

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

V.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

CASE NO. 2024090930

DECISION

March 28, 2025

On September 25, 2024, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming San Diego Unified School District, called San Diego. Administrative Law Judge Cynthia Fritz, called ALJ, heard this matter by videoconference on January 28, 29, 30, and February 4, 5, 6, and 7, 2025.

Attorneys Kelsey Castanho and Peter Cuevas represented Student. Parents attended all hearing days on Student's behalf.

Attorneys Jennifer Aardema and Jonathan Read represented San Diego. Special Education Program Specialist, Jessica Coleman, attended all hearing days on San Diego's behalf.

At the parties' request, the ALJ continued the matter to February 26, 2025, for closing briefs. On February 26, 2025, the record was closed, and the matter submitted.

PRELIMINARY MATTERS

On January 27, 2025, San Diego filed a request to clarify Issue 1c. Student made a motion on the first hearing day to clarify Issue 1d. San Diego's motion to clarify Issue 1c was granted. The ALJ clarified Issue 1c as transition plans required under Education Code section 56345 subsection (b)(4). The ALJ granted Student's motion to clarify Issue 1d. The ALJ granted Student's request to remove "specifically a nonpublic school" from Issue 1d.

Before the evidentiary portion of the hearing began, the ALJ confirmed with the parties the issues as stated below. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

ISSUE

1. Did San Diego deny Student a FAPE during the 2023-2024 school year by:
 - a. failing to consider the full continuum of placement options, specifically, remaining at a nonpublic school, at the November 2023 IEP team meetings;

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- b. failing to offer appropriate supports and services, specifically, in the areas of:
 - i. specialized academic instruction, including executive functioning skills;
 - ii. social skills; and
 - iii. mental health;
- c. failing to offer an appropriate transition plan;
- d. failing to offer an appropriate placement;
- e. failing to consider Doctor Gray's independent education evaluation at the November 28, 2023, March 2024, and May 2024 IEP team meetings;
- f. predetermining placement at the May 8, 2024 IEP team meeting; and,
- g. failing to allow meaningful parental participation at the May 8, 2024 IEP team meeting?

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JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); 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.Ed2d 387] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student filed this matter and bore the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

At the time of hearing, Student was 15 years old and in 10th grade at The Winston School, called Winston, a nonpublic school. Student resided with Parents within San Diego's geographic boundaries at all relevant times. In November 2023, San Diego found Student eligible for special education under the categories of Autism and Other Health Impairment, called OHI.

During the 2022-2023 school year, Student attended a San Diego middle school for eighth grade. Student began to exhibit school refusal behavior that school year. In Spring 2023, Student was privately evaluated for autism by Dr. Jessica Lenihan, and determined to be on the autism spectrum. After receiving the results, on May 1, 2023, Parents privately placed Student at Winston, and sued San Diego for tuition reimbursement in OAH case number 2023060150.

The parties entered into a settlement agreement on September 7, 2023. San Diego agreed to assess Student for special education, fund independent educational evaluations in psychoeducation and speech and language, and reimburse Parents for some educational costs. In exchange, Student released San Diego from liability through November 30, 2023, except for any liability that arose in connection with designated San Diego assessments and FAPE offers between September 8, 2023, through November 30, 2023. Thereafter, the IEP team met to review the assessments of Student and made a FAPE offer in November 2023. This Decision addresses the time and issues during the 2023-2024 school year outside the scope of the settlement agreement, and begins with the November 2023 IEP team meetings and FAPE offer.

The parties' principal dispute is placement. Parents prefer Student to remain at Winston. San Diego believes it can serve Student at a comprehensive public high school within the district. At the time of the hearing, Student continued to attend Winston.

ISSUE 1a: STUDENT FAILED TO PROVE THAT SAN DIEGO DENIED STUDENT A FAPE BY FAILING TO CONSIDER THE CONTINUUM OF PLACEMENT OPTIONS, SPECIFICALLY, REMAINING AT A NONPUBLIC SCHOOL, AT THE NOVEMBER 2023 IEP TEAM MEETINGS.

Student contends San Diego failed to consider the continuum of placement options, specifically, a nonpublic school, at the November 2023 IEP team meetings. San Diego argues it did consider a nonpublic school placement, and all relevant continuum of placements, but believed a comprehensive high school campus was the appropriate placement in the least restrictive environment for Student.

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 (2006).) A school district must make available a continuum of placement options to meet the instructional and service needs of special education students. (34 C.F.R. § 300.115(a) (2017); Ed. Code, § 56360.) Under the IDEA and California law, this includes, from least restrictive to most restrictive: regular education programs; resource specialist programs; related services; special classes; nonpublic, nonsectarian school services; and other listed settings; to instruction in the home, in hospitals, and in other institutions. (34 C.F.R. § 300.115 (2017); Ed. Code, § 56361.) The continuum of placement options is to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive environment appropriate for them. (71 Fed. Reg. 46,586-46,587 (Aug. 14, 2006).)

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Student failed to meet his burden of proof on Issue 1a. Student argued that San Diego failed to address Parent's inquiries at the November 15, 2023 IEP team meeting, about placement at Winston. Student claimed the IEP team did not consider a nonpublic school as a placement option. However, the evidence established that San Diego considered a nonpublic school placement for Student at the November 15, 2023 IEP team meeting.

The November 15, 2023 IEP document showed nonpublic placement was checked off under special education service options considered by the team. The IEP team meeting notes explained that a nonpublic school placement was discussed by the Student's IEP team. However, the San Diego members of the IEP team believed Student could be served in a less restrictive environment on a comprehensive school campus. San Diego acknowledged Parent's preferred placement at a nonpublic school, but did not agree with it. The IEP recording corroborated the evidence in the November 15, 2023 IEP document that a nonpublic school was considered as part of the continuum of placement options, and discussed at the meeting. As found below, Student failed to prove that San Diego did not consider a nonpublic school placement on the continuum of placement options at the November 15, 2023 IEP team meeting.

San Diego convened an IEP team meeting on November 28, 2023, to review Dr. Robert Gray's report of his independent neuropsychological evaluation of Student. Gray, a board-certified neuropsychologist with a subspecialty in pediatric neuropsychology, completed Student's neuropsychological examination on October 10, 2023. Gray recommended, among other things, that Student remain in his current

placement at Winston. Student argued San Diego failed to consider Gray's nonpublic school placement recommendation and Parent's preference for a nonpublic school placement for Student. Student's arguments failed.

The November 28, 2023 IEP indicated, through a check mark of special education service options reviewed, that the team considered a nonpublic school placement. At the November 28, 2023 IEP team meeting, after Gray completed his presentation on his evaluation of Student, San Diego Special Education Specialist, Jennifer Breeding, acknowledged she agreed with some of Gray's accommodations and study skills recommendations. However, Breeding stated she did not agree that Student should be placed at Winston.

Parent advocated for a nonpublic school placement at Winston. Breeding explained that a nonpublic school placement was considered by the team, but the IEP offer was for Student to attend a comprehensive public high school campus. San Diego did not agree that a nonpublic school was the least restrictive environment for Student.

San Diego considered a nonpublic placement at the November 28, 2023 IEP team meeting. The IEP document, IEP recording, and witness testimony corroborated a nonpublic school was considered under the continuum of placement options for Student at the November 28, 2023 IEP team meeting. Accordingly, Student failed to prove that San Diego denied Student a FAPE for failing to consider the continuum of placement options, specifically, a nonpublic school, at the November 28, 2023 IEP team meeting.

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Additionally, Student contended that San Diego should have offered an alternative public high school placement on a different campus. However, even if this allegation could be construed to fall within the confines of Issue 1a, Student errs. This argument first emerged in the last hour, as this was not pled in Student's complaint and was only raised at hearing by Parent after being recalled to the stand. Regardless, a general education setting at a different high school campus is not a distinct environment on the continuum of placement options under the IDEA and California law (34 C.F.R. § 300.115 (2017); Ed. Code, § 56361.)

Considering continuum of placement options plainly does not require discussion of every possible option at every IEP team meeting. There is no requirement that the IEP team members consider and discuss all placement options. (L.S. v. Newark Unified Sch. Dist. (N.D.Cal., May 22, 2006, No. C 0503241 JSW) 2006 WL 1390661, pp. 5 6 [nonpub. opn.]; Katherine G. v. Kentfield Sch. Dist. (N.D.Cal. 2003) 261. F.Supp.2d 1159, 1189-1190.) The purpose of the continuum is to have options available for consideration by the IEP team, including parents, when appropriate for consideration in a particular case. (T.R. v. Kingwood Township Bd. of Educ. (3d Cir. 2000) 205 F.3d 572, 579-580.)

Here, the only possible placements relevant to the parties' dispute are:

- a general education setting;
- a general education setting coupled with related services, supports, accommodations, or time in a separate special education classroom;
and
- a nonpublic school.

In November 2023, San Diego offered Student a general education setting, with services, accommodations, and supports, including time in a separate special education classroom led by a mild-moderate special education teacher. Through this offer, San Diego considered the continuum of option placements at the November 2023 IEP team meetings, including general education, general education with related services and supports, and time in a separate special education classroom.

Accordingly, Student failed to prove by a preponderance of the evidence that San Diego denied Student a FAPE for failing to consider the continuum of placement options at the November 2023 IEP team meetings.

ISSUE 1bi: STUDENT FAILED TO PROVE SAN DIEGO DENIED STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION, INCLUDING EXECUTIVE FUNCTIONING.

Student contends Gray's October 2023 neuropsychological report proved Student had difficulty with executive functioning tasks involving conceptualization, problem solving, and cognitive flexibility. Student further contends Gray properly recommended Student be offered dedicated instructional time to work on his executive functioning skills. San Diego maintains Student's IEP offers addressed Student's executive functioning weaknesses.

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 considering the child's circumstances. (*Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].)

Specialized academic instruction, sometimes called specially designed instruction, means instruction adapted as appropriate to the needs of the disabled child. The content, methodology, or delivery of instruction must address the unique needs of the child that result from the child's disability, and to ensure the child's access to the general curriculum so that the child can meet the educational standards that apply to all children. (34 C.F.R. § 300.39(b)(3) ((2006).) Executive functioning is a cognitive process that enables an individual to

- plan,
- organize,
- initiate tasks,
- regulate emotions,
- manage time, and
- sustain attention.

Whether an IEP offers a student a FAPE is assessed in light of information available at the time the IEP is developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP "is a snapshot, not a retrospective"; it must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Ibid.* [quoting *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036 (Mansmann, C.J., concurring)]; see also *L.J. v. Pittsburg Unified Sch. Dist.* (9th Cir. 2017) 850 F.3d 996, 1004 ["the 'snapshot' rule ... instructs the court to judge the appropriateness of

the determination on the basis of the information reasonably available to the parties at the time of the IEP meeting.”]; *JG v. Douglas County Sch. Dist.* (9th Cir. 2008) 552 F.3d 786, 801.)

As already stated, the operative time outside of the settlement agreement begins with the November 2023 IEP offers. By November 15, 2023, multiple San Diego staff completed a multidisciplinary assessment of Student. This assessment included testing in the areas of

- cognition,
- academics,
- attention,
- processing,
- autism,
- speech and language,
- occupational therapy, and
- health.

Based on those assessments, which included interviews with Parent and Student, school observations, records review, and use of standardized and informal assessment tools, San Diego reasonably determined Student had average cognition, strong academic skills, satisfactory peer relationships, and no significant characteristics of attention deficit hyperactivity disorder in the classroom. Student had a mild autism presentation, anxiety, and a weakness in organization and staying on task. Student had concerns with attention and hyperactivity. San Diego’s assessments were comprehensive and accurate measures of Student’s current present levels of performance and included an observation of Student in the school setting.

In November 2023, San Diego found Student eligible under the special education categories of autism, and OHI for his attention deficit hyperactivity disorder and determined executive functioning was an area of concern for Student. At the November 15, 2023 IEP team meeting, San Diego offered Student goals in organization, social-emotional, college awareness, and career awareness. It also offered Student two hours per month of consultation for

- organization and task completion,
- executive functioning skills,
- transition services for college and career awareness,
- mental health consultation services,
- preferential seating,
- visual schedules, and
- extended time on assignments.

At the November 28, 2023 IEP team meeting, San Diego added an additional five hours per week, one class period per day, in a separate, small group, special education classroom for specialized academic instruction to assist with Student's executive functioning skill. This class, taught by a special education teacher, assisted with

- organization skills,
- task completion,
- planning,
- attending to work, and
- study skills.

San Diego also added additional accommodations for prompting to stay on task, use of a planner/checklist, and teacher provided notes upon request. San Diego's offers in these areas did not change throughout the 2023-2024 school year.

Student's argument that San Diego failed to offer appropriate specialized academic instruction for his executive functioning deficits relies entirely on the findings and recommendations of Gray's expert report. Gray's opinions and recommendations were fundamentally flawed.

Gray's assessment indicated Student had average cognitive functioning with an intelligence quotient of 98, and average range performance for academic achievement, sustained attention, and concentration. Gray's assessment established Student had weaknesses in

- motor speed,
- motor planning,
- executive functioning skills,
- conceptualization,
- problems solving,
- cognitive flexibility,
- socially withdrawn behavior, and
- atypicality.

Gray did not agree with Student's prior attention deficit hyperactivity disorder diagnosis, but rather attributed Student's executive functioning weaknesses to Student's mild autism presentation. Gray recommended executive functioning support for organization skills, and work habits and strategies, and opined that a program such as a study skills class could provide such services.

Gray also recommended services, interventions, and supports in the areas of

- comprehension/critical thinking,
- written expression,
- fine motor,
- notetaking, and
- emotional support.

He recommended assistance with inferences and logical association through prompting and teacher modeling, social skills services, extended time for assignments and tests, and in-school study hall period,

- use of a word processor,
- use of a graphic organizer,
- use of a school planner,
- assistance with the writing process, and
- school counseling.

Gray, however, did not observe Student in his educational setting, nor speak to any of Student's teachers. Instead, he relied on his records review, testing results, and Parent and Student input. Gray explained Parent did not pay the extra money for him to observe Student, so it was not done. The lack of observation in Student's school setting and failure to interview, meet with, or gather information from Student's teachers undermined the persuasiveness of Gray's opinions and recommendations.

Without an observation at school, Gray could not adequately address whether Student's deficits seen in clinical testing, ratings, and interviews were accurate and prevented Student from making adequate educational progress. Gray failed to see how Student functioned in any school setting to verify the validity of his assessment tools

and to see if impacted Student's ability to learn and participate in school. Student's independent assessor and Speech and Language Pathologist Christy Himstreet opined that an observation is necessary to determine if Student can access his education. Relying on secondhand reports and clinical testing without direct observation weakened Gray's credibility, which is why an observation in the appropriate setting is required under California law for public school assessments. (Ed. Code, § 56327, subd. (c).)

Gray's failure to observe Student at school also rendered his assessment insufficiently comprehensive and unreliable which undermined the persuasiveness of his opinions and recommendations. (20 U.S.C. § 1414(b)(3)(C); 34 C.F.R. Sec. 300.304(b)(1) &(c)(6) (2017); Ed. Code, § 56320, subd. (c).) Assessments without observations do not give first-hand understanding of how a student functions in an educational setting. Because of this, Gray's opinions and recommendations related to the school environment were given less weight compared to San Diego's assessment opinions and recommendations which included observations of Student in the school setting.

At the time of the November 2023 IEP team meetings, San Diego also possessed an April 2023 private neuropsychological assessment report conducted by Lenihan. However, Lenihan also failed to conduct any school-based observations and conceded that the purpose of her assessment was to determine if Student was on the autism spectrum, and was not an independent educational evaluation. Although Lenihan candidly conceded the limitations of the assessment, it suffered the same fundamental flaw as Gray's expert report. Without direct observations, it lacked reliability and failed to provide a comprehensive understanding of how Student functioned in a school

environment. Thus, Lenihan's report was given little weight regarding her opinions and recommendations for Student at school, as compared to San Diego's assessment report findings and recommendations.

San Diego received a subsequent addendum report by Gray in April 2024. The focus of the report was updating his opinions on placement and mental health. It did not discuss specialized academic instruction for executive functioning skills.

Student failed to show that San Diego's offers for executive functioning support during the time at issue during the 2023-2024 school year, outside of the scope of the settlement agreement, were inappropriate. From November 15, 2023, through the end of the 2023-2024 school year, San Diego offered Student a goal in organization, two hours per month of consultation services for organization and task completion executive functioning skills, and accommodations in preferential seating, visual schedules, and extended time on assignments. The preferential seating assisted with distraction and attention. The visual schedules supported planning and organization. The extended time on assignment helps with task completion.

From November 28, 2023, to the end of the 2023-2024 school year, San Diego added an additional five hours per week, one class period per day, in a separate, small group, special education classroom for specialized academic instruction to assist with Student's executive functioning skills. This class, taught by a special education teacher, assisted with

- organization skills,
- task completion,

- planning,
- attending to work, and
- study skills.

On November 28, 2023, San Diego also added additional accommodations for prompting to stay on task, use of a planner/checklist, and teacher provided notes upon request. These accommodations assist with

- organization,
- task completion,
- difficulties with notetaking,
- enhancing comprehension,
- attention,
- reducing cognitive load, and
- improving retention.

San Diego's offers for specialized academic instruction to address Student's executive functioning skills did not change throughout the 2023-2024 school year, since November 28, 2023.

As part of the San Diego's assessment of Student, San Diego School Psychologist Shannon Hunter, previously Shannon Demers, observed Student in his classroom at Winston. She observed Student independently begin class assignments and remain on task. Demers sought input from two of Student's teachers at Winston, Jackson Hranek and Jana Hackamack Klingman, on the Conners, Fourth Edition. Neither Hranek nor Klingman reported concerns with task completion or organizational skills in their classes. Cristal

Perez, Student's math teacher, testified at hearing. She did not suggest that Student required additional supports in executive functioning at hearing. Perez testified that Student

"is always on time, he grabs all of his materials ... [Student] doesn't need prompting to know what the routine is ... he knows to grab his materials, and he knows to start our warm-up questions, he's very on top of it."

During the assessment process, Perez reported to Demers that Student asked questions and participates during classroom discussion.

Student argued that the IEP offers failed to give Student the explicit teaching of executive functioning skills that Student required. This argument fails. No persuasive evidence was presented that Student needed additional services or accommodation to assist with his executive functioning skills. Rather, San Diego IEP offers of daily direct specialized academic instruction for executive functioning skills was targeted to assist in Student's executive functioning skills. It aligned with Gray's executive functioning skills recommendations of a study skills class and accommodation supports, despite his opinions being less persuasive.

Student failed to prove by a preponderance of the evidence that San Diego failed to offer Student appropriate executive functioning skills support, during the 2023-2024 school year, outside of the settlement agreement period.

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ISSUE 1bii: STUDENT FAILED TO PROVE THAT SAN DIEGO DENIED STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE SOCIAL SKILLS SUPPORTS AND SERVICES.

As already stated, the operative time at issue outside of the settlement agreement begins with the November 2023 IEP team meetings. Student contends by the November 2023 IEP team meetings San Diego knew Student needed social skills supports to make progress at school and access his education. Because San Diego failed to offer him any services or supports in this area, Student argues he was denied a FAPE. San Diego contends Student did not have any social skill deficits that affected his ability to access his education, and, therefore, it did not deny Student a FAPE.

A child's educational needs are to be broadly construed to include the child's

- academic,
- social,
- health,
- emotional,
- communicative,
- physical, and
- vocational needs.

(*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106, abrogated in part on other grounds by *Schaffer*, *supra*, 546 U.S. at pp. 56-58.) Educational benefit is not limited to academic needs, but

also includes the social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467 (*San Diego*).)

Related services include transportation and other developmental, corrective, and supportive services required to assist the child in benefiting from special education. This may include speech and language pathology services. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(a) (2006); Ed. Code, § 56363, subd. (a.) Social skills encompass verbal and non-verbal behavior essential for effective interpersonal communication and social relationships.

San Diego did not offer Student any social skills support during the 2023-2024 school year. Student relies on the expert recommendations of Lenihan, Gray, and Speech and Language Pathologist and independent assessor Christy Himstreet, to support its contention that Student required social skills to receive a FAPE.

Himstreet conducted an independent speech and language assessment of Student and completed it in November 2023. However, neither Himstreet nor Parent shared it with San Diego until the end of January 2024.

At the November 15, 2023 IEP team meetings, San Diego had Lenihan's report, and its own assessments, including the assessment results from San Diego speech and language pathologist Julie Hicks. San Diego had Gray's report by the November 28, 2023 IEP team meeting. Hicks determined Student did not have any speech and language concerns, including in social skills, that affected Student's ability to access his education and make progress at school. Lenihan and Gray both recommended Student receive social skills training services at school. However, as previously stated, Lenihan and Gray's opinions were questionable given no Student observations, and, therefore,

were not given significant weight. Thus, Student failed to prove that, at the time of the November 2023 IEP team meetings, San Diego denied him a FAPE for failing to offer him appropriate social skills supports.

Himstreet found, like Hicks, that Student had adequate expressive and receptive language skills. However, Himstreet's results revealed Student had deficits in social and pragmatic language, specifically, verbal and non-verbal cues, novel social scenarios, self-advocacy, and perspective taking. Himstreet's testing included input from Winston teacher Klingman. Klingman's results placed Student in the "mostly acquired independently" skill range in all areas. Klingman concluded Student needed only infrequent cues or reminders in listening skills, speaking skills, and social language skills like understanding non-verbal communication, ability to interact with peers appropriately, having friends, and awareness of social successes and failures. Himstreet opined Student had a language disorder and recommended services and supports in social skills, pragmatic language interventions, perspective taking and self-advocacy.

Himstreet's classroom observation, however, was limited to Student's interactions with the teacher and did not capture his peer interactions or other exchanges that would provide meaningful insight into Student's pragmatic language skills or ability to take another's perspective. Himstreet did not observe Student in an unstructured setting or inquire with Winston staff about Student's social skills except for Klingman's input in Himstreet's clinical testing. As stated, Klingman's results did not endorse social skills services, rather infrequent cues and reminders.

Himstreet's formal testing conducted in a clinical setting revealed Student's social skills deficits. Parent also testified that Student had social skill challenges at home and outside of school. However, the relevant issue in this case is whether these deficits

impacted Student's ability to access his education such that San Diego was required to provide social skills to provide Student a FAPE. Himstreet opined that it did. However, Himstreet's observations at school and teacher input received did not support the conclusion that the Student's social deficits interfered with his educational access such that he required social skills support, services, or therapy. Thus, Himstreet's opinion in this area was unpersuasive, and undermined the veracity of her opinions regarding her recommendations for social skills services.

Additionally, Student did not receive any social skills instruction, support or services, or speech and language therapy while attending Winston and he was doing well there. Perez opined that Student was confident at recess and extracurricular activities. She always saw him at lunchtime socializing with the same group of friends while engaged in athletic games. Perez also saw Student playing basketball or at a lunch table with other teenage boys. Winston's Director of Special Education, Holly Reed, observed Student conversing with staff and interns at school and opined that Student was one of the kids that soothed things when disagreements arose between students. Student's own self-report stated he enjoyed spending time with friends both in and out of the school setting. This convincing evidence established that Student did not require social skills supports and services at school.

The results of San Diego's multidisciplinary assessments, which included testing in speech and language, did not identify social skills deficits that interfered with Student's educational access or progress in school. Student argued in his closing brief that San Diego's speech and language assessment was severely flawed because it relied almost entirely on subjective information and a five-minute impromptu observation of Student chatting with a few friends before walking into the testing room at University City High School. San Diego's speech and language conclusion that Student did not

require social skills training was obtained, in part, on this informal five-minute observation of Student. However, the accuracy of San Diego's assessments was not at issue in this case. Moreover, San Diego did not bear the burden of proof in this matter. Student failed to meet his burden of persuasion on this issue.

Student's evidence, independent of San Diego's speech and language testing, regarding Student's social skills at school was neither comprehensive nor sufficiently reliable to establish that San Diego was obligated to offer social skills instruction as part of its FAPE offers during the 2023-2024 school year. Student did not present persuasive evidence establishing his social skills deficits impeded his access to his education and that he required specific services or supports to receive a FAPE. Consequently, Student failed to meet his burden of proof on this issue.

Accordingly, Student failed to prove by a preponderance of the evidence that San Diego denied Student a FAPE by failing to offer appropriate social skills support and services for the 2023-2024 school year.

ISSUE 1biii: STUDENT PROVED SAN DIEGO DENIED STUDENT A FAPE FROM DECEMBER 1, 2024, THROUGH THE END OF THE 2023-2024 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE MENTAL HEALTH SUPPORTS AND SERVICES.

Student contends San Diego's mental health consultation service offered to Student during the 2023-2024 school year was inadequate to meet Student's needs because he required direct individual mental health services. San Diego contends that

the IEP offers for consultation regarding mental health services were appropriate to meet Student's needs, so he could access his education and make progress. Further, San Diego maintains it offered some direct mental health services to Student.

Related services include counseling and behavior services when appropriate. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34 (2006); Ed. Code, § 56363, subd. (a).) In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, "... strategies, including positive behavioral interventions, strategies, and supports to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) (2006); Ed. Code, § 56341.1, subd. (b)(1).)

As already stated, the operative time outside of the settlement agreement begins with the November 2023 IEP team meetings. At the November 15 and 28, 2023 IEP team meetings, San Diego offered Student six hours yearly of mental health consultation services provided by a qualified mental health clinician for crisis management. In the transition plan, it offered an anytime pass for drop-in mental health services with a mental health clinician for the first month of school when he was transitioning from nonpublic school to public school.

At the March 26, 2024 IEP team meeting, San Diego offered the same consultation mental health services offer for crisis management at six hours yearly and the anytime pass for the first months he transitioned back to public school. San Diego recommended in the March 26, 2024 IEP team meeting notes direct Parent/family counseling two times per month, 30 minutes per session, and an in-home meeting with the school counselor, to help transition Student to public school. However, it does not appear that these recommendations were added to the IEP service offer.

At the May 8, 2024 IEP team meeting, San Diego increased its offer to nine hours yearly of consultation mental health services to Student, the anytime pass for one month to transition to public school, and three hours yearly of direct Parent counseling services.

Student proved San Diego's mental health service offers from November 2023, through the end of the 2023-2024 school year were inadequate to meet Student's needs. In November, Demers completed social-emotional testing of Student for its multidisciplinary assessment. On November 6, 2023, Eric Rhinehart, a San Diego licensed marriage and family therapist, completed a mental health assessment of Student and incorporated the social-emotional testing of Student from the November 2023 multidisciplinary report. Based on his assessment and multi-disciplinary social-emotional assessment, including interviews with Parent, Student, and teachers, a school observation, records review, and use of standardized assessment tools, he found that Student required educationally related mental health services to assist with his anxiety and coping skills. However, Rhinehart endorsed consultation mental health services only. Rhinehart's reasoning was threefold:

- removing Student from class for direct counseling services could disrupt his routine and hinder his academic progress;
- the student himself did not want direct counseling services; and
- Parent also opposed direct counseling services.

Given these factors, Rhinehart determined direct counseling would likely be ineffective and instead recommended consultation services as more suitable to help Student with his anxiety and coping strategies. Along with the consultation mental

health services, San Diego also offered an anytime pass for the first month back at public school for Student to receive consultation mental health support, if needed.

Rhinehart's evaluation revealed Student had no significant emotional distress while at Winston. San Diego IEP team members endorsed Rhinehart's recommendation for mental health consultation services only. However, despite recognizing Student's needs for mental health services, the school failed to adequately address his history of school refusal behavior and anxiety when he attended San Diego's public middle school in Spring 2023. This was a material factor that Rhinehart did not consider when making recommendations regarding mental health services for Student.

Additionally, Rhinehart endorsed mental health services, but his recommendation for consultation services was based primarily on the Parent and Student preference against direct counseling, rather than an objective assessment of the Student's actual mental health needs. A school district must offer student services that address a student's unique needs, even if those services are not preferred by the parent or student. Here, Student's prior school refusal, while not observed at Winston, was a critical factor that should have been considered in its offer of mental health services to Student. Instead of developing mental health services tailored to address Student's anxiety toward public school, it relied on Parent's and Student's opposition to direct counseling. San Diego's recommendations for consultation only mental health services based on Student's reluctance to participate in direct mental health services, appeared to be an excuse, rather than a solution, which failed to address Student's needs adequately.

San Diego's offer of direct mental health services, as needed, in the form of an anytime pass to see a mental health clinician was insufficient. The offer extended to only one month while Student transitioned back to public school, and only if Student initiated the meeting, thereby making the services insufficient. The evidence established San Diego should have offered Student weekly direct mental health services, as the reasoning for offering the consultation mental health services was unpersuasive and direct services for one month for transition purposes and consultation mental health services for crisis management were not sufficient to assist with Student's ongoing anxiety and coping issues, as Rhinehart found in his assessment. If it was later determined Student did not need those services, it could have held a subsequent IEP team meeting and reduced them.

By failing to make an offer of regularly scheduled direct mental health services to Student to assist with his ongoing anxiety and coping issue, Student proved by a preponderance of the evidence that San Diego failed to offer Student appropriate mental health services at the November 28, 2023 IEP team meeting.

Additionally, San Diego failed to offer appropriate mental health services at the March and May 2024 IEP team meetings. In January 2024, Student sued San Diego for failure to offer him a FAPE. On March 15, 2024, Parent contacted San Diego and requested Student attend the San Diego high school on a trial basis. Student stopped attending Winston and Parent then enrolled Student at San Diego and signed the November 28, 2023 IEP on March 18, 2024. Parent admitted at hearing that his attorney recommended Student attempt attending San Diego for due process purposes. This admission demonstrated that the trial period was not necessarily a genuine attempt

to transition Student into public school. The evidence showed that Parent was only superficially cooperative with the transition. That fact, while potentially relevant to remedies, does not alter San Diego's obligation to offer Student a FAPE.

Student began his public high school trial period around March 21, 2024, but he refused to attend University City High School. San Diego made extensive efforts in March 2024 to facilitate Student's attendance, including offering a home visit with the University High School principal, arranging meetings with Rhinehart to play basketball with Student at school to build rapport, or to meet outside of the school at another location like a coffee shop. Parent, however, restricted access to Student, refusing to allow school staff to speak with Student unless Parent was present. The only thing Parent agreed to do was to meet with Rhinehart over a Zoom meeting in early April 2024, with Student present. During that meeting, Student looked at Parent before responding to Rhinehart, demonstrating Student's absence from independent engagement.

At the March 26, 2024 IEP team meeting, despite Student's continued refusal to attend public school, San Diego's mental health service offer remained the same. However, the IEP notes show that the IEP recommended additional parent/family counseling two times a month for 30 minutes to help Student transition back to public school. Even if the offer of 30 minutes of parent/family counseling twice a month at the March 26, 2024 IEP meeting could be interpreted as an additional service to support Student's transition back to school, it was insufficient to meet Student's needs. As previously discussed, Student required consistent and structured mental health services, not only for transitioning back to public school but also to address his anxiety and coping skills.

Despite San Diego's March 2024 IEP offer, Parent unilaterally placed Student back at Winston on April 11, 2024, three weeks after the beginning of the trial period. Student never attended University City High School during the trial period. This demonstrates that any additional supports offered were inadequate, and additional mental health support was necessary for Student.

In May 2024, San Diego offered an additional three hours of mental health consultation services, and three hours of direct Parent counseling yearly but no regularly scheduled direct mental health services for Student.

San Diego failed to adequately account for Student's school refusal behavior beginning on March 21, 2024, even considering Parent's uncooperativeness. Student's school refusal behavior reemerged while in high school, like Student's refusal to attend a San Diego middle school in Spring 2023, yet San Diego failed to offer appropriate mental health services to address it. San Diego overlooked the clear, current evidence that these same challenges persisted and prevented Student from accessing his education at San Diego. Although Student did not exhibit school refusal at Winston, his behavior in March 2024 warranted direct weekly mental health services to facilitate Student's successful transition back to public school and to assist with his then heightened anxiety.

Instead, San Diego primarily focused on the Parent's lack of cooperation throughout the process, rather than addressing Student's demonstrated needs. Parent's preference for a nonpublic school and minimal effort to cooperate with San Diego did not negate San Diego's obligation to offer Student appropriate mental health services to address Student's needs.

Additionally, as already described, San Diego made multiple and unsuccessful attempts to address Student's reluctance to attend University City High School in March and April 2024, utilizing services and supports that were not offered in either the November 2023, March 26, 2024, or May 8, 2024 IEP offers. These continued efforts demonstrated San Diego's awareness that Student required additional mental health services and supports. However, San Diego failed to appropriately revise the FAPE offers conveyed in the March and May 2024 IEP's.

Simply offering more consultation services to Student, a one-month anytime pass, with no direct regularly scheduled mental health support to Student did not provide the structured individual support Student needed. Student required such support to improve his anxiety and coping skills at that time, as clearly demonstrated by Student's refusal to attend public school.

Consultation services involve a mental health clinician consulting with a teacher or other district staff to help them respond to situations with Student. Consultation could also include observing Student, monitoring Student's progress, organizing programs or arranging for mentors, and giving Student materials regarding coping strategies that he could work on without direct support. In San Diego's attempts to get Student to return to public school in March 2024, it offered to directly meet with Parent and Student. Thus, the March and May 2024 IEP mental health service and support consultation offers were not sufficient to support Student's exacerbated mental health issues at that time.

The evidence was clear that Student needed direct individual mental health services on a regular basis at school to assist with his anxiety surrounding public school and anxiety in general.

Student proved by the preponderance of the evidence that San Diego denied him a FAPE by failing to offer appropriate direct mental health services from November 28, 2023, through the end of the regular 2023-2024 school year.

ISSUE 1c: STUDENT PROVED SAN DIEGO DENIED STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO OFFER AN APPROPRIATE TRANSITION PLAN FROM MARCH 26, 2024, THROUGH THE END OF THE 2023-2024 SCHOOL YEAR.

Student contends San Diego failed to offer a legally required transition plan at the November 2023, March 2024, and May 2024 IEP team meetings, because the plans were vague and did not meet Student's needs. San Diego contends it offered appropriate transition plans throughout the 2023-2024 school year that were suitable for facilitating Student's return from a nonpublic school to a public high school. San Diego contends Parent's lack of cooperation was a primary barrier to Student's transition because Parent had no intention of sending Student back to San Diego.

Education Code section 56345, subdivision (b)(4) requires a school district to develop a transition plan for a student moving from placement in a nonpublic school, or a special day class, to a placement for at least part of the day in a regular education class. The transition plan must include a description of the activities provided to

integrate the student into the regular education program and specify the amount of time spent on the activity each day or week. (Ed. Code, § 56345(b)(4); See T.B. ex rel Brennise v. San Diego Unified Sch. Dist. (9th Cir. 2015) 806 F.3d 451, 462-463.)

NOVEMBER 2023 TRANSITION PLAN

On November 28, 2023, to facilitate Student's transition from nonpublic school to public school, it offered Student a transition plan that included:

- a tour of the high school campus;
- a meeting with the guidance counselor to develop a class schedule;
- a meeting with the mental health support team, which included a therapist, case manager, and school counselor;
- the case manager would help facilitate a peer connection before returning to the school;
- support staff would do a check-in at the end of the third day of school;
- an anytime pass would be provided to Student for his first month in the public school in the event Student was struggling and needed to meet with a school counselor; and
- calling an IEP team meeting to see if supports are needed after the first month of transition.

Student points to Gray's transition plan recommendations at the November 28, 2023 IEP team meeting, arguing that the transition plan was inadequate to support its contention that San Diego denied Student a FAPE. Gray did not recommend a transition plan in his assessment report. It was only during the November 28, 2023 IEP team meeting that Gray opined on transition plan recommendations. Lenihan also opined at hearing that the San Diego offered transition plan was inadequate, but did not recommend a different transition plan in her assessment report. As already stated, Gray's and Lenihan's opinions and recommendations were flawed and, thus, given little weight. Rhinehart and Breeding endorsed the adequacy of the transition plan in November 2023, and no persuasive evidence contradicted their testimony.

Since the opinions of Gray and Lenihan were flawed, as previously described, more weight was given to Rhinehart and Breeding's opinions. Both Breeding and Rhinehart knew University City High School, and had experience helping students transition into public school settings. Given their knowledge of the school and transitioning students, their opinions were deemed more persuasive on this issue in November 2023.

Student also asserted that the transition plan is impermissibly vague because it failed to identify each of the transition activities would take place, the staff involved for implementation, and how the activities for transition would be implemented.

However, that is not the legal standard. The legal standard is a description of the activities for transition and the time on the activity each day or week. (Ed. Code, § 56345(b)(4); See *T.B. ex rel Brennise v. San Diego Unified Sch. Dist.* (9th Cir. 2015) 806 F.3d 451, 462-463.)

Here, while the plan does provide descriptions of the activities, it specifies the time spent for only four out of the seven activities. Two additional activities, the school tour and meeting with the guidance counselor to develop a class schedule, are reasonably understood as one-time events occurring before the transition. The only activity lacking any specific time allocation is the meeting with the mental health support team. Therefore, one of the seven components of the plan remains vague in terms of time allocation. Thus, the plan is technically procedurally insufficient.

Student proved that San Diego failed to develop an appropriate transition plan at the November 2023 IEP team meetings. This is a procedural violation under the IDEA. (*Board of Education v. Ross* (7th Cir. 2007) 486 F.3d 267, 276.) In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following:

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

Moreover, the hearing officer “shall not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian to participate in the formulation process of the individualized education program.” (Ed. Code, § 56505, subd. (j).)

The adequacy of transition services must be viewed as an aggregate in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the child to garner educational benefit. (*Lessard v. Wilton-Lyndeborough Cooperative Sch. Dist.*(1st Cir. 2008) 518 F.3d 18, 30.) When a transition plan fails to comply with the procedural requirements, but the individual transition plan or IEP provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural violation is harmless. (*Virginia S. v. Department of Educ.* (D.Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, at *10.) A transition plan that is procedurally deficient but does not result in a loss of educational opportunity, does not result in a denial of FAPE. (*Ibid.*)

The only identifiable procedural issue pertains to a lack of specificity regarding the timing of a single meeting with the mental health support team. Minor procedural deficiencies, particularly those not affecting the educational benefit of Student or parental participation, do not constitute a substantive denial of FAPE.

The evidence established San Diego did not impede Parent's opportunity to participate in the November 2023 IEP decision-making process. Parent actively engaged in both November 2023 IEP team meetings by making comments and asking questions. Additionally, Student failed to present any evidence of any demonstrable loss of educational benefit to Student due to the technical deficiency regarding a meeting schedule.

Without evidence that this minor error resulted in Student losing educational opportunity or interference with Parent's ability to participate in the IEP formation process, it does not meet the threshold for a substantive violation.

Consequently, Student failed to prove by a preponderance of the evidence that San Diego denied Student a FAPE at the November 2023 IEP team meetings for failing to offer an appropriate transition plan.

MARCH AND MAY 2024 TRANSITION PLANS

At the March 26, 2024 IEP team meeting, San Diego continued to offer the original transition plan offered in November 2023. However, the IEP team meeting notes showed that it recommended and offered additional services and supports to assist in Student's transition to public school. These additional services included:

- Parent and family counseling for two 30 minutes sessions a month to assist in getting Student to school;
- a home visit from the principal or counselor to meet with Student at home and offer support to get him to school; and
- partial school days for the initial two weeks to help acclimate Student to a larger campus.

While these additional transition supports and services appeared well-intentioned, they ultimately proved inadequate, particularly in light of Student's escalating school refusal behavior beginning March 21, 2024. The transition plan, as formulated on March 26, 2024, failed to address Student's ongoing needs, and by April 11, 2024, when Parent returned Student to Winston, San Diego was fully aware that the transition plan was ineffective. San Diego's attempts to conduct a home visit were unsuccessful, and Parent agreed to only one counseling session over Zoom. Other proposed services and supports, such as informal meetings around the community, were outside the scope of the IEP transition plan and equally ineffective. Although Parent contributed to the

transition plan's failure, it is evident the school failed to offer a sufficiently robust transition plan. San Diego demonstrated a lack of responsiveness to Student's evolving needs regarding transition back to public school.

In May 2024, San Diego added three hours yearly of Parent counseling services, and three additional hours of mental health consultation services yearly for Student. As already stated, Student needed direct mental health services to support his anxiety and issues with his transition to public school.

Accordingly, Student proved by a preponderance of the evidence that San Diego denied Student a FAPE from March 26, 2024, through the end of the 2023-2024 regular school year for failing to offer an appropriate transition plan.

ISSUE 1d: STUDENT FAILED TO PROVE THAT SAN DIEGO DENIED STUDENT A FAPE BY FAILING TO OFFER HIM AN APPROPRIATE PLACEMENT.

Student contends he required a nonpublic school, and a small, structured school campus, with a low student-to-teacher ratio, to address his mental health issues, anxiety, and coping skills. San Diego contends the San Diego public high school, University City High School, is the least restrictive environment because Student is cognitively average, with mild characteristics of autism, and has friends in public school. Further, San Diego argues the San Diego high school offers more academic and elective classes, and club offerings with typical peers. In contrast, Student would not interact with any typical peers in a nonpublic school placement. Thus, San Diego, argues the proposed placement offer was appropriate and the least restrictive environment.

The determination of an appropriate educational placement under the IDEA hinges on whether the placement provides Student with a FAPE in the least restrictive environment. School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56040.1.) The IDEA also requires, to the maximum extent appropriate, that a child with a disability must be educated with children who are not disabled. (*Ibid.*)

If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050.) In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

The Ninth Circuit has stated a four-factor evaluation to determine whether a placement is the least restrictive environment. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*)). Those four factors are:

- the educational benefits of placement full-time in a regular class;
- the non-academic benefits of interaction with children who were not disabled;

- the effect the child will have on the teacher and children in the regular class; and
- the costs of mainstreaming the student. (*Ibid.*)

Throughout the 2023-2024 school year, from the time encompassed in the September 2023 settlement agreement, beginning with the November 2023 FAPE offers, San Diego offered Student a general education setting in a comprehensive high school, with one class period each day in a separate special education classroom led by a mild/moderate special education teacher for specialized academic instruction to address executive functioning skills. This offer had Student in a general education setting with typical peers for 84.7 percent of his school day. The general education classes could have up to 36 students. The time outside the general education setting consisted of Student's specialized academic instruction during which the primary focus was support for Student's executive functioning needs. His special education class period could have up to 12 students. Parent flatly rejected a public school setting as not restrictive enough to meet Student's needs. Parent preferred Winston.

An analysis of the *Rachel H.* factors support San Diego's proposed placement offer.

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THE EDUCATIONAL BENEFITS OF PLACEMENT FULL-TIME IN A REGULAR CLASS

Breeding and Hicks endorsed the University City High School general education placement because it offered more academic courses, extracurricular activities, and clubs tailored to Student's interests. Hicks reiterated that a public high school offers a wider range of academic and elective courses, which better aligns with Student's long-term goals of attending college and eventually being employed as a scientist or engineer.

Breeding, Rhinehart, and San Diego School Psychologist, Dr. Laura Alles opined that University City High School provided Student with exposure to challenges that he would need to learn to overcome to have a successful post-secondary education. Rhinehart testified that exposing students with school aversion to challenging situations is essential in helping them develop coping skills and preparing them for their future. He further explained that you need to

"expose them to certain situations that are challenging for them ... like orienting someone to ... a bigger setting if they are getting ready to go to ... San Diego State or something of that nature. You gradually do it, little by little, and help support them along the way."

Alles testified that "there is a lot of growth that happens that prepares students for life that happens after high school."

The evidence demonstrated that University City High School was challenging academically and could prepare Student for his future and expose him to advanced learning materials, a broad range of academic resources, and help develop skills for postsecondary education. While spending 87 percent of his time in a general education

setting, Student would also receive individualized support in his special education small classroom setting daily to work on his executive functioning skills, and accommodations and other supports, while benefiting from the academic and social environment of a mainstream classroom. Thus, the placement offer was tailored to Student so that he could receive educational benefit. The San Diego witnesses endorsing San Diego's placement offer were familiar with University City High School and the offered placement and what was available to Student on the campus. Their testimony was knowledgeable, credible, and consistent. Thus, their testimony was persuasive.

Gray and Lenihan, Winston teachers, and Parent all supported a more restrictive environment, Winston, as the appropriate placement for Student during the 2023-2024 school year. However, their testimony was unpersuasive because they failed to apply the Rachel H. factors, which requires a multi-factor analysis. (Id.) Instead, they narrowly focused on comparing the different school environments such as the size of the high school, classroom size, and student to teacher ratio. However, the focus is on the appropriateness of the placement offered by the school district, and not on the alternative preferred by the Parent. (Gregory K v. Longview School Dist. v. Longview Sch.Dist. (9th Cir. 1987) 811 F.2d 1307, 1314.)

Student's experts also argued that Student's mental health precluded him from attending University City High School and thus, he could not receive educational benefit. This reasoning is flawed. Student's mental health challenges, particularly anxiety and school refusal, coupled with Parent's uncooperativeness in precluding him from attending University City High School, was Student's hinderance in attending University City High School, not the placement. The primary concerns lie in the lack of appropriate

mental health services and transition support for Student. As already stated, these supports were insufficient, coupled with Parent's singular focus of keeping Student at a nonpublic school, were impeding his ability to attend University City High School.

Except for Parent, none of Student's witnesses had direct knowledge of San Diego's high school placement. Moreover, no evidence established that any of Student's witnesses, including Parent, his experts, and Winston staff, had observed San Diego's high school program, structure, or supports. Their opinions were based on assumption, rather than direct knowledge, which rendered their opinions speculative, and thus, less credible. Conversely, San Diego's witnesses had personal knowledge of University City High School and opined that the proposed placement was reasonably calculated to provide benefit to Student.

Student could receive educational benefit from San Diego's proposed placement offer.

THE NON-ACADEMIC BENEFITS OF INTERACTION WITH CHILDREN WHO WERE NOT DISABLED

Student would be exposed to neurotypical peers at San Diego unlike at Winston. Student's exposure to neurotypical peers weighs in favor of the non-academic benefits of placement in a general education setting at University City High School because it assists with social modeling, communication, and age-appropriate interactions, critical for Student's long-term growth. This includes social skills and pragmatic skills that Student argues is critical for Student at school. The San Diego public high school offers clubs of interest with neurotypical peers. Removing Student from typically developing peers limits his opportunities for growth both socially and academically. As well, San Diego

must promote inclusive practices whenever feasible, rather than placing a student in a more restrictive placement due to parental preference. Breeding, Alles, and Rhinehart endorsed University City High School as the least restrictive environment. Breeding described the benefits of having Student with typical peers. Student did not set forth any evidence or arguments refuting that Student would not benefit from being exposed to typical peers at University City High School. This factor supports San Diego's proposed placement.

THE EFFECT THE CHILD WILL HAVE ON THE TEACHER AND CHILDREN IN THE REGULAR CLASS

Student failed to present any evidence indicating Student's presence in a general education setting would have a negative impact on teachers or peers. According to the evidence presented, Student was not disruptive or had any negative impact with teachers and peers while at his public middle school. This factor supports San Diego's proposed placement.

THE COSTS OF MAINSTREAMING THE STUDENT

Student argued that the cost of mainstreaming at University City High School would be high due to it impeding his progress. Student's argument misses the central point. The relevant factor in this context is not the perceived impact on the Student's educational progress, but rather the actual cost of mainstreaming Student. The argument about cost must address whether the school district can provide the necessary services and supports in a mainstream setting, not whether mainstreaming itself will hinder Student's program.

Since there was no evidence submitted regarding the cost of the offered placement, but the other three factors support San Diego's offered placement, San Diego's offered placement is appropriate.

Student failed to prove by a preponderance of the evidence that San Diego failed to offer Student an appropriate placement during the 2023-2024 school year, from the November 2023 IEPs.

ISSUE 1e: STUDENT FAILED TO PROVE THAT SAN DIEGO DENIED STUDENT A FAPE BY FAILING TO CONSIDER DOCTOR GRAY'S INDEPENDENT EDUCATIONAL EVALUATION AT THE NOVEMBER 28, 2023, MARCH 2024, AND MAY 2024 IEP TEAM MEETINGS.

Gray conducted an independent neuropsychological evaluation of Student and completed it on October 10, 2023. Gray completed an addendum to his original report on April 25, 2024. Student contends San Diego ignored Gray's opinions and recommendations from his original neuropsychological evaluation report and addendum report. San Diego asserts that it considered both reports and incorporated some of Gray's recommendations into its November 28, 2023, and May 8, 2024 IEP offers of a FAPE, but it was not legally required to adopt Gray's recommendations.

When presented with a private expert's evaluation report or independent educational evaluation at public expense, a school district must consider the results of the assessment, in any decision made with respect to the provision of FAPE to a student. (34 C.F.R. § 300.502(c)(1); Ed. Code, § 56329, subd. (c).) The district is not required to adopt the conclusions of such an evaluation. (Ibid.; Michael P. v. Dept. of Educ. (9th Cir. 2011) 656 F.3d 1057, 1066 (fn. 9) (Michael P.); See T.S. v. Board of Educ. of Town of

Ridgefield, (2nd Cir. 1993) 10 F.3d 87.) Evidence that district IEP team members have considered a private evaluation include factors such as a lengthy discussion of the evaluation at an IEP team meeting or alteration of IEP provisions in response to suggestions made by the private assessor. (*Michael P.*, *supra*, at p. 1066 (fn. 9).); *B.S. v. Placentia-Yorba Linda Unified Sch. Dist.* (C.D. Cal., Aug. 1, 2007, No. SACV06847CJCM LGX) 2007 WL 9719115, at *3–4) [nonpub. opn.]

Student failed to prove that San Diego disregarded Gray's October 2023 assessment results. On November 28, 2023, Gray attended the IEP team meeting and reported his results and recommendations. Gray presented his evaluation, results, and recommendation for approximately 14 minutes during the meeting. A discussion ensued after Gray's presentation. Gray further clarified his opinion regarding a transition plan and mental health services. Student's contention that San Diego dismissed Gray's report was unconvincing and not supported by the evidence. Gray discussed his report at length, clarified some issues, and had a back-and-forth discussion with IEP team members. Additionally, at the November 28, 2023 IEP, San Diego changed its FAPE offer based on Gray's recommendations to include a transition plan, and direct daily group executive functioning services and supports.

Student complained that San Diego failed to articulate a reason to reject Gray's recommendations. However, San Diego is only legally required to consider the results. The evidence clearly showed San Diego considered Gray's results by amending the offered IEP based on some of Gray's recommendations. San Diego easily satisfied the legal requirements under the IDEA and California law for considering Gray's assessment results. Student failed to prove by a preponderance of the evidence that San Diego did not consider Gray's evaluation results at the November 28, 2023 IEP team meeting.

Student argued San Diego had the opportunity to discuss Gray's report at the March 2024 IEP team meeting and did not, thus denying Student a FAPE. San Diego already considered Gray's report in November 2023. Student presented no evidence that changes had been made to Gray's report from the time of November 2023 review, through the time of the March 2024 IEP team meeting. Student failed to present any legal authority requiring San Diego to consider the report again. Student failed to prove by a preponderance of the evidence that San Diego was required to consider Gray's report again in March 2024.

In April 2024, Parent contacted Gray to help document Student's status and obtain any updated recommendations. On April 25, 2024, Gray completed an approximate three-page addendum summarizing Parent's input and Student's "brief" interview. Gray's report addendum opined that Student's mental health had declined, and recommended Student remain at Winston for the entirety of his high school career.

On May 8, 2024, San Diego held an IEP team meeting to review Gray's addendum report. At the IEP team meeting, San Diego school psychologist, Dr. Laura Alles, summarized Gray's conclusion that Student's mental health had declined, and Gray's only recommendation, that Student remain at Winston. In response to Gray's result, San Diego offered more mental health consultation hours and parent counseling hours.

Student argued in his closing brief that San Diego quickly moved past Gray's recommendation for placement at Winston without discussion. The evidence showed Alles explained at the IEP team meeting that public school continues to be the least

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restrictive environment for Student. Student conflates considering assessment results to implementing an expert's recommendations. San Diego considered Gray's results and altered Student's IEP offer.

Student failed to prove by a preponderance of the evidence that San Diego did not consider Gray's evaluation results at the May 2024 IEP team meeting.

ISSUES 1f AND 1g: STUDENT FAILED TO PROVE THAT SAN DIEGO DENIED STUDENT A FAPE BY PREDETERMINING PLACEMENT AND FAILING TO ALLOW MEANINGFUL PARENTAL PARTICIPATION AT THE MAY 8, 2024 IEP TEAM MEETING.

Student contends San Diego predetermined its placement offer at a comprehensive high school and failed to allow Parent to meaningfully participate in the decision-making process at the May 8, 2024 IEP team meeting. San Diego maintains it did not agree with Parent and Gray's addendum recommendation for Winston placement. However, it made other changes to its FAPE offer at the May 2024 IEP team meeting, showing there was no predetermination, and it considered Parent's input.

The IDEA requires school districts to ensure that the parents of disabled children are members of any group that makes decisions about their child's educational placement. (34 CFR § 300.327 (2006); 34 CFR § 300.501 subd. (c)(1) (2006).) School districts may not unilaterally predetermine a child's special education and related services before an IEP team meeting. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858., cert. denied, 546 U.S. 936 (U.S. 2005).) School administrators and staff must enter the IEP team meeting with an open mind and must meaningfully

consider the parents' input. (H.B., et al. v. Las Virgenes Unified School Dist. (9th Cir. 2007) 239 Fed. Appx. 342, 344; see also, Ms. S. ex rel G. v. Vashon Island Sch. Dist. (9th Cir. 2003) 337 F.3d 1115, 1131.) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (JG v. Douglas County School Dist. (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.)

However, school officials do not predetermine an IEP simply by meeting to discuss a child's programming in advance of an IEP team meeting. (N.L. v. Knox County Schs. (6th Cir. 2003) 315 F.3d 688 at p. 693, fn. 3.) District IEP team members also may form opinions before IEP meetings. However, if the district goes beyond forming opinions and becomes "impermissibly and deeply wedded to a single course of action," this amounts to predetermination. (P.C. v. Milford Exempted Village Schools (S.D. Ohio, Jan. 17, 2013, No. 1:11- CV-398) 2013 WL 209478, p.7.) A district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural FAPE denial. (Deal, *supra*, 392 F.3d 840, 858.)

To avoid a finding of predetermination, there must be evidence the district has an open mind and might possibly be swayed by the parents' opinions and support for the IEP provisions they believe are necessary for their child. (See *Deal, supra*, 392 F.3d at p. 858; *R.L. v. Miami-Dade County School Bd.* (11th Cir. 2014) 757 F.3d 1173, 1188–1189.) This inquiry is inherently fact intensive.

Federal and State law require that a district must afford parents of a child with a disability the opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511 (2006); Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The IEP team must consider the concerns of the parent for

enhancing the student's education, as well as information provided by the parent about student's needs. (20 U.S.C. § 1414(d)(3)(A) and (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C) (2017); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904] ["[T]he informed involvement of parents" is central to the IEP process.]) Parental participation in the IEP process is considered "[a]mong the most important procedural safeguards." (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

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* (9th Cir. 1992) 960 F.2d 1479, 1485, superseded on other grounds by statute (*Target Range*); *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*).) "Participation must be more than a mere form; it must be *meaningful*." (*Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, 858 (emphasis in original).) A parent who has an opportunity to discuss a proposed IEP and suggest changes, and whose concerns are considered by the IEP team, has participated in the IEP development process in a meaningful way. (*Fuhrmann, supra*, 993 F.2d 1031, 1036.)

In cases in which the Ninth Circuit has found predetermination or serious infringement on parental participation, the school district generally developed the entire IEP without any parental input, refused to accommodate the parents' requests to reschedule, or committed other serious errors in conjunction with the failure to secure parental participation. In *Anchorage Sch. Dist. v. M.P.*, 689 F.3d 1047 (9th Cir. 2012) (*Anchorage*), Parent failed to attend an annual IEP meeting and instead provided

extensive written commentary on the school's IEP draft offer. The school district then chose to use a two-year-old IEP, rather than continue the IEP process to consider the parents' input. The Ninth Circuit found this to be a substantive violation of the school district's obligation to have a revised IEP in place at the start of every school year. (*Id.* at 1056.)

Similarly, in *Target Range*, the school district committed numerous procedural errors, including failing to bring the parents back to the table after they left the meeting in frustration. (*Target Range*, *supra*, 960 F.2d at 1484–85) Furthermore, in *Doug C. v. Hawaii Department of Education* 720 F.3d 1038 (9th Cir.2013) (*Doug C.*), the court found that the school district failed to accommodate parent's IEP meeting scheduling requests.

Student did not prove that San Diego predetermined the placement decision before the May 8, 2024 IEP team meeting. On May 1, 2024, San Diego convened an IEP team meeting to review Gray's addendum report. However, Parent did not attend. Despite Parent's absence, the IEP team proceeded with the meeting and determined that Student should continue to be offered placement in a comprehensive public school, rather than a nonpublic school. After this determination and attempts to reach Parent, the IEP team meeting was rescheduled to ensure parental participation.

On May 8, 2024, the IEP team reconvened to review Gray's addendum report with Parent in attendance. During this meeting, the IEP team reviewed and considered Gray's addendum report but did not adopt Gray's nonpublic school placement recommendation.

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At this meeting, Parent actively engaged with San Diego IEP team members, made comments, and asked questions. In response to Gray's addendum report and Parent's voiced concerns, San Diego offered additional mental health consultation services, as well as Parent counseling services.

Unlike the circumstances in *Anchorage* and *Target Range*, where Parent was excluded from meaningful participation in the decision-making process, Parent took an active role in the IEP team meeting discussion. Parent's participation, as reflected in the record, showed Parent was able to express his concerns and the team considered Parent's input. Additionally, the modifications to the IEP offer of a FAPE demonstrated San Diego engaged in a collaborative approach and a willingness to negotiate with Parent.

However, the parties quickly reached an impasse regarding the appropriate placement for Student. The mere fact that San Diego did not agree to Parent's preferred placement does not constitute predetermination. A school district can form preliminary recommendations regarding placement and services, provided it remains open to meaningful consideration of Parental input and considers experts' assessment results. Here, San Diego fulfilled its obligation when it rescheduled the meeting so that it could review Gray's addendum report, and consider Parent's input. San Diego adjusted the IEP based on the new information and Parent's input.

Student contends in his closing brief that the May 8, 2024 IEP team improperly took direction from Coleman, a non-attorney and non-IEP team member, when it sought guidance following Parent's request for unilateral placement on April 11, 2024.

However, the record does not support this assertion. The evidence merely shows that Coleman suggested to Breeding that Breeding reassure the family that it was prepared to implement Student's March IEP offer. This communication occurred in April 2024, before the May IEP team meetings.

Following this exchange, San Diego convened an additional IEP team meeting on May 1, 2024, and after the Parent failed to attend, it scheduled another IEP team meeting on May 8, 2024, to ensure parental participation. The subsequent IEP modifications in May 2024 established that San Diego did not predetermine its offer but instead meaningfully considered Parent's input. School districts may seek internal guidance regarding a unilateral placement letter and refine subsequent offers without violating the procedural requirements of genuine team deliberation. Thus, Student's argument that the May 8, 2024 IEP team was improperly influenced and engaged in predetermination is unpersuasive.

Accordingly, Student failed to prove by a preponderance of the evidence that San Diego either predetermined its placement offer, or significantly impeded Parent's opportunity to participate in the decision-making process at the May 8, 2024 IEP team meeting.

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 failed to prove that San Diego denied Student a FAPE during the 2023-2024 school year by failing to consider the full continuum of placement options, specifically, a nonpublic school, at the November 2023 IEP team meetings.

San Diego prevailed on Issue 1a.

ISSUE 1bi:

Student failed to prove that San Diego denied Student a FAPE during the 2023-2024 school year by failing to offer appropriate specialized academic instruction, including executive functioning, during the 2023-2024 school year.

San Diego prevailed on Issue 1bi.

ISSUE 1bii:

Student failed to prove that San Diego denied Student a FAPE during the 2023-2024 school year by failing to offer appropriate social skill services during the 2023-2024 school year.

San Diego prevailed on Issue 1bii.

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ISSUE 1biii:

Student proved that San Diego denied Student a FAPE from November 28, 2023, through the end of the 2023-2024 school year by failing to offer Student appropriate mental health services and supports.

Student prevailed on Issue 1biii.

ISSUE 1c:

Student failed prove that San Diego denied Student a FAPE during the 2023-2024 school year through March 25, 2024, by failing to offer an appropriate transition plan. However, Student proved that San Diego denied Student a FAPE from March 26, 2024, through the end of the 2023-2024 school year for failing to offer an appropriate transition plan.

Student partially prevailed on Issue 1c. San Diego also partially prevailed on Issue 1c.

ISSUE 1d:

Student failed to prove that San Diego denied Student a FAPE during the 2023-2024 school year by failing to offer an appropriate placement.

San Diego prevailed on Issue 1d.

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ISSUE 1e:

Student failed to prove that San Diego denied Student a FAPE during the 2023-2024 school year by failing to consider Gray's independent psychoeducational evaluation at the November 28, 2023, March 2024, and May 2024 IEP team meetings.

San Diego prevailed on Issue 1e.

ISSUE 1f:

Student failed to prove that San Diego denied Student a FAPE during the 2023-2024 school year by predetermining placement at the May 8, 2024 IEP team meeting.

San Diego prevailed on Issue 1f.

ISSUE 1g:

Student failed to prove that San Diego denied Student a FAPE during the 2023-2024 school year by significantly impeding on Parent's opportunity to participate in the decision-making process regarding provision of a FAPE to Student at the May 8, 2024 IEP team meeting.

San Diego prevailed on Issue 1g.

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REMEDIES

Student prevailed on Issue 1biii, and partially prevailed on Issue 1c. Student proved that San Diego failed to offer Student appropriate mental health services from November 28, 2024, through the end of the 2023-2024 school year. Student also proved that San Diego failed to offer an appropriate transition plan from March 26, 2024, through the end of the 2023-2024 school year.

As remedies, Student requested reimbursement in the amount of \$20,100 for tuition, a \$995 registration fee, and \$1,030 for payment plan charges. San Diego argued that reimbursement is not warranted because it offered Student a FAPE.

Courts have broad equitable powers to remedy the failure of a local educational agency to provide a FAPE to a child with a disability. (20 U.S.C. § 1415(if)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct.1996] (*Burlington*); *Parents of Student W. v. Puyallup School Dist.*, No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove, supra*, 638 F.3d. at p. 1239.)

In remedying a FAPE denial, the student is entitled to relief that is “appropriate” considering the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3)(2006).) Appropriate relief means “relief designed to ensure that the

student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d. at p. 1497.) This Decision orders compensatory education and partial tuition reimbursement.

FAILURE TO OFFER APPROPRIATE MENTAL HEALTH SERVICES FROM
NOVEMBER 28, 2023, THROUGH THE END OF THE 2023-2024
REGULAR SCHOOL YEAR.

COMPENSATORY SERVICES

Student proved that San Diego denied Student a FAPE by failing to offer appropriate mental health services since November 28, 2023. Student failed to submit any evidence that addressed compensatory services including amounts and duration. Ultimately, the undersigned relied upon equitable judicial discretion to craft an appropriate compensatory remedy.

An administrative law judge can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033.) School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Ibid.; Puyallup, supra*, 31F.3d at p.1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) Compensatory education is a prospective award of educational services designed to catch-up the student to where the student should have been absent the

denial of a FAPE. (*Brennan v. Regional Sch. Dist. No. 1* (D. Conn. 2008) 531 F.Supp.2d 245, 265.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific and "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

Given that Winston did not provide Student any mental health services, except for one session, Winston tuition reimbursement is unwarranted and not awarded for San Diego's failure to offer appropriate mental health services. Despite that, the evidence established that Student needed counseling services as a compensatory remedy to address Student's anxiety and to assist with his coping skills from November 28, 2023, through the 2023-2024 school year. As an equitable remedy, Student will receive compensatory services consisting of 30 minutes per week of counseling services from December 1, 2023, through June 7, 2024, minus three weeks for winter and spring breaks, for a total of 10 hours of individual counseling services. Accordingly, San Diego is ordered to provide 10 hours of one-to-one individual counseling services through a certified non-public agency to Student.

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SAN DIEGO'S FAILURE TO OFFER AN APPROPRIATE TRANSITION
PLAN FROM MARCH 26, 2024, THROUGH THE END OF THE
2023-2024 SCHOOL YEAR.

COMPENSATORY EDUCATION

This Decision finds San Diego denied Student a FAPE for failing to offer an appropriate transition plan, from March 26, 2024, through the end of the 2023-2024 school year. Considering this failure, it was reasonable for Parent to seek educational alternatives for Student at that time as he was unable to attend San Diego. Although Parent was only moderately cooperative with the transition process, it was clear that the transition plan offered to Student was not adequate to meet Student's needs. Parent notified San Diego on April 11, 2024, that he intended to unilaterally place Student at Winston again, and requested San Diego reimburse Parent for the cost of that placement. While it is well within the Parent's discretion to unilaterally place Student in a nonpublic school, whether the Parent is entitled to reimbursement for the cost of that placement is a legal determination to be determined by the ALJ following hearing.

Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to offer a FAPE, and the private placement or services were appropriate under the IDEA. (20 U.S.C. § 1412(a)(10)(C); *School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 369-371 [1055 S.Ct. 96] (*Burlington*).) When a school district fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief that is "appropriate" in light of the purposes of the IDEA.

The ruling in *Burlington* is not so narrow as to permit reimbursement only when the placement or services chosen by the parent are found to be the exact proper placement or services required under the IDEA. (*Alamo Heights Independent School Dist. v. State Bd. of Educ.* (5th Cir. 1986) 790 F.2d 1153, 1161.) Although the parents' placement need not be a "state approved" placement, it still must meet certain basic requirements of the IDEA, such as the requirement that the placement address the child's needs and provide student with an educational benefit. (*Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 13-14, [114 S.Ct. 361, 126 L.Ed.2d 284] (*Carter*).) Parents may receive reimbursement for the unilateral placement if it is appropriate. (34 C.F.R. § 300.148(c)(2006); Ed. Code, § 56175; *Carter, supra*, 510 U.S. at pp. 7, 15-16.) The appropriateness of the private placement is governed by equitable considerations. (*Ibid.*) The determination of whether to award reimbursement and how much to award is a matter within the discretion of the hearing officer. (*School Committee of Burlington v. Department of Ed. supra*, 471 U.S. at p. 369.)

In *C. B. v. Garden Grove Unified School Dist.* (9th Cir. 2011) 635 F.3 1155, the Ninth Circuit set forth the standards to be applied in determining whether a private placement is appropriate for the purpose of reimbursement. There, a student had benefited substantially from a private placement, but parents had been awarded only partial reimbursement because the placement did not address all the student's special education needs. (*Id.* at pp. 1157-1158.) The Court of Appeals held that parents were entitled to full reimbursement because the IDEA "does not require that a private school placement provide all services that a disabled student needs in order to permit full reimbursement." (*Id.* at p. 1158.) In reaching this conclusion, the Ninth Circuit relied upon a standard set forth by the Second Circuit. The Court concluded that, for a parent to qualify for reimbursement, parents need not show that a private placement furnishes

every special service necessary to maximize their child's potential. Parents need only demonstrate that the private placement provides educational instruction specially designed to meet the unique needs of a child with a disability, and such services as are necessary to permit the child to benefit from the instruction. (*Id.* at p. 1159 [quoting *Frank G. v. Bd. of Education* (2d. Cir. 2006) 459 F.3d 356, 365 (Citations and emphases omitted.)].)

The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Puyallup, supra*, 31 F.3d at p. 1496.) Factors to be considered when considering the amount of reimbursement to be awarded include:

- the existence of other, more suitable placements;
- the effort expended by the parent in securing alternative placements; and
- the general cooperative or uncooperative position taken by the school district. (*Target Range, supra*, 960 F.2d at p. 1487; *Glendale Unified School Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1109.)

Student established he received some educational benefit at Winston. The Winston School, a nonpublic school certified by the California Department of Education, serves students with unique learning needs. Student did not receive any special education services or supports at Winston. Additionally, the placement at Winston is too restrictive for Student as there are no typical peers in attendance there. Student would be better served at a placement that allows him to engage with typical peers. However, Student did receive educational benefit at Winston in academics. The evidence established Winston is an A-G school, allowing students to meet the subject

requirements for admission to these public universities. Student did well academically at Winston even though academics are presented at a slower pace than at a comprehensive public school. Student also had friends and was involved in sports at Winston. Student overall received some educational benefit while attending Winston.

Student is entitled to tuition reimbursement from April 11, 2024, through May 2024, as requested. The monthly tuition costs are \$3,350. Student will receive tuition reimbursement for half of April 2024, and all of May 2024. Student is not entitled to reimbursement for the additional cost of a payment plan.

As well, no evidence established Student paid a registration fee during the time at issue in this matter. Parent testified that Student attended Winston since May 2023, and he did not disenroll Student when Student attempted to transition back to San Diego. Typically, school registration is due before starting the school year, around August 2023. Student provided no proof that a registration payment was paid after the settlement agreement in September 2023. Therefore, Student failed to provide any proof regarding the \$995 registration fee he claims Parent paid. Thus, Student is not entitled to reimbursement for it.

Student is entitled to reimbursement for Winston tuition in the amount of \$5,025 for half of April 2024 and the entire month of May 2024.

ORDER

1. Within 60 calendar days of the issuance of this Decision, San Diego will reimburse Parent for Winston tuition in the total amount of \$5,025.

2. San Diego will fund 10 hours of individual counseling services from a certified non-public agency of Parent's choice. Within 30 days of the date of this Decision, San Diego will give Parent a list of non-public agencies it has contracts with to provide compensatory counseling services. If Parent selects a non-public agency San Diego does not have a contract with, San Diego must establish direct payment to the certified non-public agency Parent selected. Those compensatory services will be available to Student until December 31, 2026, and will be forfeited thereafter if not already used. San Diego must reimburse Parent at the federal mileage rate for transportation costs for one round trip to and from the service provider's office per counseling session.
3. All of Student's other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

CYNTHIA C. FRITZ

Administrative Law Judge

Office of Administrative Hearings