

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

THE CONSOLIDATED MATTERS INVOLVING:
PARENTS ON BEHALF OF STUDENT, AND
CAPISTRANO UNIFIED SCHOOL DISTRICT.

CASE NO. 2024110845

CASE NO. 2024120812

DECISION

OCTOBER 9, 2025

On November 25, 2024, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, in OAH case number 2024110845, naming Capistrano Unified School District as respondent. OAH Case number 2024110845 is referred to as Student's Case. A due process hearing request is called a complaint. On December 23, 2024, OAH continued Student's Case for good cause.

(This space is intentionally left blank. Text continues on the following page.)

On December 23, 2024, Capistrano Unified filed a complaint in OAH case number 2024120812, naming Student. OAH case number 2024120812 is referred to as Capistrano Unified's Case. On December 30, 2024, OAH consolidated Student's Case and Capistrano Unified's Case. OAH ordered the consolidated cases to proceed on the dates set in Student's Case and the 45-day timeline for issuance of the decision in the consolidated cases to be based on the date of filing in Student's Case.

On April 4, 2025, OAH continued the consolidated cases for good cause. On May 29, 2025, OAH granted Student's motion to amend Student's complaint and deemed the amended complaint filed on May 29, 2025. OAH granted a further continuance of the consolidated cases for good cause on July 2, 2025.

Administrative Law Judge Rommel P. Cruz heard this matter by videoconference on August 5, 6, 7, 12, and 14, 2025. Attorneys Timothy Adams and Ronda Chow represented Student. Mother attended all hearing days, and Father attended four hearing days on Student's behalf. Attorney Cynthia Yount represented Capistrano Unified. Executive Director of Alternative Dispute Resolution and Compliance Dr. Kathy Purcell attended all hearing days on Capistrano Unified's behalf.

At the parties' request, the matter was continued to September 4, 2025, for written closing briefs. The record was closed, and the matter was submitted on September 4, 2025.

(This space is intentionally left blank. Text continues on the following page.)

ISSUES

An individualized education program is called an IEP. Free appropriate public education is called FAPE.

STUDENT'S ISSUES

1. Did Capistrano Unified fail to meet its child find obligation to Student from November 25, 2022, through December 9, 2022, by failing to refer Student for an assessment to determine his eligibility for special education, and thereby denying Student a FAPE?
2. Did Capistrano Unified's IEP dated March 1, 2023, deny Student a FAPE, by failing to offer Student:
 - a. appropriate goals in:
 - i. basic reading skills;
 - ii. reading fluency;
 - iii. reading comprehension;
 - iv. basic writing skills;
 - v. written expression;
 - vi. math application tasks;
 - vii. phonological processing;
 - viii. orthographic processing;
 - ix. attention;
 - x. executive functioning;

- xii. self-advocacy; and
 - xiii. social-emotional skills?
- b. appropriate counseling and behavioral services to address his needs in:
- i. attention;
 - ii. executive functioning;
 - iii. peer interaction;
 - iv. self-advocacy;
 - v. anxiety; and
 - vi. social-emotional needs?
- c. placement in a classroom environment with small group instruction to adequately address Student's needs in:
- i. basic reading skills;
 - ii. reading fluency;
 - iii. reading comprehension;
 - iv. basic writing skills;
 - v. written expression;
 - vi. math application tasks;
 - vii. phonological processing;
 - viii. orthographic processing;

- ix. attention;
- x. executive functioning;
- xi. peer interactions;
- xii. self-advocacy; and
- xiii. social-emotional skills?

3. Did Capistrano Unified deny Student a FAPE at the May 2, 2024 IEP team meeting by:
 - a. failing to ensure a school psychologist attended the meeting;
and
 - b. predetermining Student's placement?
4. Did Capistrano Unified's IEP dated May 2, 2024, deny Student a FAPE, by failing to offer Student:
 - a. appropriate goals in:
 - i. basic reading skills;
 - ii. reading fluency;
 - iii. reading comprehension;
 - iv. basic writing skills;
 - v. written expression;
 - vi. math application tasks;
 - vii. phonological processing;
 - viii. orthographic processing;

- ix. attention;
- x. executive functioning;
- xi. peer interactions;
- xii. self-advocacy; and
- xiii. social-emotional skills?

b. appropriate counseling and behavioral services to address his needs in:

- i. attention;
- ii. executive functioning;
- iii. peer interaction;
- iv. self-advocacy;
- v. anxiety; and
- vi. social-emotional needs?

c. placement in a classroom environment with small group instruction to adequately address his needs in:

- i. basic reading skills;
- ii. reading fluency;
- iii. reading comprehension;
- iv. basic writing skills;
- v. written expression;
- vi. math application tasks;

- vii. phonological processing;
 - viii. orthographic processing;
 - ix. attention;
 - x. executive functioning;
 - xi. peer interactions;
 - xii. self-advocacy; and
 - xiii. social-emotional skills?
5. Did Capistrano Unified deny Student a FAPE by failing to consider the September 2024 independent educational evaluation conducted by Dr. Dawn Richards in an IEP team meeting during the 2024-2025 school year?
6. Did Capistrano Unified deny Student a FAPE by failing to convene Student's annual IEP team meeting by May 1, 2025, pursuant to Parents' request to convene an IEP team meeting for Student's annual review?
7. Did Capistrano Unified deny Student a FAPE by failing to have an IEP in place for him prior to the start of the 2025-2026 school year?

CAPISTRANO UNIFIED'S ISSUE

8. Did Capistrano Unified appropriately conduct its psychoeducational evaluation documented in its February 2023 Multidisciplinary Assessment Report?

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (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 and Capistrano Unified requested the due process hearing in this consolidated matter and

had the burden of proof on the issues raised in their complaints. 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 nine years old and completed the third grade at the time of hearing. Student was eligible for special education under categories of specific learning disability because of visual processing deficits and other health impairment because of his attention deficits. Student had orthographic dyslexia, also known as surface dyslexia. Orthographic dyslexia involves difficulty visually recognizing and processing written words and letter patterns.

Student attended Capistrano Unified for the 2022-2023 school year, but did not attend the school district for the 2023-2024 and 2024-2025 school years. Instead, Parents enrolled him in The Lexington School, a private school in Kentucky, that operated the Learning Center, a program within the school for students with dyslexia. The Lexington School is referred to as Lexington.

ISSUE 1: DID CAPISTRANO UNIFIED FAIL IN ITS CHILD FIND OBLIGATION FROM NOVEMBER 25, 2022, THROUGH DECEMBER 9, 2022?

Student contends Capistrano Unified failed its child find obligation to him by waiting until December 9, 2022, to refer him for a special education assessment. Student argues Capistrano Unified should have referred him for an assessment no later than November 2022 based on his poor academic and social-emotional functioning, lack of progress with intensive reading interventions, and maladaptive behaviors at the

start of the 2022-2023 school year. Capistrano Unified contends it timely referred Student for a special education assessment following his limited progress in response to additional supports and instruction.

The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and evaluate all children with disabilities residing in the state that need special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).) This duty is commonly referred to as child find. California law specifically incorporates child find in Education Code section 56301, subdivision (a).

A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability, and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D.Hawaii 2001) 158 F.Supp. 2d 1190, 1194 (*Cari Rae S.*)) The school district's duty for child find is not dependent on any request by the parent for special education testing or services. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518.) The threshold for suspecting that a child has a disability is relatively low. (*Cari Rae S., supra*, at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*) An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.) The two terms have the same meaning and are used interchangeably in this Decision. (34 C.F.R. § 300.300; Ed. Code, § 56302.5.)

If a school district has noticed that a child has exhibited symptoms of a disability covered under the IDEA, it must assess the child for special education, and cannot circumvent that responsibility by way of informal observations or the subjective opinion of a staff member. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016)

822 F.3d 1105, 1121.) The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time, and not based upon hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031,1041 (*Fuhrmann*).)

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) Common law or equitable exceptions to the statute of limitations do not apply to IDEA cases. (*D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F. 3d 233, 248.) In particular, the common law exception to the statute of limitations that applies when a violation is continuing is not applicable in IDEA cases. (71 Fed.Reg. 46697 (Aug. 13, 2006).) Therefore, Capistrano Unified's allegations of child find violations before November 25, 2022, are barred by the two-year statute of limitations.

Student did not establish Capistrano Unified failed in its child find duty to Student from November 25, 2022, to December 9, 2022. Student enrolled in Capistrano Unified for his first-grade year and attended John S. Malcom Elementary School, referred to as Malcom, at the start of the 2022-2023 school year. Student and his twin sibling were placed in the same first grade class. Student attended a private school for kindergarten and Capistrano Unified only received Student's kindergarten attendance record, before he enrolled in Capistrano Unified.

At hearing, Mother testified Student did not like attending school, and injured himself by hitting his head or thigh, picking his fingernails until they bled, and threatened to kill himself. However, Student did not establish if he exhibited those behaviors at

school, or at home, or when they occurred during the 2022-2023 school year. Therefore, Mother's testimony regarding Student's maladaptive behaviors was not persuasive to support Student's argument that Capistrano Unified knew, or had reason to suspect, Student had a disability or failed in its child find duties from November 25, 2022, to December 9, 2022.

Student's first grade teacher, Eileen Medrano, contradicted Mother's testimony regarding Student's maladaptive behaviors. Medrano taught for 39 years. She taught first and second grade at Malcom for the past four years. She completed a questionnaire as part of Capistrano Unified's assessment of Student.

Medrano was direct when testifying about the many concerns she had and the weaknesses she observed about Student's academic and functional skills in school. Medrano testified plainly, confidently and consistently. Further, Medrano's testimony was corroborated by exhibits and other witnesses. Accordingly, her testimony was persuasive, and given substantial weight.

Medrano testified that Student was shy, quiet, and did not participate in classroom discussions, but had no maladaptive behaviors at school. Medrano described Student as friendly, got along with peers, and did not have tantrums in school or maladaptive behaviors. He did not pick his fingernails to the point of injury, or hit himself. He did not threaten to kill himself. Student never reported to Medrano that he did not want to be in school. Medrano's testimony did not support Mother's report of Student's maladaptive behaviors or that the behaviors occurred at Malcom during the beginning of the 2022-2023 school year.

Capistrano Unified identified Student's academic deficits at the beginning of the school year and quickly attempted to address them with additional support. They administered screening assessments at the start of the school year to Student which showed his reading skills were well below grade level. To help Student's poor reading skills, Capistrano Unified convened a student success team meeting in August 2022. Parents and Medrano were members of the team. Capistrano Unified placed Student in an intensive reading intervention program, part of Capistrano Unified's What I Need program, referred to as WIN.

WIN was part of Capistrano Unified's multi-tiered support system to support all students academically. WIN offered reading support for students based on their reading skills. Students were grouped by four skill levels. Students who could read above grade level were in one group, those reading at grade level in another group, and those not reading at grade level were placed in the strategic level. Students reading well below grade level were placed in the intensive level.

WIN classes were 40 minutes long, delivered four times a week, taught by a general education teacher. Students remained in their respective group levels for five to six weeks, then Capistrano Unified reassessed them to determine if they were ready to advance to another WIN level for the next cycle. A student's progress in the intensive level reading support group was monitored every two weeks using standardized reading measures, and classroom performance.

(This space is intentionally left blank. Text continues on the following page.)

Capistrano Unified placed Student in the intensive level reading group in the first week of September 2022. Following the first WIN cycle of the 2022-2023 school year, Student continued in the intensive level reading group, where he remained through the 2022-2023 school year.

Student's success team met again on December 9, 2022, to review his progress. Parents attended the meeting. Student demonstrated some improvement but his scores on reading assessments showed he remained below grade level. The team identified concerns about his phonemic awareness, processing skills, and anxiety. As a result, Student's success team referred him for a special education assessment, and completed a referral form dated December 9, 2022.

On December 14, 2022, Capistrano Unified provided Parents with an assessment plan to evaluate Student for special education services. Parents provided written consent to the assessment plan on December 20, 2022.

Student did not prove Capistrano inappropriately failed to initiate an assessment from November 25, 2022, through December 9, 2022, to determine if Student needed special education services. Student was in the midst of his second cycle in the WIN intensive reading support group from November 25, 2022, through December 9, 2022, consisting of 10 school days. It was reasonable and appropriate for Capistrano Unified to wait to review his response to interventions following his second cycle of WIN before referring him for a special education assessment.

Student failed to prove Capistrano Unified failed its child find obligation to him from November 25, 2022, through December 9, 2022. Capistrano Unified prevailed on Issue 1.

ISSUE 8: DID CAPISTRANO UNIFIED'S FEBRUARY 2023 PSYCHOEDUCATIONAL ASSESSMENT MEET LEGAL REQUIREMENTS?

Capistrano Unified contends its psychoeducational assessment of Student documented in a February 7, 2023 multidisciplinary assessment report was comprehensive and met all legal requirements. Student contends the psychoeducational assessment was deficient because Capistrano Unified did not interview Student's teacher and inappropriately relied on the discrepancy model in determining Student qualified for special education services under the category of specific learning disability.

Student also contends the assessment is deficient because it failed to include assessments in educationally related mental health services, functional behavior and occupational therapy. Further, Student contends Capistrano Unified failed to administer appropriate testing in written expression and mathematics.

CAPISTRANO UNIFIED TIMELY FILED A COMPLAINT IN RESPONSE TO STUDENT'S RENEWED INDEPENDENT EDUCATIONAL EVALUATION REQUEST

Under certain conditions, a student is entitled to an independent educational evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(a)(1); Ed. Code, § 56329, subd. (b); Ed. Code, § 56506, subd. (c).) An independent educational evaluation means an evaluation conducted by a qualified examiner not employed by the public agency responsible for educating the child in question. (34 C.F.R. § 300.502(a)(3)(i).)

To obtain an independent educational evaluation, the parent must disagree with an evaluation obtained by the public agency and request an independent educational evaluation. (34 C.F.R. § 300.502(b)(1), (b)(2).)

When a parent requests an independent educational evaluation, the public agency must, without unnecessary delay, either file a request for a due process hearing to show that its assessment is appropriate, or ensure that an independent educational evaluation is provided at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).) If a school district decides not to take a requested action, the district must provide parents with a prior written notice within a reasonable time period. (34 C.F.R. § 300.503.) The notice must include an explanation of why the agency proposes or refuses to take the action. (*Ibid.*)

Whether the length of time that has passed before a school district initiates a due process hearing or provides the independent evaluation at public expense constitutes unnecessary delay is a question of fact, based upon the circumstances of the particular case. (*J.P. v. Ripon Unified School Dist.* (E.D.Cal., Apr. 15, 2009, No. 207CV02084MCEAD) 2009 WL 1034993 (*Ripon*).) In *Ripon*, the Court determined that the school district's due process request filed more than two months after the request for an independent evaluation was timely, as the parties were communicating regarding the request for the evaluation in the interim, and did not come to an impasse on the issue until less than three weeks before the school district's filing. (2009 WL 1034993, **7-8.)

In contrast, in *Pajaro Valley Unified School Dist. v. J.S.*, the school district did not file its due process complaint to defend its assessment until approximately 11 weeks after the student's request for an independent evaluation. (N.D.Cal., Dec. 15, 2006, No. C 06-0380 PVT) 2006 WL 3734289.) The school district offered no explanation as to

why it delayed for 11 weeks in filing its complaint, or why that delay was necessary. (*Id.* at *3.) The court found that the school district's unexplained and unnecessary delay in filing for a due process hearing waived its right to contest the student's request for an independent educational evaluation at public expense, and by itself warranted judgment in favor of the student and parent. (*Ibid.*)

The term unnecessary delay as used in title 34 Code of Federal Regulations part 300.502(b)(2) is not defined in the regulations. Some delay in the provision of an independent evaluation is reasonable if the school district and the parents are engaging in active communications, negotiations or other attempts to resolve the matter. (See *Horne v. Potomac Preparatory P.C.S.* (D.D.C. 2016) 209 F.Supp.3d 146, 153-155.) The determination of unnecessary delay is a fact-specific inquiry, and therefore, the facts of each case are critical. (*Id.* at p. 153)

Capistrano Unified assessed Student pursuant to the December 14, 2022 assessment plan and presented its assessment findings, conclusions, and recommendations in a written report dated February 7, 2023, entitled Multidisciplinary Team Assessment Report. Capistrano Unified convened an IEP team meeting on March 1, 2023, which Parents attended, to review the February 7, 2023 Multidisciplinary Assessment Report and to determine if Student qualified for special education services.

On August 15, 2023, Mother emailed Capistrano Unified Education Specialist Victoria Sage requesting an independent educational evaluation. On September 11, 2023, Capistrano Unified provided Parents prior written notice of its decision to deny Parents' request for Capistrano Unified to fund an independent educational evaluation

and its intent to file a complaint to demonstrate that Student was not entitled to an independent educational evaluation because the February 7, 2023 Multidisciplinary Assessment Report met legal requirements.

During the 2023-2024 school year, Student and Capistrano Unified each filed complaints resulting in the parties agreeing in writing on June 4, 2024, to withdraw their complaints. Specifically, Capistrano Unified agreed to withdraw its complaint to defend the February 7, 2023 Multidisciplinary Assessment Report, if Student temporarily withdrew his request for an independent educational evaluation. The parties agreed that Student may reassert his request for an independent educational evaluation based on the February 7, 2023 multidisciplinary assessment. The parties also agreed Capistrano Unified may refile a complaint to defend the February 7, 2023 Multidisciplinary Assessment Report.

On November 25, 2024, Student's attorney provided Capistrano Unified with written notice of Student's disagreement with the February 7, 2023 Multidisciplinary Assessment Report, and sought an independent educational evaluation at public expense in the area of psychoeducation. On December 23, 2024, 28 days later, Capistrano Unified timely filed its due process complaint with OAH.

THE ASSESSMENT PLAN WAS APPROPRIATE

If a school district decides to assess a student, it must give the parent a written assessment plan within 15 calendar days of referral, not counting calendar days between the student's regular school sessions or terms or calendar days of school vacation in

excess of five school days, from the date of receipt of the referral, unless the parent or guardian agrees in writing to an extension. (Ed. Code, §§ 56043, subd. (a); 56321, subd. (a).)

The assessment plan must be written in the parent's native language and in terms easily understood by the general public. (Ed. Code, § 56321, subd. (b)(i), (ii).) The assessment plan must explain the types of assessments to be conducted. (Ed. Code, § 56321, subd. (b)(iii).) The assessment plan must also state that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 53621, subd. (b)(iv).) A parent has at least 15 days to consent in writing to a proposed assessment. (Ed. Code, §§ 56043, subd. (b), 56321, subd. (c)(4).)

Capistrano Unified's December 14, 2022 assessment plan met all legal requirements. Capistrano Unified timely provided Parents the assessment plan within 15 days of Student's referral for a special education assessment on December 9, 2022. The assessment plan was written in English, Parents' native language. The plan described the possible tests and procedures to be conducted. The plan was written clearly, and in terms understandable by the general public. The plan clearly stated that no special education services would be provided to Student without Parents' written consent.

The December 14, 2022 assessment plan explained the information sought through the evaluation of various areas. The plan proposed to evaluate Student's

- academic achievement,
- speech and language development,
- intellectual development,

- processing skills,
- social emotional functioning, and
- adaptive behavior.

The plan identified a school psychologist to assess Student's intellectual development, processing abilities, social-emotional functioning, and adaptive behavior, and an education specialist to assess Student's academic achievement. A speech-language pathologist would assess Student's speech and language development.

Parent provided written consent to the assessment plan on December 20, 2022. Capistrano Unified proved the December 14, 2022 assessment plan complied with all applicable statutory requirements regarding form, function, and notice.

CAPISTRANO UNIFIED USED QUALIFIED ASSESSORS

School districts must follow statutory guidelines for the qualifications of the assessors and the content of the assessments. Assessments must be conducted by individuals knowledgeable of the student's disability and competent to perform the assessment, as determined by the local educational agency. (Ed. Code, §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(A)(iv).) A psychological assessment must be performed by a credentialed school psychologist trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed. (Ed. Code, § 56324, subd. (a).)

(This space is intentionally left blank. Text continues on the following page.)

The February 7, 2023 multidisciplinary assessment was performed by qualified assessors. Capistrano Unified established Educational Psychologist Kari Brown was qualified to assess Student's

- academic achievement,
- intellectual development,
- processing abilities,
- social-emotional functioning, and
- adaptive behavior skills.

Brown had a master's degrees in educational psychology, school counseling, and marriage, family and child counseling. She was an educational psychologist for California public schools since 1998, having spent the past 24 years with Capistrano Unified. Brown conducted more than 2,000 psychoeducational assessments in her career, which included assessments to determine eligibility for special education services based on a specific learning disability and other health impairment.

Capistrano Unified established Education Specialist Roni Schwartz was qualified to assess Student's academic achievement. Schwartz had a master's degree in special education and was credentialed to teach students with mild to moderate disabilities. She taught for the past seven years at Capistrano Unified.

As an education specialist, Schwartz was responsible for assessing a student's academic skills for special education purposes. She conducted around 300 academic assessments in her career. Capistrano Unified established that its assessors were knowledgeable of Student's suspected disabilities, and competent to perform the assessments with which they were tasked.

ASSESSMENT TOOLS AND STRATEGIES WERE APPROPRIATE

A local educational agency must assess a special education student in all areas of suspected disability, including, if appropriate,

- health,
- motor abilities,
- language function,
- general intelligence,
- academic performance,
- communicative status,
- self-help, and
- social and emotional status.

(20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).) In assessing a child with a disability, the assessment must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

Tests and assessment materials must be used for the purposes for which they are valid and reliable, and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b)(3)(A)(iii)-(v); Ed. Code, § 56320, subd. (b)(2), (3).) Tests must be selected and administered to produce results that accurately reflect the student's aptitude, achievement level, or any other factors the test purports to measure. (Ed. Code, § 56320, subd. (d).) The determination

of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D.Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech and language testing where the concern prompting the assessment was reading skills deficit].)

Local educational agencies are required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that would assist in determining the educational needs of a child. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) Assessments must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, along with physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need. (34 C.F.R. § 300.304(c)(2).) No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2)(B); Ed. Code, § 56320, subd. (e).)

Tests and assessment materials must be selected and administered so as not to be racially, culturally, or sexually discriminatory. (20 U.S.C. § 1414(a)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The materials must also be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(ii); Ed. Code, § 56320, subd. (a).)

(This space is intentionally left blank. Text continues on the following page.)

CAPISTRANO UNIFIED REVIEWED RECORDS, AND CONDUCTED INTERVIEWS AND OBSERVATIONS FOR THE PSYCHOEDUCATIONAL ASSESSMENT

Capistrano Unified established that its psychoeducational assessment properly gathered relevant functional, developmental, and academic information about Student using a variety of assessment strategies. The assessors reviewed Student's developmental, health, and educational history. The assessors also interviewed Student, obtained input from Parent and Student's teacher, and observed Student in the classroom, at recess, and during testing.

The assessors knew Student had good attendance in kindergarten. However, Capistrano Unified was not provided a copy of his report cards, or any other information about his academic or functional performance from the private school.

According to his first-grade report card, Student made insufficient progress in the first and second trimesters in the following areas:

- Understanding spoken words, syllables and sounds.
- Understanding and applying grade-level phonics and word analysis skills in decoding words, both in isolation and in text.
- Using evidence from text to understand characters, main ideas, and supporting details.
- Demonstrating a command of grade-appropriate conventions, including grammar and spelling.

- Understanding and applying properties of math operations, adding and subtracting.
- Adding and subtracting within 20.
- Counting, reading, and writing whole numbers to 120.

The report card also identified Student's ability to persevere and produce quality work as areas of concern. Medrano noted in the report card that his lack of focus and inability to work independently contributed to his poor quality of work.

On December 20, 2022, Mother completed a child health and development questionnaire at the request of the assessors. Mother reported Student had no difficulties in hearing, communication, or speech. He wore glasses. He was creative, and artistic. He played tennis and had "great" hand-eye coordination.

Since kindergarten, Mother reported Student continued to struggle recognizing words. He also struggled to remember sight words or how to spell words. Student also had difficulty counting written numbers. He was easily frustrated when he made mistakes.

Mother also reported that Parents had recently separated, and Mother had sole custody of Student. Father lost his job in August 2021 and left the home in October 2022. Mother identified these as stressors in the family, which had an emotional toll on Student.

Mother reported Student witnessed Father talk negatively about himself, and Father appeared depressed and had mood swings and a temper. Mother shared that Student would repeat Father's "horrific" language, including statements of harming himself.

Behaviorally, Mother shared Student was kind to other children, loved animals and enjoyed playing with other children. However, Student was passive, and would not protest when children took his belongings or cut in line in front of him. He would also tantrum at home when asked to do things he did not want to do, or if he did not get his way.

Mother also reported she was most concerned that Student recently began hurting himself. He would pick his skin around his fingernails and lips to the point of bleeding. He also hit his head or thigh after making a mistake, and would threaten to hurt himself when asked to do something he did not want to do. He strived to write words perfectly, and would get frustrated when he could not. He called himself stupid. Mother opined that Student was frustrated that he was not learning in school. She believed Student was depressed and anxious. When nervous, Student would shut down, rather than persist on solving the problem. She was concerned that he was too afraid to ask for help at school.

Medrano completed a questionnaire on January 17, 2023, for the assessors. Medrano described Student as artistic, shy, and introverted. She reported Student was respectful, cooperative and followed the rules.

Medrano also reported Student gave up easily, and acted helpless. She was concerned about his declining grades, slow rate of work, and poor reading, writing, and math skills. She was also concerned about his poor ability to retain information. She found him to be disorganized and he did not complete assignments.

In her questionnaire, Medrano rated Student's academic skills below grade level in reading, writing, and math. She found him to have poor study skills, and weaknesses in attention, organization, and ability to follow multi-step instructions. She also found

weaknesses in his ability to initiate tasks on time, transition between tasks, timely complete tasks without the need to be reminded, and to understand general instructions.

Student's claim that the assessment was deficient because the assessors did not interview Medrano was not persuasive. Though Medrano was not interviewed, her responses to the questionnaire were sufficiently comprehensive to inform the assessors and the IEP team of Student's functioning in the classroom. Student offered no evidence as to what additional information the assessors could have obtained from an interview with Medrano that the assessors and IEP team failed to consider. Student also failed to offer any legal authority that required Capistrano Unified to interview Student's teacher as part of an assessment. Accordingly, the psychoeducational assessment was not deficient because the assessors did not interview Medrano.

Brown interviewed Student. Brown presented Student with a sentence completion task, asking Student to complete a sentence that Brown started. Student responded by stating he got angry when he was not allowed to play with his toys. He also stated he was "bad when I'm at school," and felt happy when "he was not alone." His other responses were typical of for his age, such as him liking Parents because they were helpful, school was fun, and his friends thought he was cool.

Brown also relied on observations conducted and reported by a school psychologist practicum student, Joanna Martindale. Martindale observed Student on two occasions.

Martindale's first observation occurred in Student's classroom on January 10, 2023, for 30 minutes. The class was engaged in a reading activity that required the students to follow along with their finger while reading aloud. Student did not read

aloud and was slow to transition to the next activity. When asked to partner with a peer to talk about their experiences with trains, Student could not find a partner. When Medrano partnered him with a pair of students, Student did not participate in the discussion. However, Student was attentive when Medrano read to the class.

Martindale's second observation occurred during recess for 20 minutes. Student played cooperatively with peers in a game of handball. He transitioned easily to eat lunch.

Brown described Student as fidgety and restless at times during testing. She also observed him touching and picking a scratch on his hand. Brown noticed him touching the scratch when the testing became more demanding.

On March 1, 2023, Capistrano Unified screened Student's vision and hearing, and detected no concerns with his hearing. Student wore glasses. He passed his right eye vision screening, but failed the left eye screening. Student had no other health concern. Capistrano Unified established that its assessors properly relied on various strategies, including information from Parent and Student, to gather relevant functional, developmental, and academic information about Student.

CAPISTRANO UNIFIED'S ASSESSORS SELECTED AND ADMINISTERED TESTING INSTRUMENTS THAT WERE VALID AND RELIABLE

Capistrano Unified established the assessors relied on testing instruments that were valid and reliable. Capistrano Unified also proved the tests were administered by qualified assessors, in accordance with the instructions provided by the producers of the tests, and relied on for the purposes for which the tests were designed. In addition,

Capistrano Unified established that the testing instruments were administered in Student's primary language, were validated and properly normed, and not racially, culturally, or sexually discriminatory.

Brown measured Student's intellectual development and processing skills using the Wechsler Intelligence Scale for Children, Fifth Edition and the Beery-Buktenica Development Test of Visual Motor Integration, Sixth Edition. She measured Student's decoding, phonological processing, and orthographic skills using the Weschler Individual Achievement Test, Fourth Edition.

Brown assessed Student's social-emotional and behavioral function using the Behavior Assessment System for Children, Third Edition, Conners Rating Scale, Fourth Edition, and Vineland Adaptive Behavior Scales, Third Edition. Brown administered each test in English. The tests were reliable and widely accepted assessment tools, and were not racially, culturally, or sexually discriminatory.

Brown was competent to administer, score, and interpret the tests she administered. In her career, she administered the Weschler Intelligence Scale for Children in more than 65 percent of the 2,000 psychoeducational assessments she conducted, the Beery-Buktenica Development Test of Visual Motor Integration about 1,500 times, and the Weschler Individual Achievement Test more than 300 times.

Brown was also trained and regularly administered, scored, and interpreted the Behavior Assessment System for Children, the Conners' Rating Scales, Vineland Adaptive Behavior Scales. She administered each test and interpreted Student's results in accordance with the publishers' protocols, yielding valid results.

INTELLECTUAL ABILITY AND PROCESSING SKILLS

The Wechsler Intelligence Scale for Children was an individually administered clinical instrument for assessing the intellectual ability of children aged six years through 16 years and 11 months. It consisted of several subtests, each measuring a different facet of intelligence. The instrument provided composite scores that represented intellectual functioning in the areas of

- verbal comprehension,
- visual-spatial processing,
- fluid reasoning,
- working memory, and
- processing speed.

The Wechsler Intelligence Scale for Children also provided a score that represented a child's general intellectual ability, called a Full Scale Intelligence Quotient.

At hearing, Brown explained the Weschler Intelligence Scale for Children was an appropriate tool because it allowed her to assess Student for dyslexia, and to identify whether his dyslexia was due to a weakness in either his phonological processing or orthographic processing skills, or both. The test also allowed her to look into concerns with Student's attention and memory.

(This space is intentionally left blank. Text continues on the following page.)

Student's performance on the Weschler Intelligence Scale for Children showed his verbal comprehension and fluid reasoning were in the average range. He performed in the low average range in visual spatial, and the very low range for working memory. His processing speed was extremely low. His Full Scale Intelligence Quotient was in the low average range, with a composite score of 84.

Brown also calculated three additional index scores based on Student's performance in the Weschler Intelligence Scale for Children. The Cognitive Proficiency Index consisted of Student's performance on subtests used to calculate his working memory and processing speed skills. His Cognitive Proficiency Index score was extremely low, with a score of 66. Brown concluded in her report that the score suggested Student had significant difficulty processing cognitive information when learning, problem solving, and exercising higher-order reasoning.

The Nonverbal Index was based on subtest scores that did not require verbal responses, and provided a measure of general intellectual functioning that minimizes expressive language demands. Student's Nonverbal Index score was very low. Brown wrote that low scores could be attributed to

- slow processing speed,
- poor working memory,
- abstract and conceptual reasoning difficulties,
- weak spatial reasoning skills, or
- low general intellectual ability.

Brown calculated a General Ability Index using his performance on the subtests for verbal comprehension, visual spatial, and fluid reasoning. The General Ability Index provides an estimate of general intelligence that relies less on working memory and processing speed. Student received a standard score of 94, which was average.

Brown opined in her report that the significant difference between Student's Full Scale Intelligence Quotient score of 84 and the General Ability Index Score of 94 could indicate that Student's Full Scale Intelligence Quotient was lower because of his poor working memory and processing speed. She also opined that the significant difference between Student's General Ability Index and Cognitive Proficiency Index suggested that Student's high-order cognitive abilities may be a strength compared to abilities that facilitate cognitive processing efficiency.

At hearing, Brown explained that Student's performance on the Visual Spatial index indicated his visual spatial processing was weak. He performed in the average range when asked to reproduce an image using blocks. However, when asked to complete a puzzle using three pictures by looking at an image, he performed in the very low range. Brown opined that his visual spatial processing weakness explained his difficulties with reading printed material, consistent with a deficit in orthographic processing.

The Weschler Individual Achievement Test measured Student's decoding, phonological processing and orthographic skills. Student performed in the low average range for basic reading, decoding, and phonological processing. However, Student's orthographic processing ability was very low.

In the word reading subtest, Student was asked to identify letters and match letters to sounds. Student was also asked to read aloud a list of regular and irregular words. He performed in the very low range. Brown reported that Student's poor performance in the word reading subtest was due to his orthographic processing deficit.

The Beery-Buktenica Development Test of Visual Motor Integration was designed to assess an individual's ability to integrate their visual and motor abilities, also known as perceptual-motor skills. Student was asked to look at geometric forms and to copy it on a paper using a pencil. Student performed below average.

SOCIAL-EMOTIONAL AND BEHAVIORAL FUNCTIONING

The Behavior Assessment Systems for Children used normed-referenced rating scales to measure emotional and behavioral difficulties, and adaptive skills. Mother and Medrano completed the rating scales.

Mother's ratings showed clinically significant concerns for anxiety and depression, with at-risk concerns for attention problems and adaptability. Medrano reported clinically significant concerns for attention problems, learning problems, withdrawal, social skills, and functional communication. Medrano reported at-risk concerns for atypicality, study skills, and leadership.

The Conners used rating scales to measure a student's behaviors related to attention deficit hyperactivity disorder and other related conditions. Ratings were quantified and compared to how other parents and teachers rated same-aged peers. Mother and Medrano completed rating scales.

Mother's ratings indicated very elevated symptoms for emotional dysregulation, depressed mood, and anxious thoughts. Medrano's ratings indicated very elevated symptoms for inattention and executive dysfunction, schoolwork, and attention deficit hyperactivity disorder. The Attention Deficit Hyperactivity Disorder Index was high for Medrano's ratings, and very high for Mother's ratings.

The Vineland Adaptive Behavior Scales used rating scales to measure an individual's ability to function in everyday life. Mother completed the rating scales. Mother's ratings showed Student's communication, daily living skills, and motor skills were moderately low, and his socialization skills were adequate.

ACADEMIC ACHIEVEMENT

Education Specialist Schwartz administered the Woodcock-Johnson Tests of Achievement, Fourth Edition. She administered the Woodcock-Johnson Tests of Achievement about 300 times, and therefore, was competent to administer, score, and interpret the results of Student's performance on test. She administered and interpreted the results of the achievement test in accordance with the publishers' protocols, yielding valid results.

The Woodcock-Johnson Tests of Achievement was individually administered, norm-referenced and standardized, designed to measure academic performance in reading, mathematics, and written language. Student's performance in basic reading, math calculations, and math problem solving fell in the low average range. His performance in written expression was low. His reading fluency and reading comprehension were in the very low range. Schwartz could not obtain a score for basic writing because Student could not complete one of the subtests.

Student could read simple words but struggled to read more difficult words. When he was asked to apply phonics skills to read increasingly difficult and unfamiliar non-words, relying less on visual memorization of words, he performed in the average range.

When asked to read aloud, Student read slowly and made many errors. For the Sentence Reading Fluency subtest, Student could not complete the test that required him to read simple sentences and quickly determine if the statements were true or false. He only attempted two of the four sample questions before Schwartz stopped the test.

Student struggled in reading comprehension. He had difficulty identifying missing words to complete sentences by using the context of the sentence. He also struggled to read the sentences aloud and could not complete the task of recalling increasingly complex stories that he read to himself.

In writing, Student could not complete the Editing subtest, and as a result, a Basic Writing score was not obtained. In the Spelling subtest, he spelled words using phonetic spelling, resulting in many errors.

When asked to write sentences in response to a verbal or picture prompt, Student wrote incomplete sentences. The task was untimed. He stated he could not spell what he wanted to write. On another subtest, when asked to quickly write simple sentences within a time limit, he wrote slowly but produced complete sentences.

Brown assessed Student's listening comprehension and oral expression skills using the Weschler Individual Achievement Test, Fourth Edition, Oral Language. Student's listening comprehension and oral expression skills were in the low average range.

STUDENT'S CHALLENGES TO THE ASSESSORS' TOOLS AND STRATEGIES WERE NOT PERSUASIVE

Student called two experts, Jennifer Strong, Ph.D., and Dawn Richards, Psy.D., to challenge the appropriateness of the February 7, 2023 multidisciplinary assessment. Dr. Strong was a licensed school neuropsychologist, with a doctorate degree in psychology. The subject of her doctorate dissertation was dyslexia. She also had a master's degree in school psychology.

Dr. Strong founded Cognitive Diagnostic Associates in 2022. Cognitive Diagnostic Associates provided independent educational evaluations throughout the United States. Parents hired Cognitive Diagnostic Associates to conduct an independent educational evaluation of Student, which Dr. Richards conducted.

Dr. Strong was a school psychologist for three California school districts from 2016 through 2022, which included two years with Capistrano Unified from 2020-2022. She was a school neuropsychologist for another California school district for the 2022-2023 school year. She conducted more than 1,800 psychoeducational evaluations in her career.

Dr. Richards was a licensed educational psychologist in private practice since December 2019. She had master's degree in clinical psychology and a doctorate degree in educational psychology.

Dr. Richards was also school psychologist for California school districts from 2012 through June 2022. Since June 2022, Dr. Richards has taught as a professor at Loyola Marymount University's education specialist master's program.

Dr. Richards conducted 15 independent educational evaluations in her career, two for Cognitive Diagnostics Associates. Parents hired Dr. Richards to assess Student at the end of the 2023-2024 school year. Dr. Richards reviewed the February 7, 2023 Multidisciplinary Assessment Report, and Student's IEPs dated March 1, 2023, and May 2, 2024. She interviewed Mother, Student, and one of Student's Lexington teachers. She tested Student on May 29, 2024, and observed the program at Malcom on May 30, 2024. She also observed Student by video at Lexington on September 4, 2024.

Dr. Richards' summarized her findings, conclusions, and recommendations in a written report which Parents provided to Capistrano Unified on September 17, 2024. Dr. Richards' report is referred to as the September 17, 2024 independent educational evaluation.

Student claims Capistrano Unified's assessors failed to include an assessment in occupational therapy based on Dr. Strong's criticism of Brown's decision not to administer two supplemental tests offered in the Beery-Buktenica Development Test of Visual Motor Integration, one to assess Student's motor coordination, the other his visual perception. Dr. Strong opined the supplemental tests would have provided a clearer understanding of whether Student's below average performance on the Beery-Buktenica Development Test of Visual Motor Integration was because of deficits in his motor coordination, also known as hand-eye coordination, or whether it was a result of poor visual perception skills.

Student's claim was not persuasive. At hearing, Brown explained Student's fine motor coordination was not a concern. Mother reported to Brown that Student loved to draw and play with Legos. Legos are toys that require an individual to manipulate small

building blocks to construct an object. Mother did not report any concerns about the legibility of Student's writing, drawing, or any other fine motor coordination skill. Medrano did not report concerns about Student's fine motor coordination.

Brown persuasively opined that Student's below average performance on Beery-Buktenica Development Test of Visual Motor Integration confirmed her finding that Student's visual perception skills were poor, consistent with her other findings that Student had a deficit in orthographic processing. Therefore, the evidence demonstrated that Brown did not need to administer the supplemental tests in the Beery-Buktenica Development Test of Visual Motor Integration to determine whether Student's dyslexia was the orthographic or surface subtype.

Student's claim that he had suspected needs in sensory integration warranting an occupational therapy assessment was also not persuasive. Student argued in his closing brief that he was shutting down and refusing to complete assignments, and therefore, may have had sensory integration deficits.

However, Student did not present any evidence he was shutting down at school. Student was quiet and introverted. He was not shutting down. He also gave up easily when he could not do the work, but he attempted assignments and did not refuse. He was cooperative, kind, and followed classroom rules. Student failed to identify any behaviors in school to support his claim that he may have had sensory integration needs that warranted an assessment.

Student also contends the assessment was deficient because the assessment of Student's written expression and mathematics was assessed separately with the Woodcock-Johnson Tests of Achievement and not with the Weschler Individual Achievement Test. This argument was not persuasive.

Dr. Strong opined it was best practice to rely on one tool to measure academic achievement. Even if true, Student failed to point to any evidence on how the assessors' use of two academic achievement tests resulted in depriving the assessors or the IEP team of critical information about Student's math and writing needs. Accordingly, Student failed to demonstrate the psychoeducational assessment was deficient because it relied on two academic achievement tools to measure different aspects of Student's academic skills.

Student's contention that the psychoeducational assessment was deficient because it failed to include assessments for educationally related mental health services and functional behavior was not persuasive. Student's argument relies solely on Mother's unsubstantiated reports of Student engaging in maladaptive behaviors at school.

Mother did not report in her questionnaire to Brown that Student picked his skin around his fingernails and lips, hit himself, or threatened to hurt or kill himself at school. Only at hearing, did Mother testify Student came home from school bleeding from his fingernails. Even then, Mother did not state how and when Student engaged in those behaviors at school.

Furthermore, Medrano did not identify a concern in her questionnaire that would warrant an educationally related mental health services assessment or a functional behavior assessment. At hearing, Medrano was clear and confident that Student did not speak poorly of himself, or hurt himself at school. Medrano's testimony was persuasive, because it was consistent with her account of Student throughout the 2022-2023 school year. Medrano commented in Student's first trimester report card that Student had a

positive attitude toward schools, made friends, and enjoyed learning. Medrano graded Student's ability to exercise self-control and follow expectations as satisfactory throughout the 2022-2023 school year.

Medrano's ratings in the Behavior Assessment System for Children classified Student as average for depression and anxiety. Her ratings of Student on the Conners demonstrated his level of emotional dysregulation, feelings of depression, and anxiety were typical, and not areas of concern.

Medrano also testified Student did not have anger outbursts or throw tantrums at school, and described him as well-behaved. He did not harm himself, or talk negatively about himself at school.

Based on the information reported by Mother and Medrano to Capistrano Unified's assessors, and how Student was functioning in school, the evidence failed to support Student's claim that an educationally related mental health services assessment or a functional behavior assessment was warranted. Therefore, the psychoeducational assessment was not deficient because it did not include those two assessments.

At hearing, Dr. Richards compared the findings of the February 7, 2023 Multidisciplinary Assessment Report with her own assessment of Student. Though the September 17, 2024 Independent Educational Evaluation was not available to Student's IEP team during the 2022-2023 school year, the independent educational evaluation provided information on the reliability of prior assessments, and the reasonableness of earlier IEP offers. (*E.M. v. Pajaro Valley Unified Sch. Dist.* (9th Cir. 2011) 652 F.3d 999, 1006.). Therefore, the September 17, 2024 Independent Educational Evaluation and Dr. Richards' opinions regarding the psychoeducational assessment were considered.

In comparing her findings of the Behavior Assessment System for Children, which she also administered, Dr. Richards' opined her findings to be similar to February 7, 2023 Multidisciplinary Assessment Report. Dr. Richards also compared her assessment of Student's cognitive abilities with the February 7, 2023 Multidisciplinary Assessment's findings. She concluded the findings were similar, specifically the weaknesses in Student's processing speed, working memory, and visual spatial skills. Dr. Richards did not criticize the manner in which the February 7, 2023 Multidisciplinary Assessment was conducted, the tests selected by Capistrano Unified's assessors, nor did Dr. Richards challenge the findings, or the conclusions in the February 7, 2023 Multidisciplinary Assessment Report.

Student did not offer specifics or evidence to support his argument the tools and strategies administered by Capistrano Unified's assessors were deficient or inappropriate. Capistrano Unified established its assessors selected and administered proper measuring tools and exercised appropriate strategies to assess Student's intellectual ability, processing skills, social-emotional and behavioral functioning, and academic achievement, and any other suspected need.

THE WRITTEN PSYCHOEDUCATIONAL REPORT WAS APPROPRIATE

An assessor must produce a written report of each assessment that includes whether the student may need special education and related services and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).) The report must also include relevant health and development, and medical findings, if any, regarding the student. (Ed. Code, § 56327, subd. (e).) For a student with a learning disability, the report must explain whether there is such a discrepancy between achievement and

ability that it cannot be corrected without special education and related services. (Ed. Code, § 56327, subd. (f).) The report must be provided to the parent after the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

Capistrano Unified's written psychoeducational assessment report presented the necessary findings and explanations to determine Student's special education and related services needs. Brown compiled the results for her assessment, Schwartz's academic achievement assessment, Martindale's observations, and the speech and language assessment conducted and written by Speech-Language Pathologist Robyn Slipakoff, and presented the findings, conclusions and recommendations of the assessors in the February 7, 2023 Multidisciplinary Assessment Report.

Capistrano Unified's assessors concluded Student met special education eligibility criteria for other health impairment because of attention difficulties, and for a specific learning disability. The assessment report explained that the specific learning disability finding was based on a severe discrepancy between Student's intellectual ability and his skills in reading fluency, reading comprehension, and written expression.

The assessors recommended Student receive specialized academic services to address his needs. Among the recommendations were a structured approach to spelling with an emphasis on conventional spelling rules, common letter sequences and orthographic rules. The assessors also recommended Student receive explicit instruction on syllable division, patterns and rules for contractions, possessives, plurals and abbreviations.

The assessors recommended various strategies in the assessment report to support Student's deficits in working memory and processing speed. The recommended accommodations included teaching Student to chunk information and to connect new information to concepts he already knew. The assessors did not rely on any single measure, tool, or score to support their findings and recommendations. Accordingly, Capistrano Unified produced a written psychoeducational assessment report that complied with statutory guidelines, which included a recommendation and explanation of Student's qualification for special education services.

Capistrano Unified provided Parents with a copy of the February 7, 2023 Multidisciplinary Assessment Report before the scheduled March 1, 2023 IEP team meeting. Brown, Education Specialist Evelyn Yousuf, and Speech-Language Pathologist Slipakoff timely presented the report to Parents and the IEP team at that meeting.

STUDENT UNSUCCESSFULLY CHALLENGED THE ASSESSMENT REPORT'S FINDINGS AND CONCLUSIONS

Student contends the psychoeducational assessment incorrectly relied on the severe discrepancy model to conclude he qualified for special education services because of a specific learning disability. Student's expert Dr. Strong criticized the report's summary and explanation of Student's eligibility for special education services under the category of specific learning disability.

First, Dr. Strong opined Brown's analysis erroneously relied on Student's fluid reasoning scaled score of 94 in the Wechsler Intelligence Scale for Children, to conclude the presence of a severe discrepancy between Student's intellectual ability and academic

achievement. Dr. Strong opined Brown should have relied on Student's Full Scale Intelligence Quotient, a low average score of 84, to determine the presence of a severe discrepancy.

A school district may use any of three specified methods of assessment to assess a student for a specific learning disability. (34 C.F.R. §§ 300.307 and 300.309; Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B) & (C).) The severe discrepancy method is one of the three assessment methods referenced under federal and state laws. (34 C.F.R. § 300.307(a)(1); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B).) The other two methods are the pattern of strengths and weaknesses methodology and the response to intervention method. (34 C.F.R. § 300.309(a)(2)(i), (ii); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(C).)

The severe discrepancy method looks for a specified statistical difference between a student's standardized test scores in intellectual ability, and the student's standardized test scores in one or more specified areas of academic achievement such as written expression, reading fluency, and reading comprehension. (See Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B)(1).) If the standardized tests do not reveal the required statistical difference, the IEP team determining eligibility may still find that a severe discrepancy exists if it documents that a discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. (*Id.*, at subd. (b)(10)(B)(3).)

In California, an assessment for a specific learning disability requires the use of at least one of the three methods, but determining whether a student has a specific learning disability may not be solely based on any of the methods. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B) and (C).) An overall comprehensive evaluation of a specific

learning disability requires using a variety of data gathering tools and strategies in addition to a severe discrepancy, response to intervention, and pattern of strengths and weaknesses assessment methodology. (*Ibid.*; United States Department of Education Office of Special Education Programs (OSEP), *Letter to Zirkel*, (OSEP, December 11, 2008); *M.M. v. Lafayette School Dist.* (9th Cir. 2014) 767 F.3d 842, 853 [approving using data acquired through a student's participation in a response to intervention program to corroborate the results of a severe discrepancy assessment].) The assessment must also include an observation of the student in the student's learning environment to document the student's academic performance and behavior in the areas of difficulty. (34 C.F.R. § 300.310; Ed. Code, § 56341, subd. (c).)

Dr. Strong's criticism was not persuasive. Brown's findings and analysis explained that Student's overall intellectual ability was higher than what was reflected in Student's Full Scale Intelligence Quotient. Student's General Abilities Index and Fluid Reasoning scores were both 94, squarely in the average range, which consisted of standard scores between 90 and 109. Brown opined in her report that Student's higher-order cognitive abilities were a strength, and his Full Scale Intelligence Quotient score was lowered by his memory and processing speed deficits.

Dr. Richards, Student's other expert, also found that Student's overall cognitive abilities were average. Based on Brown's and Dr. Richards' findings, Student's intellectual abilities were more likely than not, in the average range, and much higher than what his Full Scale Intelligence Quotient score of 84 suggested.

Capistrano Unified established a severe discrepancy existed between Student's average intellectual abilities and his reading and writings skills, when comparing his intellectual ability to his testing standard scores of 66 for reading fluency, 69 for reading

comprehension and the lack of a standard score for basic writings skills because he could not do the minimum tasks required to obtain a score. Further, neither of Student's experts, Dr. Richards nor Dr. Strong, disagreed with Brown's conclusion that Student qualified for special education services under the category of specific learning disability. Brown's analysis and conclusion of Student's learning disability was uncontradicted, and accordingly accurate and credible.

Second, Dr. Strong opined Brown failed to specify in the February 7, 2023 Multidisciplinary Assessment Report that Student had an orthographic, or surface, dyslexia subtype. This criticism was also not persuasive. Brown explained in the report that Student exhibited "an orthographic processing deficit." Brown also opined in the report the discrepancy between Student's ability and academic achievement was due in part, to his deficit in orthographic skills. Therefore, the February 7, 2023 Multidisciplinary Assessment Report identified Student's dyslexia as the orthographic, or surface, subtype. Student failed to offer any persuasive testimony or documentary evidence that Capistrano Unified failed to conduct and produce a legally sufficient psychoeducational assessment.

In sum, Capistrano Unified proved its February 7, 2023 psychoeducational assessment met all legal requirements and was appropriate. Capistrano Unified timely filed its due process complaint to defend the assessment. The December 14, 2022 assessment plan met all legal requirements. The assessment was performed by qualified assessors. The assessors used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by Parents. The assessment was sufficiently comprehensive and assessed specific areas of Student's educational needs.

Capistrano Unified established that all the instruments were validated, properly normed, and not racially, culturally, or sexually discriminatory. Capistrano Unified's assessors, Brown and Schwartz, used the assessment instruments for the purposes they were designed for and administered the tests in accordance with the instructions provided by the producers of the tests, and their results were accurate. No single assessment tool or procedure was the sole criterion for any decision or recommendation. Capistrano Unified properly prepared a written report summarizing the findings, and offered recommendations which Capistrano Unified timely presented to Parents and the IEP team.

Capistrano Unified met its burden of proving by a preponderance of the evidence the February 7, 2023 psychoeducational assessment and report met all legal requirements. Capistrano Unified prevailed on Issue 8.

ISSUES 2(a)(i) THROUGH 2(a)(xiii): DID THE MARCH 1, 2023 IEP OFFER APPROPRIATE GOALS?

Student contends the goals offered in the March 1, 2023 IEP failed to include accurate and measurable data, making the goals impossible to properly measure. Student also argues the IEP failed to offer goals in math and written expression. Capistrano Unified contends the March 1, 2023 IEP's offered goals were objectively measurable, and the IEP's statements of Student's academic and functional performance were accurate.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel

develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].) The IEP is the centerpiece of the IDEA's education delivery system for disabled children and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345.)

The IEP is a comprehensive statement of the educational needs of a child with a disability, and the specially designed instruction and related services to be employed to meet those needs. (*School Comm. of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996] (*Burlington*)). It is a written document for each child with exceptional needs that includes a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

The IEP must include a statement of measurable annual goals. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) Measurable goals must include academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (*Ibid.*) Annual goals must be appropriately ambitious in light of the child's circumstances. (*Andrew F., supra*, 580 U.S. at p. 402)

However, the statement of measurable annual goals does not require statements of quantifiable baselines. (*A.G. v. Paso Robles Joint Unified Sch. Dist.* (9th Cir. 2014) 561 Fed.Appx. 642, 644 (*Paso Robles*).) In *Paso Robles*, the student claimed that his parents and the IEP team had no way of measuring his progress or determining whether he received a FAPE because the school district did not identify a measurable baseline of his abilities. (*Ibid.*) There, one IEP stated that the student had "some difficulty forming age-appropriate sentences," and another IEP stated that the student "often" shouted out off-topic answers without waiting for the teacher to call on him, but neither IEP defined "some" or "often." (*Ibid.*) There, the Ninth Circuit found no FAPE violation because the student failed to demonstrate the statements of his baseline achievement and performance levels were inaccurate. (*Ibid.*)

Additionally, the IEP must contain statements of how the child's goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C.

§ 1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).)

The IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.)

The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. The IDEA does not require an IEP to contain every goal from which a student might benefit. (*Capistrano Unified School Dist. v. S.W., et al.* (9th Cir. 2021) 21 F.4th 1125, 1133.) Moreover, a school district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (Fed. Regs., Appendix A, Part 300 - Assistance to States for the Education of Children with Disabilities (1999), discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C. § 1414(d)(1)(A)(i)(II).)

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 School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)) It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Fuhrmann, supra*, 993 F.2d 1031.) An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams, supra*, 195 F.3d at p.1149.)

(This space is intentionally left blank. Text continues on the following page.)

THE MARCH 1, 2023 IEP TEAM MEETING AND OFFER OF FAPE

Capistrano Unified held an IEP team meeting on March 1, 2023, to review the February 7, 2023 Multidisciplinary Assessment Report. Parents attended the meeting. Medrano, Brown, Principal Laurie Lowy, Speech-Language Pathologist Slipakoff, and Education Specialists Yousuf and Cathy Schoettger also attended the meeting. Following the IEP team's review of the February 7, 2023 Multidisciplinary Assessment Report, the team determined he qualified for special education services under the categories of specific learning disability and other health impairment.

The March 1, 2023 IEP identified Student had needs in reading, writing, and social-emotional functioning, and offered seven goals. The IEP offered placement in the general education setting at Malcom, with specialized academic instruction 90 minutes, once a week in a separate setting, and 60 minutes a week in the regular classroom. Specialized academic instruction delivered in a separate setting is referred to as pull-out instruction, and specialized academic instruction delivered in the regular classroom is referred to as push-in instruction. Parents provided written consent to the March 1, 2023 IEP on March 8, 2023.

ISSUES 2(a)(i), 2(a)(ii), AND 2(a)(iii): BASIC READING SKILLS, READING FLUENCY, AND READING COMPREHENSION

The March 1, 2023 IEP offered four goals in reading that that were reasonably calculated and measurable to permit the IEP team to determine whether Student made progress in basic reading skills, reading fluency, and reading comprehension. Three goals were offered to help Student's basic reading and reading fluency skills, and one goal to help his reading comprehension.

The IEP's description of Student's present levels of reading achievement was accurate. The IEP stated Student needed to improve his accuracy in reading one-syllable words and sight words. The IEP also stated Student needed to identify patterns in words, by sorting through a list of words and grouping the words into word families. The IEP further stated that he needed to demonstrate reading comprehension by recalling the details of a story with the support of pictures.

The first reading goal, referred to as the decoding goal, was targeted to improve Student's basic reading and fluency skills. The baseline for the decoding goal stated that Student's assessments in reading fluency scores were in the very low range and his basic reading skills were in the low average range. It also noted Student had difficulty with orthographic processing based on the assessments. The baseline, coupled with the statement of Student's present levels reading achievement was sufficient under the *Paso Robles* analysis to calculate a reasonably ambitious measurable goal to address Student's deficits in basic reading skills and reading fluency.

The decoding goal was reasonably calculated and measurable to enable Student to make meaningful progress on his basic reading and fluency skills. The annual goal required Student to decode and read 10 randomly selected one-syllable words with spelling consisting of a consonant-vowel-consonant-consonant, or a consonant-consonant-vowel-consonant. The selected words could also include a silent e such as ride or five. The goal was to be implemented in a small group setting. To meet the goal, Student was required to read the words with 80 percent accuracy over five consecutive trials, as measured by teacher observations and tests.

(This space is intentionally left blank. Text continues on the following page.)

The second reading goal targeted Student's reading comprehension, referred to as the reading comprehension goal. The baseline indicated Student's reading comprehension assessment scores were in the very low range. The baseline, coupled with the statement of Student's present levels reading achievement, was sufficient under the *Paso Robles* analysis to calculate a reasonably ambitious measurable goal to address Student's deficit in reading comprehension.

The reading comprehension goal was reasonably calculated and measurable to enable Student to make meaningful progress in reading comprehension. The goal required Student to answer five questions about key details in a story that was read to him in a small group setting. The story would include illustrations. To meet the goal, Student had to answer the five questions with 80 percent accuracy in five consecutive trials as measured by teacher observations and Student's work samples. The third reading goal focused on improving Student's ability to read sight words, referred to as the sight words goal. The baseline stated Student's basic reading skills were in the low average range and reading fluency in the very low range according to assessments. The baseline, read along with the statement of Student's present levels of reading achievement was sufficient under the *Paso Robles* analysis to calculate a reasonably ambitious measurable goal to address Student's needs in basic reading skills and reading fluency.

(This space is intentionally left blank. Text continues on the following page.)

The sight words goal was reasonably calculated and measurable to enable Student to improve his ability to fluently read sight words. To meet the goal, Student had to successfully read 10 sight words with 80 percent accuracy in five consecutive trials. Sight words to be read included

- was,
- were,
- put,
- said,
- pull,
- have,
- from,
- should,
- the,
- you,
- are,
- what,
- would,
- prove, and
- whose.

Student's teachers would monitor his progress towards the goal by reviewing his work samples and test results.

The fourth reading goal, referred to as the word sort goal, was designed to improve Student's ability to identify and sort words based on common sounds. The baseline stated Student's reading fluency and orthographic processing skills were in the very low average range based on his performance on the assessments. The baseline also stated that Student had difficulty decoding sight or read words that could not be sounded out phonetically. The baseline and statement of Student's present levels of reading achievement in the IEP was sufficient under the *Paso Robles* analysis to calculate a reasonably ambitious measurable goal to address Student's needs in basic reading skills and reading fluency.

The word sort goal was reasonably calculated and measurable to enable Student to improve his basic reading and fluency skills. The goal required Student to identify 10 single syllable words provided to him, and sort the words into word families that had common sounds, with two or fewer prompts. He would demonstrate his understanding by identifying and selecting common word patterns from a list, or using word cards, and write, sort, or type the words into the word family group. To meet the goal, he had to successfully sort the words with 80 percent accuracy in five consecutive trials, as measured by observations. Student, the education specialist, general education teacher, and support staff were identified in the IEP as the responsible persons for the goal.

The four reading goals were appropriate. The goals were measurable, reasonably ambitious and calculated, to enable Student to make meaningful progress in his basic reading, reading fluency, and reading comprehension skills. Accordingly, Student failed

(This space is intentionally left blank. Text continues on the following page.)

to prove Capistrano Unified denied him a FAPE by failing to offer appropriate goals in basic reading skills, reading fluency, and reading comprehension in the March 1, 2023 IEP.

Capistrano Unified prevailed on Issues 2(a)(i), 2(a)(ii), and 2(a)(iii).

ISSUES 2(a)(iv) AND 2(a)(v): BASIC WRITING SKILLS AND WRITTEN EXPRESSION

The March 1, 2023 IEP offered one writing goal to help Student improve his sentence writing. The goal is referred to as the sentence writing goal.

The March 1, 2023 IEP's description of Student's present levels of writing achievement stated that Student needed to write two sentences on a given topic, earning four out of five points on five consecutive trials. The IEP described how the points would be earned. The baseline for sentence writing goal stated Student scored in the low range in written expression compared to peers his age and grade.

Student failed to prove the baseline achievement writing level was not accurate. Read together, the baseline and statement of Student's present levels of writing achievement was sufficient under the *Paso Robles* analysis to enable the IEP team to calculate a reasonably ambitious measurable goal to address Student's needs in basic writing skills.

(This space is intentionally left blank. Text continues on the following page.)

The sentence writing goal was reasonably calculated and measurable to enable Student to meaningfully improve his writing skills. The goal required Student to write two sentences on a given topic when given access to a word bank or text, written in his independent reading level. Student would earn

- one point for writing a subject,
- one point for a predicate,
- one for proper punctuation,
- one point for capitalization, and
- one point for no spelling errors.

To meet the goal Student had to earn four points in five consecutive trials, measured by teacher observations and Student's work samples.

The evidence did not establish the March 1, 2023 IEP required a separate goal for written expression. Student's writing skills were very poor. Based on his performance on assessments, he could not consistently write complete sentences, or identify problems in a sentence to correctly edit them. Brown explained at hearing that the IEP team wanted to first build Student's foundational sentence writing skills, before progressing to more advanced skills involved with written expression. Brown's explanation was logical and persuasive.

A preponderance of the evidence demonstrated the March 1, 2023 IEP offered an appropriate goal in basic writing skills, and a written expression goal was not necessary

(This space is intentionally left blank. Text continues on the following page.)

for Student to receive a FAPE. Accordingly, Student failed to prove Capistrano Unified denied him a FAPE by failing to offer in the March 1, 2023 IEP, appropriate goals in basic writing skills and written expression.

Capistrano Unified prevailed on Issues 2(a)(iv) and 2(a)(v).

ISSUE 2(a)(vi): MATH APPLICATION TASKS

Student's initial and amended complaints allege the March 1, 2023, and May 1, 2024 IEPs failed to specifically offer a goal in math application tasks. Student clarified at the July 28, 2025 prehearing conference and confirmed at the start of the hearing that the only area of need in math that Student was claiming the IEPs failed to offer was in math application tasks.

In Student's closing brief, he argues the March 1, 2023 IEP failed to offer a goal to address "a low math score in one area" reported on Bates page S38, of Exhibit S-5. Exhibit S-5 is the February 7, 2023 Multidisciplinary Assessment Report. The low math score reported on Bates page S38 of the February 7, 2023 Multidisciplinary Assessment Report is a standard score of 79 in math facts fluency.

Student's complaint did not allege Capistrano Unified failed to offer him an appropriate goal in math facts fluency. The issues to be heard and decided at hearing are limited to the issues alleged in the complaint. (20 U.S.C. § 1415(f)(3)(B).) Therefore, this Decision makes no determination of whether the March 1, 2023 IEP failed to offer an appropriate goal in math facts fluency.

Student's closing brief does not argue, or cite to, any testimony or documentary evidence of Capistrano Unified's alleged failure to offer a goal in math application tasks. Dr. Richards' September 17, 2024 Independent Educational Evaluation does not reference math application tasks. None of the witnesses testified about Student's understanding of math application tasks.

Student's ability to understand math application tasks was only discussed in the February 7, 2023 Multidisciplinary Assessment Report. In discussing Student's performance on the Woodcock-Johnson Test of Achievement's applied problems subtest, the report states Student appeared to have limited understanding of grade-appropriate math application tasks. A single reference as to Student's limited understanding of math application tasks in the report was insufficient to prove Student required a separate goal in this area to receive a FAPE.

Student failed to prove he required a goal in math application tasks. His performance on the applied problems subtest was in the low average range. Student performed in the average range on the number matrices subtest of the Woodcock-Johnson Test of Achievement, which required Student to identify missing numbers from a number pattern. Combined, the two subtests yielded an index score in the low average range in math problem solving, demonstrating his overall math problem solving skills, including his understanding of math application tasks, was not significantly limited. Student failed to demonstrate his skills related to math applications tasks warranted an IEP goal to enable him to receive a FAPE.

Accordingly, Student failed to prove Capistrano Unified denied him a FAPE by failing to offer in the March 1, 2023 IEP, an appropriate goal in math application tasks. Capistrano Unified prevailed on Issue 2(a)(vi).

ISSUE 2(a)(vii): PHONOLOGICAL PROCESSING

The evidence did not support a need for a phonological processing goal in the March 1, 2023 IEP. Phonological processing is the ability to perceive, order and manipulate the sounds within words. (*M.M. v. Lafayette Sch. Dist.* (9th Cir. 2014) 767 F.3d 842, 848; *Falmouth Sch. Dist. v. DOE* (USDC Maine September 29, 2021 Case No. 2:20-cv-00214-GZS) 2021 WL 4476939 at p. 4, fn. 14 (*Falmouth*).

Student's phonological processing skills were in the low average range based on Capistrano Unified's assessments. He performed in the average range in the pseudoword decoding subtest of the Weschler Individual Achievement Test, which measured his phonic decoding skills when pseudowords were read aloud to him.

Student also performed in the average range in the Phonemic Proficiency subtest of the Weschler Individual Achievement Test, which also measured his phonological and phonemic skills. There, he was presented with an audio recording and asked to respond orally to items that required manipulation of the sounds within words. Capistrano Unified's assessment team did not identify Student's phonological processing skills as an area of weakness. Student failed to offer any persuasive evidence that his phonological processing skills were a weakness necessitating an IEP goal.

Accordingly, Student failed to prove Capistrano Unified denied him a FAPE by failing to offer an appropriate goal in phonological processing in the March 1, 2023 IEP. Capistrano Unified prevailed on Issue 2(a)(vii).

(This space is intentionally left blank. Text continues on the following page.)

ISSUE 2(a)(viii): ORTHOGRAPHIC PROCESSING

Student failed to prove the March 1, 2023 IEP required an orthographic processing goal. Orthographic processing refers to the skills necessary to store and recall the visual forms of letters and words. (*S.B. v. San Mateo Foster City Sch. Dist.* (N.D.Cal. April 11, 2017 Case No. 16-cv-01789-EDL) 2017 WL 4856868 at p. 3; *Falmouth, supra*, 2021 WL 4476939 at p. 4, fn. 14.)

As discussed in Issues 2(a)(i), 2(a)(ii), and 2(a)(iii), the reading goals that sought to help Student decode, read sight words, and improve his reading fluency and reading comprehension skills were appropriately calculated and measurable to address his reading needs. Meeting the reading goals would improve his ability to store and recall letters and words. Student failed to offer any testimony or documentary evidence explaining what the March 1, 2023 IEP failed to offer in orthographic processing, that the reading goals did not already address.

Accordingly, Student failed to prove Capistrano Unified denied him a FAPE by failing to offer an appropriate goal in orthographic processing in the March 1, 2023 IEP. Capistrano Unified prevailed on Issue 2(a)(viii).

ISSUE 2(a)(ix): ATTENTION

Capistrano Unified inappropriately failed to offer a goal in attention in the March 1, 2023 IEP. Student's teacher Medrano reported to assessors that he was easily distracted in class. She was concerned about his ability to keep his attention. Medrano's ratings in the Behavior Assessment System for Children showed very elevated symptoms of inattention, and distractibility.

Further, Medrano noted in Student's first trimester report card, his lack of focus and inability to work independently contributed to his quality of work, which she identified as an area of concern in the report. At hearing, Medrano explained that Student remained easily distracted through the remainder of the 2022-2023 school year.

Student's attention deficits at school were severe enough that the March 1, 2023 IEP team determined Student met the eligible criteria for special education services, in part due to a suspected diagnosis of attention deficit hyperactivity disorder. However, despite acknowledging the severity of Student's attention deficits, and identifying his need for special education services as a result, Capistrano Unified failed to offer a goal in the March 1, 2023 IEP to address his attention deficit.

The March 1, 2023 IEP's social-emotional goal and behavior goal, as discussed in Issue 2(a)(xiii), did not address Student's attention needs at school. The IEP's program modifications and accommodations also did not support his difficulties sustaining attention. There was no testimony or documentary evidence offered at hearing that demonstrated the March 1, 2023 IEP or any aspect of Student's general education program supported his attention needs.

The evidence established the absence of an attention goal in the March 1, 2023 IEP, deprived Student of the opportunity to learn skills to better focus and sustain his attention at school. Accordingly, Student proved by a preponderance of the evidence Capistrano Unified denied him a FAPE by failing to offer an appropriate goal in attention in the March 1, 2023 IEP.

Student prevailed on Issue 2(a)(ix).

ISSUE 2(a)(x): EXECUTIVE FUNCTIONING

Executive functioning is a cognitive process that enables an individual to plan, organize, initiate tasks, regulate emotions, manage time, and sustain attention. In addition to his need for a goal in attention, Student required a separate IEP goal in other areas of executive functioning.

Medrano noted in her questionnaire for Capistrano Unified's assessors that Student was disorganized and failed to complete assignments. She found his ability to timely initiate and complete assignments poor, and transitioning between tasks difficult for him. He needed reminders to follow through with tasks. School psychologist practicum student Martindale found Student slow to transition to the next activity when she observed him in the classroom.

Assessments supported a need for an executive functioning goal. Medrano's ratings in the Behavior Assessment System for Children showed a very elevated level of concern for his ability to concentrate, organize and plan. Her ratings also showed very elevated concerns about his ability to timely turn in assignments, and to turn in complete assignments.

A preponderance of the evidence established Student's executive functioning deficits impeded his ability to access and benefit from his education. As a result, Capistrano Unified inappropriately failed to offer Student an appropriate executive functioning goal in the March 1, 2023 IEP, to address his overall executive functioning deficits.

Capistrano Unified's violation denied Student a FAPE by depriving him of the benefit of improving his ability to manage his time, transition between tasks, initiate and complete assignments, and become more organized. Accordingly, Student proved by a preponderance of the evidence Capistrano Unified denied him a FAPE by failing to offer an appropriate goal in executive functioning in the March 1, 2023 IEP.

Student prevailed on Issue 2(a)(x).

ISSUE 2(a)(xi): PEER INTERACTIONS

The March 1, 2023 IEP did not require a goal in peer interactions to provide Student a FAPE. Medrano described Student as quiet and shy. He was also respectful, collaborative, and worked well with his peers. Martindale observed Student interact and play well with other students. At hearing, Medrano testified she had no concerns about Student's peer interactions in school. In the questionnaire, Mother also reported Student got along "great" with other children, enjoyed playing with them, and was kind and giving.

The evidence demonstrated Student's interactions with his peers were not a concern, and did not warrant an IEP goal. Accordingly, Student failed to prove Capistrano Unified denied him a FAPE by failing to offer in the March 1, 2023 IEP, an appropriate goal in peer interactions.

Capistrano Unified prevailed on Issue 2(a)(xi).

(This space is intentionally left blank. Text continues on the following page.)

ISSUE 2(a)(xii): SELF-ADVOCACY

The March 1, 2023 IEP inappropriately failed to offer a goal in self-advocacy. Parent reported to assessors that Student was afraid to ask for help at school. As a result, Student had toileting accidents at school because he was apprehensive about requesting to use the restroom. Parent also described Student as a passive child, who did not speak up when someone did something to him that he did not like.

Medrano observed Student act helpless and give up easily. At hearing, Medrano shared that Student did not ask for help, but relied on a friend or his twin sister to let Medrano know Student needed help.

The evidence demonstrated Student's lack of confidence to advocate for himself impacted his classroom performance during the 2022-2023 school year. His lack of self-advocacy skills, more likely than not, contributed to his difficulties in understanding lessons and completing assignments because he was reluctant to seek help. Accordingly, the March 1, 2023 IEP required a self-advocacy goal to enable Student to benefit from his education, and the failure to do so denied him a FAPE.

Student proved by a preponderance of the evidence Capistrano Unified denied him a FAPE by failing to offer an appropriate self-advocacy goal in the March 1, 2023 IEP. Student prevailed on Issue 2(a)(xii).

(This space is intentionally left blank. Text continues on the following page.)

ISSUE 2(a)(xiii): SOCIAL-EMOTIONAL SKILLS

As previously discussed in Issues 1 and 8, Student did not engage in self-harm or negative self-talk at school. Nevertheless, and for reasons unexplained at hearing, the March 1, 2023 IEP team deemed it necessary to offer goals to address Parents' concerns. The March 1, 2023 IEP offered two goals in social-emotional skills to address Parents' concerns about Student's poor self-concept, anxiety, and self-inflicted injuries.

Contrary to the evidence, the IEP's description of Student's present level of social-emotional and behavioral functioning stated that Student needed to use self-regulation and coping strategies that he was taught across all school settings, when he was upset, frustrated, or anxious, to avoid engaging in unexpected behaviors such as self-harm and negative self-comments. The IEP also stated he needed to demonstrate an improved self-concept by utilizing positive self-esteem strategies.

The first social-emotional goal, listed under the heading Social/Emotional, was designed to improve Student's self-concept, referred to as a self-concept goal. The baseline stated Student engaged in self-harm and negative self-talk according to an assessment and parent feedback.

The second goal was listed in the IEP under the heading Behavior, which was tailored to teach Student self-regulation and coping strategies, referred to as the self-regulation goal. The baseline stated Student had difficulty regulating his emotions based on an assessment and parent feedback. It also noted he physically harmed himself, engaged in negative self-talk, and had anger outbursts when he was stressed and overwhelmed. Read together, the two goals' baselines and the statement of Student's present level of social-emotional and behavioral functioning was sufficient

under the *Paso Robles* analysis to enable the IEP team to calculate a reasonably ambitious measurable goal to help Student regulate his emotions and improve his self-concept.

The self-concept goal was reasonably calculated and measurable to enable Student to improve his self-esteem. The goal required Student to demonstrate improved self-concept by using positive self-esteem strategies. Positive self-esteem strategies would include Student identifying his personal successes, using positive self-talk, and identifying his strengths. To meet the goal, Student had to demonstrate use of positive self-esteem strategies 80 percent of the time, as measured by teacher observations and Student's own reports.

Similarly, the self-regulation goal was reasonably calculated and measurable to enable Student to better regulate his emotions. The goal required Student to use self-regulation and coping strategies taught to him when he was upset, frustrated, or anxious. Strategies that he would learn included

- movement breaks,
- deep breathing exercises,
- taking breaks in a quiet space,
- applying deep pressure to himself or doing heavy work activity, or
- using a sensory tool such as a fidget.

To meet the goal, Student had to successfully use the learned strategies, with two prompts, to avoid engaging in unexpected behaviors such as hurting himself or talking negatively about himself in four out of five opportunities. His progress towards the goal would be measured by teacher observations.

Despite the lack of evidence demonstrating Student's need for a self-concept or self-regulation goal, the inclusion of the goals in the March 1, 2023 IEP did not deny Student a FAPE. The goals were based on the concerns reported by Parents, which Capistrano Unified's IEP team members considered in developing the two goals.

The self-concept and self-regulation goals were measurable and appropriate, and addressed Student's social-emotional needs identified in the March 1, 2023 IEP. Accordingly, Student failed to prove Capistrano Unified denied him a FAPE by failing to offer appropriate goals in social emotional skills in the March 1, 2023 IEP.

Capistrano Unified prevailed on Issue 2(a)(xiii).

ISSUES 2(b)(i) THROUGH 2(b)(vi): DID THE MARCH 1, 2023 IEP FAIL TO OFFER APPROPRIATE COUNSELING AND BEHAVIOR SERVICES?

Student contends the March 1, 2023 IEP required counseling and behavioral services to address his social-emotional and behavioral needs. Capistrano Unified did not offer a specific contention regarding counseling and behavioral services.

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).) Whenever a child's behavior impedes his learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (20 U.S.C. § 1414(d)(3)(B); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).)

Student failed to prove the March 1, 2023 IEP required counseling and behavioral services to enable Student to benefit from special education. As discussed in Issue 2(a)(xi), Student did not have a need in peer interactions. Therefore, he did not require counseling or behavioral services in his IEP for that reason.

Student also did not require counseling and behavioral services in his March 1, 2023 IEP to address needs in attention, executive functioning, self-advocacy, anxiety, and social-emotional functioning. He had difficulty paying attention in school, transitioning between activities, completing assignments, organizing and managing his time. However, Student was easily redirected, cooperative, compliant, and did not have behaviors that impeded the learning of his peers.

In addition, as discussed in Issue 2(a)(xiii), the self-concept and self-regulation goals were appropriate to support the concerns reported by Parents about his poor self-esteem, self-harm, and anxiety. The self-regulation goal identified the education specialist and general education teacher as responsible persons for the goal. Though the March 1, 2023 IEP neglected to identify the responsible persons for the self-concept goal, Brown testified that the education specialist and general education teacher were also responsible for that goal.

The evidence demonstrated that an education specialist, such as Sage, was qualified to support Student's unique attention, executive functioning, advocacy, and social-emotional needs. Education Specialist Sage testified at hearing. Sage would have implemented the March 1, 2023 IEP had Student returned to Capistrano Unified for the 2023-2024 school year.

Sage held a master's degree in education and was credentialed to teach students with mild to moderate disabilities. She taught special education since August 2021. As a special education teacher, she helped develop and implement behavior intervention plans, and used modification techniques and positive behavior interventions and supports to improve students' behaviors. She received training in the Orton Gillingham methodology to enable her to teach students diagnosed with dyslexia. A preponderance of the evidence demonstrated Sage was qualified to support Student's unique attention, executive functioning, and self-advocacy needs, and to implement the strategies called for in the March 1, 2023 IEP's social-emotional and behavioral goals.

Student failed to offer any persuasive testimony or documentary evidence establishing his non-academic needs required counseling and behavioral services. Dr. Richards, a professor in Loyola Marymount University's education specialist master's degree program, did not opine an education specialist was unqualified to support Student's unique needs in attention, executive functioning, self-advocacy, and social-emotional functioning, including anxiety.

Based on a preponderance of the evidence, the March 1, 2023 IEP did not require counseling and behavioral services to address Student's needs in attention, executive functioning, self-advocacy, anxiety, and social-emotional functioning. Student failed to prove Capistrano Unified denied him a FAPE by failing to offer in the March 1, 2023 IEP, counseling and behavioral services to address Student's needs in

- attention,
- executive functioning,
- peer interaction,

- self-advocacy,
- anxiety, and
- social-emotional needs.

Capistrano Unified prevailed on Issues 2(b)(i), 2(b)(ii), 2(b)(iii), 2(b)(iv), 2(b)(v), and 2(b)(vi).

ISSUES 2(c)(i) THROUGH 2(c)(xiii): DID THE MARCH 1, 2023 IEP FAIL TO OFFER PLACEMENT IN A CLASSROOM WITH SMALL GROUP INSTRUCTION?

Student contends the March 1, 2023 IEP's offered placement would have been detrimental to Student because one day a week of help to remediate his severe dyslexia could not meet his needs. Student argues the placement would have worsened his dyslexia-related needs, resulting in increased episodes of self-harm and maladaptive behaviors. Capistrano Unified contends the March 1, 2023 IEP offered Student an appropriate placement in the least restrictive environment to meet his needs.

School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities 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); Ed. Code, § 56040.1.) In California, a specific educational placement is defined as the unique combination of facilities, personnel, location or equipment necessary to provide instructional services to a special education student as specified in the student's IEP. (Cal. Code Regs., tit. 5, § 3042, subd. (a).)

The Ninth Circuit Court of Appeals adopted a balancing test that required consideration of four factors to determine whether a placement is in the least restrictive environment. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*)) The four factors are:

1. the educational benefits of placement full-time in a regular class;
2. the non-academic benefits of interaction with children who were not disabled;
3. the effect the child will have on the teacher and children in the regular class; and
4. the costs of mainstreaming the student. (*Ibid.*)

The continuum of program options includes but is not limited to regular education; resource specialist programs; designated instruction and services; and special classes. (Ed. Code, § 56361.) However, a school district is not required to offer a program preferred by a student or parent. (*Gregory K., supra*, 811 F.2d at p. 1314.)

Student's claim that one day a week to remediate his severe dyslexia would not meet Student's needs is not an issue to be decided in this matter. Student did not challenge the March 1, 2023 IEP's offer of 90 minutes per week of pull-out instruction to address his academic deficits.

At the July 28, 2025 prehearing conference, Student clarified that the issues to be heard and decided regarding the services offered in the March 1, 2023, and May 2, 2024 IEPs were limited to counseling and behavioral services to address the specific areas of attention, executive functioning, peer interaction, self-advocacy, anxiety, and social emotional needs. Student did not identify the IEPs' offer of specialized academic

instruction as an issue for hearing. (Ed. Code, § 56505, subd. (e)(6), [a party has the right to be informed by the other party, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing].)

The July 30, 2025 Order Following Prehearing Conference for Hearing by Videoconference required a party believing that an issue has been misstated or improperly omitted to promptly file a notice in writing, before the first day of hearing, stating its concern and referring to supporting portions of the complaint. On August 1, 2025, Student filed a Motion to Correct Prehearing Conference Order seeking to correct only Issues 2(c) and 4(c) of the July 30, 2025 Order, which did not include issues regarding the inappropriateness of the March 1, 2023, and May 2, 2024 IEPs' offer of specialized academic instruction.

At the start of the hearing, following a discussion between the Administrative Law Judge and the parties, only Issues 2(c) and 4(c) were further clarified. No further corrections or clarification of the Issues were sought by Student at the hearing. Accordingly, this Decision makes no determination of whether the frequency and duration of specialized academic instruction offered in the March 1, 2023, and May 2, 2024 IEPs were appropriate.

If Student had intended to obtain a finding in this Decision that the specialized academic instruction offered in the IEPs were not appropriate to meet his dyslexia-related needs, he should have identified the problem as an issue to be heard and decided in this matter. He did not. As a result, this Decision presumes the frequency and duration of the offered pull-out and push-in instruction was sufficient for the purposes of analyzing the appropriateness of the March 1, 2023 and May 2, 2024 IEPs' offer of placement.

ISSUES 2(c)(vi), 2(c)(vii), AND 2(c)(xi): SMALL GROUP INSTRUCTION TO ADDRESS MATH APPLICATION TASKS, PHONOLOGICAL PROCESSING, AND PEER INTERACTIONS

As discussed in Issues 2(a)(vi), 2(a)(vii), 2(a)(x), and 2(a)(xi), Student failed to prove the March 1, 2023 IEP inappropriately failed to offer goals in math application tasks, phonological processing, and peer interactions. Therefore, the March 1, 2023 IEP did not need to offer Student a classroom with small group instruction to address math application tasks, phonological processing, and peer interactions. Student failed to prove Capistrano Unified denied him a FAPE by failing to offer a classroom environment with small group instruction to address his needs in math application tasks, phonological processing, and peer interactions.

Capistrano Unified prevailed on Issues 2(c)(vi), 2(c)(vii), and 2(c)(xi).

ISSUES 2(c)(i) THROUGH 2(c)(v), AND 2(c)(viii): SMALL GROUP INSTRUCTION TO ADDRESS BASIC READING SKILLS, READING FLUENCY, READING COMPREHENSION, BASIC WRITING SKILLS, WRITTEN EXPRESSION, AND ORTHOGRAPHIC PROCESSING

As discussed in Issues 2(a)(i) through 2(a)(v), Student had needs in

- basic reading skills,
- reading fluency,
- reading comprehension,
- basic writing skills,

- written expression, and
- orthographic processing.

The March 1, 2023 IEP goals adequately addressed Student's reading, writing, and orthographic processing needs, and offered specialized academic instruction outside the regular classroom to address those needs. Malcom's specialized academic instruction class offered small group instruction consisting of five or fewer students.

The evidence established the March 1, 2023 IEP's placement offer in the general education classroom, presuming the 90 minutes a week of pull-out instruction and 60 minutes a week of push-in instruction were sufficient, was appropriate and the least restrictive environment under the four factors of *Rachel H.* As to the first *Rachel H.* factor, the evidence established placement in regular classroom full-time was not appropriate. Student was significantly behind his peers academically when the 2022-2023 school year began.

Medrano opined that though Student remained behind his peers academically he benefitted from the general education lessons and demonstrated progress in reading and math. However, Student continued to need intensive reading support through the WIN program, and additional pull-out instruction to receive evidence based structured literacy interventions because of his dyslexia. Therefore, under the first *Rachel H.* factor, Student could not fully benefit if placed full-time in a regular classroom.

As to the second *Rachel H.* factor, Student benefited from interacting with his nondisabled peers. Student was shy and quiet, but got along with his peers. As the school year progressed, Student became more comfortable and social with his peers.

He made friends, and enjoyed playing at recess with his classmates, a clear benefit for a child whose Parents claimed he had low self-esteem. Thus, the general education setting conferred a substantial non-academic benefit to Student.

Regarding the third *Rachel H.* factor, Student did not have maladaptive behaviors in class. His participation in the regular classroom did not interfere with Medrano's ability to teach and manage her class. His behaviors also did not interfere with the learning of his peers. Therefore, the evidence favored Student's placement in the regular classroom under the third *Rachel H.* factor.

Neither party offered evidence as to the fourth *Rachel H.* factor relating to cost, nor was cost a factor in the ultimate outcome of this Decision. In sum, a preponderance of the evidence established the regular classroom with pull-out instruction in a small group setting, and push-in instruction in the regular classroom was an appropriate placement for Student and the least restrictive environment when balancing the *Rachel H.* factors.

At hearing, Student' expert, Dr. Strong, was familiar with the specialized academic instruction delivered at Malcom during 2020-2021 and 2021-2022 school years. During that period, she spent three days a week at Malcom as a school psychologist with Capistrano Unified. Dr. Strong opined the March 1, 2023 IEP placement offer was not appropriate for two reasons. First, Dr. Strong opined Malcom did not have the staffing to deliver the amount of specialized academic instruction Student required.

Second, Dr. Strong opined that staff at Malcom was not qualified to implement with fidelity an evidence-based structured literacy program to support Student's dyslexia-related needs. The evidence did not support Dr. Strong's criticisms of Malcom.

Dr. Strong's claim that she remained current on the special education programs at Malcom was not persuasive. At hearing, Dr. Strong shared she knew Malcom school principal Lowy "really" well and kept in touch with her after Dr. Strong left Capistrano Unified. Dr. Strong testified Lowy revealed to her that Malcom would discontinue their tier one and tier two reading interventions and decrease Malcom's specialized academic instruction class.

Lowy testified to the contrary, undermining Dr. Strong credibility. Lowy had not spoken to Dr. Strong for three years, until they spoke on May 7, 2025, when Dr. Strong observed Malcom's specialized academic instruction class. Lowy also did not tell Dr. Strong that Malcom would discontinue the tier one and tier two reading interventions. Lowy also did not tell Dr. Strong that Malcom's specialized academic instruction class would be decreasing.

At hearing, Lowy explained clearly and persuasively that the reading interventions were not ending, and the specialized academic instruction class was not decreasing at Malcom. Lowy's credible account of her conversations with Dr. Strong undermined Dr. Strong's criticisms of Malcom, and diminished the credibility of Dr. Strong's criticisms of Capistrano Unified and its staff.

Dr. Strong observed the specialized academic instruction class at Malcom on May 7, 2025, and documented her observation in a written report of the same date. She observed the classroom for 20 minutes. Education Specialist Sage was teaching. Three third-grade students were present. Sage told Dr. Strong that the group typically included five students.

Dr. Strong spoke to Sage and Lowy for less than eight minutes during the observation. During their conversation, Dr. Strong questioned Sage on, if and how, students in her class were grouped based on their type of dyslexia, such as deficits in their phonological processing, orthographic processing, or a combination of both. She also questioned Sage on how reading fluency was tracked and measured. Dr. Strong questioned Sage's qualifications, based in part, because she opined Sage's responses to her questions were unclear and lacked details.

At hearing, and in her report, Dr. Strong opined Sage and the rest of the staff at Malcom were not qualified and equipped to provide Student structured literacy interventions with fidelity. She opined Malcom did not have a certified dyslexia specialist with nationally recognized training. She also opined Malcom did not group students in the specialized academic instruction class by their specific learning profiles.

Dr. Strong further opined the specialized academic instruction program at Malcom lacked the staffing to deliver the structured literacy program Student required. Specifically, Dr. Strong opined Student required a structured literacy program, to be delivered with high fidelity by a specialist each day outside the regular classroom. Dr. Strong opined Malcom had never implemented such a program to her knowledge, and testified Sage was not delivering the structured literacy instruction when Dr. Strong observed her. Dr. Richards' also opined Student required at least two sessions a week, for 40 to 60 minutes per session, of specialized academic instruction to address Student's academic deficits.

However, the analysis of the March 1, 2023 IEP's placement offer is not based on how much specialized academic instruction Student contends, nor what Dr. Strong and Dr. Richards opined should have been offered. The IEP's offer of specialized academic

instruction is not an issue to be decided in this matter. Accordingly, Dr. Strong's and Dr. Richards' concerns about the placement's ability to implement what they opined to be a necessary amount of specialized academic instruction was not persuasive for that reason.

Furthermore, Dr. Strong's criticisms of Sage's qualifications, or the staff at Malcom to deliver with fidelity a structured literacy program was not persuasive. Though Dr. Strong's doctorate dissertation was on dyslexia, she did not have any experience teaching a structured literacy program. In addition, Dr. Strong was not familiar with Sage's education, training, or experience. Dr. Strong did not work directly with Sage while she was a school psychologist with Capistrano Unified. Sage joined Capistrano Unified in August 2022, after Dr. Strong left Capistrano Unified. Dr. Strong was only aware Sage received a certificate for completing Orton-Gillingham training in 2022, and was trained in Crisis Prevention Institute protocols.

Furthermore, Dr. Strong only observed Sage teach for 20 minutes and spoke to her for less than eight minutes. Sage's responses that troubled Dr. Strong were not enough to find Sage incompetent and unqualified. Therefore, Dr. Strong's criticism of Sage was not persuasive because her observation and conversation with Sage was brief, and her knowledge of Sage's training and experience limited.

Capistrano Unified established the personnel at Malcom was qualified to provide the specialized academic instruction specified in the March 1, 2023 IEP. In November 2022, Sage completed a 30-hour course on Orton-Gillingham, provided by Capistrano Unified. The course was delivered by the Institute for Multi-Sensory Education. The course was entitled Comprehensive Orton-Gillingham Plus Virtual. Sage received a certificate upon completing the course.

Student contends Sage's Orton-Gillingham training was not sufficient to allow her to deliver a structured literacy program with fidelity because Sage did not complete a training from the Orton-Gillingham Academy, such as the Academy's Classroom Educator level course. A print-out of the Academy's online description of the Classroom Educator level course was offered into evidence. The Classroom Educator level course provides a basic understanding of Orton-Gillingham instruction.

Student's contention was not persuasive. Neither Student nor Capistrano Unified elicited any testimony from Sage about the depth of her knowledge of the Orton-Gillingham methodology, or any other evidence-based structured literacy methodology, or her teaching methods in the specialized academic instruction class. Student failed to offer any evidence that proved a teacher had to complete a Classroom Education level course from the Orton-Gillingham Academy to use Orton-Gillingham strategies to successfully teach children with dyslexia.

The evidence established Sage was capable of implementing the specialized academic instruction called for in the March 1, 2023 IEP. Sage could also provide Student structured literacy instruction in a small group setting. Sage was trained to teach her students using Orton-Gillingham strategies. Student failed to offer any evidence that Capistrano Unified could not deliver to Student the minutes of pull-out and push-in instruction called for in the March 1, 2023 IEP, or deliver with fidelity a structured literacy program at Malcom. Student did not meet the burden of proving the personnel at Malcom was not qualified to deliver the specialized academic instruction called for in the March 1, 2023 IEP, to support his dyslexia-related needs.

In sum, the evidence established the March 1, 2023 IEP's offer of placement in the regular classroom with push-in instruction, and pull-out instruction in a small group setting was appropriate and the least restrictive environment based on the findings of this Decision. The evidence also established that Malcom had the qualified personnel to deliver the specialized academic instruction specified in the March 1, 2023 IEP.

Accordingly, Student failed to prove Capistrano Unified denied Student a FAPE by failing to offer placement in a classroom setting with small group instruction, to adequately address his needs in

- basic reading skills,
- reading fluency,
- reading comprehension,
- basic writing skills,
- written expression, and
- orthographic processing.

Capistrano Unified prevailed on Issues 2(c)(i), 2(c)(ii), 2(c)(iii), 2(c)(iv), 2(c)(v) and 2(c)(viii).

(This space is intentionally left blank. Text continues on the following page.)

ISSUES 2(c)(ix), 2(c)(x), 2(c)(xii) AND 2(c)(xiii): SMALL GROUP
INSTRUCTION TO ADDRESS ATTENTION, EXECUTIVE FUNCTIONING,
SELF-ADVOCACY, AND SOCIAL-EMOTIONAL SKILLS

As discussed in Issues 2(a)(ix), 2(a)(x), 2(a)(xii) and 2(a)(xiii), Student had needs in attention, executive functioning, and self-advocacy, and was identified by his IEP team to have a need in social-emotional functioning. As discussed in Issues 2(b)(i), 2(b)(ii), 2(b)(iv), 2(b)(v), and 2(b)(vi), Student failed to prove he required counseling and behavioral services to address his

- attention,
- executive functioning,
- self-advocacy,
- anxiety, and
- social-emotional functioning.

The evidence did not demonstrate that he required a class with small group instruction because of needs in

- attention,
- executive functioning,
- self-advocacy,
- anxiety and
- social-emotional functioning.

The push-in instruction in the March 1, 2023 IEP was offered to support Student's social-emotional and behavioral needs in the regular classroom. Student was well-behaved in Medrano's class and easily redirected when he was distracted. There was no evidence the regular classroom environment would impede Student's ability to improve his attention span and executive functioning skills, and to learn to advocate for himself. Student also failed to demonstrate how the general education setting would impede his social-emotional growth. Student offered no persuasive testimony or documentary evidence that his attention, executive functioning, self-advocacy, and social-emotional needs could not be supported in the regular classroom with push-in services.

A preponderance of the evidence established Student did not require a classroom with small group instruction to address his attention, executive functioning, self-advocacy, and social-emotional needs. Accordingly, Student failed to prove Capistrano Unified denied him a FAPE by failing to offer in the March 1, 2023 IEP, placement in a classroom setting with small group instruction to adequately address his needs in attention, executive functioning, self-advocacy, and social-emotional skills.

Capistrano Unified prevailed on Issues 2(c)(ix), 2(c)(x), 2(c)(xii), and 2(c)(xiii).

(This space is intentionally left blank. Text continues on the following page.)

STUDENT WAS NOT A CAPISTRANO UNIFIED RESIDENT DURING THE 2023-2024 AND 2024-2025 SCHOOL YEARS, THEREFORE CAPISTRANO UNIFIED WAS NOT THE RESPONSIBLE LOCAL EDUCATIONAL AGENCY AND WAS NOT OBLIGATED TO OFFER STUDENT A FAPE FOR THOSE SCHOOL YEARS

Student failed to establish he resided within Capistrano Unified's boundaries during the 2023-2024 and 2024-2025 school years. Student lived with Mother during those school years, and Mother did not maintain her permanent residence in California, within Capistrano Unified's boundaries. Although Student asserts Mother and Student's home in Kentucky was a second residence maintained by Parents solely to enable Student to attend Lexington School, a preponderance of the evidence did not support Student's assertion.

Student stopped residing in Capistrano Unified's boundaries in summer 2023, when Student and his sibling moved from California to live with Mother in her permanent residence in Kentucky. Capistrano Unified's obligations to offer Student a FAPE ceased when Student began residing with Mother in Kentucky, and therefore, had no further obligation to serve Student during the 2023-2024 and 2024-2025 school years.

A residency determination for the purposes of the IDEA is made under state law and is no different from a residency determination in other types of cases. (*Union Sch. Dist. v. Smith* (1994) 15 F.3d 1519, 1525, cert. den. (1994), 513 U.S. 935 (*Union*)). California law requires students between the ages of six and 18 to attend school in the district in which their parent or legal guardian resides, and their parent's or legal

guardian's residency determines the local educational agency responsible for the student. (Ed. Code, § 48200; *B.H. v. Manhattan Beach Unified Sch. Dist.* (2019) 35 Cal. App. 5th 563, 571; *Orange Cnty. Dept. of Educ. v. Cal. Dept. of Educ.* (9th Cir. 2011) 668, F.3d 1052, 1056.)

In *Union*, the Ninth Circuit Court of Appeals found the school district continued to be the responsible local educational agency for the student who was attending a non-residential education program, Mondays through Fridays, located in another local educational agency's boundaries. (*Union, supra*, 15 F.3d p. 1525.) There, the student resided with a parent near the program, in a temporary second residence the parents maintained for the sole purpose of allowing the student to attend the program. (*Ibid.*) The *Union* court affirmed the trial court's findings that the parents continued to reside in the school district's boundaries because the parents maintained a permanent residence within that school district's boundaries, where the parents paid taxes and the student's father continued his medical practice. (*Ibid.*)

In determining the place of residence, certain rules are to be observed, which include the following rules relevant to this matter:

- A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
- There can only be one residence.
- A residence cannot be lost until another is gained.
- The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of the unmarried child.

- The residence can be changed only by the union of act and intent.
- A married person shall have the right to retain his or her legal residence in the State of California notwithstanding the legal residence or domicile of his or her spouse.

(Gov. Code, § 244, subds. (a), (b), (c), (d), (f) and (g).) The residence of the parent with whom a child maintains their place of abode determines the residence of the child.

(Welf. & Inst. Code, § 17.1, subd. (a).)

The intent of a person with respect to their residence is a key factor in California cases on residency. To affect a change of residence, there must be a concurrence in the act of abandonment of one residence with the intent to establish a new residence elsewhere. (*Eriksen v. Eriksen* (1943) 57 Cal.App.2d 532, 534-535 (*Eriksen*)). It is mainly a question of intent, which may be shown by the testimony of the parties, considered in connection with the surrounding circumstances, plus corroboration when essential. (*Id.* at p. 535)

School districts shall accept from the parent or legal guardian of the student, reasonable evidence that the student meets the residency requirements for school attendance in the school district. (Ed. Code, § 48204.1.) Reasonable evidence of residency for a student living with a parent or legal guardian shall be established by documentation showing the name and address of the parent or legal guardian within the school district. (Ed. Code, § 48204.1, subd. (a).) Reasonable evidence of residency may include the following documentation:

1. Property tax payment receipts.
2. Rental property contract, lease, or payment receipts.

3. Utility service contracts, statements, or payment receipts.
4. Pay stubs.
5. Voter registration.
6. Correspondence from a government agency.
7. Declaration of residency executed by the parent or legal guardian of a pupil. (*Ibid.*)

Capistrano Unified carried the burden by a preponderance of the evidence of proving its defense that Student was not resident of its school district during the 2023-2024 and 2024-2025 school years. (*Hinerfeld-Ward, Inc. v. Lipian*, (2010) 188 Cal.App.4th 86, 93 [a defendant who advances an affirmative defense to the plaintiff's claims bears the burden of proof on the defense, citing *Seltzer v. Barnes*, (2010) 182 Cal.App.4th 953, 969].)

The evidence established Mother and Student did not reside within Capistrano Unified's boundaries during the 2023-2024 and 2024-2025 school years. Mother maintained her permanent residence in the state of Kentucky, referred to as the Kentucky Home. The Kentucky Home was a short distance from Lexington. Father remained in California, in the home Father and Mother previously shared before separating, referred to as the California Home. Student lived with Mother in Kentucky, not Father in California.

(This space is intentionally left blank. Text continues on the following page.)

MOTHER MOVED OUT OF CALIFORNIA BEFORE THE 2023-2024 SCHOOL YEAR WITH THE INTENT OF ESTABLISHING A PERMANENT RESIDENCE IN KENTUCKY AND NOT SOLELY TO ALLOW STUDENT TO ATTEND LEXINGTON

The evidence established Mother moved to Kentucky with the intent of establishing a permanent residence in Kentucky, and not for the sole purpose of enabling Student to attend Lexington. As part of Capistrano Unified's special education assessment of Student, discussed in Issue 8, Mother completed a questionnaire on December 20, 2022. In the questionnaire, Mother reported that she and Father were married but had separated three months prior. Mother represented that she had sole custody of Student. Father did not testify at hearing to either corroborate or deny Mother's assertion. Nevertheless, the evidence demonstrated Mother exercised sole physical custodial rights over Student and his sibling during the 2023-2024 and 2024-2025 school years.

Capistrano Unified's first day of instruction for the 2023-2024 school year was August 15, 2023. The testimony of Medrano, Capistrano Unified's Executive Director of Alternative Dispute Resolution and Compliance Dr. Purcell, and Mother all supported that Student and Mother moved to Kentucky before Capistrano Unified's 2023-2024 school year.

On February 27, 2023, Medrano met with Mother, to discuss Student's class performance. At hearing, Medrano persuasively recalled Mother stating to her at the February 27, 2023 meeting, that Mother was unhappy living in California and was considering moving to Kentucky. Mother also shared that she had an opportunity to

place her children in a private school in Kentucky, a friend would pay the tuition, and that Mother was excited about the opportunity. Medrano was persuasive because her testimony throughout the hearing on all subject matters was consistent, clear and precise.

Mother's testimony of her conversation with Medrano was not credible or persuasive. Student presented his case first, and Mother was Student's first witness. When cross-examined by Capistrano Unified, Mother testified she did not recall having a conversation with any staff at Capistrano Unified in spring 2023 about moving to Kentucky.

After Medrano's testimony, Student recalled Mother in an attempt to rebut Medrano's testimony. During rebuttal testimony, Mother opined that Medrano misunderstood Mother's representations regarding the move to Kentucky. Then, Mother conveniently recalled a conversation with Medrano the first week of April 2023, just before Capistrano Unified's spring break. Mother unpersuasively recalled details about an April 2023 conversation with Medrano, stating specifically, she told Medrano a friend offered to pay Mother to transport the friend's horses to Kentucky during spring break. Mother also recalled telling Medrano that Student and his sibling would join Mother on the trip, and that she and her children returned to California after the trip.

Notably, during the rebuttal testimony, Mother did not testify she also transported her own horses to Kentucky during the 2023 spring break. Capistrano Unified questioned Mother about an article published in April 2023, written by an author who Mother referred to as a friend. Mother did not deny the statements in the article that she had moved her horses to Kentucky because of certain conditions in California. Mother testified she moved some of her horses to Kentucky, but she denied moving to Kentucky.

Further, Mother's assertion she drove her friend's horses to Kentucky during Capistrano Unified's spring break from April 3 to 7, 2023, was also unlikely. Mother did not testify about traveling to Kentucky more than once in spring 2023, or transporting her own horses along with her friend's horses during the 2023 spring break. If Mother's account was true, that meant she made a second trip to Kentucky with her own horses in April 2023. Rather, the evidence demonstrated, more likely than not, Mother drove her own horses to Kentucky in April 2023, not her friend's.

Mother's claim that Medrano misunderstood Mother's comment about receiving payments to transport horses, for private school tuition payment was implausible, and not persuasive given the context of Mother's opinion. At hearing, Medrano was clear and unwavering about what Mother told her on February 27, 2023.

Furthermore, the events following Medrano's meeting with Mother demonstrated there was no misunderstanding by Medrano about what Mother had told her on February 27, 2023, and accurately corroborated actual events. Mother moved to Kentucky. Student and his sibling moved to live with Mother in Kentucky, and Mother enrolled both children in a private school in Kentucky. Those events did not happen by chance, but rather because Mother planned it.

Mother's testimony was inconsistent, implausible, and therefore, not credible. Her testimony about her conversation with Medrano on February 27, 2023, was misleading. Accordingly, her testimony regarding residency was given no weight.

(This space is intentionally left blank. Text continues on the following page.)

STUDENT DID NOT RESIDE WITHIN CAPISTRANO UNIFIED'S BOUNDARIES IN THE 2023-2024 SCHOOL YEAR

A preponderance of the evidence established Mother left California before the 2023-2024 school year with the intent to establish a new residence in Kentucky, and not solely to allow Student to attend Lexington. Following the 2022-2023 school year, Student traveled to Kentucky with his twin sister in the summer of 2023. There, he attended two summer camps designed to help children with dyslexia. Student lived with Mother in Kentucky during the summer and did not return to California that summer, contrary to Mother's testimony.

Mother testified she and Student returned to California following the camps, to celebrate her birthday. Mother's testimony was not credible. Student's first summer camp ended on August 4, 2023, and he started a second camp soon after. That camp was two weeks long, meaning it ended no earlier than August 18, 2023. Mother's birthday was on August 13. Student's first day of school at Lexington was August 23, 2023. Based on those dates, more likely than not, Student did not travel to California, but remained in Kentucky.

Capistrano Unified's first day of instruction for the 2023-2024 school year was August 15, 2023. Mother, Education Specialist Sage, and Brown exchanged emails between August 15, 2023, and August 18, 2023. In those exchanges, Mother requested an independent educational evaluation, expressed concerns about the amount of specialized academic instruction offered in the March 1, 2023 IEP and Sage's experience in providing the instruction.

On August 18, 2023, Brown emailed Mother recommending an IEP team meeting to discuss and document Mother's concerns. Brown shared Student's IEP team is open to considering any assessments offered by Parents and advised Mother that Student's IEP team could reconsider the goals and services offered in Student's IEP, such as the amount of pull-out instruction to provide Student.

Brown's August 18, 2023 email also informed Mother that Brown was coordinating with Student's IEP team to schedule an IEP team meeting on either August 28, or 29, 2023. Brown asked if Mother was available to meet on either date.

Student did not attend school at Capistrano Unified for the 2023-2024 school year. As a result of his absences, Capistrano Unified provided Parents with a Student Attendance Review Board letter on September 11, 2023. Parents did not contact Capistrano Unified about Student's school absences.

Mother did not respond to Brown's request to meet as a team in August 2023. Mother also did not report to Brown, Sage, or anyone else at Capistrano Unified that Student would be attending Lexington. Capistrano Unified only became aware that Student was enrolled in Lexington when Lexington sent Capistrano Unified a request on September 28, 2023, for a copy of Student's transcripts. Student was disenrolled from Capistrano Unified on September 29, 2023.

As planned, Mother enrolled Student and his sibling at Lexington. Parents did not afford Capistrano Unified an opportunity to address her concerns regarding the March 1, 2023 IEP. Parents made no effort to collaborate with Capistrano Unified to identify a California placement that would have allowed Mother to return to the

California Home. Mother did not contact Capistrano Unified during the 2023-2024 school year, until Student's attorney provided Capistrano Unified with a letter dated April 1, 2024.

The April 1, 2024 letter represented that Student continued to reside in Capistrano Unified's boundaries. The letter also requested Capistrano Unified convene an IEP team meeting for Student's annual IEP review.

Dr. Purcell testified Capistrano Unified did not obtain a full understanding of the intent and purpose of Mother's relocation to Kentucky until after the May 2, 2024 IEP team meeting, as Dr. Purcell and her department investigated and responded to Student's due process hearing claims, including speaking to the staff at Malcom. Therefore, Capistrano Unified had no reason to doubt the representations made in the April 1, 2024 letter, and convened an IEP team meeting on May 2, 2024, at Parents' request.

Attending the May 2, 2024 IEP team meeting were:

- Parents,
- Brown,
- School Principal Lowy,
- Education Specialist Sage, and a
- general education teacher.

An attorney with Attorney Adams' office attended the meeting at Parents' request.

The IEP team reviewed Student progress and present levels of academic and functional performance as reported by Student's teachers at Lexington. The team proceeded to develop an IEP, and discussed goals, services, and placement. The IEP is referred to as the May 2, 2024 IEP.

Parents' conduct at the meeting demonstrated Mother had no intention of returning to the California Home, but intended the Kentucky Home to be her permanent residence. Based on the IEP document, and testimony at hearing, Parents made no effort at the May 2, 2024 IEP team meeting to collaborate with Capistrano Unified to locate a placement for Student within reasonable proximity of the California Home. Parents did not request goals, more specialized academic instruction, or propose placement options in California. Parents also did not ask Capistrano Unified's IEP team members about California placement options besides the placement offered at Malcom.

At the IEP team meeting, Parents told the team that they would consider the FAPE offer. However, they explained that based on what Parents knew about Malcom, they did not believe the program would be appropriate. Parents stated they would continue to privately place Student at Lexington and would seek reimbursement for the private placement. Parents shared that they wished to continue their collaboration with Capistrano Unified to ensure Student received a FAPE and requested Capistrano Unified to continue to convene IEP team meetings for Student.

(This space is intentionally left blank. Text continues on the following page.)

STUDENT DID NOT RESIDE WITHIN CAPISTRANO UNIFIED'S BOUNDARIES IN THE 2024-2025 SCHOOL YEAR

Parents made no effort to collaborate with Capistrano Unified following the May 2, 2024 IEP team meeting to identify a program for Student closer to the California Home for the 2024-2025 school year. Based on their actions, Parents were not interested in obtaining an IEP placement closer to the California Home. Rather, Parents came to the May 2, 2024 IEP team meeting as a prelude to seeking reimbursement for Lexington, which further supported Mother's intent to remain in Kentucky, and not return to the California Home.

Mother continued to reside in Kentucky for the 2024-2025 school year. Student and his sibling continued to attend Lexington that year. Student offered no persuasive evidence that Mother relocated to California to reestablish her primary residence in the state, specifically the California Home located within Capistrano Unified's boundaries.

Student relied on Mother's testimony that she, Student, and his siblings returned to California during Lexington's extended breaks to support the California Home was Mother's primary residence. Student's argument was not persuasive. Student and Mother did not consistently travel to California during Lexington's school breaks, and their trips to the California Home were for temporary purposes to facilitate visits between Student, his sibling, and Father. Further, Student failed to offer any persuasive evidence that Mother stayed in the California Home during the children's visits with Father for any other purpose than to facilitate visits between Father and their children.

(This space is intentionally left blank. Text continues on the following page.)

The evidence established Mother left California with her horses and both children to establish a permanent residence in Kentucky. Unlike the *Union* parents who maintained a second residence solely to allow their child to attend an out-of-county program, Mother did not maintain the Kentucky Home solely to allow Student to attend Lexington. (*Union, supra*, 15 F.3d p. 1515.) Furthermore, Mother's actions following the 2022-2023 school year demonstrated she had no intent of moving back to California and leaving her life in Kentucky.

STUDENT'S DOCUMENTARY EVIDENCE AND MOTHER'S TESTIMONY DID NOT ESTABLISH THE CALIFORNIA HOME WAS MOTHER'S PERMANENT RESIDENCE

Student's documentary evidence did not demonstrate the California Home was Mother's permanent residence during the 2023-2024 and 2024-2025 school years. Student offered copies of Mother's real estate broker license, commission checks for real estate transactions Mother brokered, a renter's insurance policy for the California Home, internet service bills, and a copy of Mother's driver's license and temporary renewal license to prove Mother lived in the California Home. None of those exhibits were persuasive to find Mother's permanent residence to be the California Home during the 2023-2024 and 2024-2025 school years.

(This space is intentionally left blank. Text continues on the following page.)

MOTHER'S CALIFORNIA REAL ESTATE BROKER LICENSE

Mother's California real estate broker license and real estate transaction commission checks did not prove the California Home was Mother's permanent residence. Mother was a California licensed real estate broker since 2012. Her broker license listed the California Home as her office and mailing address.

Mother also formed a corporation to broker real estate transactions. The corporation's broker license named Mother as the officer, and listed the California Home as the mailing and office address. On January 7, and March 20, 2025, Mother was paid commissions on real estate transactions for properties in California.

Proof of Mother's real estate broker's licenses and real estate transactions in California did not demonstrate the California Home was Mother's permanent residence. An individual is not required to reside in California to hold a real estate broker license in the state, and is only required to maintain a California business address if engaging in business in California. (Bus. & Prof. Code, §§ 10151.5 and 10162.). Here, Mother's licenses listing the California Home did not prove Mother lived in the home because Mother could maintain her real estate broker license while residing permanently in Kentucky.

The real estate transaction commission checks she received also did not prove Mother lived in the California Home to conduct her business. Student offered no evidence that Mother brokered any real estate transactions in California during the 2023-2024 school year.

Unlike the parents in *Union*, the evidence did not establish Mother conducted her real estate business within the boundaries of Capistrano Unified. In *Union*, the student's father continued his medical practice within the boundaries of that school district, demonstrating to the Court that parents maintained their permanent residence within the school district. Mother was not in California to conduct her real estate transactions during the 2023-2024 and 2024-2025 school years, suggesting Mother conducted her real estate business from her Kentucky home.

Even assuming Mother traveled to California to broker the transactions involving her January 7, and March 20, 2025 commission checks, her return to California for those reasons were "for labor or other special or temporary purpose." (Gov. Code, § 244, subd. (a).) Therefore, Mother's broker licenses and commission checks were not persuasive to demonstrate the California Home was Mother's permanent residence during the 2023-2024 and 2024-2025 school years.

RENTERS INSURANCE POLICY FOR THE CALIFORNIA HOME

A copy of Parents' renters insurance policy, identifying the California Home as the insured residence, was also not persuasive to find the California Home was Mother's permanent residence. The renters insurance policy was in effect from November 18, 2024, through November 18, 2025. Student offered no evidence of home or renters insurance tying Mother to the California Home during the 2023-2024 school year.

(This space is intentionally left blank. Text continues on the following page.)

Furthermore, the renters insurance policy listed both Parents. Father resided in the California Home, owned by a trust established by the family. Mother's name on the renters insurance policy did not prove Mother's primary residence was the California Home.

Mother claimed her belongings remained in the California Home. The renters insurance policy did not corroborate that claim. The annual premium for the renters insurance policy was redacted on the form, along with the liability limits for the properties covered by the policy. Therefore, the quantity and value of the belongings covered by the insurance policy, which Mother claimed included her belongings, could not be ascertained by reviewing the renters insurance policy.

INTERNET SERVICE BILLS FOR THE CALIFORNIA HOME

Similarly, the internet service bills for the California Home addressed to Mother did not prove the home was her permanent residence during the 2023-2024 and 2024-2025 school years. The bills were dated October 2024 through January 2025. Student offered no utilities bills for the 2023-2024 school year, through September 2024, to show Mother resided in the California Home, let alone intended to remain a California resident.

Further, Father lived in the home. Parents were married, but separated. Therefore, the internet service under Mother's name alone for the limited period from October 2024 through January 2025 did not prove she lived in the home or supported her intent to remain in the California Home, as a resident within Capistrano Unified's boundaries. (See *Eriksen, supra*, 57 Cal.App.2d at 534-535 [residency is mainly a question of intent], Ed. Code § 48200; Welf. & Inst. Code, § 17.1, subd. (a).)

The internet service bills also did not prove the California Home was used by the family in a manner consistent with Mother's testimony. The bills did not show, nor did Student offer any documentation, of how much internet data was used in the home each month. Rather, the bills suggested the home was used less frequently by the family than Mother claimed.

The invoices for October 2024 through January 2025 showed the California Home's internet service included a download speed of 500 mega bites per second, with unlimited data. The bills for October 2024, through January 2025, were \$140 each month. However, for reasons unexplained at hearing, the internet service from February 2025, through July 2025, was reduced to 100 mega bites per second, with a monthly data limit of 1.25 terabits. The cost of the services was \$50 each month. The reduced internet capacity suggested, more likely than not, that Mother, Student, and his sibling spent less time in the California Home than Mother claimed. As a result, the internet service invoices did not support Student's claim that the California Home was Mother's primary residence during the relevant period.

MOTHER'S CALIFORNIA DRIVER'S LICENSE

A copy of Mother's California driver's license and temporary driver's license renewal did not prove the California Home was Mother's permanent residence. Her California driver's license was issued in 2021 and set to expire in August 2025. The driver's license did not list the California Home as Mother's address, but rather another address which Student does not claim was Mother's primary residence.

(This space is intentionally left blank. Text continues on the following page.)

Furthermore, Mother recently renewed her California driver's license online on July 21, 2025, listing the California Home as Mother's address. However, Student failed to offer any evidence to explain how Mother listing the California Home in the renewal proved the California Home was Mother's permanent residence during the 2023-2024 and 2024-2025 school years. Accordingly, Mother's driver's licenses, old and new, were not persuasive.

MOTHER'S TESTIMONY ABOUT TAX RETURNS AND VOTER REGISTRATION

Student argues Parents' California tax returns demonstrated Mother's permanent residence remained the California Home. Mother and Father filed tax returns as married filing jointly with the California Franchise Tax Board. Student's argument was not persuasive.

Individuals who do not reside in California may be required to file a California tax return if the individual received any income from California sources, and their gross or adjusted gross income meets the income requirement based on their filing status. (Cal. Code of Regs., § 17951-1, subd. (a); State of California Franchise Tax Board, FTB Publication 1031: 2024 Guidelines for Determining Resident Status, p. 3 (*FTB Publication 1031*).) Further, married couples may file tax returns jointly in California even if one spouse is not a resident of California. (Rev. & Tax. Code, § 18521, subds. (a)(3) and (c); *FTB Publication 1031, supra*, at p. 4 [If the tax filer filed a joint return for federal purposes, the filer "may" file separately for California if either spouse was an active member of the United States armed forces or a nonresident for the entire year and had no income source from California.]

Here, based on Parents marital status and Mother's California sourced income, California permitted Mother to file a California tax return jointly with Father, and she could do so without residing in California. Accordingly, Student's argument that Parents' California jointly filed tax returns was unpersuasive in proving the California Home was Mother's permanent residence.

Although Mother testified she was registered to vote in California and in the local elections for the California Home's surrounding communities, Student did not provide proof of Mother's California voter registration to corroborate her testimony. Therefore, Mother's uncorroborated testimony was not persuasive.

Furthermore, when Capistrano Unified mailed a correspondence to Parents in June 2025, to the California Home, the correspondence was returned by the United States Postal Office. The United States Postal Office returned the mail to Capistrano Unified with a return to sender label that listed the Kentucky Home address.

At hearing, Mother shared she used a Post Office Box because of mail theft in the California Home neighborhood to explain the return to sender label. However, Mother's explanation was unpersuasive to support her residence in California. Student did not offer a credible explanation for why Mother had correspondence forwarded to Kentucky if Mother intended her permanent residence to be in the California Home. Student failed to offer any persuasive testimony or documentary evidence establishing the California Home was Mother's permanent residence during the 2023-2024 and 2024-2025 school years.

A preponderance of the evidence showed that Mother moved from the California Home following the 2022-2023 school year with the intent of residing in Kentucky and remained in Kentucky through at least the time of hearing. A preponderance of the

evidence also showed that Student resided with Mother in Kentucky, and the California Home was not Mother's permanent residence during the 2023-2024 and 2024-2025 school years. Parents did not maintain the Kentucky Home for the sole purpose of allowing Student to attend Lexington. Accordingly, Capistrano Unified proved it was not the responsible local educational agency for Student during the 2023-2024 and 2024-2025 school years.

ISSUES 3(a), 3(b), 4(a)(i) THROUGH 4(a)(xiii), 4(b)(i) THROUGH 4(b)(vi) AND 4(c)(i) THROUGH 4(c)(xiii), 5 AND 6: DID CAPISTRANO UNIFIED DENY STUDENT A FAPE BASED ON HIS CLAIMS REGARDING THE MAY 2, 2024 IEP TEAM MEETING, THE MAY 2, 2024 IEP OFFER OF FAPE, DR. RICHARDS SEPTEMBER 17, 2024 INDEPENDENT EDUCATIONAL EVALUATION, AND CONVENING AN IEP TEAM MEETING BEFORE MAY 1, 2025?

Student contends Capistrano Unified denied him a FAPE by failing to ensure a school psychologist attended the May 2, 2024 IEP team meeting and by predetermining his placement at the May 2, 2024 IEP team meeting. Student also contends Capistrano Unified failed to offer appropriate goals and a placement in the May 2, 2024 IEP to address his needs in

- basic reading skills,
- reading fluency,
- reading comprehension,
- basic writing skills,
- written expression,

- math application tasks,
- phonological processing,
- orthographic processing,
- attention,
- executive functioning,
- peer interactions,
- self-advocacy, and
- social-emotional skills.

Student further contends Capistrano Unified failed to offer appropriate counseling and behavioral services in the May 2, 2024 IEP, to address his needs in

- attention,
- executive functioning,
- peer interaction,
- self-advocacy,
- anxiety, and
- social-emotional needs.

Furthermore, Student contends Capistrano Unified denied him a FAPE by failing to convene an IEP team meeting to consider Dr. Richards' September 17, 2024 Independent Educational Evaluation and to review his annual IEP before May 1, 2025.

(This space is intentionally left blank. Text continues on the following page.)

This Decision finds Capistrano Unified was not the responsible local educational agency for Student during the 2023-2024 and 2024-2025 school years. In light of that finding, an analysis of Issues 3(a), 3(b), 4(a)(i) through 4(a)(xiii), 4(b)(i) through 4(b)(vi), 4(c)(i) through 4(c)(xii), 5 and 6, regarding whether Capistrano Unified offered Student a FAPE, is not warranted. Student cannot prevail on his alleged FAPE denials involving the May 2, 2024 IEP team meeting, the May 2, 2024 IEP's FAPE offer, the consideration of Dr. Richards' September 17, 2024 Independent Educational Evaluation, or the convening of an IEP team meeting before May 1, 2025, because Capistrano Unified had no obligation to offer, and therefore, could not have denied him, a FAPE during the 2023-2024 and 2024-2025 school years.

Accordingly, Capistrano Unified prevailed on Issues

- 3(a) and 3(b),
- 4(a)(i),
- 4(a)(ii),
- 4(a)(iii),
- 4(a)(iv),
- 4(a)(v),
- 4(a)(vi),
- 4(a)(vii),
- 4(a)(viii),
- 4(a)(ix),
- 4(a)(x),

- 4(a)(xi),
- 4(a)(xii), and
- 4(a)(xiii).

Capistrano Unified also prevailed on Issues

- 4(b)(i),
- 4(b)(ii),
- 4(b)(iii),
- 4(b)(iv),
- 4(b)(v),
- 4(b)(vi),
- 4(c)(i),
- 4(c)(ii),
- 4(c)(iii),
- 4(c)(iv),
- 4(c)(v),
- 4(c)(vi),
- 4(c)(vii),
- 4(c)(viii),
- 4(c)(ix),
- 4(c)(x), 4
- (c)(xi),

- 4(c)(xii),
- 4(c)(xiii),
- 5 and
- 6.

ISSUE 7: DID CAPISTRANO UNIFIED FAIL TO HAVE AN IEP IN EFFECT AT THE START OF THE 2025-2026 SCHOOL YEAR?

Student contends Capistrano Unified denied him a FAPE by failing to have an IEP in effect at the beginning of the 2025-2026 school year. Capistrano Unified contends it was not obligated to offer Student an IEP for the 2025-2026 school year because Student did not reside within its boundaries.

A school district shall have for each child with a disability within the school district's jurisdiction, an IEP in effect at the beginning of each school year. (20 U.S.C. § 1414(d)(2)(A)).

The totality of the evidence did not support Capistrano Unified was responsible for offering Student an IEP during the 2025-2026 school year. As discussed, Capistrano Unified had not been Student's responsible local educational agency since the 2023-2024 school year. Mother and Student continued to reside in Kentucky at the time of hearing. Therefore, Capistrano Unified did not fail to have an IEP in effect for Student to begin the 2025-2026 school year because it had no duty to offer Student an IEP.

Accordingly, Student failed to prove Capistrano Unified denied Student a FAPE by failing to have an IEP in place to the start of the 2025-2026 school year. Capistrano Unified prevailed on Issue 7.

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:

Capistrano Unified did not fail to meet its child find obligation to Student from November 15, 2022, through December 9, 2022, by failing to refer Student for an assessment to determine his eligibility for special education, and thereby denying Student a FAPE.

Capistrano Unified prevailed on Issue 1.

ISSUES 2(a)(i), 2(a)(ii), 2(a)(iii), 2(a)(iv), 2(a)(v), 2(a)(vi), 2(a)(vii), 2(a)(viii), 2(a)(xi), AND 2(a)(xiii):

Capistrano Unified's IEP dated March 1, 2023, did not deny Student a FAPE by failing to offer appropriate goals in basic reading skills, reading fluency, reading comprehension, basic writing skills, written expression, math application tasks, phonological processing, orthographic processing, peer interactions, and social-emotional skills.

Capistrano Unified prevailed on Issue 2, subsections

- (a)(i),
- (a)(ii),
- (a)(iii),

- (a)(iv),
- (a)(v),
- (a)(vi),
- (a)(vii),
- (a)(viii),
- (a)(xi), and
- (a)(xiii).

ISSUES 2(a)(ix), 2(a)(x), AND 2(a)(xii):

Capistrano Unified's IEP dated March 1, 2023, denied Student a FAPE by failing to offer appropriate goals in attention, executive functioning, and self-advocacy.

Student prevailed on Issue 2, subsections (a)(ix), (a)(x), and (a)(xii).

ISSUES 2(b)(i) THROUGH 2(b)(vi):

Capistrano Unified's IEP dated March 1, 2023, did not deny Student a FAPE by failing to offer appropriate counseling and behavioral services to address his needs in attention, executive functioning, peer interaction, self-advocacy, anxiety, and social-emotional needs.

Capistrano Unified prevailed on Issue 2, subsections

- (b)(i),
- (b)(ii),

- (b)(iii),
- (b)(iv),
- (b)(v), and
- (b)(vi).

ISSUES 2(c)(i) THROUGH 2(c)(xiii):

Capistrano Unified's IEP dated March 1, 2023, did not deny Student a FAPE by failing to offer placement in a classroom environment with small group instruction to adequately address Student's needs in

- basic reading skills,
- reading fluency,
- reading comprehension,
- basic writing skills,
- written expression,
- math application tasks,
- phonological processing,
- orthographic processing,
- attention,
- executive functioning,

(This space is intentionally left blank. Text continues on the following page.)

- peer interactions,
- self-advocacy, and
- social-emotional skills.

Capistrano Unified prevailed on Issue 2, subsections

- (c)(i),
- (c)(ii),
- (c)(iii),
- (c)(iv),
- (c)(v),
- (c)(vi),
- (c)(vii),
- (c)(viii),
- (c)(ix),
- (c)(x),
- (c)(xi),
- (c)(xii), and
- (c)(xiii).

(This space is intentionally left blank. Text continues on the following page.)

ISSUES 3(a) AND 3(b):

Capistrano Unified did not deny Student a FAPE at the May 2, 2024 IEP team meeting by failing to ensure a school psychologist attended the meeting, and predetermining Student's placement.

Capistrano Unified prevailed on Issue 3, subsections (a) and (b).

ISSUES 4(a)(i) THROUGH 4(a)(xiii):

Capistrano Unified's IEP dated May 2, 2024, did not deny Student a FAPE by failing to offer appropriate goals in

- basic reading skills,
- reading fluency,
- reading comprehension,
- basic writing skills,
- written expression,
- math application tasks,
- phonological processing,
- orthographic processing,
- attention,

(This space is intentionally left blank. Text continues on the following page.)

- executive functioning,
- peer interactions,
- self-advocacy, and
- social-emotional skills.

Capistrano Unified prevailed on Issue 4, subsections (a)(i), (a)(ii), (a)(iii), (a)(iv), (a)(v), (a)(vi), (a)(vii), (a)(viii), (a)(ix), (a)(x), (a)(xi), (a)(xii), and (a)(xiii).

ISSUES 4(b)(i) THROUGH 4(b)(vi):

Capistrano Unified's IEP dated May 2, 2024, did not deny Student a FAPE by failing to offer appropriate counseling and behavioral services to address his needs in attention, executive functioning, peer interaction, self-advocacy, anxiety, and social-emotional needs.

Capistrano Unified prevailed on Issue 4, subsections

- (b)(i),
- (b)(ii),
- (b)(iii),
- (b)(iv),
- (b)(v), and
- (b)(vi).

(This space is intentionally left blank. Text continues on the following page.)

ISSUES 4(c)(i) THROUGH 4(c)(xiii):

Capistrano Unified's IEP dated May 2, 2024, did not deny Student a FAPE by failing to offer placement in a classroom environment with small group instruction to adequately address Student's needs in

- basic reading skills,
- reading fluency,
- reading comprehension,
- basic writing skills,
- written expression,
- math application tasks,
- phonological processing,
- orthographic processing,
- attention,
- executive functioning,
- peer interactions,
- self-advocacy, and
- social-emotional skills.

(This space is intentionally left blank. Text continues on the following page.)

Capistrano Unified prevailed on Issue 4, subsections

- (c)(i),
- (c)(ii),
- (c)(iii),
- (c)(iv),
- (c)(v),
- (c)(vi),
- (c)(vii),
- (c)(viii),
- (c)(ix),
- (c)(x),
- (c)(xi),
- (c)(xii), and
- (c)(xiii).

ISSUE 5:

Capistrano Unified did not deny Student a FAPE by failing to consider the September 2024 independent educational evaluation conducted by Dr. Dawn Richards in an IEP team meeting during the 2024-2025 school year.

Capistrano Unified prevailed on Issue 5.

ISSUE 6:

Capistrano Unified did not deny Student a FAPE by failing to convene Student's annual IEP meeting by May 1, 2025, pursuant to Parents' request to convene an IEP team meeting for Student's annual review.

Capistrano Unified prevailed on Issue 6.

ISSUE 7:

Capistrano Unified did not deny Student a FAPE by failing to have an IEP in place for him prior to the start of the 2025-2026 school year.

Capistrano Unified prevailed on Issue 7.

ISSUE 8:

Capistrano Unified appropriately conducted its psychoeducational evaluation documented in its February 2023 Multidisciplinary Assessment Report.

Capistrano Unified prevailed on Issue 8.

REMEDIES

Student proved Capistrano Unified denied him FAPE by failing to offer appropriate goals in the March 1, 2023 IEP, to address his needs in attention, executive functioning, and self-advocacy under Issues 2(a)(ix), 2(a)(x), and 2(a)(xii). Student did not prove any other FAPE denials.

Student contends Capistrano Unified should reimburse Parents for the costs of Student's Lexington tuition, and two summers camps he attended in 2023. Student also requests reimbursement for the cost of Dr. Richards' September 17, 2024 Independent Educational Evaluation. Student is seeking reimbursements in the amount of \$3,910 for the summer camps, \$78,545.94 for Lexington, and \$8,500 for the independent educational evaluation.

Capistrano Unified proved the psychoeducational portion of the February 27, 2024 Multidisciplinary Assessment Report met legal requirements. Capistrano contends an order denying Student's request for Capistrano Unified to reimburse Parents for the cost of the September 17, 2024 Independent Educational Evaluation is equitable. Capistrano also contends Student is not entitled to any relief, and all his requested remedies should be denied.

Under federal and state law, courts have broad equitable powers to remedy the failure of a local educational agency to provide FAPE to a disabled child. (20 U.S.C. § 1415(i); see *Burlington, supra*, 471 U.S. 359, 369.) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) When a local educational agency fails to provide a FAPE to a student with a disability, the student is entitled to relief that is appropriate in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. 359, 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at the hearing. (*Id.* at p. 374.)

Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the local educational agency fails to provide a FAPE. (*Burlington, supra*, 471 U.S. at p. 374; *Parents of Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local educational agency if the parents prove at a due process hearing that the local educational agency had not made a FAPE available to the student in a timely manner prior to the placement, and that the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra*, 471 U.S. at pp. 369-370 [reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE].)

The private school placement need not meet the state standards that apply to public agencies to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 11, 14 [114 S.Ct. 361, 126 L.Ed.2d 284] [despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement found to be reimbursable where it had substantially complied with the IDEA by conducting quarterly evaluations of the student, had a plan that permitted the student to progress from grade to grade, and where expert testimony showed that the student made substantial progress].)

Reimbursement for cost of enrollment in a private school may be reduced or denied if at the most recent IEP meeting the parents attended prior to removal from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district to provide a FAPE to the child, including stating their concerns and their intent to enroll the child in a private school at public

expense. (20 U.S.C. § 1412(a)(10)(iii)(C)(I)(aa).) Reimbursement for the cost of private school may also be reduced or denied if the parents did not give written notice to the school district of parents' rejection of the proposed IEP placement, and their intent to enroll the child in a private school at public expense at least 10 business days prior to the removal of the child from public school. (20 U.S.C. § 1412(a)(10)(iii)(C)(I)(bb).) Further, a court may reduce or deny reimbursement for private school costs if parents did not make the child available for assessments pursuant to the school district's prior written notice to assess, or based on a judicial finding of unreasonableness in the actions of the parents. (20 U.S.C. § 1412(a)(10)(iii)(C)(II) and (III).)

An Administrative Law Judge can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. Bd. of Educ.* (D.Conn. 2008) 531 F.Supp.2d 245, 265.) The award must be fact-specific and reasonably calculated to provide the educational benefits that likely would have accrued from special education services the local educational agency should have supplied in the first place. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.)

Compensatory education awards depend upon the needs of the disabled child, and can take different forms. (*R.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1126.) Typically, an award of compensatory education involves extra schooling, in which case generalized awards are not appropriate. (*Puyallup, supra*, 31 F.3d at p. 1497.) There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Ibid.*)

An independent educational evaluation at public expense may also be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (*Los Angeles Unified School Dist. v. D.L.* (C.D.Cal. 2008) 548 F.Supp.2d 815, 822-23.) However, if the school district proves in a due process hearing that the school district's assessment is appropriate, the school district is not required to fund an independent educational evaluation. (34 C.F.R. § 300.502(b)(3); Ed. Code, § 56329, subd. (c).)

STUDENT IS NOT ENTITLED TO REIMBURSEMENT FOR THE SEPTEMBER 17, 2024 INDEPENDENT EDUCATIONAL EVALUATION

Capistrano Unified proved the psychoeducational assessment of February 7, 2023 Multidisciplinary Assessment Report met legal requirements. Accordingly, an award to reimburse Student for the cost of the September 17, 2024 Independent Educational Evaluation is not equitable, and is denied.

Furthermore, an award to reimburse Parents for the independent educational evaluation based on Capistrano Unified's failure to offer appropriate goals in attention, executive functioning, and self-advocacy in the March 1, 2023 IEP is also not equitable. Capistrano Unified properly assessed, and gathered sufficient information to inform the March 1, 2023 IEP team of Student's difficulties in attention, executive functioning and self-advocacy. Capistrano Unified's failure to offer attention, executive functioning, and self-advocacy goals in the March 1, 2023 IEP did not occur because Capistrano Unified's assessors failed to properly and comprehensively assess those needs. Accordingly, reimbursement of the September 17, 2024 Independent Educational Evaluation must also be denied for that reason.

STUDENT IS NOT ENTITLED TO REIMBURSEMENTS FOR THE SUMMER CAMPS

In the summer 2023, Student attended two summer camps in Kentucky to help children with dyslexia, Potter's Ranch Dyslexia Camp and Lexington's The Learning Center Summer Camp. Parents paid \$2,410 for Potter's Ranch, and \$1,500 for The Learning Center Summer Camp.

The evidence did not support reimbursement for the summer camps based on Capistrano Unified's failure to offer appropriate goals in the March 1, 2023 IEP, to address his needs in attention, executive functioning, and self-advocacy. Parents did not provide Capistrano Unified with written notice of their disagreement with the March 1, 2023 IEP, nor their intent to place Student in the summer camps at public expense before Student attended the camps. Further, the evidence did not demonstrate Capistrano Unified prevented Parents from providing proper notice, that Parents were not informed of their obligation to provide proper notice, or that providing such notice was detrimental to Student. (20 U.S.C. § 1412(a)(10)(iv).)

In addition, Student failed to offer any evidence of how the camps addressed Capistrano Unified's failures to offer IEP goals in attention, executive functioning, and self-advocacy. Accordingly, reimbursement for the cost of the summer camps is not equitable, and is therefore, denied.

(This space is intentionally left blank. Text continues on the following page.)

STUDENT IS NOT ENTITLED TO REIMBURSEMENTS FOR THE LEXINGTON TUITION

Reimbursement for Lexington tuition must be denied for several reasons. Mother's email communications with Capistrano Unified in August 2023, did not constitute proper written notice to Capistrano Unified that Parents intended to place Student in a private school at public expense. Parents did not provide Capistrano Unified written notice before enrolling Student in Lexington, of their intent to place Student in Lexington for the 2023-2024 school year, and to seek from Capistrano Unified reimbursement for the cost of Student's attendance at the private school.

Even if the emails constituted proper notice of Parents' intent to seek reimbursement for the cost of placing Student in a private school, the notice was untimely. Parents placed Student at Lexington just five business days after Mother's August 16, 2023 emails to Capistrano Unified.

Further, Parents did not afford Capistrano Unified an opportunity to meet with Parents in an IEP meeting to address Parents' concerns, before Parents placed Student at Lexington. Parents did not respond to Capistrano Unified's request to meet on August 28 or 29, 2023. Accordingly, reimbursement for Lexington must be denied.

In addition, Student did not reside within Capistrano Unified's boundaries during the 2023-2024 and 2024-2025 school years, and therefore, could not demand a FAPE from Capistrano Unified for those school years. Therefore, reimbursement for Lexington for those two school years is not proper and must be denied for that reason.

STUDENT IS ENTITLED TO COMPENSATORY EDUCATIONAL SERVICES
FOR CAPISTRANO UNIFIED'S FAPE DENIALS UNDER ISSUES 2(a)(ix)
AND 2(a)(x)

Although Capistrano denied Student a FAPE for failing to offer an appropriate self-advocacy goal in the March 1, 2023 IEP, compensatory educational services in that area are not warranted. Student no longer demonstrated a deficit in self-advocacy skills at the time of the hearing. At the May 2, 2024 IEP, the IEP team considered the reports from Lexington's teachers on Student's social emotional and behavioral functioning during the 2023-2024 school year. The teachers reported Student was resilient, hardworking, and asked questions. Student did not provide any evidence showing he required compensatory services to remediate his self-advocacy skills. Accordingly, an award to compensate Student for Capistrano Unified's failure to offer a self-advocacy goal in the March 1, 2023 IEP is denied.

However, compensatory educational services to remedy Capistrano Unified's failure to offer appropriate goals in attention and executive functioning is proper. As discussed in Issues 2(a)(ix) and 2(a)(x), the March 1, 2023 IEP's failures to offer the goals denied Student the benefit of improving his ability to better

- focus and sustain his attention at school,
- manage his time,
- transition between tasks,
- initiate and complete assignments, and
- become more organized.

His difficulties with attention and transitions continued at Lexington.

Lexington's teachers reported Student was slow in completing tasks and transitioning throughout the day. The teachers observed some improvement with his pace, but he was still slow compared to his peers.

The teachers also reported Student was easily distracted, and struggled to keep his attention on some tasks. He was easily redirected, but needed frequent prompts to stay focused. In response, Student's May 2, 2024 IEP team developed two goals to address his needs in attention and transitions, and offered two hours a week of specialized academic instruction to help Student meet those goals. Therefore, compensatory educational services is an equitable award to remedy Capistrano Unified's failure to offer Student goals in attention and transitions in the March 1, 2023 IEP.

Parents provided written consent on March 8, 2023, to implement the March 1, 2023 IEP. There were 10 weeks of school from March 8, 2023, through June 1, 2023, Capistrano Unified's last day of instruction for the 2022-2023 school year.

Two hours a week is a fair estimation for the amount of services Capistrano Unified should have provided Student in the March 1, 2023 IEP, to address his needs in attention and executive functioning. This estimation is consistent with the specialized academic instruction offered in the May 2, 2024 IEP to specifically address those same needs. An estimation of an hourly fee rate not to exceed \$200 per hour is also fair. Accordingly, an award of 20 hours of compensatory educational services, to be provided by a credentialed teacher or similarly qualified provider, at a rate not to exceed \$200 per hour to be paid for by Capistrano Unified is equitable, and is therefore ordered.

(This space is intentionally left blank. Text continues on the following page.)

ORDER

1. Capistrano Unified is not required to fund an independent educational evaluation in psychoeducation for Student at public expense.
2. Capistrano Unified shall provide Student 20 hours of compensatory educational services by a credentialed teacher or similarly qualified provider, in the area of attention or executive functioning. The hourly rate of the services to be reimbursed shall not exceed \$200 per hour, for a total of \$4,000 for compensatory educational services in the area of attention or executive functioning.
3. Student shall be allowed to access the 20 hours of compensatory educational services in the area of attention or executive functioning through December 31, 2026, or the services will be forfeited. The compensatory services shall be provided by a provider of Parents' choice.
4. Capistrano Unified shall reimburse Parents within 45 days from receipt of Parents' proof of payment in the form of canceled checks or credit card statements, and proof of Student's attendance to services.
5. All other relief sought by Student is denied.

(This space is intentionally left blank. Text continues on the following page.)

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.

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings