

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

v.

PALO ALTO UNIFIED SCHOOL DISTRICT.

CASE NO. 2025030845

DECISION

July 11, 2025

On March 20, 2025, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Palo Alto Unified School District, called Palo Alto. Administrative Law Judge Robert G. Martin heard this matter by videoconference on May 6, 7, 8, 13, 14, 15, 20, 21, 22, and 27, 2025.

Attorney Nicole Hodge Amey represented Student. Parents attended all hearing days on Student's behalf. Attorney Nicole Mirkazemi represented Palo Alto. Palo Alto Director of Special Education Teri Lee attended all days of hearing on Palo Alto's behalf.

At the parties' request, OAH continued the matter for written closing briefs. The parties submitted the matter and OAH closed the record on June 23, 2025.

## ISSUES

An individualized education program is called IEP. A free appropriate public education is called FAPE. The Administrative Law Judge has reorganized and renumbered for clarity the issues stated in the prehearing conference order. No substantive changes were made. The ALJ has authority to restate the issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443; *Capistrano Unified School District v. S.W.* (C.D. Cal., Aug. 19, 2020, No. SACV1801896JVSDFMX) 2020 WL 5540186, at \*8.) The issues for decision are:

1. Did Palo Alto deny Student a FAPE from March 20, 2023 to the end of the 2022-2023 school year, by:
  - a. failing to offer Student an interim IEP after Student enrolled in Palo Alto on March 22, 2023; and
  - b. predetermining Student's educational program?
2. Did Palo Alto deny Student a FAPE in the 2023-2024 school year by failing to appropriately assess Student following Parents' March 20, 2023 request, in:
  - a. psychoeducation;
  - b. speech and language; and
  - c. occupational therapy?
3. Did Palo Alto deny Student a FAPE by failing to hold an IEP team meeting and make an offer of FAPE to Student by the start of the 2023-2024 school year?

4. Did Palo Alto's August 10, 2023 Interim Placement IEP deny Student a FAPE by:
- a. offering Student predetermined placement in an Academic Communications class;
  - b. offering Student placement on a large, comprehensive middle school campus with large class sizes, instead of a smaller campus with smaller class sizes and additional adult support;
  - c. failing to offer Student any reading comprehension goals;
  - d. failing to offer Student appropriate and measurable annual goals in:
    - i. social pragmatics;
    - ii. social/behavioral/emotional skills;
    - iii. study/organizational skills; and
    - iv. attention;
  - e. failing to offer Student adequate services to address his needs in:
    - i. attention deficit and hyperactivity disorder;
    - ii. speech and language;
    - iii. occupational therapy;
    - iv. attention and distractibility;
    - v. mental health; and
    - vi. behavior intervention?

5. Did Palo Alto's August 24, 2023 IEP deny Student a FAPE by:
  - a. offering Student predetermined placement in an Academic Communications class;
  - b. offering Student placement on a large, comprehensive middle school campus with large class sizes, instead of a smaller campus with smaller class sizes and additional adult support;
  - c. failing to offer Student any reading comprehension goals;
  - d. failing to offer Student appropriate and measurable annual goals in:
    - i. social pragmatics;
    - ii. social/behavioral/emotional skills;
    - iii. study/organizational skills; and
    - iv. attention;
  - e. failing to offer Student adequate services to address his needs in:
    - i. attention deficit and hyperactivity disorder;
    - ii. speech and language;
    - iii. occupational therapy;
    - iv. attention and distractibility;
    - v. mental health; and
    - vi. behavior intervention?
6. Did Palo Alto deny Student a FAPE by failing to file for due process after Parents did not fully consent to Student's August 24, 2023 IEP?

7. Did Palo Alto deny Student a FAPE by failing to provide Parents all of Student's educational records within statutory timelines after Parent requested them on:
  - a. August 28, 2023; and
  - b. October 28, 2024?
8. Did Palo Alto deny Student a FAPE by imposing unreasonably restrictive criteria with respect to Parent's October 15, 2023 request for independent educational evaluations in:
  - a. speech and language;
  - b. occupational therapy; and
  - c. assistive technology?
9. Did Palo Alto deny Student a FAPE by failing to timely finalize a contract with Student's independent psychoeducational assessor selected by Parents on December 1, 2023?
10. Did Palo Alto's May 14, 2024. IEP for Student deny Student a FAPE by:
  - a. offering Student predetermined placement in an Academic Communications class;
  - b. offering Student placement on a large, comprehensive middle school campus with large class sizes, instead of a smaller campus with smaller class sizes and additional adult support;
  - c. failing to offer Student any reading comprehension goals;

- d. failing to offer Student appropriate and measurable annual goals in:
    - i. social pragmatics;
    - ii. social/behavioral/emotional skills;
    - iii. study/organizational skills; and
    - iv. attention;
  - e. failing to offer Student adequate services to address his needs in:
    - i. attention deficit and hyperactivity disorder;
    - ii. speech and language;
    - iii. occupational therapy;
    - iv. attention and distractibility;
    - v. mental health; and
    - vi. behavior intervention?
11. Did Palo Alto deny Student a FAPE by failing to file for due process after Parents did not fully consent to Student's May 14, 2024 IEP?
12. Did Palo Alto deny Student a FAPE by failing to hold an IEP meeting and make a FAPE offer by the start of the 2024-2025 school year?
13. Did Palo Alto deny Student a FAPE following Parents' September 3, 2024 request for a post-secondary transition assessment of Student, by:
- a. failing to conduct a timely and appropriate post-secondary transition assessment; and
  - b. failing to offer Student an appropriate transition plan?

14. Did Palo Alto's December 9, 2024, amendment IEP deny Student a FAPE by:
- a. offering Student predetermined placement in an Academic Communications class;
  - b. offering Student placement on a large, comprehensive middle school campus with large class sizes, instead of a smaller campus with smaller class sizes and additional adult support;
  - c. failing to offer Student any reading comprehension goals;
  - d. failing to offer Student appropriate and measurable annual goals in:
    - i. social pragmatics;
    - ii. social/behavioral/emotional skills;
    - iii. study/organizational skills; and
    - iv. attention;
  - e. failing to offer Student adequate services to address his needs in:
    - i. attention deficit and hyperactivity disorder;
    - ii. speech and language;
    - iii. occupational therapy;
    - iv. attention and distractibility;
    - v. mental health; and
    - vi. behavior intervention?

15. Did Palo Alto deny Student a FAPE by failing to file for due process after Parents did not fully consent to Student's December 9, 2024 IEP?

## JURISDICTION

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

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

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



the due process complaint and had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 14 years old at the time of the hearing. He was initially found eligible for special education in 2013 under the category of autism. At the time of hearing, Student held a secondary eligibility of other health impairment due to attention-deficit/hyperactivity disorder and generalized anxiety. Student and Parents resided within Palo Alto's geographic boundaries from September 2022 through the time of the hearing.

Student was diagnosed with autism spectrum disorder at age two, and later was clinically diagnosed with general attention deficit hyperactivity disorder and generalized anxiety. He attended preschool through third grade in a Sacramento-area public school district. Per his IEP, Student attended general education classes with full time one-to-one paraeducator support. Over the years, Student had

- speech and language therapy to address speech fluency and pragmatic language,
- occupational therapy to address motor and sensory issues, and
- school counseling to address anxiety, depression, and mood regulation.

Student's second-grade triennial reevaluation in 2018 found his cognitive abilities were in the high range overall, with a full scale IQ of 123. Compared to his strong academic performance in most areas, he had significant weaknesses in reading comprehension,

listening comprehension, and sentence writing fluency. Parent and teacher rating scales identified concerns with depression, rapid and intense changes in mood and emotions, and anxiety.

Student had struggled with anxiety related to his school performance since first grade. In second and third grade his struggles increased, and his teachers would frequently excuse him from the classroom to calm down or complete his work. Student's anxiety increased in third grade, after witnessing a classmate killed in a playground accident. This greatly increased his anxieties, and he became reluctant to go to school. Subsequently, Student enrolled in a Feather River Charter School home school program, for fourth grade 2019-2020, taught by his mother. Student attended in person electives with the help of an aide.

For fifth grade 2020-2021, Parents enrolled Student in a public charter school, Natomas Charter School, in its homeschool program. Student continued struggling socially and emotionally during COVID-19 while being homeschooled with online related services.

Student's last fully consented-to IEP dated February 24, 2021, was developed while he was in fifth grade. It offered

- 30 minutes per week online specialized academic instruction,
- 50 minutes per week online group speech and language therapy in a social skills group targeting social goals,

(This space is intentionally left blank. Text continues on the following page.)

- 30 minutes online individual speech therapy to target fluency goals, and
- 30 minutes per week online counseling, to be provided in a group setting when that was appropriate and available.

Student continued homeschooling through Natomas Charter School in sixth grade, 2021-2022. Parent continued to instruct Student at home in his core subjects, but the charter school resumed in-person services, elective classes, and workshops. This allowed Student to attend several hours per week of in person elective classes and workshops at PACT with other students. These were Student's first in-person classes since the first semester of fourth grade, and his first ever in-person classes where he was not supported by a one-to-one paraeducator.

Despite low academic expectations and small class sizes in his in-person elective classes and workshops, Student struggled with emotional dysregulation. He exhibited behaviors including vocal outbursts and throwing items, leaving the classroom without permission, and refusing to follow adult instructions. The charter school was concerned about Student's safety and that of his classmates, and Student's ability to participate in in-person instruction. Following assessments, the charter school developed and implemented a behavior intervention plan to address Student's emotional dysregulation in the form of vocal outbursts, throwing items, eloping from class, and refusing to follow instructions.

Student's sixth-grade annual IEP dated February 14, 2022, was developed with input from independent psychoeducational evaluator Mary Gwaltney, Ph.D. After observing Student in one of his in-person elective classes with six classmates, Dr. Gwaltney concluded Student was not successfully accessing his in-person

instruction. Student was not able to follow the schedule of the class, to engage with the teacher when she was providing visual feedback, or respond consistently to her questions directed to him. Student was not able to respond in expected or polite ways to basic peer interactions, or to tolerate typical frustrations like computer login problems. He

- was not engaged in the instruction,
- did not interact with peers,
- demonstrated rigid thinking,
- was not able to identify what help he needed, and
- was not able to his teacher's attempts to help him.

He frequently yelled in apparent frustration, talked loudly to himself, and responded loudly to questions, creating tension with classmates that was potentially stigmatizing.

Dr. Gwaltney opined that Student needed a full-time one-to-one paraeducator with him in the classroom, and during any unstructured social time. She concluded Student would not be prepared to participate in longer classes or less restrictive settings until he developed his emotional regulation skills sufficiently to access classroom environments, work with teachers and classmates, and develop positive relationships with peers. She recommended additional goals and a new behavior intervention plan focused on improving Student's foundational and functional skills in

- following routines and schedules,
- giving joint attention to materials and his teacher,
- remaining on task,

(This space is intentionally left blank. Text continues on the following page.)

- asking for assistance,
- tolerating help from adults,
- tolerating frustration, and
- following group and individualized directions.

The February 24, 2022 IEP offered by Natomas Charter School was similar to Student's existing February 24, 2021 IEP. It included some, but not all, of Dr. Gwaltney's proposed changes. On June 11, 2022, Parents gave nominal consent, but with 48 exceptions that effectively negated any actual consent. Parents disagreed with all of the goals and related services offered, and stated at the end of the exceptions that they disagreed that the IEP offered Student a FAPE, and agreed only that Student was eligible for special education and required special education and related services.

In August 2022, Student's family moved to temporary housing in Redwood City, near Palo Alto. They enrolled Student in a small private school in the city of Palo Alto, Hope Technology Academy, for two reasons. First, because they were unsure where they would ultimately be living, and wanted to place Student in a school that he could stay in even if the family moved to a new school district. Second, because they believed Student would struggle trying to transition to the large public schools in the area, and wanted to give him a stepping stone to that environment.

Hope Technology taught approximately 150 students in kindergarten through 12th grade. Each grade had one class of approximately eight students. Middle school and high school students moved among five shared, adjacent classrooms throughout the school day. For lunch, physical education, and recess, Student walked to a parking lot/picnic area just outside his classrooms.

The school provided in-person, small classroom instruction focused on providing students on the autism spectrum strategies and supports including

- visual aids,
- sensory tools,
- social skills training,
- anxiety management techniques, and
- on-site counselors and therapists.

Hope was accredited by the Western Association of Schools and Colleges, so that academic credits earned by its students would transfer to public schools and be accepted by colleges.

Student's teachers described him as

- consistently eager to learn,
- tried to do his best work,
- completed his assignments on time,
- worked cooperatively in groups, and
- used technology responsibly to acquire, analyze and present information.

Behaviorally, he disrupted the learning environment in his classes other than science and social studies and required guidance to remain on task in most of his classes, particularly in the second half of the school year.

Student remained enrolled in Hope Technology throughout the 2022-2023 school year.

(This space is intentionally left blank. Text continues on the following page.)

ISSUES 1a AND 1b: PALO ALTO DID NOT DENY STUDENT A FAPE FROM MARCH 20, 2023, TO THE END OF THE 2022-2023 SCHOOL YEAR, BY FAILING TO OFFER STUDENT AN INTERIM IEP AFTER PARENTS CONTACTED PALO ALTO ON MARCH 20, 2023 TO ENROLL STUDENT, OR BY PREDETERMINING STUDENT'S EDUCATIONAL PROGRAM

Student argues that Palo Alto denied him a FAPE during the 2022-2023 school year by failing to offer Student an interim IEP after Student enrolled in Palo Alto in March 2023.

Palo Alto argues that it had no obligation to provide Student a FAPE or offer Student an IEP for the 2022-2023 school year, because Student was parentally placed in a private school through the end of that school year, with no intention to send Student to a Palo Alto school for the remainder of the 2022-2023 school year. Palo Alto also argues that, because Parents would not send Student to a Palo Alto school during the 2022-2023 school year, that Palo Alto could not have predetermined an offer of FAPE for that school year.

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.)

Generally, the school district where the parents reside with the child is responsible for offering the child a FAPE. (20 U.S.C. § 1413(a)(1); Ed. Code, § 48200; *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.) However, a student's district of residence is not obligated to offer a FAPE if the parent has placed the student in a private school and made clear his or her intent to keep the child enrolled in the private school. (*J.B. v. Kyrene Elementary Sch. Dist. No. 28* (9th Cir. 2024) 112 F.4th 1156, 1164 (*Kyrene*) [citing Office of Special Education Programs (OSEP) *Letter to Wayne*, January 29, 2019]; see also, *Capistrano Unified Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1138, cert. denied at 143 S.Ct. 98 [if a student has been enrolled in a private school by their parents, then the district need not prepare an IEP unless parents ask for one].)

On March 20, 2023, Parents first emailed Palo Alto's Director of Special Education Teri Lee, regarding enrolling Student in Palo Alto. Parents explained that Student would continue attending a private school for the remainder of the 2022-2023 school year but wanted Palo Alto to conduct assessments and update Student's IEP before the beginning of the 2023-2024 school year.

Because Parents expressed a clear intent to keep Student enrolled in private school for the 2022-2023 school year, Palo Alto was not required to offer Student an IEP during the end of the 2022-2023 school year. Parents argued that Palo Alto should have offered an interim IEP, citing law related to children transferring between school districts in the same academic year. However, the law cited did not apply to children

(This space is intentionally left blank. Text continues on the following page.)



changing placements between a private school and a district school. Moreover, Student did not transfer between school districts during a school year. Rather, Student chose to remain in a private school during the 2022-2023 school year, while seeking an offer of placement for the subsequent 2023-2024 school year.

A district engages in predetermination when it offers a placement without parental involvement in developing the IEP. (34 C.F.R. §§ 300.327, 300.501(c)(1); *Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858 (*Deal*).)

The evidence demonstrated that Parents did not seek an IEP for the 2022-2023 school year. Palo Alto had no obligation to offer Student an IEP for 2022-2023, and therefore no opportunity to predetermine any aspect of Student's educational program.

Student did not demonstrate that he intended to attend a Palo Alto school during the 2022-2023 school year, such that Palo Alto was required to offer any kind of an IEP during that time frame. Likewise, Parents did not seek, and Palo Alto did not hold an IEP team meeting or make an offer of FAPE during the 2022-2023 school year. On these facts, it was impossible for Palo Alto to predetermine an IEP. Student failed to meet his burden of proof on Issues 1a and 1b.

Palo Alto prevailed on Issues 1a and 1b.

(This space is intentionally left blank. Text continues on the following page.)

## ISSUES 2a, 2b, AND 2c: PALO ALTO DENIED STUDENT A FAPE IN THE 2023-2024 SCHOOL YEAR BY FAILING TO CONDUCT APPROPRIATE PSYCHOEDUCATION, SPEECH AND LANGUAGE, AND OCCUPATIONAL THERAPY ASSESSMENTS FOLLOWING PARENTS' MARCH 20, 2023 REQUEST

Student argues that Palo Alto's psychoeducational, speech and language, and occupational therapy evaluations of Student conducted in April and May 2023 at Parents' request were inappropriate because they failed to include

- classroom observations of Student,
- relevant historical functional, developmental, and academic information about Student, and
- recommendations regarding Student's eligibility for special education and what supports, services, and accommodations Student would need to make appropriate progress.

Student also argues the psychoeducational and speech and language evaluation reports contained inaccurate assessment results.

Palo Alto argues the assessments at issue complied with the requirements of the IDEA and Education Code, and were supported by classroom observations of Student by the district's assistive technology assessor. Palo Alto argues any errors in the evaluations did not materially impact their validity.

(This space is intentionally left blank. Text continues on the following page.)

School district reevaluations of students eligible for special education under the IDEA serve the purposes of confirming a continued need for specialized instruction and related services because of an IDEA-eligible disability; and helping IEP teams identify the special education and related services the student requires. (20 U.S.C. § 1414(a); 34 C.F.R. §§ 300.301 (2007), 300.303.)

Requirements involving reassessment also provide specific requirements for responding to a parent's request for assessment. Those requirements are not at issue here. Parents' March 20, 2023 introductory email to Palo Alto requested a comprehensive assessment of Student in all areas of suspected disability, to help Student transition to a new school for the 2023-2024 school year, and for his teachers to know his skills and deficits. Parents specified eight areas of concern they wanted Palo Alto to assess.

Parents attached a copy of Student's most recent IEP dated February 14, 2022, including their addendum of exceptions. They asked Palo Alto to send them an assessment plan as soon as possible, so that the assessments could be completed, an IEP team meeting held, and Student's IEP updated, before the start of the 2023-2024 school year.

Palo Alto timely responded. On March 22, 2023, it sent Parents an email confirming it had registered Student for the 2023-2024 school year. On March 23, 2023, School Psychologist Samira Rastegar and private school Education Specialist Ashley Cheechoo emailed Parent to schedule a meeting to discuss Parent's request for assessments and an IEP.

Parent, Cheechoo, and Rastegar met by videoconference on March 28, 2023. Cheechoo and Rastegar initially suggested waiting to hold an IEP until after the start of the school year, at which time Parents could request specific assessments if necessary.

However, after Parent explained that they had consented to the last IEP with many exceptions, including its offer of FAPE, Cheechoo and Rastegar agreed that an IEP meeting was necessary before the start of the new school year to determine Student's placement and services. They said they would contact Hope Technology school to determine Student's progress on his goals and arrange a classroom observation of Student.

Later on March 28, Rastegar sent Parent a release of information authorization form to sign so Palo Alto could request Student's records from Hope Technology, and asked Parent to send a copy of Student's last IEP that contained agreed-upon goals. The next day, March 29, 2023, Parent emailed Rastegar the signed request for information, and a copy of Student's February 24, 2021 IEP. Parent noted her belief that "the district's assessments did not accurately capture Student's disabilities. At that point in time, the district had only interacted with [Student] virtually, and for less than a year."

On March 31, 2023, Rastegar emailed Parent an assessment plan proposing assessments in

- academic achievement,
- health,
- intellectual development,
- language/speech communication development,
- perceptual motor development,
- social/emotional development,

(This space is intentionally left blank. Text continues on the following page.)

- including educationally related mental health services,
- adaptive behavior, and
- assistive technology.

On April 4, 2023, Parent emailed Rastegar the signed assessment plan.

On April 10, 2023, Rastegar acknowledged receipt of the signed assessment plan. She stated that Palo Alto would try to complete all the assessments before the end of the current school year, but that the 60-day timeline to hold an IEP team meeting to review the assessments ran, by her calculation, to August 15, 2023.

Palo Alto completed three of Student's assessments before the last day of the school year on June 1, 2023. A fourth was completed the following day, and Parents received the first version of the last, a psychoeducational evaluation, on August 2, 2023. The completed assessments included:

- an assistive technology evaluation dated May 17, 2023;
- an occupational therapy report dated May 18, 2023;
- a speech and language evaluation dated May 25, 2023;
- an adapted physical education report dated June 2, 2023; and
- an undated psychoeducational evaluation provided to Parents on August 2, 2023.

(This space is intentionally left blank. Text continues on the following page.)

## CLASSROOM OBSERVATIONS

Parent and school psychologist Rastegar on March 28, 2023, discussed the need to schedule classroom observations of Student at Hope Technology. However, none of Palo Alto's assessors in the areas of psychoeducation, speech and language, or occupational therapy observed Student in his classroom at Hope Technology while preparing their assessments.

Palo Alto's contracted psychoeducational assessor, School Psychologist Christina Keefe, and district speech and language assessor Jennifer Zine each confirmed at hearing that it was their practice to conduct classroom observations as part of their assessments. Keefe could not recall why she had failed to do so for Student, and Zine did not try to arrange a classroom observation because another member of Palo Alto's staff told her – incorrectly – that Hope Technology would not allow classroom observations. No explanation was offered why Occupational Therapist Anne Marie Howard did not observe Student at Hope Technology.

Palo Alto suggests, without reference to specific evidence, that Hope Technology was uncooperative in scheduling observations. The evidence does not support this suggestion. If the assessors had tried but failed to arrange classroom observations because Hope Technology was uncooperative, their reports would be expected to mention that. None does. Also, Assistive Technology Teachers Jennifer Dorwin and Brian Gadus were able to observe Student for an hour in his math class at Hope to get information used in Dorwin's May 17, 2023 assessment report. Gadus testified the staff at Hope were cooperative.

Student, in his closing brief, cites to a portion of the Code of Federal Regulations, for the proposition that assessors must always observe a child in their classroom setting when conducting reevaluations. However, the portion of the federal regulations cited pertains only to evaluations for specific learning disability. (See, 34 C.F.R. §§ 300.307-300.310.)

The relevant section of the Code of Federal Regulations is 34 Code of Federal Regulations, section 300.305. It requires the IEP team conducting a reevaluation of a child to review existing evaluation data on the child, including current classroom-based observations, as well as observations by teachers and related services providers, and on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine the child's needs.

Education Code section 56327 requires that personnel who assess the pupil prepare a written report of the results of each assessment that includes the relevant behavior noted during the observation of the pupil in an appropriate setting, and the relationship of that behavior to the pupil's academic and social functioning. (Ed. Code, § 56327, subds. (b) and (c).)

Neither section 300.305, nor section 56327, require that all assessors conduct direct classroom observations. But they do require the assessors provide sufficient data from classroom observations for the IEP team to determine the child's needs. In some instances, a lack of direct classroom observation by a particular assessor or assessors as part of a reevaluation might not amount to a FAPE denial, either because the information to be obtained from such an observation was available from other sources, or because the information was irrelevant to the issues in the case.

However, in this case Parent's primary concern, known to Palo Alto, was whether Student could successfully transition from the small campus and classes at Hope Technology, designed for students with autism, to a several times larger comprehensive public middle school and instruction in large general education classes. Observations of Student's ability to stay emotionally regulated, communicate and interact appropriately with peers, and process sensory information in the classroom at Hope in circumstances comparable or analogous to those he might encounter on a large comprehensive campus would be critical to that determination.

The classroom observation of the assistive technology assessor was not a substitute for the information that assessors in their own fields of expertise would be expected to obtain. None of the other assessment reports found it useful to mention information from Dorwin's observations, which she testified was limited to what was contained in a single short paragraph in her report. Information from the general education-only teachers at Hope Technology was similarly not an appropriate substitute for direct observation by experts. The lack of information from classroom observations that might shine light on Student's ability to successfully transition to a large public middle school and large general education classes significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and interfered with their opportunity to participate in the formulation process of the IEP.

Student met his burden of proving that Palo Alto's psychoeducational, speech and language, and occupational therapy assessments were inappropriate because they all failed to include classroom observations of Student necessary for Parents and Student's



IEP team to make informed decisions regarding his placement and services. In light of this determination, it is not necessary to address Students additional contentions why the assessments were inappropriate.

Student prevailed on Issues 2a, 2b, and 2c.

### ISSUE 3: PALO ALTO DID NOT DENY STUDENT A FAPE BY FAILING TO HOLD AN IEP MEETING AND MAKE AN OFFER OF FAPE TO STUDENT BY THE START OF THE 2023-2024 SCHOOL YEAR ON AUGUST 9, 2023

Student contends Palo Alto denied him a FAPE by failing to hold an IEP team meeting and make a FAPE offer for the 2023-2024 school year by the first day of school on August 9, 2023. Palo Alto did not address this contention.

Children with disabilities enrolled by their parents in private schools are referred to as private school children with disabilities. (34 C.F.R. 300.130; Ed. Code, § 56170.) Generally, private school children with disabilities are not entitled to an offer of FAPE from their public school district of residence (*Kyrene, supra*, 112 F.4th at p.1164), or any amount of the services the child would receive if enrolled in a public school. (34 C.F.R. § 300.137(a); Ed. Code, § 56174.5, subd. (a).)

However, parents of a privately placed child may ask for a new IEP at any time, which triggers the requirement of the school district to offer Student a FAPE. (*Capistrano Unified School District, supra*, 21 F.4th 1125, 1138.)

Each local educational agency must have an IEP in effect for each individual with exceptional needs within its jurisdiction at the beginning of each school year. (Ed. Code, § 56344, subd. (c); 20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a).) The IEP must be

reasonably calculated to provide the student a FAPE based on the information available to the district. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrman v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

Palo Alto's first day of school in the 2023-2024 school year was August 9, 2023. Palo Alto offered Student an IEP the next day, August 10, 2023. The evidence did not demonstrate that Student was denied a FAPE by this one day delay. Nor could Student have as he has not attended a Palo Alto school since the offer was made. Parents did not produce evidence that they were denied participation because of this one day delay.

Palo Alto prevailed on Issue 3.

#### ISSUE 4a: PALO ALTO DENIED STUDENT A FAPE BY PREDETERMINING ITS AUGUST 10, 2023 INTERIM PLACEMENT OFFER

Student argues Palo Alto's August 10, 2023 Interim Placement IEP was predetermined, not reasonably calculated to meet Student's needs, and denied Student a FAPE by offering Student inadequate services derived from an out-of-date and inapplicable IEP. Student argues the behavior support services, specialized academic instruction, placement, and educationally related mental health services Palo Alto offered Student for the 2023-2024 school year at Jane Lathrop Stanford Middle School, called JLS, did not constitute a FAPE because they were insufficient to enable Student to access his education. Student further argues his significant social-emotional, mental health, attention, processing, and sensory needs could not be met at JLS, regardless of the services and supports Palo Alto offered, because the school campus was too large, served too many children, and required too many transitions.

Palo Alto argues it followed appropriate intrastate transfer procedures for a student entering the district with an IEP, by providing Student a 30-Day Interim Placement IEP that corresponded to Student's last consented-to IEP to the greatest extent possible based on the continuum of services Palo Alto had to offer, in collaboration with Parents. Palo Alto further argues the Interim Placement IEP was legally required, and appropriate for up to the first 30 days of the 2023-2024 school year, until an IEP team meeting was held on August 24, 2023.

The IDEA and Education Code require that a district must afford parents of a child with a disability the opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) The IEP team must consider the concerns of the parent for enhancing the student's education, and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) and (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) The United States Supreme Court has recognized that parental participation in the IEP development is the cornerstone of the IDEA. (*Winkleman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904] ["[T]he informed involvement of parents" is central to the IEP process].) Parental participation in the IEP process is considered "[a]mong the most important procedural safeguards." (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882 (*Amanda J.*).

A school district is required to conduct, not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485, superseded on other grounds by statute (*Target Range*); *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d

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

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

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

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

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

To avoid a finding of predetermination, there must be evidence the district has an open mind and might possibly be swayed by the parents' opinions and support for the IEP provisions they believe are necessary for their child. (See *Deal, supra*, 392 F.3d at p. 858.

[“Despite the protestations of the Deals, the School System never even treated a one-on-one ABA program as a viable option. Where there was no way that anything the Deals said, or any data the Deals produced, could have changed the School System's determination of appropriate services, their participation was no more than after the fact involvement.”].)

A district can make this showing by, for example, evidence that it “was receptive and responsive at all stages” to the parents' position, even if it was ultimately rejected. (*Doyle v. Arlington Cnty. Sch. Bd.*, 806 F.Supp. 1253, 1262 (E.D.Va.1992), *aff'd* 39 F.3d 1176 (4th Cir.1994) (unpublished per curiam).) But those responses should be meaningful responses that make it clear that the district had an open mind about and actually considered the parents' points. (*R.L. v. Miami-Dade County School Bd.* (11th Cir. 2014) 757 F.3d 1173, 1188–1189.) This inquiry is inherently fact-intensive but should identify those cases where parental participation is meaningful and those cases where it is a mere formality. (*Ibid.*)

Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 267 F.3d 877, 892.) Predetermination is an automatic violation of a parent’s right of participation under the IDEA. Where predetermination has occurred,

“regardless of the discussions that may occur at the meeting, the school district’s actions would violate the IDEA’s procedural requirement that parents have the opportunity ‘to participate in meetings with respect to the identification, evaluation, and educational placement of the child.’”

