAM MEETING WITHOUT PARENTS PRESENT AND FAILING TO ADDRESS PARENTS' SAFETY CONCERNS

Rosedale conducted the September 13, 2022 IEP team meeting without having Parents in attendance. Student contends that Parents did not waive their right to be present at the meeting. Student acknowledged difficulty in scheduling the meeting but maintains that it was a denial of FAPE for the meeting to proceed without a parent present.

Rosedale notes in briefing that the phrasing of the issue by Student in the due process hearing request asserted that holding the IEP team meeting without a parent present constituted predetermination. Nevertheless, Rosedale has extensively briefed the issue of the appropriateness of the IEP team meeting proceeding without Parents.

Rosedale contends that it was justified in convening the September 13, 2022 IEP team meeting without Parents because it made repeated attempts to contact Parents prior to the IEP, used multiple modalities to attempt to contact Parents, and did not prioritize staff schedules when proposing dates and times for the meeting.

A procedural requirement of the IDEA is that the IEP team must include a parent (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.344(a)(1); Ed. Code, § 56341, subd. (b)(1)), and the IEP team must consider the concerns of the parent throughout the IEP process. (20 U.S.C. § 1414(c)(1)(B), (d)(3)(A)(i), (d)(4)(A)(ii)(III); 34 C.F.R. § 300.343(c)(2)(iii); Ed. Code, § 56341.1, subd. (a)(1).) Parents play a “significant role” in the development of the IEP and are required and vital members of the IEP team. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524; 20 U.S.C. § 1414(d)(1)(B)(i); 35 C.F.R. § 300.322; Ed. Code, § 56341, subd. (b)(1).) In the classic formulation, a parent has meaningfully participated in the development of an IEP when she is informed of her child’s problems, attends the IEP meeting, expresses her disagreement regarding the IEP team’s conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Sch.* (6th Cir. 2003) 315 F.3d 688, 693.)

The Supreme Court places great emphasis on the importance the guarantee of parental participation:

“[W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say

that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard.”
(*Rowley, supra*, 458 U.S. 176, 205-206.)

The parents of a child with a disability must be afforded the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) The parents’ right to be involved in the development of their child’s educational plan is among the most important of procedural safeguards. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044. (*Doug C.*))

The emphasis put on parental participation in educational planning recognizes the central role parents play in supporting their children’s education. (*Honig v. Doe*, 484 U.S. 305, 311 (1988) (“Congress repeatedly emphasized throughout the [IDEA] the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness.”) “Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.” (*Amanda J. v. Clark Cnty. Sch. Dist.*, (9th Cir.2001) 267 F.3d 877, 882.)

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School districts are required to

“take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded an opportunity to participate” including providing ample notice and “scheduling the meeting at a mutually agreed on time and place.” (34 C.F.R. § 300.322(a).)

Moreover, if a parent cannot attend, the agency must offer other methods of participation such as video or teleconferencing. (34 C.F.R. §§ 300.322(c), 300.328.) Most importantly, a meeting may only be conducted without a parent if “the public agency is unable to convince the parents that they should attend.” When that happens, the agency must keep a detailed record of its attempts to include the parent. (34 C.F.R. § 300.322(d).) The Ninth Circuit has held that parental “involvement in the ‘creation process’ requires the [district] to include the [parents in an IEP meeting] unless they affirmatively refused to attend.” (*Shapiro v. Paradise Valley Unified Sch. Dist.*, (9th Cir.2003) 317 F.3d 1072, 1078, superseded on other grounds by 20 U.S.C. § 1414(d)(1)(B).)

In *Doug C.*, the school district and the parents had a difficult relationship, which the district blamed upon the parents. The Ninth Circuit noted that a district may not avoid its responsibilities by blaming the parents because the IDEA protects the student’s interests, not the parents’ interests. (720 F.3d at 1045.) Unless a district is unable to convince parents that they should attend the IEP team meeting, the meeting may not take place without them. (34 C.F.R. §§ 300.322(d).) *Doug C.* held that a school district may not “prioritize” the schedules of its own staff or its need to meet statutory deadlines over parental attendance. (720 F.3d at 1045.) Further, it noted that delays in meeting IEP deadlines do not deny students a FAPE where they do not deprive a student of any

educational benefit, citing *A.M. v. Monrovia*, (9th Cir.2010) 627 F.3d 773, 779. Only in rare circumstances will a student's immediate need for services outweigh the importance of parental participation. (*Doug C., supra*, 720 F.3d at 1047.)

