

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

PALM SPRINGS UNIFIED SCHOOL DISTRICT.

CASE NO. 2025060210

CORRECTED DECISION

NOVEMBER 19, 2025

On June 5, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Palm Springs Unified School District as respondent. The case was continued on July 2, 2025, for good cause. Administrative Law Judge Penelope Pahl heard this matter via videoconference on August 12, 13, 14, 19, 20, 22, 26, 27, 28, and September 3, and 4, 2025.

Attorneys Gabriela Torres and Hasmik Petrosian represented Student. Parent attended all hearing days on Student' behalf. Attorneys Sheryl Bailey, Siobhan Cullen, and Lee Rideout represented Palm Spring Unified School District. Cynthia Blumberg, Palm Springs' Assistant Director of Special Education, attended all hearing days on Palm Springs' behalf.

Following a discussion with the parties, the ALJ continued the matter to September 29, 2025, to allow the parties time to submit written closing briefs. The record was closed, and the matter was submitted on September 29, 2025.

CORRECTED DECISION CONFORMS TO HEARING RECORD

OAH issued a Decision in this case on November 3, 2025. On November 5, 2025, Student filed a motion to correct the Decision to conform to the hearing record. Student asserted that, on the first morning of hearing, he withdrew issues 1d and 2e, as listed in the prehearing conference order, alleging eligibility under specific learning disability. Palm Springs did not file a response to Student's motion to correct the Decision.

The undersigned reviewed the hearing recording and confirmed the issues had been withdrawn. This Corrected Decision deletes references to specific learning disability eligibility; and all analysis and rulings on specific learning disability eligibility. No other aspect of the decision has changed.

ISSUES

At the beginning of the hearing, Student withdrew claims stated in the prehearing conference order alleging Palm Springs' failure to conduct legally compliant speech and language, functional behavior, and educationally related mental health assessments from Issue 1a. Student also withdrew claims 1d, and 2e, that Palm Springs failed to

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make him eligible for special education and related services under the category of specific learning disability. The issues stated in the prehearing conference order were revised, in light of the withdrawals. The issues heard were:

1. Did Palm Springs deny Student a free appropriate public education, or a FAPE, during the 2023-2024 school year, beginning April 10, 2024, by:
 - a. failing to conduct psychoeducational and occupational therapy assessments that met required legal standards;
 - b. denying meaningful parental participation in the IEP development process, by failing to meaningfully consider parental input;
 - c. failing to find Student eligible for special education and related services under the categories of autism or other health impairment;
 - d. failing to offer an individualized educational program, or IEP; and
 - e. predetermining Student's special education needs and eligibility?

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2. Did Palm Springs deny Student a FAPE during the 2024-2025 school year by:
 - a. failing to offer Student's independent psychoeducational assessor access to interview teachers and obtain teacher input through rating scales during his assessment;
 - b. failing to meaningfully consider the independent psychoeducational assessment of Edward Rodezno;
 - c. denying meaningful parental participation in the IEP development process by failing to meaningfully consider parental input;
 - d. failing to find Student eligible for special education and related services under the categories of autism or other health impairment;
 - e. failing to offer an IEP; and
 - f. predetermining Student's special education needs and eligibility?

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.

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§ 300.1 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 a free appropriate public education, also called 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. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The filing party has the burden of proof by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62; 126 S.Ct. 528; 163 L.Ed.2d 387; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this case Student had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 13 years old and in eighth grade at the time of hearing. There was no dispute that Student resided within Palm Springs' geographic boundaries at all relevant times. Student had not been found eligible for special education at the time of this hearing. Student's special education eligibility was one of the issues to be decided in this case. Throughout this Decision whenever Student's name appeared in a quoted section of an exhibit, his name has been replaced with "Student" to protect his privacy.

STATUTORY FRAMEWORK

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

In general, a child eligible for special education must be provided access to specialized instruction and related services, which are individually designed to provide educational benefit, through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Andrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

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ISSUE 1a: DID PALM SPRINGS DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, BEGINNING APRIL 10, 2024, BY FAILING TO CONDUCT PSYCHOEDUCATIONAL AND OCCUPATIONAL THERAPY ASSESSMENTS THAT MET REQUIRED LEGAL STANDARDS?

PSYCHOEDUCATIONAL ASSESSMENT

THE ASSESSMENT WAS TAINTED BY PALM SPRINGS' PRECONCEPTION THAT STUDENT WAS NOT ELIGIBLE FOR SPECIAL EDUCATION

Generally, Palm Springs' Psychoeducational Evaluation was neither thorough nor reliable, and therefore did not meet required legal standards. (*Timothy O., supra.* 822 F. 3d. 1119; 34 C.F.R. § 300.304 (c)(1)(iii) and (c)(6).) The evidence demonstrated the assessment team approached the assessment as a means of confirming prior determinations that Student was not eligible for special education and related services, rather than using the process as a fresh examination of Student's eligibility. The totality of the evidence supports a conclusion that Palm Springs' 2024 determination that Student was not eligible for special education was the result of an inappropriately narrowed assessment intended to test for a conclusion, and a report being created in anticipation of an upcoming hearing regarding Parent's pending request for due process.

Parents' request for due process was filed in November 2023. A January 24, 2024 email from assistant special education director Blumberg informed school psychologist King that Palm Springs agreed to assessments in resolution session, as

the last assessments were nearly three years old. Blumberg sent another email on January 24, 2024 listing assessments and responsible assessors, and informing King, "We are scheduled to go to hearing in March."

Palm Springs received Parent's consent to the assessment plan on January 25, 2024. King emailed the assessment team on January 31, 2024, and acknowledged they were conducting an initial assessment. A second email from King, sent minutes later to the assessors, stated:

"All – our 60 days takes us into April, BUT the district wants us to complete before March because this case is going to hearing." (emphasis in original.)

Here, King conveyed instructions from "the district" to the assessors to expedite completion of the assessments due to the upcoming hearing. The following day, in her February 1, 2024 email to the assessors, with a copy to Blumberg, King re-emphasized the need to expedite the assessments stating, "We will all be assessing Student over the course of this month, and he is frequently off campus, I've made a schedule." The focus on the need to accelerate the process and the fact that Palm Springs would be proceeding to hearing immediately following the assessments, tainted the assessment process.

Palm Springs' assessment team began the assessment with a belief Student was not eligible for special education. This was demonstrated by the narrow choice of assessments administered; failure to interview Parent; and failure to explore the reasons for absences and tardies assumed to be the primary cause of Student's poor educational performance. The Palm Springs assessors also failed to adequately assess the impact of Student's medical conditions on his attendance or poor educational performance,

and failed to fully examine Student's health issues. In conducting a special education assessment of child with a disability, each public agency must ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. 300.304 (c)(6).)

These assessment shortcomings, combined with the Psychoeducational Evaluation report's lengthy description of prior assessments which focused on the fact that Student was repeatedly found ineligible, accompanied by the report's poorly supported conclusions regarding Student's eligibility, demonstrate that the assessment process was biased. The report simply did not fully explore Student's disabilities and educational needs.

Palm Springs' school psychologist, Kathleen King, coordinated Palm Springs' psychoeducational assessments between late January and March of 2024. King conducted assessments of Student's cognitive function and processing; autism, and attention deficits. Special education teacher, Lauren Goldman, assessed Student's academic achievement levels. School nurse Gisela Acevedo contributed a health report. Palm Springs assessed Student for special education eligibility in the categories of specific learning disability, other health impairment, and autism. King documented the multidisciplinary assessments in a March 21, 2024 report entitled Psychoeducational Evaluation.

Student argues the multidisciplinary assessment failed to meet legal standards because the assessor failed to conduct a Parent interview, failed to consider Student's mental health diagnoses, and failed to conduct testing as directed by test publisher instructions. Palm Springs contends their assessments met all required legal standards.

The IDEA and California special education law, identify factors necessary to a legally compliant assessment. Among these are a requirement that assessments:

- be administered by trained and knowledgeable personnel, including that a credentialed school psychologist administer a psychoeducational assessment [20 U.S.C. § 1414 (b)(3)(iv); 34 C.F.R. § 300.304 (c)(1)(iv); Ed. Code § 56320(b)(3).];
- use a variety of assessment tools and strategies that gather relevant functional, developmental and academic information about the child, including information provided by the parent [20 U.S.C. § 1414 (b)(2)(A); 34 C.F.R. § 300.304 (b)(1)(Ed. Code § 56320 (a));
- be administered in accordance with any instructions provided by the producer [20 U.S.C § 1414 (b)(1)(C)(v); Ed. Code § 56320(b)(3)];
- assess the child sufficiently comprehensively to identify all of the child’s special education, and related services, needs; whether or not commonly linked to the disability category in which the child has been classified. [34 C.F.R. 300.304 (c)(6)].

As discussed more fully in this Decision, the evidence established that the March 21, 2024 psychoeducational assessment did not meet required legal standards. (20 U.S.C. 1401(3); Ed. Code § 56026; *Timothy O. v. Paso Robles Unif. Sch. Dist.* (9th Cir. 2016) 822 F.3d 1105, 1119.)

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FAILURE TO CONDUCT PARENT INTERVIEW

Student asserts Palm Springs failed to conduct a parent interview which resulted in Palm Springs failing to obtain adequate parental input into the assessment. Palm Springs contends, generally, that its assessment met legal requirements.

“Assessors are required to use a variety of technically sound assessment tools and strategies to gather relevant information, including information provided by a parent, to assist in determining whether the child has a disability;” and, if so, the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors. (20 U.S.C. § 1414 (b)(2)(A and C); Ed. Code § 56320, subd. (b).)

King’s inability to recall information about the assessment during hearing, coupled with the often, overly rapid responses given throughout her testimony, negatively impacted her credibility. King responded to most questions from Student’s counsel about the assessment process by saying “I don’t recall” very fast, without taking time to consider the question and see if she could, in fact, offer a substantive response. In contrast, King tended to recall significant detail when replying to district questions.

King’s inconsistent testimony, and obvious discomfort when questioned about how she gathered information about Parents’ concerns supported the conclusions that this assessment proceeded with an agenda of finding Student ineligible, and Parent’s input was considered minimally important. Initially, King stated she could not recall whether she interviewed Parent for her psychoeducational assessment. She then acknowledged no interview was summarized in the report. King asserted during hearing that she knew of Parents concerns about Student’s education from a Parent email, and from rating scales she collected from Parent. However, King could not recall

the specifics of when she received an email, whether it was forwarded to her or whether it came from Parent directly. Nor was the email offered into evidence. It was Palm Springs' burden to prove their defense. (Evid. Code § 500.) King's report included only a single sentence mentioning Parent's concerns, which states, Parent "expressed concern with Student's academic achievement, behavior and social-emotional functioning." No additional details were provided.

King's report also immediately rejected Parent's worries in favor of the opinions of "most classroom teachers" to whom King attributed "no significant concerns regarding Student's behavior." This was an erroneous characterization of both Parent and teacher comments. Parent concerns were not limited to behavior. Teachers expressed many concerns about behavior.

All teachers identified Student's lack of focus and interruption of their peers during class to be a concern. While all teachers described Student as polite and respectful when redirected, they all noted class disruptions that required redirection, some, such as math and science teacher Victor Castaneda, and PE teacher Yareli Valtierra, noted frequent redirection needed during every class period. Exploratory teacher Felipe Lara described Student as very distracted and opined the distractibility was the cause of his failure to complete work. Castaneda, Valtierra and Lara's impressions of Student's behavior were corroborated by the observations of occupational therapist Adrianna Martin, who documented Student's failure to focus in class in her assessment report.

King generally dismissed Parents' rating scale input as overly negative. King prefaced the Autism Spectrum Rating Scale report regarding Parent's mostly "clinically significant" ratings as "consistent with her history of reporting Student's behaviors." King did no further analysis of how or why Parent's responses aligned with the

responses of Castaneda and Lara, both of whom indicated Student was either “at risk” or “clinically significant,” according to King’s report, in some autism spectrum rating subject areas. Nor did King speak to Parent. Instead, King focused on the assessment results identifying Student as “average.” Given King’s interpretation of Parent’s ratings as such an outlier, the only way to determine the validity of Parent’s ratings was to talk to Parent to determine why she rated Student so negatively. The Conners 4 manual cautions that a high score on the negative impression index does not provide any insight into reasons or motivation for the highly negative impression. King never spoke to Parent to explore the rating discrepancies.

That King should have spoken to Parent is also reinforced by the fact that she did not speak to Parent directly when the assessment plan was developed. Here, Blumberg informed King that assessments had been agreed in a resolution session discussion. Blumberg provided the areas to be assessed. King never directly discussed Parent’s contemporary concerns in creating the assessment plan, or at any other time.

The failure to interview Parent also resulted in King missing the opportunity to receive updated information from Parent about a student with a complicated medical profile and about whom Palm Springs had serious attendance concerns. Palm Springs’ health report acknowledged that Student had been diagnosed with autism, and Attention Deficit Hyperactivity Disorder, or ADHD. Failing to interview Parent contributed to Palm Springs’ lack of information about the reasons underlying Student’s late arrivals and absences. The reasons underlying Student’s attendance issues were not discussed in King’s report.

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Failing to talk to Parent also deprived King of information about Student's current medications, and whether those might be impacting his attendance or ability to focus in school. According to Acevedo's health report, in Palm Springs' possession at the time of the March 21, 2024 psychoeducational report, Student took a number of different medications at home and at school. This material information was not addressed at all in Palm Springs' psychoeducational assessment report.

King also added information to the health assessment information in the Psychoeducational Evaluation that Acevedo had not included in her health report. Specifically, King included a paragraph highlighting "discrepancies" in Student's health history across prior assessments in 2019, 2020 and 2021. The statement, which does not draw conclusions about Student's health, implied that King questioned Parent's veracity without offering the underlying evidence of the discrepancies from the prior assessment reports. Here again, King's failure to ask Parent about information she believed was inconsistent, was not even handed. Instead, it resulted in a veiled accusation of dishonesty to which Parent was given no opportunity to respond.

Based on the facts of this case, information from Parent was required to reach an informed decision regarding the discrepant rating scores and the inconsistencies King raised in Student's developmental history information. Instead, King simply rejected Parent's input and disregarded it, or, in the case of the developmental history information across past assessments, never gave Parent an opportunity to respond. This is further evidence that Palm Springs approached this assessment to test for outcome and that the assessment was biased.

GENERAL LACK OF THOROUGH AND RELIABLE ASSESSMENT

Palm Springs improperly limited the information collected about Student during the assessment. King administered the Wechsler Intelligence Scales for Children, and three cognitive processing assessments. King supervised special education teacher, Goldman, in the administration of the Kaufman Test of Educational Achievement.

King opted not to request ratings using the Behavior Assessment System for Children, which King described as a standard, broad assessment of a child's social emotional and behavioral function. Instead, she chose two very specific assessments that were narrowly scoped. King evaluated Student's attention deficits using only the Conners 4 short form rating scales and evaluated Student's autism using the Autism Spectrum Rating Scales.

Use of the very limited Conners short form assessment is not disclosed when the assessments are listed under the "sources of information" on page one of the report. King mentions it once on page 15 of the Psychoeducational Evaluation. At no point does King's report explain this choice or the differences in the long and short forms. King testified that she was unfamiliar with the Conner's manual's differentiation between the testing instruments.

Use of the Conners 4 short form, without the much broader Behavior Assessment for Children, eliminated a great deal of data normally gathered in a thorough initial assessment of attention deficits and behavior, such as those described by Student's teachers. These choices resulted in an assessment that did not thoroughly or reliably

examine Student's disabilities or potential special education needs, in violation of state and federal law. (20 U.S.C. § 1414 (b)(3)(A) and (B); (Ed. Code § 56320, subd. (b)(2) and (f).)

King's analysis of the Autism Rating Scales was also unreliable. The Autism Spectrum Rating Scales ratings were completed by teachers Charles, Castaneda, and Lara; and by Parent. As with the Conners 4 ratings, King was dismissive of all raters except Charles, who rated Student as solidly average, if not low, in indications of Autism. King's report discounted Castaneda and Lara's autism ratings in advance of discussing the rating scores, by criticizing the Autism Spectrum Rating Scales testing instrument for not including a validity index that would indicate whether a responder has unusually negative or positive responses. As Licensed Educational Psychologist Rodezno pointed out, discrediting Castaneda's responses on these bases did not comport with the test publisher's instructions.

King testified she did not pursue additional information about behavior or social emotional concerns, beyond the assessments she chose, because her observations, and reports from teachers, indicated there were no concerns regarding behavior or social emotional problems at school. However, this premise was inaccurate. King had additional information from other teachers about Student's high level of distractibility, and interruption of his own, and his peers' work; his chronic failure to complete and turn in schoolwork; and his continual poor grades during sixth grade, that were not included in the report. These are detailed in the eligibility sections later in this Decision. However, King selectively emphasized information she reported from teachers to support a message that Student's educational performance issues were entirely the

result of poor attendance. The reasons for the attendance problems are never explored. Thus, the report does not present an even-handed, thorough evaluation of the reasons for Student's academic struggles.

REASONS FOR STUDENT'S LOW GRADES INACCURATELY PRESENTED

The Psychoeducational Evaluation inaccurately characterized Student's grades; and attributed his low grades to poor attendance, without explanation. Student's low grades in sixth grade, which did not align with the teacher's nearly unanimous description of Student as capable and eager in classroom discussions, were never explored, except to say he would have done better had his attendance been more consistent. Palm Springs did not examine the causes of Student's absences and tardies. Nor did it examine how the reasons for the attendance problems might be impacting Student's educational performance. Instead, in comments that seemed rehearsed at hearing, teachers characterized Student as lazy and unmotivated.

King's March 21, 2024 report includes a table that vaguely reported Student's grades from transitional kindergarten to the fifth grade. The table also includes Student's sixth-grade, quarter three grades. It lists only English and math "grades" for the kindergarten through fifth-grade years, and reports only the sixth-grade quarter three grades for English Language Arts and math instead of Student's grades for all of sixth grade to date. King had access to all of Student's grades, in real time, through the district's "Synergy" software program. Yet, King did not mention any of Student's grades from the first semester or his third quarter progress grades.

Despite the fact that this was an initial special education evaluation for a middle school student, King's report included teacher report card comments from elementary school, but not the report card comments from middle school. Most of Student's sixth grade progress report cards had flags notifying Parents he was at risk of failing courses. This was a material omission of important information about Student. The way Student's grades were presented in King's report demonstrated an intent to mislead the reader as to Student's educational performance.

Student's report cards show a concerning inconsistency of grades, not fully explained simply by Student's frequent tardies and absences. In his closing brief, Student points out that his sixth-grade, quarter two progress report shows he was failing his second period social studies class, when he had only four absences and two tardies. Comparisons of Student's other grades and attendance reports show similar anomalies. Student continued to earn failing grades in his social studies class despite the relatively low absence and tardy numbers throughout the school year. On that same second quarter report card, he had an "F" in science despite having only two absences and no tardies. King failed to mention these facts which do not support her narrative that Student's truancy is the sole basis for his academic struggles.

FAILURE TO TEST PER TEST PUBLISHER'S INSTRUCTIONS

Student asserts two failures to conduct testing according to test publisher's instructions: failing to use the correct form of the Conners 4, and failing to state the results of rating scales using test publisher's descriptions.

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Both state and federal law require that all assessments be administered by trained and knowledgeable personnel, in accordance with any instructions provided by the producer of the assessment. (20 U.S.C. § 1414 (b)(1)(C)(v); Ed. Code § 56320(b)(3).) Additionally, tests must be used for the purposes for which the assessments or measures are valid and reliable. (20 U.S.C. 1414(b)(3)(A)(iii).; Ed Code § 56320, subd. (b)(2).) King did not conform to test producer instructions when administering the Conners 4 or the Autism Rating Scales.

As previously discussed, King administered only the Conner's short form to test Student's ADHD. The Conner's manual describes the full-length Conners as "the most comprehensive." The Conners 4 manual instructions recommends the full-length form for use in initial evaluations and full re-evaluations. The Conner's manual tells assessors that, while the Conner's 4 short form takes less time to complete, it is not as comprehensive as the full-length form because it has fewer scales, and fewer items per scale, for both Content, and Impairment and Functional outcome scales. The Conners manual describes the short form as being useful when a rater has limited time or when the rater will be asked to complete the Conners 4 repeatedly such as when monthly assessments of treatment responses are needed.

King testified she did not know what the Conners testing manual recommended when choosing between the long and short forms of the Conners 4. King stated she thought the long form of the Conners 4 rating scales would be "overly burdensome without providing additional information." However, King failed to explain either why the long form would be overly burdensome, or why it would not provide additional information. King's choice to narrowly assess Student's attention deficits and social

emotional functioning, by limiting the Conners assessment to the short form, appears to be another indication that Palm Springs' assessment was intended to confirm a preconceived notion that Student was not eligible for special education.

Palm Springs argues that the evidence fell short of establishing any "missteps" in administering the Conners 4 short form assessment because it was administered to all of Student's current teachers, and Palm Springs considered and weighted their responses in accordance with the publisher's manual. However, both state and federal law require that tests be administered in accordance with any instructions provided by the producer of the assessment and used for the purposes for which the assessments or measures are valid and reliable. (20 U.S.C. § 1414 (b)(1)(C)(v) and (b)(3)(A)(iii); Ed. Code § 56320, subds. (b)(2) and (3).) Furthermore, all testing instruments need to be reliable and technically sound. (20 U.S.C. 1414 (b)(2)(C).)

In addition to failing to comply with testing instructions, which recommends the Conners full-length form assessment for initial assessments and full re-evaluations, even if use of the short form was not prohibited, it was not reliable or technically sound. The manual explains in detail why it recommends the long form for full evaluations. Not understanding the difference in the forms, King ignored the instructions solely because she thought the short form would be quicker, assuming that she would not gain additional information from the full-length form. This was an incorrect assumption, contrary to test producer's instructions. Certainly, if King lacked familiarity with the different test versions, she should have followed the test producer's recommendation to acquire thorough results.

Student also established King mislabeled the descriptions of test results in the Psychoeducational Evaluation's report of the Conners 4 ratings and in the Autism Spectrum Rating Scales. Student's expert, Licensed Educational Psychologist, Edward Rodezno, identified the discrepancy, and stated deviating from the testing publisher's prescribed descriptions could cause misinterpretation of the assessment results.

Rodezno pointed out that King chose to label the results using the terms "at risk" and "clinically significant," instead of the Conners and Autism Spectrum Rating Scales publishers' prescribed score descriptions language of "low," "average," "slightly elevated," "elevated," and "very elevated." King claimed she made this choice to show consistency of results across testing instruments. However, neither of the rating scales she chose used the "at risk" and "clinically significant" descriptors, so King's explanation did not make sense.

Furthermore, King offered no information as to the score ranges applicable to the score descriptions she used. While Rodezno stated he did not consider this a "grave" error, whether or not such a choice is a "grave error" is not the applicable legal standard. King did not have a choice of whether or not to follow the testing producer's instructions when describing testing outcomes. Had King used the required descriptions, the IEP team, including Parents, would have had an accurate basis for comparing the two assessment scales using the test producer's prescribed testing descriptions.

Finally, King chose to discount Castaneda's Conners 4 ratings in contravention of testing instructions. After describing Castaneda's ratings, which indicated substantial concerns as to hyperactivity, peer relations, inattention, and executive dysfunction, King stated it was "important to note" he was a new teacher and a long-term substitute in the

math and science classes without a full teaching credential. She described him as having less experience training and expertise with students and opined that this may have impacted his ratings, especially in light of the other ratings which King mischaracterized as "consistent." At the time the ratings were completed, Castaneda had been teaching the math and science class for nearly three months. He had as much experience with Student as Lara, the second semester elective teacher, who also rated Student.

The Conner's manual requires a rater to have provided instruction for at least the month prior to the test administration, as the teacher form of the ratings is intended to provide ratings on Student's current social, emotional behavioral and academic functioning in a school setting. The manual does not require a full teaching credential or extensive teaching experience for valid ratings. King imposed additional validity criteria onto Castaneda's ratings that the Conners 4 manual did not require. King, however, ignored the validity flag on Charles' ratings which cautioned that she responded at an unusually rapid pace. At no point did King's report identify this rating concern or analyze how it might have impacted Charles' ratings.

Palm Springs argues that Parent failed to prove the changed labels resulted in any misunderstanding. However, Palm Springs offered no legal authority that Parent had the burden to prove a negative impact from failing to conduct an assessment according to test producer's instructions, or any other individual element of the required assessment legal standards. In this case, King selected a form specifically not recommended for the assessment conducted, changed the score descriptors without justification, and applied validity criteria to ratings that did not comport with the test producer's instructions. King also changed score descriptions on the Autism Spectrum Rating Scales which used the same range of low, to highly elevated, descriptions as the

Conners 4. As King failed to follow testing instructions, on the Conners 4 short form, or the Autism Spectrum Rating Scales, King's report is neither technically sound, nor reliable.

PALM SPRINGS PSYCHOEDUCATIONAL ASSESSMENT WAS NOT LEGALLY COMPLIANT AND DENIED FAPE

Student proved several bases on which Palm Springs' psychoeducational assessment and report was not legally compliant. For the reasons addressed previously, Palm Springs' psychoeducational evaluation fails to meet state or federal legal standards.

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural violation of the IDEA. (*Park v. Anaheim Union High Sch. Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031.) A child is denied a FAPE when procedural inadequacies result in the loss of an educational opportunity, loss of educational benefit, or seriously infringe on the parents' opportunity to participate in the IEP formulation process. (*L.J. v. Pittsburg Unif. Sch. Dist., supra*, 850 F.3d at 1003; citing *Doug C. v. Hawaii Dep't of Educ.*, (9th Cir. 2013) 720 F.3d 1038, 1043).

Here, King's failure to thoroughly and reliably assess Student's special education needs resulted in lost educational opportunity for Student and significantly impeded Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student. Student lost significant educational opportunities as, the failure

to adequately assess resulted in Student being denied eligibility, as will be discussed more fully later in this Decision. The flawed assessment also resulted in Student's lost opportunity to benefit from the specialized academic instruction and related services that would have come from an IEP. Parents were denied a meaningful opportunity for participation in the IEP process because material information was not provided to the IEP team members, including Parent.

Student proved Palm Springs' violation of its duty to conduct legally compliant assessments constituted a denial of FAPE.

PALM SPRINGS' OCCUPATIONAL THERAPY ASSESSMENT

Adrianna Martin, Palm Springs licensed occupational therapist, conducted the occupational therapy needs assessment of Student. Her assessment was documented in a report dated March 22, 2024.

Student contends the assessment failed to meet legal standards because Martin failed to conduct a parent interview, failed to review work samples, and failed to include any discussion of the "informal writing sample" she conducted in her occupational therapy assessment report. Student did not prove Martin failed to interview Parent. Martin described discussions with Parent in her report, which Student did not contradict.

Student offered no legal authority or expert testimony supporting the contention that failure to review work samples or failure to include a description of an informal writing sample invalidated the occupational therapy assessment. Nor did Student offer

any expert testimony questioning the validity or accuracy of Martin's occupational testing results. No occupational therapist or other appropriately credentialed expert was called to critique Martin's process or conclusions.

Student failed to prove Palm Springs Occupational Therapy assessment did not meet legal standards.

ISSUE 1c: DID PALM SPRINGS DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, BEGINNING APRIL 10, 2024 BY FAILING TO FIND HIM ELIGIBLE UNDER THE CATEGORIES OF OTHER HEALTH IMPAIRMENT OR AUTISM?

Student asserts Palm Springs failed to properly consider his attention, social emotional and mental health conditions when determining eligibility under the other health impairment category. Palm Springs contends the assessments established Student was not eligible in any category assessed.

A child who meets the definitions of being disabled due to other health impairment, or autism, among other categories, is substantively eligible for special education if the child needs special education and related services to access their education as defined by the IDEA. A student does not qualify for special education services if support provided through the regular school program is sufficient to allow the student to access his education. (20 U.S.C. § 1401(3)(A); Ed. Code § 56026, subd.(b).)

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Here, Student met special education eligibility requirements as a Student with a health impairment, specifically, ADHD. Student also proved that available general education interventions offered did not remedy Student's attention deficits or inability to complete work and submit it for credit.

ELIGIBLE UNDER OTHER HEALTH IMPAIRMENT

California regulations define eligibility due to "other health impairment" as having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, due to a chronic or acute health problem that adversely affects a child's educational performance. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(9).) Student established he was eligible for special education under the category of other health impairment during the 2023-2024 school year due to the impact his ADHD had on his ability to focus during class and complete his schoolwork. The evidence established ample bases for a determination that Student's ADHD negatively impacted his ability to access his education. This evidence included observations of Student's

- distractibility and need for frequent redirection in class; his interruption of peers, and lack of focus on his own work, due to being out of his seat when he was not supposed to be;
- as a result of hyperactivity; as well as his frequent failure to complete or submit work.

Palm Springs came to a different conclusion following its assessment. However, facts from Harding, Parent, and teachers, offered descriptions of Student's behaviors evidencing his attention deficits and their negative impacts on Student's ability to access

his education. Palm Springs' flawed and biased assessments, previously described, contributed to its failure to find Student eligible for special education under the category of other health impairment, despite clear demonstrations of Student's significant inability to focus in class, and complete work.

TEACHER AND ASSESSOR OBSERVATIONS

All of Student's teachers described his inability to focus during class and his need for frequent redirection. Nancy Charles, Student's English and social studies teacher, told Principal Susan Drummond he "liked to be in other people's business!" (Emphasis in original.) Felipe Lara, Student's elective teacher, told Drummond that he got distracted often but did not always finish his work, "again because he is easily distracted." Physical education teacher, Yareli Valtierra, informed Drummond Student required multiple redirections during PE. Valtierra described him generally needing redirection once during opening instructions and then throughout the class.

Comments from teachers on the narrative part of the Conners 4 ratings also informed Palm Springs of Student's ADHD impacts and the resulting educational deficits. Charles again noted Student's distractibility in class, and his compliance when redirected. She also again emphasizes the impact his lack of attendance has on his performance. However, here, Charles specifically commented on the fact that Student was missing class too much for "appointments or medication needs" as well as frequently arriving late to school. Despite the knowledge of at least one aspect of Student's attendance issues, Palm Springs never examined the connection between Student's health and his attendance. Palm Springs had the obligation to explore whether the reasons for Student's absences should have informed their other health impairment eligibility decision.

Science and math teacher Castaneda's narrative response to the Conners 4 described Student's behaviors as distracting to his peers. He noted that although Student is bright, he struggled with concentration, following directions, and staying in his seat, requiring frequent redirection back to his seat and to focus on his work. Castaneda's testimony established his redirections were not always successful the first time. Student also had difficulty respecting others' personal space.

Assessment observations corroborated the teachers' impressions of Student's lack of focus and its impact. Occupational therapist, Adrianna Martin's assessment report included a very detailed, and compelling, observation of Student in Castaneda's class. Her 39-minute observation described Student's inability to focus for more than five to 10 minutes. Student completed the quizzes being given faster than many peers. However, throughout the math class, he caused repeated disruptions of the class, and of peers. Castaneda had to remind him to stop talking because others were still working on their quizzes, multiple times. He shouted out "Sigma" multiple times without reference to anything happening in class. He also called out an incorrect answer, and asked the teacher where he ate breakfast. At one point, Student began tapping his pencil on his desk, then on the head of a peer. When another peer was working a problem on the board, Student made "ay ay ay" noises. Near the end of the class, Student slammed his computer closed, shouted, "I'm done! I quit!" and left class. He returned a few minutes later, resulting in the teacher having to repeat instructions given to the class.

Martin also described distractibility in Charles' class that, while not as disruptive as in the math class, still demonstrated an inability to sustain attention for more than a few minutes. He did not want to continue working on a writing assignment, asking how

long he had to do so. A few minutes later he left to get a drink. A few minutes after returning he was called to the office, returning to class to work for another few minutes that included chatting with his table mates and others who passed by.

King also ignored evidence of Student's distractibility during her own testing. For example, King noted at least one subtest score was likely impacted by Student wanting to engage King in off-topic conversation, despite knowing it was a timed test. This "testing observations" comment was not acknowledged when King described Student as not requiring any prompting or positive reinforcement to remain focused throughout the testing. This inconsistency further undermined the credibility of the report and its conclusion that Student did not meet other health impairment eligibility criteria.

Student's teachers expressed frustration with Student's failure to complete schoolwork. Student received Fs throughout sixth grade in social studies because he did not complete a major project first semester and did not complete work second semester. Student also received low grades in English throughout the year, and in science the first semester. As noted previously, Lara described Student's distractibility as a factor in his failure to complete work. Yet Palm Springs failed to consider any of this information when considering Student's eligibility.

All of Student's teachers described Student as polite and respectful when redirected and several cited this as the reason they had not called Parent to discuss the distractibility. However, Student's pleasant response to being redirected does not negate the disruption his lack of focus has on both his own work and the work of his peers, and should not result in his educational needs being overlooked. The failure to address the distractibility, and failure to complete work resulted in poor grades and a lack of adequate progress in academics especially writing, which was a task Student had

particular difficulty with and disliked. The evidence showed Student found writing by hand physically difficult and he also did not have the ability to adequately plan a writing project.

Palm Springs' psychoeducational assessment disregarded clear evidence from teachers, and from its occupational therapist, demonstrating the impact of Student's hyperactivity, and inability to focus, on his poor educational performance. Rather, Palm Springs' psychoeducational assessment focused on Palm Springs' chosen narrative, that Student's attendance issues were the sole cause of Student's poor educational results. The reasons for Student's absences and tardies were never examined. Instead, there was a continuous theme throughout the Psychoeducational Evaluation report that Student just did not come to school, as though he was a habitual truant, as opposed to a Student with challenging medical conditions.

PARENT INFORMATION

Parent testified the IEP team discussions did not reflect Student's current situation. Parent's testimony established that Student's health conditions and attention deficits undermined his ability to get to school punctually, and impeded his ability to finish classwork during allocated time in class. Palm Springs was aware of Student's multiple health conditions, including a bladder problem, autism, and ADHD. Palm Springs was also aware of the multiple medications Student took at home. The Psychoeducational Evaluation did not include any information about Student's medications despite the fact that it was included in Acevedo's health report. Palm Springs' eligibility analysis failed to consider any medication impact on Student's attendance or educational performance.

Notes from the April 24, May 16, and June 5, 2024 IEP team meetings corroborate Parent's testimony that she informed the IEP team of Student's struggles to get to school. Student's bladder condition required him to wear protective underwear at night. As a result, he had to shower each morning before school. Student had an applied behavior analysis aide who came to his home each Monday through Friday morning to help Student get to school on time. Palm Springs' records show the district was aware that Student had been receiving this help for a few years. Despite this assistance, there were many mornings Student refused to get ready for school. Parent also told the IEP team Student had doctor appointments with seven different medical providers.

All of these facts were known to the IEP team as recounted in King's report and corroborated by notes from medical providers, IEP team meeting notes, and school records. Parent asked the IEP team for help "as far as the attendance issues were affecting his schoolwork." She also asked the Palm Springs IEP team if they could help her talk to the doctors to get appointments scheduled after school. Assistant Special Education Director, Blumberg, told Parent the school district had no control over appointment scheduling. She clarified that no one suggested Student should not attend doctors' appointments, but his absences were affecting his grades. However, at no time did any IEP team member suggest further assessment of why his attendance was so poor, or offer special education interventions to help Student regularly get to school on time or to accommodate his need to miss school for medical appointments.

Information to Palm Springs from Licensed Marriage and Family Counselor, Eric Harding, who had been providing therapy to Student for nearly five years at the time of the 2024 IEP team meetings, also corroborated Parent's concerns. Harding informed

Palm Springs, in his August 10, 2023 letter, of Student's health conditions, and his twice weekly scheduled therapy sessions. Harding described Student's medical conditions, which included ADHD as well as

- autism;
- pica, an eating disorder characterized by compulsively eating non-food items;
- trichotillomania, characterized by compulsively pulling off fingernails and hair; and
- angry outbursts that included yelling, crying, throwing objects, and hitting.

Harding stated the angry outbursts, pica, and hair and nail pulling, had decreased significantly with instruction on calming techniques. However, Student continued to receive therapy for calming strategies, emotional management, and social skills. King's report recounts Student's comment that, although he had friends he played sports with at school, he never saw his school mates outside school hours. Despite this, social skills were only superficially examined in Palm Springs' assessment.

Most importantly, Harding described ongoing therapy which focused on Student managing ADHD impulsivity, maintaining attention and completing non-preferred tasks and following instructions he did not want to follow. Harding noted Student's proclivity to argue or negotiate about the scope of tasks prescribed, which was also noted by Charles and Castaneda in class, and by King and special education teacher Lauren Goldman during testing.

Harding also discussed his work regarding Student's hyperactivity. He noted working with Student on controlling his need to get up and down from his seat frequently. Student was working on strategies to manage those impulses, such as asking for breaks, and breathing to control his body. Harding explained that Student's impulsivity resulted in Student experiencing a need to stand up and move in ways that could be disruptive to people around him. Student's proclivity to leave his seat frequently and bother peers during class was corroborated by Charles and Castaneda.

Harding explained that Student's difficulty focusing was a symptom of his ADHD and that therapy had improved Student's attention span from two to three minutes to about 10 minutes. This corroborated Martin's observations of Student in Castaneda's and Charles' classes where Student was distracted or got out of his seat at least every five to 10 minutes to get a drink, use the bathroom, or to talk to someone. Harding also corroborated Charles and Castaneda's need to prompt Student to attend to and complete writing assignments.

During therapy sessions, Harding had Student practice attending to non-preferred, short writing tasks. Student had difficulty focusing and translating his thoughts into an organized, complete paragraph. Charles and Castaneda both mentioned they had to prompt Student to complete work, and be more descriptive in his writing. They both experienced Student's attempts to negotiate the time spent on, or length of, writing assignments. This experience was described during testimony by special education teacher Goldman, too, who experienced Student's reluctance to complete writing assessments.

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The impact of Student's medical conditions on his attendance, and on his educational performance was ignored by Palm Springs' IEP team members. The IEP team failed to consider whether absences related to medical needs contributed to Student's health impairment eligibility. Palm Springs also ignored the connection between Student's ADHD symptoms and his inability to complete and submit schoolwork.

Multiple teachers noted Student's classwork often became homework because Student did not finish it in class. The totality of the evidence established Student's ADHD impeded his ability to focus and complete work. Student's sixth-grade teachers rarely assigned homework in addition to the work they expected pupils to complete during class. However, if classwork was not completed, students were allowed to finish the work at home and submit it for a grade. None of Student's sixth-grade teachers lowered Student's grades on classwork because it was turned in late, so Student was able to improve his grade by submitting late work. However, all teachers, except for PE teacher Valtierra, described Student's chronic failure to finish, or submit, schoolwork for a grade.

INACCURATELY DESCRIBED GRADE INFORMATION

Despite Parent expressing concerns at the April 24, 2024 IEP team meeting about Student's poor grades, King told Parent "Academically Student has earned good grades throughout his academic career despite his poor attendance," as memorialized in the IEP notes of April 24, 2024. This was patently untrue, as demonstrated by his grade reports.

Student received Ds and Fs in English throughout the 2023-2024 school year, except on his second quarter progress report when he received a C. He received Fs throughout the school year in social studies, and a D- and an F in math and science, respectively, at the end of the first semester. This mischaracterization of Student's grades during the IEP team meetings shows a deliberate disregard of the impact Student's ADHD was having on his ability to complete work.

Student's grades were also concerning, not just because many were at the failing or nearly failing level, but because the grades showed an inconsistent ability to succeed in challenging courses. Multiple teachers noted he was often the first to raise his hand and that he made accurate contributions to class discussions. His abilities were noticeably different if he was expected to organize and execute written classwork or homework projects. The bright and eager student seen in the classroom discussions was unable to organize and execute written schoolwork on his own. Consequently, his grades suffered.

The IEP team knew about Student's numerous absences and tardies, as they were addressed during the April 24, May 16, and June 5, 2024 IEP team meetings. However, Student's poor grades were ignored. Even in the face of Parents' explicit questions about Student's grade reports, in the April 24, 2024 IEP team meeting King told Parent that Student consistently earned good grades despite his absences and tardies.

The evidence established Student's chronic health condition of ADHD resulted in a heightened alertness to environmental stimuli, that resulted in limited alertness with respect to the educational environment. He was distracted and that impacted his ability to complete work or organize work to see that it was submitted.

INEFFECTIVENESS OF GENERAL EDUCATION INTERVENTIONS

Teachers described opportunities offered to all students to ask teachers questions or finish work during their regularly scheduled lunch-time drop-in sessions. Teachers criticized Student for not taking advantage of the offered opportunities to seek help. They expressed frustration that Student did not independently seek available assistance. However, all of the opportunities for extra help were based on Student having attention and planning skills Student lacked.

Teachers also described in-class assistance provided to Student to improve his writing skills. Both Charles and Castaneda described Student's attempts to negotiate writing less and multiple prompts given to expand written work. However, the additional in-class assistance did not improve Student's ability to focus on a writing project, or independently plan or execute it, so that it was completed and timely submitted.

Instead of considering the inconsistent grade results in combination with known information about distractibility, his proclivity to leave his seat, lack of organization, and frequent failure to turn in work, Palm Springs IEP team members attributed his poor educational performance to being "lazy" or lacking motivation. These descriptions did not align with their other comments that he was eager to participate in discussions in class, was often the first to raise his hand, and offered comments indicating he understood the material well. Palm Springs' IEP team members ignored the evidence of other health impairment eligibility that they should have acknowledged.

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WRONG LEGAL STANDARD USED TO EXCLUDE STUDENT'S OTHER HEALTH IMPAIRMENT ELIGIBILITY

The Psychoeducational Evaluation report also erroneously applied an exclusionary standard to the other health impairment eligibility analysis. King was so focused on lack of attendance being Student's sole educational performance impediment, she applied an exclusion to Student's other health impairment eligibility, based on lack of attendance that does not exist. While specific learning disability has an eligibility disqualifying factor for lack of attendance, eligibility under other health impairment does not. (Compare, Cal. Code Regs., tit. 5, § 3030, subds. (b)(9) and (b)(10)(B)(4).) By focusing so intently on attendance as the cause of all of Student's educational problems, not only was an exclusion applied in error, but the eligibility analysis also failed to examine the reasons Student was so often absent and tardy. The evidence of Student's medical appointments established attendance issues were at least partly related to Student's attention deficit or another health impairment.

California law includes a general exclusion from special education eligibility for lack of instruction in reading and math, (Ed. Code § 56026(e). However, that exclusion does not apply to Student. Instead, the exclusion applies to pupils who do not qualify for special education, eliminating special education as an avenue for remediating educational deficits for students whose need is solely related to the failure to receive adequate math or reading instruction. (Ibid.) Student qualified for special education, as previously discussed, so the exclusion did not apply to Student.

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Palm Springs ignored all facts pointing to Student's heightened sensitivity to environmental stimuli in the classroom. This ADHD related sensitivity caused Student's limited alertness in class, which adversely affected his educational performance. Palm Springs offered no evidence that Student was either lazy or lacked motivation, other than his failure to turn in work. It was Palm Springs' burden to prove any affirmative defense. (Evidence Code § 500.) The teacher's unsupported conclusions that Student was lazy or lacked motivation to complete work were not persuasive.

Student met his burden of proving that Palm Springs denied him a FAPE by failing to make him eligible for special education and related services. The evidence established that the impacts on educational performance resulting from his disabilities, could not be remedied by general education interventions, such as lunchtime homework help, in-class assistance, or even the 504 plan accommodations Kings' report and IEP meeting notes stated he received.

As detailed here, Student proved Palm Springs denied him a FAPE by failing to find him eligible for special education under the other health impairment category and offer him an IEP on April 24, May 16 and June 5, 2024.

NO ADEQUATE PROOF OF AUTISM ELIGIBILITY

Student failed to prove Student should have been found eligible for special education under the category of autism. While Student established Palm Springs' 2024 psychoeducational assessment failed to properly assess Student's special education eligibility under autism, Student failed to offer reliable evidence that autism was negatively impacting Student's ability to access his education, or his educational performance.

California regulation defines special education eligibility due to autism as meaning a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).)

Student failed to prove a nexus between his medical diagnosis of autism and his difficulties with social interactions in school or Student's difficulties accessing his education. Harding did not observe Student interacting with peers. Parent had no firsthand knowledge of Student's interactions with peers at school. Parent's testimony regarding information she received from Student did not establish that Student's social interactions or ability to access his education were impacted by autism. Even Student's expert neuropsychologist, Jill Weckerly was not convinced autism impacted Student's ability to access his education.

ISSUES 1d: DID PALM SPRINGS DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, BEGINNING APRIL 10, 2024, BY FAILING TO OFFER AN IEP?

Student asserts that legally compliant assessments would have resulted in findings of eligibility. As a result, Student argues he should have been offered an IEP, and the failure to do so constituted a denied of FAPE. Palm Springs argues its assessments were legally compliant, and on the basis of those assessments, Student was not eligible for special education, or entitled to an IEP at any time.

Following completion of assessments, the local education agency has an obligation to meet to discuss the assessments and determine eligibility. (Ed. Code § 56329, subd. (a)(1).) If a student is eligible for special education, the school district has an obligation to offer the student an IEP within 60 days of the date the school district received Parent's written consent to assessment, unless Parents have given written consent to an extension. (Ed Code § 56344, subd. (a).) The district "must offer an IEP reasonably calculated to enable a child to make progress appropriate, in light of the child's circumstances." (*Endrew F. supra*, 580 U.S. at p. 399; 137 S. Ct. 988; 197 L. Ed. 335.)

As previously detailed, Palm Springs had adequate information to find Student eligible for special education and related services under the eligibility category of other health impairment. Accordingly, Palm Springs was obligated to offer him an IEP, which it did not. Student proved he was denied a FAPE beginning on April 24, 2024, the first IEP team meeting, when Palm Springs failed to offer him an IEP.

ISSUE 1e: DID PALM SPRINGS DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, BEGINNING APRIL 10, 2024, BY PREDETERMINING STUDENT'S SPECIAL EDUCATION NEEDS AND ELIGIBILITY?

Student asserts that Palm Springs predetermined Student's ineligibility for special education. Palm Springs denies predetermining any aspect of Student's special education eligibility evaluation.

Predetermination occurs when an educational agency has made its determination of Student's special education eligibility or needs, prior to the IEP meeting. In this case, the evidence supports the finding that Palm Springs predetermined the outcome of its

eligibility decisions during its April 24, May 16, and June 5 2024 IEP team meetings. When the IEP outcome has been predetermined, regardless of the discussions that may occur at the meeting, the school district's actions violate the IDEA's procedural requirement that parents have the opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child." (H.B. ex rel. P.B. v. Las Virgenes Unif. Sch. Dist. (9th Cir. 2007) 239 Fed. Appx. 342, 344; citing 20 U.S.C. § 1415(b)(1); see also 34 C.F.R. § 300.501(c)(1).)

The totality of the circumstances supports a conclusion that Palm Springs' predetermined its decision that Student was not eligible for special education. This conclusion is largely supported by the facts that King's assessment report is written to support the conclusion that Student was not eligible for special education because the report was created in anticipation of an upcoming due process hearing.

This is demonstrated by the cumulation of the following facts:

- Blumberg and King advocated a defensive mindset associated with the assessments, as demonstrated by the January 31, 2024 and February 1, 2024 emails among Blumberg, King, and Palm Springs' staff directing that assessments be expedited so they could be used in an upcoming hearing;
- Focusing on the number of prior assessments that had already determined Student not eligible, King approached the assessment with a preconceived idea that Student was not eligible for special education;

- In an effort to confirm Student was not eligible, King made narrow assessment choices rather than broadly examining Student's eligibility in this initial assessment;
- King failed to follow testing protocols and ignored information in Palm Springs' possession, which should have led to a determination of eligibility based on Student's ADHD;
- King failed to properly apply eligibility exclusionary factors to Student's other health impairment eligibility;
- King dismissed Parent's ratings indicating Student had a high degree of need, and raised discrepancies in Student's developmental history in her report without giving Parent a chance to respond to the information King questioned; King then failed to interview Parent to try to understand Parent's ratings or the discrepancies King asserted were present in Palm Springs' records;
- King failed to interview Parent, which deprived Palm Springs of a more current and detailed understanding of Parental concerns about Student's educational and health needs;
- The Palm Springs IEP team members ignored information regarding Student's mental health diagnoses and medications that should have resulted in an examination of why Student had attendance problems;

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- The Palm Springs IEP team members also ignored clear evidence of ADHD symptoms causing disruptions to peers and Student's own classwork and impeding Student's ability to complete and submit work.
- The Palm Springs IEP team members failed to examine the reasons behind Student's absences and tardies, despite several Palm Springs staff citing attention issues as key bases for rejecting special education eligibility.

Palm Springs argues there is nothing in the law which prohibits the district from assessing Student in an expedited manner, to obtain current data about Student's educational needs, in advance of a Parent-initiated due process hearing. This is correct, unless expediting Student's assessments so they could be finished prior to the hearing on the case it was defending colored the approach to assessing Student, or impacted the objectivity of the assessments. In this case, both happened.

As previously discussed, the evidence established the assessment was rushed, so that the assessment report could be prepared for Palm Springs' use in defending an upcoming due process hearing. This, combined with the choice of narrow assessments; the lack of a legally compliant assessment and report; the failure to consider the reasons for the absences and tardies; the failure to examine whether Student's health conditions were impacting his ability to access his education; the failure to explore why Student consistently failed to turn in work; and the failure to acknowledge evidence of any impact of Student's hyperactivity and attention deficits demonstrates bias. The conclusion of bias is bolstered by the legally inadequate report which identifies selected information to support Palm Springs' narrative that Student's attendance

was the cause of his educational problems rather than thoroughly examining all information available about Student's disability and its impact on his education. The preponderance of the evidence established that Palm Springs had already determined Student would not be eligible for special education and related services prior to the April 24, 2024 IEP team meeting.

Furthermore, Palm Springs' ultimate eligibility decision did not change as the IEP team received additional information from Acevedo and Martin, or from Parent during the April 24, May 16, and June 5, 2024 IEP team meetings. A district may not predetermine the contents of an IEP. "A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification." (*Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, (9th Cir 2003) 337 F.3d 1115, 1131.) Here, Student established that Palm Springs assessment and report emphasized prior assessments finding Student not eligible.

While a records review is required in any eligibility assessment, the review is meant to examine the additional data necessary to determine whether the child is a student with a disability, and, if so, the means of determining the child's needed services. (34 C.F.R. 300.305(a)(1) and (2).) Instead of reviewing records to assist with determining needed additional information about Student, Palm Springs used information from past assessments in an attempt to demonstrate Student was not eligible for special education currently.

Student proved predetermined the April 24, May 16 and June 5, 2024 IEP determination that Student was not eligible for special education.

Predetermination is a procedural violation requiring that Student prove a denial of access to the Student's education or denial of meaningful parent participation in the IEP process. (K.D. ex rel. C.L. v. Dep't of Educ., Hawaii, (9th Cir.2011) 665 F.3d 1110, 1123; (L.J. v. Pittsburg Unif. Sch. Dist., supra, 850 F.3d at 1003; citing Doug C. v. Hawaii Dep't of Educ., (9th Cir. 2013) 720 F.3d 1038, 1043). Here, Student proved both. Palm Springs impeded Student's ability to access his education, because the predetermination deprived him of an IEP and any special education services and supports. Palm Springs also denied Parents meaningful participation in the IEP process by predetermining that Student was not eligible for special education, and depriving her of the opportunity to meaningfully participate in the eligibility determination.

ISSUE 1b: DID PALM SPRINGS DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR, BEGINNING APRIL 10, 2024, BY DENYING MEANINGFUL PARTICIPATION IN THE IEP DEVELOPMENT PROCESS BY FAILING TO MEANINGFULLY CONSIDER PARENTAL INPUT?

Student asserts that Palm Springs significantly impeded Parents opportunity to participate in the decision-making process regarding provision of a FAPE to Student by failing to provide Parent with Spanish translations of assessment reports before IEP team meetings. Student further contends the IEP team failed to consider Parent's concerns regarding Student's failure to complete work, grades, and writing capability during the meetings.

Palm Springs contends that Parent's meaningful participation was evidenced by her disagreement with the determination that Student did not qualify for special education during the meetings.

REPORT TRANSLATIONS TO SPANISH

Student fails to offer any persuasive legal authority requiring Palm Springs to provide translated assessment reports to Parents in advance of the IEP team meeting. Student's reference to *Amanda J.* in support of his contention, is devoid of a citation or analysis regarding that case's applicability to this one. A review of *Amanda J. ex rel. Annette J. v. Clark County School Dist.*, (9th Cir. 2001) 267 F.3d 877, cited in Student's closing brief citation list, does not reveal any discussion of document translation. *Amanda J.* involves, in part, a district's failure to disclose records to Parents indicating a child had autism. The Ninth Circuit found this violated Parents' procedural safeguards. The facts of *Amanda J.* are not analogous to this case.

Both the IDEA and California law require that a public agency provide a copy of the evaluation report and the documentation of eligibility determination to a parent at no cost. (34 C.F.R 300.306(a)(2); Ed. Code § 56329, subd. (a)(3).) Student cited no authority requiring reports to be provided before the IEP team meeting. Student did not offer proof of when Palm Springs provided translated reports to Parent.

Student did not prove Palm Springs' failure to provide Spanish language translations of the assessment reports, prior to the IEP team meetings considering eligibility, violated the IDEA or special education laws or denied her a FAPE.

FAILURE TO CONSIDER PARENTS' CONCERNS

As previously discussed, Palm Springs also failed to consider Parents' concerns. Parent expressed concerns about Student's behavior, his grades, about Student failing to turn in work, and about Student's failure to meet grade-level standards in some academic areas. Parent testified that when she tried to raise these concerns in the IEP

team meetings discussing Student's special education eligibility, her requests for information were ignored or her expressed concerns contradicted. The only concern addressed was Parent's need for help with Student's medical appointment scheduling. Assistant Special Education Director Blumberg informed Parent the district could not help with that. Other than this single inquiry, there was no evidence that Palm Springs addressed parents' concerns, during the IEP team meetings, regarding student's grades, failure to turn in schoolwork, or failure to meet grade-level academic standards. Parent's testimony on this topic was uncontroverted by Palm Springs' staff and faculty. Palm Springs had the burden of proof to establish its own affirmative defenses. (Evid. Code § 500.)

Student proved the IEP team failed to consider Parents' concerns, as they failed to address her questions during the IEP team meetings, regarding student's grades, failure to turn in schoolwork, or failure to meet grade-level academic standards, which also denied Parent a meaningful opportunity to participate in the IEP team meetings determining eligibility.

FAILURE TO PROVIDE A LEGALLY COMPLIANT ASSESSMENT REPORT AND ELIGIBILITY PREDETERMINATION

Also detailed previously, Palm Springs' Psychoeducational Evaluation failed to meet legal standards. The failure to present a report that met legal standards, in itself, constituted a denial of meaningful parental participation. So did Palm Springs' predetermination of the eligibility determination. (*H.B. ex rel P.B. v. Las Virgenes Unif. Sch. Dist.* (9th Cir. 2007) *supra*, at p. 344; citing 20 U.S.C. § 1415(b)(1); see also 34 C.F.R. § 300.501(c)(1).)

Student proved that Palm Springs denied Parents the opportunity to meaningfully participate in the IEP process. Palm Springs failed to answer reasonable questions about Student's educational performance from Parent during the IEP team meetings. Palm Springs also conducted a flawed psychoeducational assessment and prepared a Psychoeducational Evaluation that was not legally compliant.

Student proved Palm Springs predetermined Student's ineligibility for special education, and denied Parents meaningful participation in the IEP process which constituted a denial of FAPE to Student.

ISSUE 2a: DID PALM SPRINGS DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO OFFER STUDENT'S INDEPENDENT PSYCHOEDUCATIONAL ASSESSOR ACCESS TO INTERVIEW TEACHERS AND OBTAIN TEACHER INPUT THROUGH RATING SCALES DURING HIS ASSESSMENT?

Student contends he was denied a FAPE because his independent psychoeducational evaluator, Rodezno, was not given access to interview teachers or obtain teacher input through rating scales during his spring 2024 assessment. Palm Springs argues it was never asked to provide teacher access to Rodezno.

If a public education agency observed the pupil in conducting its assessment or its assessment procedure makes it permissible to have in-class observations of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting. (Ed. Code § 56392, subd. (b).) Rodezno was given access to observe Student.

Rodezno did not contact Palm Springs to make arrangements to interview teachers or obtain rating scales. His assertion that he did not have email addresses for teachers lacks credibility. An independent assessor is expected to be aware of methods for exploring a school district's process and policies for requesting teacher input into an independent assessment. The evidence demonstrated Rodezno attempted to shift that responsibility to Parent, who has limited English language ability, and who he knew had a difficult relationship with Palm Springs.

Although Student argues Parent's request on Rodezno's behalf for teacher contact was refused, Student failed to offer persuasive evidence of what Parent asked for exactly, who refused Rodezno's access to teachers, and when that refusal occurred. An email sent by Parent subsequent to her request, purporting to "confirm" a request, that Student could not prove was made, is unreliable hearsay which cannot form the basis of a finding of fact in special education hearings. (Cal. Code Regs., tit. 5, § 3082 subd. (b).)

Consequently, Student failed to meet his burden of proof that Palm Springs denied him a FAPE by failing to offer his independent assessor access to interview teachers or obtain teacher input through rating scales.

ISSUE 2b: DID PALM SPRINGS DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO MEANINGFULLY CONSIDER THE INDEPENDENT PSYCHOEDUCATIONAL ASSESSMENT OF EDWARD RODEZNO?

Student asserts the Palm Springs' IEP team members failed to meaningfully consider the opinions and conclusions of Student's independent assessor, Rodezno,

when determining Student's eligibility for special education during the May 28 and June 3, 2025 IEP team meetings. Palm Springs asserts it considered Mr. Rodezno's report and recommendations, but just disagreed with them.

Student's IEP team met on May 28, 2025, to consider Rodezno's independent psychoeducational assessment report. The IEP team members listened to Rodezno explain his nearly 100-page psychoeducational assessment report. Due to the length of the report, the time allocated for the May 28, 2025 meeting did not allow for a complete discussion of Student's eligibility.

Palm Springs scheduled a second IEP team meeting for June 3, 2025 to address the question of Student's eligibility. Rodezno did not attend that meeting. Contrary to Student's closing brief argument, no evidence was offered regarding whether Rodezno was invited to the June 3, 2025 IEP team meeting. During the June 3, 2025 meeting, Palm Springs' IEP team members were not persuaded to change the district's view of eligibility based on Rodezno's report. Palm Springs' IEP team members testified the primary reason they found his assessment unpersuasive was it failed to seek any information from teachers.

If the parent obtains an independent educational evaluation at public expense or shares an evaluation obtained at private expense with the public agency that meets agency criteria, the results of the evaluation must be considered by the public agency in any decision made with respect to the provision of FAPE to the child. (34 C.F.R. § 300.502(c)(1).) The IEP team is required to consider the expert's input. However, it is not required to follow the outside expert's recommendations. (See, *Capistrano Unif. Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1134.)

Student failed to prove that the team did not consider the information Rodezno provided. Palm Springs asserts it was considered; Palm Springs just did not agree with Rodezno's conclusions.

Student failed to prove Palm Springs denied him a FAPE by failing to consider Rodezno's report.

ISSUE 2d: DID PALM SPRINGS DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO FIND STUDENT ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES UNDER THE CATEGORIES OF OTHER HEALTH IMPAIRMENT OR AUTISM?

OTHER HEALTH IMPAIRMENT

Palm Springs continued to deny Student a FAPE during the 2024-2025 school year by failing to make him eligible for special education and related services under the other health impairment category due to the educational impacts of his ADHD. Student established eligibility for special education under the category of other health impairment due to Student's ADHD from April 24, 2024. During the 2024-2025 school year, Student's needs continued to be demonstrated by teacher observations. Teacher corroborated Student's attention deficits and hyperactivity in school; Student's low grades; his increasing absences and tardies; and continued problems turning in work. Palm Springs also received notice of additional mental health diagnoses which should have triggered further investigation into the causes of Student's attendance problems and failure to turn in schoolwork.

Student's educational performance in seventh grade continued to be poor and his attendance had gotten worse. By the time of these May and June 2025 IEP team meetings, the IEP team would have known and had access to all of Student's sixth and seventh-grade report cards. Though the last IEP meeting was held on June 3, 2025, three days prior to the end of the school year, King had information regarding Student's grades in real time through the "Synergy" software program. Student continued to earn an unexplained mix of failing, nearly failing and good grades that were not solely explained by Student's attendance record.

Teachers continued to criticize Student's lack of focus, and label Student's failure to complete work, as lazy. Russell Poe, Student's seventh-grade English and science teacher, even called Student's failure to click the submit button to turn in completed work on Google Docs lazy, although he later admitted perhaps it was not the right word. Teachers also continued to express frustration that Student did not independently seek help with assignments during their lunch time drop-in sessions. Student had not received executive function or organizational skills training, because he had never been made eligible for special education and related services.

Palm Springs had clear evidence of Student's special education needs during the entire 2024-2025 school year. The evidence of need only increased as the school year progressed because Palm Springs did not explore why his attendance, academic performance, attention deficits, and failure to complete work, got so much worse. Palm Springs continued to deny Student a FAPE by continuing to refuse to find him eligible for special education under the other health impairment category based on his ADHD, from the beginning of 2024-2025 school year, through June 5, 2025.

Student argues that he was entitled to eligibility under other health impairment on the basis of additional mental health diagnoses of bipolar disorder and oppositional defiant disorder, in addition to ADHD. Palm Springs had documentation of additional mental health diagnoses during the 2023-2024 school year. While additional mental health diagnoses may demonstrate additional needs, Student's assertion that he was entitled to eligibility under the other health impairment category for additional health impairments is not reached here, as Student is already found eligible under the other health impairment category.

AUTISM

Student failed to prove eligibility under the category of autism for the 2024-2025 school year. Although Student had a medical diagnosis of autism, Student failed to prove autism impacted his ability to access his education or negatively affected his peer interactions during the 2024-2025 school year.

Rodezno's assessment did not establish Student's eligibility under autism. His findings that Student qualified for special education and related services as a Student with autism were based, in part, on what Rodezno described as a qualitative, informal assessment that Rodezno devised himself. Rodezno stated he devised the assessment by drawing from the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, also called the DSM-V. There was no evidence Rodezno's informal assessment was grounded in peer reviewed research, or had any validity.

Rodezno's informal assessment was supplemented by the Childhood Autism Rating Scale, second edition, which Rodezno described as examining the severity of Student's autism symptoms. Student was medically diagnosed as autistic five years

earlier. Rodezno 's report was not persuasive as his conclusions conflicted. On one hand Rodezno interpreted the ratings to demonstrate "severe" autism symptoms. On the other hand, his report acknowledged that Student was typically a well-behaved student with no behavioral deficits, according to the Palm Springs' psychoeducational report. No other evidence corroborated a determination that Student's autism was severe.

Furthermore, nothing in Rodezno's assessment answered the question of how Student qualified for special education services due to the impacts of autism on Student's educational access. Rodezno's report regarding Student's autism eligibility was contradictory, conclusory and was given little weight. As previously discussed, Student's other expert, Weckerly, stated she was unsure whether Student was eligible for special education under the category of autism.

Consequently, Student did not prove he was denied FAPE during the 2024-2025 school year because Palm Springs did not find him eligible for special education under the category of autism.

ISSUE 2e: DID PALM SPRINGS DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO OFFER AN IEP?

As previously explained, Palm Springs had knowledge of Student's qualifying special education and related services needs during the 2023-2024 school year. An IEP should have been offered at least by April 24, 2024, the date of the first IEP team meeting to discuss Palm Springs' Psychoeducational Evaluation. Due to Student's

continued eligibility for special education, Palm Springs remained obligated to offer an IEP to Student throughout the 2024-2025 school year, including at the May 28, 2025 and June 3, 2025 IEP team meetings.

Student proved Palm Springs denied him a FAPE by failing to offer an IEP from April 24, 2024, through June 5, 2025, on the basis of Student's eligibility for special education under the category of other health impairment based on Student's ADHD.

ISSUE 2c AND 2f: DID PALM SPRINGS DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY PREDETERMINING STUDENT'S ELIGIBILITY AND DENYING MEANINGFUL PARENTAL PARTICIPATION IN THE IEP DEVELOPMENT PROCESS BY FAILING TO MEANINGFULLY CONSIDER PARENTAL INPUT?

Student failed to prove that Palm Springs' 2024-2025 eligibility determination was predetermined. Unlike in 2023-2024, there was no evidence of continued direction from the district to rush a decision to defend an upcoming hearing, and no evidence of a new assessment or report that failed to meet legal standards. Student offered no other evidence of predetermination.

The evidence did establish that Palm Springs conducted two IEP team meetings to consider Rodezno's report and Student's eligibility. Student did not offer evidence that Palm Springs ignored questions during these meetings. As previously determined, Student did not prove Palm Springs failed to consider Rodezno's findings.

Student failed to prove that Palm Springs predetermined its eligibility during the May 28, 2025 or June 3, 2025 IEP team meetings.

Student also failed to prove that Palm Springs denied Student a FAPE by denying Parent meaningful opportunities to participate in the 2024-2025 eligibility discussions. Student argued that Palm Springs denied participation by refusing Rodezno access to teacher input into his assessment. However, as previously determined, Student failed to prove that Rodezno was refused access to teachers. Student offered no other evidence of denials of parental participation in the 2024-2025 IEP process.

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 1a:

Student proved that Palm Springs' March 21, 2024 psychoeducational assessment was not legally compliant.

Student failed to prove that Palm Springs' March 22, 2024 occupational therapy assessment was not legally compliant.

Student partially prevailed on Issue 1a as to the March 21, 2024 psychoeducational report. Palm Springs partially prevailed on Issue 1a as to the occupational therapy report.

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ISSUE 1b:

Student proved Palm Springs denied Parent meaningful participation in the IEP development process during the 2023-2024 school year beginning April 10, 2024 thus denying Student a FAPE.

Student prevailed on Issue 1b.

ISSUE 1c:

Student proved Palm Springs denied him a FAPE by failing to find Student eligible for special education and related services under the category of Other Health Impairment. Student failed to prove Palm Springs denied him a FAPE by failing to find Student eligible for special education under the category of autism.

Student partially prevailed on Issue 1c. Palm Springs partially prevailed on Issue 1c.

ISSUE 1d:

Palm Springs denied Student a FAPE by failing to offer Student an IEP during the 2023-2024 school year, beginning April 24, 2024.

Student prevailed on Issue 1d.

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ISSUE 1e:

Palm Springs denied Student a FAPE by predetermining Student's special education ineligibility and needs during the 2023-2024 school year, beginning April 24, 2024.

Student prevailed on Issue 1e.

ISSUE 2a:

Palm Springs did not deny Student a FAPE by failing to offer Student's independent psychoeducational assessor access to interview teachers and obtain teacher input through rating scales during his assessment.

Palm Springs prevailed on Issue 2a.

ISSUE 2b:

Palm Springs did not deny Student a FAPE by failing to meaningfully consider the independent psychoeducational report of assessor Edward Rodezno.

Palm Springs prevailed on Issue 2b.

ISSUE 2c:

Palm Springs did not deny Parent meaningful participation in the IEP development process during the 2024-2025 school year thus denying Student a FAPE.

Palm Springs prevailed on Issue 2c.

ISSUE 2d:

Student proved Palm Springs denied him a FAPE by failing to find Student eligible for special education and related services under the category of other health impairment during the 2024-2025 school year. Student did not prove Palm Springs denied him a FAPE by failing to find Student eligible for special education under the category of autism.

Student partially prevailed on Issue 2d. Palm Springs partially prevailed on Issue 2d.

ISSUE 2e:

Palm Springs denied Student a FAPE by failing to offer Student an IEP during the 2024-2025 school year.

Student prevailed on Issue 2e.

ISSUE 2f:

Palm Springs did not deny Student a FAPE by predetermining Student's special education ineligibility and needs during the 2024-2025 school year.

Student prevailed on Issue 2f.

REMEDIES

Administrative Law Judges have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S. Ct. 1996, 85 L. Ed. 2d 385] (*Burlington*).) In remedying a

FAPE denial, the student is entitled to relief that is “appropriate” in light of the purposes of the IDEA, specifically providing Student with a FAPE which emphasizes special education and related services to meet Student’s unique needs. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) “Equitable considerations are relevant in fashioning relief” under the IDEA. (*Burlington, supra.* 471 U.S. 359, 374.)

Courts may rectify denials of FAPE by providing compensatory education, an equitable remedy that aims to bring the student “to the point he would have been, had he received a FAPE all along.” (*R.P. ex rel. C.P. v. Prescott Unif. Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011).) An award of compensatory education is not required to provide day-for-day or hour for hour compensation. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497 (Puyallap.).) By its nature, equitable relief is a fact-specific inquiry in which “the conduct of both parties must be reviewed to determine whether relief is appropriate.” (*Puyallup supra.* 31 F.3d at p.1496.)

In this case, as previously detailed in this Decision, Student established that he was denied a FAPE for the 2023-2024 school year, beginning April 24, 2024; and for the 2024-2025 school year, through June 5, 2025. Palm Springs denied FAPE by:

- Failing to conduct a legally compliant psychoeducational assessment and present a legally compliance assessment report;
- Failing to make Student eligible for special education and related services under the category of Other Health Impairment during the 2023-2024 school year beginning April 24, 2024, and during the 2024-2025 school year through June 5, 2025;

- Failing to offer Student an IEP to institute special education and related services from April 24, 2024, when the first IEP team meeting was held to discuss eligibility and during the 2024-2025 school year through June 5, 2025;
- Denying Parent meaningful participation in the IEP process during the 2023-2024 school year beginning April 24, 2024;
- Predetermining the outcome of Student's 2023-2024 IEP team meetings to determine eligibility.

REIMBURSEMENT FOR INDEPENDENT EDUCATIONAL EVALUATION

Student seeks reimbursement for Licensed Educational Psychologist Edward Rodezno's independent educational evaluation. While his assessments and report were flawed in some respects, so were district's. The testimony of Student's expert, Rodezno, assisted the undersigned in evaluating the district's assessment information. Moreover, Palm Springs' assessments did not meet legal requirements and, having been denied a district funded independent assessment, Parent was entitled to seek her own expert opinion. (Ed. Code § 56329,subd. (c).) Rodezno's assessment assisted in determining the outcome of this case. Student presented evidence that she paid \$2,000 for Rodezno's psychoeducational assessment.

Palm Springs will reimburse Parent for the independent evaluation expense.

REIMBURSEMENT FOR TUTORING

Evidence established that, after being wrongfully denied special education for her son, Parent hired Michelle Babitz, a retired special education teacher of more than 20

years experience, to help Student with homework. Babitz helped Student with his handwriting, and encouraged him to write legibly in the handwritten log he was required to keep for one of his classes. Babitz also tutored Student on the requirements of written essays, such as correct capitalization, grammar, and punctuation; and helped Student to submit assignments when they were completed. Babitz worked with Student on organization and helped Student submit late work to improve his grades.

Parent submitted evidence of payments to Babitz in the amount of \$2,300 for the months of March, April, May, June, and August 2025. Student required, but did not receive any assistance from Palm Springs to help Student with his classwork, despite Palm Springs' knowledge of Student's ADHD, and its impacts on Student's ability to access his education since at least April 24, 2024. Babitz provided Student some of the specialized academic instruction Student required. Palm Springs offered no evidence contradicting the reasonableness of Babitz' \$50 per hour rate.

Palm Springs will reimburse Parent \$2,300 for tutoring.

ADDITIONAL COMPENSATORY EDUCATION

The services supplied by Babitz were limited, and did not compensate Student in full for the lack of specialized academic instruction he should have received. Babitz provided one to two hours of tutoring most weeks between March and June 2025, and again in August of 2025. Student is entitled to additional compensatory education for the period of time he should have been offered special education and related services, but was not.

Student is awarded 75 hours of compensatory education in the areas of academics and 25 hours of compensatory education in the area of behavior. This is an equitable award that considers the delay in receiving the needed specialized academic instruction and Student's looming entry into high school. The undersigned carefully considered the appropriate amount of time to award, taking into consideration time missed in academics, and the level of Student's academic needs, including writing abilities in particular; as well as Student's demonstrated lack of organizational and executive functioning skills.

Palm Springs did not provide training to help Student manage his attention deficits in sixth or seventh grade. Student also did not receive adequate instruction in writing, despite several teachers' knowledge that Student did not maintain focus on his writing to adequately expand his essay answers or prose without reminders, and had difficulty organizing writing assignments. Student was also deprived of instruction on organizing work, time management and following obligations through to completion. Timely submitting completed work is a life skill that Student will need to master as he progresses to high school, and then to college or vocational training.

Behavior training shall focus on the areas of

- managing impulsive behaviors,
- executive functioning,
- organization,
- time management,
- regulating emotions, and
- social skills.

All compensatory services are to be provided by a California certified non-public agency, or properly licensed or otherwise qualified providers. Any service provider not associated with a California certified non-public agency must be in the business of regularly providing the services being scheduled for Student.

Student shall have until June 30, 2027, to use the compensatory hours, which must be scheduled outside school hours.

Palm Springs shall provide Parent with a list of its currently contracted non-public agencies that are available to provide the awarded services. Palm Springs shall arrange to directly pay these providers for services if parents choose them. However, Parent is not limited to these. Palm Springs shall offer to contract directly with Parent's selected providers within 21 days of Parents notifying the district of their selection. If Parents' selected provider does not agree to contract with District, Parents shall be reimbursed for services from their selected provider so long as academic tutoring services do not exceed \$125 per hour, and behavior services do not exceed \$250 per hour. These figures are based on the commonly charged fees in Southern California for the awarded services.

IEP MEETING TO BE HELD WITHIN 14 SCHOOL DAYS

This Decision finds Student eligible for special education and related services under the category of Other Health Impairment. Palm Springs shall conduct an IEP team meeting within 14 school days of the date of this Decision to offer Student an IEP that includes all elements required for Student to receive a FAPE. It is noted that this bright, eager Student is approaching the second semester of his last year of middle school. Therefore, the IEP developed should include adequately robust specialized

academic instruction and related services to help Student engage in an appropriately ambitious educational program in high school that prepares Student to pursue an equally appropriately ambitious post-secondary academic or vocational education.

(*Endrew F, supra*, 580 U.S. at p. 402; 137 S. Ct. 988; 197 L. Ed. 335.)

PALM SPRINGS STAFF TRAINING

Palm Springs staff erred in predetermining its refusal to find a Student eligible for special education during the 2024 assessments and IEP team meetings to determine Student's eligibility. Palm Springs' concerns about defending an upcoming due process hearing, resulted in biased assessments and wrongful refusal to acknowledge Student's special education eligibility, when Student's attention deficits and associated educational needs were well documented and continual. Palm Springs failed to approach the initial assessment with an open mind. It failed to consider whether new or additional information about Student's eligibility might exist. This was contrary to the requirements of the IDEA and California special education laws.

Palm Springs will contract with a trainer, who is not employed by the district, to provide a two-hour training on:

- meaningful parental participation from the request for assessment through subsequent IEP team meetings;
- objectively conducting, and evaluating, serial, parent requested, eligibility assessments; and
- avoiding predetermination of eligibility during the assessment and IEP team meeting process.

ORDER

1. Student is deemed eligible for special education and related services under the category of other health impairment.
2. Palm Springs is ordered to convene an IEP team meeting within 14 days of the date of this order to develop an IEP that meets Student's educational needs.
3. Palm Springs is ordered to reimburse Parent for the independent educational evaluation conducted by Edward Rodezno in the amount of \$2,000 within 30 calendar days of the issuance of this Decision.
4. Palm Springs is ordered to reimburse Parent for tutoring services provided by Michelle Babitz in the amount of \$2,300 within 30 calendar days of the issuance of this Decision.
5. Palm Springs shall provide 75 hours of compensatory education in the area of academics and 25 hours of compensatory education for behavior training, in conformance with the terms detailed previously as to this remedy. Palm Springs shall provide Parent with a list of its currently contracted non-public agencies, however Parent is not limited to these. Palm Springs shall send an offer to contract with Parent's selected providers directly within 21 days of Parents notifying the district of their selection. If Parents' selected provider does not agree to contract with District, Parents shall be reimbursed for services from their selected provider if academic tutoring services do not exceed \$125 per hour, and behavior services do not exceed \$250 per hour.

6. Palm Springs must conduct a two-hour training for all Palm Springs staff involved with Student's assessments, or participating as IEP team members by March 30, 2026, on the topics of:

- meaningful parental participation from the request for assessment through subsequent IEP team meetings; and
- objectively conducting and evaluating serial, parent requested, eligibility assessments.
- avoiding predetermination of eligibility during the assessment and IEP team meeting process.

This training shall be developed and conducted by someone who is not employed by the district.

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.

PENELOPE S. PAHL

Administrative Law Judge

Office of Administrative Hearings