

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

NEW PACIFIC CHARTER-ROSEVILLE.

CASE NO. 2024110157

DECISION

JULY 01, 2025

On November 4, 2024, Parent, on behalf of Student, filed a due process hearing request, also called a complaint, with the Office of Administrative Hearings, called OAH, naming New Pacific Charter-Roseville, called New Pacific. On November 21, 2024, and January 2, 2025, OAH granted the parties' request to continue the hearing dates for good cause. Administrative Law Judge Deborah Myers-Cregar heard this matter by videoconference on January 28, 29, 30, February 4, 5, 6, 11, 12, 13, 25, 26, 27, March 18, 19, 20, 25, 26, 27, April 1, 2, 10, and 22, 2025.

Attorney Molly Watson represented Student. Parent attended all hearing days on Student's behalf. Attorneys Tilman Heyer and Marcy Gutierrez represented New Pacific. Stacie Jones, assistant director of special education services, and Tim Ribota, director of educational services, attended the hearing on New Pacific's behalf.

At the parties' request, the matter was continued to June 9, 2025, for written closing briefs. The record was closed, and the matter was submitted on June 9, 2025.

ISSUES

1. Did New Pacific deny Student a free appropriate public education, called a FAPE, during the 2023-2024 school year by failing to offer appropriate placement?
2. Did New Pacific deny Student a FAPE during the 2023-2024 school year by failing to implement his April 14, 2023 individualized education program, called IEP, by not providing:
 - behavior intervention services;
 - specialized academic instruction;
 - counseling;
 - speech and language therapy;
 - occupational therapy; and
 - noise blocking headphones and access to a calming space?
3. Did New Pacific deny Student a FAPE during the 2023-2024 school year by failing to timely convene an IEP team meeting?
4. Did New Pacific deny Student a FAPE during the 2024-2025 school year by:
 - failing to have an IEP in place at the beginning of the school year;
 - failing to offer appropriate placement; and
 - failing to offer appropriate behavior support?

5. Did New Pacific deny Student a FAPE during the 2024-2025 school year by failing to implement his April 10, 2024 IEP by not providing:
 - a calming space;
 - specialized academic instruction;
 - counseling;
 - speech and language therapy;
 - occupational therapy; and
 - behavior intervention services?
6. Did New Pacific deny Student a FAPE during the 2024-2025 school year by failing to timely provide a complete copy of Student's records upon request?

JURISDICTION

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

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

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

During the 2023-2024 school year, Student attended New Pacific within Pacific Charter Institute, an independent charter school responsible for providing special education and related services to its students. During the 2024-2025 school year, Student attended New Pacific and disenrolled on September 11, 2024. Student was nine years old and in fourth grade at the time of hearing. Student was enrolled in Pacific Charter Institute and New Pacific at all relevant times. Student was eligible for special education under the category of autism.

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LEGAL FRAMEWORK

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

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

ISSUE 1: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE PLACEMENT?

Student contends New Pacific did not provide appropriate placement at the November 28, 2023 IEP when it placed Student on an independent study placement after his third student incident report and a dangerous elopement. An elopement is the act of leaving a supervised area without permission or awareness.

Student also contend that New Pacific did not offer appropriate placement with sufficient behavior support at the January 26, 2024 IEP, when it placed Student back in general education placement on January 10, 2024, when he engaged in school refusal beginning January and February 2024.

New Pacific contends its placement offer was appropriate. In its closing brief, New Pacific did not address its November 2023 offer changing Student's placement to independent study, or its January 2024 offer transitioning Student back to general education with behavior support. New Pacific asserts Parent embellished stories about Student's behaviors.

The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. (*Endrew F.*, *supra*, 580 U.S. at p. 404.) 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. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

A student's unique needs that must be addressed by the IEP are not limited to the child's academic needs but may also include social and emotional needs that affect academic progress, school behavior and social behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) When a student's behavior impedes the child's learning, or that of others, positive behavioral interventions and supports, and other strategies, should be considered to address that behavior. (20 U.S.C. § 1414 (d)(3)(B); Ed. Code, § 56521.2, subd. (a)(8).)

California law defines specific educational placement as a unique combination of facilities, personnel, location or equipment necessary to provide instructional services as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings. The IEP team must document why the student's disability prevents his needs from being met in a less restrictive environment, even with the use of supplementary aids and services. (Cal. Code Regs., tit. 5, § 3042.)

Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must include the alternative placements such as instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. The continuum must also include provision for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement. (34 C.F.R. § 300.115; Ed. Code, § 56360.)

Generally, the appropriate placement option is the least restrictive environment in which the child can be educated. The IDEA requires school districts ensure that children with disabilities are educated alongside their nondisabled peers "[t]o the maximum extent appropriate." (20 U.S.C. § 1412(a)(5)(A).) School officials may remove a disabled child from the regular classroom "only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (*Ibid.*) This provision reflects the IDEA's "strong preference" for educating children with disabilities in a regular classroom environment. (*Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834 (*Poolaw*).)

In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that the child needs. Also, a child with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116.) The law requires students to be educated with nondisabled peers to the maximum extent appropriate. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only if the nature or severity of a child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A).)

Whenever feasible, a school district must push support services into the regular classroom rather than remove students from it. A school district may not remove a student from a regular education classroom solely because of needed modifications in the general education curriculum. (*Los Angeles Unified School District v A.O.* (9th Cir. 2024) 92 F.4th 1159, 1176, citing *D.R ex tel. R. R. v Redondo Beach Unified Sch. Dist.* (9th Cir. 2022) 56 F.4th 636, 646, quoting 20 U.S.C. § 1412(a)(5)(A).)

A four-factor test must be applied to the evidence to determine whether a school district has complied with the least-restrictive-environment requirement. (*Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*).)

The first and most important factor compares the academic benefits a child receives from placement in the regular classroom with the academic benefits available in a special education classroom. (*Id.* at p. 1400–1401; *Poolaw, supra*, 67 F.3d at p.836.)

The second factor considers the non-academic benefits a disabled child derives from being educated in a regular classroom, such as the development of social and communication skills from interaction with nondisabled peers. (*Rachel H., supra*, 14 F.3d at p. 1404; *Oberti v. Board of Education*, 995 F.2d 1204, 1216 (3d Cir. 1993); *see also Ms. S. v. Vashon Island School District*, 337 F.3d 1115, 1137 (9th Cir. 2003), *superseded by statute on other grounds*, 20 U.S.C. § 1414(d)(1)(B).)

The third factor weighs the potential negative effects a disabled child's presence may have on the education of other children in the classroom or the teacher. (*Rachel H., supra*, 14 F.3d at p. 1404.)

The fourth factor considers the costs to the school district of providing the supplementary aids and services necessary to educate a disabled child in the regular classroom. (*Ibid.*)

STUDENT'S INITIAL APRIL 14, 2023 IEP

Pacific Charter Institute offers several different educational programs and campuses, including an independent study program at Sutter Peak Charter Academy, and an in-person program at New Pacific.

Beginning January 2023, Student enrolled in Sutter Peak Charter Academy, while on a waitlist to attend New Pacific. Sutter Peak Charter Academy assessed Student for special education eligibility. During his initial psychoeducational assessment, Student

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eloped from the testing site. He returned with Parent, and he asked to reschedule testing. He returned, and the school psychologist completed her testing that day. The assessments demonstrated Student had average

- academic achievement;
- behavioral outbursts with a history of eloping;
- sensory processing deficits;
- attention deficits; and
- social pragmatic deficits.

Sutter Peak Charter Academy found Student eligible for special education under the primary category of autism. New Pacific's psychologist Whitney Marks, assistant director Stacie Jones, principal Eric Garber, and program specialist Adrienne Butler attended Student's initial IEP team meeting on April 14, 2023, along with Parent. The meeting was convened, continued, and completed on May 15, 2023.

The April 14, 2023 IEP offered for the 2023-2024 school year:

- general education setting for 88 percent of the school day at New Pacific;
- outside of general education for 12 percent of the school day;
- two 30-minute specialized academic instruction sessions per week, to check in and out, help refocus for his work completion goal, on a push in or push out basis;
- two 30-minute occupational therapy sessions per week;
- two 30-minute speech and language sessions per week, with future option for group social skills;

- positive behavior support strategies such as
 - a reward and incentive chart,
 - positive reinforcement,
 - chunking assignments and tasks,
 - preloading his daily schedule,
 - providing consistent routines,
 - giving warnings for transitions,
 - making sure behavior expectations and consequences are clear,
 - social stories,
 - visual schedules,
 - noise cancelling headphones,
 - checking in and out, and
 - instructing self-soothing strategies, and developing behavior goals; and
- a functional behavior assessment to be conducted by New Pacific.

The functional behavior assessment was necessary to help shape Student's behavioral program. The IEP offered four goals in work completion and behavior; pragmatic language; sensory processing and regulation; and visual motor integration for handwriting.

Parent signed consent to the functional behavior assessment on May 11, 2023.
Parent signed consent to the IEP without exception on May 25, 2023.

STUDENT'S TRANSITION TO NEW PACIFIC CHARTER GENERAL EDUCATION PLACEMENT

On August 14, 2023, Student began attending New Pacific on the first day of the 2023-2024 school year. New Pacific held a total of nine IEP amendment meetings, in addition to Student's annual IEP team meeting in April 2024.

New Pacific provided a small open campus, with classrooms located in a converted house, portables, and other commercial buildings, on neighboring sites across the street. The campus had low fences and gates which did not lock. New Pacific uses project-based learning incorporating leadership and collaboration into its academic program. Student's third grade classroom was on the second floor of the school building. The campus had a perimeter fence with two open gates. Student's classroom had 30 students, a teacher, and a classroom aide. New Pacific provided specialized academic instruction and supplementary services as required by a student's IEP. The campus did not have a special day class, which typically is a classroom with a low student to teacher ratio and only special education students.

BEHAVIOR INCIDENTS PRIOR TO COMPLETION OF THE FUNCTIONAL BEHAVIOR ASSESSMENT

When Student enrolled in New Pacific, Parent shared concerns about Student's needs. Parent had placement concerns at the outset related to Student's behavior and his transition to an in-person program. Parent was concerned he would get overstimulated or scared, his behaviors would escalate, and he would elope from the classroom.

Student began having behavioral incidents within three days of the beginning of the 2023-2024 school year. While some behaviors occurred in the classroom, the most severe behaviors related to his transition to, from, and during the aftercare program offered at New Pacific.

The first behavior incident occurred on August 17, 2023. Student and Parent left the New Pacific after-school program but were still on campus. Student was angry and began hitting Parent, who cried out for help. Parent gave permission for New Pacific staff to perform a safety restraint intervention. Student hit school staff. New Pacific's Principal, Eric Garber, prepared a Student Incident Report.

On September 20, 2023, Student eloped from the aftercare program and tried to climb over the school gate. He began breaking a wood table, threw a large rock and metal water bottles, and ran around the school grounds. Parent was not present but gave permission for New Pacific staff to perform a restraint safety intervention. New Pacific's Principal, Garber, prepared a Student Incident Report.

On September 20, 2023, Keana Ursua, a paraprofessional aide, was present and assisted with restraining Student's arms when he eloped from the after-school program. Student left New Pacific's after school program and ran around different parts of campus, between the gate openings. Ursua described Student as skipping, bouncing, running, side shuffling, and growling between the three entry points. Student was not using his words and was using long grunting sounds. After 20 minutes, Parent arrived and tried to engage Student, but he ran from her. Parent tried to entice him to come to her and do something fun. Student did not want to. Then, Student began running toward Parent and hit her. Parent back peddled, but Student cornered her, made contact and hit her. Ursua, education specialist Brennan Bruegger, and another aide

intervened and tried to restrain him. Parent gave him a big hug, and he tried to bite her and kick her. Ursua touched him and tried to get him to calm down. Ursua did not restrain him or restrict his movement. She had her arm around him and spoke calmly. She told him she was not comfortable with how he was using his body to push her, and he stopped. When Parent walked Student to the car, he ran ahead and locked himself in the car.

On September 25, 2023, the IEP team met to discuss whether the placement with the current level of behavior support was meeting Student's needs. The functional behavior assessment was not yet completed. At the IEP team meeting, Stacie Jones, New Pacific's assistant special education director, discussed placement and whether New Pacific was the right placement for Student. The IEP team discussed offering behavior support first, before further discussing or making decisions about placement. Parent shared she was trying to get outside counseling for Student. Parent discussed the possibility of using positive behavior support strategies such as a reward and incentive chart with stars for positive behavior and checking in and out before and after transitions. The team discussed motivating him to transition by allowing him to use his Chromebook for 10 minutes.

Board Certified Behavior Analyst Kelsey Gundestrup, a contracted behaviorist from Total Education Solutions, who was conducting Student's functional behavior assessment, wanted to observe Student at school the next day to finish her report. Gundestrup wanted to conduct more observations at school and at the after-school program, and to interview Parent before completing her report. Whitney Marks, New Pacific's psychologist, wanted to implement a check-in process with Student at the

beginning of his day, and a check out process at the end of the day, as he transitioned to the after-care program. Gundestrup and Parent discussed how school was a trigger for his behavior.

Principal Garber was concerned and discussed several behavioral incidents, which mostly occurred transitioning Student to the after-school program. While some New Pacific staff members were trained in restraint, most were not.

New Pacific offered no additional behavior support services, and did not make changes to the IEP services, supports, or placement. The IEP was continued for the functional behavior assessment to be completed, initially scheduled for October 23, 2023, but not held until October 30, 2023.

FUNCTIONAL BEHAVIOR ASSESSMENT AND OCTOBER 30, 2023 IEP

The IEP team met on October 30, 2023, and November 17, 2023, to review the functional behavior assessment and to discuss whether the placement with the current level of behavior support was meeting Student's needs. Gundestrup presented the functional behavior assessment findings. Gundestrup observed Student twice in the classroom, but not on the playground or in the afterschool program. She also interviewed Parent and reviewed Student's initial IEP and work samples. Gundestrup's main concerns were Student's behavior disruptions during class, his elopement from supervised areas, and his aggression towards property and people, as described by the incident reports and staff at the September 25, 2023 IEP team meeting.

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After observing Student and analyzing her data, Gundestrup determined Student had primarily met the criteria for mild to moderate behavioral intensity. Student also met the criteria for having some severe behavior occurrences, based on staff reports. A severe behavior occurrence means it would prevent academic instruction, and if Student was not able to recover from it quickly, his behavior could require physical restraint.

Gundestrup's assessment hypothesized that the function of Student's behaviors was to escape from unpreferred activities and to gain tangible access to preferred and unavailable items. The functional behavior assessment theorized a large component of Student's behaviors could be due to him not having consequences and follow through, as his escape behaviors were being allowed in the classroom. She theorized that a high percentage of his escape behavior was due to him not being motivated or reinforced.

The functional behavior assessment recommended implementing proactive and reactive behavior support strategies to promote a decrease in maladaptive behavior. The suggested behavior support plan included

- priming Student before an activity,
- creating a visual schedule in the classroom,
- presenting structured choices,
- providing a small space or area for him to calm down,
- providing the option to take a break, without escalating his behavior or allowing him to escape the school day.

She also recommended a preference assessment, redirection, and consistency.

Gundestrup's assessment recommended a new goal for Student to vocally ask for a break before leaving the immediate environment. This proposed goal was similar to Student's sensory processing regulation goal which encouraged him to use positive self-talk and coping strategies to handle non-preferred tasks and work demands in which he demonstrated negative behavior.

At the October 30, 2023 IEP team meeting, Student's third-grade teacher, Cynthia Peer, described several behavioral concerns in the classroom. She had difficulty getting Student to a quiet and safe place for him to calm down, and difficulty redirecting him once behaviors began. Student would leave the classroom and sit outside when he was upset, but that was not a safe technique. Peer also reported Student had a difficult time navigating social situations, and often became upset, would underperform academically, and then call Parent to pick him up. Gundestrup was concerned Student was calling home to be picked up early. Peer mentioned that Student's behavior was easier to manage when he went home early.

Based on these discussions, Parent and Gundestrup questioned the appropriateness of the placement. Gundestrup was not sure if the environment was right for Student, because of the two unlocked school gates, or how far staff could push him before his behavior escalated and resulted in elopement. Student had not eloped from a classroom yet, and Principal Garber shared his concerns that staff might not be successful in intervening in the future. At hearing, Gundestrup clarified her concerns that New Pacific was not a traditional brick and mortar campus with high walls and gates that locked from the inside.

In response, Jones reported home school or independent study options through Pacific Charter Institute were full and had wait lists. At hearing, Jones explained she did not believe independent study was appropriate for Student and only suggested it to placate Parent. Jones did not explain why she felt the need to placate Parent. This weakens New Pacific's credibility that the independent study placement decision was appropriate.

Parent wanted Student to be placed on a waitlist for a home school program, but the IEP team recommended a modified school day. The IEP team discussed Student's behavior and ideas to keep him safe. Gundestrup would work with staff to support the implementation plan once it was developed.

While the IEP team discussed behavior supports, the October 30, 2023 IEP offered no written behavior support plan, behavior implementation plan, no updated behavior goal, and made no change in placement. The IEP team agreed to meet before Thanksgiving Break to adjust the IEP to a modified school day, if the IEP team approved it.

On October 31, and November 1, and 3, 2023, Jones e-mailed Parent to update her that the IEP team was concerned about Student attending a modified school day for only half days, and missing academics. Jones discussed the option of a modified school day with New Pacific's special education director and school psychologist Marks. Jones informed Parent New Pacific's recommendation changed, and it would instead offer and develop a behavior plan first, before further discussing or recommending another placement. Jones told Parent New Pacific would do their best to start the behavior plan the following week. Jones encouraged Parent to apply for the waitlist at Sutter Peak, Student's prior independent study program, through Pacific Charter Institute.

ADDITIONAL BEHAVIORAL INCIDENTS FOLLOWING THE OCTOBER 30, 2023 IEP OFFER.

On November 9, 2023, Student had two behavior incidents during, and upon leaving, the New Pacific park field day event. Student began hitting Parent. Two school staff, Bruegger and Ursua, trained in crisis prevention intervention restraints and de-escalation, restrained Student and put him in a 'T hold,' in which Student was standing with his arms outstretched, while staff each held one arm. When Student calmed down, Parent walked him back towards her car, but he ran into and across a large intersection without stopping. Parent called the police and the Mobile Crisis Team because she could not catch him. Peer prepared a Student Incident Report, noting only that Parent asked for help to deescalate Student, and Peer sent staff to help Parent. The Mobile Crisis Team documented the event.

The November 9, 2023 incident lasted 45 minutes and was the longest behavioral episode Ursua observed, as Student locked Parent out of the car. Ursua opined his behavioral incidents were otherwise manageable and she could redirect him. Ursua spoke candidly about Student's less severe behavioral episodes during class, recess and lunch. Once to twice a week, she saw Student get upset, slam his hands hard on the desk, and try to leave the situation. He often ran to her to talk. Approximately every two weeks, Student would yell out in class 'I am going to hit you. I am going to punch you.' Ursua was able to talk to him and redirect him. She would take him outside and reason with him.

In sum, while New Pacific was in the process of completing its functional behavior assessment and behavior intervention plan, Student had behavior resulting in three incident reports for the 2023-2024 school year. Student previously eloped from

transitions from New Pacific after-school program on campus, inside the New Pacific campus, and New Pacific's park field day event. Construction on the school campus reached its peak and there was limited playground space.

By November 9, 2023, there was no written behavior support plan or behavior implementation plan yet. At hearing, Marks and Gundestrup opined Student should not have been allowed to participate in any future park field day events without a safety plan. Student stopped attending New Pacific regularly after the November 9, 2023 incident.

NOVEMBER 17 AND 28, 2023 IEP AMENDMENT OFFERED INDEPENDENT STUDY

On November 17, 2023, the IEP team met, but Gundestrup did not attend. The IEP team discussed placement options including a modified school day, a short term two-week independent study at New Pacific, and Sutter Peak Charter Academy's long-term independent study program, which had an opening. Parent did not want to enroll him in Sutter Peak Charter Academy because of her professional school program and the lack of socialization opportunities for Student. The IEP team did not offer a modified school day out of concern Student would be missing too many hours of academics. The November 17, 2023 IEP team recommended independent study, but did not offer additional behavior support or a written behavior plan.

The November 17, 2023 IEP team offered independent study as a temporary option because based on their research, no other schools, special day classes, non-public school, or county office of education schools had openings or were close by. Jones and Butler, the program specialist, had contacted Pacific Charter Institute and a few nearby

schools to determine what placement options were available for Student. Other than Sutter Peak's sudden availability, there were no spots available. Parent was concerned about Student losing out on socialization. Principal Garber and the other IEP team members agreed it was a temporary solution based on Student's safety concerns until a better placement option or solution could be found. At hearing, Marks, Peer and Jones testified they recommended independent study at the IEP to placate the Parent. This undermines New Pacific's reasoning that it offered an appropriate placement in the least restrictive environment when it offered independent study.

The IEP team agreed to place Student on independent study after Thanksgiving, until the end of winter break in January 2024. The IEP meeting was continued to allow for the new offer of FAPE to be written, and to allow Parent to sign New Pacific's independent study agreement.

The November 28, 2023 IEP amended the April 14, 2023 IEP, and amended the two-page FAPE offer of services. It changed Student's program to independent study, intended to last 14 days or less. The frequency and duration of Student's special education related services would remain the same. The location was changed to allow for virtual or in-person services, as arranged by the Parent and service provider. There was no evidence that Parent signed the IEP. However, on November 28, 2024, Parent signed the independent study agreement.

- The placement could not exceed 14 days.
- Teacher Peer would assign Student a body of work to be completed and submitted by December 14, 2023.
- Teacher Peer would evaluate the time value of the work products, and certify the qualifying days credited.

INDEPENDENT STUDY WAS NOT AN APPROPRIATE PLACEMENT

There was no evidence how Student performed academically during this time. Student received the curriculum packet, but there were no curriculum objectives, and no method of study identified. Student received one virtual speech session, but he did not do well in the virtual setting.

Student established that his placement needs in the 2023-2024 school year required general education placement with opportunities for socialization with peers and appropriate behavior support. Although there was no expert testimony, Gundestrup's testimony and assessment as a board-certified behavior analyst, and Ursua's and Peers' testimony established that Student's behaviors in the classroom were largely manageable with behavior support.

The November 28, 2023 amendment IEP offer of independent study placement was not appropriate because it was not the least restrictive environment adequate to meet Student's needs. New Pacific was required to offer placement to Student so he could be educated with nondisabled peers to the maximum extent appropriate. Instead, New Pacific removed Student not only from the general education environment, but from the school environment completely. The evidence did not support a finding that Student could not be educated in the general education environment with appropriate aids and supports.

The evidence did not support a finding that Student's behavior in his general education classroom impeded his learning or that of others, to the extent that a more restrictive placement was warranted. Student's behavior mildly and moderately disrupted the general education classroom. Once, Peer had to move students to the other side of the classroom to allow Student more personal space and a quieter

environment. Student's typical disruptions included verbal outbursts and quiet screaming sounds, talking to other students during instruction time, and needing assistance to navigate relationships and physical contact, such as hugging without permission. When Student was off task, Peer checked in on him, gave warnings as they transitioned to a new task. Peer could usually redirect Student and opined his behavior was relatively normal for a third-grade male student.

New Pacific did not offer general education placement with supplementary aides, behavior support, a behavior intervention plan, or a transition aide to help with transition elopements, to keep him in general education closer to 88 percent of his day. Student required behavior support and a behavior intervention plan to assist Student with transitions. New Pacific did not use appropriate supplementary aids and services prior to changing his placement to a more restrictive setting, as required. New Pacific could not accommodate his behavior support needs and instead recommended one of the most restrictive placements.

Student's independent study lasted 12 school days, from November 27 to December 14, 2023. Student attended school on December 14, but did not return December 15 through 22, 2023, the beginning of winter break.

New Pacific did not comply with the least-restrictive environment requirement presented in *Rachel H.* (*Rachel H., supra*, at p. 1400–1401.)

The first factor compares the academic benefits Student receives from placement in the regular classroom with the academic benefits available in a special education classroom. In this case, New Pacific did not offer placement in a special education

classroom, but instead, in an independent study program. Thus, the analysis of this factor will compare the academic benefits of a general education classroom with an independent study program.

Student had average academic achievement with some deficits. Student was able to keep up with his general education peers academically. New Pacific removed Student from general education placement the entire 88 percent of his school day, and Student merely completed a packet of academic assignments at home and turned them in. There was no evidence Student could complete the work independently. Comparatively, at New Pacific, Student benefitted from being taught by a teacher in a structured environment. Therefore, the academic benefits of a general education classroom outweighed the benefits of the independent study program.

The second factor considers the non-academic benefits a disabled child derives from being educated in a regular classroom, such as the development of social and communication skills from interaction with nondisabled peers. (*Rachel H.*, *supra*, 14 F.3d at p. 1404; *Oberti v. Board of Education* (3d Cir. 1993) 995 F.2d 1204, 1216.) Student had several friends and played physical games with them on the playground. He had a small group of friends he played with. When New Pacific removed Student from general education, he was not able to work on his work completion and behavior goal, his pragmatic language goal, or his sensory processing and regulation goal. New Pacific's independent study placement did not offer any non-academic benefits because Student could not develop his social and communication skills from interaction with nondisabled peers.

The third factor weighs the potential negative effects a disabled child's presence may have on the education of other children in the classroom or the teacher. (*Rachel H., supra*, 14 F.3d at p. 1404.) Student enjoyed interacting with and presenting projects in front of his peers. Although his teacher, Peer, initially reported he was easily distracted and had impulsive behavioral outbursts, she also opined she and the two classroom aides, in combination with Bruegger's educational services, were able to redirect him. Student's typical disruptions were mild in nature and included verbal outbursts and quiet screaming sounds, talking to other students during instruction time, and needing assistance to navigate relationships and appropriate physical contact. Student's presence in the classroom had a minimal negative impact on classroom instruction.

The fourth factor considers the costs to the school district of providing the supplementary aids and services necessary to educate a disabled child in the regular classroom. (*Ibid.*) There was no evidence presented as to cost and neither party raised cost as a factor that was considered when New Pacific offered Student independent study.

In sum, in the November 28, 2023 IEP, New Pacific inappropriately changed Student's placement to independent study. This placement offer was not academically or non-academically appropriate and was not the least restrictive environment for Student. New Pacific's offer of independent study placement was not the least restrictive environment because Student did not participate in or receive academic benefit from a general education classroom.

Student proved the November 28, 2023 IEP offer of independent study failed to offer Student a placement adequate to meet Student's needs and therefore denied him a FAPE.

DECEMBER 11, 12, AND 21, 2023 AMENDMENT IEP'S ADDED A BEHAVIOR INTERVENTION PLAN, A BEHAVIOR GOAL, AND SERVICES

During Student's independent study placement, the IEP team continued to meet to develop his behavioral program to support his placement. On December 11, 2023, the IEP team discussed placement and the proposed behavior implementation plan to support Student in anticipation of his return from independent study. Parent requested an aide to transition Student back to the campus. New Pacific wanted to implement the behavior intervention plan first.

The December 11, 12, and 21, 2023 amendment IEP's updated Student's progress on his pragmatic language goal, and work completion and behavior goal in a one-to-one setting. It did not update all his goals. The amendment IEP updated his three-page FAPE offer of services. Garber and the IEP team developed a welcome plan to help Student transition onto campus, in the calm down center and into the classroom, which was reflected in the updated program accommodations with daily check-in with the education specialist upon arriving at school. Garber clarified that by December 2023, he, Bruegger, Ursua and another staff member completed crisis prevention intervention training hosted by the County Office of Education, to safely intervene and deescalate students. Garber added five walkie talkie radios for staff to communicate urgent messages across campus.

Student's behavior intervention plan identified his target behaviors as disruption in the form of

- engaging in alterative activities,
- screaming,
- attempting or successfully engaging in property destruction,

- attempting or successfully engaging in aggression, and
- elopement from a supervised area.

The behavior intervention plan required that duration data be collected by an adult. A timer would be used when Student engaged in disruption and would end when he complied with adult instructions. The responsible adult was not specified but would logically have been the teachers and aides in the classroom, and the behaviorist.

Eight antecedent modifications were listed.

- Staff would prime Student with what would be happening throughout the day.
- Staff would run a preference assessment so Student would know what he would be earning for his expected behaviors.
- Staff would implement a visual schedule to show what work he could expect for the rest of the day.
- Staff would allow access to a safe area when he was over stimulated.
- Staff would praise Student for engaging in safe choices and following directions.
- Staff would remind Student of his schedule when he engaged in non-preferred activities.
- Staff would give Student structured choice making opportunities.
- Staff would give Student transition warnings.

Parent gave written consent to the behavior intervention plan on December 18, 2023.

The December 11, 12, and 21, 2023 IEP's offered increased services and added:

- a behavior goal to address Student's dysregulation, with the school psychologist and behaviorist collecting data to develop baselines;
- a behavior intervention plan;
- two 30-minute weekly sessions of in-person or virtual behavior intervention services;
- 30 minutes of weekly in-person or virtual counseling;
- access to a calm-down space with staff support; and
- program accommodations including transition warnings, and a communication log.

Parent gave written consent to the December 21, 2023 IEP on February 15, 2024. New Pacific received it on February 28, 2024.

JANUARY 26, 2024 IEP AMENDMENT CHANGING BACK TO IN-PERSON GENERAL EDUCATION PLACEMENT

The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. (*Endrew F.*, *supra*, 580 U.S. at p. 404.)

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In determining the educational placement of a child with a disability, a school district must ensure that:

- placement decisions are made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
- placement decisions satisfy least restrictive environment requirements;
- placement is determined annually, is based on the child's IEP, and is as close as possible to the child's home;
- unless the IEP specifies otherwise, the child attends the school that he or she would if nondisabled;
- in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- a child is not removed from age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116; Ed. Code, § 56342.)

Student's January 26, 2024 IEP amendment ended his independent study placement, and his services returned to being provided in-person at New Pacific. No one attended the IEP in person, and instead, circulated the IEP document for signatures. Parent conferred with her attorney and consented to the January 26, 2024 IEP on February 15, 2024, which New Pacific received on February 28, 2024.

School resumed on January 8, 2024. New Pacific did not have a calm-down space ready, as written in Student's IEP, but did by January 10, 2024. Student missed two days of school and returned on January 10, 2024, with a plan to have Bruegger meet them at their car to welcome Student onto campus. Bruegger would first take Student to a calming space and then transition him to the classroom.

GENERAL EDUCATION WITH BEHAVIOR SUPPORTS WAS AN APPROPRIATE PLACEMENT

The January 26, 2024 IEP amendment changed placement back to general education 88 percent of the time with a behavior implementation plan. The IEP amended the three-page FAPE offer of services by changing the location of services to be provided in person. The IEP increased program accommodations to include additional transition warnings, structured choice-making, and daily check-ins and check outs with the education specialist and the teacher. The IEP included program modifications including a journal with behavior expectation and preference assessment incentives in a journal for Student's use.

Student did not establish New Pacific denied Student a FAPE by offering general education with behavior support and a behavior intervention plan. Based upon what New Pacific knew at the time, returning Student to the general education placement in January 2024 was adequate to meet Student's needs and therefore did not deny him a FAPE.

Gundestrup's testimony and assessment as a board-certified behavior analyst, and Ursua's and Peers' testimony established that Student's behaviors in the classroom were largely manageable with behavior support. The behavior intervention plan,

incorporated into the December 21, 2023 IEP amendment, was developed after a functional behavior assessment, and was individualized to Student's needs. New Pacific increased safety protocols by training additional staff with crisis prevention intervention training and adding five walkie talkies for staff use for behavioral emergencies. New Pacific's December 21, 2023 amendment IEP also added a behavior goal, program accommodations, and a welcome plan with a calming center to address and ameliorate Student's behaviors.

While Student alleges the general education placement was not appropriate because New Pacific did not provide behavior support to address school refusal, the evidence established Student did not engage in school refusal before the January 26, 2024 IEP amendment. At hearing, Gundestrup opined the behavior intervention plan could have been generalized to address Student's school refusal.

The evidence established Student benefitted from being taught by a teacher in a structured environment. Therefore, the academic benefits of a general education classroom outweighed the benefits of the independent study program.

The evidence established Student would receive non-academic benefits as he navigated through social relationships and further developed his social and communication skills from interaction with nondisabled peers. New Pacific's general education program supported Student in progressing in his work completion and behavior goal, his pragmatic language goal, or his sensory processing and regulation goal.

The evidence established Student's presence in the classroom had a minimal negative impact on classroom instruction.

New Pacific complied with the least-restrictive environment requirement presented in *Rachel H.* (*Rachel H., supra*, at p. 1400–1401.) New Pacific’s offer of general education with the additional behavior supports behavior intervention plan, staff training, and program accommodations was an appropriate placement offer adequate to meet Student’s needs. (34 C.F.R. § 300.116; Ed. Code, § 56342.)

ISSUE 2a: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO IMPLEMENT HIS APRIL 14, 2023 IEP BY NOT PROVIDING BEHAVIOR INTERVENTION SERVICES?

Student contends New Pacific failed to materially implement Student’s April 14, 2023 IEP and did not provide behavior intervention services beginning November 2023, when it placed Student on independent study, and also beginning February 2024, when Student engaged in school refusal.

New Pacific contends Parent did not provide consent for behavior intervention services until February 28, 2024, with only 12 weeks of school remaining. New Pacific contends that after Parent consented to the services, Gundestrup, who New Pacific contracted with to provide behavior intervention services, was on campus frequently and tried to arrange her schedule to coincide with Student’s unpredictable attendance.

Supplementary aides and supports include behavior support. (20 U.S.C. § 1414(d)(3)(B).) In the case of a student whose behavior impedes the child’s learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (Ed. Code, § 56521.2, subd. (a)(8).)

A district's material failure to implement the child's IEP may violate the IDEA. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 815.)

NO FAILURE TO IMPLEMENT FROM APRIL 14, 2023, TO FEBRUARY 28, 2024

New Pacific did not offer Student behavior intervention services at the April 14, 2023 IEP. New Pacific had no obligation to implement services which were not offered and accepted in the IEP. Therefore, New Pacific did not deny Student a FAPE by not implementing behavior intervention services not included in the April 14, 2023 IEP, until February 28, 2024, when Parent consented to the December 21, 2023 and January 26, 2024 IEP amendments.

FAILURE TO IMPLEMENT FROM FEBRUARY 28, TO MAY 28, 2024

The December 11, 12, and 21, 2023 IEP amendments to the April 14, 2023 IEP offered behavior intervention services, a behavior implementation plan, and a new behavior goal. Parent gave written consent to the behavior implementation plan on December 18, 2023. Parent gave written consent to the December 21, 2023 IEP amendment on February 15, 2024. New Pacific received it on February 28, 2024, and New Pacific's responsibilities to implement behavior intervention services began when it received Parent's consent.

Student's behavior intervention plan was made part of the December 21, 2023 IEP amendment. New Pacific was required to provide two 30-minute weekly sessions of in-person or virtual behavior intervention services. The behaviorist would train New Pacific

staff to implement the behavior intervention plan. The behaviorist, the teacher, the psychologist, and the paraprofessional aides would be trained to collect data of Student's behavioral episodes, including the severity and duration of those episodes, and antecedent events that triggered the behavior. The behaviorist and the psychologist would use that information to develop baselines for Student's behavior regulation goal. The behaviorist would use the data to make any changes to the behavior implementation plan.

The behavior intervention plan required that duration data be collected by an adult. A timer would be used when Student engaged in disruption and would end when he complied with adult instructions. The responsible adult was not specified but would logically have been the teachers and aides in the classroom, and the behaviorist. Peer opined she was the best person to take the data for the behaviorist, although she failed to do so.

Student's behavior intervention plan targeted his socially significant behavior that required data collection. Student's target behaviors included disruption in the form of

- engaging in alternative activities,
- screaming,
- attempting or successfully engaging in property destruction,
- attempting or successfully engaging in aggression, and
- eloping from a supervised area.

Staff would collect data on the effectiveness of eight identified behavior strategies. These included

- priming Student for transitions,
- conducting preference assessments,

- using a visual schedule for his day,
- allowing a safe area when overstimulated,
- praising Student for safe choices,
- reminding him of his schedule,
- providing structured choice making opportunities, and
- giving transition warnings.

Between February 28, 2024, and May 31, 2024, New Pacific failed to implement Student's IEP by not consistently providing behavior intervention services. This affected data collection to establish Student's baseline and progress. Student established New Pacific's failure to implement behavior intervention services materially impacted his ability to access his education.

Student had 23 tardies, and 24 absences in March, April, and May, 2024. Gundestrup admitted she did not provide behavior intervention services after February 28, 2024. Gundestrup showed up to Student's classroom but was not able to deliver the services due to Student's frequent and unpredictable absences. She cancelled meetings and attempted different times of the day to see him, but he was not present. She spoke generally to Peer, Garber, and Bruegger, who reported Student was meeting behavioral expectations.

New Pacific argues that Gundestrup would have provided the services if Student had attended school. However, Gundestrup admitted in retrospect, it was a mistake to not reach out to Parent and attempt to provide virtual sessions as permitted by the IEP.

Student required behavior intervention services to access his general education placement. Student established New Pacific denied him a FAPE by failing to materially implement behavior intervention services between February 28, and May 30, 2024.

ISSUE 2b: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO IMPLEMENT HIS APRIL 14, 2023 IEP BY NOT PROVIDING SPECIALIZED ACADEMIC INSTRUCTION?

Student contends New Pacific failed to materially implement Student's IEP and did not provide specialized academic instruction beginning November 28, 2023, when it placed Student on independent study, and beginning February 2024 when Student engaged in school refusal.

New Pacific contends it materially complied when Student attended school. New Pacific contends its services were regularly scheduled, and Student missed services because he did not attend school on those days or refused services.

Student's initial April 14, 2023 IEP offered two 30-minute specialized academic instruction sessions per week, to check in and out, help refocus for his work completion goal, on a push in or push out basis. Education specialist Bruegger, who had a teacher internship credential, provided those services in the classroom, and outside the classroom in a small group. Bruegger provided check ins and check outs to make sure Student was emotionally regulated to start the day and talk about any concerns.

New Pacific materially implemented Student's specialized academic instruction for Student when he was on campus, August 14, 2023 up to the November 28, 2023 IEP which placed him on independent study.

New Pacific failed to materially implement Student's IEP and did not provide two hours of specialized academic instruction beginning November 28, 2023, when they placed Student on independent study. The IEP allowed for two 30-minute sessions weekly which could be virtual services, but Bruegger did not provide them. There was

no evidence Student was unable to complete his instruction packet. Failing to provide two hours of specialized academic instruction in two-week period is not material, as Student completed his packet. Therefore, New Pacific's failure to provide two hours of specialized academic instruction does not constitute a material failure to implement the IEP.

New Pacific materially implemented Student's specialized academic instruction when he returned to the general education program in January 2024, through May 30, 2024. Bruegger opined he provided Student with specialized academic instruction once to twice a week.

While Bruegger did not provide direct services to Student on the days he was absent, the evidence established Bruegger provided services to Student on the days he did attend school. Bruegger facilitated the check-in and check-out process as part of the welcome plan to meet Student at the gate when Student returned to school and engaged in school refusal. Bruegger waited at the school gate daily, for over 45 minutes. Bruegger recalled when he assisted Student at the car, he had a 50 percent success rate. Bruegger recalled when Parent tried to get Student out of the car without his help, it dropped to a 20 percent success rate. Bruegger also went to the calming center with Student about eight times for approximately 15 minutes per session. Bruegger witnessed and assisted with at least two of Student's meltdowns lasting 15 to 20 minutes each. The evidence established New Pacific materially implemented specialized academic instruction offered in the IEP.

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Student did not establish New Pacific failed to provide 60 minutes per week of specialized academic instruction. Student did not establish New Pacific denied him a FAPE by failing to materially implement specialized academic instruction during the 2023-2024 school year.

ISSUE 2c: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO IMPLEMENT HIS APRIL 14, 2023 IEP BY NOT PROVIDING COUNSELING?

Student contends New Pacific failed to materially implement Student's IEP and did not provide counseling beginning November 2023, when it placed Student on independent study, and beginning February 2024 when Student engaged in school refusal.

New Pacific contends Student did not receive all his counseling services because of his absences and his refusal to meet with the psychologist.

The evidence established that counseling services were not offered in the April 14, 2023 IEP. Student failed to prove the April 14, 2023 IEP included counseling services. Therefore, Student failed to meet his burden of establishing that New Pacific denied Student a FAPE by failing to implement the April 14, 2023 IEP when it did not provide counseling services.

Counseling services were offered for 30 minutes weekly, at the December 21, 2023 IEP. Parent gave written consent to the December 21, 2023 IEP on February 15, 2024. New Pacific received it on February 28, 2024. New Pacific's obligation to implement the IEP began when it received Parent's consent.

School psychologist Marks admitted she did not provide counseling for Student every week beginning February 28, 2024. She credibly testified Student sometimes refused counseling services, and she allowed it. Marks recalled she went to check in with him many times, but he was not interested in talking to her. Marks also admitted she did not provide virtual counseling sessions with Student when his attendance declined, even though virtual counseling sessions were provided for in the IEP. Mark's vagueness about how many sessions she provided to Student lacked clarity and details. Student established New Pacific failed to materially provide counseling beginning February 28, 2024.

Between February 28, and May 30, 2024, New Pacific did not provide Student with six hours of counseling, 30 minutes of services during 12 weeks. Student established New Pacific failed to materially provide and implement counseling services beginning February 28, 2024, through May 30, 2024.

ISSUE 2d: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO IMPLEMENT HIS APRIL 14, 2023 IEP BY NOT PROVIDING SPEECH AND LANGUAGE THERAPY?

Student contends New Pacific failed to materially implement Student's IEP and did not provide speech therapy beginning November 2023, when placed Student on independent study, and beginning February 2024 when Student engaged in school refusal.

New Pacific asserts it materially complied when Student attended school. New Pacific contends Student often refused services.

Student's April 14, 2023 IEP offered two 30-minute speech and language sessions per week, with a future option for group social skills.

New Pacific materially implemented Student's speech and language services for Student when he was on campus, August 14, 2023, up to the November 28, 2023 IEP which placed him on independent study.

New Pacific failed to materially implement Student's speech and language therapy services beginning November 28, 2023, when it placed Student on independent study. The IEP provided for two 30-minute sessions weekly speech and language services which could be virtual services, but the speech therapist did not provide them. Failing to provide two hours of speech and language services in a two-week period is not material. Therefore, New Pacific's failure to provide two hours of speech and language does not constitute a material failure to implement the IEP.

New Pacific materially implemented Student's speech and language services when he returned to the general education program in January 2024, though May 30, 2024. Although Peer recalled Student sometimes refused to go to speech and language therapy, there was no credible evidence establishing how many times he refused, or how many sessions he missed due to absences. Student did not establish New Pacific did not fail to materially implement speech and language services when Student returned to general education.

Student did not establish New Pacific denied him a FAPE by failing to materially implement speech and language services during the 2023-2024 school year.

ISSUE 2e: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO IMPLEMENT HIS APRIL 14, 2023 IEP BY NOT PROVIDING OCCUPATIONAL THERAPY?

Student contends New Pacific failed to materially implement Student's IEP and did not provide occupational therapy beginning November 2023, when it placed Student on independent study, and beginning February 2024 when Student engaged in school refusal.

New Pacific asserts it materially complied when Student attended school. New Pacific asserts Student often refused services.

Student's April 14, 2023 IEP offered two 30-minute occupational therapy sessions per week. New Pacific scheduled both sessions for Mondays only.

New Pacific materially implemented Student's occupational therapy services for Student when he was on campus, August 14, 2023, up to the November 28, 2023 IEP which placed him on independent study.

New Pacific failed to materially implement Student's occupational therapy services beginning November 28, 2023, when it placed Student on independent study. The IEP provided for two 30-minute sessions weekly occupational therapy services which could be virtual services, but the occupational therapist did not provide them. Failing to provide two hours of occupational therapy services in a two-week period is not material. Therefore, New Pacific's failure to provide two hours of occupational therapy services does not constitute a material failure to implement the IEP.

New Pacific materially implemented Student's occupational therapy services when he returned to the general education program in January 2024, though May 30, 2024. Peer did recall Student sometimes refused to go to occupational therapy, but there was no credible evidence establishing how many times he refused, or how many sessions he missed due to absences. Student did not establish New Pacific failed to materially implement occupational services when Student returned to general education.

Student did not establish New Pacific denied him a FAPE by failing to materially implement occupational therapy services during the 2023-2024 school year.

ISSUE 2f: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO IMPLEMENT HIS APRIL 14, 2023 IEP BY NOT PROVIDING NOISE BLOCKING HEADPHONES AND ACCESS TO A CALMING SPACE?

NOISE CANCELLING HEADPHONES

Student contend that New Pacific did not provide headphones at the start of the 2023-2024 school year as required by the April 14, 2023 IEP. New Pacific contends it provided the headphones within three weeks of the start of the 2023-2024 school year.

At the start of the 2023-2024 school year, there was ongoing school construction with heavy machinery which reached its peak in November 2023. Student offered no evidence as to how this affected him.

Noise cancelling headphones were offered as a behavior strategy and support in Student's April 14, 2023 IEP. New Pacific had noise cancelling headphones for Student in the front office, and Student's teacher, Peer, provided them to Student within the initial three weeks of the start of the school year.

Student failed to offer any evidence demonstrating the impact the three-week delay in providing headphones caused to Student's ability to access his education. Peers noted Student only used his headphones occasionally during group instruction and projects but preferred not to use them at all. Student failed to meet his burden of establishing that New Pacific denied Student a FAPE by failing to implement the April 14, 2023 IEP, when it delayed the provision of noise blocking headphones during the 2023-2024 school year.

CALMING SPACE

Student contends New Pacific did not provide a calming space at the start of the school year, as required by the April 14, 2023 IEP. New Pacific contends there was no evidence a calming space was not provided.

Student failed to prove the April 14, 2023 IEP included an offer of a calming space. Therefore, Student failed to meet his burden of establishing that New Pacific denied Student a FAPE by failing to implement the April 14, 2023 IEP when it did not provide a calming space during the 2023-2024 school year. New Pacific has no obligation to provide a calm-down space that was not offered nor accepted in the April 14, 2023 IEP.

A calm down space was offered at the December 21, 2023 IEP. Parent gave written consent to the December 21, 2023 IEP on February 15, 2024. New Pacific received it on February 28, 2024. New Pacific's responsibilities begin when it receives Parent's consent. By February 28, 2024, New Pacific had a calming space for Student, down the stairs and seven steps through another door.

Parent did not establish New Pacific did not have a calming space on or after February 28, 2024. Student did not meet his burden of proof, and did not establish a lack of a calm down space materially impacted his ability to access his education.

ISSUE 3: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO TIMELY CONVENE AN IEP TEAM MEETING?

Student contends New Pacific denied Student a FAPE by not convening an IEP team meeting to address his behaviors and school refusal when he did not meet his anticipated goals. Student alleges he demonstrated a lack of anticipated progress because of school refusal, and New Pacific should have revised his IEP to address the lack of progress toward his annual goals. Student asserts this failure impeded Student's right to a FAPE and significantly impeded Parent's opportunity to participate in the decision-making process.

New Pacific contends there was no indication Student was refusing to go to school, but rather Parent was refusing to send Student. New Pacific alleges Parent scheduled multiple appointments during school hours and created a chaotic schedule for Student's attendance.

The local educational agency shall ensure that the IEP team reviews the child's IEP periodically, but not less frequently, than annually, to determine whether the annual goals for the child are being achieved, and revised the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate, and the results of any reevaluation conducted. (20 U.S.C. § 1414(d)(3)(F)(4).)

An IEP team shall meet whenever the pupil demonstrates a lack of anticipated progress; or the parent or teacher requests a meeting to develop, review, or revise the IEP. (Ed. Code, § 56343, subds. (b), (c).)

Student asserts New Pacific should have timely convened an IEP team meeting to address Student's school refusal, which began in February 2024, when he did not meet his anticipated goals. Student did not specify a date that New Pacific should have convened an IEP team meeting. Between the January 26, 2024 IEP, through May 31, 2024, the last day of school, New Pacific did not hold an IEP team meeting with a behaviorist to collect and review behavior data regarding elopement and school refusal.

The testimony of Parent, Bruegger, and principal Garber, established when Student returned to school on January 10, 2024, Student began refusing to get out of Parent's car to attend school. Initially, Bruegger met Student at Parent's car to encourage and assist Student to come on to campus. Bruegger credibly testified during the month of January, 2024, he had a 50 percent success rate encouraging Student to come out of the car. By the beginning of February, Bruegger was no longer allowed to meet Student on the sidewalk at Parent's car and instead waited for Student at the school gate. Bruegger credibly testified that when he observed Parent arrive, she only

had a 20 percent success rate getting Student to come out of the car without his help. Garber similarly witnessed Parent's difficulties getting Student to exit her car to engage in school.

Parent maintained daily communication logs, and frequent e-mails to the IEP team, memorializing eight days that Student's behavioral challenges and meltdowns prevented him from coming to school and getting out of the car. There were four days documented in February, and four days documented in March 2024. Parent and New Pacific noted several absences were for outside assessments and therapies during school hours, or due to illness. The evidence established a pattern of Student's tardies and absences increasing. Student failed to make progress toward his goals as early as February 27, 2024, largely due to his absences.

Student had

- nine tardies and five absences in February;
- seven tardies and four absences in March;
- 10 tardies and six absences in April; and
- six tardies and 14 absences in May, 2024.

In total, Student missed 52 full days of school and was late 40 additional days during the 2023-2024 school year. Neither Garber nor Bruegger collected any data or documented Student's refusal to get out of Parent's car, as it was happening. Neither behaviorist Gundestrup, general education teacher Peer, or the classroom and playground aides collected any longitudinal data, meaning documenting the duration and intensity of Student's behavior as it was happening. Gundestrup considered the parent-teacher logs to be anecdotal data because they were recorded after the event.

On March 21, 2024, Student had another behavioral melt-down at New Pacific's park field day. Student established New Pacific should have convened an IEP by March 22, 2024, to address Student's behavior and school refusal. Ursua, Marks, and Gundestrup agreed that as early as September 2023, Student should not have been allowed to attend park field day without a safety plan in place. New Pacific should have timely convened an IEP to evaluate and review data to determine whether the behavior implementation plan to address school safety, school refusal, and elopement was working. By March 22, 2024, the evidence established that Student had already missed 17 days of school for the spring semester and was tardy 18 times.

Student established New Pacific knew there was a problem that required an IEP based on the voluminous data Parent provided them in the form of communication logs, messages, e-mails, and face to face conversations. Student established New Pacific knew there was a problem that required an IEP when Student eloped again from park field day.

New Pacific did not hold an IEP team meeting to review data to evaluate whether Student's behavior implementation plan was working. In fact, even by April 17, 2024, during Student's annual IEP, New Pacific did not invite Gundestrup, and did not address elopement and school refusal. New Pacific had collected no data and was not addressing Parent's repeated concerns. The IEP team did not convene again until August 2024, at the start of the 2024-2025 school year. Gundestrup attended, but New Pacific provided her with no data. Neither Peer nor the aides collected data. Without it, Gundestrup was not able to analyze the effectiveness of the current plan and hypothesize new behavior interventions.

A procedural violation results in a denial of a FAPE only if the violation: 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)(ii); see Ed. Code, § 56505, subds. (f)(2), (j).)

This failure to hold an IEP team meeting by March 22, 2024, denied Student a FAPE because Student was not accessing his general education program when he refused to attend school. His unmet behavior needs impeded his ability to access the school campus. New Pacific did not address Student's frequent school refusals which caused him a deprivation of educational benefits. Student failed to make progress toward his goals as early as February 27, 2024, largely due to his absences. New Pacific should have met to evaluate and review data to determine whether the behavior implementation plan to address school safety, school refusal, and elopement was working.

Additionally, New Pacific's failure to timely convene an IEP team meeting by March 22, 2024, denied Parent meaningful participation in the IEP process. New Pacific impeded Parent's ability to engage in meaningful discussions with the IEP team to evaluate and review data to determine whether the behavior implementation plan to address school safety, school refusal, and elopement was working. New Pacific had collected no behavior data and was not addressing Parent's repeated concerns about Student's behaviors. Without this information, Parent could not meaningfully participate in the IEP process.

New Pacific's failure to convene a timely IEP by March 22, 2024, was a procedural violation which denied Student a FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subds. (f)(2), (j).)

ISSUE 4a: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO HAVE AN IEP IN PLACE AT THE BEGINNING OF THE SCHOOL YEAR?

Student alleges for the beginning of the 2024-2025 school year, New Pacific failed to have an IEP in place within the first 30 days of school.

New Pacific contends it tried to have an IEP in place at the beginning of the year, but it could not accommodate Parent's preferences and conditions. New Pacific asserts that the IEP was postponed as Parent required the attendance of the behaviorist, who was not a mandatory IEP team member. New Pacific asserts Parent's attorney was not available the last few weeks of the school year.

At the beginning of each school year, each public agency must have an IEP in effect for each child with a disability within its jurisdiction. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a)(2006); Ed. Code, § 56344, subd. (c).) The IEP that must be in place at the beginning of the school year is an IEP that is fully compliant with the IDEA. (34 C.F.R. § 300.22 (2006).)

The IDEA defines an IEP as "a written statement for each child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324." (*Ibid.*) Parental consent to an IEP must also be "in writing." (34 C.F.R. § 300.9(b)(2008).)

The requirement that an IEP be written is not just a technicality; it is critical to implementation of a student's program. An IEP must be in writing to be enforceable. "[A] discussion does not amount to an offer. [Student] could force the District to provide only those services and devices listed in the IEP, not those discussed at the IEP meeting but left out of the IEP document." (*M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199.) The Court added:

Parents must be able to use the IEP to monitor and enforce the services that their child is to receive. When parent is unaware of the services offered to student and, therefore, can't monitor how these services are provided, a FAPE has been denied, whether or not parent had ample opportunity to participate in formulation of the IEP.

Student's initial IEP was held on April 14, 2023. The IEP team reconvened and completed the IEP on May 15, 2023. Student's offer of placement and related services would expire on April 23, 2024.

During the 2023-2024 school year, New Pacific held a total of nine IEP amendment meetings, prior to Student's annual IEP team meeting in April 2024. Those nine IEP amendments, mentioned in the decision, made several changes to the FAPE services page. They were typically two to three pages, unless a new goal was added. The November 28, 2023 IEP amendment changed Student's placement for two weeks and changed the location of services to be virtual. The December 21, 2023 IEP amendment added a behavior goal, a behavior intervention plan, and behavior

intervention services. The January 26, 2024 IEP amendment changed Student's placement back to general education on campus, with services to be delivered in person or virtual.

None of those amendment IEPs were full, complete, annual IEPs. The last time Student's present levels of performance were established, his goals were developed, and a complete offer of FAPE with placement and related services was made, was April 2023.

Student's proposed IEP from April 2024 was neither complete nor consented to, in compliance with the IDEA. It therefore did not satisfy the statutory requirement to have an IEP be in place at the beginning of the school year.

Student's annual IEP was scheduled for April 10, 2024. On April 2, 2024, Parent asked the IEP team to convene after standardized testing to provide information for his present levels of performance. The IEP was rescheduled to April 17, 2024. New Pacific reported it 'administratively opened and closed' the April 10, 2024 IEP, but provided no legal authority for that term or its legal significance.

The April 17, 2024 IEP team meeting was held but was not completed. The IEP team did not have current academic or behavior data for Student. This affected the development of the present levels of performance, and the goals. The IEP team discussed all special education services but did not discuss behavior support. Gundestrup was not present, and her absence from that IEP team meeting was not explained. Parent wanted information about Gundestrup's behavior data and her analysis of whether the behavior implementation plan was effective because Student's

behavior was the biggest barrier to Student going to school and staying in school. Gundestrup had not provided Student with his one-hour weekly behavior intervention services in April and May 2024, due to Student being absent.

Parent credibly testified that the proposed IEP did not have data to indicate whether goals were met. Student's teachers and service providers were unable to report on his present levels of performance due to his frequent absences. Student's work completion and behavior goal did not indicate whether the goal was met. Student's visual-motor integration goal was not met. Student's sensory processing goal was in progress. Student's newest self-regulation goal had no data.

New Pacific scheduled the continuation IEP for May 6, 2024, to allow for the behaviorist to be available. On May 3, 2024, Parent e-mailed the IEP team after learning that the behaviorist, who she considered an essential IEP team member, could not attend. Parent wanted the behaviorist to attend to discuss the behavior data collected. Parent asked for the May 6, 2024 IEP team meeting to be rescheduled when the behaviorist was available. At hearing, behaviorist Gundestrup testified she was not available because she was on vacation.

On May 10, 2024, Student went to school after an applied behavioral analysis appointment and had a difficult morning staying regulated during recess. After school, Student eloped from his Kaiser pediatrician's medical building into a busy intersection. The incident lasted one hour. On May 15, 2024, Parent e-mailed the IEP team and informed them she was waiting for her attorney's availability. Parent and the IEP team e-mailed almost daily about the end of the year testing schedule. On May 28, 2024,

Parent e-mailed the IEP team to advise them she was still waiting to hear back about her attorney's availability. Parent asked if the IEP team could meet on June 7, 2024, so the special education local plan area director could attend.

May 31, 2024, was the last day of school. Jones e-mailed Parent at 9:50 a.m. to discuss scheduling the IEP, acknowledging Parent wanted behaviorist Gundestrup at the meeting, but explaining the teachers would be on summer break. Jones acknowledged that at the April 17, 2024 IEP team meeting, the IEP team reviewed everything except behavior, attendance, and the extended school year. Parent responded at 10:37 a.m. that she was willing to hold a meeting without teacher Peer because she thought Peer had passed along her assessment information throughout the year. At 4:18 p.m., Jones offered to hold an IEP team meeting the following week, although several members would not be available because school was out of session. Parent did not respond to that e-mail. On an undisclosed date in May, New Pacific sent Parent an incomplete draft of the IEP.

August 12, 2024, was the first day of school for the 2024-2025 school year. However, Student did not attend school in person for the first few weeks because Parent wanted the IEP to be completed so she could review the new offer of placement and related services. New Pacific counted Student's missed school days as absences and initiated a student attendance review team meeting. On an undisclosed date in August, New Pacific sent Parent a different incomplete draft of the April 17, 2024 IEP.

On August 30, 2024, New Pacific held a continuation IEP team meeting for Student. Rachael Calvert, New Pacific's program specialist, took notes during the meeting. The IEP team meeting was still not completed. New Pacific had not collected data, and the behaviorist had no behavior data to review. The IEP team scheduled a

follow up IEP team meeting for September 12, 2024, so an outside board-certified behavior analyst from Autism Learning Partners, from Student's private insurance, would observe Student for one hour, on September 6, 2024. Autism Learning Partners was not authorized to conduct a full functional behavioral assessment, only a limited one-hour observation to evaluate the level of care to authorize.

On September 6, 2024, Autism Learning Partners observed Student for one hour at New Pacific. On September 9, 2024, New Pacific held a student attendance review team hearing, and Parent attended it. On September 11, 2024, New Pacific wrote Parent a letter of intent to involuntarily disenroll Student for his excessive absence. Parent believed the Notice of Intent to Disenroll letter meant Pacific Charter had already disenrolled Student. Parent immediately enrolled Student in Horizon Charter School, in an independent study program. Horizon Charter completed Student's IEP.

Calvert and Jones tried to complete the IEP, and continued e-mailing Parent for input, up to September 19, 2024. On an undisclosed date, Parent sent New Pacific a nine-page detailed and itemized list of her proposed changes. Jones informed Parent New Pacific could not complete the IEP as Student was no longer enrolled.

New Pacific did not have a complete, clear, written IEP in place for Student at the beginning of the 2024-2025 school year. The proposed April 10, 2024 IEP, held on April 17, and August 30, 2024, was neither completed in writing nor consented to in compliance with the IDEA. Therefore, it did not satisfy the statutory requirement that an IEP be in place at the beginning of the school year.

New Pacific's violation was harmful to Parent's participatory rights because Parent did not receive and understand the full FAPE offer. New Pacific's violation caused delays by not making the behaviorist available for the IEP team meetings. The behaviorist

needed to analyze data, address his behavior goals, write new goals, and recommend changes to services. New Pacific's failure to have an IEP in place at the beginning of the school year was a procedural violation of the IDEA.

There was no complete offer of FAPE. The April 17, and August 30, 2024 IEP offer was never completed, and was never agreed to by Parent in writing.

New Pacific's failure to complete a written IEP from the April 17, 2024 IEP team meeting in time for the beginning of the school year substantially impeded Parent's right to participate in the decision-making process regarding the provision of a FAPE to Student. (See 20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subds. (f)(2), (j).) Those failures led to months of confusion about Student's program, as Parent unsuccessfully attempted to clarify that program.

New Pacific's failure to complete a written IEP from the April 17, 2024 IEP team meeting in time for the beginning of the school year impeded Student's right to a FAPE and deprived him of educational benefits because it did not develop an educational program appropriate to meet his unique needs. Without accurate present levels of performance, and goals developed according to his baseline skills, it is not possible to know what placement, services, program modifications and accommodations he required.

Student established New Pacific denied Student a FAPE by failing to have an IEP in place at the beginning of the 2024-2025 school year.

ISSUE 4b: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE PLACEMENT?

Student asserts New Pacific failed to offer an appropriate supportive placement including a one-to-one aide to address his behavior, elopement, and school refusal.

New Pacific contends it offered an appropriate placement because it hired an additional paraprofessional classroom aide and an education specialist for Student's class to help Student's special education teacher for the 2024-2025 school year.

As determined in Issue 4a, Student's proposed IEP from April 2024 was neither complete nor consented to, in compliance with the IDEA. Student's proposed IEP was never completed, and an offer of placement was not made.

Student attended one day of school, on September 6, 2024. Student disenrolled on September 11, 2024. New Pacific's proposed offer of placement was the same general education program 88 percent of his day, and related services for 12 percent of his day. New Pacific assigned Student the same third and fourth grade teacher, Peer, and the same paraprofessional aides. Principal Garber hired another education specialist to help Bruegger's workload, and another paraprofessional aide to help with Student's classroom.

Student's concern that the additional aide support in Peer's classroom might only be temporary was not supported by the evidence. Student also asserted Peer's project-based classroom was too noisy for Student, but Student did not establish he was overstimulated or that the placement was not appropriate. Peer credibly testified that Student used his noise cancelling headphones during small group instruction. Peer convincingly testified she had enough support to implement his behavior interventions.

Student provided no credible evidence that the proposed placement was not appropriate. Student did not establish he required a one-to-one aide to support his placement. Student did not meet his burden of proof establishing the offer of placement was not appropriate because he required a one-to-one aide. There was no expert witness testimony or assessment supporting Student's claim. Peer opined Student benefited from extra attention and support, which she provided. Gundestrup, Marks, and Bruegger, agreed Student's behavior was manageable in Peer's class, with existing and proposed supports. Peer was effective keeping Student engaged with the class instruction, while allowing him freedom to roam the classroom during project-based learning.

ISSUE 4c: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE BEHAVIOR SUPPORT?

Student asserts New Pacific denied Student a FAPE by failing to offer a one-to-one aide, failed to update his behavior intervention plan to address his school refusal, failed to offer adequate check-ins and check outs, and failed to offer access to a calming space.

New Pacific alleges Student's level of behavior support was appropriate. New Pacific asserts it hired additional adult support for the classroom.

Student attended one day of school, on September 6, 2024. Student disenrolled on September 11, 2024. As determined in Issue 4a, Student's proposed IEP from April 2024 was neither complete nor consented to, in compliance with the IDEA. Student's proposed IEP was never completed, and a complete offer of behavior services was not made.

Principal Garber explained that New Pacific hired two new staff, another special education teacher and a paraeducator aide, to increase support for Student and help Bruegger in Peer's class and at the welcome gate. However, this extra support was not reflected in Student's proposed IEP. New Pacific's failure to make a complete and clear written offer of FAPE and have an IEP in place at the beginning of the school year affected Student's educational programming. New Pacific did not have accurate information to develop Student's educational program adequate to meet Student's unique needs.

ISSUE 5: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO IMPLEMENT HIS APRIL 10, 2024 IEP BY NOT PROVIDING NOISE BLOCKING HEADPHONES AND ACCESS TO A CALMING SPACE; SPECIALIZED ACADEMIC INSTRUCTION; COUNSELING; SPEECH AND LANGUAGE THERAPY; OCCUPATIONAL THERAPY; AND BEHAVIOR INTERVENTION SERVICES?

Student contends generally that New Pacific's failure to implement his April 10, 2024 IEP during the 2024-2025 school year, denied him a FAPE.

New Pacific contends Student attended one out of 21 school days before withdrawing. New Pacific contends it did not have Parent's consent to implement the April 10, 2024 IEP. It contends it had no obligation to implement an IEP without Parent's consent.

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The IEP team did not actually meet on April 10, 2024. The IEP team met on April 17, 2024, and on August 30, 2024. However, the IEP was not completed, and New Pacific did not make a full offer of FAPE. There was no offer and no acceptance by Parent.

The IEP team met again on August 30, 2024, but it was not completed. Calvert, the program specialist, worked with Parent for several weeks on goals. However, the September 11, 2024 student attendance review team committee letter stating its intent to disenroll Student prompted Parent to enroll him at Horizons Charter School, which then held and completed Student's annual IEP.

Therefore, New Pacific had no obligation to implement the incomplete April 10, 2024 IEP; however, its failure to have an IEP in place at the start of the 2024-2025 school year and the impact that had on Student's ability to access his education, was discussed in Issue 4a.

Student attended one day of school, on September 9, 2024. Student disenrolled on September 11, 2024. New Pacific prevailed because there was no IEP offer or acceptance. New Pacific did not make a complete FAPE offer, and Parent did not consent in writing.

Therefore, New Pacific could not implement the IEP.

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ISSUE 6: DID NEW PACIFIC DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO TIMELY PROVIDE A COMPLETE COPY OF STUDENT RECORDS UPON REQUEST?

Student contends Parent repeatedly requested Student's IEP records during August and September 2024, and that New Pacific never provided a copy. Student asserts this denied him a FAPE and significantly impeded Parent's opportunity to participate in the decision-making process. New Pacific alleges Parent did receive a copy of the draft IEP. New Pacific asserts Parent did not request educational records during the 2024-2025 school year.

The parent shall have the right and opportunity to examine all school records of her child and to receive copies pursuant to this section within five business days after the request is made, either orally or in writing. The public agency shall comply with the request for school records without unnecessary delay before any meeting regarding an IEP, or any hearing, and in no case more than five business days after the request is made orally or in writing. (Ed. Code, § 56504)

Parent did not establish that she requested a copy of the IEP in August and September 2024, and that it was not provided to her. Parent admitted she received a copy in May 2024 with no notes. Additionally, Parent received an updated draft IEP in August 2024. By the middle of September 2024, Parent prepared an undated nine-page list of her suggested changes to the IEP. Parent recalled sending it to Jones by September 25, 2024. Jones responded she would not be able to complete Student's IEP because he was no longer enrolled at New Pacific.

Parent received a draft copy of the IEP in May 2024, and again in August 2024, before the August 30, 2024 IEP. Student did not prove New Pacific denied Student a FAPE by failing to provide Parent with IEP records in the 2024-2025 school year.

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:

New Pacific denied Student a FAPE during the 2023-2024 school year by failing to offer appropriate placement.

Student prevailed on Issue 1 in part. New Pacific prevailed on Issue 1 in part.

ISSUE 2a:

New Pacific denied Student a FAPE during the 2023-2024 school year by failing to implement his April 14, 2023 IEP, by not providing behavior intervention services.

Student prevailed on Issue 2a.

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ISSUE 2b:

New Pacific did not deny Student a FAPE during the 2023-2024 school year by failing to implement his April 14, 2023 IEP by not providing specialized academic instruction.

New Pacific prevailed on Issue 2b.

ISSUE 2c:

New Pacific denied Student a FAPE during the 2023-2024 school year by failing to implement his April 14, 2023 IEP, by not providing counseling services.

Student prevailed on Issue 2c.

ISSUE 2d:

New Pacific did not deny Student a FAPE during the 2023-2024 school year by failing to implement his April 14, 2023 IEP by not providing speech and language services.

New Pacific prevailed on Issue 2d.

ISSUE 2e:

New Pacific did not deny Student a FAPE during the 2023-2024 school year by failing to implement his April 14, 2023 IEP by not providing occupational therapy services.

New Pacific prevailed on Issue 2e.

ISSUE 2f:

New Pacific did not deny Student a FAPE during the 2023-2024 school year by failing to implement his April 14, 2023 IEP by not providing noise cancelling headphones and access to a calming space.

New Pacific prevailed on Issue 2f.

ISSUE 3:

New Pacific denied Student a FAPE during the 2023-2024 school year by failing to timely convene an IEP team meeting.

Student prevailed on Issue 3.

ISSUE 4a:

New Pacific denied Student a FAPE during the 2024-2025 school year by failing to have an IEP in place at the beginning of the school year.

Student prevailed on Issue 4a.

ISSUE 4b:

New Pacific did not deny Student a FAPE during the 2024-2025 school year by failing to offer appropriate placement.

New Pacific prevailed on Issue 4b.

ISSUE 4c:

New Pacific denied Student a FAPE by failing to offer appropriate behavior support.

Student prevailed on Issue 4c.

ISSUE 5a:

New Pacific did not deny Student a FAPE during the 2024-2025 school year by failing to implement the April 10, 2024 IEP, by not providing noise blocking headphones or access to a calming center.

New Pacific prevailed on Issue 5a.

ISSUE 5b:

New Pacific did not deny Student a FAPE during the 2024-2025 school year by failing to implement the April 10, 2024 IEP by not providing specialized academic instruction.

New Pacific prevailed on Issue 5b.

ISSUE 5c:

New Pacific did not deny Student a FAPE during the 2024-2025 school year by failing to implement the April 10, 2024 IEP by not providing counseling.

New Pacific prevailed on Issue 5c.

ISSUE 5d:

New Pacific did not deny Student a FAPE during the 2024-2025 school year by failing to implement the April 10, 2024 IEP by not providing speech and language therapy.

New Pacific prevailed on Issue 5d.

ISSUE 5e:

New Pacific did not deny Student a FAPE during the 2024-2025 school year by failing to implement the April 10, 2024 IEP by not providing occupational therapy.

New Pacific prevailed on Issue 5e.

ISSUE 5f:

New Pacific did not deny Student a FAPE during the 2024-2025 school year by failing to implement the April 10, 2024 IEP by not providing behavior intervention services.

New Pacific prevailed on Issue 5f.

ISSUE 6:

New Pacific did not deny Student a FAPE by failing to provide timely student records.

New Pacific prevailed on Issue 6.

REMEDIES

Student prevailed on Issue 1 in part. New Pacific denied Student a FAPE during the 2023-2024 school year by failing to offer appropriate placement, beginning with its independent study placement on November 28, 2023, and through January 25, 2024. New Pacific did not deny Student a FAPE beginning with its general education placement offer on January 26, 2024, through the end of the 2023-2024 school year. Student is awarded one hour per day of compensatory specialized academic instruction for the 34 school days during independent study, for a total of 34 hours. These services may be provided by a non-public agency, or another qualified provider as agreed between Parent and New Pacific, at a rate not to exceed \$125 per hour.

Student prevailed on Issue 2a. New Pacific denied Student a FAPE during the 2023-2024 school year by failing to implement his April 14, 2023 IEP, by not providing behavior intervention services for a 12-week period. Student is awarded one hour per week, of compensatory behavior intervention services, for a total of 12 hours. These services may be provided by a non-public agency or another qualified provider as agreed between Parent and New Pacific, at a rate not to exceed \$175 per hour.

Student prevailed on Issue 2c. New Pacific denied Student a FAPE during the 2023-2024 school year by failing to implement his April 14, 2023 IEP, by not providing counseling services for a 12-week period. Student is awarded one-half hour per week of compensatory counseling services, for a total of six hours. These services may be provided by a non-public agency or another qualified provider as agreed between Parent and New Pacific, and provided by a counselor, at a rate not to exceed \$175 per hour.

Student prevailed on Issue 3. New Pacific denied Student a FAPE during the 2023-2024 school year by failing to timely convene an IEP team meeting by March 22, 2024, to address Student's school refusal and elopement behavior. Student is awarded one hour per week of additional behavior intervention services compensatory education through the end of the 2023-2024 school year, for a total of nine hours. These services may be provided by a non-public agency or another qualified provider as agreed between Parent and New Pacific, at a rate not to exceed \$175 per hour.

Student prevailed on Issue 4a. New Pacific denied Student a FAPE during the 2024-2025 school year by failing to have an IEP in place at the beginning of the school year. Student is awarded one hour per day of missed specialized academic instruction as compensatory education for a total of 22 hours, at a rate not to exceed \$125 per hour. For the five weeks Student was enrolled, Student is awarded five hours of compensatory education for speech and language services, five hours of compensatory education occupational therapy services, and three hours of compensatory education counseling services. These services may be provided by a non-public agency or another qualified provider as agreed between Parent and New Pacific, at a rate not to exceed \$175 per hour.

Student prevailed on Issue 4c. New Pacific denied Student a FAPE during the 2024-2025 school year by failing to offer appropriate behavior support. For the five weeks Student was enrolled, Student is also awarded one hour per week of compensatory behavior intervention services, for a total of five hours. These services may be provided by a non-public agency or another qualified provider as agreed between Parent and New Pacific, at a rate not to exceed \$175 per hour.

The total amount of compensatory specialized academic instruction, for all periods for the denial of FAPE is 56 hours. The total amount of compensatory behavior interventions services, for all periods for the denial of FAPE, is 21 hours. The total amount of compensatory counseling services, for all periods for the denial of FAPE, is nine hours. The total amount of compensatory speech and language services, for all periods for the denial of FAPE, is five hours. The total amount of compensatory occupational therapy services, for all periods for the denial of FAPE, is five hours.

While this Decision calculated Student's remedy for missing services, it may not benefit Student to receive small quantities of services from a new provider Student does not know, or to receive behavior intervention services for school when Student is enrolled in an independent study charter school. Therefore, Parent will be given discretion to access any services within these categories, in any quantity of hours, subject to a total not to exceed \$14,000, and subject to the hourly rates listed above.

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ORDER

1. As compensatory education for denying Student a FAPE for the 2023-2024 and 2024-2025 school years, New Pacific shall establish an educational fund to provide compensatory education services to Student, not to exceed \$14,000, in the following categories:

- compensatory academic instruction, not to exceed \$125 per hour;
- behavior intervention services, not to exceed \$175 per hour;
- speech and language services, not to exceed \$175 per hour;
- occupational therapy services, not to exceed \$175 per hour; and
- counseling services, not to exceed \$175 per hour.

Parent may access any of these services, without restriction of quantity in each category, subject to a total amount of \$14,000.

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.

DEBORAH MYERS-CREGAR

Administrative Law Judge

Office of Administrative Hearings