PARENTAL PARTICIPATION AT THE SEPTEMBER 13, 2022 IEP TEAM MEETING

On November 6, 2020, Custodial Parent attended an IEP team meeting with Fruitvale School District, which Student attended before transferring to Rosedale. Parents agreed to the IEP offered at that meeting. That was the last IEP team meeting either parent attended. The Fruitvale IEP has been in operation and has set Student's services ever since, as the last agreed-upon and implemented placement for Student.

On September 3, 2021, Rosedale sent parents an invitation to an IEP team meeting to be held on September 14, 2021. Around that time, a controversy arose between Custodial Parent and Rosedale regarding a document that Custodial Parent believed had been changed by Rosedale without Custodial Parent's knowledge. This appears to be the point at which relations between Parents and Rosedale became contentious. Custodial Parent revoked a previously-expressed agreement to attend the September 14 IEP team meeting on the day of the meeting, and on October 1 again canceled an agreement to attend an IEP team meeting on October 4, 2021. Rosedale rescheduled the meeting for October 25, 2021, with Custodial Parent's agreement, and then Custodial Parent did not appear for the meeting. Rosedale contacted Student's Step-parent, but could not get a parent with educational rights to attend the meeting.

Rosedale made numerous attempts to arrange a date and time for an IEP team meeting. The record contains more than 10 attempts by Rosedale between October 25, 2021, and May 6, 2022 to contact Parents to set a date for an IEP team meeting. Custodial Parent testified at hearing that Parents never received most of these communications. It is not material whether or not the communications were received, as the issue is the effort made by Rosedale to secure Parents' attendance and whether Parents ever refused to attend an IEP team meeting. Parents did not respond to these attempts by Rosedale to schedule an IP team meeting. On May 6, 2022, Rosedale sent a letter offering Parents a choice of dates for the meeting, but told them if it did not hear from them it would proceed with the meeting without their attendance. The meeting took place on May 25, 2022. The Rosedale members of the IEP team agreed to offer Student the same level of services provided in Fruitvale's IEP. Parents did not consent to or sign the May 25, 2022 IEP.

As Student's last annual IEP was opened on September 14, 2021, his next IEP was due September 14, 2022. Student's speech therapist attempted on August 17 and August 22, 2022, to reach Custodial Parent to set a date and time for an IEP team meeting. On August 25, 2022, Rosedale sent an invitation to Parents for an IEP team meeting to be held on September 13, 2022. Also on August 25, 2022, the speech therapist had a telephone conversation with Custodial Parent where the issue of the allegedly altered document again arose. The speech therapist reported to Rosedale that Custodial Parent said Parents would not attend an IEP team meeting until the altered document was corrected. Rosedale took no action in response to this request by Custodial Parent prior to holding the IEP team meeting.

On September 8, 2022, Rosedale sent a letter to Custodial Parent and Non-Custodial Parent by U.S. mail offering three dates for an IEP team meeting. One was the very next day, September 9, 2022. The other was the following Monday, September 12, 2022, and the last was September 13, 2022. The letter stated that if Parents did not respond before then, the meeting would proceed on September 13, 2022. Parents did not respond or attend the meeting, and the Rosedale members of the IEP team proceeded without them on September 13, 2022.

In briefing, Student contends that there were reasons why Parents had difficulty agreeing to a date and time for an IEP team meeting. It was difficult for Custodial Parent to attend an IEP team meeting during working hours because there are other children, including one with a disability, and Step-parent works during the day. Non-custodial Parent lives over 200 miles away and could not assist with childcare. Student cites Parents' testimony they could have attended an IEP meeting if one had been offered outside of working hours or if the two parents were offered duplicate meetings at different times to attend separately, so that any difficulty in scheduling both parents' attendance could be avoided. Student maintains in briefing, as Custodial Parent did at hearing, Custodial Parent wanted to attend the IEP team meeting and had important input to give regarding Student and his needs.

Rosedale asserts that it met its obligations regarding parental participation because it made repeated attempts to engage Parents in the development of Student's IEP, it did not prioritize its staff's schedules in picking dates and times, and it used "multiple modalities" to contact parent, including phone, email, certified mail, and placing documents in Student's backpack. Lastly, Rosedale notes that Custodial Parent did not explain why the document allegedly altered in 2021 prevented Parents from participating in an IEP in 2022.

Student carried his burden of establishing the September 13, 2022 IEP team meeting was held without Parents present and Parents had not waived their right to be present. Rosedale failed to demonstrate that it was appropriate to hold the meeting without Parents present.

The law prioritizes parents' presence at IEP team meetings. A meeting can proceed without parents only if the school district can demonstrate that it was "unable to convince the parents that they should attend." (34 C.F.R § 300.322(d).) Put another way, parents must affirmatively refuse to attend. (*Paradise Valley*, supra, 317 F.3d at 1078.) That is not the case here. Rosedale has not demonstrated that it was unable to, attempted to, or even needed to, convince Parents they should attend the September 13, 2022 IEP team meeting, and it has not produced any affirmative refusal by Parents to attend the IEP team meeting.

Rosedale argues that it tried multiple times and multiple ways to arrange Parents' presence at the September 13, 2022 IEP team meeting. Rosedale seemingly conflates the effort put forth in the 2021-2022 school year to get Parents to attend the IEP team meeting completed on May 25, 2022, with what it did between August 17 and September 8, 2022, to get Parents to attend on September 13, 2022. None of the effort expended to get Parents to attend the May meeting is relevant to the effort put forth to get Parents to attend the September meeting. In contrast to the efforts made prior to the May 25, 2022 IEP team meeting, Rosedale's efforts to secure Parent's attendance at the September 13, 2022 IEP team meeting consisted of three phone calls by the speech therapist and two mailings. That was not sufficient.

Rosedale's letter of September 8, 2022, was substantially deficient. Its initial proposal that Parents agree to attend an IEP team meeting the day after the letter was prepared for mailing is, on its face, insincere. The IDEA does not impose specific timelines in connection with the IEP team meeting notice requirement. It simply requires that the school district notify the parents of the IEP team meeting early enough to ensure that they will have an opportunity to attend. (34 C.F.R. § 300.322(a)(1).) Ten days is a customary period, and is generally considered adequate time for parents to make whatever arrangements are necessary to attend. (*Letter to Constantian* (U.S. Dept. of Educ., Office of Special Education Programs (OSEP September 6, 1990) 17 IDELR 118.) September 13, 2022, was four days after the earliest possible delivery date of the letter and was not adequate notice.

The strained relationship between Custodial Parent and Rosedale did not excuse Rosedale's failure to include Parents in the September 13, 2022 IEP team meeting. Rosedale obliquely references an "admittedly tense relationship" with Custodial Parent. It was clear from testimony at hearing from many parties, including Custodial Parent, that Custodial Parent held great anger toward Rosedale, and that Rosedale's staff felt that Custodial Parent was abusive towards them. Similarly, Custodial Parent felt disrespected by Rosedale.

These bad feelings arose somehow from the change or changes allegedly made to a document in 2021. At hearing, neither side could explain exactly what had changes happened or why it was important. Rosedale included a notation in the September 8, 2022 letter that the speech therapist had reported that Custodial Parent would not attend an IEP meeting until the document was "changed back" and noting that Rosedale was awaiting a letter from Custodial Parent stating the reasons why they "could not

attend.” Even if the speech therapist’s testimony that Custodial Parent put conditions on Parents’ attendance at an IEP team meeting is credited, it still does not demonstrate an affirmative refusal by Parents to attend an IEP team meeting. Rosedale did make the change it believed Custodial Parent wanted in the document and was awaiting a further response from Custodial Parent, but proceeded with the IEP team meeting just five days after preparing the September 8, 2022 letter.

As noted in *Doug C.*, difficulties with parents do not excuse a school district from its obligations to the student. Rosedale’s need to meet its statutory deadline for Student’s annual IEP team meeting was not an immediate need to provide services to Student to justify holding the IEP team meeting without Parents. By holding the IEP team meeting without Parents and without showing that it was unable to convince Parents to attend, Rosedale committed a procedural violation of the IDEA. Holding the meeting without Parents present prevented them from having a voice in the planning of Student’s educational program. That violation significantly impeded Parents’ opportunity to participate in the decision-making process, denying Student his right to a FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).)

Student proved Rosedale denied Parents their right to participate in the September 13, 2022 IEP team meeting and denied Student FAPE in the 2022-2023 school year.

Student prevailed on Issue 3a.

PARENTS' SAFETY CONCERNS

In Issue 3, part b, parents assert that Student was denied FAPE because the September 13, 2022 IEP team meeting did not address Parents' concerns about Student's safety. As discussed in part a of this issue, Rosedale's failure to include Parents at the September 13, 2022 IEP team meeting denied their ability to participate in Student's educational planning. Because Rosedale prevented Parents from attending the IEP team meeting, their concerns about Student's safety, whether valid or not, were not received and addressed. Although the IEP team is only chargeable with the information before it at the time that the educational plan was created under the "snapshot rule," (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 439), a denial of parental participation makes any resulting IEP inadequate because it denies the parents input into the IEP team's discussion and planning. Accordingly, Rosedale's failure to ensure Parents' participation at the September 13, 2022 IEP team meeting means Rosedale also failed to address Parents' safety concerns, resulting in a denial of FAPE.

