

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.

CASE NO. 2025030093

DECISION

AUGUST 18, 2025

On February 28, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming San Dieguito Union High School District and San Diego County Office of Education as respondents. Administrative Law Judge Clifford H. Woosley heard this matter by videoconference on June 10, 11, 12, 18, 19, 24, and 25, 2025.

Attorneys Peter J. Cuevas and Kelsey R. Castanho represented Student. Mother attended the hearing on behalf of Student. Attorneys Christopher J. Fernandes and Dan B. Soar represented San Dieguito Union High School District. Orletta Nguyen, senior director of special education, attended the hearing on behalf of San Dieguito Union High School District.

Attorney Sundee M. Johnson represented San Diego County Office of Education. On the first day of hearing, before the introduction of evidence, Student dismissed San Diego County Office of Education as a respondent and Attorney Johnson did not attend the hearing thereafter.

Intern Brenden Palguta, from Student's attorney's office, observed the hearing but did not participate. Administrative Law Judge Laurie S. Gorsline observed two days of hearing but did not participate.

At the parties' request, OAH continued the matter for written closing briefs. The parties submitted their briefs, and OAH closed the record on July 21, 2025.

In this Decision, a free appropriate public education is called a FAPE, and an individualized education program is called an IEP. San Dieguito Union High School District is called San Dieguito.

ISSUES

1. Did San Dieguito deny Student a FAPE during the 2023-2024 school year by:
 - (a) failing to locate, identify, and evaluate Student as a child who has a disability?
 - (b) failing to assess Student in the area of functional behavior?
 - (c) failing to assess Student in the area of educationally related mental health?

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2. Did San Dieguito deny Student a FAPE regarding the January 31, 2024 IEP by:
 - (a) failing to have all required participants at the IEP team meeting?
 - (b) failing to offer any support and services for behavior?
 - (c) failing to offer any support and services for mental health?
 - (d) failing to offer an appropriate behavioral intervention plan?
 - (e) failing to offer any behavioral management goals?
 - (f) failing to offer any impulse control goals?
 - (g) failing to consider the continuum of placement options, including a residential treatment center?
 - (h) failing to offer an appropriate placement?
3. Did San Dieguito deny Student a FAPE regarding the March 27, 2024 IEP by:
 - (a) failing to offer an appropriate transition plan?
 - (b) failing to offer appropriate supports and services for behavior?
 - (c) failing to offer appropriate supports and services for mental health?
 - (d) failing to offer an appropriate behavioral intervention plan?
 - (e) failing to offer appropriate goals for behavioral management?
 - (f) failing to offer appropriate goals for impulse control?

- (g) failing to consider the continuum of placement options, including a residential treatment center?
 - (h) failing to offer an appropriate placement?
 - (i) failing to make a clear and specific offer of FAPE?
4. Did San Dieguito deny Student a FAPE regarding the October 28, 2024 IEP by:
- (a) failing to offer an appropriate transition plan?
 - (b) failing to offer appropriate support and services for behavior?
 - (c) failing to offer appropriate support and services for mental health?
 - (d) failing to offer an appropriate behavior intervention plan?
 - (e) failing to offer measurable goals for behavioral management?
 - (f) failing to offer measurable goals for impulse control?
 - (g) failing to consider the continuum of placement options, including a residential treatment center?
 - (h) failing to offer an appropriate placement?
5. Did San Dieguito and San Diego County Office deny Student a FAPE during the 2024-2025 school year by failing to consider the July 10, 2024 private psychoeducational evaluation?

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JURISDICTION

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

The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62; *see also* 20 U.S.C. § 1415(i)(2)(C)(iii).)

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

BACKGROUND

During the hearing, Student turned 17 years old and was attending Coastal Academy High School in the Classical Academies Charter Organization. Coastal Academy was not associated with San Dieguito. Student resided within San Dieguito's geographic boundaries at all times relevant to this decision.

ISSUE 1(a): DID SAN DIEGUITO DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO LOCATE, IDENTIFY, AND EVALUATE STUDENT AS A CHILD WHO HAS A DISABILITY?

Student contends that San Dieguito did not meet its child find obligations, which were triggered early in the 2023-2024 school year. Student argues that San Dieguito should have assessed Student, convened an IEP team meeting, found him eligible, and provided services and placement to enable him to access and benefit from the educational curriculum before Parents' request in the fall of 2023. Student argues that Student's educational history, maladaptive behaviors with peers and adults, and diagnosis, put San Dieguito on notice that Student may have had a disability. Student argued that San Dieguito's failure to meet its child find obligations denied Student a FAPE.

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San Dieguito contends that it was not made aware of circumstances which triggered its child find duty before Parents asked for assessment. When Parents requested assessment, San Dieguito asserts it properly responded to Parents' concerns by proceeding with a Study Team Meeting. San Dieguito then drafted and provided Parents with an assessment plan. Awaiting the assessment results, San Dieguito convened a Section 504 review meeting and created a plan of educational accommodations. San Dieguito argues it timely completed assessment and convened Student's initial IEP team meeting, finding Student eligible for special education.

The IDEA places an affirmative, ongoing duty on school districts to identify, locate, and evaluate all children with disabilities who are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).) This duty is commonly referred to as "child find." California law specifically incorporates child find in Education Code section 56301, subdivision (a).

School districts cannot rely on informal observations or the subjective opinion of a staff member to circumvent their responsibility to use the thorough and reliable procedures specified in the IDEA to assess a child in all areas of suspected disability. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1119 (*Timothy O.*))

Whether a school district had knowledge of or reason to suspect a disability must be evaluated in light of information that it knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041).) The Ninth Circuit Court of Appeals noted in an unpublished decision that

it had not yet articulated a test for determining when the child find obligation is triggered. (*G.M. ex. rel. G.M. v. Saddleback Valley Unified Sch. Dist.* (9th Cir. 2014) 583 Fed.Appx. 702, 703, fn. 1.)

STUDENT'S PRIOR SCHOOL HISTORY

For seventh grade, Student started at San Dieguito's Diegueño Middle School, in August 2020. Due to COVID restrictions, classes were virtual, and Student struggled with distance learning. A month later, on September 25, 2020, Parents withdrew Student and placed him in Saint John School, a private school in Encinitas, California, for the remainder of the 2020-2021 school year.

During the 2021-2022 school year, Student's family relocated to Paris, France, where Student attended the International School of Paris for eighth grade. There, Student struggled with executive functioning, impulse control, and behavior management.

DR. WETTER'S NEUROPSYCHOLOGICAL-PSYCHOEDUCATIONAL EVALUATION

The family returned to the United States in December 2021 for winter break. Due to Student's difficulties, Parents had Student assessed by Spencer Wetter, Ph.D., a neuropsychologist. He measured and evaluated Student's cognitive abilities, achievement levels, and social and emotional development.

Dr. Wetter diagnosed Student with ADHD, combined type, because of Student's difficulty with sustained attention, impulse control, and executive functioning. Dr. Wetter

recommended supports and accommodations, including educational therapies, development of patterns of thinking, and building thinking skills. He specified strategies for prioritizing work and completion of homework and projects. Dr. Wetter described more than 20 accommodations for Student's success in school.

The family returned to Paris and Student finished the 2021-2022 school year at the International School. The family then returned home.

2022-2023 SCHOOL YEAR

For the 2022-2023 school year, Parents enrolled Student at Sante Fe Christian School, a private school, for ninth grade. There, Student exhibited maladaptive behaviors. Sante Fe Christian told Parents to disenroll Student, or the school would expel him. Parents enrolled Student at Coastal Academy Charter School, a homeschool charter, on November 30, 2022, as an eighth grader. Student did not adhere to Coastal Academy's independent study program. Coastal Academy disenrolled him.

Parents placed Student in New Vision Wilderness Therapy, a residential program, from February to May 2023. Upon discharge, New Vision recommended placing Student in a therapeutic boarding school. Otherwise, Student's behaviors were likely to regress.

Parents enrolled Student at Catalyst Residential Treatment Center, called Catalyst, in Brigham City, Utah, on May 10, 2023. The Catalyst program consisted of phases, through which teenaged males would progress, taking eight to 10 months to complete. There, Student received intensive individual and group therapy, while the program addressed Student's executive functioning and pragmatics.

Student returned home in August, 2023, after three months, without completing the program. Mother said Catalyst recommended not withdrawing Student before he finished, but the family missed Student and just wanted him home.

PARENTS ENROLL STUDENT AT SAN DIEGUITO

In March, 2023, Parents enrolled Student at San Dieguito for the 2023-2024 school year, as a ninth grader, to begin in August 2023. Mother completed the enrollment documentation. Father and Mother agreed that Mother would take the lead regarding Student's education, on behalf of both. When asked to identify prior enrollments, Mother named the International School of Paris, for the 2021-2022 school year, starting August 15, 2021, for eighth grade. Mother also listed Saint John School for seventh grade. Student attended St. John in the 2020-2021 school year. Mother did not identify Sante Fe Christian School or New Vision Wilderness Therapy, which Student attended in the 2022-2023 school year.

Mother signed a Release of Records on March 14, 2023 for the International School, St. John's, and Coastal Academy as part of the enrollment process,

2023-2024 SCHOOL YEAR: STUDENT'S NINTH GRADE

Student started attending San Dieguito's Canyon Crest Academy, called Canyon Crest, when the 2023-2024 school year started on August 15, 2023. Student had a typical general education freshman curriculum. Before a month had passed, Parents started to receive emails or phone calls from some of Student's teachers and administrators, noting that Student had difficulty sitting still, remaining focused, and timely turning in schoolwork.

Student's Mother testified at the hearing, and related the following. Upon Student's return from Catalyst, Parents provided transition support with a therapist and a wraparound program, to which Mother took Student after school. Also, on the advice of Catalyst, Parents restricted Student's access to technology. Parents used a content monitoring application, which enabled them to limit and filter Student's technology on any of his devices and track his location. Parents did not inform San Dieguito of Student's wraparound program and therapy, or that they had been advised to impose technology restrictions.

Mother described Student's first few weeks of school. Student did great the first week of school. Mother believed that, subsequently, Student became depressed, had low self-esteem, and felt that others made fun of him. Student struggled with his ADHD, was impulsive, did not self-regulate, and had few friends. Mother said he would make up lies to appear "cool" and be accepted. Student's desire to attend school diminished. Mother regularly checked Student's academic progress on the school's on-line student information system, called Aries.

Student's general education math teacher, Chiara E. Luna, testified at the hearing. Luna taught math for 12 years at Canyon Crest Academy, grades nine through 12. She first met Student when he joined her ninth-grade math class in August 2023, a week or two after the school year started. Thereafter, Luna saw Student every day, 90 minutes a day, until December 2023. Luna observed, personally and via GoGuardian, that Student would get distracted with technology and would do Google searches during class. Luna would have to redirect Student a couple of times a day, personally or over the computer platform GoGuardian. GoGuardian was a computer platform used by San Dieguito, which connected teachers with their students' technology, in real time. GoGuardian included monitoring and limiting students' activity on their devices during the day.

In the beginning of the year, Student was okay working in groups. But, as the year progressed, Luna noted that Student could distract his class peers. She paired Student one-to-one with another classmate. Student was typically responsive to adult redirection. Luna advised a school administrator about Student's improper use of technology.

On August 28, 2023, Assistant Principal Brianna Castellanos contacted Parents regarding Student's inappropriate use of school technology and his search history. Castellanos also counseled Student regarding his search history in math class. Castellanos interacted with Student throughout the fall semester, into December 2023.

Mother started to contact Student's teachers, telling them Student was in transition, should not be allowed to roam about, and his technology use needed to be monitored and controlled. She expressed concern that Student would seek attention and associate with unsavory peers. Mother did not share specifics of Student's history of maladaptive behaviors, such as unkindness to peers, defiance, dishonesty, stealing, and threats.

On October 4, 2023, Parents requested support for Student and an IEP. On October 6, 2023, Mother sent school counselor Christine Baragan a copy of Dr. Wetter's report.

San Dieguito responded with a prior written notice (34 C.F.R. § 300.503) on October 18, 2023. At that time, San Dieguito declined to commence a special education assessment. Assistant Principal Castellanos authored the letter, after consulting with the special education director, the school psychologist, School Counselor Baragan, and Program Supervisor Sara Scoma. They reviewed Student's records and file before responding. The written notice stated that Student had no attendance concerns and

teachers had not reported significant concerns with his ability to participate or benefit from his schooling. Student's end-of-quarter grades were all passing. Castellanos stated that Student was not demonstrating any behavioral concerns. Castellanos did not consider Student's inappropriate search on his Chromebook in late August 2023 to be significant enough to warrant a special education assessment.

San Dieguito offered a Student Study Team meeting, called an SST, to determine next steps to support Student's academic progress. Castellanos asked that Parents send any further medical or psychological assessment reports to the school counselor to be considered at the SST meeting. The SST was scheduled in two weeks, on November 2, 2023. If the SST meeting date did not work for Parents, they were invited to let Barragan know so it could be rescheduled.

Before the SST meeting, on October 27, 2023, Student was accused of stealing money and Starbucks' cards from a fellow student. Parents were advised. Castellanos instructed Student to stay away from the other student. She also requested that the teacher keep the two students separated.

SAN DIEGUITO'S CHILD FIND TRIGGERED AT STUDENT STUDY TEAM MEETING

The SST meeting was rescheduled for November 14, 2024. Castellanos was ill, so Assistant Principal Kathryn Freeman attended as the meeting administrator. Mother, Mother's advocate Maureen Dempsey, Freeman, Counselor Barragan, and Student's teachers Debora Balch and Luna, were present at the SST meeting. Freeman received a copy of Dr. Wetter's report shortly before the meeting, which she reviewed during the

meeting with the team. Mother shared information regarding Student, including his diagnoses of ADHD and his medication for anxiety and depression. The team discussed Dr. Wetter's January 2022 report.