(*H.B. v. Las Virgenes, supra*, 239 Fed.Appx. at p. 344, quoting 20 U.S.C. § 1415(b)(1).) Substantive harm occurs when parents are denied meaningful participation in a student’s IEP development. (*Deal, supra*, 392 F.3d 840 at pp. 857-858.)

Predetermination also causes a deprivation of educational benefits where, absent the predetermination, there is a strong likelihood that alternative educational possibilities for the student would have been better considered. (*M.S. v. Los Angeles*

*Unified School Dist.* (C.D. Cal. September 12, 2016, Case No. 2:15-cv-05819-CAS-MRW) 2016 WL 4925910 at p.12. (citing *Doug C., supra*, 720 F.3d 1038, 1047).) A student is not required to prove that his placement or services would have been different but for the predetermination. (*Ibid.*)

## REQUIREMENTS FOR DEVELOPING IEP FOR PRIVATE SCHOOL STUDENTS ENTERING THE DISTRICT

The IDEA and Education Code contain specific provisions governing the development of IEPs for students transferring to a new school district. These vary depending upon when the student transfers, whether they are transferring from within the same state, or between different states, and whether they are transferring from a public school or a private school. Students who transfer between public school districts in the same state within the same academic year are commonly referred to as intrastate, inter-district transfers. Under the IDEA, when a student with an existing IEP moves between school districts, within the same state, during the school year, the receiving district must promptly provide services comparable to those in the prior IEP, in collaboration with the student's parents. (20 U.S.C. § 1414(d)(2)(C)(i)(I); 34 C.F.R. § 300.323(e).) These comparable services remain in place until the new district either adopts the existing IEP, or develops, adopts, and implements a new one. (*Ibid.*; Ed. Code, § 56325, subd. (a)(1).)

The U.S. Department of Education, in its commentary to the 2006 IDEA regulations, addressed concerns about how these obligations apply when a student transfers between school years rather than within a school year. The Department declined to amend 34 C.F.R. § 300.323(e) to include language concerning inter-district transfers that occur over summer break. Instead, it reaffirmed that, under the IDEA, all

school districts must have an IEP in place for each eligible student at the beginning of the school year. (71 Fed. Reg. 46682 (2006).) The Department made it clear, however, that there is no requirement for a new district to adopt or mirror a prior IEP in cases involving transfers between school years, nor is there a statutory “stay put” provision triggered by such transfers. (*Ibid.*)

The statutory inter-district transfer provisions do not explicitly govern transitions from private or nonpublic schools into public school districts—whether those changes happen mid-year or between school years. (Ed. Code, § 56325, subd. (a)(1); 20 U.S.C. § 1414(d)(2)(C)(i)(I).) In such cases, the Office of Administrative Hearings has interpreted the law to require a new district to craft and implement an IEP that offers a FAPE, based on the information reasonably available at the time. (*See Clovis Unified Sch. Dist. v. Student* (June 4, 2009) OAH No. 2008110569, p. 32; *Parents on behalf of Student v. Acalanes Union High Sch. Dist.* (July 17, 2008) OAH No. 2007100455, p. 22.) Importantly, a district is not obligated to implement an IEP from another district if Parents did not consent to it, nor must it provide “comparable” services in such a scenario. (*See Clovis, supra.*) In *S.H. v. Mount Diablo Unified School District* (N.D. Cal. 2017) 263 F.Supp.3d 746, the court found the district violated the IDEA and Education Code, and denied the Student a FAPE, by erroneously relying on the interdistrict transfer provisions and an IEP the parents had not consented-to as the basis for an interim placement IEP, instead of developing a new IEP for the student. (*Id.* at pp. 759-760.)

Federal courts have reached similar conclusions. When students with disabilities who were previously placed in private schools return to public education, districts are responsible for initiating the IEP process—even in the absence of a current IEP. For instance, courts have held that a district’s obligation to assess or offer services is triggered upon re-enrollment. (*M.D. v. Colonial School District* (E.D.Pa. May 13, 2021)



539 F.Supp.3d 380 (student remained eligible for services when student re-enrolled in district after two years in private school and district's obligation to provide an IEP was triggered when parents re-enrolled and requested an IEP).)

## DEVELOPMENT OF THE AUGUST 10, 2023 IEP

As discussed previously, Palo Alto was required to have an IEP in place for Student at the beginning of the 2023-2024 school year. On August 10, 2023, Palo Alto Special Education Coordinator Laura Thorpe emailed Parents an "IEP-Interim Placement" dated August 10, 2023, that placed Student at JLS. Thorpe's email explained:

These are the initial services that will be provided between now and [Student's] 30 day IEP. The JLS middle school team will reach out to you to schedule an IEP meeting if they have not already done so. When a student comes from out of district we try to match services as closely as possible based on the continuum of services Palo Alto Unified School District has to offer.

The two-page Interim Placement IEP included only Student's information and eligibility, and a page stating the special education and related services offered. Under the heading, "Interim Placement Authorization," was the explanation "Following review of the previously approved IEP and consultation with the parent, an interim placement has been made for this student in the special education and related services identified on page 2 of this document. Within a period not to exceed 30 days, the receiving LEA shall adopt the previously approved IEP or develop and implement a new IEP." However, Palo Alto had not consulted with Parents about the services offered, and the Interim Placement IEP did not ask for Parents' consent.

Parent responded on August 11, 2023, objecting to what she thought was Palo Alto's use of Student's last consented-to IEP dated February 24, 2021, as a template for drafting the Interim Placement IEP. Parent pointed out that IEP was two years old and drafted when Student was receiving most of his instruction in a one-to-one setting. She stated that Student needed an appropriate IEP and plan to transition from his small private school, with supports and accommodations developed based on Palo Alto's recent assessments.

Thorpe responded the same day. She explained that the August 10, 2023 IEP was short-term , and legally required. She asked Parent to "[p]lease understand that the interim placement is a jumping off point and is a legal requirement that must be completed when a student enters a school from outside the district. It is temporary until the IEP can be held."

Thorpe testified at hearing that she had drafted the Interim Placement IEP. She explained that she had used Student's February 14, 2022 IEP, not the February 24, 2021 IEP, to determine the type and amount of Student's services. The February 14, 2022 date appears on the Interim Placement IEP as the "Current Complete IEP Date."

After determining that the February 14, 2022 IEP offered 30 minutes per week of individual/group specialized academic instruction, 240 minutes per month group language and speech services, and 75 minutes per month behavior intervention services, Thorpe asked her supervisor what comparable services were available at JLS to match those offered in the February 14, 2022 IEP.

(This space is intentionally left blank. Text continues on the following page.)

Based on the schedule of services available at JLS, Thorpe drafted the Interim Placement IEP to provide Student 210 minutes per week group specialized academic instruction, 240 minutes per month individual speech and language, and 600 minutes per year individual behavior intervention services. Thorpe testified that the Interim Placement IEP offer of services was based on Palo Alto's program, how the class was structured and what was offered at that particular school. While JLS was able to match the 240 monthly speech and language minutes offered in the February 14, 2022 IEP, and approximate the 75 minutes per month of behavior intervention services, the Interim Placement IEP offered Student 210 minutes of specialized academic instruction per week instead of 30 minutes per week, because JLS was only able to provide specialized academic instruction through its Academic Communications class, which met weekly for 210 minutes.

#### THE FORM OF PALO ALTO'S INTERIM PLACEMENT IEP WAS NOT LEGALLY REQUIRED, AND ITS DEVELOPMENT WITHOUT PARENT'S INVOLVEMENT DENIED STUDENT A FAPE

Palo Alto's justification for the form of the August 10, 2023 Interim Placement IEP, and the manner in which it was developed, was incorrect. The interdistrict transfer on which Thorpe based her development of the interim IEP, did not apply to Student in this case. Student was privately placed at Hope Technology, and sought to transfer to a Palo Alto school between school years, after completing the 2022-2023 academic year at Hope Technology. Palo Alto was neither legally required to offer Student an interim placement IEP with services comparable to those in a previous IEP, nor entitled to rely

on doing so instead of developing a new IEP for Student. Palo Alto was simply required to develop and offer Student an IEP for the start of the 2023-2024 school year that was reasonably calculated to provide him a FAPE, based on the information then available to the district. (*Adams, supra*, 195 F.3d at p. 1149.)

Here, Palo Alto based the interim IEP on Student's present levels of performance and the placement and services offered in the February 14, 2022 IEP. However, Parents did not consent to the underlying February 14, 2022 IEP. As explained previously, Parents took issue with several portions of the IEP upon which the interim IEP was based, including the services offered. Palo Alto did not review the February 14, 2022 IEP with Parents or obtain their input on modifications required to develop information from the February 14, 2022 IEP into an offer of FAPE in the August 10, 2023 interim IEP.

Palo Alto did not develop the interim IEP in consultation with Parents, did not review the IEP at an IEP team meeting, and did not obtain Parents' consent to the IEP. For these reasons, Palo Alto seriously impeded the Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student in the development of the interim IEP.

The provision of the August 10, 2023 Interim IEP as take-it-or-leave-it, even if based on a misconception that it was required to do so, was also effectively predetermination. Student met his burden of proving that Palo Alto's August 10, 2023 IEP was predetermined and denied Student a FAPE.

Student prevailed on Issue 4a.

ISSUES 4b, 4c, 4d AND 4e: DID PALO ALTO'S AUGUST 10, 2023 IEP DENY STUDENT A FAPE BECAUSE PALO ALTO FAILED TO APPROPRIATELY ASSESS STUDENT IN PREPARATION FOR THE IEP, AND THE IEP FAILED TO OFFER STUDENT APPROPRIATE GOALS, SERVICES AND SCHOOL AND CLASS PLACEMENT?

Student established that Palo Alto denied him a FAPE by failing to appropriately develop, and predetermining, the August 10, 2023 IEP's offer. It is unnecessary to determine whether the IEP was defective for additional reasons, and this decision does not do so.

Neither party prevailed on Issues 4b, 4c, 4d, or 4e.

ISSUES 5a: PALO ALTO DENIED STUDENT A FAPE BY PREDETERMINING ITS AUGUST 24, 2023 IEP OFFER

Student contends Palo Alto denied Student a FAPE by predetermining its offer of school and classroom placement in its August 24, 2023 IEP. Palo Alto contends it did not predetermine the August 24, 2023 IEP offer, but developed it with input from all IEP team members, including Parents.

Here, Parents were given no meaningful opportunity to participate in the development of the August 24, 2023 IEP. Parents informed Student's IEP team at Student's August 24, 2023 IEP team meeting that Student had had difficulty with transitions and emotional dysregulation even with the small campus and small classes at Hope Technology. Parent did not believe Student would be able to transition successfully from Hope Technology to the much larger campus and classes at JLS. The

transcript of the August 24, 2023 IEP team meeting offered in evidence confirms Palo Alto did not even acknowledge, much less discuss, Parent's concerns. There was no discussion by Palo Alto of any possible placement for Student other than at JLS Middle School in general education classes, with one Academic Communication class per week.

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

The only placement Palo Alto considered for Student was placement at the large, comprehensive campus at Student's home school, JLS, in 30-plus student general education classes, with 90 minutes weekly pull-out specialized academic instruction, provided in one class period per week in the Academic Communications class. Despite Parents' concerns, there was no discussion of a continuum of placement options that might be available for Student, or the information available about Student that supported Palo Alto's apparent conclusion that a large campus with large general education classes was the least restrictive environment appropriate for Student. There were no facts or data presented to the August 24, 2023 IEP team to support a conclusion Student would be able to successfully access his education at JLS in fall 2023.

Student proved by a preponderance of the evidence that Palo Alto predetermined Student's school and classroom placement offered in the August 24, 2023 IEP.

Student prevailed on Issue 5a.

ISSUES 5b, 5c, 5d AND 5e: DID PALO ALTO'S AUGUST 24, 2023 IEP DENY STUDENT A FAPE BECAUSE PALO ALTO FAILED TO APPROPRIATELY ASSESS STUDENT IN PREPARATION FOR THE IEP, AND THE IEP FAILED TO OFFER STUDENT APPROPRIATE GOALS, SERVICES AND SCHOOL AND CLASS PLACEMENT?

Student established that Palo Alto denied him a FAPE by predetermining the August 24, 2023 IEP's offer. It is unnecessary to determine whether the IEP was defective for additional reasons, and this decision does not do so.

Neither party prevailed on Issues 5b, 5c, 5d, or 5e.

ISSUE 6: PALO ALTO DID NOT DENY STUDENT A FAPE BY FAILING TO FILE FOR DUE PROCESS AFTER PARENTS DID NOT CONSENT TO STUDENT'S AUGUST 24, 2023 IEP

Student contends Palo Alto denied him a FAPE by failing to file a due process hearing request to prove its August 24, 2023 IEP offered Student a FAPE. Palo Alto contends it was not required to file a complaint because the obligation to file did not apply to Student when he was privately placed, and in any event it was not unreasonable for Palo Alto to delay filing for due process while Palo Alto was working with the Student to conduct IEE's and develop a new IEP that included input from them.

The Education Code permits parents to consent to the receipt of special education and related services while rejecting other components of an IEP. (Ed. Code, § 56346, subd. (e).) When that occurs, the school district must implement the IEP components consented to so as not to delay providing instruction and services to the child. (*Ibid.*) Additionally, if the school district determines that the proposed special education program components not consented-to are necessary to provide the Student a FAPE, then the district must file a due process hearing to obtain a determination that it may implement the program components without the parent's consent. (Ed. Code, § 56346, subd. (f).)

However, the school is not required to file a due process hearing request in a situation where the parent is the one seeking a different program than what the school district considers sufficient to provide a FAPE. (*Capistrano Unified School Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1136 (*Capistrano v. S.W.*) [citing *I.R. ex rel. E.N. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1169].)

The facts in *Capistrano v. S.W.* are similar to those presented here. In that case, the parents disagreed with the district's IEP offer for their child during first grade and filed a due process hearing request. (*Capistrano v. S.W.*, 21 F.4th at p. 1131.) They then unilaterally placed their child in private school, told the district they intended to keep their child in private school for the remainder of first grade through second grade, and requested reimbursement for the private school costs. (*Ibid.*)

On appeal, the district did not dispute that its first grade IEP failed to offer a FAPE, but contended it did not have to file for due process to defend it. (*Ibid.*) The Ninth Circuit agreed. (*Id.* at pp. 1133, 1136-1137.) It held that the sole trigger for any district obligation to file a due process complaint to defend an IEP was the district's own



determination that a proposed special education program component to which the parent did not consent was necessary to provide a FAPE. (*Id.* at p. 1136.) The court rejected the parents' contention that the district was required to file because it did not know whether their child was receiving a FAPE in private school. (*Id.* at p. 1137 ["[parents] cite no authority holding that the district must file for due process when parents unilaterally place their child in private school."].)

