

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT

v.

PALO ALTO UNIFIED SCHOOL DISTRICT.

CASE NO. 2025041223

DECISION

JANUARY 7, 2026

On April 28, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Palo Alto Unified School District as respondent. Administrative Law Judge Clifford H. Woosley heard this matter by videoconference on October 21, 22, 23, 28, 29, and 30, 2025.

Attorneys Emily Hart and N. Jane DuBovy represented Student. Mother attended the hearing on behalf of Student. Attorneys Matthew P. Juhl-Darlington and Jenai Howard represented Palo Alto Unified School District. Teri Lee, Director of Special Education, attended the hearing on behalf of Palo Alto Unified School District. Dr. Rita Rodriguez, Special Education Coordinator, attended two hearing days on behalf of Palo Alto Unified School District, when Director Lee was unable to be present.

At the parties' request, OAH continued the matter for written closing briefs. The parties submitted their briefs, and OAH closed the record on December 4, 2025.

In this Decision, a free appropriate public education is called a FAPE, and an individualized education program is called an IEP. Palo Alto Unified School District is called Palo Alto.

ISSUES

1. Did Palo Alto deny Student a FAPE by failing to have an IEP offer of special education and related services in place before the start of the 2023-2024 school year?
2. Did Palo Alto deny Student a FAPE in the IEP developed during the IEP team meetings held September 28 and October 19, 2023, provided to Parents on November 2, 2023, and revised on January 26, 2024, by failing to develop an IEP that was reasonably calculated to enable him to make progress appropriate in light of his circumstances, specifically:
 - A. failing to include an appropriate type and amount of specialized academic instruction?
 - B. failing to offer an appropriate placement?
3. Did Palo Alto deny Student a FAPE by predetermining Student's offer of placement and services in the IEP developed at the IEP team meetings held April 18 and May 17, 2024?
4. Did Palo Alto deny Student a FAPE in the IEP developed at the IEP team meetings held April 18 and May 17, 2024, by failing to meaningfully consider Parents' concerns?

5. Did Palo Alto deny Student a FAPE by failing to have a Greene Middle School staff member knowledgeable about available supports and services at the May 17, 2024 IEP team meeting?
6. Did Palo Alto deny Student a FAPE in the IEP developed at the April 18 and May 17, 2024 IEP team meetings, by failing to develop an IEP that was reasonably calculated to enable him to make progress appropriate in light of his circumstances, specifically, by:
 - A. failing to offer appropriate specialized academic instruction programming?
 - B. failing to offer an appropriate placement?
7. Did Palo Alto deny Student a FAPE by preventing Parents from having a comprehensive placement observation in spring 2024, thereby significantly impeding the opportunity of Parents to participate in the decision-making process regarding the provision of a FAPE to Student and Parents' right to informed consent?
8. Did Palo Alto deny Student a FAPE by failing to have at the May 29, 2024 IEP team meeting, a sixth-grade teacher knowledgeable about available supports and services at Greene Middle School?

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9. Did Palo Alto deny Student a FAPE in the IEP developed at the May 29, 2024 IEP team meeting, by failing to develop an IEP that was reasonably calculated to enable him to make progress appropriate in light of his circumstances, specifically, by:
 - A. failing to offer appropriate specialized academic instruction programming?
 - B. failing to offer an appropriate placement?
10. Did Palo Alto deny Student a FAPE in the IEP developed at the IEP team meetings held on April 23 and May 29, 2025, by failing to meaningfully consider the findings and recommendations of the March 20, 2025 neuropsychological and educational evaluation?
11. Did Palo Alto deny Student a FAPE in the IEP developed at the IEP team meetings held on April 23 and May 29, 2025, by predetermining the offer of placement and services?
12. Did Palo Alto deny Student a FAPE in the IEP developed at the IEP team meeting held on April 23 and May 29, 2025, by failing to develop an IEP that was reasonably calculated to enable him to make progress appropriate in light of his circumstances, specifically, by:
 - A. failing to offer any appropriate services?
 - B. failing to offer an appropriate placement?

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JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, or IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act 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); 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 was 12 years old and in seventh grade. Student attended Charles Armstrong School, a private school in Belmont, California. Student resided within Palo Alto's geographic boundaries at all times relevant to this Decision.

ISSUE 1: DID PALO ALTO DENY STUDENT A FAPE BY FAILING TO HAVE AN IEP OFFER OF SPECIAL EDUCATION AND RELATED SERVICES IN PLACE BEFORE THE START OF THE 2023-2024 SCHOOL YEAR?

Student contended that Palo Alto denied Student a FAPE by failing to have an IEP offer in place before the beginning of the 2023-2024 school year. Student asserted that Palo Alto held an April 28, 2023 annual IEP team meeting, which required a second meeting. Palo Alto set the second meeting for June 1, 2023, but unilaterally cancelled the meeting less than a day before. Palo Alto told Parents that the next part of the April 2023 annual IEP would be scheduled and completed in August or September 2023, after the 2023-2024 school year began.

Palo Alto contended that Parents' actions delayed the completion of the April 28, 2023 IEP, by insisting that the IEP team review a December 2022 private assessment of Student at the annual IEP meeting. Therefore, Palo Alto cancelled the March 16, 2023 IEP team meeting, which had been scheduled to review the private evaluation.

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Student was in second grade for the 2020-2021 school year. Palo Alto convened Student's initial IEP team meeting in April 2021 and found that Student met the eligibility criteria for specific learning disability. At the beginning of third grade, in the 2022-2023 school year, Parents unilaterally placed Student in Charles Armstrong School, a private independent school.

Parents subsequently filed a due process hearing request, which was resolved by a December 20, 2022 settlement agreement. As part of the agreement, Student waived all educational claims through August 1, 2023, and Palo Alto was required to convene an IEP meeting in spring 2023 to offer a FAPE for the 2023-2024 school year. Student continued his enrollment in Charles Armstrong School for the remainder of the 2022-2023 school year.

For public school children with disabilities, school districts make a FAPE available by having an IEP in effect at the beginning of each school year. (34 C.F.R. § 300.323(a) (2006).) The school district where the parents reside with the child is responsible for offering the child a FAPE. (20 U.S.C. § 1413(a)(1); Ed. Code, § 48200; *Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525 (*Union*).)

However, a student's district of residence is not obligated to offer a FAPE if parents placed the student in a private school and made clear of their intent to keep the child enrolled in the private school. (*J.B. v. Kyrene Elementary Sch. Dist. No. 28* (9th Cir. 2024) 112 F.4th 1156, 1164 (*Kyrene*) [citing Office of Special Education Programs (OSEP) *Letter to Wayne*, January 29, 2019]; see also, *Capistrano Unified Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1138, cert. denied at 143 S.Ct. 98 (*Capistrano*).)

Title 34, section 300.130 (2006), of the Code of Federal Regulations defines parentally placed private school children with disabilities as children with disabilities enrolled by their parents in private schools or facilities. (20 U.S.C. § 1412(a)(10)(A).) Section 300.137(a) states “no parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.” (*Ibid.*; 34 C.F.R. § 300.137(a) (2007).) Consequently, once a parent unilaterally enrolls the student in private school, the student meets the definition of a private school child with a disability and does not have an individual entitlement to special education and related services. (*Capistrano*, *supra*, 21 F.4th at p. 1138–40.)

Parents who unilaterally place a child in private school may seek reimbursement for the costs of special education and related services. (See 20 U.S.C. § 1415.) Courts may grant reimbursement under title 20 of the United State Code section 1415(i)(2)(C)(iii) only when a school district failed to provide a FAPE and the private-school placement is appropriate. (*Forest Grove Sch. Dist. v. T.A.* (2009) 557 U.S. 230, 242 n.9, 129 S.Ct. 2484, 174 L.Ed.2d 168; cited by *Capistrano*, *supra*, 21 F.4th at p. 1138. (*Forest Grove*.)

Though not individually entitled to a FAPE or special education services, parents of a privately placed child may ask for a new IEP at any time, which triggers the requirement of the school district to offer Student a FAPE. (*Capistrano*, *supra*, 21 F.4th at p. 1138 [“if a student has been enrolled in a private school by their parents, then the district need not prepare an IEP unless parents ask for one”].)

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In early spring 2023, Parents requested that the IEP team review a privately funded December 2022 independent educational evaluation and hold Student's annual IEP team meeting to make a FAPE offer for the 2023-2024 school year. Palo Alto Education Specialist Ashley Cheechoo, assembled members of Student's IEP team, set an IEP team meeting for March 16, 2023, to review the December 2022 independent educational evaluation, which is called the December 2022 IEE. She sent Zoom invites to all attendees, including Parents.

On March 8, 2023, Mother acknowledged the scheduled meeting, and restated Parents' request that Palo Alto make an IEP team offer for the 2023-2024 school year. Mother said that Parents would then consider Palo Alto's offer for the next school year, which they were expecting at the March 16, 2023 IEP team meeting, after review of the December 2022 IEE.

Cheechoo responded on March 9, 2023, noting that Palo Alto could not make an offer of FAPE at the March 16, 2023 IEP meeting because the purpose was to review the independent evaluation. Palo Alto would make the offer of FAPE at the annual IEP team meeting, which would be scheduled pursuant to the applicable timeline.

Mother told Cheechoo that Parents were unaware that the following week's IEP meeting was to only review the IEE. Parents wanted the December 2022 IEE's findings and recommendations to be included in the formation of Student's IEP. Mother requested that the private evaluation review and the annual IEP be combined into one meeting. Mother said to push the following week's IEP meeting back, if necessary. Mother also said Parents wanted Charles Armstrong representatives to attend, to report on Student's progress.

Cheechoo acknowledged Parents' request to combine the evaluation review and annual IEPs into one meeting, noting that the meeting would have to be rescheduled. She cancelled the March 16, 2023 meeting. Cheechoo also introduced, via the email, Angela Hernandez, a program specialist for alternative placements, who thereafter took over the scheduling and planning of Student's IEP team meeting.

The IEP team meeting scheduling required weeks of communication to obtain a mutually agreeable time and date. On April 10, 2023, the IEP team meeting was set for April 28, 2023, 10:30 a.m. to noon.

Palo Alto convened Student's annual IEP team meeting on April 28, 2023. Attendees included Parents, Student's expert Dr. Amanda Wagner-Doughty, who is referred to as Dr. Wagner, Palo Alto psychologists Dr. Erika Gardiner and Dr. Rita Rodriguez, the remaining Palo Alto IEP team members, and two Charles Armstrong teachers. Review of the December 2022 IEE generated many questions and substantial discussion. This took most of the meeting's allotted time. The IEP team adjourned Part 1 of the annual IEP team meeting and agreed to schedule Part 2.

Hernandez worked with Mother and the IEP team meeting participants in scheduling the Part 2 team meeting for June 1, 2023. However, on May 31, 2023, Hernandez cancelled the meeting because various planned school site activities for the last day of school meant the full IEP team would be unavailable. Hernandez told Parents that Palo Alto would schedule Part 2 in August 2023. Parents correctly concluded that the annual IEP team meeting would not be rescheduled until after the new school year started.

On July 21, 2023, Parents notified Palo Alto of their intent to unilaterally place Student at Charles Armstrong for the 2023-2024 school year and to seek reimbursement. Without an IEP offer, Parents asserted they had no way to understand and evaluate the supports and services Palo Alto would provide for the following school year.

On July 28, 2023, Palo Alto sent a prior written notice to Parents, declining their request for reimbursement because Palo Alto could provide a FAPE offer in Student's home school of Duveneck Elementary. Palo Alto offered to complete the annual IEP when its staff returned from the summer break.

Here, Student demonstrated that Palo Alto denied Student a FAPE when it failed to have a FAPE offer in place before the commencement of the 2023-2024 school year. As part of the December 2022 due process settlement, Palo Alto agreed to hold an IEP meeting in the Spring of 2023 to offer a FAPE for the 2023-2024 school year. OAH does not have jurisdiction regarding a party's possible breach of a settlement agreement obligation. (See *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2020) 223 F.3d 1026, 1028-1029.) But, because of the agreement, Palo Alto knew that it was going to have to hold an IEP team meeting in spring of 2023 to make an offer for the following school year. The obligation was not a surprise. Additionally, Parents separately requested Palo Alto hold an IEP team meeting and make a FAPE offer for the 2023-2024 school year, which Parents could then consider. Therefore, as sanctioned by *Capistrano*, Palo Alto was obligated to convene an IEP team meeting and make a FAPE offer, irrespective of the settlement agreement.

Palo Alto contended that Parents' conduct regarding the scheduling of the IEP team meetings in spring 2023 caused the delay in developing the FAPE offer before the end of the 2022-2023 school year. Palo Alto asserted that if Parents had let the

March 16, 2023 meeting proceed for the December 2022 IEE review, the April 28, 2023 meeting would have likely been able to complete the IEP and make a FAPE offer for the following school year.

Palo Alto's argument fails. Palo Alto was obligated to have a FAPE offer in place before the beginning of the 2023-2024 school year. Since it had the duty, Palo Alto should have clearly informed Parents that independent assessments, like Dr. Wagner's evaluation, needed to be reviewed in an IEP team meeting that was focused on understanding and considering the assessment. Palo Alto knew, or should have reasonably known, that Student's IEP team could not complete the review of Dr. Wagner's evaluation, formulate the IEP, and make a FAPE offer in an hour-and-a-half meeting. However, instead, Palo Alto merely agreed to Parents' request, cancelled the March 2023 IEP team meeting, did not reschedule the meeting until April 2023 and failed to hold Part 2 of the IEP meeting before the end of the year.

In the communications between Parents and Palo Alto staff regarding the scheduling of the meetings, Palo Alto did not emphasize its obligation to develop a 2023-2024 FAPE offer before the beginning of the next school year. Further, the April 2023 Palo Alto IEP team members seemed unaware of Palo Alto's obligation to make a timely FAPE offer.

Similarly, in scheduling Part 2 of the IEP meeting, Palo Alto staff did not emphasize the need to get the meeting timely set. And finally, Palo Alto agreed to set the Part 2 meeting on June 1, 2023, but cancelled the day before because of end of school year activities. The general tone of the communications and scheduling process lacked any sense of urgency by Palo Alto to meet its obligation of making a timely FAPE offer.

Palo Alto asserted that its July 28, 2023 prior written notice offered to provide Student the IEP program in Student's last agreed upon and implemented IEP. Therefore, Palo Alto contended there was an offer of FAPE when the 2023-2024 school year started. Palo Alto's one-sentence offer in its prior written notice did not identify the IEP to which they were referring and did not provide any information regarding the IEP's program. In any context, such an offer does not meet the minimum requirements of 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 (*Glendale*.) Palo Alto's prior written notice did not provide Parents with a clear written offer a FAPE.

A school district's failure to make a timely 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) (2007); Ed. Code, § 56505, subd. (j).) A procedural violation results in a FAPE denial if (a) it impedes the child's right to a FAPE, (b) significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or (c) causes 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 Sch. Dist. No. 23, Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*.)

Here, Parents requested the IEP team meetings so they could consider Palo Alto's FAPE offer for the following school year, 2023-2024. Palo Alto did not provide a FAPE offer before the following school year began in August 2023. Indeed, Palo Alto developed the offer of FAPE for the 2023-2024 school year in IEP team meetings conducted in September and October. Palo Alto provided Parents with the offer of FAPE on November 2, 2023, well after the beginning of the school year. This delay

significantly impeded the Parents' opportunity to participate in the decision-making process regarding the provision of FAPE to Student. Parents needed to decide where to place Student for the following school year but there was no FAPE offer to consider before the school year began. Thus, this procedural violation constitutes a FAPE denial.

Student met his burden of proof, by a preponderance of the evidence, that Palo Alto denied Student a FAPE by failing to have an IEP offer of special education and related services in place before the start of the 2023-2024 school year. Student prevailed on Issue 1.

ISSUE 2A: DID PALO ALTO DENY STUDENT A FAPE IN THE IEP DEVELOPED DURING THE IEP TEAM MEETINGS HELD SEPTEMBER 28 AND OCTOBER 19, 2023, PROVIDED TO PARENTS ON NOVEMBER 2, 2023, AND REVISED ON JANUARY 26, 2024, BY FAILING TO DEVELOP AN IEP THAT WAS REASONABLY CALCULATED TO ENABLE HIM TO MAKE PROGRESS APPROPRIATE IN LIGHT OF HIS CIRCUMSTANCES, BY FAILING TO INCLUDE AN APPROPRIATE TYPE AND AMOUNT OF SPECIALIZED ACADEMIC INSTRUCTION?

Student contended that the offer of specialized academic instruction made at the October 2023 IEP team meeting, for the April 2023 annual IEP, and as revised in January 26, 2024, was vague, failing to include the type and amount of instruction, who would provide the instruction, and what parts of the curriculum would be addressed in the pull-out and push-in instruction. Parents claimed they could not make an informed decision regarding Palo Alto's FAPE offer.

Palo Alto asserted that Parents were well aware of the amount and nature of the offered specialized academic instruction, which was discussed in detail at both the September and October 2023 IEP team meetings. The Parents also demonstrated a clear awareness of Palo Alto's specialized academic instruction offer in their January 2024 response to the complaint. Parents understood the offer.

Student failed to prove that Palo Alto did not provide an appropriate type and amount of specialized academic instruction. A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321 (2007), and 300.501 (2006).)

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

"Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39 (2017); Ed. Code, § 56031.) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school

personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

The IDEA requires a school district to make a clear written FAPE offer. (20 U.S.C. § 1414(d)(1)(A)(i); *Union, supra*, 15 F.3d at p. 1526.) 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, supra*, 122 F.Supp.2d at pp. 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) (2007); Ed. Code, § 56505, subd. (j).)

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APRIL 28, 2023 ANNUAL IEP OFFER OF FAPE WAS FORMAL,
WRITTEN, AND SUFFICIENTLY CLEAR

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) (2007); Ed. Code, § 56345, subd. (h).) Here, Parents understood Palo Alto's offer, which was clearly recorded in the IEP's documentation and notes of meetings, and as acknowledged by Parents' attached response to the April 28, 2023 IEP offer.

The Ninth Circuit recently addressed the IDEA requirement that school district offers are to be clear, in *Los Angeles Unified Sch. Dist. v. A.O. by and through Owens* (9th Cir. 2024) 92 F.4th 1159 (*A.O.*). There, the school district offered one to 10 speech therapy sessions per week, totaling 30 minutes, and one to five sessions of audiology services per month, totaling 20 minutes. The court agreed that the frequency ranges did not provide reasonable clarity, since the speech therapy could be 10 sessions of 3 minutes or one 30-minute session. This failed to sufficiently provide parents an ability to make an informed decision as to the service's sufficiency. (*Id.* at p. 1169–1171.) At the same time, the court recognized that educators require a degree of flexibility in the delivery of related services, especially to younger children. (*Ibid.*)

Palo Alto offered specialized academic instruction, called SAI, five times a week, for a total of 300 minutes, delivered in a separate group, referred to as SAI pull-out. Palo Alto also offered 150 minutes a week of SAI, five times a week, in Student's general education class, referred to as SAI push-in. Student asserted that this offer was unclear because Palo Alto did not specify whether the SAI would be delivered by a special

education teacher or special education instructional aide. Student also claimed that the SAI minutes were not broken down between academic goal areas or what specific curriculum, if any, would be implemented.

Here, the record reflects Palo Alto addressed Parents' questions on the SAI services' delivery, more than once. Special Education Program Specialist Kristin Apuzzo participated in the September and October 2023 IEP team meetings. She had bachelor's and master's degrees in elementary and special education, and held special education credentials in both Rhode Island and California. Her professional experience included positions as a special education teacher, and a specialized academic instruction education specialist, in both Rhode Island and California. She worked at Palo Alto for three years and had been a program specialist for two years.

Program specialist Apuzzo's duties included supporting and training special education teachers and staff. She attended and facilitated IEP team meetings, helped guide the meetings, and assured that all participants, including parents, participated in addressing issues and concerns. She possessed substantial experience in IEP team building to meet the needs of disabled children, including the development of goals with services designed to support children in making progress and achieving their goals. At the time of hearing, she attended about 120 IEP team meetings each school year. Apuzzo's education, experience, patience, and professional insight were apparent during her testimony.

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Apuzzo and other Palo Alto IEP team members explained at the September 2023 IEP team meeting that the delivery of the SAI services was not fixed. Rather, the delivery of SAI related services was based on various potential delivery models which gave Palo Alto the flexibility to adjust as Student progressed toward his goals. Apuzzo, as well as other Palo Alto staff who would work with Student, were trained in Orton-Gillingham and other science-of-reading instructional approaches. Palo Alto teachers and trained staff used Orton-Gillingham, and other research-based multimodalities and strategies that successfully supported and remediated dyslexic children. Parents' concerns regarding SAI content allocation were also addressed. Program specialist Apuzzo explained during the IEP team meeting that SAI in general education would be divided between reading, writing, and math for 7.5 hours per week, one and a half hours a day. However, the content on a particular day depended on the goal and curriculum being worked upon by Student.

Regulations provide that the written program must include the projected start date for services and modifications, as well as the "anticipated frequency, location, and duration of those services and modifications." (34 C.F.R. § 300.320(a)(7) (2007); *A.O. supra*, 92 F.4th 1159 at p. 1169.) Here, Palo Alto did so. Parents were informed of the duration and frequency of the services and the manner in which they would be delivered. Parents understood the offer. But Parents wanted a different related service model.

Student failed to meet his burden of proof, by a preponderance of the evidence, that Palo Alto denied Student a FAPE by failing to include an appropriate type and amount of specialized academic instruction.

Palo Alto prevailed on Issue 2A.

ISSUE 2B: DID PALO ALTO DENY STUDENT A FAPE IN THE IEP DEVELOPED DURING THE IEP TEAM MEETINGS HELD SEPTEMBER 28 AND OCTOBER 19, 2023, AND PROVIDED TO PARENTS ON NOVEMBER 2, 2023, AND REVISED ON JANUARY 26, 2024, BY FAILING TO DEVELOP AN IEP THAT WAS REASONABLY CALCULATED TO ENABLE HIM TO MAKE PROGRESS, APPROPRIATE IN LIGHT OF HIS CIRCUMSTANCES, BY FAILING TO OFFER AN APPROPRIATE PLACEMENT?

Student contended that Palo Alto's offer of FAPE, made at the October 2023 IEP team meeting, for the April 2023 annual IEP, and as revised on January 26, 2024, did not offer a program where Student could access his education and make meaningful progress. Student claimed that he had already tried this model of teaching in years prior, when attending Duveneck, and it quickly proved unsuccessful, as Student's self-esteem declined.

Palo Alto responded that the offered placement was in the least restrictive educational environment, providing appropriately tailored services and accommodations to meet Student's needs and enabling Student to access his education and make meaningful progress.

Student failed to prove that Palo Alto offered an inappropriate placement. Over the last 10 years, California lawmakers and educators have addressed concerns related to dyslexia, and similarly impactful reading disabilities. In 2015, Assembly Bill 1369 required the Department of Education to develop program guidelines for dyslexia, to assist regular and special education teachers. The law emphasized evidence-based, multisensory, direct, explicit, structured, and sequential instruction. The development of

these guidelines was codified in Education Code, section 56335, which required the guidelines to be completed and disseminated by the 2017-2018 academic year. The Department of Education timely developed and published the California Dyslexia Guidelines. The guidelines are not mandatory. In 2023, Senate Bill 114 implemented comprehensive screening requirements, under Education Code, section 53008, for students with reading difficulties, including dyslexia. Assembly Bill 1454, signed into law in October 2025, legislated how to teach reading, how to prepare teachers, and how to identify early reading difficulties.

Parents placed Student at Charles Armstrong because they believed it provided a better educational program than that offered by Palo Alto, in light of Student's dyslexia. But the essential question is not whether Charles Armstrong can provide a better dyslexia-focused program. Instead, the question is whether Palo Alto offered a program that was a FAPE, in the least restrictive environment, under IDEA standards.

The Ninth Circuit recently reviewed and reaffirmed the standards to be applied in evaluating the sufficiency of a special education program, in its 2024 *A.O.* decision. The court stated that to substantively comply with the IDEA, school districts must design IEPs that are "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Andrew F.*, *supra*, 580 U.S. at 403.) Yet, an appropriate public education "does not mean the absolutely best or 'potential-maximizing' education for the individual child." (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314, (quoting *Rowley*, 458 U.S. at 197 n.21) (*Gregory K.*). An individualized education program must still be "appropriately ambitious," and a program that offers "merely more than de minimis" progress violates the IDEA.

(*Andrew F.*, *supra*, 580 U.S. at pp. 402–403.) The program must be designed to convey a “meaningful benefit” to the student. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; *A.O.*, *supra*, 92 F.4th at p. 1172.)

The IDEA also requires states to educate students with disabilities in the “least restrictive environment,” meaning that, to “the maximum extent appropriate,” children with disabilities should be educated with children who are not disabled. (20 U.S.C. § 1412(a)(5)(A).) “[S]pecial classes, separate schooling, or other removal of children with disabilities from the regular educational environment” should occur “only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” (*Id.*) The IDEA thus establishes “Congress’s preference for educating children with disabilities in regular classrooms with their peers.” (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994). 14 F.3d 1398, 1403 (*Rachel H.*); cited by *A.O.*, 92 F.4th at 1175.)

Parents asserted that Student had tried the offered SAI delivery model in prior years, at his home elementary school, but it proved unsuccessful. This narrative was repeated during the hearing and in Student’s closing brief, but Student did not submit persuasive evidence on this point.

Student’s initial IEP was April 19, 2021. The last day of Palo Alto’s school year was typically between May 30 and June 5. Parents unilaterally enrolled Student at Charles Armstrong beginning in August 2021. Therefore, even if Student’s initial IEP was immediately implemented, Student would have received IEP services at Duveneck for only five to six weeks. Mother testified that the program was not working and that Student was discouraged and felt ashamed. Student told Dr. Wagner he did not like

being pulled out for his SAI. But Student failed to submit any other persuasive evidence that the SAI delivery model was or would be unproductive, or that Palo Alto had any opportunity to address Parents' concerns and failed to do so.

STUDENT'S INDEPENDENT EDUCATIONAL EVALUATION.

Student points to Dr. Wagner as evidence that Palo Alto's placement offer was not appropriate. Dr. Wagner's evaluation and report was unconvincing that Student would not benefit from Palo Alto's FAPE offer. Dr. Wagner has a 2007 bachelor's degree in psychology, a 2014 master's degree in educational psychology, and a 2017 doctorate degree in educational psychology, with a neuropsychology specialization. She completed a two-year post-doctoral fellowship, at Oregon Health and Science University between 2017 and 2019. Dr. Wagner's training and experience includes neuropsychological and educational assessment techniques and protocols for most assessment interments.

Dr. Wagner is a California licensed psychologist and, at the time of hearing, was eligible for board certification in neuropsychology. From 2019 to 2025, Dr. Wagner worked at the Child Mind Institute in San Mateo, California. She performed evaluations, 25 percent of which required her to attend IEP team meetings. In August 2025, Dr. Wagner opened her own full-time private practice. Dr. Wagner's training and experience qualified as an expert in educational neuropsychology. Dr. Wagner was not licensed or credentialed as a general education or special education teacher and had not taught children in a public-school setting, except for being a teaching assistant in college.

In winter 2022, Parents retained Child Mind Institute to evaluate Student. Dr. Wagner assessed Student and produced a Confidential Neuropsychological and Educational Evaluation report. The December 2022 IEE report was not dated, but the last evaluation date was December 1, 2022.

Dr. Wagner clinically interviewed Student, Parents, and some of his educators. She administered behavior rating scales, conducted a symptom inventory, and obtained data from questionnaires. She also gathered neuropsychological and educational testing data and made behavioral observations of Student. However, Dr. Wagner did not observe Student at Charles Armstrong.

She reviewed Student's previous records, assessments, and IEP, which suggested Student was behind his peers in several aspects of his reading acquisition, from kindergarten through second grade. Dr. Wagner interviewed Student's second-grade teacher, Krista Velasquez, who described Student as a super sweet kid who worked very hard and had a great sense of humor. The teacher said Student had difficulties with reading which was hampering his learning. The teacher reported that Student's reading skills were kindergarten level at the end of the second grade.

Dr. Wagner reviewed Palo Alto's initial assessments of Student and his initial April 2021 IEP. In April 2022, Student began to work with a private reading tutor, who was a former teacher at Charles Armstrong school, for an hour, twice a week. When Parents subsequently pulled Student from Duveneck and enrolled him in third grade at Charles Armstrong, the tutoring stopped.

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Parents had no concerns about Student's social functioning. He was a little fidgety at times, but observed him to be calm and focused when he needed to be. Student was an accomplished snowboarder and skier, and participated in snowboarding and lacrosse team sports.

Dr. Wagner observed Student during three testing sessions, which lasted approximately three hours each. He was friendly, socially engaging, with a great sense of humor. Student appropriately expressed himself and made eye contact. Student did not have repetitive or stereotypical behavior, with age-typical attention throughout each of the highly structured, one-on-one sessions. He occasionally fidgeted in his seat or was distracted by external stimuli, but easily redirected. He spoke clearly and coherently, with appropriate volume, was generally positive during the testing sessions.

Dr. Wagner had Parents and Student complete rating scales, which indicated Student did not have any clinically elevated symptomatology. Student's self-report indicated a balanced self-evaluation, acknowledging both positive and negative aspects of himself. Student perceived himself as successful in peer relationships, with quality friendships. However, in his clinical interview, Student said he disliked being pulled out for reading instruction when he was at Palo Alto because it often meant that he would miss out on fun activities, like science. He also said the pull-out sessions did little in helping him to read. Student said the program at Charles Armstrong had been great and that he enjoyed reading. His hardest subject was mathematics and his easiest was writing.

Dr. Wagner reported her evaluation results. The results showed Student's overall intellectual functioning was within the average range with discrepancies across the skill areas measuring his intellectual functioning scores. Testing of Student's expressive

language showed an above average vocabulary and verbal reasoning skills, with average verbal fluency. Student's receptive language demonstrated above average results, consistent with his above average expressive vocabulary. Student scored average to above average in visual function. His fine-motor dexterity was intact bilaterally. Dr. Wagner thought some of Student's scores suggested difficulties with inattentiveness, vigilance, and sustained attention. Further instruments ruled out attention deficit hyperactivity disorder. Student demonstrated age-typical verbal and visual memory.

Student had greater challenges in his academic functioning. Dr Wagner's testing indicated that Student's reading abilities and reading accuracy were in the very low range overall. Reading fluency and comprehension showed below average scores. Dr. Wagner concluded that Student difficulties with reading accuracy and fluency were impeding Student's ability to derive full meaning from the text he reads. Dr. Wagner found Student's performance profile, with his weaknesses in phonological memory and rapid automatic naming, was consistent with a dyslexia diagnosis. Dr. Wagner also found Student's writing abilities to be in the below average range overall, which was predominantly impacted by his below average spelling. As for mathematics, Student performed within the average range. However, his performance on speeded math calculation measures showed scores in the very low range overall.

Generally, Student demonstrated notable weaknesses in reading accuracy, fluency, and comprehension, along with spelling and math fluency. Student had processing impairments in phonological memory and rapid automatic naming, which were skills that underly fluent reading. Dr. Wagner diagnosed Student with a specific learning disorder, with impairment in reading, also called dyslexia. (*American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (called

the DSM-5) Codes: 315.00 (F81.0).) Dr. Wagner also found that Student met the criteria for specific learning disability eligibility for special education. (34 C.F.R. § 300.8(c)(10) (2017); Cal. Code Regs., tit. 5, § 3030(i).)

Dr. Wagner stated that Student required evidence-based reading interventions such as Orton-Gillingham, which should be coordinated with the broader curriculum. In other words, Dr. Wagner opined that Student's intensive reading intervention needed to be implemented and supported within the classroom setting, not mere pull-out sessions. Dr. Wagner recommended that Student continue his placement in a specialized school for children with language-based learning disabilities, such as Charles Armstrong. She made a series of recommendations as to supports and accommodations with Student's classroom.

Dr. Wagner's assessment results generally agreed with Palo Alto's assessments. Palo Alto listened to and incorporated many of Dr. Wagner's findings and suggestions into the IEP's levels of performance, goals, and accommodations.

However, Dr. Wagner's opinion that Student could only be educationally served in a delivery model like that at Charles Armstrong was not convincing. Dr. Wagner's reports said Student would benefit from enrollment in a specialized school for children with language-based learning disabilities, like Charles Armstrong, not that such enrollment was necessary for Student to receive a FAPE

Dr. Wagner was never able to observe Student in a public-school setting. She talked to Student's second-grade teacher from Duveneck, who confirmed his struggles with reading. This was why the student study team and Parents referred Student for assessment. Otherwise, Dr. Wagner relied upon Parents' interview and records

regarding the five-to-six-week implementation of Student's April 2021 initial IEP. At the time of Dr. Wagner's assessments of December 2022, Student had been attending Charles Armstrong for one and half academic years. Dr. Wagner's report concluded that Student's proper placement was in a setting like Charles Armstrong to address his dyslexic disability, even though she had not observed Student at Charles Armstrong. Her subsequent observation and taking of behavioral ratings from Charles Armstrong teachers, after the Part 1 IEP team meeting on April 28, 2023, did not alter the fact she was willing to give a professional opinion without them.

Dr. Erika N. Gardiner was a school psychologist for Palo Alto since 2013. She held a bachelor's degree in psychology, and master and doctoral degrees in school psychology. Dr. Gardiner's professional career as a school psychologist spans for more than 30 years. Before graduate school, she taught as an educational instructional aide. In graduate school, she instructed students in the psychology and education departments. She held a California pupil personnel service credential, was a certified school psychologist in Connecticut, and a licensed psychologist and certified school psychologist in Rhode Island.

Palo Alto assigned Dr. Gardiner to two schools, Duveneck and Walter Hays Elementary. Her Palo Alto duties included doing IEP evaluations, involving cognitive, social-emotional, and eligibility. She performed Section 504 and crisis assessments. Dr. Gardiner regularly worked with and in IEP teams to develop educational programs. She provided direct and indirect consultation with parents, teachers, and staff. Dr. Gardiner attended about 20 IEP team meetings a month, 200 a year. Over her career, she attended more than 6,000 IEP team meetings. Dr. Gardiner's education and experience qualified her as an expert in school

psychology. Dr. Gardiner also met and knew Student, assessed Student in 2021 and 2024, and attended most of Student's IEP team meetings. She was therefore qualified to speak directly about Student's needs, assessments, and program.

Dr. Gardiner attended the April 28, 2023 annual IEP team meeting, Part 1, at which Dr. Wagner's December 2022 IEE was presented. She thought the IEE was somewhat inconsistent, sometimes confusing, and probably not legally appropriate, under special education guidelines. Notably, the recommendations were not supported by observations of Student in his present educational setting. In her opinion, such an observation was required for an assessment to be legally compliant. Dr. Gardiner also identified the IEE's interchangeable use of a learning disorder and a learning disability as confusing. A disorder was a diagnosis, usually based upon the DSM-5. Learning disability was an educational term, regularly used in the IDEA and special education law, for special education eligibilities. (5 C.C.R., § 3030.) Dr. Gardiner noted that a diagnosis did not equate to a special education eligibility. She believed the December 2022 IEE leaned heavily upon the neuropsychological and less on the educational, in analyzing what educational program was required for a FAPE.

Dr. Gardiner opined that Student's dyslexia and emotional-social concerns were appropriately addressed by the April 2023 Annual IEP FAPE offer, which was made after the beginning of the 2023-2024 school year. Teachers and staff were trained in Orton-Gillingham and other research-based reading modalities, guided by Student's goal trajectory and curriculum.

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Parents' expressed concern that Student would "get lost" in a general education classroom was based on Student's experience the last five weeks of second grade, almost five years earlier. Similarly, Student's reaction to being pulled out for SAI was based on the same compressed time frame, when services were first implemented. Here, though, the November 2, 2023 offer of FAPE addressed these concerns. For example, Parents contended that when Student was in a large, general education classroom, and did not understand what he was to do, Student would just sit there, afraid or unable to ask for help. A number of the accommodations addressed this issue. Also, the IEP team as a whole agreed to add an IEP goal of self-advocacy, with Student and the teacher agreeing upon a type of signal or method, where Student could seek assistance without having to speak or raise his hand. The development and generalization of self-advocacy skills was fundamental to Student's educational success. Palo Alto listened to Parents' and Student's concerns, as demonstrated by its FAPE offer of goals and accommodations.

The mainstreaming requirement in the IDEA can at times be in tension with the other requirement in the IDEA that schools provide programming designed individually to meet the specific needs of each child. (20 U.S.C. §§ 1412(a)(5); 1414(d).) To meet its substantive obligations, a district must merely provide an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" in the least restrictive environment. (*Endrew F., supra*, 137 S. Ct. at 1001.) The IDEA permits a more restrictive placement only if "education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." (*D.R. ex rel. R. R. v. Redondo Beach Unified Sch. Dist.* (9th Cir. 2022) 56 F.4th 636, 646.)

Student failed to demonstrate that the nature and severity of his dyslexia disability was such that Student's education in an elementary general education class, with the offered related services and accommodations, could not be satisfactorily achieved. (*A.O., supra*, 92 F.4th at pp. 1175–1176.) Student failed to meet his burden of proof, by a preponderance of the evidence, that Palo Alto denied Student a FAPE by failing to make an offer of appropriate placement.

Palo Alto prevailed on Issue 2B.

ISSUE 3: DID PALO ALTO DENY STUDENT A FAPE BY PREDETERMINING STUDENT'S OFFER OF PLACEMENT AND SERVICES IN THE IEP DEVELOPED AT THE IEP TEAM MEETINGS HELD APRIL 18 AND MAY 17, 2024?

Student contended that Palo Alto predetermined its offer of FAPE in the April 18 and May 17, 2024 IEP team meetings. Student asserted that Palo Alto only offered a Student's home school as placement and was unwilling to discuss other public-school placements.

Palo Alto asserted that the April and May 2024 IEP team meetings demonstrated substantive collaborative discussions in the teams' development of the IEP, including goals, accommodations, and related services. Parents, Charles Armstrong teachers, and Dr. Wagner's opinions and recommendations were included in the IEP. Palo Alto contended that special education law favors a placement at a child's home school, unless the child requires another physical placement to receive a FAPE.

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d at p. 1485.) "Participation must be more than mere form; it must be meaningful." (*Deal v. Hamilton County Board*

of Educ. (6th Cir. 2004) 392 F.3d 840, 858 (“*Deal*”).) A school cannot independently develop an IEP, without meaningful participation, and then present the IEP to the parent for ratification. (*Target Range, supra*, 960 F.2d at p. 1484.)

For IEP team meetings, predetermination occurs when an educational agency has decided on its offer before the meeting and is unwilling to consider other alternatives. (*Deal, supra*, 392 F.3d at pp. 857–858.) A district may not arrive at an IEP team meeting with a “take it or leave it” offer. (*JG v. Douglas County Sch. Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn.10.) Although school district personnel may bring a draft of the IEP to the meeting, the parents are entitled to bring to an IEP team meeting their questions, concerns, and recommendations as part of a full discussion of a child’s needs and the services to be provided to meet those needs before the IEP is finalized. (Assistance to States for the Education of Children Disabilities (March 12, 1999) 64 Fed. Reg. 12478-12479.) School officials may permissibly form opinions before IEP team meetings.

The IEP team met on April 18, 2024, to discuss the results of Student’s triennial assessments, present levels of performance, proposed goals, and services. However, Palo Alto’s triennial assessments had yet to be completed. The team discussed Student’s present levels of performance, and Mother reviewed Student’s strengths and interests, which the team documented in the IEP. Mother said Student was approximately at grade level and her goal was to close that gap and have him be approximately at grade level by high school. Mother told the team it was hard for Student to learn in a traditional environment and that Student was thriving at Charles Armstrong. Mother further explained that Student needed redirection to stay on task if something was hard for him to understand, which he was easily able to get by the teacher in the smaller classes. The team reviewed the status of the triennial assessment and discussed when to reconvene.

The evidence showed Palo Alto did not predetermine Student's placement at this IEP team meeting. The IEP team agreed to a second meeting to consider the completed assessments and make a FAPE offer.

PALO ALTO'S MAY 2024 TRIENNIAL ASSESSMENTS

The team reconvened for Part 2 of IEP team meeting on May 17, 2024, to review the triennial assessments and develop the IEP. The meeting notes and testimony of all attendees demonstrated a robust and inclusive meeting.

The Palo Alto assessment team had completed the assessments and prepared a 43-page Integrated Triennial Evaluation Report, which had been distributed to the team before the meeting. Mother stated she had read the report.

Dr. Gardiner reviewed the psychological assessments, including the social-emotional evaluation. The team discussed the findings, and Mother noted the report was very thorough, and had no further questions of Dr. Gardiner. Mother asked about some discrepancies between the Charles Armstrong rating scales, which Student's English teacher and behavior specialist Joshua Shleffar addressed. Dr. Gardiner commented that the teacher's rating scales were very similar and did not reflect significant social, emotional, or behavioral concerns for Student.

In response to Mother's request, Student's teacher noted that Student benefited from direction during language class when writing. Teacher also noted Student had more inattention during the smaller, language class, which generated discussion as to why.

Special education teacher Maddy Daum reviewed the results of the academic assessment. Generally, the academic triennial assessment was consistent with past assessments. Student's weaknesses included

- math fluency,
- reading fluency,
- orthographic processing,
- essay writing, and
- writing conventions.

Mother noted that Student needed continued support in writing. This generated discussion with Student's Charles Armstrong teacher and the team regarding delivery of reading interventions and remediation.

Occupational therapist Katherine Aguayo presented her occupational therapy assessment to the team. The assessment showed Student's fine motor skills were average, and his handwriting was inconsistent, scoring in the low average range. Student tended to write over his mistakes, which impacted his legibility. Student's teacher noted that, in class, Student would more likely erase mistakes. Mother affirmed the occupational therapist's finding that Student had fluent typing skills. Student's Charles Armstrong teacher agreed with the occupational therapist that incorrect capitalization was an issue.

Behavior specialist Joshua Shleffar reviewed the behavior assessment. Student exhibited mild executive functioning difficulties which impacted attention, but Student was easily redirected, per the classroom teacher input. Student focused on instruction for 20 to 25 minutes and was able to ignore peer distractions. The behavioralist noted

that Student reportedly used a fidget stone and tapped on his desk and seat. But the behaviorist did not see this conduct during the classroom observations, where Student behaved similar to his classmates.

The team discussed and agreed that Student continued to meet the criteria for specific learning disability. They considered and discussed other health impairment eligibility. Dr. Gardiner noted that Parent and teacher assessment input and reports indicated that Student had some difficulties with attention and executive functions. However, this did not impact his learning. The team discussed and agreed not to recommend other health impairment as a secondary eligibility.

IEP TEAM'S DEVELOPMENT OF THE IEP

The IEP team then focused on developing the IEP. They agreed that Student's areas of need, as confirmed by the assessments, were reading fluency, math applications, written language, and attention. They discussed and documented present levels of performance, which included Charles Armstrong reports, Dr. Wagner's assessments, Palo Alto assessments, and parental input.

The notes and hearing testimony demonstrated energetic discussions regarding the goals. For example, the education specialist recommended goal one, based upon data from the testing, but the Charles Armstrong teacher noted that the proposed baseline reflected a language skill that Student had not yet been taught. So, the goal was modified. Based on discussions with Student's teacher and input from the assessors, the education specialist agreed that an additional goal was appropriate. Similar exchanges occurred as the team worked through the remaining goals and the proposed accommodations.

PALO ALTO DID NOT PREDETERMINE STUDENT'S OFFER OF PLACEMENT

Student failed to prove that Palo Alto predetermined Student's placement. The documentary record and hearing testimony of the two IEP team meetings indicated that Parent came to the IEP team well-informed, asked questions, expressed concerns, and made recommendations, which the team as a whole considered and discussed. Charles Armstrong staff attended, participated, and provided reports and test results, which were used in the IEP's development, including adding and modifying the goals. Dr. Wagner's report and prior participation was utilized by the team, and specifically referred to in the IEP. Palo Alto team members consistently demonstrated their openness and willingness to the entire team's participation and input, including Mother.

Student asserted that Palo Alto's continuing, and persistent placement offer of Student's home school indicated Palo Alto predetermined Student's placement. Palo Alto offered related services of specialized academic instruction, both push-in and pull-out, at Duveneck Elementary, with substantial accommodations and supports. These could be delivered at Student's home school. Therefore, Palo Alto was required to offer the home school placement.

"In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that The child's placement ... is as close as possible to the child's home...". (34 C.F.R. § 300.116(b)(3) (2006).) Student did not demonstrate that Student required a public elementary school placement, other than his home school, to receive a FAPE, in the least restrictive

environment. Palo Alto was not predetermining Student's placement when it offered Student's home school for implementation of Student's IEP program. It was merely following the law.

Student failed to meet his burden of proof, by a preponderance of the evidence, that Palo Alto denied Student a FAPE by predetermining Student's offer of placement at the April and May 2024 IEP team meetings.

Palo Alto prevailed on Issue 3.

ISSUE 4: DID PALO ALTO DENY STUDENT A FAPE IN THE IEP DEVELOPED AT THE IEP TEAM MEETINGS HELD APRIL 18 AND MAY 17, 2024, BY FAILING TO MEANINGFULLY CONSIDER PARENTS' CONCERNS?

Student contended that Palo Alto failed to meaningfully consider Parents' concerns at the IEP team meetings of April 18 and May 17, 2024. Student claimed that Palo Alto did not consider Dr. Wagner's recommendation that evidence-based academic interventions be implemented throughout the entire school day, like at Charles Armstrong, rather than piecemealed, 40-minute portions.

Palo Alto asserted that Parental concerns were heard and discussed at the IEP team meeting regarding Dr. Wagner's delivery recommendations. Parents repeatedly stated that they believed the Charles Armstrong implementation of the reading interventions were more effective and beneficial to Student. However, Palo Alto disagreed, proposing a delivery modality that provided Student with evidence-based intervention in the least restrictive environment.

Student failed to demonstrate that Palo Alto did not meaningfully consider Parents' concerns. The Ninth Circuit emphasized that, whenever feasible, a school district must push support services into the regular classroom rather than pull students out of it. (*D. R. by and through R. R. v. Redondo Beach Unified Sch. Dist.* (9th Cir. 2022) 56 F.4th 636, 646 , citing 20 U.S.C. § 1412(a)(5)(A).) The IDEA permits a more restrictive placement only if the Student's education in a regular classroom cannot be satisfactorily achieved with the use of supplementary aids and services. (*Id.*, quoted at *A.O. supra*, 92 F.4th at p. 1176.)

The Ninth Circuit recently affirmed that a school district is not required to use the methodology a parent prefers when providing special-education services for a child. (*Crofts v. Issaquah Sch. Dist. No. 411* (9th Cir. 2022) 22 F.4th 1048, 1056–1057.) School districts are "entitled to deference in deciding what programming is appropriate as a matter of educational policy." (*J.L. v. Mercer Island Sch. Dist.* (9th Cir. 2010) 592 F.3d 938, 945 n.5 (*Mercer Island*); see also. *Rowley, supra*, 458 U.S. at p. 208; *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122 ("The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit").) Districts need not specify an instructional method unless that method is necessary to enable a student to receive a FAPE. (*Mercer Island, supra*, 592 F.3d at p. 952.) Rather, to meet its substantive obligations, a district must merely provide an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Andrew F., supra*, 137 S.Ct. at p. 1001.)

Palo Alto did not fail to meaningfully consider Parents' concerns. Palo Alto IEP team members considered the Parents request for a delivery methodology like Charles Armstrong. Charles Armstrong's Director of Structured Literacy and teacher

Cori Maiden described the program at hearing. Charles Armstrong utilized the Wilson Reading System, which is a structured literacy curriculum designed specifically for students with dyslexia or similar severe reading and spelling difficulties. The Wilson Reading System was Orton-Gillingham-based and provided a complete curriculum, and highly systematic approach. Orton-Gillingham was the foundational therapeutic teaching model for dyslexia. Unlike the Wilson Reading System, Orton-Gillingham was not a curriculum. It was a research-based, multisensory model that could be incorporated with other reading interventions, depending on a child's needs. It was an instructional approach, in which educators, like Palo Alto special education teachers and staff, have been trained.

Parental concerns regarding Student being lost in the general education classroom were not dismissed. In response, the IEP team thoughtfully discussed goals and accommodations to develop Student's self-advocacy skills and receive requested or needed individualized attention in the generalized education classroom.

Parents and Dr. Wagner believed that Charles Armstrong delivery of the Wilson Reading System was more beneficial. But Palo Alto made a good faith offer that was reasonably calculated to enable Student to make progress in light of his circumstances, in a general education, regular classroom, in accordance with IDEA's legal framework and obligations.

Student did not meet its burden of proof, by a preponderance of the evidence, that Palo Alto denied Student a FAPE in the IEP developed at the team meetings held on April 18 and May 17, 2024, by failing to meaningfully consider Parents' concerns.

Palo Alto prevailed on Issue 4.

ISSUE 5: DID PALO ALTO DENY STUDENT A FAPE BY FAILING TO HAVE A GREENE MIDDLE SCHOOL STAFF MEMBER KNOWLEDGEABLE ABOUT AVAILABLE SUPPORTS AND SERVICES AT THE MAY 17, 2024 IEP TEAM MEETING?

Student maintained that Palo Alto denied Student a FAPE because it did not have Greene Middle School staff at the May 17, 2024 IEP team meeting to knowledgeably discuss the supports and services available to Student in sixth grade.

Palo Alto asserted that the April and May 2024 IEP team meetings were for purposes of reviewing the triennial assessments and developing an IEP for the remainder of the 2023-2024 school year, and that all legally required attendees were present.

Student did not show that Palo Alto failed to have a knowledgeable IEP team member regarding available supports and services at the IEP team meeting. An IEP is developed by an IEP team. The IEP team must include:

1. one or both of a student's parents;
2. no less than one general education teacher;
3. no less than one special education teacher or, if appropriate, a special education provider of the student;
4. a representative of the school district who is qualified to provide or supervise specially designed instruction, and is knowledgeable about the general education curriculum and the availability of district resources;

5. an individual who can interpret instructional implications of assessment results;
6. at the discretion of the parent or district, any other individual who has knowledge or special expertise regarding the student, including related services personnel, as appropriate; and
7. whenever appropriate, the student with exceptional needs.

(20 U.S.C. § 1414(d)(1)(B)(i)-(iv); 34 C.F.R. § 300.321(a)(2007); Ed. Code, §§ 56341, subd. (b); 56342.5.)

The May 17, 2024 IEP team meeting, was intended to complete review of the triennial assessments, develop Student's IEP, and provide a FAPE offer for the remainder of Student's 2023-2024 elementary school year. Student's transitional IEP team meeting, for Student's advancement to middle school, was held on May 29, 2024. Student would be entering the sixth grade for the 2024-2025 school year. Greene Middle School was Student's home middle school in Palo Alto.

At the May 17, 2024 IEP team meeting, Mother had a question about the services at Greene Middle School. Program specialist Apuzzo reminded the team about a subsequent transition meeting with Greene Middle School staff to talk about the middle school services and offer for the 2024-2025 school year. Still, Apuzzo gave Mother some examples of academic support options at Greene Middle School, such as co-teaching and specialized academic instruction classes. She also described additional interventions and classes on the spectrum of services. The transitional IEP took place on May 29, 2024, where Palo Alto made a FAPE offer for the following school year, Student's sixth grade.

The May 17, 2024 IEP team meeting convened to develop and make an IEP offer for the remainder of the elementary school year. All requisite attendees were present. A representative from Greene Middle School was not a legally required attendee at the May 17, 2024 IEP team meeting. (20 U.S.C. § 1414(d)(1)(B)(i)-(iv); 34 C.F.R. § 300.321(a) (2007); Ed. Code, §§ 56341, subd. (b); 56342.5.)

Student did not meet his burden of proof, by a preponderance of the evidence, that Palo Alto denied Student a FAPE by failing to have a Greene Middle School staff member knowledgeable about available supports and services at the May 17, 2024 IEP team meeting.

Palo Alto prevailed on Issue 5.

ISSUE 6A AND 6B: DID PALO ALTO DENY STUDENT A FAPE IN THE IEP DEVELOPED AT THE APRIL 18 AND MAY 17, 2024 IEP TEAM MEETINGS, BY FAILING TO DEVELOP AN IEP THAT WAS REASONABLY CALCULATED TO\ ENABLE HIM TO MAKE PROGRESS APPROPRIATE IN LIGHT OF HIS CIRCUMSTANCES, SPECIFICALLY BY (A) FAILING TO OFFER APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION PROGRAMMING, AND (B) FAILING TO OFFER AN APPROPRIATE PLACEMENT?

In his closing brief, Student asserted that the offer of FAPE, developed at the April and May 2024 IEP meetings, was no different than the FAPE offer made in the April 2023 IEP. Therefore, in his closing brief, Student simply contended that the April 2023 IEP did not offer a FAPE, as set forth in Student's Issues 2A and 2B, equally applied to Issues 6A and 6B, and the April 18, 2024 IEP.

Palo Alto contended that Student's April 18, 2024 IEP was a clear and unambiguous FAPE offer, in the least restrictive environment, which differed from Palo Alto's previous annual April 2023 IEP FAPE offer.

Student failed to prove that Palo Alto did not offer appropriate specialized academic instruction and placement at the April and May 2024 IEP team meetings. Student's assertion that the April 2024 IEP offer was the same as the April 2023 IEP offer was inaccurate. An IEP FAPE offer must include goals, accommodations, related services, and physical placement. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.) Here, at the April 18, 2024, and May 17, 2024 meetings, Student's IEP team reviewed Palo Alto's triennial assessments of Student, which were administered as requested by Parents. Issue 3, Issue 4, and Issue 5, above, addressed these two IEP meetings. Student's IEP team developed a program using data from the triennial assessments, Charles Armstrong teacher, and Dr. Wagner's report. Similarly, the accommodations and goals were updated, amended, and expanded.

What was unchanged, from Parents' perspective, was that the April 2025 IEP offered placement at Student's home elementary school, with general education students. Parents continued to view Student's attendance at Charles Armstrong to be a better program for Student. As requested by Student in his closing brief, the analysis and findings in Issues 2A and 2B, which determined that the April 2023 IEP offered a FAPE in the least restrictive environment, was therefore applicable here. That is, the April 18, and May 17, 2024 IEP team meetings offered Student a FAPE, in the least restrictive environment. Parents declined the IEP offer of FAPE in a July 30, 2024 letter.

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Student failed to meet his burden of proof, by a preponderance of the evidence, that Palo Alto denied Student a FAPE by failing to include an appropriate type of specialized academic instruction and by failing to offer an appropriate placement, in the IEP developed at the April and May 2024 IEP meetings.

Palo Alto prevails on Issue 6A and Issue 6B.

ISSUE 7: DID PALO ALTO DENY STUDENT A FAPE BY PREVENTING PARENTS FROM HAVING A COMPREHENSIVE PLACEMENT OBSERVATION IN SPRING 2024, THEREBY SIGNIFICANTLY IMPEDING THE OPPORTUNITY OF PARENTS TO PARTICIPATE IN THE DECISION-MAKING PROCESS REGARDING THE PROVISION OF A FAPE TO STUDENT AND PARENTS' RIGHT TO INFORMED CONSENT?

Student asserted that Palo Alto denied Student a FAPE by preventing Parents from having a comprehensive placement observation of Student's potential classes or programs, on May 28, 2024. Student claimed this significantly impeded Parents' opportunity to participate in the IEP decision-making process regarding the provision of FAPE for Student's 2024-2025 school year, his sixth-grade entry into middle school. Palo Alto's FAPE offer was to be made at Student's transition IEP, scheduled for the next day, May 29, 2024.

Palo Alto contended it did nothing to prevent Parents from having a comprehensive placement observation in Spring 2024. Instead, Palo Alto arranged for an observation within six school days of Parents' request.

Student failed to prove that Palo Alto prevented Parents from observing the proposed IEP placement, in Spring 2024. A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d at p. 1485) Participation must be meaningful. (*Deal, supra*, 392 F.3d at p. 858.) A school cannot independently develop an IEP, without meaningful participation, and then present the IEP to the parent for ratification. (*W.G., supra*, 960 F.2d at p. 1484.)

Toward the end of the May 17, 2024, Part 2 IEP team meeting, concerning the FAPE offer for the remainder of the 2023-2024 school year, Mother broached the subject of placement, classes, and the program at Student's home middle school, Greene Middle School. The IEP team shared some information as to the available program and classes, but the details would be discussed at the transition IEP, set for May 29, 2024. At that time, Student's sixth-grade IEP would be developed and a FAPE offer given for the 2024-2025 school year. Mother mentioned that she would like to observe Greene Middle School.

Arrangements were made and Mother went to observe the proposed placement at Greene Middle School. She was shown an eighth-grade academic class, which was not doing much academics because school ended in two days and the class was talking about graduation. Mother observed no instruction.

However, Student presented no evidence that Palo Alto actively prevented Mother from having a more substantive observation. Mother did not request any particular class. An academic planning class could have been shown because it was mentioned as a possible class at the May 17, 2024 IEP discussion about Greene Middle School, but the record was unclear. Mother asked to observe at Greene Middle School, toward the end of the May 17, 2024 meeting, on late Friday afternoon. Palo Alto

arranged for Mother to have an observation at Greene Middle School within six school days, which was not an unreasonable time. However, school was ending in two days. Few, if any, classes or programs were conducting typical academics. Palo Alto did not prevent Parents from having a more comprehensive placement observation.

Student failed to meet his burden of proof, by a preponderance of the evidence, that Palo Alto denied Student a FAPE by preventing Parents from having a comprehensive placement observation of Student's potential classes or programs, on May 28, 2024.

Palo Alto prevailed on Issue 7.

ISSUE 8: DID PALO ALTO DENY STUDENT A FAPE BY FAILING TO HAVE AT THE MAY 29, 2024 IEP TEAM MEETING, A SIXTH-GRADE TEACHER KNOWLEDGEABLE ABOUT AVAILABLE SUPPORTS AND SERVICES AT GREENE MIDDLE SCHOOL?

Student asserted that Palo Alto denied Student a FAPE by failing to have a sixth-grade general education teacher at the May 29, 2024 meeting, who was knowledgeable about Greene Middle School's available supports and services. Parents felt they had no choice but to sign a waiver of the Greene Middle School general education teacher's participation because the IEP meeting would not otherwise occur and they would be without an IEP offer for the 2024-2025 school year.

Palo Alto asserted that it requested that Parents consent to the Greene Middle School general education teacher's absence at the May 29, 2024 meeting, and Parent's signed the legally sufficient wavier.

Student failed to establish that Palo Alto failed to have a teacher knowledgeable about available supports and services at the May 2024 IEP, which denied Student a FAPE. Required team members may be excused from an IEP team under two conditions. First, an IEP team member may be excused if the parent agrees in writing that the team member's attendance is not necessary because that team member's area of the curriculum or related services are not being modified or discussed at the meeting. (20 U.S.C. § 1414(d)(1)(C)(i); Ed. Code § 56341, subd. (f) through (h).) Second, an IEP team member may be excused if the meeting involves a modification to or discussion of the member's area of the curriculum or related services if the parent and school district consent in writing, and the excused member provides written input to the IEP team prior to the meeting. (20 U.S.C. § 1414(d)(1)(C)(ii); 34 C.F.R. § 300.321(e)(2) (2007); Ed. Code, § 56341, subd. (f).) If more than one regular education teacher is providing instruction services to the child, one regular education teacher may be designated by the school district to represent the others. (Ed. Code, § 56341, subd. (b)(2).) Any team member who is qualified to interpret the results of any assessment may do so. (20 U.S.C. § 1414(d)(1)(B)(v); 34 C.F.R. § 300.321(a)(5) (2007); Ed. Code, § 56341, subd. (b)(5).)

An IEP team must include at least one general education teacher, and the failure to do so is a procedural violation under the IDEA. (*M.L. v. Federal Way Sch. Dist.* (9th Cir. 2005) 394 F.3d 634, 640.) As discussed in *R.B., ex rel. F.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007) 496 F.3d 932, 939, after the 1997 amendments to the IDEA, the presence of the child's current general education teacher is no longer required for the IEP team. The general education teacher who appropriately serves on the IEP team is the teacher who will, or who may, be responsible for implementing portions of the IEP. (*Ibid.*)

Program specialist Apuzzo emailed Parents on May 28, 2024, providing copies of the transition meeting agenda and the triennial reevaluation. Apuzzo also asked if Parents would be able to excuse the general education teacher for the next day's meeting. Apuzzo noted that Charles Armstrong teacher Tamu Johnson and the Greene Middle School education specialist would be present and be key contributors into identifying the best offer of placement for Student's classes. Mother responded the next morning, saying their preference was to have a general education teacher present. But since that would not be an option, Mother said "we're happy to excuse them in an effort to have this meeting before the end of the year." Apuzzo thanked Parents for their understanding, commenting that the end-of-the-year activities, including promotion ceremonies, posed an unusual challenge in scheduling. Mother acknowledged granting the excusal request and signing the form.

Mother testified that she unwillingly agreed to excuse the Greene Middle School general education teacher because Parents wanted the FAPE offer for Student's sixth-grade year before the beginning of the 2024-2025 school year. Mother said Parents did not want to repeat the delay of finalizing the April 2023 IEP offer, because the end-of-year Part 2 IEP team meeting was unilaterally cancelled. However, the email exchanges between Mother and program specialist Apuzzo did not say the May 29, 2024 meeting would be cancelled if Parents did not agree. The tone was more of a convenience because of the difficulty in scheduling the general education teacher's attendance since it was the last day of school.

Even if the signed parental waiver was somehow defective, the failure to have the middle school general education teacher at the IEP would have been a procedural violation. (20 U.S.C. § 1414(d)(1)(C); Ed. Code, § 56341, subd. (f) through (h).) But Palo Alto's procedural violation did not result in a loss of educational opportunity or seriously

infringe on Parent's opportunity to participate in the IEP formulation process. (*Capistrano, supra*, 556 F.3d at p. 909; *Mahoney v. Carlsbad Unified Sch. Dist.* (S.D. Cal., Apr. 8, 2009, No. 08-CV-1860 H (NLS)) 2009 WL 1010061, at *5, *aff'd* (9th Cir. 2011) 430 Fed.Appx. 562 , *aff'd*. (9th Cir. 2011) 430 Fed. Appx. 562 .) The IEP team addressed Parent's questions about Greene Middle School classes, curriculum, supports, and services.

As discussed in Issue 9A and Issue 9B, below, the May 29, 2024 IEP team members were actively engaged. Greene Middle School's education specialist and middle school special education teacher Angelica Plascencia participated and was especially well-informed regarding Greene Middle School's program and implementation of services. Greene Middle School's classes, structure, scheduling, and the implementation of proposed related services and supports, as well as Parent's questions, were explained and answered.

Student did not present any persuasive evidence of how Mother was uninformed by the Greene Middle School general education teacher's absence. Parent meaningfully participated in development of the May 29, 2024 IEP. Therefore, even if there were a procedural violation in not having the Greene Middle School's general education teacher present at the May 2024 IEP team meeting, the procedural violation did not deny Student educational benefit or deny Parent's meaningful participation in development of the May 29, 2024 IEP. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *Target Range, supra*, 960 F.2d at p. 1484.)

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Student failed to meet his burden of proof, by a preponderance of the evidence, that Palo Alto denied Student a FAPE by failing to have at the May 29, 2024 IEP team meeting, a sixth-grade teacher knowledgeable about available supports and services at Greene Middle School.

Palo Alto prevailed on Issue 8.

ISSUE 9A AND 9B: DID PALO ALTO DENY STUDENT A FAPE IN THE IEP DEVELOPED AT THE MAY 29, 2024 IEP TEAM MEETING, BY FAILING TO DEVELOP AN IEP THAT WAS REASONABLY CALCULATED TO ENABLE HIM TO MAKE PROGRESS APPROPRIATE IN LIGHT OF HIS CIRCUMSTANCES, SPECIFICALLY, BY (A) FAILING TO OFFER APPROPRIATE SPECIALIZED ACADEMIC INSTRUCTION PROGRAMMING AND (B) FAILING TO OFFER AN APPROPRIATE PLACEMENT?

Student asserted that Palo Alto dramatically changed the format of SAI services, from offering daily SAI for elementary school to then offering, just two weeks later, middle school classes, that only met three times a week. Student claimed that Palo Alto did not justify or explain the changes or how it was individually tailored to address Student's profile at Greene Middle School.

Palo Alto contended that Parents were well informed of the nature of the FAPE offer for Student's first year of middle school, in the 2024-2025 school year. Mother participated in a transitional IEP, where her questions were specifically answered regarding the Greene Middle School classes, SAI instruction delivery, and

accommodations. Also, the placement at Greene Middle School was reasonably calculated to enable a Student to make progress appropriate in light of his circumstances, in the least restrictive environment.

Student failed to show that Palo Alto failed to offer appropriate specialized academic instruction and placement at the May 2024 IEP team meeting. Student's assertion that Palo Alto never explained how and why the FAPE offer changed was disingenuous. The May 17, 2024 IEP FAPE offer was for elementary school, until the end of the 2023-2024 school year. The May 29, 2024 FAPE offer was made at Student's transitional IEP, where the IEP was developed for Student's sixth-grade middle school program, beginning in the 2024-2025 school year.

In middle school, students begin to experience a school environment that more closely resembles high school than elementary school. Unlike elementary school, where most students stay in one classroom with one teacher throughout the day, middle school students move between different classrooms and teachers for math, English, science, social studies, and history. This was why Palo Alto convened a separate, transitional IEP team meeting, to develop an IEP offer for Student's sixth grade. Palo Alto would have been remiss if it did not offer an IEP program that supported Student in a middle school environment.

Parents indicated they wanted Student to continue to grow in his reading, with the goal of him returning to public school for high school. Yet, even in the transitional IEP, Parents said that Student freezes up in the regular class, when he's lost, and does not know how to ask for help. Therefore, Parents wanted Student to have a placement and supports like Charles Armstrong.

But the development and generalization of core skills, like self-advocacy, are fundamental to academic success in high school. Middle school was the training ground for such skills. And Palo Alto's program encouraged Student's growth, while addressing his needs to make educational progress. The great weight of evidence supports a finding that Parents were well informed of the FAPE offer and how the services and supports would be delivered to address Student's needs in sixth grade.

THE MAY 29, 2024, TRANSITIONAL IEP

The notes of the May 29, 2024 transitional IEP team meeting, and the testimony of those who attended, evidenced a robust and knowledgeable exchange amongst the attendees, including Mother. In addition to program specialist Apuzzo, the team included Duveneck education specialist Daum, Greene Middle School education specialist and middle school special education teacher Plascencia, and Charles Armstrong teacher Johnson.

Apuzzo led the team through the entire IEP meeting. They reviewed the present levels of Student's strengths and challenges. The team went over each of the seven goals, which included the baselines, the means of measuring each goal's progress, and the responsible teachers and staff who would monitor Student's progress. The team discussed the instructional accommodations. Greene Middle School special education teacher Plascencia suggested further clarification about what percentage of extended time the Student would have for assignments. The team discussed and agreed to time and a half for tests and homework. Plascencia asked about Student needing frequent breaks and Charles Armstrong teacher Johnson clarified that Student needed breaks to refocus. The team changed the wording to frequent breaks to support focus.

The teams' transition discussion included the continuum of special education and related services, including any potential harmful effects on Student. Mother asked about the co-taught English class and the academic planning class curriculum and how dyslexic students were supported in these classes. Greene Middle School education specialist Plascencia explained the curriculum in both classes. Duveneck education specialist Daum suggested that co-taught English language arts would be good for Student. Plascencia agreed and the team reviewed and discussed the co-taught English language arts class for Student. Mother commented that the team was considering making the offer "on the fly," but Apuzzo noted that IEP team meetings included discussion and consideration of all team members' observations and suggestions, including those by parents.

The team discussed specialized academic instruction in middle school English language arts, and the use of a modified curriculum. Parent asked about the academic planning class and Apuzzo and Plascencia discussed the supplemental curriculum that was used and other options to support students in their areas of need in the class. Mother further inquired about the academic planning's grade level and the amount of independent work versus direct instruction. Plascencia explained that the teacher has discretion based on the needs of the students. Plascencia, in response to Mother's inquires, stated that the maximum size class in middle school was 25 students, but the school generally kept the academic planning class to less than 15. If any class became bigger [bigger than 15?], instructional assistants were added. The team also reviewed and recommended a co-taught math class, to support Student's goals.

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Palo Alto's FAPE offer to Student for sixth grade, in Greene Middle School, his home school, for the 2024-2025 school year was:

Related services:

- Specialized academic instruction for 210 minutes weekly, in a separate setting (the academic planning class).
- 210 minutes weekly of specialized academic instruction in co-taught math class, a general education setting.
- 210 minutes weekly of specialized academic instruction in co-taught English language arts class, a general education setting.

28 Accommodations:

- Five for school setting, such as extended time for tests and homework, frequent breaks for focus, and preferential seating.
- Six for directions and instruction, including
 - reading aloud of written work and directions,
 - text-to-speech for state assessments,
 - audiobooks,
 - chunking of tasks,
 - visual models, and
 - frequent checks for understanding.

- Six for organization and study skills, including graphic organizer, charts and manipulative, color coding for organization, and study guides.
- Six for sensory needs, including noise cancelling headphones, use of self-monitoring strategies, fidget objects, and standing when needed.
- Five for Student's response, like dictation software, no penalty for spelling except on spelling tasks, word processing prediction application, and permission to type longer assignments.

The guiding principles for Student's related services and accommodations were the IEP's seven goals. Plascencia suggested that, a few weeks after the beginning of Student's sixth-grade year, the IEP team would meet to see if any adjustments should be made to Student's program. This suggested IEP meeting, soon after the commencement of school, was consistent with the IDEA's desire to have IEP teams address any needed adjustments to a program, and evaluate transitional needs, without waiting to the next annual IEP team meeting. (34 C.F.R. § 300.324(b)(1) (2017).)

Student's argument that Palo Alto did not adequately describe and identify the offered program, and the manner it would be implemented, was unpersuasive. For example, Student argued that the co-taught classes were just general education classes and that the only SAI Student received was in the academic planning class. However, the offer clearly stated that Student would receive 210 minutes a week, in each of the two co-taught math and English language arts classes. Co-taught meant the class had both a general education teacher and special education teacher. Both were responsible for implementing Student's IEP in the co-taught classes. The special education teacher

would provide and manage Student's specialized academic instruction, similar to a push-in model, using Orton-Gillingham and other research-based reading modalities, guided by Student's goal trajectory, curriculum, and assignments.

Parents were concerned that they were not told exactly what and when the reading interventions would be in the co-taught classes. First, both the general and special education teachers were responsible for implementing Student's IEP and the special education teacher would deliver and manage the specialized academic instruction. One of the benefits of having credentialed special education teachers was that they had the education, continuing education, and experience of supporting and educating a student with what was needed to address Student's educational or social situation. For example, Student may have been given a writing assignment, based on a chapter he had to read from his text in English language arts class. Student would be provided SAI support using the writing assignment. The special education teacher would use research-based teaching models, guiding Student to comprehensively read the text, identify and scaffold the ideas, chunk them for understanding, and perhaps have Student use a visual organizer to manage the assignment. The SAI co-taught classes used a modified curriculum that placed students on a fruitful high school trajectory.

School district offers must be clear. (*A.O., supra*, 92 F.4th at pp. 1169-1171) At the same time, the Ninth Circuit recognizes that educators require a degree of flexibility. (*Ibid.*) Palo Alto's program, clearly stated in the IEP, was based upon these principles, and could develop Student's skills and behaviors which would support him as he moved through middle school into high school.

The IDEA required Palo Alto to offer a placement in the least restrictive environment. As discussed in Issue 2B, above, the IDEA requires children with disabilities to be educated with children who are not disabled, to the maximum extent appropriate. (20 U.S.C. § 1412(a)(5)(A).) Congress prefers educating children with disabilities in regular classrooms with their peers. (*Rachel H.*, *supra*, 14 F.3d at p. 1403; *A.O.*, *supra*, 92 F.4th at p. 1175.)

Parents, however, dismissed the significance of educating Student in the least restrictive environment. Mother testified she saw no benefit to teaching Student with nondisabled peers. Parents were entitled to place Student in an educational environment that they believed was the most beneficial to Student, without regard for the least restrictive environment. Palo Alto, though, was required to consider the least-restrictive-environment mandate when offering Student's placement.

Here, Student's needs were addressed in the academic planning class, where every pupil had an IEP, were in the same grade, and in a smaller setting, designed to adapt to Student's needs. In the co-taught classes and the remainder of the school day, Student would participate in school classes and activities alongside general education students. To not consider and provide a placement in the least restrictive environment was contrary to the IDEA. The May 29, 2024 FAPE offer was reasonably calculated to enable Student to make progress appropriate in light of the Student's circumstances, in the least restrictive environment, alongside his nondisabled peers. (*Andrew F.*, *supra*, 580 U.S. at p. 403; *Gregory K.*, *supra*, 811 F.2d at p. 1314; *Rachel H.*, *supra*, 14 F.3d at p. 1403; 20 U.S.C. § 1412(a)(5)(A).)

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Student failed to meet his burden of proof, by a preponderance of the evidence, that Palo Alto denied Student a FAPE, by not developing an IEP at the May 29, 2024 team meeting, that was reasonably calculated to enable him to make progress appropriate in light of his circumstances, by (a) failing to offer appropriate specialized academic instruction programming and (b) failing to offer an appropriate placement.

Palo Alto prevailed on Issue 9A and Issue 9B.

ISSUE 10: DID PALO ALTO DENY STUDENT A FAPE IN THE IEP DEVELOPED AT THE IEP TEAM MEETINGS HELD ON APRIL 23 AND MAY 29, 2025, BY FAILING TO MEANINGFULLY CONSIDER THE FINDINGS AND RECOMMENDATIONS OF THE MARCH 20, 2025 NEUROPSYCHOLOGICAL AND EDUCATIONAL EVALUATION?

Student asserted that Palo Alto denied Student a FAPE by not meaningfully considering Dr. Wagner's March 20, 2025 evaluation's findings and recommendations. In developing Student's IEP offer for the 2025-2026 school year.

Palo Alto contended that Dr. Wagner's findings and evaluations were thoughtfully considered by the IEP team, incorporating some of her recommendations in updating, drafting, and adding goals. Palo Alto disagreed with Dr. Wagner's placement recommendation, but this did not mean Palo Alto IEP team members failed to seriously consider Dr. Wagner's recommendations.

Student failed to prove that Palo Alto did not consider Dr. Wagner's March 2025 report. If a parent shares a private evaluation obtained at private expense, the evaluation results must be considered by the school district if it meets agency criteria, in the provision of FAPE for a child. (34 C.F.R. § 300.502(c)(1) (2006); Ed. Code, § 56329(c).) When presented with a private expert's evaluation report or independent educational evaluation at public expense, a school district must consider the results of the assessment, in any decision made with respect to the provision of FAPE to a student. (34 C.F.R. § 300.502(c)(1) (2006); Ed. Code, § 56329, subd. (c).) The district is not required to adopt the conclusions of such an evaluation. (*Ibid.*; *Michael P. v. Dept. of Educ.* (9th Cir. 2011) 656 F.3d 1057, 1066 (fn. 9) (*Michael P.*); *See T.S. v. Board of Education of Town of Ridgefield*, (2nd Cir. 1993) 10 F.3d 87.) Evidence that district IEP team members have considered a private evaluation include factors such as a lengthy discussion of the evaluation at an IEP team meeting or alteration of IEP provisions in response to suggestions made by the private assessor. (*Michael P., supra*, at p. 1066 (fn. 9).); *B.S. v. Placentia-Yorba Linda Unified Sch. Dist.* (C.D. Cal., Aug. 1, 2007, No. SACV06847CJCM LGX) 2007 WL 9719115, at *3–4) [nonpub. opn.]

Student did not meet his burden on this issue. Student entered middle school for sixth grade in the 2024-2025 school year. Though Parents chose to maintain Student's unilateral placement at Charles Armstrong, Student's Palo Alto's IEP team members and special education staff changed to the special education staff at Greene Middle School. Simone Worsham was the special education coordinator, and Jessamy McKinney was the special education program specialist. As the program specialist, McKinney took the lead in interacting with Parents, managing Student's IEP team, and coordinating, convening, and administrating Student's IEP team meetings during his middle school years.

McKinney worked at Palo Alto for three years, first as a resource education specialist, then a therapeutic education specialist, and finally as the program specialist, beginning in 2024. She had 18 years of public education experience, focusing on special education, behavior support, and multi-tiered intervention systems. She had a bachelor's degree in elementary education and a master's degree in special education. McKinney possessed California teaching credentials as an educational specialist, mild/moderate, and multi-subject.

McKinney was trained in structured, explicit, multisensory approach to phonics and spelling that was grounded in Orton-Gillingham principles. As program specialist, McKinney attended IEP team meetings, and oversaw IEP compliance and progress monitoring to ensure IEP alignment with student needs and the school's policies. She developed and delivered professional development, including specialized academic instruction. McKinney participated in 15 professional development trainings during the previous 10 years. McKinney's education, experience, credentials, certifications and continued educational development qualified her to knowledgeably address Student's IEP educational program that Palo Alto offered at Greene Middle School.

Parents requested that Palo Alto hold an annual IEP team meeting, and make an offer of FAPE for the 2025-2026 academic year. McKinney obtained a signed release of information from Parents for Charles Armstrong, enabling Palo Alto to talk to private school's staff and gather materials for IEP development, such as grade reports and evaluations. McKinney familiarized herself with Student, by reviewing his evaluations, IEPs, and educational history. She communicated with Palo Alto's private school team regarding Student's unilateral placement at Charles Armstrong.

Mother had requested to observe a Greene Middle School sixth-grade academic planning class and a co-taught class, at the conclusion of the May 29, 2024 transition IEP. Mother was not able to discuss observation until November 2024. McKinney coordinated Mother's observation with Greene Middle School's principal Courtney Carlomagno and staff. Mother eventually observed in February 2025.

McKinney coordinated with Mother in scheduling the requested annual IEP, including assuring the attendance of a Charles Armstrong teacher who Mother would choose. On March 28, 2025, McKinney sent notice of the IEP meeting, for April 23, 2025, and the listed attendees included:

- Mother,
- a Charles Armstrong teacher,
- Greene Middle School general education teacher Paul Liu,
- Greene Middle School special education teacher Josh Saldana,
and
- McKinney as the IEP facilitator.

McKinney also shared a draft IEP document with the IEP team, including Parents.

Palo Alto convened Student's annual IEP team meeting on April 23, 2025. Mother arranged for Charles Armstrong teacher Maiden to attend. Without notice to anyone, Mother also had Dr. Wagner virtually attend, for purposes of presenting a new March 20, 2025, evaluation.

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DR. WAGNER'S MARCH 20, 2025 INDEPENDENT EDUCATIONAL EVALUATION

Dr. Wagner performed another independent neuropsychological and educational evaluation, dated March 20, 2025. This included a battery of assessments for

- intellectual functioning,
- visual and motor functioning,
- attention and executive functioning, and
- academic functioning in reading, written expression, and mathematics.

She had Parents, Student, and teacher Maiden complete rating scales regarding Student's social and emotional functioning.

None of the Palo Alto IEP team members saw or even knew about Dr. Wagner's report before convening the April 23, 2025 IEP team meeting. Mother did not inform McKinney that Dr. Wagner would be attending. Parents claimed Dr. Wagner sent the report to Palo Alto before the IEP, but Student could not produce any evidence of the report having been sent, such as a cover letter or email. Every Palo Alto attendee affirmed the report had not been provided. And inexplicably, when presenting her report virtually at the IEP team meeting, Dr. Wagner did not screenshare the evaluation.

McKinney had an email exchange with Mother, after the completion of the two annual IEP team meetings of April 23 and May 29, 2025. On June 10, 2025, McKinney asked for a copy of Dr. Wagner's March 20, 2025 report, so it could be included in the

school's system as part of Student's IEP record. Mother responded, saying Dr. Wagner had already directly shared the report with McKinney, but she sent a copy to McKinney anyway

Dr. Wagner did not share the report with McKinney or any IEP team member before the April 23, 2025 meeting; neither did Parents. The first time Palo Alto had possession of the March 20, 2025 report, was on June 10, 2025. Also, if the March 20, 2025 report was completed, Dr. Wagner should have virtually screenshared the report with the IEP team during her April 23, 2025 presentation. Further undermining the professionalism and persuasiveness of Dr. Wagner's report, her IEP presentation, and testimony, was that the report included notes of school-based observations on April 11, 2025, though it is dated March 20, 2025.

The March 20, 2025 report, review of the reassessments, and rating scales generally agreed with Dr. Wagner's December 2022 assessment report and with Palo Alto's May 2024 triennial evaluation. Parents did not criticize Palo Alto's triennial evaluation of Student, done less than 10 months before. Mother had complemented the assessment in IEP team meetings. Parents disagreed with the IEP offer of placement and program implementation in the public school, that differed from Charles Armstrong's private school program.

The March 20, 2025 report did three things. First, it added a diagnosis of specific learning disorder, with impairment in mathematics. Student's weakness in math fluency, especially in computational skills, had long been recognized by Palo Alto. The diagnosis was unsurprising. Second, Dr. Wagner provided a critical observation report of Greene Middle School's co-taught and academic planning class. She compared this to a

glowing observation of Charles Armstrong's classes. Third, for the first time, Dr. Wagner described Charles Armstrong, or a similar program without any nondisabled peers, to be Student's least restrictive environment.

Despite not having access to the March 20, 2025 report, the IEP team welcomed and considered Dr. Wagner's input and feedback during the April and May 2025 IEP meetings. The IEP team asked thoughtful questions, considered Dr. Wagner's input, and integrated her specialized knowledge in developing Student's IEP. Following the April 23, 2025 meeting, McKinney promptly began revising Student's IEP after receiving feedback from Charles Armstrong staff, Parents, and Dr. Wagner. McKinney ensured the changes to Student's IEP accurately reflected Dr. Wagner's recommendations. Specifically, program specialist McKinney revised Student's present levels and goals in the areas of

- reading fluency,
- reading comprehension,
- writing,
- math fluency,
- executive functioning, and
- self-advocacy.

Though Palo Alto did not agree with Dr. Wagner's opinion that Charles Armstrong was Student's least restrictive environment, Palo Alto IEP team members appropriately considered the verbally presented results of Dr. Wagner's report and her input at the IEP team meetings.

Student failed to meet his burden of proof, by a preponderance of the evidence, that Palo Alto denied Student a FAPE by failing to meaningfully consider the findings and recommendations of Dr. Wagner's March 20, 2025 evaluation, in the IEP developed at the April 23 and May 29, 2025, IEP team meeting.

Palo Alto prevailed on Issue 10.

ISSUE 11: DID PALO ALTO DENY STUDENT A FAPE IN THE IEP DEVELOPED AT THE IEP TEAM MEETINGS HELD ON APRIL 23 AND MAY 29, 2025, BY PREDETERMINING THE OFFER OF PLACEMENT AND SERVICES?

Student contended that Palo Alto predetermined its offer of FAPE in the April 23 and May 29 2025, IEP team meetings. Student asserted that Palo Alto's offer of FAPE remained unchanged and was unwilling to discuss other public-school placements.

Palo Alto asserted that the April and May 2025 IEP team meetings demonstrated substantive collaborative discussions and decisions in the teams' development of the IEP, including changes and updates to goals, accommodations, and related services. Mother, a Charles Armstrong teacher, and Dr. Wagner participated in two robust team meetings, where their opinions and recommendations were incorporated in developing the IEP. Palo Alto's offer of a public-school placement, at Student's home school of Greene Middle School, did not mean Palo Alto predetermined the outcome. Palo Alto disagreed with Parents' contention that Student required placement in Charles Armstrong private school, or a similar setting, to receive a FAPE.

A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d at p. 1485.) "Participation must be more than mere form; it must be meaningful." (*Deal, supra*, 392 F.3d 840, 858.)

As discussed in Issue 10 above, the IEP team meeting carefully and respectfully considered Dr. Wagner's review of her most recent private assessment report. The team updated Student's present levels of performance, both his strengths and challenges, using input from Dr. Wagner's report and teacher Maiden. For example, present levels were changed to update Student challenges with basic math calculation.

The team agreed with Dr. Wagner's new diagnosis and decided to add a goal to address those deficits and adjust the accommodations. Special education teacher Saldana explained how accommodations were implemented in the classrooms. Depending on daily needs, students may be split into small, mixed groups, focusing on core skills, also supplemented by general education support. Front-loading of skills was supported during academic planning class, using tools such as IXL Learning, an online support for struggling readers and writers. Other supports included Desmos, an interactive math platform, for students who struggle with reading and writing, to develop structured math-solving. Delta Math was also available for building skills to address math word problems.

The team looked at the last IEP's seven goals and evaluated Student's goal progress. This process greatly relied upon the input of Charles Armstrong data and teacher. For Student's three writing goals, Student made progress on two goals and met one goal. He partially met his executive functioning/self-advocacy goal. Student met his decoding goal, but did not meet his reading goal.

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The team then reviewed, amended, and added IEP goals, one-by-one, for the current IEP. Reading Goal 1 was updated with Mother's agreement. Reading Goal 2 and writing Goal 3 were updated to seventh grade standards. They reviewed the math Goal 4, executive functioning Goal 5, and self-advocacy Goal 6. The team agreed to rewrite the executive functioning goal to add clarity.

At this juncture, the team agreed to complete the goals sections and IEP development at a later meeting. Five days later, Parents on behalf of Student filed this request for due process hearing.

The second team meeting for the April 23, 2025 annual IEP was held on May 29, 2025. Dr. Wagner presented additional updated findings from her March 20, 2025 evaluation. The team continued developing the IEP's goals, incorporating suggested changes from Dr. Wagner for a reading goal related to instructional-level texts via audiobooks, and splitting the executive functioning goal into two goals, adding one for Student to independently submit assignments. The team agreed on the math goal, focusing on multi-step work problems and number sense. The team added a math goal, addressing math fluency without reliance on calculators, as suggested by Dr. Wagner. The April 23, 2025 IEP had nine revised or new goals.

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The team reviewed and approved the accommodations for state testing and the 28 instructional accommodations to be applied to all subjects and in all settings. The team discussed the related services and placement. Palo Alto's FAPE offer for Student's seventh grade, in Greene Middle School, for 2025-2026 was:

Related services:

- Specialized academic instruction on Mondays for 40 minutes, in a separate group setting (academic planning class).
- Specialized academic instruction, two sessions a week, for 85 minutes a session, for a total of 170 minutes, in a separate group setting (during the block-scheduled periods: academic planning class).
- Specialized academic instruction on Mondays, two sessions for 40 minutes, for a total of 80 minutes, in a general education setting (co-taught English language arts and co-taught math).
- Specialized academic instruction, four sessions a week, for 85 minutes a session, for a total of 340 minutes, in a general education setting (during the block-scheduled periods: co-taught English language arts and co-taught math.).

Palo Alto offered 630 minutes, or 10.5 hours, of specialized academic instruction, weekly.

Here, Mother disagreed with the placement maintaining that Student would not benefit from the related services and accommodations, delivered at Greene Middle School. Mother and Dr. Wagner told the team about their observations of a co-taught

class and the academic class on February 6, 2025. Mother stated she did not observe the special education specialist during the co-taught class and felt the academic planning class was like a study hall. Dr. Wagner did not see visible remediation for goals, described academic planning as lacking targeted support, and felt at least one teacher appeared harsh. Mother said that Student would not benefit from the related services model, to be implemented at Greene Middle School. Both told the team that Student required the smaller, controlled setting, like Charles Armstrong, with remediation and targeted support in all settings and in all classes.

PALO ALTO DID NOT PREDETERMINE STUDENT'S OFFER OF PLACEMENT

Student contended that Palo Alto merely recorded Parents' concerns in the IEP, but otherwise ignored their contention that placement at Greene Middle School would not provide him with the educational benefits of Charles Armstrong, or a similar placement and program. Student's contention was a characterization that was not supported by the documentary and testimonial evidence. The record reflected Palo Alto substantively responded to Parents' position that Student required a Charles Armstrong setting and program to receive a FAPE and benefit from his educational placement.

Parents frequently explained their position, in writing and at the many IEP team meetings, since their unilateral placement of Student at Charles Armstrong private school for the 2021-2022 school year, after five weeks of special education placement and services at the end of Student's second grade. On December 19, 2023, Parents responded to the 2023-2024 IEP offer of FAPE, in writing. On January 29, 2024, Parents sent another written response to the 2023 annual IEP offer. On July 30, 2024, Parents responded to the triennial IEPs for elementary school and the transitional IEP for

Student's sixth grade at Greene Middle School, for the 2024-2025 school year, in writing. On June 18, 2025, Parents sent their written response to the annual IEP offer for 2025-2026. In the responses, Parents informed Palo Alto that they would continue with Student's unilateral placement at Charles Armstrong. As required by the IDEA, Palo Alto responded with prior written notices to Parents' written responses to the IEP offers.

Parents' responses to the IEPs, and statements at IEP team meetings, agreed with the findings of Student's eligibility, but disagreed with placement in public school. Parents expressed their conviction that Student was happy and flourishing at Charles Armstrong private school, that his reading had improved, he was accessing his academics, and his grades were improving. They stated that Student required a program where the remediation and research-based intervention were woven into every subject, throughout the day, in small classes and groups. Parents asserted that Student would be lost in the larger public-school classes and would not benefit from the specialized academic instruction push-in/pull-out model, for elementary school. Student would similarly fail to improve in middle school's co-teaching and academic planning class delivery model at Greene Middle School, with its larger classes and campus.

Palo Alto staff listened and responded to Parents' concerns. At this IEP team meeting, Palo Alto described the public-school placement model, delivering research-based remediation and support of Student's specific learning disability, dyslexia. Experienced, educated, and well-trained professionals, like program specialist Apuzzo, Dr. Gardiner, and program specialist McKinney, affirmed the program's viability, providing appropriately tailored services and accommodations to meet Student's needs and enabling Student to access his education and make meaningful progress. The great

weight of evidence demonstrated that Parents participated in the development of the IEP and that Palo Alto listened to Parents and their expert, incorporating many requested changes into the IEP.

Student has failed to demonstrate that Palo Alto predetermined its placement offer and failed to consider Parents' concerns. Parents wanted what they determined was the best educational environment for their son, where they believed his disability was best addressed. However, 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 was better. (See *Gregory K, supra*, 811 F.2d at p. 1314.) An appropriate public education "does not mean the absolutely best or 'potential-maximizing' education for the individual child." (*Ibid.* (quoting *Rowley, supra*, 458 U.S. at 197 n.21)). Palo Alto disagreed with Parents and offered a public-school placement and program, where Student could access his education and make meaningful progress, with his general education peers.

Palo Alto prevailed on Issue 11.

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ISSUES 12A AND 12B: DID PALO ALTO DENY STUDENT A FAPE IN THE IEP DEVELOPED AT THE IEP TEAM MEETINGS HELD ON APRIL 23 AND MAY 29, 2025, BY FAILING TO DEVELOP AN IEP THAT WAS REASONABLY CALCULATED TO ENABLE HIM TO MAKE PROGRESS APPROPRIATE IN LIGHT OF HIS CIRCUMSTANCES, SPECIFICALLY, BY (A) FAILING TO OFFER APPROPRIATE SERVICES AND (B) FAILING TO OFFER AN APPROPRIATE PLACEMENT?

Student asserted that the FAPE offer, developed at the April and May 2025 IEP team meetings, was no different than the FAPE offer made in the May 29, 2024 IEP. Therefore, in his closing brief, Student simply contended that his prior arguments that the May 29, 2024 IEP did not offer a FAPE, as set forth in Student's Issues 9A and 9B, equally applied to Issues 12A and 12B. Student's only additional assertion was that the May 29 2025 IEP was unclear because the IEP document they received had "draft" as a watermark.

Palo Alto contended that its April 2025 IEP offer was not the same offer as the May 29, 2024 transitional IEP offer, and that the April 2025 IEP offer was clear and unambiguous. Palo Alto further contended that it offered Student appropriate specialized academic instruction and an appropriate placement.

Student failed to prove that Palo Alto denied him a FAPE in its offer of specialized academic instruction and placement. Student claimed that the copy of the IEP documents that program specialist McKinney sent Parents was watermarked with the word "draft." Therefore, Student asserted there was no final, clear offer. Parents acknowledged they

were told that the “draft” watermark would be removed by Palo Alto’s systems when printed out after Parents signed the consent, or consent with reservations. Parents claimed that the watermark rendered the IEP offer ambiguous, denying them the opportunity to be fully informed and participate in the IEP formation.

Parents understood the FAPE offer as indicated by their June 18, 2025 written Parent Response to the April 23, 2025 annual IEP, where they clearly set out and rejected the IEP’s FAPE offer. The response was made part of the IEP document. The IEP is to be read as a whole. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d)(2) (2007); Ed. Code, § 56345, subd. (h).) The IEP itself clearly set out the offer and Parents’ understanding of the offer was affirmed in their attached response. Student failed to demonstrate that the April 23, 2025 IEP offer was unclear and ambiguous.

Student’s Issues 12A and 12B were subject to the same analysis and ruling as Issues 9A and 9B. However, Student’s assertion that the April 2025 IEP offer was the same as the May 29, 2024 IEP offer was not correct. As reviewed and analyzed in Issues 10 and 11 above, the IEP team developed an IEP that addressed his needs as indicated by his present levels of performance and his seventh-grade standards. Substantive and substantial changes, updates, and additions were made in the development of the April 2025 IEP during the two IEP team meetings.

Student’s assertion that the April 2025 IEP offer was unchanged highlights Parents’ fundamental focus. Parents objected to Palo Alto offer of FAPE because it was at Student’s home middle school, with general education peers. 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 was better. (See *Gregory K, supra*, 811 F.2d at p. 1314.) An appropriate public education “does not mean the absolutely best or ‘potential-maximizing’ education for the individual child.” (*Ibid.* (quoting *Rowley, supra*, 458 U.S. at 197 n.21)).

Substantive and substantial changes, updates, and additions were made in the development of the April 2025 IEP during the two IEP team meetings. The IEP team meetings updated present levels of performance, tracked progress on Student’s IEP goals, revised and added accommodations and goals, and offered placement, consistent with seventh-grade standards. Palo Alto disagreed with Parents and offered a public-school placement and program, in the least restrictive environment, where Student could access his education and make meaningful progress, with his general education peers.

As Student asserted, the analysis and findings in Issues 9A and 9B that found the May 29, 2024 IEP offered Student a FAPE in the least restrictive environment, applies here. The April 23, 2025 IEP offered Student appropriate specialized academic instruction and an appropriate placement, in the least restrictive environment. Palo Alto prevailed on Issues 12A and 12B.

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:

Palo Alto denied Student a FAPE by failing to have an IEP offer of special education and related services in place before the start of the 2023-2024 school year.

Student prevailed on Issue 1.

ISSUES 2A AND 2B

Palo Alto did not deny Student a FAPE in the IEP developed during the IEP team meeting held September 28 and October 19, 2023 IEP, provided to Parents on November 2, 2023, and revised on January 26, 2024, by failing to develop an IEP that was reasonably calculated to enable him to make progress, appropriate in light of his circumstances, by (a) failing to include an appropriate type and amount of specialized academic instruction and (b) failing to offer an appropriate placement.

Palo Alto prevailed on Issues 2A and 2B.

ISSUE 3:

Palo Alto did not deny Student a FAPE by predetermining Student's offer of placement and services in the IEP developed at the IEP team meetings held April 18 and May 17, 2024.

Palo Alto prevailed on Issue 3.

ISSUE 4:

Palo Alto did not deny Student a FAPE in the IEP developed at the IEP team meetings held April 18 and May 17, 2024, by failing to meaningfully consider Parents' concerns.

Palo Alto prevailed on Issue 4.

ISSUE 5:

Palo Alto did not deny Student a FAPE by failing to have a Greene Middle School staff member, knowledgeable about available supports and services, at the May 17, 2024 IEP team meeting.

Palo Alto prevailed on Issue 5.

ISSUES 6A AND 6B

Palo Alto did not deny Student a FAPE in the IEP developed at the April 18, and May 17, 2024 IEP team meetings, by failing to develop an IEP that was reasonably calculated to enable him to make progress appropriate in light of his circumstances, specifically, by (a) failing to offer appropriate specialized academic instruction programming, and (b) failing to offer an appropriate placement.

Palo Alto prevailed on Issues 6A and 6B.

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ISSUE 7:

Palo Alto did not deny Student a FAPE by preventing Parents from having a comprehensive placement observation in spring 2024, thereby significantly impeding the opportunity of Parents to participate in the decision-making process regarding the provision of a FAPE to Student and Parents' right to informed consent.

Palo Alto prevailed on Issue 7.

ISSUE 8:

Palo Alto did not deny Student a FAPE by failing to have at the May 29, 2024 IEP team meeting a sixth-grade teacher knowledgeable about available supports and services at Greene Middle School.

Palo Alto prevailed on Issue 8.

ISSUES 9A AND 9B:

Palo Alto did not deny Student a FAPE in the IEP developed at the May 29, 2024 IEP team meeting, by failing to develop an IEP that was reasonably calculated to enable him to make progress appropriate in light of his circumstances, specifically, by (a) failing to offer appropriate specialized academic instruction programming, and (b) failing to offer an appropriate placement.

Palo Alto prevailed on Issues 9A and 9B.

ISSUE 10:

Palo Alto did not deny Student a FAPE in the IEP developed at the IEP team meetings held on April 23 and May 29, 2025, by failing to meaningfully consider the findings and recommendations of the March 20, 2025 neuropsychological and educational evaluation.

Palo Alto prevailed on Issue 10.

ISSUE 11:

Palo Alto did not deny Student a FAPE in the IEP developed at the IEP team meetings held on April 23 and May 29, 2025, by predetermining the offer of placement and services.

Palo Alto prevailed on Issue 11.

ISSUES 12A AND 12B:

Did Palo Alto deny Student a FAPE in the IEP developed at the IEP team meeting held on April 23 and May 29, 2025, by failing to develop an IEP that was reasonably calculated to enable him to make progress appropriate in light of his circumstances, specifically, by (a) failing to offer services, and (b) failing to offer an appropriate placement

Palo Alto prevailed on Issues 12A and 12B.

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REMEDIES

Student prevailed on Issue 1, regarding failure to have a FAPE offer in place for the commencement of the 2023-2024 year. As a remedy, Student requests reimbursement for Charles Armstrong tuition, reimbursement for the transportation costs related to Student's Charles Armstrong attendance, and reimbursement for Dr. Wagner's independent educational evaluation. Palo Alto contends that no remedy is warranted, and that reimbursement should be denied because at all times it offered Student a FAPE.

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

TUITION REIMBURSEMENT

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

remedies that courts may employ to craft “appropriate relief” for a party. The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.)

A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district did not make a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra*, 471 U.S. 359, 369- 370.) A school district's failure to propose an IEP of any kind is at least as serious a violation of its responsibilities under IDEA as a failure to provide an adequate IEP. (*Forest Grove, supra*. 557 U.S. at pp. 238-239.)

APPROPRIATENESS OF UNILATERAL PLACEMENT

The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c) (2006).) Unilateral placement was found to be reimbursable where the placement had substantially complied with the IDEA by conducting quarterly evaluations, having a plan that permitted the student to progress from grade to grade, and where student made substantial academic progress. (*Florence County Sch. Dist. Four v. Carter* (1993) 510 U.S. 7, pp. 11 & 14 (*Carter*).)

The analysis of Student’s request for reimbursement requires determining whether Parent’s unilateral placement was appropriate within the meaning of *Carter*, and whether equitable factors require reduction of the requested reimbursement. Palo

Alto argued that the IDEA does not compel public funding of private placements that are more restrictive, less academically rigorous, or inconsistent with the requirements of a FAPE.

Here, Student presented evidence of Charles Armstrong and its program. The private school utilized the Orton-Gillingham-based Wilson Reading System, which was designed for a small school environment. Wilson was a complete curriculum, delivered in a private school, where the teachers were not required to be California credentialed general education or special education teachers. Those involved were trained in the Wilson curriculum and supervised by reading specialists, who were Wilson accredited to lead and teach others in the Wilson system. The Wilson Reading System had regular testing of Student, to evaluate his progress, in a number of parameters related to his specific learning disability, dyslexia. Some of the instruments used to track Student's progress were unique to the Wilson system, but others were commonly used instruments. For example, Charles Armstrong tested for Lexile scores, which were a standardized measure of reading ability and text difficulty that placed students and books on the same numeric scale. Lexile scores are widely used in general and special education and not limited to the Wilson Reading System. Student's Lexile scores increased through the 2023-2024 school year.

The Charles Armstrong private school placement did not meet the state standards that apply to public schools, but Student sufficiently demonstrated that Student benefited. (34 C.F.R. § 300.148(c) (2006).) Palo Alto's staff, including Dr. Gardiner, acknowledged that Student had made some progress at Charles Armstrong during the 2023-2024 school year. Though Charles Armstrong placement

was not a FAPE in the least restrictive environment, Student met his burden of proof, showing that the Charles Armstrong unilateral placement sufficiently complied with *Carter*. Student is entitled to reimbursement.

AMOUNT OF TUITION REIMBURSEMENT

If the unilateral placement meets the standards of *Carter*, the amount of reimbursement for the costs of unilateral placement need to be appropriate. (*Burlington, supra*, 471 U.S. at p. 369-371; *Puyallup, supra*, 31 F. 3d at p. 1496.) The reimbursement amount is an equitable remedy, which courts craft for the parties.

Here, Palo Alto failed to provide an offer of FAPE before the beginning of the 2023-2024 school year. As discussed in Issue 1, this was a material procedural failure that denied Student a FAPE. Parents did not have an offer to consider, so Parents notified Palo Alto in July 2023, that they were going to unilaterally place Student at Charles Armstrong and subsequently seek reimbursement. Palo Alto did not timely offer a FAPE. But when Palo Alto finally made the FAPE offer for the 2023-2024 school year, toward the close of the calendar year, the April 2023 IEP offered Student a FAPE, in the least restrictive environment. But Student was already placed at Charles Armstrong by Parents. (See Issues 2A and 2B, above.)

The development of the April 28, 2023 IEP took two additional IEP team meetings, after the start of the 2023-2024 school year, on September 28 and October 19, 2023. Parents received the final IEP document, with the April 28, 2023 IEP offer of FAPE, on November 2, 2023. Mother observed the proposed placement location at Duveneck Elementary on November 15, 2023. Parents responded to Palo Alto's April 28, 2023 offer, on December 19, 2023. Parents declined the offer stating

Student would continue with unilateral placement at Charles Armstrong, and would thereafter seek reimbursement for the placement. Therefore, Student was without a FAPE from the beginning of the 2023-2024 school year until Parents declined the April 23, 2023 IEP offer, on December 19, 2023.

Subsequently, Parents asked for Palo Alto to conduct triennial assessments and make an IEP offer, per *Capistrano*. Palo Alto assessed and held two IEP team meetings and made an IEP FAPE offer on May 17, 2024. This offer was for the remainder of the 2023-2024 school year, to May 30, 2024. The May 17, 2024 offer was a FAPE offer, in the least restrictive environment. Parents declined the offer and informed Palo Alto it would continue with the Charles Armstrong unilateral placement. Thereafter, through the end of the 2023-2024 academic year, Palo Alto had an appropriate FAPE offer, in the least restrictive environment, which Palo Alto was ready to implement with Parents' consent.

Here, Parents initially placed Student at Charles Armstrong for the 2023-2024 school year because there was no FAPE offer on the table. So, unlike the subsequent May 2024 IEP offer that Parents rejected on substantive grounds, Student was technically at Charles Armstrong because Palo Alto did not procedurally comply with IDEA by having an offer for consideration.

When the April 2023 FAPE offer was declined by Parents on December 19, 2023, half the school year was over. Student was in fifth grade, finishing elementary school, with the same class of peers he had for two-and-half years. Having Student change schools in the mid-year would have caused Student unnecessary confusion and disturbance. For the 2023-2024 school year, the equities favor Student.

Palo Alto must reimburse Parents for the full Charles Armstrong tuition from the beginning of the 2023-2024 school year up to and including December 19, 2023, as described more fully below. Though Palo Alto again made a FAPE offer in the least restrictive environment in May 2024, which Parents rejected because they disagreed with the substance of the offer, Student was already enrolled at Charles Armstrong for the 2023-2024 school year because of Palo Alto's substantive procedural failure for not having made a FAPE offer before the next school year. Because of this, Palo Alto should reimburse a portion of the tuition for the remainder of the school year. One-half of the 2023-2024 school year's remaining tuition, beginning December 20, 2023, through the end of the school year, is an appropriate equitable remedy, instead of removing Student from Charles Armstrong, in the middle of his last year of elementary school.

Charles Armstrong tuition for the 2023-2024 school year was \$50,710. The record demonstrated that Parents paid the tuition, with billings, proofs of payment, and testimony. There were 167 school days in the 2023-2024 school year. Student was absent five days for the year, but this did not affect the amount of tuition Parents paid. Therefore, Palo Alto will pay \$303.65 ($\$50,710$ divided by 167) for each day of school from the first day of school for the 2023-2024 year, up to and including December 19, 2023, when Parents declined Palo Alto's offer of FAPE in the least restrictive environment. Palo Alto will then reimburse one-half of the remaining tuition for the 2023-2024 school year.

For example, if there were 78 days of school from the beginning of school up to and including December 19, 2023, Palo Alto would reimburse \$303.65 per day, or \$23,684.91 (78 times \$303.65). Palo Alto would also pay one-half for the remaining

school year tuition. In this example, the full tuition paid, \$50,710, minus the reimbursement of \$23,684.91, leaves \$27,025.09 of tuition for the remainder of the year. Palo Alto would reimburse one-half of this remaining tuition sum of \$27,025.09, which would be \$13,512.54. The total tuition reimbursement would be \$23,684.91 (up-to December 19, 2023, tuition) and \$13,512.54 (one-half of remaining year's tuition) for a total of \$37,197.45. This is an example of the tuition reimbursement computation, not an order to reimburse this sum.

Therefore, Parents need to document the number of school days from the first day of school in 2023-2024 school year, up to and including December 19, 2023. The parties can then compute the amount of tuition Palo Alto must reimburse.

REIMBURSEMENT FOR TRANSPORTATION TO CHARLES ARMSTRONG SCHOOL

Student seeks reimbursement for transporting Student to-and-from Charles Armstrong School each day of attendance. Student argued that transportation was a cost associated with the unilateral placement and, as a result of Palo Alto failure to provide a FAPE, Parents are thus entitled to reimbursement. (*Burlington, supra*, 471 U.S. at p. 369-371.) (*Ibid.*; *Puyallup, supra*, 31 F. 3d at p. 1496.) Transportation is a cost associated with a unilateral placement, and reimbursement for transportation is subject to the same equitable considerations as tuition reimbursement.

Student was absent five days during the 167-day 2023-2024 school year. Therefore, Student requests transportation reimbursement for 162 days, at \$33.32 a day, using the IRS mileage rate of 70 cents per mile, which totals \$5,397.84.

Parents transported Student every day that he attended Charles Armstrong school during the 2023-2024 school year. A one-way drive was 11.9 miles, making one round trip to and from Charles Armstrong School 23.8 miles. In 2023, the Internal Revenue Service transportation reimbursement rate was 65.5 cents per mile. Mileage claims must use the rate for the period in which the travel actually accrued. Therefore, one round trip of 23.8 miles is \$15.59 in reimbursement (23.8 times .655). Parent made two round trips a day, which amounts to a transportation reimbursement of \$31.18 a day.

Here, the Charles Armstrong attendance record for the 2023-2024 indicated that Student was absent for one day before December 19, 2023. Therefore, Palo Alto shall reimburse Parents for transportation costs at the rate of \$31.18 per day, from the beginning of the 2023-2024 school year up to and including December 19, 2023, minus the one day of absence.

However, unlike tuition, the equities weigh in favor of Palo Alto regarding transportation costs after December 19, 2023. Palo Alto's contribution to Student's tuition after December 19, 2023, was solely based upon concern of moving Student from the few remaining months of his last elementary school year. Here, Parents are not legally entitled to reimbursement after it declined Palo Alto's FAPE sufficient offer on December 19, 2023, and there is no convincing equity argument to support Palo Alto contributing to transportation reimbursement after December 19, 2023.

Charles Armstrong attendance records for the 2023-2024 indicate that Student was absent for one day before December 19, 2023. Therefore, Palo Alto shall reimburse Parents for transportation costs at the rate of \$31.18 per day, from the beginning of the

2023-2024 school year up to and including December 19, 2023, minus the one day of absence. Transportation costs, after Parents' rejection of Palo Alto's FAPE sufficient offer, the least restrictive environment, will be borne by Parents.

DR. WAGNER-DOUGHTY'S INDEPENDENT EDUCATIONAL EVALUATIONS

Student seeks reimbursement of Dr. Wagner-Doughty's independent educational evaluations. Dr. Wagner presented two private evaluations, one from December 2022 and another dated March 20, 2025, which were considered in this Decision.

An independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question. (34 C.F.R. § 300.502(a)(3)(i) (2006).) A student may be entitled to reimbursement of an independent educational evaluation when a school district's assessment is not legally appropriate. (34 C.F.R. § 300.502(b)(2) (2006); see also Ed. Code, § 56329, subds. (b) and (c).)

Student did not allege that a Palo Alto assessment was not legally appropriate, and this Decision made no determination regarding the legal compliance of any Palo Alto assessments. Thus, Student is not entitled to reimbursement for Dr. Wagner's private assessment because a Palo Alto assessment was not legally appropriate. However, reimbursement for the costs of an independent educational evaluation may also be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (*Los Angeles Unified Sch. Dist. v. D.L.* (C.D. Cal. 2008) 548 F.Supp.2d 815, 822–823.)

Here, the equities involving reimbursement for Dr. Wagner's assessments and reports strongly favor Palo Alto. In Issue 1, Palo Alto was found to have denied Student a FAPE for part of the 2023-2024 school year, due to the procedural failure of not having a FAPE offer before the beginning of the school year. Dr. Wagner's evaluations were assessments, observations, interviews, and recommendations regarding Student's program and placement. The December 2022 and the March 2025 evaluations did not in any way assist Student in demonstrating that Palo Alto denied Student a FAPE in Issue 1.

Accordingly, Student's request for reimbursement for Dr. Wagner's evaluations is denied.

ORDER

1. Palo Alto must reimburse Parents \$303.65 for each day of school, regardless of Student's absences, from the first day of school for the 2023-2024 year up to and including December 19, 2023. Palo Alto will then reimburse one-half of the remaining tuition for the 2023-2024 school. This reimbursement amount is computed as outlined in the Remedy section of this Decision above.
2. Palo Alto must reimburse Parents for the costs of transportation at the rate of \$31.18 per school day, from the beginning of the 2023-2024 school year, up to and including December 19, 2023, minus the one day of Student's absence.

3. Palo Alto must reimburse Parents the tuition and transportation costs within 30 days of Parents providing Palo Alto with documentation, from Charles Armstrong School, establishing the number of school days, from the first day of school for the 2023-2024 school year, up to and including December 19, 2023.

RIGHT TO APPEAL THIS DECISION

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

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings