

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

PERRIS UNION HIGH SCHOOL DISTRICT.

CASE NO. 2024090725

DECISION

January 3, 2025

On September 18, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student naming Perris Union High School District, called Perris Union. Administrative Law Judge Jennifer Kelly heard the matter via videoconference on November 5, 6, 7, 12, 13, 14, and 19, 2024.

Attorneys Ryan S. Song and Michelle E. Wilkolaski represented Student. Parent attended all hearing days. Student attended day one of the hearing. Attorneys Dee Anna Hassanpour, Rebecca Diddams, and Anisha Asher represented Perris Union. Amil Alzubaidi, Director of Special Education for Perris Union, attended all hearing days on Perris Union's behalf, except during the afternoon on November 5, 2024.

At the parties' request, OAH continued the matter for written closing briefs. The parties submitted the matter and OAH closed the record on December 16, 2024.

PRELIMINARY MATTERS

STUDENT'S TWO WITHDRAWN ISSUES IN HIS CLOSING BRIEF ARE DISMISSED WITH PREJUDICE

In this Decision, a free appropriate public education is called a FAPE. An individualized education program is called an IEP.

In Student's December 16, 2024 closing brief, Student requested withdrawal of two issues. Student requested Issue 3b (college and career awareness services in the August 22, 2023 IEP) and Issue 5b (college and career awareness services in the August 20, 2024 IEP) be withdrawn. These issues were listed in the October 29, 2024 Order Following Prehearing Conference and discussed with the ALJ on the record on day one of the due process hearing on November 5, 2024.

Neither state nor federal special education statutes or regulations, nor the California Administrative Procedures Act, address requests to withdraw issues before, during, or after the due process hearing has commenced. Code of Civil Procedure section 581, subdivision (b)(1) provides that in civil proceedings an action may be dismissed

"with or without prejudice, upon written request of the plaintiff to the clerk, filed with papers in the case, or by oral or written request

to the court at any time before the actual commencement of the trial, upon payment of costs, if any.” (Code Civ. Proc., § 581, subd. (b)(1).)

Code of Civil Procedure section 581, subdivision (e) provides,

“After the actual commencement of a trial, the court shall dismiss a complaint, or causes of action asserted in it, in its entirety, or as to any defendants, with prejudice, if the plaintiff requests a dismissal, unless all affected parties to the trial consent to its dismissal without prejudice or by court order dismissing the same without prejudice on a showing of good cause.” (Code Civ. Proc., § 581, subd. (e).)

Code of Civil Procedure section 581, subdivision (a)(6) states,

“A trial shall be deemed to actually commence at the beginning of opening statements or argument of any party or his or her counsel, or if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.” (Code Civ. Proc., § 581, subd. (a)(6).)

Here, the parties completed opening statements, called witnesses, introduced evidence, and rested their cases over the seven-day hearing. Student requested the withdrawal of Issues 3b and 5b in his closing brief after the hearing ended. Student did not establish that the parties mutually agreed to a dismissal of these issues without prejudice. Therefore, Issues 3b and 5b are hereby dismissed with prejudice.

The ALJ removed these two issues from the issues section below and renumbered the issues. All other issues are otherwise unchanged from the October 29, 2024 Order Following Prehearing Conference.

NOTICE OF OAH'S RETENTION OF JURISDICTION TO CONSIDER A MOTION BY PERRIS UNION TO SHIFT EXPENSES

In its closing brief, Perris Union requested OAH retain jurisdiction over this matter for the purpose of ordering an award of sanctions against Student's counsel on the grounds the complaint was frivolous. Perris Union's primary assertion is that Student's issues were frivolous or brought for an improper purpose.

In certain circumstances, an ALJ presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ("Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge.")) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. (Gov. Code, § 11455.30, subd. (a); Cal.

Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

OAH will retain jurisdiction over this matter for 30 days from the date of issuance of this Decision for the limited purpose of considering a motion by Perris Union to shift expenses, should Perris Union decide to file such motion. Any motion to shift expenses shall be supported by declarations under penalty of perjury and detailed invoices of the legal fees Perris Union incurred in defending this matter and for which it seeks to shift expenses.

In the event Perris Union files a motion to shift expenses, Student may file a response, supported by declarations under penalty of perjury.

ISSUES

The issues at the due process hearing, as alleged in the due process hearing request and clarified by the parties during the October 29, 2024 prehearing conference and at the start of hearing, are stated below.

1. Did Perris Union deny Student a FAPE at the March 6, 2023 IEP team meeting by failing to offer an educationally related mental health services assessment?
2. Did Perris Union deny Student a FAPE at the March 6, 2023 IEP team meeting by predetermining the IEP without Parent present?

3. Did Perris Union deny Student a FAPE in the August 22, 2023 IEP by failing to offer necessary special education services to enable Student to receive educational benefit, specifically:
 - a. behavior intervention services;
 - b. sufficient speech-language services;
 - c. sufficient occupational therapy services;
 - d. home applied behavior analysis therapy and clinic meetings;
 - e. parent training in autism, communication skills, and behavior; and
 - f. placement in the least restrictive environment?
4. Did Perris Union deny Student a FAPE by failing to hold Student's three-year-review IEP team meeting in September 2023?
5. Did Perris Union deny Student a FAPE in the August 20, 2024 IEP by failing to offer necessary special education services to enable Student to receive educational benefit, specifically:
 - a. behavior intervention services;
 - b. sufficient speech-language services;
 - c. sufficient occupational therapy services;
 - d. home applied behavior analysis therapy and clinic meetings;
 - e. parent training in autism, communication skills and behavior; and
 - f. placement in the least restrictive environment?

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JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

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

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

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

the due process complaint 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 19 years old at the time of the hearing. Student assigned his educational rights to Parent on January 31, 2024. At all relevant times, Student resided with Parent within Perris Union's geographic boundaries.

Student was initially found eligible for special education at age three under the primary category of autism. Autism is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. (Cal. Code. Regs., § 3030, subd. (b)(1).) Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual response to sensory experiences. (*Id.*) Student remained eligible for special education under the category of autism throughout his educational career. Student had a history of academic, communication, social, and behavioral deficits related to autism.

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BACKGROUND

In late spring 2022, when Student was 17 years old and in 11th grade, Perris Union placed Student in the REACH Autism program operated by the Riverside County Office of Education. The REACH Autism program was a specialized program for students with autism with moderate-to-severe needs between the ages of 14 through 22. The program provided comprehensive, evidence-based practices to address

- social,
- behavior,
- communication,
- sensory,
- functional academic, and
- daily living skills.

The REACH Autism program team included

- a credentialed special education teacher,
- a speech-language pathologist,
- an intensive behavior intervention specialist,
- a board-certified behavior analyst, and
- an occupational therapist.

An intensive behavior intervention specialist works with children with special needs to implement positive behavior intervention plans using principles of applied behavior analysis. Applied behavior analysis is a research-based behavior therapy for individuals with autism and other developmental disorders. Its goal is to increase positive behaviors

and decrease negative behaviors. An intensive behavior intervention specialist and/or a board-certified behavior analyst provided supports to the teacher, staff and students in the REACH Autism classroom one and one-half to two hours weekly.

Student attended REACH Academy for six weeks at the end of the 2021-2022 school year. Credentialed special education teacher Stephanie Armstrong was Student's teacher. Armstrong had been employed as an education specialist for the Riverside County Office of Education for four years. Previously, she worked as an instructional aide for another school district in both mild-to-moderate and moderate-to-severe special day classes.

During the six-week period, Armstrong kept demands on Student minimal to build trust. Student displayed maladaptive behaviors and sensory deficits, including asking for preferred items repeatedly, destroying property, self-injurious behavior, and physical aggression. Armstrong regularly communicated with Parent about Student's behaviors through telephone calls and behavior logs. Parent told Armstrong Student was prescribed medication to help him self-regulate his behavior.

THE AUGUST 31, 2022 IEP

Perris Union convened an IEP team meeting on August 31, 2022, for the purpose of developing Student's educational program for the 2022-2023 school year. The August 31, 2022 IEP identified Student's areas of need as

- vocational reading, writing, and math,
- communication,
- behavior and self-regulation,

- transition education-employment, and
- adapted physical education.

In preparation for the August 31, 2022 IEP team meeting and with Parent's consent, the Riverside County Office of Education conducted a functional behavior assessment and prepared a June 20, 2022 report. The functional behavior assessment targeted Student's maladaptive behaviors of destroying property, self-injurious behavior, and physical aggression. The antecedents of Student's behavior were seeking attention and access to a preferred activity or person. The functional behavior report recommended that replacement behaviors be taught and reinforced and for the IEP team to develop behavior goals in self-management and a positive behavior intervention plan. The report also recommended Student continue to receive one-to-one aide support to implement the positive behavior intervention strategies with fidelity.

The August 31, 2022 IEP offered Student:

- specialized academic instruction for 1,920 minutes per week;
- speech-language services in two, 20-minute group sessions per month;
- occupational therapy in two, 15-minute sessions per month;
- adapted physical education services in three, 20-minute sessions per month;
- travel and mobility services in 30 minutes weekly, group sessions;
- vocational, counseling, guidance, and career assessment services 30 minutes monthly in a group;

- job coaching services 30-minutes weekly;
- daily curb-to-curb transportation in two, 60-minute sessions daily; and
- extended school year services.

Although not explicitly stated in the August 31, 2022 IEP, evidence at hearing established Student received intensive individual services, called a one-to-one aide, during daily transportation and throughout the school day. The August 31, 2022 IEP also offered supplementary aids, services, and other supports, including access to oral supports, movement breaks, adapted seating, and a sensory diet.

The August 31, 2022 IEP contained a self-regulation goal consistent with the recommendation of the functional behavior report. The goal aimed for Student to demonstrate appropriate on-task behavior during academic work and group activities for at least 15 minutes with no more than one visual prompt in four of five days. The goal included visual supports, such as a token system or first-then timer, and sensory strategies, including weighted equipment, sensory breaks, or movement opportunities.

Parent consented to the August 31, 2022 IEP on September 10, 2022.

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ISSUE 1: DID PERRIS UNION DENY STUDENT A FAPE AT THE MARCH 6, 2023 IEP TEAM MEETING BY FAILING TO OFFER AN EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT?

Student contends Perris Union denied Student a FAPE in the March 6, 2023 IEP meeting by failing to offer an educationally related mental health services assessment. Student further contends Perris Union had notice of the need to be assessed because it knew of Student's social anxiety and behavioral difficulties.

Perris Union contends there was no reason to conduct an educationally related mental health services assessment because Student's behavioral needs were being met by the implementation of a positive intervention plan. Perris Union further contends Student did not prove Perris Union was aware of a need for mental health services, and there was no request by Parent or a teacher for an educationally related mental health assessment during the March 6, 2023 IEP team meeting.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards are provided 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); 34 C.F.R. §§ 300.320, 300.321, and 300.501; and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make

progress appropriate considering the child's circumstances. (*Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

For a child who is already eligible for special education, the IDEA provides for reevaluations to be conducted no more frequently than once a year, but at least every three years, unless the parent and the school district agree otherwise. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).) Reevaluations serve the purpose of helping IEP teams identify the special education and related services required by an eligible student as their education progresses. (34 C.F.R. §§ 300.301 (2007), 300.303; see Comments, 71 Fed. Reg. 46,640 (Aug. 14, 2006).) Reevaluations must be sufficiently comprehensive to identify all the child's special education and related service needs, whether commonly linked to the child's disability category. (34 C.F.R. § 300.304(c)(6).) California law refers to evaluations as assessments, and the terms evaluation and assessment are used in this Decision interchangeably. (Ed. Code, § 56302.5.)

A school district is not required to reassess more often than every three years unless one of the following occurs:

- the school district determines that the educational or related service needs, including improved academic achievement and functional performance of the student, warrant a reassessment;
- a parent requests reassessment; or
- a teacher requests reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

Student's three-year evaluation was due on or before August 23, 2023, during the 2023-2024 school year. Therefore, Student's three-year evaluation was not due during the 2022-2023 school year, unless Perris Union determined Student's educational or related service needs, including improved academic achievement and functional performance, warranted a reassessment or Parent or a teacher requested a reassessment. (20 U.S.C. §§ 1414(a)(B)(ii), 1414(c)(4); 34 C.F.R. § 300.303(b)(2); Ed. Code, § 56381, subd. (a)(2); *M.S. v. Lake Elsinore Unified Sch. Dist.* (9th Cir. 2017) 678 Fed.Appx. 543, 544 (nonpub. opn.) (school district had no duty to conduct a reevaluation of student because school district did not determine that a reevaluation was necessary, and neither parents nor student's teacher requested a reevaluation).)

A school district's failure to conduct appropriate assessments or reassess in all areas of suspected disability may constitute a procedural denial under the IDEA. (*Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033 (*Park*).) A procedural violation results in liability for denial of a FAPE only if the violation impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).)

An educationally related mental health services assessment is used to determine if a student qualifies for educationally related mental health services. Educationally related mental health services are provided to students receiving special education services when the student has significant social, emotional, and/or behavioral needs that impede their ability to benefit from special education services, supports, and placement.

Student failed to prove that Perris Union had a duty to refer Student for an educationally related mental health services assessment at the March 6, 2023 IEP team meeting. Parent did not request an educationally related mental health assessment on or before the March 6, 2023 IEP team meeting. No teacher requested an assessment in mental health, nor did Perris Union determine such an assessment was necessary at the time of the March 6, 2023 IEP team meeting.

During the 2022-2023 school year, Student was in 12th grade and continued to attend the REACH Autism program at Temescal Canyon High School. Student's August 31, 2022 IEP was the operative IEP at the start of the 2022-2023 school year through March 6, 2023. Armstrong continued as Student's special education teacher during the 2022-2023 school year. Armstrong's class had approximately 13 students, most of whom had one-to-one instructional aides. The classroom was highly structured with a focus on functional academic and basic living skills to increase independent living. The program had embedded behavior and sensory supports, including sensory diets to support self-regulation. The program taught functional living skills, such as washing dishes, doing laundry, and checking in and out of the classroom. In addition, the program focused on college and career awareness skills, including filling out applications, model interviews, and community outings. For purposes of mainstreaming with typical peers, students interacted with the general student population during adapted physical education, in the cafeteria, and during pep rallies and school-wide assemblies.

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Armstrong worked with Student on his transition, functional academic, behavior-sensory, employment, and independent living goals. Armstrong observed Student, collected data, and tracked Student's progress towards his goals. Although Student worked hard and used his best efforts, he demonstrated attention and sensory seeking behaviors such as

- repeating an adult's name,
- humming,
- clapping his hands,
- dropping to the ground and rolling around, or
- trying to flip his body.

During fall 2022, Student participated in classroom routines and was generally able to self-regulate through implementation of his positive behavioral supports. Student benefitted from a token board, verbal and gestural prompts, and movement and sensory breaks. He could ask for help when trying to self-regulate. The intensive behavior interventionist kept daily data about Student's behaviors, and sent weekly notes to Student's teacher and the school principal. Student greeted staff and demonstrated appropriate physical distance with classmates and staff. He recognized and communicated emotions by other students. For example, he could say, "my friend needs a break" or "you ok?" Student showed enthusiasm for preferred activities, including snack time, adapted physical education, and dance-movement time. Approximately twice weekly he

- appeared anxious and put his hands over his ears,
- hummed a tune,
- cried silently,
- bit his hand,

- rocked back and forth, or
- dropped to the ground.

Student turned 18 years old on January 19, 2023. Following the winter break in January 2023, Student had more frequent and intensive behaviors. Student became dysregulated by loud noises, work demands, and being denied access to preferred items, such as food. Student repeatedly asked for items and/or repeated a staff member's name. Student engaged in self-injurious behaviors, dangerous behavior towards others, and destruction of property. For example, he

- ran into walls or bookshelves,
- banged on doors or windows,
- punched items,
- hit classmates, and
- jumped up and down in proximity to classmates while yelling and waving his fists in the air.

THE MARCH 6, 2023 IEP TEAM MEETING AND AMENDMENT

All students may receive individual instruction in their home, a hospital or other health facility when a temporary disability makes attendance in a regular program impossible or inadvisable. (Ed. Code, § 48206.3, subds. (a), (b).) Whether a special education student receives home hospital instruction is a decision for an IEP team. (Cal. Code Regs., tit. 5, § 3051.4.) Home hospital instruction is generally a temporary placement and is not appropriate for a student whose needs can be met in a less restrictive environment.

On March 2, 2023, Student became dysregulated and engaged in dangerous behaviors. Student threw himself head-first into a bookshelf, slammed his head on the floor, and damaged property in the classroom. Armstrong and staff were present and could not control Student's behaviors.

Perris Union convened an emergency IEP team meeting four days later on March 6, 2023. The IEP team included

- school psychologist Dr. Maggie Carrillo-Blades,
- Armstrong,
- program specialist Chad Shaner,
- a speech-language pathologist,
- an occupational therapist,
- program nurse Heather Hargraves,
- Intensive Behavior Intervention Manager Dr. Awit Dalusong,
- Riverside County Office of Education Administrator Randi Chapluk and
- principal Kara Unger.

Parent provided verbal consent for the IEP team to meet without her. The purpose of the meeting was to address Student's behaviors and consider a change of placement.

Dr. Dalusong testified at hearing. Dr. Dalusong held a doctorate degree in education and was a board-certified behavior analyst. She worked as an intensive behavior intervention manager for the Riverside County Office of Education for 18 years. She was responsible for supervising, coordinating, and overseeing Riverside County Office of Education's Intensive Behavioral Intervention Program for students in the school, home, and community settings. Dalusong oversaw board-certified behavior

analysts and intensive behavior intervention specialists providing applied behavior analysis services to students in the county's programs. She conducted functional behavior assessments, attended IEP team meetings, supervised implementation of behavior intervention plans, visited classrooms, and supported teachers.

Dalusong was familiar with Student from contributing to Student's June 20, 2022 functional behavior assessment and report, observing Student in the REACH Autism classroom at least one time every other month, and attending IEP team meetings held on August 31, 2022, and March 6, 2023. Dalusong reviewed Student's positive behavior intervention plan with the March 6, 2023 IEP team.

Student's teacher, one-to-one aide, and intensive behavior intervention specialist implemented positive interventions to support Student's behavior needs, including

- frequent walks,
- access to sensory items,
- giving Student access to his Chromebook with preferred websites,
- verbal praise,
- social stories,
- timers, and
- choice of tasks.

Student demonstrated escalating unsafe behaviors despite these interventions.

Student's behaviors escalated within seconds. He engaged in behavior episodes which included

- running through the classroom,
- throwing his body against staff,
- hitting staff and students,

- slamming his head against the floor, and
- throwing his body into furniture.

On the day of the March 6, 2023 IEP team meeting, Student spent most of the day walking outside and laying on the grass to stay calm. While in the classroom, he became escalated and repeatedly asked for items that were not available. Parent shared with Armstrong prior to the IEP team meeting that Student had not been regularly taking the medication prescribed to regulate his behavior. Parent told Armstrong she was in the process of obtaining a conservatorship to facilitate health support for Student.

At hearing, Dr. Dalusong, Armstrong, Shaner, and Unger offered convincing testimony establishing the IEP team did not suspect Student's academic or functional performance warranted a mental health assessment at the time of the March 6, 2023 IEP team meeting. Each witness had a good recall of working with Student, answered questions readily and with details, and provided thoughtful opinions and explanations.

Dr. Dalusong opined that Student's behaviors were attributable to autism and were addressed through implementation of a positive behavior intervention plan and embedded supports in the REACH Autism program. Dalusong did not suspect Student's behaviors were related to a mental health condition.

Armstrong similarly opined Student's behaviors and dysregulation were related to his autism and addressed by sensory supports, breaks, and movement opportunities. Armstrong did not suspect Student's behaviors were attributable to a mental health condition. Armstrong also did not believe Student could benefit from educationally related mental health services, which typically involve talk therapy or counseling with a school psychologist.

Unger, a principal of special education for the Riverside County Department of Education held a master's degree in education, an education specialist credential, and an administrative services credential. Unger had worked in special education for 18 years. Unger's responsibilities included supervising services for students from birth to 22 years old for Riverside County Office of Education programs across 23 districts, facilitating IEP's, and conducting special education training. Unger attended 25 to 30 IEP meetings each year.

Unger was familiar with Student from observing him in the REACH Autism program and attending the March 6, 2023 IEP team meeting. Unger persuasively opined that the March 6, 2023 IEP team considered Student's behaviors resulting from autism. She did not suspect an educationally related mental health services assessment was warranted given Student's low cognitive abilities and his inability to benefit from talk therapy. Parent told Unger that she was having difficulties filling Student's medical prescriptions which were prescribed for Student's behaviors. Parent did not communicate, nor was Unger aware, of any medication prescribed for a mental health condition.

Shaner was a program specialist for Perris Union. He held a master's degree in special education and an administrative services credential. He worked as a special education teacher for 24 years. Shaner's responsibilities at Perris Union included coordinating educationally related mental health services assessments and services. Shaner was Student's case manager during the 2022-2023 school year. Shaner did not suspect Student required a mental health assessment. He opined Student's behaviors were attributable to autism, and at the time he had no reason to suspect a mental health condition or the need for an educationally related mental health services assessment.

Perris Union called Jeremy Stevens, a licensed marriage and family therapist, as an expert on the issue of educationally related mental health assessments and services. Stevens held a bachelor's degree in psychology, a master's degree in clinical psychology, and a license from the Board of Behavior Sciences. He worked as the Coordinator of Mental Health Services for the Riverside County Department of Mental Health Services since 2023. His responsibilities included overseeing licensed therapists and social workers providing mental health services to students, including students with disabilities. Previously, he worked as the Coordinator of Mental Health Services for Perris Union and as the Educationally Related Mental Health Services Coordinator for the Riverside County Office of Education. Stevens had conducted over 100 educationally related mental health services assessments, and reviewed them with IEP teams. Over the course of his career, Stevens attended hundreds of IEP team meetings. He also provided educationally related mental health services to students.

Stevens was familiar with Student from providing Parent, Student, and Student's aunt a tour of the REACH Autism program around August 2023. During the tour, Student lacked sustained attention. Student struggled with communication and social cues. He required prompts and directions to attend to the tour. He displayed some aggression by pounding his fists on a table.

Stevens also reviewed Student's educational records, including the June 2022 functional behavior assessment and report and Student's August 2022 IEP. Stevens opined that a functional behavior assessment is used to target behaviors of students with disabilities and to determine reinforcement strategies to reduce the behaviors of concern. In Stevens' opinion, the functional behavior assessment report and positive behavior intervention plan were appropriate to address Student's behavior needs, as amended over time to address any changed behaviors. He explained an educationally

related health services assessment was not warranted given Student's low cognitive functioning. Stevens convincingly opined the fact Student took medication to address his behaviors related to autism did not trigger a suspicion Student had mental health needs requiring a mental health assessment. No expert contradicted Stevens' opinions. Stevens' education, credentials, and experience rendered his testimony persuasive. At hearing, Stevens answered questions candidly and exhibited a strong understanding of assessment procedures and educationally related mental health theory and practices. Stevens' testimony was given significant weight.

The March 6, 2023 IEP team was concerned about Student's safety and that of others, and believed home hospital instruction was an appropriate temporary placement. The IEP team believed home hospital instruction was appropriate to ensure Student's safety and that of others while Parent obtained Student's medication and Perris Union located an appropriate nonpublic school placement.

Student argued, without corroborating evidence such as assessments, medical reports, or witness testimony, that Perris Union should have determined an educationally related mental health services assessment was warranted because Student was prescribed medication to control his behaviors and social anxiety. Student offered no expert testimony about the reasons for the prescribed medication or how they related to Student's mental health needs. Autism is not a mental health condition. Student conflated behaviors commonly attributable to autism with a mental health condition. No evidence demonstrated that emotional issues interfered with Student's learning or that Student required mental health testing. No members of the March 6, 2023, IEP team determined Student's educational or related service needs warranted a mental health assessment. (Ed. Code, § 56381, subds. (a), (b).) Student questioned 16 witnesses during the seven-day hearing. None of the witnesses, including Parent, suspected Student had a

mental health disorder or referred Student for an educationally related mental health services assessment at the March 6, 2023 IEP team meeting. In fact, Parent did not raise the issue of educationally related mental health services as a desired area of assessment until she filed the complaint for due process hearing.

Student failed to show by a preponderance of the evidence that Perris Union denied Student a FAPE by failing to offer an educationally related mental health services assessment at the March 6, 2023 IEP team meeting.

Perris Union prevailed on Issue 1.

ISSUE 2: DID PERRIS UNION DENY STUDENT A FAPE AT THE MARCH 6, 2023, IEP MEETING BY PREDETERMINING THE IEP WITHOUT PARENT PRESENT?

Student contends Perris Union held the March 6, 2023 IEP team meeting without Parent's participation and predetermined changes to Student's placement. Perris Union contends it held an emergency IEP team meeting to address Student's behaviors which posed a risk to Student and others, and that Parent authorized Perris Union to hold the meeting without her. Perris Union further contends IEP team members met with Parent following the IEP team meeting and discussed the IEP team's concerns about Student's safety and the recommendation for a change of placement. Perris Union argues that Parent and Student provided consent to the March 6, 2023 IEP amendment.

Predetermination of a student's placement is a procedural violation under the IDEA. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(b) and (c)(1); Ed. Code, § 56304, subd. (a).) Predetermination occurs when placement is determined without parental involvement in developing the IEP. (34 C.F.R. §§ 300.327, 300.501(c)(1); *Deal v. Hamilton*

County Bd. of Educ. (6th Cir. 2004) 392 F.3d 840, 858 (*Deal*).) A school district violates the IDEA if it predetermines placement for a student before the IEP is developed or steers the IEP team to a predetermined placement. (*Target Range, supra*, 960 F.2d 1479, 1484.) A district may not arrive at an IEP team meeting with a take it or leave it offer. (*JG v. Douglas County Sch. Dist.* (9th Cir. 2008) 552 F.3d 786, 801, f. 10.)

An IEP is not predetermined simply by meeting to discuss a child's programming in advance of an IEP team meeting. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693, fn. 3.) Although school district personnel may bring a draft IEP to the meeting, parents are entitled to a full discussion of their questions, concerns, and recommendations before an IEP is finalized. (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*); Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers with Disabilities 64 Fed. Reg. 12406, 12478 (March 12, 1999).)

Special education law places a premium on parental participation in the IEP process. IEP team meetings must include the parents of a child with a disability. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.344(a)(1); Ed. Code, § 56341, subd. (b)(1).) The IEP team must consider the concerns of the parent for enhancing the student's education, as well as information provided by the parent about the student's needs. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3), & (f).) A school district's predetermination of an IEP seriously infringes on parental participation in the IEP process. (*Deal, supra*, 392 F.3d 840, 858.)

The right of parental participation must be considered concurrently with the legal provisions regarding the transfer of educational rights to student with exceptional needs who reach the age of majority. When a student with exceptional needs reaches the age

of majority under state law, except for a student who has been determined to be incompetent under state law, any notice of procedural safeguards required by title 20 United States Code section 1415 shall be provided to both the student who is 18, and the parents. All other rights accorded to parents shall transfer to the student. (20 U.S.C. § 1415(m); Ed. Code, § 56041.5.) Accordingly, a parent of such an adult student only retains the right to receive notice of procedural safeguards. The right to participate in IEP team meetings regarding the identification, evaluation, educational placement, and the provision of a FAPE to the adult student is transferred from parent to student upon the student's reaching the age of majority. Educational agencies must thereafter afford the adult student the opportunity to participate in such IEP team meetings, not the student's parent.

Student turned 18 on January 19, 2023, and was not conserved at the time of the March 6, 2023 IEP team meeting or at hearing. Accordingly, without evidence to the contrary, Student held educational rights as of March 6, 2023. This legal conclusion is consistent with the documentary and testimonial evidence presented at hearing, including Parent's testimony. (See *Parent v. Fremont Unified School Dist.* (March 10, 2021) OAH Case No. 2020100499 (holding school district had no legal obligation to include parent in the IEP team meeting where student held educational rights).) OAH decisions are not binding precedent, but may be persuasive. (Cal. Code Regs., tit. 5, § 3085.)

Perris Union had no legal obligation to include Parent in the March 6, 2023 IEP team meeting because Student held educational rights. Therefore, Student failed to prove that Perris Union's failure to include Parent at this meeting denied Student a FAPE.

Student did not raise any issues regarding Perris Union's convening the March 6, 2023 IEP team meeting without Student. Accordingly, this Decision does not analyze or make legal conclusions regarding Perris Union's convening the IEP team meeting without Student.

Even if Perris Union committed a procedural violation by failing to include Parent in the March 6, 2023 IEP team meeting, the evidence did not establish Parent was significantly denied participation in the development of Student's IEP. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *Target Range, supra*, 960 F.2d 1479, 1484.) The evidence was undisputed Parent consented to the IEP team meeting proceeding without her.

The March 6, 2023 IEP team discussed Student's behavior plan and strategies to handle his behaviors, including visual schedules and a token board. The IEP team determined Student required additional supports to maintain Student's safety and that the REACH Autism program could not address Student's behavioral needs at the time. Perris Union offered Student home hospital instruction pending its efforts to locate a nonpublic school placement.

Student offered no evidence that Perris Union's IEP team members decided on the offer of home hospital instruction prior to the March 6, 2023 IEP team meeting, and refused to consider other alternatives.

Armstrong, Unger, Dr. Delasong, and Shaner offered unrefuted testimony that the IEP team discussed Student's behavior intervention plan and whether changes could be made to allow Student to remain at the REACH Autism program. After a thorough review of Student's behavior intervention plan and considering plausible modifications, and considering the safety to Student and others, the March 6, 2023 IEP team offered

home hospital instruction as a temporary placement. No evidence suggested Student's placement was determined before the March 6, 2023 IEP amendment was developed. (*Target Range, supra*, 960 F.2d 1479, 1484.)

Following the IEP team meeting, Parent met in person with Unger and Armstrong to review the IEP. Unger reviewed the IEP team notes with Parent, answered Parent's questions, and explained the placement offer to home hospital instruction while it explored a nonpublic school placement. Parent agreed to a change of placement to home hospital instruction. Parent and Student signed the March 6, 2023 IEP amendment document. At no time did Parent request another meeting or express concerns or disagreement to the IEP amendment.

Further, Student did not offer persuasive evidence that holding the IEP team meeting without Parent impeded his right to a FAPE or caused a deprivation of educational benefit. "A loss of educational opportunity occurs, for example, when there is a 'strong likelihood' that, but for the procedural error, an alternative placement 'would have been considered.'" (*D.O. by and Through Walker v. Escondido Union Sch. Dist.* (9th Cir. 2023) 59 F.4th 394, 414-17, citing *Timothy O. v. Paso Robles Unified Sch. Dist.* (9th Cir. 2016) 822 F.3d 1105, 1124.) Student did not offer proof that absent a procedural error, there was a strong likelihood that alternative educational opportunities for Student would have been considered, as was his burden. (*Id.* at p. 414.) Student did not explain what alternative education possibilities would have been better considered. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1047, citing *M.L. v. Federal Way Sch. Dist.* (9th Cir. 2005) 394 F.3d 634, 657 (*M.L.*).)

On August 7, 2023, Parent consented to a change of placement for Student from home hospital instruction to Leroy Haynes School for Autism, called Leroy Haynes. Leroy Haynes was a nonpublic school under contract with Perris Union.

Student did not prove by a preponderance of the evidence that Perris Union denied him a FAPE at the March 6, 2023 IEP team meeting by offering a predetermined IEP without Parent participation.

Perris Union prevailed on Issue 2.

ISSUES 3a, 3b, 3c, 3d AND 3e: DID PERRIS UNION DENY STUDENT A FAPE BY FAILING TO OFFER NECESSARY SPECIAL EDUCATION SERVICES IN THE AUGUST 22, 2023 IEP?

ISSUE 3a: BEHAVIOR INTERVENTION SERVICES

Student contends Perris Union denied him a FAPE in the August 22, 2023 IEP by failing to offer behavior intervention services. Perris Union contends the August 22, 2023 IEP offered Student extensive services and supports to address his behavior deficits, including a one-to-one aide, a behavior intervention plan, and placement in an autism classroom at Leroy Haynes with embedded behavior supports.

Parents and school personnel develop an IEP for a special education 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 (2007), 300.321 (2006), and 300.501 (2006).) An IEP provides a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in

the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a)(1)-(4).)

Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) Related services, when needed, are determined by the IEP team. (Cal. Code Regs., tit. 5, 3051, subd. (a)(1).) The IEP must show a direct relationship between present levels of performance, goals, and specific educational services to be provided. (Cal. Code Regs., tit. 5, 3040, subd. (b).)

A student's educational needs are broadly construed to include the student's academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, abrogated in part on other grounds by *Schaffer, supra*, 546 U.S. 49.) Educational benefit is not limited to academic needs, but also includes the 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 (*County of San Diego*).)

When developing, reviewing, or revising an IEP, the IEP team should determine whether behavioral supports are needed to ensure a FAPE to the child, including:

- 1) special education and related services;
- 2) supplementary aids and services; and

- 3) program modifications or supports for school personnel. (34 C.F.R. §§ 300.320(a)(4), 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1); Office of Special Education and Rehabilitative Services “Questions and Answers Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions,” Question A-4 (July 19, 2022).)

When a child’s behavior impedes the child’s learning or that of others, the IEP team must consider strategies, including positive behavioral interventions and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) and (b) (2017); Ed. Code, § 56341.1, subd. (b)(1).) The Legislature intended that children with serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions. (Ed. Code, § 56520, subd. (b)(1) & (2).) An IEP that does not appropriately address behaviors that impede a child’s learning denies a student a FAPE. (*County of San Diego, supra*, 93 F.3d 1458, 1467-68.)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district’s offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district’s offer must be designed to meet the student’s unique needs, comport with the student’s IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann, supra*, 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed, by looking at

the IEP's goals and goal-achieving methods at the time the IEP was implemented and determining whether the methods were reasonably calculated to confer an educational benefit. (*Adams, supra*, 195 F.3d at p. 1149.)

Student's annual IEP was scheduled for August 22, 2023. At Parent's request, the IEP team meeting was rescheduled for October 19, 2023. Perris Union held part one of Student's IEP on October 19, 2023. The IEP team required additional time to complete Student's IEP and continued the IEP team meeting to November 27, 2023. Collectively, these meetings are referred to as the August 22, 2023 IEP.

The Perris Union IEP team consisted of program specialist James Holmes, III, school psychologist Dr. Martha Samaniego, two speech-language pathologists, an occupational therapist, and an adapted physical education teacher. Leroy Haynes' IEP team members included

- administrator Margarita Olado,
- special education teacher Mercedes Fontana,
- occupational therapist Maegan Robinson,
- a speech-language pathologist, an
- adapted physical education teacher, and
- behavior specialist Vanessa Caldera.

At Parent's request, Student's adult brother attended part one of the IEP team meeting on October 19, 2023. Parent attended the November 27, 2023 IEP team meeting. Each member of the IEP team was familiar with Student because they either taught, observed, or provided services to Student.

The IEP team reviewed recent assessments including psychoeducational, speech and language, occupational therapy, and behavior. Qualified therapists and educators from Riverside County Office of Education evaluated Student in each area and presented their findings to the IEP team. A psychoeducational assessment with behavioral and social emotional components had been completed in April 2023 as part of Student's three-year evaluation.

Licensed Educational Psychologist Maggie Carrillo-Blades oversaw Perris Union's multidisciplinary team assessment of Student and contributed to a report dated April 14, 2023. Dr. Carrillo-Blades had been a school psychologist for 18 years. She worked as a school psychologist for the Riverside County Office of Education since 2007. Dr. Carrillo-Blades held a Doctor of Philosophy in school psychology and a master's degree in education. She held a clear pupil personnel services credential, which allowed her to conduct psychoeducational assessments. Dr. Carrillo-Blades' duties included conducting assessments for special education eligibility, observing students, and presenting findings to IEP teams.

Dr. Carrillo-Blades testified at hearing. Dr. Carrillo-Blades used a variety of measures to evaluate Student, including informal and structured play activities, rating scales, and standardized assessments. Dr. Carrillo-Blades evaluated Student's adaptive and self-help functioning through the Vineland Adaptive Behavior Scales, III. This rating scale assessed adaptive behavior in communication, daily living skills, and socialization. Parent and special education teacher Armstrong completed the rating scales.

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Student's overall scores on the adaptive behavior composite were in the low range with severe deficits compared to his same aged peers. Student scored in the bottom first percentile compared to his same aged peers in communication, daily living skills, and socialization. He was severely impaired in each of these domains.

In maladaptive behaviors, which measured internalizing and externalizing problems, Armstrong scored Student in the elevated range in internalizing and externalizing problems. Parent reported severe maladaptive behaviors by Student, including self-harm, compulsive behavior, and fixating on a topic or on a person.

Student is African American. California law forbids the administration of intelligence tests to African American students for the purpose of special education, and therefore no assessment was administered to examine Student's cognitive functioning. (*Larry P. by Lucille P. Riles* (9th Cir. 1984) 793 F.2d 969, 980-981.) Dr. Carrillo-Blades considered Student's communication, adaptive skills, and adaptive behavior deficits to estimate Student's age equivalencies in various domains. In the communication domain, Student's receptive and expressive language skills were in the three-year-old equivalency, and his written language skills were equivalent to a five-year-old. Student's daily living skills were in the three-to-six-year-old age equivalency, and his socialization skills were at a one-to-two-year-old equivalency.

Dr. Carillo-Blades administered the Autism Rating Scales to assess symptoms and behaviors associated with autism spectrum disorder. Armstrong and Parent completed the rating scales. Armstrong's rating placed Student in the very elevated range for displaying symptoms related to autism. Student

- had difficulty using appropriate verbal and non-verbal communications for social contact,

- engaged in unusual behaviors,
- struggled with inattention and impulse control,
- engaged in stereotypical behaviors,
- had difficulty tolerating changes in routine, and
- overreacted to sensory stimulation.

Parent's rating similarly placed Student in the very elevated range for symptoms associated with autism. Parent rated Student as:

- having difficulty using appropriate verbal and non-verbal communication;
- engaging in unusual behaviors;
- displaying inattention and impulse control;
- engaging in inappropriate emotional responses in social situations;
- using atypical language; and
- difficulty tolerating changes in routine.

On the Behavior Assessment System for Children, Third Edition, a norm-referenced rating scale measuring numerous aspects of behaviors, Armstrong's scores placed Student in the clinically significant range in maladaptive behaviors. The adaptive scales represent positive or desirable characteristics. Armstrong rated Student at risk in this domain. Parent rated Student at risk to clinically significant in maladaptive behaviors, and clinically significant in adaptive skills. Armstrong and Parent rated Student in the elevated range in

- hyperactivity,
- attention problems,
- atypicality,

- adaptability,
- social skills, and
- functional communication.

Perris Union's school psychologist Dr. Martha Samaniego reviewed the April 14, 2023 multidisciplinary report at the November 27, 2023 IEP team meeting. Parent actively participated in the IEP team meeting discussions. The IEP team extensively discussed Student's

- strengths,
- weaknesses,
- current performance levels,
- recent observations, and
- test results.

Student was an enthusiastic and energetic learner. He enjoyed functional math, completing puzzles, and playing on the playground. Parent wanted Student to be more independent and not ask for help on tasks he could complete.

The IEP team determined Student continued to be eligible for special education under the category of autism. The IEP team reviewed progress on Student's prior goals. Student met or partially met his functional academic, employment, and adapted physical education goals. Student partially met his behavior goal in behavior-sensory regulation. To receive educational benefit, the IEP team identified Student's needs in

- vocational reading, writing, math, education and employment,
- adapted physical education,
- behavior, and
- self-regulation.

The IEP team developed nine goals in functional academics, functional living skills, behavior, self-regulation, social skills, motor control, and pragmatic language.

The August 22, 2023 IEP offered Student:

- 1,570 minutes weekly specialized academic instruction in a nonpublic school;
- 360 minutes daily one-to-one aide support;
- 120 minutes daily one-to-one aide support during curb-to-curb transportation;
- 30 minutes twice monthly collaborative group occupational therapy;
- 30 minutes weekly group speech-language services;
- 90 minutes yearly transition services;
- 30 minutes weekly adapted physical education; and
- extended school year services, including
 - specialized academic instruction,
 - a one-to-one aide,
 - speech-language services,
 - occupational therapy,
 - adapted physical education, and
 - transportation.

Perris Union offered continued placement at Leroy Haynes. The autism classroom at Leroy Haynes had fewer students, a higher adult-to-student ratio, and many embedded services to support students with autism.

Parent consented to the August 22, 2023 IEP on January 10, 2024.

POSITIVE BEHAVIOR INTERVENTION PLAN

The August 22, 2023 IEP team considered Student's behaviors and their impact on his ability to access his educational program. The IEP team determined Student's behaviors impeded his learning and learning of his peers.

Behavior specialist Vanessa Caldera reviewed a tier two positive behavior intervention plan developed for Student. Tier two plans are targeted, systematic, positive behavioral interventions, strategies, and supports for students displaying at-risk behaviors. The plan was developed by Student's special education teacher, the behavior specialist, and the behavior interventionist. The plan provided targeted, systematic interventions, strategies and supports for Student. The positive behavior intervention plan identified the behaviors that impeded Student's learning, including:

- engaging in loud vocalization;
- grabbing staff's arms and clothes;
- self-injurious behavior, including biting his hand and slapping his head;
- aggression;
- repetitive speech;

- behavior outbursts; and
- eloping from a designated area without permission.

The plan described the frequency, intensity, and duration of the problem behaviors, along with environmental factors and predictors for behaviors. The plan identified skills Student needed to learn to replace the inappropriate conduct, and specified goals to be included in Student's IEP. The suggested goals included independently requesting attention from a staff person or peer using appropriate communication and independently identifying the need for a break or to leave an area.

The positive behavior intervention plan described teaching strategies and reinforcement methods to reinforce the desired behaviors, including

- verbal praise,
- short breaks,
- modeling appropriate behavior,
- visual reminders,
- prompting, or
- offering a nutritious snack.

The plan provided reactive strategies if Student's behavior continued to escalate in frequency, intensity, or duration. The reactive strategies included

- prompting Student to switch to a replacement behavior,
- safely managing the problem behavior,
- debriefing and/or additional practice after the problem behavior subsided, and
- return of Student to his schedule and work for reinforcers.

The behavior intervention plan would be implemented at school by the full-time, one-to-one behavior aide under the supervision of a board-certified behavior analyst.

BEHAVIOR GOALS

The IEP team developed three behavior goals consistent with the positive behavior intervention plan. Goal number six aimed for Student to complete both preferred and non-preferred tasks in four of five opportunities a week with no more than one verbal prompt over two consecutive weeks. Goal number 10, a self-regulation goal, aimed for Student to identify two interceptive cues, such as sweaty palms, clenched fists, or increased heart and breathing rate, for three emotions, such as happy, sad, or mad, in three of four trials given prompt fading strategies and supports. Goal number 12 sought for Student to independently request attention from peers or staff using appropriate communication in eight of 10 opportunities across two consecutive weeks.

ONE-TO-ONE AIDE, ACCOMMODATIONS, AND SUPPORTS

The August 22 2023, IEP offered Student 360 minutes daily one-to-one aide support during the school day. In addition, the IEP offered Student 120 minutes daily one-to-one aide services to support Student during door-to-door transportation.

The IEP offered Student aids, services, program accommodations, and supports including:

- access to supplementary sensory items and a sensory diet;
- movement breaks and adapted seating;

- oral supports, weighted input, tactile activities such as putty and hand fidgets to support self-regulation; and
- six hours, four times yearly staff professional development.

Student did not offer evidence, including assessments or expert testimony, of any additional or different behavior services or interventions he required to receive a FAPE. Student did not challenge the adequacy of the goals, the behavior intervention plan, or accommodations. Student did not explain why he believed the August 22, 2023 IEP's behavior components were insufficient.

In his closing brief, Student inexplicably argued Perris Union failed to offer any behavior intervention services in the August 22, 2023 IEP, despite the overwhelming evidence to the contrary. This argument ignored the numerous behavioral supports provided to Student, including a dedicated one-to-one aide, a behavior intervention plan, embedded classroom support by a behavior interventionist supervised by a board-certified behavior analyst, and a variety of accommodations to address Student's sensory deficits. Therefore, Student failed to prove by a preponderance of evidence that Perris Union denied him a FAPE in the August 22, 2023 IEP by failing to offer behavior intervention services.

Perris Union prevailed on Issue 3a.

ISSUE 3b: SUFFICIENT SPEECH-LANGUAGE SERVICES

Student contends the August 22, 2023 IEP did not offer a FAPE because it did not offer sufficient speech-language services. Perris Union contends that the August 22, 2023 IEP's offer of 30 minutes weekly group speech-language services appropriately

addressed Student's needs. Related services may include speech-language services when appropriate. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

In August 2022, the IEP team determined Student had needs in receptive and expressive language. The IEP goal for receptive-expressive language was for Student to answer what, where, and who questions using at least four-word utterances without using echolalia (or repetitive language) with 80 percent accuracy in four of five days. As of October 19, 2023, the speech-language pathologist reported that given visuals, Student could answer what, where, and who questions using at least four-word utterances without using echolalia. Student made progress in receptive-expressive language achieving the goal with 60 percent accuracy instead of the targeted 80 percent. Student could answer what, where, and who questions using single words.

Receptive and expressive language continued to be areas of need for Student. The August 22, 2023 receptive language goal was for Student to use at least four-word utterances to ask or answer questions, talk about a picture, or participate in a class activity using visual or verbal cues, such as "use more words" with 80 percent accuracy in four of five days. The IEP team offered a new expressive language goal. Student's baseline showed Student demonstrated initial readiness skills for calling 911 by stating hello and stating his personal information. The goal aimed for Student, given visual supports and a verbal situation, to verbally or visually choose whether it was appropriate or not appropriate to call 911. To support Student's progress on the speech-language goals, the IEP team increased Student's speech-language services from 20-minutes twice per month to 30-minutes weekly in a group setting.

At hearing, Student did not present evidence challenging the adequacy of the speech-language services offer. Student did not offer a speech-language assessment,

call a pathologist as a witness, or elicit testimony from any of Perris Union's witnesses challenging the adequacy of the services. Parent and Student's brother did not express concerns or disagreements about the duration, frequency, or length of the speech - language services.

Student failed to meet his burden of proof and establish, by the preponderance of the evidence, that Perris Union denied Student a FAPE in the August 22, 2023 IEP by failing to offer sufficient speech-language services.

Perris Union prevailed on Issue 3b.

ISSUE 3c: SUFFICIENT OCCUPATIONAL THERAPY SERVICES

Student contends the August 22, 2023 IEP did not offer a FAPE because it did not offer sufficient occupational therapy. Perris Union contends that the August 22, 2023 IEP's offer of occupational therapy appropriately addressed Student's needs.

Related services may include occupational therapy services as may be required to assist a student with a disability to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

The August 22, 2023 IEP team reviewed Student's needs in occupational therapy. Student demonstrated appropriate visual motor integration skills when navigating video applications on the classroom laptop. He could independently type and search videos of interest. He benefited from a weighted pencil to help with fine motor control and stability. Student continued to have deficits in self-regulation, particularly when redirected to a non-preferred task. The IEP team determined Student had needs in self-regulation.

Occupational therapist Maegan Robinson worked for Building Blocks Therapy for Kids and provided services to students at Leroy Haynes. She was familiar with Student from overseeing the occupational therapist providing direct services to Student, reviewing Student's present levels of performance and progress on goals, and developing new goals.

Robinson testified at hearing. Robinson had been an occupational therapist for over 10 years. She held a master's degree in psychology and a master's degree in occupational therapy. Robinson had extensive experience providing direct services to students and consultative services to educators, paraeducators, and parents. At the time of the August 22, 2023 IEP team meeting she provided consultation and oversight services only, and did not provide direct services to Student. Robinson's testimony was professional and measured. No witness contradicted her opinions. Robinson's testimony was afforded substantial weight.

Robinson said Student's occupational therapy related need at the time of the August 22, 2023 IEP was in self-regulation. Student's classroom had embedded occupational therapy supports. An occupational therapist or occupational therapist assistant visited the classroom daily to provide consultative services to the educational specialist and staff. Student had access to sensory items and a sensory diet, breaks between activities, and assistance with transitions between preferred and non-preferred activities. Student used movement breaks, including walking or running outside, to improve focus in the classroom.

At the time of the August 22, 2023 IEP team meeting, Student had partially met his prior IEP goal in behavior-sensory regulation. This goal required Student to show appropriate on-task behavior during academic work and group activities, using visual

support and sensory strategies, for at least 15 minutes with no more than one visual prompt in four of five days. Student could engage in appropriate behaviors using visual supports and sensory strategies for up to 10 minutes with more than eight prompts in four of five days.

The August 22, 2023 IEP offered two new goals. The first goal, a self-regulation goal, required Student to identify two interceptive cues, such as sweaty palms or clenched fists, for three emotions in three of four trials given prompt fading strategies and visual supports. The second goal, a writing goal, required Student to identify and explain five career choices when given a visual list. The goal aimed for Student to type his answers, with no more than one verbal prompt in four of five opportunities in a week.

The IEP team reviewed Student's program accommodations, including access to:

- sensory items or a sensory diet;
- access to a slant board and weighted pencil to increase fine motor control during handwriting;
- movement breaks and adapted seating;
- oral supports, weighted input, and tactile activities; and
- staff professional development.

The IEP offered Student collaborative group occupational therapy for 30 minutes, twice monthly. At hearing, Robinson persuasively opined the services and accommodations, together with the embedded sensory supports in the classroom, were reasonably calculated for Student to obtain educational benefit. Robinson did not propose direct, one-to-one occupational therapy for Student. She credibly opined that the self-regulation goal required self-awareness by Student and an understanding of his

responses to external problems. All the adults working with Student, including the occupational therapist, special education teacher, and classroom staff, assisted Student with managing his sensory responses to external problems. Robinson explained an occupational therapy consultation model was appropriate to address Student's self-regulation goal. No expert refuted Robinson's opinions. Parent and Student's brother did not disagree with the proposed occupational therapy consultation services at the IEP team meetings or request anything different.

Student did not present any evidence supporting the need for additional or different occupational therapy beyond the consultation services offered in the August 22, 2023 IEP to ensure Student's access to his education or a FAPE. Student failed to submit any data, assessment, report, or expert testimony that supported Student's claim he needed occupational therapy that differed from what Perris Union offered. Student failed to meet his burden of proof on this issue.

Perris Union prevailed on Issue 3c.

ISSUE 3d: HOME APPLIED BEHAVIOR ANALYSIS THERAPY AND CLINIC MEETINGS

Student contends Perris Union denied him a FAPE in the August 22, 2023 IEP by failing to offer home applied behavior analysis services and clinic meetings. Perris Union contends Student did not meet his burden of proof on this issue.

A school district is not required to address a student's emotional or behavioral problems outside the school setting when the student demonstrates educational progress in the classroom. (*San Rafael Elementary Sch. Dist. v. California Special Educ. Hearing Office* (N.D. Cal. 2007) 482 F.Supp.2d 1152, 1161 (*San Rafael*), citing *County of*

San Diego, supra, 93 F.3d 1458, 1467.) A school district is required to address behavioral problems outside the academic setting "only to the extent they affect the educational progress of the student." (*San Rafael, supra*, 482 F.Supp.2d at pp. 1161-1162.)

Student argued, without evidence, that he required applied behavior analysis therapy in the home and clinic settings to receive a FAPE. Student did not offer into evidence a description of applied behavior analysis. Student also did not offer any substantiating data, assessments, or witness testimony supporting Student's alleged need for an in-home or clinic based applied behavior analysis therapy program at the time the August 22, 2023 IEP was developed. For example, Student did not identify any specific behaviors in the home that adversely affected Student's ability to access his educational program, such as school refusal. Student offered no evidence about the need for clinic based applied behavior analysis therapy, and apparently abandoned this issue.

Student previously received in-home applied behavior analysis services through the regional center, and not the school district, until 2021. At hearing, Parent testified that she believed applied behavior analysis in the home setting would be beneficial. Student displayed some maladaptive behaviors at home during home hospital instruction following the March 6, 2023 IEP team meeting. Parent did not articulate at hearing or at the November 27, 2023 IEP team meeting any specific behavioral problems occurring at home that required intervention through applied behavior analysis therapy. Parent admitted she did not request applied behavior analysis services from Perris Union. Perris Union did not have details related to how Student's behaviors at home affected his ability to access his education. No member of the IEP team recommended Student receive in-home or clinic based applied behavior analysis therapy.

Perris Union's Director of Special Education Amil Alzubaidi testified at hearing. Alzubaidi explained that an IEP team makes the determination about whether a student requires in-home applied behavior analysis services. For those students who require intensive supports, an IEP team member may refer a student for an assessment. In such cases, an assessment plan would be generated, the assessment conducted, and then reviewed by an IEP team. Here, Parent did not request an assessment for in-home applied behavior analysis therapy. Perris Union did not believe Student's academic or functional performance warranted an assessment in this area.

Student failed to prove by a preponderance of the evidence that Perris Union denied Student a FAPE by failing to offer home applied behavior analysis services and clinic meetings in the August 22, 2023 IEP.

Perris Union prevailed on Issue 3d.

ISSUE 3e: PARENT TRAINING IN AUTISM, COMMUNICATION SKILLS, AND BEHAVIOR

Student contends Perris Union denied him a FAPE in the August 22, 2023 IEP by failing to offer parent training in autism, communication skills, and behavior to receive a FAPE. Perris Union contends Student failed to meet his burden of proof on this issue.

Related services required to assist a student with exceptional needs to benefit from special education may include parent training. (Ed. Code, 56363, subd. (b)(11).) In California, related services must be provided "as may be required to assist an individual

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with exceptional needs to benefit from special education.” (Ed. Code, § 56363, subd. (a).) The IDEA and the California Code of Regulations define parent counseling and training as:

- assisting parents in understanding the special needs of their child;
- providing parents with information about child development; and
- helping parents acquire the necessary skills that will allow them to support the implementation of their child’s IEP. (34 C.F.R. § 300.34(c)(8); see also Cal. Code Regs., tit. 5, § 3051.11, subd. (a).)

Student did not meet his burden of proving that Perris Union denied him a FAPE in the August 22, 2023 IEP by failing to offer parent training in autism, communication skills, and behavior. Student did not offer evidence establishing Parent needed training in autism, communication skills, and behavior to understand Student’s special needs, to understand Student’s development, or to acquire necessary skills to implement Student’s IEP. Further, Student did not offer evidence, including assessments or expert testimony, about what specific training Parent needed or why, or of the type, amount, or duration of training Student contends should have been included in his IEP.

Parent did not request training from Perris Union staff or administration prior to or at the August 22, 2023 IEP team meeting. Parent also did not ask questions indicating she needed training in autism, communication skills, and behavior for Student to receive a FAPE. No member of the August 22, 2023 IEP team recommended parent training as a necessary related service. While Parent testified she would have benefited from training, the evidence did not demonstrate training was necessary for Student to receive a FAPE.

Further, Leroy Haynes offered parent training to all parents four times a year. During the 2023-2024 school year, Parent did not attend the trainings. Parent's decision not to participate in parent trainings further demonstrated that Parent did not require parent training for Student to receive a FAPE.

Student failed to prove by a preponderance of the evidence that Perris Union denied him a FAPE in the August 22, 2023 IEP by failing to offer parent training in autism, communication skills, and behavior.

Perris Union prevailed on Issue 3e.

ISSUE 3f: PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

Student contends Perris Union denied Student a FAPE in the August 22, 2023 IEP by failing to offer placement in the least restrictive environment. Student asserts that the least restrictive environment for Student was a general education classroom with supplemental aids and services.

Perris Union contends the August 22, 2023 IEP offered Student an appropriate placement in a nonpublic school program targeting Student's academic, communication, behavioral, and functional needs. Perris Union argues the placement offer was reasonably calculated to enable Student to make progress in light of his circumstances and educate him in the least restrictive environment.

A school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Gregory K., supra*,

811 F.2d 1307, 1314.) School districts are required to provide each special education student with a program in the least restrictive environment. (34 C.F.R. § 300.114; Ed. Code, § 56033.5.) California law defines “specific educational placement” as that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to an individual with exceptional needs. (Cal. Code Regs., tit. 5, § 3042, subd. (a).)

School districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers; and that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii); Ed. Code, § 56031.)

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); Ed. Code, § 56360.) In California, this includes, from least restrictive to most restrictive:

- regular education;
- resource specialist programs;
- related services;
- special classes;
- nonpublic nonsectarian schools;
- state special schools;
- specially designed instruction in settings other than classrooms;

- itinerant instruction in settings other than classrooms; and
- instruction using telecommunication, and instruction in the home, in hospitals, or other institutions. (Ed. Code, § 56361.)

The continuum of placement options is to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive environment. (71 Fed. Reg. 46,586-587 (Aug. 14, 2006.)

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

- the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into consideration the requirement that children be educated in the least restrictive environment;
- placement is determined annually based upon the child's IEP and is as close as possible to the child's home;
- unless the IEP specifies otherwise, the child must attend the school that he would attend if non-disabled;
- in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or the quality of services he needs; and

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- a child with a disability is not removed from education in age-appropriate regular classroom solely because of needed modifications to the general education curriculum. (34 C.F.R. § 300.116; Ed. Code, § 56342.)

The Ninth Circuit United States Court of Appeals set forth standards to determine whether a general education classroom is the least restrictive environment for a child with a disability in *Sacramento City Unified Sch. Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) (adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)). The court adopted a balancing test that required consideration of four factors:

1. the educational benefits available in the general education classroom, supplemented with appropriate aids and services, as compared with the educational benefits of the special education classroom;
2. the nonacademic benefits of interaction with children without disabilities;
3. the effect the student has on the teacher and children in the regular class; and
4. the costs of mainstreaming the student. (*Id.* at p. 1403.)

However, the Ninth Circuit also found that a general education placement is not the least restrictive environment for every special needs child. (*Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834 (in some cases where a child's handicap is particularly severe, it will be impossible to provide any meaningful education in a mainstream environment).)

If the IEP team determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate considering the continuum of program options. (*Daniel R.R.*, *supra*, 874 F.2d 1036, 1048 1050; see also *Clyde K. v. Puyallup Sch. Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402, superseded on other grounds as recognized in *M.L.*, *supra*, 394 F.3d 634, 665, fn. 7. (applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder).) Mainstreaming is a term used to describe opportunities for disabled students to engage in activities with non-disabled students. (*M.L.*, *supra*, 394 F.3d 634, 640, fn. 7.) The determination of whether a student can be satisfactorily educated in the regular classroom, with supplemental aids and services, is a fact specific inquiry. (*Daniel R.R.*, *supra*, 874 F.2d 1036, 1048.)

STUDENT COULD NOT RECEIVE EDUCATIONAL BENEFIT IN A GENERAL EDUCATION CLASSROOM WITH SUPPLEMENTAL AIDS AND SERVICES

Student did not prove Perris Union's placement offer in an autism classroom at Leroy Hanes was not the least restrictive environment. The preponderance of the evidence proved that Student could not be appropriately educated in the general education environment with supplemental aids and services. At the time of the August 22, 2023 IEP team meeting, Student was in 12th grade and following an alternative curriculum leading towards a certificate of completion rather than a regular high school diploma because his abilities were so far below the academic requirements

for the regular high school curriculum. Student's academic abilities in reading, writing, and math were in the kindergarten range. Student's adaptive functioning was in the well-below average range. Student engaged in self-harm and aggressive behaviors.

The IEP team that met on October 19, 2023, discussed Student's progress on his previous goals and present levels of performance. The IEP team determined Student's needs were in

- functional reading, math, and writing,
- communication,
- behavior,
- self-regulation,
- transitional education and employment, and
- adapted physical education.

The IEP team reviewed, discussed, and agreed to new goals in these areas. The IEP team determined Student continued to require a behavior support plan to address Student's loud vocalization, grabbing staff, and engaging in self-harm.

The November 27, 2023 IEP team discussed the full continuum of placement options. The IEP team determined a nonpublic school placement was the least restrictive environment for Student. Perris Union offered Student placement in an autism program at Leroy Haynes. The IEP offered Student 1,570 minutes weekly specialized academic instruction in the nonpublic school setting, together with

- a one-to-one aide,
- speech and language services,

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- occupational therapy,
- adapted physical education, and
- transition services.

At hearing, Perris Union's witnesses, including Leroy Haynes' Director of Education Olado and special education teacher Fontana offered persuasive testimony establishing placement at Leroy Haynes was the least restrictive environment for Student. Olado and Fontana were experienced in their fields, were familiar with Student and his unique needs, and offered detailed testimony about Student. Their testimony was given substantial weight.

Olado held a master's degree in education, a mild-to-moderate education specialist credential, and an administrative credential. Over the course of her 18-year career, Olado worked as an education specialist, an IEP coordinator, an administrator, and director of education. Olado's responsibilities included overseeing the Leroy Haynes' autism programs and insuring IEP's were implemented with fidelity. She attended hundreds of IEP team meetings each year.

The Leroy Haynes program focused on behavior modification, language and communication, academics, sensory and social training, transition, and technology. The classroom had imbedded behavior intervention strategies, including access to sensory items and proprioceptive input, meaning activities using muscles and joints, developed with the assistance of an occupational therapist. The classroom teacher, staff, and occupational therapist worked collaboratively to implement the sensory components.

In communication, all students were encouraged to improve their language acquisition skills. The program was staffed with a speech-language pathologist and speech-language pathologist assistant to support students' speech-language goals. For

academics, the program used a curriculum called Unique Learning Systems geared to students with moderate-to-severe disabilities. The program used core standards-based instruction that was differentiated and modified to meet each student's needs.

Olado offered detailed and convincing testimony about the appropriateness of Student's placement at Leroy Haynes as evidenced by Student's progress on his goals. She opined the program addressed Student's need for individual attention and had imbedded behavioral supports, including classroom staff trained in positive behavior techniques and strategies. Olado gave an example of a behavior incident that occurred around August 2023 when Student began attending Leroy Haynes. Student was upset because his teacher was absent that day. Classroom staff helped Student deescalate using the strategies from Student's positive behavior intervention plan and he was able to complete the school day without further incident.

Olado believed placement at a nonpublic school was the least restrictive environment for Student. Olado had a professional demeanor and answered questions readily and thoroughly. She demonstrated a solid understanding of Student's needs and the program components to meet those needs.

Olado's opinions were uncontradicted by any other expert.

Special education teacher Fontana corroborated Olado's opinions. Fontana had been a special education for 15 years. Students in Fontana's class functioned below grade level and had behavior intervention plans. The class had approximately 11 students and a one-to-one adult to student ratio. Student was supported throughout the day by a one-to-one aide.

At the start of the 2023-2024 school year, Student could say short phrases. He could copy words or phrases through typing, but could not generate his own thoughts. Fontana explained the autism class provided Student meaningful academic benefit because lessons were geared to Student's academic level. Fontana provided one-to-one academic instruction to Student three times per week based on his abilities. She moved through the content slowly to increase Student's comprehension.

Fontana opined Student made notable progress on his IEP goals during the 2023-2024 school year. She offered thoughtful and detailed testimony about Student's progress on his functional reading comprehension and math goals. Student could listen to a passage and correctly answer comprehension questions by highlighting words with visual icons. In math, Student made progress on his goal of using money to purchase items. In Fontana's view, placement at Leroy Haynes was the least restrictive environment for Student.

At hearing, Student failed to present any evidence proving Perris Union's placement offer was not in the least restrictive environment. Student did not call an expert, such as a school psychologist or inclusion expert, to testify on his behalf. Student failed to produce evidence critical of the placement decision by the August 22, 2023, IEP team. Parent did not express disagreement with the placement offer at the time the IEP was developed or at hearing. Parent did not request Student spend more time in general education.

A detailed analysis of the remaining *Rachel H.* factors is not necessary because the evidence proved Student could not be satisfactorily educated in the general education setting. (*Rachel H., supra*, 14 F.3d 1398, 1404.) Student did not offer

evidence about the non-academic benefits of placement in general education, the effect Student would have on teachers and children in a regular class, or the costs of mainstreaming Student. (*Id.*)

A SELF-CONTAINED CLASSROOM OUTSIDE THE GENERAL EDUCATION ENVIRONMENT WAS THE LEAST RESTRICTIVE ENVIRONMENT

Student did not establish the August 22, 2023 IEP failed to offer appropriate mainstreaming opportunities. The least restrictive environment analysis requires determining whether Student would be mainstreamed to the maximum extent that is appropriate considering the continuum of program options. (*Daniel R.R., supra*, 874 F.2d 1036, 1048-1050.) The October 19, 2023 IEP team discussed the potential harmful effect of Student spending 100 percent of his time outside the regular education setting with no access to typically developing peers. The IEP team agreed the benefit of Student spending 100 percent of his school day in the autism program addressed Student's needs for a smaller class size with specialized academic instruction throughout the school day. Student's need for instruction targeted at his academic and functional skills level using an alternate curriculum outweighed any potential harmful effect of reduced exposure to typical peers.

Student did not offer testimony or assessments establishing Student required more or different mainstreaming opportunities other than that offered in the August 22, 2023 IEP to obtain educational benefit. Although Student did not have mainstreaming

opportunities with typically developing peers because he was in a nonpublic school setting, the IEP team determined Student's special education and behavioral needs outweighed the opportunity to mainstream.

Student failed to prove by a preponderance of the evidence that Perris Union denied him a FAPE in the August 22, 2023 IEP by failing to offer placement in the least restrictive environment.

Perris Union prevailed on Issue 3f.

ISSUE 4: DID PERRIS UNION DENY STUDENT A FAPE BY FAILING TO HOLD STUDENT'S THREE-YEAR-REVIEW IEP TEAM MEETING IN SEPTEMBER 2023?

Student contends Perris Union denied him a FAPE by failing to hold a three-year IEP team meeting by September 1, 2023. Perris Union contends it timely held Student's annual IEP team meeting on October 19, 2023, and November 27, 2023, to accommodate Parent's schedule.

An IEP team meeting must be held at least annually. (Ed. Code, § 56343, subd. (d).) In addition, an IEP team meeting must be held when a student has received a formal assessment, demonstrates a lack of anticipated progress, or when a parent or teacher requests an IEP team meeting to develop, review, or revise a student's IEP. (Ed. Code, § 56343, subds. (a)-(c).) For a child who already is in special education, an IEP team meeting shall be held within 30 days from the date a school district receives a parent's written request for an IEP team meeting. (Ed. Code, § 56343.5.)

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The IDEA provides for periodic revaluations to be conducted not more frequently than once a year, unless the parents and school district agree otherwise, but at least once every three years unless the parents and school district agree that a revaluation 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 may also be performed if warranted by the child's educational or related service needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 303(a)(1); Ed. Code, § 56381, subd. (a)(1).) An IEP team meeting that is required because of an assessment must be held within 60 calendar days of the date the assessment plan was signed, excluding days between regular school sessions and school holidays. (Ed. Code, § 56344, subd. (a).)

The IDEA and the Education Code do not require a three-year IEP team meeting. Student conflates the requirement that a school district conduct a three-year evaluation with an obligation to hold an IEP team meeting. Here, Student did not allege Perris Union failed to timely hold an IEP team meeting following an assessment, a lack of anticipated progress, a request by Parent or a teacher, or annually. (Ed. Code, § 56343, subds. (a)-(d).) Therefore, Student failed to prove by a preponderance of the evidence that Perris Union committed a procedural violation by not holding a three-year IEP team meeting.

Perris Union prevailed on Issue 4.

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ISSUES 5a, 5b, 5c, 5d AND 5e: DID PERRIS UNION DENY STUDENT A FAPE BY FAILING TO OFFER NECESSARY SPECIAL EDUCATION SERVICES IN THE AUGUST 20, 2024 IEP?

ISSUE 5a: BEHAVIOR INTERVENTION SERVICES

Student contends Perris Union denied him a FAPE in the August 20, 2024, IEP by failing to offer behavior intervention services. Perris Union contends the August 20, 2024, IEP offered Student extensive services and supports to address Student's behavior deficits including a one-to-one aide, a behavior intervention plan, and placement at Leroy Haynes' adult transition program with embedded behavior supports.

The August 20, 2024, IEP team consisted of Olado, special education teacher and case carrier Erica Lopez, occupational therapist Robinson, speech-language pathologist Cassandra Tamayo, behavior specialist Yanelly Diaz, an adapted physical education teacher, case manager Holmes, and Parent. The IEP team reviewed Student's progress on prior goals and present levels of performance.

Behavior specialist Yanelly Diaz reported on Student's present levels of performance in behavior at the August 20, 2024 IEP team meeting. Student was energetic and enjoyed going on walks and being outside. He could follow staff directions and engaged with peers and staff with minimal prompts during group activities and social times. He sometimes engaged in

- loud vocalizations,
- grabbing,
- biting his hands,

- slapping his head,
- repetitive speech, and
- eloping (or running out of class without permission).

At the start of the school year, Student's loud vocalizations increased, but all other behaviors decreased. He had needs in communicating with words, requesting attention, and waiting for preferred tasks.

The IEP team reviewed Student's progress on his behavior goals. Student partially met his previous behavior goal of independently requesting attention from peers or staff using appropriate communication in 80 percent of opportunities across two weeks. Student could independently request attention in 20 percent of measured opportunities. Student partially met his other behavior goal of independently identifying the need for a break or to leave the area and ask for a break in 80 percent of opportunities across two consecutive weeks. Student could independently ask for a break in 30 percent of activities across two weeks.

Perris Union proposed two new behavior goals. The first behavior goal required Student to appropriately request attention by saying "excuse me" from a variety of staff without maladaptive behaviors in 80 percent of opportunities across two consecutive weeks. The second behavior goal aimed for Student to use functional communication, such as words or visuals, to request preferred items or immediate needs, with no more than one indirect verbal prompt, with no maladaptive behaviors, in 80 percent of opportunities across two consecutive weeks.

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The IEP team determined Student's behavior impeded his learning and that of others. Diaz updated Student's positive behavior intervention plan and reviewed the plan with the August 20, 2024 IEP team. The plan described the prior positive interventions, including

- precursor and antecedent behaviors,
- non-contingent reinforcement, such as scheduled breaks throughout the day and access to highly preferred items, and
- contrived opportunities for Student to use appropriate behaviors.

The positive behavior intervention plan included the behavior goals, teaching strategies and reinforcement procedures to obtain the desired behaviors, and reactive strategies to be used if Student's behavior escalated in frequency, intensity, or duration. The behavior intervention plan was attached to the August 20, 2024 IEP.

Parent was given the opportunity to ask questions about the behavior goals and positive behavior intervention plan. Parent had no questions or concerns.

The August 20, 2024, IEP offered Student 360 minutes daily one-to-one aide support. The IEP offered Student aids, services, and supports to support Student's behavior goals, including access to oral supports and weighted input, movement breaks and adapted seating, and access to sensory items and a sensory diet. The IEP offered Student continued placement at Leroy Haynes.

The weight of the evidence showed Perris Union was aware of the precursors and antecedents to Student's behaviors based on the June 2022 functional behavior assessment. The behavior specialist and board-certified behavior analyst working with Student collected and analyzed Student's behavior data and updated his behavior

intervention plan. Although Student continued to engage in some maladaptive behaviors, particularly when seeking attention, he made progress towards his behavior goals.

Perris Union's witnesses, including Diaz, Lopez, and Olado, offered detailed and convincing testimony in support of the sufficiency of the behavior supports offered in the August 20, 2024 IEP. Diaz held a master's degree in applied behavior analysis and was a board-certified behavior analyst. She was employed by Leroy Haynes as a behavior coordinator. Her responsibilities included overseeing the behavior specialists in three classrooms. She observed the behaviorists in the classrooms and helped implement behavior goals and behavior intervention plans with fidelity. She attended 40 to 60 IEP team meetings annually.

Diaz was familiar with Student from observing him between 15 to 60 minutes daily in the classroom and attending Student's August 20, 2024 IEP team meeting. At hearing, Diaz described the behavioral supports embedded within the autism classrooms at Leroy Haynes. Each classroom had a full-time behavior interventionist supervised by a board-certified behavior analyst. The teachers and staff working with students used visuals, timers, priming, and prompting to facilitate behavioral compliance. Student's special education teacher and all one-to-one aides received quarterly training from Diaz or a behavior interventionist. Diaz also trained Student's one-to-one aide and the classroom behavior interventionist on implementing Student's positive behavior intervention plan.

Diaz sometimes worked with Student directly. For example, she switched out with the classroom behavior specialist to provide Student a "fresh face." Diaz explained that changing the adults working with Student increased behavioral compliance. At

the start of the 2024-2025 school year, Diaz observed two maladaptive behaviors by Student. On one occasion, Student hit himself, and on another occasion, he dropped to the ground. When these behaviors occurred, Student's one-to-one aide and the behavior interventionist implemented Student's behavior intervention plan. They offered Student sensory fidgets, or a preferred item, and asked him to take deep breaths. Diaz opined implementation of the positive behavior intervention plan helped Student self-regulate. Diaz opined the positive behavior intervention plan and embedded supports at Leroy Haynes were sufficient to meet Student's behavior needs. Student offered no expert witness testimony contradicting Diaz's opinions.

Education specialist Lopez was Student's special education teacher at Leroy Haynes during the 2024-2025 school year starting in June 2024 and continuing through November 2024. Lopez offered persuasive testimony in support of the sufficiency of the behavior interventions offered in the August 20, 2024 IEP. Lopez held a master's degree in special education and a mild-to-moderate teaching credential. She had worked as an education specialist at Leroy Haynes for five years. She previously worked as a behavior interventionist at other nonpublic schools. She had worked in special education for approximately 14 years.

Student's class at Leroy Haynes had 10 students ages 18 to 22 and eight paraprofessionals. Lopez was responsible for implementing Student's academic and transition goals, making sure related services were implemented, and developing lesson plans. Student's class focused on

- functional academics,
- adaptive living skills,
- community experiences,

- vocational skills and
- recreation and leisure.

A typical school day included working on skills to develop independence, such as putting away one's backpack, learning social skills during "walking club" and lunch, and working on IEP goals. The class learned skills necessary to function in the community which they practiced in weekly outings. For example, students made grocery lists, calculated costs, learned to write their names and personal information and complete a job application.

Student was a quiet, positive young man. He engaged in loud vocalizations or repeated words when he wanted something. Student was supported by his one-to-one aide and an intensive behavior specialist who attended the classroom daily. The behavior interventionist collected data, shadowed one-to-one aides, and ensured Student's behavior intervention plan was implemented with fidelity.

Lopez observed two maladaptive behaviors by Student at the start of the 2024-2025 school year. On one occasion, Student became dysregulated during a transition between activities. On another occasion, Student became upset when he wanted an item and his peer was in his way. When Student was dysregulated, Lopez and Student's one-to-one aide followed Student's behavior intervention plan by showing quiet hands and using a calm voice. Lopez opined the behavior supports in Student's IEP were sufficient to meet Student's behavior needs.

At hearing, Parent testified Student's behaviors had improved since attending Leroy Haynes. She believed that "whatever they're doing at Haynes School is working." Parent also believed Student's communication skills had improved and he could say more words.

At hearing, Student did not offer lay or expert testimony or assessments establishing Student required additional or different behavior intervention services other than what was offered in the August 20, 2024 IEP. None of the 16 witnesses who testified at hearing, including Parent, expressed any concern about the behavior intervention services offered by Perris Union.

Student failed to prove by a preponderance of the evidence that Perris Union denied him a FAPE by failing to offer behavior intervention services in the August 20, 2024, IEP.

Perris Union prevailed on Issue 5a.

ISSUE 5b: SUFFICIENT SPEECH-LANGUAGE SERVICES

Student contends Perris Union denied him a FAPE in the August 20, 2024 IEP by failing to offer sufficient speech-language services. Perris Union contends its offer of speech-language services was sufficient to meet Student's unique needs.

Licensed speech-language pathologist Cassandra Tamayo reported on Student's present levels of performance in speech-language at the August 20, 2024 IEP team meeting. Tamayo was employed by Whole Child Therapy. Whole Child Therapy contracted with Leroy Haynes to provide speech-language services to its students. Tamayo attended IEP team meetings, wrote goals, proposed services, and supervised speech-language pathologists. Tamayo was familiar with Student from observing him in speech therapy sessions and attending his IEP team meetings.

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Tamayo stated that Student was a verbal communicator and could follow simple directions with prompts. He could ask for help independently during speech-language services. He responded to questions using two to four words. Student had needs in expressing his needs and wants through speech.

Student partially met his prior speech-language goal of using five-word utterances to describe a picture or participate in a class activity in four of five opportunities with no more than one verbal prompt. To address Student's continued needs in functional communication, Tamayo proposed a new goal for Student to give an appropriate statement or question using four to five words when given visual scenarios about everyday life problems in four of five trials over three trial days. To meet this goal, the IEP offered Student 30 minutes weekly speech-language services in a group setting. Tamayo opined this level of service was sufficient to allow Student to make progress on his speech-language goal.

At hearing, no witness testified that Student required additional or different speech-language services. Student offered no assessments or expert testimony supporting Student's contention the speech-language services were inadequate. Parent testified she was satisfied with Student's speech progress at Leroy Haynes. She described what Leroy Haynes was doing "was working" for Student.

Student failed to establish that Perris Union denied him a FAPE by failing to offer sufficient speech-language services in the August 20, 2024 IEP.

Perris Union prevailed on Issue 5b.

ISSUE 5c: SUFFICIENT OCCUPATIONAL THERAPY SERVICES

Student contends Perris Union denied him a FAPE in the August 20, 2024 IEP by failing to offer sufficient occupational therapy. Perris Union contends the August 20, 2024, IEP offered Student sufficient occupational therapy to support Student's sensory needs.

Perris Union reevaluated Student's need for school based occupational therapy in April 2023 in preparation for Student's three-year evaluation. The assessment found Student performed functional fine motor tasks with accommodations. Student demonstrated moderate deficits in sensory processing which impacted his learning and performance of functional activities. There were no additional occupational therapy assessments following the April 2023 assessment.

As discussed in Issue 3c, Student had a self-regulation goal in the 2023 IEP. He received a variety of accommodations to address his sensory needs, and collaborative group occupational therapy services for 30 minutes, twice monthly.

Occupational therapist Robinson reported on Student's present levels of performance at the August 20, 2024 IEP team meeting. Student had hand tremors but he could complete fine motor tasks. He engaged in attention seeking behaviors, which could result in escalation when ignored. Robinson reported Student's progress towards his self-regulation goal. Student partially met the goal. He continued to require moderate verbal and gestural prompting to identify two interoceptive cues for the emotions tired, sad, mad, and happy. Robinson developed a new goal for Student to understand how his body felt when experiencing different emotions by identifying two

interoceptive cues for five different emotions (angry, happy, sad, tired, and scared) in four of five opportunities, across two consecutive weeks. The IEP team adopted the self-regulation goal.

The August 20, 2024 IEP offered Student 30 minutes, twice monthly collaborative occupational therapy services. At hearing, Robinson opined collaborative occupational therapy services were adequate to support Student's self-regulation goal. Occupational therapy supports were embedded in the classroom. An occupational therapist was in the classroom daily during the entire school day and provided sensory supports, strategies, and techniques for the education specialist and staff. The August 20, 2024 IEP also included accommodations, such as access to

- oral supports,
- weighted input,
- tactile activities,
- movement breaks, and
- sensory items.

Robinson persuasively opined the supports and consultation services were adequate to meet Student's unique needs and that Student had made progress towards his self-regulation goal. No expert refuted Robinson's opinions about the sufficiency of the occupational therapy consultation services.

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Student failed to present any evidence, such as an assessment or testimony by an occupational therapist, showing Student required direct or additional occupational therapy. Student failed to prove by a preponderance of the evidence that Perris Union denied him a FAPE in the August 20, 2024 IEP by failing to offer sufficient occupational therapy.

Perris Union prevailed on Issue 5c.

ISSUE 5d: HOME APPLIED BEHAVIOR ANALYSIS THERAPY AND CLINIC MEETINGS

Student contends Perris Union denied him a FAPE in the August 20, 2024 IEP by failing to offer home applied behavior analysis services and clinic meetings. Perris Union contends Student did not meet his burden of proof on this issue.

Student did not meet his burden of proving Perris Union denied him a FAPE in the August 20, 2024 IEP by failing to offer home applied behavior analysis therapy and clinic meetings. As discussed in Issue 3d, Student offered limited evidence that Student required applied behavior analysis therapy at home or in the clinic setting. There was some evidence Student previously received these services through the regional center.

However, Student did not present any evidence explaining the nature of applied behavior analysis therapy, its relevance to Student's specific behavioral issues, or why applied behavioral analysis therapy at home was necessary to provide Student a FAPE. (*San Rafael, supra*, 482 F.Supp.2d at pp. 1161-1162.) Student did not demonstrate how

applied behavior analysis, addressing unknown behavior issues at home, would affect Student's educational progress. Student did not offer any evidence about the need for applied behavior analysis therapy in the clinic setting, and apparently abandoned this issue.

At hearing, Parent did not explain why she believed Student should receive this therapy at home. Student failed to present any substantiating data, assessments, or witness testimony substantiating Student's need for behavior analysis therapy in the home or clinic settings to receive a FAPE. Student failed to meet his burden of proving Perris Union denied him a FAPE in the August 20, 2024 IEP by failing to offer home applied behavior analysis services and clinic meetings.

Perris Union prevailed on Issue 5d.

ISSUE 5e: PARENT TRAINING IN AUTISM, COMMUNICATION SKILLS AND BEHAVIOR

Student contends Perris Union denied him a FAPE in the August 20, 2024 IEP by failing to offer parent training in autism, communication skills, and behavior to receive a FAPE. Perris Union contends Student failed to meet his burden of proof on this issue.

For the same reasons discussed in Issue 3e, Student did not establish Perris Union denied him a FAPE in the August 20, 2024, IEP by failing to offer parent training in autism, communication skills, and behavior. Student did not prove Parent required training in autism, communication skills, or behavior for Student to receive a FAPE. Further, neither Parent nor any other IEP team member requested or recommended that parent training be included in Student's IEP.

Student received weekly speech-language services from a qualified speech-language pathologist. Student made progress towards his speech-language goals, and there were no recommendations for additional services at the August 20, 2024 IEP team meeting.

Student made progress on his self-regulation goal, and Student's ability to control his emotions when denied access to a preferred item or activity remained an area of need. The IEP included two behavior goals. To support Student's behaviors, Student had a one-to-one aide and a behavior intervention plan. A behavior specialist, supervised by a board-certified behavior analyst, was part of Student's classroom team. The behavior specialist was responsible for implementing Student's behaviors goals.

Parent did not request parent training during the August 20, 2024 IEP team meeting, nor did any other IEP team member suggest that parent training was necessary for Student to receive a FAPE. (34 C.F.R. § 300.34(c)(8); Ed. Code, § 56363, subd. (b)(11); see also Cal. Code Regs., tit. 5, § 3051.11(a).) This issue was raised for the first time in Student's complaint and unsubstantiated during the hearing.

Leroy Haynes offered parent training four times yearly covering topics such as behaviors related to autism. Parent's decision not to attend the trainings demonstrated parental training was unnecessary for Student to receive a FAPE.

Student failed to show by a preponderance of the evidence that Perris Union denied him a FAPE in the August 20, 2024 IEP by failing to offer parent training in autism, communication skills, and behavior.

Perris Union prevailed on Issue 5e.

ISSUE 5f: PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

Student contends Perris Union denied Student a FAPE in the August 20, 2024 IEP by failing to offer placement in the least restrictive environment. Student asserts that Perris Union should have placed Student in a general education classroom with supplemental aids and services.

Perris Union contends the August 20, 2024 IEP offered Student placement in a nonpublic school targeting Student's academic, communication, behavioral, and functional needs. Perris Union contends its offer of FAPE in a nonpublic school for 100 percent of the school day was the least restrictive environment for Student.

Student failed to prove by a preponderance of the evidence that Perris Union denied him a FAPE in the August 20, 2024 IEP by failing to offer placement in the least restrictive environment. The August 20, 2024 IEP team reviewed Student's present levels of performance. Student could correctly answer five questions at his instructional level by highlighting and rechecking answers. He struggled with handwriting. He could perform basic math calculations using a calculator. He could identify dollar bills with 80 percent accuracy. Student could follow staff directions and interact with peers and staff with minimal prompts. He continued to engage in attention seeking behaviors.

The August 20, 2024 IEP team reviewed Student's progress on his previous goals. Student met or partially met his previous IEP goals. Student met his IEP goals in

- reading comprehension,
- writing,
- math,
- daily-living,

- hygiene,
- employment,
- recreation and leisure, and
- adapted physical education.

He partially met his goals in identifying sight words, self-regulation, behavior, and speech.

The IEP team developed 13 new IEP goals to address Student's needs. The goals targeted Student's needs in:

- functional reading, mathematics, and writing;
- identifying community signs;
- understanding an emergency;
- following a weekly job chart;
- playing a board game with a peer;
- catching and tossing a ball with a peer;
- asking for help;
- understanding his emotions;
- independently requesting attention from staff without exhibiting maladaptive behaviors;
- using functional communication to request a preferred item or immediate need; and
- waiting for an answer to a request without engaging in maladaptive behaviors.

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The August 20, 2024 IEP offered Student:

- 1,570 minutes per week of specialized academic instruction in a nonpublic school;
- 340 minutes daily one-to-one aide support;
- 30 minutes weekly group speech-language services;
- 30 minutes, twice monthly individual collaborative occupational therapy services;
- 30 minutes weekly group adapted physical education services;
- daily curb to curb transportation; and
- extended school year with related services.

Perris Union offered Student continued placement at Leroy Haynes where he would participate in highly structured specialized academic instruction for 100 percent of his school day. Perris Union offered a behavior intervention plan, a transition plan, accommodations, and modifications.

Student did not prove the August 20, 2024 IEP's offer of placement at Leroy Haynes with individualized instruction, one-to-one aide support, embedded supports, and a behavior intervention plan was not the least restrictive environment for Student. Student had a history of success in the Leroy Haynes program and made progress towards his prior IEP goals. Student's teachers, assessors, and related service providers who assessed and worked with Student strongly believed continued placement at Leroy Haynes was appropriate to meet Student's unique needs and was in the least restrictive environment. Perris Union's witnesses, including Lopez, Diaz, and Olado, offered persuasive testimony that placement at a nonpublic school was the least restrictive environment for Student.

Lopez provided detailed testimony about Student's program during the 2024-2025 school year. The class was comprised of 10 adult students between the ages of 18 to 22. The class was staffed by Lopez and nine paraprofessionals. The class focused on functional academics, adaptive living, vocational skills, and recreation and leisure skills to prepare students for independent living.

Lopez persuasively opined the Leroy Haynes adult transition program was appropriate for Student based on his needs, and that Student's IEP supports, services, and accommodations could be effectively implemented in the program. Student could not be educated in a general education classroom, even with the use of supplementary aids and services, due to his academic, communication, and behavior deficits. The small adult to student ratio and embedded communication, behavior, and sensory supports were necessary for Student to make progress towards his IEP goals.

Student flourished with his peers and his social skills improved. Student also participated in community outings, such as shopping and eating in restaurants where he interacted with adults and generalized daily living skills learned in the classroom. Student could count money, purchase items, and recognize community signs.

Student's aggressive behavior improved, but Lopez did not believe Student could be educated in a less restrictive environment. Student required the embedded communication, sensory, and behavior intervention supports to address Student's unique needs. Lopez further opined she was not aware of any less restrictive environment available to students in an adult transition program.

Lopez's testimony was persuasive based upon her substantial experience, measured testimony, and knowledge of Student.

Diaz similarly opined Leroy Haynes was the least restrictive environment to meet Student's behavioral needs. The behavior goals, behavior intervention plan, and embedded behavior supports provided by the behavior interventionist with regular supervision by a board-certified behavior analysis were necessary to support Student's behavioral needs. Diaz opined Student's progress on his behavior goals showed the program was reasonably calculated for Student to make progress towards his IEP goals in the least restrictive environment.

Olado's testimony was consistent with Lopez and Diaz. Olado convincingly opined Leroy Haynes was the least restrictive environment for Student. As an example, Olado explained Student met or made progress on his prior goals which she described as a "big achievement" for Student given his unique needs. His behaviors had subsided compared to the previous year. Student still required the functional academic, communication, behavior, and daily living skills offered at Leroy Haynes. Olado did not believe Student could make educational progress in a less restrictive environment. Olado's testimony was persuasive based on her substantial experience, knowledge of the Leroy Hayne's program and Student unique needs, and her professional demeanor. Olado's testimony was afforded significant weight.

As discussed in Issue 3f, the August 20, 2024 IEP team discussed the potential harmful effect of Student spending 100 percent of his time outside the regular education setting. The IEP team determined Student's need for instruction targeted at his academic and functional skills level using an alternate curriculum outweighed any potential harmful effect of not mainstreaming with his typical peers.

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Student offered no testimony or assessment suggesting the August 20, 2024 IEP team had any information that its offer of continued placement at Leroy Haynes was not the least restrictive environment for Student at the time it was made. Parent believed Student's academic abilities improved since attending Leroy Haynes. He could identify sight words and count. His communication and daily living skills and improved. For example, he could take public transportation and pay for items.

Student failed to prove by a preponderance of the evidence that Perris Union denied him a FAPE in the August 20, 2024 IEP by failing to offer placement in the least restrictive environment.

Perris Union prevailed on Issue 5f.

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:

Perris Union did not deny Student a FAPE at the March 6, 2023 IEP team meeting by failing to offer an educationally related mental health services assessment.

Perris Union prevailed on issue 1.

ISSUE 2:

Perris Union did not deny Student a FAPE at the March 6, 2023 IEP team meeting by predetermining the IEP without Parent present.

Perris Union prevailed on Issue 2.

ISSUE 3a:

Perris Union did not deny Student a FAPE in the August 22, 2023 IEP by failing to offer behavior intervention services necessary to enable Student to receive educational benefit.

Perris Union prevailed on Issue 3a.

ISSUE 3b:

Perris Union did not deny Student a FAPE in the August 22, 2023 IEP by failing to offer sufficient speech-language services necessary to enable Student to receive educational benefit.

Perris Union prevailed on Issue 3b.

ISSUE 3c:

Perris Union did not deny Student a FAPE in the August 22, 2023 IEP by failing to offer sufficient occupational therapy services necessary to enable Student to receive educational benefit.

Perris Union prevailed on Issue 3c.

ISSUE 3d:

Perris Union did not deny Student a FAPE in the August 22, 2023 IEP by failing to offer home applied behavior analysis therapy and clinic meetings necessary to enable Student to receive educational benefit.

Perris Union prevailed on Issue 3d.

ISSUE 3e:

Perris Union did not deny Student a FAPE in the August 22, 2023 IEP by failing to offer parent training in autism, communication skills, and behavior.

Perris Union prevailed on Issue 3e.

ISSUE 3f:

Perris Union did not deny Student a FAPE in the August 22, 2023 IEP by failing to offer placement in the least restrictive environment.

Perris Union prevailed on Issue 3f.

ISSUE 4:

Perris Union did not deny Student a FAPE by failing to hold Student's three-year-review IEP team meeting in September 2023.

Perris Union prevailed on Issue 4.

ISSUE 5a:

Perris Union did not deny Student a FAPE in the August 20, 2024 IEP by failing to offer behavior intervention services necessary to enable Student to receive educational benefit.

Perris Union prevailed on Issue 5a.

ISSUE 5b:

Perris Union did not deny Student a FAPE in the August 20, 2024 IEP by failing to offer sufficient speech-language services necessary to enable Student to receive educational benefit.

Perris Union prevailed on Issue 5b.

ISSUE 5c:

Perris Union did not deny Student a FAPE in the August 20, 2024 IEP by failing to offer sufficient occupational therapy services necessary to enable Student to receive educational benefit.

Perris Union prevailed on Issue 5c.

ISSUE 5d:

Perris Union did not deny Student a FAPE in the August 20, 2024 IEP by failing to offer home applied behavior analysis therapy and clinic meetings necessary to enable Student to receive educational benefit.

Perris Union prevailed on Issue 5d.

ISSUE 5e:

Perris Union did not deny Student a FAPE in the August 20, 2024 IEP by failing to offer parent training in autism, communication skills, and behavior.

Perris Union prevailed on Issue 5e.

ISSUE 5f:

Perris Union did not deny Student a FAPE in the August 20, 2024 IEP by failing to offer placement in the least restrictive environment.

Perris Union prevailed on Issue 5f.

ORDER

All relief sought by Student is denied.

RIGHT TO APPEAL THIS DECISION

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

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings