

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

PALO ALTO UNIFIED SCHOOL DISTRICT.

CASE NO. 2025030847

DECISION

November 6, 2025

On March 20, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Palo Alto Unified School District. OAH continued the matter for good cause on April 21, 2025. Administrative Law Judge June R. Lehrman heard this matter via videoconference on August 12, 13, 14, 19, 20, 21, 26, 27, 28, and September 2, 3, 4, 9, 10 and 11, 2025.

Nicole Hodge Amey represented Student. Mother attended all hearing days on Student's behalf. Nicole Mirkazemi represented Palo Alto Unified School District. Palo Alto's Director of Special Education Teri Lee attended all hearing days on Palo Alto's behalf.

At the parties' request the matter was continued to October 9, 2025, for written closing briefs. The record was closed, and the matter was submitted on October 9, 2025.

ISSUES

A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Palo Alto deny Student a FAPE by failing to timely provide Parents a complete copy of his educational records pursuant to Parent's records requests on:
 - August 15, 2023; and
 - October 28, 2024?
2. Did Palo Alto deny Student a FAPE from March 20, 2023, through August 14, 2023, by failing to timely assess Student in:
 - psychoeducation;
 - behavior;
 - occupational therapy;
 - speech and language; and
 - mental health?
3. Did Palo Alto deny Student a FAPE from March 20, 2023, through March 20, 2025, by failing to conduct a comprehensive post-secondary transition assessment of Student?

4. Did Palo Alto deny Student a FAPE by failing to convene timely IEP team meetings within 30 days of Parents requests:
 - from March 20, 2023, through the end of the 2022-23 school year;
 - during the 2023-24 school year;
 - during the 2024-25 school year up to March 20, 2025?
5. Did Palo Alto deny Student a FAPE by failing to convene a timely IEP meeting by August 2023 to review assessments?
6. Did Palo Alto deny Student a FAPE during the 2023-24 school year by:
 - failing to offer goals that appropriately addressed Student's needs in
 - math,
 - writing,
 - organization skills,
 - "transition to independent living,"
 - communication,
 - counseling,
 - mental health, and
 - post-secondary transition; and
 - failing to offer any goals in social skills, fine motor skills, sensory processing, and executive functioning?

7. Did Palo Alto deny Student a FAPE during the 2024-25 school year, through March 20, 2025, by:
- failing to offer goals that appropriately addressed Student's needs in
 - math,
 - writing,
 - organization skills,
 - "transition to independent living,"
 - communication,
 - counseling,
 - mental health, and
 - post-secondary transition; and
 - failing to offer any goals to address Student's needs in social skills, fine motor skills, sensory processing, and executive functioning?
8. Did Palo Alto deny Student a FAPE by failing to timely request a due process hearing when Parents did not provide full consent to the IEPs dated
- August 24, 2023,
 - September 5 and 12, 2023, and
 - May 21, 2024?

9. Did Palo Alto deny Student a FAPE from October 10, 2023, through March 20, 2025, by delaying and preventing Parents from obtaining a timely independent educational evaluation because Palo Alto imposed an unreasonably restrictive criteria for the independent educational evaluation?
10. Did Palo Alto deny Student a FAPE by failing to offer an appropriate "transition plan":
 - from March 21, 2023, through the 2022-23 school year;
 - during the 2023-24 school year; and
 - during the 2024-25 school year, through March 21, 2025?
11. Did Palo Alto deny Student a FAPE by predetermining his IEPs
 - from March 20, 2023, through the end of the 2022-23 school year;
 - during the 2023-24 school year;
 - during the 2024-25 school year through March 20, 2025?
12. Did Palo Alto deny Student a FAPE during the 2023-24 school year by failing to offer:
 - appropriate services for
 - post-secondary transition,
 - "transition to a school campus,"
 - behavior,
 - academics,

- speech and language,
 - mental health,
 - social skills, and
 - occupational therapy; and
 - an appropriate placement?
13. Did Palo Alto deny Student a FAPE during the 2024-25 school year, through March 20, 2025, by failing to offer:
- appropriate services for
 - post-secondary transition,
 - "transition to a school campus,"
 - behavior,
 - academics,
 - speech and language,
 - mental health,
 - social skills, and
 - occupational therapy; and
 - an appropriate placement?
14. Did Palo Alto deny Student a FAPE from March 20, 2023, through March 20, 2025, by failing to assess him for a specific learning disability?

15. Did Palo Alto deny Student a FAPE from March 20, 2023, through March 20, 2025, by failing to find him eligible for special education services because of a specific learning disability?
16. Did Palo Alto deny Student a FAPE by failing to make a clear written offer of specialized academic instruction in the:
 - August 14, 2023 IEP; and
 - May 14, 2024 IEP?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, or IDEA, 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 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 free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; 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).) In this matter, Student bore the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student had just turned 17 years old at the time of hearing, between 10th and 11th grade. Student resided within Palo Alto's geographic boundaries at all relevant times. Student was eligible for special education under the eligibility categories of autism and other health impairment at the time of hearing.

BACKGROUND

The last time Student attended an in-person public school was first through fifth grades in Woodland Joint Unified School District. There, he attended a small school and had an IEP. Student was in fifth grade during 2018-19 school year. By the fifth grade, Mother felt Student was struggling both socially and academically.

In the 2019-20 school year for sixth grade, Parents decided to pull Student out of the in-person public schools and instead home school him through a public home school charter school. Mother thought learning academics at home in a quieter and less social environment with fewer distractions might be helpful for him. He continued to have IEP speech and behavior consult services. But, due to the COVID-19 pandemic,

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these services were delivered virtually. Student took some in-person electives through vendors in small classes, during which Parents provided a one-to-one aide for support, which was infrequently needed.

Due to the pandemic and the home schooling, Student did not make much progress socially. He was content at home and comfortable. According to Mother, the home-schooling plan "kind of backfired" because Student was comfortable and not being pulled "out of his shell."

In the 2020-21 school year for the seventh grade, Parents moved Student to a different charter school through Natomas School District that was also a home-school charter but had a physical campus location for electives or for optional core subject classes. However, due to the continuing pandemic the learning environment there continued to be virtual only. Mother contemplated that when the pandemic ended, Student would have opportunities there to participate in group classes occasionally. He received group speech services that started out as virtual due to the pandemic, but were later in-person when that became possible.

Social skills were a big struggle for Student, as was reading comprehension and writing. Having to be with other people was uncomfortable for him. At or around this time, because therapists noticed his hands shake, and Mother witnessed Student pushing his pencil too hard, Mother took him to a neurologist who diagnosed Student with hand tremors. Occupational therapy services were added to his IEP in October 2020.

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Natomas convened an annual IEP team meeting on March 22, 2021. That IEP offered Student eligibility under the primary category of autism and the secondary category of other health impairment. The IEP offered goals in

- organization and planning,
- self-regulation,
- social emotional functioning and pragmatics,
- expressive language,
- writing,
- study skills,
- reading, and
- math.

The IEP noted that Student exhibited autistic-like behaviors such as delays in social interactions/pragmatics, obsession to maintain sameness, preoccupation with objects, resistance to controls, and ritualistic behaviors that may affect his participation in school. He also experienced impulsive and unplanned reactions to environmental stimuli, and distractibility, which impeded his ability to access general curriculum without increased support.

Parents consented to the implementation of the IEP with minor exceptions as to whether certain goals had been met or not. However, after a September 29, 2021 amendment IEP team meeting that made no changes to Student's IEP, Mother wrote a lengthy letter entitled "Written Opinion" dated November 17, 2021, stating numerous complaints pertaining to the March 22, 2021 IEP.

During the next 2021-22 school year, in the eighth grade, Student attended a special program within the Natomas charter that was different from the traditional home-school charter program. The charter taught two days a week in-person where Student was with other students in classes of less than 20. The remaining three days a week he had homework. As the year progressed, he increasingly struggled with social skills. He had limited social skills and he had a hard time making friends and talking to peers. He was awkward in group settings.

On January 11, 2022, Natomas offered independent educational evaluations in academic achievement and intellectual development, and social emotional and behavioral functioning. A psychoeducational independent educational evaluation occurred in approximately February 2022. That assessment concluded that Student's cognitive scores were average to high average. But Student presented with significant adaptive skill deficits which could be due in part to his associated autism. Academically, he demonstrated significant deficits through standardized testing in reading comprehension, oral discourse comprehension, spelling, and anything to do with independent writing in terms of sentences and essays. In addition, he exhibited significant deficits in math and math fluency. He was challenged by rigid behaviors and literal understanding, as part of his autism.

Natomas convened another annual IEP team meeting on March 15, 2022. Parents did not consent to the offer of special education and related services. On June 6, 2022, Parents wrote a seven-page letter stating 47 exceptions to the IEP.

In August of 2022, the family relocated to the Bay Area. In October 2022, the family settled in Palo Alto. For the 2022-23 school year, Parents moved Student to Hope Technology where he was retained to do another year of eighth grade. Hope was a

small private school with a small campus that Mother considered as a “stepping stone” to a comprehensive public school campus. Her intention was to have Student finish one year at Hope and then transfer to the public school system.

Student remained at Hope for the 2022-23 school year. Because of the disputes that arose concerning the placement and services Palo Alto offered, Parents kept him at Hope throughout the 2023-24 school year as a parentally-placed private school student. As of the dates of the hearing, Student had never attended a public school within Palo Alto.

Student’s Issues are analyzed below, not in Issue order but, largely, by school year. Issues fall, generally, in categories of the time period between March 20, 2023, through the end of the 2022-23 school year, followed by the 2023-24 and 2024-25 school years.

ISSUE 4a: DID PALO ALTO DENY STUDENT A FAPE BY FAILING TO CONVENE A TIMELY IEP TEAM MEETING PRIOR TO THE START OF 2023-24 SCHOOL YEAR?

In Issue 4a, Student contends that Palo Alto denied Student a FAPE from March 20, 2023, through the end of the 2022-23 school year by failing to convene timely IEP team meetings within 30 days of Parents’ requests. Palo Alto contends it was not obligated to convene an IEP meeting within 30 days of Parent’s March 20, 2023 request because Student remained a parentally-placed private school student throughout the 2022-23 school year, and Parents made clear that they were not seeking public school enrollment or an IEP team meeting until after updated assessments were completed.

Parents of a privately placed child may ask for a new IEP at any time, which triggers the requirement of the school district to offer Student a FAPE. (*Capistrano Unified Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125,1138, cert. den. _ U.S._ [143 S.Ct. 98, 214 L.Ed.2d 20] (*Capistrano*) ["To be sure, when parents withdraw a student from public school and place her in private school, all they have to do is ask for an IEP, and then the district must prepare one."].) Districts "must be prepared to develop an IEP and to provide FAPE to a private school child if the child's parents re-enroll the child in public school." (Assistance to States for the Education of Children with Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities, 64 Fed. Reg. 12601(March 12, 1999).)

Each school district must have an IEP in place for a child at the beginning of the school year. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a); Ed. Code 56344, subd. (c).) The IEP must be reasonably calculated to provide the student a FAPE based on the information available to the district. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) A school district must hold an IEP team meeting within 30 days of a parent's written request. (Cal. Ed. Code §§ 56343, 56343.5, 56043(l).)

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 Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

Student attended the private school Hope during the 2022-23 school year. Parents intended him to attend a district program in Palo Alto for the following 2023-24 school year. On March 20, 2023, Parents wrote a letter notifying Palo Alto of their intentions and requesting comprehensive assessments and an IEP team meeting. Their clearly-stated intent was for the IEP team to meet prior to the start of the 2023-24 school year so Student's program and services would be in place by the time he started attending. Specifically, the letter stated

"While [Student] will finish 8th grade at his current school, we are enrolling [him] with the PAUSD in order to complete the necessary assessments and update his IEP prior to the start of 9th grade and the '23-'24 school year."

On March 22, 2023, Mother had an intake meeting with Palo Alto's legal secretary Jamie Engle. Mother provided evidence of her residency and address and "registered" Student for school in Palo Alto. Engle testified that for students with IEPs, the special education department determined an incoming student's initial placement. The special education department instructed Engle to enroll Student at his Palo Alto home school Gunn High School.

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Palo Alto witnesses used the terms “registration” and “enrollment” interchangeably, except when trying to distinguish their own obligations triggered by Student’s “registration” in March of 2023 versus his “enrollment” for the 2023-24 school year. Neither Lee nor Palo Alto legal secretary Engle could clarify the difference between the two words or concepts. Lee at hearing stated it was “semantic” only. In any event, Student was indisputably a resident who “registered” in the Palo Alto Unified School District in March 2023.

On March 23, 2023, Palo Alto education specialist Ashley Cheechoo and Palo Alto school psychologist Samira Rastegar emailed Mother inviting her to meet with them. They were members of a team that assessed private school students and facilitated transfers into Palo Alto from private schools. The meeting occurred via Zoom on March 28, 2023.

It was unclear from the evidence presented exactly who stated what at this meeting. But, a misunderstanding began at that meeting that continued throughout the spring of 2023. Cheechoo and Rastegar had the impression that Mother wanted to wait for comprehensive assessments and hold an IEP team meeting after those had all occurred. Mother, on the other hand, sought to have some plan in place prior to Student attending Palo Alto for the 2023-24 school year. Although Mother asked for assessments in her March 20, 2023 correspondence, she did not understand them to be a necessary first step prior to developing an IEP for Student.

On March 28, 2023, Mother received an email from Palo Alto informing her that Student had been “enrolled” at Gunn for the 2023-24 school year. Mother and Gunn exchanged emails regarding the Gunn schedule and the Gunn course catalog on March 28 and 29, 2023.

On March 31, 2023, Palo Alto generated an assessment plan that Mother signed on April 4, 2023, and Palo Alto received on April 10, 2023. Because of the intervening summer, Rastegar calculated an IEP deadline of August 15, 2023, which was after the start of the 2023-24 school year on August 9, 2023. Rastegar calculated that the legal deadline to complete the assessments and hold an IEP team meeting would not elapse until after the start of the new school year. On April 10, Rastegar however told Mother that Palo Alto would “attempt” to complete all the assessments prior to the summer break.

Cheechoo and Rastegar undertook the responsibility of locating Student’s educational records from prior schools, including his last agreed-upon IEP. It proved difficult to obtain documents from prior districts, and Mother’s copies were incomplete. There were two different IEP documents, one from 2021 and the other from 2022, that Palo Alto thought might be considered the last agreed upon IEP. But Parent’s numerous and lengthy attachments contesting the appropriateness of the 2022 IEP, and consenting then objecting to the 2021 IEP, made it challenging for Palo Alto to determine Student’s last agreed-upon goals, placement and services.

On May 1, 2023, Palo Alto’s assessments commenced. On May 1, 2023, Mother wrote an email to Cheechoo and Rastegar that clearly stated her request to hold an IEP team meeting prior to the summer so as to determine Student’s placement before the start of the 2023-24 school year. Mother’s email stated:

“It sounds to me like his IEP needs to be agreed upon prior to determining his placement in classes. Is that accurate? Is it possible to schedule the IEP meetings prior to the summer? That would be in [his] best interest so he can start high school off in classes that he won't be pulled out of a few

weeks into the school year. It would also be in his best interest to determine if he is eligible for [extended school year] which might help prepare him for transitioning to high school.”

Thus, Mother explicitly requested an immediate IEP before the start of the 2023-24 school year and also asked whether Student would be eligible for extended school year services during the summer of 2023 to help prepare him for transitioning to high school. Rastegar responded that that request would be determined by the assessors and her coordinator at the time, Lee. Lee was the Special Education Coordinator working with Gunn High School at the time. She later became the Director of Special Education. Meanwhile, Palo Alto continued to search for the Student’s prior school records so as to determine what constituted the “last agreed upon IEP.” Palo Alto did not offer to convene an immediate IEP team meeting.

On May 4, 2023, Lee spoke with Mother and sent her a Gunn course catalog. On May 9, 2023, Rastegar wrote Mother that the assessments could not be completed prior to the summer break and that Palo Alto would “need their 60 days (August 15)” to complete the assessments. On May 12, 2023, Mother wrote Lee stating that she did not know how to choose courses and electives because “we do not know what school is going to look like in terms of his IEP.” On May 17, 2023, Lee wrote back that she would “put in course request that align to what is typical for most 9th grade students. Adjustments can be made after his IEP is held in August.” Thus, Mother continued to seek clarity about Student’s placement before the start of the 2023-24 school year, but Palo Alto contemplated holding an IEP team meeting only after completing assessments after the start of the 2023-24 school year.

At hearing, Rastegar and Lee both confirmed that there was no reason why an IEP team meeting could not have been scheduled prior to the end of the 2022-23 school year. Palo Alto personnel were simply under the impression that Mother wanted to wait, so as to review completed assessments. In its closing brief, Palo Alto makes clear that its position was not because of any legal limitations preventing them from convening an IEP team meeting. Rather, it argues it was based on what Palo Alto personnel thought Mother wanted.

But the evidence was to the contrary. Mother sought to have an IEP in place by the first day of school for the 2023-24 school year, and repeatedly communicated that to Palo Alto. No reason existed to not convene an IEP team meeting, so as to review the information Palo Alto had, including the assessments that had been completed so far, the two prior IEPs, and make an offer of special education and related services to be in place at the beginning of the 2023-24 school year.

In an analogous situation of a parental inquiry to a new school district that “began a long series of disputed conversations and letters regarding [student’s] placement,” the Ninth Circuit found that obligations to an incoming student under the IDEA are “triggered by the transfer student’s enrollment in the new district.” (*Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1120, 1130 (*Vashon*).) The Court noted that neither federal nor state regulations specified when a child “enrolls” for purposes of the IDEA. (*Id.* at p. 1130.)

Here, given District’s witnesses’ lack of clarity about the difference between “registration” and “enrollment,” the indisputable fact that Mother registered Student in March 2023, and the evidence that she communicated her request to have an IEP team meeting in time for him to attend the 2023-24 school year, Palo Alto was obligated

to convene an IEP team meeting so as to develop an IEP for Student that would be operative on the first day of the 2023-24 school year. Palo Alto's "determination that [Student] should be evaluated did not suspend its obligation to develop and implement an IEP upon [his] re-enrollment" to be in effect at the start of the academic year. (See, e.g. *M.D. v. Colonial Sch. Dist.* (E.D.Penn. 2021) 539 F.Supp.3d 380, 391.)

Thus, Palo Alto did not convene an IEP team meeting within 30 days upon parental request. In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following:

- impeded the right of the child to a FAPE;
- significantly impeded the opportunity of the parents to participate in the decisionmaking process regarding the provision of a FAPE to the child of the parents; or
- caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E); Ed. Code, § 56505, subd. (f).)

The hearing officer

"shall not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian to participate in the formulation process of the individualized education program."

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(Ed. Code, § 56505, subd. (j); *W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*) ["... procedural inadequacies that result in the loss of educational opportunity, [citation], or seriously infringe the parents' opportunity to participate in the IEP formulation process, [citations], clearly result in the denial of a FAPE."].)

