

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

DEL MAR UNION SCHOOL DISTRICT.

OAH CASE NO. 2025050384

DECISION

November 21, 2025

On May 9, 2025, Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Del Mar Union School District, called Del Mar Union. On June 30, 2025, OAH granted Student's request to file an amended complaint. OAH continued the due process hearing to September 3, 2025.

Administrative Law Judge Judith Pasewark heard this matter via videoconference on September 3, 9, 10, 11, 17, 23, and 24, 2025. An Administrative Law Judge is called ALJ.

Parent represented Student. Attorneys Summer Dalessandro and Jasey Mahon represented Del Mar Union. Director of Special Education and Student Support Nadine Schick attended all hearing days on Del Mar Union's behalf.

At the parties' request, the matter was continued to October 27, 2025, for written closing briefs. The record was closed, and the matter was submitted on October 27, 2025.

On October 30, 2025, Del Mar Union filed a Motion to Strike Student's Closing Brief, on the grounds that, among other things, the brief exceeded the ALJ's order limiting the substantive length of the brief to 30 pages and the brief contained misstatements and fabrications of facts, documents, and law. On October 31, 2025, Student filed a response to Del Mar Union's motion.

Del Mar Union's motion is denied as it is unnecessary. Without concurring with the sarcastic comments contained in Student's response, Student's arguments regarding format more closely align with the ALJ's comments at hearing. Closing briefs are not evidence. The briefs are merely a tool utilized by the ALJ as a roadmap of the party's arguments and legal authorities in support of their claims. Closing briefs are not independently determinative of the accuracy or persuasiveness of a party's claim in the ALJ's analysis of law and evidence in deciding the issues as determined in the Order Following Prehearing Conference and delineated in this Decision.

Indeed, Student's 70 plus page closing brief contained issues and arguments outside the scope of the issues presented in this matter. Those issues, however, were not presented at hearing and were therefore unsupported by the evidence. Accordingly, Student's over-extensions were discarded by the ALJ as irrelevant dicta.

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ISSUES

The issues have been reordered for clarity and chronology. This reorganized statement of issues is allowed by the holding in *JW v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F. 3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist.* (9th Cir. 2002) 291 F. 3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F. 3e 1189, 1196, fn. 2 [dictum]). No change in substance has been made.

In this Decision, a free appropriate public education is called a FAPE. An individualized education program is called an IEP. The May 2, 20, and 29, 2025 IEPs are collectively called the May 2, 2025 IEP.

1. Did Del Mar Union deny Student a FAPE in March 2025 by failing to appropriately assess Student in:
 - a. psychoeducation;
 - b. speech and language; and
 - c. academics?

2. Did Del Mar Union deny Student a FAPE in March 2025 by failing to assess Student in all areas of suspected disability, specifically in:
 - a. occupational therapy;
 - b. educationally related mental health;
 - c. executive functioning;
 - d. social skills; and
 - e. specialized academic instruction?

3. Did Del Mar Union deny Student a FAPE by failing to find Student eligible for special education and related services under the categories of other health impairment and emotional disability in the May 2, 2025 IEP?
4. Did Del Mar Union deny Student a FAPE by predetermining Student's eligibility for special education and related services at the May 2, 2025 IEP team meeting?
5. Did Del Mar Union deny Student a FAPE by requiring Parent to obtain a medical diagnosis for Student to be eligible for special education and related services under the categories of other health impairment and emotional disability?
6. Did Del Mar Union deny Student a FAPE by failing to include a school nurse at the May 2, 2025 IEP team meeting?
7. Did Del Mar Union deny Student a FAPE in the May 2, 2025 IEP by failing to offer appropriate speech and language goals?
8. Did Del Mar Union deny Student a FAPE in the May 2, 2025 IEP by failing to offer appropriate speech and language services?
9. Did Del Mar Union deny Student a FAPE in the May 2, 2025 IEP by failing to offer goals in:
 - a. emotional regulation;
 - b. self-care; and
 - c. academics?

10. Did Del Mar Union deny Student a FAPE at the May 2, 2025 IEP team meeting by failing to offer occupational therapy, behavioral services, specialized academic instruction, and accommodations or modifications?
11. Did Del Mar Union deny Student a FAPE by denying parental participation at the May 2, 2025 IEP team meeting, specifically:
 - a. by failing to consider suggestions for creating a safe environment for Student;
 - b. by refusing to show Parent all assessment protocols, informal data measures, teacher input documents, and all documents used as part of the data collection process?
12. Did Del Mar Union deny Student a FAPE by failing to offer a special day class placement at the May 2, 2025 IEP team meeting?
13. Did Del Mar Union deny Student a FAPE by predetermining services offered in the May 2, 2025 IEP?
14. Did Del Mar Union deny Student a FAPE by failing to offer extended school year services in the May 2, 2025 IEP?

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JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

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

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62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Weast*); Student requested the hearing and bears 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).)

The ALJ 's evidentiary obligations are not suspended simply because a parent is representing a student pro se. As Del Mar Union correctly argued, *Weast*, a case cited by both parties, also states that there should be an assumption that a school district's IEP is appropriate (*Weast*, 126 S. Ct. 528, at p. 537.), and [judges] cannot substitute their own notions of sound educational policy for those of the school authorities. (See *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 208. (*Rowley*). Therefore, Parent, as a pro se representative, still maintains the responsibility to prove Student's case by a preponderance of the evidence.

Student was three years old and in preschool at the time of hearing. Student resided within Del Mar Union's geographic boundaries at all relevant times. Although Del Mar Union offered Student special education and related services in the May 2, 2025 IEP, Parent has not consented to eligibility or implementation of this initial IEP. Student continues to attend KinderCare, a private preschool, and receives private services and therapies at Parent's expense.

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BACKGROUND INFORMATION

REGIONAL CENTER

Student began receiving services from the San Diego Regional Center in 2024, in the form of speech therapy, infant education, and occupational therapy.

Kim Sum, Student's Regional Center Service Coordinator, testified under objection from Attorney Bridgett Webster, Counsel for San Diego Regional Center, who was present during Sum's testimony. Sum reported Student qualified for the Early Start program at the Regional Center and received one hour per week of occupational therapy, one hour per week of infant services, and two hours per week of speech and language therapy. Student received each service in a one-to-one setting. Student also received consultation behavior services.

The regional center reports were a source of disagreement between the parties, however neither party offered the written reports or notes into evidence. Student called Xyrine Co-Untian, Student's Early Start interventionist, to testify. Co-Untian provided limited testimony, however her responses were thoughtful and credible. Co-Untian provided Student's virtual applied behavior analysis therapy in the home between October 2024 and April 2025, in one-to-one 60-minute sessions, once a week. It was her job to collect data and track Student's behaviors which ranged in degree.

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Co-Untian reported Student was sometimes aggressive, inattentive, and refused to comply; however, he was making progress and could tolerate the 60-minute sessions. Student began to functionally communicate and played more. Co-Untian acknowledged that Student displayed some extreme behaviors such as hitting and tantruming, but she did not report behaviors which she could handle herself or behaviors she was working on at the time. No record of extreme behaviors were presented by Co-Untian or KinderCare. Based on her experience with Student, Co-Untian opined that Student would benefit from additional occupational therapy and behavioral services.

ASSESSMENTS

RADY CHILDREN'S HOSPITAL KIDSTART DEVELOPMENTAL EVALUATION REPORT

Prior to Student's third birthday, Student was referred for a comprehensive developmental evaluation by Rady Children's Hospital KidStart due to concerns about language and behavior problems. Del Mar Union received a copy of this report, dated March 31, 2025.

Melina Islas, Ph.D., a licensed clinical psychologist, conducted both neuropsychological and psychological testing of Student in March 2025. Dr. Islas testified at hearing and provided competent testimony to establish her credentials. Further, Del Mar Union referenced and reported a significant portion of Dr. Islas' findings in the review of Student records contained in its own comprehensive evaluation.

Dr. Islas assessed Student in March 2025, concurrently with Del Mar Union's assessment. Dr. Islas did not observe Student in an educational setting, nor was Dr. Islas contacted by anyone from Del Mar Union to explain or discuss her assessments or recommendations. Dr. Islas acknowledged her evaluation was not an educational evaluation but rather was administered to determine interventions and medical recommendations.

Dr. Islas observed Student during her assessment as part of the evaluation. Parent accompanied Student to the evaluation, however Parent was not present with Student during the cognitive testing. Student tolerated this separation without incident and initially provided age-appropriate attention and engagement. When Student got to the final subtest, he became disengaged and reluctant to follow directives. Student initially said "no" when presented with instructions and became increasingly disengaged by

- getting out of his seat,
- getting hand sanitizer several times,
- walking around the room,
- knocking blocks onto the floor, and
- demanding "want something else."

Student was given a break to color, but shortly became disengaged again. When the assessment subtest was again attempted, Student completed several items, but then knocked down blocks, saying "want something else." When presented with an "if/then" statement, Student was willing to pick up the blocks but refused to continue with the assessment task.

Dr. Islas noted that Student's speech sometimes displayed echolalia, or repetitive speech. Student spoke in single words, phrases, and used one sentence. Student also pointed to direct attention and used good eye contact when talking. Student was sometimes impulsive and wiggled in his seat. Student regularly made a sucking motion with his mouth as if he had a pacifier, although there was nothing in his mouth.

Dr. Islas conducted a battery of assessments and considered the test results valid. Dr. Islas noted however, that due to Student's young age of two years, 10 months, the scores were not necessarily predictive of future scores.

Dr. Islas administered the Differential Ability Scales, second edition, a test of cognitive ability that provided standardized estimates of verbal, nonverbal, and special skills in young children. Student scored in the average range for his age on the verbal subtest. Student was able to name picture and follow directions involving basic language concepts in the average range. Student's nonverbal scores were in the average range for his age. Student scored above average in abstract visual reasoning and abstract categorical reasoning and had no difficulty matching pictures with a similar element or concept.

However, Student had difficulty imitating and copying block patterns of increasing complexity and demonstrated visual-spatial scores in the below average range. Dr. Islas noted Student's performance might be highly impacted by Student's decreased effort and attention on this task.

Dr. Islas administered the Vineland Adaptive Behavior Scale, third edition, in the form of a questionnaire to Parent to assess Student's adaptive functioning in communication, daily living skills, socialization, and motor skills. Parent indicated

Student had a relative strength in motor skills and a relative weakness in daily living skills. Parent's ratings indicated Student's adaptive behaviors were consistent with his cognitive abilities.

The communication domain of the Vineland evaluated receptive language skills which measured how Student listened, paid attention, and his understanding of language. Student obtained a composite score indicating overall communication skills in the moderately low range, achieving age equivalent scores of 24 months in receptive language and 21 months in expressive language.

The daily living skills domain of the Vineland measured Student's self-help skills, ability to perform household chores, and ability to follow instructions and demonstrate safety behavior in the community. Overall, Student exhibited daily living skills within the low range, with an age equivalency of 19 months.

The socialization domain of the Vineland evaluated Student's interpersonal, play, and coping skills. Overall, Student scored in the moderately low range.

The motor skills portion of the Vineland assessed motor development and evaluated Student movement and coordination regarding both fine and gross motor skills. Overall, Student scored within the adequate range.

Dr. Islas administered the Child Behavior Checklist to Parent to obtain information about Student's behavior across a range of domains. Parent reported clinical elevations on the Syndrome scale of aggressive behavior and the Diagnostic and

Statistical Manual of Mental Disorders, fifth edition, called DSM-5, oriented scales of autism spectrum problems, attention deficit/hyperactivity problems and oppositional defiant problems. Parent also reported a borderline clinical elevation for attention problems.

Dr. Islas administered the Parent Relationship Questionnaire portion of Behavior Assessment Scales for Children, third edition. Parent rated Student in the average range across all scales, indicating an appropriate attachment with Student, consistency in responding to Student's misbehavior, appropriate time spent playing with Student, as well as confidence in her parenting ability. Dr. Islas noted that Parent's scores were valid.

Parent completed the Autism Spectrum Rating Scales which quantified observations of a child that are associated with autism. Parent rated Student in the average range on the social/communication scale, which indicated the extent to which Student used verbal and nonverbal communication appropriately to initiate, engage in, and maintain social contact. Parent rated Student in the elevated range on the unusual behaviors scale, which indicated Student's level of tolerance for changes in routine, engagement in apparently purposeless and stereotypical behaviors, and overreaction to certain sensory experiences. The Autism Spectrum Rating Scale also provided a scale to compare Student's symptoms to the DSM-5 criteria for autism spectrum disorder. Student's comparison was in the elevated range.

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Dr. Islas administered the Autism Diagnostic Observation Schedule, second edition (Module 1), which was designed to assess Student's communication, social interactions, and play for the purpose of diagnosing an autism spectrum disorder.

Student displayed strengths in

- good eye contact,
- appropriate facial expressions and gestures,
- enjoyment of interactions, and the
- ability to direct the attention of others.

Student also displayed strengths in his ability to

- speak in short phrases,
- interest in getting the examiner's attention to request a social routing,
- ability to engage in conversation, and
- pretend play.

Student demonstrated social difficulties in appropriately responding to the examiner's initiations at times, sometimes spoke with unintelligible speech, and demonstrated atypical behaviors such as frequently making a sucking motion with his mouth.

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Overall, Dr. Islas did not find Student's Autism Diagnosis Observation Schedule scores consistent with a classification of an autism spectrum disorder. Student's comparison score indicated minimal to no evidence of an autism spectrum disorder of autism related symptoms.

Dr. Islas' assessment concluded:

- Student exhibited evenly developed cognitive abilities with an overall cognitive ability in the average range.
- Student demonstrated below average overall adaptive functioning, with a relative strength in motor skills. Student struggled with appropriately engaging in social and play activities, coping emotionally, and completing activities of daily living. The report recommended monitoring Student's adaptive functioning through behavioral and occupational therapies.
- While Student's aggressive behaviors, sensory seeking behaviors, and short attention span were often seen in individuals with autism spectrum disorder, Student did not meet the diagnostic criteria for autism spectrum disorder. Student's social difficulties appeared to be greatly impacted by his difficulties with use of coping skills, low frustration tolerance, and a desire for a response from others. The report recommended continuation of Student's current speech therapy, occupational therapy, and infant education through San Diego Regional Center, until age three.

- Parent should obtain an assessment for parent-child based mental health services with a focus on behavior, parent behavior management, reducing incidents of aggression, and promoting the parent-child relationship.
- Student would benefit from enrollment in KidStart, a unique program for children birth through five years of age who have complex developmental and social-emotional/mental health needs.
- Student would benefit from:
 - behavioral services, including behavior support and occupational therapy to address sensory processing/self-regulation,
 - speech therapy,
 - group services to promote social skills, flexibility, attention, and ability/willingness to follow direction, and
 - consultation with a developmental pediatrician.
- Student should receive a comprehensive evaluation through the school district to determine if Student would benefit from special education services, which included speech and language, occupational therapy, and behavioral assessments.

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At hearing, Dr. Islas confirmed the content of her assessments. She acknowledged that her findings did not meet the criteria for any diagnosis but added that most diagnoses are inappropriate for children under three years of age. As an example, regarding autism, she did not believe Student was on the spectrum; but Student's elevated scores in some autism-related testing still identified those areas of deficit needing to be addressed.

As a clinical psychologist, Dr. Islas made medically based, not educational recommendations. She recommended continuing Student's existing services and reassessment to determine if Student's qualified for services in the educational setting once he began school.

STUDENT'S INITIAL IEP TEAM MEETING

Student's initial IEP commenced on May 2, 2025, one day prior to his third birthday. As the IEP team meeting was conducted in three parts on May 2, May 20, and May 29, 2025, the IEP is referred to as the May 2, 2025 IEP. The ALJ listened to the recordings and read the transcripts of the May 20 and 29, 2025 IEP team meetings. The record is replete with unpleasantness, sarcasm, and argumentative behavior. Therefore, the factual determinations gleaned from the IEP notes in this Decision have been parsed as one IEP meeting to limit reporting the drama between the parties. Given the amount of time spent on this collateral agenda, the IEP team was unable to complete its offer of FAPE until May 29, 2025.

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Del Mar Union's program specialist Kelly Brady reduced the May 2, 2025 IEP to a completed written document on June 2, 2025, and Del Mar Union sent Parent a completed copy with its final offer of FAPE, which included placement in Del Mar Union's early education center at Student's school of residence and 1,800 minutes per year of group speech and language services.

Parent did not provide consent to any part of the May 2, 2025 IEP, specifically indicating "I decline the offer of initiation of special education services."

ISSUE 1: DID DEL MAR UNION DENY STUDENT A FAPE IN MARCH 2025 BY FAILING TO APPROPRIATELY ASSESS IN PSYCHOEDUCATION, SPEECH AND LANGUAGE, AND ACADEMICS?

Student contended that Del Mar Union's multidisciplinary assessments were incomplete, methodologically flawed, and ignored critical data sources. Throughout the hearing, Parent challenged Del Mar Union's selection of assessment tools, their validity, and the professional qualifications of the assessors.

Del Mar Union contended the multidisciplinary assessment was legally appropriate and each assessor was highly competent and authorized to assess Student in their respective areas.

An assessment of the student's educational needs must be conducted before any action is taken to place a student with exceptional needs in a special education program. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) An assessment may be initiated by request of a parent, a State educational agency, other State agency, or

local educational agency. (20 U.S.C. § 1414(a)(1)(B); Ed. Code, §§ 56302, 56029, subd. (a), 56506, subd. (b).) The IDEA uses the term “evaluation,” while the California Education Code uses the term “assessment.” (20 U.S.C. § 1414; Ed. Code, § 56302.5). As used in this decision, “assessment” and “evaluation” mean the same thing and are used interchangeably.

Assessments must be conducted with parental consent and proper written notice, which includes a proposed assessment plan and a copy of the parent’s procedural safeguards. (20 U.S.C. § 1414(b)(1); 20 U.S.C. §§ 1415(b)(3), (c)(1); Ed. Code, § 56321, subd. (a).) The plan must be in the parent’s native language, clearly describe the assessments to be conducted, identify qualified assessors, and state that no IEP will result without parental consent. (Ed. Code, § 56321, subds. (b)(1)-(4); 20 U.S.C. § 1415(b)(3)-(4); 34 C.F.R. § 300.9(a).)

ASSESSMENT PLAN COMPLIED WITH STATUTORY REQUIREMENTS

In the Initial Special Education Background Questionnaire, dated March 7, 2025, Parent informed Del Mar Union that:

- Student was diagnosed with a speech delay and received speech and language services from San Diego Regional Center to address difficulty combining two or more words.
- Student displayed verbal and physical behaviors, including biting, spitting, hair pulling, and punching.
- Student was undergoing testing at Rady Children’s Hospital for a conduct disorder.

- Student's extreme anger and lack of emotional regulation impeded Student's ability to access his education.
- Student needed special education supports and services due to emotional disturbance and speech delay.

Del Mar Union's program specialist, Kelly Brady, developed Student's assessment plan based on the information obtained from Student's initial special education questionnaire and interview with Parent. As a program specialist, Brady provided a wide range of assistance to Del Mar Union in providing services for students with special needs. Brady held a preliminary administrative services credential. Brady held a master's degree in education in school psychology with pupil personnel services, and a bachelor's degree in psychology. She was qualified to draft assessment plans and testified credibly.

The assessment plan was drafted during the initial intake interview and reviewed with Parent at that time.

The assessment plan indicated Del Mar Union sought to assess Student in

- academic achievement,
- intellectual development,
- language,
- speech and communication development,
- motor development,
- social-emotional behavior, and
- adaptive behavior.

The assessment plan clearly explained the assessments to be conducted and identified the job title for each assessor. The plan was written in Parent's native language of English and explained that no IEP would result without parental consent.

Parent consented to the assessments on March 10, 2025. On the same day, Brady provided Parent with a prior written notice letter that proposed to assess Student to determine eligibility for special education and related services and provided Parent with a Notice of Procedural Safeguards which explained state and federal requirements and Student's and Parent's procedural rights.

The assessment plan presented to Parent complied with statutory requirements.

DEL MAR UNION'S ASSESSORS AND ASSESSMENT PROCEDURES MET STATUTORY REQUIREMENTS

Assessments must use valid, reliable tools administered by qualified personnel in a non-discriminatory manner and in the student's native language. (20 U.S.C. § 1414(b)(3)(A); Ed. Code, § 56320, subds. (a), (b)(3).) Assessors must use multiple measures and incorporate relevant parent input. (20 U.S.C. § 1414(b)(2)(A); Ed. Code, § 56320, subds. (b), (e).) Adherence to the testing producer's instructions is required. (20 U.S.C. § 1414(b)(3)(A)(v); Ed. Code, § 56320, subd. (b)(3).)

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Assessments must be conducted by persons competent to perform the assessment as determined by the local educational agency. (Ed Code, § 56322.) Any psychological assessment of pupils must be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed. (Ed. Code, § 56324, subd. (a).)

Del Mar Union selected school psychologist Melissa Martin, education specialist Mary Murphy , and speech pathologist Brittany Massimino to assess Student.

School psychologist Martin was a licensed educational psychologist and held a pupil personnel services credential in school psychology. Martin was licensed to provide school-based counseling. Martin held a master's degree in educational psychology, an education specialist degree in school psychology, as well as an associate's degree in speech and language pathology and a bachelor's degree in psychology.

Martin's job requirements at Del Mar Union included:

- administering psychoeducational assessments for preschool students, focusing on cognitive, academic, social-emotional and behavioral development;
- conducting transition assessments to ensure smooth entry from preschool to kindergarten with appropriate services and accommodations; and
- providing behavior support for early childhood inclusion programs.

Education specialist Mary Murphy held a master's degree in special education and a credential in early childhood special education.

Murphy's job skills included:

- curriculum adaptation;
- IEP development;
- behavior support implementation;
- progress monitoring; and
- assessment administration.

Brittany Massimino, a licensed speech and language pathologist, held a master's degree in speech and language pathology and a bachelor's degree in communication sciences and disorders.

Massimino's job requirements at Del Mar Union included:

- conducting comprehensive speech and language assessments for preschool to sixth grade students;
- participating in IEP team meetings to address educational concerns related to speech therapy;
- implementing individual and group therapy sessions focusing on speech sound production, language, fluency and voice skills, utilizing evidence-based practice; and
- conducting regular staff trainings on language-related topics.

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Student's initial multidisciplinary assessment was conducted by qualified and competent assessors. Martin, Brady, and Massimino possessed the professional credentials and experience required to assess Student. Each assessor credibly testified at hearing and presented logical and competent testimony which qualified each assessor as an expert witness in their areas of expertise.

Assessments must use valid, reliable tools administered by qualified personnel in a non-discriminatory manner and in the student's native language. (20 U.S.C. § 1414(b)(3)(A); Ed. Code, § 56320, subds. (a), (b)(3).) Assessors must use multiple measures and incorporate relevant parent input. (20 U.S.C. § 1414(b)(2)(A); Ed. Code, § 56320, subds. (b), (e).) Adherence to the testing producer's instructions is required. (20 U.S.C. § 1414(b)(3)(A)(v); Ed. Code, § 56320, subd. (b)(3).)

Del Mar Union's assessment team utilized the following assessment procedures for Student's initial multidisciplinary assessment:

- records review;
- health and developmental history review;
- interviews;
- observations; and
- standardized testing in
 - academic and preacademic functioning,
 - cognitive development,

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- social-emotional functioning,
- adaptive functioning and behavior, and
- communication.

At hearing, school psychologist Martin reported the assessment materials and procedures used during Student's evaluations were carefully selected and administered to ensure they were not racially, culturally, or sexually discriminatory. Student's primary language, racial, and ethnic background, as well as social-economic status were carefully considered prior to the selection and interpretation of evaluation procedures and measures to understand their potential impact on Student's educational experience and performance. The standardized assessments were conducted in Student's primary language of English and have been validated for the specific purposes for which they were used. The selected measures were administered according to standard procedures for the specific purposes recommended by the publishers, ensuring their validity within the measured limits.

Results of standardized test were combined with non-standardized assessment procedures to appropriately assess Student's performance. No single procedure was used as the sole criterion for determining eligibility, unique needs, or educational recommendations. Independent evaluations and information provided by the parents were considered when available.

Martin, noted that unless otherwise stated, the results of the evaluation appeared to be valid measures of Student's current level of functioning at the time of assessment in each area assessed. However, Martin also cautioned that the scores may not accurately

reflect long-term potential because preschoolers have rapidly developing brains and their test performance can often be impacted by fluctuating attention, motivation, and limited language skills.

The assessment team utilized appropriate assessment tools. Each assessor testified to the validity of their testing, and where appropriate, issued additional caveats regarding early childhood assessments. As will be discussed further below, when questioned by Parent regarding the validity of certain tools, the assessors reviewed Student's scores, corrected minor scoring errors, sought verification from the assessment manufacturers, and conducted additional assessments which were reviewed and discussed at an IEP team meeting.

Del Mar Union utilized qualified assessors who adhered to appropriate assessment procedures for Student's initial multidisciplinary assessment.

Student spent an exceptional amount of time at hearing attempting to discredit the Del Mar Union assessors and the assessment tools they utilized to evaluate Student. Parent's objections to the assessors' competency were based on a standard of perfection defined by Parent; the assessment tools were selected by Del Mar Union assessors. While the parent is an equal member of the IEP team, or may be a participant in a student's assessment, a parent is not a member of the assessment team. It is well settled that parents who want their child to receive special education and related services must allow (re)assessment by the school district, with assessors of the school district's choice. (*Johnson v. Duneland School Corp.*, (7th Cir. 1996) 92 F. 3d 554, 558.) A parent must allow the school itself to (re)evaluate the student and cannot force the school to rely solely on an independent evaluation. (*Gregory K. v. Longview School Dist.* (9th Cir.

1987) 811 F. 2d 1307, 1315.) Further the selection of particular testing or evaluation instruments is left to the discretion of the State and local educational authorities, not the parent. (*Letter to Anonymous* (OSEP September 17, 1993.)

Student failed to establish that Parent's objections to the May 2, 2025 multidisciplinary assessment were more than a disagreement with the report findings and recommendations, and distaste for the assessment tools selected by the assessment team. Neither of which invalidated the assessments.

Parent's dogged pursuit of this issue amounted to a moot academic exercise. Even assuming Parent prevailed on this issue, the law instructs that if a parent disagrees with a district's assessment, they have the right to seek an independent educational evaluation at public expense. The district must then, without undue delay, either fund the independent educational evaluation or file for due process to defend its assessment. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b)(1)–(2); *Baquerizo v. Garden Grove Unified School Dist.* (9th Cir. 2016) 826 F.3d 1179, 1185.) In Student's case, Del Mar Union agreed to conduct independent psychoeducation and speech and language assessments before an offer of FAPE was even complete and were in progress at the time of hearing.

SUBSTANTIVE CONTENT OF MAY 2, 2025 MULTIDISCIPLINARY ASSESSMENT

REVIEW OF AVAILABLE INFORMATION

School psychologist Martin summarized Rady Children's Hospital's developmental evaluation conducted by Dr. Islas.

Martin summarized the Pediatric Speech and Language Discharge Summary report provided to Del Mar Union by Caroline Biebel, MA, CCC-SLP, dated April 5, 2025. Biebel did not testify at hearing nor was her report offered into evidence. It was, however, summarized in the May 2, 2025 assessment report, as follows:

Student received home-based speech and language therapy for approximately 10.5 months with an increase to twice-weekly sessions beginning in November 2024. At the time of initial assessment in May 2024, Student's receptive language skills were age-appropriate at the 21-24 month level, while expressive language skills were moderately to severely delayed at the 12-15 month level. As of the most recent update, Student's receptive skills were at the 30-33 month level (low average) and expressive language skills improved to 27-30 month range. Progress was noted in increasing expressive vocabulary. Student produced three-word utterances, and used gestures, signs and approximations to communicate. However, ongoing delays in speech sound production, including phonological error and reduced intelligibility in unfamiliar contexts, continued to impact effective communication. When unintelligible, Student exhibited negative behaviors due to frustration for inability to communicate effectively. Full speech and language testing through the local school district was recommended to determine eligibility for school-based services.

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Martin summarized the Brigance Core Assessment administered on March 7, 2025, administered at Kindercare, and was summarized in the May 2, 2025 assessment report as follows:

- In the area of language development, Student identified body parts by pointing to
 - ears,
 - head,
 - teeth,
 - legs,
 - fingers and
 - arms.
- When asked to identify pictures by naming, Student correctly named
 - cat,
 - dog,
 - key,
 - apple, and
 - car.
- Student did not earn points on the sentence repetition task, which included repeating sentences of three and four syllables.

- In the academic/cognitive domain, Student demonstrated understanding of number and size concepts, including “just one,” “one more,” “big,” and “little.” For color identification, Student correctly identified
 - red,
 - blue,
 - green,
 - yellow, and
 - orange.
- In the physical development domain, Student earned full credit for gross motor tasks, including jumping off the floor with both feet, walking backward four steps, standing on one foot for one second, and walking on tiptoes for three steps.
- For visual motor skills, Student demonstrated purposeful crayon use, drew a somewhat recognizable picture, held the crayon with fingers, not a fist, and used one hand consistently.
- Student also built a tower with six blocks during the block stacking task.

KinderCare reassessed Student with the Brigance Core Assessment on May 8, 2025, at Parent’s request. The results were consistent with the prior testing from March 7, 2025. Student demonstrated strong skills in identifying body parts, naming pictures, and understating object use, which was consistent with all observations. Student also performed well in gross and visual motor skills, which reflected

age-appropriate physical development. Student's understanding of early academic concepts such as colors, numbers, and size was solid across both tests. There was a slight discrepancy in verbal fluency and sentence repetition. The report noted that Student's speech intelligibility varied depending on the communication partner, which may explain why his teacher observed more effective communication during daily interactions.

OBSERVATIONS

Martin and Murphy observed Student at KinderCare during the same 30-minute observation. Each recounted their own observations in the assessment report, however, their observations were similar in nature and provided a compatible summary.

Student's class consisted of seven students and one staff member. Student demonstrated a range of play abilities and interactions across multiple centers. Student engaged in imaginative play with dinosaurs and magnet tiles, showing emerging pretend play and counting skills. Murphy observed Student count the tiles using one-through-eight correspondence. Student shifted between activities and required occasional redirection from staff to maintain safety and appropriate behavior. Student responded to visual support and adult guidance when cued. At times, Student demonstrated impulsive behaviors, such as pushing a peer, hitting, and running indoors, though he was generally responsive to redirection and safety reminders. Student demonstrated emerging social communication, such as requesting turns verbally, using gestures and attempting to gain adult attention appropriately. Student participated in clean-up with visual prompts and adult support showing familiarity with classroom routines. While some of Student's language was unintelligible, he appeared to be engaged and purposeful.

Martin added that during the free play observation, several other children showed similar behaviors like seeking attention, active play, and delayed compliance, which suggested that Student's behaviors were not isolated but rather part of a broader trend among his peers in the unstructured classroom context.

Based upon their observations, Martin and Murphy concluded Student demonstrated strengths in:

- peer interaction: Student initiated play with peers.
- compliance with directions with prompts: Student generally complied with adult directions, although sometimes required verbal prompts or a count.
- following multi-step directions: Student followed multi-step directions.
- functional play: Student engaged in functional play with various toys.
- problem solving/cognitive skills: Student completed a 3-D puzzle and lined up and counted tiles up to eight.
- developing social awareness: Student appropriately asked for a turn and attempted to alert the teacher to another child breaking a rule.
- seeking information: Student inquired, indicated curiosity and a desire to learn.

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Student demonstrated need for growth in:

- impulse control: Student exhibited impulsive behaviors such as dropping toys, sitting unsafely on furniture, running in the classroom, and hitting a peer on the head.
- attention and focus: Student's play shifted frequently between activities; he was easily distracted and engaged in repetitive actions.
- following directions with initial compliance: Student eventually complied but often required multiple prompts before following instructions.
- safety awareness: Student demonstrated a lack of awareness regarding safe behavior, such as sitting on the arm of the couch and running into the wall.
- emotional regulation: Student did not immediately respond with an apology after hurting a peer.
- clarity in communication: Student's speech was often unintelligible.
- sustained engagement: Student's engagement in activities was often brief before moving onto something else.

Speech pathologist Massimino observed Student for 30 minutes at KinderCare. Massimino observed Student's receptive language skills. Student demonstrated understanding of a variety of common classroom directions and simple questions; responded appropriately to yes/no questions and followed one-step directions paired with gestures. Student also responded to teacher directions which indicated the ability to interpret adult interaction.

Massimino observed Student's expressive language skills. Student used a combination of single words, short phrases, and one three-word combination to express himself. Student demonstrated spontaneous language with greetings, requests, responses, and labeling. He repeated words and used communicative gestures to supplement his verbal attempts. Student's attempts at longer utterances were difficult to understand, suggesting limited intelligibility and reduced sentence clarity, particularly during unstructured communication.

Massimino observed Student's pragmatic, also referred to as social, language skills. Student demonstrated a range of early pragmatic skills. Student initiated interactions with adults and peers, used appropriate eye contact and facial expressions, and responded to social cues. Student used spoken and nonspoken communication to make requests, participate in turn-taking, and comment during play.

Massimino determined Student could produce a variety of speech sounds, however intelligibility was inconsistent. Some single words and prompted responses were clearly understood, while longer or spontaneous utterances were often difficult to understand. Student demonstrated the ability to imitate words when modeled, but had difficulty producing clear, intelligible multi-word utterances independently. He also used many play-based vocalizations and sound effects.

Massimino did not find any concerns regarding Student's voice or fluency.

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INTERVIEWS

KINDERCARE INTERVIEWS

Murphy conducted an interview of KinderCare program specialist Simone Coudray through a developmental report. Student, then two years, 10 months of age, had attended KinderCare for a year and a half. KinderCare director Kristina Simon recommended Coudray for the interview, as Student's classroom teacher, Natali Ghandy, only worked with Student for a short time.

Coudray reported Student demonstrated advanced physical development, with strong gross and fine motor skills. Student showed strengths in receptive language, understanding instructions and following along with routines effectively. Over time, Student became increasingly independent with self-help tasks and was described as a helpful classroom member. Coudray reported that Student interacted well with several peers and showed interest in general social exchanges, such as waving goodbye and clapping during songs. Student attempted to imitate physical movements during group activities and enjoyed physical active play, such as running, jumping, and climbing. Student exhibited a strong interest in sensory play, construction toys like Legos and blocks, and imaginative play involving vehicles and dinosaur figurines.

Coudray considered Student's expressive language significantly delayed, but he was showing progress with the support of occupational therapy and speech therapy services. Student received speech therapy and occupational therapy twice a week, both at home and at school. Despite the improvement, Student's verbal output remained largely unintelligible and communication breakdowns may have contributed to some of his social frustrations. Emotionally, Student struggled with patience, which was typical for

his age. Behaviorally, Student's expressive language delays appeared to contribute to some challenges in social settings, and when upset, he sometimes lashed out by pushing, hitting, or grabbing toys. These behaviors sometimes resulted in accidentally hurting other children.

Coudray reported Student could request help in a functional way, although he did not consistently use verbal requests. In terms of academic concepts, Student identified some shapes and colors and demonstrated emerging counting skills, counting to 10, with success ranging from one-to-three times. Student's ability to remain engaged in a shared activity was limited to about five minutes.

Martin independently interviewed Coudray through a teacher/childcare provider input form, which supplemented and corroborated the information obtained by Murphy. Coudray again indicated Student was a sweet child with developing language skills, who enjoyed helping teachers and had good relationships with them, but Student occasionally struggled to be gentle with other children. Coudray reported Student's areas of growth included language development, impulse control, and toilet training.

Student demonstrated fairly independent self-help skills, except for toileting, where he resisted sitting on the toilet. Socially, Student enjoyed interacting with peers, but sometimes used his size to get what he wanted, leading to roughness. Student had good gross motor skills but could improve his fine motor skills. Student showed progress with age and therapy, was speaking more and being less physically aggressive, although he still had occasional incidents. Coudray suggested that more speech therapy could be beneficial to further improve Student's behavior and participation.

Massimino also interviewed Coudray via a speech and language questionnaire. Coudray shared that although Student made significant progress with the support of speech therapy, intelligibility remained a concern, particularly as Student approached age three. Student attempted to speak more frequently, however he was often difficult to understand, especially when producing less familiar words. Coudray expressed concern that Student's reduced intelligibility may create challenges in the next classroom setting where peers were more verbal, potentially leading to frustration or physical behaviors, as evidenced by a biting incident when attempting to communicate with a peer. Among two-year-olds, Student socially engaged without difficulty as his classmates exhibited a wide range of language abilities.

Student demonstrated emerging awareness of communication breakdowns; he did not appear visibly frustrated or self-conscious when adults guessed his intended message incorrectly. He continued to initiate communication with peers and adults. He showed no signs of teasing from peers regarding his speech. Student willingly attempted to produce speech sounds when prompted.

Testing indicated Student's intelligibility remained greater at the single-word level rather than in conversational speech. Student demonstrated decreased intelligibility in noisy environments and when discussing unfamiliar topics. Coudray expressed concern that although Student made progress, she questioned whether he was catching up as quickly as needed to meet age expectations.

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Parent raised concern at the May 2, 2025 IEP team meeting regarding the validity of Coudray's participation in Student's assessment, as Coudray was not Student's teacher. Therefore, Murphy and Massimino conducted an in-person interview of KinderCare preschool teacher Ghandy, to obtain supplemental and updated information regarding Student's progress and behavior in the classroom.

Parent requested that the information and assessment results provided by Coudray be stricken from the assessment report because Coudray did not have the requisite qualifications as Student's teacher for participating in the assessment testing. As such, Parent considered Coudray's information skewed and invalid. The ALJ disagrees with Parent's claim of invalidity. While Coudray was not Student's teacher, she had sufficient interaction with Student to provide valid information. As such, Del Mar Union did not err in considering Coudray's input in Student's assessment. Even assuming Coudray's contributions to the assessments were stricken from the assessment report, the massive amount of information provided in this hearing was enough for the IEP team to reach their same conclusions regarding Student's eligibility and related services.

At the time of the interview, Ghandy held 12 early childhood education units, spent at least 40 hours per week in the classroom, and worked with Student in the classroom. Ghandy had known Student for seven months, however she had only worked full time with Student for seven weeks.

Ghandy's interview produced updated but similar information to that provided by Coudray. In Murphy's interview, on May 8, 2025, Ghandy described Student's strength as his ability to meet his basic needs in the classroom, and he was progressing in potty

training. Student actively participated in whole group activities and circle time, with free play being his preferred time. Student enjoyed helping with clean-up and demonstrated strong independence and the ability to follow directions, even when frustrated.

Ghandy considered communication to be an area of need for Student. While his expressive language was improving, he still continued to work on pronunciation. When a breakdown occurred, Student might become frustrated which sometimes led to hitting, yelling, or stomping. Ghandy reported these behaviors occurred approximately once a week for hitting and up to twice daily for other behaviors such as stomping, screaming, or throwing toys. Ghandy shared that Student benefited from adult support, including physical prompts, and modeling calming strategies to help regulate him when overwhelmed. Student could return to the group after adult intervention.

Student demonstrated difficulty with peer interactions, particularly with sharing, or when peers did not understand him, which lead to Student seeking isolated play or adult support. Student, however, was beginning to imitate familiar songs and engage well in play-based activities, including dramatic play, sensory exploration, musical instruments and gross motor play.

Student demonstrated emerging pre-academic skills such as color and shape recognition and showed partial use of functional communication. Student's attention span for structured tasks increased to approximately 10 minutes.

Massimino also interviewed Ghandy on May 8, 2025, to gather updated information regarding Student's communication abilities in the classroom. Ghandy reported that Student could say words and was putting together longer utterances, but he continued to have difficulty with pronunciation. While Student was making overall

progress, his improvements in speech clarity had slowed. When Student had difficulty connecting words or making himself understood, he could become frustrated and exhibit behaviors such as yelling, acting out, hitting, or stomping his feet. Student also expressed frustration by slapping his legs.

Ghandy also noted that other young students in the classroom did not typically react to Student's speech differences, but when Student was around older children or unfamiliar adults, his teacher often needed to interpret for him.

Ghandy reported Student could follow directions during small group activities and participated well, though he could have difficulty sharing. When Student became frustrated, Ghandy first helped him calm his body by having him sit, take deep breaths, and wait until he was regulated before continuing. Ghandy then spoke slowly, clearly modeling slow and deliberate pronunciation to support Student's understanding. Ghandy reported that Student responded well to verbal countdowns before transitions such as a five-minute and then a two-minute warning before bathroom breaks. She also incorporated his interest to maintain engagement and used forced-choice options, as Student was very independent. Ghandy provided Student with short, simple directions to support his success in the classroom.

Martin interviewed Ghandy through a teacher input form on May 12, 2025. Ghandy reported that Student had shown some good improvement with potty training. As Student was only beginning to visit the three-year-olds' classroom, his progress with that curriculum was still to be determined. Ghandy believed that focusing on developing Student's foundational knowledge of language and literacy was important

and suspected his limited language skills were a contributing factor. Martin was also aware that Student had a speech therapist and an occupational therapist who came to school once a week to provide additional support.

PARENT INTERVIEW

Education specialist Murphy interviewed Parent. Parent was highly educated and held a teaching credential along with a doctorate degree in education leadership, a master's degree in education, mathematics, and clinical psychology, and a bachelor's degree in social science. However, Parent did not hold a medical degree, nor has she attended law school. Parent displayed little tolerance or patience with imperfection in the special education domain.

Parent reported Student was in the early stages of developing foundational learning concepts. Student could count to 15, but had yet to identify colors, numbers, or shapes. Student could verbally ask for help, but his ability to respond to and follow directions was inconsistent and largely depended on his mood.

Parent reported significant concerns regarding Student's speech development and behavior. Student's speech delay was linked to early hearing difficulties, which was improved with surgery. Student received speech and language services and showed noticeable progress. However, as his speech increased, so did his aggressive behaviors.

Parent described Student's behavior as highly reactive, with frequent frustration over small issues. His emotional outbursts often included

- hitting,
- crying,

- punching,
- pulling hair, and
- spitting.

These aggressive behaviors occurred multiple times throughout the day, and were not linked to common triggers such as hunger or tiredness. Student's impatience was extreme; he had difficulty waiting or coping with minor frustrations.

Parent expressed a major concern with Student's defiance, specifically when Student refused to follow directions, did not respond to redirection, and disregarded rules. Parent was particularly troubled by Student laughing after engaging in aggressive behavior, making it unclear whether he fully understood the impact of his actions.

School psychologist Martin also interviewed Parent. Parent acknowledged Student's significant need for control in all situations was a challenge. Student's aggression, particularly around other children was also a concern. Parent's primary concern for Student was his speech development which is crucial for kindergarten readiness, and his extreme anger and lack of self-control.

Parent reported Student used a combination of words and gestures to express himself, though he experienced a significant speech delay. In spite of making good progress, Student required more time to catch up developmentally. Student articulated with a slight lisp. His receptive language skills were strong. However, socially, Student's interactions were inconsistent, showing resistance towards peers and adults depending on his mood. Student attended KinderCare full time, and Parent opined that at school,

his general peer interactions were positive, however during play, Student exhibited controlling behaviors, dictating the play's direction with both adults and children; Student reacted with aggression if others touched his belongings without permission.

Parent informed Martin that Student engaged in a frequent sucking motion with his mouth and displayed a strong attachment with his blanket. Student tended to repeat questions throughout the day. Student's play often involved hitting toys together, and due to his language delay, the specific themes of his play were unclear.

Parent reported that specific triggers for challenging behaviors included being told "no," situations requiring patience or waiting, and any perceived lack of control. Regarding sensory issues, Student frequently noted loud sounds. Student showed resistance to potty training, preferred to eat with his hands instead of with utensils, enjoyed brushing his teeth, but did not dress himself, and resisted all dressing tasks except for removing his shoes and socks.

Parent indicated that transitions and changes in the environment often led to an increase in negative behaviors. Positive strategies included frontloading of expectations. Parent opined that Student required considerable attention, frequently asked questions, and needed detailed explanations. Student also needed breaks, and consistent stimulation, and engagement.

Speech pathologist Massimino also interviewed Parent. Parent reported Student's receptive skills were very strong, noting Student could follow two and three-step directions. Parent attributed Student's failure to follow directions to his behaviors, rather than comprehension. Parent noted that she understood about

50 percent of what he says, but to others he is extremely unintelligible. When Student was not understood, he became extremely frustrated, which contributed to many of his behavioral challenges.

Parent acknowledged that Student's slight lisp may be age-appropriate, however Parent did not believe Student's overall speech sound development was at the expected level for his age.

Parent expressed concern about the level of support Student received at KinderCare. There were 10-12 students in the room with one teacher. Parent complained that when Student was not understood, the staff tended to move on rather than use strategies to support Student's communication.

Parent noted that Student's speech output appeared closely tied to his behavior and mood. When in a good mood, Student spoke more frequently and with greater intelligibility. When in a bad mood, Student's speech was markedly different. Parent reported Student frequently spoke loudly, almost yelling, and attributed this to the environment at KinderCare where the other children were often yelling and screaming.

Massimino interviewed private speech pathologist Biebel by phone to gather information regarding Student's speech and language therapy. Biebel initially provided Student individual speech and language services once per week but at the time of the interview was providing speech services twice per week. The increase in frequency greatly supported Student's progress. Student could produce three-word utterances which were mostly intelligible within context to a familiar listener. Student's speech

included both typical and atypical error patterns. Behaviorally, Student could sit, attend, follow simple directions, and imitate actions which contributed to his ability to participate more effectively in therapy.

ACADEMIC ASSESSMENT

Murphy evaluated Student's pre-academic skills with the Hawaii Early Learning Profile, ages zero to three, and the Woodcock-Johnson, Test of Early Cognitive and Academic Development. Both were standardized assessment measures.

Results from the Hawaii Early Learning Profile indicated that Student demonstrated a broad range of age-appropriate pre-academic skills. Student exhibited:

- solid object permanence and means-end reasoning,
- he could locate hidden items,
- solve simple problems using tools or his body, and
- imitate both familiar and some new gestures.

Student's development of social play aligned with expected milestones. He demonstrated sound awareness, cause-effect reasoning, and spatial relationship understanding. Student's picture recognition and number concepts were age appropriate. Student's matching and sorting skills were above age level, but color sorting was still emerging. Size concept was also below his age. Student's associative thinking skills were age appropriate.

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Student was not yet consistently imitating new or invisible gestures. Student's primary mode of communication was verbal attempts, and when the attempts were unsuccessful, Student often became dysregulated and required adult support to regain regulation. This pattern suggested that ongoing communication challenges may impact Student's ability to develop more social-communication strategies such as gestural imitation.

Student's scores on the Woodcock Johnson indicated Student's letter-word identification fell within the moderately delayed range. The confidence interval suggested that Student's test performance may not fully reflect his abilities on a different day. Student's number sense fell within the average range, indicating age-appropriate understanding of early numerical concepts and quantitative reasoning.

Overall, Student exhibited solid foundational pre-academic development across domains, however his communication challenges appeared to impact specific pre-academic skills. Continued exposure to early literacy activities and embedded communication support was essential for promoting growth in these areas and strengthening Student's early academic readiness.

PSYCHOEDUCATIONAL ASSESSMENT

Martin administered the Developmental Assessment of Young Children, second edition, which assessed Student's level of cognitive functioning, such as

- perception,
- concept development,
- reasoning,

- memory and
- time concepts.

The assessment was utilized to offer insights into Student's cognitive and developmental abilities. Specifically, Student's cognitive domain score indicated that his cognitive skills were developing within the typical range for children his age.

Martin administered the Conners Early Childhood assessment, which assessed a wide range of behavioral, emotional and social concerns, and developmental milestones in pre-school aged children. The assessment was conducted through ratings scales completed by Parent, Coudray, and Ghandy.

Parent's reporting indicated concerns in:

- inattention/hyperactivity,
- defiant/aggressive behavior,
- atypical behaviors, anxiety,
- mood and affect,
- adaptive skills, and
- difficulty with behavior and emotional regulation with functional impairment, particularly at home.

Coudray reported Student demonstrated age-appropriate functioning across all evaluated behavioral and developmental domains within the classroom, suggesting typical development for his age.

Ghandy reported scores in the high-average to elevated levels in each domain, more in line with Parent's observations. Martin reported Ghandy's scores demonstrated strengths in emotional regulation, but showed areas for growth in attention, behavior, social skills, and overall development, including potential challenges with self-regulation.

Ghandy also provided additional responses to the Conners, as requested by Parent in lieu of Coudray's responses, as follows:

- Student's emotional expression and mood regulation were within the average range for his age, suggesting he generally displayed appropriate emotions and recovery from upset within a typical timeframe.
- Student exhibited a high-average/slightly elevated level of concern regarding attention and hyperactivity by occasionally demonstrating inattention, restlessness, and a tendency to lose interest quickly.
- Student's behavior showed an elevated level of aggression, in which Student frequently engaged in negative peer interactions, such as teasing, damaging belongings, occasionally attempting to hurt others' feelings, and becoming involved in physical conflicts.
- Student demonstrated elevated difficulties in social functioning, occasionally struggling to make and keep friends and get along well with other children.
- Student exhibited very elevated atypical behaviors, which identified significant unusual behaviors such as repetitive play, use of unusual language, and repeated body movements.

- Student presented with a high-average/slightly elevated level of anxiety and scored in the very elevated range for physical symptoms, such as feeling sick and appearing tired.
- Student demonstrated high-average/slightly elevated levels of concern with some delays in age-appropriate self-help skills, including challenges eating and drinking and recognizing the need to use the bathroom.
- Student's communication skills were elevated, noting delays in expressive and receptive language development.
- Student's play skills were elevated, indicating difficulties with imaginative play and using objects symbolically.
- Student presented with high-average slightly elevated levels of concern which indicated some delays in early cognitive and pre-academic skills, specifically difficulty with counting, grouping similar objects, and following along with books.

Student's overall functioning showed concerns, particularly with restless-impulsive behaviors and emotional instability which were high average and indicated potential challenges with self-regulation that may impact Student's overall functioning in the school setting.

Martin administered the Autism Spectrum Rating Scale, ages two to five, which helps determine the likelihood that a child has symptoms associated with autism spectrum disorder. Parent, Coudray, and Ghandy completed the rating scales.

Parent scored Student as very elevated, indicating Student displayed significantly more behaviors associated with autism spectrum disorder than peers across multiple domains. Parent scored Student with significant challenges in

- peer socialization,
- adult socialization,
- unusual behaviors, including stereotype, behavior rigidity and sensory sensitivity, and
- self-regulation.

Coudray reported few levels of autism spectrum disorder related behaviors, and scored Student with slightly elevated to elevated scores in peer socialization, adult socialization, and atypical language.

Ghandy reported scores in the slightly elevated range for peer socialization, adult socialization, atypical language, sensory sensitivity, attention and self-regulation, indicating somewhat more overall behaviors associated with autism spectrum disorder than typically reported for Student's age.

Martin administered the Autism Diagnostic Observation Schedule, second edition, ages two to five, which was utilized to obtain a semi-structured sample of Student's communication and social skills to provide data to determine educational eligibility for autism. Student's comparison scores corresponded to minimal-to-no evidence of autism-related characteristics. Student used single words/phrases and

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gestures for communication, showed appropriate gaze and social reciprocity, engaged in functional emerging imaginative play focused on cause-effect, and displayed no unusual sensory/repetitive behaviors. Specifically:

- Student primarily demonstrated the use of single word and phrases to label toys, make requests and express pleasure during play, with occasional repetition of statements made by Martin. Student used informal gestures alongside his verbal communication. Student's speech was very unintelligible, so abnormalities in intonation, volume, rhythm, and rate were not scored.
- Student demonstrated appropriate gaze and effectively used it to communicate his wants and needs; he exhibited a range of facial expressions. Student responded to joint attention through gaze and initiated spontaneous interactions with Martin and Parent. Rapport was easily established.
- Student engaged in both functional and emerging imaginative play, often guided by his personal preferences, with a strong inclination towards cause-effect toys. Throughout the session, Student demonstrated shared enjoyment with Martin, smiling, showing excitement, and shifting his gaze between Martin and the toys. Student did not display unusual sensory interests or repetitive interests during play and did not display any unusual hand or finger mannerisms.

- Student was calm and cooperative throughout the administration of the Autism Diagnostic Observation Schedule. He did not exhibit disruptive, destructive, or overly aggressive behaviors, nor did he show signs of anxiety. Student did attempt to bite Parent when it was time to leave.

Martin administered the Adaptive Behavior Assessment System, third edition, to measure adaptive behaviors at home, school, work and other settings. Parent completed this rating scale, and overall scored Student in the below average range. This indicated Student's development of daily living skills across various areas was generally lower than what was typically expected for a child of his age, suggesting Student experienced broad challenges in meeting age-appropriate expectations for adaptive behavior.

Overall, Student's cognitive and communication based adaptive skills, as indicated by the conceptual composite of the assessment, fell in the below average range, suggesting Student experienced difficulties in speech, language, and listening skills needed for communication with other people, however, Student's ability to express himself and understand others was developing appropriately.

Student's pre-academic functional skills were below average and showed some difficulty with early academic concepts relating to learning in school but needed for independent functioning, such as reading, writing, and practical math.

Student scored below average in self-direction skills needed for

- independence,
- responsibility,

- self-control,
- making choices,
- completing tasks,
- seeking assistance, and
- following directions.

Overall, the social component scores of the Adaptive Behavior Assessment System assessment fell in the low range.

Student's leisure skills and recreational interests that involved social interaction were average, but skills relating to social exchanges with others were low. Student exhibited substantial difficulty with age-appropriate social interaction.

Overall, Student's scores on the practical composite fell in the below average range indicating challenges in his development of everyday functional skills.

Student demonstrated strengths in appropriate participation in household routines and activities and basic awareness of safety concerns and health-related behaviors Student's fine and gross motor skills were developing appropriately.

Student showed some difficulty with behaviors appropriate for community settings and demonstrated challenges with age-appropriate personal care skills.

SPEECH AND LANGUAGE ASSESSMENT

Speech pathologist Massimino conducted Student's speech and language assessment. In addition to standardized testing, Massimino utilized language samples, teacher and parent reports, a records review, and observations previously discussed.

Massimino utilized the Receptive-Expressive Emergent Language Test, fourth edition, to measure Student's emerging receptive and expressive language skills based on Parent report. The assessment subtests measured Student's understanding and spoken language abilities. Student's language ability was in the below average range.

Student's receptive language was average. Student demonstrated a sense of humor and appeared to recognize when someone was joking. Student understood the meaning of longer sentences rather than relying on only a few key words and comprehended spatial concepts. Student could appropriately respond to simple and direct requests and could follow directions involving objects that were not immediately visible. Student listened to explanations of how things worked and demonstrated understanding of past and future events. Receptive language areas which were still developing include identifying simple shapes, understanding that most words described objects, animals or people, and attending to short stories and answering related questions.

Student's expressive language scores fell in the delayed range. Student showed a preference for certain words by repeating or practicing them. Student repeated some words from a sentence and used some two-word sentences or phrases beyond simple greetings. Student did not yet say at least 50 recognizable words, use phrases such as "I want/don't want," use past tense verbs, refer to friends by name, or use descriptive words for color and size.

Student's vocabulary was in the average range reflecting overall age-appropriate single-word vocabulary use. Student could produce a

- variety of age-appropriate nouns,
- action words,

- descriptive words,
- early prepositions,
- questions,
- his name and names of family members, and
- yes/no.

Massimino administered the Preschool Language Scale, fifth edition, which also measured Student's receptive and expressive language skills. Student's expressive language skills fell in the average range compared to age-matched peers. Massimino noted that while Student could use a variety of nouns and pronouns, he did not demonstrate the use of a variety of verbs in spontaneous speech. Student did not produce word modifiers or four-to-five-word sentences. Student did not use the present progressive form, nor did he consistently answer "what or where" questions or describe objects when prompted.

Massimino utilized the Clinical Assessment of Articulation and Phonology, second edition to assess Student's speech sound production. Student demonstrated several phonological processes, which were considered typical for his developmental stage, which included

- fronting,
- multisyllabic word reduction,
- consonant cluster reduction,
- sound substitutions, and
- substitution on "th" sounds.

Student also demonstrated final consonant deletion, which was not considered age appropriate beyond two years, nine months of age. This deletion impacted Student's ability to produce complete words, resulting in speech that was often difficult for listeners to understand without contextual support. This pattern was more frequent during multi-word utterances, particularly as sentence length and complexity increased.

Parent completed the Intelligibility in Context Scale which assessed how well Student's speech was understood by different communication partners. Overall, Student's speech was reduced for his age. Student's scores indicated he was more likely to be understood by Parent and immediate family members, was sometimes understood by teachers, friends, and extended family members, and was less likely to be understood by acquaintances and strangers.

There were no concerns with Student's voice or fluency, indicating no stuttering or vocal pathology.

Joy Brewster, Student's private speech and language therapist at KidStart testified at hearing. Brewster began speech sessions with Student in June 2025, after the May 2, 2025 assessment was completed and after Del Mar Union made its offer of FAPE. Therefore, her testimony was given little weight. Nevertheless her testimony generally supported Massimino's assertions and recommendations. Student presented with a moderate-to-severe speech delay and articulation needs, which were accompanied by attention difficulties and behavior issues. Brewster recommended 30 minutes per week of one-to-one speech therapy. Student exhibited attention to task was limited to four-to-five minutes at a time.

Student received home-based speech and language therapy from Carolina Biebel for approximately 10.5 months with an increase to twice-weekly sessions

beginning in November 2024. Based upon the information obtained from Biebel, in May 2024, Student's receptive language skills were age-appropriate at the 21–24-month level, while expressive language skills were moderately to severely delayed at the 12-to-15-month level. As of the most recent update, Student's receptive skills were at the 30–33-month level (low average) and expressive language skills improved to the 27-30-month range. Progress was noted in increasing expressive vocabulary. Student produced three-word utterances, and used gestures, signs, and approximations to communicate.

However, ongoing delays in speech sound production, including phonological error and reduced intelligibility in unfamiliar contexts, continued to impact effective communication. When unintelligible, Student exhibited negative behaviors due to frustration for inability to communicate effectively. Full speech and language testing through the local school district was recommended to determine eligibility for school-based services.

SUMMARY

Student's cognitive skills were developing within the typical range for children his age. Academically, Student's lower performance in early literacy was likely influenced by ongoing communication challenges.

Results of social, emotional, and behavioral assessments produced more mixed scores depending on the reporter. Parent reported significant concerns regarding Student's overall functioning across multiple behavioral domains. Coudray reported

appropriate functioning across all assessed behavioral and developmental domains within the classroom; while Ghandy suggested elevated concerns in the areas of aggression, social functioning, communication, and play.

Assessment results on whether Student exhibited characteristics of autism spectrum disorder were also mixed. Parent reported very elevated scores, while Ghandy indicated only slightly elevated scores. Student displayed minimal-to-no evidence of autism during the assessments. While his speech was sometimes unintelligible, he showed good social engagement and enjoyed shared activities. Del Mar Union's assessors did not observe any stereotyped behaviors.

DETERMINATION OF SPECIAL EDUCATION ELIGIBILITY

Student did not meet the eligibility criteria for autism. Del Mar Union's assessors opined that based on classroom observations and assessments, Student presented with minimal autistic-like behaviors. While Student showed slightly reduced engagement with peers and adults, and there were concerns about atypical language, these features appeared more aligned with Student's speech delay than indicative of autism. Overall, behavioral characteristics typically associated with autism did not seem to be adversely affecting Student's educational performance in the classroom.

Student did not meet the eligibility criteria for other health impairment. Martin initially proffered two different conclusions regarding other health impairment eligibility.

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First Conclusion:

Valid assessment data and observations indicate that Student displays behaviors often associated with attention deficit hyperactivity disorder (ADHD), including inattention, impulsivity, and emotional dysregulation. Despite initial KinderCare reports of developmentally appropriate attention and impulse control, valid assessment data and his most recent teacher observations indicate that Student exhibits behaviors consistent with ADHD, such as inattention, impulsiveness and emotional dysregulation. Specifically, the teacher reports occasional inattention, restlessness, and distractibility, and poor impulse control which ultimately impacts Student's ability to participate effectively in structured learning.

Second Conclusion:

Student is a healthy child without chronic or acute health conditions. Although Parent reports significant attention and behavioral control difficulties at home, his most recent teacher indicated only mildly elevated concerns regarding sustained attention, impulse control, and self-regulation. Classroom observations suggest that some of Student's behaviors, such as running, shifting activities, and distractibility, are consistent with typical development for a three-year-old. While certain behaviors might resemble ADHD traits, considering his young age and his overall presentation in the classroom, marked by typical strength, vitality and alertness, and the lack of significant impact on his educational performance, indicates that Student does not currently meet other health impairment criteria for significant behavioral characteristics impacting his education.

Martin testified regarding the conflicting statements. Martin was faced with a hard decision. She was conflicted. The information provided by KinderCare employees was inconsistent. The outcome of the two eligibility statements could not both be true. Martin sought guidance from the other assessors to discuss the variations in information. Ultimately, after the second IEP team meeting, Martin decided Student did not qualify under other health impairment. Although Student had weaknesses in some areas, none impacted his access to learning.

Student did not meet the eligibility criteria for emotional disability. While Parent reported significant concerns regarding defiant behaviors, mood and affect, aggression, and social functioning, the KinderCare teacher and staff observations indicated substantially less frequent and intense aggressive behaviors and social skill deficits, suggesting that Student's primary difficulties were strongly linked to frustration arising from communication breakdowns. When Student experienced challenges in communication, it often escalated into frustration, occasionally manifesting as hitting (approximately once per week per teacher report), and difficulties in peer interactions, particularly around sharing and when his attempts to communicate were not understood. This communication barrier seemed to be a key trigger for his behavior responses. Given the KinderCare teacher and staff's perspective, Student's behavioral challenges in the preschool setting appeared to be directly attributable to communication difficulties, rather than significant underlying emotional problems that inherently impede his access to education.

Student met the eligibility criteria for speech or language impairment in speech sound production. Student demonstrated reduced intelligibility related to the presence of final consonant deletion and multiple phonological process and articulation errors,

which adversely impacted Student ability to communicate effectively in an educational setting. Although Student's expressive language skills were found to be delayed on one subtest, his scores were not below the seventh percentile and did not meet the criteria for eligibility under expressive language delay.

ISSUE 2: DID DEL MAR UNION DENY STUDENT A FAPE IN MARCH 2025 BY FAILING TO ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY?

Parent contended she informed Del Mar Union personnel that Student displayed escalating sensory and emotional behaviors which impeded his participation in preschool activities and requested a comprehensive evaluation to determine Student's eligibility for special education and related services. Parent contended Del Mar Union failed to assess in all areas of disabilities, including

- occupational therapy,
- educationally related mental health,
- executive functioning,
- social skills, and
- specialized academic instruction.

Del Mar Union contended it assessed Student in all areas of suspected disability and that occupational therapy, educationally related mental health, and social skills were not areas of suspected disabilities.

For purposes of evaluating a child for special education eligibility, the district must ensure that the child is assessed in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, §56320, subd. ((f).) Decisions regarding areas to be assessed

are driven by the suspected needs of the child. If a child's behaviors or physical status is of concern, evaluations addressing these areas must be conducted. (71 Fed. Reg. 46,643 (2006).)

The requirement to assess a student may be triggered by informed suspicions of outside experts. Once the school district has notice that a student displayed symptoms of an eligible disability, it must assess the student in all areas of that disability. Informal observations and the subjective opinions of staff members who dispel such reported suspicion are not sufficient. (*Timothy O. v. Passo Robles Unified School Dist.*, (9th Cir. 2016) 822 F. 3d 1105, *N.B. v. Hellgate Elementary School Dist.*, (9th Cir. 2008) 541 F. 3d 1202.)

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

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d. 1025, 1031-1033.)

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ISSUE 2(a): DEL MAR UNION'S FAILURE TO ASSESS STUDENT IN OCCUPATIONAL THERAPY WAS A PROCEDURAL FAPE VIOLATION BUT DID NOT DENY STUDENT A FAPE

As previously discussed, since November 2024, the regional center provided one hour per week of individual occupational therapy to Student. Further, Dr. Isla's recommended ongoing occupational therapy in her March 2025 assessment report. Despite this information, Del Mar Union did not assess Student in occupational therapy as part of the May 2, 2025 multidisciplinary assessment.

Whether Del Mar Union received a copy of Student's regional center records that included information about the occupational therapy he received, was disputed at hearing. However, whether Del Mar Union received Student's records is immaterial as the evidence showed Del Mar Union had knowledge Student received occupational therapy from multiple sources, including Parent, Student's regional center service coordinator Sum, and Dr. Isla's report. Therefore, Del Mar Union was on notice that Student had a suspected disability that required occupational therapy services.

Student's contention that Del Mar Union should have assessed him in occupational therapy was further supported by the May 2, 2025 assessment report's acknowledgment that Student received occupational therapy through the regional center.

The May 2, 2025 assessment report accurately summarized Dr. Isla's developmental evaluation report. However, school psychologist Martin omitted Dr. Isla's information regarding occupational therapy to address Student's sensory processing and self-regulation, both of which presented concerns to behavior, and

attention deficit hyperactivity disorder. Further, Dr. Islas acknowledged Student received occupational therapy sessions and recommended Del Mar Union assess Student in the area of occupational therapy; Del Mar Union ignored this recommendation.

Lynn Melickian, a licensed occupational therapist at KidStart, testified at hearing. Melickian, an occupational therapist for 42 years, assessed Student in June 2025. This assessment was not admitted into evidence as it was a medically based assessment conducted after Del Mar Union's May 2, 2025 assessment report and offer of FAPE. Her testimony as Student's expert witness credibly addressed the dynamics of occupational therapy needs. In addition to assessing fine motor and gross motor skills, an occupational therapy assessment also looks at sensory processing and daily living skills. Further, occupational therapy challenges can occur in all environments but may be more severe in one area. An occupational therapy assessment could determine what areas would affect Student's access to education. Melickian opined that the information contained in Dr. Islas' report was sufficient to establish a suspicion that Student had occupational therapy needs and should have been assessed.

Martin's belief that Student did not present with fine or gross motor weaknesses, did not alleviate Del Mar Union's obligation to formally assess Student's occupational therapy needs. Student exhibited difficulty with sensory integration, emotional regulation, and adaptive functioning. All this information established a need to assess Student in the area occupational therapy. Del Mar Union's failure to do so, was a procedural violation of the IDEA.

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While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School District* (9th Cir. 2001) 267 F.3d 877, 892.)

A procedural violation does not constitute a denial of FAPE unless the procedural inadequacy impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(i) & (ii); Ed. Code, § 56505, subd. (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.) (*Target Range*.)

Student failed to establish by preponderance of the evidence that he was denied access to learning in the short period of time involved in this matter. Del Mar Union held Student's initial IEP over three IEP team meetings, on May 2, and May 20, and May 29, 2025. During the discussions at Part 1 of the May 2, 2025 IEP, the IEP team acknowledged they needed more information and offered to conduct an occupational therapy assessment. Del Mar Union did not make an offer of FAPE at the May 2, 2025 meeting because they ran out of time. They scheduled two follow-up meetings and on May 29, 2025, Del Mar Union made a complete offer for special education and related services to Student.

Student was not owed any services from Del Mar Union until the May 2, 2025 IEP team meeting, at the earliest. Only 27 days elapsed between the two IEP team meetings. Student did not present any evidence that he lost any educational benefit

in these 27 days. Student was enrolled in a private preschool program and received private occupational therapy services. Del Mar Union's delay in offering an occupational therapy assessment did not result in a loss of these services.

Further, Del Mar Union's failure to conduct an occupational therapy assessment as part of its initial assessments did not significantly impede Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to Student. Parent was an active participant in the assessment and IEP process. In fact, Del Mar Union scheduled the May 29, 2025 IEP team meeting to accommodate Parent's questions regarding the assessments and to discuss all Student's needs.

On May 13, 2025, Schick provided Parent with a prior written notice agreeing to the request for an occupational therapy assessment. This was prior to the IEP team meeting on May 20, 2025, and Del Mar Union's initial offer of FAPE on May 29, 2025.

Parent distrusted the Del Mar Union assessors and was frustrated with members of the IEP team. Instead of completing the IEP process, on May 7, 2025, Parent formally revoked consent for Del Mar Union to further assess Student or investigate Parent's concerns. Moreover, Parent ultimately did not consent to the final offer of FAPE, which relieved Del Mar Union of any further requirement to pursue Student's request for special education and related services.

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ISSUE 2(b), 2(c), 2(d), AND 2(e): DEL MAR UNION DID NOT FAIL TO ASSESS STUDENT IN EDUCATIONALLY RELATED MENTAL HEALTH, EXECUTIVE FUNCTIONING, SOCIAL SKILLS, AND SPECIALIZED ACADEMIC INSTRUCTION

Throughout her interactions with Del Mar Union staff, Parent reported a plethora of information regarding Student's developmental delays and behavior, describing among other things, Student's aggression, inattention, sensory issues, and perceived academic delays. She provided examples of behavior challenges and reported Student had attention deficit hyperactivity disorder and oppositional defiance disorder. Parent reported developmental delays in adaptive behavior and difficulty with communication which impacted Student's ability to successfully interact with peers and adults. That Parent provided Del Mar Union with a significant amount of information to establish a suspicion of disability and subsequent need to assess in these areas was not disputed. Student's contentions that Del Mar Union failed to assess were based on her disagreement with Del Mar Union's assessment findings, and not on their failure to assess Student. Disagreement with assessment results is not the same as a failure to assess and the evidence established that Del Mar Union assessed Student in mental health, executive functioning, social skills, and academics.

MENTAL HEALTH

Other than the Dr. Islas report, Parent provided no information to Del Mar Union identifying a private therapist, psychologist, or psychiatrist providing Student with mental health services. Dr. Islas did not report exceptional mental health issues or emotional disabilities. Instead, Dr. Islas recommended that Parent obtain an assessment

for parent-child based mental health services with a focus on behavior, parent behavior management, reducing incidents of aggression, and promoting the parent-child relationship. This was not a recommendation for an educationally based assessment or educationally related mental health services. Despite Parent's insistence to the contrary, Dr. Islas did not make any diagnosis or representation that Student was diagnosed with attention deficit hyperactive disorder, oppositional defiance disorder, or any other emotional disability.

As noted by KinderCare's Coudray and Ghandy, and Student's IEP team members experienced in early childhood education, maladaptive behaviors were common in preschoolers and were often considered developmentally age appropriate. This presented a conundrum to differentiate mental health related behavior from maladaptive behaviors. At hearing, Dr. Islas confirmed this point by stating her findings did not meet the criteria for any diagnosis because most diagnoses were inappropriate for children under three years of age.

School psychologist Martin administered the Conners ratings scales to assess a wide range of behavioral, emotional, and social concerns, and developmental milestones in preschool aged children.

Martin administered the Autism Spectrum Ratings Scale and the Autism Diagnostic Observation Schedule, both of which were designed to solicit information regarding socialization difficulties, unusual behaviors, behavior rigidity, and self-regulation. These are all areas of possible comorbidity or symptoms of emotional disabilities.

Martin administered the Adaptive Behavior Assessment System, which assessed Student's adaptive behaviors, including self-control, following directions, completing tasks, and social interaction.

These standardized tests along with the assessment interviews and observations were sufficient to determine whether there was any suspicion that Student had an emotional disability requiring educationally related mental health services.

Parent's contention that Del Mar Union failed to assess mental health was unsubstantiated. Nor did Parent establish that Del Mar Union's multidisciplinary assessment findings suggested a need to further explore additional areas related to mental health.

EXECUTIVE FUNCTIONING AND SOCIAL SKILLS

Parent's concerns regarding executive functioning and social skills were primarily related to Student's symptoms which suggested attention deficit hyperactivity disorder and his established difficulties with communication and aggressive behavior.

In children, executive functioning generally refers to the mental processes that help them manage, plan, and organize their behavior. Social skills include our ability to interact and communicate with others. School psychologist Martin administered several assessment tools that addressed Student's mental processes, behavior, and social skills. The Conners assessed a wide range of behavioral, emotional, and social concerns. The Autism Spectrum Ratings Scale and the Autism Diagnostic Observation Schedule assessed areas including socialization difficulties, unusual behaviors, behavior rigidity, and self-regulation. The Adaptive Behavior Assessment System addressed areas including self-control, following directions, completing tasks, and social interaction. Student's cognitive skills were developing at an age-appropriate rate, and while he exhibited some behavioral and social challenges, much of those were attributed to his identified communication deficits.

Student failed to establish that the assessment tools Del Mar Union relied upon in its multidisciplinary assessment failed to assess Student in executive functioning or social skills. Student also failed to establish there were additional assessment tools Del Mar Union should have used to assess Student in these areas.

SPECIALIZED ACADEMIC INSTRUCTION

Specialized academic instruction is not an area of disability but is a special education service provided for academic support. Assuming Parent meant Del Mar Union failed to assess in academics, or in Student's case, pre-academics, the record reflected that Del Mar Union's assessment was multidisciplinary and contained a comprehensive academic assessment conducted by Murphy.

Murphy administered the Developmental Assessment of Young Children, to assess Student's cognitive abilities. As indicated in the May 2, 2025 assessment report, this assessment focused on Student's emerging conceptual skills, involving

- attention,
- memory,
- purposeful planning,
- decision-making and
- discrimination, which included areas such as
 - recognizing shapes,
 - counting,
 - identifying letters and numbers, and
 - understanding sequences.

Murphy administered the Woodcock Johnson Early Cognitive and Academic Development assessment which investigated Student's early academic skills at the preschool level.

Additionally, the Conners' developmental scales subtest explored Student's knowledge of pre-academic concepts such as

- shapes,
- colors,
- letters,
- numbers, and
- body parts.

Student did not establish Del Mar Union should have assessed him further in pre-academics. As Director of Special Education and Student Support Nadine Schick reiterated in the IEP team meeting, a student who was developing skills was not expecting to have mastered those skills. Student might demonstrate some inconsistencies as described by Parent, but often students know information one day and not the next, because they have not generalized the information. Student presented with some weaknesses, but a weakness was not the same as a deficit.

Student did not establish that the May 2, 2025 multidisciplinary assessment failed to assess him in academics or pre-academics, such that the IEP team did not have sufficient information regarding Student's potential need for specialized academic instruction.

ISSUE 3: DID DEL MAR UNION DENY STUDENT A FAPE BY FAILING TO FIND STUDENT ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES UNDER OTHER HEALTH IMPAIRMENT AND EMOTIONAL DISABILITY?

Student contended that the May 2 2025 IEP denied him a FAPE when the IEP team failed to find Student eligible for special education and related services under the categories of other health impairment and emotional disability in addition to speech or language impairment. Student argued the information provided by Parent and outside assessors as well as Del Mar Union’s own assessment results reflected sufficient information to qualify Student in those additional categories.

Del Mar Union contended that while Student displayed some symptoms associated with attention deficit hyperactivity disorder, sensory meltdowns and maladaptive behaviors, none rose to the level necessary to meet eligibility criteria for other health impairment and emotional disability. Nor did Student’s weaknesses in these areas limit his access to learning.

A child may be found eligible for special education and related services beginning at three years of age. (Ed. Code, § 56026, subd. (c)(2).) A preschool child between the ages of three and five may qualify for early childhood special education services provided by a local educational agency if the criteria for an identified disabling condition is met and the need for specially designed instruction or services is established, among other criteria. (Ed. Code, § 56441.11, subd. (d).)

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As long as a child remains eligible for special education and related services, the IDEA does not require the child to be placed in any particular disability category. Nothing in the IDEA requires that children be classified by their disability so long as each child who has a disability listed in the IDEA 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); 34 C.F.R. § 300.111(d); see also Ed. Code, § 56301, subd. (a).)

United States Department of Education guidance has long been that a child's entitlement is not to a specific disability classification or label, but to a FAPE. (*Letter to Fazio* (U.S. Dept. of Educ., Office of Special Education Programs (OSEP) Apr. 26, 1994) 21 IDELR 572.) The IDEA simply requires that to be eligible for special education, a student must have a qualifying disability, and, because of that disability need special education. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a)(1) & (b); Ed. Code, § 56026, subds. (a) & (b).)

Further, the existence of a medical diagnosis does not automatically determine that the condition adversely affects a student's educational performance. A student may have a qualifying disability and still not be found eligible for special education, let alone a specific category. (See *Hood v. Encinitas Union School Dist.* (9th Cir. 2007) 486 F.3d 1099, 1107-1108, 1110.)

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STUDENT DID NOT ESTABLISH HE MET ELIGIBILITY CRITERIA FOR OTHER HEALTH IMPAIRMENT

The eligibility criteria for other health impairment, defined by title 5 of the California Code of Regulations section 3030, subdivision (9), requires that a student has limited strength, vitality, or alertness, including a heightened alertness with respect to the educational environment, that:

- is due to chronic or acute health problems which include attention deficit disorder or attention deficit hyperactivity disorder; and
- the condition adversely affects the child's educational performance; and
- the condition is not temporary in nature.

The Del Mar Union members of the IEP team determined that Student did not meet the eligibility criteria under other health impairment.

In the original draft of the assessment report Martin proffered two different conclusions regarding other health impairment eligibility for consideration in the multidisciplinary assessment. After Martin's presentation of assessment information and an overtly robust debate regarding Student's observed symptoms and behaviors in the May 2, and May 29, 2025 IEP team meetings, Martin amended the final assessment report to reflect only the second analysis that Student did not meet eligibility criteria for other health impairment as her findings. The IEP team notes reported that the eligibility statement in the draft assessment report was "refined" based on information provided during the IEP team meeting on May 20, 2025. This "refinement" was inappropriate, as

it appeared a self-fulfilled the prophecy. The “refinement” only supported the finding of non-eligibility under other health impairment, which justified the IEP team determinations argued in the two earlier IEP team meetings.

Martin acknowledged she was conflicted with the issue of other health impairment eligibility. The assessment data made it difficult to determine whether Student’s behaviors were age appropriate or whether they were due to attention deficit hyperactivity disorder. Prior to revising the May 2, 2025 assessment, Martin discussed her dilemma with other team members outside of the IEP team meeting to review these choices in relation to the assessment information, as discussed in the earlier IEP team meetings. It is no wonder Parent suspected a conspiracy. While Martin’s ultimate recommendation was supported by the evidence, she deleted the analysis supported by Parent during hotly contested IEP team meetings.

It is generally acceptable for an assessment report to be amended or supplemented. Many times, an IEP team will discover a need to further assess in an area which is teased out during team discussions, and additional information becomes available which is relevant for consideration by the IEP team. In those cases, the original information remains in the assessment report, and the new information is added as a supplement or correction. As example, it was appropriate for Del Mar Union to “refine” the May 2, 2025 assessment report regarding Coudray’s participation in the assessment process. The assessment report noted Parent’s objection to Coudray’s qualifications as an assessment rater; reported Coudray’s assessment results and subsequently assessed and reported Ghandy’s information as a supplemental addition to the report for consideration by the IEP team;

thus, the finding and recommendations could be considered in their entirety. Acceptable “refinement” however does not simply remove previously reported information to fit the IEP team meeting discussions, especially where the subject matter such as eligibility was highly contested. Its deletion was not a mere clerical error.

Nevertheless, collateral testimony regarding Student’s symptoms of attention deficit hyperactivity disorder was unpersuasive. Student argued that Dr. Lauren Gist, Student’s developmental pediatrician at KidStart documented that Student displayed behaviors consistent with attention deficit hyperactivity disorder, heightened emotional reactivity, and sensory dysregulation affecting his strength and attention.

Dr. Gist’s testimony in this matter, while most likely accurate, was given little weight as it was based on progress notes dated July 22, 2025, far after the May 2, 2025 assessment report and final IEP team meeting. Dr. Gist simply opined that if a child was on medication to address symptoms of attention deficit hyperactivity disorder, then the child probably had attention deficit hyperactivity disorder. Further, Dr. Gist’s testimony was offered strictly on a medical basis and provided no educational considerations or insight into whether Student’s symptoms prevented him from accessing learning.

The IEP team acknowledged that a health diagnosis was not required to meet other health impairment criteria, however Student still did not meet the necessary criteria even with Parent’s concerns regarding Student’s behavior. Parent’s concerns in the home setting were not indicated to the same degree as Student’s behavior at school.

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While Parent's presentation at hearing did not prove that Student was entitled to an other health impairment eligibility for special education and related services, Del Mar Union's redaction of favorable eligibility information in the assessment report, rendered their determination of non-eligibility unpersuasive as well. Per the wisdom of *Rowley*, judges cannot substitute their own opinions for the decisions of the IEP team.

However, even assuming the assessment report was fatally flawed, and constituted a procedural violation, Parent failed to establish she was denied parental participation in the IEP process. The redaction in the assessment report did not occur until after the May 20, 2025 IEP team meeting, where the IEP team including Parent, had a full review and discussion of Student's eligibility. Further, Student presented no evidence of actual educational loss to Student as a result of any procedural violation.

STUDENT DID NOT ESTABLISH HE MET ELIGIBILITY CRITERIA FOR AN EMOTIONAL DISABILITY

The eligibility criteria for emotional disability under title 5 of the California Code of Regulations section 3030, subdivision (5), requires that a student exhibit one or more of the following conditions:

- An inability to learn that cannot be explained by intellectual, sensory or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- Inappropriate types of behavior or feelings under normal circumstances;

- A general pervasive mood of unhappiness or depression; or
- A tendency to develop physical symptoms or fears associated with personal or school problems.

Additionally, one or more of these characteristics must be present over a long period of time, to a marked degree and adversely affect the child's educational performance. The term emotional disability does not apply to children who are socially maladjusted without a qualifying condition identified above.

Student argued that Del Mar Union ignored the full scope of Dr. Islas' report and excluded Parent's observations and concerns from meaningful consideration at the IEP team meetings. This contention was patently untrue. Unless otherwise noted, each of the factual determinations in this Decision which were attributed to Parent's reporting and observations, and outside provider reports and contributions, were acknowledged by Del Mar Union and corroborated in the May 2, 2025 assessment report and the May 2, 2025 IEP team meeting notes. It was not that Del Mar Union members of the IEP team ignored Parent's concerns; they simply disagreed with her conclusions and requested outcomes.

No one disputed that Student had challenging and aggressive behaviors. Parent opined that Student demonstrated inappropriate types of behavior and feelings under normal circumstances, in all domains, which was the criteria for an emotional disability eligibility. Parent concluded that if Student demonstrated those behaviors as described in the statute, Student was eligible under the category of emotional disability per se. Parent provided sophisticated philosophies and hypothetical conclusions regarding the impact of Student's behavior, but at the end of the day, Student failed to offer facts which denoted a negative impact on his ability to learn or access education.

Schick opined that Student's behavior was not due to a disability, but due to social maladjustment. The criteria for emotional disability required that Student's behavior be due to a disability, not due to a social maladjustment. Martin further clarified the differences between social maladjustment and emotional disability, emphasizing that Student's behaviors were related to communication breakdowns. The consensus of opinion of all speech and language professionals that worked with or assessed Student, indicated that Student's behaviors were primarily linked to a breakdown in communications and frustrations when not understood by others. Martin acknowledged that pursuant to Parent's data, Student exhibited behavior outside of communication breakdowns; however, pursuant to school data, Student's behaviors appeared to be related to communication breakdowns.

Parent contended that Dr. Islas reported that Student had a severe attention deficit hyperactivity disorder that was turning into oppositional defiance disorder, and this constituted evidence of emotional disability. This argument was not persuasive because Dr. Islas expressly did not make any diagnoses because Student was too young to be diagnosed.

The IEP team carefully considered Student's behavior in relation to the criteria for emotional disability. The IEP team reviewed the emotional disability eligibility, and considered multiple sources of information, including information from Parent, Dr. Islas, Coudray, and Ghandy. Martin and Murphy opined that although Student demonstrated behavioral difficulties, the behaviors did not appear to impact his educational performance at the time. What symptoms the IEP team observed in determining Student's maladaptive

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behaviors were triggered by communication breakdowns, were similar to what Student's outside providers shared. As Linda Weaver, Del Mar Union's general education teacher commented, although Student's aggressive behavior was not acceptable, Student was still able to access his education based on the assessments.

Student did not establish that he qualified for special education and related services under the eligibility category of emotional disability.

ISSUE 4: DID DEL MAR UNION DENY STUDENT A FAPE BY PREDETERMINING STUDENT'S ELIGIBILITY FOR SPECIAL EDUCATION AND RELATED SERVICES AT THE MAY 2, 2025 IEP TEAM MEETING?

ISSUE 13: DID DEL MAR UNION DENY STUDENT A FAPE BY PREDETERMINING SERVICES OFFERED AT THE MAY 2, 2025 IEP TEAM MEETING?

Issues 4 and 13 involve the same legal analysis regarding predetermination and are therefore discussed together.

Student contended that Del Mar Union held a staff meeting outside the IEP process without Parent present, at which time they predetermined that Student did not qualify for special education and related services under the eligibility category of other health impairment and subsequently removed a portion of Student's assessment report to comport with their unilateral decision to deny eligibility. Therefore, by predetermining

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Student's ineligibility under any other eligibility category, Del Mar Union effectively predetermined that Student would receive no services beyond those offered for speech and language.

Del Mar Union contended it did not predetermine any portion of the May 2, 2025 IEP.

Predetermination of a student's placement is a procedural violation that can deprive a student of a FAPE. (*K.D. ex rel. C.L. v. Dep't of Educ., Hawaii* (9th Cir. 2011) 665 F.3d 1110, 1123.) Predetermination occurs when an educational agency has decided on its offer prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Cupertino Union Sch. Dist. v. K.A.* (N.D.Cal. 2014); 75 F.Supp.3d 1088, 1099; *Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.)

While predetermination occurs when a school district makes decisions regarding a child's educational program, services, or placement prior to the IEP team meeting, and refuses to consider parental input or evaluation data during the meeting. (34 C.F.R. § 300.501(B)), the IEP team is not required to adopt the parent's views and demands. The IEP team is only required to hear and consider the opinions of the parent or any assessor or service provider for that matter, to ensure parental participation. The IEP team is not required to defer to them. An IEP does not need to conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education ... designed according to the parents' desires"], citing *Rowley, supra*, 458 U.S. at p. 207.)

School district staff are allowed to come prepared to discuss evaluations and preliminary recommendations. (78 Fed. Reg. 46679 (2006).) The test for predetermination is not whether school staff members have met and discussed the IEP and recommendations prior to the scheduled IEP team meeting or discussed the IEP outside the presence of the parent. Rather, the test is whether the school district arrived at the IEP team meeting with a "take it or leave it" offer. (*J.G v. Douglass-County Sch. Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.)

As discussed in Issue 3, Del Mar Union's decision to redact the assessment recommendation regarding other health impairment gave the appearance of an eligibility decision made outside of the IEP team meeting. However, it did not reach the level of predetermination. The eligibility redaction in the May 2, 2025 assessment report did not take place until the final copy of the report was completed. This was after the completion of the IEP team discussions of eligibility, not before the discussions, which would have supported predetermination.

Reviewing assessments or topics for IEP team meetings were regularly discussed in Del Mar Union's staff meetings. Assessment reports were sent to Brady as the program specialist to review for compliance and clerical errors. Brady was not involved in the assessment process and did not influence the recommendations contained in the report. Brady then set a staff meeting for their members of the IEP team to discuss what would be discussed at the IEP team meeting. Schick confirmed that assessment reports were reviewed prior to the IEP meeting to look for compliance issues and read for clarity and understandability. Reviewers did not edit the content of the assessment reports.

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Student placed great relevance on the staff meeting held the day prior to the May 20, 2025 IEP team meeting. Brady credibly testified that she held the meeting for several reasons. The IEP team meeting on May 2, 2025 had been a disaster which was neither respectful or collaborative, and she wanted to avoid a repeat by having the Del Mar Union member prepared and ready to answer Parent's questions. Further, the assessors collected new information at Parent's request and had more extensive answers to Parent's questions, which would be reviewed at the May 20, 2025 IEP team meeting. Brady reported that staff meetings were not unusual as they were a discussion, not a decision-making process. No notes were taken, nor were members presented with written notes.

Parent introduced a handwritten note captioned "Staffing 5/19/25," written by Brady. The note contained a bullet list of items which included the phrase, "not providing school." Much time was spent pursuing the meager content of this note at hearing. Again, Brady credibly testified that the note was a personal reminder for conducting the meeting, similar to an agenda for the meeting. No decisions were made during this meeting. Parent's contention was nothing more than an unsubstantiated hunch.

Student failed to establish that the staff meeting on May 19, 2025 was anything other than a staff meeting.

Student's primary contention regarding predetermination arose from a sincere belief that Parent was not being heard, and questions were not being taken seriously. As was previously noted, Parent had an extensive educational background. She expected to be treated as an equal member of the IEP team, on par professionally with other team members in all areas of special education knowledge and experience.

Parent however, presented as opinionated, arrogant, sarcastic, and condescending throughout each IEP team meeting, and again at hearing. She did not accept disagreement with her opinions and was easily frustrated.

Admittedly, Parent's level of education made for a higher-level discussion than initially expected from a parent. Many of Parent's questions initially remained unanswered. Most of the answers which were provided were unacceptable or dismissed because they did not comport with Parent's expectations. As a result, each of the IEP team meetings frequently dissolved into tangents of overly critical comments and over-speaking by each team member wanting to control the discussions. The meetings were contentious and toxic. The IEP team recordings reflect that when the parties were yelling or interrupting, they were not effectively listening. When they were agitated, they were not clearly expressing their thoughts.

In reviewing the IEP transcripts along with the supplements to the assessment report, Del Mar Union did not predetermine Student's eligibility or services. At no time did Del Mar Union IEP team members approach the IEP team discussions with a "take it or leave it" attitude. Parent actively participated in all aspects of the IEP process. All her factual observations and concerns were documented and considered throughout the process. Private assessment reports available at the time were included in the May 2, 2025 assessment report. The IEP team reconvened on May 20, and May 29, 2025 to revisit the assessments, obtain new information and obtain additional information to answer Parent's questions. Del Mar Union agreed to Parent's May 7, 2025 request for independent assessments. Although the Del Mar Union members of the IEP team steadfastly disagreed with Parent's opinions and conclusions, they did not dispute the observations or assessments presented by Parent, and Student's teachers and service providers, but simply reported the information as it was provided.

While Parent strenuously disagreed with Del Mar Union's determination of eligibility and offer of services, Student presented no credible evidence to establish predetermination in either eligibility or related services.

ISSUE 5: DID DEL MAR UNION DENY STUDENT A FAPE BY REQUIRING PARENT TO OBTAIN A MEDICAL DIAGNOSIS FOR STUDENT TO BE ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES UNDER OTHER HEALTH IMPAIRMENT AND EMOTIONAL DISABILITY?

Student contended Del Mar Union denied Student a FAPE by requiring Parent to obtain a medical diagnosis for Student to be eligible for special education and related services under the eligibility categories of other health impairment and emotional disability.

Del Mar Union contended it repeatedly informed Parent that a medical diagnosis was not required to determine eligibility for special education, but a medical diagnosis could be considered as a factor in analyzing the criteria for eligibility.

Del Mar Union did not require Parent to obtain a medical diagnosis to determine Student's eligibility for special education and related services.

The testimony on this issue was contradictory and unpersuasive. Therefore, the ALJ listened to each of the IEP recordings and reviewed each of the written IEP team meeting transcripts to verify the testimony offered by each party.

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During the May 29, 2025 IEP team meeting, Martin discussed the assessment report, and the team considered the eligibility categories of other health impairment and emotional disability as discussed in Issue 3.

Regarding other health impairment, the record clearly and unequivocally stated:

“So for this we consider any health condition, any diagnoses that they (the child) may have. We also would consider attention deficit hyperactivity disorder under this area. A child doesn’t have to have a diagnosis to meet eligibility, but it’s definitively something that we consider. And our assessment indicates that Student is a healthy child with no diagnosed chronic or acute health conditions at this time.”

In attempting to discuss the criteria for emotional disability, Parent referred to Dr. Islas’ report to support her contention that Student’s behavior was not solely communication related, but also qualified Student under emotional disability. Brady noted that Dr. Islas did not give Student any kind of diagnosis for an emotional disability. Parent responded that she informed someone at Del Mar Union that Dr. Islas specifically stated Student had severe attention deficit hyperactivity disorder, and it was turning into oppositional defiance disorder, but Student was too young to give an exact diagnosis. Dr. Islas would need to reassess Student at age four or five to provide an official diagnosis.

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As the parties continued to debate the definitions of medical diagnosis and special education eligibility, Parent again asked if Brady, and ergo the other members of the IEP team, were claiming that a student had to have a diagnosis to receive services.

Brady responded:

“No, and Martin spoke to that. You don’t have to have a diagnosis, but you do have to meet criteria through the education code to have eligibility, and at this time the team is not seeing that Student meets the eligibility criteria for other health impairment and emotional disability. Further, if a doctor were to say Student had attention deficit hyperactivity disorder or an emotional disability, that would be information that the team would consider. There would still have to be that adverse educational impact because a medical diagnosis is different than special education eligibility.”

Although Parent disagreed with Del Mar Union IEP team members about eligibility, and Parent continued to insist that Del Mar Union was requiring a medical diagnosis for Student to meet eligibility criteria, the record is clearly to the contrary. Del Mar Union did not require a medical diagnosis for Student to qualify for special education and related services, nor did Del Mar Union tell Parent or even imply that a medical diagnosis was required.

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ISSUE 6: DID DEL MAR UNION DENY STUDENT A FAPE BY FAILING TO INCLUDE A SCHOOL NURSE AT THE MAY 2, 2025 IEP TEAM MEETING?

Parent contended that Student had a known medical and developmental history that implicated health-related factors that required the interpretation by qualified medical personnel.

Del Mar Union contended there is no requirement under the IDEA or California law that a school nurse is a required IEP team member. Parent never noted health concerns or indicated Student required a comprehensive health evaluation.

Title 34 Code of Federal Regulations section 300.321 defines the required IEP team members as:

1. The parents of the child;
2. Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
3. Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
4. A representative of the public agency who:
 - i. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

- ii. Is knowledgeable about the general education curriculum;
and
 - iii. Is knowledgeable about the availability of resources of the
public agency;
5. An individual who can interpret the instructional implications of
evaluation results, who may be a member of the team described in
paragraphs (a)(2) through (a)(6) of this section;
 6. At the discretion of the parent or the agency, other individuals who
have knowledge or special expertise regarding the child, including
related services personnel as appropriate; and
 7. Whenever appropriate, the child with a disability. (34 C.F.R.
§ 300.321(a).)

Participants in an IEP team meeting may fulfill more than one role; it is not required that each role be filled by a different person. (34 C.F.R. § 300.321(a)(5) and (d); Ed. Code, § 56341, subdivisions (b)(5) and (e).) The failure to include required team members is a procedural violation of the IDEA.

The May 2, 2025 assessment report contained a health and developmental history which was based on information provided by Parent. Student's medical history included frequent ear infections which required surgical implanting of tympanostomy tubes at age two. Student's adenoids were surgically removed at the same time. Student was not on any medications nor were there any known hearing or vision impairments. Student received speech and language services through the regional center due to delays in speech intelligibility and a suspected speech and language disorder.

Student argued his known ear and throat surgeries were reason to require the presence of a nurse at the IEP team meeting, to provide information regarding Student's speech and language delays. This was meritless as there was no evidence presented to suggest Student suffered any medical repercussions from the surgery. To the contrary, the evidence, including Parent's own reporting, indicated the surgery was successful and provided improved health and less frequent illness. Parent reported Student's speech was improving as well.

Parent also reported that Student's conduct significantly impacted his ability to access education due to his extreme anger and emotional dysregulation, which manifested in aggressive behaviors at home.

A vision screening and hearing screening were conducted by school nurse Beth Yocum, to provide a comprehensive overview and confirm that these sensory modalities were not contributing to Student's current educational challenges.

Yocum conducted an alternate vision screening by observation due to Student's young age and attention limitations. Parent reported no concerns regarding vision.

Yocum conducted an alternate hearing screening via observation due to Student's young age, and intolerance to headphones, which prevented standard testing. Yocum noted Student was under the care of an ear, nose, and throat physician for his frequent ear infections.

Yocum concluded that the screenings indicated that Student's vision and hearing were not contributing to Student's current educational challenges. Student's vision and hearing were within typical ranges and the assessment team determined that further

assessment by the nurse was not necessary. Further, a review of Student's Initial Special Education Background Questionnaire, completed by Parent, revealed no significant health concerns requiring further assessment by the school nurse.

Student argued that a nurse's expertise was needed to provide the IEP team medical information to determine how Student's medical diagnoses of attention deficit hyperactivity disorder and oppositional defiance disorder interfered with his access to learning. Student's contention is unfounded as Parent never raised this contention at hearing. As previously discussed, Dr. Islas did not make any medical or mental health diagnoses due to Student's age. Further, the Rady Children's KidStart progress notes, dated July 22, 2025, from Dr. Gist, were entered into evidence by Parent for purposes of remedies only, as the report was not compiled until well after Del Mar Union's assessment and IEP.

Yocum testified at hearing at Parent's request but was not questioned regarding her knowledge of attention deficit hyperactivity disorder or oppositional defiance disorder. Parent failed to establish that, as a school nurse, Yocum possessed the expertise to discuss those medical diagnoses, even if present at the IEP team meeting.

Accordingly, Student failed to establish the school nurse had sufficient knowledge of Student's medical needs to attend the IEP team meeting as an appropriate participant. (34 C.F.R. § 300.321(a)(6).)

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ISSUE 7: DID DEL MAR UNION DENY STUDENT A FAPE IN THE MAY 2, 2025 IEP BY FAILING TO OFFER APPROPRIATE SPEECH AND LANGUAGE GOALS?

Student contended the May 2, 2025 IEP failed to include any specific, measurable goals related to Student's expressive, receptive, or pragmatic communication deficits despite consistent evidence of significant delay in all three areas. Further, Student contended that Student exhibited difficulty sustaining attention, following multi-step directions, and retrieving words but no goals were proposed to address these areas of deficit. Lastly, Student argued the two goals offered failed to provide measurable benchmarks, lacked criteria for mastery, or any reference to objective data collection, thereby undermining parental participation and accountability to monitor Student's progress.

Del Mar Union contended that Massimino appropriately offered Student speech and language goals. Student's biggest impediment leading to his maladaptive behaviors and difficulties accessing the general education setting was his difficulty with communication resulting from his verbal unintelligibility.

Annual goals in an IEP are designed to enable the student to be involved, and make progress, in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320; Ed. Code, § 56345, subd. (a)(1).) For each area in which a special education student has an identified need resulting from their disability, the IEP team must develop measurable annual goals that are based upon the student's present levels of academic achievement and functional performance, and which the student has a reasonable chance of attaining within a year. (*Ibid.*) The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (a).)

The IDEA requires goals to target a student's needs but does not require an IEP to contain every goal from which a student might benefit. (*Capistrano Unified School Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1134, cert. denied sub nom. *S.B. v. Capistrano Unified School Dist.* (2022) 143 S.Ct. 98; (*Capistrano*).

Student offered no evidence to suggest that the May 2, 2025 IEP's speech and language goals were inappropriate or that Student required additional communication goals.

The IEP contained two goals in communication. The first goal's baseline indicated that Student produced final consonants in target consonant-vowel-consonant words at the phrase level with 20 percent accuracy. The goal sought to improve Student's pronunciation at the phrase level to 80 percent accuracy in a group setting as determined across three trial days measured by speech and language pathologist data collection. The goal sought to enable Student to be involved and progress in the general curriculum and state standards by supporting foundational language development in listening and speaking, understanding, and using vocabulary.

The second goal's baseline indicated Student's overall speech intelligibility was 40 to 50 percent, marked by numerous phonological processes errors, including fronting, cluster reduction, syllable reduction, final consonant deletion, and stopping that impacted his ability to be understood, especially out of context. The goal sought to improve Student's overall speech intelligibility to 80 percent in spontaneous communication within a 30-minute period of time across three data collection days, as measured by the speech and language pathologist's observations and data collection.

This goal also sought to enable Student to be involved and progress in the general curriculum and state standards by supporting foundational language development in listening and speaking, understanding, and using vocabulary.

The evidence presented at hearing did not support Parent's contentions that Student required specific, measurable goals related to expressive, receptive, or pragmatic communication deficits. The Del Mar Union IEP team members concurred Student's behaviors were communication based. Martin and Brady reported communication challenges were prominent, led to behaviors, and impacted Student's social skills during their observations. Massimino did not observe maladaptive behaviors during her observation at KinderCare. She reported some behaviors, such as running across the room, but Student modified his behavior when prompted by the teacher.

Dr. Islas did not report difficulties with pragmatic language, as discussed in ruling out autism spectrum disorder as an eligibility category. She did however, report that Student's social difficulties appeared to be greatly impacted by his difficulties with using coping skills, low frustration tolerance, and a desire for a response from others.

Biebel's report was included in the May 2, 2025 assessment report. Student's receptive language skills were at the 30-to-33-month level and expressive language skills were in the 27-to-30-month range. She noted that ongoing delays in speech sound production, including phonological error and reduced intelligibility in unfamiliar contexts, continued to impact effective communication. When unintelligible, Student exhibited negative behaviors due to frustration for inability to communicate effectively.

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Massimino observed Student's receptive language skills. Student demonstrated understanding of a variety of common classroom directions and simple questions; responded appropriately to yes/no questions and followed one-step directions paired with gestures. Student also responded to teacher directions which indicated the ability to interpret adult interaction.

Even Brewster's observations generally supported Massimino's assertions and recommendations. Student presented with a moderate-to-severe speech delay and articulation needs, which were accompanied by attention difficulties and behavior issues.

Student's language ability fell within the below average range on the Receptive-Expressive Emergent Language Test, based on Parent report. Massimino reported Student's still developing receptive language was average, however Student's expressive language was delayed. His vocabular inventory composite fell within the average range reflecting overall age-appropriate single-word vocabulary use.

Student's expressive language skills scored in the delayed range, but referring back to the caveat regarding test validity in Issue 1, limited language skills in preschoolers can also hinder their understanding of test instructions and response options, potentially leading to scores that underestimated their abilities. As such, the assessors explained that Student's skills were still developing, and his assessment scores were more indicative of areas of weakness, not necessarily areas of deficit. One might argue that interpreting the language scores was a close call, and it remains a call the ALJ is unwilling to make, best leaving the decision to qualified professionals. Massimino was a qualified speech and language professional; Parent was not. It was also noted that Parent revoked consent to allow further assessment and observation of Student. Massimino was unable to further

assess or discuss her findings with Biebel because of this. Student did not establish that the two IEP speech and language goals were inappropriate or insufficient to address Student's identified areas of deficit. Further, Student did not prove by a preponderance of the evidence that Del Mar Union was wrong in omitting goals for Student's expressive, receptive, and pragmatic language skills at the time.

With respect to Student's last contention that the offered communication goals were flawed, an IEP must describe how the student's progress toward meeting the annual goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III); see also 34 C.F.R. § 300.320(a)(3).) However, there is no specific form of measurement required by statute or case law. (*Capistrano, supra*, 21 F.4th at p. 1133.) Goal measurement can be based on the teacher's subjective observations. (*Ibid.*, citing *R.P. ex rel. C.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122.) Nor does the IDEA require a district to adopt the specific form of data collection preferred by the parent. (*Id.*, at p. 1135.)

Each of the goals addressed Student's pronunciation and unintelligibility. Each goal contained a baseline of Student's present level of performance and described what the goal sought to accomplish over one year's time. Each goal described how the goal would be measured and who was responsible for collecting the data. The goals contained sufficient information to establish that each goal comported to an identified area of Student's communication needs. Each goal was reasonably measurable. Parent's objection that the goals as written undermined her ability to gauge whether progress was occurring was misguided. Del Mar Union told Parent she would receive progress reports the same as any other parent. Logically, given Student's

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deficit was verbal, specifically involving pronunciation and unintelligibility, Parent could personally measure Student's progress, or lack thereof, by simply listening to him in conversation.

The May 2, 2025 IEP's communication goals were appropriate.

ISSUE 8: DID DEL MAR UNION DENY STUDENT A FAPE AT THE MAY 2, 2025 IEP TEAM MEETING BY FAILING TO OFFER APPROPRIATE SPEECH AND LANGUAGE SERVICES?

Student contended that Del Mar Union offered inappropriate and insufficient speech and language services to address Student's pervasive speech and language delays that were thoroughly documented.

Del Mar Union contended that Student's services were designed to provide educational benefit reasonably calculated to enable Student to make appropriate educational progress. Further, Student presented no testimony or evidence about what additional services he required to receive a FAPE.

The term related services means such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech and language pathology. (34 C.F.R. § 300.34(a).) An IEP must include a statement of the anticipated frequency, location, and duration of a related service that will be provided to a child. (34 C.F.R. § 300.320(a)(7).)

It is an accepted adage in special education that goals drive services. In Issue 7, Student did not meet his burden of proof to establish that Student required additional speech and language goals. Therefore, the only goals subject to further discussion in

relation to appropriate speech services are the two goals contained in May 2, 2025 IEP. Del Mar Union offered 30 minutes of group speech therapy twice per week to support the two goals.

Massimino recommended speech and language services in a group setting. She considered it beneficial for Student to work alongside other students who were working on building communication skills. Parent did not agree and expressed that the offer of one hour per week was not enough to meet Student's significant needs, as was evidenced by Student's private speech therapy services with Biebel consisting of one hour, twice per week. The limited information obtained regarding Student's private speech services with Biebel indicated that Student had received one hour per week of individual speech services until November 2024, when Biebel increased the sessions to one hour twice per week at Parent's request. No further information was provided regarding those sessions, what areas were being worked on, or why they were increased. Parent reported that these sessions were often behaviorally challenging.

Parent inquired if Student could meet the goals as written with the services provided. Massimino explained the difference between school-based, private, and medical services. Specifically, school-based services were intended to support access to education. Research showed that speech services twice a week was a better delivery service model, which would allow for a structured opportunity for Student to learn how to repair communication breakdowns. It would also allow Student to generalize these skills with peers.

Parent expressed concern that Student would not be working on his goals if other students with different goals were in his group. While no two students had the same goals, Massimino explained how a speech session may be structured to provide

therapy and support each student's areas of need. Typically, there were 50 plus trials per session. Student would be an active member of the group practicing skills and generalization of skills. At that age, the students would not be drilled during sessions. Group speech therapy would have allowed Student to access his education.

Student provided no documentary evidence or expert witness testimony to contradict Massimino's sound explanation of how she intended to deliver Student's speech services and expressed that those services could be delivered within the framework of 30 minutes of group sessions twice per week.

Student failed to establish that the May 2, 2025 IEP's speech and language services were inappropriate or insufficient.

ISSUE 9: DID DEL MAR UNION DENY STUDENT A FAPE AT THE MAY 2, 2025 IEP TEAM MEETING BY FAILING TO OFFER GOALS IN EMOTIONAL REGULATION, SELF-CARE, AND ACADEMICS?

Student contended Del Mar Union failed to offer goals which addressed each of Student's known areas of deficit resulting from his disability.

Del Mar Union contended that Massimino appropriately offered Student speech and language goals. Student's biggest impediment leading to his maladaptive behaviors and difficulties accessing the general education setting was his difficulty with communication resulting from his verbal unintelligibility. Student may have exhibited weaknesses in other areas, but they did not rise to the level of a deficit requiring additional goals or supports.

In general, a child eligible for special education must be provided access to specialized instruction and related services 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. (*Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000] (*Endrew*).)

ISSUE 9(a): STUDENT DID NOT ESTABLISH HE REQUIRED EMOTIONAL REGULATION GOALS

Student argued the data provided by Parent and KinderCare documented he exhibited persistent emotional dysregulation, frustration, and difficulty transitioning between tasks, which required structured intervention. Del Mar Union's IEP team members dismissed these difficulties as either age-appropriate or due to Student's language delay.

Student also presented with the ability to positively interact with peers and adults. Student liked to help in the classroom. As reported in the observations of both Martin and Murphy, Student demonstrated a range of play abilities and interactions across multiple centers. He could shift between activities Student required occasional redirection from staff to maintain safety and appropriate behavior, but he responded to visual support and adult guidance when cued. At times Student demonstrated impulsive behaviors, such as pushing a peer, hitting, and running indoors, though he was generally responsive to redirection and safety reminders. Several other children showed similar behaviors like seeking attention, active play, and delayed compliance, which suggested that Student's behaviors were not isolated but rather part of a broader trend among his peers in the unstructured classroom context.

Both Coudray and Ghandy considered communication to be an area of need for Student and suggested that more speech therapy could be beneficial to further improve Student's behavior and participation.

Ghandy reported Student could follow directions during small group activities and participated well, though he could have difficulty sharing. Ghandy utilized calming strategies and modeling behaviors when Student became frustrated. Student responded well to verbal countdowns before transitions such as a five-minute and then a two-minute warning before bathroom breaks. She also incorporated his interest to maintain engagement and used forced-choice options, as Student was very independent. Ghandy provided Student with short, simple directions to support his success in the classroom.

The majority of the assessment interview participants, assessors, and witnesses concurred that Student's behaviors were closely related to communication breakdowns which resulted in frustration and anger. These same witnesses reported that Student interacted with peers and adults. When Student's behavior escalated, he could be calmed and redirected. Both Ghandy and Massimino shared strategies for calming Student when frustrated. Importantly, none of Student's witnesses provided recommendations or guidance to develop goals or services for Student's emotional regulation.

Again, Student presented a series of examples of Student's behaviors but assumed they required goals and services without further discussion. At no point did Student discredit Del Mar Union's determination that Student's behaviors were

communication related or were actually age appropriate for a three-year-old. As such Student did not present any evidence other than Parent's opinion that additional goals were necessary.

ISSUE 9(b): STUDENT DID NOT RAISE THE ISSUE OF SELF CARE AT HEARING

Student argued that had Del Mar Union assessed Student in occupational therapy, they would have found that Student had major delays in dressing, feeding, and toileting. Speculation in closing argument is not evidence. At hearing the only information regarding self-care arose from a brief reference to Student's toileting difficulties, which arose from his hesitance to communicate his needs. Ironically, KinderCare staff indicated Student was improving in that area.

Student did not establish a need for self-care goals.

ISSUE 9(c): STUDENT DID NOT ESTABLISH STUDENT REQUIRED ACADEMIC GOALS

Student argued that Student's Brigance scores revealed substantial deficits in pre-literacy, number sense, and sequencing tasks. This was ironic, as during the IEP team meeting, Parent opined that the Brigance was an invalid assessment tool.

The evidence at hearing supported the finding that Student's pre-academic skills were age appropriate. Student's cognitive skills were developing within the typical range for children his age.

Student's academic assessment determined that when verbal communication was not clear to the listener, Student became dysregulated and required adult support to regain regulation. The report concluded that Student's lower performance in early literacy might be influenced by ongoing communication challenges that impacted his skills. Student demonstrated appropriate skills across most areas, with lower scores in gestural imitations, size, letter-word identification and number sense.

Parent's observations that Student could not count or match colors was well taken, however Murphy' explanation of preschool standards was also credible and bears repeating. Most children Student's age can identify some letters in their name, however there was no set standard or number of letters a child should know. The goal was exposure and interest, not mastery. Even if Student did not know any letters, he would still be in the expected ranges for preschool.

The evidence established Student's pre-academic skills were within normal range and he did not require academic goals in the May 2, 2025 IEP.

ISSUE 10: DID DEL MAR UNION DENY STUDENT A FAPE AT THE MAY 2, 2025 IEP TEAM MEETING BY FAILING TO OFFER OCCUPATIONAL THERAPY, BEHAVIOR SERVICES, SPECIALIZED ACADEMIC INSTRUCTION, AND ACCOMMODATIONS OR MODIFICATIONS?

Student contended that by qualifying Student in only speech or language impairment, resulted in Del Mar Union denying Student related services in occupational therapy, behavior services, specialized academic instruction, and accommodations.

The issue, however, presents only minor variations of the same contentions as raised in Issues 1, 3, 7, and 9. The determinations made in those issues do not change simply because Student has reworded his contention.

An IEP is required to contain (1) a statement of measurable annual goals; (2) a description of the services, accommodations and supports necessary to meet those goals; and (3) an explanation of the extent to which the student will participate in general education. (Ed. Code, § 56345, subd. (a).)

Student contended that the May 2, 2025 IEP was deficient as it did not contain services, supports and accommodations, which supported Student's contentions on other issues. As example, Student contended that the failure to assess in occupational therapy denied Student a FAPE because Del Mar Union was unable to develop goals and services for occupational therapy. Issue 3 already determined that Del Mar Union failed to assess in occupational therapy, but Student did not establish that the failure prevented Student from accessing education. Further, Del Mar Union had rectified the violation by conducting an occupational therapy assessment which is not subject to this complaint. Student assumes facts not in evidence, specifically, the outcome of information on the assessment. Without further evidence, it has not yet been established that student requires occupational therapy, therefore it remains unknown whether it was error to omit occupational therapy services from the May 2, 2025 IEP. Parent's assumption that Student needs occupational therapy, without more, does not establish her claim.

Likewise, it was already determined that Student is not eligible for special education under the category of emotional disability. This Decision also determined that Del Mar Union sufficiently assessed Student in mental health. This Decision is

replete with Parent's observations and claims regarding Student's mental health and maladaptive behaviors which were strenuously argued and applied to those issues. Student now wishes to extend that evidence beyond those specified issues to argue that Del Mar Union failed to offer behavior intervention services, offer educationally related mental health services, conduct a functional behavior assessment, or create a behavior plan. None of those issues were raised in the complaint or at hearing and they will not be addressed in this Decision. Student is not entitled to expand his issues beyond those confirmed as part of this hearing.

Issue 2(e) determined Del Mar Union appropriately assessed Student's academic skills. Issue 9(c)d determined Student did not establish he required goals for pre-academics because Student's skills were age appropriate. Therefore, it follows that specialized academic instruction, a special education service to address academic deficits, was not required as part of Student's IEP.

The only portion of Student's claim left unaddressed was whether Student required accommodations to access learning. The May 2, 2025 IEP team determined program accommodations and modifications were not needed in the general education classes or other educational related settings.

Massimino reported she did not observe any behaviors during Student's speech assessment and did not believe Student required additional supports or accommodations at this time.. As discussed, Student's behaviors appeared to be related to communication breakdowns, and she opined that her normal behavior strategies would be sufficient. If behavior became a concern, adjustments could be made as needed. Massimino concluded that although Parent reported Student's behavior as maladjusted, there was not sufficient data to support this need during speech therapy. Student did not explore

the issue further and provided no additional evidence at hearing to establish a need for accommodations, including what specific accommodations Student required to receive a FAPE.

ISSUE 11: DID DEL MAR UNION DENY STUDENT A FAPE BY DENYING PARENTAL PARTICIPATION AT THE MAY 2, 2025 IEP TEAM MEETING?

Student contended Del Mar Union denied Parent access to key evaluation materials, prohibited Parent from reviewing assessment protocols, and dismissed Parent's concerns when raising safety and environmental concerns for Student.

Del Mar Union contended that Parent participated in the assessment process, in all IEP team meetings, shared her concerns and disagreements with assessment findings, and requested revisions which Del Mar Union made.

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) & (c); Ed. Code, §§ 56304, 56341.)

Among the procedural rights guaranteed to parents by the IDEA is the right "to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child ..." (20 U.S.C. § 1415(b)(1)(A).)

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Sch. Dist.* (9th Cir. 1992) 960 F.2d 1479); see *Fuhrmann v. East Hanover Bd. Of Educ.* (3rd Cir. 1993) 993 F.2d

1031, 1036.) The IEP team must consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to, or by, the parent. (20 U.S.C. § 1414(d)(3)A & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A school cannot independently develop an IEP, without meaningful participation by the parent, and then present the IEP to the parent for ratification. (*Target Range, supra*, 960 F.2d at p. 1484.)

The informed involvement of parents is central to the IEP process. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524[127 S.Ct. 1994].) However, a parent need not have an in-depth understanding of all of the services a child's IEP might provide or every aspect of a proposed evaluation. Rather, for consent to be "informed" the parent must merely have a general understanding of the activity for which she is providing consent. (*Letter to Johnson* (OSEP 2010).) The parent of a child with a disability does not have veto power over the IEP process. (*Ms. S. ex rel. G. v Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) Likewise, just because the IEP team does not adopt the program preferred by the parents does not mean that the parents have not had an adequate opportunity to participate in the IEP process. (*B.B. v. Hawaii Dept. of Educ.* (D.Hawaii 2006) 483 F. Supp. 2d 1042, 1051.)

ISSUE 11(a): DEL MAR UNION DID NOT FAIL TO CONSIDER SUGGESTIONS FOR CREATING A SAFE ENVIRONMENT FOR STUDENT

Student did not pursue this issue as anything other than an afterthought, and it remains unclear what Student required for a safe environment. Again, making a factual presentation that Student was aggressive and capable of violence towards others does not per se establish a need for a safety plan, accommodations, or services. Student's

behavior was a factor to be considered regarding safety, but the fact that Student had some concerning behaviors was not enough to determine Del Mar Union could not provide a safe learning environment.

The only evidence specifically presented regarding safety, was Parent's concerns that Student would continue to bite and hit others. Schick, a seasoned veteran of special education, described Del Mar Union's procedures regarding behavior intervention, crisis intervention and crisis response intervention. Parent, however, wanted proactive services or accommodations to prevent Student's known behaviors.

Massimino would be providing Student's speech and language services. Massimino noted she did not see any need for accommodations. Student's behaviors appeared to be related to his communication breakdowns. Understanding triggers was helpful for Student, along with her normal behavior strategies which were not above and beyond what would be done for a three-year old. Sarcastically, Parent asked Massimino what she planned to do when Student bit her. Massimino noted she would work with Student to communicate his wants and needs in an effective way, as he appeared to use his body to communicate. She was hopeful to provide Student with words to communicate his needs.

Massimino opined that she did not observe the biting behavior during the assessment and felt that support was not currently needed. Massimino correctly described the IEP as fluid. If behavior became a concern, adjustments could be made as needed. Parent reiterated that Student was going to bite, slap other students and the teacher, elope or escape from the class, and tantrum. Massimino concluded that although Parent reported this information, there was not the data to support this need during speech therapy.

ISSUE 11(b): DEL MAR UNION WAS NOT REQUIRED TO SHOW PARENT ALL ASSESSMENT PROTOCOLS, INFORMAL DATA MEASURES, TEACHER INPUT DOCUMENTS, AND ALL DOCUMENTS USED AS PART OF THE DATA COLLECTION PROCESS

Parent took issue with the way the multidisciplinary assessment report was developed by each assessor. Parent did not initially reveal her educational background and felt she was treated as if she could not understand the assessment data.

Student presented several significant reasons Parent challenged the May 2, 2025 assessment report and test scores. Based upon her initial discussions with the IEP team, Parent surmised the assessors lacked experience and training based on the way the assessors scored the standardized testing. Parent opined that the assessment tools selected were inappropriate. She extensively questioned why the Woodcock Johnson was rescored and what the subtest meant, and what letters Student was able to identify. Parent opined Coudray was an improper assessment source and that the assessment report was full of factual errors and omission. Discrepancies in scores were not adequately explained to Parent's satisfaction. Parent asked the questions again and was informed that the question had been asked and answered. The IEP team meeting then took a trip down accusation lane.

As a result of her concerns, Parent requested to review the testing materials, including the test protocols. The Del Mar Union assessors denied Parent access to the testing materials. Brady reported that Del Mar Union did not maintain protocols as part

of a student's educational record. Likewise, data sheets were not maintained as part of educational records. This led to a major collateral argument regarding production of the protocols which continued through a series of unpleasant emails between the parties.

During the May 2, 2025 IEP team meeting, Parent requested that additional information be obtained, appropriately collected, and updated to be reviewed at a second IEP team meeting. Del Mar Union agreed to reconvene the IEP team meeting after additional data was collected.

At the May 20, 2025 IEP team meeting, the assessors obtained supplemental information and test scores from Ghandy pursuant to parental request. Murphy obtained information for Parent which verified the qualifications for a person completing ratings scales. Murphy read the manufacturer's response and the Autism Spectrum Rating Scale assessment manual verbatim to Parent, each reiterating the four-week requirement as had been previously explained by the assessors.

The protocols were not produced for Parent as it was Del Mar Union's policy to destroy the protocols after the assessment was completed. District wide, Del Mar Union did not provide parents with test protocols, because protocols contained assessor notes and other personal observations.

Murphy reviewed adjustments made to her section of the assessment report. Parent asked more questions, chipping away at the validity of the assessments. Parent questioned the information's accuracy of the May 2, 2025 assessments as Student was

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now older. Parent complained that the information she shared was not included in the report. Responses were offered by Schick and Brady. The IEP team meeting deteriorated into verbal chaos, with Parent and team members losing their tempers and attempting to speak at the same time.

Student asserted in his closing brief that *Amanda J.* and *Doug C.* both support his contention that the failure to produce test protocols equated to a denial of parental participation. This was not true. Neither case addressed the issue of test protocols. *Amanda J.* addressed assessment reports which were withheld for over a year. *Doug C.* addressed the failure to include a parent in the IEP team meeting. Parent cited no authority which required Del Mar Union to provide anything more than the assessment report to Parent. Parent provided no authority to indicate that test protocols were part of a student's educational records, and therefore subject to production (Ed. Code, § 56504.) Further, by providing Parent with all standardized testing information available from the test manufacturers in addition to the information identifying the assessment tools and requisite scoring, Del Mar Union provided sufficient information to allow Parent meaningful participation in the IEP process. If Parent distrusted or disagreed with the assessment report findings, Parent had the opportunity to request independent educational evaluations, which she did, and Del Mar Union agreed to fund independent assessments.

Student failed to establish a denial of parental participation in the IEP process by any definition. Parent's participation in the IEP process was extensive as can be seen in the extensive reporting of Parent's reported contributions to the assessment and IEP team meetings as contained in this Decision. It was not that Del Mar Union failed to

“hear” Parent or chose to omit Parent’s contributions, it was that Del Mar Union simply disagreed with Parent’s conclusions, opinions, and philosophic understanding of the IDEA.

ISSUE 12: DID DEL MAR UNION DENY STUDENT A FAPE BY FAILING TO OFFER A SPECIAL DAY CLASS PLACEMENT AT THE MAY 2, 2025 IEP TEAM MEETING?

Student contended that Del Mar Union declined to consider offering a special day class placement despite evidence that remaining at a private preschool was not reasonably calculated to confer educational benefit in light of Student’s unique needs.

Del Mar Union contended that Parent never requested placement in a special day class, nor was it ever recommended by any assessor or teacher. Further, Del Mar Union contended Student failed to present any evidence at hearing to support this contention.

California defines a special education placement as that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to a child with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings. (Cal. Code Regs., tit. 5, § 3042, subd. (a).)

School districts must have available a continuum of program options to meet an eligible student’s needs for special education and related services. (34 C.F.R. § 300.115; Ed. Code, § 56360.) A district must make a continuum of placement options available but does not need to discuss every possible placement at every IEP team meeting. (See *L.S. v. Newark Unified Sch. Dist.* (N.D.Cal., May 22, 2006, No. C 05-03241 JSW)

2006 WL 1390661, pp. 5-6 [nonpub. opn]; *Katherine G. v. Kentfield Sch. Dist.* (N.D.Cal. 2003) 261 F.Supp.2d 1159, 1189-1190.) Only placement options that are likely to be relevant to a student's needs must be discussed.

The IDEA expresses a clear policy preference for inclusion in general education to the maximum extent appropriate as an aspiration for all children with special needs. (See 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. §§ 300.114 & 300.116; Ed. Code, § 56031.) Educational agencies are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56031.)

Attendance is not compulsory for preschool, which means by law, Student was not required to attend school. Student failed to provide any evidence that a special day class, which is a special education classroom designed to educate students with varying disabilities, or any placement more restrictive than general education would be appropriate for Student. Parent privately placed Student at KinderCare when he was one year of age, and as of the hearing, Student continued to attend preschool at KinderCare, a general education setting. Parent did not request a placement more restrictive than a general education preschool program during any of the IEP team meetings.

The IEP team is not required to discuss a complete continuum of placement options where no disagreement is expressed to the least restrictive environment of a general education classroom.

Student argued in his closing brief that a plethora of documentation from several different sources documented provided overwhelming evidence that Student required a smaller, structured environment with targeted supports for regulation, communication, and adaptive skills. At hearing, Student failed to introduce any evidence, other than Parent's own rebuttable conclusions to support this contention. As pointed out by Del Mar Union in closing argument, despite her educational background, Parent was not qualified to offer an expert opinion because she was not a

- credentialed school psychologist,
- clinical therapist,
- speech and language pathologist,
- occupational therapist or
- board-certified behavior analyst.

Student's entire argument was based upon Parent's observations of Student's behaviors, and her opinions that Student required additional goals and services to address functional and behavioral deficits. There was no dispute that Parent's observations of behavior were credible; Student exhibited maladjusted behaviors.

Parent however, approached this case from the belief that a description of Student's behaviors was sufficient to establish a per se violation of the IDEA. It is not. As presented, Student's entire case hinged merely on Parent's opinions versus Del Mar Union staff's opinions. Her personal opinions and unsubstantiated conclusions were not given significant weight when compared to the professional opinions of the Del Mar Union assessors and the educators on the IEP team.

ISSUE 14: DID DEL MAR UNION DENY STUDENT A FAPE BY FAILING OFFER EXTENDED SCHOOL YEAR SERVICES IN THE MAY 2, 2025 IEP?

Student contended Del Mar Union failed to discuss extended school year at the May 2, 2025 IEP team meeting despite Student's demonstrated regression in functional, communication, and regulation skills after absences from daycare for only a few days. Del Mar Union contended that the IEP team had no evidence to support a need for extended school year services.

A school district is required to provide extended school year services when a student's IEP team determines that such services are necessary to provide a FAPE to the student. (34 C.F.R. § 300.106(a)(2).) California special education regulations require that extended school year services be provided for each student with exceptional needs who requires special education and related services in excess of the regular academic year. (Cal. Code Regs., tit. 5, § 3043.) Extended school year services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if not provided with an educational program during the summer.

The mere possibility of regression does not entitle a student to an extended year placement, because all students may regress to some extent during lengthy breaks from school. A more specific showing is necessary to establish extended school year eligibility. (*M.M. v. Sch. Dist. Of Greenville County* (4th Cir. 2002) 303 F.3d 523, 538.)

Student argued that extended school year was not addressed during the May 2, 2025 IEP team meetings. This was at odds with another statement in which Parent indicated telling the IEP team Student "lost progress every time they took a break."

Limited information was presented to indicate that in the past, other than a KinderCare statement that Student regressed after short absences from preschool. In the closing argument, Student reference other documents such as the Brigance as evidence of regression. The Brigance was never offered at hearing as evidence of regression, nor were any other documents or any demonstration of specific examples of regression or how long it took Student to recoup the skill.

Extended school year was briefly discussed at the May 2, 2025 IEP team meetings. As Student had only attended a daycare/preschool program, there was no data to indicate how he performed in an educational setting. Without sufficient data, the IEP team was unable to determine whether Student experienced regression; they would need to wait and collect future data to determine whether regression was a reality.

Student did not establish that he experienced regression severe enough to require extended school year services.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

ISSUE 1:

Del Mar Union did not deny Student a FAPE in March 2025 by failing to appropriately assess in psychoeducation, speech and language, and academics.

Del Mar Union prevailed on Issue 1.

ISSUE 2:

Del Mar Union did not deny Student a FAPE in March 2025 by failing to assess Student all areas of suspected disability, specifically in occupational therapy, educationally related mental health services, executive functioning, social skills, and specialized academic instruction.

Del Mar Union prevailed on Issue 2.

ISSUE 3:

Del Mar Union did not deny Student a FAPE by failing to find Student eligible for special education or related services under the categories of other health impairment and emotional disability in the May 2, 2025 IEP.

Del Mar Union prevailed on Issue 3.

ISSUE 4:

Del Mar Union did not deny Student a FAPE by predetermining Student's eligibility for special education and related services at the May 2, 2025 IEP team meeting.

Del Mar Union prevailed on Issue 4.

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ISSUE 5:

Del Mar Union did not deny Student a FAPE by requiring Parent to obtain a medical diagnosis for Student to be eligible for special education and related services under other health impairment and emotional disability.

Del Mar Union prevailed on Issue 5.

ISSUE 6:

Del Mar Union did not deny Student a FAPE by failing to include a school nurse at the May 2, 2025 IEP team meeting.

Del Mar Union prevailed on Issue 6.

ISSUE 7:

Del Mar Union did not deny Student a FAPE at the May 2, 2025 IEP team meeting by failing to offer appropriate speech and language goals.

Del Mar Union prevailed on Issue 7.

ISSUE 8:

Del Mar Union did not deny Student a FAPE at the May 2, 2025 IEP team meeting by failing to offer appropriate speech and language services.

Del Mar Union prevailed on Issue 8.

ISSUE 9:

Del Mar Union did not deny Student a FAPE at the May 2, 2025 IEP team meeting by failing to offer goals in emotional regulation, self care, and academics.

Del Mar Union prevailed on Issue 9.

ISSUE 10:

Del Mar Union did not deny Student a FAPE at the May 2, 2025 IEP team meeting by failing to offer occupational therapy, behavior services, specialized academic instruction and accommodations or modifications.

Del Mar Union prevailed on Issue 10.

ISSUE 11:

Del Mar Union did not deny Student a FAPE by denying parental participation at the May 2, 2025 IEP team meeting, specifically by failing to consider suggestions for creating a safe environment for Student, and refusing to show Parent all assessment protocols, informal data measures, teacher input documents, and all documents used as part of the data collection process.

Del Mar Union prevailed on Issue 11.

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ISSUE 12:

Del Mar Union did not deny Student a FAPE by failing to offer a special day class placement at the May 2, 2025 IEP team meeting.

Del Mar Union prevailed on Issue 12.

ISSUE 13:

Del Mar Union did not deny Student a FAPE by predetermining services offered at the May 2, 2025 IEP team meeting.

Del Mar Union prevailed on Issue 13.

ISSUE 14:

Del Mar Union did not deny Student a FAPE by failing to offer extended school year services in the May 2, 2025 IEP.

Del Mar Union prevailed on Issue 14.

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ORDER

Student's requested relief 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.

Judith L. Pasewark

Administrative Law Judge

Office of Administrative Hearings