Student prevailed on Issue 3, part b.

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ISSUE 5: HOLDING THE OCTOBER 5, 2023 IEP TEAM MEETING WITHOUT PARENTS PRESENT, ALTERING STUDENT'S SUPPORTS AND SERVICES WITHOUT PARENTAL CONSENT, FAILING TO ADDRESS BULLYING, AND FAILING TO ADDRESS PARENTS' CONCERNS ABOUT STUDENT'S SAFETY?

PARENTS' PARTICIPATION

Similar facts exist for the October 5, 2023 IEP team meeting as for the September 13, 2022 IEP team meeting, and the analysis and outcome are also similar.

The October 5, 2023 IEP team meeting was held without Parents present. Student contends Parents wanted to attend the October 5, 2023 IEP team meeting and that Custodial Parent wanted to provide information and input to the IEP team. Student also asserts that Rosedale failed to confirm any IEP team meeting dates with Parents and that Parents were unaware that Rosedale was going to hold an IEP team meeting on October 5, 2023.

Rosedale contends it made numerous attempts between August 2023, and October 2023, to contact Parents to schedule an IEP team meeting and that it only proceeded to hold the IEP team meeting after it received no response to an email sent by the speech therapist.

The IEP team must include a parent. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.344(a)(1); Cal. Ed. Code § 56341 subd. (b)(1).) The parents' right to be involved in the development of their child's educational plan is among the most important of

procedural safeguards. (*Doug C.*, 720 F3d at 1043-1044.) An IEP team meeting may only be conducted without a parent if “the public agency is unable to convince the parents that they should attend.” (34 C.F.R. § 300.322(d).)

As detailed in Rosedale’s briefing, Student’s speech therapist “reached out” to Parents at the start of the 2023-2024 school year to propose dates for the IEP team meeting, but did not get any response from Parents. Rosedale did not document the attempts made by the speech therapist to contact Parents, describe the means of contact, or give the dates of the contacts. The speech therapist’s testimony on this point at hearing was extremely vague, establishing only that she made some effort in the time period from mid-August to early September. On September 11, 2023, after the dates proposed by the speech therapist had passed, Custodial Parent emailed the speech therapist to express a desire to participate in an IEP team meeting and suggested a time period in which the meeting could be held. To comply with the statutory deadline for Student’s annual IEP, Rosedale opened the IEP team meeting on September 12, 2023, and then immediately closed it to await an arrangement for Custodial Parent’s attendance.

The speech therapist then emailed Custodial Parent to offer to hold the IEP team meeting on dates within the timeframe Custodial Parent suggested in the email, with October 5, 2023, as the last of the proposed dates for the meeting. Custodial Parent did not respond to the speech therapist’s email attempt to schedule an IEP team meeting. Rosedale convened the IEP team meeting on October 5, 2023. Because none of these emails were offered into evidence and no details were presented in testimony, it is unknown whether Custodial Parent was warned, as was the case with the May 6, 2022, and September 8, 2022 letters, that the meeting would proceed without Parents if they

did not respond. Likewise, it is unknown when the email was sent or how long after the email was sent Rosedale held the IEP team meeting. Rosedale argues the notices emailed to Parent by Student's speech therapist fulfilled Rosedale's responsibility to ensure parental participation at the October 5, 2023 IEP team meeting.

Student carried his burden of establishing that Rosedale held the October 5, 2023 IEP team meeting without Parents present and that Parents did not waive their right to be present. Rosedale failed to demonstrate that it was permissible to hold the meeting without Parents present.

Rosedale did not demonstrate that it was unable to convince Parents they should attend the IEP team meeting and did not produce any affirmative refusal by Parents to attend the October 5, 2023 IEP team meeting. Rosedale concedes in briefing that it held the meeting without Parents less than a month after Custodial Parent reached out to Rosedale to inform it that Parents wished to attend and participate at an IEP team meeting. Rosedale took only minimal action to secure Parent's participation at the October 5, 2023 IEP team meeting despite learning of Custodial Parent's active interest in attending the meeting. The decision to proceed with the meeting was unjustified and significantly impeded Parents' opportunity to participate in the decision-making process, denying Student his right to a FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *Target Range, supra*, 960 F.2d at 1484.)

Rosedale further argues the denial of parental participation did not constitute a denial of FAPE because Student has not shown that he suffered a deprivation of educational benefit. Rosedale misreads title 20 United States Code section 1415(f)(3)(E)(ii) and *Target Range*. The law does not require a showing that the violation impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in

the decision-making process, and caused a deprivation of educational benefits; any one element suffices to establish a denial of a FAPE. Accordingly, Student proved by a preponderance of the evidence Rosedale denied him a FAPE for the 2023-2024 school year by holding the October 5, 2023 IEP team meeting without Parents present.

Student prevailed on Issue 5a.

ALTERING STUDENT'S SUPPORTS AND SERVICES, FAILING TO ADDRESS BULLYING, AND FAILING TO ADDRESS PARENTS' CONCERNS ABOUT STUDENT'S SAFETY

In Issue 5, parts b, c, and d, Parents assert that Student was denied FAPE because the October 5, 2023 IEP team meeting altered Student's supports and services without parental consent, failed to address bullying by Student's math teacher, and did not address Parents' concerns about Student's safety. As discussed in issue 5a, Rosedale's failure to include Parents at the October 5, 2023 IEP team meeting denied their ability to participate in Student's educational planning. Because Rosedale prevented Parents from attending the IEP team meeting, Student's IEP was changed without receiving and considering their input. Similarly, Parents' concerns about Student being bullied and his general safety were not received and addressed. A denial of parental participation makes any resulting IEP inadequate because it denies parents input into the IEP team's discussion and planning. Accordingly, Rosedale's failure to ensure Parents' participation at the October 5, 2023 IEP team meeting means that Rosedale failed to address these other concerns, resulting in a denial of FAPE. Student prevailed on Issue 3, parts b, c, and d.

ISSUE 2: FAILING TO OFFER ADEQUATE COMMUNICATION GOALS, ADDRESS REGRESSION, OR OFFER PARENT TRAINING IN SPEECH AND LANGUAGE

Issue 2 asserts that Student was denied a FAPE in the 2022-2023 school year because the IEP developed at the September 13, 2022 team meeting failed to offer adequate communication goals, address Student's regression in speech, or offer Parents training in speech and language. As discussed in Issue 3, part a, Rosedale's failure to include Parents at the September 13, 2022 IEP team meeting denied their ability to participate in Student's educational planning. Because Rosedale prevented Parents from attending the IEP team meeting, their input about Student's goals and risk of regression were not received and addressed. Likewise, the IEP team did not receive and consider Parents' views on the necessity of receiving training in speech and language to assist Student in overcoming his speech impediment. A denial of parental participation makes any resulting IEP inadequate because it denies parents input into the IEP team's discussion and planning. Accordingly, Rosedale's failure to ensure Parents' participation at the September 13, 2022 IEP team meeting also means that Rosedale failed to take into consideration Parents' input on Student's communication goals, risk of regression and their request for parent training, resulting in a denial of FAPE.

Student prevailed on Issue 2, parts a, b, and c.

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ISSUE 4: FAILURE TO ASSESS STUDENT IN SPEECH AND LANGUAGE AND PSYCHOEDUCATIONAL FUNCTIONING

Issue 4 asserts that Student was denied FAPE in the 2023-2024 school year because Rosedale did not assess him in speech and language and psychoeducational functioning.

SPEECH AND LANGUAGE

Student contends in Issue 4, part a, that Custodial Parent raised concerns about Student's speech issue with the speech therapist and offered to provide Rosedale a copy of a private assessment report obtained at Parents' expense. Because Student had never been assessed by Rosedale and Parents had new concerns about Student's speech, Parents assert that Rosedale needed to conduct an assessment.

Rosedale counters that it also believed Student needed to be assessed in speech and language and sent Parents an assessment plan on September 13, 2023. It argues that Parents' failure to sign and return the assessment plan absolves it of any responsibility for failing to assess Student.

The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must be conducted if the local educational agency "determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment." (20 U.S.C.

§ 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) If parents do not consent to a reassessment plan, a school district may conduct the reassessment by showing at a due process hearing that it needs to reassess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).) Assessments must be conducted, and if parents do not consent to allow assessment the school district must file for due process.

Rosedale has never assessed Student. If an assessment was done by Fruitvale, it was done prior to the November 20, 2020 IEP team meeting. Accordingly, it has been at least three years since Student's last assessment. A speech and language assessment needed to be done for the 2023-2024 school year. Parents offered Rosedale an independent speech and language assessment by Small Talk Therapy that had been completed in July 2023, but Rosedale's speech therapist refused to accept it.

Rosedale asserts that it provided Parents with an assessment plan on September 13, 2023, and only proceeded with the IEP team meeting on October 5, 2023, when Parents did not sign and return the assessment plan. The purpose of assessments is to provide information to parents and school staff that the IEP team can use to create a student's educational program. Having the IEP team meeting without conducting assessments means that Parents are without information they need to consider in order to participate in planning their child's educational program.