The SST team proposed five interventions. First, Student was referred to a support facilitator, who would regularly check in with Student regarding his homework, assignments, and test preparation. Second, teachers would conduct frequent check-ins for on-task behavior and positive reinforcement. Third, Student would be seated near teacher and paired with positive peers. Fourth, Student could take short, targeted breaks. Fifth, Student's assignments would be broken down into smaller parts, known as chunking. Mother asked for a Section 504 referral and asked Student to be assessed for special education eligibility. The SST team did not refer Student for special education assessments. The team agreed to refer Student for a Section 504 consideration.

A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability, and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1194 (*Cari Rae S.*)) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Id.* at p. 1195.) Either a parent's suspicion or a district's suspicion may trigger the need for a child-find initial evaluation to determine if the student is a child with a disability within the meaning of the IDEA. (*Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, 802.)

A disability becomes "suspected," and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability. (*Timothy O., supra*, at pp. 1119-1120.) A district may be put on notice

through concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or by other less formal indicators, such as the child's behavior. (*Id.* at pp. 1119-1121.)

Here, San Dieguito's child find duty was triggered at the November 2023 SST meeting. The attendees heard from Parent regarding Student's diagnosis, medication and therapy. Dr. Wetter's report affirmed the ADHD diagnosis and recommended educational accommodations and strategies to address Student's challenges. Student's teachers reported that Student struggled with assignment completion and did not accurately complete homework. Student had difficulty paying attention, being organized, and following directions. Student was easily distracted.

These behaviors gave San Dieguito reason to suspect that special education services may be needed to address that disability. San Dieguito's child find obligation to locate and identify Student for special education assessment was triggered by the provision of information at the SST meeting about Student's academic struggles, behavior issues, and medical diagnosis.

San Dieguito's child find duty was not triggered earlier. The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. (See *Adams v. State of Oregon*, *supra*, 195 F.3d 1141, 1149.) Prior to the SST meeting, much had been withheld from San Dieguito by Parents.

Parents did not share Dr. Wetter's evaluation when they registered Student in March 2023 or when Student started attending in August 2023. Student argued that San Dieguito had access to information regarding Student's educational struggles, because Mother signed a release on March 14, 2023, as part of the enrollment process. But the

release only permitted San Dieguito to obtain Student's cumulative files and final official transcripts of three schools. The release did not permit San Dieguito to obtain Student's attendance, health, and discipline records. The release did not permit any direct contact and exchange of information or interviews with teachers or staff. More significantly, the release did not include New Vision Wilderness residential program, which Student was attending at the time of enrollment. Mother acknowledged at hearing that she did not tell San Dieguito about New Vision Wilderness.

After leaving New Vision Wilderness in May 2023, Parents placed Student at Catalyst residential treatment center in Utah, until Student returned early and started at Canyon Crest. The enrollment paperwork submitted by Parents did not include any mention of Student's attendance at Catalyst. Parents did not share or discuss that Catalyst recommended a transition plan, including Student's therapy and wraparound services, which were in place before Student started school. Parents did not sign a release for exchange of information with Catalyst before the SST meeting. San Dieguito had no child find obligations prior to the SST team meeting on November 14, 2023.

Though Mother stated she had told Student's teachers about some of Student's behavior and transition challenges, such information was piecemealed and not generalized. The SST meeting was the first opportunity to assemble and review available information, which enabled San Dieguito to identify Student as a child who should be assessed for special education placement and services to address a possible disability. Because San Dieguito did not refer Student for special education assessment at the SST meeting, it failed to meet its child find duty. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).)

THE TRIGGERING OF SAN DIEGUITO'S CHILD FIND DUTY ON NOVEMBER 14, 2023, DID NOT DENY STUDENT A FAPE

Student successfully demonstrated that San Dieguito's child find duty, requiring referral of Student for assessment, was triggered at the November 14, 2023 SST meeting.

However, violations of a district's child find duties, and of the obligation to assess a student, are procedural violations of the IDEA and the Education Code. (*Cari Rae S.*, *supra*, 158 F.Supp. 2d 1190 at p.1196); *Park v. Anaheim Union High School Dist.*, et al. (9th Cir. 2006) 464 F.3d 1025, 1031.) In *Rowley*, the Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Rowley*, 458 U.S. 176 at pp. 205-06.)

However, a procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in liability for denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) (*Target Range*.)

Once a school district has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability, the district must conduct an initial evaluation to determine whether the child is eligible for special education. (34 C.F.R § 300.301; Ed. Code, § 56302.1.) No action may be taken to place a

student with exceptional needs in a program of special education without first conducting assessment of the student's educational needs. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.)

Parental consent for an assessment is required before a school district can conduct an initial assessment of a student. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(a)(1)(i); Ed. Code, § 56381, subd. (f).) The triggering of San Dieguito's child find duties required a referral for special education assessment. When a student is referred for assessment, the school district must provide the student's parents with a proposed written assessment plan within 15 calendar days of referral for assessment, not including school vacation in excess of five schooldays. (Ed. Code, § 56321, subd. (a).)

On November 17, 2023, Student was suspended for violating four codes of student conduct, as listed in the Education Code. (Ed. Code, § 48900, subds. (e), (g), (h), and (i).) Student made disparaging remarks about some of his first period classmates. Student denied saying these statements and blamed another peer. Investigation confirmed Student made these statements and, further, Student had been seen exchanging money with another student on the other side of the classroom. Search of Student's backpack revealed items that did not belong to him and that had been reported missing in his classroom over the past few weeks. His backpack also contained a vape pen and a nicotine case. In addition to a one-day suspension from school, Student had to write two essay reflections as part of a restorative module.

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On November 29, 2023, San Dieguito provided Parents with a written proposed assessment plan, in the areas of

- academic achievement,
- health,
- intellectual development,
- social emotional/behavior, and
- post-secondary transition.

This was 15 calendar days after the triggering of San Dieguito's child find obligation. Thus, San Dieguito issued an assessment plan within the legal timeline, as if San Dieguito met its child find duty and referred Student for assessment at the November 14, 2023 SST meeting. San Dieguito completed the assessments and convened the IEP team meeting on January 31, 2024, within the requisite time restraints. At the meeting, Student was found eligible for special education.

Since San Dieguito provided Parents an assessment plan within the statutory timeframe, timely completed the assessments, held the IEP within the legal timeframe, and found Student eligible, the child find procedural violation did not deny Student a FAPE. (Ed. Code, § 56321, subd. (a).)

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE during the 2023-2024 school year, by failing to locate, identify, and evaluate Student as a child who has a disability.

San Dieguito prevailed on Issue 1(a).

ISSUE 1(b): DID SAN DIEGUITO DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO ASSESS STUDENT IN THE AREA OF FUNCTIONAL BEHAVIOR?

Student asserts that his history of maladaptive behaviors required San Dieguito to conduct a functional behavior assessment, called an FBA. For years, Student's behaviors had been a source of distress for Parents. Student argues that this was a pattern of conduct, which was demonstrated by Student's intervention and disciplinary proceedings at Canyon Crest. Student asserts that San Dieguito's failure to conduct an FBA and fashion an appropriate behavior intervention plan amounted to a failure to assess Student in all areas of suspected disability. Student claims this procedural violation denied Student a FAPE.

San Dieguito contends its legally compliant assessment of Student appropriately and adequately assessed Student's behavioral and emotional needs and that an FBA was not warranted.

SECTION 504 MEETING

San Dieguito started the assessment process after Parents returned the signed assessment plan on November 30, 2023. In the interim, San Dieguito held a Section 504 meeting on December 5, 2023. A Section 504 plan is an educational program created under the federal anti-discrimination law known as Section 504 of the Rehabilitation Act of 1973. (29 U.S.C. § 794; see 34 C.F.R. § 104.1 et seq. (2000).) Section 504 plans consist of accommodations only, not specialized academic instruction or special education related services.

The team found Student eligible for Section 504 and offered eight accommodations. Regular meetings with the student support facilitator would continue, as outlined by the SST team. Parents agreed to the Section 504 plan and Student's support facilitator met with Student on December 1 and 7, 2023.

On December 5, 2023, Student was off campus during lunch, vaping in a Panera Restaurant, disparaging the manager. Student denied this, but there was independent confirmation of his conduct inside Panera. Ninth graders were not allowed off campus. Mother expressed concern that unstructured adult check-ins were not going to be sufficient to keep Student from roaming about or going off campus.

SAN DIEGUITO'S INITIAL ASSESSMENTS

San Dieguito assembled an assessment team which evaluated Student and issued a 62-page confidential Multidisciplinary Report, dated January 31, 2024. School Psychologist Emily Yuan led the assessment team, with Education Specialist Laura Stephenson and Speech-Language Pathologist Christina Filia. They were charged with determining if there was a processing deficit or disability which impacted Student's educational performance that required special education services and, if so, the nature of the services in the least restrictive, appropriate environment. The team assessed Student in all areas of suspected disability and determined Student met the special education eligibility criteria for Other Health Impairment.

Student did not allege a separate issue, claiming that San Dieguito's assessment was not legally appropriate. But Student consistently questioned the appropriateness of San Dieguito's assessment throughout the hearing and argument. Therefore, this

decision reviews San Dieguito's January 2024 multidisciplinary assessment and finds that Student failed to demonstrate it was not legally appropriate. (20 U.S.C. § 1414(b); 34 C.F.R. §§ 300.301–300.305; Ed. Code § 56320, subds. (a), (b)(1), (d), and (e).)

For purposes of evaluating a child for special education eligibility, the district must ensure that "the child is assessed in all areas of suspected disability". (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158.) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all of the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

A school district's failure to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim, supra*, 464 F.3d 1025, 1031-1033.)

The team worked on Student's assessments from early December 2023 through January 2024. They

- reviewed Student's available school records,
- reviewed health and developmental history,
- interviewed Student, Parents, and Student's teachers, and
- observed Student in the classroom and during testing.

The team used 15 different testing instruments. The assessment team reported, summarized, and analyzed the results. The assessors were each qualified by their training, credentialing, licensure, and experience to administer the testing instruments

and interpret the results. (20 U.S.C. § 1414(b)(3)(A)(iv), (v); 34 C.F.R. § 300.304(c)(1)(iv), (v); Ed. Code, §§ 56320, subd. (b)(3).) This collective collaboration enabled the team to knowledgably consider, discuss, and make their findings and recommendations.

DECEMBER 12, 2023 DISCIPLINE INCIDENT AND EXPULSION RECOMMENDATION

A few days after the start of the assessments, Student was involved in a racially provocative incident, which resulted in a five-day suspension and a pending recommendation for expulsion. Student sent multiple racist and threatening messages via text to a Canyon Crest assistant principal, an African American male. Student used a privacy application on his phone, called "Mysudo," in an attempt to send them anonymously. Student sent six separate messages over a span of 36 minutes, saying:

- "Nigger,"
- "[assistant principal name] you are a Nigger go back to the fields boy,"
- "On gang fuck your dead mother nigga,"
- "real g shit,"
- "nigger," and
- "reply."

When asked, Student denied sending the messages. Then he falsely implicated another student. Canyon Crest staff were able to trace the call and, when the calling number was dialed, Student's phone rang, confirming the text was sent from his phone. Timestamped security video footage showed Student was the sender. Search

of Student's San Dieguito-issued Chromebook search history indicated Student had searched racist material. After suspension, Student continued to search the assistant principal's name.

Before the incident, Student searched and obtained the assistant principal's personal number. Student explained to his friends that he wanted to send racist messages to the assistant principal. Several students told Student it was not a good idea, but Student sent the messages. Afterwards, he showed them to several students on campus.

Since Student was in the process of a special education assessment, San Dieguito and Parents agreed to delay the expulsion proceedings until after completion of the assessments and the initial IEP team meeting.

PARENTS IGNORE SAN DIEGUITO'S REQUESTS FOR ADDITIONAL DOCUMENTATION AND RELEASE OF INFORMATION FORMS

School psychologist Yuan made multiple attempts to obtain additional information from Parents that needed to be considered by the assessment team. On November 30, 2023, Yuan emailed Parents, asking for further documentation concerning Student's background history which was unavailable to San Dieguito. Subsequently, on December 13 and 19, 2023, Yuan emailed Parents, with attached Release of Information forms, seeking consent to obtain school records, educational reports, and psychological and psychiatric reports. San Dieguito needed Parents' permission to interview school staff from Student's prior schools and therapeutic providers.

Parents ignored these requests.

ENROLLMENT AND BACKGROUND HISTORY

School Psychologist Yuan reviewed Student's school enrollment and history, available California test scores, and grade report history. She testified at hearing. Yuan had a master of science in school psychology and counseling as an education specialist, and a California Pupil Personnel Services Credential. She worked as a school psychologist for two years with another district before coming to San Dieguito as a school psychologist in May 2022. Her duties included conducting psychological evaluations, functional behavioral assessments, and manifestation determination reviews. She participated in IEP team meetings, counseled students, and collaborated with school staff.

Yuan spoke with Mother in assembling Student's enrollment and attendance history. Mother did not tell Yuan how Student struggled with defiance, dishonesty, impulse control, and behavior management while attending the International School of Paris. Mother did not tell Yuan that Student first attended Santa Fe Christian School between August and November, 2023, and that the school said it would expel Student unless Parent disenrolled him. Mother told Yuan that Student attended Catalyst from January to July, 2023. But Mother did not tell Yuan that Parents first sent Student to New Vision Wilderness therapy school, from February to May, 2023, after Coastal Academy disenrolled Student. Mother did not tell Yuan that New Vision Wilderness recommended placement in a residential, therapeutic setting to prevent Student's behaviors from regressing. Mother acknowledged Catalyst recommended not withdrawing Student before he finished, but the family missed Student and just wanted him home.

Mother conceded she made no attempt to correct the errors in Student's educational history at the January 2024 initial IEP team meeting. The misinformation in Student's school history, especially for the year before attending Canyon Crest, hampered the assessment team's ability to seek and obtain documentation and to identify and interview teachers, providers, and professionals who would have contributed to Student's assessment. The lack of information caused the team to have limited knowledge of Student's behavioral issues.

For the 2023-2024 school year at Canyon Crest, Student had first quarter grades of three B's and a C. For the second quarter, at the time of assessment, Student had two B's and two C's. Other than his recent suspension, he had no absences and 20 tardies.

School psychologist Yuan reviewed Dr. Wetter's January 22, 2022 evaluation report, and his diagnosis of ADHD and a nonverbal learning disability. Dr. Wetter's standardized cognitive and academic testing generally agreed with the team's assessments. Dr. Wetter's recommendations primarily addressed behavioral issues associated with his ADHD diagnosis.

BEHAVIOR OBSERVATIONS OF STUDENT

School Psychologist Yuan observed Student in Yuan's office at Canyon Crest during the first session of testing. A second session of testing occurred at a neighboring school within San Dieguito, because Student was on suspension from Canyon Crest. Yuan administered a variety of psychoeducational tests on a one-to-one basis.

During both testing sessions, Student was friendly and made eye contact when speaking. Student was polite, cooperative, and task-oriented throughout the assessments. He put forth good effort, demonstrated ability to attend to tasks, listened

to all instructions, and quickly followed instructions. Speech and Language Pathologist Christina Filia's observations of Student during testing were similar to those of School Psychologist Yuan.

Yuan observed Student in his biology class for about 30 minutes on the morning of December 11, 2023. Overall, Student did not display disruptive behavior. Student was generally inattentive to instruction, looking at his Chromebook and engaging in conversation with peers.

Overall, Student's academic and cognitive ability was in the average range. Student's full-scale intelligent quotient was 107. He demonstrated relative weakness in his visual spatial skills, which fell within the low average range. Student would therefore benefit from additional support when presented with visual information.

SOCIAL, EMOTIONAL, AND BEHAVIORAL DEVELOPMENT

School Psychologist Yuan evaluated Student's current social-emotional and behavioral functioning, using observations, interviews, and standardized rating scales.

Parents identified Student's strengths as being smart, funny, and passionate about his interests. He had a charming personality, which initially would draw people to him. Parents described Student as a leader who, when focused, would complete tasks. Parents were concerned that Student was impulsive and would act without thinking about the consequences of his actions. Student lied frequently, stole, made off-color comments, and constantly broke rules. He was defiant and manipulative. At school, Student was disorganized, missing assignments and late with his work. Student

struggled to stay on task, got bored, needed frequent breaks, and paid little attention to detail. Student could not maintain friendships over time. He was often in the midst of creating some level of chaos at home.

Yuan consulted with Student's math teacher Luna, Spanish teacher Ms. Telminova, biology teacher Mrs. Balch, and business teacher Mr. Brown. They described Student as capable, hardworking and persevering, if he received frequent teacher check-ins. He asked questions in class, contributed to class discussion, and had a good sense of humor. Student had friends and generally got along with peers.

Student's teachers identified Student's primary difficulty as staying on task. He was regularly distracted by his phone and Chromebook. He would browse the internet and engage in tasks unrelated to coursework. Student struggled to timely turn in work. Yet, school staff reported that Student responded to redirection. Student had friendships. His peers were respectful of Student, but some did not engage very long because Student might ask to copy their homework or class work, and would not contribute to group work.

Yuan interviewed Student on December 5, 2023, before his suspension. Student acknowledged struggling with maintaining focus and said he would like additional support in this area. Student denied feeling stressed, worried, or upset about school. In a second interview on January 10, 2025, after his suspension and recommended expulsion, Student said he did not really do stupid things at school, except for the December 12, 2023 incident with the assistant principal.

Yuan had Parents and two of Student's teachers complete three standardized rating scales. Three out of four raters indicated an elevated concern for inattentions, executive dysfunction, and impulsivity. All raters indicated a high probability for ADHD,

including hyperactivity, conduct problems, and attention problems. Parents' rated Student's behavior problems as significantly higher than the teachers. Teachers' ratings focused primarily on Student's distractibility, inattention, and hyperactivity.

SPEECH AND LANGUAGE

Pathologist Filia evaluated Student social communication, speech and language abilities, and the need for services in the area of speech-language impairment. Filia found no concerns with Student's receptive and expressive language skills. Student's social communication skills were comparable to his same-aged peers. He demonstrated the ability to critically think about real-life contexts in order to make inferences, problem solve, and interpret perspectives. For Student's social communication and interaction skills, Parents rated Student in the overall severe range, while Student's teachers rated Student to be in the normal range. Filia found Student's articulation, voice, and fluency to be comparable to same-aged peers.

ELIGIBILITY CONSIDERATION

Student met the eligibility criteria associated with Other Health Impairment, due to his ADHD, depression, and anxiety, that impaired and adversely affected Student's educational performance. The assessment team found that Student did not meet the eligibility criteria for Specific Learning Disability, Emotional Disturbance, Autism, and Speech Language Impairment.

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STUDENT'S JANUARY 31, 2024 IEP TEAM MEETING

On January 31, 2024, San Dieguito convened Student's initial IEP team meeting. The assessment team presented its multidisciplinary evaluation. The IEP team found Student eligible for special education and related services under the category of Other Health Impairment. San Dieguito identified work completion and on-task behavior as areas of need for Student and developed goals in the areas of Work Completion, On-Task Behavior, Career Awareness, and Self-Monitoring. San Dieguito developed and offered positive behavior interventions, including

- seating near the teacher and focused peers,
- frequent check-ins to support on-task behavior,
- positive feedback,
- choice-making,
- GoGuardian to supervise Chromebook use, and
- the chunking of instructions and assignments.

The assessment team also devised a positive behavior reinforcement system where Student received feedback and reflected on behaviors during the day. The IEP included a home/school communication process to monitor behavior.

San Dieguito offered extensive accommodations and specialized academic instruction to address executive functioning or math needs in a semester where Student took a math class. San Dieguito offered Student placement at a comprehensive high school campus.

Parents consented to Student's eligibility and goals, only. Parents did not consent to the initial provision of special education, accommodations, behavior interventions, or other components of the IEP. Parents told San Dieguito that Parents intended to unilaterally place Student at Catalyst, starting February 5, 2024, and would seek reimbursement from San Dieguito.

FUNCTIONAL BEHAVIOR ASSESSMENT

Student has failed to demonstrate that an FBA was necessary to fully assess Student in all areas of suspected disability. An FBA focusses on persistent and severe behaviors that are destructive to a student's learning or to others. FBA's are specifically referenced under disciplinary procedures of a special education student. (20 U.S.C. § 1415(k) and 34 C.F.R. § 300.530-300.536.) Otherwise, if the legal evaluation procedures are met, the decision to conduct an FBA as an evaluation instrument is at the discretion of the school district.

School Psychologist Yuan was professionally qualified to administer FBA's. She knowledgably testified about FBA's. During an FBA, a student is observed in different settings and the assessor gathers data regarding the frequency of known behaviors, identifying antecedents to the behaviors, and recording the consequences of the behaviors. FBA's were considered when a student displayed behaviors that general classroom interventions and supports could not ameliorate. The December 5, 2023 Section 504 interventions were not fully implemented before Student was suspended on December 12, 2023.

Yuan and the assessment team did not observe or identify patterns of maladaptive behaviors that could be addressed by and benefit from an FBA. Though Student engaged in some behaviors of concern at the time of the assessment, such as inappropriate conversations with classmates, suspected stealing, and the exchange of money in class, the behaviors did not warrant an FBA. Student attended Canyon Crest for a total of 79 days. The evaluation's testing, observations, interviews, and review of available records disclosed academic and behavioral concerns that the assessment team found could be addressed with appropriate accommodations and special education supports. Student's behaviors were not expressed in patterns that could be analyzed and addressed by an FBA.

San Dieguito was uninformed of Parents' claims that Student had a lengthy history of maladaptive behaviors. Parents did not sign releases for all of Student's most recent prior schools and did not give access to Student's discipline, attendance, and health history on the releases Parents did sign.

Before beginning Student's formal assessments, San Dieguito made multiple requests of Parents for releases of information regarding Student's prior therapeutic placement and for permission to communicate with Student's providers, such as his therapists and wraparound services. Parents ignored San Dieguito's requests.

Without further information indicating otherwise, the disciplinary incidents at San Dieguito did not demonstrate a pattern of conduct which might require an FBA to address. Student's inattention, off-task behavior, distractibility, and executive functioning needs were assessed and subsequently addressed in Student's January 31, 2024 initial IEP team meeting.

Student argued that his antisocial behavior of stealing was a pattern that required an FBA. Yet, the available information demonstrated this was not a pervasive and excessive behavior, observed by teachers, staff, or the assessors. The assessment team's social and emotional evaluation acknowledged these events and created accommodations and services that would address Student's suspected stealing. Based on the evaluation and available information, San Dieguito determined that an FBA was not required to find the antecedents of any of Student's behaviors.

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE during the 2023-2024 school year, by failing to assess Student in the area of functional behavior.

San Dieguito prevailed on Issue 1(b).

ISSUE 1(c): DID SAN DIEGUITO DENY STUDENT A FAPE DURING THE 2023-2024 SCHOOL YEAR BY FAILING TO ASSESS STUDENT IN THE AREA OF EDUCATIONALLY RELATED MENTAL HEALTH?

Student claims that San Dieguito denied Student a FAPE during the 2023-2024 school year by failing to assess Student in the area of educationally related mental health needs. Student asserted that Student's emotional and mental health required an intensive evaluation and San Dieguito's social-emotional and behavior assessment was insufficient to assess Student's mental health needs, which denied Student a FAPE.

San Dieguito contends it appropriately and adequately assessed Student's behavioral and emotional needs and that further assessment was not warranted in the 2023-2024 school year.

School Psychologist Yuan testified that San Dieguito's assessment of Student reliably assessed Student's social, emotional, and mental health. She also commented that San Dieguito did not do educationally related mental health services, called ERMHS, assessments, as such.

Student's expert, Dr. Marta Shinn, had a bachelor's degree in psychology, a master's degree in educational school psychology, and a doctorate in psychology. She was a licensed clinical psychologist since 2009 and a licensed educational psychologist since 2007. Dr. Shinn conducted child and adolescent psychological and educational evaluations and provided psychological consultation services to families, schools and colleges. Dr. Shinn testified that a social emotional and behavior assessment in a psychoeducational evaluation was not the same as an ERMHS assessment. Student therefore argued that San Dieguito did not appropriately evaluate Student's significant mental health needs. This argument was unpersuasive.

Federal and state special education law did not specify ERMHS as an area to be assessed. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).) An ERMHS assessment was a descriptor of a more intensive assessment of a Student's mental health and possible therapeutic supports and services, if indicated by other factors.

Therefore, the foundational issue was whether San Dieguito's evaluation appropriately assessed Student in all areas of suspected disability, including his social, emotional, and behavioral needs.

Senior Director of Special Education, Dr. Orletta Nguyen, testified at the hearing. She had been a school psychologist for 20 years. Dr. Nguyen had a master of arts in educational psychology and a doctorate of education in teaching and learning. She

held a Pupil Services Credential in school psychology, a professional Clear Subject Teaching Credential in English, and an Administrative Services Credential. She was a secondary English teacher, a special education teacher and school psychologist, for other school districts, before becoming San Dieguito's special education director in 2024. Dr. Nguyen's testimony was measured, knowledgeable, clear, and persuasive.

Dr. Nguyen explained that San Dieguito did not use the term ERHMS in referring to assessments or services. Instead, San Dieguito performed social-emotional and behavior assessments. These included

- record reviews,
- interviews with therapists and outside providers, school staff, and parents,
- observations in multiple settings, and
- various assessment instruments.

If a social-emotional assessment indicated that Student had serious mental health issues which might require more intensive and therapeutic interventions, the school psychologist would recommend and conduct additional assessments. Dr. Nguyen stated that Student's January 2024 initial assessment fully assessed Student's social-emotional and behavioral needs. Using all available information, the assessment properly found that Student did not require additional assessment for intense emotional and mental health issues.

Here, Student did not demonstrate that San Dieguito's multidisciplinary evaluation failed to appropriately assess Student's emotional and behavioral mental health needs. Parents signed the assessment plan, indicating Student would be evaluated the areas of social-emotional and behavior. (Ed. Code § 56321(b).) School

Psychologist Yuan interviewed Parents, Student, and all four of Student's teachers. Parents expressed concerns that Student was impulsive, manipulative, and defiant. Teachers noted Student was distracted by technology, had difficulty completing and timely submitting class assignments and homework, and generally struggled with maintaining focus. Teachers also described Student as

- social,
- contributing to class discussions,
- generally got along with peers,
- responsive to redirection, and
- capable and hardworking, with frequent teacher check-ins.

Yuan interviewed Student before and after he was suspended on December 12, 2023. Student enjoyed school and being with friends. Student was self-aware, acknowledging he struggled with maintaining focus and said he would like additional support in this area. In the second interview on January 10, 2024, Student said he did not really do stupid things at school, except for the incident with the assistant principal.

Yuan had Parents and two of Student's teachers complete three standardized rating scales, assessing Student's

- patterns of behavior,
- externalizing and internalizing problems,
- behavior symptoms,
- school problems,
- adaptive skills, and
- behaviors related to autism spectrum disorder.

Three out of four raters indicated an elevated concern for inattention, executive dysfunction and impulsivity. All raters indicated a high probability for ADHD, including hyperactivity, conduct problems, and attention problems.

Parents' rated Student's behavior problems as significantly higher than the teachers. The elevated emotional behaviors cited by Parents were not observed in the classroom setting. The assessment team, as well as the San Dieguito members of the IEP team, agreed that the Student's behaviors could be addressed in the general education setting, with appropriate special education, supports, and accommodations. The assessment team did not have information, by way of record review, interview, or assessment, that demonstrated a serious emotional or mental health issue that required additional assessment.

Student contended that Dr. Shinn said the assessment was bad because only three instruments were used. However, the broad-band assessments, the interviews, observations, and the data gathered by the assessment team did not indicate any reason to consider more intensive interventions.

San Dieguito's initial assessment of Student must be measured by what its assessment team reasonably and objectively knew at the time of its initial January 2024 assessments. (*Adams, supra*, 195 F.3d 1141, 1149; *Fuhrmann, supra*, 993 F.2d 1031, 1041.) As outlined above, the assessment team was unaware of and did not have access to Student's full enrollment history, past disciplinary issues, and the nature of Student's prior and present therapy and supports. Parents ignored the assessment team's multiple requests for releases to access Student's records and identify and communicate with his therapists and service providers. If San Dieguito had access

to Student's therapists and mental health providers, especially from the intensive interventions at New Vision Wilderness and Catalyst, the assessment team may have had reason to further assess. But San Dieguito did not have that access.

Where parents had information relevant to a student's assessment and IEP development, and failed to share it with the school district, they cannot later complain that the IEP was deficient under the IDEA for not addressing the withheld information. (20 U.S.C.A. § 1400 et seq.) Parents may not withhold critical information from the school district and then claim a FAPE was not provided. (*D.R. ex rel. Etsuko R. v. Department of Educ., State of Hawai'i* (D. Haw. 2011) 827 F.Supp.2d 1161, 1170.) Here, the San Dieguito assessment team properly and fully assessed Student's social-emotional health and behavior, based upon the available information, as Student's needs then required.

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE during the 2023-2024 school year, by failing to assess Student in the area of educationally related mental health.

San Dieguito prevailed on Issue 1(c).

ISSUE 2(a): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE JANUARY 31, 2024 IEP BY FAILING TO HAVE ALL REQUIRED PARTICIPANTS AT THE IEP TEAM MEETING?

Student alleges in his complaint that San Dieguito's failure to have all required participants at Student's initial IEP team meeting of January 31, 2024, denied him a FAPE. Student did not address the issue in final briefing.

San Dieguito contends that all required IEP participants attended Student's January 2024 IEP team meeting.

A school district must ensure that a child's IEP team include:

1. The parents of the child;
2. Not less than one general education teacher of the child;
3. Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
4. A representative of the public agency who:
 - (a) Is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
 - (b) Is knowledgeable about the general education curriculum; and
 - (c) Is knowledgeable about the availability of resources of the public agency.
5. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;

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6. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
7. Whenever appropriate, the child with a disability.

(34 C.F.R. § 300.321.)

Mother and her advocate Dempsey attended the meeting. San Dieguito staff who attended the January 31, 2024, IEP meeting were:

- Laura Stephenson, educational specialist and special education teacher;
- Chiara Luna, general education teacher;
- Christine Barragan, guidance counselor;
- Emily Yuan, school psychologist;
- Christina Filia, speech and language pathologist;
- Kathryn Freeman, assistant principal and administrator;
- Brianna Castellanos, assistant principal and administrator; and
- Sara Scoma, program supervisor.

The administrators were authorized to commit San Dieguito's resources.

All legally required San Dieguito participants attended Student's initial IEP team meeting of January 31, 2024. Student made no argument in his final brief to support this issue.

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Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE by failing to have all required participants at the January 31, 2024 IEP team meeting.

San Dieguito prevailed on Issue 2(a).

ISSUES 2(b) AND (c): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE JANUARY 31, 2024 IEP BY FAILING TO OFFER ANY SUPPORT AND SERVICES FOR BEHAVIOR AND MENTAL HEALTH?

Student asserts that San Dieguito's January 31, 2024 initial IEP denied Student a FAPE because it did not offer appropriate behavioral services and supports. Student claims that San Dieguito knew that Student had a long history of serious maladaptive behaviors. Student also cites the testimony of his expert, Dr. Marta Shinn, and her psychological educational evaluation, in support of Student's contention that the supports offered in the initial IEP were insufficient to address his behavioral and mental health needs.

San Dieguito counters that the January 31, 2024 IEP offered positive behavioral interventions and supports. The social emotional component of Student's initial evaluation found that staff consistently rated Student to be in the average range for internalizing problems, anxiety, depression, and somatization. Student rated himself as "average" in these same areas. Parents rated these mental health concerns much higher, but otherwise refused to provide San Dieguito access to any of Student's records, therapists, or providers who could shed light on Student's mental health history and needs. San Dieguito also contends that the January 2024 IEP offered a FAPE, based upon the thorough, legally-compliant multidisciplinary evaluation.

An IEP is a written document describing a child's "present levels of academic achievement and functional performance" and a "statement of measurable annual goals, including academic and functional goals" designed to meet the child's educational needs. (Ed. Code, § 56345, subd. (a)(1), (2); 34 C.F.R. § 300.320(a) (2006).) The IEP must also contain a description "of the manner in which the progress of the pupil toward meeting the annual goals ... will be measured and when periodic reports on the progress the pupil is making ... will be provided" (Ed. Code, § 56345, subd. (a)(3); 34 C.F.R. § 300.320(a)(3) (2006)). The IEP shall state the special education and related services and supplementary aids and services to be provided to the pupil and describe the program modifications and supports designed to enable the pupil to advance toward attaining their goals and make progress in the general education curriculum (Ed. Code, § 56345, subd. (a)(4); 34 C.F.R. § 300.320(a)(4) (2006)). The IEP shall explain the extent, if any, that the pupil will not participate with nondisabled pupils in the regular class or activities (Ed. Code, § 56345, subd. (a)(5); 34 C.F.R. § 300.320(a)(5) (2006)) and address any individual appropriate accommodations necessary to measure academic achievement and functional performance of the pupil on state and district-wide assessments. (Ed. Code, § 56345, subd. (a)(6); 34 C.F.R. § 300.320(a)(6).)

An IEP team must consider the use of positive behavioral interventions, supports, and strategies when a child's behavior impedes his or her learning or that of others. (34 C.F.R. § 300.324(a)(2)(i); Cal. Educ. Code, § 56341.1 (b)(1).) The team may address the behavior through annual goals, and may include modifications, support for teachers, and any related services necessary in the IEP to achieve those behavioral goals. (34 C.F.R. § 300.320(a)(2)(i). 34 C.F.R. § 300.320(a)(4).)

The San Dieguito assessment team presented its multidisciplinary report at the January 31, 2024 IEP team meeting. The team acknowledged that Student's behavior impeded his learning in the classroom. San Dieguito provided two goals addressing Student's behavior, for work completion and on-task behavior. In support of the goals, San Dieguito offered positive behavioral interventions and supports:

- seating near the teacher and focused peers;
- frequent check-ins to support on-task behavior;
- positive feedback;
- choice making when feasible;
- GoGuardian to supervise Chromebook use;
- giving instructions in sections;
- using a reinforcement system, which included regular adult and teacher check-in at beginning and end of periods, and at the beginning, middle, and end of lunch; and
- establishing a home/school communication to monitor behavior.

San Dieguito also offered accommodations which addressed behaviors:

- targeted breaks;
- defining expectations during group work, and
- use of technology management systems.

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San Dieguito's social-emotional assessment concluded that Student did not require intensive mental health supports. School Psychologist Yuan found that Parents' concerns were not occurring in the school setting. Student said he was not stressed, worried, or upset about school. On the Behavior Assessment System for Children, Third Edition, Student's teachers rated him to be in the average range for internalizing problems, anxiety, depression, and somatization, similar to Student's Catalyst teacher on Dr. Shinn's report. Student rated himself average for

- Social stress,
- anxiety,
- depression,
- sense of inadequacy, and
- somatization.

Parents rated Student significantly higher in these categories.

DR. SHINN'S PRIVATE ASSESSMENT AND TESTIMONY

In the spring of 2024, Parents retained Dr. Marta M. Shinn to conduct a psychological and educational evaluation of Student. Dr. Shinn's private evaluation report was undated, so the date of the final report was when Dr. Shinn sent the report to Parents on October 22, 2024.

Student was at Catalyst in Utah when Dr. Shinn virtually interviewed, observed, and assessed Student. She did not travel to Catalyst. Parents signed a release of information for Catalyst, allowing Dr. Shinn to observe Student's placement at Catalyst, assess Student at Catalyst, and observe Student in a Catalyst class. The release also

permitted Dr. Shinn to communicate with the Catalyst staff, including Academic Director Holly Montano, Student's therapist Colleen Allie, Clinical Director and therapist Adam Poll, and one of Student's 10th-grade teachers.

Catalyst Clinical Director Poll, testified at hearing. He told Dr. Shinn that Student was enrolled at Catalyst for three months during the summer of 2023, but Parents prematurely withdrew Student to return home and attend school. The Catalyst clinical team thought this unwise because Student had not yet "internalized" or implemented the coping skills and mentality needed to succeed at home. Poll said this proved to be true because Student was readmitted to the center in the winter of 2024.

Dr. Shinn virtually observed Student over two testing sessions. Student was cooperative, respectful, and pleasant. Overall, Student demonstrated consistent average performance across most cognitive domains, with notable strength in his working memory. Dr. Shinn concluded Student would benefit from continued therapy to target maladaptive coping skills. This was something that Poll and Student's therapist endorsed when Student was at Catalyst in the summer of 2023 and again to Dr. Shinn in September 2024.

Student's therapist Allie hosted Dr. Shinn's virtual observation of Student's ninth-grade math class of five students, a teacher, and one instructional assistant. He did not exhibit any behavioral or emotional outbursts, actively participated, and responded to teacher's discussions. Student was occasionally distracted.

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Dr. Shinn recommended a multifaceted approach to support Student's academics and social-emotional development, which he was receiving at Catalyst. Dr. Shinn said that it was not appropriate for Student to return to a school setting in San Diego County, substantively based upon the detailed reports from Catalyst's staffers Poll and Allie.

Student's Catalyst therapeutic team highlighted Student's ongoing needs, including his struggles with impulsivity, emotional regulation, relationship-building, and executive functioning. Dr. Shinn cited Poll's therapeutic concern that Student had not yet internalized the coping skills and mentality needed to succeed outside the residential setting. Dr. Shinn referred to Catalyst therapist Allie's opinion that Student needed 24-hour care and support to manage his ADHD, anxiety, and other behavioral issues.

Dr. Shinn did not issue her report until late October 2024, because she had not yet received responses from Student's therapists and mental health providers. When a school psychologist conducts a psychoeducational assessment of a child, the psychologist must identify and communicate with a child's treating therapists and mental health providers. (20 U.S.C. § 1414(b); 34 C.F.R. §§ 300.301–300.305; Ed. Code § 56320, subds. (a), (b)(1), (d), and (e).) San Dieguito therefore made repeated efforts to obtain releases to review records and communicate with therapists and mental health providers, particularly from New Vision Wilderness and Catalyst, who treated Student before Student started at Canyon Crest in August 2023. Unlike Dr. Shinn, Parents denied San Dieguito access to Student's records, therapists, and mental health providers.

The January 31, 2024 IEP offer of FAPE included special academic instruction, positive behavioral supports, and accommodations tailored to needs Student demonstrated in San Dieguito's multidisciplinary assessment which met Student's behavioral and mental health needs. Student has not demonstrated that a different outcome should have been reached, based upon the information available to San Dieguito in January 2024.

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the January 31, 2024 IEP by failing to offer any support and services for behavior and mental health.

San Dieguito prevailed on Issue 2(b) and on Issue 2(c).

ISSUE 2(d): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE JANUARY 31, 2024 IEP BY FAILING TO OFFER AN APPROPRIATE BEHAVIORAL INTERVENTION PLAN?

Student asserts that he required a behavior intervention plan, with positive interventions and behavioral supports, to meet his emotional and mental health needs. Student argues that the January 2024 initial IEP proposed behavioral supports which had already been proven inadequate.

San Dieguito claims that the January 2024 IEP's proposed positive behavioral interventions, supports, and accommodations to meet Student's identified behavior needs.

Except when determined appropriate by the IEP team after a student with a disability is subjected to a disciplinary change in placement following a manifestation determination review, the IDEA and related law does not mandate the development of a behavior intervention plan. (34 C.F.R. § 300.530(f).) In ordinary circumstances, a team must develop behavior supports that are “reasonably calculated” to enable a student to make progress in light of his unique circumstances. (*Endrew F*, *supra*, 580 U.S. 386, 402.)

School Psychologist Yuan explained that a behavior intervention plan was typically developed after an FBA, which indicated Student would benefit from such a plan. As analyzed in Issue 1(b), Yuan and the assessment team did not observe or identify patterns of maladaptive behaviors at the time of his initial assessment, which required an FBA or creation a behavior intervention plan. The January 2024 IEP team therefore developed and proposed goals, positive behavioral supports, and accommodations to address Student’s identified needs.

Student argued that some of the behavioral supports had already proved to be inadequate, referring to Student’s Section 504 plan. However, the supports that were developed at Student’s December 5, 2023 initial Section 504 meeting had not been significantly implemented before Student was suspended on December 12, 2023.

Parents agreed to the January 2024 IEP team’s finding of eligibility and the proposed goals, but did not agree to the IEP’s implementation. Parents unilaterally placed Student at Catalyst without allowing Student to return to public school. Student attended 79 days of public school, from his first day in August 2023 to the date of his suspension on December 12, 2023. San Dieguito never had the opportunity to implement and monitor the proposed behavioral supports, and it cannot be said that they did not work because they had not been fairly tried.

San Dieguito's assessment team did not have access to Student's records, therapists and mental health providers, from New Vision Wilderness, Catalyst, current therapists, and wraparound services. If they had, their assessment report and the initial IEP team's proposal might have differed. But San Dieguito's assessment and IEP offers must be measured by what its assessment team and Student's IEP team reasonably and objectively knew at the time of the January 2024 IEP offer. (*Adams, supra*, 195 F.3d 1141, 1149; *Fuhrmann, supra*, 993 F.2d 1031, 1041.) At that time, San Dieguito developed goals, positive behavioral supports, and accommodations to address Student's identified behavioral needs.

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the January 31, 2024 IEP by failing to offer to offer an appropriate behavioral intervention plan. San Dieguito prevailed on Issue 2(d).

ISSUES 2(e) AND (f): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE JANUARY 31, 2024 IEP BY FAILING TO OFFER ANY BEHAVIORAL MANAGEMENT GOALS OR IMPULSE CONTROL GOALS?

Student argues that San Dieguito's January 2024 IEP offer failed to include goals that addressed Student's struggles with impulse control and behavioral regulation, denying Student a FAPE. Student referred to Dr. Shinn's opinion that Student's two suspensions were the consequence of Student's poor impulse control and impaired judgement.

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San Dieguito argues that its assessment identified Student's areas of need in on-task behavior and work completion, and the IEP team found Student eligible under other health impairment. The January 31, 2024 IEP offered three goals that addressed identified behavior needs.

An IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's educational needs. (Ed. Code, § 56345, subd. (a)(1), (2); 34 C.F.R. § 300.320(a) (2006).)

Student's contention that Student required goals for impulsivity and behavior was primarily based upon Dr. Shinn's opinion that Student's two suspensions were the consequence of Student's diagnosed ADHD, combined type. That is, inattention and hyperactivity or impulsivity. Dr. Shinn opined that these incidents reflected Student's impulsivity and impaired judgment, explaining that he often acted without fully considering the consequences. The two suspension-related incidents occurred on November 17 and December 12, 2023.

Student's argument and Dr. Shinn's testimony primarily addressed the December 12, 2023 incident, when Student texted racial slurs to an African American assistant principal. Dr. Shinn said that impulsivity can involve partially planned actions that fail to account for risks or their impact on others. Dr. Shinn said that Student's rumination about what he was going to do or say was a component of ADHD and was typically maladaptive.

Dr. Shinn's testimony in this regard was unpersuasive. San Dieguito had researched and investigated the December 12, 2023 incident, and assembled a 99-page expulsion packet for the contemplated expulsion hearing. Dr. Shinn's

assessment report and testimony indicated Dr. Shinn did not review this document, which contained witness statements and documentary evidence regarding Student's conduct relative to the December 2023 incident. The documentary evidence supported San Dieguito's determination that Student's texting of racial slurs to the assistant principal was not an impulsive act and not related to his ADHD diagnosis.

Here, Student failed to demonstrate that the December 2023 texting of racial slurs was an impulsive act, related to Student's ADHD diagnosis. A search of his Chromebook browsing history revealed that Student had been researching the word "nigger," and viewed YouTube sites containing racist content. Student found and downloaded the app Mysudo, in an attempt to hide his identity when calling or texting others. Mother testified that since the assistant principal had previously searched Student's backpack in front of his peers in November 2023, Student sent the racial slurs to the assistant principal in December 2023, to recover his "cool." Student had dealt with other assistant principals and staff, but this assistant principal was the only African American.

Dr. Shinn also testified that Student's not knowing or caring about the consequences of his actions was consistent with his ADHD diagnosis. This too was unpersuasive. Student knew that his plan was wrong and that his plan had very serious consequences. Student used an app to hide his identity, because he did not want to get caught. He told his peers what he was going to do and, when they told him not to, he assured them his identity was hidden. When asked if he sent the texts, he blamed his fellow peers. When San Dieguito staff found the Mysudo app on Student's phone, he said he did not use it, then he said another Student used it. Even when he was

presented with clear and convincing evidence that he sent the texts, Student denied. He denied because he had known the consequences would be serious from when he first planned the act.

San Dieguito identified Student's needs in the areas of on-task behavior and work completion. San Dieguito's assessment determined that Student generally followed classroom rules but was easily distracted and engaged in behaviors such as walking around, talking to friends, leaving on breaks, going on his phone, and going on inappropriate websites. The January 2023 initial IEP team developed four goals in the following areas: work completion; on-task behavior; career awareness; and self-monitoring.

Student's work completion goal sought utilization of a gradebook and teacher check-ins to ensure no more than two missing assignments across all subjects per term. Student's on-task behavior goal sought initiation of a task within one minute with no more than two prompts and remaining on task for 15-minute intervals separated by breaks. Student's self-monitoring goal sought appropriate use of San Dieguito's technology during class. These goals directly related to the areas of need identified by San Dieguito's assessment.

Student's self-monitoring goal directly addressed Student's use of school computers to ensure that Student did not engage in inappropriate internet searching. Student's on-task behavior goal permitted Student the use of breaks to regain focus after intervals of on-task performance. Student struggled with being accountable and returning to work when taking breaks, and San Dieguito sought to improve Student's skills in these areas.

San Dieguito offered accommodations and supports related to impulsivity which would assist Student in reaching these goals. The January 2023 initial IEP offered

- seating near the teacher or positive peers,
- check-ins,
- use of GoGuardian,
- home and school communication regarding behavior,
- targeted breaks, and
- other technology management strategies.

Parent did not consent to these accommodations and supports.

San Dieguito's assessment team did not have access to information that might have shown Student struggled with other mental health issues. If they had, their assessment report and the initial IEP team's proposal might have differed. But here, San Dieguito assessed Student, determined his emotional and behavioral needs, and offered goals that addressed those needs.

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the January 31, 2024 IEP by failing to offer any behavioral management or impulse control goals. San Dieguito prevailed on Issue 2(e) and on Issue 2(f).

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ISSUES 2(g) AND (h): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE JANUARY 31, 2024 IEP BY FAILING TO CONSIDER THE CONTINUUM OF PLACEMENT OPTIONS, INCLUDING A RESIDENTIAL TREATMENT CENTER, AND FAILING TO OFFER AN APPROPRIATE PLACEMENT?

Student asserts that Student was denied a FAPE because San Dieguito did not consider the continuum of placement options, including a residential treatment center, and failed to offer an appropriate placement. Student claimed that Mother asked the team to consider a residential treatment center.

San Dieguito asserts that the multidisciplinary assessment and the San Dieguito IEP team members found and agreed that Student's disability related behaviors and needs could be met in the general education environment, with proper special education and behavior supports. No one, including Parent and advocate, suggested that Student should be educated in a more restrictive environment. San Dieguito did not possess, or have access to, information that would indicate Student required to be placed in a more restrictive environment.

For a school district's offer of special education placement and services to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)). Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams, supra*, 195 F.3d at p. 1149.)

To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate: 1) that children with disabilities are educated with non-disabled peers; and 2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114 (a); Ed. Code, § 56031.)

If the IEP team determines a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050.) The continuum of program options includes, but is not limited to:

- regular or general education;
- resource specialist programs;
- designated instruction and services;
- special classes;
- nonpublic, nonsectarian schools;
- state special schools;
- specially designed instruction in settings other than classrooms;
- itinerant instruction in settings other than classrooms; and
- instruction using telecommunication instruction in the home or instructions in hospitals or institutions.

(34 C.F.R. § 300.115; Ed. Code, § 56361.)

The determination of whether a school district offered Student a FAPE is focused on the appropriateness of the proposed placement under *Rowley*, not on whether the placement desired by parents is better. (See *Gregory K, supra*, 811 F.2d at p. 1314.) Residential treatment centers are in the category of most restrictive environments.

Federal and state law require that a school district has available a continuum of program options to meet the needs of students with disabilities for special education and related services. (34 C.F.R. § 300.115; Ed. Code, §§ 56360-61.) Applicable law does not require a school district to consider every possible placement option. (*J.G. v. State of Hawaii Dept of Educ.* (D. Hawaii 2018) 72 IDELR 219, *aff'd* 772 F.App'x 567 (9th Cir. 2019) (rejecting parents' argument that a school district was obligated to discuss more restrictive placement options than that which the district recommended as the least restrictive environment); see also *Student v. William S. Hart Union High School District* (OAH 2016) OAH Case No. 2016020807, 116 LRP 45758, *aff'd* (9th Cir. 2019) 772 F.App'x 578.) Such a requirement would involve a discussion of irrelevant placement options. Here, San Dieguito IEP administrative attendees knew of, and had full authority to commit, San Dieguito's continuum of appropriate placement options.

Student attended school in San Dieguito for 79 school days at the time of the initial IEP team meeting. San Dieguito staff unanimously agreed that Student could succeed at a comprehensive high school campus. The multidisciplinary assessment reported that Student's academic performance was not a concern. Student was social and able to connect with peers and adults, and Student's behaviors did not warrant removal from the general education setting.

San Dieguito identified a relative weakness in the area of executive functioning and found Student could be successfully redirected when engaging in off-task behaviors during class. Discussion and placement in a more restrictive environment, including a residential treatment center, was not warranted or supported by the assessment, evaluations, and available information.

Student asserted that San Dieguito was well aware that a general education placement on a comprehensive campus was not working because of Student's disciplinary proceedings. However, as discussed above, Dr. Shinn's conclusion that Student's disciplinary incidents were a direct consequence of Student's ADHD, combined type, was unpersuasive. Student cited Dr. Shinn's testimony stating that the offered program was not a program for students that needed around the clock support in order to access instruction and remain behaviorally regulated. However, this statement was drawn from what Catalyst Clinical Director Poll and Catalyst therapist Allie told Dr. Shinn in September 2024. As referenced and analyzed above, San Dieguito was denied an opportunity to communicate with Catalyst regarding Student's social-emotional, behavioral, and mental health, before and after assessing Student.

Available data indicated that Student could succeed in the general education setting with supplementary aids, special academic instruction, and services. San Dieguito offered participation in a targeted academic instruction class, a small classroom led by a special education teacher which focused on student task completion and organization, for 90 minutes per day to address Student's executive functioning needs. San Dieguito also offered a series of positive behavioral interventions and program accommodations. San Dieguito's placement offer had Student in a general education

class 79 percent of the time and outside the regular class for special education instruction 21 percent of the time. No one on the IEP team suggested a more restrictive environment during the three-hour meeting.

After the assessment team presented the multidisciplinary assessment report, and answered questions, the team reviewed each page of the IEP document. Mother and advocate then shared with the IEP team that their plan was to place Student in a residential treatment center in Utah on February 5, 2024, and then seek payment from San Dieguito. The advocate asked if San Dieguito would agree to this. Mother and advocate did not seek to discuss or engage in consideration of any other placement option during the team meeting. At the end of the meeting, Parents simply announced what they were going to do.

Here, Student failed to demonstrate that Student was denied a FAPE because San Dieguito did not consider the continuum of placement options or offer an appropriate placement. Rather, the evidence demonstrated that San Dieguito considered a continuum of placements, from general education to general education with special education instruction, behavior supports, and accommodations. No one suggested a more restrictive environment, so no other placements were discussed.

Also, Student did not demonstrate that the placement was inadequate because of Student's disciplinary incidents. Student's behavioral missteps did not demonstrate a need for around the clock support. Student's offer of placement was based on the legally appropriate multidisciplinary report, providing access and benefit in his least restrictive placement. Dr. Shinn's contrary opinion was based on information not provided to San Dieguito and, in the case of the manifestation determination, not

reviewed by Dr. Shinn. San Dieguito's assessment and FAPE offers were measured by what they knew at the time, and they considered and offered the continuum of appropriate placements.

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the January 31, 2024 IEP by failing to consider the continuum of placement options, including a residential treatment center, and failing to offer an appropriate placement.

San Dieguito prevailed on Issue 2(g) and on Issue 2(h).

ISSUE 3(a): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE MARCH 27, 2024 IEP BY FAILING TO OFFER AN APPROPRIATE TRANSITION PLAN?

Student claims that San Dieguito denied Student a FAPE at the March 27, 2024 IEP team meeting because it failed to offer an appropriate transition plan from Catalyst back to San Dieguito. Student asserts that the offer of weekly counseling was grossly inadequate, and San Dieguito failed to meet its statutory obligation to prepare him to transition back to public school.

San Dieguito asserts that, based on all information available at the time, its proposal was sufficient. Parents did not provide, or grant access to, the information needed to fashion a transition plan.

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

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

STIPULATED EXPULSION AGREEMENT

San Dieguito convened a manifestation determination meeting on February 2, 2024. San Dieguito recommended Student for expulsion, due to the December 12, 2023 issue involving the assistant principal. Since Student had been found eligible for special education, San Dieguito held a manifestation team meeting to determine if Student's conduct regarding the December 2023 incident was a manifestation of Student's disability. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(2).) The manifestation team had 11 participants, including Mother and advocate Dempsey.

The fundamental issue for the team was whether Student's December 12, 2023 conduct was an impulsive act, associated with his disability. The San Dieguito members of the manifestation determination team determined that Student's acts were not impulsive. His conduct exhibited a prolonged course of action, and was not a manifestation of his disability. Since Student's conduct was found not to be a manifestation, he could be disciplined like a student without an IEP. (20 U.S.C. § 1415(k)(1)(C).) Citing Dr. Shinn's report and testimony, Student claimed the Student's conduct was impulsive. As discussed in Issues 2(e) and 2(f), Dr. Shinn's testimony in this regard was unpersuasive.

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On February 21, 2024, San Dieguito sent Parents a prior written notice, denying Parents' request for reimbursement for Student's placement at Catalyst. (20 U.S.C. § 1415(b)(3).) San Dieguito declined to pay for Parents' unilateral placement of Student in a residential treatment center because its January 2024 IEP offer provided Student with a FAPE, based upon all information available to San Dieguito.

On March 7, 2024, Parent and San Dieguito entered into a stipulated expulsion agreement regarding the December 12, 2023 incident. Parents agreed that Student violated five sections of the Education Code. (Ed. Code, §§ 48900, subds. (h), (i), and (r); 48900.3; and 48900.4.) Student's term of expulsion would be to the end of the last day of the 2024 fall semester on December 19, 2024. Parents also agreed to have Student assigned to a school operated by the San Diego County Office of Education's Juvenile Court and Community Schools, called JCCS, during the expulsion term. Parents never enrolled Student in a JCCS school.

MARCH 27, 2024 IEP TEAM MEETING

San Dieguito convened an amendment IEP team meeting on March 27, 2024, to address Parents' concerns, which included the formation of a transition plan for Student upon his return from Catalyst. All requisite team members attended, including Mother and advocate Dempsey.

Before the meeting, on February 7, 2024, Mother completed and signed an Authorization for Exchange of Information for San Dieguito with Catalyst regarding Student. Mother limited the information exchange to "Educational Planning." The release did not permit San Dieguito to communicate with Catalyst regarding Student's

emotional, behavioral, and mental health needs. San Dieguito could not inquire about or obtain any information regarding Student's behavioral and therapeutic program, including communicating with Student's therapists and mental health providers.

The day before the meeting, Mother emailed Program Supervisor Scoma two documents—Student's March 26, 2024 Report Card and a June 27, 2023 Individualized Learning Plan, from when Student was at Catalyst the summer before starting at Canyon Crest. Scoma attempted to contact Catalyst many times, to no avail. The two documents did not provide any information regarding the Catalyst program in which Student was enrolled at the time of the IEP amendment meeting.

At the meeting, Mother requested Catalyst as a placement. The advocate said that Student could not return and attend the JCCS schools, because they would not provide the level of support Student was receiving at Catalyst, like wraparound level support, therapy with social workers and licensed therapists, and a mentor. Therefore, Parents sought a robust transition plan to support Student when he returned from Catalyst.

San Dieguito offered 30 minutes a week of school counseling, for four weeks.

PARENTS IMPEDED SAN DIEGUITO'S ABILITY TO OBTAIN NEEDED, RELEVANT INFORMATION

San Dieguito's teachers and staff, Catalyst Clinical Director Poll, and Student's Catalyst therapist Allie, acknowledged that Parents placed Student at Catalyst because of his social, emotional, behavioral, and mental health needs. Yet Parents consistently and intentionally stymied San Dieguito's ability to access this information.

This parental attitude started with the selective revelation of the schools that Student attended the year before starting at Canyon Crest. At the time of Student's enrollment at San Dieguito, Parents signed releases for records for some of Student's prior schools, but these did not give access to Student's discipline, attendance, and health history. Parents did not give Dr. Wetter's evaluation to San Dieguito upon Student's enrollment or when he started school. Multiple times before starting its assessment, San Dieguito sought releases of information from Parents, seeking access to Student's records and permission to communicate with his therapists and mental health providers. Parents ignored the requests. And here, at this March 27, 2024 amendment IEP team meeting, Parents sought a transition plan to support Student when he leaves Catalyst, even though San Dieguito was unaware of the program from which Student was allegedly transitioning.

In a later IEP team meeting, Mother told the team that she limited the releases at the recommendation of Catalyst. At hearing, Catalyst staff did not recall making this recommendation. Clinical Director Poll opined that the information shared by a release was up to the parent.

At hearing, Mother acknowledged intentionally limiting San Dieguito's ability to obtain information regarding Student's emotional, behavioral, and mental health needs, including not granting San Dieguito permission to communicate with Catalyst. Mother said the information was personal and private and did not need to be shared with a large IEP team, because Student's personal life was not a "talk show."

In *K.D. ex rel. C.L. v. Department of Educ., Hawaii* (9th Cir. 2011) 665 F.3d 1110, the Ninth Circuit reviewed a parent's history of noncooperation with Hawaii's Department of Education, which was equivalent to a school district, in obtaining information regarding a

private placement. The Department wrote multiple letters requesting written consent to observe the student and obtain reports. In light of this conduct, the Ninth Circuit concluded that parent should not expect the new IEP offer to differ from the prior IEP offer. The Ninth Circuit explained that not having received written consent or any records from a private placement due to the mother's lack of cooperation, the Department could only prepare an IEP that was substantially similar to the prior IEP. (*Id.*, at 1126.)

San Dieguito was uninformed of Student's emotional, behavioral, and mental health issues for which he was placed at Catalyst and had no information regarding the services, supports, and program that Catalyst was providing Student. Fashioning a transition plan required knowledge of the program from which Student was transitioning. Also, Student's expert Dr. Shinn, who started to assess Student a month later in April 2024, said that Student was not ready to return to a public school setting at that time. Parents requested an IEP to discuss a transition plan, though Student was not about to transition and did not complete the program until December 2024.

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to offer an appropriate transition plan. San Dieguito prevailed on Issue 3(a).

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ISSUES 3(b) AND (c): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE MARCH 27, 2024 IEP BY FAILING TO OFFER APPROPRIATE SUPPORTS AND SERVICES FOR BEHAVIOR AND MENTAL HEALTH?

Student asserts that, by the time of the March 27, 2024 IEP team meeting, San Dieguito was well informed regarding Student's need for supports and services for his behaviors and mental health. Student maintains that Parents provided a full release that enabled San Dieguito to obtain Catalyst records.

San Dieguito contended that it did not have additional information regarding his current placement at Catalyst, other than a grade report. Parents limited the February 7, 2024 release to "Educational Planning."

As analyzed in Issue 3(a), San Dieguito did not know Student's emotional, behavioral, and mental health issues which required placement at Catalyst and had no information regarding the services, supports, and program that Catalyst was providing Student. Mother signed a February 7, 2024 authorization to exchange information with Catalyst. Student claimed this authorization empowered San Dieguito to obtain all the information it required to be fully informed of Student's behavior and mental needs.

But it did not. Mother limited the release to information about "Educational Planning." Clinical director Poll acknowledged at hearing that this limitation prevented him from sharing information regarding Student's behavior and mental health needs and Student's therapeutic setting, program, and treatment at Catalyst.

On October 29, 2024, Mother signed another authorization, similarly limiting it to "Educational Progress." Members of the IEP team used the authorization to speak to Clinical Director Poll in the first week of November 2024. Poll refused to discuss Student's emotional, behavioral, and mental health, or give any information regarding his therapeutic environment at Catalyst, despite the IEP team's attempt to gain relevant information.

Mother emailed Program Supervisor Scoma on November 9, 2024, scolding the IEP team members for trying to exceed the parameters of her release in the conversation with Poll. Parents did not intend the February 7 and October 29, 2024 releases to provide San Dieguito information regarding Student's emotional, behavioral, and mental health, and therapeutic environment. Mother acknowledged, at hearing, this was her intent. Yet, Parents granted full access to Dr. Shinn, who was therefore fully informed when writing her evaluation report and giving testimony.

As discussed in Issues 2(b) and 2(c), the January 31, 2024 IEP offered goals, positive behavior supports, specialized academic instruction, and accommodations to enable Student to access and benefit from his education in the least restrictive environment. This was based upon the assessment and the information available.

San Dieguito was uninformed of Student's emotional, behavioral, and mental health issues which required placement at Catalyst and did not possess information regarding the therapeutic services, supports, and program that Catalyst was providing Student. Parents did not provide or allow access to such information. Parents did not provide any meaningful information to San Dieguito since the January 31, 2024 IEP team

meeting. Thus, San Dieguito did not possess substantive additional information to change the initial IEP's FAPE offer in the March 27, 2024 IEP. (*K.D. ex rel. C.L. v. Department of Educ., Hawaii, supra*, 665 F.3d 1110, 1126; *Adams, supra*, 195 F.3d 1141, 1149.)

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to offer appropriate supports and services for behavior and mental health. San Dieguito prevailed on Issues 3(b) and 3(c).

ISSUE 3(d): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE MARCH 27, 2024 IEP BY FAILING TO OFFER AN APPROPRIATE BEHAVIOR INTERVENTION PLAN?

Student asserts that San Dieguito had increased notice of Student's behavior, but still failed to offer an appropriate behavior intervention plan by the time of the March 27, 2024 IEP team meeting, denying Student a FAPE. Student claims that San Dieguito had an affirmative obligation, irrespective of whether Student's conduct was determined to be a manifestation of Student's disability, to provide behavioral intervention services and modifications that were designed to address the behavior violation so that it did not recur. (20 U.S.C. § 1415(k)(1)(D)(ii).)

San Dieguito contends that it had not received additional information regarding Student's behavior management at Catalyst as of the March 2024 IEP team meeting. Also, San Dieguito was not statutorily obligated to add behavioral intervention services and modifications to address the behavior violation so that it did not recur.

Title 20 United States Code section 1415(k) establishes the procedures regarding the placement of a child with a disability in an alternative educational setting, including the manifestation determination procedures, related to disciplinary removal for more than 10 days, due to a violation of a student code of conduct. Section 1415(k)(1)(D) addresses services to a child with a disability, who was removed from their current placement, irrespective of whether the behavior was found to be a manifestation of the disability. Section 1415(k)(1)(D)(i) states that the student with a disability must continue to receive educational services to enable the student to continue to participate in the general education curriculum and progress toward IEP goals. (34 C.F.R. § 300.530(d)(1).)

Student claims that Section 1415(k)(1)(D)(ii) required San Dieguito to develop and offer a behavior intervention plan, though his conduct was not a manifestation of his disability. This misstates the statute. Section 1415(k)(1)(D)(ii) states that the student shall receive a functional behavioral assessment, behavior intervention services and modifications, to address the behavior violation so that it does not recur, if appropriate. The appropriateness of a behavior intervention plan was analyzed in Issue 2(d).

Student claimed that, as of the March 27, 2024 IEP team meeting, San Dieguito had possession or access to additional information that required a behavioral intervention plan. But San Dieguito did not have, or have access to, such information. The release of information previously signed by Parent did not provide access to Student's records and permission to communicate with his therapists and mental health providers regarding Student's behavioral, emotional, and mental health.

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On March 26, 2024, Mother provided Student's Catalyst Individualized Learning Plan, dated June 27, 2023. This was from Student's enrollment at Catalyst in the summer before starting at Canyon Crest in August 2023. This was not Student's current learning plan, and it did not provide information regarding the Catalyst program in which Student was enrolled at the time of the meeting.

Student equates the learning plan to an IEP, but the plan was not an IEP. The learning plan was almost a year old and did not contain present levels of academic achievement and functional performance. Present levels were necessary for the development of an IEP. (Ed. Code, § 56345, subd. (a)(1), (2); 34 C.F.R. § 300.320(a) (2006).) The learning plan did not detail Student's behavioral, social, and mental health history. The learning plan described some of the services and aids being used in June 2023, but the plan said nothing about the services or program that Student presently needed or was receiving at Catalyst in March 2024.

Notably, Student did not show that the behavior which formed the basis for the violation of a code of student conduct may recur. Student's December 2023 conduct was the planning and execution of racially based cyberbullying (Ed. Code, § 48900(r)), threats of hate violence (Ed. Code, § 48900.3), and harassment, threats, or intimidation, directed against school district personnel, which created a hostile environment (Ed. Code, § 48900.4). San Dieguito had no knowledge that such racially based acts were a recurring act of conduct, which might recur. Student acknowledged that these acts were wrong in his assessment interview. Mother said Student never exhibited such racially based conduct before. Student offered no evidence such conduct might recur. Student did not demonstrate that a behavioral intervention was appropriate.

As discussed in Issues 3(a), (b), and (c), San Dieguito did not receive or possess additional information to change the initial IEP's FAPE offer in the March 27, 2024 IEP. (*K.D. ex rel. C.L. v. Department of Educ., Hawaii, supra*, 665 F.3d 1110, 1126; *Adams, supra*, 195 F.3d 1141, 1149.)

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to offer an appropriate behavior intervention plan. San Dieguito prevailed on Issue 3(d).

ISSUES 3(e) AND (f): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE MARCH 27, 2024 IEP BY FAILING TO OFFER GOALS FOR BEHAVIORAL MANAGEMENT AND IMPULSE CONTROL?

Student maintains that the additional information Parents provided to San Dieguito before the March 27, 2024 IEP team meeting provided sufficient information to develop goals addressing behavioral management and impulse control. San Dieguito did not develop new goals at the March 2024 IEP and denied Student a FAPE.

San Dieguito contended that the additional information provided by Parents the day before the March 27, 2024 IEP did not provide information regarding Student's current emotional, behavioral, and mental health issues for which he was placed at Catalyst. Parents continued to hamper San Dieguito's ability to obtain such information so it could, if necessary, modify or add goals for behavioral management and impulse control.

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Student's January 2024 IEP offered goals targeting Student's on-task classroom behavior, work completion, and inappropriate technology use. Parents accepted these goals, and the IEP team updated the goals' baseline data at the March 27, 2024 IEP team meeting. Parent never consented to implementation of the updated goals.

Student claimed that the 11-month old Catalyst Individualized Learning Plan, which Mother sent to Program Supervisor Scoma the day before the IEP team meeting, was equivalent to an IEP and provided San Dieguito with the data and information needed to fashion goals for behavioral management and impulse control. The evidence did not support Student's claim.

This learning plan is discussed in Issue 3(d). It was not Student's current learning plan, and it did not provide information regarding the Catalyst program in which Student was enrolled at the time of the meeting. The learning plan did not contain present levels of academic achievement and functional performance. Present levels were necessary for the development of goals. (Ed. Code, § 56345, subd. (a)(1), (2); 34 C.F.R. § 300.320(a) (2006).)

As discussed in Issue 3(a), Parents impeded San Dieguito's efforts to obtain information, before and after the unilateral placement, regarding Student's emotional, behavioral, and mental health and the services, supports, and program that Catalyst was providing Student. Without access to such information, San Dieguito could not practically and properly fashion appropriate new goals for behavioral management and impulse control for behavior that were not evidenced at a district school. (Ed. Code, § 56345, subd. (a)(1), (2); 34 C.F.R. § 300.320(a) (2006); *K.D. ex rel. C.L. v. Department of Educ., Hawaii*, *supra*, 665 F.3d 1110, 1126; *Adams, supra*, 195 F.3d 1141, 1149.)

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to offer appropriate goals for behavioral management and impulse control. San Dieguito prevailed on Issues 3(e) and 3(f).

ISSUES 3(g) AND (h): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE MARCH 27, 2024 IEP BY FAILING TO CONSIDER THE CONTINUUM OF PLACEMENT OPTIONS, INCLUDING A RESIDENTIAL TREATMENT CENTER, AND FAILING TO OFFER AN APPROPRIATE PLACEMENT?

Student asserts that San Dieguito refused to discuss the continuum of placements and consider a residential center placement, even though it possessed the additional information provided by Parent.

San Dieguito noted that the team did discuss residential placement, as well as other levels of support. However, without knowledge of Student's current emotional, behavioral, and mental health issues for which he was placed at Catalyst, San Dieguito did not have a basis for offering a more restrictive placement.

The testimony of the San Dieguito staff, as well as the contemporaneous notes, demonstrated that the IEP team discussed the June 2023 Catalyst learning plan. The team compared some of the accommodations that were in the 2023 Catalyst learning plan with accommodations in the January 31, 2024 IEP. However, as discussed in Issues 3(d), 3(e) and 3(f), the learning plan described services and aids used in June 2023. The plan said nothing about the services or program that Student required or was receiving at Catalyst in March 2024.

The IEP team discussed placement. Mother requested Catalyst as a placement. The advocate discussed the JCCS schools, to which Parents stipulated in the March 7, 2024 expulsion agreement. Parent and advocate said JCCS school would not provide the level of support Student was receiving at Catalyst, like wraparound level support, therapy with social workers and licensed therapists, and a mentor. San Dieguito team members reviewed how the January 2024 assessment demonstrated Student could be successful in the modified and special education supported placement of general education. San Dieguito said at the IEP team meeting the available information indicated that residential treatment center placement was too restrictive and unnecessary for Student's academic success.

The assertion that the March 2024 IEP team did not discuss a continuum of placement was factually incorrect. San Dieguito considered a continuum of placements, from general education to general education with special education instruction, behavior supports, and accommodations. Also, Student did not demonstrate that the placement was inadequate because of Student's disciplinary incidents. Student's behavioral missteps did not demonstrate a need for around the clock support. Student's offer of placement was based on the legally appropriate multidisciplinary report, providing access and benefit in his least restrictive placement. Dr. Shinn's contrary opinion was based on information not provided to San Dieguito. San Dieguito's assessment and FAPE offers were measured by what they knew at the time. San Dieguito was precluded from gathering information related to Student's therapeutic, behavioral, and mental health. (Ed. Code, § 56345, subd. (a)(1), (2); 34 C.F.R. § 300.320(a) (2006); *K.D. ex rel. C.L. v. Department of Educ., Hawaii*, *supra*, 665 F.3d 1110, 1126; *Adams*, *supra*, 195 F.3d 1141, 1149.) San Dieguito properly offered a placement as stated in the January 31, 2024 IEP.

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to consider the continuum of placement options, including residential treatment center, and failing to offer an appropriate placement.

San Dieguito prevailed on Issues 3(g) and 3(h).

ISSUE 3(i): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE MARCH 27, 2024 IEP BY FAILING TO MAKE A CLEAR AND SPECIFIC OFFER OF FAPE?

Student asserts that San Dieguito denied Student a FAPE by failing to make a clear and specific offer of FAPE at the March 27, 2024 IEP team meeting, regarding behavioral supports, transition services, specialized academic instruction, and placement at JCCS.

San Dieguito contends that the March 2024 IEP offer of FAPE was clear and specific and that Parents understood the offer, especially in light of Parents' Stipulated Expulsion Agreement, specifically agreeing that Student would attend JCCS.

The IDEA requires a school district to make a clear written FAPE offer. (*Union v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526, cert. denied (1994) 513 U.S. 965 (*Union*).) The school district must offer a single, specific program, in the form of a clear, coherent offer which parents can reasonably evaluate and decide whether to accept or reject. (*Glendale Unified Sch. Dist. v. Almasi* (C.D. Cal. 2000) 122 F.Supp.2d 1093, 1107-1108.) This requirement "should be enforced rigorously" as it creates a clear record to help eliminate factual disputes. (*Union*, 15 F.3d at p. 1526.) It also assists the parents in

presenting complaints with respect to any matter relating to the educational placement of the child. (*Ibid.*; *J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 459-460.)

A due process decision must be based on substantive grounds when determining whether a child has received a FAPE. A school district's failure to make a sufficiently specific offer of placement and services is a procedural violation of the IDEA. (*Union, supra*, 15 F.3d at p. 1527; 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320(a); Ed. Code, § 56505, subd. (j).) A procedural violation results in a denial of FAPE if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *Target Range, supra*, 960 F.2d at 1484.)

First, Student asserted that many of the IEP's behavioral supports were vague and unspecific, but did not identify which supports. At the IEP meeting, the IEP team discussed how similar many of the supports and accommodations that Catalyst listed in the June 2023 learning plan were to those in Student's IEP. Many of the supports and accommodations mentioned in Dr. Wetter's January 2022 evaluation report were strikingly similar to those in Student's IEP. Student failed to demonstrate how any of the behavioral supports were vague and unspecific.

Second, Student asserts that San Dieguito's offer of transitional counseling services was unclear, because San Dieguito stated the offer in the IEP meeting, as reflected in the notes, but did not amend the IEP document's FAPE offer page. The testimonial and documentary evidence established that Parents clearly understood San Dieguito's offer regarding transition, which was discussed and analyzed in Issue 3(a).

San Dieguito told Mother that when Student transitions from a higher level of care back to San Dieguito, San Dieguito would provide 30 minutes a week of counseling for four weeks. San Dieguito also said that the transition offer was based on what it knew at the time and that, when Student was going to transition, San Dieguito wanted to consider Student's experiences and gains by consulting with his providers from Catalyst. Mother and advocate, generally and specifically, indicated that Student was remaining at Catalyst and Student was not preparing to leave and transition back to public school. In her October 2024 evaluation report, Dr. Shinn said Student was not ready to return to a public school environment.

The IEP is to be read as a whole. There is no requirement that necessary information be included in a particular section of the IEP if that information is contained elsewhere. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2); Ed. Code, § 56345, subd. (h).) Here, Parents understood San Dieguito's transition offer, which was clearly recorded in the IEP's notes. Parents were also on notice that the offer was subject to being altered by consulting with Student's providers at Catalyst when Student was ready to transition. Student did not demonstrate that San Dieguito's transition offer was unclear.

Third, Student contends that the IEP's offer of specialized academic instruction was unclear and nonspecific. Student's IEP offered 90 minutes a day of specialized academic instruction in a separate classroom, of targeted academic instruction in an executive functioning course, or as math support in semesters when Student had math. This description was unambiguous. When Student was taking math, his specialized instruction would be math support class.

Student also argues that the IEP was confusing, citing the testimony of Program Supervisor Scoma who was unclear how Student's specialized instruction would be administered. But Scoma was not the individual who would be responsible for assuring the implementation of the IEP's related services during Student's expulsion.

In the March 7, 2024 expulsion agreement, Parents stipulated to have Student assigned to the JCCS schools operated by the San Diego County during Student's term of expulsion. Parents would have to enroll Student at JCCS. Marissa Tirri was the San Diego County Office of Education's coordinator of programming of special education, and was responsible for assuring implementation of students' IEPs at the JCCS schools. She testified at hearing.

JCCS schools served high school students who were recommended for expulsion or referred because a student needed additional or smaller classes. The JCCS class size averaged less than 15 students. Special education students had access to all related services, including math counseling, executive functioning courses, and cognitive behavioral therapy.

San Dieguito referred Student for possible enrollment following the expulsion agreement and Tirri reviewed Student's records, including the Section 504 plan, the IEP's, and the manifestation determination. Tirri determined that JCCS could provide all supports, accommodations, and specialized academic instruction, which she found to be clearly stated in Student's IEP. Upon Student's enrollment, JCCS would implement Student's IEP, including the specialized academic instruction. San Dieguito remained responsible for providing FAPE. Student did not demonstrate that the San Dieguito's offer of special academic instruction was unclear or unambiguous.

Fourth, Student claims that the offer of placement was unclear and ambiguous, because JCCS was not listed on the IEP's form FAPE page as Student's placement. Student's argument was unpersuasive. Parents stipulated that Student would enroll and attend JCCS during Student's term of expulsion. If Student returned during his term of expulsion, Student would enroll and attend JCCS. Student's IEP team did not place Student at JCCS; Parents agreed to JCCS. Parents' knowledge of JCCS was reflected in the discussions at the March 27, 2024 IEP team meeting. Parents were fully aware and not confused as to where Student would attend if he returned during his term of expulsion.

Finally, Student did not demonstrate that these alleged procedural violations, if found, would have met the *Target Range* factors for a denial of FAPE.

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to make a clear and specific offer of FAPE. San Dieguito prevailed on Issue 3(i).

ISSUE 4(a): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE OCTOBER 28, 2024 IEP BY FAILING TO OFFER AN APPROPRIATE TRANSITION PLAN?

Student claims that San Dieguito denied Student a FAPE at the October 28, 2024 IEP team meeting because it failed to offer an appropriate transition plan from Catalyst back to San Dieguito. Student asserts that the offer of weekly counseling was grossly inadequate, and San Dieguito failed to meet its statutory obligation.

San Dieguito maintains that, based on all information available at the time, its proposal was sufficient. As of October 28, 2024, Parents did not provide, or grant access to, the material needed to fashion a transition plan.

San Dieguito convened an amendment IEP meeting on October 28, 2024. Parents requested the meeting to discuss JCCS. All necessary attendees were present, including Mother and advocate Dempsey. San Diego County of Education JCCS Coordinator Tirri also attended, because Parents wanted to discuss JCCS. On October 23, 2024, three working days before the IEP team meeting, Mother emailed a copy of Dr. Shinn's undated report to Program Supervisor Scoma and JCCS Coordinator Tirri.

Student argued that San Dieguito failed to offer an appropriate transition plan at the October 2024 IEP team meeting. Student asserted that the prior transition offer was still insufficient, citing Dr. Shinn's testimony and her report. But San Dieguito did not have the benefit Dr. Shinn's report and testimony. And, San Dieguito never had access to Student's Catalyst therapeutic program, therapists, or providers, like Dr. Shinn.

The prior transition offer was discussed in Issues 3(a) and 3(i). As of the October 2024 IEP team meeting, the IEP team had not reviewed Dr. Shinn's report and agreed to reconvene within 30 days for a complete IEP review. San Dieguito remained uninformed of the services, supports, and program that Catalyst was providing Student. Until San Dieguito communicated with Catalyst regarding Student's program, the transition plan offer was sufficient and remained the same. Modifying a transition plan required additional information about the program from which Student was transitioning. For the same reasons that the initial transition plan was adequate, the plan in the October 28, 2024 IEP was appropriate.

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to offer an appropriate transition plan.

San Dieguito prevailed on Issue 4(a).

ISSUES 4(b) AND (c): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE OCTOBER 28, 2024 IEP BY FAILING TO OFFER APPROPRIATE SUPPORTS AND SERVICES FOR BEHAVIOR AND MENTAL HEALTH?

Student asserts that San Dieguito was well informed regarding Student's need for supports and services for his behaviors and mental health, as of the October 28, 2024 IEP team meeting, and should have offered appropriate supports and services for Student behavior and mental health.

San Dieguito contends that the offered goals were supported by positive behavioral supports and accommodations. As of October 28, 2024, Parents did not provide, or grant access to, the material that may have indicated additional behavior and mental health support were necessary and, if so, what they might be.

Student's assertions regarding the need for additional behavior and mental health services were discussed in Issues 2(b), 2(c), 3(b) and 3(c). As of the October 2024 IEP meeting, San Dieguito remained uninformed of Student's emotional, behavioral, and mental health issues which required placement at Catalyst and did not possess information regarding the therapeutic services, supports, and program that Catalyst was providing Student. Lacking additional information, the January 31, 2024 IEP offer

remained legally sufficient and was restated at the October 2024 IEP team meeting. (*K.D. ex rel. C.L. v. Department of Educ., Hawaii, supra*, 665 F.3d 1110, 1126; (*Adams, supra*, 195 F.3d 1141, 1149.)

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to offer appropriate supports and services for behavior and mental health. San Dieguito prevailed on Issues 4(b) and 4(c).

ISSUE 4(d): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE OCTOBER 28, 2024 IEP BY FAILING TO OFFER AN APPROPRIATE BEHAVIOR INTERVENTION PLAN?

Student asserts San Dieguito denied Student a FAPE because it had increased notice of Student's behavior, and was required to fashion and develop an appropriate behavior intervention plan, at the October 28, 2024 IEP team meeting.

San Dieguito contends that, as of October 28, 2024 IEP, Parents did not provide, or grant access to, the material that indicated a need for a behavioral intervention plan.

Student's contentions regarding the behavior intervention plan were addressed in Issues 2(d) and 3(d). Student consistently cited to Dr. Shinn's testimony and report in making claims that San Dieguito had additional information as of the October 28, 2024 IEP team meeting. But San Dieguito had yet to review Dr. Shinn's report and certainly did not know about her hearing testimony. San Dieguito did not possess additional

information to change the initial IEP's FAPE offer at the October 28, 2024 IEP. (*K.D. ex rel. C.L. v. Department of Educ., Hawaii, supra*, 665 F.3d 1110, 1126; *Adams, supra*, 195 F.3d 1141, 1149.)

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to offer an appropriate behavior intervention plan.

San Dieguito prevailed on Issue 4(d).

ISSUES 4(e) AND (f): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE OCTOBER 28, 2024 IEP BY FAILING TO OFFER GOALS FOR BEHAVIORAL MANAGEMENT AND IMPULSE CONTROL?

Student asserts that San Dieguito was well informed regarding Student's need for goals for behavior management and impulse control, as of the October 28, 2024 IEP team meeting and should have offered appropriate goals.

San Dieguito contends that the goals offered at the January 31, 2024 IEP remained sufficient because, as of October 28, 2024, Parents did not provide or grant access to the material that indicated additional goals for behavior management and impulse control were warranted.

Student's assertions regarding the need for additional behavior and mental health services were discussed in Issues 2(e), 2(f), 3(e) and 3(f). As of the October 2024 IEP meeting, San Dieguito remained uninformed of Student's emotional, behavioral, and mental health issues which required placement at Catalyst and did not possess information regarding the therapeutic services, supports, and program that Catalyst was

providing Student. Absent additional information, Student's January 31, 2024 IEP's goals remained legally sufficient and were properly restated at the October 2024 IEP team meeting. (*K.D. ex rel. C.L. v. Department of Educ., Hawaii, supra*, 665 F.3d 1110, 1126; *Adams, supra*, 195 F.3d 1141, 1149.) Finally, Student did not show or argue that these alleged procedural violations would have met the *Target Range* factors for a denial of FAPE.

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to offer appropriate goals for behavioral management and impulse control.

San Dieguito prevailed on Issues 4(e) and 4(f).

ISSUES 4(g) AND (h): DID SAN DIEGUITO DENY STUDENT A FAPE REGARDING THE OCTOBER 28, 2024 IEP BY FAILING TO CONSIDER THE CONTINUUM OF PLACEMENT OPTIONS AND FAILING TO OFFER AN APPROPRIATE PLACEMENT?

Student asserts that San Dieguito failed to discuss the continuum of placements and a residential treatment center placement, and failed to offer an appropriate placement, even though it possessed the additional information provided by Parent at the October 28, 2024 IEP.

San Dieguito contends that San Dieguito required access to Student's Catalyst therapists and mental health providers, in order to have the information that was necessary to amend the IEP offers, if necessary.

At the October 28, 2024 IEP team meeting Mother talked about Student's Catalyst program and identified Student's therapist Colleen Allie. Mother acknowledged San Dieguito's request to communicate with the therapist; by indicating she would sign the necessary releases. But Parents did not.

Student's assertions that San Dieguito did not discuss the continuum of placements, including a residential treatment center, and failed to make an appropriate placement offer, were discussed in Issues 2(g), 2(h), 3(g), and 3(h). San Dieguito had been operating on the information obtained through the January 31, 2024 initial assessment and IEP. Since then, Parents failed to provide access to therapists and providers who could inform San Dieguito of Student's emotional, behavioral, and mental health issues which required placement at Catalyst. San Dieguito did not possess information regarding the therapeutic services, supports, and program that Catalyst was providing Student, other than Parents' selective verbal review, without any validating records or documentation.

At the IEP team meeting, Parent requested placement at Catalyst. Program Supervisor Scoma referred the team back to the current offer of FAPE and discussed how the information available to San Dieguito did not warrant a more restrictive environment. The continuum of placements for Student, including residential treatment center, was discussed at the IEP meeting.

Neither the January 2024 multidisciplinary evaluation, nor information subsequently observed or obtained by San Dieguito, supported a more restrictive placement. The adequacy of an offer was not measured by whether the placement desired by parents was better. (See *Gregory K, supra*, 811 F.2d at p. 1314.) San Dieguito was precluded from gathering information related to Student's therapeutic, behavioral,

and mental health that may have supported a more restrictive placement offer. (Ed. Code, § 56345, subd. (a)(1), (2); 34 C.F.R. § 300.320(a) (2006); *K.D. ex rel. C.L. v. Department of Educ., Hawaii, supra*, 665 F.3d 1110, 1126; *Adams, supra*, 195 F.3d 1141, 1149.) San Dieguito properly offered a placement as stated in the January 31, 2024 IEP.

Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to consider the continuum of placement options, including residential treatment center, and failing to offer an appropriate placement. San Dieguito prevailed on Issues 4(g) and 4(h).

ISSUE 5: DID SAN DIEGUITO DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO CONSIDER THE JULY 10, 2024 PRIVATE PSYCHOEDUCATIONAL EVALUATION?

Student asserts that San Dieguito denied Student a FAPE for the 2024-2025 school year by failing to consider Dr. Shinn's July 10, 2024 report. Student argues that San Dieguito members of Student's IEP team had possession of the report before the October 28, 2024 IEP meeting, and should have reviewed the report at that time. Student also claims that San Dieguito did not fully review the report at the November 21, 2024 IEP meeting, because they made no changes to the IEP.

San Dieguito contends the report was provided three school days before the October 2024 IEP team meeting, the full IEP team did not have time to thoroughly review Dr. Shinn's full report, and Dr. Shinn was not at the meeting. The IEP team agreed to meet within 30 days and did so on November 21, 2024. Though Dr. Shinn did not attend, the team thoroughly reviewed the report and proposed fully assessing Student. Parents agreed and signed an assessment plan.

School districts must consider the results of privately obtained assessments when making FAPE decisions. (34 C.F.R. § 300.502(c)(1); Cal. Educ. Code § 56329(b)-(c).) Evidence that districts considered a private evaluation include a lengthy discussion of the evaluation, questions asked, proposals to conduct further assessments, or alteration of IEP provisions in response to suggestions. (*Michael P. v. Dep't of Educ.* (9th Cir. 2011) 656 F.3d 1057, 1066.) The IDEA only requires a school district to consider the results of a parent-initiated evaluation; it does not require a school district to adopt the conclusions of such an evaluation. (*Id.* at p. 1066, fn. 9.)

Student incorrectly dated Dr. Shinn's report as July 10, 2024. Dr. Shinn acknowledged including and considering communications from Catalyst staff in September and October 2024. Dr. Shinn's report was undated, so the date of the final report was when Dr. Shinn sent the report to Parents on October 23, 2024.

Here, San Dieguito timely reviewed and considered Dr. Shinn's report. Student argued that the IEP team should have reviewed Dr. Shinn's report at the October 2024 IEP team meeting. However, the October 28, 2024 team meeting had been scheduled to review Parents concern regarding JCCS and Coordinator Terri was present to discuss. Three school days was insufficient time for the entire IEP team to review the report. Also, Dr. Shinn did not attend, could not present her evaluation, and the IEP team would not have an opportunity to ask questions. The team agreed to reconvene an IEP team meeting within 30 days to review Dr. Shinn's report. Mother told the team that Dr. Shinn would be at the next IEP meeting, so San Dieguito did not request a release to communicate directly with Dr. Shinn

San Dieguito convened an IEP team meeting on November 21, 2024, to review Dr. Shinn's report. Dr. Shinn was not present. Mother explained that Dr. Shinn required four to five weeks' notice to schedule. Program Supervisor Scoma expressed concern that Dr. Shinn's absence would not enable the team to obtain answers to the IEP teams' questions regarding the private evaluation. Nevertheless, School Psychologist Yuan led the team through Dr. Shinn's report, section by section.

San Dieguito staff identified several inaccuracies with Student's educational history as listed in the report and further noted that the report mentioned various behavioral issues occurring at Catalyst such as drug use, self-harm, running away, and stealing, which had not been previously reported to San Dieguito. The report had inconsistencies regarding Student's behaviors between those reported by Parent and those identified in Dr. Shinn's report. Dr. Shinn started virtually assessing Student in April 2024, but did not produce the report until late October 2024. Dr. Shinn recommended that Student remain at Catalyst but her only direct connection to Student's program was a 50-minute virtual class observation and virtual assessments.

Since Dr. Shinn was not in attendance to address these inconsistencies and concerns, San Dieguito requested a release of information to speak with Dr. Shinn directly. Parent declined, suggesting that San Dieguito develop a list of questions for Parent to relay to Dr. Shinn. Since San Dieguito could not directly communicate with Dr. Shinn, San Dieguito proposed conducting a social emotional assessment and provided a proposed assessment plan.

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Parents subsequently signed the assessment plan. San Dieguito sent School Psychologists Yuan and Nguyen to Catalyst for testing and observations. On January 31, 2025, Parents informed San Dieguito that Parents enrolled Student at Coastal Academy High School, which was a different local education agency. Student was no longer enrolled at San Dieguito, and San Dieguito was no longer responsible for Student's educational programming.

The record demonstrated that San Dieguito timely and thoroughly reviewed Dr. Shinn's report. Student failed to prove, by a preponderance of the evidence, that San Dieguito denied Student a FAPE during the 2024-2025 school year by failing to consider the July 10, 2024 private psychoeducational evaluation.

San Dieguito prevailed on Issue 5.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1(a)

Student failed to prove that San Dieguito denied Student a FAPE during the 2023-2024 school year by failing to locate, identify, and evaluate Student as a child who has a disability.

San Dieguito Union High School District prevailed on Issue 1(a).

ISSUE 1(b)

Student failed to prove that San Dieguito denied Student a FAPE during the 2023-2024 school year by failing to assess Student in the area of functional behavior.

San Dieguito Union High School District prevailed on Issue 1(b).

ISSUE 1(c)

Student failed to prove that San Dieguito denied Student a FAPE during the 2023-2024 school year by failing to assess Student in the area of educationally related mental health.

San Dieguito Union High School District prevailed on Issue 1(c).

ISSUE 2(a)

Student failed to prove that San Dieguito denied Student a FAPE regarding the January 31, 2024 IEP by failing to have all required participants at the IEP team meeting.

San Dieguito Union High School District prevailed on Issue 2(a).

ISSUE 2(b)

Student failed to prove that San Dieguito denied Student a FAPE regarding the January 31, 2024 IEP by failing to offer any support and services for behavior.

San Dieguito Union High School District prevailed on Issue 2(b).

ISSUE 2(c)

Student failed to prove that San Dieguito denied Student a FAPE regarding the January 31, 2024 IEP by failing to offer any support and services for mental health.

San Dieguito Union High School District prevailed on Issue 2(c).

ISSUE 2(d)

Student failed to prove that San Dieguito denied Student a FAPE regarding the January 31, 2024 IEP by failing to offer an appropriate behavioral intervention plan.

San Dieguito Union High School District prevailed on Issue 2(d).

ISSUE 2(e)

Student failed to prove that San Dieguito denied Student a FAPE regarding the January 31, 2024 IEP by failing to offer any behavioral management goals.

San Dieguito Union High School District prevailed on Issue 2(e).

ISSUE 2(f)

Student failed to prove that San Dieguito denied Student a FAPE regarding the January 31, 2024 IEP by failing to offer any impulse control goals.

San Dieguito Union High School District prevailed on Issue 2(f).

ISSUE 2(g)

Student failed to prove that San Dieguito denied Student a FAPE regarding the January 31, 2024 IEP by failing to consider the continuum of placement options, including a residential treatment center.

San Dieguito Union High School District prevailed on Issue 2(g).

ISSUE 2(h)

Student failed to prove that San Dieguito denied Student a FAPE regarding the January 31, 2024 IEP by failing to offer an appropriate placement.

San Dieguito Union High School District prevailed on Issue 2(h).

ISSUE 3(a)

Student failed to prove that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to offer an appropriate transition plan.

San Dieguito Union High School District prevailed on Issue 3(a).

ISSUE 3(b)

Student failed to prove that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to offer appropriate support and services for behavior.

San Dieguito Union High School District prevailed on Issue 3(b).

ISSUE 3(c)

Student failed to prove that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to offer any support and services for mental health.

San Dieguito Union High School District prevailed on Issue 3(c).

ISSUE 3(d)

Student failed to prove that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to offer an appropriate behavioral intervention plan.

San Dieguito Union High School District prevailed on Issue 3(d).

ISSUE 3(e)

Student failed to prove that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to offer appropriate goals for behavioral management.

San Dieguito Union High School District prevailed on Issue 3(e).

ISSUE 3(f)

Student failed to prove that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to offer appropriate goals for impulse control.

San Dieguito Union High School District prevailed on Issue 3(f).

ISSUE 3(g)

Student failed to prove that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to consider the continuum of placement options, including a residential treatment center.

San Dieguito Union High School District prevailed on Issue 3(g).

ISSUE 3(h)

Student failed to prove that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to offer an appropriate placement.

San Dieguito Union High School District prevailed on Issue 3(h).

ISSUE 3(i)

Student failed to prove that San Dieguito denied Student a FAPE regarding the March 27, 2024 IEP by failing to make a clear and specific offer of FAPE.

San Dieguito Union High School District prevailed on Issue 3(i).

ISSUE 4(a)

Student failed to prove that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to offer an appropriate transition plan.

San Dieguito Union High School District prevailed on Issue 4(a).

ISSUE 4(b)

Student failed to prove that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to offer appropriate support and services for behavior.

San Dieguito Union High School District prevailed on Issue 4(b).

ISSUE 4(c)

Student failed to prove that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to offer any support and services for mental health.

San Dieguito Union High School District prevailed on Issue 4(c).

ISSUE 4(d)

Student failed to prove that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to offer an appropriate behavioral intervention plan.

San Dieguito Union High School District prevailed on Issue 4(d).

ISSUE 4(e)

Student failed to prove that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to offer measurable goals for behavioral management.

San Dieguito Union High School District prevailed on Issue 4(e).

ISSUE 4(f)

Student failed to prove that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to offer measurable goals for impulse control.

San Dieguito Union High School District prevailed on Issue 4(f).

ISSUE 4(g)

Student failed to prove that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to consider the continuum of placement options.

San Dieguito Union High School District prevailed on Issue 4(g).

ISSUE 4(h)

Student failed to prove that San Dieguito denied Student a FAPE regarding the October 28, 2024 IEP by failing to offer an appropriate placement.

San Dieguito Union High School District prevailed on Issue 4(h).

ISSUE 5

Student failed to prove that San Dieguito denied Student a FAPE during the 2024-2025 school year by failing to consider the July 10, 2024 private psychoeducational evaluation.

San Dieguito Union High School District prevailed on Issue 5.

ORDER

All of Student's 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.

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings