BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

CASE NO. 2025060347

DECISION

February 6, 2026

On June 6, 2025, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming San Diego Unified School District, called San Diego. On July 10, 2025, OAH granted the parties' joint request for continuance. Administrative Law Judge Ashok Pathi heard this matter by videoconference on November 25, 2025, and December 2, and 3, 2025.

Attorneys Peter Cuevas and Kelsey Castanho represented Student. Parents attended all hearing days on Student's behalf. OAH provided Japanese interpretation for Student's mother. Attorneys Jonathan Read and Jennifer Aardema represented San Diego. Jessica Coleman, Program Specialist from San Diego's Due Process Hearing and Mediation Office, attended all hearing days on San Diego's behalf.

At the parties' request, the matter was continued to January 5, 2026, for written closing briefs. The record was closed, and the matter submitted on January 5, 2026.

ISSUES

A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

On November 20, 2025, Student filed a motion withdrawing some issues as clarified in the prehearing conference order. On the first day of the due process hearing, the ALJ confirmed with the parties the remaining issues. The issues have been renumbered for clarity.

1. Did San Diego deny Student a FAPE during the 2024-2025 school year by failing to offer appropriate services in the area of mental health?
2. Did San Diego deny Student a FAPE during the 2024-2025 school year by failing to offer appropriate accommodations and modifications in the area of mental health?
3. Did San Diego deny Student a FAPE during the 2024-2025 school year by failing to offer an appropriate plan to transition Student from a nonpublic school to a comprehensive campus?

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JURISDICTION

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

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

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

Student was 17 years old and in 11th grade at the time of hearing. Student resided within San Diego's geographic boundaries at all relevant times. Student was eligible for special education under the primary category of autism, and secondary category of other health impairment.

During the relevant timeframe of this Decision, Student attended The Winston School, a certified nonpublic school, called Winston. Parents unilaterally placed Student, at Winston in April 2024, prior to the 2024-2025 school year, and maintained his placement there for the 2024-2025 school year.

ISSUE 1: DID SAN DIEGO DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE SERVICES IN THE AREA OF MENTAL HEALTH?

Student contends that San Diego failed to offer Student appropriate mental health services during the 2024-2025 school year.

San Diego contends that Student's issue is precluded by the doctrines of res judicata and collateral estoppel. San Diego also contends that it was not obligated to convene an IEP team meeting during the 2024-2025 school year because Student was privately placed and Parents did not request an IEP until December 2024, at which point Parents refused to attend an IEP team meeting.

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RES JUDICATA AND COLLATERAL ESTOPPEL DO NOT PRECLUDE STUDENTS' CLAIMS

On November 24, 2025, San Diego filed a motion to dismiss Student's complaint based upon the doctrines of res judicata and collateral estoppel. San Diego argued Student's claims were previously litigated in OAH Case Number 2024090930. Student opposed the motion.

The undersigned denied San Diego's motion without prejudice and indicated that San Diego could raise res judicata and collateral estoppel as affirmative defenses in its closing argument brief. San Diego did so.

Federal and state courts have traditionally adhered to the related doctrines of res judicata and collateral estoppel. (*Allen v. McCurry* (1980) 449 U.S. 90, 94 [101 S.Ct. 411, 66 L.Ed.2d 308] (*Allen*); *Levy v. Cohen* (1977) 19 Cal.3d 165, 171). Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties or their agents from relitigating issues that were or could have been raised in that action. (*Allen, supra*, 449 U.S. at p. 94.) In *Nevada v. United States* (1983) 463 U.S. 110 [103 S.Ct. 2906, 77 L.Ed.2d 509] (*Nevada*), the United States Supreme Court stated that

> "the doctrine of res judicata provides that when a final judgment has been entered on the merits of a case, '[it] is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.'" (*Id.* at pp. 129-130 [citation omitted].)

Collateral estoppel requires that the issue presented for adjudication be the same one that was decided in the prior action, that there be a final judgment on the merits in the prior action, and that the party against whom the plea is asserted was a party to the prior action. (See 7 Witkin, California Procedure (4th Ed., Judgment § 280 et seq.) Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. (*Ibid.*; *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 (*Lucido*); see also *Migra v. Warren City School Dist. Bd. of Ed.* (1984) 465 U.S. 75, 77, fn. 1 [104 S.Ct. 892, 79 L.Ed.2d 56] [federal courts use the term "issue preclusion" to describe the doctrine of collateral estoppel].)

The doctrines of res judicata and collateral estoppel serve many purposes, including relieving parties of the cost and vexation of multiple lawsuits, conserving judicial resources, and, preventing inconsistent decisions, encouraging reliance on adjudication. (*Allen, supra*, 449 U.S. at p. 94; see *University of Tennessee v. Elliott* (1986) 478 U.S. 788, 798 [106 S.Ct. 3220, 92 L.Ed.2d 635.) While collateral estoppel and res judicata are judicial doctrines, they are also applied to determinations made in administrative settings. (*See Pacific Lumber Co. v. State Resources Control Bd.* (2006) 37 Cal.4th 921, 944, citing *People v. Sims* (1982) 32 Cal.3d 468, 479; *Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control* (1961) 55 Cal.2d 728, 732.)

However, the IDEA contains a section that modifies the general analysis regarding res judicata and collateral estoppel. The IDEA specifically states that nothing in the Act shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.) Nevertheless, the doctrines of res judicata

and collateral estoppel apply to repeated filings of requests for due process in California under the IDEA. (See e.g., *Loof v. Upland Unified Sch. Dist.* (C.D. Cal., Sept. 10, 2021) Case No. EDCV 21-556 JGB (SPx)) 2021 WL 4974797 at p. *3 (*Loof*); *Family of Four v. State of California Attorney General, et al.* (S.D. Cal., Aug. 3, 2005) Civil No. 04-CV-759-WQH (JMA) 2005 WL 8158462 at p. *7.)

When deciding whether a claim is precluded under res judicata, courts must determine whether the cause of action is the same cause of action asserted and decided in a previously litigated matter, and whether the current parties are identical or in privity with the parties in the previous matter. (*Nevada, supra,* 463 U.S. at p. 130.)

Student previously filed a due process complaint, naming San Diego, on September 25, 2024. OAH designated that matter OAH Case No. 2024090930, and issued a Decision for that case on March 28, 2025, following a seven-day hearing. OAH held that San Diego denied Student a FAPE during the 2023-2024 school year by failing to offer appropriate mental health services and an appropriate transition plan.

OAH may take official notice of previous OAH decisions. (*Hogen v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125 [citing Evid. Code § 452, subd. (c)].) During the hearing, the undersigned ALJ took official notice of the Decision in OAH Case number 2024090930 without objection from the parties.

While the parties in the present matter and OAH Case number 2024090930 are the same, the issues are not identical. In the prior case, Student alleged San Diego failed to offer appropriate mental health services and supports, and transition plan for the 2023-2024 school year; while the present matter alleges San Diego failed to offer

appropriate mental health services, accommodations and modifications, and transition plan for the 2024-2025 school year. The issues are not identical and therefore res judicata does not bar Student's present issues.

The doctrine of collateral estoppel "applies to a question, issue, or fact when four conditions are met in subsequent suits based on a different cause of action involving a party, or privy, to the prior litigation:

- the issue at stake was identical in both proceedings,
- the issue was actually litigated and decided in the prior proceedings,
- there was a full and fair opportunity to litigate the issue, and
- the issue was necessary to decide the merits."

(*Loof, supra*, 2021 WL 1974797 at p. *4 [citing *Oyeniran v. Holder* (9th Cir. 2012) 672 F.3d 800, 806 [citing *Montana v. United States* (1979) 440 U.S. 147, 153-54, 99 S.Ct. 970, 59].) California courts have applied five conditions when deciding whether collateral estoppel applies. (See e.g. *People v. Garcia* (2006) 39 Cal.4th 1070, 1077; [citing *Lucido, supra,* 51 Cal.3d at p. 341].) The different sets of criteria overlap and there is no material difference in the legal analysis.

In the prior case, Student alleged San Diego failed to offer appropriate mental health services and supports, and transition plan for the 2023-2024 school year. In the present matter, Student alleges San Diego failed to offer appropriate mental health services, mental health accommodations and modifications, and transition plan for the

2024-2025 school year. The issues are not identical, and Student was not required to litigate the present issues during the prior case. Therefore, collateral estoppel does not bar Student's present issues.

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 individualized education program, referred to as 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 (*Rowley*); *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000] (*Endrew F.*).)

SAN DIEGO OWED STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR

As an affirmative defense, San Diego argued Student was a parentally placed private school student during the 2024-2025 school year, and San Diego was not required to develop a new IEP for him unless Parents requested one. (*Capistrano Unif. Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1138 [cert. den. *sub nom. S.W. on Behalf*

of B.W. v. Capistrano Unif. Sch. Dist. (2022) 143 S.Ct. 98, 214 L.Ed.2d 20] (*S.W.*).)
San Diego asserted that Parents unilaterally placed Student at Winston prior to the end of the 2023-2024 school year, and maintained Student's placement throughout the 2024-2025 school year, which relieved it of its obligation to provide Student a FAPE.

Generally, the school district where the parents reside with the child is responsible for offering the child a FAPE. (20 U.S.C. § 1413(a)(1); Ed. Code, § 48200; *Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.) The Ninth Circuit in *S.W.* clarified that the special education rights of children placed by their parents in private schools are governed by 20 U.S.C. § 1412(a)(10)(A), which, "provides … that such children need not be given IEPs." (*S.W., supra,* 21 F.4th at p. 1138.) School districts are not required to offer an IEP to privately placed students, unless the parents ask for one. (*Id.* at p. 1139.)

Title 34 part 300.137(a) of the Code of Federal Regulations, which implements 20 U.S.C. § 1412(a)(10)(A), states "no parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school." (34 C.F.R. § 300.137(a) (2007); see also *S.W., supra,* 21 F.4th at p. 1138.) Consequently, once a parent unilaterally enrolls the student in private school, the student meets the definition of a private school child with a disability and does not have an individual entitlement to special education and related services, unless a parent requests an IEP.

San Diego did not prove that Student was a parentally placed private school student to whom San Diego did not owe a FAPE. Parents had already placed Student at Winston during the 2023-2024 school year, save a short period between March and April 2024 when there was an attempt to have Student transition to a San Diego school site. Student's IEP team convened on May 8, 2024, and San Diego amended its offer of

FAPE, after Student had returned to Winston in April 2024. Therefore, the record established that Parents sought an offer of FAPE, and San Diego developed an IEP pursuant to Parents' request for an offer of FAPE, while Student was already unilaterally placed at Winston in the spring of 2024.

San Diego did not persuasively argue that it had no obligation to offer Student a FAPE for the 2024-2025 school year, when its May 8, 2024 IEP offer would be in place until at least November 14, 2024, or until Student's IEP team reviewed his IEP and San Diego made a new offer of FAPE. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1046 (*Doug C.*).) San Diego also did not convincingly argue that Parents' subsequent complaint challenging the appropriateness of the May 8, 2024 IEP, waived Student's right to a FAPE during the 2024-2025 school year under the circumstances here. San Diego owed Student a FAPE during the 2024-2025 school year resulting from the May 8, 2024 IEP, but was not required to develop a new IEP unless Parents requested one.

SAN DIEGO FAILED TO OFFER STUDENT APPROPRIATE MENTAL HEALTH SERVICES DURING THE 2024-2025 SCHOOL YEAR

As an initial matter, it is necessary to determine what San Diego's offer of FAPE was for Student for the 2024-2025 school year. This is so, because when resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1315 (*Gregory K.*) [*citing Comm. of Burlington v. Dept. of Educ. of Mass*. (1985) 471 U.S. 359, 105 S.Ct. 1996 (*Burlington*.) This is particularly relevant when parents seek reimbursement for a unilateral placement, such as the case here.

A school district is not required to place a student in a program preferred by parents, even if that program will result in greater educational benefit to the student. (*Gregory K., supra,* 811 F.2d at p. 1314 [citing *Rowley, supra,* 458, U.S. at p. 197, fn. 21.) An appropriate public education "does not mean the absolutely best or 'potential-maximizing' education for the individual child." (*Los Angeles Unif. Sch. Dist. v. A.O. by and through Owens* (9th Cir. 2024) 92 F.4th 1159, 1172 (*A.O.*) [*quoting Gregory K., supra,* 811 F.2d at p. 1314.)

The IEP must comprehensively describe the child's educational needs and the corresponding special education and related services that meet those needs. (*Burlington, supra,* 471 U.S. at p. 368.) The IEP must identify the student's special education and related services and supplementary aids and services, including program modifications or supports. (*Id.* at p. 368; 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(4)(2007); Ed. Code, § 56345, subd. (a)(4).) Mental health services are a related service. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(a); Ed. Code, § 56363, subd. (b).) In California, related services are called "designated instruction and services." (Ed. Code, § 56363, subd. (a).)

San Diego's last offer of FAPE regarding mental health services was reflected in the May 8, 2024 IEP. This offer of mental health services included three hours per year of mental health parent counseling and nine hours per year of consultation services for Student. The offer of mental health services, along with the remainder of the program included in the IEP were set to be in place until November 14, 2024, the date for Student's annual review based on the date of the November 15, 2023 IEP. Thus, the program reflected in the May 8, 2024 IEP would be in place into at least the beginning of the 2024-2025 school year, or until Student's IEP team reviewed his IEP and San Diego made a new offer of FAPE. (*Doug C., supra,* 720 F.3d. at p. 1046.)

OAH determined that San Diego's offer of mental health services was inadequate and denied Student a FAPE in the previous Decision, and the parties are precluded from relitigating that determination. (*Nevada, supra,* 463 U.S. at p. 130; *Loof, supra*, 2021 WL 4974797 at p. *4.) San Diego's defenses, including testimony from mental health provider Ronald Eric Rhinehart and school psychologist Dr. Laura Alles, consisted of rehashing defenses it raised in the previous matter. For example, San Diego staff opined that Student would not benefit from direct mental health services because he was averse to therapy, and that such therapy would remove Student from the classroom. OAH rejected these arguments previously when considering San Diego's offers of FAPE during the 2023-2024 school year. Accordingly, they are likewise not persuasive here.

Although the adequacy of the May 8, 2024 IEP is not at issue here, OAH's determination that the mental health services in that IEP were inadequate and denied Student a FAPE is evidence considered in evaluating Student's claim for the 2024-2025 school year. Its persuasiveness depends on whether Student's needs changed after the May 8, 2024 IEP, through the passage of time, or by some other intervening event. Here, OAH's previous determinations constituted highly persuasive evidence.

The parties introduced limited evidence as to Student's need for mental health services during the 2024-2025 school year. Nevertheless, the record established that Student's needs did not meaningfully change following the May 8, 2024 IEP. For example, Parents both testified that Student continued to demonstrate mental health difficulties related to coping skills and anxiety. Student's mental health difficulties manifested, in part, as task and school refusal. These behaviors were like those Student demonstrated in the spring of 2024, prior to the May 8, 2024 IEP. While

neither Parent was an expert in mental health, their observations and descriptions of Student's behavior demonstrated that his mental health needs continued throughout the 2024-2025 school year.

Student also offered testimony from Russell Jacobsen, a credentialed special education teacher, who had taught Student at Winston. Jacobsen explained Student's attendance difficulties being related to his refusals to go to school. He opined that Student's mental health needs were the root of many of Student's educational difficulties. Jacobsen did not establish that he was an expert in mental health, but his experience and training as a special education teacher, and experience teaching Student, added some weight to his opinions.

San Diego did not refute this evidence, as none of its witnesses observed or interacted with Student during the 2024-2025 school year. San Diego offered emails between Winston staff and Parents, starting in February 2025, that reflected Student's mental health needs. However, these emails did not establish that the May 8, 2024 IEP mental health services would be appropriate at that time. Overall, the record did not show a change in Student's circumstances that would render the offer of mental health services included in the May 8, 2024 IEP somehow appropriate for Student later in the 2024-2025 school year.

As discussed previously, the offer of FAPE reflected in the May 8, 2024 IEP was designed to be in place through November 14, 2024. However, San Diego was not required to review Student's IEP before November 14, 2024, because Student was a

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parentally placed private school student during the 2024-2025 school year and San Diego was not required to develop a new IEP until Parents requested one. (*S.W., supra,* 21 F.4th at p. 1138.)

By email on December 21, 2024, Parents requested that San Diego hold an IEP team meeting for Student to develop a new IEP. Parent also confirmed that Student was still attending Winston. Parent's email was a request for an IEP as contemplated by *S.W., supra,* 21 F.4th at p. 1138. The family resided within San Diego's boundaries at this time, and Student was eligible for special education. Accordingly, San Diego was required to convene an IEP team meeting to develop an IEP for Student.

Student did not establish Parents had made an earlier request during the 2024-2025 school year. Therefore, San Diego had no duty to convene an IEP team meeting or offer a new IEP until Parents' request. (*S.W., supra,* 21 F.4th at p. 1138.)

Parent sent his email request on the afternoon of the first day of San Diego's winter break. San Diego staff was not aware of the request until San Diego resumed instruction on January 7, 2025. Even if San Diego staff were aware of the request on December 21, 2024, the timeline to hold an IEP team meeting is tolled during days of school vacation in excess of five school days, such as San Diego's winter break. (Ed. Code, § 56343.5.)

Jennifer Breeding, Student's IEP case manager and special education teacher, responded to Parents' request on January 14, 2025. Breeding was a career educator, with over 20 years of experience as a special education teacher. She was the special education department chair at the high school where both she and Student were assigned. Her testimony was generally clear and credible.

Breeding offered February 5, and 6, 2025, as two possible dates for IEP team meetings, both of which were within the applicable 30-day timeline to convene an IEP team meeting. (Ed. Code, § 56343.5.) Breeding also asked Parents if they needed to attend on a different date or time. Finally, Breeding attached a release of information that would allow San Diego staff to communicate with Winston staff regarding Student, obtain educational records, and observe him at Winston. Breeding explained that this authorization for release of information was needed to obtain Student's present levels of performance. (20 U.S.C. § 1414(d)(1)(A)(i)(I); Ed. Code, § 56345, subd. (a)(1).)

During the hearing, Father testified he did not recall when he had previously consented to a release of information. Student attempted to refresh Father's recollection with emails from the fall of 2023 which Student asserted showed that Father consented to a release of information then. However, this did not aid Father's memory or result in credible testimony.

After Parents did not reply, Breeding sent a follow-up email on January 17, 2025. Breeding again offered the February 5, and 6, 2025 dates. She also reminded Parents about the release of information and explained why San Diego wanted updated information from Winston.

On January 17, 2025, Parent replied to Breeding, and indicated that February 6, 2025, would work for the IEP team meeting. Breeding replied, reminding Parents about the release of information and stating that she would send a videoconference link for the meeting in a separate email. Parents did not consent to the release of information.

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There were additional email communications between Breeding and Parents about the possible need to reschedule the IEP team meeting to a different time on February 6, 2025, but San Diego quickly retracted the request to reschedule, and the meeting remained set as agreed upon. Breeding then sent a separate email with a videoconference link for the IEP team meeting, set for February 6, 2025, at 9:00 a.m.

On January 21, 2025, San Diego's counsel emailed Student's counsel requesting the release of information. San Diego's counsel explained that Parents had been provided with a copy but had not consented to it. San Diego's counsel again explained why San Diego wanted the release of information.

Following a brief series of email communications between counsel, San Diego confirmed that the release of information would be valid for up to one year, unless Parents revoked consent earlier. Parents still did not consent to the release of information.

In his closing brief, Student argues that his attorneys secured one of Parents' signatures on the release of information, but subsequently failed to provide it to San Diego. Student put on no persuasive evidence establishing these alleged events. Regardless, whether through his counsel's error or not, Student did not provide San Diego with a consented to release of information during the 2024-2025 school year.

On January 24, 2025, Breeding emailed Parents, requesting to reschedule the February 6, 2025 IEP team meeting to February 18, 19, or 20, 2025, because the parties were set to be in the due process hearing for the previous matter on February 6, 2025. Breeding also asked whether Parents would like to invite a representative from Winston

to the meeting, and if so, to provide her with their contact information. Finally, Breeding reminded Parents of the outstanding release of information, because Parents had not yet consented to it.

Later that day, Parent agreed to reschedule the meeting, and indicated that February 19, 2025, would work. Parent agreed to attempt to have a representative from Winston attend the IEP team meeting and to sign the release of information. Parents did not do either of these things.

On February 4, 2025, Breeding emailed Parents asking if they would agree to move the IEP team meeting to February 21, 2025, because of a conflict with the previous date. Parents did not reply to this email. The next day, Breeding emailed Parents to follow up about rescheduling, and reminded Parents about the release of information, because Parents had not yet consented to it. Parents did not reply to this email either.

On February 10, 2025, Breeding again emailed Parents inquiring about whether they were agreeable to move the IEP team meeting to February 21, 2025, as well as the release of information. Breeding again asked whether Parents wanted to invite a representative of Winston so that she could include them in the videoconference IEP team meeting. Breeding also asked whether Parents had any information regarding Student's present levels of performance, such as report cards, that they could share with San Diego members of Student's IEP team.

Father replied later that day. He explained that he would need to recheck his schedule because the due process hearing in the previous matter impacted his work schedule. Father indicated that he would reply to Breeding as soon as he could. Breeding replied to acknowledge receipt of Parent's email.

On February 19, 2025, Breeding emailed Parents again requesting their consent to the release of information with Winston. Breeding again explained why San Diego requested the release. Parents did not reply. Student's IEP team did not convene on February 21, 2025.

Breeding emailed Parents again on April 7, 2025, following San Diego's spring break, to ask whether Parents still wanted to convene an IEP team meeting. Breeding then stated, "[i]f there is no response to this email, then I will take that as you withdrawing the request."

Parents did not reply to this email for nearly two months. On May 30, 2025, the first day of summer vacation after the end of San Diego's 2024-2025 school year, Parent replied to Breeding's April 7, 2025 email. Parent stated that Breeding's email was "lost in my inbox" and that he was just then seeing her email. He explained that Parents were still requesting an IEP and that they could, "provide any needed documents prior to a potential IEP meeting." Parent then asked what documents San Diego wanted.

Because Parents sent their email after the end of the regular school year, Breeding did not reply until August 7, 2025, which was shortly before the 2025-2026 school year began on August 11, 2025. Student's IEP team, including Parents, convened for an IEP team meeting to develop an IEP during the 2025-2026 school year, on September 3, 2025.

Student's IEP team did not convene for an IEP team meeting pursuant to Parents' email request during the 2024-2025 school year. However, San Diego took the required steps to schedule the meeting but could not hold the meeting without Parents.

SAN DIEGO TOOK THE REQUIRED STEPS TO SCHEDULE AN IEP TEAM MEETING PURSUANT TO PARENTS' REQUEST

Parental participation in the IEP process is a foundational component of the IDEA. (*Schaffer v. Weast, supra*, 546 U.S. at p. 53 ["The core of the [IDEA] ... is the cooperative process that it establishes between parents and schools. ... The central vehicle for this collaboration is the IEP process."]; *Honig v. Doe* (1988) 484 U.S. 305, 311, 108 S.Ct. 592 ["Congress repeatedly emphasized throughout the [IDEA] the importance and *indeed the necessity of parental participation* in both the development of the IEP and any subsequent assessments of its effectiveness." (emphasis added)].) The Ninth Circuit Court of Appeals has found, "[p]arents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know." (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

A local educational agency, such as San Diego,

> "is required to 'take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded an opportunity to participate' including providing ample notice and 'scheduling the meeting at a mutually agreed on time and place.'"

(*Doug C., supra,* 720 F.3d at p.1044 [quoting 34 C.F.R. § 300.322(a)]; see also Ed. Code, § 56341.5, subd. (c).) If a parent cannot attend, the agency must offer other methods of participation such as video or teleconferencing. (*Id.* [citing 34 C.F.R. §§ 300.322(c) and 300.328; see also Ed. Code, § 56341.5, subd. (h).)

In *Doug C., supra,* 720 F.3d at p. 1044, the Ninth Circuit determined that, an "[IEP team] meeting may *only* be conducted without a parent if 'the public agency is *unable* to convince the parents that they should attend.'" (*Id.* (emphasis in original) [citing 34 C.F.R. § 300.322(d)]; see also Ed. Code, § 56341.5, subd., (h).) In that circumstance, the local educational agency must keep a detailed record of its attempts to include the parent. (*Id.*)

In *Shapiro v. Paradise Valley Unif. Sch. Dist. No. 69* (9th Cir. 2003) 317 F.3d 1072, 1078 [superseded by statute on other grounds by 20 U.S.C. § 1414(d)(1)(B)] (*Shapiro*), the Ninth Circuit explained the limited circumstances under which a public agency can hold an IEP team meeting without parental participation. It held that parental "involvement in the 'creation process' requires the [agency] to include the [parents in an IEP meeting] unless they affirmatively refused to attend." (*Doug C., supra*, 720 F.3d at p. 1044 [citing *Shapiro, supra*, 317 F.3d at p. 1078 [emphasis in original].)

It is undisputed that Student's IEP team did not convene for an IEP team meeting, and San Diego did not offer a new IEP, during the 2024-2025 school year. However, San Diego took all the necessary steps to hold a meeting following Parents' request. The record established that San Diego made repeated efforts to conduct an IEP team meeting, including offering dates and flexibility if those dates and times did not work for Parents. San Diego provided Parents additional flexibility by offering to convene the IEP team meeting by videoconference.

San Diego's rescheduling the February 6, 2025 IEP team meeting in response to the overlapping due process hearing in Student's previous matter also did not run afoul of the law. (*Anchorage Sch. Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1056 (*Anchorage*) [school districts must continue to hold IEP team meetings even if a due process complaint

has been filed].) As reflected in the previous OAH Decision, "Parents attended all hearing dates on Student's behalf," which included February 6, 2025. Because both Parents attended the due process hearing, they could not have attended an IEP team meeting at the same time. Moreover, Parents agreed to reschedule the IEP team meeting under these circumstances.

Even if this rescheduling delayed the IEP team meeting beyond the 30-day timeline, special education law prioritizes parental participation over strict deadline compliance. (*Doug C., supra,* 720 F.3d at p. 1046; see also *A.M. v. Monrovia Unif. Sch. Dist.* (9th Cir. 2010) 627 F.3d 773, 779 (*A.M.*).) Therefore, San Diego acted reasonably when it offered to reschedule the IEP team meeting until after the due process hearing was completed, because doing so would allow Parents to participate in both processes.

Student did not prove that Breeding's February 4, 5, and 10, 2025 emails seeking to further reschedule the IEP team meeting from February 19, 2025, to February 21, 2025, were problematic. Parents did not affirmatively refuse to attend the IEP team meeting. Rather, Parent indicated that he needed to recheck his work schedule, which was impacted following a two-week long due process hearing, and that he would reply regarding the rescheduling later. This was the last email Parents would send Breeding for the remainder of the 2024-2025 school year.

Breeding sent Parent a follow-up email on February 19, 2025, but Parents did not reply. Parents did not confirm their availability to meet on February 21, 2025, and Student's IEP team did not convene without Parents.

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Student did not prove that Breeding's April 7, 2025 email following up with Parents was improper. Student argued that in this email, San Diego impermissibly made the IEP team meeting contingent on Parents' consent to the release of information. Specifically, Student focused on the sentence referring to Parents' requested IEP team meeting, "I do need the completed release of information in order to proceed." However, Father's testimony and Student's argument were not persuasive.

While Father initially appeared genuine during direct examination, his testimony did not survive cross examination. Father displayed superficial difficulty answering questions on cross examination on topics he had little to no difficulty discussing when questioned by Student's counsel. Father displayed a generally uncooperative demeanor when responding to questions from San Diego's counsel.

Father testified that Parents had been, "desperate" to "get an IEP" for Student. However, Father's self-proclaimed "desperation" does not ring true considering the significant reticence Parents had in attending an IEP team meeting during the spring of 2025, or providing information reasonably requested by San Diego. The same applies to Father's claim that he "lost track" of Breeding's email for nearly two months, only to contact Breeding the day after the end of the 2024-2025 school year and a week prior to Parents filing the current due process complaint.

Father was experienced with special education procedures, admitting that he had attended IEP team meetings for over a decade. He appeared intelligent and sophisticated. Thus, his testimony that he was confused about routine special education processes, especially when he had the assistance of counsel throughout this time, was

not credible. (See *Newport-Mesa Unif. Sch. Dist. v. D.A.* (9th Cir. 2024) No 23-55351, 2024 WL 1367170, *2 (nonpub. opn.) [finding parents' familiarity with IEP procedures relevant when evaluating procedural violations related to IEP requests under *S.W.*].)

Finally, the record established that Parents engaged in gamesmanship during their previous interactions with San Diego. For example, an email between Parents and Winston staff from the spring of 2024 revealed that Parents did not act entirely in good faith when having Student trial a San Diego placement. Instead, Parents had Student attempt to participate to "make our case stronger." Parents' actions during the spring of 2025 in avoiding the IEP team meeting can be similarly interpreted as further gamesmanship. Taking all the above into consideration, Father's testimony regarding scheduling the IEP team meeting was accorded little weight.

Contrary to Student's assertion, the record did not establish any point during the 2024-2025 school year where Parents attempted to participate in an IEP team meeting, but were turned away, or had the meeting cancelled by San Diego, because Parents had not consented to the release of information. Rather, special education teacher Breeding's email from January 17, 2025, which included a link to the videoconference set up for a February 6, 2025 IEP team meeting, demonstrated that San Diego offered and scheduled an IEP team meeting despite Parents not consenting to the release of information.

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The wording of Breeding's April 7, 2025 email was not ideal but did not create a contingency on San Diego's willingness to convene an IEP team meeting pursuant to Parents' request. Considering the totality of San Diego's actions, San Diego did not make an IEP team meeting or FAPE offer contingent on Parents' consent to the release of information.

Breeding's subsequent comment that, "[i]f there is no response to this email, then I will take that as you withdrawing the request" is more problematic. San Diego did not provide any persuasive legal authority that would allow San Diego to disregard Parents' request for an IEP team meeting to develop an IEP, simply by their subsequent silence. Parents' lack of immediate response did not revoke their December 21, 2024 request. Nevertheless, that portion of Breeding's email does not change the overall outcome here, because San Diego never refused to convene an IEP team meeting during the 2024-2025 school year. San Diego took the required steps to schedule an IEP team meeting pursuant to Parents' December 21, 2024 request.

SAN DIEGO COULD NOT CONVENE THE IEP TEAM MEETING WITHOUT PARENTS

Student argued that San Diego could have convened an IEP team meeting and made a new offer of FAPE even though Parents did not cooperate with the scheduling. Student's argument is not persuasive.

The Ninth Circuit has repeatedly found that school districts may not convene an IEP team meeting without parents unless parents affirmatively refused to attend. (*Doug C., supra*, 720 F.3d at p. 1044 [citing *Shapiro, supra*, 317 F.3d at p. 1078]; see also *Anchorage, supra*, 689 F.3d at p. 1055, fn.1.) Parents here did not express an affirmative

refusal to attend. Rather, Parents engaged in multiple email communications regarding scheduling the IEP team meeting they requested on December 21, 2024. Parents' subsequent lack of response to Breeding's February 19, 2025 and April 7, 2025 emails was not an affirmative refusal to participate. This is especially so, considering their previous communications and their December 21, 2024 request to convene the IEP team meeting in the first place.

Recently, the District Court for the Central District of California applied *Doug C.* and found a school district could not lawfully convene an IEP team meeting without the parents. (*Etiwanda Sch. Dist. v. D.P.* (C.D. Cal. Jan. 11, 2024) EDCV 22-1446 JGB (SHKx) 2024 WL 126956 (*D.P.*).) In that case, the child's IEP was due for review in May 2021, and the school district began trying to schedule the IEP team meeting with the parents in April 2021. (*Id.* at p. *4.) However, the parents repeatedly cancelled scheduled meetings or failed to respond to requests to schedule meetings throughout the remainder of 2021. (*Ibid.*) The school district ultimately convened the IEP team meeting without parents on December 8, 2021. (*Id.* at p. *5.)

The court found the parents and their advocate to be "largely uncooperative, largely unresponsive, and difficult to work with." (*D.P., supra,* 2024 WL 126956 at p. *14.) Nevertheless, that court faulted the school district for proceeding with an IEP team meeting without the parents, even when they failed to respond to most of the school district's emails to schedule meetings, because the parents expressed an interest in participating in the meeting. (*Ibid.*) The court determined that the school district must, "do more than present an ultimatum and proceed [with the IEP team meeting]." Had San Diego held an IEP team meeting without Parents, it would have committed the same error.

The Ninth Circuit has explained two circumstances where a school district can convene an IEP team meeting without parents. (*A.M., supra*, 627 F.3d 773; *K.D. ex rel. C.L. v. Dept. of Educ., Hawaii* (9th Cir. 2011) 665 F.3d 1110 (*K.D.*).) Both of those cases are distinguishable from the facts here.

In *A.M.*, the Ninth Circuit found that the school district lawfully held an IEP team meeting without the parents, when the parents cancelled a previously scheduled meeting and would only agree to reschedule several weeks later. (*A.M., supra,* 627 F.3d at p. 780 [citing 34 C.F.R. § 300.322.) The court found that school district's actions were excusable because the parents refused rescheduling earlier. The school district offered the parents the option of participating telephonically and allowed the parents to bring the student to the IEP team meeting to help alleviate childcare difficulties. The court found these efforts were sufficient to demonstrate that the school district took the necessary steps to have the parents participate in the IEP team meeting. (*Ibid.*)

A.M. is distinguishable from the current situation, because the child there, was a recent transfer to the school district, was attending a school district school, and was on an interim program pursuant to Education Code, § 56325, subdivision, (a)(1). The student was entitled to services "comparable" to those in the previously approved IEP, rather than a current IEP based on his unique educational needs. Such an interim placement may only be in place for 30 days. (Ed. Code, § 56325, subd, (a)(1).) The law requires that, after those 30 days, the school district, "shall adopt the previously approved individualized education program or shall develop, adopt, and implement a new individualized education program that is consistent with federal and state law." (*Ibid.*) Therefore, the school district in *A.M.* had an obligation to convene an IEP team meeting and offer an IEP separate from any request made by the parents.

Unlike in *A.M.*, San Diego's only obligation to convene an IEP team meeting and develop an IEP was Parents' request, because there was no similar independent duty for San Diego to offer an IEP for parentally placed private school students. (*S.W., supra,* 21 F.4th at p. 1138 [citing 20 U.S.C. § 1412(a)(10)].) Requiring San Diego to convene an IEP team meeting without Parents under these circumstances would functionally create a duty where the law does not. (*S.W., supra,* 21 F.4th at p. 1138; 20 U.S.C. § 1412(a)(10)].) Because Parents' request was the only trigger for San Diego's duty to convene a meeting and develop an IEP, *A.M.* is not controlling.

In *K.D.*, the student was parentally placed in a nonpublic school, which the school district agreed to fund for a single school year through a settlement agreement. (*K.D., supra,* 665 F.3d at p. 1115.) The parent maintained that nonpublic school placement following the expiration of the settlement agreement and subsequently sought reimbursement. (*Ibid.*) As part of the settlement agreement, the school district convened an IEP team meeting to revise the student's IEP for the following school year, but could not finish the meeting due to time constraints. (*Ibid.*)

The school district attempted to schedule the second portion of an IEP team meeting, but the parent subsequently did not respond to communications from the school district. (*K.D., supra,* 665 F.3d at p. 1124.) The school district sent multiple letters to the parent, all of which the parent received. (*Ibid.*) The parent never responded to the letters, and the school district ultimately convened the IEP team meeting without the parent. (*Ibid.*) The school district sent the parent five additional letters between Jul 2007 and February 2008 seeking her consent to the IEP and encouraging her to contact the school district to discuss any concerns, changes, or issues with the IEP. (*Ibid.*) The parent demonstrated similar behavior when it came time to review the

student's IEP in 2008, except this time the parent did not respond to any of the school district's communications regarding that IEP team meeting. (*Id.* at pp. 1124-25.) The court found that the school district properly convened the IEP team meetings without parent, because it had taken the steps necessary to involve the parent. (*Ibid.*)

K.D. is distinguishable here because Parents were communicating with San Diego regarding the scheduling of the IEP team meeting they requested on December 21, 2024. Parents' failure to respond to two emails is not akin to the parent's behavior in *K.D.*, where that parent never responded to any communications regarding IEP team meeting scheduling. (*K.D., supra,* 665 F.3d at pp. 1124-25.) This is especially true considering that Parents ultimately did respond on May 30, 2025, to confirm their desire to participate in the IEP team meeting. Parents' behavior here, while not consistently responsive, is far different than the parent's entirely nonresponsive behavior in *K.D.* Because the facts are distinguishable, *K.D.* does not control here.

Moreover, *K.D.* was decided prior to *S.W.*, and did not consider whether the school district was obligated to independently convene IEP team meetings and develop an IEP for a student unilaterally placed in a private school by the parent. Rather, the *K.D.* court treated the school district's obligations under the IDEA to a parentally placed private school student equally to those of a student enrolled and attending a school district program.

The Ninth Circuit's decision in *S.W.* recognized that, prior to that ruling, it was understood by many parties that school districts were independently required to develop IEPs for parentally placed private school students, such as when there was a

pending claim for reimbursement. (*S.W., supra*, 21 F.4th at p. 1137 ["although the parties agree that an IEP is necessary when there is a claim for reimbursement, we have never explicitly held as such"].)

Since *S.W.*, the law has been interpreted that school districts have no duty to develop an IEP for parentally placed private school students absent a parent's request. (*S.W., supra*, 21 F.4th at pp. 1137-40; see also *J.B. v. Kyrene Elementary Sch. Dist. No. 28* (9th Cir. 2024) 112 F.4th 1156, 1164.) Because the decision in *K.D.* assumes a duty to develop an IEP for parentally placed private school students that the Ninth Circuit has subsequently determined school districts do not have, and the facts are distinguishable, *K.D.* does not control.

Considering the totality of the circumstances, it would have been improper for San Diego to convene an IEP team meeting at any time during the spring of 2025 without Parents. San Diego did not make any other offer of FAPE for the 2024-2025 school year. Thus, the offer of FAPE reflected in the May 8, 2024 IEP was the offer in place for the 2024-2025 school year.

OAH determined that the offer of mental health services denied Student a FAPE. Because San Diego did not make another offer of FAPE, and Student's needs did not materially change during the 2024-2025 school year, the denial of FAPE reflected in the May 8, 2024 IEP continued throughout the 2024-2025 school year. Accordingly, Student proved that San Diego denied him a FAPE during the 2024-2025 school year by failing to offer appropriate mental health services.

Nevertheless, Parents' obstruction of the IEP process during the spring of 2025 raises equitable concerns relevant to Student's remedy for this denial. These matters are discussed fully in the Remedies section below.

Student prevailed on Issue 1.

ISSUE 2: DID SAN DIEGO DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO OFFER APPROPRIATE ACCOMMODATIONS AND MODIFICATIONS IN THE AREA OF MENTAL HEALTH?

Student contends that San Diego failed to offer Student appropriate mental health accommodations and modifications during the 2024-2025 school year.

San Diego contends that Student's issue is precluded by the doctrines of res judicata and collateral estoppel. San Diego also contends that it was not obligated to convene an IEP team meeting during the 2024-2025 school year absent a request from Parents. San Diego also contends that when Parents did request an IEP, they obstructed the process by failing to attend an IEP team meeting.

Student pled issues 1 and 2 as a combined issue relating to the failure to offer appropriate mental health supports and services, as he did in his complaint for OAH Case No. 2024090930. During the prehearing conference, the undersigned ALJ discussed Student's issues with the parties. Student explained that "supports" meant accommodations and modifications. Accommodations and modifications are different than services. Accordingly, the undersigned ALJ reorganized the issues as restated above, separating the accommodations and modifications into a separate issue. Neither party objected.

The previous Decision found that San Diego denied Student a FAPE by failing to offer appropriate direct mental health services but did not find that San Diego denied Student a FAPE by failing to offer appropriate mental health accommodations and modifications. Thus, the previous Decision is not evidence of Student's needs for mental health accommodations and modifications.

Here, Student did not put on any evidence of what mental health accommodations and modifications he required. Winston teacher Jacobsen testified that Winston did not modify standards or curriculum for their students. Jacobsen explained that Student had accommodations for movement breaks, multimodal instruction, and extended deadlines for assignments. Student did not establish that these were mental health accommodations, or that he required them to receive a FAPE.

Moreover, Student did not address this Issue in his closing brief, and it is not the ALJ's responsibility to construct or develop a party's argument. (See *Independent Towers of Washington v. Washington* (9th Cir. 2003) 350 F.3d 925, 929 [the court cannot construct arguments for a party, and will only examine issues specifically and distinctly argued in a party's brief].) Student failed to meet his burden of proving that San Diego denied him a FAPE during the 2024-2025 school year by failing to offer appropriate mental health accommodations and modifications.

San Diego prevailed on Issue 2.

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ISSUE 3: DID SAN DIEGO DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL YEAR BY FAILING TO OFFER AN APPROPRIATE PLAN TO TRANSITION STUDENT FROM A NONPUBLIC SCHOOL TO A COMPREHENSIVE CAMPUS?

Student contends that San Diego failed to offer Student an appropriate plan to transition Student from a nonpublic school to a comprehensive campus during the 2024-2025 school year.

San Diego contends that Student's issue is precluded by the doctrines of res judicata and collateral estoppel. San Diego also contends that it was not obligated to convene an IEP team meeting during the 2024-2025 school year absent a request from Parents. San Diego also contends that when Parents did request an IEP, they obstructed the process by failing to attend an IEP team meeting.

Education Code section 56345, subdivision (b)(4) requires a school district to develop a transition plan for a student moving from a placement in a nonpublic school, or a special day class, to a placement for at least part of the day in a regular education class. The transition plan must include a description of the activities provided to integrate the student into the regular education program and specify the amount of time spent on the activity each day or week. (Ed. Code, § 56345(b)(4); See *T.B. ex rel Brennise v. San Diego Unified Sch. Dist*. (9th Cir. 2015) 806 F.3d 451, 462-63.)

OAH previously determined that the transition plan included in the May 8, 2024 IEP was inadequate and denied Student a FAPE. The May 8, 2024 IEP was the IEP offer in place for the 2024-2025 school year, because San Diego made no other offer.

Therefore, it would have been the plan to transition Student from Winston to a San Diego high school campus, at any time, if Parents consented to the May 8, 2024 IEP and placement within San Diego.

Student's needs during the 2024-2025 school year remained consistent with his needs at the time of the May 8, 2024 IEP, such that the transition plan remained inappropriate. For example, the previous Decision found that the transition plan in the May 8, 2024 IEP did not provide direct mental health services to support Student's anxiety issues related to a transition to a public school. As determined above, Student's mental health needs during the 2024-2025 school year, including his anxiety-related school refusal behaviors were like those Student demonstrated in the spring of 2024, prior to the May 8, 2024 IEP. San Diego did not refute this evidence.

Student's needs did not materially change during the 2024-2025 school year, and San Diego did not make another offer of FAPE. Therefore, the transition plan remained inappropriate throughout the 2024-2025 school year and denied Student a FAPE.

Student proved that San Diego denied him a FAPE during the 2024-2025 school year by failing to offer an appropriate transition plan. However, Parents' obstruction of the IEP process during the spring of 2025, and related balancing of equities, is discussed fully in the Remedies section below.

Student prevailed on Issue 3.

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CONCLUSIONS AND PREVAILING PARTY

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

ISSUE 1:

San Diego denied Student a FAPE during the 2024-2025 school year by failing to offer appropriate mental health services.

Student prevailed on Issue 1.

ISSUE 2:

San Diego did not deny Student a FAPE during the 2024-2025 school year by failing to offer appropriate mental health accommodations and modifications.

San Diego prevailed on Issue 2.

ISSUE 3:

San Diego denied Student a FAPE during the 2024-2025 school year by failing to offer an appropriate plan to transition Student from a nonpublic school to a comprehensive campus.

Student prevailed on Issue 3.

REMEDIES

Student prevailed on Issues 1 and 3. Student proved that San Diego failed to offer Student appropriate mental health services during the 2024-2025 school year. Student also proved that San Diego failed to offer an appropriate transition plan during the 2024-2025 school year.

As remedies, Student requested reimbursement in the amount of $35,830 for tuition at Winston. San Diego argued that reimbursement is not warranted because Student failed to prove that he was denied a FAPE for the 2024-2025 school year.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *Burlington, supra,* 417 U.S. at p. 369.) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove Sch. Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district failed to provide a FAPE, and the private placement or services were proper under the IDEA and replaced services that the district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *Burlington, supra* , 471 U.S. at pp. 369-371.) Parents may be entitled to reimbursement even if the chosen private placement does not provide all services that a disabled student needs. (*C.B. ex rel. Baquerizo v. Garden Grove Unif. Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155, 1157-58.)

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The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (20 U.S.C. § 1412(a)(10)(C)(iii); *Parents of Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) A court may consider whether parents' conduct obstructed the school district's ability to properly prepare an IEP and may reduce reimbursement accordingly. (*W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, (9th. Cir 1992) 960 F.2d 1479, 1485-86 [superseded by statute on other grounds]; *Glendale Unified School Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1109 (*Glendale*).)

The only remedy Student requested is reimbursement for the cost of attendance at Winston for the 2024-2025 school year, in the amount of $35,830. This amount reflected the total tuition for Winston for the 2024-2025 school year, based on a 10-month payment plan. Payment for each month was generally due at the beginning of the month. Each month's tuition payment was $3,583. Student did not request reimbursement of any additional costs, and they are not awarded in this Decision.

Student established Parents paid for Winston from August 2024 through January 2025, by producing receipts and credit card statements. Documentation from Winston showed that the remainder of the tuition for the 2024-2025 school year was paid but did not establish who made the payments. Based on the denials of FAPE Student proved, and considering the parties' conduct, reimbursement of some tuition costs is appropriate.

Winston was a proper placement for purposes of reimbursement. (20 U.S.C. § 1412(a)(10)(C); *Burlington, supra* , 471 U.S. at pp. 369-371; *Baquerizo v. Garden Grove Unif. Sch. Dist.*, *supra*, 635 F.3d at pp. 1157-58.) Winston was a California certified

nonpublic school and offered a program to allow its graduates to attend post-secondary education, including four-year universities. Although Student did not receive mental health services from Winston, Student proved that Winston provided him some benefit during the fall of 2024, including the receipt of specialized instruction from teachers such as Jacobsen. Student received passing grades during the first semester of the 2024-2025 school year, but did not establish his grades for the second.

Reimbursement is also proper because the inappropriate transition plan did not provide for an appropriate transition to integrate Student into a San Diego campus from Winston. OAH previously determined that Winston was a proper placement for reimbursement during the 2023-2024 school year, and that determination further supports finding Winston proper for reimbursement for the 2024-2025 school year.

However, Parents' failure to attend an IEP team meeting during the spring of 2025 significantly obstructed the IEP process, including San Diego's attempts to offer a new IEP. Taking into consideration Parents' availability, San Diego timely scheduled the IEP team meeting for February 6, 2025. Due to the previous due process hearing being scheduled on that day, San Diego offered to reschedule the IEP team meeting later in February 2025. At that point, Parents ceased cooperating with scheduling the IEP team meeting they requested. Despite repeated efforts to have Parents participate in the IEP team meeting, San Diego could not convene the IEP team meeting and make an offer of FAPE without Parents.

These facts are similar to those in *Glendale, supra,* 122 F.Supp.2d at 1109-10. In *Glendale*, the parent failed to reply to multiple letters and telephone calls from the school district and withheld information that would have assisted the school district in developing an appropriate IEP for the student. (*Id.* at p. 1109.) The District Court

affirmed the ALJ's determination that the parent was only entitled to partial reimbursement, because the parent's actions impaired the school district's ability to make decisions related to the student's education. (*Id.* at p. 1110.)

Parents' actions in obstructing the IEP process by failing to attend an IEP team meeting during the spring of 2025 similarly impaired San Diego's ability to make decisions related to Student's education. Therefore, Parents' actions shift the equities away from awarding reimbursement after February 2025.

Student is entitled to reimbursement for the months of August 2024 through February 2025. This reflects seven months of reimbursement for a total of $25,081. Student has established these costs and proof of payment from August 2024 through January 2025, for a total of $21,498. No further proof is required for those months. Student must timely provide San Diego with the corresponding invoice and proof of payment for February 2025 to receive reimbursement for that month. Student is not entitled to any other remedies.

ORDER

1. Within 60 calendar days of the issuance of this Decision, San Diego will reimburse Parent for Winston tuition in the total amount of $21,498.
2. Within 60 calendar days of the issuance of this Decision, Student shall provide counsel for San Diego with the paid invoice from Winston and corresponding proof of payment, by Parents, for February 2025. Within 60 calendar days of receiving Student's documentation for February 2025, San Diego shall reimburse Parents for the remaining

amount. Should Student fail to provide San Diego with this documentation within the required time, reimbursement for February 2025 shall be forfeited.

3. The total reimbursement for Winston shall not exceed $25,081.
4. Student's other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings