

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

V.

BELMONT-REDWOOD SHORES SCHOOL DISTRICT.

CASE NO. 2024110856

DECISION

May 1, 2025

On November 26, 2024, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Belmont-Redwood Shores School District, called Belmont-Redwood Shores. Administrative Law Judge Jennifer Kelly heard the matter via videoconference on February 11, 12, 13, 14, 25, and 26, 2025.

Attorneys Mark Wojciechowski and Sarah Fairchild represented Student. Parents attended all hearing days on Student's behalf. Attorneys Kathryn Meola and Michael Sellers represented Belmont-Redwood Shores. Jennifer Jimenez-Payne, Director of Special Programs for Belmont-Redwood Shores, attended all hearing days on Belmont-Redwood Shores' behalf.

At the parties' request, OAH continued the matter for written closing briefs. The parties submitted the matter and OAH closed the record on March 24, 2025.

ISSUES

An individualized education program is called IEP. A free appropriate public education is called FAPE. The parties stipulated in writing on February 5, 2025, to revising the issues set forth in OAH's February 3, 2025, Prehearing Conference Order as follows:

1. Did Belmont-Redwood Shores deny Student a FAPE during the 2024-2025 school year by failing to assess Student in all areas of disability, specifically in health prior to Student's initial IEP team meeting on April 29, 2024?
2. Did Belmont-Redwood Shores deny Student a FAPE during the 2024-2025 school year in the April 29, 2024 IEP, as amended on August 23, 2024, by:
 - a. failing to offer Student appropriate health and medical services designed to meet Student's unique needs;
 - b. failing to offer a clear written health plan identifying the training, experiences, and qualifications for the service providers implementing Student's catheter services;
 - c. failing to include all necessary IEP team members, specifically a school nurse;
 - d. developing Student's health plan without all necessary IEP team members present;

- e. predetermining the removal of Student's full-time, one-to-one nursing services, thereby denying parental participation;
 - f. failing to provide prior written notice about the decision to remove Student's full-time nursing services;
 - g. failing to offer training guidelines specific to Student's unique health and medical needs; and
 - h. failing to consider Parents' suggestions for creating a safe environment for Student, thereby denying parental participation?
3. Did Belmont-Redwood Shores deny Student a FAPE during the 2024-2025 school year by failing to allow Student to attend school until Parents consented to the August 23, 2024 amendment IEP?

JURISDICTION

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

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student filed the due process complaint and had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was five years old at the time of the hearing. Student was initially found eligible for special education in April 2024, under the category of orthopedic impairment based on Student's diagnosis of paraplegia following removal of a neuroblastoma tumor. Paraplegia is a loss of muscle function and sensation in the lower half of the body, including both legs. At all relevant times, Student resided with Parents within Belmont-Redwood Shores' geographic boundaries.

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ISSUE 1: DID BELMONT-REDWOOD SHORES DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY, SPECIFICALLY IN HEALTH PRIOR TO THE INITIAL APRIL 29, 2024 IEP TEAM MEETING?

Student contends Belmont-Redwood Shores denied Student a FAPE by failing to assess Student in health prior to the initial April 29, 2024 IEP team meeting. Student contends the health assessment should have been conducted by a credentialed school nurse or physician.

Belmont-Redwood Shores contends its health assessment by the school psychologist, which included a review of Student's medical records and an interview with Father, was sufficient to understand Student's health related needs in the school setting. Belmont-Redwood Shores further contends it did not have sufficient medical documentation to complete a comprehensive health assessment at the time of the April 29, 2024 IEP team meeting, but it thereafter diligently sought Student's physician's orders.

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

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000] (*Endrew F.*)). Special education is instruction specially designed to meet the unique needs of child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) Related services are developmental, corrective, and supportive services including nursing services, as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34 (2006); Ed. Code, § 56363, subd. (a).) California adopts this definition of related services which it calls "designated instruction and services." (Ed. Code, § 56363, subd. (a).) Related services, when needed, are determined by the IEP team and must be specified in an IEP. (20 U.S.C. § 1414(d)(1)(A)(IV); Cal. Code Regs., tit. 5, 3051, subd. (a)(1).)

There are two parts to the legal analysis of determining whether a school district's IEP offer complied with the IDEA. First, the school district must have complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. 176, 206-207.) Second, the IEP must have been designed to meet the child's unique needs and reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) Unlike substantive violations, procedural flaws in an IEP do not automatically deny the child a FAPE and require an additional analysis. A procedural violation results in a FAPE denial only if it impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or caused a

deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subds. (f) & (j); see *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 (*Target Range*); *Rowley*, *supra*, 458 U.S. 176, 200.)

A local educational agency must assess a child prior to determining whether a child qualifies for special education services. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381, subd. (a)(2).) The IDEA uses the term evaluation, while the California Education Code uses the term assessment. The two terms have the same meaning and are used interchangeably in this Decision. (34 C.F.R. § 300.300; Ed. Code, § 56302.5.) A child with a disability is a child who has been evaluated and identified with one or more specific disability classifications and “by reason thereof” requires special education and related services. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a).) A student qualifies for special education and related services if an IEP team determines that a legally compliant assessment demonstrates the child has a disability, and the degree of the child’s impairment requires special education and related services that cannot be provided with modification of the regular school program. (Ed. Code, §§ 56026, 56320; Cal. Code Regs., tit. 5, § 3030, subd. (f).)

A school district must assess the child in all areas related to the child’s suspected disability. (20 U.S.C. §§ 1414(a)(1)(A), 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4) (2006); Ed. Code, § 56320, subd. (f).) An assessment must be sufficiently comprehensive to identify all the student’s special education and related service needs, whether commonly linked to the disability category in which the child is classified. (34 C.F.R. § 300.304(c)(6) (2006).) A student’s unique educational needs are broadly construed to include academic, social, health, emotional, communicative, physical, and vocational needs.

(*Seattle Sch. Dist., No. 1 v. B.V.* (9th Cir. 1996) 82 F.3d 1493, 1500; *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 (*County of San Diego*).)

A disability is suspected, and a child must be assessed, when the district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified Sch. Dist.* (9th Cir. 2016) 822 F.3d 1105, 1120-21 (*Timothy O.*).) Notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*Id.* at p. 1120 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796]; *N.B. v. Hellgate Elementary Sch. Dist.* (9th Cir. 2008) 541 F.3d 1202 (*N.B.*).)

The school district must follow statutory guidelines that dictate both the content of the assessments and the qualifications of the assessors. The procedural safeguards ensure that evaluations achieve "a complete result that can be reliably used to create an appropriate and individualized educational plan tailored to the needs of the child." (*Timothy O., supra*, 822 F.3d 1105, 1110.) Individuals who are both knowledgeable of the student's disability and competent to perform the assessment, as determined by the school district, county office, or special education local plan area, must conduct assessments of a student's suspected disabilities. (20 U.S.C. § 1414(b)(3)(B)(ii); Ed. Code, § 56320, subd. (g).)

An assessment requires parental consent. To obtain parental consent for an assessment, the school district must provide proper notice to the student and their parent within 15 days of an assessment being requested by parents. (20 U.S.C. § 1414(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).) The notice consists of the

proposed assessment plan and a copy of parental rights under the IDEA and related state law. (20 U.S.C. §§ 1414(b)(1); 1415(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).) The assessment must be completed, and an IEP team meeting held, within 60 days of receiving consent, exclusive of school vacations in excess of five school days and other specified days. (20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c) (2007); Ed. Code, § 56043, subd. (f)(1).)

The United States Department of Education attaches great importance to accurate and comprehensive evaluations. This is underscored by the right of parents who disagree with district evaluations to request an independent educational evaluation at public expense. (20 U.S.C. § 1415(b)(1) & (d)(2); 34 C.F.R. § 300.502(b); Ed. Code, §§ 56506, subd. (b), 56329, subd. (b).) The failure to obtain critical assessment information about a student “render[s] the accomplishment of the IDEA’s goals – and the achievement of a FAPE – impossible.” (*N.B., supra*, 541 F.3d 1202, 1210 quoting *Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 894 (*Amanda J.*)). A school district’s failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial under the IDEA. (*Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033 (*Park*)).

STUDENT’S KNOWN HEALTH CONDITIONS

A student may qualify for special education eligibility if they have a severe orthopedic impairment which adversely affects their educational performance and the pupil’s needs cannot be solely met within the regular classroom setting. (Cal. Code Regs., tit. 5, § 3030.)

Student moved with Parents to the United States at age two. Student was diagnosed with neuroblastoma, a childhood cancer, at the age of 10 months. Student underwent surgery to remove a spinal cord tumor at 10 months old, followed by chemotherapy treatments and another surgery at 14 months. Student also had a diagnosis of paraplegia secondary to the neuroblastoma removal, resulting in loss of lower body mobility and sensory deficits. Student could not walk and used a wheelchair to navigate her environment.

Dr. William Kennedy, Student's pediatric urologist, testified at hearing, and provided detailed information on Student's medical condition. Dr. Kennedy was board certified in pediatric urology. He received his medical degree from Columbia University, and completed a fellowship at Children's Hospital of Philadelphia. He was a professor of urology at Stanford University. Student was Dr. Kennedy's patient since 2023. Student had a neurogenic bladder and bowel, meaning a lack of bladder and bowel control related to the nervous system. Student required clean intermittent urine catheterization four times daily. Clean intermittent catheterization was a procedure which involved inserting a catheter into the bladder to empty urine. Individuals with neurogenic bladder, including those with spinal cord injuries, sometimes required this procedure. Student's catheterization procedures exposed her to an increased likelihood of urinary tract infections. Student had recurrent urinary tract infections and was treated with preventive antibiotics. Student had a diagnosis of vesicoureteral reflux, a condition where urine flowed backward from the bladder into the ureters and sometimes the kidneys.

Nurse Practitioner Cathy Costaglio testified at hearing and further explained Student's medical needs. Costaglio had been a nurse practitioner at Stanford Children's Hospital for 20 years, and previously worked as a registered nurse. Costaglio was

familiar with Student because she treated Student at Stanford Children's Hospital during summer 2024. Costaglio opined that Student required clean intermittent catheterization every three to four hours. Student also required prompt diaper changing using proper hygiene when Student voided into her diaper to minimize the risk of infection. Costaglio explained the importance of slowly implementing the catheterization process because of Student's diagnosis of vesicoureteral reflux. Dr. Kennedy and Costaglio each opined that best practices included allowing parents to observe the catheterization process by individuals conducting the procedure. Finally, both witnesses opined that clean intermittent catheterization was a relatively simple procedure which could be performed by families and patients in the home setting.

PARENTS' REFERRALS FOR SPECIAL EDUCATION ELIGIBILITY

Parents originally referred Student for special education eligibility in May 2022, when Student was three years old and in preschool. Belmont-Redwood Shores assessed Student in August 2022 to determine if she qualified for special education and related services. Belmont-Redwood Shores held Student's initial IEP team meeting on September 22, 2022, and continued it to October 14, 2022, to review the results of Belmont-Redwood Shores' psychoeducational assessment and report. The IEP team considered eligibility under the category of orthopedic impairment. The IEP team determined Student did not qualify for special education eligibility, but determined Student's physical challenges could be accommodated through a section 504 plan. 504 plans are governed by section 504 of the Rehabilitation Act of 1973, a federal civil rights statute that ensures equal access to education for students with disabilities.

On January 30, 2024, Parents made a second referral for Belmont-Redwood Shores to assess Student for special education eligibility due to Parents' concerns about Student's health and mobility deficits. Belmont-Redwood Shores provided Parents an assessment plan on February 12, 2024. The assessment plan proposed that a school psychologist assess Student's intellectual development, health, social-emotional behavior, and adaptive behavior. (20 U.S.C. § 1414(b)(3) and (c)(1); Ed. Code, § 56321, sub. (a).) Student's language and speech would be evaluated by a speech-language pathologist. Student's motor development would be assessed by an occupational therapist. Under the category of "other", Belmont-Redwood Shores proposed assessment by a physical therapist.

BELMONT-REDWOOD SHORES FAILED TO CONDUCT A HEALTH ASSESSMENT BY A CREDENTIALLED NURSE OR PHYSICIAN

Health assessments must be conducted by a credentialed school nurse or physician who is trained and prepared to assess cultural and ethnic factors appropriate for the student being assessed. (Ed. Code, § 56324, subd. (b).) A student who has been diagnosed as having a chronic illness may be referred for a health assessment to determine the need for special education. (Cal. Code Reg., tit. 5, § 3021.1, subd. (a).)

A health assessment focuses on diagnoses, health history, and those specific health needs while in school which are necessary to assist a child with a disability. (*L.J. v. Pittsburg Unified Sch. Dist.* (9th Cir. 2017) 850 F.3d 996, 1008 (*L.J.*); *C.N. v. Los Angeles Unified Sch. Dist.* (C.D.Cal. October 9, 2008) 2008 WL 4552951, at *10 [health assessment conducted to determine need for support around student's tracheostomy and G-tube feedings].) California state regulations require that the IEP team review the possible

medical side effects and complications of treatment that could affect school functioning, and educational and social implications, such as likelihood of fatigue, absences, or problems with fine and gross motor control. (Cal. Code Regs., tit. 5, § 3021.1, subd. (b); *L.J., supra*, 850 F.3d 996, 1008.)

Belmont-Redwood Shores committed a procedural violation by failing to conduct Student's health assessment by a credentialed school nurse or physician. Belmont-Redwood Shores was aware that Student had orthopedic impairments based on its prior evaluation and report dated August 25, 2022, and health records provided by Parents. Belmont-Redwood Shores' February 12, 2024 assessment plan included a health assessment. On February 25, 2024, Parents signed a consent to release information to allow Belmont-Redwood Shores to exchange personally identifiable information with Student's medical providers, including Student's

- oncologist,
- neurosurgeon,
- orthopedic surgeon,
- orthopedic urologist, and
- rehabilitation specialist.

The signed consent to release information was received by Belmont-Redwood Shores on February 26, 2024. The consent to release information was signed by Parents without conditions or restrictions on what information could be exchanged.

Parents signed the February 12, 2024 assessment plan on February 25, 2024, and returned it to Belmont-Redwood Shores on February 26, 2024. Parents checked a box on the assessment form indicating they "would like the following information to be

considered by the IEP team.” Parents added a handwritten note to the assessment plan requesting that Belmont-Redwood Shores “consider bladder and bowel dysfunction to be evaluated by pediatric rehabilitation specialist/urologist or other specialist.”

Belmont-Redwood Shores’ School Psychologist Adrienne Hill emailed Parents on February 28, 2024, and advised them that Belmont-Redwood Shores could not conduct the requested assessments in urology or pediatric rehabilitation. Belmont-Redwood Shores attached another clean copy of the assessment plan for consent by Parents. Parents consented to the assessment plan, without revision, on February 28, 2024.

Belmont-Redwood Shores received the signed assessment plan and contacted Parents on March 5, 2024, to schedule Student’s assessments. On March 6, 2024, Parents emailed Hill records relating to Student’s medical history, including a medical history about Student’s prior treatment, and progress notes from Student’s urologist, pediatrician, and pediatric rehabilitation specialist. Hill acknowledged receipt of these documents on March 7, 2024.

Belmont-Redwood Shores assigned School Psychologist Hill to conduct Student’s psychoeducational assessment, including a health assessment. Hill, a licensed school psychologist, held bachelor’s and master’s degrees in psychology and a clear pupil personnel services credential which authorized her to conduct psychoeducational assessments. She had worked as a school psychologist for 23 years. Hill was qualified to conduct a psychoeducational assessment based upon her education, experience, and credentials. Hill was not a licensed nurse or physician. She was not qualified to conduct a health assessment. (Ed. Code, § 56324, subd. (b).)

Hill opined at hearing that Student's health assessment was based on a records review, observations, questionnaires completed by Parents, and a telephone call with Father. Hill believed she reviewed many records for Student. However, Hill could not recall which reports she reviewed.

Belmont-Redwood Shores' April 29, 2024 multi-disciplinary psychoeducational assessment referenced medical information from its prior psychoeducational reported dated August 25, 2022, and an earlier health summary from Student's private occupational therapist from 2022. It did not reference any current medical reports.

Although Parents signed a release of information on February 25, 2024, allowing Belmont-Shores to exchange information with Student's private medical providers, Hill did not communicate with any of Student's medical providers as part of her evaluation. No one from Belmont-Redwood Shores communicated with Student's medical providers prior to the April 29, 2024 IEP team meeting. A credentialed nurse or physician did not gather and review Student's medical records or determine how Student's health impacted her educational needs.

At hearing, multiple witnesses from Belmont-Redwood Shores, including Hill, Assistant Superintendent Ching-Pei Hu, Director of Special Programs Jimenez-Payne, and Principal Gloria Higgins testified that health assessments could be conducted by a school psychologist. This is contrary to the law. (Ed. Code, § 56324, subd. (b).) The school psychologist's attempt to assess Student's health through a review of records and Parent input did not qualify as a health assessment.

This critical mistake resulted in a chain of events and misunderstandings between Parents and Belmont-Redwood Shores. Student's health was not merely a suspected area of disability, but was a core area of need for Student. Student's April 29, 2024 IEP

team lacked key assessment data about Student's health and treatment needs. The IEP team members did not possess the necessary qualifications to determine Student's health needs or the specialized physical health care services Student required.

Belmont-Redwood Shores' failure to have a nurse or physician assess Student's needs in health constituted a procedural violation under the IDEA.

BELMONT-REDWOOD SHORES' FAILURE TO CONDUCT A HEALTH ASSESSMENT WAS A FAPE VIOLATION

Student proved the failure to conduct a health assessment significantly impeded Parents' ability to meaningfully participate in Student's educational program and resulted in a loss of educational opportunity to Student. (Ed. Code, § 56505, subd. (f)(2).) Parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City Sch. Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904] (*Winkelman*).) Parents must have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to such child. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(b); Ed. Code, § 56304; *Doug C. v. Hawaii Depart. Of Education* (9th Cir. 2013) 720 F.3d 1038, 1047 (*Doug C.*) ["Parental participation ... is critical to the organization of the IDEA."].) Parental participation in the IEP process is considered among the most important procedural safeguards in the IDEA. (*Amanda J., supra*, 267 F.3d 877, 882.) A parent has meaningfully participated in the development of an IEP when the parent has been informed of the child's problems, attends the IEP team meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693 (*Knox*); *Fuhrmann v. East Hanover Bd. of Educ.* (*Fuhrmann*) (3d Cir. 1993) 993 F.2d 1031, 1036.)

Belmont-Redwood Shores was required to conduct a comprehensive evaluation which assessed Student in all areas of suspected disability. (20 U.S.C. § 1414(a)(1)(A), (b)(3)(B).) Student had serious medical issues which required a health assessment. (Cal. Code Regs., tit. 5, § 3021.1.) The IEP team was required to review, among other things, the “possible medical side effects and complications of treatment that could affect school functioning.” (*Ibid.*) A legally compliant health assessment was required to inform the IEP team about the educational impact of Student’s health conditions. It would have provided the IEP team accurate and updated medical information about any specific procedures governing Student’s catheterization, including the type and frequency of Student’s required catheterization, the qualified professional who could administer Student’s catheterization services, any changes to the standardized procedures based on Student’s unique anatomy, and Student’s diapering needs.

Belmont-Redwood Shores’ witnesses, including Hill, Occupational Therapist Julianna Hsu, Education Specialist Robin Silk, Speech-Language Pathologist Gina Alves, and General Education Teacher Caroline Baldonado, opined at hearing that Student’s April 29, 2024 IEP team had sufficient assessment information about Student’s health, and that Belmont-Redwood Shores offered Student a FAPE. Although each witness appeared well-intentioned, they lacked the expertise and qualifications to assess Student’s health. Hill recognized Student’s need for catheterization, but was not qualified to assess Student or determine what specialized physical health care services Student required. Hsu testified that a school nurse did not attend the April 29, 2024 IEP team meeting and the IEP team did not have Student’s physician’s orders for catheterization. Notwithstanding the failure to have a nurse attend the IEP team meeting or review Student’s health needs, Hsu unpersuasively opined Belmont-Redwood Shores offered Student a FAPE. Silk opined that Belmont-Redwood Shores assessed Student in all areas of suspected disability and

offered Student a FAPE, even though she agreed a school nurse typically conducts a health assessment. Alves opined that Student was assessed in all areas of suspected disability. However, Alves's testimony was unpersuasive because she was aware of Student's need for catheterization and agreed a health assessment was not completed. Baldonado opined that Belmont-Redwood Shores offered Student a FAPE, but she could not recall if the April 29, 2024 IEP team reviewed a health assessment and she did not have an independent recollection of the IEP team offering Student full-time nursing services. In summary, Hsu, Silk, Alves, and Baldonado's testimony was not based on a legally compliant health assessment, which rendered their opinions incomplete and unpersuasive.

Belmont-Redwood Shores' failure to assess Student in health deprived Parents of the opportunity to participate in decisions regarding Student's health needs at school. Parents lacked critical information about how Student's health needs, specifically catheterization, would be implemented. Parents were not informed about the qualifications of the service providers to conduct catheterization, their training, how they would be supervised, and what procedures and protocols would be used. The IEP team members did not know the type of catheterization Student required, whether the service could be performed by a nurse or a paraprofessional, and when the services needed to be scheduled during the school day.

This confusion was highlighted in an email exchange between Hill, Hsu, and District Nurse Terri Sandoval on April 29, 2024, prior to the IEP team meeting. In their email exchange, Hsu questioned the school nurse about who could perform Student's

catheterization. Sandoval, who had not been involved in the assessment process, did not know what type of catheterization Student required. Hill responded that Belmont-Redwood Shores intended to offer Student full-time nursing services during the school day.

The IEP team's misunderstanding about Student's health needs was further compounded by the failure of the April 29, 2024 IEP team to offer Student nursing services in the document's FAPE offer. The April 29, 2024 IEP team believed Student required full-time nursing services, as reflected in the IEP's notes, but did not include the anticipated frequency, location, and duration of nursing services in the IEP's FAPE offer. Parents therefore could not be certain of the related services offered, which denied their ability to meaningfully participate in the development of Student's IEP, specifically relating to Student's catheterization.

The failure to assess Student's health also resulted in a deprivation of educational benefit to Student. A school district's failure to assess in an area of suspected disability constitutes a procedural violation, that by itself constitutes a lost educational opportunity and a denial of FAPE. (*Carrie I. ex rel. Greg I. v. Dep't of Educ., Hawaii* (D.Haw. 2012) 869 F.Supp.2d 1225, 1247 ["The lack of assessments alone is enough to constitute a lost educational opportunity"]; *Doug C., supra*, 720 F.3d 1038, 1047.)

At the time of the April 29, 2024 IEP team meeting, Belmont-Redwood Shores was on notice of Student's health issues, including her immobility below the waist, and need for catheterization and frequent diaper changing. The evaluations by the school psychologist, occupational therapist, and physical therapist consistently highlighted Student's deficits related to Student's paraplegia and neurogenic bladder and bowel.

Although the evaluators correctly identified that Student had health issues that impacted her ability to access her education, Belmont-Redwood Shores was obligated to look further to determine the impact of Student's known health conditions on her education. Had Belmont-Redwood Shores completed a valid health assessment, there is a strong likelihood that alternative educational possibilities for Student would have been better considered. (*Doug C.*, *supra*, 720 F.3d 1038, 1047; *L.J.*, *supra*, 850 F.3d 996, 1008.) A legally compliant health assessment was foundational to the proper development of Student's IEP. Student's health needs were not properly assessed, and therefore Belmont-Redwood Shores could not make an adequate FAPE offer.

Belmont-Redwood Shores argued that Student met her IEP goals at the time of the due process hearing, including in physical therapy and occupational therapy, and was progressing socially and academically. Occupational Therapists Rachel Thompson and Kristi Neu provided occupational therapy services to Student after Student began attending Sandpiper Elementary during the 2024-2025 school year. Thompson and Neu opined Student made progress towards her stretching goal. General Education Teacher Jennifer Schultz opined that she had no concerns about Student's academic progress. Whether Student met her goals or made academic progress is immaterial to whether Belmont-Redwood Shores met its duty to assess Student in all areas of suspected disability, including health.

Belmont-Redwood Shores further argued that the release of information provided to Parents allowed for an exchange of information under the Family Education Rights and Privacy Act, called FERPA (20 U.S.C. § 1232(b) and 34 C.F.R. Part 99), a federal law that protects the privacy of student education records. Belmont-Redwood Shores asserted it was barred from contacting any of Student's medical providers without

Parents' consent under the Health Insurance Portability and Accountability Act, called HIPAA (45 C.F.R. Parts 160, 162, and 164), a 1996 federal law that restricts access to individuals' private medical information.

However, Belmont-Redwood Shores did not offer evidence that it requested that Parents sign a HIPAA release and that they refused to do so, nor that Parents imposed any conditions on their consents to release information provided to them by Belmont-Redwood Shores and signed and returned without condition. Belmont-Redwood Shores was tasked with determining Student's specialized physical health care services, and it was not persuasive to blame Parents for any delay attributable to Belmont-Redwood Shores' neglect by providing Parents the wrong form or not following up with Student's medical providers. Any delays in obtaining information from Student's doctors or information related to Student's health needs was attributable to Belmont-Redwood Shores' failure to conduct a health assessment and coordinate Student's specialized physical health care with Student's physician as required by California law. (Ed. Code, §§ 49423, subd. (a), 49423.5, subd. (a)(2); Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(D)(1)-(3).)

Belmont-Redwood Shores asserted the April 29, 2024 IEP team meeting was conducted to plan for the upcoming 2024-2025 kindergarten school year and that it had additional time to collect necessary medical documentation before the start of the school year. This argument was contrary to the requirement that an assessment be completed and an IEP team meeting held within 60 days of consent to an assessment plan. (20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c) (2007); Ed. Code, § 56043, subd. (f)(1).)

Here, the April 29, 2024 IEP team reviewed the assessments and made a FAPE offer. Nowhere in the document did it state additional information was needed nor did Belmont-Redwood Shores continue the IEP team meeting to obtain any additional medical information necessary to offer Student adequate specialized physical health care services. Parents consented to the April 29, 2024 IEP on May 6, 2024. This did not prevent Belmont-Redwood Shores from seeking to amend the IEP document after receiving Student's physician's orders in accordance with the IDEA, which it failed to do.

Student met her burden of proving by a preponderance of the evidence that Belmont-Redwood Shores denied her a FAPE by failing to conduct a legally appropriate health assessment. This procedural violation denied Parents' meaningful participation in the development of Student's IEP and resulted in a loss of educational benefit to Student. Student prevailed on Issue 1.

ISSUE 2a AND 2g: DENIAL OF FAPE IN THE APRIL 29, 2024 IEP, AS AMENDED ON AUGUST 23, 2024, BY FAILING TO OFFER STUDENT APPROPRIATE HEALTH SERVICES AND TRAINING GUIDELINES SPECIFIC TO STUDENT'S HEALTH NEEDS.

Student contends the April 29, 2024 IEP, as amended on August 23, 2024, failed to offer Student appropriate health and medical services, specifically services necessary to address Student's catheterization. Student further contends Belmont-Redwood Shores failed to offer training guidelines related to Student's catheterization and diaper changing needs.

Belmont-Redwood Shores contends it offered nursing services in the April 29, 2024 IEP, but required orders from Student's doctors to develop a health care plan for Student. Belmont-Redwood Shores further contends it offered Student appropriate health services in the August 23, 2024 amendment IEP by qualified nursing staff who were prepared to provide catheterization services on the first day of the 2024-2025 school year.

The IEP is "the centerpiece of the statute's education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345.) The IEP is a comprehensive program prepared by a student's IEP team and must be drafted in compliance with the IDEA's detailed set of procedures. (*Endrew F., supra*, 137 S.Ct. 988, 994.)

The IDEA requires an IEP to include, among other things, a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a)(1)-(4).) The IEP must include the projected date for the beginning of the services and modifications and their anticipated frequency, location, and duration. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(7) (2007); Ed. Code, § 56345, subd. (a)(4) and (7).) The IEP team is not required to include information under one component of a pupil's IEP that is already contained under another component of the IEP. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d) (2007); Ed. Code § 56345, subd. (h).)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)). For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*)

Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann*, *supra*, 993 F.2d 1031, 1036.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed, by looking at the IEP's goals and goal-achieving methods at the time the IEP was implemented and determining whether the methods were reasonably calculated to confer an educational benefit. (*Adams, supra*, 195 F.3d at p. 1149.) "An IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken." (*Ibid.*)

REQUIREMENTS FOR SPECIALIZED PHYSICAL HEALTH CARE SERVICES IN SCHOOL

The United States Supreme Court has held that services provided by a school nurse to assist a child with a disability to benefit from special education fall under the related services requirement of the IDEA. (*Cedar Rapids Cmty. Sch. Dist. v. Garret F. ex*

rel. Charlene F. (1991) 526 U.S. 66, 74-76 [119 S.Ct. 992, 143 L.Ed.2d 154] (school district required to provide continuous nursing service as a related service); *Irving Independent Sch. Dist. v. Tatro* (1984) 468 U.S. 883, 890-891 [104 S.Ct. 3371, 82 L.Ed.2d 664] (requiring school to provide clean intermittent catheterization to a student with spina bifida so she could attend special education classes); 20 U.S.C. § 1401(26)(A).)

Health and nursing services are related services that are specifically included as designated instructional services in California. (Ed. Code, § 56363, subd. (b)(12).) Health and nursing related services may include providing services by qualified personnel and managing the individual's health problems on the school site. (Cal. Code Regs., tit. 5, § 3051.12, subd. (a)(1), (2).) Schools must provide accommodations for the safety and necessary physical care for individuals with disabilities, while simultaneously assuring the personal privacy and dignity of such individuals. (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(B).)

Health and nursing services may include specialized physical health care services if necessary to meet a disabled child's unique needs. (Cal. Code Regs., tit. 5, § 3051.12, subd. (b).) Specialized physical health care services "means those health services prescribed by the child's licensed physician and surgeon requiring medically related training for the individual who performs the services, and which are necessary during the school day to enable the child to attend school." (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(1)(A).) The IDEA and California regulations require related services, including specialized physical health care, to be specified in an IEP. (20 U.S.C. § 1414(d)(1)(A)(IV); Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(A).)

Specialized physical health care services includes catheterization. (Ed. Code, § 49423.5, subd. (d).) Specialized physical health care services, including catheterization, must be coordinated by a school physician or nurse, who must consult with appropriate personnel and maintain communication with health agencies providing care to the student. (Ed. Code, §§ 49423, subd. (a), 49423.5, subd. (a)(2); Cal. Code Reg., tit. 5, § 3051.12, subd. (b)(3)(D)(1)-(3).) A school district must obtain a written statement from the student's physician detailing the medical procedure, including the method and time schedules. (Ed. Code, § 49423, subd. (b)(1).) A school district also must obtain a written statement from the parents expressing their desire that the school district perform the procedures set forth in the physician's statement. (*Id.*, at subd. (b)(3).)

Specialized physical health care services must be performed based on written licensed physician and parent requests using protocols and procedures developed through collaboration among school administrators and health professionals, including licensed physicians and nurses. (Ed. Code, § 49423, subds. (a), (b); Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(1)(B), (b)(3)(E).) The specific standardized procedures to be used in implementing physical health care services must be maintained for each child with exceptional needs. (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(E).) The school district is required to maintain daily documentation of the specific services which are provided on a district-approved form which includes the signatures of the qualified designated personnel who perform the procedure. (*Ibid.*)

The term "health plan" is not defined under the IDEA, the Education Code, or California regulations. However, specialized physical health care services must be specified in a child's IEP. (20 U.S.C. § 1414(a)(i)(A)(IV); Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(A).) Consistent with the IDEA and California law, OAH has found that a

student's specialized physical health care services must be included in an IEP. The determination of what details must be included in the IEP document, or in a separate health plan that is incorporated into an IEP, is fact specific. The following decisions determined a child's health plan needs had to be documented in an IEP, or in a separate health plan:

- *Student v. San Francisco Unified Sch. Dist.* (2024) OAH case number 2024090473 (parent denied meaningful participation by failing to receive guidelines used for tracheostomy and ventilation management as part of health plan development);
- *Parent on behalf of Student v. San Diego Unified Sch. Dist.* (2021) OAH case number 2021050118 (health plan mask accommodation was needed for Student to access in-person instruction and was properly attached to and included as part of student's IEP);
- *Educational Rights Holder on behalf of Student v. Pittsburg Unified Sch. Dist.* (2018) OAH case number 2018041136 (school district denied Student a FAPE by failing to include Student's need for clean intermittent catheterization in her IEP or propose a health plan based on physician prescriptions and medical recommendations to student's IEP team for consideration).

OAH decisions are not binding precedent, but may be persuasive. (Cal. Code Regs., tit. 5, § 3085.) The foregoing OAH decisions are persuasive.

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THE APRIL 29, 2024 IEP FAILED TO OFFER STUDENT SUFFICIENT HEALTH OR MEDICAL SERVICES OR TRAINING GUIDELINES SPECIFIC TO STUDENTS' UNIQUE HEALTH NEEDS

Belmont-Redwood Shores convened an IEP team meeting on April 29, 2024, to review its April 29, 2024 multidisciplinary assessment and report. The IEP team included

- Parents,
- School Psychologist Hill,
- a school administrator,
- Education Specialist Silk,
- Speech-Language Pathologist Alves,
- Occupational Therapist Hsu,
- Student's private occupational therapist, Physical Therapist Vaishali Bauskar, and
- General Education Teacher Baldonado.

A school nurse did not attend the IEP team meeting.

Student only challenged Belmont-Redwood Shores' health assessment. The other assessments are briefly summarized for context. Student's skills in all domains were within the average to above average range, except for Student's motor skills and adaptive daily living scores which were delayed. Cognitively, Student was above average. Student demonstrated pre-academic skills within normal age limits. Student's communication skills were average and her socialization skills were above average. Student's behavior and social-emotional functioning was in the above-average range.

Belmont-Redwood Shores' Occupational Therapist Hsu conducted the occupational therapy portion of the evaluation. Hsu's occupational therapy evaluation was included in the multidisciplinary report. Hsu did not conduct a health assessment, was not qualified to do so, and did not consider her evaluation report to be a health assessment. Hsu opined Student's fine motor and visual motor integration skills were advanced for her age. Student had reduced truncal lower body muscle strength. Student could transfer herself using a slide board from her wheelchair to a seat with moderate assistance. She was dependent on transferring from the wheelchair to the toilet and changing table for catheter and diaper changes. Student required accommodations for transferring and physically transitioning between activities and workload. Hsu recommended to the April 29, 2024 IEP team that Student receive occupational therapy services.

Belmont-Redwood Shores contracted with Physical Therapist Bauskar to conduct Student's physical therapy assessment. A school-based physical therapy assessment evaluates a student's gross motor skills, gait and mobility, and balance and postural support issues in the school setting. Bauskar did not complete a health assessment of Student, nor was she qualified to do so. Bauskar determined that Student had adequate balance while seated and had sufficient upper body strength to maneuver her wheelchair for short distances. Student struggled with endurance required for navigating the wheelchair over longer distances. Student demonstrated lower extremity weakness resulting from neuroblastoma. Student was dependent on assistance for wheelchair to floor transfers and climbing onto a cube chair. Bauskar recommended to the April 29, 2024 IEP team that Student receive school-based physical therapy services.

Hill shared background information with the April 29, 2024 IEP team about Student's medical condition, past assessments, and vision and hearing screening. Hill also reviewed the private medical services Student currently received. Student required a catheter to empty her bladder. She wore a diaper and generally could not feel when she needed to be changed.

The April 29, 2024 IEP team determined Student had gross motor needs. Student required accommodations to address her mobility needs, catheterization and diaper changing during the school day. The IEP team determined Student qualified for special education and related services under the category of orthopedic impairment.

The IEP team developed two goals for Student in gross motor development, specifically in navigating in her wheelchair and stretching to reduce overuse or injury to her upper extremities. The April 29, 2024 IEP offered Student the following program accommodations:

- reminders for fluid intake;
- slide board transfers;
- alternative seating;
- regular breaks and position changes; and
- accessible bathroom facilities with a changing table.

The April 29, 2024 IEP offered Student 30 minutes, three times monthly occupational therapy services and 30 minutes, once weekly physical therapy services. The IEP offered Student placement in the general education setting. Student would

spend 96 percent of the time inside the regular class environment, and four percent of time outside the regular class environment. The April 29, 2024 IEP did not offer Student specialized physical health services to perform Student's catheterization.

The April 29, 2024 IEP team identified Student had health needs related to her paraplegia which required school nursing services. However, the IEP team lacked the inclusion and expertise of a credentialed nurse or physician to identify the specific specialized physical health care services Student required. The IEP team recognized Student's need for catheterization, but failed to offer Student specialized physical health services to perform Student's clean intermittent catheterization, as required by state regulation. (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(A).)

The IEP document also did not identify Student's catheterization procedure or proposed schedule, nor the anticipated frequency, location, and duration of the services. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(7) (2007); Ed. Code, § 56345, subd. (a)(4) and (7).) Student's frequent need for diaper changing was also a health-related need. This was particularly important because Student was prone to urinary tract infections and could not feel when she needed to be changed. The April 29, 2024 IEP did not address how Student's diaper changing needs would be addressed.

Catheterization was a disability-related need. Student's need for specialized physical health care services was integral to the development of Student's educational program. Therefore, the failure to offer specialized physical health care services denied Student a FAPE because the April 29, 2024 IEP was not designed to meet Student's unique needs, comport with Student's IEP, or calculated to provide Student with some educational benefit in the least restrictive environment. (*Gregory K.*, *supra*, 811 F.2d

1307, 1314.) Student met her burden of proving by a preponderance of the evidence that Belmont-Redwood Shores denied her a FAPE by failing to offer sufficient health and medical services and training guidelines in the April 29, 2024 IEP.

THE AUGUST 23, 2024 AMENDMENT IEP FAILED TO OFFER STUDENT SUFFICIENT HEALTH AND MEDICAL SERVICES OR TRAINING GUIDELINES

Belmont-Redwood Shores convened an IEP team meeting on August 23, 2024, to amend Student's IEP, as discussed in depth in Issue 2b below. Belmont-Redwood Shores still had not conducted a health assessment by a credentialed school nurse or physician. As a result, the August 23, 2024 IEP team continued to lack a fundamental understanding of Student's health needs and how her needs impacted her ability to access her educational program. Belmont-Redwood Shores received Dr. Kennedy's orders for Student's catheterization on July 15, 2024, but inexplicably did not present a health plan for review and consideration by the August 23, 2024 IEP team.

Belmont-Redwood Shores amended the IEP offer to add "150 minutes weekly delivered 30 minutes daily catheterization services to be delivered onsite by a LVN in the presence of the paraprofessional." LVN means licensed vocational nurse. Licensed vocational nurses must operate under the supervision of a credential school nurse. (Ed. Code, § 49426.5.)

The August 23, 2024 amendment IEP did not identify Student's catheterization protocols or procedures or proposed schedule, nor the anticipated frequency, location, and duration of the services. It was unclear how the licensed vocational nurse would be supervised, if they had sufficient training in clean intermittent catheterization, what

procedures would be followed, and where it would take place. The August 23, 2024 amendment IEP also did not address Dr. Kennedy's order for frequent diaper changing, making it unclear who would perform this service, and what procedures and protocols would be used.

Therefore, the August 23, 2024 amendment IEP's offer of specialized physical health care was not designed to meet Student's unique needs, did not comport with Student's IEP, and was not reasonably calculated to provide Student with some educational benefit in the least restrictive environment. (*Gregory K., supra*, 811 F.2d 1307, 1314.) Student proved by a preponderance of the evidence that Belmont-Redwood Shores denied her a FAPE in the August 23, 2024 amendment IEP by failing to offer appropriate health and medical services and training guidelines.

Student prevailed on Issues 2a and 2g.

ISSUE 2b: DENIAL OF FAPE IN THE APRIL 29, 2024 IEP, AS AMENDED ON AUGUST 23, 2024, BY FAILING TO OFFER A CLEAR WRITTEN HEALTH PLAN.

Student contends Belmont-Redwood Shores denied her a FAPE by failing to offer a clear written health plan in the April 29, 2024 IEP, as amended on August 23, 2024. Student contends Belmont-Redwood Shores' failed to identify the training, experience, and qualifications for the school nurse implementing Student's catheterization services. Student contends the failure to offer a clear written health plan denied parental participation because Parents did not have information about how and when Student's catheterization and other health care services would be conducted at school or by which qualified individuals.

Belmont-Redwood Shores contends it made appropriate efforts to develop a health plan after receiving Student's doctor's orders on July 15, 2024, but that Parents were unwilling to meet with Belmont-Redwood Shores' nurse to review and finalize the health plan. Belmont-Redwood Shores further contends it had a licensed vocational nurse or registered nurse available to perform Student's catheterization services, but Parents refused to allow Belmont-Redwood Shores to implement this service.

The IDEA requires a school district to make a formal written FAPE offer. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 (*Union*).) The United States Court of Appeals for the Ninth Circuit held:

"[T]he requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any." (*Id.* at p. 1526.)

This requirement is rigorously enforced because it provides a clear record if disputes arise and helps parents decide whether to accept or reject the proposed program. (*Los Angeles Unified Sch. Dist. v. A.O.* (9th Cir. 2024) 92 F.4th 1159, 1169.)

A written IEP document memorializes the FAPE offer by "providing notice to both parties as to what services will be provided to the student during the period covered by the IEP." (*M.C. v. Antelope Valley Union Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1197-1198.) Parents must be able to use the IEP to monitor and enforce the services their child is to receive. (*Ibid.*) A failure to include specificity in a child's FAPE

offer renders “the IEP useless as a blueprint for enforcement” and infringes on parental participatory rights. (*Id.* at pp. 1197-1199.) Failure to make a clear written offer is a procedural IDEA violation. (*Union, supra*, 15 F.3d 1519, 1527.)

THE APRIL 29, 2024 IEP DID NOT OFFER STUDENT A CLEARLY WRITTEN HEALTH PLAN

Student proved Belmont-Redwood Shores committed a procedural violation of the IDEA by failing to offer Student a clear written health plan in the April 29, 2024 IEP. The April 29, 2024 IEP did not specify the specialized physical health care services Student required, the projected date for the beginning of the services and their anticipated frequency, location, and duration. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(7) (2007); Ed. Code, § 56345, subd. (a)(4) and (7).) The April 29, 2024 IEP did not identify the category of qualified service provider who could provide Student’s catheterization service, whether they were trained in clean intermittent catheterization, or specify the level of supervision they required. (Ed. Code, § 49423.5; Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(1)(B), (D), and (E).)

As a result of these omissions, Parents had no way of knowing the type of specialized physical health care that would be provided, if Student’s catheterization services would be performed by a qualified individual, or the frequency or method of catheterization. Parents could not understand how the qualified service provider would be supervised and what protocols and procedures would be utilized, as required by California law. These critical omissions resulted in a denial of Parents’ ability to meaningfully participate in the development of Student’s educational program, specifically related to Student’s health needs. The same ambiguity meant that

Belmont-Redwood Shores, or any other school, could not be certain that it was implementing Student's specialized physical health care services correctly, depriving Student of education benefit and denying her a FAPE.

Consequently, a preponderance of the evidence proved Belmont-Redwood Shores denied Student a FAPE in the April 29, 2024 IEP by failing to offer a clearly written health plan.

THE AUGUST 23, 2024 AMENDMENT IEP DID NOT OFFER STUDENT A CLEAR WRITTEN HEALTH PLAN

BELMONT-REDWOOD SHORES DID NOT DEVELOP A HEALTH PLAN PRIOR TO THE START OF THE 2024-2025 SCHOOL YEAR

Belmont-Redwood Shores notified Parents on April 29, 2024, the same day as the IEP team meeting, that Student's school assignment for the 2024-2025 school year was Redwood Shores Elementary. Parents signed the April 29, 2024 IEP, without condition, on May 6, 2024.

Credentialed School Nurse Terri Sandoval was Belmont-Redwood Shores' district nurse starting in February 2024. Sandoval was a licensed registered nurse since 2023, and completed additional educational requirements to obtain a school nursing credential. Previously, she worked as a licensed vocational nurse for 26 years. Sandoval supervised, trained, and evaluated Belmont-Redwood Shores' nurses. Sandoval was responsible for ensuring Belmont-Redwood Shores understood and appropriately supported students'

health care needs. Sandoval also was responsible for, among other things, training and supervising licensed vocational nurses on students' health needs, and overseeing student health care plans, vision and hearing screenings, and immunization records.

Sandoval was tasked with developing Student's health plan. This was the first health plan Sandoval had prepared for a child with an IEP. Sandoval initially communicated with Parents through a May 3, 2024 email. Sandoval notified Parents she required any physician's orders related to Student's health care needs at school, including orders for Student's catheterization. Sandoval provided Parents a medication authorization form for Parents to complete and return. In response, on May 5, 2024, Parents emailed Sandoval updated medical records from Student's pediatrician, urologist, pediatric rehabilitation specialist, and a summary of Student's prior medical records. Parents also returned the signed medication authorization form. As discussed in Issue 1, Parents provided Belmont-Redwood Shores a signed consent to exchange personally identifiable information with Student's medical providers on February 24, 2024. Parents did not have an order for Student's catheterization but offered in a May 5, 2024 email to Sandoval to coordinate a telephone call between Sandoval and Student's physician, to which Sandoval did not respond.

Sandoval notified Parents on May 9, 2024, that she had received the documents submitted by Parents and would schedule a "care plan meeting." Parents subsequently met with Sandoval on June 19, 2024. Sandoval discussed with Parents the need for various orders from Student's physician pertaining to catheterization, the height of the

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adjustable changing table, use of a slide board for transfers, and any required braces, postural supports, or equipment. In a follow-up email, Sandoval requested that Parents send a photograph of Student after which she would forward Parents the care plan.

At hearing, Sandoval believed she was justified in not presenting a health plan to Parents at the June 19, 2024 meeting because she did not have Student's physician's orders. Sandoval assumed Parents would bring Student's physicians' orders to the June 19, 2024 care plan meeting, but this was not explicitly communicated to Parents at any time. Sandoval blamed the Parents for not timely providing her copies of Student's doctor's orders, although this was her responsibility under California law. (Ed. Code, §§ 49423, subd. (a), 49423.5, subd. (a)(2); Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(D)(1)-(3).)

Belmont-Redwood Shores received Dr. Kennedy's orders for Student's catheterization on July 15, 2024. Sandoval did not prepare a health plan for Student until she returned from summer break in early August 2024. Sandoval testified she prepared Student's health plan sometime after August 1, 2024. However, Sandoval did not share the health plan with Parents or Student's IEP team.

As of the first day of the 2024-2025 school year, Parents did not know who would perform Student's catheterization or what procedures or protocols would be followed. Because of the uncertainty surrounding Student's catheterization, Parents did not send Student to Sandpiper Elementary on the first day of school on August 14, 2024.

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THE AUGUST 23, 2024 AMENDMENT IEP DID NOT SPECIFY THE QUALIFICATIONS OF THE SERVICE PROVIDERS OR PROTOCOLS AND PROCEDURES FOR SPECIALIZED PHYSICAL HEALTH CARE SERVICES

Belmont-Redwood Shores convened an amendment IEP team meeting on August 23, 2024. The purpose of the IEP team meeting was to discuss Student's health needs. The IEP team members included

- Mother,
- Sandoval,
- Licensed Vocational Nurse Cindy Lau,
- Jimenez-Payne,
- Higgins,
- General Education Teacher Jennifer Schultz,
- Student's private physical therapist, and
- Occupational Therapist Min Kim.

An IEP is not required to include the specific instructional methodologies the school district will use to educate the child. (34 C.F.R. § 300.320(d)(1); 71 Fed. Reg. 46,665 (Aug. 14, 2006).) The methodology used to implement an IEP is left to the school district's discretion so long as it is designed to meet the student's unique needs, comports with the child's IEP, and is reasonably calculated to provide an educational benefit. (*Rowley, supra*, 458 U.S. 176, 208; *Crofts v. Issaquah School Dist. No. 411* (9th Cir. 2022) 22 F.4th 1048, 1056-57.) A school district has the right to select a program and qualified service providers for a special education student, provided the program

and qualified service providers can meet the student's unique needs. (*Rowley, supra*, 458 U.S. 176, 208 ("once a court determines that the requirements of the [IDEA] have been met, questions of methodology are for resolution by the States").)

Parents do not have the right to select the employees who will provide related services to a student. (*Rowley, supra*, 458 U.S. 176, 207-208; *Swanson v. Yuba City Unified Sch. Dist.* (E.D. Cal. Oct. 14, 2016) No. 2:14-CV-01431-KJM-DB, 2016 WL 6039024, at *8.) However, parents have the right to ask questions about the service provider's qualifications. (*Student v. San Francisco Unified Sch. Dist., supra*, OAH case number 2024090473, at *33.)

California law permits only two types of employees to provide specialized physical health care services:

1. qualified personnel who possess an appropriate credential, including a valid certificate of public health nursing issued by the Board of Registered Nursing; and
2. qualified designated school personnel trained in the administration of specialized physical health care if they perform those services under the supervision of a credentialed school nurse or licensed physician. (Ed. Code, § 49423.5, subd. (a)(1), (2).)

California regulations specify the different levels of supervision required for the designated employee when performing the specialized health care service. For example, "direct supervision" means that the "supervisor shall be present in the same building as the person being supervised and available for consultation and/or assistance." (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(1)(D)(2).)

Specialized physical health care services, including catheterization, must be coordinated by a school physician or nurse, who must consult with appropriate personnel and maintain communication with health agencies providing care to the student. (Ed. Code, §§ 49423, subd. (a)(1), (2), 49423.5, subd. (a)(2); Cal. Code Reg., tit. 5, § 3051.12, subd. (b)(3)(D)(1)-(3).) These services must be implemented pursuant to “protocols and procedures developed through collaboration among school or hospital administrators and health professionals, including licensed physicians and surgeons, and nurses.” (Ed. Code, § 49423, subds. (a), (b); Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(1)(B).) A school district is required to maintain “specific standardized procedures” for each student with exceptional needs who receives specialized physical health care services. (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(E).) These arrangements must be made by the school’s physician or nurse “in consultation with the physician treating the pupil” (Ed. Code, § 49423.5, subd. (a)(2).)

Mother shared her concerns about Student’s catheterization needs with the August 23, 2024 amendment IEP team. Student required catheterization daily between 11:30 a.m. and 12:30 p.m. Sandoval requested an updated order from Student’s doctor reflecting the revised catheterization schedule. Sandoval suggested that School Nurse Lau could perform the catheterization daily between 11:15 and 11:45 a.m.

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Jimenez-Payne informed the IEP team that the April 29, 2024 IEP did not clearly describe the nursing services or reflect the nursing and paraprofessional related services on the FAPE service page. She informed the team that Belmont-Redwood Shores wanted to modify the services as follows:

- 1,245 minutes weekly one-to-one support by a paraprofessional for academic, toileting, and health support throughout the school day; and
- 150 minutes weekly delivered 30 minutes daily catheterization services to be delivered onsite by a LVN in the presence of the paraprofessional.

Parents did not question the qualifications of Sandoval or Lau to perform catheterization services. Rather, Parents wanted to understand if they had sufficient training to conduct catheterization services for Student and the standardized procedures they would follow. Throughout the timeframe at issue, Parents relayed their concern to Belmont-Redwood Shores about the importance of safe catheterization, particularly because of Student's propensity to develop urinary tract infections due to her diagnosis of vesicoureteral reflux.

Mother asked Sandoval when she had last performed a catheterization procedure or received training in catheterization. Sandoval declined to answer Mother's questions on privacy grounds. Sandoval responded that she was fully capable of performing this procedure. Sandoval was critical of Parents questions about when she had last performed a catheterization and how long she had worked as a nurse. She believed the questions were equivalent to being in a job interview and she directed Parents to talk to Belmont-Redwood Shores' human resources department.

There was discussion by the IEP team about Mother's request to observe the nurse perform the catheterization on Student. However, there was no clear consensus reached by the August 23, 2024 IEP team about whether Mother's observation request was acceptable. Mother wanted to observe the nurse for a period of one to two weeks. Mother understood following the IEP team meeting that she could observe the nurse on the first day of school. Sandoval and Lau understood they would observe Mother perform the catheterization, and they would contact her if they had any questions.

Mother explained at hearing that an observation was important to Parents because they had genuine concerns about Student's safety, particularly because of Student's propensity for urinary tract infections. Mother presented as a compelling witness who was justifiably concerned about her young child's health and safety. Mother could not understand Sandoval's reluctance to allow Mother to observe her or Lau.

At hearing, Sandoval did not convincingly explain why Parents could not observe the service providers, other than referring to general privacy concerns. Sandoval's reluctance to answer Parents' basic questions about her experience performing catheterization, as well as her defensive demeanor, rendered her testimony unpersuasive.

Lau attended the August 23, 2024 IEP team meeting, but she did not contribute to the IEP team's discussion about Student's health related services. At hearing, Lau testified that she had conducted 20 to 30 catheterizations over the course of her nursing career. The last time she had performed a catheterization was 10 years earlier. Lau believed that she could perform catheterization services and she did not object to Mother observing her. Lau planned to receive additional training from Sandoval about

Student's specific catheterization needs. For example, Sandoval told Lau she believed that Mother used a catheter that was too long for Student, and that Mother performed the procedure somewhat differently than was standard. The need for additional training for Lau was not discussed with the August 23, 2024 IEP team, which deprived Parents and the IEP team important information about any necessary required training for the service provider.

The August 23, 2024 amendment IEP did not describe the general procedures for Student's catheterization procedure or where it would take place on the Sandpiper Elementary campus. The IEP document stated the service would be provided by a licensed vocational nurse, but did not specify if that person was qualified or how they would be supervised as required by the Education Code and California Regulations. (Ed. Code, § 49423.5, subd. (a)(1), (2); Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(1)(E)(2).) The IEP did not contain any standardized procedures to be utilized in the provision of Student's specialized physical health care services. For example, it did not identify what type of catheterization was required, where the service would take place or by which qualified provider, or how urinary output would be measured. Alternatively, this information could have been included in a separate health plan prepared by the school nurse, presented to the IEP team, and attached to the IEP or filed in a designated location. Here, the details of Student's catheterization was not contained either in the IEP or in a separate health plan, thus denying Student a FAPE. (20 U.S.C. § 1414(d)(1)(A)(IV); Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(A).)

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Mother also told the IEP team she was concerned about Student transferring herself from a slide board to the changing table if she had voided in her diaper. Mother requested that the paraprofessional working with Student be trained in:

- transferring Student from her wheelchair to a chair, the ground, and a standing frame;
- putting on and taking off Student's braces; and
- changing Student's diaper.

Mother's questions and concerns were largely disregarded. The August 23, 2024 amendment IEP document did not include any information about whether the staff working with Student would be trained in these areas, nor did the evidence establish the August 23, 2024 IEP team considered Mother's suggestions.

The August 23, 2024 IEP team also did not discuss Dr. Kennedy's June 21, 2024 order for Student's specialized physical health care services, even though Sandoval had received Dr. Kennedy's order. The order required:

- clean intermittent catheterization services for Student every four hours while at school;
- measuring of urinary output; and
- a diaper change as soon as wet or soiled.

This information was not contained in the IEP, nor in a separate health plan shared with Parents and the IEP team. The issue of Student's need for immediate diaper changing in the event it was wet or soiled was not discussed by the August 23, 2024 IEP team. The IEP did not mention procedures for transferring Student from the slide board

to the changing table. Therefore, Parents could not know if or how Belmont-Redwood Shores intended to implement Dr. Kennedy's June 21, 2024 order or procedures for Student's use of the slide board.

The IEP document also did not mention Student's need for an adjustable changing table, and any required braces, postural supports, or equipment. Sandoval had discussed with Parents the need for physician's orders regarding these items at the June 19, 2024 meeting, but they were left out of the IEP, and not referenced in a health plan.

There also was no discussion at the August 23, 2024 IEP team meeting about the status of Student's health plan or when it would be presented to Parents and the IEP team. Consistent with California law, Jimenez-Payne and Silk each persuasively opined that a health care plan is typically developed by the school nurse in collaboration with a student's physician and then presented to an IEP team. This insured that the IEP team, and the service providers working with Student, understood how Student's health needs would be addressed. Other than generally discussing the timing of Student's catheterization, the August 23, 2024 IEP team did not discuss Student's health plan. Confusingly, the health portion of the present levels of academic achievement section of the IEP document had a box indicating if Student had an "individual health plan". This box was unchecked.

Parents' questions stemmed from Belmont-Redwood Shores' failure to develop Student's health plan, including identifying the qualified providers who would perform the catheterization procedure, and developing protocols and procedures for implementation of Student's specialized physical health care services through collaboration with Student's licensed physician. (Ed. Code, § 49423, subds. (a), (b); Cal. Code Regs., tit. 5, § 3051.12,

subd. (b)(1)(B).) Had Belmont-Redwood Shores developed a health plan, Parents' concerns could have been alleviated. A health plan would have informed Parents, and the IEP team, about the standardized procedures that would be used and if training was necessary to prepare for the "appropriate delivery and skillful performance of specialized physical health care services" as contemplated by California law. (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(1)(E)(1)-(2); *Student v. San Francisco Unified Sch. Dist.*, *supra*, OAH case number 20240473, at *33.)

Sandoval's reasons for not sharing the draft health plan with Parents at any time during the statutory period were unconvincing. Sandoval understood she was required to meet personally with Parents before she could finalize a health plan for Student or share it with the IEP team. Sandoval's testimony was contradicted by Assistant Superintendent Hu's testimony. Hu opined she was unaware of any district policy requiring the district nurse to meet in person with parents before finalizing a student's health plan. Nor is there any such legal requirement.

Sandoval's argument she had insufficient time to share Student's health plan or the specialized physical health care services Student required at the August 23, 2024 IEP team meeting was unpersuasive because she made no prior or subsequent efforts to meet with Parents to review the health plan. Sandoval also blamed Parents for the failure to complete the health plan because Parents stopped communicating with her. A school district cannot blame a parent for its failure to ensure meaningful procedural compliance with the IDEA. (*A.O.*, *supra*, 92 F.4th 1159, 1171, citing *Doug C.*, *supra*, 720 F.3d 1038, 1045.)

Student's health plan was not shared with Parents or Student's IEP team through the date of hearing. Parents and Student's IEP team therefore could not know how Student's catheterization and diaper changing needs would be implemented. This uncertainty resulted in Mother performing Student's catheterization during the school day beginning September 6, 2024, and continuing through the hearing.

BELMONT-REDWOOD SHORES' FAILURE TO OFFER A CLEAR HEALTH PLAN DENIED STUDENT A FAPE

Student proved by a preponderance of the evidence that Belmont-Redwood Shores denied her a FAPE by failing offer a clear health plan in the August 23, 2024 amendment IEP. The failure to offer a clear health plan denied Parents meaningful participation in developing Student's IEP. (*Target Range, supra*, 960 F.2d 1479, 1484.) The IEP did not specify whether the persons providing the services were qualified, as required by the Education Code, or whether they required medically related training to update the nurse's professional skills and knowledge to meet Student's need for catheterization. Parents had no way of knowing the category of employee who would perform the service.

The IEP also did not contain any standardized procedures to be utilized in the provision of Student's specialized physical health care services. Parents were entitled to know and approve of the general procedure by which Student's specialized physical health care services would be provided, including any training necessary for the service providers to implement Student's catheterization. These flaws substantially impeded Parents' ability to participate in the development of Student's IEP, and denied Student a

FAPE. Consequently, Student proved by a preponderance of the evidence that Belmont-Redwood Shores denied Student FAPE by failing to offer a clear written health plan in the April 29, 2024 IEP, as amended on August 23, 2024.

Student prevailed on Issue 2b.

ISSUE 2c AND 2d: DENIAL OF FAPE IN THE APRIL 29, 2024 IEP, AS AMENDED ON AUGUST 23, 2024, BY FAILING TO INCLUDE A SCHOOL NURSE AND DEVELOPING STUDENT'S HEALTH PLAN OUTSIDE THE IEP PROCESS.

Student contends Belmont-Redwood Shores denied her a FAPE by not including a school nurse in the April 29, 2024 IEP team meeting. Student further contends Belmont-Redwood Shores denied her a FAPE by developing a health plan outside the IEP process.

Belmont-Redwood Shores contends a school nurse was not a mandatory member of the April 29, 2024 IEP team and Parents did not request that the school nurse attend the IEP team meeting. Belmont-Redwood Shores argues the IEP team was informed of Student's health needs and able to develop an appropriate program. Belmont-Redwood Shores further contends a school nurse attended the August 23, 2024 amendment IEP meeting. Belmont-Redwood Shores argues it attempted to develop a health plan for Student, but Parents put conditions on the health plan beyond Belmont-Redwood Shores' obligations under the law.

There was no dispute that school nurse Sandoval attended the August 23, 2024 amendment IEP team meeting. Therefore, Issue 2c is limited to whether a procedural violation occurred by failing to have a nurse attend the April 29, 2024 IEP team meeting.

An IEP is developed, reviewed, or revised by an IEP team. (Ed. Code, § 56341, subd. (a).) The IEP team must include:

1. one or both of a student's parents;
2. no less than one general education teacher;
3. no less than one special education teacher, or, if appropriate, a special education provider for the student;
4. a representative of the school district who is qualified to provide or supervise specially designed instruction and is knowledgeable about the general education curriculum and the availability of district resources;
5. an individual who can interpret the instructional implication of assessment results;
6. at the discretion of the parents or district, any other individual who has knowledge or special expertise regarding the student, including related services personnel, as appropriate; and
7. whenever appropriate, the student with exceptional needs.

(20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b).)

The first five designated participant categories are mandatory team members. A mandatory member of the IEP team is not required to attend an IEP team meeting, if the parents and school district agree that the attendance of such a member is not necessary because the member's area of the curriculum or related service is not being modified or discussed at the meeting. (20 U.S.C. § 1414(d)(1)(C)(i); Ed. Code, § 56341, subds. (f) and (h) [agreement must be in writing].) Related service providers, such as a nurse, are not identified under the law as required IEP team members. The IDEA does not require that individuals with specific professional knowledge or qualifications attend all IEP team meetings. (71 Fed. Reg. 46540-01, 46669 (Aug. 14, 2006).) Rather, the IDEA allows the parent or local educational agency to invite other individuals with knowledge or special expertise regarding the child, including related services personnel as appropriate, to be included as a team member. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (f).)

Here, the evidence proved that the April 29, 2024 IEP team did not include an individual who could interpret the instructional implication of assessment results. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b).) Although related service providers are generally not mandatory IEP team members, here Student's health was central to development of Student's IEP. None of the April 29, 2024 IEP team members had expertise to evaluate Student's health needs, specifically Student's need for catheterization.

At hearing, no witness disputed that Student required a health plan to memorialize how her specialized physical health services, specifically catheterization, would be implemented. Belmont-Redwood Shores witnesses', including Sandoval, Jimenez-Payne, Silk, and Higgins, opined that a health care plan was typically developed

outside the IEP process between the school nurse, parents, and a student's medical providers, and then presented to the IEP team for review. This is consistent with California regulations that require qualified individuals, such as a qualified school nurse, to coordinate a disabled child's health care services on the school site. This necessarily may occur outside the IEP team process because the qualified school nurse must make referrals, maintain communication with health agencies and parents, review requests by licensed physicians and parents, and maintain daily documentation.

Here, Belmont-Redwood Shores denied Student FAPE by failing to develop Student's health plan and present it to Student's IEP team. As a result, Parents and Student's IEP team did not know what specialized physical health care services Student required to benefit from special education. (Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(A).) Parents and Student's IEP team also lacked critical information about how Student's specialized health care services would be implemented. This denied Parents meaningful participation in developing Student's educational program.

Student proved by a preponderance of the evidence that Belmont-Redwood Shores denied her a FAPE by not including a nurse at the April 29, 2024 IEP team meeting, and developing Student's health plan outside the IEP process. Student met her burden of proof on Issues 2c and 2d.

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ISSUE 2e: DENIAL OF FAPE IN THE APRIL 29, 2024 IEP, AS AMENDED ON AUGUST 23, 2024, BY PREDETERMINING THE REMOVAL OF STUDENT'S FULL-TIME, ONE-TO-ONE NURSING SERVICES.

Student contends Belmont-Redwood Shores denied her a FAPE by predetermining the removal of Student's full-time, one-to-one nursing services in the August 23, 2024 amendment IEP, thereby denying parental participation.

Belmont-Redwood Shores contends it did not predetermine the removal of Student's full-time, nursing services. Belmont-Redwood Shores contends the August, 23, 2024 amendment IEP team discussed Student's health care and medical needs and determined Student's needs could be addressed by a licensed vocational nurse and a full-time, one-to-one paraprofessional. Belmont-Redwood Shores contends Mother participated in the August 23, 2024 IEP team meeting and voiced her concerns, and therefore meaningfully participated in the development of Student's IEP.

In determining the educational placement of a disabled student, the public agency must ensure that the placement is based on the child's IEP. (34 C.F.R §§ 300.116(b)(2); 300.552.) A change in a disabled child's educational placement can result when there is a significant change in the student's program, even if the student remains in the same setting. (*K.O. by and through Ogawa v. San Dieguito Union High Sch. Dist.* (S.D. Cal. April 23, 2024, No. 22-cv-01703-H-BGS) 2024 WL 1744084, *10, app. dism. (9th Cir. 2024, June 28, 2024) 2024 WL 3898621), citing *N.D. ex rel. v. Hawaii Dep't of Education* (9th Cir. 2010) 600 F.3d 1104, 1116.)

Parental consent is required to change services listed in a student's IEP. (20 U.S.C. § 1414(a)(1)(D)(i)(II); 34 C.F.R. § 300.300(b) (2006); Ed. Code, § 56346, subd. (a).) Parents may consent to changes in an IEP either by agreeing to a new IEP or by executing an amendment to an IEP. (20 U.S.C. § 1414(d)(3)(D), (F); 34 C.F.R. § 300.324(a)(4)(i), (a)(6); Ed. Code, § 56380.1, subds. (a), (b).) In the event a parent does not consent, the school district may seek an order following a due process hearing to override the parent's lack of consent. (Ed. Code, § 56346, subds. (e), (f).)

Predetermination occurs when placement is determined without parental involvement in developing the IEP. (34 C.F.R. §§ 300.327, 300.501(c)(1); *Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858 (*Deal*).) A school district violates the IDEA if it predetermines placement for a student before the IEP is developed or steers the IEP team to a predetermined placement. (*Target Range, supra*, 960 F.2d 1479, 1484.) A school district predetermines an offer when it presents one placement option at an IEP team meeting and is unwilling to consider other alternatives. (*H.B., et al., v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344 (*H.B.*); *Vashon Island, supra*, 552 F.3d 1115, 1131 (*Las Virgenes*) ["a school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification."].)

A school district is required to engage in open discussions of a student's educational program and show a willingness to discuss options suggested by parents. (*Anchorage Sch. Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1054-1055.) Although school districts are permitted to form opinions and compile reports prior to an IEP team meeting, this conduct is only harmless provided the school officials are "willing to listen to the parents". (*Knox County Sch., supra*, 315 F.3d 693-694, fn. 3 (noting that school

system representatives should “come to the meeting with suggestions and open minds, not a required course of action”).) A district may not arrive at an IEP team meeting with a “take it or leave” it offer. (*J.G. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn. 10, citing *Vashon Island, supra*, 337 F.3d 1115, 1131.)

Predetermination of a student’s placement is a procedural violation under the IDEA. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(b) and (c)(1); Ed. Code, § 56304, subd. (a).) Predetermination is an automatic violation of a parent’s right of participation under the IDEA. Where predetermination has occurred, regardless of the discussions that may occur at the meeting, the school district’s actions violate the IDEA’s procedural requirements that parents have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child. (*Las Virgenes, supra*, 239 Fed.App. 342, 344, citing U.S.C. 20 U.S.C. § 1415(b)(1).) Predetermination causes a deprivation of educational benefits where, absent the predetermination, there is a strong likelihood that alternative educational possibilities for the student would have been better considered. (*M.S. v. Los Angeles Unified Sch. Dist.* (C.D.Cal., September 12, 2016, No. 2:15-cv-05819-CAS-MRW) 2016 WL 4925910, at *12.)

Two weeks after Parents met with Sandoval, Belmont-Redwood Shores changed Student’s school location from Redwood Shores to Sandpiper Elementary. Principal Higgins emailed Parents on July 2, 2024, and welcomed Student to Sandpiper Elementary. Higgins explained that Sandoval determined Student’s need for skilled nursing was for clean intermittent catheterization every four hours. Further, Student’s other needs, such as diaper changes, fluids every 30 minutes, repositioning, and wheelchair transfer, could be met by a paraprofessional. Higgins proposed a meeting on August 9, 2024, before the start of the 2024-2025 school year to “make amendments” to the IEP.

At hearing, Parents expressed genuine surprise and disappointment upon receiving Higgins' email. Parents were familiar with Redwood Shores Elementary and Student had friends there. They also understood based on the April 29, 2024 IEP that Student would receive full-time nursing services to support her health needs. They did not understand why Belmont-Redwood Shores determined Student's other health care needs could be met by a paraprofessional. Parents replied to Higgins on July 2, 2024, and expressed their confusion. Higgins responded that same day and confirmed Student's placement at Sandpiper Elementary was made to support Student's nursing needs. Higgins suggested the parties meet on August 9, 2024, to discuss changes to Student's program.

Parents were reluctant to meet with Higgins because they understood Student's April 29, 2024 IEP constituted Student's educational program for the 2024-2025 school year. Parents understood that Belmont-Redwood Shores would hire a full-time nurse for Student. Parents also believed that Belmont-Redwood Shores would develop and implement a health care plan to address Student's health needs at school as discussed with Sandoval at the meeting held on June 19, 2024, and as confirmed in an email to Parents from Education Specialist Silk.

After receiving notification about the change of placement, Parents contacted Belmont-Redwood Shores' Special Programs Coordinator Sumita Gosala. Gosala responded that Student's school location had changed for various reasons, including because Sandpiper Elementary School had a full-time nurse onsite.

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THE AUGUST 1, 2024 MEETING TO DISCUSS CHANGES TO STUDENT'S IEP

Parents continued to be confused by Belmont-Redwood Shores' changes to Student's site location and nursing services. Parents emailed Assistant Superintendent of Educational Services Ching-Pei Hu on July 25, 2024, to seek further clarification. In response, Hu suggested that Parents meet with her and Director of Special Programs Jimenez-Payne the following week in person to discuss their concerns.

Parents agreed, and they attended a meeting at Belmont-Redwood Shores on August 1, 2024. The attendees included Father, Hu, Jimenez-Payne, and Sandoval. Mother was present at the school site with Student, but did not participate in the meeting. Hu reviewed the April 29, 2024 IEP team notes. Hu explained that Belmont-Redwood Shores could serve Student's catheterization and other health needs at Sandpiper Elementary.

Hu offered inconsistent testimony at hearing about the purpose of the August 1, 2024 meeting. Hu suggested the main purpose of the meeting was to address Parents' concerns about the change of Student's school site. She reluctantly agreed that the reduction of nursing services was also a key reason for the meeting. Hu opined Belmont-Redwood Shores' obligation was to make fiscally wise decisions and it wanted to amend Student's IEP to remove the full-time nursing services.

Jimenez-Payne also testified at hearing. Jimenez-Payne was hired by Belmont-Redwood Shores on July 24, 2024. Jimenez-Payne held a master's degree in educational leadership and a clear educational specialist credential. Jimenez-Payne

had over 23 years-experience working in special education as a special education teacher, supervisor of special education services, and executive director of special education services.

Shortly after her hiring in July 2024, Jimenez-Payne reviewed Student's IEP, and determined there were errors in the document. The IEP notes referenced a full-time nurse for Student, but the nursing service was not delineated in the IEP's FAPE offer. Jimenez-Payne met with Hu sometime after July 24, 2024, to discuss the discrepancies in Student's IEP document. Jimenez-Payne believed the IEP should be amended to include the nursing services in the service grid portion of the FAPE offer.

Jimenez-Payne testified the purpose of the August 1, 2024 meeting was to clarify the service grid. Jimenez-Payne was aware Student's doctor prescribed catheterization services every four hours, and therefore Jimenez-Payne did not believe Student required full-time nursing services. Jimenez-Payne told Father that Student's health needs could be met at Sandpiper Elementary. Father did not agree with Belmont-Redwood Shores' decision to reduce Student's nursing services.

The August 1, 2024 meeting ended without resolution. Jimenez-Payne suggested that an IEP team meeting be scheduled to clarify Student's nursing and health services. Belmont-Redwood Shores attempted to hold an amendment IEP meeting on August 9, 2024. Between August 6 and 9, 2024, Parents exchanged emails with Higgins and Jimenez-Payne about Belmont-Redwood Shores' request to meet on August 9, 2024. In an August 8, 2024 email, Jimenez-Payne explained to Parents, "unfortunately the IEP team at Redwood Shores made some errors in the provider and location of services in the IEP which need to be discussed and corrected." Parents responded they needed more time before they could attend an IEP team meeting.

As discussed in Issue 2b, the weight of the evidence proved Belmont-Redwood Shores decided to reduce Student's nursing services as early as July 2, 2024, when it advised Parents of the change of school site to Sandpiper Elementary. At that time, Belmont-Redwood Shores determined Student required clean intermittent catheterization every four hours and she did not require a full-time nurse. Assistant Superintendent Hu explained at hearing that Belmont-Redwood Shores was concerned about the financial cost of providing a full-time nurse when Student's needs could be met with reduced nursing services and additional support by a paraprofessional. She believed Belmont-Redwood Shores was required to make fiscally wise decisions based on a limited budget. Although Belmont-Redwood Shores had the right to form opinions prior to an IEP team meeting, it could not independently develop Student's IEP and present it to Parents for ratification. Although school districts are permitted to form opinions and compile reports prior to an IEP team meeting, this conduct is only harmless provided school officials are willing to listen to the parents.

Belmont-Redwood Shores did not follow the mandate of the IDEA to include Parents in decisions regarding Student's educational placement, or the provision of a FAPE. As of the August 1, 2024 meeting with Father, Belmont-Redwood Shores had decided not to implement Student's full-time nursing services. Hu, Jimenez-Payne, and Higgins vigorously disputed that Belmont-Redwood Shores unilaterally decided to reduce Student's nursing.

Their testimony was contradicted by more persuasive evidence. Higgins' July 2, 2024 correspondence to Parents expressly stated Student's needs for catheterization every four hours could be met by a nurse and support of a paraprofessional and that Belmont-Redwood Shores wanted to amend the IEP document. Belmont-Redwood Shores' inaction also confirmed its intention to reduce Student's nursing services. Hu,

Jimenez-Payne, and Higgins offered consistent testimony that Belmont-Redwood Shores had not hired or assigned a full-time nurse for Student for the 2024-2025 school year. On cross-examination, each witness appeared uncomfortable when questioned about why a full-time nurse had not been assigned to Student. They opined that it was unnecessary to do so because Belmont-Redwood Shores could meet Student's needs at Sandpiper Elementary. However, they referenced the dedicated nurse for all students at Sandpiper Elementary, not a full-time nurse designated for Student. Although the parties agreed at hearing that Student did not require a full-time nurse, Belmont-Redwood Shores decided to reduce this service outside the IEP process and without Parents' consent. This was predetermination.

The August 23, 2024 amendment IEP team did not have an open discussion about the reduction of Student's nursing services. Belmont-Redwood Shores wanted to change the FAPE offer to add a paraprofessional instead of a full-time nurse and determined to make this change at the IEP team meeting regardless of Parents' concerns. As discussed in Issue 2b, the August 23, 2024 amendment IEP reduced Student's nursing services to 30 minutes daily, and added a paraprofessional to assist Student with academics, and toileting and health support throughout the school day.

Belmont-Redwood Shores presented the offer on a "take it or leave it" basis. This was illustrated by Principal Higgins' statement to Parents that Student could start school as early as Monday, August 26, 2024, "pending receipt of the signed IEP and changes in the doctor's order for timing of the catheterization and testing of the urine." This was reasonably interpreted by Parents to mean they had to sign the amendment IEP before Student could start school. As a result, Parents consented to the August 23, 2024 amendment IEP on September 4, 2024, because they understood Student could not attend school until provided consent. Although school districts are permitted to form

opinions and compile reports prior to an IEP team meeting, here Belmont-Redwood Shores was not willing to listen to Mother and approached the IEP team meeting as necessary to reduce Student's nursing services. The overwhelming weight of the evidence proved Belmont-Redwood Shores was unwilling to consider other alternatives.

Belmont-Redwood Shores argued Student could have started school on August 14, 2024, but Parents chose not to send Student to school. Belmont-Redwood Shores argued Sandpiper Elementary had a full-time nurse on staff who could implement Student's catheterization services. As of the first day of school on August 14, 2024, Parents understood Student would not be provided a full-time nurse. It was unclear who would provide Student's catheterization services, the qualifications of the service provider, the timing of the catheterization, or how the procedure would be performed. This was compounded by Belmont-Redwood Shores' failure to develop a health plan which specified how Student's health needs would be met in the educational setting, as discussed in Issue 2b. As discussed, educational agencies cannot excuse their failure to satisfy the IDEA's procedural requirements by blaming the parents.

Student met her burden of proving by a preponderance of the evidence that Belmont-Redwood Shores denied her a FAPE by predetermining the removal of Student's full-time, one-to-one nurse in the August 23, 2024 amendment IEP. Student prevailed on Issue 2e.

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ISSUE 2f: DENIAL OF FAPE BY FAILING TO PROVIDE PRIOR WRITTEN NOTICE ABOUT THE DECISION TO REMOVE STUDENT'S FULL-TIME NURSING SERVICES.

Student contends Belmont-Redwood Shores denied a FAPE by failing to issue a prior written notice about the decision to remove Student's full-time nursing services.

Belmont-Redwood Shores contends it did not remove Student's full-time nursing services. It contends the August 23, 2024 amendment IEP team determined Student did not require a full-time nurse and Student's medical needs could be addressed by 30 minutes daily nursing services to perform Student's catheterization services. Belmont-Redwood Shores further contends the August 23, 2024 amendment IEP team determined Student's other health needs, including diaper changing, could be met through a full-time paraprofessional. Belmont-Redwood Shores contends these changes were made through the IEP process with Parents' consent, and therefore it was not required to provide a prior written notice. It further contends it issued prior written notices on December 2, 2024, and January 27, 2025, in response to Parents' emails requesting specific guidelines for Student's catheterization services.

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A school district must provide written notice to the parents of a student with a disability whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (a).) The notice must contain:

- a description of the action proposed or refused by the agency;
- an explanation for the action or refusal, along with a description of each assessment or report the agency used as a basis for the action or refusal;
- a statement that the parents are entitled to procedural safeguards and how they can obtain a copy;
- sources of assistance for parents to contact;
- a description of other options that the IEP team considered, with the reasons those options were rejected; and
- a description of the factors relevant to the agency's action or refusal.

(20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4, subd. (b).) An IEP document can serve as a prior written notice provided the IEP contains the required content of a prior written notice. (71 Fed. Reg. 46540, 46691 (Aug. 14, 2006).)

A prior written notice is "designed to ensure that the parents of a child with a disability are both notified of decisions affecting their child and given an opportunity to

object to these decisions." (*C.H. v. Cape Henlopen Sch. Dist.* (3rd Cir. 2010) 606 F.3d 59, 70.) A school district's failure to provide adequate prior written notice is a procedural violation under the IDEA. (*Ibid.*)

Belmont-Redwood Shores predetermined its decision to reduce Student's nursing services. As of the parties' August 1, 2024 meeting Belmont-Redwood Shores did not intend to assign a full-time nurse to Student. Belmont-Redwood Shores did not issue a prior written notice when it proposed to change or reduce Student's nursing services and add services by a paraprofessional. This was a procedural violation of the IDEA.

Belmont-Redwood Shores argued it issued two prior written notices relating to Student's catheterization services. These prior written notices were issued on December 2, 2024, and January 27, 2025, following a November 26, 2024 amendment IEP meeting which was not at issue at hearing. The prior written notices related to protocols and procedures for implementing Student's catheterization, and not to the reduction of nursing services and addition of paraprofessional services. Belmont-Redwood Shores did not establish the issuance of the December 2, 2024 and January 27, 2025 prior written notices was sufficient to meet its obligation to issue a prior written notice following its decision to reduce Student's full-time nursing services.

Student proved the failure to provide a prior written notice denied Parents' meaningful participation in development of Student's IEP. Parents did not understand the action proposed or refused by Belmont-Redwood Shores. For example, they did not understand the role of a paraprofessional, or how 30 minutes of daily nursing services was sufficient to meet Student's needs. They did not understand what procedures and protocols would be followed, nor had a health plan been developed.

Student met her burden of proving by a preponderance of the evidence that Belmont-Redwood Shores denied her a FAPE by failing to provide a prior written notice about its decision to remove Student's full-time nursing services. Student prevailed on Issue 2f.

ISSUE 2h: DENIAL OF FAPE BY FAILING TO CONSIDER PARENTS' SUGGESTIONS FOR CREATING A SAFE ENVIRONMENT FOR STUDENT.

Student contends Belmont-Redwood Shores denied her a FAPE by failing to consider Parents' suggestions for creating a safe environment for Student. Belmont-Redwood Shores contends it had qualified nursing staff available to perform Student's catheterization services and was prepared to safely implement this service.

A central dispute at hearing was a disagreement between the parties about how Belmont-Redwood Shores would implement Student's catheterization. At the August 23, 2024 amendment IEP team meeting, Mother requested that she be permitted to observe the nurse implementing Student's catheterization over five days. Sandoval explained that the nursing staff would work with Parents on one day and call Parents with any concerns. The parties had different understandings about whether Mother could observe the nurse implementing Student's catheterization. Mother understood she could observe the nurse perform the catheterization service on Student's first day of attendance. Sandoval and Lau understood they would observe Parent perform the procedure on Student.

Student's first day of school at Sandpiper Elementary was September 6, 2024. When it was time to perform Student's catheterization, Parent was surprised to learn the nurses wanted to observe her. This resulted in frustration by all the parties. Mother

sought assistance from Principal Higgins. Lau became upset and left work for the day. Mother eventually agreed to allow Sandoval to observe her perform Student's catheterization procedure that day.

Sandoval believed Parents put unreasonable restrictions on the implementation of the catheterization services, including requesting observations of the nurses implementing the specialized physical health care services and asking about training of the paraprofessionals. However, Dr. Kennedy and Nurse Practitioner Costaglio's testimony that best practices for implementing catheterization included allowing observation of the person performing the service was more persuasive.

This incident was directly attributable to Belmont-Redwood Shores' failure to conduct a health assessment and develop a health plan in collaboration with Student's physicians. (Ed. Code, §§ 49423, subd. (a), 49423.5, subd. (a)(2); Cal. Code Regs., tit. 5, § 3051.12, subd. (b)(3)(D)(1)-(3).) Belmont-Redwood Shores should have collaborated with Student's medical providers to develop protocols and procedures for implementation of Student's specialized physical health care services. (*Ibid.*) This may have resulted in a streamlined approach for Student's catheterization services, including initial observations by Parents, and thereby allayed Parents' concerns. Its failure to do, or to engage in a constructive dialogue with Parents about their concerns, created confusion and misunderstandings. For example, at hearing Sandoval was critical of Parents' use of a longer catheter than typically used for a child. However, Mother's testimony was more persuasive that the longer length catheter was prescribed by Dr. Kennedy and easier to use to prevent reflux of urine into the bladder, and was corroborated by documentary evidence.

As of the date of hearing, Belmont-Redwood Shores had not provided Parents a copy of Student's health plan. Belmont-Redwood Shores also did not coordinate Student's catheterization services with Student's medical providers during the relevant time at issue as required by California law. Parents had no way of knowing the qualifications of the service providers or the specific standardized procedures Belmont-Redwood Shores intended to follow to implement Student's catheterization procedure. This created an unsafe environment for Student and ignored Parents' reasonable requests for a safe environment. This denied Parents the opportunity to meaningfully participate in the development of Student's IEP and caused a deprivation of education benefits.

Student proved by a preponderance of the evidence that Belmont-Redwood Shores denied her a FAPE by failing to consider Parents' suggestions for creating a safe environment for Student. Student met her burden of proof on Issue 2h.

ISSUE 3: DENIAL OF FAPE BY FAILING TO ALLOW STUDENT TO ATTEND SCHOOL UNTIL PARENTS CONSENTED TO THE AUGUST 23, 2024 AMENDMENT IEP.

Student contends Belmont-Redwood Shores prevented Student from attending school until Parents agreed to the August 23, 2024 amendment IEP. Belmont-Redwood Shores contends Student's school attendance was not conditioned on Parents' consent to the August 23, 2024 amendment IEP and that it was ready and willing to meet Student's health needs at school.

IEP team meetings are held and new IEP offers are generally made annually. (See 20 U.S.C. § 1414(d)(4)(A); 34 C.F.R. § 300.342(b) (2006); Ed. Code, § 56343, subd. (a).) Student's April 29, 2024 IEP was the operative IEP at the start of the 2024-2025 school year. Special education and related services shall be made available to the child with a disability in accordance with their IEP. (34 C.F.R. § 300.323(c)(2); Ed. Code, § 56344, subd. (b).)

Student met her burden of proving by a preponderance of the evidence that Belmont-Redwood Shores failed to allow Student to attend school until she consented to the August 23, 2024 amendment IEP. As discussed in Issue 2e, Belmont-Redwood Shores predetermined the removal of Student's full-time, one-to-one nursing services in the August 23, 2024 amendment IEP. Belmont-Redwood Shores made the determination to reduce Student's nursing services to 30 minutes daily and replace a full-time nurse with a paraprofessional prior to the start of the 2024-2025 school year.

Belmont-Redwood Shores' witnesses, including Higgins and Jimenez-Payne, testified they had an open discussion with Mother at the August 23, 2024 amendment IEP team meeting and assured her Student could start school. Their testimony was not persuasive. At hearing, Higgins could not explain how Student's catheterization needs could be met if Parents did not consent to the amended IEP and vaguely argued they would have to come up with a plan. Jimenez-Payne opined that if a new IEP was not signed, Student could not safely attend. Belmont-Redwood Shores did not hire a full-time nurse for Student or provide Parents a health plan prior to the start of the 2024-2025 school year, resulting in Parents being uncertain about how Student's catheterization services would be implemented.

Documentary evidence confirmed that Belmont-Redwood Shores did not plan for Student to start school until Parents consented to the August 23, 2024 amendment IEP. Higgins was a note taker at the August 23, 2024 amendment IEP team meeting. The IEP notes expressly indicated Student could start, "as early as August 26 pending receipt of the IEP and changes in doctor's order for timing of catheterization."

Belmont-Redwood Shores' argument that it made efforts to facilitate Student's timely start to the 2024-2025 school year by welcoming Student to visit the school and meet her teacher and coordinating staff and resources to meet Student's needs was a pretext. It was unreasonable to expect Student to start school on August 14, 2024, when it was unclear who would perform her catheterization services. Belmont-Redwood Shores should have planned for a full-time nurse and implemented the April 29, 2024 IEP at the start of the 2024-2025 school year. Belmont-Redwood Shores elected not to do so and instead conditioned Student's school attendance on Parents' consent to the August 23, 2024 amendment IEP.

Student proved by a preponderance of evidence that Belmont-Redwood Shores denied her a FAPE by failing to allow Student to attend school until Parents consented to the August 23, 2024 amendment IEP. Student prevailed on Issue 3.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1:

Belmont-Redwood Shores denied Student a FAPE during the 2024-2025 school year by failing to assess Student in all areas of suspected disability, specifically in health prior to the April 29, 2024 IEP team meeting.

Student prevailed on Issue 1.

ISSUE 2a:

Belmont-Redwood Shores denied Student a FAPE during the 2024-2025 school year in the April 29, 2024 IEP, as amended on August 23, 2024, by failing to offer Student appropriate health and medical services designed to meet Student's unique needs.

Student prevailed on Issue 2a.

ISSUE 2b:

Belmont-Redwood Shores denied Student a FAPE during the 2024-2025 school year in the April 29, 2024 IEP, as amended on August 23, 2024, by failing to offer a clear written health plan identifying the training, experiences, and qualifications for the service providers implementing Student's catheter services.

Student prevailed on Issue 2b.

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ISSUE 2c:

Belmont-Redwood Shores denied Student a FAPE during the 2024-2025 school year in the April 29, 2024 IEP, as amended on August 23, 2024, by failing to include all necessary IEP team members, specifically a school nurse.

Student prevailed on Issue 2c.

ISSUE 2d:

Belmont-Redwood Shores denied Student a FAPE during the 2024-2025 school year in the April 29, 2024 IEP, as amended on August 23, 2024, by developing Student's health plan without all necessary IEP team members present.

Student prevailed on Issue 2d.

ISSUE 2e:

Belmont-Redwood Shores denied Student a FAPE during the 2024-2025 school year in the April 29, 2024 IEP, as amended on August 23, 2024, by predetermining the removal of Student's full-time, one-to-one nursing services, thereby denying parental participation.

Student prevailed on Issue 2e.

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ISSUE 2f:

Belmont-Redwood Shores denied Student a FAPE during the 2024-2025 school year in the April 29, 2024 IEP, as amended on August 23, 2024, by failing to provide prior written notice about the decision to remove Student's full-time nursing services.

Student prevailed on Issue 2f.

ISSUE 2G:

Belmont-Redwood Shores denied Student a FAPE during the 2024-2025 school year in the April 29, 2024 IEP, as amended on August 23, 2024, by failing to offer training guidelines specific to Student's unique health and medical needs.

Student prevailed on Issue 2g.

ISSUE 2h:

Belmont-Redwood Shores denied Student a FAPE during the 2024-2025 school year in the April 29, 2024 IEP, as amended on August 23, 2024, by failing to consider Parents' suggestions for creating a safe environment for Student, thereby denying parental participation.

Student prevailed on Issue 2h.

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ISSUE 3:

Belmont-Redwood Shores denied Student a FAPE during the 2024-2025 school year by failing to allow Student to attend school until Parents consented to the August 23, 2024 amendment IEP.

Student prevailed on Issue 3.

REMEDIES

Student prevailed on all issues. Student proved by a preponderance of the evidence that Belmont-Redwood Shores denied her a FAPE by:

- failing to conduct a health assessment by a credentialed nurse or physician;
- failing to offer Student appropriate health and medical services designed to meet Student's unique needs;
- failing to offer a clear written health plan in the April 29, 2024 IEP, as amended on August 23, 2024, identifying the training, experiences, and qualifications for the service providers implementing Student's catheterization services;
- failing to include all necessary IEP team members in the April 29, 2024 IEP team meeting, specifically a school nurse;
- developing Student's health plan outside the IEP process;
- predetermining the removal of Student's full-time, one-to-one nurse;

- failing to provide prior written notice to Parents about the decision to remove Student's full-time nursing services;
- failing to offer training guidelines specific to Student's unique health and medical needs; and
- failing to consider Parents' suggestions for creating a safe environment for Student.

As remedies for Belmont-Redwood Shores' FAPE denials, Student requests that Belmont-Redwood Shores convene an IEP team meeting to develop a health plan with standardized procedures specific to Student's health needs. Student also requests training for Belmont-Redwood Shores' employees and staff, including the district nurse, director of special programs, and assistant superintendent on various issues, including the legal requirements for prior written notices, health assessments, health plans, and parental participation. Student further requests compensatory education for academics, social skills, occupational therapy, and physical therapy for schools days missed.

Courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(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, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable power extends to administrative law judges who hear and decide special education administrative due process matters. (*Forest Grove Sch. Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

In remedying a FAPE denial, the student is entitled to relief that is appropriate in consideration of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) Appropriate relief means “relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” (*Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496-97 (*Puyallup*).) School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Park, supra*, 464 F.3d 1025, 1033; *Puyallup, supra*, 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. (*Puyallup, supra*, 31 F.3d at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Ibid.*)

Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional Sch. Dist. No. 1* (D.Conn. 2008) 531F.Supp.2d 245, 265; *Orange Unified Sch. Dist. v. C.K.* (C.D.Cal. June 4, 2012, No. SACV 11-1253 JVS(MLGx) 2012 WL 247839, *12.) Compensatory education is an equitable remedy that depends upon a fact-specific and individualized assessment of a student’s current needs. (*Puyallup, supra*, 31 F.3d 1489,1496.; *Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be “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.” (*Id.* at p. 524.) However, hour-for-hour relief for a FAPE denial is not required by law. (*Puyallup, supra*, 31 F.3d at p. 1497.) An independent educational evaluation at public expense may also be awarded as an equitable remedy, if necessary to grant appropriate relief. (*Los Angeles Unified Sch. Dist. v. D.L.* (C.D.Cal. 2008) 548 F.Supp.2d 815, 822-823.)

Appropriate relief in light of the purposes of the IDEA may include an order that school staff be trained in areas in which violations were found, to benefit the specific student involved, or to remedy procedural violations that may benefit other students. (*Park, supra*, 464 F.3d 1025, 1034.)

Staff training is ordered because Belmont-Redwood Shores' staff departed significantly from the procedural requirements of the IDEA and showed a lack of understanding about health assessments, documenting specialized physical health care services in IEP's, and development of health plans for students with medical needs.

Student is entitled to an independent educational evaluation in health by a qualified nurse or licensed medical doctor selected by Parents to determine her health and treatment needs, and the impact of those needs on her educational program. Belmont-Redwood Shores shall convene an IEP team meeting to consider the independent health evaluation and fund the presence of the assessor at the meeting. The funding shall include up to six hours for the assessor's preparation, travel, and participation in the IEP team meeting.

Belmont-Redwood Shores argued it did not have the required consent to release information allowing it to communicate with Student's health care providers to coordinate Student's specialized physical health care services. Belmont-Redwood Shores shall provide Parents a consent and release of information in compliance with HIPAA to allow Student's physicians and health care providers to share protected health information and Student's treatment needs with Belmont-Redwood Shores in compliance with HIPAA, if it still requires this release.

Following the August 23, 2024 IEP team meeting, the parties had numerous conversations about how Student's specialized physical health care services could be implemented at school. During the hearing, the parties informed the ALJ that they reached a stipulation about how Student's specialized physical health care services could be implemented. The stipulation was stated on the record. On March 6, 2025, OAH issued an order requesting clarification of the parties' stipulation as to Student's specialized physical health care services in the interests of maintaining a clear and accurate record. The parties were ordered to confirm their stipulation in writing through their attorneys of record and file the stipulation with OAH by March 14, 2025. In the event the parties failed to file a stipulation, the verbal stipulation on the record would be stricken. The parties were unable to confirm the terms of the stipulation, and no stipulation was filed with OAH. Accordingly, the verbal stipulation is hereby stricken.

Student missed 16 school days between August 14, 2024, and September 5, 2024, because Belmont-Redwood Shores did not offer the specialized physical health services required for Student to attend school. As of the date of the hearing, Belmont-Redwood Shores had not offered Student a health plan identifying Student's required specialized health care services. Student is entitled to compensatory education for these FAPE violations. Student did not establish the type, or amount of compensatory services necessary to place Student in the position she would have been in but for Belmont-Redwood Shores' FAPE denials. However, Student is entitled to a remedy. Belmont-Redwood Shores' decision to condition Student's school attendance on Parents' consent to the August 23, 2024 amendment IEP was particularly egregious given the numerous procedural violations it committed.

Belmont-Redwood Shores shall directly fund the services of a private registered nurse or licensed vocational nurse trained in clean intermittent catheterization up to two hours daily to provide Student's daily catheterization services until such time as Belmont-Redwood Shores offers Student a written health plan in compliance with Education Code sections 49423 and 49423.5, and California Code of Regulations, title 5, section 3051.12. The health plan shall include a written statement:

1. from a licensed physician or surgeon stating the protocols and procedures developed through collaboration with Belmont-Redwood Shores' district nurse to be utilized for Student's clean intermittent catheterization and other necessary health related needs, including diaper changing;
2. identifying the qualified persons who possess an appropriate credential or qualified designated school personnel trained in the administration of specialized physical health care if they perform those services under the supervision of a credentialed school nurse or licensed physician;
3. describing any medically related training of the service providers necessary to enable the person or persons to provide Student's specialized physical health care services at school; and
4. including a written statement by Parents indicating their desire that Belmont-Redwood Shores assist Student in the matters set forth in the statement of the physician and surgeon.

The health plan shall be presented to Student's IEP team and attached to the IEP document.

An award of 52 hours of compensatory academic education will equitably account for the programming failure including failure to offer a health plan and specialized physical health care services. This was calculated at three hours per day for the 16 school days missed. In addition, Student is entitled to compensatory education for two hours missed physical therapy service and two hours missed occupational therapy services.

Belmont-Redwood Shores shall contract with a qualified non-public agency of Student's choice to provide a total 52 hours of academic instruction by a credentialed special education teacher through a non-public agency. Belmont-Redwood Shores shall provide Student two hours of physical therapy services, and two hours of occupational therapy services, for a total of four hours. The compensatory education hours for occupational and physical therapy may be fulfilled, at Belmont-Redwood Shores' option, by its employees or service providers, or a non-public agency. All compensatory education hours will be available for Student's use through the end of the 2025-2026 school year.

Belmont-Redwood Shores shall provide four hours of training to its special education department including its director of special programs, assistant superintendent, education services wellness coordinator, district nurse and all licensed vocational nurses, program specialists, special education teachers, and case managers on the legal requirements for special education health assessments, development of health plans, and requirements for specialized health care services. This training shall be provided by an attorney or law firm knowledgeable about special education law who does not currently represent Belmont-Redwood Shores.

ORDER

1. Within 10 days of this Decision, Belmont-Redwood Shores shall provide Parents a consent to disclose protected health information about Student's treatment needs to her physicians in compliance with HIPAA, if it still requires this release to communicate with Student's health care providers to coordinate implementation of Student's specialized physical health care services.
2. Belmont-Redwood Shores shall fund an independent health assessment of Student by a qualified nurse or licensed medical doctor selected by Parents to determine Student's health and treatment needs and their impact on Student's educational program. Parents shall provide Belmont-Redwood Shores with contact information for their selected assessor within 20 calendar days of this Decision. Within 10 business days of receipt of this contact information, Belmont-Redwood Shores shall contract with the assessor to perform the independent health assessment. Belmont-Redwood Shores shall cooperate with all reasonable requests of the assessor.
3. Belmont-Redwood Shores shall convene an IEP team meeting to consider the results of the independent health assessment within 30 days of submission of the written assessment report, and shall fund up to six hours for the assessor to prepare for, travel to, and attend the IEP team meeting to present their assessment.

4. Belmont-Redwood Shores shall directly fund the services of a private registered nurse or licensed vocational nurse trained in clean intermittent catheterization for up to two hours daily to provide Student's catheterization services until such time as Belmont-Redwood Shores offers Student a written health plan in compliance with Education Code sections 49423 and 49423.5 and California Code of Regulations, title 5, section 3051.12.
5. Belmont-Redwood Shores shall provide a total of 52 hours of individual academic instruction by a credentialed special education teacher through a non-public agency, two hours of occupational therapy services by an occupational therapist, and two hours of physical therapy services by a physical therapist. The occupational and physical therapy hours may be provided, at Belmont-Redwood Shores' option, by its related service providers, or a non-public agency. All compensatory education hours shall be made available to Student within 10 days of this Decision and may be used through the end of the 2025-2026 regular school year.
6. Within 60 days of this Decision, Belmont-Redwood Shores shall contract with a non-public agency or a law firm who specializes in special education law, to provide at least four hours training to all of Belmont-Redwood Shores' special education department, including the assistant superintendent, director of special programs, education services wellness coordinator, district nurse and all licensed vocational nurses, program specialists, special education teachers, and case managers, on the legal requirements for special

education health assessments, development of health plans, and requirements for specialized health care services. The training shall not be provided by an attorney or law firm currently representing Belmont-Redwood Shores. The training shall be completed by December 31, 2025. Belmont-Redwood Shores shall notify Parents and Parents' attorney in writing within 10 days of the date Belmont-Redwood Shores has completed such training.

7. All other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

JENNIFER KELLY

Administrative Law Judge

Office of Administrative Hearings