Further, Rosedale refused to accept the Small Talk Therapy assessment, which could have provided valuable input to the IEP team about Student's speech and language needs. If Rosedale believed it needed to assess Student to develop an

appropriate IEP, they should have filed a request for due process hearing to obtain leave to assess without parental consent, as they eventually did when they filed for due process on May 14, 2024. Unfortunately, Rosedale waited nearly eight months to file their request for due process hearing and let the entire 2023-2024 school year elapse without obtaining updated assessment data on Student. It is discordant for Rosedale to blame Parents for their failure to assess Student when the evidence showed Rosedale made little effort to obtain Parents' consent on the September 13, 2023 assessment plan and then held the October 5, 2023 IEP team meeting without Parents. Rosedale's inaction denied Parents' participation in the assessment and IEP process and constitutes a denial of FAPE. (*Doug C.*, *supra*, 720 F.3d at 1045.)

Student prevailed on Issue 4, part a.

PSYCHOEDUCATIONAL FUNCTIONING

Student contends in Issue 4, part b, that Rosedale needed to assess his psychoeducational functioning because Parents believed his teachers had concerns about Student's behavior in class and because the Small Talk Therapy assessment reported behaviors that are present in students with autism.

Rosedale counters that it had no reason to suspect that Student had difficulty in psychoeducational functioning and that Parents never provided the Small Talk Therapy assessment to it. As a result, Rosedale was unaware of anything that warranted assessment in that area.

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Student's teachers were recorded in the IEP team meeting notes as stating and testified consistently at hearing that Student had behaviors that impacted his learning and that of others. Student could be loud and disruptive. Student would move around during class, say inappropriate things, or get "handsy." Student would need redirection, but would accept it.

Rosedale argues that it was not on notice of any need to assess Student's behavior because it did not view Student's behavior as an issue. The input from Student's teachers described in the IEP team meeting notes was recorded, but no services were offered or action taken because the IEP team felt Student was acting within the expectations of a pupil his age and gender.

The IEP team's view was a product of their deliberations and was reached without input from Parents or from the Small Talk Therapy assessment the speech therapist declined to bring before the team. A decision reached without consideration of opposing facts or viewpoints is not defensible. If Parents were present at the IEP team meeting and disagreed with the decision not to offer behavior services, they could have requested that a psychoeducational assessment be conducted. At that point, the team could have discussed the issue and responded to Parents' concerns. The IEP team deliberately limited the team's knowledge by excluding Parents and failing to consider the Small Talk Therapy assessment.

Because Rosedale limited the information before the IEP team and did not allow parental participation at the October 5, 2023 IEP team meeting, Rosedale cannot rely upon the findings of that team to refute Parents' contention that he had needs requiring a psychoeducational assessment. The disagreement regarding Student's needs between Parents and the IEP team needed to be settled through discussion at an IEP team

meeting, and may not be resolved unilaterally by the Rosedale members of the IEP team. Further, as discussed in part a above, any previous psychoeducational assessment of Student would have been conducted more than three years ago and a reassessment would be overdue. If one had not been previously conducted, conducting an initial psychoeducational assessment should have been discussed by the IEP team at the October 5, 2023 IEP team meeting.

Accordingly, lacking an effective response from Rosedale, Student has carried his burden of establishing that Rosedale should have conducted a psychoeducational assessment during the 2022-2023 school year.

Student prevailed on issue 4, part b.

ISSUE 6: CONDUCTING ASSESSMENTS WITHOUT PARENTS' CONSENT

Rosedale seeks to assess Student in speech and language and general health in preparation for an IEP team meeting. Parents have not consented to the assessment plan. Rosedale contends it should be allowed to assess Student without Parental consent because it has attempted to obtain Parent's agreement to the September 11, 2023 assessment plan, but Parents have refused to consent without good cause.

Student did not respond to this Issue in final briefing.

Reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the student and his parents. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of

parental procedural rights under the IDEA and companion state law. (20 U.S.C. §§ 1414(b)(1), 1415(c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must:

- appear in a language easily understood by the public and the native language of the student;
- explain the assessments that the district proposes to conduct; and
- provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).)

The district must give the parents 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

If parents do not consent to a reassessment plan, a school district may conduct the reassessment by showing at a due process hearing that it needs to reassess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).) "Every court to consider the [Individuals with Disabilities Education Act's] reevaluation requirements has concluded that 'if a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student ...'." (*M.T.V. v. DeKalb County School Dist.* (11th Cir. 2006) 446 F.3d 1153, 1160, quoting *Andress v. Cleveland Indep. Sch. Dist.* (5th Cir. 1995) 64 F.3d 176, 178-79.) The Ninth Circuit has held that "if the parents want [their child] to receive special education services under the [IDEA], they are obliged to permit [re-assessment] testing." (*Gregory v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1315.)

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Rosedale provided Parents with an assessment plan for Student on September 13, 2023. The September 13, 2023 assessment plan offered to assess Student's language and speech communication development and health. Student had not had any assessments conducted since at least his enrollment at Rosedale. Assessments of students eligible for special education must be conducted at least every three years.

Rosedale made multiple attempts to obtain Parents' consent to the September 13, 2023 assessment plan through phone calls, emails, and mailing, but has been unsuccessful. Student raised no defense to this request and has been aware of the request since at least May 14, 2024. The assessment plan received into evidence is in a standardized form. It is in a language easily understood by the public, is in Student's native language, explains the assessments to be conducted and notes that any resulting IEP will not be implemented without the consent of Parents. Thus, it meets the legal requirements under the IDEA and Education Code. Accordingly, Rosedale may assess Student pursuant to the September 13, 2023 assessment plan without parental consent if Parents wish Student to continue to receive special education services from Rosedale.

Rosedale prevailed on Issue 6.

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 1, SUBSECTION a:

Rosedale did not deny Student a FAPE during the 2022-2023 school year by failing to offer sufficient speech and language services.

Rosedale prevailed on Issue 1, subsection a.

ISSUE 1, SUBSECTION b:

Rosedale did not deny Student a FAPE during the 2022-2023 school year by failing to offer or implement extended school year services.

Rosedale prevailed on Issue 1, subsection b.

ISSUE 2, SUBSECTION a:

Rosedale did not offer Student offer Student adequate communication goals in the September 13, 2022 IEP.

Student prevailed on Issue 2, subsection a.

ISSUE 2, SUBSECTION b:

Rosedale did not develop an IEP that addressed Student's regression at the September 13, 2022 IEP team meeting.

Student prevailed on Issue 2, subsection b.

ISSUE 2, SUBSECTION c:

Rosedale did not develop an IEP that offered Parent training in speech and language at the September 13, 2022 IEP.

Student prevailed on Issue 2, subsection c.

ISSUE 3, SUBSECTION a:

Rosedale denied Student FAPE by holding the September 13, 2022 IEP team meeting without Parents present.

Student prevailed on Issue 3, subsection a.

ISSUE 3, SUBSECTION b:

Rosedale denied Student FAPE by failing to address Parents' concerns about Student's safety at the September 13, 2022 IEP.

Student prevailed on Issue 3, subsection b.

ISSUE 4, SUBSECTION a:

Rosedale denied Student FAPE in the 2023-2024 school year by failing to assess him in speech and language.

Student prevailed on Issue 4, subsection a.

ISSUE 4, SUBSECTION b:

Rosedale denied Student FAPE in the 2023-2024 school year by failing to assess him in psychoeducational functioning.

Student prevailed on Issue 4, subsection b.

ISSUE 5, SUBSECTION a:

Rosedale denied Student FAPE by holding the October 5, 2023 IEP team meeting without Parents present.

Student prevailed on Issue 3, subsection a.

ISSUE 5, SUBSECTION b:

Rosedale denied Student FAPE by altering Student's services at the October 5, 2023 IEP without parental consent.

Student prevailed on Issue 3, subsection b.

ISSUE 5, SUBSECTION c:

Rosedale denied Student FAPE by failing to address bullying of Student at the October 5, 2023 IEP.

Student prevailed on Issue 3, subsection c.

ISSUE 5, SUBSECTION d:

Rosedale denied Student FAPE by failing to address Parents' concerns about Student's safety at the October 5, 2023 IEP.

Student prevailed on Issue 3, subsection d.

ISSUE 6:

Rosedale may assess Student pursuant to its September 11, 2023 assessment plan without Parents' consent.

Rosedale prevailed on Issue 6.

REMEDIES

STUDENT'S REMEDY

Student demonstrated Rosedale denied him a FAPE in the 2022-2023 and 2023-2024 school years. Student seeks assessments in speech and language, extended school year services, parent training in speech and language, and a new IEP team meeting to consider Student's needs and develop new goals, baselines, and services.

Under federal and state law, courts have broad equitable powers to remedy the failure of a local educational agency to provide FAPE to a disabled child. (20 U.S.C. § 1415(i); see *School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996] (*Burlington*.) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, n. 11

[129 S.Ct. 2484, 174 L.Ed.2d 168].) When a local educational agency fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief that is appropriate in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. 359, 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at the hearing. (*Id.* at p. 374.)

An ALJ can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. Bd. of Educ.* (D.Conn. 2008) 531 F.Supp.2d 245, 265.) The award must be fact-specific and reasonably calculated to provide the educational benefits that likely would have accrued from special education services the local educational agency should have supplied in the first place. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) Compensatory education awards depend upon the needs of the disabled child, and can take different forms. (*R.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1126.) Typically, an award of compensatory education involves extra schooling, in which case generalized awards are not appropriate. (*Parents of Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1497.) There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Ibid.*)

Student failed to establish any loss of educational benefit or access as result of Rosedale's violations. No compensatory education appears appropriate. As noted in the Order Following Prehearing Conference dated May 17, 2024, a party seeking

compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Student did not do this. Accordingly, no compensatory educational services will be ordered.

Student's only specific remedies requested in briefing are for independent assessments in speech and language and psychoeducational functioning, and for extended school year services and parent training in speech and language. Student needs to be assessed, as no assessments have been performed during the three years Student has been at Rosedale. Because no assessments were conducted by Rosedale since Student's entry in 2021, Rosedale shall provide independent assessments in speech and language and psychoeducational functioning at public expense, to be performed by an assessor of Student's choosing. Once completed, those assessments shall be reviewed at an IEP team meeting with the assessor in attendance, either personally or virtually, to discuss their reports.

Student presented at hearing a speech and language assessment conducted in July 2023 by Small Talk Therapy. That assessment found Student to have a moderate stutter and a substitution of the "uh" sound for words ending in "er." It recommended that Student receive 120 minutes per month of speech and language services for a period of six months. The report echoes the findings of Rosedale's school staff and offers a slightly reduced service amount compared to the Fruitvale IEP. The report appears to be reliable and independent. Student may opt to receive reimbursement for this assessment in place of a new independent speech and language assessment.

Rosedale prevailed on Student's Issue 1b regarding extended school year services. Although Parents have requested an award of extended school year services, no showing has been made that such services are necessary, and it would

be inconsistent to find them as appropriate relief. Likewise, despite requesting it as relief, Student has made no showing that parent training in speech and language is necessary. Student is progressing well academically and his speech appears to be improving. No other remedies will be offered.

ROSEDALE'S REMEDY

Rosedale proved assessments of Student's language and speech communication development and health were warranted, and the September 11, 2023 assessment plan was procedurally compliant. Therefore, Rosedale may assess Student pursuant to its September 11, 2023, assessment plan without Parent's consent if Parents wish Student to continue to receive special education services from Rosedale. If Student opts to receive a new independent speech and language assessment, Rosedale shall coordinate its assessment with the independent assessor to make sure that Student is not over-assessed. Student's independent assessments shall have priority over any assessments by Rosedale.

ORDER

1. Rosedale shall provide independent assessments in speech and language and psychoeducational functioning at public expense, to be performed by assessors of Parent's choice who meet the criteria under Rosedale's special education local plan area guidelines for independent educational evaluations.

2. Within 10 business days of this Decision, Rosedale shall provide Parents with a copy of Rosedale's special education local plan area guidelines for independent educational evaluations, including any list of qualified assessors who meet its criteria for independent educational evaluations for speech and language and psychoeducational functioning.
3. Parents have 90 calendar days from the receipt of the guidelines for independent educational evaluations to provide Rosedale with the names of qualified assessors to conduct the independent speech and language and psychoeducational evaluations. Parents may select an assessor who is not present on Rosedale's list of qualified assessors, but the assessor must meet the special education local plan area guidelines.
4. Within 10 working days of Parent providing Rosedale with the name and contact information of an assessor, Rosedale shall contact the identified assessor to initiate a contract. Rosedale shall additionally fund the attendance, by telephone, video, or in person, of the assessor to an IEP team meeting convened by Rosedale, or the local educational agency responsible for Student at the time the IEP team meeting is held, to present the results of their independent educational evaluation, for a total of four hours, including travel.
5. Rosedale shall reimburse Parents for the out-of-pocket cost for the assessment conducted by Small Talk Therapy, Inc. Parents shall provide Rosedale with proof of payment for the Small Talk Therapy, Inc. assessment. Rosedale shall reimburse Parents within 30 days of receiving the proof of payment.

6. All other relief sought by Student is denied.
7. Rosedale may assess Student pursuant to the September 11, 2023 assessment plan without parental consent. If Student opts to receive a new independent speech and language assessment, Rosedale shall coordinate its speech and language assessment with Student's independent assessor.

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.

Chris Butchko

Administrative Law Judge

Office of Administrative Hearings