Palo Alto's failure to convene an IEP team meeting upon Parents' request during the 2022-23 school year resulted in Parents being denied participation in the decisionmaking process in order to have an IEP in place by the start of the 2023-24 school year. This procedural error impeded Student's right to a FAPE and significantly impeded Parents' opportunity to participate in the decisionmaking process.

For these reasons, Student prevails on Issue 4a.

ISSUE 11a: DID PALO ALTO DENY STUDENT A FAPE BY PREDETERMINING HIS IEPs FROM MARCH 20, 2023, THROUGH THE END OF THE 2022-23 SCHOOL YEAR SCHOOL YEAR?

Palo Alto failed to offer Student any IEP from March 20, 2023, through the end of the 2022-23 school year. As stated in relation to Issue 4a, this failure resulted in the denial of FAPE for failing to timely convene a timely IEP team meeting within 30-days of Parent's request for an IEP and before the end of the 2022-23 school year. Palo Alto could not have predetermined an IEP that it never offered.

Accordingly, Palo Alto prevailed on Issue 11a.

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ISSUE 10a: DID PALO ALTO DENY STUDENT A FAPE BY FAILING TO OFFER AN APPROPRIATE "TRANSITION PLAN" FROM MARCH 21, 2023, THROUGH THE 2022-23 SCHOOL YEAR?

Student contends that Palo Alto denied him a FAPE by failing during the 2022-23 school year, after he had registered to attend school in Palo Alto for the 2023-24 school year, to provide him with a plan for transitioning into Gunn by the beginning of the following year. Palo Alto contends there is no specific FAPE requirement for a "transition plan" into high school, and that in any event the supports and services it offered were appropriate and constituted a FAPE.

There is no specific FAPE requirement for a "transition plan" from a private school into a public school. Student cites no legal provisions in support of his contentions, and does not clarify what, if any, components such a plan would or should contain.

California Education Code section 56345, subdivision (b)(4), requires transition plans into public school from nonpublic, nonsectarian schools, but as a private school, Hope did not fall within that definition. (See *N.G. by and through R.G. v. Placentia Yorba Linda Unified Sch. Dist.* (9th Cir. 2020) 807 Fed.Appx. 648 [Section 56345(b)(4), only requires a plan for "transition into the regular class program if the pupil is to be transferred from a special class or nonpublic, nonsectarian school into a regular class in a public school."])

As Palo Alto argues, Student's use of the term "transition plan" was ambiguous. Postsecondary "transition services," discussed in further detail below, are specifically defined by law and refer to a student's transition after high school into employment and adult living. Student, however, in Issue 10a, is not arguing about a postsecondary

transition plan. Instead, Student argues that there was an obligation to create a transition plan into the public school setting following a private school placement. However, there is no such requirement under the IDEA or California law.

For these reasons, Palo Alto prevails on Issue 10a.

ISSUES 2a, 2b, 2c, 2d, 2e AND 5: DID PALO ALTO DENY STUDENT A FAPE BY FAILING TO TIMELY ASSESS STUDENT FROM MARCH 20, 2023, THROUGH AUGUST 14, 2023, IN PSYCHOEDUCATION, BEHAVIOR, OCCUPATIONAL THERAPY, SPEECH AND LANGUAGE, AND MENTAL HEALTH, BY FAILING TO CONVENE A TIMELY IEP TEAM MEETING BY AUGUST 2023 TO REVIEW ASSESSMENTS?

In Issue 2, Student contends that Palo Alto denied him a FAPE from March 20, 2023, through August 14, 2023, by failing to timely assess Student in

- (a) psychoeducation,
- (b) behavior,
- (c) occupational therapy,
- (d) speech and language, and
- (e) mental health.

In Issue 5, Student contends that Palo Alto denied Student a FAPE by failing to convene a timely IEP meeting by August 2023 to review assessments. Palo Alto contends its assessments and IEP team meeting timelines were timely and correct.

A proposed assessment plan shall be developed within 15 calendar days of referral for assessment, not counting calendar days between the pupil's regular school sessions or terms or calendar days of school vacation in excess of five schooldays, from the date of receipt of the referral, unless the parent or guardian agrees in writing to an extension. A parent or guardian shall have at least 15 calendar days from the receipt of the proposed assessment plan to sign the assessment plan. An IEP required as a result of an assessment of a pupil shall be developed within a total time not to exceed 60 days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's written consent for assessment, unless the parent agrees, in writing, to an extension. (Ed. Code, §§ 56043 and 56344.)

On March 20, 2023, Mother requested that Palo Alto assess Student. Palo Alto generated a proposed assessment plan within the required 15 days, on March 31, 2023. The assessment plan proposed to assess Student in

- academic achievement,
- health,
- intellectual development,
- language and speech communication development,
- perceptual motor development,
- social emotional and adaptive behavioral functioning,
- post-secondary transition, and
- assistive technology.

Mother signed the assessment plan on April 3, 2023, and emailed it to Palo Alto on April 4, 2023. Palo Alto was on spring break the week of April 3, 2023, and did not receive the signed plan until Monday, April 10, 2023. Palo Alto calculated the 60 day timeline to require an IEP team meeting to be held by August 15, 2023, after the start of the 2023-24 school year on August 9, 2023. Palo Alto convened and held an initial IEP team meeting on August 14, 2023. This was timely based on Palo Alto's receipt of the assessment plan upon its return from spring break on April 10, 2023.

Palo Alto completed certain portions of the assessments and held the initial IEP team meeting to discuss the results on August 14, 2023. There were 126 calendar days from receipt of the signed assessment plan until the initial IEP team meeting was held. However, the last day of the 2022-23 school year was June 1, 2023, followed by summer break lasting from June 2, 2023 until the first day of the 2023-24 school year on August 9, 2023, a break of 68 days. Therefore, Palo Alto held the IEP team meeting to review the completed portions of the assessments 58 days after Parents consented to the assessment plan, within legal time limits.

At the initial IEP team meeting on August 14, 2023, Palo Alto completed the psychoeducational assessment and held the IEP team meeting within the statutorily required 60-day timeline. The psychoeducational assessment contained behavior and mental health components. Thus, Student failed to establish that Palo Alto failed to timely conduct the assessments in Issues 2a, 2b, and 2e. Palo Alto timely held the IEP team meeting to review assessments in psychoeducation, behavior, and mental health.

Due to time constraints, the August 14, 2023 IEP team meeting adjourned and a part two IEP team meeting occurred on September 5, 2023, and a part three on September 12, 2023. At that September 5, 2023 IEP team meeting, the speech

language pathologist and occupational therapist presented their assessment reports. Thus, with regard to Issues 2c and 2d concerning occupational therapy and speech and language, Palo Alto held untimely IEP team meetings to consider these assessments. September 5, 2023 was 80 calendar days from Palo Alto's April 10, 2023 receipt of the assessment plan, not counting the 68 days of summer break.

Student however did not establish any denial of FAPE as a result of the 20 calendar days of delay in convening an IEP team meeting to review the speech language and occupational therapy assessments. Because this delay was not shown to have caused any denial of educational benefit nor denial of parental rights, Student failed to meet his burden of proof on Issues 2c, 2d, and 5 with regard to the speech and language and occupational therapy assessments.

Student argues that the initial 60-day timeline should have been counted not from Palo Alto's receipt of the assessment plan on April 10, 2023, but rather from Mother's sending it to Palo Alto on April 4, 2023, while they were on spring break. However, the Education Code specifically counts the days from the district's "receipt" of the plan. (Ed. Code, §§ 56043 and 56344.) Moreover, even if the argument is correct, Student established no denial of FAPE as a result of the six-day difference.

Accordingly, Palo Alto prevailed on Issues 2a through 2e and 5.

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ISSUE 4b: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2023-24 SCHOOL YEAR BY FAILING TO CONVENE TIMELY IEP TEAM MEETINGS WITHIN 30 DAYS OF PARENTAL REQUESTS?

Student contends that Palo Alto failed to convene timely IEP team meetings upon Parental request during the 2023-24 school year. Palo Alto contends it convened timely IEP team meetings.

Palo Alto convened the first IEP team meeting on August 14, 2023, which was continued and reconvened on September 5 and 12, 2023, when its offer of FAPE for the 2023-24 school year was finalized. Except when the individual dates are relevant, this Decision will refer to the August 14, September 5 and September 12, 2023 IEP team meetings collectively as the "August/September 2023 IEP." As discussed above, based on the date of the assessment plan, the commencement of the August/September IEP team meeting on August 14, 2023, was timely, and no denial of FAPE resulted from the continuations into September.

On October 10, 2023, Parents wrote a letter objecting to the August/September IEP, declining to consent to it, objecting to the psychoeducational, speech and language, occupational therapy and adapted physical education assessments and requesting independent educational evaluations. On October 30, 2023, Palo Alto agreed to fund independent educational evaluations in the requested areas, specifically psychoeducational, speech and language, occupational therapy and adapted physical education. Licensed Educational Psychologist Eva Nicolosi assessed Student in February through April, 2024 and completed her psychoeducational assessment report on May 14, 2024.

On April 19, 2024, Mother requested that Palo Alto convene an IEP team meeting to review Nicolosi's independent educational evaluation and specifically requested that it be held on May 21, 2024.

Typically, a school district must hold an IEP team meeting within 30-days of a parent's written request. (Ed. Code, § 56343.5.) However, here, Parent requested, and Palo Alto granted, an IEP on a specific date, two-days beyond the typical 30-day requirement. Student offered no legal authority, and the facts do not support his contention he was denied a FAPE, by the two-day delay beyond a technical procedural timeline which Parent requested, and which was by mutual agreement, waived.

On May 21, 2024, the exact date Mother requested, Palo Alto held an IEP team meeting to review Nicolosi's report. Thus, the August/September and May 21, 2024 IEP team meetings were timely.

Student's closing brief alleges that after the May 21, 2024 IEP team meeting, Palo Alto "failed to reconvene an IEP Meeting to consider Nicolosi's recommendations." However there were only nine remaining days left in the 2023-24 school year. The last day of the 2023-24 school year was May 30, 2024. Moreover, Student established no specific request to reconvene within that short time frame.

Student's claim that Palo Alto failed to hold a timely IEP meeting during the 2023-24 school year, within 30 days of parental request, is not supported by these facts. Student failed to prove Palo Alto denied him a FAPE during the 2023-24 school year by failing to convene an IEP team meeting within 30 days of Parent's request for an IEP team meeting.

Palo Alto prevails on Issue 4b.

ISSUE 1a: DID PALO ALTO DENY STUDENT A FAPE BY FAILING TO TIMELY PROVIDE PARENTS A COMPLETE COPY OF HIS EDUCATIONAL RECORDS PURSUANT TO PARENTS' RECORDS REQUEST ON AUGUST 15, 2023?

In Issue 1a, Student contends that Palo Alto denied Student a FAPE by failing to timely provide Parents a complete copy of his educational records pursuant to Parents' records request on August 15, 2023. Palo Alto contends it timely provided all required records.

Parents of children with exceptional needs may request copies of their child's educational records at any time, and are entitled to receive those copies within five business days of their request. (Ed. Code, § 56504.) The school district must respond to the request, whether it is made orally or in writing. The implementing regulations for the IDEA provide that educational agencies must permit parents to inspect and review educational records relating to their children. (Ed. Code, § 56504.)

The federal Family Educational Rights and Privacy Act (referred to hereafter as FERPA) defines "education records" to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed.Code, § 49061, subd. (b).) The United States Supreme Court in *Owasso Ind. Sch. / Dist. v. Falvo* (2002) 534 U.S. 426 [122 S. Ct. 934, 151 L.Ed.2d 896](*Falvo*), after conducting an analysis of FERPA provisions related to education records, determined that not every record relating to a student satisfies the FERPA definition of "education records." Specifically, the Supreme Court examined the FERPA provision that requires educational institutions to "maintain a record, kept with the education records of each student" (i.e., 20 U.S.C.

§ 1232g(b)(4)(A)), that “list[s] those who have requested access to a student’s education records and their reasons for doing so.” (*Falvo*, supra, 534 U.S. at p. 434.) The Court concluded that because this single record must be kept with the education records, “Congress contemplated that education records would be kept in one place with a single record of access.” (*Ibid.*) The Court further concluded that “[b]y describing a ‘school official’ and ‘his assistants’ as the personnel responsible for the custody of the records, FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar” (*Id.* at pp. 434-435.)

In *S.A. ex rel. L.A. v. Tulare County Office of Education* (E.D.Cal. Sept. 24, 2009, No. CV F 08–1215 LJO GSA) 2009 WL 3126322, and *S.A. v. Tulare County Office of Education* (E.D.Cal. October 6, 2009, No. CV F 08–1215 LJO GSA) 2009 WL 3296653, the district court found in the context of a request for special education records under Education Code, section 56504, that documents such as school district emails that had not been placed in student’s permanent file were not educational records as defined under FERPA, even when those emails personally identified a student. The court, citing *Falvo*, stated that Congress contemplated that educational records be kept in one place with a single record of access to those records. Because the emails the student requested had not been placed in his permanent file, and were therefore not “maintained” by the school district, the emails were not “educational records” and the school district was therefore not required to produce them under a request for student records under the IDEA and California law. (*S.A. ex rel. L.A. v. Tulare County Office of Education*, supra, 2009 WL 3126322, at *4-*5.)

On August 15, 2023, following the IEP team meeting on August 14, 2023, Mother asked Palo Alto to provide test protocols for the assessments that had been conducted. This is the request for documents that is at issue in Issue 1a. Although Student contends

that Palo Alto denied Student a FAPE by failing to timely provide Parents a “complete copy of his educational records” pursuant to Parent’s records request on August 15, 2023, the evidence established that Parent asked only for assessment protocols and not other records.

According to the assessment plan, the areas to be assessed were

- academics,
- health,
- intellectual development,
- language and speech,
- perceptual motor development,
- social/emotional,
- adaptive/behavior,
- post-secondary transition, and
- assistive technology.

A school psychologist was to assess intellectual development, social emotional functioning and adaptive behavior. Health was to be assessed by a school nurse based on a records review. A speech language pathologist would assess speech and language. Perceptual motor development would be assessed by an occupational therapist and an adapted physical education teacher. Assistive technology was to be assessed by an assistive technology specialist. Although the assessment plan stated that academic testing would be conducted by a special education teacher, an explanatory email dated April 19, 2023, from school psychologist Christina Keefe explained that she would conduct both the academic and cognitive testing.

As detailed below, Mother received all the testing protocols from the speech language pathologist, the occupational therapist, and the adapted physical education teacher. She received only partial responses to her request for the test protocols from the assistive technology assessor and Keefe for the assessments they conducted.

In response to Mother's request, Lee emailed Keefe requesting that Keefe provide the protocols she used in preparing the psychoeducational assessment. On September 1, 2023, Keefe provided some documents to Mother. The documents she provided were some academic testing worksheets and Student's results booklet for the Cognitive Assessment System, Second Edition.

The documents Keefe provided to Mother did not constitute the entire protocols for the all tests Keefe used. In addition to the Cognitive Assessment System, her assessment report indicates she also administered the

- Woodcock-Johnson, Fourth Edition: Tests of Achievement,
- the Comprehensive Executive Functioning Inventory,
- the Autism Spectrum Rating Scale,
- the Adaptive Behavior Assessment System, Third Edition,
- the Behavior Assessment System for Children, Third Edition,
- the Beck Youth Inventories, Second Edition,
- the Children's Depression Inventory, Second Edition, and
- the Manifest Anxiety Scale for Children, Second Edition.

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On September 3, 2023, case manager Briana Gonzalez provided documents she received from the assistive technology assessor Brian Gadus. However these consisted only of instructions for the "Student Environment, Tasks and Tools Framework" and the "HIAT Written Productivity Profile" instruments Gadus had used, and no actual Student responses. Palo Alto provided no further assistive technology protocol results in response to Mother's request.

Also on September 3, 2023, Gonzalez forwarded to Mother the protocols she received from speech pathologist Sophia Lo. Lo provided all the protocols for all the testing instruments she used. Specifically, she provided Student's results on

- the Expressive One Word Picture Vocabulary Test,
- the Receptive One-Word Picture Vocabulary Test,
- the Clinical Evaluation of Language Fundamentals, Fifth Edition, and
- the Social Language Development Test-Adolescent: Normative Update.

Lo credibly testified that she provided all the protocols she used for assessing Student. She also administered an instrument called the Impact Social Communication Rating Skills, but there were no documents to produce for that instrument. Lo did not receive the rating scales back from the raters, just the results that she incorporated into her report.

On September 4, 2023, the adapted physical education assessor Roxanne Koopman forwarded to Mother the instructions for the assessment tools she used, specifically the California Physical Fitness and Health Related Test and the Adapted Physical Education Assessment Scale-II. Koopman then followed up on September 8,

2023, summarizing Student's individual results on the first of the two assessments, with no information about the second one. Gonzalez then obtained from Koopman, and on September 15, 2023 shared with Mother, the actual protocol testing results for both instruments.

On September 7, 2023, Gonzalez shared with Parents the occupational therapist Anne Marie Howard's protocols for the (a) Sensory Processing Measure, Second Edition, (b) the results booklets for the Wide Range Assessment of Visual Motor Abilities, and (c) the Test of Handwriting Skills, revised. According to Howard's assessment report, these were all the instruments Howard administered.

Here, the assessment protocols were not kept in one place with a single record of access. They were not maintained in the normal course of business by a single, central custodian of the school or the District. That is why Lee asked Keefe for them, and Gonzalez obtained them from Gadus, Lo, Koopman and Howard. Thus, under the authorities cited above, they were not education records. Palo Alto provided all the assessors' protocols to Parents with the exception of Keefe and Gadus. Under the authorities cited above with respect to those they did not provide, Student did not prove that these were legally required.

In *Newport-Mesa Unified v. State of California* (C.D.Cal 2005) 371 F.Supp.2d 1170, the Court found, without mentioning *Falvo*, that protocols were education records. In *Letter to Price* (October 13, 2010), 57 IDELR 50, 111 LRP 45419, the Office of Special Education Programs, also called OSEP, found that test protocols with personally identifiable information were both education records and copyright protected. OSEP found that due to the copyright protection, the protocols should only be made available for inspection and review, but copies should not be distributed.

OSEP's designation of these documents as education records without reference to the manner in which they were maintained and by whom, is at odds with the legal authorities, including the Supreme Court's holding in *Falvo* cited above. OSEP *Letters* are not binding authority and their application is limited. (See *Csutoras v. Paradise High School* (9th Cir. 2021) 12 F.4th 960, 967, 967-968 [rejecting the claim that guidance letters issued by the Department of Education are binding authority].)

And, in *Letter to Shuster* (OSEP August 7, 2007) 108 LRP 2302, OSEP stated its "long-standing policy regarding test protocols as education records" and its policy regarding providing copies of copyrighted materials, such as test protocols, to parents. Quoting from the policy contained in the Analysis of Comments and Changes section of the 1999 IDEA regulations, OSEP reiterated:

"Records that are not directly related to a student and maintained by an agency or institution are not 'education records' under FERPA and parents do not have a right to inspect and review such records. For example, a test protocol or question booklet which is separate from the sheet on which a student records answers and which is not personally identifiable to the student would not be apart of his or her 'education records.' However, Part B and FERPA provide that an educational agency or institution shall respond to reasonable requests for explanations and interpretations of education records. (34 C.F.R. § 300.562(b)(1); 34 C.F.R. § 99.10(c)). Accordingly, if a school were to maintain a copy of a student's test answer sheet (an 'education record'), the parent would have a right under Part B and FERPA to request an explanation and interpretation of the record. The explanation and interpretation by the school could entail showing the

parent the test question booklet, reading the questions to the parent, or providing an interpretation for the response in some other adequate manner that would inform the parent.”

Here, Student did not claim or contend that Parents should have been shown the protocols or had them explained. Rather, Student argued that the protocols were an educational record of the kind that gave Parent a right to obtain copies. The argument is not persuasive under the Supreme Court and other case law analyzed above. Accordingly, Student did not meet his burden of persuasion that Palo Alto failed to timely provide Parents a complete copy of his educational records, when requested on August 15, 2023.

For these reasons, Palo Alto prevailed on Issue 1a.

ISSUES 16a AND 16b: DID PALO ALTO DENY STUDENT A FAPE BY FAILING TO MAKE A CLEAR WRITTEN OFFER OF SPECIALIZED ACADEMIC INSTRUCTION IN THE AUGUST 14, 2023 IEP AND THE MAY 14, 2024 IEP?

In Issues 16a and 16b, Student contends that Palo Alto denied Student a FAPE in the August/September 2023 and May 14, 2024 IEPs, by failing to make a clear written offer of specialized academic instruction. Palo Alto contends its IEP offers were clear. As there was no May 14, 2024 IEP, these contentions are treated as referring to the May 21, 2024 IEP.

A school district must make a formal written offer in the IEP that clearly identifies the proposed program. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 (*Union*). An IEP offer must be sufficiently clear that a parent can understand it and make

intelligent decisions based on it. (*Ibid.*) In *Union*, the Ninth Circuit observed that the formal requirements of an IEP are not merely technical, and therefore should be enforced rigorously. The requirement of a coherent, formal, written offer creates a clear record that helps eliminate factual disputes about when placements were offered, what placements were offered, and what additional assistance was offered to supplement a placement. It also assists parents in presenting complaints with respect to any matter relating to the educational placement of the child. (*Ibid.*) The procedural requirement of a formal written IEP offer creates a clear record and eliminates troublesome factual disputes years later about what placement and services were offered. (*Ibid.*) Parents must be able to use the IEP to monitor and enforce the services that their child is to receive. When a parent is unaware of the services offered to the student, and therefore cannot monitor how these services are provided, a FAPE has been denied. (*M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1197.)

The August/September 2023 IEP offered specialized academic instruction in a group setting in a separate class with a weekly duration of 390 total minutes, with notes indicating "Academic Planning and Academic Communications." Although not delineated in this notation, there were actually two separate classes, one called "Academic Planning" and the other called "Academic Communications." Academic Planning was a specialized academic instruction class that case manager Gonzalez, who was a credentialed special education teacher, taught at Gunn. Its schedule varied day by day because Gunn was on an "alternate block schedule" where different classes occurred on different days of the week and different durations each day. On Mondays the Academic Planning class was 45 minutes. On "block days" which were either

Tuesday and Thursday or Wednesday and Friday, it was 90 minutes each. Thus, the weekly duration of the Academic Planning class was 225 minutes. None of this was described in the IEP.

The IEP did not delineate where the remaining 165 minutes of the offered group specialized academic instruction would occur. Testimony at hearing indicated it would be delivered during the Academic Communications class, which focused on developing communication and academic skills.

Academic Communications included “push in” services from a speech language pathologist. Thus, although this required testimony at hearing to understand, the IEP also offered 120 total minutes of monthly speech and language services in a small group, with notes indicating it would be delivered in the “Academic Communication[s] Class.”

Gonzalez wrote these August/September 2023 IEP entries. She admitted that that the offer of specialized academic instruction was unclear. Gonzalez at hearing stated that she could see how the 390 minute designation for “Academic Planning and Academic Communications” could be confusing, because it would be unclear that there were two separate classes and how much time Student would spend in each class. Palo Alto has since changed the way it writes up IEPs, separating out the two classes from one another and specifying the number of minutes in each class. Gonzalez also stated that the IEP was intended to offer one period of Academic Planning and one period of Academic Communications, and the

“reason why the minutes are 390 is because our speech language pathologist is doing small group activities within the Academic

Communication[s] class. So it appears that she subtracted those minutes from the total for Academic Communication[s]. But I can see how that is confusing.”

Thus, the August/September 2023 IEP offer of specialized academic instruction was unclear. It did not delineate the two classes. It did not state the number of minutes in each class. There was no separate line item for Academic Communications and the IEP did not specify that the speech language minutes were subtracted from time spent in that class.

At the May 21, 2024 IEP team meeting, after reviewing Nicolosi’s independent educational evaluation, Palo Alto modified its offer. The modified offer also did not delineate Academic Planning and Academic Communications on separate line items. But, on the line noting the class title, the offer changed from “Academic Planning and Academic Communications” to simply “Academic Planning.” The IEP also decreased the specialized academic instruction minutes from 390 to 225. This made it appear as though Academic Communications was being eliminated.

However, the speech services of 120 minutes per month were still noted as occurring within Academic Communications, which Gonzalez confirmed at hearing was still part of what Palo Alto intended to offer. As she confirmed at hearing, the Academic Communications class should have had a separate line item in both offers, and the relationship between its minutes and the push-in speech pathologist minutes made explicit.

Even more confusing, the May 21, 2024 IEP added 900 additional weekly minutes of specialized academic instruction, explaining this in the IEP only as “CT Math, CT English, CT History, CT Science.” Neither Mother nor Nicolosi, who attended the May 21,

2024 IEP team meeting, knew what this meant. At hearing, Palo Alto clarified that the offer intended to comprise core subjects taught in a “co-teaching” model with general education and special education team teachers, but this was not explained in the May 21, 2024 IEP team meeting or the resulting documented offer.

In conclusion, the August/September 2023 and May 2024 IEP offers of specialized academic instruction were unclear. This procedural error resulted in a denial of FAPE. When a parent is unaware of the services offered to the student, and therefore cannot monitor how these services are provided, a FAPE has been denied. (*M.C. v. Antelope Valley Union High Sch. Dist.*, *supra*, 858 F.3d 1189, 1197.)

Student prevailed on Issue 16a and 16b.

ISSUE 11b: DID PALO ALTO DENY STUDENT A FAPE BY PREDETERMINING HIS IEPs DURING THE 2023-24 SCHOOL YEAR?

Student contends that Palo Alto predetermined the offer of Gunn as Student’s placement in the IEPs it offered during the 2023-24 school year. Palo Alto contends its offers were not predetermined.

PALO ALTO PREDETERMINED THE INTERIM IEP

The evidence established that from Mother’s initial inquiry in May of 2023 about Student’s placement, Gunn was always the only placement Palo Alto contemplated offering to Student. On March 22, 2023, after Mother had her intake meeting with legal secretary Jamie Engle, the special education department instructed Engle to enroll Student at his Palo Alto home school Gunn. As discussed above in Issue 4a, Palo Alto did not convene an IEP team meeting to generate an IEP that would be operative on the

first day of the 2023-24 school year. Instead, Lee generated an Interim IEP, which she signed on August 3, 2023, offering Student placement at Gunn. Palo Alto developed and offered the Interim IEP without holding an IEP team meeting and without parental input.

The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(b).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP team meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693-5; *Fuhrmann v. East Hanover Board of Education, supra*, 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].) An education agency's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of FAPE. (*Target Range, supra*, 960 F.2d 1479, 1484; *Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, 857-58.) Predetermination occurs when an educational agency has made its determination prior to the IEP team meeting, and is unwilling to consider other alternatives. (*Vashon, supra*, 337 F.3d 1115, 1131 ["A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, then simply presents the IEP to the parent for ratification."].)

In generating the Interim IEP, Lee anticipated that at the start of the 2023-24 school year, Student would attend Gunn. She used as a basis for her determination of the services Student would receive there, the March 22, 2021 IEP that she understood to

be Student's last agreed upon IEP from when he attended Natomas. She wrote what she believed to be a comparable program. She did not consult with Parents in making the Interim IEP offer. The Interim IEP stated:

"[Student] is coming to PAUSD from Hope Technology, a private school. Prior to attending this private school, [Student] was enrolled at Natomas Charter School. The school of residence is Gunn High School. The most recently consented to IEP, dated 3/22/2021, from the previous school district has been reviewed and PAUSD is offering a comparable offer of 150 min/week of Specialized Academic instruction, 60 min/mo of OT, 30 min/wk individual counseling, 30 min/week of Speech and Language, and behavior consultation. A reevaluation, at parent's request, is in progress and the team will convene to review the evaluation and determine appropriate recommendations."

In developing the Interim IEP, Palo Alto was relying on a set of laws that govern duties toward a student with a currently-operative IEP who attends a public school in another district, who transfers in during a school year. The law governs such transfers within the same or between different states, and within the same or between different special education local plan areas. In those cases, the local educational agency shall provide the pupil with a FAPE, including services comparable to those described in the previously approved IEP, in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law. (20 U.S.C. § 1414(d)(2)(C); 34 C.F.R. §§ 300.323(e) and (f); Ed. Code, § 56325; Ed. Code, § 56043, subd. (m).) To facilitate the transition from one school district to another, the new school in which the student enrolls shall take reasonable steps to promptly

obtain the pupil's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the pupil, from the previous school in which the pupil was enrolled. (Ed.Code, § 56325, subd. (b)(1).)

These rights and duties toward a transferring student only apply in the case of a transfer from one public school district to another, during a school year. (Ed. Code, § 56325, subd. (a); 20 U.S.C. § 1414(d)(2)(C).) As Palo Alto's closing brief acknowledges, there are no federal or state statutory provisions explicitly addressing the situation where a student transfers from a private school. (See, e.g., *S.H. v. Mount Diablo Unified Sch. Dist.* (N.D.Cal. 2017) 263 F.Supp.3d 746, 759 [addressing a transfer in summer, which is also not explicitly covered by the rules, and finding "was not reasonable for a school district to apply the interdistrict transfer rule, title 20 United States Code section 1414(d)(2)(C)(i)(I), to a summer transfer when, on its face, that provision applies only to mid-year transfers"].)

However, even if Palo Alto was entitled to rely on the transfer rules that apply to students with current IEPs coming from other public school districts, they would have required "consultation with the parents," which did not here occur. (Ed. Code, § 56325.) Lee's opinion, as she testified to, was that parental consent is not required for an Interim IEP. She did not consult with Parents about its contents. Nor did she share the Interim IEP with Parents. Although Lee recalled having shared the Interim IEP with Parents in August 2023 when it was generated, her testimony was not convincing.

Mother persuasively recalled that the first time she ever saw the Interim IEP was when Palo Alto responded to Student's records requests in 2024 in preparation for litigation. Moreover, there was no documentation that Palo Alto had consulted with

Parent in the development of the Interim IEP or that it shared the Interim IEP with Parents. Such documentation should reasonably have existed if the Interim IEP had in fact ever been shared with Parents.

In *Vashon, supra*, 337 F.3d 1115, the Ninth Circuit held that, for transfer students, an interim IEP was appropriate as a temporary measure and was not predetermined where the district had scheduled IEP team meetings, modified draft goals, repeatedly tried to engage with parent, and provided parent with the opportunity to participate meaningfully in the process of its development. (*Id.* at pp. 1132-33.) Such was not the case here, as Lee was under the misimpression that consulting with parents was not legally required when generating an interim IEP.

The parties argue about which of the two possible prior Natomas IEPs was indeed the last agreed-upon IEP. And, Student also argues that the placement and services Lee placed into the interim IEP were not in fact “comparable” to those Natomas IEPs. However, those contentions need not be addressed, because Palo Alto was not entitled to develop an IEP, even were that to be an interim IEP and even if the services were comparable to some preexisting IEP, without consultation with Parents. Palo Alto drafted the August 3, 2023 Interim IEP without parental input, which input Palo Alto believed was not legally necessary. Here, because the Interim IEP was developed without any parental input, it was thus predetermined.

A school district’s predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of a FAPE. Substantive harm occurs when parents are denied meaningful participation in a

student's IEP development. (*Deal v. Hamilton County Board of Education*, supra, 392 F.3d at p. 859.) Because the Interim IEP was predetermined and parental participation rights were thereby denied, Student prevailed on Issue 11b, regarding the Interim IEP.

PALO ALTO PREDETERMINED THE AUGUST/SEPTEMBER 2023 IEP

The first day of the 2023-24 school year was August 9, 2023. On August 10, 2023, Gonzalez was assigned as Student's case manager and she wrote Parents an email that welcomed them to Gunn for the 2023-24 school year. Tellingly, Gonzalez wrote that in addition to being his case manager for the upcoming school year at Gunn, she would also be his "dedicated Academic Planning teacher" there. Although the Interim IEP offered 150 minutes a week of specialized academic instruction, this was the first mention of placement in the Academic Planning class at Gunn. The August 14, 2023 IEP team meeting had yet to occur.

This timeline indicates that before any IEP team meeting had been held, Palo Alto determined that Gunn was to be Student's placement. On August 10, 2023, before any IEP team meeting had been held, Gonzalez already understood that Student was to attend her Academic Planning class at Gunn.

School psychologist Christina Keefe conducted Palo Alto's psychoeducational assessment and presented it at the August/September 2023 IEP team meetings. Student's prior school records identified that Student exhibited autistic-like behaviors such as delays in social interactions/pragmatics, obsession to maintain sameness, preoccupation with objects, resistance to controls, and ritualistic behaviors that might

affect his participation in school. He also experienced impulsive and unplanned reactions to environmental stimuli, and distractibility, which impeded his ability to access the general curriculum without increased support.

Keefe's assessment contained information from Student's then- current teachers at Hope, indicating that Student could be inflexible during class. He had challenges persevering and problem-solving. He required prompting to complete his work, follow along with activities, stay engaged with the class, and answer questions. He needed more prompting and help compared to same-aged peers. He got "stuck" on assignments, became rigid, and had difficulty asking for help. He had difficulty pushing himself to complete an assignment beyond the minimum that was being asked. He had difficulty initiating conversations at times, especially about non-preferred topics. He had trouble picking up on social cues from peers and adults. He had difficulty taking the perspective of others.

Keefe used subtests of the Cognitive Assessment System and rating scales to assess Student's executive functioning. She concluded that he had deficits in independence. She noted Mother's ratings that indicated lack of motivation for non-preferred tasks. Keefe administered the Autism Spectrum Rating Scales, and placed Student's level of autistic-like behaviors, as compared to his peers, in the elevated range. She administered the Adaptive Behavior Assessment Scales for Children, Third Edition. Student earned a General Adaptive Composite of 56, which fell within the extremely low range. Mother reported that Student did not perform actions that others his age would typically perform, such as

- participating in reciprocal conversations,
- writing or sending emails,

- using the internet,
- working independently,
- asking for help,
- completing tasks,
- trying new things,
- tying his own shoes,
- cleaning his room,
- following directions, or
- navigating the community alone.

In the area of adaptive skills, as rated by Mother, Student functioned far below same age peers in his ability to perform skills essential for independent functioning. Mother rated Student as extremely low in all areas of adaptive functioning, with results suggesting that he was more like a five or six year old in terms of his adaptive skills. Mother reported that Student kept to himself, did not care about school, and needed to be pushed to reach his potential. He had difficulties expressing his emotions. He needed to increase his coping skills. Mother described Student as very immature and unaware of his surroundings. She was concerned that he was very behind when it came to functioning independently in the community and in a school setting without direct and close supervision.

During an interview, Student reported that he “just do[es]n’t like work.” For his future, he stated that he does not want to go to college. Instead, he said when he grows up, he will “sell soda in my backyard.” From the above results, Keefe opined in

her report that Student had low motivation and preferred to keep to himself. He did not like school, specifically, he did not like to do any work, and he had low ambition for his future.

Nevertheless, she concluded that Student was a “capable youngster who can successfully use his executive functioning skills to perform tasks; however, for the most part, he would rather not make the effort and is not interested.” Keefe did not testify at hearing and her conclusions were thus unexplained.

After the team reviewed assessments, Palo Alto presented its offer at the September 12, 2023 IEP team meeting. Gunn, with the Academic Planning and Academic Communications classes, was the only placement discussed. Palo Alto offered no discussion of the continuum of service options, or indeed any option other than Gunn with the two specialized academic instruction classes.

A school district must make available a continuum of placement options to meet the instructional and service needs of special education students. (34 C.F.R. § 300.115(a); Ed. Code, § 56360.) Under the IDEA and California law, this includes, from least restrictive to most restrictive: regular education programs; resource specialist programs; related services; special classes; nonpublic, nonsectarian school services; and other listed settings; to instruction in the home, in hospitals, and in other institutions. (34 C.F.R. § 300.115; Ed. Code, § 56361.) The continuum of placement options is to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive environment appropriate for them. (71 Fed. Reg. 46,586-46,587 (Aug. 14, 2006).)

Palo Alto made its offer of FAPE for the August/September 2023 IEP at the meeting that occurred on September 12, 2023 IEP. At that meeting, the participants presenting Palo Alto's offer only discussed Gunn and no other placement options. Mother at one point expressed confusion as to why the program at Gunn was being discussed first, rather than after the discussion of goals and services. Other than Gunn, no mention was made of any other options.

Director Lee confirmed at hearing that Palo Alto did not have any programs of self-contained, full-day special day class programs at high school except for much more restrictive programs for students with much more extensive behavioral or mental health challenges. Palo Alto did not discuss these options at the IEP team meeting. Nor did Palo Alto consider, or discuss at the meeting, nonpublic schools as an option for Student. Accordingly, Palo Alto predetermined the August/September 2023 IEP.

On October 10, 2023, after the August/September 2023 IEP team meeting, Parents wrote a lengthy letter objecting to the IEP offer, declining to consent to it, and requesting independent educational evaluations. On October 30, 2023, Palo Alto agreed to fund the independent educational evaluations requested. However, even after the independent educational evaluations, Palo Alto did not consider other placements on the continuum.

PALO ALTO PREDETERMINED THE MAY 21, 2024 IEP

Nicolosi performed an extensive independent psychoeducational evaluation of Student in the spring of 2024. She assessed Student's cognition using the Wechsler Intelligence Scale for Children, Fifth Edition and his achievement using the Wechsler Individual Achievement Test, Fourth Edition. Nicolosi found that Student had high

average cognitive functioning, with a Full Scale score of 113, and that a significant weakness emerged on two tasks of reading comprehension and written expression. In addition, she administered processing instruments indicating an auditory processing disorder.

She anticipated that Student would not be able to access the curriculum in the offered placement at Gunn. She found that Student had high cognitive abilities in the high average range overall, but he required information to be broken and slowed down because cognitive ability was only one component of what was required to do well at school. On her testing, Student had lower verbal memory, which manifested in struggles re-telling a story he had just heard. In the area of executive functioning, he had clinically significant difficulties with self-monitoring. He had deficits in his ability to keep track of his own performance while working, checking for errors, or being able to keep track of his effect on others. He struggled with sustaining attention, patience, tolerance and persistence to see tasks through to the end.

Nicolosi at hearing was persuasive that Student became overwhelmed and distracted in groups or where there was too much stimulation. Overstimulation could occur in situations where there was a lot of talking, or the use of complex thoughts, such as a classroom. She observed Student in March and April 2024 at his then-current placement at Hope requiring redirection and prompting to focus and refocus his attention. She also observed him taking breaks from group activities to decompress by himself.

She observed the Academic Communications and a general education English class at Gunn. Although impressed by the high level of instruction at Gunn, she opined the Gunn environment would be too challenging for Student given his

processing deficits. Nicolosi was persuasive that due to Student's processing deficits, the educational placement and setting at Gunn was simply too large and overstimulating. The executive and adaptive functioning demands would be too high, and the academic demands too great. Student required a structured, self-contained environment with few distractions in order to access the curriculum. Given his attentional difficulties and their impact on his language and reading comprehension, he would miss out on the content being taught.

Nicolosi presented her report and opinions at the May 21, 2024 IEP team meeting. The Palo Alto team members listened but did not respond with any discussion of any other placement options on the continuum except for Gunn. Although Palo Alto then made certain changes in the May 21, 2024 IEP offer, offering "CT" or co-taught general education core classes in response, the offer of placement at Gunn remained unchanged. And, testimony at hearing established that all of the core curriculum classes at Gunn were co-taught classes. Thus, the ostensible change made in the May 21, 2024 IEP offer did not actually indicate movement on Palo Alto's part. Accordingly, Palo Alto predetermined the May 21, 2024 IEP.

As discussed above, predetermination occurs when an educational agency has made its determination prior to the IEP team meeting, and is unwilling to consider other alternatives. A school district's predetermination of an IEP seriously infringes on parental participation in the IEP process. Substantive harm occurs when parents are denied meaningful participation in a student's IEP development. (*Deal v. Hamilton County Board of Education*, supra, 392 F.3d at p. 859.) Here, Student established by a preponderance of the evidence that the placement at Gunn with specialized academic

instruction was the only program Palo Alto had to offer, and it did not discuss or consider any other options on the continuum. Student established the Interim IEP, August/September 2023 and May 21, 2024 offers were predetermined.

Student prevailed on Issue 11b.

ISSUE 14: DID PALO ALTO DENY STUDENT A FAPE FROM MARCH 20, 2023, THROUGH MARCH 20, 2025, BY FAILING TO ASSESS HIM FOR A SPECIFIC LEARNING DISABILITY?

In Issue 14, Student contends Palo Alto denied him a FAPE by failing to assess him for a specific learning disability. Palo Alto contends that specific learning disability was not a suspected area of disability and there was therefore no need to assess for it.

A specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to

- listen,
- think,
- speak,
- write,
- spell or
- perform mathematical calculations. (Ed. Code, § 56337, subd. (a).)

California law provides at least three methods to determine eligibility under this category. The first method considers whether a student has a "severe discrepancy" between ability and academic achievement. When standardized scores are considered valid, the law provides for a mathematical calculation to be applied comparing standardized scores of intellectual ability with scores of academic achievement. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B)(1).)

Use of the severe discrepancy model is not required. (Ed. Code, § 56337, subd. (b).) The law also provides for alternate methods of determining a severe discrepancy in the absence of standardized scores, or where the scores obtained do not fit within the mathematical calculation described above. (Cal. Code Regs., tit. 5, § 3030, subds. (b)(10)(B) and (C).) Another method of determining specific learning disability is to use a process that determines if a student who is underachieving for his age or grade level responds to scientific, research-based interventions. (Cal. Code Regs., tit. 5, § 3030, subds. (b)(10)(C)(1) and (2).) The response to intervention methodology is explicitly permissive and not mandatory. (Ed. Code, § 56337, subd (c); Cal. Code Regs., tit. 5, § 3030 subd. (b)(10)(C) [both stating that this method "may" be used to determine specific learning disability].)

Another method to determine specific learning disability is to assess whether a student who is underachieving for his age or grade level "exhibits a pattern of strengths and weaknesses in performance, achievement or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability." (Cal. Code Regs., tit. 5, § 3030 subd. (b)(10)(C)(2)(ii).)

Palo Alto undertook none of these methods for determining whether Student had a specific learning disability when it conducted Student's psychoeducational assessment prior to the August 14, 2023 IEP team meeting or at any other time prior to the filing of the complaint.

Keefe was aware that in February 2022, an independent assessment concluded that despite Student's average to high average cognitive scores, he demonstrated significant deficits in

- reading comprehension,
- oral discourse comprehension,
- spelling,
- writing,
- math and
- math fluency.

Keefe administered standardized cognitive testing. Specifically, she administered the Cognitive Assessment System, on which Student earned a full scale score of 97, which fell within the average classification.

Using the Woodcock-Johnson, Fourth Edition: Tests of Achievement, Keefe found that Student's academic achievement was overall average, with average reading, writing and math scores except for low scores in math facts fluency. Keefe's findings of average reading scores, in particular, were inconsistent with Student's past assessments noting significant difficulties with reading comprehension.

Keefe did not undertake to analyze whether there was a statistically-significant disparity between Student's cognition and his academic performance. Nor did she apply any of the other legally-allowed measures to assess for specific learning disability. Although Keefe's report indicated she also reviewed prior assessments, Keefe did not explore whether Student's historical academic performance revealed a disparity between his cognition and performance. Nor did she note that the reading comprehension scores she obtained for him were inconsistent with Student's past assessments, which noted significant difficulties with reading comprehension.

Nicolosi reviewed Student's prior educational history and found repeated evidence of a significant discrepancy between his high average cognitive functioning and his low average performance on reading comprehension tasks. Additional areas that had emerged as low average or lower throughout his assessment history included math calculation, listening comprehension, and written expression. These facts were, or should have been, known to Keefe from Student's records at the time she conducted her assessment.

Due to his high average cognitive functioning and low average reading comprehension and written expression skills, and his identified impaired processing in the area of auditory processing, Nicolosi suspected, and at hearing opined that he presented as a student with a specific learning disability. Nicolosi's report and supporting testimony justifying her results support a finding that Palo Alto should have suspected and assessed Student for a specific learning disability. Nicolosi's findings and opinions went un rebutted in light of the lack of justification presented by Keefe, who did not testify. Accordingly, Student met his burden of proof that Palo Alto should have suspected and assessed Student for a specific learning disability.

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

- health and development,
- vision,
- hearing,
- motor abilities,
- language function,
- general intelligence,
- academic performance,
- communicative status,
- self-help,
- orientation and mobility skills,
- career and vocational abilities and
- interests, 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).)

A local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. (20 U.S.C. § 1414(b)(2)(A).) No single measure or assessment shall be the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category

of the child. (34 C.F.R. § 300.304(c)(6).) The local educational agency must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3); Ed. Code, § 56320, subds.(e) & (f).) Assessments must be conducted by individuals who are both “knowledgeable of [the student’s] disability” and “competent to perform the assessment, as determined by the school district, county office, or special education local plan area.” (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (g), 56322.)

A school district’s failure to conduct appropriate assessments, or to assess in all areas of suspected disability, may constitute a procedural denial of a FAPE. (See *Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031-1032.) The failure to obtain critical assessment information about a student renders the accomplishment of the IDEA’s goals -- and the achievement of a FAPE -- impossible. (*N.B. v. Hellgate Elementary Sch. Dist.* (9th Cir. 2008) 541 F.3d 1202, 1210 [quoting *Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 894].)

Here, Palo Alto failed to obtain critical assessment information by failing to apply any methodology related to the determination of a specific learning disability, though it had reason to suspect this area of disability. Based on this procedural violation, Student satisfied the requirement of Education Code section 56505, subdivision (f) of a denial of FAPE by significantly impeded the opportunity of the parent to participate in the decisionmaking process.

Student prevails on Issue 14.

ISSUE 15: DID PALO ALTO DENY STUDENT A FAPE FROM MARCH 20, 2023, THROUGH MARCH 20, 2025, BY FAILING TO FIND HIM ELIGIBLE FOR SPECIAL EDUCATION SERVICES BECAUSE OF A SPECIFIC LEARNING DISABILITY?

In Issue 15, Student contends that Palo Alto denied him a FAPE by failing to find him eligible for special education services because of a specific learning disability. Palo Alto contends it offered Student appropriate eligibility categories and services, and did not deny him a FAPE.

The IDEA does not require that a student be placed in the most accurate disability category.

“Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in ... this title and who, by reason of that disability, needs special education and related services, is regarded as a child with a disability” (20 U.S.C. § 1412(a)(3)(B).)

Thus, as interpreted by the Ninth Circuit, the IDEA “does not give a student the legal right to a proper disability classification.” (*Weissburg v. Lancaster Sch. Dist.* (9th Cir. 2010) 591 F.3d 1255, 1259.) Similarly, the Seventh Circuit held,

“The IDEA concerns itself not with labels, but with whether a student is receiving a [FAPE]. A disabled child's [IEP] must be tailored to the unique needs of that child ... The IDEA charges the school with developing an

appropriate education, not with coming up with a proper label with which to describe [a student's] multiple disabilities." (*Heather S. v. State of Wisconsin* (7th Cir. 1997) 125 F.3d 1045, 1055.)

The United States Department of Education has advised that "a child's entitlement is not to a specific disability classification or label, but to a [free appropriate public education]." (*Letter to Fazio* (OSEP April 26, 1994) 21 IDELR 572.) A properly crafted IEP addresses a student's individual needs regardless of his eligibility category. (See *Fort Osage R-1 Sch. Dist. v. Sims* (8th Cir. 2011) 641 F.3d 996, 1004 [category "substantively immaterial"]. "The very purpose of categorizing disabled students is to try to meet their educational needs; it is not an end to itself." (*Pohorecki v. Anthony Wayne Local Sch. Dist.* (N.D. Ohio (2009) 637 F.Supp.2d 547, 557.)

Student failed to establish that an incorrect eligibility determination, in and of itself, resulted in a denial of FAPE. Student also failed to establish what, if any, related services he required to address his potential specific learning disability. Thus, Student failed to establish he was denied a FAPE by failing to find him eligible under the eligibility category of specific learning disability. Nor did he establish what, if any, services for that eligibility he contends he was denied.

Student failed to meet his burden of proof on Issue 15.

ISSUE 3: DID PALO ALTO DENY STUDENT A FAPE FROM MARCH 20, 2023, THROUGH MARCH 20, 2025, BY FAILING TO CONDUCT A COMPREHENSIVE POST-SECONDARY TRANSITION ASSESSMENT OF STUDENT?

Student contends Palo Alto denied Student a FAPE by failing to conduct a comprehensive post-secondary transition assessment in the two year period before

the complaint was filed. Palo Alto contends that a post-secondary transition assessment was not yet required because Student was not 16 years old when it conducted its reevaluation in summer 2023, and that the assessment it conducted proactively was appropriate. At the time of the August/September 2023 IEP team meeting, Student was 15 years old.

Beginning not later than the first IEP to be in effect when the child is 16 years old, or earlier if the IEP team deems appropriate, the IEP must include appropriate measurable post-secondary goals based on age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills, and the transition services needed to assist the child in reaching those goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); 34 C.F.R. § 300.320(a)(7)(b).) Transition services are defined as a coordinated set of activities that are designed within an outcome-oriented process that is focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities, including

- post-secondary education,
- vocational education,
- integrated employment,
- continuing and adult education,
- adult services,
- independent living, or
- community participation.

Transition services are based on the student's needs, taking into consideration the student's strengths, preferences and interests; and includes

- instruction,
 - related services,
 - community experiences,
 - the development of employment and other post-school adult living objectives, and if appropriate,
 - acquisition of daily living skills and a functional vocation evaluation.
- (20 U.S.C. § 1401(34); 34 C.F.R. § 300.43(b); Ed. Code, § 56345.1, subd. (a).)

Student turned 15 years old immediately prior to the start of the 2023-24 school year. He would not turn 16 until the summer of 2024, after the 2023-24 school year ended. Thus, the August/September 2023 IEP would not be in effect when he turned 16. Nevertheless, Palo Alto deemed an early transition assessment appropriate, as was clear from its assessment plan that Mother signed on April 10, 2023, which included assessments in post-secondary transition.

The August/September 2023 IEP contained a three-page attachment entitled "post secondary transition plan." Case manager Gonzalez drafted the postsecondary transition plan. She had never met or assessed Student. The document she drafted stated that age-appropriate transition assessments and instruments had been used. It also stated that Student had participated in the assessment process via an interview. Neither of these statements were true. Neither she nor any other assessor administered any transition assessment or instruments. Gonzalez never interviewed Student.

At hearing, Gonzalez stated that her information was based on her review of educational records reflecting an interview with another assessor. But, she could not specify where that purported interview was documented nor who conducted it. Gonzalez also stated she had relied on other unspecified past information, including information from Student's teachers, but could not point to any evidence in the record substantiating her sources. At hearing, she admitted that she would have liked more information upon which to base development of Student's transition plan, but worked from the information she had at the time. She admitted the post-secondary transition goals were preliminary and were intended to evolve with further data and information once Student attended a district school. This testimony was tantamount to an admission that Gonzalez did not, in fact, have sufficient information to draft appropriate measurable post-secondary transition goals in the August/September 2023 IEP.

The purported post-secondary transition plan contained three goals addressing training, education, employment and independent living. The first, in the area of training and education, stated that "upon exploration of careers within my areas of interest, I will identify potential vocations and industries that resonate with me and align with my passions." The second transition goal, in the area of post-secondary employment stated that "upon completion of school I will volunteer/apply for internships in industries that align with my interests (i.e., art, story writing)." The third goal addressing independent living stated that "upon completion of school I will develop and uphold a well-structured daily schedule encompassing schoolwork, extracurricular activities, and personal responsibilities."

In addition to not being based on demonstrable assessments of any kind, the goals were not measurable. Goals must be measureable, such that the student's progress toward meeting them can be periodically reported, such as through the use

of quarterly or other periodic reports. (Ed Code 56345, subd. (a)(3).) Further, the IEP offered no specific related services. Transition services may be special education if provided as specially designed instruction, or may be related services. (20 U.S.C. § 1401(34); 34 C.F.R. § 300.43; Ed. Code, § 56345.1.) The IEP only suggested vague activities to support the transition goals, specifically “exploratory work experience” and “online career exploration” to occur 60 minutes yearly in a separate class and supported by unspecified persons. At hearing, Gonzalez could not specify where or how these services would be delivered, stating only that it could have been in a study hall or specialized academic instruction class.

Postsecondary transition goals vary from other annual goals. Transition goals reflect the desires and plans of the student. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a)(2).) In contrast, other annual goals state measurable standards by which the school district’s program for the student will be measured by the end of the next 12 months. (20 U.S.C. § 1414(d)(1)(A)(i)(II).) Transition goals also address a student’s career or post-secondary education after graduation.

The adequacy of a postsecondary transition plan and services must be viewed as an aggregate in light of the child’s overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the child to garner educational benefit. (*Lessard v. Wilton-Lyndeborough Cooperative Sch. Dist.* (1st Cir. 2008) 518 F.3d 18, 30.) A flawed or missing transition plan is generally regarded as a procedural error. (*Board of Education v. Ross* (7th Cir. 2007) 486 F.3d 267, 276.) When a transition plan fails to comply with the procedural requirements, but the individual transition plan or the IEP provides a basic framework sufficient to ensure that the student receives transition services that benefit the student’s education, the procedural violation is harmless.

(*Virginia S. v. Dept. of Education* (D.Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, *10.) Therefore, a transition plan that is procedurally deficient, but does not result in a loss of educational opportunity, does not result in a denial of FAPE.

Here, however, the postsecondary transition plan failed to comply with the procedural requirements, and neither it nor the IEP as a whole provided a framework sufficient to ensure that Student would receive transition services to benefit his education or interests. The post-secondary transition goals were not based on an age-appropriate transition assessment, or any other assessment. The IEP team was clearly without any critical evaluative information concerning Student's needs in the area of post-secondary transition services. That deprivation made it impossible for the IEP team to consider and recommend appropriate services necessary to address Student's needs. Parents were thus substantially impaired in their ability to fully participate in the collaborative IEP process. (*Timothy O. v. Paso Robles Unified Sch. Dist.* (9th Cir. 2016) 822 F.3d 1105, 1120-21.)

For this reason, Student met his burden of proof on Issue 3.

GOALS, SERVICES AND PLACEMENT IN THE IEPs OFFERED DURING THE 2023-24 SCHOOL YEAR

Student contends that the August/September 2023 and May 21, 2024 IEPs denied Student a FAPE by failing to offer appropriate goals, services and placement. Because of the failures to assess, predetermination and lack of clarity of the offers discussed above,

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these IEPs denied Student a FAPE. The substantive FAPE issues will be addressed solely for thoroughness in addressing all issues Student presented. (See *Target Range*, *supra*, 960 F.2d 1479, 1485 [reasoning that

“[b]ecause we hold that Target Range failed to develop the IEP according to the procedures required by [IDEA], we need not address the question of whether the proposed partial IEP was reasonably calculated to enable R.G. to receive educational benefits”].)

ISSUE 6a: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2023-24 SCHOOL YEAR BY FAILING TO OFFER GOALS THAT APPROPRIATELY ADDRESSED STUDENT’S NEEDS IN MATH, WRITING, ORGANIZATION SKILLS, “TRANSITION TO INDEPENDENT LIVING,” COMMUNICATION, COUNSELING, MENTAL HEALTH, AND POST-SECONDARY TRANSITION?

In Issue 6a, Student contends that Palo Alto denied Student a FAPE during the 2023-24 school year by failing to offer goals that appropriately addressed Student’s needs in

- math,
- writing,
- organization skills,
- “transition to independent living,”
- communication,
- counseling,

- mental health, and
- post-secondary transition.

Palo Alto contends the goals it offered were appropriate.

An IEP is a written document for each child with a disability that includes:

- a statement of the child's present levels of academic achievement and functional performance; and
- a statement of measurable annual goals, including 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. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320; Ed. Code, § 56345, subd.(a)(2).)

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.) When appropriate, the IEP should include

- short-term objectives that are based on the child's present levels of academic achievement and functional performance,
- a description of how the child's progress toward meeting the annual goals will be measured, and
- when periodic reports of the child's progress will be issued to the parent. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320; Ed. Code, § 56345, subd. (a)(3).)

In *Capistrano, supra*, 21 F.4th 1125, the Ninth Circuit stated that the IDEA required IEP goals to target a student's needs, but the IDEA did not require an IEP to contain every goal from which a student might benefit. (*Id.*, at pp. 1133-34.) Citing Education Code section 56345, subdivision (i), the *Capistrano* court also noted that California "does not require ... additional information, beyond that explicitly required by" the IDEA. (*Ibid.*) The *Capistrano* court also addressed goal baselines, stating that the IDEA did not require that the IEP team rely on specific kinds of quantitative data. (*Ibid.*)

The goals that Palo Alto offered in the August/September 2023 IEP did not change in the May 21, 2024 IEP. The IEPs stated that Student had needs in the areas of

- math calculation,
- written language,
- study and organizational skills,
- social/behavioral and emotional skills,
- transition, and
- communication.

They contained sections stating Student's present levels of academic achievement and functional performance in

- executive functioning,
- reading and writing,
- math,
- communication development and gross and fine motor skills,

- social/emotional and behavioral issues,
- vocational interests, and
- adaptive and daily living skills.

The IEPs offered goals in

- math,
- writing,
- study/organization,
- “transition/independent living,”
- communication,
- communication/counseling, and
- two in mental health.

COMMUNICATION AND “COMMUNICATION/ COUNSELLING” GOALS

Speech pathologist Lo conducted Student’s speech assessment and wrote two communication goals for the August/September 2023 IEP, which remained unchanged in the May 24, 2024 IEP. The IEPs stated a communication development present level indicating that Student could effectively communicate his needs to both peers and adults, but showed struggles seeking help. He had difficulty initiating conversations with peers, particularly on non-preferred topics. He did participate in conversations when initiated by others, especially about preferred topics.

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Student failed to establish any inaccuracy of this statement of Student's present levels. Independent assessor Nicolosi overall endorsed these areas of need in her May 2024 assessment, stating that Student conversed well one-on-one, but was less successful with peers or in groups, and had difficulty with self-understanding and self-advocacy.

In her testing sessions and standardized instruments, Lo observed that Student had good language abilities and was very good at advocating for himself, for example when he needed something repeated or he didn't know an answer. He had the skills to speak and ask questions but he displayed these skills inconsistently. At hearing, Lo credibly defended all the instruments she administered in her assessment, against Student's lengthy and searching questioning. Lo competently defended detailed questions at hearing concerning her accurate scoring of Student's results. She opined that the two goals she wrote addressed Student's needs in perspective-taking by putting himself in somebody else's shoes, and thinking about other people outside of himself, and also in functional communication within a school setting. Nicolosi endorsed these areas of need.

The first communication goal stated that by August 14, 2024, with minimal to moderate prompting, Student would communicate with his teachers to seek help ten times per semester as measured by observation and data collection. The second goal Lo wrote was in the area of "communication counselling" that was a combination speech and mental health goal. It stated that by August 14, 2024, Student would demonstrate understanding of others' thinking during role-play scenarios in small groups, put himself in "someone else's shoes" in school scenarios, or in characters' perspectives in reading and writing assignments at 75 percent accuracy as measured by observation and data collection. Lo explained at hearing that the number of trials in the second goal would

be based on as many role-play small-group scenarios as arose in class and could be “any number of times.” She and Student’s teachers could track his percentage of successes.

Thus at hearing, Lo credibly defended her assessment of Student’s areas of need and the appropriateness and measurability of these goals. Student, on extensive examination failed to detract from the accuracy of the present levels or the appropriateness of the goals Lo wrote. Independent assessor Nicolosi confirmed that Student had difficulty with cognitive flexibility, exhibited rigidity in his thinking, had difficulty shifting, and required help in perspective taking, and thus confirmed the appropriateness of Lo’s goals at the time they were developed in August and September 2023.

Nicolosi, at hearing, opined that the goal of seeking help from teachers was too advanced for Student at the time the goal was written because he had not yet learned to identify his own emotions. However, when combined with the mental health goal discussed below, aimed toward identification of one’s feelings, the speech goals were appropriate.

MENTAL HEALTH GOALS

School therapist Kelly Rupe wrote two mental health goals based on a present level stated in the August/September 2023 IEP, which was unchanged in the May 21, 2024 IEP. The mental health present level stated that Student was at risk for

- depression,
- anxiety,

- separation anxiety,
- “passive suicidal ideation,”
- feelings of emptiness,
- intrusive thoughts,
- withdrawal, and
- avoidance of non-preferred tasks and social interactions.

The present levels section recommended goals to focus on identifying and expressing feelings and learning how to increase his ability to tolerate distress so he can continue to develop socially, academically, and emotionally. Rupe had not met or assessed Student or written his present levels, or know who did. However, despite extensively challenging the source of Rupe’s understanding of Student’s needs, and challenging the validity of Keefe’s underlying psychoeducational assessment, Student failed to establish that these present levels were inaccurate. And, Nicolosi’s independent assessment confirmed them.

Rupe wrote two mental health goals that were measurable and appropriate. The first stated that by August 14, 2024, during therapy sessions, Student would identify and express his emotions (e.g., sad, anxious, frustrated) in response to stressors in four out of five opportunities across three consecutive months, as measured by therapist data collection and observation. The other mental health goal stated that by August 14, 2024, during therapy sessions, Student would practice and role-play self-soothing and calming techniques, such as deep breathing or asking for a break, in four out of five opportunities across three consecutive months, as measured by therapist data collection and observation. Particularly with reference to the goal aiming toward identification

of emotions, Nicolosi endorsed this as an area of Student's need in her May 2024 assessment. Student failed to establish that these goals were not appropriate, measurable, or reasonably calculated to confer on him some educational benefit.

STUDY/ORGANIZATION AND "TRANSITION/INDEPENDENT LIVING"

Gonzalez drafted the study/organization goal which stated that by August 14, 2024, Student would independently review instructions and responses to ensure all steps within an assignment had been completed, and make any needed changes, with 100 percent accuracy for four out of five assignments, as observed through teacher observations and records.

Gonzalez also wrote a "transition, independent living goal," which was essentially an executive functioning goal and should be treated as distinct from the postsecondary transition goals discussed elsewhere in this Decision. The "transition/independent living" goal stated that by August 14, 2024, Student would independently create and maintain a structured daily schedule, including schoolwork and extracurricular activities in two out of three weekly checklists. Gonzalez tied these goals to reporting in the psychoeducational assessment from one of Student's teachers noting that he rushed through assignments and did not review his work. Student failed to establish that these goals did not address Student's needs or confer on him some educational benefit. Nicolosi confirmed that Student rushed through assignments and academic tasks, and thus missed information, thereby confirming the appropriateness of these goals at the time they were developed for the August/September 2023 IEP and continued in the May 21, 2024 IEP.

WRITING

Student's present levels in the August/September 2023 IEP regarding his writing skills stated that in his writing, Student did not elaborate and provide details to support his ideas. Gonzalez' writing goal was related to this present level and stated a core ninth grade writing standard. It stated that by August 14, 2024, when given a grade-level text and a prompt, Student would write an essay that took a position and that cited two valid citations of textual evidence to support the claim, plus a detailed analysis as to how the evidence supported the claim, for two out of three topics or texts.

Student did not provide evidence to dispute the appropriateness of this goal, or the present level on which it was based, and did not dispute that this was an area of need for him from which he would obtain educational benefit. Nicolosi confirmed that Student required instruction in generating topic sentences, organizing his thoughts into paragraphs, providing more details in his writing, including supportive details. She thus confirmed the appropriateness of these goals at the time they were developed for the August/September 2023 IEP and continued in the May 21, 2024 IEP.

BASELINES

The aforementioned goals were not models of perfection. As determined above, the present levels were accurate and the goals appropriate and measureable. But, the goals also contained baselines against which to measure progress, and it is fair to say that both Gonzalez and Rupe made up the baselines for the goals they drafted.

The writing baseline stated: "When given a grade-level text and a prompt that requires the writer to take a position, [Student] has composed an essay including a claim, textual evidence, and detailed analysis in 0 out of 0 texts."

The baseline for the study/organization goal Gonzalez wrote stated: "[Student] has been observed independently reviewing the instructions and his responses to ensure all steps within the assignment have been completed accurately in 0 out of 0 assignments." Gonzalez confirmed at hearing that when she wrote "0 out of 0" it was based not on Student's actual performance and that she intended to develop actual baselines "the moment [Student] is present on campus, I can begin to assess and provide those materials so I can gain a clearer and more accurate baseline." Without that information, she simply pulled areas of need from the assessment, then wrote a baseline stating "0 out of 0."

With regard to the "transition/independent" living goal baseline, Gonzalez wrote: "[Student] has independently created and maintained a structured daily schedule in 0 out of 0 weekly checklists." As with the prior baselines, Gonzalez admitted at hearing that she "did not get a baseline regarding [Student's] ability to maintain a daily schedule."

Rupe wrote two goals, one with a baseline that stated "assessments indicate that [Student] has difficulty identifying and expressing his feelings. Baseline is 0 out of 5." Rupe wrote another baseline stating that "assessments indicate that [Student] would benefit from learning coping skills to manage difficult emotions. Baseline is 0 out of 5." Rupe testified she prepared the baseline for this goal because "this was based on, that this wasn't a skill that had been taught and wasn't a skill that he had yet." Neither Gonzalez nor Rupe could point to any information in any underlying documentation that supported the baselines.

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However, inadequate baselines or present levels are not necessarily fatal. In *Nunez v. Grossmont Union High Sch. Dist.* (S.D.Cal. September 30, 2019, No. 17-cv-2097-L-MDD) 2019 WL 4849172 (*Nunez*), the court held that a school district did not deny the parent of an eleventh-grade student an opportunity to meaningfully participate in an IEP meeting where the baselines were arguably inadequate. There, the goals on the merits were not found deficient, and the court rejected the proposition that an IEP cannot include appropriate goals if it does not include adequate baselines or current levels. (*Nunez, supra*, at *6-9.)

Student failed to establish that the goals in writing, study/organization skills, "transition to independent living," communication, counseling, and mental health were inappropriate or denied student a FAPE.

MATH

However, there is a limit beyond which a goal that has no discernible basis in demonstrably accurate present levels is so procedurally deficient as to deny a FAPE. In *Ravenswood City Sch. Dist.* (N.D.Cal 2009) 870 F. Supp. 2d 780 (*Ravenswood*), the court upheld an ALJ's determination that an IEP was inadequate because the program and its goals were not predicated upon clear baselines or present levels. Because of the deficient present levels, the IEP goals were not based upon reasoned criteria or the student's current skill levels. The school district in that case argued that the lack of baselines was not a violation because baselines are not a mandatory component of an IEP. But the court was not persuaded, "[a]n IEP begins by measuring the student's present level of performance -- affectionately known as PLOP -- which provides a benchmark for measuring the student's progress toward the goals stated in the IEP." (*Ravenswood*,

supra. at p. 790 [citing *Settlegoode v. Portland Pub. Schs.* (9th Cir. 2004) 371 F.3d 503, 508, n.1].) "Baseline data must be concise and clearly understandable so that the student's progress can be evaluated." (*Ibid.*, citing *O'Toole v. Olathe Unified Sch. Dist.* (10th Cir. 1998) 144 F.3d 692, 702-703.) As the ALJ had found, the purported baselines were wholly insufficient, did not provide any indication of what, if any, skills the Student had, were too vague to determine what area of need it addressed, and were otherwise simply inadequate.

The August/September 2023 IEP stated a present level for Student in math based on his Woodcock Johnson results indicating that when presented with mathematical problems and prompted to recognize the relevant procedures and execute the appropriate calculations, Student performed well within the average range, but occasionally rushed through assigned math tasks, resulting in errors and incomplete demonstrations of work. He was reluctant to revisit and revise his work.

The math goal Gonzalez wrote stated that

"By 8/14/2024, when presented with a literal equation (such as $D = rt$, $y = mx + b$), [Student] will use inverse operations to accurately solve for a designated variable (like $r = D/t$, $x = (y - b)/m$) and document the steps taken to arrive at the solution in 4 out of 5 problems."

Gonzalez based this goal not on anything that was known about Student's individual functioning, but simply on the fact that this goal would fall within a standard curriculum for ninth grade algebra.

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Although achieving that ninth grade core curriculum standard would be admirable, the goal was in no way tied to anything about Student regarding these skills. The math present level in no way corresponded to a goal concerning literal equations, inverse operations or designated variables. When pressed, the sole basis Gonzalez could locate for this goal was a low math calculation score on the Woodcock Johnson academic tests.

Gonzalez wrote a baseline for the math goal she drafted that stated "[w]hen presented with a literal equation, [Student] is able to use inverse operations and document the steps taken to arrive at a solution in 0 out of 0 problems." At hearing, Gonzalez admitted that this baseline simply reflected that she herself had not observed Student using this skill. Since she herself had not observed him showing mastery of the skill, she wrote that his baseline was "0 out of 0." She admitted that that baseline did not mean that Student couldn't do the math problems, only that she personally had not seen him do it.

Goals must be "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." (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320; Ed. Code, § 56345, subd.(a)(2).) The IEP shall "show a direct relationship between the present levels of performance [to] the goals and objectives." (Cal. Code. Regs., tit.5, § 3040.) Because the math goal had no discernible basis in Student's present levels, and was not tied to any data concerning him, his capacities or his areas of need, it was not appropriate.

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POST-SECONDARY TRANSITION GOALS

In Issue 6a Student also contends that the post-secondary transition goals in the August/September 2023 and May 21, 2024 IEPs were not appropriate. This was addressed in Issue 3. As discussed there, Student's contentions were correct because the post-secondary goals were vague, not measurable, and not tied to any assessment.

In conclusion, the goals Palo Alto offered in the August/September 2023 and May 21, 2024 IEPs were appropriate except for the math goal and the post-secondary transition goal.

ISSUE 6b: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2023-24 SCHOOL YEAR BY FAILING TO OFFER ANY GOALS IN SOCIAL SKILLS, FINE MOTOR SKILLS, SENSORY PROCESSING, AND EXECUTIVE FUNCTIONING?

In Issue 6b, Student argues he was denied a FAPE by the absence of any goals in either the August/September 2023 or May 21, 2024 IEPs in the areas of social skills, fine motor skills, sensory processing, and executive functioning. Palo Alto contends that the goals it offered were appropriate and it did not fail to offer any necessary goals.

With regard to social skills and executive functioning, Student's contentions were not persuasive that such goals were absent. The communication, communication/counselling, study organization and mental health goals discussed above all addressed Student's social skills and executive functioning.

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With regard to fine motor skills and sensory processing, Student established that he required goals in these areas at the time of the August/September 2023 and May 21, 2024 IEPs, and was denied a FAPE by their absence.

Palo Alto occupational therapist Anne Marie Howard conducted an assessment that included the Wide Range Assessment of Visual Motor Abilities, including subtests measuring visual-motor skills, visual-spatial skills, and fine motor skills. Student scored in the average range for visual-motor and visual-spatial skills. His fine motor score, significantly lower, fell within the third percentile. In her assessment report, Howard opined, without explanation, that “this score is not believed to be a true representation of his fine motor abilities.” Student was diagnosed with hand tremors, during the 2020-21 school year. Howard did not herself notice hand tremors and seemed unaware this was an area of concern at the time of her assessment, although there would have been evidence of it had she reviewed his past assessments and educational records. This evidence established that fine motor skills was a known area of need that Palo Alto, for unexplained reasons, ignored.

Howard also administered the Sensory Processing Measure, a standardized assessment tool for measuring a student’s sensory processing abilities and their effect on the student’s functional performance in the classroom environment. Her results showed “moderate difficulties” in Student’s hearing. The assessment report noted that Student often hummed to himself repeatedly, sometimes avoided places with loud music and noise, as well as occasionally failed to respond when his name was called. Howard’s report concluded that in the area of sensory processing, hearing appeared to be the only area currently impacted. Howard simply noted these issues, but made no

recommendations with respect to them. She left all recommendations up to the IEP team, but that team did not recommend any goals or services to address these areas of need.

At hearing, Howard admitted that elevated scores in auditory processing could impact sensitivity to noises, over-responsiveness to aural stimuli, and could impact self-regulation and the ability to focus and pay attention. The evidence established this was a known area of need that Palo Alto, for unexplained reasons, ignored.

Nicolosi credibly found that sensory processing issues were severely detrimental to Student's abilities to access the educational environment at Gunn. The IEP's failure to address Student's sensory processing needs denied him a FAPE.

Student met his burden of proof in on Issue 6b with respect to the absence of goals in fine motor skills and sensory processing in both the August/September 2023 and May 21, 2024 IEP.

Student failed to meet his burden of proof regarding social skills and executive functioning with regard to both IEPs.

ISSUE 10b: DID PALO ALTO DENY STUDENT A FAPE BY FAILING TO OFFER AN APPROPRIATE "TRANSITION PLAN" DURING THE 2023-24 SCHOOL YEAR?

In Issue 10b, Student contends that during the 2023-24 school year, Palo Alto denied him a FAPE by failing to offer an appropriate "transition plan" into Gunn. As discussed above, Palo Alto correctly contends there is no specific FAPE requirement for a transition plan into a comprehensive high school campus.

Here, as in Issue 10a, Student argues that there was a FAPE obligation to create a transition plan into the public school setting following a private school placement. However, there is no such requirement under the IDEA or California law. Nor did Student cite any law supporting this contention, or provide any evidence as to what purported “transition plan” would or should contain.

For these reasons, Palo Alto prevailed as to Issue 10b.

ISSUE 12a: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2023-24 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE SERVICES FOR POST-SECONDARY TRANSITION, “TRANSITION TO A SCHOOL CAMPUS,” BEHAVIOR, ACADEMICS, SPEECH AND LANGUAGE, MENTAL HEALTH, SOCIAL SKILLS, AND OCCUPATIONAL THERAPY?

In Issue 12a, Student contends that Palo Alto denied him a FAPE in the August/September 2023 and May 21, 2024 IEPs by failing to offer appropriate services for

- post-secondary transition,
- “transition to a school campus,”
- behaviors,
- academics,
- speech and language,

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- mental health,
- social skills and
- occupational therapy.

Palo Alto contends that the services it offered were appropriate.

POST-SECONDARY TRANSITION

Post-secondary transition services are addressed above in Issue 3. As discussed above, the August/September 2023 and May 21, 2024 IEP's offered no specific related services in the area of post-secondary transition.

Student met his burden of proving a denial of FAPE because Palo Alto did not offer appropriate post-secondary transition services.

TRANSITION TO A SCHOOL CAMPUS

Transition to a school campus services were addressed above in Issue 10b. As discussed, there is no FAPE obligation to create a transition plan into the public school setting following a private school placement under the IDEA or California law. Student did not cite any law supporting this contention, or provide any evidence as to what purported "transition plan" would or should contain.

Student failed to meet his burden of proving a denial of FAPE because a lack of services related to transition to a school campus.

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BEHAVIORS

There was no evidence concerning the services Student contends should have been offered to address behaviors, nor did he establish that problematic behaviors were an area of need at the time of the August/September 2023 or May 21, 2024 IEPs.

Student failed to meet his burden of proving a denial of FAPE because Palo Alto did not offer appropriate behavior services.

ACADEMICS

The August/September 2023 IEP, and the May 21, 2024 IEP offered goals in writing and math. The August/September 2023 IEP offered the Academic Planning and Academic Communication specialized academic instruction minutes as services. The May 2024 IEP added co-taught classes for core subjects, which meant a special education and general education teacher would both be in the classroom working on Student's goals.

With respect to reading, Mother shared Student's difficulties with reading comprehension at the August/September 2023 and the May 21, 2024 IEP team meetings. Keefe's assessment found no deficits in Student's reading, and the IEPs offered no reading goals or services. The Natomas February 2022 independent assessment found that Student had significant reading comprehension challenges. Keefe was, or should have been aware of this, but did not note it in her report or undertake any further testing to clarify the disparate results she obtained.

Independent assessor Nicolosi disagreed with Keefe's results, finding that although Student had the solid ability to read words correctly, quickly, and fluently, both in isolation and within larger paragraphs, he still struggled to comprehend what he read.

His attentional difficulties caused him to miss details while reading, which impacted his processing of the information. Most notably, however, his difficulties with processing language, including making inferences and understanding figurative language, heavily impacted his reading comprehension skills. In the area of reading comprehension, Nicolosi specifically recommended small group support with three or fewer students at least 30 minutes three times a week to address reading comprehension and written expression goals.

Nicolosi's assessment was available to Palo Alto at the May 21, 2024 IEP. The 2022 independent assessment showing his reading comprehension difficulties, despite his abilities to read words on the page, was available to Keefe prior to the August/September 2023 IEP.

On the basis of Nicolosi's analysis of Student's reading comprehension difficulties, the fact that evidence of this preexisted Keefe's contrary results, and Nicolosi's specific recommendations of special education services in that area, Student sustained his burden of proving that Palo Alto denied him a FAPE by failing to offer appropriate services in the area of academics, which should have included reading, in addition to writing and math.

SPEECH AND LANGUAGE

The August/September 2023 IEP offered 120 minutes a month of speech and language services that would have been delivered as push-in services into the Academic Communications class. The May 2024 IEP did not make any changes to the offer of services.

In determining that this was the appropriate number of minutes, Lo referred to a document or policy developed by one of the Northern California SELPA's that "many, many speech language pathologists are trained in and I use as a reference to see how much speech and language support is needed for students individually." This document or policy was called the "communication severity scale." It determined the number of service minutes based on where a student's level of need fell on that scale. Lo also based her determinations regarding service minutes on the "embedded supports" she thought would be provided in the Academic Communications class.

Student did not offer contrary evidence as to the number of minutes or type of speech services he contends should have been offered. Lo determined that for the two communication goals she offered, addressing self-advocacy and perspective-taking, the IEP offered an appropriate 120 push-in minutes combined with the services she claimed were "embedded" into the program. There was no contrary evidence.

Student did not meet his burden of proving that he was denied a FAPE by Palo Alto's failure to offer appropriate speech services.

MENTAL HEALTH

Student's mental health present levels stated that Student was at risk for

- depression,
- anxiety,
- separation anxiety,
- passive suicidal ideation,
- feelings of emptiness,

- intrusive thoughts,
- withdrawal, and
- avoidance of non-preferred tasks and social interactions.

School Therapist Rupe offered two goals addressing the expression of emotions and self-soothing calming techniques, and 30 minutes weekly individual counseling to address those goals. At hearing, she stated that the 30 minutes was a “minimum,” but could have been tweaked upwards if Student, once at Gunn, exhibited greater need. For students who

“are having a hard time adjusting generally, I would probably provide more than the minimum offer of minutes. If they're struggling to accommodate, I would probably see them a bit more often. We might have daily check-ins as opposed to a once weekly meeting.”

Rupe, like Lee and Gonzalez, also opined that at Gunn Student could also be supported with embedded supports outside of the specific services the IEP offered.

Student did not offer contrary evidence as to the number of minutes or type of mental health services he contended should have been offered. In light of the lack of evidence concerning what, if anything, he contends was incorrect about Palo Alto’s offer, or what he contends would have been more appropriate, Student overall failed to meet his burden of proving that he was denied a FAPE by Palo Alto’s failure to offer appropriate mental health services.

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SOCIAL SKILLS

Social skills services were encompassed within the services for speech and mental health. Student's social skills were addressed by the communication goals and services Lo offered, and by the mental health goals and services Rupe offered. These addressed self-advocacy, perspective-taking, expression of emotions and self-soothing calming techniques.

Student overall did not meet his burden of proving that he was denied a FAPE by Palo Alto's failure to offer appropriate social skills services.

OCCUPATIONAL THERAPY

Student established in Issue 6b above that he required goals in these areas and was denied a FAPE by their absence. Similarly, to support such goals, Palo Alto should have offered services to address his low fine motor skills in which he scored in the third percentile, and his moderate difficulties in auditory processing. As discussed above, elevated scores in auditory processing could impact sensitivity to noises, over-responsiveness to aural stimuli, and could impact self-regulation and the ability to focus and pay attention. The IEP's failure to address Student's sensory processing needs via any services denied him a FAPE.

With respect to post-secondary transition services, academics with specific reference to reading, and occupational therapy, Student met his burden of proof on Issue 12a.

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ISSUE 12b: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2023-24 SCHOOL YEAR BY FAILING TO OFFER AN APPROPRIATE PLACEMENT?

In Issue 12b, Student contends Gunn was an inappropriate placement where he would be unable to access the curriculum, that denied him a FAPE. Palo Alto contends it offered Student an appropriate placement in the least restrictive environment.

Federal and state laws require school districts to provide a program in the least restrictive environment appropriate for each special education student. (Ed. Code, §§ 56342, subd. (b); 56033.5; 34 C.F.R. § 300.114.) A special education student must be educated with non-disabled peers to the maximum extent appropriate and may be removed from the regular education environment only when 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).)

To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors:

- the educational benefits of placement full-time in a regular class;
- the non-academic benefits of such placement;
- the effect the student would have on the teacher and children in the regular class; and
- the costs of mainstreaming the student.

(*Sacramento City Unified Sch. Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050] (*Daniel R.R.*); see also *Clyde K. v. Puyallup Sch. Dist. No. 3* (9th

Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's syndrome].) If it is determined that a child cannot be educated in a general education environment, then the analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R.*, *supra*, 874 F.2d at p. 1050.)

There were many good things about the program Palo Alto offered. The Academic Communications class was designed for students on the autism spectrum or who otherwise had social communication challenges. Its curriculum focused on social communication with the support of a speech language pathologist and an educational specialist. In this group, educators facilitated conversations by working on perspective and turn-taking, in a smaller classroom. Nicolosi observed the Academic Communications classes as part of her May 2024 independent assessment and opined that it was "a great class." It had only eight students, with an aide, a special education teacher and a speech pathologist. Nicolosi was impressed by the high level of lively discussion, interaction and language she observed in that class. The students were involved, verbal and talking. Academic Planning focused on executive functioning and organizational challenges. It gave students time to do their homework and plan and track their assignments.

The co-taught core curriculum general education classes also had much to recommend them. They were taught by general education and special education teachers in classes of approximately 30 students with several aides. General Education Math teacher Jacquelyn Silverbush explained this teaching model at hearing. According

to her credible, enthusiastic and impressive testimony, all of the accommodations Nicolosi recommended, and more, would have been provided to Student within the co-taught general education classes. Nicolosi recommended:

- Directions simplified, explained, and presented a few at a time.
- Visual instructions, check lists, and other visual supports such as charts, graphs, pictures, etc.
- Language broken down, presented in small chunks.
- Access to calculator for math work and tests.
- Access to computer for writing tasks.
- Assistance with organization for writing tasks, including brainstorming ideas, developing graphic organizers, and editing drafts.
- Frequent movement breaks.
- Scaffolding for group work.
- Groups should be kept small and structured.
- Frontloading of content.

In addition to those accommodations, as part of her teaching methodologies, Silverbush would also have provided check-ins and pre-testing. She would have separated groups based on content mastery. She would have provided pre-printed sheets with blanks and sentence starters. Her teaching methods would teach orders of mathematical operations by “undoing” them, “which is the same as using the inverse”

of the operation, among others. Silverbush's testimony was truly inspiring as to her teaching methodologies, her content mastery, and her familiarity with her duties and responsibilities to her special education students under the IDEA.

Nicolosi confirmed the high level of educational opportunity Palo Alto offered, from her observations at Gunn in April 2024 as part of her assessment. She observed a co-taught English class with a general education teacher and a special education teacher and opined that "it was again a wonderful class. I mean, it was really, it was high level. Honestly, there was a lot of a very high level of discussion going on." And, in Nicolosi's opinion, Palo Alto's offer of FAPE in the August/September 2023 and May 21, 2024 IEPs targeted goals and areas in which Student required support.

However, none of the above indicates that Student would have been able to access the instruction at Gunn, however excellent it might have been. Even with the supports and accommodations Nicolosi recommended, she anticipated that Student would not be able to access the curriculum in the offered placement at Gunn. Based on a searching and thorough assessment of Student's needs, she found that Student had high cognitive abilities in the high average range overall, but he required information to be broken and slowed down because cognitive ability was only one component of what was required to do well at school. On her testing, Student had lower verbal memory, which manifested in struggles re-telling a story he had just heard. In the area of executive functioning, he had clinically significant difficulties with self-monitoring. He had deficits in his ability to keep track of his own performance while working, checking for errors, or being able to keep track of his effect on others. He struggled with sustaining attention, patience, tolerance and persistence to see tasks through to the end.

Although Student at hearing spent significant effort trying to undermine the accuracy of Keefe's assessment, much of the information in that assessment was consistent with Nicolosi's. Rather, it was the interpretation and analysis of the severity of Student's needs that distinguished Palo Alto's views from Nicolosi's. Except in the area of reading comprehension, Keefe noted many of the same challenges that Nicolosi found. Keefe noted Student's challenges persevering and problem-solving. He required prompting to complete his work, follow along with activities, stay engaged with the class, and answer questions. He needed more prompting and help compared to same-aged peers. He was rigid. He had difficulty asking for help. He had difficulty pushing himself to complete an assignment beyond the minimum that was being asked. He had trouble picking up on social cues. He had difficulty taking the perspective of others. He kept to himself. He did not care about school. He was immature and unaware of his surroundings. He had deficits in independence. He was not motivated. His autistic-like behaviors were elevated. His adaptive skills were extremely low. He was reluctant to acquire new skills or learn new things. He was withdrawn. He did not want to be around other people.

Despite this information, and while noting his challenges and lack of ambition, Keefe's analysis and conclusions differed from Nicolosi's. Keefe concluded that Student "presents as an easy going, fairly happy youngster who wants to please others." She concluded with regard to executive functioning that Student is a "capable youngster who can successfully use his executive functioning skills to perform tasks; however, for the most part, he would rather not make the effort and is not interested." Keefe found that "emotionally, Student presents as calm, happy, and is self contained."

From Keefe's report, it can be inferred that she thought Student had the capacity to attend Gunn, and might succeed there if pushed beyond his comfort zone. But, Keefe was not called to testify to her analysis, and Nicolosi was in any event more persuasive in her view that no amount of services or accommodations would have permitted Student to access the curriculum in the environment that Palo Alto offered.

There is no requirement in the IDEA that a student be placed and fail in a less restrictive setting before moving to a more restrictive one. (See *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 836

[“The IDEA's preference for mainstreaming is not an absolute commandment. The language of 20 U.S.C. § 1412(5)(B) only requires mainstreaming ‘to the maximum extent appropriate’ and provides [for more restrictive placements] ‘when the nature or severity of the handicap is such that education and regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.’”].) Thus, “the Act's mandate for a free appropriate public education qualifies and limits its mandate for education in the regular classroom.” (*Ibid.* at 834 [quoting *Daniel R.R.*, *supra*, 874 F.2d at p. 1045.])

Related services include developmental, corrective, and other supportive services, such as speech-language pathology, psychological services and counselling, physical and occupational therapy designed to enable a child with a disability to receive a FAPE as described in the IEP as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363.)

The evidence did not support, nor did either party contend, that an offer of more or different related services would have better enabled Student to attend Gunn. Rather, Palo Alto contends that its offer was appropriate. Student contends that more robust related services, which except as described above were not offered, would not have sufficed.

Student's argument was more persuasive. According to Nicolosi's extensive assessment, Student became overwhelmed and distracted in groups or where there was too much stimulation. Overstimulation would occur in situations where there was a lot of talking, or the use of complex thoughts, such as a classroom. She observed Student at his then-current placement at Hope, which Keefe did not do. At Hope, even in its small contained environment, Student required redirection and prompting to focus and refocus his attention. Nicolosi observed him taking breaks from group activities to decompress by himself. Although impressed by the high level of instruction at Gunn, she opined the Gunn environment would simply be too challenging for Student given his processing deficits.

Nicolosi was persuasive that due to Student's processing deficits, the educational placement and setting at Gunn was too large and overstimulating. The executive and adaptive functioning demands would be too high, and the academic demands too great. Student required a structured, self-contained environment with few distractions in order to access the curriculum. Given his attentional difficulties and their impact on his language and reading comprehension, he would miss out on the content being taught.

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Director Lee confirmed at hearing that Palo Alto did not have any self-contained, full-day special day class programs at high school except for much more restrictive programs for students with much more extensive behavioral or mental health challenges than Student had. Thus, Palo Alto could not offer Student a smaller, more contained, structured or more supportive environment at the time of placement offers made in the August/September 2023 or May 21, 2024 IEPs.

Mother persuasively testified that she shared her concerns with Palo Alto regarding Student's difficulties with large group settings. Gonzalez and Rupe vividly recalled IEP team meeting discussions of concerns regarding Student going from a small classroom size at Hope to a comprehensive campus like Gunn.

The Gunn student body was somewhere close to 1,800 students. The campus covered two acres with approximately 75 classrooms in eight separate buildings, plus an area of portable buildings, separated by grassy areas and athletic fields. The cafeteria was in the middle of the campus, with one 40-minute lunch period per day for all 1,800 students. Student would be expected to navigate this campus on his own.

Gunn was on a block schedule involving multiple daily transitions from class-to-class, with schedules that alternated according to the days of the week. Special events like assemblies could also vary the schedule. The classes occurred at different days and times, 45 minutes on one day and 90 minutes on two other days. After the Academic Planning and Academic Communications classes, Student would be expected to transition on his own to whatever other classes were on his schedule.

Palo Alto in the August/September 2023 IEP as amended in May 2024, offered no services to assist Student in navigating the Gunn campus. More importantly, however, Nicolosi was persuasive that services would not enable Student to navigate the Gunn

campus or handle the stimulation there. Lee opined at hearing that Palo Alto had “robust services and a really great teams at sites that support students” and that she “didn't have any information that he wouldn't be able to manage the transitions” at Gunn.

Gonzalez opined that the teams at Gunn worked together and were able to assist students navigate the campus. These same Palo Alto witnesses opined that supports were “embedded” throughout the school day, with education specialists, counsellors and speech pathologists present on campus, working together as a team and available when needed. But, it was not clear how that worked in practice, or who would help Student navigate a large comprehensive campus.

Rupe opined that Gunn had robust, embedded mental health supports, but did not recall any specifics as to any supports or services embedded into the proposed program that would help Student. Someone, either Student or his teachers, would have had to seek out help when needed.

School Counsellor Andrea Bueno was similarly vague in her testimony about how Student’s needs would have been supported in navigating the “block schedule” and the alternative schedules on specific days for assemblies or special events. All she could offer at hearing, was that teachers would provide updates about alternate schedule changes to their students during class, and that Gunn had a website and an electronic kiosk in the front of the school that indicated when alternate schedules occurred.

This vague information about how Student would be supported at Gunn was not persuasive. Student met his burden of proving that he could not be satisfactorily educated in a regular education environment, given that under the *Rachel H* four-factor

test, both the educational benefits of placement full-time in a regular class and the non-academic benefits of such placement were nonexistent. Gunn was not the least restrictive environment for him.

Student met his burden of proof on Issue 12b.

ISSUE 8: DID PALO ALTO DENY STUDENT A FAPE BY FAILING TO TIMELY REQUEST A DUE PROCESS HEARING WHEN PARENTS DID NOT PROVIDE FULL CONSENT TO THE IEPS DATED AUGUST 24, 2023, SEPTEMBER 5 AND 12, 2023, AND MAY 21, 2024?

Student contends that Palo Alto denied Student a FAPE by failing to timely request a due process hearing after Parents did not consent to the August/September 2023 and May 21, 2024 IEPs. Palo Alto contends it was under no obligation to file for due process.

Under certain circumstances, a school district is obliged to defend its IEP via a due process proceeding. (See *I.R. v. Los Angeles Unified Sch. Dist.* (9th Cir. 2015) 805 F.3d 1164, 1169-1170 [if the parent refuses to consent to an IEP program component necessary to provide student a FAPE, after previously consenting to special education for the student, the local educational agency must file a due process hearing request].)

The obligation applies only where parents partially consent to the IEP and the district “determines that the proposed special education program component to which the parent[s] do[] not consent is necessary to provide a FAPE.” (*Capistrano, supra*, 21 F.4th at 1136 [quoting Ed. Code, § 56346, subd. (f)].) Parents here consented to no part

of the August/September 2023 or May 21, 2024 IEPs. For that reason, Palo Alto had no obligation to file for due process. (*Newport-Mesa Unified Sch. Dist. v. D. A.* (9th Cir. April 1, 2024) 2024 WL 1367170, at *3, No. 23-55351.)

Following the August 14, 2023 IEP team meeting, Parents wrote a letter dated August 28, 2023, stating that because the IEP was not yet complete, they had unilaterally placed Student at Hope. The IEP team meetings continued on September 5 and 12, 2023. Following the September 12, 2023 IEP team meeting, Mother requested to visit Gunn and did so on October 2, 2023. On October 10, 2023, Parents wrote a seven-page letter stating disagreements with the assessments and the August/September 2023 IEP offer. In pertinent part, the letter stated:

“We are not convinced this is the right environment for [Student] as nowhere in any of the evaluations, or in the IEP, is the fact that [Student] has been learning in a small environment (i.e., small classroom on a small campus, etc.) In fact, in one assessment [Student] indicated he liked Hope because it was small and yet the District’s IEP team rushed to place him at Gunn without giving any weight to this history of small environment learning and [Student’s] own input.”

On October 30, 2023, Palo Alto wrote a prior written notice declining to fund Hope. In the October 30, 2023 prior written notice, Palo Alto offered independent educational evaluations in the areas of psychoeducation, speech and language, adapted physical education and occupational therapy. Thereafter, negotiations regarding the independent evaluations transpired. At no point during that process did Parent consent to any portion of the IEPs Palo Alto offered.

Palo Alto convened the May 21, 2024 IEP team meeting to review Nicolosi's report, and revised its offer of FAPE. Parents did not consent to any part of the May 21, 2024 IEP. On May 31, 2024, Mother wrote:

"Ultimately we didn't sign the document because we didn't know if we consent or not to an IEP we don't understand."

Because Parents here consented to no part of the August/September 2023 or May 21, 2024 IEPs, Palo Alto was under no duty to file for due process.

Palo Alto therefore prevailed on Issue 8.

ISSUE 9: DID PALO ALTO DENY STUDENT A FAPE FROM OCTOBER 10, 2023, THROUGH MARCH 20, 2025, BY DELAYING AND PREVENTING PARENTS FROM OBTAINING A TIMELY INDEPENDENT EDUCATIONAL EVALUATION BECAUSE PALO ALTO IMPOSED UNREASONABLY RESTRICTIVE CRITERIA FOR THE INDEPENDENT EDUCATIONAL EVALUATION?

Student contends Palo Alto denied Student a FAPE by delaying and preventing Parents from obtaining timely independent educational evaluations because Palo Alto imposed unreasonably restrictive criteria for independent educational evaluations. Palo Alto contends it applied legally authorized criteria.

The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain an independent 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).) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. (34 C.F.R. § 300.502(a)(3)(i).) To obtain an independent educational evaluation, the student must disagree with an evaluation obtained by the public agency and request an independent evaluation. (20 U.S.C. 1415(b)(1); 34 C.F.R. § 300.502(b)(1) and (b)(2); Ed. Code §§ 56329(b); 56506(c).) When a parent requests an independent assessment at public expense, the school district must, without unnecessary delay, either initiate a due process hearing to show that its assessment is appropriate or provide the independent assessment at public expense. (34 C.F.R. § 300.502(b)(2).)

If an independent educational evaluation is at public expense, the criteria under which the assessment is obtained, including the location, limitations for the assessment, minimum qualifications of the examiner, cost limits, and use of approved instruments must be the same as the criteria that the public agency uses when it initiates an assessment, unless those criteria are inconsistent with the parent's right to an independent educational evaluation. (34 C.F.R. § 300.502(e)(1).)

School districts may establish criteria to ensure that public funded independent evaluations are not unreasonably expensive. (*Letter to Wilson* (OSEP October 17, 1989) 16 IDELR 83.) Public agencies should not be expected to bear the costs of independent evaluations where those costs are clearly unreasonable. (*Letter to Kirby* (OSEP May 4, 1989) 213 IDELR 233.) However, a district's criteria may not be so narrow as to interfere with a parent's right to obtain an independent evaluation. (*Letter to Petska* (OSEP September 10, 2001) 35 IDELR 191.)

When enforcing cost criteria, the district must allow parents the opportunity to demonstrate that unique circumstances justify an independent evaluation that does not fall within the school district's criteria. (*Letter to Kirby, supra*, 213 IDELR 233.) If an independent evaluation that falls outside the district's criteria is justified by the child's unique circumstances, that evaluation must be publicly funded. (*Ibid.*)

The United States Supreme Court described the importance of independent evaluations, finding that the IDEA ensures parents have access to

“an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the fire power to match the opposition.” (*Schaffer v. Weast, supra*, 546 U.S. 49, 60-61.)

On October 30, 2023, Palo Alto granted Parents’ requests for independent educational evaluations in the areas of psychoeducation, speech and language, adapted physical education and occupational therapy. Lee’s letter agreeing to the independent evaluations enclosed a document entitled, “Special Education Local Plan Areas I, II, III, IV, VII Independent Educational Evaluation Policy And Procedures.” The document explained that a school district within that Plan Area could impose criteria relating to location, minimum qualifications, and costs. For the 2022-23 school year, the SELPA cost limitations were \$3,000 for a speech language assessment and \$3,000 for an occupational therapy assessment. No cost cap was noted for adapted physical education. Because Palo Alto ultimately funded Student’s preferred psychoeducational assessor, that assessment is not at issue, however the listed cost cap was \$7,000.

In pertinent part, the SELPA policy stated that

“the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the LEA uses when it initiates an evaluation, to the extent those criteria are consistent with a parent's right to an IEE.”

It also stated, importantly, that “except for the criteria described in this policy, a LEA may not impose conditions or timelines related to obtaining an IEE at public expense.” The SELPA document outlining a district’s allowable criteria made no mention of insurance. Lee also sent with her letter, a list of approved providers and their telephone numbers.

On November 28, 2023, Mother notified Lee she had selected Nicolosi to conduct a psychoeducational evaluation, and Jennifer Katz to assess Student in language and speech. Neither assessor was on the approved list. In response, Lee wrote that Palo Alto would “consider” the independent evaluators Mother requested. Lee stated that the consideration was contingent of the assessors’ cost estimate, total number of hours needed to complete the assessment, the evaluator’s W-9, and a copy of the evaluator’s insurance certificate. The allowable SELPA limitations had not included any insurance requirements.

On December 6, 2023, Lee rejected Katz as speech assessor as her rate exceeded the SELPA cost limitations. Katz had advised that she charged a flat rate of \$9,800, based on a time estimate of 26 total hours to do testing, observations, interviews, write a report and attend an IEP team meeting, at an hourly rate of \$405 per hour.

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On April 29, 2024, Mother requested that Palo Alto fund an independent assessment by another speech language assessor named Deborah McCloskey. At the same time, Mother requested that an occupational therapist named Liz Osono conduct the independent educational occupational therapy evaluation.

During email exchanges on April 29 and 30, 2024, Palo Alto for the first time included information concerning "COI requirements" and a document on Palo Alto letterhead entitled "Insurance Requirements 2023-24." The evidence did not establish anything about who generated this document, who it was intended to apply to, or why it was newly added to ongoing exchanges of messages concerning independent educational evaluators. The document itself did not state that it was intended to apply to independent assessors, but that is how these emails applied it. In pertinent part, it listed "minimum limits" of \$1,000,000 per occurrence of comprehensive general liability insurance, professional liability insurance and sexual abuse/molestation coverage.

Palo Alto's emails stated that abuse/molestation coverage must be included under General Liability or obtained in separate policies in an amount of not less than \$1,000,000 per occurrence. The Palo Alto Unified School District, Board of Trustees, its officers, agents, employees and volunteers must be named as additional insureds. Any insurance carried by District shall be excess and noncontributory. Additional Insured Endorsements were required to accompany Certificates of Insurance.

On August 3, 2024, Student's lay advocate Marie Fajardo received documents from Palo Alto, including an updated list of approved independent providers. She contacted them, and of those who did respond, not all of them had the required

insurance or sexual molestation insurance. Some said if that were required, they could obtain it but would charge an additional fee to do the independent evaluation. One assessor had it, but only \$250,000, not the \$1,000,000 that Palo Alto required. Another assessor advised Fajardo that the annual cost for maintaining \$1,000,000 of sexual molestation insurance was \$12,000.

On or around August 30, 2024, Palo Alto advised Student that the insurance documents that had been submitted by occupational therapist Osono did not meet Palo Alto's requirements, leaving Parents with "one option to proceed." That option was to front the cost of the independent educational occupational therapy assessment themselves, after which Palo Alto would reimburse them the \$3,000 cost cap amount. Palo Alto put that offer into writing by letter dated September 19, 2024. Although not documented, lay advocate Marie Fajardo testified that Osono charged hourly and could potentially fit the \$3,000 guideline, but not if she exceeded an hours projection. No evidence was presented regarding Osono's hourly rate, nor the time her occupational therapy assessment might require.

On September 10, 2024, Mother retracted the request concerning McCloskey and requested that Palo Alto approve a different speech assessor named Judi Jewett. Palo Alto reiterated the insurance requirements. Although not documented, lay advocate Marie Fajardo testified that Palo Alto rejected Jewett because she charged \$3,500, which was \$500 over the cost cap, and did not have sexual molestation insurance.

To date, neither the speech nor occupational therapy independent assessments have occurred.

At hearing, Palo Alto's speech and language, occupational therapy, assistive technology and adapted physical education assessors all testified. None knew what insurance Palo Alto carried on their behalf. Lee established that Palo Alto pays for liability insurance, but she did not know whether that included sexual molestation insurance for its employees or assessors, and she did not know what these insurance requirements were based on. Some evidence established that recently, outside the time frame at issue here, Palo Alto offered to Parents to waive the sexual molestation insurance requirements. However, the terms of the waiver were not established and because those discussions occurred outside the time frame at issue here, they are neither relevant nor persuasive.

Palo Alto's insurance requirements that it imposed on the independent evaluators were, from the evidence presented, not the same as the criteria that it used for its own assessors when it initiates an assessment. Nor were those criteria consistent with the parent's right to an independent educational evaluation. (34 C.F.R. § 300.502(e)(1).) They were also not authorized by the SELPA, which stated "except for the criteria described in this policy, a LEA may not impose conditions or timelines related to obtaining an IEE at public expense." The SELPA document outlining a district's allowable criteria made no mention of insurance.

For these reasons, Student met his burden of proof on and prevailed on Issue 9.

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ISSUES 1b, 4c 7a, 7b, 10c, 11c, AND 13: DID PALO ALTO DENY STUDENT A FAPE DURING THE 2024-25 SCHOOL YEAR BY FAILING TO TIMELY PROVIDE HIS EDUCATIONAL RECORDS, TIMELY CONVENE IEP TEAM MEETINGS, OFFER APPROPRIATE GOALS, OFFER AN APPROPRIATE TRANSITION PLAN, BY PREDETERMINING HIS IEPs, AND BY FAILING TO OFFER APPROPRIATE SERVICES AND PLACEMENT?

In Issue 1b, Student claims Palo Alto denied him a FAPE by failing to timely provide Parents with educational records in response to their October 28, 2024 request. In Issue 4c, Student claims that Palo Alto denied him a FAPE during the 2024-25 school year up to March 20, 2025, by failing to convene timely IEP team meetings within 30 days of Parental request. In Issues 7a and 7b, Student claims that Palo Alto denied him a FAPE during the 2024-25 school year, through March 20, 2025, by failing to offer appropriate goals. In Issue 10c, Student claims that Palo Alto denied Student a FAPE by failing to offer an appropriate transition plan during the 2024-25 school year, through March 21, 2025. In Issue 11c, Student claims that Palo Alto denied him a FAPE by predetermining his IEPs during the 2024-25 school year through March 20, 2025. In Issue 13, Student claims that Palo Alto denied Student a FAPE during the 2024-25 school year, through March 20, 2025, by failing to offer appropriate services and placement. These claims all pertain to alleged denials of FAPE during the 2024-25 school year up until the date Student filed the complaint in this matter.

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Absent parental request for an IEP, a school district is not obliged to convene IEP team meetings for a student who is parentally placed in a private school. (*Capistrano, supra*, 21 F.4th 1125,1138.) Pending claims, such as for reimbursement, do not amount to the specific request for an IEP that the law requires to trigger a school district's obligation to offer an IEP. (*Ibid.*)

Parents did not request that Palo Alto offer Student an IEP for the 2024-25 school year, while he was parentally placed at Hope. Palo Alto therefore had no duty to convene IEP team meetings for 2024-25 or to offer or provide a FAPE to Student. Student's contentions in Issues 4c 7a, 7b, 10c, 11c, and 13, all of which presume that Palo Alto had an existing duty to offer or provide special education and related services during the 2024-25 school year, fail.

Student failed to meet his burden of proof on Issues

- 4c,
- 7a,
- 7b,
- 10c,
- 11c, and
- 13.

Further, with regard to Issue 11c, no IEP team meetings occurred during the 2024-25 school year. Thus, Issue 11c, claiming that Palo Alto predetermined Student's IEPs during that time, has no merit.

Here, unlike for the prior 2023-24 school year, Parents made no IEP request. All communications during the 2024-25 school year up until the March 2025 filing of this complaint, concerned either independent educational evaluations left to be completed, or litigation.

The same analysis applies to Issue 1b, in which Student contends Palo Alto denied him a FAPE by failing to timely provide Parents with a complete copy of his educational records pursuant to Parent's records request on October 28, 2024. If there was a procedural violation, it cannot amount to a denial of FAPE where, as here, under *Capistrano*, there was no request for an IEP, and therefore no obligation to offer or provide a FAPE. In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following:

- impeded the right of the child to a FAPE;
- significantly impeded the opportunity of the parents to participate in the decisionmaking process regarding the provision of a FAPE to the child of the parents; or
- caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E); Ed. Code, § 56505, subd. (f).)

Under *Capistrano*, Palo Alto was not obligated to offer or provide FAPE for 2024-25. Therefore, it cannot have denied Student a FAPE, as Student contends. (See, e.g. *L.B. V. San Diego Unified Sch. Dist.* (S.D.Cal. August 12, 2024) 23-cv-00528-AJB-DDL, 2024 WL 3797985 at *19-20 [no obligation to offer FAPE]; *Newport-Mesa Unified Sch. Dist. v. D. A, supra*, 2024 WL 1367170 at * 3, No. 23-55351 [no obligation to issue prior written notice].)

Because Parents had placed Student at Hope and did not request that an IEP address Student's placement and services for the 2024-25 school year, Student failed to meet his burden of proof on all issues alleging denials of FAPE during that school year.

Palo Alto's closing brief incorrectly argues that the May 21, 2024 IEP made an offer of FAPE for the 2024-25 school year. It did not. The May 21, 2024 IEP was an amendment to the August/September 2023 IEP, and its offer was set to expire on August 14, 2024, which was the first day of the 2024-25 school year. Thus, Palo Alto made no offer for that year, and because Student was parentally placed and had not requested an IEP, Palo Alto was not obliged to offer one.

More recently, after the filing of the March 2025 due process complaint in this matter, the parties convened an IEP team meeting in June 2025. That IEP was both outside the time frame at issue in this case, and did not relate to the 2024-25 school year which had already ended.

Student failed to meet his burden of proof on Issues

- 1b,
- 4c,
- 7a,
- 7b,
- 10c,
- 11c, and
- 13.

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.

ISSUES 1a AND 1b:

Palo Alto did not deny Student a FAPE by failing to timely provide Parents a complete copy of his educational records pursuant to Parent's records requests on (a) August 15, 2023; and (b) October 28, 2024.

Palo Alto prevailed on Issues 1a and 1b.

ISSUES 2a, 2b, 2c, 2d, AND 2e:

Palo Alto did not deny Student a FAPE from March 20, 2023, through August 14, 2023, by failing to timely assess Student in

- (a) psychoeducation;
- (b) behavior;
- (c) occupational therapy;
- (d) speech and language; and
- (e) mental health.

Palo Alto prevailed on Issues

- 2a,
- 2b,

- 2c,
- 2d, and
- 2e.

ISSUE 3:

Palo Alto denied Student a FAPE from March 20, 2023, through March 20, 2025, by failing to conduct a comprehensive post-secondary transition assessment of Student.

Student prevailed on Issue 3.

ISSUE 4a:

Palo Alto denied Student a FAPE by failing to convene timely IEP team meetings within 30 days of Parents requests (a) from March 20, 2023, through the end of the 2022-23 school year.

Student prevailed on Issue 4a.

ISSUES 4b AND 4c:

Palo Alto did not deny Student a FAPE by failing to convene timely IEP team meetings within 30 days of Parents requests (b) during the 2023-24 school year or (c) during the 2024-25 school year up to March 20, 2025.

Palo Alto prevailed on Issues 4b and 4c.

ISSUE 5:

Palo Alto did not deny Student a FAPE by failing to convene a timely IEP meeting by August 2023 to review assessments.

Palo Alto prevailed on Issue 5.

ISSUE 6a:

Palo Alto did not deny Student a FAPE during the 2023-24 school year by failing to offer goals that appropriately addressed Student's needs in

- writing,
- study/organization skills,
- "transition to independent living,"
- communication,
- counseling or
- mental health.

Palo Alto denied Student a FAPE during the 2023-24 school year by failing to offer goals that appropriately addressed Student's needs in math and post-secondary transition.

Palo Alto prevailed on Issue 6a except as to math and post-secondary transition.

Student prevailed on Issue 6a as to math and post-secondary transition.

ISSUE 6b:

Palo Alto did not deny Student a FAPE during the 2023-24 school year by failing to offer any goals in social skills or executive functioning.

Palo Alto denied Student a FAPE during the 2023-24 school year by failing to offer any goals in fine motor skills and sensory processing.

Palo Alto prevailed on Issue 6b regarding social skills and executive functioning.

Student prevailed on Issue 6b regarding fine motor skills and sensory processing.

ISSUES 7a AND 7b:

Palo Alto did not deny Student a FAPE during the 2024-25 school year, through March 20, 2025, by

(a) failing to offer goals that appropriately addressed Student's needs in

- math,
- writing,
- organization skills,
- "transition to independent living,"
- communication,
- counseling,

- mental health, and
- post-secondary transition; and

(b) failing to offer any goals to address Student's needs in social skills, fine motor skills, sensor processing, and executive functioning.

Palo Alto prevailed on Issues 7a and b.

ISSUE 8:

Palo Alto did not deny Student a FAPE by failing to timely request a due process hearing when Parents did not provide full consent to the IEPs dated August 24, 2023, September 5 and 12, 2023, and May 21, 2024.

Palo Alto prevailed on Issue 8.

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ISSUE 9:

Palo Alto denied Student a FAPE from October 10, 2023, through March 20, 2025, by delaying and preventing Parents from obtaining a timely independent educational evaluation because Palo Alto imposed an unreasonably restrictive criteria for the independent educational evaluation.

Student prevailed on Issue 9.

ISSUE 10a:

Palo Alto did not deny Student a FAPE by failing to offer an appropriate transition plan from March 21, 2023, through the 2022-23 school year.

Palo Alto prevailed on Issue 10a.

ISSUE 10b:

Palo Alto did not deny Student a FAPE by failing to offer an appropriate transition plan during the 2023-24 school year.

Palo Alto prevailed on Issue 10b.

ISSUE 10c:

Palo Alto did not deny Student a FAPE by failing to offer an appropriate transition plan during the 2024-25 school year, through March 21, 2025.

Palo Alto prevailed on Issue 10c.

ISSUE 11a

Palo Alto did not deny Student a FAPE by predetermining his IEPs from March 20, 2023, through the end of the 2022-23 school year.

Palo Alto prevailed on Issue 11a.

ISSUE 11b

Palo Alto denied Student a FAPE by predetermining his IEPs during the 2023-24 school year.

Student prevailed on Issue 11b.

ISSUE 11c:

Palo Alto did not deny Student a FAPE by predetermining his IEPs during the 2024-25 school year through March 20, 2025.

Palo Alto prevailed on Issue 11c.

ISSUE 12a

Palo Alto denied Student a FAPE during the 2023-24 school year by failing to offer appropriate services for post-secondary transition, academics specifically with regard to reading comprehension and occupational therapy.

Palo Alto did not deny Student a FAPE during the 2023-24 school year by failing to offer appropriate services for transition to a school campus, behavior, speech and language, mental health or social skills.

Student prevailed on Issue 12a as to post-secondary transition, academics specifically with regard to reading comprehension, and occupational therapy.

Palo Alto prevailed on Issue 12a as to transition to a school campus, behavior, speech and language, mental health or social skills.

ISSUE 12b:

Palo Alto denied Student a FAPE during the 2023-24 school year by failing to offer an appropriate placement.

Student prevailed on Issue 12b.

ISSUES 13a AND 13b:

Palo Alto did not deny Student a FAPE during the 2024-25 school year, through March 20, 2025, by failing to offer

(a) appropriate services for

- post-secondary transition,
- transition to a school campus,
- behavior,
- academics,
- speech and language,
- mental health,

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- social skills, and
- occupational therapy; and

(b) an appropriate placement.

Palo Alto prevailed on Issues 13a and 13b.

ISSUE 14:

Palo Alto denied Student a FAPE from March 20, 2023, through March 20, 2025, by failing to assess him for a specific learning disability.

Student prevailed on Issue 14.

ISSUE 15:

Palo Alto did not deny Student a FAPE from March 20, 2023, through March 20, 2025, by failing to find him eligible for special education services because of a specific learning disability.

Palo Alto prevailed on Issue 15.

ISSUES 16a AND b:

Palo Alto denied Student a FAPE by failing to make a clear written offer of specialized academic instruction in the (a) August 14, 2023 IEP; and (b) May 14, 2024 IEP.

Student prevailed on Issues 16a and 16b.

REMEDIES

Student prevailed on Issues

- 3,
- 4a,
- 9,
- 11b,
- 12b,
- 14 and
- 16a and b.

Student partially prevailed on Issues 6a, 6b, and 12a.

As a remedy, Student requests reimbursement for

- Hope tuition,
- reimbursement for a post-secondary transition independent assessment conducted by independent assessor Bruce Bloom,
- funding of speech and language and occupational therapy independent educational evaluations, and
- staff training for Palo Alto.

Palo Alto contends that no remedy is warranted, and that reimbursement should be denied because at all times it offered Student a FAPE.

A student is entitled to relief that is “appropriate” in light of the purposes of the IDEA (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 369-370 [105 S. Ct. 1996, 85 L. Ed. 2d 385] (*Burlington*).) ALJ’s have broad latitude to fashion equitable remedies appropriate for denial of FAPE. (*Burlington, supra*, at p. 370; *Parents v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.)

INDEPENDENT EDUCATIONAL EVALUATIONS

BRUCE BLOOM’S POST-SECONDARY TRANSITION EVALUATION

Parents obtained a private post-secondary transition evaluation conducted by Bruce Bloom. Bloom was a vocational expert and transition evaluator in private practice. He provided transition services geared towards integration into productive employment, throughout nine states. He frequently appeared as a vocational expert in court cases related to medical malpractice, personal injury, Social Security disability hearings, and the like. Bloom completed his transition evaluation on or around August 7, 2025, approximately one week prior to the first day of hearing. As of the time of hearing, the assessment had not yet been presented to the IEP team. Bloom charged, and Parents paid \$5,900 for his assessment.

Because Palo Alto failed to conduct an appropriate post-secondary transition assessment, and had, in the August/September 2023 IEP, made an inappropriate offer of post-secondary goals and services as a result, Parents are granted reimbursement of Bloom’s charges. Educational evaluations at public expense may be awarded as an equitable remedy, if necessary to grant appropriate relief. (*Los Angeles Unified Sch. Dist. v. D.L.* (C.D.Cal. 2008) 548 F.Supp.2d 815, 822-823.)

If a parent disagrees with an evaluation because a child was not assessed in a particular area of suspected disability, the parent has a right to request an independent educational evaluation in that area. (*Letter to Baus* (OSEP February 23, 2015) 65 IDELR 81); see also, *Letter to Carroll* (OSEP October 22, 2016) 68 IDELR 279.) OSEP's interpretation is that the IDEA affords parents the right to an independent educational evaluation at public expense if an evaluation does not assess in all areas of suspected disabilities, and that right is not conditioned on the public agency first having an opportunity to cure the defects of its evaluation. (*Ibid.*) Per OSEP, it would be inconsistent with the provisions of 34 Code of Federal Regulations part 300.502 to allow the public agency to conduct an assessment in an area that was not part of the initial evaluation or reevaluation before either granting the parent's request for an independent educational evaluation at public expense or filing for due process complaint to show its evaluation was appropriate. (*Letter to Carroll, supra.*) While, as mentioned above, OSEP *Letters* are not binding authority (see *Csutoras v. Paradise High School, supra*, 12 F.4th 960, 967-968) OSEP *Letters* nonetheless provide guidance in the interpretation of the IDEA and its implementing regulations.

In addition, it is ordered that Bloom's assessment shall be reviewed by the IEP team, and that Palo Alto shall pay for an additional two hours of Bloom's time to attend the IEP team meeting and present his report, at his normal hourly rate of \$350 per hour.

Parents also seek reimbursement for the time Bloom spent appearing as an expert witness at this hearing. However, expert witness fees are not compensable in due process. (See *Arlington Central Sch. Dist. Bd. of Education v. Murphy* (2006) 548 U.S. 291.)

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SPEECH AND OCCUPATIONAL THERAPY INDEPENDENT EDUCATIONAL EVALUATIONS

Palo Alto unreasonably interfered in Student's right to obtain independent educational evaluations in the areas of speech and occupational therapy as addressed in Issue 9. To ensure Student's right to independent speech and language and occupational therapy evaluations at public expense, Palo Alto shall fund independent educational evaluations in the areas of speech and language and occupational therapy.

No evidence established that the SELPA cost cap for occupational therapy of \$3,000 was unreasonably restrictive, therefore that shall be the cost cap for the independent educational occupational therapy evaluation. However, the independent evaluator need not comply with Palo Alto's insurance criteria, but shall otherwise meet the SELPA's written policy criteria.

The evidence established a range of speech and language independent evaluation costs, some within Palo Alto's \$3,000 cost cap and some, as was Katz, as high as \$9,800. At least one evaluator whose resume was included in a document request response from the SELPA charged \$5,500. In light of the conflicting evidence, Student failed to prove by a preponderance of evidence either that the cost cap was inconsistent with the parent's right to an independent educational evaluation, or that unique circumstances justified an independent evaluation that did not fall within the Palo Alto's cost cap of \$3,000. Student is therefore limited to cost cap of \$3,000. The independent evaluator need not comply with Palo Alto's insurance criteria, but shall otherwise meet the SELPA's written policy criteria.

Student's closing brief also seeks independent educational evaluations in the areas of adaptive physical education and assistive technology, but the evidence did not support that remedy. The evidence did not establish Palo Alto's agreement to fund an independent assistive technology evaluation or that the District's assessment in that area was inappropriate. And, although Palo Alto agreed to fund an independent assessment in adapted physical education, the evidence did not establish that Palo Alto had imposed any criteria on such assessors that were inconsistent with Parents' right to an independent educational evaluation.

TRAINING

Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Park v. Anaheim Union High Sch. Dist., et al., supra*, 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].)

Here, Palo Alto misunderstood the laws relating to:

- Postsecondary transition assessments,
- Students who are transferring in from private schools,
- Parental rights with respect to interim IEPs, and
- Predetermination.

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Palo Alto shall provide no less than three hours of training to its special education department including its director, program specialists, case managers, and school psychologists, on the legal requirements regarding these topics. This training shall be provided by an attorney or law firm knowledgeable about special education law who does not currently represent Palo Alto.

TUITION REIMBURSEMENT

A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and 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. 359, 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 in order to be appropriate. (34 C.F.R. § 300.148(c); *Florence County Sch. Dist. Four v. Carter* (1993) 510 U.S. 7, 14 [114 S.Ct. 36, 1126 L.Ed.2d 284] (*Carter*) [despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found to be reimbursable where the unilateral placement substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade and where expert testimony showed that the student made substantial progress].)

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APPROPRIATENESS OF PRIVATE PLACEMENT

The analysis of Student's request for reimbursement requires determining whether Parent's unilateral placement was appropriate within the meaning of *Carter*, and whether equitable factors require reduction of the requested reimbursement. Palo Alto argues that the IDEA does not compel public funding of private placements that are more restrictive, less academically rigorous, or inconsistent with the requirements of a FAPE.

Student, surprisingly, presented very little evidence about the program Hope offered. No information was presented about Hope's accreditation if any, nor the qualifications of any of Hope's teachers, nor the student body Hope served. Mother and the independent assessors Nicolosi and Bloom stated that Hope was a small school on a small campus. Mother testified to Hope's "embedded" supports and accommodations, such as reminders, visual and written directions, asking questions to make sure that things were understood, checking in with the students to make sure they were on top of things, scaffolding, individualizing the explanations, and breaking things down into small chunks or steps. Mother also opined that social skills were "embedded" into the Hope program. That is essentially all the information about Hope's appropriateness that was presented at hearing, and was not significantly different from the embedded supports Gunn would have provided in the Academic Planning and Academic Communications classes plus co-taught core classes offered.

Nicolosi and Bloom's reports reflected their observations at Hope, but did not shed any light on exactly what kind of school Hope was, other than that it was small. Nicolosi's report stated that Hope was on a very small campus and used space in a church. It included students from elementary through high school, with one small class,

generally around eight students, per grade level. There were about five classrooms shared by all of the middle and high school students, all in a contained area, and the students moved among these classrooms throughout the day. During Nicolosi's observations, Student moved between three classrooms, which were close in proximity to each other, and his physical education, lunch, and recess times were in the parking lot/picnic areas just outside of these classrooms. Nicolosi's report also stated that Hope as "a small private school with supports for students who have learning differences." Nicolosi's report also opined that since starting eighth grade at Hope, Student demonstrated improvement, and was doing well. She opined that he liked school, was showing growth academically, and his attitudes toward school improved. Hope had a high teacher/student ratio, very small campus and class sizes, accommodations and supports embedded within the environment of the school setting throughout the entire campus, and academics that were "adjusted to student levels."

No information was presented regarding the population at Hope, or whether Student was able to interact there with any typically-developing peers. Nicolosi's report stated only that "the profile of students at Hope Technology appeared to be a good match, where the students receive similar accommodations to what [Student] requires." Bloom's report stated that Hope was "a private and inclusive educational setting that supports students with special needs." According to Bloom's report, Student was "part of one of the first cohorts since the school began offering high school classes. There are currently approximately 40 students enrolled in the high school program." Bloom reported that Student was on track to graduate in 2027 with a regular diploma."

Bloom's transition-related opinions were thorough, and his testimony detailed, well-supported by his experience and expertise, and credible. They are pertinent here, in how they relate to reimbursement for Hope. There was a clear tension between

Student's needs on the one hand, for a small, supportive, self-contained environment to access his education, and on the other hand, Student's needs to be motivated to grow towards independence. Bloom found Student to be not ambitious or motivated concerning independent living and not interested in tackling the responsibilities of adult life. Student did not "show any interest in implementing independent living skills." Bloom attributed Student's deficits in independent living skills "to what needs to happen in his home life in order for him to be successful [I]ndependent living is primarily done at home, at least that's where it will start. And is why I recommended parent training."

Mother's testimony was in accord with Bloom's opinions in that Student was "comfortable," and disinterested in taking care of himself. Bloom found that Student hasn't "been exposed" to skills like money management, organizing his own calendar, taking any responsibility for his medical care and the like. Thus, he was not "tracking towards being able to live independently, even though he has got the cognitive ability to do so." Bloom was of the opinion that Student was capable of greater independence but requires extensive interventions to achieve that. Bloom also found that the family needs "parent training to help them. Otherwise, we're [going to] have a student [who is] not going to live independently in his adult life."

Bloom recommended many, many services Hope did not provide. Among other recommendations, he recommended social skills peer groups. In February 2023 Hope suggested that Student needed social skills training. Except for additional costs through outside vendors, Hope did not offer social skills training. Bloom also made recommendations for exploring post-secondary education because Student was not currently tracking towards post-secondary education or employment. He recommended career exploration be conducted as part of Student's educational

services. He recommended job training, not just in a classroom but in community job sites. He recommended targeted interventions with a speech language pathologist to work on Student's communication skills. He recommended financial literacy training. He recommended Parent training either through educational instructors or through a behavioral intervention plan.

Bloom acknowledged that the supports he recommended were not available at Hope. As Bloom stated at hearing, Student is "barely tracking and making progress and he has intensive support." Even within a supported school setting such as Hope, in Bloom's opinion, Student still required interventions with communication, self-advocacy, executive functioning behaviors, and attention. As Bloom also stated at hearing, his understanding was that Hope "do[es]n't have a sufficient number of services." Hope's instruction in career readiness or independent living "is somewhat integrated into some of their education, but it's not extensive and targeted." Hope's current transition services were not "robust enough in and of themselves." Bloom's recommendation was that Student should continue to attend school at a smaller educational setting like Hope, but "with services brought in ... or another small school setting with a more robust transition program."

In addition, as observed by Nicolosi, Hope was less academically rigorous than Gunn, due to the lower language processing demands, less need to organize one's thoughts, lower level of the discussions, and a slower pace.

Director Lee's understanding was that Hope was a private school that was not certified by the State of California and was not required to meet the same curriculum and content standards. Nor did private schools have to require that their teachers were certificated in the content areas that they taught.

Nevertheless, the circumstances here presented were that Mother reasonably chose on August 28, 2023, the first day of the Hope 2023-24 school year, not to send Student to Gunn because there was no IEP in place. By the start of the Hope 2023-24 school year on August 28, 2023, the August/September 2023 IEP was not yet finalized. When it was finalized on September 12, 2023, it did not offer FAPE as addressed above. Therefore, Parents' decision to place Student at Hope, where he attended the previous year, was reasonable. (See, e.g. *M.D. v. Colonial Sch. Dist.*, *supra*, 539 F.Supp.3d 380.)

Although little information was presented about Hope's program other than its smallness, the evidence contained report cards that Hope issued for Student. In his 2023-24 final report card, Student earned A's and B's in Spanish, World Literature, Chemistry, Algebra 1, World Civilizations, and Physical Education. He earned scores in responsibility, communication, initiative, collaboration and technology ranging between 4's indicating "very good" to 7's, indicating "fair." His attendance was good, ranging in the four quarters of 2023-24 from approximately 85 to 97percent present, with very few absences. It appeared he was on track to graduate with a high school diploma. In the absence of contrary evidence, Student has met the burden of proof that Hope, although not offering FAPE, was sufficiently appropriate for equitable reimbursement purposes.

Here, despite some doubts discussed and resolved above, the evidence showed that Student met the burden of proof that Hope was an "appropriate" placement and provided him educational benefit for the time period in question for purposes of reimbursement. Parents are therefore entitled to reimbursement of tuition expenses incurred to-date.

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AMOUNT OF REIMBURSEMENT

Reimbursement may be reduced or denied if, at the most recent IEP team meeting the parents attended prior to removing the child, the parents did not inform the IEP team they were rejecting the proposed placement, and state their concerns and intent to enroll their child in a private school at public expense; or at least ten business days prior to the removal of the child, the parents did not give written notice to the public agency of this information. (20 U.S.C. § 1412(a)(10)(C)(iii)(I); 34 C.F.R. § 300.148(d).)

Reimbursement may be reduced or denied if the actions of parents were unreasonable. (20 U.S.C. § 1412(a)(10)(C)(iii)(III); 34 C.F.R. § 300.148(d)(3).) For example, in *Patricia P. ex rel Jacob P. v. Board of Education* (7th Cir. 2000) 203 F.3d 462, 469, (*Patricia P.*) the Court of Appeals held that a parent who did not allow a school district a reasonable opportunity to evaluate a child following a parental unilateral placement “forfeit[ed] their claim for reimbursement.” In *Patricia P.*, reimbursement was denied where the parent enrolled the child in a private school in another state and at most offered to allow an evaluation by district personnel if the district personnel traveled to the out-of-state placement. (*Ibid.*)

Palo Alto attempted at hearing to establish that Parents were not interested in a District placement and always intended only to send Student to Hope. This effort was not successful, as Mother at hearing was credible in her testimony that she intended to send Student to public school if Palo Alto made an appropriate offer. Her testimony about her intentions was consistent over the course of her questioning at hearing and was consistent with the contemporaneous documentation. Therefore, equitable factors do not support a reduction in the amount of requested reimbursement. On August 28, 2023, Parents timely notified Palo Alto of their intention to unilaterally place Student at

Hope. Parents acted reasonably given the situation, wholly created by Palo Alto, that an IEP on which they had been consulted was not in place at the commencement of the 2023-24 school year, and that when the offer was finalized on September 12, 2023 it was not appropriate.

Mother presented bills for tuition for Hope for the 2023-24 school year totaling \$18,375. Mother testified that Parents paid these amounts. Parents are entitled to an award of \$18,375 for tuition expenses incurred at Hope. Parents also seek reimbursement for the 2024-25 school year but, as discussed above, Palo Alto was not obligated to offer, and did not deny Student a FAPE, for that school year.

Parents also seek and are entitled to the costs of transporting Student to and from Hope, a distance of 2.8 miles, for two round trips per day for every school day from August 28, 2023, the first day of the 2023-24 school year according to the Hope calendar, until June 14, 2024, the last school day, less holidays and breaks, which was approximately 187 days total. Approximately 79 school days were in the calendar year 2023, compensable at the 2023 Internal Revenue Service rate for mileage of 66.5 cents per mile. Approximately 108 school days were in the calendar year 2024, compensable at the 2024 Internal Revenue Service rate for mileage of 67 cents per mile. The total is \$1,398.

ORDER

1. Palo Alto shall, within 30 days of the date of this Decision, reimburse Parents \$5,900 for the Bruce Bloom independent transition assessment.

2. Palo Alto shall convene an IEP team meeting to review the Bruce Bloom independent transition assessment, to occur within 30 days of the date of this Decision.
3. Palo Alto shall pay two hours of Bloom's time to attend the IEP team meeting and present his report, at his normal hourly rate of \$350 per hour. Palo Alto may either contract directly with Bloom or reimburse Parents for this expense.
4. Palo Alto shall provide up to \$3,000 for an independent language and speech evaluation and up to \$3,000 for an occupational therapy evaluation by assessors of Parent's choice, who meet the criteria under the SELPA guidelines for independent educational evaluations, except as otherwise ordered herein. Palo Alto may either contract directly with Parents' chosen assessors or reimburse Parents for this expense. The reimbursement shall be made within 45 days after Student's submission of proof that the evaluation was completed and Parents paid for the evaluation. Student shall provide to Palo Alto a copy of each completed independent educational evaluation report within 10 days of Parent's receipt or Student attorney's receipt of each report, whichever occurs first. Palo Alto shall convene an IEP team meeting to review each report within 30 days of its receipt of each report.
5. Independent evaluators need not comply with Palo Alto's insurance criteria.
6. Palo Alto shall provide no less than three hours of training to its special education department including its director, program specialists, case managers, and school psychologists, on the legal requirements

regarding the topics listed below. This training shall occur within the 2025-26 school year and shall be provided by an attorney or law firm knowledgeable about special education law who does not currently represent Palo Alto. The topics for the training shall be:

- Postsecondary transition assessments,
 - Students who are transferring in from private schools,
 - Parental rights and school district responsibilities with respect to interim IEPs, and
 - Predetermination.
7. Palo Alto shall reimburse Parents for tuition for Hope for the 2023-24 school year totaling \$18,375 within 30 days of this Decision.
 8. Palo Alto shall reimburse Parents for transportation for the 2023-24 school year totaling \$1,398 within 30 days of this Decision.
 9. All other relief sought by Student is denied.

RIGHT TO APPEAL THIS DECISION

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

June Lehrman

Administrative Law Judge

Office of Administrative Hearings