The present case differs somewhat from *Capistrano v. S.W.* in that Palo Alto made its FAPE offer to a privately-placed student who had never attended school in the district, while Capistrano made its FAPE offer to a student attending Capistrano with an IEP, who then became a privately-placed student after disagreeing with the offer. Part of the rationale of *Capistrano v. S.W.* was that Capistrano theoretically might have determined that the not-consented-to components of its first grade IEP were not necessary to provide the student a FAPE because the components of its prior IEP in place at the time of the offer were sufficient to do so. (*Ibid.*)

That exact rationale is not present in this case, where Student had never attended school in Palo Alto. However, Palo Alto theoretically could have determined that it could provide Student a FAPE by adopting his last consented-to IEP instead of the August 24, 2023 IEP.

In this case, Student contended that Palo Alto's August 24, 2023 IEP denied Student a FAPE, while Palo Alto contended its offer was sufficient to provide a FAPE. Palo Alto was not required to file a due process hearing request to prove it offered Student a FAPE, and did not deny Student a FAPE by failing to do so.

Palo Alto prevailed on Issue 6.

## ISSUE 7a: PALO ALTO DENIED STUDENT A FAPE BY FAILING TO PROVIDE PARENTS ASSESSMENT PROTOCOLS REQUESTED AUGUST 28, 2023

Student contends that Palo Alto denied him a FAPE by failing to produce all of the assessment protocols generated during Palo Alto's 2023 reevaluation of Student, as requested by Parents on August 28, 2023, or all of Student's educational records, as requested by Student's attorney on October 28, 2024.

Palo Alto contends it produced all documents in its possession responsive to each of Student's requests. Palo Alto further contends that no additional responsive records exist due to its routine and lawful record retention practices, which include its policy that assessment protocols may be destroyed after an evaluation is conducted.

The IDEA and state educational statutes grant parents of a child with a disability the right to examine all relevant records in relation to their child's special education identification, evaluation, educational placement and receipt of a FAPE. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a); Ed. Code, §§ 56501(b)(3) & 56504.) This assists parents in making informed decisions about their child's education, including being able to fully participate in all aspects of the IEP process.

A school district must permit parents to inspect and review any education records relating to their child that are collected, maintained, or used by the district. (34 C.F.R. § 300.613(a).) The district must comply with a request without unnecessary delay. (*Ibid.*) While federal regulations require that educational records be provided within 45 days of

(This space is intentionally left blank. Text continues on the following page.)

request, California law affords parents the right to receive copies of all school records within five business days of the request. (*Ibid*; Ed. Code, § 56504.) The right to inspect and review educational records includes

- the right to receive an explanation and interpretation of the records;
- the right to receive copies of the records if failure to provide copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- the right to have a representative inspect and review the records.  
(34 C.F.R. §300.613(b).)

The IDEA does not include a definition of educational records, and adopts the Family Educational Rights and Privacy Act (FERPA) definition of education records. (34 C.F.R. § 300.611 (b).) In general, educational records are defined as records which are personally identifiable to the student and maintained by an educational agency. (20 U.S.C § 1232g(a)(4)(A); 34 C.F.R. §§ 99.3. In California, Education Code section 49061 similarly defines a "Pupil Record," which is the term used in California statutes and regulations.

The Supreme Court, after conducting an analysis of FERPA provisions related to educational records, defined the word "maintained" in this context by its ordinary meaning of "preserve" or "retain." (*Owasso Independent School Dist.No.I-011 v. Falvo* (2002) 534 U.S. 426, 434 [122 S. Ct. 934, 151 L.Ed.2d 896].) Educational records are those maintained by a district in the normal course of business by a single, central custodian, rather than every document ever created that pertains to a given student. (*N.F. v.*

*Antioch Unified School Dist.* (N.D. Cal., Mar. 30, 2021) No. 4:19-CV-02453-KAW, 2021 WL 1746366, at \*6 (*N.F. v Antioch*), aff'd sub nom. *N.F. v. Antioch Unified School Dist.* (9th Cir., May 2, 2022) No. 21-15781, 2022 WL 1301882.)

Educational records do not include documents which are in the sole possession of the maker thereof, are not accessible or revealed to any other person except a substitute, and are used only as a personal memory aid. (20 U.S.C. § 1232g(a)(4)(b)(i); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3(b)(1).) This exception does not exclude from the category of educational records detailed notes that record direct observations or evaluations of student behavior. (*Letter to Baker*, Office of Innovation and Improvement, Complaint No. 1251, December 28, 2005 [comprehensive notes of observations and evaluations by a speech therapist, though kept in the sole possession of the maker, were not used solely as a memory aid and therefore were educational records subject to disclosure].) “School officials may not unilaterally remove records from the protections of FERPA through administrative decisions about where certain records are maintained or how they are categorized.” (*Ibid.*)

Educational records also do not include documents created by a non-employee, such as a third party contracted by a district to perform assessments, unless the document is provided to the district. (*N.F. v. Antioch, supra*, 2021 WL 1746366, at \*76.)

The failure to provide a parent with information related to the assessment of his or her child may significantly impede the parent’s opportunity to participate in the decision-making process and result in liability. In *Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F. 3d 877, 892-895, the Ninth Circuit held that a failure to timely provide parents with assessment results indicating a suspicion of autism significantly impeded parents’ right to participate in the IEP process, resulting in

compensatory education award. In *M.M. v. Lafayette School Dist.* (9th Cir. 2014) 767 F.3d 842, 855-856, a district's failure to provide parents assessment data showing their child's lack of progress in district's response to intervention program left the parents "struggling to decipher his unique deficits, unaware of the extent to which he was not meaningfully benefitting from the [individualized services plan], and thus unable to properly advocate for changes to his IEP." The court concluded that the failure to provide the assessment data prevented the parents from meaningfully participating in the IEP process and denied their child a FAPE.

## EDUCATIONAL RECORD RETENTION REQUIREMENTS

School districts are required to maintain educational records, including records relating to special education, for varying lengths of time, depending on the type of document. Education Code section 49062 requires school districts to establish, maintain and destroy pupil records according to regulations adopted by the State Board of Education. No pupil records may be destroyed except pursuant to such regulations. (Ibid.) School districts are required to establish written policies and procedures for pupil records which implement the statutes and regulations relating to pupil records. (Cal. Code Regs., tit. 5, § 431, subd. (c).)

The California Code of Regulations defines a pupil record as

"information relative to an individual pupil gathered within or without the school system and maintained within the school system, regardless of the physical form in which it is maintained. Essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil record." (Cal. Code Regs., tit. 5, § 430, subd. (d).)

All pupil records are divided into three categories for the purpose of defining how long they must be kept before they can be destroyed: (1) Mandatory Permanent Pupil Records, (2) Mandatory Interim Records, and (3) Permitted Records. (Cal. Code Regs., tit. 5, § 432, subds. (b)(1-3).) Most special education records fall in the category of Mandatory Interim Records, which include participation in special education programs including required tests, case studies, authorizations, and actions necessary to establish eligibility for admission or discharge. (Cal. Code Regs., tit. 5, § 432, subd. (b)(2)(C).) Some may be in the category of Permitted Records, which include objective counselor and/or teacher ratings, and verified reports of relevant behavioral patterns. (Cal. Code Regs., tit. 5, § 432, subd. (b)(3)(A) & (D).)

Mandatory Interim Pupil Records must be retained until the student leaves the district, or their usefulness ceases, at which point the district can determine the record is disposable. (Cal. Code Regs., tit. 5, § 437, subd. (c).) Once a Mandatory Interim Pupil Record has been determined to be disposable, the district must destroy it during the third school year after that determination. (*Id.*; Cal. Code Regs., tit. 5, § 16027.) Permitted Pupil Records may be destroyed “when their usefulness ceases. They may be destroyed after six months following the pupil’s completion of or withdrawal from the educational program.” (Cal. Code Regs., tit. 5, § 437, subd. (d).)

Before destroying a pupil record, a school district must inform the parents when it determines the pupil record is no longer needed to provide educational services to their child. (34 CFR § 300.624.)

(This space is intentionally left blank. Text continues on the following page.)

## FAILURE TO PRODUCE REQUESTED ASSESSMENT PROTOCOLS

Assessment protocols include score sheets on which students mark their answers, and tables on which examiners calculate the students' scores. They can also include the "prompts" for the test questions and instructions for the test administrators. (*Newport-Mesa Unified School Dist. v. Dept. of Ed.* (C.D. Cal. 2005) 371 F.Supp.2d 1170, 1175, fn. 5.) Assessment protocols are considered educational records under Education Code section 56504 because, after students write answers on the protocols, they are identifiable with the students. (*Id.* at pp. 1175, 1179.)

Notwithstanding any copyright protections, they must be provided to parents if requested. (*Ibid.* [providing parents copies of their children's test protocols is a permissible "fair use" pursuant to federal copyright law]; *Letter to Price* (OSEP Oct. 13, 2010) 57 IDELR 50 [if copyright law conflicts with IDEA's requirement to provide educational records, districts should seek ways to facilitate inspection including contacting the copyright holder].) Parents also have a specific right to inspect instructional materials and assessments including teacher's manuals. (Ed. Code, § 49091.10, subd. (a).)

Assessment protocols used by contract assessors not employed by a school district are not considered educational records unless they are given to the district. (*N.F. v Antioch, supra*, 2021 WL 1746366, at \*7 ["To be educational records, the District would have needed to have possession of them at some point in time"].)

After their review of Student's assessments and the August 24, 2023 IEP team meeting raised questions in Parents' minds whether all the assessments accurately reflected Student's test results, Parents on August 28, 2023, requested a copy of all the

assessment protocols from Palo Alto's 2023 evaluation of Student. Palo Alto ultimately provided Parents assessment protocols from the speech and language and occupational therapy assessors, but no others.

Parents contend the failure to provide the psychoeducational assessment protocols, in particular, denied Student a FAPE. Between August 2, 2023, and September 1, 2023, School Psychologist Keefe sent Parents three different versions of her psychoeducational evaluation of Student. Despite the requirement that all assessment reports and anecdotal information maintained as a pupil record must be dated and signed by the individual who originated the data (Cal. Code Regs., tit. 5, § 431), none of Keefe's reports were dated.

On reading Keefe's evaluation presented at Student's August 24, 2023 IEP, Parents discovered that it included an observation of Student that matched the text of Keefe's observation of Student's brother, whom she also assessed around the same time as Student. Parents also questioned the accuracy of some of Keefe's testing scores, based on discrepancies with prior testing. It was these concerns with the accuracy of Keefe's report that triggered their requests for all of the assessment protocols.

Keefe had given her assessment protocols to Palo Alto, but Palo Alto never produced them to Parents.

At a minimum, Palo Alto was required to retain assessment protocols as educational records for three years. Palo Alto's destruction of protocols within six months of when they were created as part of a document retention policy was unlawful, and significantly impeded parents' right to participate in the IEP process. This conclusion is supported by Keefe's use of the protocols to correct her psychoeducational assessment when Parents



pointed out the error in her observations. Similarly, Zine made corrections in her speech and language assessment report based on a review of her protocols triggered by Parents' request for protocols.

Student proved by a preponderance of the evidence that Palo Alto denied him a FAPE by failing to produce all protocols requested by Parents on August 28, 2023.

Student prevailed on Issue 7a.

#### ISSUE 7b: PALO ALTO DID NOT DENY STUDENT A FAPE BY FAILING TO PROVIDE EDUCATIONAL RECORDS REQUESTED OCTOBER 28, 2024

On October 28, 2024, Student's attorney requested Palo Alto produce all of Student's educational records. The District emailed records to Student's counsel on November 4, 2024. Student contends Palo Alto failed to produce an April 10, 2023 Interim IEP for Student that would have established Student's date of initial enrollment in Palo Alto, an unsigned copy of Zine's speech and language assessment report that Palo Alto included in its exhibits, and a copy of Student's May 15, 2024 IEP, as amended December 9, 2024.

Student did not demonstrate that the failure to produce any of these documents denied him a FAPE. Even if Student could have used the April 10, 2023 Interim IEP as proof of his date of initial enrollment in Palo Alto, that information would have been irrelevant to the determination in Issue 1 that Palo Alto was not obligated to provide him a FAPE in the 2022-2023 school year. Student did not identify anything in the not-produced copy of Zine's speech and language report that materially differed from information in the versions provided to parents, such that the lack of information

significantly impeded Parent's opportunity to participate in the IEP development process. Finally, Palo Alto's November 4, 2024 response to Student's October 28, 2024 request for educational records could not have included a document created after the December 9, 2024 IEP.

Palo Alto prevailed on Issue 7b.

## ISSUES 8a AND 8b: PALO ALTO DENIED STUDENT A FAPE BY IMPOSING UNREASONABLY RESTRICTIVE CRITERIA WITH RESPECT TO PARENTS' OCTOBER 15, 2023 REQUEST FOR IEE'S IN THE AREAS OF SPEECH AND LANGUAGE AND OCCUPATIONAL THERAPY

Student contends that after granting Parents' October 13, 2023 requests for IEE's in the areas of psychoeducation, speech and language, occupational therapy, adaptive physical education, and assistive technology, Palo Alto improperly rejected Parent's chosen independent speech and language assessor on grounds they charged more than the SELPA guidelines permitted, and independent occupational therapy assessor on grounds they failed to have adequate sexual abuse and molestation insurance. Student contends Palo Alto was required to file a due process hearing request to prove its criteria were reasonable, without unnecessary delay, and failed to do so.

Palo Alto contends it was under no obligation to file a request for due process hearing to prove the appropriateness of its independent educational evaluation criteria.

(This space is intentionally left blank. Text continues on the following page.)

Education Code section 56329, subdivision (b) provides a parent has the right to obtain at public expense an independent educational assessment of the pupil if the parent disagrees with an assessment obtained by the public education agency, in accordance with Section 300.503 or Title 34 of the Code of Federal Regulations.

When a Parent requests for an independent educational evaluation, the law requires the school district to request a due process hearing to demonstrate the appropriateness of its own assessment ,or ensure it provided the independent evaluation at public expense. (34 C.F.R. § 300.502(b)(2).) Either obligation, to fund or file, must be made without unnecessary delay. (*Id.*) The regulation provides an exception to funding, but only where the public agency demonstrates at a hearing that an independent evaluation, already obtained by a parent, did not meet agency criteria. (34 C.F.R. § 300.502,(b)(2)(ii).)

If an independent educational evaluation is at public expense, the criteria under which the evaluations is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (34 C.F.R 300.502 (e)(1).) Except for these criteria, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

Palo Alto's mere agreement to fund an independent evaluation within SELPA criteria does not amount to ensuring Parent received an independent evaluation at public expense. OSEP, which administers the IDEA and develops its regulations, issued guidance on whether a public agency must file a request for hearing or fund an independent evaluation under 34 C.F.R. § 300.502, in several letters.

In *Letter to Parker*, 41 IDELR 155 (OSEP 2004), OSEP reviewed and issued recommendations for changes to California Department of Education, referred to as CDE, guidance on independent evaluations. OSEP recommended that CDE's guidelines include a statement that if a parent elects an independent evaluator not on the public agency's list of evaluators, and the public agency believes the evaluator does not meet agency criteria, or there is no justification for selecting an evaluator not meeting agency criteria, the public agency may file for due process, or must pay for the independent evaluation. (*Id.*) The CDE's March 11, 2021 Notice on Independent Educational Evaluations reiterated the fund or file requirements of 34 C.F.R. § 300.502(b)(2):

[I]f a parent requests an IEE at public expense, the local educational agency (LEA) must, without unnecessary delay, either:

- File a due process complaint to request a hearing to show that its evaluation is appropriate; or
- Ensure that an IEE is provided at public expense, unless the LEA demonstrates in a hearing ... that the evaluation obtained by the parent did not meet agency criteria."

A public agency may not delay its decision to seek a due process hearing or provide a publicly funded independent evaluation so long as to essentially eliminate a parent's right to an independent evaluation. (*Letter to Anonymous*, 21 IDELR 1185 (OSEP 1994); *Letter to Katzerman*, 28 IDELR 310 (OSEP 1997).)

The Ninth Circuit's decision in *L.C. v. Alta Loma School Dist.* (9th Cir. 2021) 849 Fed.Appx. 678 (*Alta Loma*), which was based on facts similar to those in this case, supports CDE's guidance. In *Alta Loma*, the school district contended the parents' chosen independent visual therapy assessor's fee for an evaluation exceeded district's

independent evaluation policy cost criteria. Student had not provided district with unique circumstances justifying an independent evaluation exceeding the cost criteria. Once the parties reached a final impasse on the parameters for the independent evaluation, the school district filed a request for due process hearing on the issue of student's entitlement to an independent vision therapy evaluation by an evaluator of student's choosing who did not meet the requirements of district's independent educational evaluation policy.

Student filed on the issue of the district's unreasonable delay in filing a due process complaint to determine the reasonableness of its IEE criteria. In a decision that assumed without discussion that the school district was obligated to file for due process, the Ninth Circuit found the district did not unreasonably delay its filing where the parties negotiated evaluation criteria, reached an impasse, and the district filed for due process only days later. (*Alta Loma*, 849 Fed.Appx. at pp. 679-680; *see also*, *A.A. v. Goleta Union School Dist.* (C.D. Cal. 2017, No. CV1506009DDPMRWX) 2017 WL 700082 (*Goleta*) [district filed a request for due process hearing to determine student's entitlement to an independent evaluation with a chosen evaluator exceeding its cost criteria].)

Whether Palo Alto "unnecessarily delayed" filing a complaint to determine the reasonableness of its IEE criteria is a fact specific inquiry focused on circumstances surrounding the delay. (*C.W. v. Capistrano Unified Sch. Dist.* (9th Cir. 2015) 784 F.3d 1237, 1247; *J.P. ex rel. E.P. v. Ripon Unified Sch. Dist.* (E.D. Cal. April 15, 2009, No. 2:07- CV-02084-MCE-DAD) 2009 WL 1034993, at p.7 (*Ripon*) (two-month delay before filing to defend district's assessment while district attempted to negotiate an

independent evaluation agreement with parent and filed for due process less than three weeks after negotiations came to an impasse was not unnecessary).) The term "unnecessary delay," not defined in the regulations, permits a reasonably flexible, though normally brief, time period to accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an independent evaluation. (*Letter to Anonymous*, 56 IDELR 175 (OSEP 2010).) When the parties continue to discuss provision of an independent evaluation, there is no unnecessary delay in the school district waiting to file for due process until the parties reach a "final impasse," after engaging in active communication, negotiation, or other attempts to resolve the matter. (*Ripon*, 2009 WL 1034993, at p.7.)

In *Pajaro Valley Unified Sch. Dist v. J.S.* (N.D. Cal., Dec. 15, 2006, No. C06-0380) 2006 WL 3734289 at p.3 (*Pajaro*), the court found the district acted unreasonably when it waited three months after the student's request for an independent evaluation before filing to show its assessment was appropriate.

Here, the parties reached a final impasse on August 30, 2024, when it rejected Parents' selected occupational therapy assessor for not satisfying Palo Alto's requirement that assessors have sexual abuse and molestation insurance, and in September 2024, when Palo Alto rejected the last of Parent's selected speech and language assessors for exceeding SELPA cost criteria. Palo Alto did not fund the assessments and never filed a request for due process hearing.

These dates were approximately three months before Student filed his complaint in this action. This amount of delay was unreasonable under the standards in *Pajaro*.

Student persuasively demonstrated that Palo Alto unnecessarily delayed filing a request for due process hearing after the parties reached an impasse regarding the parameters of the speech and language and occupational therapy evaluations. Palo Alto was required to, but did not, file a request for due process hearing on the issue of Student's entitlement to independent evaluations by evaluators of Parent's choosing who did not meet Palo Alto's cost and insurance criteria for independent educational evaluations. By not seeking that determination, Palo Alto failed to ensure Parent's right to the independent evaluations at public expense.

Student therefore satisfied his burden of proof that Palo Alto's cost criteria for speech and language assessments, and insurance criteria for an occupational therapy assessment were unreasonable.

Student prevailed on Issues 8a and 8b.

#### ISSUE 8c: PALO ALTO DID NOT DENY STUDENT A FAPE BY IMPOSING UNREASONABLY RESTRICTIVE CRITERIA WITH RESPECT TO PARENTS' OCTOBER 15, 2023 REQUEST FOR AN IEE IN THE AREA OF ASSISTIVE TECHNOLOGY

Student presented no evidence that Palo Alto refused to approve any specific independent assistive technology assessor selected by Parents on grounds the assessor did not satisfy Palo Alto's criteria for independent assessments, or that the criteria precluded Student from finding an assistive technology assessor. The parties never discussed a specific independent assistive technology assessor, much less reach impasse on the issue of Palo Alto's criteria for hiring one. Student did not satisfy his burden of proving either that Palo Alto's criteria for independent assistive technology assessments

was unreasonable, or that Palo Alto was required to file for due process to prove the reasonableness of its criteria with respect to independent assistive technology assessments.

Palo Alto prevailed on Issue 8c.

#### ISSUE 9: PALO ALTO DID NOT FAIL TO TIMELY FINALIZE A CONTRACT WITH STUDENT'S INDEPENDENT PSYCHOEDUCATIONAL ASSESSOR SELECTED BY PARENTS ON DECEMBER 1, 2023

Student contends Palo Alto denied Student a FAPE by failing to finalize a contract with Student's chosen independent psychoeducational evaluator Dr. Eva Nicolosi for approximately 35 days after Dr. Nicolosi provided the information required by Palo Alto to approve her contract. Palo Alto contends the delay was not unreasonable, especially in light of Palo Alto's 16-day winter break from December 23, 2023 through January 7, 2024.

Student offered no authority for the proposition that Palo Alto's delay, whether calculated as 19 days, or 35 days, was unreasonable. Even assuming a brief administrative delay had occurred, the IDEA does not require perfection in procedural matters. Minor delays that do not significantly impede a parent's opportunity to participate in the decision-making process does not constitute a procedural violation. (See *Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1485 (9th Cir. 1992); 34 C.F.R. § 300.513(a)(2).) Here, Student presented no evidence that the delay deprived Parents of the opportunity to meaningfully participate in Student's education.

Palo Alto prevailed on Issue 9.



## ISSUE 10a: PALO ALTO DID NOT DENY STUDENT A FAPE BY PREDETERMINING A MAY 14, 2024 IEP OFFER

Student contends Palo Alto denied Student a FAPE by predetermining an offer of FAPE made in Student's May 14, 2024 IEP.

Palo Alto contends that all of its IEP's proposed terms that were not predetermined, but were instead provisional and developed over time as more information became available, and never a fixed or non-negotiable offer of FAPE. Palo Alto further contends that the May 14, 2024 IEP was not convened to present or discuss a FAPE offer, but was for the purpose of reviewing Dr. Nicolosi's independent psychoeducational evaluation, as Palo Alto was not required to offer Student a FAPE while he was privately placed.

From the evidence presented, it is not possible to determine what proposed terms were included in the IEP used at Student's May 14, 2024 IEP team meeting, but it was clear that Palo Alto did not make an offer of FAPE at that meeting, and the parties left the meeting anticipating further discussion of Dr. Nicolosi's report, and revision of the proposed IEP. Neither Student nor Palo Alto placed a copy of the May 14, 2024 IEP in evidence. Palo Alto's admitted exhibits included a copy of the May 14, 2024 IEP as revised for Student's December 9, 2024 IEP team meeting. Student's exhibits included a copy of the May 14, 2024 IEP as revised after a September 13, 2024 transition inventory, for an anticipated November 13, 2024 IEP team meeting that did not occur.

The transcript of the May 14, 2024 IEP team meeting is clear that Palo Alto made no FAPE offer at that time. At the start, Palo Alto's program specialist stated the purpose of the one-hour team meeting was to review Dr. Nicolosi's evaluation. After Dr. Nicolosi quickly summarized her findings, Parents and Student's advocate forcefully

presented their primary concern that Dr. Nicolosi's report, and the historical data on Student, showed that he would not be able to access his education if placed on a large school campus in large general education classes.

The team agreed to meet again, with school psychologist Megan Warter summing up the team's progress:

"I think that we're at this point where we need to really look at the goals so that we can have that really rich placement conversation that clearly we weren't prepared to have [at the August 24, 2023 IEP team meeting]. Now that we have additional information, it's going to be on us to go back and figure out what are their other options. But we really have to start with the goals, and I want to have a forward-thinking conversation around placement."

Student failed to prove that Palo Alto made any FAPE offer at the May 14, 2024 IEP team meeting, or that Palo Alto engaged in any sort of predetermination.

Palo Alto prevailed on Issue 10a.

ISSUES 10b, 10c, 10d, AND 10e: PALO ALTO DID NOT DENY STUDENT A FAPE BY FAILING TO APPROPRIATELY ASSESS STUDENT IN PREPARATION FOR STUDENT'S MAY 14, 2024 IEP, OR FAILING TO OFFER STUDENT APPROPRIATE GOALS AND SERVICES IN THE IEP

Student contends Palo Alto denied Student a FAPE by developing its May 14, 2024 IEP offer based on inappropriate assessments from its 2023 reevaluation of Student, and by failing to offer Student appropriate goals and services.

Palo Alto contends that the May 14, 2024 IEP was not convened to present or discuss a FAPE offer, but was for the purpose of reviewing Dr. Nicolosi's independent psychoeducational evaluation, as Palo Alto was not required to offer Student a FAPE while he was privately placed.

As determined with respect to Issue 10a, Student failed to prove that Palo Alto made any FAPE offer at the May 14, 2024 IEP team meeting. Palo Alto was not obligated to conduct appropriate assessments for, or include appropriate goals and services in, a nonexistent offer. The separate issue of whether Palo Alto was required to make a new FAPE offer to Student before the start of the 2024-2025 school year is discussed with respect to Issue 12.

Palo Alto prevailed on Issues 10b, 10c, 10d, and 10e.

#### ISSUE 11: PALO ALTO DID NOT DENY STUDENT A FAPE BY FAILING TO FILE FOR DUE PROCESS AFTER PARENTS DID NOT CONSENT TO STUDENT'S MAY 14, 2024 IEP

Student contends Palo Alto denied him a FAPE by failing to file a due process hearing request to prove its May 14, 2024 IEP offered Student a FAPE.

Palo Alto contends it was not required to file a complaint because Palo Alto did not make a FAPE offer in its May 14, 2024 IEP, the obligation to file did not apply to Student when he was privately placed, and in any event it was not unreasonable for Palo Alto to delay filing for due process while Palo Alto was working with the Student to conduct IEE's and develop a new IEP that included input from them.

As determined previously with respect to Issue 10a, Student failed to prove that Palo Alto made any FAPE offer at the May 14, 2024 IEP team meeting that Palo Alto was obligated to defend through a due process complaint. Also, as determined previously with respect to Issue 6, Palo Alto was not required to file a due process hearing request in this situation, where Parents of privately-placed Student were seeking a different program than what Palo Alto considered sufficient to provide a FAPE. (*Capistrano Unified School Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1136 [citing *I.R. ex rel. E.N. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1169].)

Palo Alto prevailed on Issue 11.

## ISSUE 12: PALO ALTO WAS NOT REQUIRED TO HOLD AN IEP MEETING AND MAKE A FAPE OFFER TO STUDENT BY THE START OF THE 2024-2025 SCHOOL YEAR, AND NOT DOING SO DID NOT DENY STUDENT A FAPE

Student contends Palo Alto denied Student a FAPE by failing to hold an annual IEP team meeting for Student and have an IEP in place for the start of his ninth grade, 2023-2024 school year.

Palo Alto contends it had no legal obligation to convene an IEP meeting for Student because he was a parentally-placed private school student, and Parents had not requested an IEP.

If a student has been enrolled in private school by their parents, the school district is not obligated to prepare an IEP unless the parents ask for one. (*Capistrano v. S.W.*, *supra*, 21 F.4th 1125, 1137–1138.) A pending claim for reimbursement for the private school placement is not a substitute for a specific request from the parents.

(*Ibid.*) If the parents request an IEP, the district must provide one, and it cannot condition the IEP on the student re-enrolling in the district. (*Woods v. Northport Public School* (6th Cir. 2012) 487 Fed.Appx. 968, 979 [nonpub. opn.].)

The facts in *Capistrano v. S.W.* are similar to those presented here. In that case, the parents disagreed with the district's IEP offer for their child during first grade and filed a due process hearing request. (*Capistrano v. S.W.*, 21 F.4th 1125, at p. 1131.) They then unilaterally placed their child in private school, told the district they intended to keep their child in private school for the remainder of first grade through second grade, and requested reimbursement for the private school costs. (*Ibid.*) The student's first grade IEP expired at the end of first grade, and district did not replace it. (*Ibid.*) Near the end of second grade, the district held an annual IEP team meeting and sought permission to assess the child, but the parents did not consent. (*Id.* at p. 1132.) The decision does not state whether the district held the second grade annual IEP team meeting on its own initiative, or because the parents requested it. However, nothing *Capistrano v. S.W.* suggests that holding an IEP team meeting voluntarily in the absence of a parental request would impose additional obligations on the school district, such as an obligation to make a FAPE offer for the start of a school year.

Here, Student did not contend or prove that Parents requested an IEP to be in place for Student at the start of the 2024-2025 school year. On October 13, 2023, Parents sent a letter to Palo Alto's school board detailing their efforts to obtain an IEP for Student, and expressing frustration with Palo Alto's assessments and the August 24, 2023 IEP team meeting and offer of FAPE. Parents requested IEE's, and put Palo Alto on notice that they intended to keep Student privately-placed at Hope Technology until the IEE's were completed and they could make informed decisions regarding placement.

Thereafter, Palo Alto worked with Parents to complete IEE's and hold an IEP team meeting to review them and develop an IEP that considered them. Parents did not attempt to, and indeed could not, impose a strict deadline to complete the independent assessments and hold an IEP team meeting, such as the start of the 2024-2025 school year. Parents have a right to an independent educational evaluation in certain circumstances, and a school district must consider an independent educational evaluation obtained by a parent, but there is no specified deadline for either completing or reviewing such an evaluation. (34 C.F.R. § 300.502(b) & (c).)

In this case, Dr. Nicolosi sent her completed independent psychoeducational evaluation on May 8, 2024, and Student's IEP team met on May 14, 2024 to consider it. Needing additional time to complete their review, the IEP team agreed to continue the IEP meeting. Initially, the team tried to schedule a meeting before the end of the 2023-2024 school year, but there was never any discussion by Parents or Palo Alto of a deadline to complete the meeting. Ultimately, due to difficulties arranging the schedules of Dr. Nicolosi and the IEP team, the IEP team met briefly again on November 13, 2024, then completed its discussion based on Dr. Nicolosi's report on December 9, 2024, at which time Palo Alto made a FAPE offer. Although completing, reviewing, and considering Dr. Nicolosi's report took over a year from when Parents asked for IEE's, the process was in accord with Parents' request.

Student failed to prove Palo Alto was required to hold an IEP and make a FAPE offer to Student by the start of the 2024-2025 school year, and denied Student a FAPE by not doing so.

Palo Alto prevailed on Issue 12.

## ISSUES 13a AND 13b: PALO ALTO DENIED STUDENT A FAPE BY FAILING TO CONDUCT AN APPROPRIATE TRANSITION ASSESSMENT, AND FAILING TO OFFER STUDENT AN APPROPRIATE TRANSITION PLAN

Student contends Palo Alto denied Student a FAPE by failing to conduct an appropriate transition assessment of Student, and provide Student an appropriate transition plan, after Parents requested a transition assessment in September 2024.

Palo Alto contends it was not obligated to conduct a transition assessment and offer a transition plan until Student turned 16 in 2026. Palo Alto concedes it did not conduct a formal transition assessment or prepare an individualized transition plan. It contends it provided Student a transition inventory relating to occupations he might be interested in that clearly stated it was not a formal transition assessment or individualized transition plan, and was never represented as such. Palo Alto further contends that its transition inventory, and the transition goal it developed, were appropriate.

## REQUIREMENTS FOR TRANSITION GOALS AND SERVICES

Beginning with the first individualized education program to be in effect when a pupil is 16 years of age, or younger if determined appropriate by the IEP team, the pupils district must include in each IEP:

- Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

- The transition services, as defined in Education Code section 56345.1, including courses of study, needed to assist the pupil in reaching those goals.

(20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa) and (bb); Ed. Code, § 56345, subds.(a)(8)(A) & (B).) The law requires only that post-secondary goals be based upon “age appropriate” transition assessments. It does not require that a formal transition assessment must be performed, or that standardized measures be used. Thus, relevant information may be obtained from a variety of sources, including record review, interviews, assessment materials, or testing instruments, each of which may individually constitute an assessment.

Transition services are defined as a coordinated set of activities designed within a results-oriented process, focused on improving the academic and functional achievement of the individual to facilitate movement from school to post-school activities, including post-secondary education, vocational education, and integrated employment, including

- supported employment,
- continuing and adult education,
- adult services,
- independent living, or
- community participation.

Transition services are to be based upon individual needs, taking into account individual strengths, preferences, and interests. Transition services include

- instruction,
- related services,
- community experiences,



- development of employment and other post-school adult living objectives, and, if appropriate,
- acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services may be special education if provided as specially designed instruction, or may be related services. (20 U.S.C. § 1401(34); 34 C.F.R. § 300.43; Ed. Code, § 56345.1.)

Simply put, the IDEA requires IEP's for older students to include a plan for a coordinated set of services designed to move special education students successfully from high school to post-high school settings. Transition plans help students gain skills they will need when they graduate from high school or age out of special education when they turn 22 years old. Transition services emphasize the acquisition of functional skills and hands-on knowledge, enabling students to enter the workforce or continue their education or training. Such services also prepare students to eventually live as autonomously as possible, given the extent of their disabilities.

Transition goals vary from other annual goals. Transition goals reflect the desires and plans of the student. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a)(2).) In contrast, other annual goals state measurable standards by which the school district's program for the student will be measured by the end of the next 12 months. (20 U.S.C. § 1414(d)(1)(A)(i)(II).) Transition goals also address a student's career or post-secondary education after graduation, for which progress cannot be measured while a student is still in high school.

The adequacy of a transition plan and services must be viewed as an aggregate in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the child to garner educational benefit. (*Lessard v.*

*Wilton-Lyndeborough Cooperative School Dist.* (1st Cir. 2008) 518 F.3d 18, 30.) A flawed or missing transition plan is generally regarded as a procedural error. (*Board of Education v. Ross* (7th Cir. 2007) 486 F.3d 267, 276.)

When a transition plan fails to comply with the procedural requirements, but the individual transition plan or the IEP provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural violation is harmless. (*Virginia S. v. Dept. of Education* (D.Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, \*10 (*Virginia S.*.) Therefore, a transition plan that is procedurally deficient, but does not result in a loss of educational opportunity, does not result in a denial of FAPE.

## PALO ALTO'S TRANSITION ASSESSMENT AND PLAN

Student completed eighth grade at Hope Technology in June 2024. Parents re-enrolled Student at Hope Technology for his ninth-grade year, 2024-2025. Classes started at Hope Technology on August 26, 2024. Within Palo Alto, Student's entry into ninth grade meant that he was now considered a high school Student, and his home school changed from JLS to Henry M. Gunn High School, called Gunn. Gunn is a large campus of about 1700 students in grades nine through twelve. Beginning with his May 14, 2024 IEP, Student's IEP team began to transition to staff at Gunn.

On September 3, 2024, Parent emailed Gunn Special Education Teacher Briana Gonzalez and requested a transition assessment for Student. While Student's IEP team clearly had the authority under the IDEA and Education Code to determine that it was

appropriate to assess Student's need for transition goals and services even though he was less than 16 years old, Gonzalez did not involve the IEP team in the decision. She responded on September 5, 2024, "The Gunn Team will work on a transition assessment." After trying to arrange an assessment at Hope Technology, Gonzalez on September 10, 2024 emailed Parent, "It looks like HOPE Tech does not have the space for one of our staff to collect information needed for a transition plan. In turn, we will need [Student] to come to [Gunn]. We will probably need an hour at most to complete this." After several more emails regarding scheduling "the assessment," Gonzalez and Parent on September 11, 2024, set it for the next day, September 12, 2024. Palo Alto did not send Parents an assessment plan.

Program Specialist Christina Dias assessed Student on September 12, 2024. Palo Alto concedes she did not conduct a formal transition assessment. She administered a "transition inventory, called the RIASEC, to help identify occupations that might interest Student by asking whether he liked or disliked various activities related to six interest areas or "career clusters":

- Realistic,
- Investigative,
- Artistic,
- Social,
- Enterprising, and
- Conventional.

Gonzalez used Student's scores to identify occupations that might interest him most.

Based on the transition inventory, Gonzalez prepared a document titled “transition inventory,” and dated September 13, 2024. Contrary to Palo Alto’s argument, it did not mention that it differed from a more complete transition assessment or a transition plan. The inventory included the following proposed transition goal for Student:

“After completing the RIASEC Inventory and given the results (e.g. personal strengths, aptitudes, employability skills, possible careers), [Student] will identify 2 possible careers and write a 3 sentence explanation of how his areas of strength apply to each of his identified career path possibilities for 1 out of 2 career choices in 1 out of 1 reflective writing exercise.”

Gonzalez did not suggest any transition services.

Gonzalez presented the transition inventory at Student’s December 9, 2024 IEP team meeting, where she described it as a “transition report.” Student’s scores did not indicate a high level of interest in any occupation, but his highest level of interest was in the area of animation.

## PROCEDURAL VIOLATIONS IN DEVELOPING THE TRANSITION INVENTORY DENIED STUDENT A FAPE

When Parents asked for a transition assessment and transition plan on September 3, 2024, Palo Alto was required to either agree to conduct the requested assessment and obtain Parents’ consent to a written assessment plan for a transition assessment, or provide Parents prior written notice why Palo Alto was refusing to conduct the requested assessment. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300 (c); Ed. Code, §§ 56321, subd. (a), 56381, subd. (f)(1), and 56500.4, subds. (a) & (b).)

Instead, Gonzalez agreed informally to conduct a transition assessment to collect information for a transition plan that should have looked at training, education, employment, and, in Student's case, independent living skills, and then decided, equally informally, to conduct a more limited transition inventory of occupational interests only.

Palo Alto committed procedural violations including failing to obtain Parents' informed consent to the transition inventory it administered, and failing to give Parents' prior written notice why it was refusing to conduct the more complete transition assessment they had requested. Palo Alto also failed to conduct an appropriate transition assessment and prepare an appropriate transition plan, as the transition inventory did not include assessments related to training, education, or independent living skills.

Palo Alto's procedural violations deprived Parents of the opportunity to give informed consent to the transition inventory, or identify why it was insufficient to satisfy their request for a transition assessment and obtain a more complete transition plan from Palo Alto. The limited scope of the transition inventory also deprived Parents of information about Student related to training, education, and appropriate, independent living skills needed to develop goals in those areas, and identify services needed to support them. These consequences significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and thereby denied Student a FAPE.

Student prevailed on Issues 13a and 13b.

## ISSUE 14a: PALO ALTO DENIED STUDENT A FAPE BY PREDETERMINING ITS DECEMBER 9, 2024 IEP OFFER

Student's IEP team held an IEP team meeting on December 9, 2024 to finish reviewing Dr. Nicolosi's psychoeducational IEE, review Student's transition inventory, and review and update goals, accommodations, and services from the May 14, 2024 IEP. Palo Alto made a FAPE offer at the meeting.

Student contends Palo Alto continued to offer Student nearly the same predetermined educational program it had offered since August 2023, including specialized academic instruction in an Academic Communications class, and placement on a large comprehensive campus – now at Gunn High School.

Palo Alto contends there was no evidence of predetermination at the December 9, 2024 IEP team meeting, which instead showed consideration of both Parents' concerns and Dr. Nicolosi's IEE, leading to new goals and services in the IEP, including increased support for Student in the general education environment in the form of English, math, history and science classes co-taught by a general education teacher and an education specialist.

Education Specialist Gonzalez sent Parents a draft IEP on December 9, 2024, shortly before the IEP team meeting that day. Compared to the prior August 24, 2023 IEP offer, or the draft IEP Palo Alto distributed before the aborted November 13, 2024 IEP team meeting (which did not include services), the December 9, 2024 IEP included significant changes in goals and services. Compared to the August 24, 2023 IEP offer, the December 9, 2024 draft IEP offered Student nine goals instead of the previous six. It retained the two previous social-pragmatic goals intended to improve Student's

inferencing and social problem-solving skills. It rewrote the two prior study/organizational skills goals for improving Student's work completion and work attention skills. It rewrote a mental health coping skills goal to focus on dysregulation instead of negative emotions, and replaced a mental health goal of identifying triggers for depression and anxiety with a goal to practice self-compassion techniques to combat feelings of shame about his behaviors. Finally, it added three new goals – two new academic goals in reading and writing comprehension, and Gonzalez' proposed transition goal.

With respect to related services and supplemental supports, the new IEP retained the same speech and language, individual counseling, and occupational therapy services as before. It retained specialized academic instruction in an Academic Communications class, providing 195 minutes per week compared to the prior 210 minutes per week, because the class at Gunn met 15 minutes less each week than the class at JLS. To help Student with issues that might arise from transitioning from the small-school environment at Hope Technology to 1700-student Gunn, the December 9, 2024 IEP added the supplemental service of 600 minutes yearly consultation with a behavior specialist. It also included as a supplemental service 300 minutes per year of occupational therapy consultation.

The most significant change in the December 9, 2024 IEP was its addition of 900 minutes per week of specialized academic instruction to support Student in the general education environment where he would receive 84 percent of his educational program. For this, the IEP placed Student in his core English, math, history and science classes in general education classes co-taught by a general education teacher and an education specialist. However, the IEP did not include direct support for Student during other general education classes, unstructured time like lunch or recess, or during class transitions.

The December 9, 2024 IEP team meeting was scheduled for one hour, and took a short 48 minutes. It began with a presentation of the revised goals, Parents did not realize that Palo Alto had revised the goals from the previous draft IEP provided for the November 13, 2024 IEP team meeting, and Student's advocate stated Parents would not be agreeing to anything today because they would need more time to review the documents. Special Education Teacher Gonzalez explained what each goal was, and how Palo Alto believed it addressed a need of Student.

Gonzalez then stated the extensive proposed accommodations:

- seating away from distractions and noise,
- advanced warning of schedule changes,
- strategic pairing for group activities,
- extended time for assignments,
- tasks presented in smaller chunks,
- check ins to ensure understanding,
- small group instruction when possible,
- verbal instructions paired with visuals when possible,
- access to checklists,
- access to graphic organizers,
- access to teacher/class note,
- a special seat to accommodate Student's sensory needs,
- movement breaks,
- access to sensory tools,
- speech to text, and text to speech,



- typing and access to a word processor and word prediction software,
- reduced paper and pencil tasks, and
- audio books.

Moving on to services, Speech and Language Pathologist Sophia Lo briefly explained the Gunn High School's Academic Communications class. The class was similar to the JLS Academic Communications class, but was slightly larger, with 12 students at the time, and an increased focus on post-secondary skills. Gonzalez briefly explained the proposed co-taught courses in English, math, history and science. She explained each class would be taught by a content specialist and a teaching method specialist working together. In response to Dr. Nicolosi's concern that the classes might be too fast paced for Student, Gonzalez indicated the intent was that Student's case managers would speak with both teachers, to make them aware so they could change and slow down the pace of the class.

Occupational Therapist Kayla Minor briefly explained that the occupational therapy consultation would involve guiding staff on techniques to promote Student's attention, and self-regulation, suggesting adjustments to his classroom environment, and providing strategies to help improve his focus, executive functioning, and transitions. No behaviorist attended the meeting, but Gonzalez explained the behavior consultation was offered to help Student transition from Hope Technology to Gunn High School, "because I know that Hope Technology, I know the classroom is very small, and being put into a public high school can be daunting, so we want to make sure that he has the support crossing that threshold." Parent asked who would be providing the behavior service, and Program Specialist Jodi Snyder and Special Education Coordinator

Simone Worsham, who was also the meeting's facilitator, explained the consultation services would be provided through a behavior team at Gunn High School that included a behaviorist, and would work with his case manager and his team.

The "really rich, goal-driven, 'forward thinking' conversation" regarding Student's placement that School Psychologist Warter anticipated at Student's last IEP team meeting on May 14, 2024 did not happen. After the discussion regarding behavior consultation, Gonzalez concluded Palo Alto's presentation of the IEP, and asked if anyone had any final remarks or questions. Student's Advocate Marie Fajardo expressed outrage that Palo Alto was still offering Student placement on a large comprehensive campus instead of a smaller learning environment.

"Then my question is, how is it that all the information that's been presented to this team, from when they conducted their own assessment to now this new information from Dr. Nicolosi, how do they all end up being the same offer?"

Snyder explained Palo Alto had fine-tuned the IEP in terms of accommodations and strategies and behavior supports based on Dr. Nicolosi's recommendations, and Worsham said Palo Alto's whole team had gathered together "to find out or to really look at a good offer of FAPE, solid offer of FAPE [and] this is what we as professionals have come up with." Worsham confirmed, "This is our offer of FAPE."

Dr. Nicolosi's comments went to the heart of Parents' problem with Palo Alto's offer:

"[W]hat you've prepared, is wonderful. I mean, everyone's put so much work into these goals and these different services, and it's extremely

complicated, though, and what it honestly comes down to for a select amount of students is environment. I mean, it comes down for every student to an environment, and many students can access and manage on a comprehensive environment, with so many people around and all of these wonderful supports that you've prepared, and some cannot. And for [Student], he needs a smaller, more supportive, smaller environment. And that's the crux of my recommendations. So while you have tweaked a few things to maybe add some accommodations, or, you know, the goals and such, the crux of my recommendations are not what your offer is."

As at Student's previous August 24, 2023 IEP team meeting, Palo Alto essentially refused to participate in a discussion of a continuum of placement options that might be available for Student, or of what information available about Student supported Palo Alto's apparent conclusion that a large campus with large general education classes was the least restrictive environment appropriate for Student. Palo Alto obviously put significant thought and effort in developing goals for Student, and services to support him in a placement in the large campus, large classroom environment at Gunn High School. But that placement was clearly predetermined. It was offered in Student's first August 10, 2023 Interim Placement IEP, and Palo Alto thereafter remained unwilling to consider or discuss any other placement option for Student, or explain how it had come to conclude that that placement was the appropriate one for him.

Student proved by a preponderance of the evidence that Palo Alto predetermined Student's school and classroom placement offered in the December 9, 2024 IEP.

Student prevailed on Issue 14a.

ISSUES 14b, 14c, 14d AND 14e: DID PALO ALTO'S DECEMBER 9, 2024 IEP DENY STUDENT A FAPE BECAUSE PALO ALTO FAILED TO APPROPRIATELY ASSESS STUDENT IN PREPARATION FOR THE IEP, AND THE IEP FAILED TO OFFER STUDENT APPROPRIATE GOALS, SERVICES AND SCHOOL AND CLASS PLACEMENT?

Student established that Palo Alto denied him a FAPE by predetermining the December 9, 2024 IEP's offer. It is unnecessary to determine whether the IEP was defective for additional reasons, and this decision does not do so.

Neither party prevailed on Issues 14b, 14c, 14d or 14e.

ISSUE 15: PALO ALTO DID NOT DENY STUDENT A FAPE BY FAILING TO FILE FOR DUE PROCESS AFTER PARENTS DID NOT CONSENT TO STUDENT'S DECEMBER 9, 2024 IEP

As determined previously with respect to Issue 6, Palo Alto was not required to file a due process hearing request in this situation, where Parents of privately-placed Student were seeking a different program than what Palo Alto considered sufficient to provide a FAPE. (*Capistrano Unified School Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1136 [citing *. I.R. ex rel. E.N. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1169].)

Palo Alto prevailed on Issue 15.

## CONCLUSIONS AND PREVAILING PARTY

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

### ISSUE 1a:

Palo Alto did not deny Student a FAPE during the 2022-2023 school year by failing to offer Student an Interim IEP after Parents contacted Palo Alto on March 20, 2023 to enroll Student.

Palo Alto prevailed on Issue 1a.

### ISSUE 1b:

Palo Alto did not deny Student a FAPE during the 2022-2023 school year by predetermining Student's educational program after Parents contacted Palo Alto on March 20, 2023 to enroll Student.

Palo Alto prevailed on Issue 1b.

### ISSUE 2a:

Palo Alto denied Student a FAPE in the 2023-2024 school year by failing to conduct an appropriate psychoeducation assessment following Parents' March 20, 2023 request for assessments.

Student prevailed on Issue 2a.

## ISSUE 2b:

Palo Alto denied Student a FAPE in the 2023-2024 school year by failing to conduct an appropriate speech and language assessment following Parents' March 20, 2023 request for assessments.

Student prevailed on Issue 2b.

## ISSUE 2c:

Palo Alto denied Student a FAPE in the 2023-2024 school year by failing to conduct an appropriate occupational therapy assessment following Parents' March 20, 2023 request for assessments.

Student prevailed on Issue 2c.

## ISSUE 3:

Palo Alto did not deny Student a FAPE by failing to hold an IEP meeting and make an offer of FAPE to Student by the start of the 2023-2024 school year.

Palo Alto prevailed on Issue 3.

## ISSUE 4a:

Palo Alto denied Student a FAPE by predetermining its August 10, 2023 Interim Placement offer to place Student in an Academic Communications class.

Student prevailed on Issue 4a.

#### ISSUE 4b:

Whether Palo Alto's August 10, 2023 Interim Placement IEP denied Student a FAPE by offering Student placement on a large, comprehensive middle school campus with large class sizes, instead of a smaller campus with smaller class sizes and additional adult support was not decided.

Neither party prevailed on Issue 4b.

#### ISSUE 4c:

Whether Palo Alto's August 10, 2023 Interim Placement IEP denied Student a FAPE by failing to offer Student any reading comprehension goals was not decided.

Neither party prevailed on Issue 4c.

#### ISSUE 4d:

Whether Palo Alto's August 10, 2023 Interim Placement IEP denied Student a FAPE by failing to offer Student appropriate and measurable annual goals in social pragmatics, social/behavioral/emotional skills, study/organizational skills and attention was not decided.

Neither party prevailed on Issue 4d.

#### ISSUE 4e:

Whether Palo Alto's August 10, 2023 Interim Placement IEP denied Student a FAPE by failing to offer Student adequate services to address his needs

in attention deficit and hyperactivity disorder, speech and language, occupational therapy, attention and distractibility, mental health, and behavior intervention was not decided.

Neither party prevailed on Issue 4e.

#### ISSUE 5a:

Palo Alto's August 24, 2023 IEP denied Student a FAPE by offering Student a predetermined placement in an Academic Communications class.

Student prevailed on Issue 5a.

#### ISSUE 5b:

Whether Palo Alto's August 24, 2023 IEP denied Student a FAPE by offering Student placement on a large, comprehensive middle school campus with large class sizes, instead of a smaller campus with smaller class sizes and additional adult support was not decided.

Neither party prevailed on Issue 5b.

#### ISSUE 5c:

Whether Palo Alto's August 24, 2023 IEP denied Student a FAPE by failing to offer Student any reading comprehension goals was not decided.

Neither party prevailed on Issue 5c.



#### ISSUE 5d:

Whether Palo Alto's August 24, 2023 IEP denied Student a FAPE by failing to offer Student appropriate and measurable annual goals in social pragmatics, social/behavioral/emotional skills, study/organizational skills and attention was not decided.

Neither party prevailed on Issue 5d.

#### ISSUE 5e:

Whether Palo Alto's August 24, 2023 IEP denied Student a FAPE by failing to offer Student adequate services to address his needs in attention deficit and hyperactivity disorder, speech and language, occupational therapy, attention and distractibility, mental health, and behavior intervention was not decided.

Neither party prevailed on Issue 5e.

#### ISSUE 6:

Palo Alto did not deny Student a FAPE by failing to file for due process after parents did not consent to Student's August 24, 2023 IEP.

Palo Alto prevailed on Issue 6.

#### ISSUE 7a:

Palo Alto denied Student a FAPE by failing to provide parents assessment protocols requested August 28, 2023.

Student prevailed on Issue 7a.

#### ISSUE 7b:

Palo Alto did not deny Student a FAPE by failing to provide educational records requested October 28, 2024.

Palo Alto prevailed on Issue 7b.

#### ISSUE 8a:

Palo Alto denied Student a FAPE by imposing unreasonably restrictive criteria with respect to parent's October 15, 2023 request for IEE's in the area of speech and language.

Student prevailed on Issue 8a.

#### ISSUE 8b:

Palo Alto denied Student a FAPE by imposing unreasonably restrictive criteria with respect to parent's October 15, 2023 request for IEE's in the area of occupational therapy.

Student prevailed on Issue 8b.

#### ISSUE 8c:

Palo Alto did not deny Student a FAPE by imposing unreasonably restrictive criteria with respect to parent's October 15, 2023 request for an IEE in the area of assistive technology.

Palo Alto prevailed on Issue 8c.

## ISSUE 9:

Palo Alto did not deny Student a FAPE by failing to timely finalize a contract with Student's independent psychoeducational assessor selected by Parents on December 1, 2023.

Palo Alto prevailed on Issue 9.

## ISSUE 10a:

Palo Alto's May 14, 2024 IEP for Student did not deny Student a FAPE by offering Student predetermined placement in an Academic Communications class.

Palo Alto prevailed on Issue 10a.

## ISSUE 10b:

Palo Alto's May 14, 2024 IEP for Student did not deny Student a FAPE by offering Student placement on a large, comprehensive middle school campus with large class sizes, instead of a smaller campus with smaller class sizes and additional adult support.

Palo Alto prevailed on Issue 10b.

## ISSUE 10c:

Palo Alto's May 14, 2024 IEP for Student did not deny Student a FAPE by failing to offer Student any reading comprehension goals.

Palo Alto prevailed on Issue 10c.

#### ISSUE 10d:

Palo Alto's May 14, 2024 IEP for Student did not deny Student a FAPE by failing to offer Student appropriate and measurable annual goals in social pragmatics, social/behavioral/emotional skills, study/organizational skills and attention.

Palo Alto prevailed on Issue 10d.

#### ISSUE 10e:

Palo Alto's May 14, 2024 IEP for Student did not deny Student a FAPE by failing to offer Student adequate services to address his needs in

- attention deficit and hyperactivity disorder,
- speech and language,
- occupational therapy,
- attention and distractibility,
- mental health, and
- behavior intervention.

Palo Alto prevailed on Issue 10e.

#### ISSUE 11:

Palo Alto did not deny Student a FAPE by failing to file for due process after Parents did not consent to Student's May 14, 2024, IEP.

Palo Alto prevailed on Issue 11.

## ISSUE 12:

Palo Alto did not deny Student a FAPE by failing to hold an IEP meeting and make a FAPE offer by the start of the 2024-2025 school year.

Palo Alto prevailed on Issue 12.

## ISSUE 13a:

Palo Alto denied Student a FAPE following Parents' September 3, 2024 request for a post-secondary transition assessment of Student, by failing to conduct an appropriate post-secondary transition assessment.

Student prevailed on Issue 13a.

## ISSUE 13b:

Palo Alto denied Student a FAPE following Parents' September 3, 2024 request for a post-secondary transition assessment of Student, by failing to offer Student an appropriate transition plan.

Student prevailed on Issue 13b.

## ISSUE 14a:

Palo Alto's December 9, 2024, amendment IEP denied Student a FAPE by offering Student predetermined placement in an Academic Communications class.

Student prevailed on Issue 14a.

#### ISSUE 14b:

Whether Palo Alto's December 9, 2024, amendment IEP denied Student a FAPE by offering Student placement on a large, comprehensive middle school campus with large class sizes, instead of a smaller campus with smaller class sizes and additional adult support was not decided.

Neither party prevailed on Issue 14b.

#### ISSUE 14c:

Whether December 9, 2024, amendment IEP denied Student a FAPE by failing to offer Student any reading comprehension goals was not decided.

Neither party prevailed on Issue 14c.

#### ISSUE 14d:

Whether Palo Alto's December 9, 2024, amendment IEP denied Student a FAPE by failing to offer Student appropriate and measurable annual goals in social pragmatics, social/behavioral/emotional skills, study/organizational skills and attention was not decided.

Neither party prevailed on Issue 14d.

#### ISSUE 14e:

Whether Palo Alto's December 9, 2024, amendment IEP denied Student a FAPE by failing to offer Student adequate services to address his needs in attention

deficit and hyperactivity disorder, speech and language, occupational therapy, attention and distractibility, mental health, and behavior intervention was not decided.

Neither party prevailed on Issue 14e.

#### ISSUE 15:

Palo Alto did not deny Student a FAPE by failing to file for due process after Parents did not fully consent to Student's December 9, 2024 IEP.

Palo Alto prevailed on Issue 15.

#### REMEDIES

Student prevailed on Issues 02a, 02b, 02c, 04a, 05a, 07a, 08a, 08b, 13a, and 13b. Student proved by a preponderance of the evidence that Palo Alto denied him a FAPE from August 10, 2023 to Student's filing of his complaint on March 20, 2025 by making Student IEP offers that predetermined his placement for specialized academic instruction in Academic Communications classes on large comprehensive campuses with large general education or co-taught classes, and refusing to meaningfully consider alternative placement options for Student. Student also proved Palo Alto denied Student a FAPE by failing to conduct appropriate assessments in the areas of speech and language, occupational therapy, and post-secondary transition, and that Palo Alto's cost criteria for speech and language assessments, and insurance criteria for an occupational therapy assessment, were unreasonable.

As a remedy for Palo Alto's FAPE denials, Student requested an order directing Palo Alto to reimburse Parents for the costs of Student's private placement at Hope Technology Academy for the 2023-2024 and 2024-2025 school years, and provide independent education evaluations in the areas of speech and language and occupational therapy, and post-secondary transition by assessors selected by Parents, not subject to Palo Alto's criteria for independent evaluators.

Courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove, supra*, 557 U.S. 230, 244, n. 11.)

## REIMBURSEMENT FOR TUITION AND COSTS OF PRIVATE PLACEMENT AT HOPE TECHNOLOGY

When a school district fails to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. at p. 369-371.) Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the school district has failed to provide a FAPE. (*Id.*; *Student W. v. Puyallup School District* (9th Cir. 1994) 31 F. 3d 1489, 1496 (*Puyallup*).)

A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing both that the IEP offered by the school district violated the IDEA



and that the alternative private placement they chose was proper under the Act. (Ed. Code, § 56175; 20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *School Committee of Burlington v. Dept. of Ed.* (1985) 471 U.S. 359, 369-370 [105 S. Ct. 1996, 85 L. Ed. 2d 385] (reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE).) The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 14 [114 S.Ct. 36, 1126 L.Ed.2d 284] (despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found to be reimbursable where the unilateral placement had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade and where expert testimony showed that the student had made substantial progress).)

Because reimbursement is a form of discretionary equitable relief, a court must also assess the reasonableness of both parties' conduct to determine whether reimbursement is warranted. (See *Anchorage School Dist. v. M.P.*, 689 F.3d 1047, 1058-59 (9th Cir. 2012).) Relevant factors include the existence of more suitable placements for the student, and the parties' level of cooperation during the IEP process. (*Id.*)

Here, Hope Technology was an appropriate placement for Student, especially when considering the availability of alternative placements that might be more suitable. Hope Technology was able to support Student's academic abilities and aspirations. It was accredited by the Western Association of Schools and Colleges, so that academic

credits earned by Student would transfer to public schools and be accepted by colleges. Although it did not provide special education services, it provided in-person, small classroom instruction focused on providing students on the autism spectrum strategies and supports including visual aids, sensory tools, social skills training, anxiety management techniques, and on-site counselors and therapists.

The only alternative placement to Hope Technology that was suggested by either party was the placements offered by Palo Alto at JLS and Gunn High School. As determined in this decision, Palo Alto did not engage during the IEP process in a discussion of a continuum of placement options, or why its proposed placements were the least restrictive environments appropriate for Student. Given Parents concern over Student's ability to succeed academically, socially, and emotionally if placed in the large campuses and classrooms offered by Palo Alto, which was supported by Student's educational history, prior assessments, and testimony from Student's experts, Parents' placement of Student at Hope Technology was proper under the IDEA.

Palo Alto contends any reimbursement should be reduced or denied because Parents failed to give Palo Alto 10-days' advance written notice of their intent to remove Student to the private placement at Hope Technology. A hearing officer has discretion to reduce or deny a parent's reimbursement if a parent fails to provide 10 days advance written notice to the school district before removing their child from the district. (20 U.S.C., § 1412(a)(10)(C)(iii).)

(This space is intentionally left blank. Text continues on the following page.)

Parents gave Palo Alto notice on August 28, 2023, that Student would continue at Hope Technology, writing,

"Given the fact school started weeks ago and it will take two weeks to schedule a tour, we do not think it prudent to keep [Student] out of school any longer. [Student] will continue to attend Hope Technology School until his IEP and the tour are completed to make sure the program offer is appropriate."

The purpose of the notice requirement is to give a school district one final opportunity to modify the student's IEP and craft an education plan that parents find acceptable. (*Ashland School Dist. v. Parents of Student E.H.* (9th Cir. 2009) 587 F.3d 1175, 1186.)

However, Parents had been seeking an IEP for Student for the 2023-2024 school year since March 20, 2023, and had been clear Student needed an IEP in place before he started at Palo Alto. Palo Alto had already made two IEP offers that Parents were unwilling to agree to, but both offers had been made after the start of classes at JLS on August 9, 2023. Finally, in defending not offering Student an IEP for the start of the 2024-2025 school year, Palo Alto argued that it reasonably understood that Student was enrolled continuously at Hope Technology from March 2023 through the filing of the complaint, based on "Parent's explicit statements" in her March 20, 2023, and October 13, 2023 letters. It would not advance the purposes of the 10-day notice provision, or be equitable, to reduce or deny parents' reimbursement when Parents gave Palo Alto more than four months' notice before the start of the 2023-2024 school year that Student needed an IEP in place from Palo Alto before they would remove him from his existing

private placement at Hope Technology. Similarly, Palo Alto, by its own admission, was aware Student would continue at Hope Technology for the 2024-2025 school year unless Student had a Palo Alto IEP in place.

Palo Alto also claimed Parents had not worked with Palo Alto in good faith. Palo Alto argued Parents exhibited a longstanding pattern of enrolling Student in a school district to obtain assessments and for procedural purposes, followed by immediately withdrawing the Student. Palo Alto strenuously argued Parents had no intention of placing Student in a public school setting, and that “This context is critical in understanding the District’s actions, the limitations it has faced, and the reasons why no denial of a FAPE occurred.”

The first problem with this argument is that difficult parents are not an excuse for procedural violations. “We have often said that a school district cannot ‘blame a parent for its failure to ensure meaningful procedural compliance with the IDEA.’” (*Los Angeles Unified School Dist. v. A.O.* (9th Cir. 2024) 92 F.4th 1159, 1171–1172, quoting *Doug C. v. Hawaii Dept. of Educ.*, 720 F.3d 1038, 1045 (9th Cir. 2013) (*Doug C.*)). This is because “the IDEA’s protections are designed to benefit the student, not the parent.” (*Doug C.*, *supra*, 720 F.3d at 1045.)

The second problem with Palo Alto’s characterization of Parents’ conduct is that the facts did not support it. Parents had not exhibited a longstanding pattern of enrolling Student in a school district to obtain assessments and then immediately withdrawing the Student. All of Student’s educational assessments prior to Palo Alto’s were conducted through IEP teams at schools Student was attending, except for the independent psychoeducation evaluation by Dr. Gwaltney in 2022.

Parents did exhibit a strong preference for small schools and small classes. Given Student's educational history and evaluation results, such a preference was not illogical or unreasonable. Moreover, Parents since 2021 had been progressing Student towards less restrictive environments with more peer interaction. They transitioned Student from one-on-one instruction and online services in 2020-2021, to one-on-one-instruction and in-person elective classes and services in 2021-2022, to in-person instruction on a small campus, and in small classes, at Hope Technology in 2022-2023. Parents' decision to reach out to Palo Alto in March 2023 regarding assessments and an IEP for Student's 2023-2024 school year presents more like a natural progression towards a transition to a less restrictive environment than a scheme to take advantage of Palo Alto. In any event, Parents were cooperative with, and responsive to, Palo Alto at all times, and their conduct did not give rise to an equitable basis for reducing their right to reimbursement.

Parents will be awarded costs of Student's tuition at Hope Technology Academy for the 2023-2024, and 2024-2025 school years. Student presented testimony and credit card transaction printouts from Parent, and billing statements from Hope Technology Academy showing amounts owed and paid, proving by a preponderance of the evidence that Hope Technology billed Parents, and Parents paid Hope Technology \$36,750 tuition for Student and his brother for the 2023-2024 school year. Student presented testimony and credit card transaction printouts from Parent, and billing statements from Hope Technology Academy showing amounts owed, proving by a preponderance of the evidence that Hope Technology billed Parents \$39,300 for tuition for both of their children for the 2024-2025 school year. Parents paid Hope Technology \$20,559 for the 2024-2025 school year through March 13, 2025, leaving an unpaid tuition balance of \$18,741 for Student and his brother as of March 13, 2025.

Parents will be awarded Student's one-half share of Parents' Hope Technology tuition payments, equal to \$18,375 for the 2023-2024 school year, plus \$10,279.50 for payments made through March 13, 2025 2024-2025, or a total paid for both years of \$28,654.50. Student's share of the unpaid balance owed to Hope Technology as of March 13, 2025 was \$9,370.50. Parents will also be awarded reimbursement of this amount on proof of payment similar to that presented at hearing.

Parents are also awarded reimbursement of their cost of transporting Student to and from Hope Technology for the 2023-2024, and 2024-2025 school years. Parents drove Student and his brother to and from school. Parent's testimony, corroborated by Google Maps, of which official notice is taken pursuant to Government Code section 11515 and Evidence Code section 452, subdivision (h), proved the driving distance from Student's home to Hope Technology was 2.8 miles one-way, or 11.2 miles total for two round-trips daily. Official notice is also taken of the Internal Revenue Service's Standard Mileage Rate of \$0.655 per mile for the calendar year 2023, \$0.67 per mile for 2024, and \$0.7 per mile for 2025. Multiplying the 11.2 miles traveled each day times the applicable reimbursement rate, then dividing by two because Parents were transporting both children, yields the cost of travel allocable each day to taking Student to school. Parents are awarded reimbursement of \$3.67 for each day Student attended school at Hope Technology in the fall of 2023, \$3.75 for each day attended in 2024, and \$3.92 for each day attended in 2025. Student's attendance records in evidence prove by a preponderance of the evidence Student attended Hope Technology 84 days in the fall of 2023, 93 days in the spring of 2024, and 83 days in the fall of 2024, yielding a travel reimbursement total of \$968.28 for those periods. ( $\$308.28 + \$348.75 + \$311.25$ .) Parents are also awarded reimbursement of \$3.92 per day for each day Student attended Hope Technology, on proof of payment similar to that presented at hearing.

## INDEPENDENT EDUCATIONAL EVALUATIONS

Educational evaluations at public expense may also be awarded as an equitable remedy, if necessary to grant appropriate relief. (*Los Angeles Unified Sch. Dist. v. D.L.* (C.D.Cal. 2008) 548 F.Supp.2d 815, 822-823.) To ensure Student's right to independent speech and language and occupational therapy evaluations at public expense, Palo Alto will be required to fund an independent speech and language assessment at a cost exceeding Palo Alto's 2025 cost criteria, and an occupational therapy assessment that is not subject to Palo Alto's insurance criteria.

Student did not offer proof of the reasonable cost for an independent speech and language assessment, but was unable to obtain such an assessment from an assessor of Parents' choice that complied with Palo Alto's criteria capping the cost of speech and language IEE's at \$3000 for the 2024-2025 school year. Palo Alto's list of independent educational evaluators for the 2024-2025 school year identified speech and language evaluators who charged flat fees between \$1200 and \$2950, or hourly rates from \$151 an hour to \$200 an hour. Parents' first chosen speech and language assessor, Jennifer Katz, charged a flat rate of \$9800 to devote between 25 and 30 hours to a speech and language assessment, preparation of a report, and participation in an IEP team meeting. This equated to an hourly rate between \$327 and \$392. Parents did not challenge Palo Alto's December 6, 2023 rejection of Katz based on her rate. Student did not present evidence of the rate, proposed hours, and total cost of Parents' second chosen speech and language assessor, Judi Jewett. However, Student should reasonably be able to obtain a comprehensive 25-hour speech and language assessment, report,

and IEP attendance at the \$200 per hour rate that was the highest in Palo Alto's independent assessors' list. Palo Alto will be required to fund an independent speech and language evaluation by an assessor of Parent's choosing, in an amount not to exceed \$5000.

Palo Alto rejected Parents chosen occupational therapy assessor, Liz Isono, on grounds she did not satisfy Palo Alto's criteria that independent evaluators have sexual abuse and molestation insurance. This requirement was not part of the SELPA criteria or list of materials for review that Palo Alto identified in a November 6, 2023, prior written notice regarding IEE requests, but was apparently added some time in 2024. Contracted School Psychologist Keefe testified Palo Alto required her to have insurance, in the 2022-2023 school year, but she did not believe it included sexual abuse and molestation insurance during 2024. Palo Alto employees who assessed Student were almost all unaware of whether Palo Alto requires or maintained sexual abuse and molestation insurance coverage for them. In light of the uncertainty whether this requirement was being applied by Palo Alto to its employees and contractors, and Palo Alto's failure to file a due process hearing request to defend that requirement, Palo Alto will be ordered to suspend it as a condition to Palo Alto's funding an occupational therapy IEE of Student by Isono or another occupational therapy assessor of Parents' choice who meets Palo Alto's other criteria.

Student proved that Palo Alto denied him a FAPE by failing to conduct an appropriate post-secondary transition assessment and prepare an appropriate transition plan for Student. Student was entitled to an independent post-secondary transition assessment at public expense, and development of an appropriate transition plan. The evidence showed Student requested a post-secondary transition IEE on March 20, 2025,



the day before filing the complaint in this action. Palo Alto authorized a transition IEE eleven days later, on March 31, 2025. Student did not offer evidence to prove the parties had reached an impasse over the provision of a transition IEE, or Palo Alto's criteria for a transition IEE. Palo Alto is legally required to hold an IEP team meeting to review and consider the independent transition assessment, and modify or replace the previously-offered transition plan if the IEP team believes doing so is necessary to offer Student a FAPE, based on the data provided by the independent assessor. No further relief is necessary with respect to the post-secondary transition assessment or plan.

### TRAINING IN AREA DEVELOPING IEPs FOR ELIGIBLE STUDENT'S TRANSFERRING INTO PALO ALTO WITHOUT A CURRENT IEP

Appropriate relief may include an order that school staff be trained in areas in which violations were found, to benefit the specific student involved, or to prevent future procedural violations that might otherwise harm other students. (*Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2007) 464 F.3d 1025, 1034.) Staff training is an appropriate remedy here because Palo Alto departed significantly from the procedural requirements of the IDEA with respect to developing an appropriate IEP for students eligible for special education who transfer into Palo Alto without a current IEP. Palo Alto shall provide two hours of training to its special education department including its director, program specialists, case managers, and school psychologists, on the legal requirements for developing an appropriate IEP for students eligible for special education who transfer into Palo Alto. This training shall be provided by an attorney or law firm knowledgeable about special education law who does not currently represent Palo Alto.

## ORDER

1. Within 45 days of this Decision, Palo Alto shall reimburse Parents \$29,622.78 for:
  - a. Student's tuition cost of \$28,654.50 paid by Parents to Hope Technology Academy for the 2023-2024 school year, and the 2024-2025 school year through March 13, 2025; and
  - b. Parents' costs of \$968.28 to drive Student to and from school at Hope Technology Academy for the 2023-2024 school year, and for the 2024-2025 school year through December 31, 2024, calculated based on mileage and the Internal Revenue Service Standard Mileage Rates for 2023 and 2024.
2. Within 45 days of receipt from Parents of proof of payment or costs incurred, Palo Alto shall reimburse Parents for:
  - a. Student's cost of tuition at Hope Technology Academy for the 2024-2025 school year, paid after March 13, 2025, Palo Alto shall reimburse Parents the amounts proved, in an amount not to exceed \$9,370.50. Parents may provide proof of payment in the form of credit card transaction printouts from Parent, and billing statements from Hope Technology Academy, showing amounts owed and paid; and
  - b. Parents' costs to drive Student to and from school at Hope Technology Academy for the 2024-2025 school year from from January 1, 2025, through the end of the school year

on June 13, 2025. Parents shall provide proof of costs incurred by providing Student's attendance record showing the number of days Student attended Hope Technology, which shall be multiplied by the daily reimbursement rate of \$3.92 calculated as previously described based on the mileage from Student's home to and from Hope Technology Academy, and the Internal Revenue Service Standard Mileage Rate for 2025.

3. Within 10 days of Parents providing Palo Alto the name of their selected independent speech and language assessor for Student, Palo Alto will contact the provider(s) and expeditiously complete the contracting. Palo Alto may apply its independent educational evaluation criteria in considering the proposed speech and language assessor, except for its cost cap for independent speech and language assessments, which is raised to \$5,000 for this assessment of Student, only.
4. Within 10 days of Parents providing Palo Alto the name of their selected independent occupational therapy assessor for Student, Palo Alto will contact the provider(s) and expeditiously complete the contracting. Palo Alto may apply its independent educational evaluation criteria in considering the proposed occupational therapy assessor, other than its requirement that the assessor maintains sexual abuse and molestation insurance, which is suspended for this assessment of Student, only.

5. Within 60 days of this Decision, Palo Alto shall contract with a law firm that specializes in special education law, to provide at least two hours' training to its special education department including its director, program specialists, case managers, and school psychologists, on the legal requirements for developing an appropriate IEP for students eligible for special education who transfer into Palo Alto. This training shall be provided by an attorney knowledgeable about special education law who does not currently represent Palo Alto. The training shall be completed by December 31, 2025. Palo Alto shall notify Parents and Parents' attorney in writing within 10 days of the date Palo Alto has completed such training.
6. All other requests for relief are denied.

## RIGHT TO APPEAL THIS DECISION

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

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings