

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTER OF

PARENT ON BEHALF OF STUDENT,

V.

REDONDO BEACH UNIFIED SCHOOL DISTRICT.

CASE NO. 2024080334

CASE NO. 2024070777

DECISION

February 24, 2025

On July 23, 2024, Redondo Beach Unified School District, called Redondo Beach, filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Student. On August 8, 2024, Student filed a due process hearing request with OAH, naming Redondo Beach. On August 14, 2024, OAH granted Student's request to consolidate the cases. On September 13, 2024, OAH granted the parties' joint request to continue the consolidated matter. Administrative Law Judge Paul H. Kamoroff heard this consolidated matter by videoconference on January 7, 8, and 9, 2025.

Attorney Deanna D. Sweeney represented Parent and Student. Parent attended all hearing days on Student's behalf. Attorney Sundee M. Johnson represented Redondo Beach. Danielle Duncan Bernstein, Executive Director of Special Education for Redondo Beach, attended all hearing days on behalf of Redondo Beach.

At the parties' request, OAH continued this matter to January 29, 2025, for written closing briefs. The record was closed, and the matter was submitted on January 29, 2025.

ISSUES

REDONDO BEACH'S ISSUES:

1. May Redondo Beach implement the November 17, 2023, individualized education program, called IEP, as amended on April 15, and May 22, 2024, and as clarified by prior written notice on July 10, 2024, including the offer of placement at the nonpublic school HELP Group, pending Student's acceptance in the HELP Group, without Parent's consent?
2. May Redondo Beach provide Student's special education records to the HELP Group in connection with the application for Student's acceptance there, without Parent's consent?

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STUDENT'S ISSUES:

1. Did Redondo Beach deny Student a free appropriate public education, called FAPE, from November 17, 2023, through August 8, 2024, by failing to offer Student appropriate services in assistive technology?
2. Did Redondo Beach deny Student a FAPE during the 2023-2024 school year by creating a hostile environment for Student by isolating Student from his peers?
3. Did Redondo Beach deny Student a FAPE from November 17, 2023, through August 8, 2024, by failing to offer Student appropriate goals and objectives in behavior?
4. Did Redondo Beach deny Student a FAPE from November 2023, through August 8, 2024, by failing to assess Student in assistive technology, an area of Student's suspected disability?
5. Did Redondo Beach deny Student a FAPE during the 2023-2024 school year and during the 2024-2025 school year through August 8, 2024, by failing to conduct a legally compliant psychoeducational assessment of Student?

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6. Did Redondo Beach deny Student a FAPE during the 2023-2024 school year in the IEP dated November 17, 2023, by significantly impeding Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student by:
 - a. predetermining the offer of placement and services; and
 - b. failing to address Parent's concerns regarding racist remarks made by peers to Student?
7. Did Redondo Beach deny Student a FAPE during the 2023-2024 school year by failing to conduct an appropriate psychoeducational assessment and functional behavior assessment of Student because the person appointed to conduct those assessments was unqualified to administer the Autism Diagnostic Observation System instrument?
8. Did Redondo Beach deny Student a FAPE during the 2023-2024 school year by materially failing to implement the IEP dated November 17, 2023, regarding:
 - a. the behavior aide services and behavior supervision services through a nonpublic agency; and
 - b. the behavior intervention plan?
9. Did Redondo Beach deny Student a FAPE during the 2023-2024 school year by failing to address Student's pleas for adult intervention in connection with Student's conflicts with peers at school?

10. Did Redondo Beach deny Student a FAPE during the 2023-2024 school and during the 2024-2025 school year through August 8, 2024, by failing to timely provide Parent with Student's complete educational records pursuant to the records request dated August 8, 2024?

JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the

hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this consolidated matter, Redondo Beach had the burden of proof for its issues, and Student had the burden of proof for his issues. 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 eight years old and in third grade at the time of the hearing. Student resided with Parent within Redondo Beach's geographic boundaries at all relevant times. Student was first found eligible for special education in November 2023 under specific learning disability, due to a reading disorder, and other health impairment, due to disorders in attention and impulsivity. As a result of his disabilities, Student had academics delays and severe behavioral problems that impacted his ability to access his education.

REDONDO BEACH'S ISSUES 1 AND 2: MAY REDONDO BEACH IMPLEMENT PLACEMENT AT A NONPUBLIC SCHOOL WITHOUT PARENT'S CONSENT

Redondo Beach's first issue is whether it may implement the November 17, 2023 IEP, as amended on April 15, 2024, and May 22, 2024, and as clarified by prior written notice on July 10, 2024, including the offer of placement at the HELP Group, a nonpublic school, pending Student's acceptance in the HELP Group, without Parent's consent.

Redondo Beach's second issue is whether it may provide Student's special education records to the HELP Group in connection with the application for Student's acceptance there, without Parent's consent.

Parent consented to the November 17, 2023, IEP when it was presented and did not withdraw or contest that consent before or during the hearing. Consequently, Redondo Beach's issues pertain to its ability to implement Student's placement at the HELP Group, as offered in the amended IEPs.

Student responds that he should continue being placed at a comprehensive public school.

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

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

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School districts are required to provide special education students with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031.)

A local educational agency is required to initiate a due process hearing to override a parent if the public agency determines that the proposed special education program component to which the parent does not consent is necessary to provide a FAPE to the child. (Ed. Code, § 56346, subd. (f).)

On November 17, 2023, Redondo Beach held an initial IEP team meeting for Student. Student was seven years and five months old and in second grade at Beryl Heights Elementary, a comprehensive public school in Redondo Beach. Student had a history of learning delays and significant behavioral issues, which often necessitated removal from the classroom. The November 2023 IEP team meeting came after several attempts by Redondo Beach to assess Student for special education during the previous school year, which had been denied by Parent. However, in August 2023, Parent agreed to Redondo Beach's request to assess Student for special education and signed consent for a related assessment plan. The November 2023 IEP team meeting followed this consent and the completion of Redondo Beach's initial assessments of Student.

Parent attended the IEP team meeting with a family friend. Redondo Beach ensured that all necessary team members were present, including

- special education teacher Kate Buchen,
- general education teacher Jennifer Hernando,
- school psychologist Marcie Samuele,

- board certified behavior analyst Laura O'Neill,
- program specialist Kristie Brown,
- Executive Director Dr. Anthony Taranto, and
- the school principal.

Redondo Beach provided Parent a copy of parental procedural rights and explained those rights to her.

Parent participated in the development of Student's present levels of performance, including sharing her thoughts and concerns regarding Student's strengths and areas of need.

School psychologist Samuele presented her psychoeducational assessment report and functional behavior assessment to the IEP team. Student demonstrated clinically significant levels of aggression and inattention at school that impacted his ability to learn and disrupted the education of his peers. Significant problem behaviors included

- physical aggression,
- verbal aggression,
- throwing objects,
- elopement,
- noncompliance,
- outbursts and
- tantrums.

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The IEP team considered different areas of special education eligibility for Student, including specific learning disability, other health impairment, and emotional disturbance. With Parent's input, the IEP team agreed Student was eligible for special education under specific learning disability, in the areas of reading and writing with processing deficits in auditory and attention; and other health impairment due to low levels of attention and high levels of impulsivity.

To meet Student's unique needs, the IEP team discussed various goals and agreed upon four reading goals in reading decoding, encoding, spelling, and high-frequency and sight words. The IEP team also agreed to five behavior goals in

- functional communication,
- frustration tolerance,
- compliance,
- emotional regulation, and
- social skills.

To meet those goals, the IEP team agreed to a behavior intervention plan, various accommodations, and the following related services:

- 300 minutes of specialized academic instruction weekly in a special education day class called the Learning Center.
- 60 minutes of individual counseling monthly.
- 30 minutes of Parent counseling monthly with the school psychologist.
- 1,440 minutes of intensive individual services weekly, including an individual behavior aide.

Despite the implementation of a behavior intervention plan, behavior goals, and intensive behavior services, Student's behavior worsened after the November 2023 IEP. In response, Redondo Beach reconvened Student's IEP team meeting on December 4, 2023. Due to Student's continued behavioral challenges, Redondo Beach added a second behavior aide, provided through a nonpublic agency, for 1,440 minutes per week. This brought the total support to two, full-time behavior aides and 4,500 minutes of behavior intervention services for the remainder of the 2023-2024 school year. Parent consented to the December 2023 IEP amendment.

Even with two individual behavior aides, Student's behavior deteriorated throughout the school year. He regularly punched, kicked, shoved, spit on, and threw objects at his aides, school staff, and peers. He displayed verbal aggression towards both staff and students, frequently left the classroom without permission, and caused damage to school property, teacher materials, and personal belongings. Student typically refused to attend the Learning Center and often spent periods of the day in a calming room.

On March 12, 2024, Redondo Beach held a manifestation determination review meeting to decide whether Student's behavior was a manifestation of his disability or if Student should be expelled from school. In addition to a pattern of problematic behaviors, Student was suspended for two days for grabbing and pulling one student's hair and pushing another student. This brought Student's total number of suspension days during the 2023-2024 school year to 11. The manifestation determination team determined that Student's conduct was a manifestation of his disability, specifically other health impairment due to impulsivity. As a result, the manifestation determination team did not recommend expulsion for Student.

On April 15, 2024, Redondo Beach held an amendment IEP team meeting to review Student's progress. Parent attended the IEP team meeting. Redondo Beach had all necessary team members present, including

- special education teacher Buchen,
- school psychologist Samuele,
- board certified behavior analyst O'Neill,
- program specialist Brown,
- Executive Director Dr. Taranto,
- general education teacher Dr. Maribel Galan,
- nonpublic agency supervisor and board certified behavior analyst Kelly Edleman,
- nonpublic agency supervisor Nathalie Mendoza,
- nonpublic agency clinical director and board certified behavior analyst Jaclyn Duree, and
- nonpublic agency program director and board certified behavior analyst Anjani Bhatt.

Redondo Beach provided Parent with a copy of her parental procedural rights and explained those rights to her.

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The IEP team reviewed Student's behavior intervention plan and his progress towards his goals. Student was not making the expected behavioral or academic progress as anticipated by the IEP team. He was on track to meet only three out of nine goals and had made no progress toward goals related to

- high-frequency words,
- frustration tolerance,
- functional communication,
- emotional regulation, and
- social skills.

The IEP team also noted that his behaviors had increased since the March 12, 2024, manifestation determination review, despite the following changes made to his program since March:

- seating him with two other students in the general education classroom;
- temporarily agreeing to stop using the calming room;
- assigning new/different aides to work with him;
- having service providers contact Parent by phone to update her on Student's participation or refusal to participate in services; and
- having the nonpublic agency supervisor update the daily behavior log to make it easier for Parent to read, as requested.

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Due to Parent's schedule, the IEP team was unable to complete its discussion regarding Student's educational placement and services. To accommodate her schedule, Redondo Beach agreed to continue the remainder of the amendment IEP team meeting on May 22, 2024.

The May 22, 2024, amendment IEP team meeting was facilitated by Special Education Local Plan Area alternative dispute resolution specialist Jason Harper. Danielle Duncan, Redondo Beach's Executive Director of Special Education, also attended the amendment IEP team meeting. Additional attendees included

- Parent, Buchen,
- O'Neill,
- Hernando,
- Edleman,
- Dr. Taranto,
- nonpublic agency clinical director and board-certified behavior analyst Duree, and
- nonpublic agency program director and board-certified behavior analyst Bhatt.

Again, Redondo Beach ensured that all necessary IEP team members were present during the meeting. Redondo Beach provided Parent with a copy of the parental procedural rights and explained those rights to her.

The May 2024 amendment IEP team meeting included another manifestation determination review for Student, as he had been suspended again on May 16, 2024, for his 14th and 15th days of the school year. This suspension resulted from Student physically injuring school staff, throwing items at school staff, and destroying school

property. The IEP team determined these behaviors were a manifestation of Student's disability, specifically, impulsivity, emotional regulation difficulties, and frustration tolerance issues, due to his attention deficit hyperactivity disorder.

The IEP team determined Redondo Beach had implemented Student's IEP with fidelity. In addition to carrying out the behavior intervention plan, several adjustments were made to address Student's needs, including changes to seating arrangements, access to the calming room, and the behavior aides assigned to Student. Service providers were tasked with contacting Parent to update her on Student's participation and cooperation, and the behavior log was revised for greater clarity.

The IEP team also reviewed Student's progress toward his IEP goals. While Student made progress in reading, none of his nine goals were met. His behavior continued to significantly impact his ability to access his general education classes and services in the Learning Center, and it disrupted his classmates' learning.

At the time of the meeting, Student displayed the following behaviors:

- 59 percent compliance with classroom directions.
- Verbal aggression 9.21 times per day.
- Physical aggression 2.75 times per day.
- Provocative behavior 18.97 times per day.
- Appropriate emotional responses to frustrating tasks 37 percent of the time.
- Positive peer engagement without challenging behaviors 57 percent of the time.

Given this information, the IEP team discussed alternative placement options. Parent expressed a preference for another elementary school within Redondo Beach. The IEP team carefully reviewed a continuum of placements and concluded that a special day class at another public school, which focused on a modified curriculum, would not meet Student's needs, as he required access to the general education curriculum. The IEP team determined that Student would benefit from a smaller, more structured setting with integrated behavior interventions, that was not available within Redondo Beach. Therefore, all members of the IEP team, except Parent, agreed placement at a nonpublic school was appropriate for Student. On this basis, Redondo Beach correctly offered this placement as part of the IEP amendment. The amendment IEP offer included:

- Placement at the HELP Group, a nonpublic school (pending acceptance).
- 30 minutes per week of individual counseling provided by the nonpublic school.
- 30 minutes per month of parent counseling provided by the nonpublic school.
- Intensive Individual Services (one-to-one behavior aide for the entire school day), provided by the nonpublic school or a non-public agency.
- 1,200 minutes per month of Behavior Intervention Services (supervision by a nonpublic school Board Certified Behavior Analyst).
- Round-trip transportation between home and the nonpublic school.

On July 10, 2024, Redondo Beach sent Parent a detailed prior written notice reiterating the IEP offer, the discussion during the IEP team meeting about the nonpublic school, and provided a release of information for the HELP Group, a potential nonpublic school placement. Parent did not consent to the nonpublic school placement, respond to the prior written notice, or sign the release of information. As a result, Redondo Beach filed its complaint on July 23, 2024, to place Student at a nonpublic school without Parent's consent.

During the pendency of the hearing, Redondo Beach implemented Student's IEP at Alta Vista Elementary School, a comprehensive public school within Redondo Beach. While there, Student repeatedly hit, kicked, and verbally threatened other students and school staff. On one occasion in October 2024, Student

- escaped from class,
- kicked his aides, teacher, and school psychologist,
- stabbed an aide with a pencil, breaking the skin,
- hit the school psychologist in the face,
- bit a teacher resulting in bruises,
- damaged school property,
- hit aides and other school staff,
- used profanity and derogatory language against staff, and
- made terrorist threats against school staff.

In November 2024, Redondo Beach began expulsion proceedings for Student. This was stopped by a December 2024 manifestation determination review, which again found Student's behaviors were a manifestation of his disability.

Redondo Beach's July 2024 complaint seeks an order permitting it to implement the November 17, 2023, IEP, as amended on April 15, and May 22, 2024, and as clarified by prior written notice dated July 10, 2024. However, Parent signed her consent to the November 17, 2023 IEP on the day it was presented and did not withdraw her consent. As a result, Redondo Beach was not required to obtain an OAH order to implement the IEP. (Ed. Code, 56346, subd. (f).)

Nonetheless, during the hearing, school psychologist Samuele, special education teacher Buchen, general education teacher Hernando, and program specialist Brown each testified in support of the appropriateness of the November 17, 2023 IEP, at the time it was offered. All of these witnesses were qualified and experienced educators or therapists who had personally taught and assessed Student. Each was familiar with Student's unique needs and persuasively testified in support of the goals, services, and educational placement outlined in the IEP at the time it was offered. Student did not present any witness testimony or documentary evidence to demonstrate that the IEP was inadequate or failed to meet Student's needs in November 2023.

Redondo Beach's witnesses also supported modifying Student's IEP to include placement at a nonpublic school in May 2024. Samuele, Buchen, Hernando, and Brown, along with Special Education Director Duncan Bernstein, credibly testified in support of the April and May 2024 amendment IEP's. Given Student's unique academic and behavioral needs, Student required a more restrictive, highly structured, small, and therapeutic nonpublic school like the HELP Group. Only the nonpublic school provided a placement where Student could obtain the behavior supports he required while receiving grade level curriculum. Each of these witnesses had personal knowledge of Student at school. For example, Samuele had directly assessed Student and frequently observed him at school. Hernando taught Student in general education and Buchen

taught Student when he attended the Learning Center special day class. Brown was charged with ensuring Student's IEP was implemented and interacted with Student almost daily. Duncan Bernstein was an active member of Student's IEP team and directly familiar with Student's unique educational needs.

Redondo Beach showed the April and May 2024 amendment IEP's met all procedural requirements. The meetings had all necessary participants including Parent, were based upon present and reliable data regarding Student's unique needs, and considered various related services and placement options. The IEP team carefully considered the least restrictive environment for Student in alignment with applicable law, including:

- The educational benefit available to the student in a regular classroom setting, supplemented with appropriate aids and services, compared to the educational benefits of a special education classroom;
- the nonacademic benefits to the disabled child of interacting with nondisabled children;
- the effect of the presence of the disabled child on the teacher and other children in the regular education classroom; and
- the costs of supplemental aids and services necessary to mainstream a disabled student in a regular classroom setting.

(Sacramento Unified School District v. Rachel Holland (9th Cir. 1992)
786 F. Supp. 879.)

Redondo Beach implemented Student's IEP with fidelity and increased and modified IEP services and the behavior intervention plan throughout 2023-2024 school year. Redondo Beach carefully monitored Student's educational progress and held frequent amendment IEP team meetings, including meetings in December 2023, March, April, and May 2024. Despite the careful delivery of special education at the public school, Student's behaviors could not be effectively curbed at a comprehensive public school. His behaviors significantly disrupted his education and that of his peers. Rather, he required a small, therapeutic and highly structured school, like the HELP Group, as offered in the May 22, 2024, amendment IEP, in light of his circumstances. Redondo Beach's offer of school placement at the nonpublic school was carefully formulated from input by qualified IEP team members, including Student's teachers, services providers, behavior specialists, and school psychologist, along with input from Parent. The amendment IEP offers would have provided Student a FAPE in light of his unique academic and behavioral needs. In sum, Redondo Beach witnesses, including Duncan Bernstein, Buchen, Samuele, Hernando, and Brown, were credible and persuasively supported placing Student at the HELP Group, or similar nonpublic school.

In response, Student called two witnesses during the hearing and failed to submit any documentary evidence. Student's witnesses included Rhoda Vegh and Parent.

Rhoda Vegh was Student's neighbor. She babysat him once in December 2024, for approximately an hour. Student behaved well during that time. Vegh was not familiar with Student's IEP's, the educational programs offered to Student, his educational history, or any school records. She had not observed Student at school and had only briefly observed him outside of school. Vegh's testimony was short and did not address any of the issues for this hearing. For these reasons, Vegh was not a persuasive witness, and little weight was given to her testimony.

Parent also testified briefly. During her testimony, she was quick tempered and had difficulty answering questions asked of her. Parent had a history of hostility towards Redondo Beach that resulted in frequent changes to Student's service providers and IEP team members, along with police intervention. Parent blamed Student's problem behaviors on others and made racial allegations against school staff and Student's peers. There was no evidence submitted to support these allegations. Finally, Parent was not familiar with Student's educational program, or the educational program offered at the nonpublic school. For these reasons, Parent was not a persuasive witness, and little weight was given to her testimony.

A preponderance of the evidence showed that the November 17, 2023 IEP, as amended on April 15, and May 22, 2024, and as clarified by prior written notice dated July 10, 2024, offered Student a FAPE such that Redondo Beach can implement placement at the nonpublic school HELP Group, and provide it Student's school records, without Parent's consent.

STUDENT'S ISSUES 1 AND 4: ASSISTIVE TECHNOLOGY

Student's Issue 1 complains Redondo Beach denied him a FAPE, from November 17, 2023, through August 8, 2024, by failing to offer him appropriate services for assistive technology.

Student's Issue 4 complains Redondo Beach denied Student a FAPE during the same time frame, by failing to assess Student in assistive technology, a suspected area of disability.

Redondo Beach responds that Student failed to prove these issues.

A school district is required to provide any assistive technology device that is necessary to provide a FAPE to a child with a disability. (20 U.S.C. § 1412(a)(12)(B)(i); 34 C.F.R. § 300.105; Ed. Code, § 56341.1, subd. (b)(5).) An IEP team must consider whether a child requires assistive technology devices or services. (20 U.S.C. § 1414(d)(3)(B)(v); 34 C.F.R. § 300.324 (a)(2)(v); Ed. Code, § 56341.1, subd. (b)(5).)

An assistive technology device is any piece of equipment that is used to increase, maintain, or improve the functional capabilities of individuals with disabilities. An assistive technology service is any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. (20 U.S.C. § 1401(1); Ed. Code, § 56020.5.)

The IDEA requires a school district to assess a student in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4)). Once a school district is on notice that a child has displayed symptoms of a disability, the district must assess the child to determine the child's educational needs. (*Timothy O. v. Paso Robles Unified Sch. Dist.*, (9th Cir. 2016) 822 F.3d 1105, 1118–20.)

During the hearing, Parent testified that she wanted Student to have access to assistive technology. She did not describe why Student required assistive technology or what type of assistive technology should have been provided to Student. The November 17, 2023, IEP did not offer Student assistive technology, yet Parent consented to the IEP when it was offered. Parent did not request assistive technology or an assistive technology assessment during the IEP team meeting or anytime following that IEP team meeting, nor did any other IEP team member.

Student used a Chromebook laptop computer at school and there was no mention during an IEP team meeting, or the hearing, from his teachers or school staff that he required additional technology to access his education.

Other than Parent's testimony that she now desired for Student to receive assistive technology, Student failed to present any evidence to support a need for assistive technology. Student failed to present any data, assessment, or expert testimony to support his need for assistive technology. Moreover, Student failed to elicit testimony from any school witness that Student required assistive technology to access his education or that it was a suspected area of disability.

This failure to present evidence was consistent throughout all of Student's issues. To support 10 issues, Student submitted no documentary evidence and approximately 90 minutes of witness testimony by two witnesses, Parent and Student's neighbor Vegh. As found herein in Redondo Beach's Issues 1 and 2, Vegh did not testify regarding any issue for this matter and Parent was not a persuasive witness. Therefore, little weight was given to these witnesses' testimony. Moreover, Student failed to directly examine any of Redondo Beach's witnesses, thereby overlooking all of Student's issues during the testimony for those witnesses as well.

Student had the burden of proving his issues. (Ed. Code, § 56502, subd. (i).) Student's failure to present evidence during the hearing resulted in him being unable to meet the burden of proving by a preponderance of the evidence that Redondo Beach denied him a FAPE, from November 17, 2023, through August 8, 2024, by failing to offer him appropriate services for assistive technology. Student also failed to meet his burden of proving that Redondo Beach denied him a FAPE during that same time, by failing to assess him for assistive technology.

STUDENT'S ISSUE 2: HOSTILE ENVIRONMENT

Student complains that Redondo Beach denied him a FAPE during the 2023-2024 school year by creating a hostile environment by isolating Student from his peers. Redondo Beach responds that Student failed to prove this issue, or any issue, during the hearing.

Student failed to support this allegation with any applicable law.

Redondo Beach sometimes placed Student into a calming room to deescalate his behaviors. However, Student failed to present any evidence to show this created a hostile environment or denied Student a FAPE.

Student's failure to present evidence during the hearing resulted in him being unable to meet the burden of proving by a preponderance of the evidence that Redondo Beach denied him a FAPE during the 2023-2024 school year by creating a hostile environment by isolating Student from his peers.

STUDENT'S ISSUE 3: FAILING TO OFFER APPROPRIATE GOALS

Student asserts Redondo Beach denied him a FAPE from November 17, 2023, through August 8, 2024, by failing to offer Student appropriate goals and objectives in behavior. Redondo Beach responds Student failed to prove this issue.

For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345.) The purpose of annual goals is to permit the IEP team to determine whether the pupil is making

progress in an area of need. (Ed. Code, § 56345, subd. (a).) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. In *Capistrano Unified Sch. Dist. v. S.W., et al.* (9th Cir. Dec. 30, 2021,) 2021 WL 6141122 (*Capistrano*), the court stated that the IDEA required IEP goals to target a student's needs, but the IDEA did not require an IEP to contain every goal from which a student might benefit. (*Id.* at *5.) Moreover, a school district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (Fed. Regs., Appendix A, *Part 300 – Assistance to States for the Education of Children with Disabilities* (1999), discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C. § 1414(d)(1)(A)(i)(II).)

The November 2023 IEP offered five behavior goals in the areas of

- functional communication,
- frustration tolerance,
- compliance,
- emotional regulation, and
- social skills.

Along with qualified Redondo Beach IEP team members, Parent helped formulate those goals and agreed to the goals when they were presented by the IEP team. During the hearing, Parent did not assert any problems with the behavior goals.

Student failed to submit any documentary evidence or witness testimony to show the goals were not appropriate. Despite having several school witnesses available during examination, Student failed to examine any witness regarding the behavior goals.

It is not enough to make a claim against a school district, Student must support that claim with evidence. Student's failure to present evidence during the hearing resulted in him being unable to meet the burden of proving by a preponderance of the evidence that Redondo Beach denied him a FAPE from November 17, 2023, through August 8, 2024, by failing to offer Student appropriate goals and objectives in behavior.

STUDENT'S ISSUES 5 AND 7: THE PSYCHOEDUCATIONAL AND FUNCTIONAL BEHAVIOR ASSESSMENTS

Student's Issue 5 complains Redondo Beach denied Student a FAPE during the 2023-2024 school year and during the 2024-2025 school year through August 8, 2024, by failing to conduct a legally compliant psychoeducational assessment of Student.

Student's Issue 7 complains Redondo Beach denied Student a FAPE during the 2023-2024 school year, by failing to conduct an appropriate psychoeducational assessment and functional behavior assessment of Student because the person appointed to conduct those assessments was unqualified to administer the Autism Diagnostic Observation System instrument.

Redondo Beach argues that Student did not prove these issues.

Failure to conduct an appropriate assessment is a procedural violation. (*Park v. Anaheim Union High Sch. Dist.*, (9th Cir. 2006.) 464 F.3d 1025, 1031–33.) A procedural violation may amount to a denial of a FAPE if it results in the loss of educational opportunity, or seriously infringes the parents' opportunity to participate in the IEP

formulation process, or causes a deprivation of educational benefits. (*J.G. v. Baldwin Park Unified Sch. Dist.*, (C.D. Cal. 2015) 78 F. Supp. 3d 1268, 1284 (quoting *Amanda J.*, 267 F.3d at 892).)

As part of Student's initial assessments, Redondo Beach conducted a psychoeducational assessment and functional behavior assessment in October 2023. The testing results were compiled in separate written reports dated November 17, 2023.

Student failed to call any witness to discuss the psychoeducational assessment or functional behavior assessment, or to call any school witness directly for any issue. Student also failed to submit any documentary evidence to support these issues, or any issue. In particular, the psychoeducational assessment was not received as evidence during the hearing.

Redondo Beach did submit the functional behavior assessment as evidence for this matter. This assessment was conducted by school psychologist Samuele and general education teacher Hernando. However, neither party questioned the assessors' qualifications to administer the Autism Diagnostic Observation System instrument, nor did the functional behavior assessment include the Autism Diagnostic Observation System testing instrument.

Student had the burden of proving the November 17, 2023, psychoeducational assessment was defective in some manner and wholly failed to address this issue. Student also had the burden of showing the functional behavior assessment was defective because the assessors were unqualified to administer the Autism Diagnostic Observation System instrument, and abandoned that issue as well.

Student failed to meet his burden of showing by a preponderance of the evidence that Redondo Beach denied him a FAPE during the 2024-2025 school year through August 8, 2024, by failing to conduct a legally compliant psychoeducational assessment of Student.

Student also failed to meet his burden of showing by a preponderance of the evidence that Redondo Beach denied Student a FAPE during the 2023-2024 school year by failing to conduct an appropriate psychoeducational assessment and functional behavior assessment of Student because the person appointed to conduct those assessments was unqualified to administer the Autism Diagnostic Observation System instrument.

STUDENT'S ISSUE 6: PARENT'S PARTICIPATION IN THE DECISION-MAKING PROCESS

Student complains that Redondo Beach denied Student a FAPE during the 2023-2024 school year in the November 17, 2023 IEP, by significantly impeding Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student by, (a) predetermining the offer of placement and services; and (b) failing to address Parent's concerns regarding racist remarks made by peers to Student.

Redondo Beach responds that Student failed to prove this issue.

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23 Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1485, *superseded in part by statute on other grounds.*) Participation must be more than mere form; it must be meaningful. (*Deal v. Hamilton County Board of Educ.* (6th Cir. 2004) 392 F.3d 840, 858

[citations omitted] (*Deal*.) A school cannot independently develop an IEP, without meaningful participation, and then present the IEP to the parent for ratification. (*Target Range, supra*, 960 F.2d at p. 1484.) A school district that predetermines the child's program, and does not consider parents' requests with an open mind, has denied the parents' right to participate in the IEP process. (*Deal, supra*, 392 F.3d at p. 858; *Ms. S., supra*, 337 F.3d at p. 1131.)

An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp. 2d 127, 139 [IDEA did not provide for an education designed according to the parent's desires.]) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) A school district has the right to select the program offered, if the program is able to meet the student's needs, and the district is ultimately responsible for ensuring a FAPE is offered. The United States Court of Appeals for the Ninth Circuit has held that while the school district must allow for meaningful parental participation, it has no obligation to grant the parent a veto over any individual IEP provision. (*Ms. S., supra*, 337 F.3d at p. 1131.)

Redondo Beach held Student's initial IEP team meeting on November 17, 2023. Parent attended the IEP team meeting with a family friend and all necessary participants from Redondo Beach. Redondo Beach provided Parent a copy of parental procedural rights and explained those rights to her.

Parent was a robust participant in the formulation of Student's IEP. She participated in the development of Student's present levels of performance, including sharing her thoughts and concerns regarding Student's strengths and areas of need. IEP team members, including school psychologist Samuele, diligently included Parent in all

parts of the IEP discussion, including frequently asking Parent if she had any questions during the meeting. Parent participated in the development of Student's eligibility, accommodations, goals, services and Student's educational placement.

During the hearing, attendees from the November 17, 2023 IEP team meeting, including Samuele, Buchen, Hernando, and Brown, each persuasively testified that Parent was an active participant during the IEP team meeting and assisted in the development of Student's educational program. Parent's input was included in writing in the IEP document. Parent's participation was an important factor in the formulation of each part of Student's educational program, and particularly important in the consideration of eligibility, goals, services, and school placement. The IEP was developed during the IEP team meeting, with no part predetermined prior to the meeting.

During Parent's testimony, she did not express concerns regarding the development of the November 17, 2023 IEP. To the contrary, Parent wanted that IEP implemented instead of the April and May 2024 amendment IEP's, as she was opposed to placing Student at a nonpublic school.

Parent testified that Student was racially targeted by peers and school staff. However, this testimony failed to describe when these incidents occurred or if Parent had raised this concern during the November 2023 IEP team meeting. It was also unsupported by other evidence. Redondo Beach's witnesses, including Buchen and Hernando, more persuasively testified that Student had not been racially targeted at school. Consequently, there was not enough evidence submitted during the hearing to show that racial remarks impacted Student's education or should have been addressed during the IEP team meeting.

Student failed to show by a preponderance of the evidence that Redondo Beach denied Student a FAPE during the 2023-2024 school year in the IEP dated November 17, 2023, by significantly impeding Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student by, (a) predetermining the offer of placement and services, or (b) failing to address Parent's concerns regarding racist remarks made by peers to Student.

STUDENT'S ISSUE 8: FAILURE TO IMPLEMENT

Student claims Redondo Beach denied him a FAPE during the 2023-2024 school year by materially failing to implement the November 17, 2023 IEP, regarding: (a) the behavior aide services and behavior supervision services through a nonpublic agency; and (b) the behavior intervention plan. Redondo Beach responds that Student did not prove this issue.

A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822.) However, the materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. (*Ibid.*)

On November 17, 2023, Redondo Beach held Student's initial IEP team meeting. The IEP team devised a behavior intervention plan and offered 1,440 minutes weekly of intensive individual services, including an individual behavior aide. Testimony from

Duncan Bernstein, Samuele, Brown, Buchen, and Hernando persuasively showed the behavior intervention plan and behavior services began immediately following the Thanksgiving holiday, the last week of November 2023.

Redondo Beach carefully monitored the delivery of behavior services and, on December 4, 2024, met to further review the behavior intervention plan and behavior services. Redondo Beach added a second behavior aide, provided through a non-public agency, for 1,440 minutes per week. This brought the total support to two, full-time behavior aides and 4,500 minutes of behavior intervention services for the remainder of the 2023-2024 school year.

On March 12, 2024, Redondo Beach held a manifestation determination review meeting, during which it again reviewed the behavior intervention plan and delivery of behavior services. There was no question that Redondo Beach had implemented the behavior intervention plan and behavior aide services at the time of this meeting.

On April 15, 2024, Redondo Beach held an amendment IEP team meeting, where it reviewed the behavior intervention plan and behavior services, amongst other concerns. Along with other IEP team members, various school and nonpublic agency behavior specialists attended the IEP team meeting. These included

- school psychologist Samuele,
- board certified behavior analyst O'Neill,
- program specialist Brown,
- nonpublic agency supervisor and board-certified behavior analyst Kelly Edleman,
- nonpublic agency supervisor Nathalie Mendoza,

- nonpublic agency clinical director and board-certified behavior analyst Jaclyn Duree, and
- nonpublic agency program director and board-certified behavior analyst Anjani Bhatt.

Amongst other areas of discussion, the IEP team reviewed Student's behavior intervention plan and progress towards his behavior goals, and delivery of behavior services. Again, there was no concern raised during this meeting that Redondo Beach had failed to implement the behavior intervention plan or behavior aide services.

On May 22, 2024, Redondo Beach held another amendment IEP team meeting, which included a manifestation determination review. Student's behavior intervention plan and behavior services were thoroughly discussed by qualified IEP team members including nonpublic agency clinical director and board-certified behavior analyst Duree, and nonpublic agency program director and board-certified behavior analyst Bhatt. There was no concern raised during this meeting that Redondo Beach had not implemented Student's behavior services or behavior intervention plan.

There was no mention during any IEP team meeting, or outside of an IEP team meeting, that Redondo Beach or the nonpublic agency had failed to implement Student's behavior intervention plan or behavior services. During the hearing, testimony from Duncan Bernstein, Samuele, Brown, Buchen, and Hernando persuasively showed the behavior intervention plan and behavior services were fully implemented throughout the 2023-2024 school year.

During her testimony, Parent opined that Redondo Beach had not implemented the behavior services with fidelity. However, she was unable to explain what service was not implemented, when the services were not implemented, or her basis of knowledge

for this claim. Therefore, her testimony in this area was not persuasive. Student failed to submit any documentary evidence or persuasive witness testimony to support this issue.

Student failed to show by a preponderance of the evidence that Redondo Beach denied Student a FAPE during the 2023-2024 school year by materially failing to implement the IEP dated November 17, 2023, regarding (a) the behavior aide services and behavior supervision services through a nonpublic agency; and (b) the behavior intervention plan.

STUDENT'S ISSUE 9: ADULT INTERVENTION

Student complains that Redondo Beach denied him a FAPE during the 2023-2024 school year by failing to address Student's pleas for adult intervention in connection with Student's conflicts with peers at school. Redondo Beach argues Student did not prove this issue.

Student failed to submit any applicable law to support this issue.

During the hearing, Parent testified Student was sometimes antagonized by peers and therefore required adult intervention. Parent was unable to explain specific incidents of when or how Student was antagonized by other students.

School teachers Hernando and Buchen more persuasively testified that Student was not antagonized by other students. To the contrary, Student often hit other students without provocation, including peers who were not interacting with him in any

manner. Their testimony was supported by behavior and discipline logs that showed Student was frequently physically aggressive towards his peers and school staff without any provocation.

Moreover, Student had two adult behavior aides with him during the 2023-2024 school year, beginning December 2023. Parent failed to explain why these adult aides were insufficient adult intervention, even had Student been antagonized by another student.

Student failed to submit any documentary evidence or persuasive testimony to support this issue.

Student failed to show by a preponderance of the evidence that Redondo Beach denied Student a FAPE during the 2023-2024 school year, by failing to address Student's pleas for adult intervention in connection with Student's conflicts with peers at school.

STUDENT'S ISSUE 10: STUDENT'S SCHOOL RECORDS

Student complains Redondo Beach denied Student a FAPE during the 2023-2024 school year and during the 2024-2025 school year, through August 8, 2024, by failing to timely provide Parent with Student's complete educational records pursuant to the records request dated August 8, 2024. Redondo Beach responds that Student failed to prove this issue.

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California Education Code section 56504 states in relevant part,

“The parent shall have the right and opportunity to examine all school records of his or her child and to receive copies ... within five business days after the request is made by the parent, either orally or in writing.”

A business day means Monday through Friday, except for federal and state holidays. (34 C.F.R. § 300.11(b) (2006).)

Student failed to present any evidence to support this issue. Student did not submit documentary evidence, such as a request for school records, or testimony supporting that Student had requested school records. Nor did Student submit any evidence to show Redondo Beach failed to provide Parent or her attorney school records. Student abandoned this issue during the hearing.

Student failed to show by a preponderance of the evidence that Redondo Beach denied Student a FAPE during the 2023-2024 school and during the 2024-2025 school year, through August 8, 2024, by failing to timely provide Parent with Student’s complete educational records pursuant to the records request dated August 8, 2024.

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.

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REDONDO BEACH'S ISSUE 1:

Redondo Beach may implement the November 17, 2023 IEP, as amended on April 15 and May 22, 2024, and as clarified via prior written notice dated July 10, 2024, including the offer of placement at the HELP Group, pending Student's acceptance in the HELP Group, without Parent's consent.

Redondo Beach prevailed on Redondo Beach's Issue 1.

REDONDO BEACH'S ISSUE 2:

Redondo Beach may provide Student's special education records to the HELP Group in connection with the application for Student's acceptance there, without Parent's consent.

Redondo Beach prevailed on Redondo Beach's Issue 2.

STUDENT'S ISSUE 1:

Redondo Beach did not deny Student a FAPE from November 17, 2023, through August 8, 2024, by failing to offer Student appropriate services in assistive technology.

Redondo Beach prevailed on Student's Issue 1.

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STUDENT'S ISSUE 2:

Redondo Beach did not deny Student a FAPE during the 2023-2024 school year by creating a hostile environment for Student by isolating Student from his peers.

Redondo Beach prevailed on Student's Issue 2.

STUDENT'S ISSUE 3:

Redondo Beach did not deny Student a FAPE from November 17, 2023, through August 8, 2024, by failing to offer Student appropriate goals and objectives in behavior.

Redondo Beach prevailed on Student's Issue 3.

STUDENT'S ISSUE 4:

Redondo Beach did not deny Student a FAPE from November 2023, through August 8, 2024, by failing to assess Student in assistive technology, an area of Student's suspected disability.

Redondo Beach prevailed on Student's Issue 4.

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STUDENT'S ISSUE 5:

Redondo Beach did not deny Student a FAPE during the 2023-2024 school year and during the 2024-2025 school year through August 8, 2024, by failing to conduct a legally compliant psychoeducational assessment of Student.

Redondo Beach prevailed on Student's Issue 5.

STUDENT'S ISSUE 6(a) AND (b):

Redondo Beach did not deny Student a FAPE during the 2023-2024 school year in the IEP dated November 17, 2023, by significantly impeding Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student by:

- a. predetermining the offer of placement and services; or
- b. failing to address Parent's concerns regarding racist remarks made by peers to Student.

Redondo Beach prevailed on Student's Issue 6(a) and (b).

STUDENT'S ISSUE 7:

Redondo Beach did not deny Student a FAPE during the 2023-2024 school year by failing to conduct an appropriate psychoeducational assessment and functional behavior assessment of Student because the person appointed to conduct those assessments was unqualified to administer the Autism Diagnostic Observation System instrument.

Redondo Beach prevailed on Student's Issue 7.

STUDENT'S ISSUE 8(a) AND (b):

Redondo Beach did not deny Student a FAPE during the 2023-2024 school year by materially failing to implement the IEP dated November 17, 2023, regarding:

- a. the behavior aide services and behavior supervision services through a nonpublic agency; or
- b. the behavior intervention plan.

Redondo Beach prevailed on Student's Issue 8(a) and (b).

STUDENTS ISSUE 9:

Redondo Beach did not deny Student a FAPE during the 2023-2024 school year by failing to address Student's pleas for adult intervention in connection with Student's conflicts with peers at school.

Redondo Beach prevailed on Student's Issue 9.

STUDENT'S ISSUE 10:

Redondo Beach did not deny Student a FAPE during the 2023-2024 school and during the 2024-2025 school year through August 8, 2024, by failing to timely provide Parent with Student's complete educational records pursuant to the records request dated August 8, 2024.

Redondo Beach prevailed on Student's Issue 10.

ORDER

1. Redondo Beach may implement the November 17, 2023 IEP, as amended on April 15 and May 22, 2024, and as clarified via prior written notice dated July 10, 2024, including the offer of placement at the HELP Group, pending Student's acceptance in the HELP Group, without Parent's consent, unless Parent and Redondo Beach agree to a new IEP offer.
2. Redondo Beach may provide Student's special education records to the HELP Group in connection with the application for Student's acceptance there, without Parent's consent, unless Parent and Redondo Beach agree to a new IEP offer.
3. All of Student's claims for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearings