

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT AND STUDENT,

v.

SAN MATEO COUNTY OFFICE OF EDUCATION.

CASE NO. 2025080304

DECISION

JANUARY 20, 2026

On August 7, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming San Mateo County Office of Education. In this Decision, San Mateo County Office of Education is referred to as San Mateo. For good cause, OAH continued the hearing to October 7, 2025. Administrative Law Judge Laurie Gorsline heard this matter by videoconference on October 7, 8, 14, 15, 16, 28, 29, and 30, and November 12 and 13, 2025.

Attorneys Abigail Trillin and William Koski represented Student, and were assisted by certified law clerks, Abby Wolfe, Sarah Nelson, and Anna Zannetos. Father attended the hearing on the morning of October 16, 2025, while Student was testifying. OAH provided interpretation services for Father in Father's and Student's native language on

the morning of October 16, 2025. Jennifer James, an investigator with the San Mateo County Private Defender Program, was present during Student's testimony. Aaron Blum represented San Mateo County Office of Education. Sarah Notch, M.Ed., San Mateo Executive Director of Educational Innovation, and Jesus Jimenez, Ed.D., San Mateo Director of School Programs, attended two or more of the hearing days on San Mateo's behalf.

At the parties' request the matter was continued to December 15, 2025, for written closing briefs. The record was closed, and the matter submitted on December 15, 2025.

ISSUES

On September 29, 2025, Administrative Law Judge Thanayi Lindsey held a prehearing conference and issued an order dated September 30, 2025, determining the issues to be decided at hearing. The order stated that the parties were responsible for carefully reviewing the hearing issues listed, and to promptly file a written objection if any issue was omitted or misstated. Neither party filed an objection.

The issues for hearing are listed below. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did San Mateo deny Student a FAPE by failing to assess from:
 - A. August 7, 2023, through April 17, 2024?
 - B. March 11, 2025, through March 21, 2025, for speech and language?

2. Did San Mateo deny Student a FAPE at the April 18, 2024 IEP team meeting by failing to find Student eligible for special education and services?
3. Did San Mateo deny Student a FAPE on March 21, 2025, by issuing him a diploma?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called the 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.) All future citations to the Code of Federal Regulations are to the 2006 version, unless otherwise noted. The main purposes of the IDEA are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the

hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii).) As the filing party, Student had the burden of proof on all Issues.

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).) Some details regarding Student or Student's history are not included in this Decision to protect Student's identity and the confidentiality of these proceedings. This Decision does not cite to the administrative record because it was not available before the issuance of this Decision and OAH policy is that decisions do not include citations to the record.

Student's written closing argument cites at least two exhibits that were withdrawn by Student, despite the ALJ's admonishment against citing exhibits not admitted into evidence. It was not the ALJ's responsibility to determine if these withdrawn exhibits were somewhere else in the record, much less sift through the admitted exhibits and find the information Student attempted to reference. (Cf., *In Re: Out of Network Substance Use Disorder Claims Against UnitedHealthcare* (C.D. Cal., October 14, 2022, 8:19-cv-02075-JVS(DFMx)) 2022 WL 17080378, fn. 2 (*In Re: Out of Network*) ["The Court 'is not a pig searching for truffles in a forest,' and will 'not perform the work of representing parties.'"])

Moreover, both parties cite Special Education Local Plan Area policies not proffered into evidence, and San Mateo cites to a part of the California Department of Education website which was not part of the evidence admitted at hearing. Any exhibits

or other documents that were not admitted into evidence or officially noticed pursuant to the ALJ's December 4, 2025 Order Granting In Part, and Denying In Part Request for Official Notice, were not considered by the ALJ in rendering this Decision. Both parties are admonished for citing exhibits outside of the record.

Student was born outside of the United States and immigrated with his family to the United States in 2016, when he was about nine years old. At that time, he did not speak any English. Student was enrolled in public school in California in 2017 when he was in fourth grade. English was not spoken in Student's family home.

Apart from a brief period in the summer of 2025, Student has been incarcerated since he was 15 years old at the San Mateo County Youth Services Center, a juvenile detention facility, between June 2022 through the end of the hearing in November 2025. The San Mateo Youth Services Center included a housing unit which was run by the San Mateo County Probation Department, called Probation, and a court and community school called Hillcrest School, referred to as Hillcrest. Hillcrest was accredited by the Western Association of Schools and Colleges, called WASC. A WASC accreditation signifies that the educational institution has undergone a review process by an independent body, ensuring it meets certain quality standards. Hillcrest was a year-round school, with two summer sessions.

San Mateo conducted an initial assessment of Student for special education and related services during the 2023-2024 school year, Student's 11th grade year. At an IEP team meeting on April 18, 2024, the IEP team declined to find Student eligible for special education and related services, over Parents' objections.

On March 21, 2025, during Student's 12th grade year, San Mateo awarded Student his high school diploma and exited him from Hillcrest, but he remained incarcerated at the Youth Services Center. At an IEP team meeting on April 29, 2025, San Mateo found Student eligible for special education and related services under the category of specific learning disability but did not offer Student any special education and related services because he had already earned his diploma.

This case was filed by Parents on Student's behalf, and by Student, individually. Student was 18 years old at the time the complaint was filed in August 2025. The complaint alleges Student elected to share his educational rights with Parents. There was no evidence at hearing establishing Student shared his educational rights with Parents. Student failed to prove Parents had standing to prosecute this case on Student's behalf.

At the time of the hearing which began in October 2025, Student continued to reside within the jurisdiction of San Mateo. There was no evidence Student was ever sentenced, and at hearing, Student objected to the admission of any evidence regarding the charges asserted against Student, and the reasons why Student was arrested and incarcerated at the Youth Services Center. Based on Student's objection, there was no evidence proffered on these issues, and therefore the ALJ was unable to consider them.

ISSUE 1A: DID SAN MATEO DENY STUDENT A FAPE BY FAILING TO ASSESS HIM FOR SPECIAL EDUCATION FROM AUGUST 7, 2023 THROUGH APRIL 17, 2024?

Student's complaint alleges when Student entered Hillcrest in June 2022, he had a 1.4 grade point average, and his prior school district had recommended special

education assessments. Student also alleges he had a long school discipline record both before and after entering Hillcrest. Student asserts all these things were clear indications he might require special education services. Student asserts that during this same period, his juvenile case defense attorney requested a competency evaluation that resulted in a finding by January 2024 that Student had a neurodevelopmental disorder and was incompetent to stand trial. Student contends San Mateo's staff should have noticed these deficits and referred Student for assessments prior to Parent's request for a special education evaluation in Fall 2023. Student argues the failure to refer him for an evaluation for special education was a violation of San Mateo's child find obligations, resulting in a lengthy delay in Student being assessed, and deprived Student special education services. On the first day of hearing, Student clarified that his contention in Issue 1A, is that Student should have been assessed for special education eligibility before San Mateo conducted its Spring 2024 assessment.

In his closing brief, Student argues San Mateo failed to assess Student for special education until Spring 2024 at the request of Student's parents. Student contends that by at least August 7, 2023, San Mateo should have assessed Student based on his teachers' observations of his behaviors and his standardized test scores. Student argues his teachers noticed he struggled with pronunciation, enunciation, sounding out words, and reading, and that these symptoms were consistent with challenges which characterize a specific learning disability.

Relying on his expert's testimony, Student also argues his standardized test scores were consistent with symptoms of a disability and should have been cause for concern, in that the results showed below grade level work and did not reflect grade level mastery. He contends his teachers should have noticed Student had a disability by the Fall of 2023. Student asserts that the testimony of both his geometry teacher and

his paraeducator underscores that San Mateo had a duty to earlier assess Student because what they observed was consistent with a learning disability, which is a lifelong condition. Student asserts the paraeducator had concrete suspicions Student had a learning disability when she later started working with Student more regularly. Student also asserts San Mateo's later assessment in Spring 2024, and the assessment of the independent evaluator in 2025, demonstrates San Mateo should have been on notice of Student's symptoms of disability at an earlier time. He argues Student's scores were consistent with Hillcrest educators' observations regarding his struggles with vocabulary, concept retention and sounding out words, indicating San Mateo should have known of Student's symptoms of disability during the child find period at issue.

Student contends San Mateo should have known about a prior school district's Student Study Team meeting and offer to assess Student for special education, but San Mateo failed to request Student's prior school records upon his enrollment to Hillcrest. Student argues San Mateo's failure to request Student's educational records from his previous school district violated the law and prevented it from earlier identifying and assessing Student for special education. Student argues neither his grades nor the subjective observations of his educators relieved San Mateo of its responsibility to assess Student. Student asserts Student's grades were inflated because they improperly relied on factors other than his relevant academic and cognitive skills including measures of collaborative academic work with educators, and warranted minimal, if any, reliance on the decision not to assess Student prior to April 17, 2024. Student contends the staff's speculation that Student's struggles resulted from acculturation, or his English language proficiency, were insufficient to dispel the suspicion of a disability during the child find period. Student asserts San

Mateo's failure to earlier assess Student resulted in a loss of educational opportunity because he never received special education services and significantly infringed on Parents' participation rights.

San Mateo alleges in its response to the complaint that it satisfied its child find obligations. It contends a Student Study Team process was initiated in November 2022, following teacher concerns about poor grades, behavior issues, and physical fights, but Parents declined to participate in the originally scheduled meeting. San Mateo argues that child find obligations are evaluated based on what was reasonably suspected educationally at the time, not by defense-retained forensic opinions. It argues that a competency evaluation does not address special education eligibility.

In its closing brief, San Mateo argues Student failed to meet his burden of proof. San Mateo contends Student presented no observable behaviors or academic deficits distinguishable from his limited English proficiency, their expert lacked firsthand knowledge of Student's presentation during the relevant period, and Student failed to produce prior school records or evaluations that would have triggered earlier suspicion. It contends when Student arrived at Hillcrest in June 2022, he had a thick accent and informed teachers and staff he had immigrated to the United States and was classified as an English-language learner. San Mateo argues that at Hillcrest, Student thrived in the structured environment, and he experienced a newly found ability to learn and enjoy school. San Mateo asserts Student attended school consistently, participated actively, and earned his good grades. It contends Student's teachers uniformly described him as intelligent, motivated, and engaged, and nothing about Student's performance or behavior at Hillcrest triggered a duty to refer him for special education. San Mateo

argues that prior to Fall of 2023, Student got along with his peers and nothing about his behavior or academic performance at Hillcrest should have given rise to a suspicion of a disability prior to the Fall 2023 referral.

San Mateo also argues Student's expert, Dr. Ana DiRago, was not credible when she claimed that Student's verbal deficits should have been apparent to those who worked with him in June 2022. It asserts expert DiRago never spoke to Student and failed to explain how Student's deficits would have been distinguishable from his accent or limited English proficiency. It also claims that to the extent Student's expert based her opinion on the results of the 2025 independent assessment oral language scores, they were insufficient to form the basis of a credible opinion of Student's presentation with respect to his verbal abilities one or two years prior, considering his limited English proficiency. It argues that the fact that DiRago believed she could render such an opinion about the past undermined her credibility, particularly when she never interacted with Student. San Mateo asserts that DiRago's January 2025 report and correspondence further undermine her credibility because they demonstrate she predetermined her opinion and she provided an unequivocal opinion based only on reviewing two other reports having never met Student, Parents or talking to his teachers, which was at odds with both the findings of San Mateo's 2024 psychoeducational evaluation and the 2025 independent educational assessment.

San Mateo also contends it had no reason to suspect Student had a disability based on his previous school records. It argues Student presented no evidence of any special education referral or Student Study Team meeting prior to Student's enrollment at Hillcrest in June 2022. It asserts that apart from Student's ninth grade transcript from a prior school district, Student offered no explanation for their failure to proffer

Student's prior school records as evidence. San Mateo claims Student's failing grades from ninth grade were insufficient to trigger a child find obligation even assuming San Mateo had them. It argues Student offered no support for his claim that San Mateo's failure to obtain Student's entire cumulative file contributed to a child find violation, and that San Mateo was not required to obtain Student's pupil record because the authorities relied upon by Student do not apply to juvenile delinquents. It asserts that the applicable authority did not require San Mateo to obtain Student's permanent record, which is in conformity with the practical realities faced by juvenile court schools. It argues those realities include that the average stay for a youth in juvenile detention is 15 days, and often shorter, thus, providing insufficient time to obtain the file, and that the juvenile school staff frequently do not know at any given time when a student will be released from detention.

San Mateo contends even if it was required to obtain Student's cumulative record and even if there had been a record of a Student Study Team meeting or special education referral, those records alone would not have triggered San Mateo's child find obligation, given the alternative education setting at Hillcrest, including its small-structured program and embedded supports. It argues there was evidence that before coming to Hillcrest in June 2022, Student had been using marijuana daily since eighth grade and his school attendance in ninth grade was inconsistent before he stopped attending school in April 2022 of that school year. San Mateo argues as compared to a traditional school setting, school attendance and abstaining from drug use was mandatory at Hillcrest. San Mateo asserts Student succeeded at Hillcrest and did not present with any impairments distinguishable from his presentation as an English

language learner, and Student presented no credible evidence to the contrary. It contends there was no basis for a special education assessment referral prior to Parent's request in Fall 2023.

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

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

The responsible public agencies have an affirmative, ongoing duty to actively and systematically seek out, identify, locate, and evaluate all children with disabilities residing within their boundaries who may need special education and related services, including children not enrolled in public school programs. (20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a); Ed. Code, §§ 56300, 56301.) This ongoing duty to seek and serve children with disabilities is referred to as "child find." (34 C.F.R. § 300.111.) California law specifically incorporates child find in Education Code section 56301.

Because a public agency's child find obligation is an affirmative one, a parent is not required to request that a public agency identify and evaluate a child. (20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(1); Ed. Code, § 56300 et seq.) Title 34 Code of Federal Regulations part 300.33 states that a public agency includes the state educational agency, local educational agencies, educational service agencies, certain nonprofit public charter schools, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. A "public agency" is defined as "a school district, county office of education, special education local plan area, ... or any other public agency ... providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

Children with exceptional needs who are placed in a juvenile hall or a county community school that qualify for special education are entitled to a FAPE. (Ed. Code, § 56150.) Juvenile court schools provide educational services to all students "detained" in juvenile halls. (Ed. Code, § 48645.1.) Regardless of the residence of the parents of such children, the responsibility for providing a FAPE to any student who is detained in juvenile hall rests with the local county board of education. Specifically, Education Code, section 48645.2 provides that a county board of education shall administer and operate juvenile court schools, or contract out their operation to the respective elementary, high school, or unified school district in which the juvenile court school is located. Title 20 United States Code section 1415(k)(6)(A) provides that the IDEA does not "prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability."

A public agency's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability and reason to suspect that

special education services may be needed to address that disability. (*Department of Education, State of Hawaii v. Cari Rae S.* (D.Hawaii 2001) 158 F.Supp.2d 1190, 1194 (*Cari Rae S.*)) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A disability is “suspected,” and a child must be assessed, when the public agency is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1109 (*Timothy O.*)) Such notice may come in the form of concerns expressed by parents about a child’s symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child’s behavior. (*Id.* at p. 1120 [citing *Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796 and *N.B. v. Hellgate Elementary School Dist., ex rel. Board of Directors, Missoula County, Mont.* (9th Cir. 2008) 541 F.3d 1202].)

A public agency’s appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Timothy O., supra*, 822 F.3d at p. 1109; see *Cari Rae S., supra*, 158 F.Supp.2d at p. 1195.) The actions of a public agency with respect to whether it had knowledge of, or reason to suspect a disability, must be evaluated in light of information that the public agency knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) After-acquired evidence “may shed light” on the objective reasonableness of a school district’s actions at the time the school district rendered its decision. (*E.M. ex rel. E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2011) 652 F.3d 999, 1004, citing *Adams, supra*, 195 F.3d at p. 1149)

Child find does not guarantee eligibility for special education and related services under the IDEA. It is merely a locating and screening process that is used to identify those children who are potentially in need of special education and related services. Once a child is identified as potentially needing specialized instruction and services, the public agency must conduct an initial evaluation to determine the child's eligibility for special education. (34 C.F.R § 300.301; Ed. Code, § 56302.1.) The term "assessment" used in the California Education Code has the same meaning as the term evaluation in the IDEA. (Ed. Code, § 56302.5.)

When a student is referred for special education assessment, the public agency must provide the parent with a proposed written assessment plan within 15 days of the referral, not counting days between the pupil's regular school sessions or terms or days of school vacation in excess of five school days from the date of receipt of the referral. (Ed. Code, § 56321, subd. (a).) The parent has at least 15 days to consent in writing to the proposed assessment. (Ed. Code, § 56321, subd. (c)(4).) The public agency has 60 days from the date it receives the parent's written consent, excluding days between the pupil's regular school sessions or terms or days of school vacation in excess of five school days, to complete the assessments and develop an initial IEP, unless the parent agrees in writing to an extension. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f), 56302.1, subd. (a), 56344, subd. (a).) In the case of an initial IEP, the meeting to develop an initial IEP shall be conducted within 30 days of a determination that the pupil needs special education and related services. (Ed. Code, § 56344, subd. (a).)

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Referral for assessment means any written request for assessment to identify an individual with exceptional needs made by a parent, among others. (Ed. Code, § 56029, subd. (a).) All referrals for special education and related services shall initiate the assessment process and shall be documented. (Cal. Code Regs, tit. 5, § 3021, subd. (a).)

A public agency's failure to assess a child may constitute a procedural violation of the IDEA. (*D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F.3d 233, 249; see also *Park v. Anaheim Union High School Dist., et. al.* (9th Cir. 2006) 464 F.3d 1025, 1032 [A failure to properly assess is a procedural violation of the IDEA.]) A procedural violation results in a FAPE denial only if it impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subds. (f)(2) & (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23, Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1483-1484, *superseded in part by statute on other grounds.*)

STUDENT'S ENROLLMENT AT HILLCREST

Student was initially enrolled at Hillcrest on June 21, 2022, at the end of his ninth-grade school year. San Mateo was the public agency responsible for providing Student educational services while he was at Youth Services Center. Probation was responsible for the security at the Youth Services Center, and determined the number of classrooms, the classroom groupings, and the size of the classrooms. For safety purposes, including concerns with students' gang affiliations, Probation also determined whether certain students needed to be segregated from other students and receive their educational services on an individual basis. Depending on the students' involvement in

the juvenile court cases, gang affiliations, no contact orders, or other incidents that occurred at the Youth Services Center, Probation grouped and regrouped students based on these concerns, to prevent certain students from encountering other specific students.

The number and the ages of the prisoners incarcerated at the Youth Services Center was fluid and could change from day to day, but included students ranging from seventh to 12th graders, as well as adults who had already graduated from high school. The seventh through 12th graders received their educational services through Hillcrest, and adult prisoners who already graduated from high school had the opportunity to take online college courses from the local colleges. The Hillcrest students were generally segregated from the older prisoners. The length of stay for all those incarcerated at the Youth Services Center varied from just days to years, depending on the youth involved and their individual criminal cases. For example, some youth might be incarcerated pending arraignment, awaiting trial, pending sentencing or for other reasons.

California Code of Code of Regulations, title 15, section 1370, subdivision (e) required all incarcerated youth to be immediately enrolled in school and for educational staff to evaluate and determine the youth's general academic functioning levels to enable placement in core curriculum courses. After admission to the facility, a preliminary education plan had to be developed for each youth within five days. (Cal. Code Regs., tit. 15, § 1370, subd. (e)(3).) Upon enrollment, education staff were required to request a youth's records from the student's prior school, including but not limited to

- transcripts,
- IEPs,

- 504 Plans,
- state language assessment scores,
- immunization records,
- exit grades, and
- partial credits.

(Cal. Code Regs., tit. 15, § 1370, subd. (e)(4).) The County Superintendent of Schools had to provide appropriate credit, full or partial, for course work completed while in juvenile court school in accordance with the Education Code. (Cal. Code Regs., tit. 15, § 1370, subd. (f)(2).)

Hillcrest's general practice upon a student's enrollment at Hillcrest, was to have its data specialist look in a statewide database that listed every school in California in which the student had been enrolled. Hillcrest also had a practice of requesting each student's academic transcript from the prior local educational agency, which was then reviewed by Hillcrest administration and the academic counselor to determine the courses the student needed to graduate from high school. Hillcrest also searched the Special Education Information System, which was a database of all students with IEPs, including all students whose parents had provided their local educational agency with a signed assessment plan consenting to assessment of their child for special education. The Special Education Information System did not include students who were referred for an initial assessment but whose parents had declined assessment.

In June 2022, when Student entered Hillcrest, San Mateo also had a practice of assessing students in reading and math through the MAP Growth Assessment and the MyPath Learning Assessment, further discussed below. Taking the information found

regarding each student and looking at the student's needs across academic, behavioral and social emotional domains, San Mateo's practice was to have the academic counselor develop a learning plan for each new student enrolled at Hillcrest. Periodically, the academic counselor met with each student, and the individual learning plans were modified as needed. As part of its general practice, Hillcrest did not request a student's cumulative file from the students' previous school districts, unless it believed there was a need to request it.

Student was not listed in the Special Education Information System at time of his enrollment at Hillcrest. As of that time, Parents had never signed an assessment plan to have Student assessed, Student was not a special education student, and he did not have an IEP. Hillcrest never requested Student's cumulative pupil records from any prior school district. There was no evidence establishing whether Student's academic transcript was reviewed by his academic counselor or whether a learning plan was developed upon his enrollment at Hillcrest. Student's academic counselor did not testify.

STUDENT'S NINTH-GRADE TRANSCRIPT FROM HIS PRIOR SCHOOL DISTRICT

Student's ninth grade transcript from his prior school district only had grades for "Term 2" of the 2021-2022 school year. The transcript stated Student had a 1.429 cumulative grade point average.

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Student had a B in a course titled "English 1 Supp," and C's in courses titled "English 1-P," and "Algebra 1-P". He had a C+ in "Drama 1-P," and a D- in a course called "Advisory 9th Grade." Student had F's in Physics-P and in a course reflected on his transcript as "Race Immig & Ethn in the US-P."

Student had a total of 25 credits. Any grade above an F was a passing grade. The courses with a "-P" in the title were "college prep" classes for University of California and California State University colleges.

STUDENT'S PERFORMANCE AT HILLCREST PRIOR TO HILLCREST'S NOVEMBER 2023 RECEIPT OF PARENTS' REQUEST FOR ASSESSMENT

Beginning in June 2022 through at least November 2023, Student received his instruction in a regular classroom at Hillcrest with other students spanning a range of ages and grade levels. The size of the classroom varied but generally ranged from about 10 to 18 students. Three of the teachers assigned to provide instruction to Student during the period between June 2022 and December 2023, testified at hearing, namely Julie Naested, John Bordagaray, and Courtney Parreira.

ENGLISH IN TEACHER NAESTED'S CLASSROOM

Naested was Student's English teacher during a ninth-grade summer session, and in 10th, 11th and 12th grades. Naested was a credentialed general education teacher for over 20 years. She taught at Hillcrest for seven years, primarily English, as well as study skills, history, and social studies for grades seven through 12. She held a master's degree in English literature/liberal studies, a bachelor's degree in English and education, and had a certificate which allowed her to teach English to students whose native language was not English. Prior to her employment at Hillcrest, she worked for the

San Diego County Office of Education for three years as a multiple subject teacher in its court and community schools. Prior to that, between 2003 and 2014, she worked at various California school districts as an English teacher. At the time of the hearing, she was 15 units short of earning her special education credential.

When students entered her class, Naested made a point of connecting with them to find out about them. Hillcrest provided her a list of students who had IEPs and those who were English language learners. Student was an English language learner. At hearing, Naested explained based on experience when students first arrived at Hillcrest, they were typically traumatized by the fact they were now incarcerated, so she engaged students in schoolwork to get some sense of their abilities and make them feel comfortable. She typically tried to get students to write because she believed it was a private form of expression.

Naested's English classes met five days a week for about an hour. She gave the students a writing prompt every day with expectations for the writing. She front-loaded the vocabulary and academic language before the reading portion of the class. She also had students orally share their writing and engage in classroom discussion. There were students in her classroom in different grades and English courses. She aligned all the work to the required California common core standards which applied to each student for the course they were taking. She instructed and required coursework back from students based on the common core bands of standards that applied to them. She gave students classroom work, tests, and quizzes.

She aligned her grading with the required common core standards. She used a point system in her grading and focused her grading on what she called mastery effort outcomes. She explained this as – did the student demonstrate that he could do the

work evidenced by the work they submitted, did they complete the work and did they show competency in doing the work. She assigned a maximum number of points a student could receive on each assignment. Students could earn maximum points, partial points or no points. She gave maximum points with the following things in mind – mastery, outcome, completion and competency – which she boiled down to completing the assignment and completing it to the expected standard demonstrating competency. She did not base grades on the student’s behavior or how she felt about the student.

Naested kept a gradebook, did daily grading, and provided daily feedback to students. She explained that because it was not known when a student might suddenly be released from custody, grading could not wait until the end of the quarter. She allowed students to resubmit an assignment if the work did not demonstrate their best effort or they had a bad week. However, she did not allow students to redo a quiz or a test unless they had a legitimate excuse. At hearing, she characterized herself as not a lenient grader. Students were given points for each of the assignments, quizzes, and tests, and then she converted the points to the corresponding grade earned based on the total number of points achieved by the student.

When Naested first met Student, she did not know his educational history, so she asked him about himself. He told her he was from another country, that he came to this country when he was eight or nine years old, and indicated he was socioeconomically challenged. He told her he was in ninth grade and English was his second language. To Naested, he appeared very nervous, as was typical of new students. He had some struggles at first, but Naested observed it did not take Student long to adjust to the classroom. He was new at Hillcrest and Naested believed Student had to adjust to being confined. He was one of the younger students at the time and she believed he

was trying to fit in. She was impressed with Student's skill level in reading and thought he had strong skills in English, keeping in mind he was an English language learner and as compared to other English language learners at Hillcrest. It was apparent English was Student's second language. In Naested's opinion, Student could write and read at grade level, and he was very verbal, but his weakness was in enunciation. She made this initial determination based on her conversations with him and review of his work product.

The classroom sizes were small enough so that Naested could engage with the students individually. Naested thought Student was bright and funny, so she liked him. She observed Student enjoyed engaging and challenging people and ideas when students shared their writing in class. He loved physical education, was a natural athlete, and was very competitive. She described Student as having a "smart brain," and "naturally smart." She observed that he questioned things said during class and appeared to really think about things. She thought he was able to respond "pretty well" in writing and sometimes got lazy or angry when she pushed him. She noticed what she called his intellectual and good thinking abilities. In open discussions about the reading the class was doing, Student was able to express his opinions. He frequently read aloud in addition to doing the required daily writing. Naested opined that Student was able to comprehend what he read in her class.

At hearing, Naested denied Student struggled in class and called him one of the "brightest kids" at Hillcrest. According to Naested, Student did not want to be thought of as lazy or stupid. He worked on group projects, and in her opinion, he enjoyed working in groups more than doing individual work. She observed that Student was socially more comfortable than most of the other students. He was supportive of other students but occasionally had conflicts. Naested recalled that he occasionally had issues with some of the other students and her classroom had assigned seating, so she placed

him toward the front of her classroom. According to Naested, Student did the required daily writing, required coursework and met the deadlines. She saw his academic abilities grow over time.

Naested never suspected that Student might have a learning disability. At hearing, she explained that being an immigrant herself, she believed any difficulties Student had were related to his acculturation, being an English language learner and his socioeconomic circumstances. She opined that his difficulties in pronouncing words had to do with him being an English language learner and lacking instruction in reading aloud. Naested did not suspect his issues with enunciation had to do with him having a deficit that might make him eligible for special education.

SOCIAL STUDIES WITH TEACHER BORDAGARAY

Bordagaray has been a credentialed general education teacher for over 40 years, 37 years at Hillcrest where he taught

- social studies,
- history,
- government,
- economics,
- physical education,
- credit recovery, and
- English.

He held a bachelor's degree in history and a certificate signifying he was trained to teach English language learners. Bordagaray was Student's physical education teacher during the 2022 summer session of his ninth-grade year, and his social studies teacher during the 10th, 11th and 12th grades.

Bordagaray used approved textbooks and supplemental materials in his social studies classes. There were about 15 students in a class. He taught five periods a day and he had one period for preparation. For each class he taught a student, he met with them once a day, five days a week. In each class there were students ranging in age or grade level with mixed skill levels, but each student was responsible for the subject they were taking. He used a textbook for each course, sometimes more than one textbook, which were grade level specific and tied to the California common core standards. Students were assigned chapters from the book and he created folders for each of his students with the coursework. Each chapter and supplemental materials had questions to answer. He also gave quizzes, midterms and final tests.

Bordagaray used a point system for grading students' daily work, and students lost points for incorrect answers. Final and midterms were worth more points than the daily work, but about 70 percent of the final grade for the quarter was based on the daily work and 30 percent of the grade was based on the points earned on finals and midterms. He entered the students' daily points into a gradebook every day, and the total number of points corresponded to a particular letter grade for the class. He required students to read, and they went to the library once a week. For approved books, students could earn book report points. Students were required to make up work when they were absent, such as when they were required to go to court or had medical appointments. Bordagaray thought many of the students who entered Hillcrest

had missed a lot of school and had been on drugs, but at Hillcrest, he observed that they sobered up and often “blossomed.” He observed that after a few days at Hillcrest, the students started trying to do well.

When he first began teaching Student, Bordagaray did not see Student’s transcript and was unaware of his educational history. Bordagaray spoke to Student about his background. Student told him that he had been doing a lot of drugs and had not been behaving properly. Student had a thick accent and Bordagaray noticed his enunciation when he spoke and attributed it to Student being from another country.

At hearing, Bordagaray described Student’s performance in the classes he taught him. For ninth grade physical education, he described Student as a “fantastic,” “excellent” athlete. In 10th-grade world history during the 2022-2023 school year, Bordagaray described Student as “so good,” and an “excellent student on everything.” Bordagaray thought Student had an excellent memory and was impressed that Student learned every country and its capital in the world. Bordagaray had Student read aloud to the class and thought Student was an excellent reader. Student’s enunciation was different because of his deep accent. Bordagaray thought Student “outshined” the whole class. He described Student’s work as “clear, correct, and on time.” He described Student as “remarkably bright,” and recalled Student did his work, it was always correct, he gave great oral presentations and was excellent at debate. According to Bordagaray, Student was able to work on the group “pod” projects and Bordagaray recalled that Student was everyone’s favorite pupil. Other students wanted him in their groups. Bordagaray recalled that other students in the classroom tried to copy Student’s work, so Bordagaray had to take steps to prevent that. Student did well and he got along with his peers. Bordagaray believed that Student did well because he was required to attend school at Hillcrest, and was “made to do well.”

Bordagaray also taught Student U.S. History in all four quarters of 11th grade. While Student was in the regular classroom through November 2023, he was engaged in class activities. Student memorized the United States presidents by their full names, chronologically, both forward and backward. Bordagaray could only recall one other student being able to do that. Bordagaray testified that for the first two years at Hillcrest, Student was “very, very good, very respectful,” and a good student. He stayed on task and was “just a regular kid.” He believed Student comprehended what he read. Sometimes Student did not know what particular words meant and he asked Bordagaray for help. He estimated that when Student began 10th grade at Hillcrest, he was reading at a fifth grade reading level, but his reading improved over time. He did better than his peers across the board and he observed that Student was able to access the curriculum. Bordagaray never suspected Student had a learning disability.

CREDIT RECOVERY COURSES WITH COURTNEY PARREIRA

Courtney Parreira was a teacher on special assignment, titled Student Support, for San Mateo’s court and community programs, since January 2023. She was the credit recovery teacher for all three court and community programs, including Hillcrest. She held a bachelor’s degree in administration of justice and a teaching credential in English. Prior to her employment at San Mateo, she worked as an English language arts middle school teacher for four years beginning in 2007, and then a high school English 9 and English development teacher for a year. She worked at an alternative education program for 10 years as a teacher for English, prelaw and health classes, and as an academic counselor and a career and post-secondary counselor.

At San Mateo, a teacher on special assignment was a broad teaching assignment that allowed Parreira to support programming and students any way necessary. Parreira ran the credit recovery program at Hillcrest. Credit recovery offered students the opportunity to recover credits in courses they may have previously failed or needed to graduate from high school. Credit recovery was individualized to the student. Typically, students were given credit recovery work to do in addition to a regular full caseload or courses. Students were expected to work on their credit recovery on their own, in their room or at school. They could obtain assistance from Parreira, other teachers or the paraeducator. Parreira was Student's teacher for some of the credit recovery classes he was assigned at Hillcrest.

At Hillcrest, credit recovery was mostly paper based because the computer system at Hillcrest could be shut down at any time. Typically, students were given a packet which contained a unit of study out of a textbook that had been copied and organized, along with an assignment. Parreira sent an agenda with the materials that instructed the students which questions to answer and what to focus on. Parreira did her best to organize the work in a way that allowed the students to access the work independently, appreciating that they were not necessarily in a typical classroom setting when they were doing the credit recovery work. When credit recovery was delivered by computer, she used a San Mateo board-adopted online curriculum. She selected the courses the student needed to complete and uploaded it to the student's online account for them to complete. The credit recovery curriculum was approved by the San Mateo Board of Education, and all the work Parreira assigned was aligned to the California common core standards.

Parreira's practice was to have an initial meeting with each student to make sure they could access the curriculum. She did not provide traditional direct instruction, but was there to provide support, particularly if she believed the curriculum was lacking in fullness. She had students watch videos online or provided other materials to support students' comprehension. Her practice was to check in with students once a week to support them on credit recovery up until 2025, when, because of her workload, she could not check in with students as often; but, she checked in with them at least once every two weeks. Other staff members also checked in with the students to support them on their credit recovery work. The work was self-paced. When students submitted a unit of work and received a passing grade on that work, she assigned the next unit of work.

Parreira assigned grades to students based on how well they responded to the questions. Parreira evaluated student work and assigned a grade depending on the assigned work. There were some forms of assessment or tests sprinkled through online or paper-based work. The tests were not proctored. Tests and midterms were not weighed more heavily than the assignments. A test might have more impact on a grade than an assignment because it was a larger task. She also kept in mind that students were working independently so she did not expect perfection. If a student was working hard on a somewhat tougher concept they "got close to," she gave them the benefit of the doubt because they did not have her there to help them or have a teacher in the room. She took into consideration many things, including whether the student was an English language learner, whether they had a 504 plan or an IEP, whether school at Hillcrest was the first time they were regularly going to school. As an example, if a student was asked to write an essay, but only wrote three or four paragraphs, she would not necessarily give them an F, but a C, if it had been a long time since they

had attended school and had not developed the skills to write an essay. She took her students' effort into consideration. She had no formal rubric for grading. Grades were based on the raw score on the assignment, and then if there were extenuating circumstances impacting the raw score, she would "cushion" that grade "a bit."

Parreira first met Student sometime in the first or second month of 2023, the third quarter of his 10th-grade year. Student shared his background with Parreira, including that he had immigrated to the United States and was an English language learner. Student was assigned to Parreira for English 9 credit recovery and physical education credit recovery. Student received a "NC" for English 9 credit recovery, and a "NM" for Physical Education credit recovery. At that time, Parreira explained that for her classes, the no credit, or "NC," mark impacted Student's grade point average, but a no mark, or "NM," did not. A "NC" in her class meant Student was assigned the work but did not do it, thus, Student attempted 2.50 English 9 credit recovery credits in the third quarter of his tenth-grade year, but he received zero credits. In contrast, a "NM" in her class meant there were circumstances which were not Student's fault which prevented him from completing the course, so although he received no credits for Physical Education credit recovery, he was not penalized for attempting that course.

Parreira could not recall exactly the circumstances for Student's "NC" in English 9 that third quarter. She believed she had assigned Student credit recovery work, but Student was more interested in socializing than in doing credit recovery during his down time. She gave him no credit because she received no work from him. She explained that this was common behavior for sophomores and juniors, and throughout the alternative education spaces. She stated that Student was enrolled at the same time in an English 10 in-person class, so it was more engaging, whereas time doing credit recovery lent itself to Student socializing instead of doing the work. Parreira did not

recall the reasons why Student received a "NM" in Physical Education the third quarter of tenth grade. Later in her testimony she surmised it was her fault Student did not attempt that class because there was some kind of misunderstanding and she did not provide Student with the materials he needed.

For the fourth quarter of his 10th-grade year, Student was assigned to Parreira's English 9 credit recovery course. Student got a "NM" in that class. Parreira did not teach during the summer of 2023. During the first two quarters of the 2023-2024 school year, Student's 11th grade year, he was assigned to English 9 credit recovery, earning .50 units the first quarter and 2.50 units the second quarter. The evidence was conflicting as to which teacher taught these courses, because both Naested and Parreira claimed they taught those courses and the evidence was unclear on this point.

Parreira did not provide daily direct instruction to Student. During the period through at least November 2023, Parreira checked in on Student once a week. During a Study Skills class, she also "popped" by on a weekly basis to assign work and collect work and check in on students. Some students were doing credit recovery in packets, some were doing work out of textbooks, and some were using the online curriculum on the computers. When she saw Student, he was playful and got along with his peers.

Parreira had no understanding as to the grade level Student was working when he was first assigned to her classes, because it was not until later that she received work from him. Based on her review of Student's later submitted work, she believed there were "maybe gaps in education," pointing to his penmanship or handwriting which she called "on the messier side." She did not notice any other areas of need. Parreira explained this was common in the service of impacted youth. Based on her years of working in the alternative education setting, she testified that if students had been out

of school or not practicing their handwriting, their handwriting tended to be printed and sloppier. Later, Parreira testified that the gaps in education she noticed also referred to Student not completing his work, which seemed to refer to her earlier testimony regarding Student's "NC" mark in English 9 during the third quarter of his 10th-grade year, discussed above. She also claimed she did not have a lot of interaction with Student so she could not recall what the gaps there were.

For the classes Parreira taught and gave Student regular letter grades, she thought his grades reflected his academic abilities. She described him as a very bright young man, very thoughtful, very intellectual and deep. He asked clarifying questions and inquired about aspects of his studies or concepts he was learning. She thought he was a good writer, and she could "hear his voice" in his writing. She considered his efforts in evaluating Student. She considered work completion but explained there were a certain number of units students had to complete to earn a certain number of credits. Parreira never suspected Student of having learning disability because when he submitted work, "it was good work." She further explained that Student showed comprehension of the concepts because he was able to complete the work. She did not see him struggle with assigned work and heard from other teachers that he was a good student.

MAPP AND MYPATH TESTING

Up until the 2023-2024 school year, Hillcrest had a practice of administering the MAP Growth Assessment and the MyPath Learning Assessment to students twice a year. Hillcrest administered these assessments to Student when he entered Hillcrest, and when he was in the 10th and 11th grades. MAP and MyPath were related. MyPath was designed to provide instruction based on a student's performance on the MAP and

MyPath scores. MAP was a computer adaptive assessment which meant it adjusted the difficulty of the questions based on the test-takers performance and was administered to determine a student's level of progress, and the scores were not tied to a grade level. It produced scaled scores. It was used by some schools across the nation.

MyPath had two components, a computerized teaching program and an assessment. The MyPath learning program created an individualized learning program based on the scores on the MAP and MyPath. As part of the learning program there were different tests to measure progress. The MyPath assessment produced MyPath scores which were percentages of the answers a student got correct. It was used by some schools across the nation but was not normed. According to the publisher's manual, the MyPath assessment was not supposed to be administered to a student unless the student also received some instruction by MyPath. Hillcrest never used the MyPath curriculum, and only administered the MyPath assessment.

Student received numeric test scores, but those scores required interpretation to understand their meaning. The evidence at hearing was conflicting on this point. The MyPath Learning assessment was administered to Student on June 28, 2022, for math placement, and on June 29, 2022 for reading placement. The MyPath Learning Assessment was also administered on August 22, 2022, for math and reading placement. The MAP assessment was administered on August 24, 2022, for mathematics and on August 25, 2022, for reading.

The MAP assessment for mathematics was readministered on March 23, 2023, and a MAP Screening was done for reading on March 24, 2023.

The MyPath assessment for math placement was readministered on August 24, 2023, and for reading placement was readministered on September 7, 2023. On April 24, 2024, another MyPath math placement assessment was administered to Student.

Between June 2022 and September 2023, Student's reading raw score on MyPath and the percentage of questions he answered correctly more than doubled. Between June 2022 and August 2023, Student's math raw score on MyPath increased by four points, and the percentage of questions he answered correctly increased by 9.1 percent. On MAP, between August 2022 and March 2023, Student's scaled score in reading went from a 203 to a 207. Student's scaled MAP math score between August 2022 and March 2023, remained at 207.

Executive Director of Educational Innovation Sarah Notch had been employed at San Mateo since 2019, holding various titles and duties. Her most recent duties included oversight of all school programs, including special education services for students with extensive support needs and for the past three or four years, court and community schools, including Hillcrest. Prior to working for San Mateo, she worked as a special education teacher, an autism specialist, a behavior specialist and then transitioned into administration, working as a coordinator of special education, and as a director of special education. She held a bachelor's degree in special education and elementary education, and a master's degree in special education administration. She held administrative and special education credentials. She was a state board appointee for a California Department of Education advisory commission on special education for five years.

Notch was involved in San Mateo's strategic planning process with a variety of team members with different areas of expertise and was also involved with a commission on delinquency prevention. Based on the work with the commission, including a data study, and the strategic planning process, San Mateo determined that the MAP and MyPath assessments were not the right instruments for use at Hillcrest, and began phasing out its usage in 2023, and focused instead on a variety of curriculum-based assessments with data review cycles. Notch explained that during the strategic planning process San Mateo did a "deep dive" regarding the MyPath and MAP assessments and learned about the limitations of the MAP testing. MyPath went out of business and no longer existed, as of September 2025.

According to Notch, Hillcrest administration learned through their strategic planning process that the MAP and MyPath assessments were not sensitive enough instruments to provide the necessary information for its incarcerated student population. She explained at hearing that the assessments had flaws, including but not limited to, a very broad standard deviation which meant a score spanned multiple grade levels. For example, a score of 203 on MAP could range from three or four grade levels below and above the mean. Thus, Hillcrest could not pinpoint a score to a particular grade level because there was so much overlap. At most, even assuming the students tried their best on the assessments, the tests gave a broad range of the level at which the student was performing, as compared to more targeted assessments. San Mateo did not believe the assessment provided valuable information that allowed for adjustment of instruction on an ongoing basis.

Notch testified that through the strategic planning process, San Mateo learned about other problems with the MAP and MyPath tests. While the tests could provide comparative data, most students' stays were too short for comparative data to be

obtained. Notch also explained that the most expected average yearly growth on one of the tests was only two points; thus, the margin was too slim to be useful, and it was unclear what growth greater than two points meant. In addition, the assessments were not normed for English language learners, which were disproportionately higher in number at Hillcrest, and were not widely used assessments in court school settings. The strategic planning committee concluded that student engagement was usually greater on daily classwork, than on computer adaptive tests which were discouraging for Hillcrest students who typically completed these types of assessments quickly. Based upon her involvement with the strategic planning process and work with the commission, Notch opined that MAP testing could only determine if a student was responding to instruction; however, there were too many barriers to this data being valid and reliable for a court school population. As a result of the work done as part of the San Mateo strategic planning process, Hillcrest declined to continue to rely on these assessments even before it stopped administering the tests.

Notch explained that the data showed Student was making progress beyond what was expected for students his age and he was responding to the instruction he received, pointing to Student's August 25, 2022 MAP reading scale score of 203 as compared to his March 24, 2023 score of 207, which was twice the amount of expected growth within a year for a student. But, she also said it was hard to know if the growth was due to him positively responding to the instruction or that he did not do his best on the first assessment. She explained there were a lot of variables, which is why Hillcrest relied more heavily on the day-to-day classroom data.

Student's expert, DiRago, offered a different opinion on the MyPath and MAP assessments. DiRago was a psychologist licensed in California and held a doctorate in clinical psychology since 2012. She had her own private practice doing assessments

since 2018 and was employed by Stanford University School of Medicine since 2017, at first as a clinical instructor and later as a professor. She held other positions as a psychologist prior to that. She was qualified to administer psychoeducational evaluations of minors based on her education, credentials and experience. As explained in Issue 2, DiRago never conducted a psychoeducational evaluation of Student. She conducted three assessments for Student's attorneys over the years for different students, one of which was a psychoeducational evaluation.

DiRago researched the MAP and MyPath assessments after she reviewed Student's test results on those measures in November 2025. She never administered either of these assessments but read about them and "believed" she had encountered these types of tests a handful of times during evaluations she conducted of private school students. They were not tests that would be administered as part of a psychoeducational assessment.

Although DiRago asserted the MAP scores were not tied to a grade level, she went on to opine that Student's reading scores in March 2023, and his math scores in both August 2022 and March 2023 were consistent with the average performance of a student in the fifth and sixth grades. As far as progress, DiRago said Student's math score remained the same during this period of his 10th-grade year, so her interpretation was there was a lack of measurable academic growth by Student in math. DiRago acknowledged that Student's MAP scores in reading between August 2022 and March 2023 showed a four-point increase, but she claimed this was negligible growth because he was still scoring at the level of a fifth and sixth grader. She claimed that a score of 70 or 80 percent or higher on a MyPath assessment demonstrated competency

near grade level curriculum, but also that it was not a standardized test. She said Student's MyPath scores demonstrated he had not mastered skills necessary to access grade level curriculum in both reading and math when the test was given in June and August 2022, in August and September 2023, and in April 2024.

When DiRago was asked to provide possible explanations for Student's MAP scores in 10th grade, she explained that MAP was meant to assess learning progress using MyPath curriculum with supervision from a teacher. According to DiRago, MyPath was a curriculum, but she did not know how it was presented to Student. She incorrectly assumed Student's primary form of instruction at Hillcrest was MyPath, so one explanation she gave for his MAP scores was that the intervention was not delivered with sufficient intensity. She also said it could have been that he was not provided with sufficient instruction or material, or it was possible the content of the MyPath learning program was not addressing his skill set, or he required a different type of instruction than the MyPath automated intervention provided. DiRago also claimed without explanation that if MyPath curriculum was not being used by Hillcrest, her interpretation of the MAP scores would not change. She also admitted that MyPath assessments were not supposed to be administered to determine progress unless the student was receiving some instruction by MyPath.

Through a leading question by Student's counsel, she claimed that Student's MAP scores should have been a cause for concern. She claimed Student's scores were consistent with a learning disability.

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STUDENT'S PARTICIPATION IN THE NATIONAL POETRY COMPETITION

Student participated in a National Endowment of the Arts poetry competition in his 10th, 11th and 12th grade years, typically beginning in February. Students from different schools competed against each other in reading poetry out loud to an audience. Winners from different regions then competed at the state level, and the winners competed at the national level. English teacher Naested worked closely with Student to help him prepare for the contest. Students were required to select both a modern poem and an older poem, read them, and understand the vocabulary, the context, and the inference or innuendo. Student volunteered for the competition and was one of the few students from Hillcrest to compete in the poetry competition which required a lot of extra work by the students that competed. Each year, Student was able to analyze the poems and recite them in public. He never won the competition, but during his second year of competition, in February 2024, he received a "shout out" from one of the judges for doing well.

At hearing, credit recovery teacher Parreira recalled watching Student compete in the poetry competition. She saw the competition twice but could not recall the dates, estimating it was "maybe" Student's junior and senior years. As a speaker, Parreira was very impressed with Student, particularly given he was an English language learner, and competed against native English speakers. Parreira observed that Student's cadence was strong, and she thought his memorization was wonderful. His hand movements and gestures were right in time, and his voice was strong.

STUDENT'S SCORES ON THE ENGLISH LANGUAGE PROFICIENCY ASSESSMENTS FOR CALIFORNIA

Student took the Summative English Language Proficiency Assessment for California, called the ELPAC, during his 10th-grade year, and on April 19, 2024, in his 11th-grade year. The assessment was used to measure progress toward English proficiency for English language learners. The evidence did not establish exactly when Student took the assessment in 10th grade, but it was likely in April 2023. However, there was no evidence proving when Hillcrest received the results of the assessments. Students who are English language learners continued to take the ELPAC until reclassified. The ELPAC measured how well students could listen, read, write, and speak in English. Student was eligible to take this test in the ninth grade at his prior school district, but he was not tested. The evidence did not establish why Student was not assessed at that time.

Students received an overall score and a performance level. There were four performance levels. Students were expected to show improvement within the level or move to the next level each school year. The overall score was a combination of two performance areas. The results provided a measure of where students were excelling and where they could improve. The assessment results were only one measure and the written test results stated they should be combined with other information to better understand student performance.

Student's overall score on the ELPAC was at Level 2 in both 10th and 11th grades. Level 2 meant a student had somewhat developed English skills and usually needed help in using English to learn new things in school and to interact in social situations, and that the student could often use English for simple communication.

STUDENT'S GRADES AT HILLCREST

For Hillcrest's 2022 summer sessions, Student's transcript reflected he received A's in Study Skills for .50 credits, and in Physical Education, a B- in English 9, and a B+ in Algebra I.

During 10th grade, Student took English 10, Algebra I, Integrated Science 1 and 2, Study Skills, Modern World History, and Physical Education II. He also took Geometry during the fourth quarter. He received A's and B's in all these classes. An English 9 credit recovery course was listed on Student's transcript during all four quarters of the regular school year. He received a "NC" mark in English 9 credit recovery in the first and second quarters of 10th grade, which his transcript reflected he never attempted or received credits. NC meant "no credit." The circumstances of those marks were not established at hearing. In the third quarter, he received a NC in English 9 credit recovery, and his transcript reflected he attempted 2.50 credits, but received no credit. He also received a "NM" which meant "no mark," in a Physical Education credit recovery course. In the fourth quarter, he received a NM in the English 9 credit recovery class. The basis for the NMs and NC in the third and fourth quarters are explained earlier in this Decision.

Student also took two college courses in 10th grade, Keys to Success and another course the title of which was unclear from the transcript but likely was a psychology course. Hillcrest had a dual enrollment program in which high school students could receive both high school and college credits when they took college courses offered by local community colleges. The college courses were taught by the college professors

who came to Hillcrest, and the college professors determined the grades for the students in those classes, and whether they passed the courses. The transcript does not show a grade or mark for the Keys to Success course, but Student attempted three credits and received three credits. Student received a D in the college psychology course and received 10 credits. A grade of D was a passing grade. The reasons why there was no mark on the transcript for Keys to Success or the circumstances for the grade Student received in the college psychology course were not explored and established at the hearing.

During the first summer session of his 10th-grade year, Student took

- Integrated Science 2,
- Geometry,
- English 10,
- a Social Science elective,
- Study Skills and
- Physical Education II.

He received A's and B's in all these classes. He also received NMs in English 9 credit recovery and Physical Education II credit recovery, both of which he neither attempted nor received credit. The evidence was unclear why he had two Physical Education II classes listed on his transcript.

During the second summer session after his 10th-grade year, Student took

- Geometry,
- Study Skills,

- Integrated Science 2,
- an English elective,
- English 9 credit recovery,
- a Social Science elective and
- Physical Education II.

He received A's and B's in all these classes, except for a C in Geometry. He also received NM in Integrated Science 1 credit recovery and Physical Education II credit recovery, which he did not attempt or receive credit. The evidence was unclear why he had two Physical Education II classes listed on his transcript.

During the 11th grade, the 2023-2024 school year, Student took

- Geometry,
- English 9 credit recovery,
- Integrated Science 1 and 2,
- English 11,
- U.S. History,
- Study Skills,
- Physical Education II, and
- Visual Arts credit recovery.

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He received A's and B's in all his courses. Student also completed a community college U.S. History course, which the evidence established was taught and graded by the college professor. He received an A in that course, for a total of 10 units.

During the first summer session of the 2023-2024 school year, Student took

- Integrated Science 2,
- Integrated Math 2,
- Study Skills,
- an English elective,
- a Social Studies elective, and
- Physical Education II.

Student received a C in Integrated Science 2, and A's in all the other courses. During the second summer session of 2024, Student took

- Integrated Math 2,
- Study Skills,
- an English elective,
- a Social Science elective, and
- Physical Education II.

He received a B+ in Integrated Math 2, and A's in all the other courses.

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During 2024-2025 regular school year, the first quarter of Student's 12th grade year, he took

- English 12,
- Algebra II,
- Health credit recovery,
- a Physical Education elective, and
- American Government.

He received an As or Bs in these courses, except in Algebra II, he received a grade of C. He also passed his Leadership course. He received NM in Health and Economics credit recovery.

During the second quarter of Student's 12th grade year, he received a C in American Government. He received A's in Economics credit recovery and a Physical Education elective.

During the third quarter of Student's 12th grade year, he received a C+ in Economics, which gave him enough total credits to graduate with a regular high school diploma.

STUDENT'S BEHAVIOR AT HILLCREST

During spring 2023 at Hillcrest, Student received a one-day suspension for making a threatening gesture toward a peer. He committed a few infractions of Hillcrest's technology use agreement, including visiting prohibited websites, which resulted in a temporary removal of his technology access. He also had one incident of excessive talking leading to a timeout during spring 2023. On November 14, 2023, of

his 11th grade year, Student was involved in a disciplinary incident which resulted in a five-day suspension. He entered an unassigned classroom during a restroom break and physically attacked a fellow student, which led to an extended brawl among several students.

After the November 14, 2023 disciplinary incident which resulted in Student's suspension for five days, Probation moved Student from the regular general education classroom to smaller classroom at Hillcrest. This smaller classroom was called the "care class," which had less than 10 students at any given time. Student received his instruction in the care class for a short period of time. His teachers rotated into the classroom, and provided him individual one-to-one instruction, or small group instruction.

By February 8, 2024, Probation moved Student out of the care class because of conflicts he had with other students, to prevent further outbreaks of aggression among the student population. Probation moved Student to a classroom with the older high school graduates who were completing remote and asynchronous college courses, called the "computer lab." There, Student received one-to-one instruction from his teachers, who rotated into the computer lab. Student also worked on school packets in his residential unit or in the computer lab, to earn credits toward his high school diploma, called credit recovery courses. Student completed credit recovery courses by working on the packets put together by his teacher which he completed without live teacher classroom instruction, although periodically the credit recovery teacher, other teachers, or an instructional aide checked in on him to help him with his schoolwork.

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PARENT'S FALL 2023 REQUEST FOR ASSESSMENT

On October 25, 2023, Parent wrote a letter to San Mateo, requesting that Student be assessed for special education services and supports. Parent stated that a recent psychological evaluation indicated Student had significant cognitive delays evidencing a developmental disability which "would" impact Student's ability to learn in a classroom setting. Parent requested Student be comprehensively assessed in the areas of

- social-emotional,
- health,
- academic achievement,
- cognition and psychological processing, and
- any other areas of suspected disability.

San Mateo received Parent's letter on November 29, 2023. San Mateo school psychologist Tina Perdices noted the date of receipt on the letter as November 29, 2023. Perdices was a licensed and credentialed school psychologist employed by San Mateo since August 2020. She was assigned to the court and community schools, including Hillcrest in 2021 and was primarily responsible for assessing students at Hillcrest. She held a master's degree in school psychology since 1994, had been a school psychologist for about 30 years. (This space is intentionally left blank. Text continues on the following page.)

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On December 14, 2023, Perdices prepared an assessment plan and sent the assessment plan to Parents. The description of the areas of assessment on the assessment plan were written in Student's native language but the positions of the people who were proposed to conduct the assessment were all stated in English. The proposed areas of assessment were listed as:

- academic achievement by a resource specialist;
- health by a nurse;
- intellectual development by a psychologist;
- social emotional/behavior by a psychologist; and
- adaptive behavior but did not specify by whom.

Perdices did not check the boxes for language/speech communication or motor development although Perdices wrote "psychologist" next to motor development. It appears that Perdices wrote "psychologist" on the wrong line on the form, and that she intended to indicate that a psychologist would conduct the social emotional/behavior and adaptive behavior portions of the initial evaluation.

On January 11, 2024, San Mateo received a copy of the assessment plan signed by a Parent.

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STUDENT DID NOT PROVE SAN MATEO DENIED HIM A FAPE BY
FAILING TO ASSESS HIM FOR SPECIAL EDUCATION PRIOR TO
APRIL 17, 2024

As stated above, at hearing Student confirmed that his contention in Issue 1A, is that Student should have been initially assessed for special education eligibility before San Mateo evaluated him for special education eligibility in early 2024. Here, the evidence established that San Mateo conducted an initial assessment of Student, which was reviewed at an IEP team meeting on April 18, 2024. The assessment process began when San Mateo received Parent's request for assessment on November 29, 2023, and San Mateo timely sent Parents an assessment plan on December 14, 2023, which Parents returned on January 11, 2024. Accordingly, Issue 1A only looks at the period between August 7, 2023, and November 29, 2023, for determining whether San Mateo denied Student a FAPE by failing to assess Student for special education and related services during that same period.

Student failed to prove by a preponderance of evidence that San Mateo denied him a FAPE by failing to assess Student for eligibility for special education and related services between August 7 and November 29, 2023. The evidence failed to establish that San Mateo had knowledge of, or reason to suspect, Student had a disability and reason to suspect that special education services may be needed to address that disability. None of the information San Mateo had was sufficient, individually or collectively, to trigger its duty to assess Student for special education and related services during the child find period.

The evidence established that upon Student's enrollment at Hillcrest, San Mateo knew Student was an immigrant and English was not his native language because it was obvious from Student's thick accent. It also knew what Student told staff about his background, that he had immigrated to the United States when he was eight or nine years old and grew up poor. Student also shared with staff he had been doing a lot of drugs and had not been behaving properly. Student told Hillcrest staff English was his second language, and he was an English language learner. His teachers noticed he had some issues with pronouncing words, but they attributed these difficulties to Student being from a foreign country and not yet proficient in English acquisition, or that Student may have lacked instruction in reading aloud. He was quiet and kept to himself initially. He initially appeared nervous to his English teacher, but this was typical of new students to Hillcrest who were newly incarcerated, often traumatized by the experience of being arrested and imprisoned, and having to adjust mentally to confinement.

The evidence established Student did well at Hillcrest. He was an excellent student and actively participated in class. None of this information was enough to trigger San Mateo's duty to assess. Certainly, being an immigrant with an accent and an English language learner is not enough to suspect Student had a disability or required special education.

Adding that Student had some bad grades in school prior to entering Hillcrest was insufficient to establish San Mateo should have suspected Student had a disability requiring special education, considering all the circumstances. It was unclear given the testimony about San Mateo's usual practice to obtain a student's transcript but not the cumulative file, whether San Mateo ever obtained Student's transcript from his prior school district.

However, even if San Mateo had the transcript from Student's prior school district which was admitted into evidence at the hearing, this too, was insufficient to trigger San Mateo's duty to assess. That transcript reflected Student had a 1.429 grade point average from his prior school district, and that he had attended the second term of the 2021-2022 school year, his ninth-grade year, failing two courses, but had received passing scores in all other courses, including B's and C's in English and Algebra. There was no information in that transcript that Student attended school during anything other than Term 2 of his ninth-grade year at his prior school district.

This transcript even assuming San Mateo had it, in conjunction with Student's admitted drug use and bad behavior, the other things he told his teachers, and his English language status, was not enough to put San Mateo on notice that Student might have a disability that required special education. Based on the evidence at hearing, given all the circumstances, Student presented no observable behaviors distinguishable from his limited English proficiency, which would have triggered San Mateo's duty to assess Student for special education eligibility.

THE CUMULATIVE FILE FROM STUDENT'S PRIOR SCHOOL DISTRICT

Student relies substantially on San Mateo's failure to request Student's pupil records to support his claim of a child find violation; however, this argument is unconvincing. Student argues that certain parts of the Education Code pertaining to foster youth governed San Mateo's duty to obtain Student's cumulative file within two business days of Student's enrollment at Hillcrest. However, it is unnecessary to make

this determination because the law otherwise required San Mateo to obtain Student's pupil records from his prior school district upon Student's enrollment. (E.g., Cal. Code Regs., tit. 15, § 1370, subd. (e)(4).)

San Mateo concedes California Code of Regulations, title 15, section 1370, subdivision (e)(4) applies to it. On its face, the law required Hillcrest to request Student's records upon enrollment at Hillcrest in June 2022. This most certainly included Student's cumulative file, despite San Mateo's unimpressive attempts to limit the definition of "youth records" and parse what "including, but not limited to" meant.

Notwithstanding San Mateo's failure to obtain Student's records from his prior school district, Student failed to prove what San Mateo would have known had it obtained Student's pupil records, as was his burden. Significantly, Student offered no convincing evidence establishing the content of Student's cumulative file at his prior school district. Student argues that because San Mateo did not request Student's pupil records it was unaware that a Student Study Team meeting had been held in Fall 2021 and a special education assessment had been offered by his prior school district to address concerns regarding Student's poor grades, behavior and mental health. Student unpersuasively argues that this information from Student's records triggered San Mateo's duty to assess by Fall 2023.

No one specifically defined the term Student Study Team during the hearing. However, in general, a Student Study Team is a meeting of the parents of a general education student and school staff to discuss specific educational challenges the student exhibits and consider, discuss, and possibly select additional general education resources that could be provided to the student to support the student. Sometimes

those interventions do not enable the student to make anticipated progress, and it is determined that the student needs to be assessed for eligibility for special education and related services.

The evidence failed to establish Student's prior school district offered or convened a Student Study Team Meeting or referred Student for a special education assessment, or that this information was in Student's cumulative file from his prior school district. The weight of evidence established this information was derived from a competency evaluation performed by Hugh Molesworth, Ph.D., for Student's juvenile court case, but there was no evidence establishing where he obtained this information or if the information was accurate. Molesworth was not called to testify at the hearing, and his report was not proffered as evidence at the hearing. Instead, school psychologist Perdices merely copied this information into her April 2024 psychoeducational report from a Molesworth report she did not obtain until her assessment began after November 29, 2023. Specifically, Perdices's April 2024 psychoeducational report stated that a Student Study Team meeting was held in the fall semester of Student's ninth grade year at his prior school district and that a special education referral was reportedly offered to Parents at that time but was apparently declined.

A version of this same information upon which Student relies was also in a March 2025 independent educational evaluation prepared by Educational Psychologist Korah La Serna Guilar, but similarly, there was no evidence establishing where it came from. Guilar's March 2025 independent educational evaluation report noted that Guilar reviewed records which included Students educational records. However, it was not proven that this information came from Student's cumulative file or from some other source.

Guilar was not called to testify at the hearing. Therefore, she could not be questioned as to the source of this information or whether she had merely copied it from some other third-party report. In fact, the version of the events in Guilar's March 2025 report was incorrect. Her report stated that a Student Study Team meeting was initiated in November 2022 based on concerns regarding Student, but the meeting was declined by Student and Parents. The evidence established that no Student Study Team meeting occurred in November 2022, which would have been after Student had already enrolled at Hillcrest.

There was no evidence that Student ever requested his cumulative file from his prior school district, or why those records were not proffered as evidence to support Student's claim at hearing. Coupled with that, Student was not questioned about these events, and Parents were not called as witnesses, to establish that a Student Study Team Meeting had been called and a referral for special education had been made by Student's prior school district, and the date these events occurred.

Further, if these events occurred, Student failed to proffer any evidence that Parents would have consented to an assessment plan had Hillcrest offered one prior to November 2023, much less explain why Parents did not consent to the Fall 2021 proposed special education assessment offered by Student's prior school district, or why Parents did not ask Hillcrest to assess prior to Fall 2023 if they believed Student should have been assessed during that period.

Student's argument that San Mateo's duty to assess was triggered by what it would have discovered in Student's prior school records had San Mateo obtained the records, necessarily fails for lack of proof.

THE MAP AND MYPATH TESTING

Student's MAP and MyPath test results failed to establish that San Mateo should have assessed Student for special education prior to Parent's Fall 2023 request. Student relies on psychologist DiRago's testimony for his interpretation of Student's scores on these assessments. However, DiRago's opinions regarding Student's MAP and the MyPath scores, and the implications of those scores, were unconvincing.

DiRago failed to establish sufficient familiarity with the assessments to reach the conclusions she rendered about them at the hearing. DiRago admitted she had only encountered these tests five or less times when assessing private school students, and her "encounters" with these tests was vague. She claimed she had read about the tests, but again, her testimony as to when or how much time she spent reading about them was unclear. It appeared she read about them on the internet just before she testified at hearing, but it was unclear how much time she spent. DiRago also never administered the tests, and although she claimed she was qualified to administer academic assessments, she admitted she would not administer them as part of a psychoeducational evaluation but did not comprehensively explain why. She did not know the meaning of some of the MAP scores listed on Student's MAP and MyPath score sheet. DiRago said she did not know specifically if the MAP or MyPath assessments considered the California common core standards. She admitted the tests did not take into account a student's English language proficiency, but she appeared uncertain if a student's MAP scores were normed against English language learners. She also did not know the standard deviation with respect to any of Student's scores or the expected growth rate for Student from August 2022 to March 2023.

DiRago's testimony was also unpersuasive for other reasons. She claimed the MAP scores were not tied to a grade level but then tied Student's scores to a grade level more than once. Notably, she was not called to rebut Executive Director Notch's testimony regarding the range of the standard deviation of the MAP scores or the range of grade levels the standard deviation covered. She also asserted that grade level was an appropriate measure to determine progress but admitted she did not expect Student to perform at grade level.

DiRago conceded that other factors other than a learning disability could impact Student's ability to perform at grade level. During her testimony, DiRago struggled with answering many of the questions posed by San Mateo's attorney which undermined her credibility. When she was asked why she claimed that an increase of four points in Student's MAP reading scores between August 2022 and March 2023 was negligible, she was unable to explain the basis of her statement. She also admitted Student's MAP testing and MyPath testing indicated some improvement in scores at different points of time. She also claimed the test results indicated Student was not making as much progress as was expected but admitted she never calculated any expected progress for Student, and she was unaware what improvement would have been over particular time periods. DiRago offered no rebuttal to Executive Director's Notch's opinion that average expected growth on one of the tests was two points, which further rendered DiRago's opinion on this issue unpersuasive.

DiRago also incorrectly assumed Student was receiving at least some instruction through MyPath which undermined the credibility of her conclusions. When DiRago was asked to provide possible explanations for Student's MAP scores in tenth grade, she explained that MAP was meant to assess learning progress using MyPath curriculum with supervision from a teacher. DiRago then inconsistently claimed, without a

clear explanation, that if MyPath curriculum was not being used by Hillcrest, her interpretation of the MAP scores would not change. She also admitted MyPath assessments were not supposed to be administered to determine progress unless the student was also receiving some instruction by MyPath, which Student never received. DiRago's admissions that the MAP and MyPath assessments were supposed to be used in conjunction with the MyPath curriculum with supervision from a teacher, along with the evidence that this never occurred, undermined DiRago's opinions about the significance of Student's scores.

DiRago willingness to offer opinions about the assessments to support Student's position given her demonstrated limited familiarity with them, along with the inconsistencies in her statements, made her appear biased. Other evidence also made DiRago appear unobjective as discussed below and in Issue 2. Thus, Student's argument that, based on DiRago's testimony, Student's MAPP and MyPath scores should have alerted San Mateo of the need to assess Student prior to Parent's Fall 2023 request, was unsuccessful.

TESTIMONY FROM STUDENT'S ENGLISH AND SOCIAL STUDIES TEACHERS

Student asserts that English teacher Naested and Social Studies teacher Bordagaray observed that Student struggled with pronunciation, enunciation, sounding out words, and reading. He asserts that these are symptoms consistent with processing challenges that characterize a specific learning disability, demonstrating that San Mateo should have earlier assessed Student for special education. It is unclear what part of his teachers' testimony

Student is relying upon given the vagueness in this part of Student's written closing argument. However, it appears Student has taken Naested's and Bordagaray's testimony out of context.

Academically, during the child find period at issue, Student did well in his classes, achieving mostly A's and B's, including in English and Social Studies. According to both English teacher Naested and Social Student teacher Bordagaray, as discussed above, Student was bright, he did his work, and he did it well. Although Student had issues with pronunciation and enunciation, he was an English language learner, and neither teacher suspected Student had a learning disability.

Naested testified that Student initially had some struggles, but she was never asked to describe what she meant by that statement or how long that lasted. Based on the context of her other testimony, it appeared she was referring to a brief period when Student first entered Hillcrest and was adjusting to incarceration. Again, Naested testified it did not take Student long to adjust to the classroom, and she denied he struggled prior to being moved by Probation to the computer lab. She described him as one of the brightest students at Hillcrest, and that he had a better memory than she did. As detailed above, Student did his daily writing assignments and according to Naested, responded well to the writing prompts she gave. He rarely asked for help on his work and did not require unusual intervention to do his work. She thought his verbal abilities as compared to other English language learners was strong and she was impressed by his skill level in reading. It was obvious from Naested's testimony that she thought very highly of Student's work in the poetry competitions in February 2023, 2024, and 2025. There was no persuasive evidence that established Naested knew, or suspected, Student had a disability requiring special education.

Bordagaray testified Student asked a lot of questions about words and what they meant, but he also said he said that was not any different than other students and that there were a lot of new words in high school textbooks. Bordagaray also testified Student sometimes struggled with "higher order readings," but he said this had to do with 12th grade economics and government. Bordagaray testified when a pupil got "up into" 12th grade economics and government the courses got harder, and Bordagaray had to explain terms or ideas, but also that Student caught on. He also said Student had a great memory, and once Student "knew it, he was fine." Bordagaray described Student's comprehension of course material as average or above average. Bordagaray also observed Student's request for feedback or help on his work was no different than other students, and that Student did very well academically as compared to his peers. There was no persuasive evidence that established Bordagaray knew, or suspected, Student had a disability requiring special education. Like any student, Student struggled with some concepts and asked questions of his teachers in his effort to learn the material which was not proven to be out of line with his peers. This was insufficient to establish San Mateo should have assessed him for special education eligibility

Moreover, notwithstanding Student's allegations of grade inflation, as further addressed in Issue 3, Student failed to prove by a preponderance of evidence that any of Student's grades were inflated or that it should have triggered San Mateo's duty to assess Student during the child find period at issue. Student argues that San Mateo violated its child find obligations by improperly relying on inflated grades which did not capture his relevant skills. Student cites to *W.H. ex rel. B.H. v. Clovis Unified School Dist.* (E.D.Cal., June 8, 2009, CV F 08-0374 LJO DLB) 2009 WL 1605356, at *17 (*W.H.*) to support his argument.

In *W.H.*, the court found that an ALJ erred in determining writing was not an area of suspected need requiring assessment where the student earned grades of A's and B's on his report cards and scored in the proficient range on a language arts assessment. *W.H.* is factually distinguishable. The student in *W.H.* had a 504 plan and was only required to turn in 50 percent of all work, of which he only completed 10 to 30 percent of the assigned work for his grade. Further, the test did not measure student's written expression because it only required him to fill-in-the-bubbles and not produce written responses. Based on those facts, it was error to rely on the student's grades and test scores in determining writing was not an area of need that required assessment.

In contrast, here Student did not prove by a preponderance of evidence that Student's grades did not reflect his academic achievement, as described in this section, and further discussed in Issue 3.

THE TESTIMONY OF STUDENT'S MATH TEACHER

Student points to the testimony of his math teacher, Roger Wroblewskil, as proof that San Mateo's duty to assess Student was triggered prior to Parent's Fall 2023 request for assessment. Student argues that while the timing of Wroblewski's observations was unclear, Wroblewski observed symptoms consistent with a specific learning disability, including struggles with long-term concept retention and basic mathematical calculations.

Wroblewski had been a credentialed math teacher since 2009. He held a bachelor's degree and a master's degree in math. He was employed as a teacher at Hillcrest from 2009 to 2017 or 2018, and between 2022 through the 2024-2025 school

year, but he could not recall if he only worked half time at Hillcrest for a portion of that time. He described himself as more of a mathematician that taught, as opposed to a teacher that taught mathematics.

Wroblewski taught math and science, and depending on the student's age or grade level, the kind of science and math he taught varied. He could have students from seventh or eighth grade all the way up to 12th grade in the classroom at one time. Classrooms were not grouped by age or grade level, but by Probation for safety due to affiliation. In one classroom, Wroblewski sometimes taught many different subjects, with about seven or eight students in a classroom. He observed that regardless of the students' class levels at the time they entered Hillcrest, generally they all had some sort of deficits from not going to school or other circumstances, and almost all of them needed to start with basic ideas and move up, learning the "real rules" of math.

Wroblewski did not recall when he first met Student or whether the subject he taught him was Geometry or Integrated Math, but he could only recall teaching Student in the computer lab with the older inmates. Student was not moved to the computer lab until sometimes after November 2023. Contrary to Student's attempts to place himself in Wroblewski's classroom prior to Parent's Fall 2023 request for assessment, the preponderance of evidence established any observations of Student Wroblewski made were not made until later. Therefore, Wroblewski's observations could not have put San Mateo on notice that Student required an assessment for special education during the child find period.

In the computer lab, Wroblewski worked with Student one-on-one at a carol with a computer, with about eight or nine other older students in the room. Wroblewski did this five days a week, for one hour per day. He could only recall teaching Student

geometry, but he said the title of the course could have been Geometry or Integrated Math 1 or 2, and that both covered geometry concepts. Student took Geometry in the computer lab sometime in latter part of 11th grade after November 2023 through the end of Quarter 4 which ended in May or June 2024. He took Integrated Math 2 in both sessions of Summer 2024. Wroblewski also said he taught Student science, but he could not recall the title of the course, the grade he gave Student, or whether it was for more than one quarter. He seemed to speculate as to when he taught Student science, because he said “probably that same last year” which seemed to suggest he thought he taught Student science and math at some later time. However, Wroblewski was clear that he was only Student’s teacher for one-half or three quarters of a school year, before Wroblewski was “moved,” and he could not recall what period that covered.

In working with Student, Wroblewski used a computer-based math curriculum approved by the San Mateo board, which followed along with problems from the textbook. The curriculum included answering questions, and if Student answered a question incorrectly, the computer program generated another question later in that area, which was a way of helping Student master the information. Wroblewski went through the program with Student, providing instruction and tools to solve the problems, and instructing him on what sections to complete.

At hearing, Wroblewski said he believed Student was at a fourth grade or fifth grade level in math calculations when Wroblewski first started working with Student. Wroblewski testified that decimals and fractions were not Student’s forte, but with a calculator, Student was able to get through it. Wroblewski recalled that when Student finished a section, he could do the fractions calculations, but Wroblewski was unsure of Student’s retention level because he might not be able to do them a month later, and Wroblewski would have to review them again with Student.

Cognitively, Wroblewski said he was not an expert, but Student seemed to struggle, but Student was always able to move through the work. Wroblewski based this opinion on Student giving Wroblewski a blank stare on some of the material they covered, and Wroblewski had to take a couple of steps backward and “sort of scaffold up” to where Student needed to be. He speculated Student might have had an issue with moving things into his short-term or long-term memory. Wroblewski also clarified when he had to review material he had previously covered with Student, it was not that Student had to relearn a concept he had been taught, but that Student did not recall the mechanics of working the problem.

To Wroblewski, Student was a serious student and wanted to get the work done and not play around. Student seemed to place a high value on education and was in the top 10 percent of the students he taught as compared to Student’s peers. Student was “100 percent” engaged in the lessons, was attentive and followed instructions. In Wroblewski’s opinion, Student liked to learn different math concepts and worked hard to master things. Wroblewski observed that Student was able to apply trigonometry concepts to word problems. He thought Student was generally proficient at getting to the end of the material by the conclusion of each lesson. Wroblewski opined that Student accessed the curriculum, completed all the required coursework, and earned his grades. Wroblewski confirmed the grades he gave Student were an accurate reflection of his abilities and that Student made a lot of progress in math.

Wroblewski denied Student was any different from other students in juvenile detention as far as the amount of work and effort Student put into mastering the material Wroblewski worked on with Student. At hearing, Wroblewski testified he believed all the students in juvenile hall had a learning disability and emotional disturbance just from being in juvenile hall. But Wroblewski also clarified, he did

not believe all the inmates had special needs. He believed that with few exceptions, students in juvenile hall fell behind in academics prior to entering juvenile hall and had gaps in their foundational knowledge at the time they arrived. Wroblewski testified he thought Student had an emotional disturbance based on his understanding that Student was placed into the computer lab because he was involved in a fight with another inmate.

The preponderance of evidence failed to establish that based on Wroblewski's testimony, San Mateo knew, or suspected, Student had a disability in need of special education. Again, Wroblewski was not Student's teacher until some later point in time, likely well after Parents' Fall 2023 request for a special education assessment. Thus, any observations Wroblewski made could not have put San Mateo on notice Student required an earlier assessment for special education. Student's claim that Wroblewski's subsequent observations evidenced that San Mateo employees working with Student reasonably should have known of Student's symptoms of disability during the child find period was unpersuasive.

In his closing brief, Student ignored important parts of Wroblewski's testimony, including, that Student was accessing the curriculum, doing the work, and that his grades reflected his academic abilities. Moreover, Wroblewski worked with Student on math after Fall 2023, as opposed to English or social studies, and fractions and decimals were not Student's forte, but he was able to do the work. None of Student's math teachers during the child find period testified. Although Wroblewski sometimes had to review material with Student if Student gave him a "blank stare," even at hearing, Wroblewski was difficult to understand when he spoke about mathematics. He spoke like the mathematician he described himself to be.

Student also ignored that both Naested and Bordagaray, the only teachers who were called to testify who worked with Student on a regular daily basis since he first was enrolled at Hillcrest, including the child find period at issue, thought Student had an excellent memory. Naested testified Student's memory was better than her memory and Bordagaray revealed in Student's ability to recite all the countries of the world and their capitals, and the United States presidents in chronological and reverse chronological order by their full names. Wroblewski's later observations were insufficient to establish that Student's earlier teachers should have suspected he had had a disability and might require special education. Although credit recovery teacher Parreira did not work as closely with Student as any of the other teachers that testified, she supported Student at least once a week between sometime after January 2023 until at least Fall 2024, and she denied any suspicion Student had a learning disability.

Wroblewski's general statements that all students, and Student in particular, had a disability, were not credible, were grossly overbroad, and did not prove Hillcrest staff should have earlier assessed Student for special education. There was also no evidence establishing he held these opinions at the time he worked at Hillcrest. Certainly, not all students in juvenile hall have a disability qualifying them for special education, nor do all of them have an emotional disturbance disability. His statements also demonstrated he did not know the definition of emotional disturbance, let alone a learning disability. He also made it clear that he was not opining that all students had special needs, but rather, his belief that incarcerated youth were typically troubled and incarceration itself was traumatizing. Therefore, Wroblewski's testimony was insufficient to establish San Mateo should have suspected Student had a disability and referred him for assessment prior to Parent's Fall 2023 request.

THE PARAEDUCATOR'S TESTIMONY

Student also argues that based on the subsequent observations of San Mateo paraeducator Monika Moreno, San Mateo employees working with Student reasonably should have known of Student's symptoms of disability during the child find period. As was the case with Wroblewski, Student's argument is not convincing regarding Issue 1A.

Moreno was a paraeducator for the court and community schools, including Hillcrest since December 2023. She had a bachelor's degree in child and adolescent development, and a minor in special education. She had worked with kids since at least 2018, including as a preschool educator for three years. As a paraeducator, she supported students and teachers, including collaborating with teachers, implementing IEPs for students with special needs, and tutoring students in any subject. She did not hold any teaching credentials.

The weight of evidence established that Moreno worked with Student regularly during the 2024-2025 school year in the computer lab, between three and five days a week, between 15 and 50 minutes at a time. Prior to that she worked with Student occasionally in the care classroom, and later, in the computer lab. She mainly helped Student with social studies, including history and economics, and some side projects, including research. She worked with Student on the assignments he received from his teachers, which he also worked on in his residential unit. She only heard positive things about Student from his teachers, including how bright and capable he was.

According to Moreno, Student was one of her easier students because he wanted to learn. History was his favorite subject. Student liked accomplishing his work, and he finished his work packets assigned by his teachers in a timely manner. He often said it

was "easy," especially if it was history-based. She saw improvement in his reading and writing skills over time. Moreno characterized Student as "thriving" at Hillcrest. Moreno claimed Student knew things she did not know, and that Student had an amazing memory that she did not see in his peers. Moreno thought Student was bright and capable and when he understood the directive, he did "just fine." She believed he performed well for an English language learner. He could navigate the computer but needed help with computer research due to lack of access. He needed a little help with vocabulary, and what particular words meant, and going beyond memorizing and instead, retaining and using what he learned. He was very curious, wanted to learn, and do well. Moreno thought Student was a good self-learner and knew his own pace.

Moreno thought Student was very bright and thrived beyond his years in some areas. In other areas she thought he was missing foundational skills. She said he could almost do trigonometry, but sometimes he stumbled on basic math. Mostly, he was well-regulated, and she never saw him frustrated, except once, but it was just a curt remark. She was also aware he did not want to do an online health course regarding women's reproduction because he lacked an understanding about woman's reproduction, and Moreno insinuated Student may have been "ribbed" by some of the older inmates about that course. There was brief period in Student's senior year when he did not want to do his work, and it took him longer to complete his work. Although the testimony of the witnesses was inconsistent about when this occurred, the weight of evidence established it was approximately a three-week period sometime during Student's senior year and prior to the March 11, 2025 IEP team meeting. Except for the brief period, Student was self-motivated, and he did well.

According to Moreno, Student liked to talk with her, and sometimes seemed to just want her company, more than receiving assistance with his work. Moreno took turns reading with Student. Sometimes he asked her what something meant, and other times he just wanted to talk. He did not talk to her about his juvenile court case, but she thought he needed emotional support because sometimes, but not regularly, he was overwhelmed with things like “the system,” and he had fears about graduating. Moreno believed Student was intimidated by “factors happening on the Probation side.” Sometimes Student just needed help with understanding reading, including vocabulary or concepts he was unfamiliar with. She thought some of Student’s questions were related to him being an English language learner, differences in education and culture, and that he missed learning certain foundational concepts in early childhood.

Moreno took some contemporaneous notes regarding Student in Fall 2024. In October 2024, she wrote, “Doing great!,” “Happy and staying engaged with learning,” “Very positive time working with him, great student,” “Same as yesterday, wonderful student,” “Is learning a lot of magic tricks, very easy to work with, lots of energy.” In November 2024, she wrote, “Is excited for his project, needs help refocusing,” and “Has been a little off with the codes.” Codes meant some violent incident or potential incident at the facility with guards coming out and making all the students put their hands behind their heads. Moreno also documented, “He is a great student. Did a project with me he has never done before. I am proud of him and what he accomplished.” She also wrote, he was very bright, positive, hard-working, honest and easy to trust. Moreno also noted in capital letters that Student was “SMART!,” was fascinated with almost anything, and showed enthusiasm for learning and bettering his life. She wrote he liked to have intellectual conversations, often asking questions and others’ opinions. She also noted

Student had shown great intellect, such as memorizing every country and capitals of the world. Moreno wrote that she could trust Student with completing his work, remembering information, and that he needed more challenge in his life academically.

When asked if she suspected Student had a learning disability, Moreno testified she did when she was with Student more regularly later in 2024. She questioned when Student memorized something, but then “threw it away,” and wondered if he was stimming or just nervous. She also testified that like most people, she did this too, when she was in school. Moreno did not necessarily believe this was a learning disability that would prevent Student from accessing his education, because she explained, like most students, he had strengths in in some areas, and weaknesses in others. When asked if she had concerns about his cognitive or intellectual abilities, Moreno said during that same period when she was working with Student regularly, she had a mild concern because there was something a little different about him, but she thought it could have been lack of access to resources and material, or that it could have been trauma-based or because of his upbringing. According to Moreno, Student was limited at Hillcrest, and he was not given all the material he needed to go as far as he could go, and she believed he could have been provided with more robust material and projects to work on, instead of having to work on so many packets. She thought Student was one of the smartest students she met and believed he could do well in college.

The preponderance of evidence failed to establish that based on Moreno’s testimony San Mateo knew, or suspected, Student had a disability that required special education during the child find period. Moreno did not interact with Student until after

Parent's Fall 2023 request for assessment. Thus, her later observations in 2024 or 2025 about Student could not have put San Mateo on notice Student required an earlier assessment for special education.

Student also failed to establish by a preponderance of the evidence that Moreno's subsequent observations meant that San Mateo employees working with Student reasonably should have known of Student's symptoms of disability during the child find period. Moreno's descriptions of these observations of Student later in 2024 were too vague, as discussed in Issue 3. Moreover, there was no convincing evidence that his other teachers had or should have had those same observations prior to Fall 2023. Naested and Bordagaray, who had Student in their classes during the child find period at issue, both denied any suspicion of a learning disability. Moreno's later observations were simply insufficient to establish that his other teachers did or should have noticed a year earlier the same things she did after Summer or Fall 2024 when she was regularly working with Student.

Student failed to prove he could not have presented differently to his teachers in the group classroom setting prior to Fall 2023. Student failed to establish that based on Moreno's testimony, San Mateo should have suspected Student had a disability that required special education.

STUDENT'S LATER TEST SCORES

Student argues that his scores on later tests underscores that San Mateo was on notice of symptoms of his disability prior to Fall 2023, including the results in San Mateo's April 2024 initial psychoeducational assessment and Guilar's March 2025

independent educational evaluation results. However, this argument is not convincing. There was no persuasive evidence establishing that Student's scores on these tests in 2024 and 2025 demonstrated Hillcrest staff should have suspected Student had a disability and required special education, as many as two years earlier.

Student appears to be relying on DiRago's testimony where she opined that based on Student's March 2025 scores, his reported verbal deficits should have been apparent as far back as June 2022. However, as discussed above and further addressed in Issue 2 below, DiRago was not a credible witness. DiRago never spoke to Student, Parents or his teachers, or otherwise assessed Student.

Moreover, as further addressed in Issue 2, Student failed to demonstrate that the findings from Guilar's March 2025 independent educational evaluation were a proper basis for DiRago to base a credible opinion with respect to Student's presentation a year or two earlier, particularly given Student's limited English proficiency. Student never called Guilar as a witness, and therefore her test results were never substantiated. Nor was Guilar called to offer an opinion about whether based on her tests results, San Mateo should have earlier suspected Student had a disability needing special education during the child find period. Any assertion that San Mateo was required to assess Student prior to Fall 2023 based on the after-acquired Guilar 2025 independent evaluation, without a credible expert to explain that evaluation and substantiate the findings was simply not convincing.

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STUDENT'S DISCIPLINE RECORD

Student's complaint alleges that Student had long history of school discipline both before and after entering Hillcrest as a basis for the claim that San Mateo should have earlier assessed Student. However, Student failed to offer the evidence necessary to prove that allegation.

As explained above, Student never proffered his pre-incarceration pupil records as evidence at the hearing, and Student never proved what was contained in those records. Thus, there was an absence of evidence establishing Student's discipline history before coming to Hillcrest in June 2022, or that San Mateo was aware of that history or should have been aware of that history before Parent's Fall 2023 request for a special education assessment. Again, to the extent any of Student's pre-Hillcrest discipline history was in Guilar's March 2025 independent evaluation report, Student failed to prove where this information came from, either through Guilar, who never testified, or any other witness. To the extent that it was contained in San Mateo's 2024 initial psychoeducational evaluation, there was no evidence establishing it came from Student's cumulative file from his prior school district.

While the evidence established that Student had some discipline incidents at Hillcrest prior to November 2023, there was insufficient evidence about the details of these incidents. Without more specific evidence about the disciplinary incidents, and witness testimony about why this should have caused San Mateo to refer Student for assessment, there was insufficient proof to make a finding that San Mateo was on notice that Student should have been assessed for special education during the relevant period. Student was never examined about these events at hearing, and they were not adequately explored with other witnesses. To the extent any of the witnesses offered

testimony about Student's behavior prior to November 2023, it was far too vague and incomplete to conclude San Mateo should have suspected Student had a disability warranting a referral for special education. The disciplinary event on November 14, 2023, in which Student received a five-day suspension, appeared to be the most serious incident, and by November 29, 2023, San Mateo had already received Parents' October 2023 request for assessment.

Student's closing brief does not offer any argument regarding Student's record of disciplinary behavior to support his claim in Issue 1A; thus, Student appears to have abandoned this argument. It is not the ALJ's responsibility to construct or develop a party's argument. (*See Loewen v. Berryhill* (9th Cir. 2017) 707 Fed. Appx. 907, 908 (nonpub. opn.), citing *Carmickle v. Commissioner* (9th Cir. 2008) 533 F.3d 1155, 1161, fn. 2 [the court is not required to address arguments made without specificity]; *In Re: Out of Network, supra*, 2022 WL 17080378, fn. 2 [the court will not perform the work of representing parties].)

Student offered no persuasive evidence establishing San Mateo should have offered to assess Student prior to Fall 2023. Even assuming San Mateo committed a procedural error by failing to assess Student earlier, Student failed to prove this denied him a FAPE. There can be no denial of FAPE where a pupil does not prove he was eligible for special education. (*R.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 942 (*R.B. v. Napa Valley*) [a procedural violation cannot "qualify an otherwise ineligible student for IDEA relief" and constitutes harmless error]; see *D.G. v. Flour Bluff Independent School Dist.* (5th Cir. 2012) 481 Fed. Appx. 887, 893, 2012 WL 1992302 [nonpub. opn.] (*D.G. v. Flour Bluff*) ["IDEA does not penalize school districts for not timely evaluating students who do not need special education."].)

Here, as discussed in Issue 2, Student did not prove he was eligible for special education prior to his graduation on March 21, 2025. Students who have graduated are not entitled to special education and related services. (34 C.F.R. § 300.102(a)(3)(i); Ed. Code, § 56026.1, subds. (a) & (b).)

Based on the totality of the evidence, Student failed to prove by a preponderance of the evidence that San Mateo denied Student a FAPE by failing to assess Student for special education and related services from August 7, 2023, through April 17, 2024.

For clarity, this Decision addresses Issue 1B after Issue 2 below.

ISSUE 2: DID SAN MATEO DENY STUDENT A FAPE AT THE APRIL 18, 2024 IEP TEAM MEETING BY FAILING TO FIND STUDENT ELIGIBLE FOR SPECIAL EDUCATION AND SERVICES?

In the complaint, Student alleges that San Mateo denied Student a FAPE by “mistakenly” finding he did not have a disability in April 2024 and did not offer any special education services. As a result, Student alleges he did not receive special education services, which he desperately needed, as confirmed by Guilar’s March 2025 independent educational evaluation. Student alleges San Mateo’s assertion that Student received a lot of individual attention at Hillcrest, misses the point, because he did not receive specialized academic instruction by a credentialed special education teacher. On the first day of hearing, Student’s attorney clarified that Student’s contention in Issue 2 is that Student should have been found eligible for special education at the April 18, 2024 IEP team meeting under the eligibility category of specific learning disability.

In his closing brief, Student asserts that, based on the findings of Guilar's March 2025 independent educational evaluation, San Mateo agreed to find Student eligible for special education under the category of specific learning disability at the April 29, 2025 IEP team meeting. Student contends that because a specific learning disability is a neurodevelopmental condition which is lifelong, and Student's presentation did not change between April 18, 2024, when San Mateo found him ineligible, and a year later, on April 29, 2025, when it found him eligible, he should have been made eligible at the April 18, 2024 IEP team meeting. Student argues that the findings of Guilar's March 2025 independent educational evaluation are significant evidence of Student's eligibility in April 2024, and that the differences in the conclusions regarding eligibility are likely explained by the flaws in school psychologist Perdices's initial evaluation. Student asserts that those flaws included (a) the failure to consider all relevant data, including failing to review prior school records, (b) the failure to assess Student's oral language, (c) failing to correctly analyze eligibility under specific learning disability, and (d) failing to consider that at the time of 2024 initial psychoeducational evaluation Student was receiving his instruction in a one-to-one setting in the computer lab. Student contends that by failing to find Student eligible in April 2024, San Mateo never offered an IEP, depriving Student of specialized academic instruction by a special education teacher or other services.

San Mateo alleges in its response to the complaint that Student's focus and concern has been on Student's eligibility for services after Student's exit from Hillcrest. It alleges that following the April 18, 2024 IEP team meeting where Student was found ineligible for special education, San Mateo promptly offered to fund an independent educational evaluation. However, Student did not respond to the offer until September 2024, and when they did respond, they proposed DiRago who was

employed at the same institution as Student's counsel and that she was only going to conduct a records review. It alleges that Guilar ultimately conducted the independent educational evaluation, which evaluation report was not completed until March 2025. San Mateo alleges the report acknowledged Student's profile as complex and influenced by significant economic, cultural, linguistic and environmental variables which played a considerable role in his learning, but did not find them to be the primary reason for his learning challenges and offered no further explanation. San Mateo alleges Guilar relied on a criminal competency evaluation obtained by Student's juvenile defense attorney to determine Student's competency to stand trial but omitted information from that report. It also alleges Student ignores that Guilar's report found Student's cognitive abilities to be within the expected range. San Mateo also alleges that the criminal competency evaluation and Guilar's report ignore if Student could access his education at Hillcrest. San Mateo alleges although Guilar's March 2025 independent assessment ultimately found Student eligible for special education, it did not retroactively render San Mateo's prior assessment inappropriate.

In its closing brief, San Mateo contends Student never challenged the April 2024 evaluation and presented no evidence at hearing that it was legally flawed. San Mateo asserts Student both misunderstood and failed to meet his burden of proof. It contends Perdices properly evaluated Student for a specific learning disability under the pattern of strengths and weaknesses model. It argues the complaint did not identify any reasons why the April 2024 eligibility determination was in error, and at hearing, Student never asked expert DiRago to opine on the adequacy of Perdices's 2024 psychoeducational evaluation. San Mateo contends Student is incorrect in his

assertion that just because he was found eligible for special education in April 2025, he was eligible in April 2024. It asserts that given Student's profile, the determination of whether Student was eligible necessarily involved discretion.

San Mateo also asserts that Student's reliance on Guilar's 2025 report is misplaced. San Mateo contends Student's failure to call Guilar as a witness was notable. It contends Guilar used different assessment tools, and her 2025 evaluation was based on information the April 18, 2024 IEP team did not have, including information from Parents that Student's early English language development was somewhat slow which was not shared with Perdices in 2024, despite multiple meetings with Parents and their participation in the February 2024 Student Study Team meeting. San Mateo argues that its decision to find Student eligible in 2025, notwithstanding the fact that Guilar never observed Student in his learning environment, was based in part on facilitating Student's ability to receive community-based services following graduation, including services from the California Department of Rehabilitation.

San Mateo also argues that the information Perdices had from Parents in April 2024 indicated Student met early developmental milestones at expected rates, and that based on Parent and teacher ratings, Student was in the average range regarding his ability to understand spoken and written language and use verbal and nonverbal skills to communicate. San Mateo also contends to the extent Student claims he was not assessed in his oral language abilities, Perdices did assess Student's phonological processing abilities, and neither Parent nor teacher rating scales evidenced concerns with Student's language abilities. San Mateo also asserts that Student failed to prove that an assessment of Student's oral language abilities was required to determine his eligibility for special education.

San Mateo argues that prior to this case, Student maintained he was eligible for special education under the category of intellectual disability and never indicated a suspicion of specific learning disability. It argues that DiRago testified only in general terms that neurodevelopmental disorders remain constant over time and provided no credible evidence how that would have manifested in Student's education in 2024, given DiRago's failure to ever meet Student, his Parents or his teachers. San Mateo contends that the lack of consensus regarding Student's eligibility among Perdices, DiRago and Guilar further indicates the San Mateo's 2024 ineligibility decision was reasonable. San Mateo further contends that even if Student met the criteria for a specific learning disability in 2024, Student failed to prove that he required special education to receive educational benefit. It asserts the evidence was overwhelming that Student was receiving educational benefit and making progress in the small, structured environment at Hillcrest where school attendance was required and drug use was not an option. It argues that in June 2024, even Student's attorney acknowledged Student's grades reflected his "newly found ability to learn and enjoy school."

There are 13 different special education eligibility categories, which include but are not limited to emotional disturbance, intellectual disability, other health impairment, and specific learning disability. (34 C.F.R. § 300.8(c); Cal. Code Regs., tit 5, § 3030.) A child qualifies for special education under the category of specific learning disability if he or she has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to

- listen,
- think,

- speak,
- read,
- write,
- spell, or
- perform mathematical calculations. (Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

Basic psychological processes include

- attention,
- visual processing,
- auditory processing,
- phonological processing,
- sensory-motor skills, and
- cognitive abilities including association, conceptualization, and expression. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10).)

Specific learning disability eligibility does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage. (Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(A).)

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There are three ways to determine whether a pupil has a specific learning disability. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B) and (C).) In determining whether a pupil has a learning disability, the public agency may consider whether the pupil has a severe discrepancy between achievement and intellectual ability in

- oral expression,
- listening comprehension,
- written expression,
- basic reading skill,
- reading comprehension,
- mathematical calculation, or
- mathematical reasoning. (Ed. Code, § 56337, subd. (b); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B).)

No single score or product of scores, test, or procedure shall be used as the sole criterion for the decisions of the IEP team as to the pupil's eligibility for special education. (Ed. Code, § 56320, subd. (e); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B).) A discrepancy shall not be primarily the result of limited school experience or poor school attendance. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B)(4).) The IEP team can determine whether a discrepancy exists by computing and measuring mathematical differences between ability and achievement scores on standardized testing as required by California Code of Regulations, title 5, section 3030, subdivision (b)(10)(B).

Whether or not a pupil exhibits a severe discrepancy as described in California Code of Regulations, title 5, section 3030, subdivision (b)(10)(B), a pupil may be determined to have a specific learning disability if the pupil does not achieve adequately for the pupil's

age or to meet State-approved grade level standards in one or more specified areas when provided with learning experiences and instruction appropriate for the pupil's age or State-approved grade level standards, and:

- 1) the pupil does not make sufficient progress in one or more of those areas when using a process based on the pupil's response to scientific, research-based intervention; or
- 2) the pupil exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 Code of Federal Regulations parts 300.304 and 300.305. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(C)(1) & (2)(i) & (ii).)

However, the findings made under California Code of Regulations, title 5, section 3030, subdivisions (b)(10)(C)(1) and (2) must not be primarily the result of:

- A visual, hearing, or motor disability;
- Intellectual disability;
- Emotional disturbance;
- Cultural factors;
- Environmental or economic disadvantage; or
- Limited English proficiency. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(C)(3)(i) through (vi).)

THE FEBRUARY 8, 2024 STUDENT STUDY TEAM MEETING

San Mateo held a Student Study Team meeting on February 8, 2024, in response to Parent's Fall 2023 request that Student be assessed for special education. School psychologist Perdices convened the Student Study Team meeting to learn more about Parents' concerns and Student's history, and if there had been any prior supports that may have worked. School psychologist Perdices, Parent, the assistant principal, a teacher on special assignment, and education specialist Christina DeLeon attended that meeting, along with an interpreter. Student and social studies teacher Bordagaray also attended a part of the meeting. Notes were taken by Hillcrest staff during the meeting.

Parent and the social worker reported on Student's background. They reported Parent's native language was the primary language spoken at home. Student performed well during elementary school and earned rewards for his achievements. Student had always done well academically, but behavioral issues arose in middle school, including arriving late to school and skipping classes. Student had difficulty focusing, sitting still and resisting social distractions during middle school. Perdices's practice was to ask parents if they had any concerns about students learning to walk or talk. There was no evidence Parent ever indicated Student had any early childhood developmental delays. There was no evidence Parent ever shared at that meeting whether there had been any Student Study Team meeting or any referral for special education by Student's prior school district.

The notes of the meeting acknowledged that Student had been classified as an English language learner. During the meeting, Student was described by school staff as bright and academically skilled, who was motivated to complete assignments and earn good grades. Student was on the school honor roll and was participating in a poetry competition. It was reported Student had a 3.4 grade point average and on track for

graduation in 2025 based on his class credits necessary for graduation. He enjoyed a strong bond with several Hillcrest staff members who found him to be polite, respectful, and grateful. Student was helpful and hardworking, very athletic and he liked gardening. Student was eager to please and impress others.

The meeting notes documented Student was receiving individual instruction at the request of Probation due to behavioral incidents with peers, and that he was working in a classroom with high school graduates who were completing college courses. The notes also stated there was a high level of embedded structure at Hillcrest and Student was receiving a lot of individual attention due to a very small class size, and that paraeducator support was available to all Hillcrest students. It also documented Student's participation in taking a college history course after regular school hours.

The areas of concern for Student were indicated on the notes as difficulties focusing and sitting for extended periods reported during middle school. It also stated that incidents of aggression with peers required him to be separated in the school building during the 2023-2024 school year. It documented that Student was susceptible to peer pressure, prone to make poor choices, and easily distracted by social influences in class. San Mateo's action plan that resulted from the Student Study Team meeting included finishing the ongoing initial special education evaluation, and for the social worker to obtain and provide to the assessment team, Student's private assessment information and prior school records.

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THE ACADEMIC ASSESSMENT

San Mateo education specialist DeLeon conducted an academic assessment on March 12, 2024, and the scores were reported in a two-page score report. DeLeon was not called as a witness at hearing. All of Student's standard scores fell in the 80s and 90s, except Student's scores in sentence reading fluency and sentence writing fluency, which were 79 and 78, respectively. In math calculation skills Student had a standard score of 96. His standard score in basic reading skills was 90 and in written expression he scored an 86.

The comments at the bottom of the report appeared to document DeLeon's qualitative observation about the standardized assessment she administered. She stated that in sentence reading fluency, Student appeared to read sentences at a rate typical for peers. In sentence writing fluency, Student wrote appropriate sentences at an adequate pace, with the word "typical" written next to it. In all the areas DeLeon commented upon in the report, the word "typical" was used to describe Student's performance, including

- Letter-Word Identification,
- Applied Problems,
- Spelling, Passage Comprehension,
- Calculation,
- Writing Sample,
- Word Attack, and
- Math Facts Fluency.

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THE MARCH 14, 2024 IEP TEAM MEETING

On March 14, 2024, San Mateo convened an initial IEP team meeting to review the results of its initial evaluation of Student for special education and related services, including what the IEP team meeting notes refer to as "a draft copy" of Perdices's "incomplete report." A copy of the draft psychoeducational report prepared by Perdices as it existed on March 14, 2024, was not proffered into evidence by either party.

At the IEP team meeting, Parent attended along with school psychologist Perdices, an interpreter, a social worker, a general education teacher and an administrator. Education specialist DeLeon was scheduled to attend but was unexpectedly unavailable because of a family emergency.

The team discussed that Parents had not returned to Perdices their parent input forms so those components were not completed prior to the IEP team meeting. San Mateo personnel explained that the meeting would have to be continued so that this information could be collected, interpreted and incorporated into the initial assessment report. San Mateo also explained that the meeting would be continued such that a special education teacher could attend. Perdices also stated that the parties could either begin a review of the assessment data gathered thus far or adjourn the meeting and use the time to complete the parent input forms with the interpreter present. Parent agreed to adjourn the IEP team meeting so that the parent rating scales and interview could be completed.

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On March 14, 2024, Perdices met with Parent for approximately two hours to complete the parent rating scales with the assistance of an interpreter, but did not finish. Perdices met with Parents again on March 21, 2024, for approximately two and one-half hours, on April 10, 2024, for approximately one hour, and on April 17, 2024, for approximately an hour, to finish the parent rating scales.

THE INITIAL SPECIAL EDUCATION EVALUATION

San Mateo assessed Student for special education and related services prior to the April 18, 2024 IEP, which consisted of a psychoeducational evaluation performed by school psychologist Perdices, and an academic assessment by education specialist DeLeon. The psychoeducational assessment conducted by Perdices was documented in an assessment report dated April 18, 2024, noted as being a "Revised Report." The evaluation included administration of assessment measures in the areas of intelligence, auditory processing, visual-motor integration, behavior and a developmental profile. Perdices also reviewed records, conducted an observation of Student in the computer lab, and obtained Parent, Student and teacher input.

Perdices reviewed some school records, but that did not include Student's prior transcript or cumulative file from his prior school district. Among the documents Perdices reviewed for her assessment was a psychological assessment by Molesworth conducted as part of Student's criminal case for the purposes of establishing Student's competency to stand trial. That Molesworth psychological assessment was not part of the documentary evidence at hearing, and at the time of Perdices's assessment, Student's legal team restricted access to the full report to Perdices. Student's team did not provide a copy of

this Molesworth report to Perdices until some time during the assessment process. Some of the information Perdices summarized in her report came from her review of that Molesworth report.

Perdices's report documented that Student's primary language was not English, that he was classified as an English language learner. Prior to entering Hillcrest, he lived with his family where they primarily spoke Student's native language. Early developmental milestones were reportedly achieved at expected rates. Student otherwise enjoyed good general health. Perdices also noted Student's education had been impacted by the extended school year closures during the COVID-19 pandemic from seventh grade through his eighth-grade year when instruction was provided asynchronously and remotely and that he had inconsistent school attendance during ninth grade.

The report stated that during ninth grade prior to entering Hillcrest, Student engaged in incidents of verbal and physical aggression, vandalism, cannabis use, and had a 15-day suspension. It also noted disciplinary incidents at Hillcrest, including a one-day suspension in Spring 2023 for making a threatening gesture, visiting prohibited websites on the computer, and one incident of excessive talking. It also noted the November 2023 incident that resulted in his removal by Probation from the general education classrooms to the computer lab with the older inmates. As a result, the report stated, Student was receiving individual instruction from his teachers and worked independently on assignments in a separate classroom grouping with the facility's high school graduates who were completing remote and asynchronous college courses. It also noted that even prior to being moved to the separate grouping with the graduates, Student had received a lot of individual support due to the very small class size and

availability of additional paraeducator assistance. It also noted that there was a high level of embedded disciplinary structure in Student's current program, including a school wide point system and close monitoring of the classroom by Probation program supervisors at the Youth Services Center.

Perdices included an abbreviated summary of Molesworth's criminal case competency assessment data she believed relevant to San Mateo's special education evaluation. Perdices noted that the Molesworth concluded Student's overall cognitive abilities were in the deficient range with a wide scatter of underlying skills noted, ranging from average performance in processing speed, low average performance in visual-spatial thinking and short-term memory, borderline performance in fluid reasoning, and very deficient performance in comprehension knowledge. Molesworth's evaluation placed Student's attentional processing in the average range.

Perdices observed Student during testing and in the computer lab while he was completing a history assignment. Specifically, he was browsing and selecting images on a computer to insert into his written report about social justice. He was well engaged in the task and progressed efficiently. Perdices's observations did not include seeing Student's peer interaction, but he did not pose any distraction or other disturbance to the learning environment. During Perdices's administration of the assessments, Student was very cooperative, polite, motivated, engaged and helpful. Perdices reported Student sustained concentration and persevered through most challenges. He fidgeted frequently by tapping his fingers or swiveling his chair without impeding his performance. Due to security protocols, the door to the assessment room had to remain open, so external noise and entry by others into the assessment space occurred frequently which she thought likely distracted Student to a significant degree.

Perdices used a nonverbal assessment tool to gain a better understanding of Student's strengths and weaknesses in the area of cognition. Perdices selected this assessment tool because its language processing demands were minimal and therefore more reliable in assessing English language learners, like Student. All of Student's composite scores fell in "Poor" range, although there was some variation in his specific underlying skills. Student's grasp of analogous and sequential relationships between abstract designs as well as his understanding of categorical connections between familiar images were stronger, placing him in the average to low average ranges, but his scores in the other areas were weaker, in the borderline range. Student's full scale composite score was 72. Perdices concluded Student's scores were consistent with prior assessments and indicated Student's thinking capabilities were marked by some variability and were weaker overall than many same-aged peers.

Perdices administered two subtests from another cognitive measure which measured Student's ability to fluidly identify various basic attributes from a visual stimulus which was important for easily accessing basic information automatically without applying excess effort. Student scored in the average range on the subtest that measured Student's ability to accurately and quickly identify single letters and numbers. Student scored in the high average range on the subtest which measured Student's ability to accurately and quickly identify the quantity within a grouping of dots. Perdices concluded Student scored in the high average range overall, indicating he could readily summon fundamental knowledge without having to expend undue mental capacity, freeing him to tackle more complex and novel thinking challenges.

Perdices used selected subtests to measure Student's abilities to analyze sound structures of language and isolate and manipulate individual phonemes, which was associated with decoding skills and important to reading and writing development.

Student's overall score fell in the low average range, but there was significant scatter within the discrete skills. On two subtests, Student scored in the average range. On the third subtest, Student scored in the deficient range, but Perdices concluded this score was highly suspect because of the disrupted testing environment. Therefore, Perdices opined that Student's overall abilities were closer to the upper range of the confidence interval which was compatible with his average performance on the first two subtests.

Student's scores fell in the average range on a test of visual motor integration. Perdices opined that this result suggested Student had basic underlying fine motor skills necessary to complete handwritten tasks. For adaptive functioning, Mother and a teacher were asked to report whether Student demonstrated a number of skills in several domains, including gross and fine motor skills, self-care and survival skills, interpersonal behaviors that reflect social and emotional competence, intellectual functioning skills (such as perception, concept development, number relations, reasoning, memory, classification, time concepts and related mental acuity skills), and communication (ability to understand spoken and written language as well as to use verbal and nonverbal skills to communicate). All of Student's scores both at home and at school were in the average range. Student's General Development Score, which represented his broad functioning across all domains, was average overall with a standard score of 96 at school, and a standard score of 101 at home. These results indicated that Student's daily living skills were appropriate to meet his basic needs across settings and did not exhibit delays in his developmental profile that would be consistent with a special education eligibility of intellectual disability.

Perdices evaluated aspects of Student's behavior and personality which might influence his educational performance through rating scales answered by Student, Parent and a teacher. None of Parent's or the teacher's ratings were in the clinically

significant range. Student rated himself in the clinically significant range in some areas, but it was not established these were important to Student's claim in Issue 2. His teacher's scores were average in learning problems, which meant difficulties comprehending and completing schoolwork in various academic areas, and average in school problems, which meant Student's overall academic functioning. Both his teacher and Parent rated Student average in functional communication, which meant typical communication ability displayed by the average child of his age. The results of this assessment tool indicated Student's teacher had some concerns regarding Student's overall behavioral functioning, noting that Student was a bit prone to be argumentative and defiant. Student indicated he was easily overstimulated and somewhat prone to be irritable. Parent thought Student could lack flexibility and struggled to some degree to manage stress and recuperate from setbacks.

English teacher Naested reported to Perdices that Student was motivated, hardworking and intelligent. Naested told Perdices that Student worked well with others and was eager to achieve, but that Naested wanted to see Student improve his anger management skills to prevent fights with other students.

Mother told Perdices she enjoyed a good relationship with Student, describing him as active, fun, sociable, happy, and someone who liked to play games with his brothers and be helpful at home. Mother reported Student was a very hard worker, never idle, and an innovative thinker with great ideas. Mother was primarily concerned with Student being bored because he required a lot of stimulation.

Student told Perdices he considered his athleticism to be his primary strength, and that he spent a lot of time with friends working out and playing basketball. He acknowledged that he got into trouble for fights and breaking rules, but he did not have

other concerns about how he was faring. Student declined to discuss his history of psychosocial trauma as part of Perdices's evaluation, but Perdices noted in her report Student had been "intimately exposed to extensive community-based violence," including the deaths of several neighborhood peers and received weekly counseling sessions as part of the Youth Services Center rehabilitation program.

Perdices concluded her report by answering certain questions posed as the purpose of the assessment. First, she identified Student's areas of strength and need. Student was an athletically inclined Student completing concurrent college courses. He had been on honor roll for seven consecutive periods with the most recent grade point average of 4.0, referring to his last quarter grades. He represented Hillcrest in the annual spoken word competition, which referred to the poetry competition, for the past two years. His adaptive behaviors were all well within range for his age, and had excelled as a student at Hillcrest overall, aside from his struggles to regulate his anger and control aggressive reactions which required considerable intervention to manage safely after the enrollment of rival peers at Hillcrest.

Second, Perdices determined Student did not qualify for special education under the categories of specific learning disability, other health impairment, emotional disturbance, and intellectual disability. For specific learning disability Perdices relied on considerable scatter in Student's cognitive profile, ranging from very deficient to high average levels. She concluded Student did not show a clear pattern of overall average cognitive functioning inherent to the definition of specific learning disability under the pattern of strengths and weaknesses model. As such, she concluded Student did not meet the eligibility criteria for specific learning disability. She also relied on what she described as Student's current high level of achievement in his academic functioning as a contraindication of a learning issue. Perdices noted Student was classified as

an English language learner and the assessment was not given in Student's primary language, so the IEP team might consider referring Student for a bilingual assessment to ensure that a complete picture of Student's capabilities was captured before making a final eligibility determination. Student's specific academic scores were not included in Perdices's report.

In concluding Student did not meet the criteria for other health impairment, Perdices acknowledged that Student self-reported significant struggles with symptoms of inattentiveness and hyperactivity, but these challenges were inconsistent with the other measures. Perdices also noted that the small highly structured living and learning environments inherent to the Youth Services Center and Hillcrest might have mitigated any issues to a considerable extent and less visible to observers. Perdices suggested reassessment of Student upon returning to the mainstream settings.

As part of her report, Perdices separately posed the question whether Student needed special education services to obtain educational benefit. In response to this question, Perdices stated Student appeared to be accessing his education and gaining educational benefit with the support of his program at Hillcrest. She pointed to Student's accelerated progress toward earning his high school diploma as early as December 2024, his honor roll status for seven consecutive grading periods, and his completion of concurrent college level courses. She noted that Hillcrest as a court school, offered a small class size with a high level of structured support, whereas Student might struggle maintaining appropriate conduct and progress within a comprehensive high school campus. Perdices did not recommend any goals or interventions in her report, noting that the IEP team would make the final eligibility determination.

THE APRIL 18, 2024 IEP TEAM MEETING

The initial IEP team meeting which began on March 14, 2024, was reconvened on April 18, 2024, to review the results of the initial assessment. All required members were initially present, except there was no nurse present to review any health assessment performed by San Mateo. In addition, education specialist DeLeon left after reviewing the academic assessment report. Social Studies teacher Bordagaray also left the meeting early. Attorneys for Parents and San Mateo also attended the IEP team meeting.

During the meeting in response to a request for explanation as to the discrepancy between Student's high grades and low-test scores, and whether he was getting one-to-one attention, the education specialist stated that not all of Student's scores were low, that Student was thriving in the small, structured environment, and that teachers provided one-to-one feedback. Perdices explained test scores were merely a snapshot in a testing environment that was not ideal due to security protocols which posed many interruptions and distractions. As to why the setting seemed to be successful, social studies teacher Bordagaray explained that the staff worked with Student in the classroom and on an individual basis. San Mateo's administrator clarified because Student was accessing learning in a classroom, it was similar to a classroom setting. Perdices summarized for the IEP team her assessment conclusions regarding ineligibility in the four categories she assessed. She also acknowledged Mother had expressed concerns regarding autism. Perdices informed the IEP team she did not suspect Student would qualify for special education under autism, but admitted a comprehensive assessment was not conducted in that area.

At the April 18, 2024 IEP team meeting Student's attorney expressed concerns regarding the assessment findings and asked if the team could reconvene to be creative about fulfilling an eligibility category. Student's attorney claimed that Student had reported an inability to track or understand what was happening when in a classroom and was concerned about later being "dumped" in a regular classroom. Student's attorney was concerned because Student might be released soon, given that he struggled with school before coming to Hillcrest's higher level of service. San Mateo's attorney stated that he did not know how San Mateo could anticipate needs that were not currently being displayed in the current setting. Perdices said she would consult a colleague to see if they had suggestions to address these concerns. Student's attorney also asked if it would help if Perdices had a copy of Student's "very comprehensive" private evaluation. Perdices said it would be "great" if she could consult with this evaluator, and Student's attorney said she would reach out to see if she could provide the IEP team with access to the report. The IEP team agreed to correspond regarding the scheduling of "a continuation of the meeting."

STUDENT'S REQUEST FOR RECONSIDERATION OF ELIGIBILITY AND REQUEST FOR AN INDEPENDENT EDUCATIONAL EVALUATION

By letter dated June 6, 2024, from Student's attorney to San Mateo, the family requested that San Mateo reconsider Student's eligibility for special education, or in the alternative, fund an independent educational evaluation. Student's attorney stated that she disagreed with San Mateo's psychoeducational evaluation because it did not include certain information, and that it was incorrect in its administration, interpretation and consideration of critical cognitive assessments, claiming Student should have been made

eligible under the categories for intellectual disability and other health impairment based on an attention deficit hyperactivity disorder. Student's attorney criticized the failure to consider Student's prior school records, and San Mateo's failure to request them.

The letter stated that Student was assessed by Molesworth in November and December 2023, to determine Student's competency to stand trial after he became a ward of the juvenile court system beginning June 17, 2022. The letter claimed Molesworth found that Student had "an Unspecified Neurodevelopmental Disorder, with features including Overall Low Intellectual Ability (IQ 68), Cognitive Deficits (including but not limited to fluid reasoning, abstract reasoning, delayed memory) and ADHD features." It claimed Molesworth noted that Student's delay in English language development likely reflected his cognitive deficits, and his scores on tests not requiring language proficiency still supported a conclusion of overall low intellectual disability. It also claimed that based on a February 2024 order, Dr. Cynthia He, M.D., Ph.D., also examined Student to assess his competency to stand trial in juvenile court, and that she found Student met diagnostic criteria for Unspecified Neurodevelopmental Disorder, with cognitive deficits, including impaired learning, memory, attention and executive functioning. The letter documented that the "evaluations" were emailed to Perdices and others on April 29, 2024, but also stated that Perdices had a copy of "the Molesworth report" in preparing the April 18, 2024 revised psychoeducational assessment, but not a copy of the He report. Neither the He report nor any of Molesworth's reports were proffered as evidence at hearing, and neither of these witnesses was called to testify at the hearing.

Student attorney's June 6, 2024 letter detailed what purported to be information from the Molesworth and He reports, prepared as part of Student's criminal case. The letter argued Student should have been found eligible for special education under the primary category of intellectual disability and the secondary category of other health impairment. It stated Student reported not understanding or being able to learn until he was provided with special education accommodations given to him at Hillcrest. The letter stated Student reported finally being able to learn and enjoy school with the assistance of a one-to-one aide. It also stated Student's grades reflected his newly found ability to learn and enjoy school. Student's attorney stated the IEP process was initiated because it was imperative to permanently secure for Student the accommodations he had been provided, with the singular goal to ensure Student always had the best opportunity possible to enjoy and excel in his education.

The letter criticized Perdices's failure to consider the findings in the Molesworth report, including details about Student's history, grades, and delayed English proficiency. It cited to March 4, 2024 statements attributed to Student that were purportedly from He's report, to counter the academic success reported by Perdices in her April 18, 2024 psychoeducational report. Student's attorney also took issue with the assessment and conclusions regarding Student's adaptive skills and claimed Perdices disregarded Student's scores on a nonverbal intelligence measure and Student's delays in acquisition of learning English, to support Student attorney's claim Student qualified for intellectual disability special education eligibility. Based primarily on Molesworth's report and the fact that Perdices did not conduct certain tests to disprove "an ADHD eligibility,"

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Student's attorney also argued Student should have qualified under the category of other health impairment until such time as sufficient assessments could be provided to better understand Student's cognitive disabilities.

CALIFORNIA ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS

Student took the California Assessment of Student Performance and Progress, known as the CAASPP, sometime during the spring of the 2023-2024 school year. Student did not meet the 11th grade standards for English language arts or mathematics. His scores were reported by the California Department of Education as being at a level 1.

Student was below 11th grade standards in reading and listening, which measured his ability to understand written and spoken information, and in writing and research, which measured how well he used research skills and communicated in writing. For English language arts, the state average score was a 2590, and Student achieved a score of 2401. A score of 2583 or higher met the grade 11 standard.

Student was near 11th grade standards in math concepts and procedures, which measured his ability to apply mathematical concepts and procedures to solve problems. He was below 11th grade standards in mathematical practices, which measured how well he applied strategies to solve complex problems and explain the reasoning for the solution. For math, the state average score was a 2545 and Student obtained a score of 2480. A score of 2628 or higher met the grade 11 standard.

No scores were provided for Student on the Essay Performance portion of the test, stating that his written response was insufficient and he did not receive a score. There was no evidence proffered as to what that meant.

Student's scores on the CAASPP were not reported to San Mateo until sometime after the April 18, 2024 IEP team meeting, but the record failed to establish when the scores were received. The score sheet stated that assessment results were only one measure and should be combined with other information to better understand student achievement.

The testimony at hearing established that the CAASPP was not normed for English language learners and that English language learners did not perform as well on this assessment as native English speakers.

SAN MATEO'S AGREEMENT TO FUND AN INDEPENDENT EDUCATIONAL EVALUATION

On June 12, 2024, San Mateo offered to fund an independent psychoeducational evaluation and provided Student's team with a copy of the San Mateo's policy for independent educational evaluations along with a list of approved assessors. School psychologist Perdices contacted almost all assessors on the approved list to facilitate Parent's selection of an available assessor to conduct the independent educational evaluation.

On September 24, 2025, Student initially requested that licensed psychologist DiRago conduct the independent evaluation by conducting a record review. When San Mateo objected, on September 25, 2024, Student's attorney proposed a different

independent assessor. When it was discovered in October 2025 that this other assessor was booked through the end of the year, on October 7, 2025, Student's attorney again proposed DiRago.

On October 16, 2024, San Mateo objected to DiRago based on a perceived conflict of interest because she was an adjunct professor at Stanford University School of Medicine and Student was represented by a legal team from a legal clinic at Stanford Law School. On October 28, 2024, the parties agreed on another independent evaluator, but in mid-November 2024, San Mateo learned this other evaluator declined to conduct the independent educational evaluation.

Later in November 2024, the parties agreed that Guilar would conduct Student's independent educational evaluation. Guilar was listed on San Mateo's independent educational evaluation policy list of approved educational psychologist assessors. On November 21, 2024, San Mateo also informed Student's legal team that San Mateo was not inclined to reconsider Student's special education eligibility without an independent educational evaluation.

DIRAGO'S RECORD REVIEW

On September 24, 2024, DiRago wrote Student's attorney an email stating that one possible opinion could be that the school psychologist did not conduct a thorough enough evaluation to determine whether Student qualified for special education under other categories. It was that same afternoon that Student's attorney notified San Mateo Student had selected DiRago to do the independent assessment, as referenced in the

preceding section. DiRago made this statement before ever seeing Perdices's April 2024 psychoeducational evaluation. DiRago's offer of this as a possible opinion before ever seeing the evaluation negatively impacted her credibility.

On September 25, 2024, Student's attorney notified DiRago that they were going to use someone on San Mateo's list of approved assessors for the independent educational evaluation because of its objections to using DiRago. They also told DiRago that they may still want to hire DiRago to conduct a review of all the assessments.

On November 19, 2024, Student's attorney contacted DiRago and asked if she could conduct a record review of the existing evaluations and make recommendations as to whether further testing was needed to determine special education eligibility. Student's attorney stated that they were unable to proceed with DiRago because of San Mateo's objections to using DiRago, but wanted to know if DiRago could still do a review of the existing evaluations and make recommendations.

On November 21, 2024, Student's attorney instructed DiRago to write a report and a few days later sent the assessments to DiRago that she wanted her to review.

On January 10, 2025, DiRago sent her report to Student's attorney offering opinions regarding Student's psychoeducational evaluation and his eligibility for special education. Student's attorney sent DiRago's report to San Mateo on January 13, 2025, asserting that Student was eligible for special education under the category of intellectual disability, and likely qualified under both emotional disturbance and other health impairment. Student's attorney requested that San Mateo find Student eligible for special education without any further assessments.

DiRago reviewed four documents to write her report, including Perdices's April 18, 2024 revised psychoeducational evaluation, Molesworth's January 2024 competency report, and He's April 2024 report and supplemental report regarding Student's competency to stand trial in juvenile court. She did not review Student's transcripts, discipline records or IEPs. She never met with Parent or his teachers, never observed Student, and never did any testing. She never met with Student or observed Student in an educational setting, never spoke with Parents other than at the March 11, 2025 IEP team meeting discussed below, and never looked at any of Student's educational records, other than some unspecified work samples which she looked at just before she testified.

In her report, DiRago disagreed with Perdices's conclusion regarding special education eligibility pursuant to the category of intellectual disability. DiRago spent the bulk of her eight-page report explaining the reasons supporting her finding that Student "undoubtedly" qualified for special education under the category of intellectual disability. DiRago also believed that a compelling argument could be made that Student also qualified under the category of emotional disturbance. She also agreed with school psychologist Perdices's April 2024 psychoeducational evaluation conclusion that Student did not qualify under the category of specific learning disability, based on DiRago's determination that Student's poor performance on the standardized tests was more accurately attributable to his intellectual disability rather than a special learning disorder. DiRago also stated Student "would likely qualify" for special education under other health impairment based on information she apparently read in the reports she reviewed.

On January 17, 2025, San Mateo informed Student's attorney that according to school psychologist Perdices, the data clearly indicated Student had a higher achievement level than what was expected of a student with an intellectual disability.

It reported it was Perdices's opinion that an intellectual disability profile was inconsistent with Student's completion of A through G coursework from a WASC-accredited school, consistent honor roll status, and on the verge of earning his high school diploma.

THE INDEPENDENT EDUCATIONAL EVALUATION

An independent psychoeducational evaluation was conducted by Guilar, and she prepared a 37-page report dated March 11, 2025. Guilar's report stated that she was a Licensed Educational Psychologist. Neither side called Guilar as a witness at hearing to explain her report and answer questions about it.

The report stated that Guilar's evaluation consisted of a review of

- school and clinical records,
- interviews with Student, English teacher Naested, and Parents,
- observations during assessment, and
- various tests, and
- rating scales, including but not limited to,
 - an academic assessment,
 - instruments specific to autism,
 - oral language cognition and behavior.

It was unknown whether Guilar considered other information because she did not testify.

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The report documented that Student did not speak any English when he emigrated to the United States in 2016. Parents were fluent speakers in their native language and reported a “literacy lean” environment for Student, relying largely on biblical scripture as their primary source of literature. Guilar noted that when considering heritage, home language, schooling, and community, Student’s profile was markedly different from the mainstream United States norm samples commonly used in standardized measurements. The report stated that the effects of environmental, cultural, linguistic, and socioeconomic status were considered and that some of these factors might have impacted Student’s education.

The report stated that Student’s developmental history was obtained from Mother. Mother reported Student’s early health history as major milestones being achieved on time except for language. When Mother compared Student to other children, she considered Student to have much later language development. Guilar reported Student began school in his native country when his language skills were just developing, but reportedly often left the classroom and found the lessons boring. Student began speaking English after moving to the United States and was enrolled in English language development classes as a “newcomer.” Parents also reported English was currently Student’s dominant language, and that he understood humor and sarcasm, and could follow verbal directions. They reported no sensory aversion and were concerned with his academic standing. They hoped he could regain fluency in his native language while continuing to develop English.

English teacher Naested described Student to Guilar as an intellectually capable Student who demonstrated focus and engagement during lessons and assignments, and she never observed him having challenges in understanding directions. Naested believed he had matured mentally, emotionally, and academically over the past couple

of years. She described his affect as easy going, very social and considerate. She also described his social interactions as typical of all boys his age, could be strong-willed at times, and only moody or stubborn as a direct response to something personal occurring.

According to the Guilar report, Student told Guilar that his current educational experience was largely independent, stating "They just drop me off work – mostly Miss Monica." She reported Student demonstrated ambidextrousness during testing. Student explained to Guilar that he switched hands because of a previous fracture in his wrist that made using his right hand painful when writing. Guilar reported Student appeared motivated during testing and declined breaks, engaged with Guilar throughout the interview and provided clarifying comments during rating scale administration.

Guilar's report appeared to summarize a psychological report created in July 2023 by psychologist Molesworth based on his evaluations in 2022 and 2023. Again, neither Guilar nor Molesworth were called as witnesses and at hearing and none of Molesworth's reports were offered into evidence. Guilar reported Molesworth indicated Student had been exposed to significant community violence, the most recent incidents in 2022, and that prior to his arrest in 2022, he mostly stayed on the street with his "crew." Molesworth reportedly did not find Student to present with symptoms of depression, anxiety or attention deficit hyperactivity disorder, but had concerns related to possible post-traumatic stress disorder or substance abuse. A comprehensive mental health evaluation was reportedly recommended at that time. This evaluation was not part of the record in this case.

Guilar's report stated that when Student was later assessed, apparently by Molesworth, he reported Student presented with a limited vocabulary, had difficulty comprehending questions and comments, was considered to have poor memory, and

that Student's test performance resulted in low overall cognitive ability. Guilar also reported that Student was assessed in March 2024 by He to determine Student's competence to stand trial. Again, He was not called as a witness at hearing and He's report was not offered into evidence. According to Guilar, He reported Student had difficulty retaining information between meetings with lawyers and evaluators, and that Student did not like "studying stuff." Per Guilar's report, Student had reported to He that he was using marijuana daily by the middle of eighth grade, and other drugs less frequently. He used codeine cough syrup mixed with soda which he called "juice" or "lean" once or twice a week, but not every week in eighth and ninth grades. He also shared that he had used Ecstasy and cocaine. He said marijuana made him forget about everything and made him calm.

Guilar's report stated that at the start of high school, a review of records indicated Student's English proficiency level was at the fourth-grade level, his math skills were at an eighth-grade level, he had a grade point average of less than 1.429 and he had failing grades in two classes. Guilar incorrectly stated in her report that Student's failing grades during his freshman year were in English and Physics. In fact, Student got a B in "English I Supp" and a C in "English I-P," as detailed in Issue 1A.

Guilar's report stated that Student's prior teachers observed frequent absences or tardiness, a failure to complete homework and the need for repeated instructions and redirection. Guilar also reported that a Student Study Team process was initiated in November 2022 but was declined by Student and Parents. At hearing, as noted in Issue 1A, this date was established to be an error, and refers to events in November 2021.

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Guilar's report stated that Student had a record of assertive discipline and suspensions beginning in middle school. A behavioral incident report included nine referrals between October 2021 and March 2022 for incidents of fighting, threatening, and injuring others. Guilar reported Student was found in possession of marijuana in November 2021 and March 2022 and was reportedly expelled for fighting and transferred to a charter school in September 2021, disenrolled from the charter school in April 2022, two months before his arrest, and he became a ward of the juvenile court system in June 2022. Guilar reported that in ninth grade Student missed 15 full days of instruction and had 135 unexcused class absences and approximately 80 unexcused tardies.

Guilar's 2025 report stated that Student's oral language testing scores suggested he was acquiring academic language at a slower pace than his peers across several areas. Guilar reported that it appeared Student struggled with processing complex language, and his level of English academic language proficiency might not be sufficient to fully benefit from classroom instruction without specialized instruction. Guilar reported that a thorough bilingual-multicultural speech/language evaluation would provide further information about Student's functional language. Guilar reported that Student was English dominant but his oral language scores indicated he was not English proficient.

In the area of cognitive functioning, Guilar's report stated that tests were administered to better understand the extent to which language impacted Student's performance on tests with varying verbal load and what this meant for his learning. Guilar reported using a measure to help interpret whether lower scores demonstrated a weakness beyond the impact of language and culture. Guilar reported Student's pattern of scores resembled those of students who have language disabilities in their primary

and secondary languages. The report stated that on the academic assessment clusters, Student scored below what was expected for his age in reading and math, but his score in writing suggested he was writing as expected for his age.

Guilar's report concluded Student demonstrated curiosity and perseverance during challenging tasks. The report stated Student's abstract reasoning and visual problem-solving were areas of strength and he excelled at tasks of processing speed. The report stated that Student's language processing impacted his English language development, and that Student's oral language abilities indicated a significant need for targeted support. The report stated Student tended to exhibit frustration when faced with high academic language demands, and Student struggled with understanding complex and nuanced language. The report also stated Student demonstrated good executive functioning and attention processing through standardized measures, but that reports from others suggested he struggled with impulsivity and inattention.

Guilar's report stated Student did not meet eligibility criteria for autism, other health impairment or intellectual disability. Guilar reported Student met eligibility criteria for specific learning disability. The report stated that Student's performance across multiple data points assessing his language comprehensions and expression suggested that his oral language was considerably lower than expected for his age even when compared to other English language learners with similar level of academic English language exposure. Guilar explained in her report that she analyzed the assessment data to determine if Student demonstrated a significant and unexpected difference in a psychological processing area. The report stated that despite Student's

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strong cognitive efficiency and adequately developed nonverbal reasoning ability, Student might encounter challenges in certain academic domains that required language knowledge and reasoning versus basic interpersonal communication skills.

The report also noted that Student's language delays were evident from a very young age, prior to his move to the United States, and that his current educational language delays were believed to be due to his neurotype impacted by environmental factors. The report stated that several outside factors impacted Student's academic progress, including as examples, his

- move to a new country,
- economic hardship,
- school violence,
- poor school attendance,
- a global pandemic, and
- incarceration.

Guilar's report concluded that economic, cultural, linguistic and environmental variables did not appear to be the primary factors contributing to Student's learning challenges but played a role in his learning. Guilar's report stated Student required specialized academic instruction to access the curriculum, particularly to support his challenges with language processing which impacted his learning across academic subjects, among other recommendations in the report, including that the IEP team consider the strong likelihood of a speech and language impairment.

THE MARCH 11, 2025 IEP TEAM MEETING

On March 11, 2025, San Mateo reconvened Student's IEP team meeting to review the results of Guilar's independent educational evaluation. Parents attended, along with Guilar and DiRago, social studies teacher Bordagaray who attended the first part of the meeting, Director of School Programs Jesus Jimenez, and attorneys for both parties. At hearing, Perdices testified she believed she attended this meeting. The record did not establish if other individuals attended the IEP team meeting.

Bordagaray reported on Student's current academic status. He shared Student had performed well during the previous quarter, but approximately three weeks earlier he had stopped completing schoolwork and voiced he did not want to graduate. Bordagaray also reported Student had recently reengaged and was on track to finish his course requirements by March 21, 2025, the end of the quarter. He acknowledged he had no independent written work or tests to share. He explained that all coursework was kept in the classroom folder, and that he or the paraeducator administered and supported Student on chapter assignments embedded in state-approved economics text. Student's attorney stated that grades alone were insufficient to document Student's academic competence. Guilar reviewed her independent evaluation. She recommended the IEP team consider eligibility under speech language impairment and specific learning disability, noting Student's language deficits appeared to be longstanding based on her interviews with Student and Mother, and were not solely attributable to second-language acquisition.

San Mateo's attorney stated the IEP team would not decide as to eligibility at that time because Guilar did not provide San Mateo with a copy of her report until the day before the meeting. Student's attorney objected and argued that awarding a diploma

without documented mastery of grade-level skills could expose San Mateo to liability and limited Student's access to future educational services. Director Jimenez noted Student was only 2.5 credits short of completing his graduation requirements and upon satisfying them, Student would receive a Golden State Seal Merit Diploma. He said he was deferring any graduation decision until the team thoroughly reviewed the independent evaluation report. Parents echoed their lawyer's concerns and Student's attorney reiterated the family did not agree to closing the IEP or graduating Student at that time. The IEP team agreed to promptly reconvene to finalize the pending eligibility determination, review graduation implications, and consider services recommended in the independent evaluation.

On March 20, 2025, San Mateo's attorney notified Student's attorney by email that based on the independent assessment and other data, and input from the IEP team, it had determined Student met special education eligibility criteria under the category of specific learning disability. The email also stated Student would meet the requirements for graduation on March 21, 2025. It also stated that in response to the demand from Student's attorney, San Mateo would proceed with developing an IEP to address Student's needs, inviting Student's attorney to share any ideas about what services may be appropriate for Student prior to the IEP team meeting.

STUDENT WAS AWARDED A DIPLOMA ON MARCH 21, 2025

On March 21, 2025, Student was awarded his diploma and was exited from Hillcrest. Student's diploma included the distinction of being a Golden State Seal Merit Diploma. Students are eligible to receive a Golden State Seal Merit Diploma if they are

eligible to receive a high school diploma and demonstrate mastery of the curriculum in six particular subject areas, by either achieving a certain grade level during consecutive semesters, or by attaining qualifying scores on certain examinations.

During Student's senior year, San Mateo Director of School Programs Jimenez and Student's academic counselor determined Student met criteria to graduate with a Golden State Seal Merit Diploma based on his grades, and filed an application on Student's behalf with the State of California. Student was the only student awarded a Golden State Seal Diploma since San Mateo Executive Director Notch's assumed oversight responsibilities for Hillcrest in 2021 or 2022.

THE APRIL 29, 2025 IEP TEAM MEETING

On April 29, 2025, San Mateo reconvened Student's IEP team meeting. Student and Parents attended, along with Student's attorney and an interpreter, social studies teacher Bordagaray, Perdices, Director Jimenez, a special education teacher, a transition services coordinator, and San Mateo's attorney, among others.

Work samples were circulated for the IEP team to review, and they discussed special education eligibility. Prior to the meeting, Bordagaray attempted to gather samples of Student's work from some of his teachers. He asked teachers if they had any work samples and took whatever they provided to him but he did not look at them or verify they were Student's work. At hearing, Bordagaray explained that he gathered whatever he could as San Mateo had a practice of shredding students' work after the COVID-19 pandemic because it might carry germs and because of other concerns about students' privacy.

At the IEP team meeting, Student's legal team proposed that the IEP team consider specific learning disability, as recommended by Guilar in her independent evaluation report, and intellectual disability as a possibility as proposed by DiRago. Speech and language eligibility was also raised as an option by Student's legal team. The team discussed that neither DiRago nor Perdices found Student eligible under the category of specific learning disability, but Perdices acknowledged that Guilar's report was more recent and more comprehensive than DiRago's. Perdices also stated that because a speech and language evaluation had not been completed, eligibility under that category was not appropriate without additional data. The IEP team agreed to specify Student's special education eligibility as specific learning disability.

The San Mateo staff noted that Student met high school graduation requirements and was no longer eligible for the development of an IEP, given that goals, services and accommodations were not required to support him in accessing his education or earning a diploma. Student's team asked San Mateo to clarify if the proposal continued to be a potential settlement agreement rather than an IEP. San Mateo clarified for Student's legal team that the proposal was that any compensatory services would be specified in a potential settlement agreement, not in an IEP. The IEP team also discussed transition services options, including transition services San Mateo coordinated through the Department of Rehabilitation and an employment agency, which assisted youths in obtaining jobs after being released from juvenile detention.

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STUDENT FAILED TO PROVE STUDENT WAS ELIGIBLE FOR SPECIAL
EDUCATION UNDER THE CATEGORY OF SPECIFIC LEARNING
DISABILITY ON APRIL 18, 2024

On the first day of hearing, Student's attorney clarified that Student was only contending he qualified for special education eligibility under the category of specific learning disability, so that is the only category of eligibility addressed by this Decision.

As explained below, Student failed to establish he should have qualified for special education at the April 18, 2024 IEP team meeting under the category of specific learning disability. Contrary to Student's assertions, the finding in independent evaluator Guilar's report that Student met the eligibility criteria for a specific learning disability in March 2025, did not establish San Mateo should have reached the same conclusion a year earlier, at the April 18, 2024 IEP team meeting.

THE MARCH 2025 INDEPENDENT EVALUATION WAS BASED
ON INFORMATION SAN MATEO DID NOT HAVE WHEN IT
CONDUCTED STUDENT'S APRIL 2024 INITIAL EVALUATION

Student did not prove San Mateo should have found Student specific learning disability eligible in April 2024. Student's reliance on Guilar's March 2025 independent evaluation and the April 29, 2025 IEP team's determination qualifying Student for special education is not persuasive. Guilar's independent evaluation took place a year after San Mateo's 2024 psychoeducational evaluation. Whether Student was eligible for

special education as of April 18, 2024, must be evaluated in light the information San Mateo had at that time. Student did not prove Perdices had or should have had in April 2024 all the information Guilar had in March 2025 when she conducted her evaluation.

For example, Student did not prove that Perdices had at the time of her 2024 initial assessment, all the reports Guilar had for her March 2025 independent evaluation. Based on Guilar's report, Guilar appears to have had multiple reports from Molesworth, including a report from July 2023 and subsequent competency assessments done later, including in November and December 2023. Guilar's report also demonstrated that Guilar had at least one report from He, if not the He supplemental competency letter referenced in DiRago's January 2025 report.

Perdices testified although she had one of Molesworth's competency evaluations when she conducted her assessment, it was not until after the April 18, 2024 IEP team meeting that Student's team shared other reports which she had not seen previously, including an additional report by Molesworth and at least one of He's report. Parents were reluctant to share these reports, but after Perdices explained why it was important that Perdices see them, Student's team agreed to provide them. Student attorney's June 6, 2024 letter documented that Perdices was never given He's report and corroborated Perdices's testimony that she only had one of Moleworth's reports. Specifically, the June 6, 2024 letter referred to Student only providing Perdices with the singular, "Molesworth report." Student did not prove that Perdices had all the reports reviewed by Guilar prior to the April 18, 2024 IEP team meeting.

In addition, Student failed to prove Parents gave Perdices the information they reportedly provided to Guilar about Student's early childhood language development. Prominent in Guilar's March 2025 report concluding Student qualified for special education under the category of a specific learning disability was the fact that Student had language delays from a very young age before he moved to the United States. This information apparently was provided to Guilar by Parent. The report indicates Parent reported to Guilar that Student achieved major milestones on time, except for language. Perdices denied Parent provided this same information about Student's early childhood language development in connection with San Mateo's 2024 initial assessment, thereby denying her important information about Student's language delays. Student failed to prove this information was provided to Perdices, or that Perdices did not question Parents about Student's early childhood language development. Perdices testified at hearing the assessment would have elicited this information from Parent, including during the Student Study Team meeting or during the multiple meetings she had with Parent after the March 11, 2024 IEP team meeting. Student did not rebut this testimony through any other witness. The contemporaneous Student Study Team meeting notes did not reflect Parent ever mentioned this issue, and Student did not reference anything in Perdices's 2024 assessment report indicating that any Parent disclosed this. In fact, Perdices April 2024 assessment report recorded Student had met all "[e]arly developmental milestones," at expected rates, which information Perdices testified came from Parents.

The importance of these other reports or Student's early language delays to Guilar's evaluation conducted one year later and how they may have impacted Guilar's findings is not known because Guilar was not called to testify as a witness. Guilar's report, without her testimony to explain it and substantiate her findings, and answer questions regarding Student's claim regarding his eligibility for special education a year

earlier, was fatal to Student's claim in Issue 2. Guilar's 37-page report and its findings required explanation and substantiation by the evaluator. Yet, Student inexplicably failed to have Guilar, or another unbiased credentialed expert, testify to persuasively explain the basis for Guilar's eligibility findings, particularly those pertaining to specific learning disability eligibility. Significantly, it was not clear which, if any, of the three models for determining specific learning disability Guilar used in reaching her determination regarding specific learning disability, as required by the California Code of Regulations, title 5, section 3030, subdivision (b)(10). At hearing, Perdices speculated Guilar used the pattern of strengths and weaknesses model pursuant to California Code of Regulations, title 5, section 3030, subdivision (b)(10)(C)(2), but Perdices also noted there were different versions of that model, and it was unclear what model Guilar purportedly used. Student also did not establish that Guilar used proper protocols for administering all tests, including those that she relied on in reaching her conclusions about Student's eligibility under the specific learning disability category. These questions and others were never answered at hearing, given that Guilar never testified, and negatively impacted Student's ability to meet his burden of proof on Issue 2.

STUDENT'S EXPERT DIRAGO WAS NOT CREDIBLE

Student's reliance on psychologist DiRago's testimony was not persuasive in establishing that Student had specific learning disability at the time of the April 18, 2024 IEP team meeting, based on Guilar's independent evaluation report, prepared a year later.

DiRago testified at hearing that Student qualified for special education under the category of specific learning disability, relying on Guilar's 2025 independent evaluation. She testified that a specific learning disability was a neurodevelopmental disability, and

therefore a lifelong condition. DiRago also testified Student's oral language scores obtained during Guilar's 2025 independent evaluation were extremely low and represented a significant impairment in Student's ability to express himself and understand language, which should have been apparent in Fall 2023 to a professional working closely with him.

However, DiRago was not a credible witness. As discussed above, other than conducting a limited record review consisting of four prior assessment reports, DiRago never assessed, tested, or observed Student. DiRago never met or spoke to Student or his Parents, other than seeing Parents at the March 11, 2025 IEP team meeting. She never spoke to any of his teachers, never reviewed his transcripts or discipline records and never reviewed his educational file, including the notes of the IEP team meetings at Hillcrest. Yet, in her January 2025 report she rendered opinions about Student's qualification for special education eligibility in fairly absolute terms.

As noted above, DiRago spent the bulk her January 2025 report justifying Student's position at that time. DiRago stated Student "undoubtedly" qualified for special education under the category of intellectual disability, and determined Student's poor performance on standardized tests were more accurately attributable to his intellectual disability rather than a specific learning disorder, and that she thought he likely qualified under the category of other health impairment. DiRago stated in her report without qualification she agreed with Perdices's opinion that Student did not qualify for special education under the category of specific learning disability. DiRago's billing records reflect she billed 5.5 hours of time pertaining to her report, and only one hour of that time for reviewing Student's records, and 4.5 hours writing her report. DiRago's willingness to render this unqualified opinion about Student's eligibility

for special education without ever having properly assessed Student significantly undermined her credibility. DiRago's complete about-face on those opinions at hearing, in conjunction with other evidence, made it impossible to give credence to anything she said.

At hearing, DiRago testified Student did not have an intellectual disability as she had opined was "undoubtedly" the case in her January 2025 report. Instead, she claimed Student had a specific learning disability after having reviewed Guilar's report, who had concluded Student did not qualify under the category of intellectual disability. At hearing, DiRago also reversed her earlier January 2025 opinion that Student likely qualified for special education under the category of other health impairment, now claiming she agreed with Guilar's opinion that Student did not meet eligibility under other health impairment. DiRago explained that both intellectual disability and specific learning disability were neurodevelopmental developmental disabilities. But, she also clarified that eligibility for special education under the categories of specific learning disability and intellectual disability were mutually exclusive – that a student could not be eligible under both categories. She opined that a specific learning disability involved a difficulty with a basic psychological process that impacted academic performance. Therefore, she explained that a learning disability could not be due to an intellectual disability but had to result from a deficit in one of the psychological processes. In contrast, she explained for a student to meet criteria for intellectual disability eligibility, the poor academic performance had to be the result of the presence of a global cognitive impairment, rather than deficits in individual processes.

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DiRago's willingness to "flip" the opinion she gave in January 2025 she claimed to have no doubt about, to reach a contradictory conclusion only a few months later, negatively impacted the trustworthiness of her testimony. Notably, it was Student's attorney who insisted in their June 6, 2024 letter to San Mateo that Student was eligible for special education under the category of intellectual disability and other health impairment – and this was exactly the opinion DiRago provided in her January 2025 report. Later in 2025 Student's attorneys asserted in this case that Student should have qualified for special education eligibility in April 2024 under the category of specific learning disability, rather than intellectual disability. Not surprisingly, DiRago echoed this opinion at hearing, which was the exact opposite of what she had earlier concluded.

When DiRago was asked at hearing if in January 2025, she said Student "undoubtedly" qualified for special education due to his intellectual disability, DiRago unconvincingly stated she did not recall. When asked if she had any doubts about Student qualifying under intellectual disability eligibility at the time, DiRago responded that there was always doubt to all conclusions. She testified she did not think she had any doubt at the time she wrote her report and was certain based on the information she had. Yet, she also claimed there was always more information to be gathered. Her statements appeared inconsistent and defensive. DiRago's sheepish response to the initial question suggested she was not candid. This lack of candor, together with the inconsistencies in her statements, and that DiRago made no attempt to qualify the conclusions in her January 2025 report after reviewing Student's records for only one hour, further undermined her credibility.

Other evidence made DiRago appear biased and rendered her opinions unreliable. For example, as noted above, DiRago seemed to prejudge the opinion she could offer in her September 2024 email to Student's attorney. Specifically, DiRago suggested "one

potential opinion could be that the school psychologist did not conduct a thorough enough evaluation...," before she had ever even seen Perdices's 2024 evaluation. Further, as discussed in Issue 1A, she attempted to render opinions on the MAP and MyPath testing favorable to Student although she lacked sufficient familiarity with these instruments and could not explain some of her opinions.

DiRago acknowledged Student was an English language learner and testified it would take four or five to seven years on average for academic language development of English language skills at the same level as native English speakers, and a shorter time for social language. When San Mateo's attorney tried to cross-examine DiRago on these topics, DiRago had difficulty expressing her opinions, admitted she was rambling, and she could not persuasively explain the literature on which she relied. She also agreed that the literature did not include school interruption due to the COVID-19 pandemic. DiRago also stated she did not know how old Student was when he arrived at Hillcrest and that she had never met him. DiRago also agreed that the score scatter Perdices found could be explained by one's status as an English language learner, interruption in schooling, or countless other variables, including but not limited to, testing conditions, effort, or a particular individual's strengths and weaknesses.

DiRago's opinions at hearing relied heavily on Guillar's report, but as explained above, Guillar's extensive report was never comprehensively or adequately explained during the hearing, and it was not established Guillar followed all proper protocols in administering her assessment. DiRago admitted that tests were not 100 percent reliable and she failed to persuasively explain how Student met the requirements for specific learning disability eligibility. DiRago also admitted that the academic test Guillar reported to have administered Student in March 2025 was not normed to English language learners and DiRago did not know if English language learners progressed

academically at the same rate as English speaking peers, although she admitted that English language learners scored lower than English-speaking peers on State examinations of academic achievement. She also acknowledged that as stated in Guilar's report, Student's profile was markedly different from the normed samples commonly used in standardized measurements. DiRago admitted she had no basis to dispute Student was not English proficient at the time he was tested and did not match the norming samples. DiRago's testimony comparing Student's scores in 2024 to his scores in 2025, was also confusing and convoluted, and she appeared at times to backtrack from what she said earlier on direct examination. At one point, DiRago admitted she was speculating, at another point she stated she did not know why Student's scores were different, and at another point said she did not know if any of the differences in the scores was statistically significant.

Overall, DiRago's testimony was unpersuasive based on her lack of credibility. Therefore, DiRago's testimony was insufficient by itself or considering the other evidence proffered to prove San Mateo should have found Student eligible for special education at the April 18, 2024, IEP team meeting.

SAN MATEO FOUND STUDENT ELIGIBLE FOR SPECIAL
EDUCATION AFTER HE GRADUATED FROM HIGH SCHOOL TO
ASSIST HIM IN RECEIVING POST-SECONDARY SERVICES FROM
OTHER AGENCIES

The fact that San Mateo agreed to make Student eligible for special education under the category or specific learning disability at the April 29, 2025 IEP team meeting did not mean that Student was eligible on April 19, 2024, a year earlier. In addition, the

weight of evidence established San Mateo agreed to make Student eligible at the IEP team meeting on April 29, 2025, after he graduated, in an to attempt to support Student in his post-secondary education.

At hearing, Executive Director Notch explained it could be helpful for a student to have IEP eligibility for obtaining post-secondary services from the Department of Rehabilitation or other community organizations. Because the IEP process did not conclude prior to Student's graduation, San Mateo wanted to explore how that could impact Student's post-secondary opportunities, including his ability to obtain disability services in college if he had an IEP. San Mateo thought it could proceed with finding Student eligible for special education so Student could obtain supports in his post-secondary education, even though he was no longer eligible for special education services at Hillcrest, because he had already graduated on March 21, 2025.

Although there was testimony from San Mateo witnesses that they agreed or did not object with the decision to make Student eligible in April 2025, it was not established that the IEP team agreed he was eligible at some earlier time because he qualified under the category of specific learning disability. In fact, school psychologist Perdices testified she did not think Student needed special education at the time of the April 29, 2025 IEP team meeting. Thus, it appears Perdices did not demur to the decision to make Student eligible at the April 29, 2025 IEP team meeting, for the reasons Notch articulated at the hearing.

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STUDENT DID NOT PROVE THAT ANY LEARNING ISSUES HE
HAD WERE NOT THE RESULT OF ENVIRONMENTAL, CULTURAL
OR ECONOMIC ADVANTAGE OR BECAUSE OF HIS LIMITED
ENGLISH PROFICIENCY

Student did not prove whether issues he alleged he had regarding specific learning disability were not the result of environmental, cultural, or economic disadvantage. And, Student did not prove Guilar's findings regarding specific learning disability eligibility were correct. In other words, Student did not prove the deficits Guilar reported were not the result of cultural factors, environmental factors, or limited English proficiency, or that any severe discrepancy found was not primarily the result of limited school experience or poor school attendance. Student did not prove which model Guilar used to determine Student met the definition of specific learning disability eligibility and that she applied it correctly because Guilar did not testify, and Student presented no other witness to persuasively opine about this.

Here, there was no doubt that Student had limited English proficiency and was an English language learner. He was from another country and did not speak English until he came to the United States when he was about nine years old. Student's native language was still spoken in the home. Guilar reported Student had a literacy lean environment before moving to the United States, his Parents relying largely on biblical scripture. His education was impacted by the extended school closures caused by the COVID-19 pandemic in seventh and eighth grades. He apparently started using different drugs by the middle of eighth grade, including daily marijuana use. He was reportedly exposed to significant community violence and many of his friends were arrested or on probation. He was apparently threatened with a weapon on multiple

occasions, and several of his friends died as result of street violence. In ninth grade, he reportedly mostly stayed on the street with his “crew” which protected him from other “crews,” and missed significant amounts of school. He reportedly had many traumatic events throughout his life. He was arrested in June 2022 and incarcerated at the Youth Services Center since that time, except for a brief period in Summer 2025. When he came to Hillcrest, he told English teacher Naested he grew up poor and social studies teacher Bordagaray he had been doing drugs and behaving badly.

Guilar’s report stated that she considered the effects of environmental, cultural, linguistic, and socioeconomic factors, and she concluded that several of these factors had impacted Student’s academic progress. She cited as examples, Student’s move to a new country, economic hardship, school violence, poor school attendance, a global pandemic, and incarceration. Guilar wrote that these factors contributed to Student’s current educational profile and played a considerable role in his learning. Although Guilar wrote that she did not believe these were the primary factors contributing to Student’s learning challenges, by failing to call Guilar to testify, Student failed to establish that Guilar’s conclusions in this regard were appropriate.

**STUDENT DID NOT PROVE HE WAS SPECIFIC LEARNING
DISABILITY ELIGIBLE IN APRIL 2024 BECAUSE PERDICES’S
ASSESSMENT WAS FLAWED**

Any flaws in Perdices’s April 2024 initial assessment were insufficient to conclude Student was eligible for special education in April 2024 under the category of specific learning disability.

Student claims San Mateo failed to consider Student's setting when it evaluated him. Student asserts at the time of the 2024 initial assessment Student was receiving all his education in the computer lab and receiving one-to-one instruction, which Perdices acknowledged in her report. Student also claims Perdices acknowledged Student might be eligible for special education in a more regular educational setting, and that she offered to follow up with a colleague but never did. Student points to Perdices's report which stated it might be appropriate to reconsider Student's eligibility for special education once he returned to a more typical school environment because his presentation could change in a setting different from the small, structured court school environment at Hillcrest.

As distinguished from the situation in *L.J. v. Pittsburg Unified School Dist.* (9th Cir. 2017) 850 F.3d 996, a case cited in Student's closing brief where the general education pupil received what the court found were in fact special education services to help him access the curriculum, Student was not moved to the computer lab or taught using a one-to-one model after November 2023 because he required that setting to access his education. Instead, he was moved by Probation to the computer lab for safety reasons. There was no persuasive evidence establishing that Student could not access his education in the regular general education setting at Hillcrest. In fact, the evidence demonstrated, including the testimony of his teachers, that the contrary was true. Student received one-to-one instruction in the computer lab because of Probation's determination as to how the inmates needed to be grouped for safety reasons, including gang affiliations, following a November 14, 2023 incident involving Student. As a result, Student's teachers worked with him individually in the computer lab, with support from a paraeducator who was not a one-to-one aide. In other words, Student

was not provided accommodations and services not normally available to general education students but was taught individually based on Probation's implementation of a necessary safety protocol.

To the extent that Student suggests Perdices was required to predict in her 2024 assessment Student's behavior if he were in a regular general education classroom on a comprehensive campus, rather than the Hillcrest setting, and make recommendations based on that future possibility, Student's argument is unpersuasive. Student failed to provide any cogent argument or persuasive authority to support this position.

While the evidence proved that Perdices's assessment had some failings, including the failure to obtain Student's prior school records, as Executive Director Notch acknowledged at hearing, Student did not demonstrate that any failings proved Student should have been found eligible under specific learning disability in April 2024, given all the other deficiencies in the evidence on Issue 2. To the extent there was any failure to properly assess oral language in 2024, as Student contends, Student did not prove this resulted in Student not being found specific learning disability eligible. Guilar never testified to substantiate her findings regarding oral language and their relationship to her 2025 conclusion regarding specific learning disability, or the adequacy of Perdices's 2024 assessment as it related to Student's claim in Issue 2. The evidence did not establish that had Perdices not made the errors Student alleges occurred, San Mateo would have determined Student was eligible in 2024. Moreover, Student did not raise legal deficiencies in Perdices's assessment as a separate claim in the complaint as an issue for hearing. Student did not seek leave to amend to add additional issues, and San Mateo did not consent at any time to amending the issues for hearing. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i) [the party requesting the

hearing may not raise issues at the due process hearing that were not raised in the complaint unless the other party agrees.].) Thus, Student's arguments regarding alleged deficiencies were only considered within the context of the stated Issues.

Even so, Student called no credible witness to opine directly and comprehensively on the adequacy of Perdices's assessment on the question of April 2024 eligibility. DiRago's testimony was not reliable because she was not credible. Moreover, DiRago did not directly or comprehensively discuss the methods of establishing specific learning disability eligibility under California Code of Regulations, title 5, section 3030, subdivision (b)(10), and in particular, any problems with Perdices's application of the patterns of strengths and weaknesses model Perdices used in April 2024 to determine Student did not qualify as a pupil with a specific learning disability. Instead, after DiRago reviewed Perdices's April 2024 psychoeducational evaluation report, DiRago wrote in her January 2025 report, "I agree with Ms. Perdices opinion that [Student] does not qualify for special education services under the category of Specific Learning Disability (SLD)." Neither DiRago nor Student's lawyers thought Student was specific learning disability eligible as of January 2025, undermining Student's argument that he was specific learning disability eligible even earlier, in April 2024, based on the flaws in Perdices's 2024 evaluation.

Student's argument that Perdices incorrectly analyzed eligibility under specific learning disability was also unconvincing. The record was not sufficiently developed to fully or comprehensively establish what the pattern of strengths and weaknesses model consisted of and that Perdices applied it incorrectly, as was Student's burden. Perdices's testimony was confusing and insufficient to reach the conclusion Student seeks, particularly considering DiRago's January 2025 report that she agreed with

Perdices's conclusion that Student was not eligible under specific learning disability. Moreover, Student did not call any other witness to establish that San Mateo's 2024 application of the strengths and weaknesses model was incorrect. It is still puzzling how Student could allegedly be specific learning disability eligible with the cognitive profile he had, given his academic achievement scores. Student improperly attempts to rely on evidence which was never proffered at hearing much less admitted and made part of the record, specifically, the San Mateo Special Education Local Plan Area manual. The ALJ did not consider this document. Student's reliance on another OAH decision with different evidence was not persuasive.

Notwithstanding Student's attempts to expose the mistakes Perdices may have made in her conclusion regarding specific learning disability, Student failed to prove these mistakes should have resulted in a finding of specific learning disability on April 18, 2024. Neither did Student prove he needed special education at the time of the April 18, 2024 IEP team meeting, which is a necessary element for establishing eligibility. Besides his teachers' testimony and the other evidence demonstrating he was accessing the curriculum, Student's lawyer in her June 6, 2024 letter, acknowledged Student reporting that he was learning and enjoying school. His attorney also opined at that time that Student's grades reflected that.

Student failed to prove by a preponderance of evidence that San Mateo denied him a FAPE at the April 18, 2024 IEP team meeting by failing to find Student eligible for special education and services.

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ISSUE 1B: DID SAN MATEO DENY STUDENT A FAPE BY FAILING TO ASSESS BETWEEN MARCH 11 AND 21, 2025 FOR SPEECH AND LANGUAGE?

Student contends San Mateo denied him a FAPE by failing to assess Student for a speech and language disorder. Student argues San Mateo was on notice of Student's symptoms of a speech and language disorder based on the results of the independent evaluation and the educators' observations. Student asserts that by March 11, 2025, San Mateo knew Student had performed poorly on the measure of oral language and vocabulary, and that school psychologist Perdices agreed that a speech and language assessment was warranted based on Student's scores at that time, and he would have been assessed but for his graduation on March 21, 2025. Student argues that but for San Mateo improperly graduating Student, San Mateo would have assessed Student for a speech and language disorder, and considered offering Student alternative services, and that the failure to assess Student seriously infringed on Parents' opportunity to participate in the IEP process.

San Mateo contends that a speech and language assessment was suggested by independent assessor Guilar in her March 11, 2025 report. It asserts that the data indicating that Student was delayed in early language development was not shared with school psychologist Perdices in connection with her 2024 assessment or with the IEP team on April 18, 2024. Thus, San Mateo contends that any child find obligation with respect to any potential speech and language impairment was not triggered until March 11, 2025, only ten days before Student's lawful graduation on March 21, 2025. San Mateo asserts there was insufficient time for it to issue an assessment plan, obtain consent, conduct an evaluation and convene an IEP team meeting before Student graduated from high school on March 21, 2025. San Mateo argues Student failed to

prove it acted unreasonably within this brief period at issue, or that any alleged failure caused Student a deprivation of educational benefit. It argues there is no merit to Student's claim of a child find violation with respect to a potential speech and language disability.

Student failed to prove San Mateo denied Student a FAPE by failing to conduct a speech and language evaluation of Student between March 11 and March 21, 2025 for the reasons set forth below.

Independent assessor Guilar presented the results of her independent psychoeducational evaluation at the March 11, 2025 IEP team meeting. In Guilar's report, she recommended that the IEP team consider eligibility under speech language impairment, noting that Student's language deficits appeared to be longstanding based on her interviews with Student and Mother, and were not solely attributable to second-language acquisition. At hearing, school psychologist Perdices agreed that based on the results of Guilar's independent educational evaluation, a speech and language assessment was warranted, and she would have recommended such an assessment had Student not graduated on March 21, 2025.

Even assuming San Mateo's obligation to assess Student for speech and language was triggered on March 11, 2025, when it became aware of Guilar's recommendation and given Perdices's statements at hearing, San Mateo was not required to assess Student within the 10-day period. Instead, San Mateo had 15 days to provide Parent with a written proposed assessment plan, Parent had 15 days to sign and return the assessment plan, and San Mateo had 60 days to conduct the assessment and convene an IEP team meeting to review the assessment. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f), 56302.1, subd. (a), 56321, subd. (a) & (c)(4), 56344, subd. (a).)

Student failed to prove San Mateo denied Student a FAPE by failing to assess from March 11, 2025, through March 21, 2025, in speech and language.

ISSUE 3: DID SAN MATEO DENY STUDENT A FAPE ON MARCH 21, 2025 BY ISSUING HIM A DIPLOMA?

In the complaint, Student alleges he was denied a FAPE when San Mateo awarded him a diploma on March 21, 2025, purportedly based on his having completed the requisite number of credits. Student alleges San Mateo failed to produce evidence that he met the graduation standards in the classes he was required to take, it was unclear what his grades were based on, and it was uncertain whether Student mastered the material or even understood it. Student claims his graduation precluded him from any further secondary education long before he met basic standards and that he was prematurely graduated.

In his closing brief, Student contends that he was denied a FAPE on March 21, 2025, when San Mateo issued him a diploma because it terminated his eligibility for special education and related services after the third quarter of his 12th grade year, and denied him the opportunity to obtain a speech and language assessment. Student concedes that Student's transcript reflected he earned more than the minimum credits required by San Mateo for graduation, and he completed all state-required courses for graduation. But, Student contends his grades were issued in violation of Superintendent Policy 5121, because nearly all of his teachers used factors unrelated to knowledge and understanding of the course content in their grading, including his English teacher, his social studies teacher, and his credit recovery teacher. Student argues his grades were inflated by prohibited factors like attendance, behavior and effort which allowed him to earn credits which in turn led to his improper graduation.

Student concedes that neither the IDEA nor California law requires mastery of 12th grade standards for graduation, but San Mateo board policy requires that course materials be aligned with California state standards to help students achieve grade level competency. Student argues that California law permits districts to issue diplomas only when a student has met the standards of proficiency in basic skills prescribed by the governing board of the district or the equivalent thereof. However, Student asserts that Hillcrest staff were unable to identify those standards and that the evidence “suggests” Student was not demonstrating basic proficiency in coursework aligned with grade-level standards, because he struggled with below-grade level skills, received substantial assistance from educators on graded assignments and earned standardized test scores inconsistent with his grades. Student contends the circumstantial evidence demonstrates Student was unable to access grade-level content and meet the standards of proficiency in state standards-aligned courses.

In their response to the complaint, San Mateo alleges Student earned enough credits to be awarded a regular high school diploma. It alleges that it found Student eligible for special education on April 29, 2025, in part as a response to Student’s representations that the IEP eligibility determination would facilitate Student’s eligibility for community-based services following his graduation. It asserts that it expressed a willingness to discuss compensatory education that did not result in an IEP offer. Referencing Student’s reliance on his last California state standardized test results, San Mateo alleges it was not improper to graduate a student who did not meet grade level standards. It alleges Student completed both San Mateo and state approved curriculum, earned the requisite credits to graduate and received a regular high school diploma with Golden State Seal distinction. It alleges Student’s assertions of

the absence of evidence, was not evidence of absence, and San Mateo could not rescind a valid diploma to extend special education services beyond the point where the student had completed the prescribed course of study.

In its written closing argument, San Mateo contends Student presented no credible evidence that his graduation was improper or unearned. San Mateo argues the record established Student completed all required credits and coursework in Hillcrest's structured program and that he earned passing grades. San Mateo argues Student ignored the evidence in asserting Student failed to meet graduation standards. It asserts that the law does not require students to exhibit academic proficiency at a 12th grade level to graduate, but only that the student has sufficient passing credits in each required area of study. San Mateo argues that standardized test performance is an imperfect data-point because it is a one-day snapshot, that the CAASPP has limited diagnostic value for English learners and was not normed for English learners, and that penalizing students because they are still learning English risks violating federal civil rights laws. San Mateo also argues Student's abilities were routinely evaluated as part of his coursework and his teachers awarded his grades based on his mastery of the subject matter and his academic abilities. San Mateo contends the work samples Student relies on fall far short of demonstrating Student did not meet the requirements for graduation. It asserts there was no credible evidence Student's grades were inflated, or that credits were awarded without the completion of coursework, or that San Mateo deviated from its established graduation requirements.

The federal regulations implementing the IDEA require that school districts provide FAPE to children with qualifying disabilities until the age of twenty-two. (34 C.F.R. § 300.101(a).) This obligation, however, does not apply where the disabled

student has “graduated from high school with a regular high school diploma.” (34 C.F.R. § 300.102(a)(3)(i).) A pupil with exceptional needs who has met all state and school district requirements and graduates from high school with a regular diploma is no longer eligible for special education and related services. (34 C.F.R. § 300.102(a)(3)(i); Ed. Code, § 56026.1, subds. (a) & (b).) When a student satisfies the requirements for a regular diploma, the student’s eligibility for FAPE ends.

A regular high school diploma means a diploma conferred on a student who has met all local and state high school graduation requirements. (Ed. Code, § 56026.1, subd. (b).) A regular high school diploma does not include an alternative degree that is not fully aligned with the state academic standards, such as a certificate or a general educational developmental credential, called a GED. (34 C.F.R. § 300.102(a)(3)(iv); Ed. Code, § 56026.1, subd. (c).) A regular high school diploma means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma. (34 C.F.R. § 300.102(a)(3)(iv).)

The establishment of proficiency standards for a high school diploma is a State function which is not addressed by the IDEA or federal regulations. Neither the IDEA nor California education law requires that a graduating student exhibit academic proficiency at a 12th grade level. State law and school district policy exclusively determine diploma and graduation requirements. (*Letter to Anonymous*, Office of Special Education Programs (OSEP) (Nov. 1, 1994); see also, *Parent on behalf of Student v. Newport-Mesa Unified School Dist.* (December 9, 2010) OAH Case No. 2010060770 (*Newport Mesa*) [the determination of a student’s proficiency is left to the school district and the IEP team].)

In California, a student must complete the curriculum and have sufficient passing credits in each required area of study. Education Code section 51225.3 prescribes the courses required for a student to earn a high school diploma. The governing board of any California school district maintaining a high school shall prescribe courses of study designed to provide the skills and knowledge required for adult life, and shall prescribe separate courses, including but not limited to, a course of study designed to prepare prospective pupils for admission to state colleges and universities, and a course of study for career technical training. (Ed. Code, § 51224.) No diploma shall be conferred on a pupil as evidence of completion of a prescribed course of study or training, or of satisfactory attendance, unless the pupil has met the standards of proficiency in basic skills prescribed by the governing board of the high school district, or the equivalent thereof. (Ed. Code, § 51412.)

When grades are given for any course of instruction taught in a school district, the grade given to each pupil shall be the grade determined by the teacher of the course and the determination of the pupil's grade by the teacher, in the absence of clerical or mechanical mistake, fraud, bad faith, or incompetency, shall be final. (Ed. Code, § 49066, subd. (a).) The governing board of the school district and the superintendent of such district shall not order a pupil's grade to be changed unless the teacher who determined such grade is, to the extent practicable, given an opportunity to state orally, in writing, or both, the reasons for which such grade was given and is, to the extent practicable, included in all discussions relating to the changing of such grade. (Ed. Code, § 49066, subd. (b).)

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A school district cannot deny a regular high school diploma to a student who meets the district's graduation requirements simply because that student has a disability. (*Letter to Anonymous, supra*, OSEP (Nov. 1, 1994).) Education Code section 56392 states,

"It is not the intent of the Legislature by enacting this chapter to eliminate the opportunity for an individual with exceptional needs to earn a standard diploma issued by a local or state educational agency when the pupil has completed the prescribed course of study and has passed the proficiency requirements with or without differential standards." (Ed. Code, § 56392.)

When an individual with exceptional needs meets public education agency requirements for completion of a prescribed course of study designated in the student's IEP, the public education agency which developed the IEP shall award the diploma. (Cal. Code Regs., tit. 5, § 3070.)

Student failed to prove by a preponderance of evidence that San Mateo denied him a FAPE by awarding him a high school diploma on March 21, 2025.

THERE CAN BE NO FAPE DENIAL BECAUSE STUDENT DID NOT
PROVE HE WAS ELIGIBLE FOR SPECIAL EDUCATION AT THE TIME HE
GRADUATED

As an initial matter, as discussed in Issue 2, Student failed to prove he was eligible for special education prior to San Mateo awarding him a diploma. The IEP team agreed to make Student eligible for special education at the IEP team meeting on April 29, 2025. By that time, Student had already been awarded a high school diploma on

March 21, 2025. Thus, San Mateo could not have denied Student a FAPE by awarding him a diploma on March 21, 2025, because Student did not prove he was eligible for special education at or prior to that time.

While it is true that San Mateo's attorney wrote a letter to Student's attorney on March 20, 2025, stating San Mateo was agreeing to make Student eligible, that was the day before Student fully completed his coursework and awarded his diploma, ending any FAPE obligations San Mateo had at that time. Moreover, a decision to make a pupil eligible for special education was an IEP team decision, made at an IEP team meeting which did not occur here until April 29, 2025. Notably, neither Parent nor Student consented to eligibility offered at the April 29, 2025 IEP team meeting until August 2025. Student did not consent to eligibility to special education proffered during the April 29, 2025 IEP team meeting until August 28, 2025, nearly four months later. Without consent, San Mateo had no FAPE obligations to Student even assuming he had not already graduated. (Ed. Code, § 56346, subd. (a).)

Regardless of any procedural errors San Mateo may have made, there can be no denial of FAPE where a pupil does not prove he was eligible for special education. (Cf., *R.B. v. Napa Valley*, *supra*, 496 F.3d 932, 942; *D.G. v. Flour Bluff*, *supra*, 481 Fed. Appx. 887, 893, 2012 WL 1992302.)

STUDENT DID NOT PROVE HE FAILED TO COMPLETE AND PASS THE REQUIRED COURSES NECESSARY TO GRADUATE

Student concedes that his transcript reflects he earned more than the minimum credits and completed all the State-required courses necessary to graduate with a regular high school diploma when San Mateo awarded it to him on March 21, 2025. Moreover,

Executive Director Notch and Director Jimenez testified that the minimum number of credits necessary to graduate from Hillcrest with a regular high school diploma was 210, and Student had a total of 223 credits and completed all the required courses. In addition, there was no persuasive evidence, and Student's raises no convincing argument, that Hillcrest's curriculum in regard to Student, was not aligned with the applicable State academic standards, commonly referred to as the California common core standards. Instead, Student argues that Student's grades were issued in violation of San Mateo's policies on grading. However, Student failed to meet his burden of proof on this claim.

Student cites to *Student v. Los Angeles Unified School District*, OAH Case No. 2013050272 (September 26, 2013) in support of Issue 3. However, that case is inapposite. In that case, the ALJ found that the student's curriculum was so thoroughly modified that it bore almost no resemblance to the curriculum of his class, and even with substantial modifications to the curriculum, Student could not participate meaningfully in his school placement. The teacher and staff reports in reading, writing, vocational education, adapted physical education, speech and language, and behavior, each concluded that student's various deficits impeded his ability to access the general education curriculum, and a year later, uniformly reported that Student's deficits continued to hinder his access to the general education curriculum. Just two months before the student was awarded his high school diploma, he was unable to read, write, or to functionally communicate even with the assistance of his aide. Based on this and other evidence, the ALJ did not give credence to the district's reliance on a printout of the student's grades and credits as evidence he earned passing marks and found that the

student's grades were inflated. In contrast, here, Student failed to present necessary persuasive evidence for the ALJ to conclude that San Mateo improperly awarded him a high school diploma.

Student asserts San Mateo's teachers violated Superintendent Policy 5121, which required Student's grades to be based on the quality of Student's work and mastery of course content based on San Mateo's standards, and prohibited San Mateo from including factors that were not a direct measure of knowledge and understanding of the course content, including attendance, effort, student conduct and work habits. However, Student never offered Superintendent Policy 5121, which Student argues was violated, as evidence. Director Jimenez was asked about the policy and claimed he was familiar with it, but Student failed to establish through Jimenez or otherwise what the entire policy said, when it was adopted by the Superintendent, and whether there were any exceptions or conditions applicable to this policy. Jimenez only started working at Hillcrest in July 2024. He claimed he was familiar with the policy because he looked at it last year, but it was not established what he meant by "last year," whether he looked at it before or after Student graduated or whether it was the policy since June 2022 when Student entered Hillcrest. Credit recovery teacher Parreira testified San\ Mateo's Superintendent recently shared a grading policy with the staff within the "last year or two," and she also claimed she followed the policy. Student did not prove what the grading policy was since June 2022, when Student first became a pupil at Hillcrest, through his graduation on March 21, 2025.

However, even assuming the complete policy was as described by Student's attorney during the examination of Jimenez, Student failed to prove he was not entitled to a diploma because his teachers deviated from that grading standard. Student points

to snippets of Director Jimenez's testimony and his teachers' testimony, including English teacher Naested, Social Studies teacher Bordagaray, and Credit Recovery teacher Parreira, as examples that the Superintendent Policy was violated. However, Student takes some of that testimony out of context and gives the testimony Student's relies on more weight than it is entitled.

When Jimenez spoke about "seat time," he was explaining that the number of credits a pupil might earn was a function of the length time the pupil was at Hillcrest. Jimenez did not say a student earned credits only for being present, as Student seems to argue. Further, contrary to Student's argument, there was no requirement an administrator "verify" that a student's grades were based on actual mastery of curriculum before a diploma could be awarded. Pursuant to Education Code section 49066, subdivisions (a) and (b), San Mateo properly left the determination of Student's grades to his teachers, and those grades were final. There was no showing Student ever took steps to change any of his grades.

While English teacher Naested may have mentioned the words, effort, completion and attendance in discussing her grading practices at hearing, Student took her words out of context and ignored the gestalt of her testimony. Naestad used a point system in her daily grading. She gave points for each of the assignments, quizzes, and tests she assigned and converted them to the corresponding grade earned based on the total number of points achieved by the student. Naested based her grading on what she called mastery effort outcomes as described in Issue 1A above – which she boiled down to, did student complete the work and did they complete it to the expected standard demonstrating competency? She specifically denied she based her grades on a student's behavior or how she felt about the student, and she did not allow students to redo a quiz or a test unless they had a legitimate excuse. As more than one teacher

pointed out, a student could not earn any points if they were absent from school, due to court appearances, appointments with lawyers, medical appointments, and the like. Similarly, to the extent Naested mentioned effort and completion as grading factors, these appeared to be a function of the competency and mastery standard Naested used. There was no persuasive evidence Naested based the grades she gave Student merely on him attending class, completing an assignment or his effort. To the extent Naested gave Student points for those things, Student failed to prove how much it impacted his grade, or whether it impacted it to the degree necessary to demonstrate he did not earn a diploma, given that a D was a passing grade.

Bordagaray gave his students daily assignments, plus quizzes, midterms, and finals. He used a point system. Different tasks had different point values. The final grade was determined by the totality of the points based on what was in the daily gradebook over the quarter, with finals weighed more heavily because they were worth more points. As Student acknowledges, Social Studies teacher Bordagaray testified he gave grades based on whether the student did the work and met the State standards, explaining that his grades reflected his students' level of competence. Bordagaray stated every lesson had an assessment or test at the end. When asked how he graded these assessments or tests, he said he looked at whether the student got the correct answers. As far as daily work, Bordagaray testified that if the student got the wrong answer, it lowered their grade. During Bordagaray's testimony, he also mentioned as part of his grading factors, attendance, and whether the work was clear and on time. But when asked how much participation or attendance factored into a student's grade, he said if the student was absent, they did not receive the information, so they had to make up the work. When asked what he meant by "the work was clear," Bordagaray said he meant whether he could read what the student wrote, but it did not appear

Bordagaray had deducted points on that basis when the ALJ questioned him about one of Student's work samples. At another point, Bordagaray said his grading was based on participation, attendance, correctness, clarity, timeliness, but he clarified that mainly, he looked at whether the student's answer was correct.

While Bordagaray may have used nonacademic factors in grading some students, Student did not prove Bordagaray used those factors in the grades he gave Student. In fact, Bordagaray denied ever having to adjust Student's grades for non-academic reasons. To the extent Bordagaray used those nonacademic factors in grading Student, Student did not prove how much it impacted his grades, or whether it impacted his grades to the degree necessary to demonstrate Student did not earn a diploma. To that point, although Student should not have earned a point or two on the work sample Student references in his closing brief, this one instance, considering all the other evidence, was insufficient to establish Student failed to earn his high school diploma.

As discussed in Issue 1A, credit recovery teacher Parreira testified she based the grades she gave to students on how well the students did on the assigned work. She had no formal rubric for grading. The grade was based on the raw score on the assignment, and then if there were extenuating circumstances impacting the raw score, she would "cushion" that grade "a bit." Parreira testified that Students' grades accurately reflected his academic abilities. Although Parreira admitted she "considered" when she decided grades that students were working independently without much support on credit recovery, Student failed to establish how much, if at all, that "consideration" impacted Student's grades. Similarly, while Parreira admitted she might "cushion" a grade after seeing a student's raw score if there were extenuating circumstances, Student failed to prove that Parreira did this for any of the scores or

grades she gave Student. Thus, Student did not prove if or how much Parreira's nonacademic grading factors impacted Student's grades, or his entitlement to a diploma.

Student failed to meet his burden of proof.

STUDENT FAILED TO PROVE HE DID NOT MEET THE PROFICIENCY STANDARDS REQUIRED TO GRADUATE

Student concedes that neither the IDEA nor California law requires a student to master 12th grade common core standards to graduate with a regular high school diploma. In fact, the law does not specifically require a student to master any particular grade level standards. Instead, California Education Code section 51412 requires that for issuance of a diploma, the pupil must meet the standards of proficiency in basic skills prescribed by the governing board of the high school district, or the equivalent thereof. Student argues that Hillcrest staff were unable to identify the "standards of proficiency in basic skills proscribed by the governing board of the high school district," nor were they able to identify the "equivalent thereof." However, Student ignores it was his burden to prove the requirements for graduation, not San Mateo's.

Purportedly relying on San Mateo Board Policy 6161.1, Student argues that it required that course materials be aligned with California state standards and "help students achieve grade-level competency." But, as with Superintendent Policy 5121, Student failed to proffer into evidence Board Policy 6161.1. When Student's attorney told Director Jimenez what San Mateo Board Policy 6161.1 supposedly said, Jimenez did not seem to be familiar with it. Jimenez claimed, at one point, he did not memorize it,

said it sounded familiar, and that he “believed” it to be the policy. In any event, Student failed to establish through Jimenez or otherwise the full contents of Board Policy 6161.1, or when it was adopted by the San Mateo Board.

Student points to isolated portions of Student’s and his teachers’ testimony to argue that Student lacked proficiency in basic skills necessary to be awarded a diploma. This argument was unconvincing.

Although math teacher Wroblewski testified he believed Student was at a fourth or fifth grade level in math calculations when he first began working with Student, Wroblewski also said Student got better at those skills. Wroblewski explained that decimals and fractions were not Student’s forte, but Student could get through it. Wroblewski specifically characterized Student as the type of pupil who was “proficient” when working on the problems, but Wroblewski was “not sure” Student would remember it “down the line.” Wroblewski testified that the online math curriculum he used with Student was an effective way for Student to learn math, that Student did well at it and eventually “mastered” it. As noted above, Wroblewski thought Student liked to learn different math concepts and worked hard to “master things.” He also thought Student was generally “pretty proficient” at getting through the lessons during their sessions together. Contrary to Student’s assertions, Wroblewski thought Student made a lot of progress, he completed all the required coursework and earned his grade in math. Moreover, Wroblewski only worked with Student for half or three quarters of a year, and the evidence failed to prove what period that covered. Wroblewski’s testimony did not establish Student lacked the proficiency required for a diploma.

The same thing is true about the parts of Student's testimony and paraeducator Moreno's testimony regarding math, which Student relies on in Student's closing brief. Student's testimony at hearing was too brief, the questions he was asked too overbroad and not probing enough, and his answers were too conclusory, for his testimony to be persuasive on Issue 3 given the weight of the other evidence. Moreno's statements were similarly vague and unconvincing. Moreno testified Student could do almost trigonometry but then would stumble with basic math. Student failed to establish what basic math she was referring to, the basis for her assertion Student "stumbled," when she saw this occur, and the number of times she saw this.

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Student also points to Social Studies teacher Bordagaray's and paraeducator Moreno's testimony as evidence Student was not proficient enough in English language arts to receive a diploma. They both testified Student sometimes needed help with vocabulary, but Student did not prove that he asked questions beyond the level of what

any pupil, particularly an English language learner, might ask. Student's reliance on his own testimony on this issue was also insufficient for the same reasons noted above regarding math.

Student also relies on his work samples and Guilar's 2025 test scores in vocabulary and reading as evidence of his lack of proficiency, but this evidence was insufficient to carry Student's burden of proof. The work samples admitted into evidence were by no means established to be an accurate sampling of Student's work. Most of Student's work had apparently already been shredded pursuant to Hillcrest standard procedures. Moreover, Student was taking a reduced class load when Bordagaray, pursuant to Student attorney's request, attempted to collect work samples from Student's teachers. Bordagaray did not look at the papers the other teachers gave him, and the evidence did not demonstrate Bordagaray's efforts produced a true measure of Student's capabilities. In fact, not all the work samples Bordagaray collected were proven to belong to Student. To the extent some of them were Student's work product, the two isolated examples Student relies on in his closing brief, are insufficient to demonstrate Student lacked the proficiency necessary to be awarded a diploma. Among other things, the circumstances for these assignments or the instructions the teachers gave for these tasks were not established. Furthermore, Student failed to establish the circumstances of Guilar's March 2025 administration of the tests Student relies upon because Guilar never testified, and Student was not questioned about it. Similarly, there also was no persuasive evidence establishing how much Student's English language learner status or other circumstances impacted his scores because Guilar did not testify.

Student argues that the assistance he received on his assignments from his teachers and the paraeducator, "casts doubt" on San Mateo's assertion that Student met the standards of proficiency necessary to award him a diploma. This argument was also unpersuasive. Although Student received assistance from his teachers and the paraeducator, there was no convincing evidence that this assistance was beyond what was typical of any teaching situation. As a matter of common sense, students ask questions and may receive assistance from their teachers when they do not understand something. There was no persuasive evidence that Student's teachers or the paraeducator did his work for him such that he was not eligible for a diploma. There was no evidence establishing that because Student was allowed to redo some of his work or because he obtained assistance from his teachers, he failed to meet the requirements for a diploma.

Student takes Wroblewski's testimony out of context. As stated above, Wroblewski used an approved math curriculum. "Hints" were embedded into the program when Student's answer was incorrect. However, these "hints" did not tell Student the answer to the question, so much as notify him his answer was incorrect, and give him another chance to answer the question correctly. The approved math curriculum included its own grading program which Student did not prove was improperly administered.

Moreover, to the extent Student needed help with reading comprehension from paraeducator Moreno on certain tasks, this did not prove his lack of proficiency for purposes of his diploma. Again, students ask questions when they are learning. In addition, Moreno emphasized during her testimony that often when Student wanted her help, she believed he was just looking for her company. Moreover, the failure of either Moreno or Student to recall how many tests Student took, did not mean Student did

not take any tests. In fact, Moreno confirmed Student took tests during the time she worked with him. During her testimony, she testified she could only distinctly recall Student's final in Economics, which she proctored.

Student also argues his standardized test scores demonstrated he failed to achieve the required proficiency for a diploma, specifically his MAP and MyPath scores, and his CAASPP scores. However, Student failed to prove Student's test scores meant he lacked the entitlement to a diploma. As discussed in Issue 1A, the evidence regarding the MAP and MyPath scores was conflicting, and Student did not prove that DiRago's testimony about the MAP and MyPath scores and what they demonstrated was reliable or trustworthy. On the CAASPP, Student scored below 11th grade level standards for English language arts or mathematics when he took the test in 11th grade. However, the test results stated on their face that it was just one measure and should be combined with other information to better understand a student's achievement. Moreover, the CAASPP was not normed for English language learners and English language learners did not perform as well on this assessment as native English speakers. Finally, while Student may not have demonstrated that he met 11th grade standards on the CAASPP when he took the test in Spring 2024, the law did not require that he achieve any particular grade level standards to graduate.

To illustrate, in *Newport-Mesa, supra*, OAH determined the school district properly graduated student with a regular high school diploma where the pupil completed the prescribed course of study with sufficient passing credits in each required area of study, notwithstanding that his academic levels were equivalent to

fourth to sixth grade levels. (OAH Case No. 2010060770.) OAH decisions are not binding precedent but may be persuasive authority. (Cal. Code Regs., tit. 5, § 3085.) OAH's decision in the foregoing case is persuasive based on the facts in this case.

The isolated snippets of testimony and other evidence Student relies on were insufficient by themselves, or in conjunction with all the other evidence, to prove Student should not have been awarded a diploma.

Student failed to prove San Mateo denied him a FAPE on March 21, 2025 by issuing him a diploma.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1A:

San Mateo did not deny Student a FAPE by failing to assess from August 7, 2023 through April 17, 2024.

San Mateo prevailed on Issue 1A.

ISSUE 1B:

San Mateo did not deny Student a FAPE by failing to assess from March 11, 2025 through March 21, 2025 for speech and language.

San Mateo prevailed on Issue 1B.

ISSUE 2:

San Mateo did not deny Student a FAPE at the April 18, 2024 IEP team meeting by failing to find Student eligible for special education and services.

San Mateo prevailed on Issue 2.

ISSUE 3:

San Mateo did not deny Student a FAPE on March 21, 2025, by issuing him a diploma.

San Mateo prevailed on Issue 3.

ORDER

All relief sought by Student is denied.

RIGHT TO APPEAL THIS DECISION

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

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings