

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

V.

IRVINE UNIFIED SCHOOL DISTRICT.

CASE NO. 2025080066

DECISION

April 3, 2026

On August 1, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming the Irvine Unified School District. OAH continued the matter on September 2, 2025, at the parties' request. Administrative Law Judge Charles Marson heard this matter by videoconference on February 3, 4, and 5, 2026.

Attorneys Timothy A. Adams and Damian R. Fragoso represented Student. Student's Mother attended all hearing days on Student's behalf except for brief absences. Attorney Amy E. Rogers represented Irvine. Katie Purnick, Irvine's Director of Special Education, attended all hearing days on Irvine's behalf.

At the parties' request the matter was continued to February 23, 2026, for written closing briefs. The record was closed, and the matter was submitted on February 23, 2026.

ISSUES

1. Did Irvine deny Student a FAPE in the 2023-2024 school year, starting on August 1, 2023, by failing to offer:
 - A. goals that adequately addressed Student's needs in the areas of:
 - 1) reading comprehension,
 - 2) reading fluency,
 - 3) math,
 - 4) self-soothing,
 - 5) behavior,
 - 6) transitions,
 - 7) use of technology,
 - 8) communications, and
 - 9) handwriting;
 - B. services to adequately address the areas of need identified above, and
 - C. a class size small enough to allow Student to obtain significant benefit from her education?

2. Did Irvine deny Student a FAPE in the 2024-2025 school year by failing to offer:
 - A. goals that adequately addressed Student's needs in the areas of:
 - 1) reading comprehension,
 - 2) reading fluency,
 - 3) math,
 - 4) self-soothing,
 - 5) behavior, and communication;
 - B. services to adequately address the areas of need identified above, and
 - C. a class size small enough to allow Student to obtain significant benefit from her education?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R.

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§ 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

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

- all children with disabilities have available to them a free appropriate public education 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 free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this matter, Student had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 14 years old and in the ninth grade at the beginning of the hearing. She resided within Irvine's geographic boundaries at all relevant times. Student was eligible for special education under the categories of autism and speech or language disorder.

Student contends that Irvine's March 16, 2023 IEP did not provide Student a FAPE during the 2023-2024 school year. Student primarily asserts that the IEP was based on obsolete and inaccurate present levels of academic achievement and functional performance, called present levels, and also because Student's expert witness opined that the IEP was inappropriate.

Irvine contends that the IEP provided Student a FAPE in the least restrictive environment because the present levels of performance it relied upon were accurate and not obsolete, and because the opinion of Student's expert witness was unpersuasive. Irvine argued Student did not meet his burden of proof.

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); see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321 (2007), and 300.501 (2006).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make

progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 [102 S.Ct. 303, 473 L.Ed.2d 690]; *Andrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402-403 [137 S.Ct. 988, 197 L.Ed.2d 335].)

A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parent proves at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and that the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c)(2006); see also *Burlington Sch. Comm. v. Dept. of Educ.* (1985) 471 U.S. 359, 369-370 [reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE].) The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c)(2006); *Florence County Sch. Dist. Four v. Carter* (1993) 510 U.S. 7, 11, 14 [114 S.Ct. 361, 126 L.Ed.2d 284].)

ISSUE 1: DID IRVINE DENY STUDENT A FAPE IN THE 2023-2024 SCHOOL YEAR, STARTING ON AUGUST 1, 2023?

BACKGROUND

Student attended Irvine's Westpark Elementary School as a fifth grader in the 2021-2022 school year, but had been privately placed since then. On August 1, 2023, Student was in a homeschool program provided by Parents. From February 24, 2024, to November 25, 2024, Student attended 2e4ME, a private school in Newport Beach providing virtual instruction. For two and one half months, Student accompanied at

least one parent on a trip to South Africa, where she was tutored by Star Academy, a private provider based there. Student left 2e4ME in November 2024 and returned to a home-schooling program administered by Parents. Student remained in the home school program through August 1, 2025, when she filed her due process request.

Student now seeks reimbursement of expenses for 2e4ME, the Star Academy, and three related service providers.

THE 2023 IEP OFFER

The parties agree that Student's principal needs and challenges were in the area of behavior. Student's maladaptive behaviors were usually triggered by assignment of a nonpreferred task. Student would frequently refuse the task and engage in

- vocal protest,
- screaming,
- hitting her head with an open palm,
- pounding on a table, and
- engaging in other kinds of tantrums.

These behaviors also interfered with her academic efforts.

On March 16, 2023, at Parents' request, Irvine convened Student's IEP team for an annual review. Parents, their attorney, and their advocate attended on behalf of Student.

The 2023 IEP placed Student in a virtually delivered home hospital program for the rest of the 2022-2023 school year, which ratified her placement at the time and is not in dispute. Then, for the 2023-2024 school year, it offered Student placement in a

seventh-grade general education class for 61 percent of her school day, and the rest of her day in a separate setting called Practical Classes for academics. The Practical Classes were small, highly structured classes with low student-to-teacher ratios that offered a modified curriculum at a slower pace than presentation of the regular curriculum in general education. The Practical Classes usually served six to nine students each.

The 2023 IEP offered Student

- specialized academic instruction in a general education setting for science, an elective and PE;
- group and individual speech and language services;
- behavior intervention by a behaviorally trained one-to-one aide; and
- extended school year services.

In addition, Irvine proposed an updated behavior intervention plan, which was attached to the 2023 IEP and was intended to guide the one-to-one aide and a consulting behaviorist. The 2023 IEP offer also proposed consultation by an occupational therapist, a speech and language pathologist, and an education specialist.

Parents did not consent to the 2023 IEP offer, and Student remained privately placed for the rest of the 2022-2023 school year and the 2023-2024 school year.

GOALS

In her specification of issues for the prehearing conference, Student identified nine areas of need in which she alleged that the annual goals and services offered to her in the 2023 IEP were inadequate. At hearing, Irvine presented several witnesses who

were involved in the drafting of the proposed goals to explain their reasoning and plans for implementation. In her closing brief, Student does not mention or challenge the testimony of those witnesses, or address any of those specific goal areas or services. At hearing, Student presented only two witnesses, Parent and Dr. Amy Weir.

Student now alleges that the present levels of academic and functional performance, called present levels, that were used in crafting the IEP, were obsolete and inaccurate. The IDEA requires that an IEP contain a statement of a disabled student's "present levels of academic achievement and functional performance" as a basis for making educational programming decisions. (20 U.S.C. § 1414(d)(1)(A)(i)(I).) According to Student, Irvine's violation of that requirement invalidated all the goals, services and placement that she was offered.

The 2023 IEP proposed annual goals in the areas of:

- reading comprehension,
- reading fluency,
- writing,
- math word problems,
- math fluency,
- math computation,
- money,
- time,
- semantics,
- pragmatic language,
- syntax-asking questions,
- syntax-pragmatic language,

- behavior reduction - verbal protest,
- behavior reduction - self injurious behavior,
- behavior reduction - noncompliance,
- prosocial behaviors,
- following instructions, and
- tolerating denied access.

PRESENT LEVELS OF ACADEMIC AND FUNCTIONAL PERFORMANCE

The March 2023 IEP meeting notes and testimony by Irvine witnesses established that present levels were extensively discussed at the meeting. Student had not attended an Irvine school since the end of the 2021-2022 school year. For present levels in the 2023 IEP offer, Irvine relied on data from assessments that had been completed by March 28, 2022, as part of Student's triennial review, and were about a year old.

Before the March 2023 IEP team meeting, Irvine staff repeatedly requested that Parent provide signed releases of information so that Irvine could talk to Student's private providers. By the time of the March 2023 IEP team meeting, Parents had not provided those releases. Irvine was prevented by confidentiality laws from discussing Student's present levels of performance with any of her outside providers. Irvine therefore relied on Student's most current assessment information when determining Student's then present levels of performance.

Dr. Marta Shinn, a clinical child and educational psychologist, privately assessed Student in several sessions from July 6, 2022, through August 10, 2022, and produced a report on September 26, 2022. Student argued at the March 2023 IEP team meeting

that Irvine should have used Dr. Shinn's reported assessment results to determine Student's then-present levels. Dr. Shinn was a qualified and experienced educational psychologist who headed Variations Psychology, a group of educational psychologists in Newport Beach which included Dr. Amy Weir, whose testimony is analyzed below. Student argues that Irvine denied her a FAPE by failing to use the more current present levels determined by Dr. Shinn rather than the levels reported in the District's triennial assessments earlier in 2022.

However, Dr. Shinn's evaluation was only a few months newer than Irvine's triennial assessments, and Student does not identify any difference between the two sets of present levels that could have had any effect on her educational programming. In fact, Student does not assert that there are any differences at all between the two sets of present levels, and does not argue that any particular goal or service was inadequate as a result of the use of allegedly obsolete present levels.

In any event, a school district must consider an independent assessment but has no obligation to adopt any part of it. (See 34 C.F.R. § 300.306(c)(2)(ii) (2017); Ed. Code, § 56329, subd. (c)(2d. par.); *T.S. v. Board of Educ. of the Town of Ridgefield* (2d Cir. 1993) 10 F.3d 87, 89-90.) Dr. Shinn's assessment report was reviewed at an IEP team meeting on February 6, 2023, attended by Irvine staff and Parents and their representatives, so Irvine met its obligation to consider Dr. Shinn's report.

At the March 2023 IEP team meeting, Irvine obtained updated information regarding Student's functioning from Parents at the meeting itself. The meeting notes confirm this process was mostly successful.

Erin Condy, the education specialist, asked Parents for comment on the portion of the 2023 IEP that addressed Student's strengths. Parents responded that it was a good summary. Condy asked Parents about Student's reading levels, and they responded that Student had regressed since her 2022 levels were measured. Parents reported that Student was currently reading at an end of first grade to early second grade level. Condy asked if Parents were still concerned about reading fluency, and Parents responded that they were. Parents reported that Student still had the same strengths and challenges in math. They also stated that the levels Irvine had used for writing were still accurate.

Irvine's speech and language pathologist Nahal Wilson said she had received from Parents a release of information confidentiality so that she could talk to Student's private speech and language provider, but neither Parent had signed the document. Wilson reviewed the data Irvine had for Student's levels of communication performance. Parents agreed those levels were generally accurate but suggested they should include the information that when Student is given a list of choices, she always picks the last choice. Irvine's speech pathologist agreed to add that information to the levels.

Irvine's occupational therapist Annie Liuzzi asked about Student's fine motor levels, and Parents had no new information to add.

Irvine's behaviorist Bri Silva reviewed the information that Irvine had used in the 2023 IEP offer and asked for any new information. Parents stated that Student would sometimes rock her chair in class and get in trouble with the teacher for doing so. The behaviorist suggested the team consider addressing that problem with an accommodation.

Condy asked about Student's use of a computer at home, and Parents provided detailed information about her ability to log on and use passwords. The education specialist then asked about Student's present levels in adaptive/daily living skills, and Parents had no new information to offer. Parents also confirmed that no updating was needed in Irvine's data about Student's health.

Parents confirmed at the March 2023 IEP team meeting that many of the present levels of performance taken from Irvine's 2022 assessments were still the same in March 2023. The evidence showed that Student's academic progress had been stagnant, and her behavior had not improved. This explained why the 2022 present levels had not significantly changed by March 2023.

By the end of the March 2023 IEP team meeting, Irvine had obtained from Parents significant new information about Student's present levels in some areas, and assurances that no updating was needed in other areas. Student's argument in her closing brief that all the information Irvine used for the 2023 IEP was obsolete is not accurate. With the help of Parents at the March 2023 IEP team meeting, Irvine updated Student's present levels in the 2023 offer.

The evidence established that Irvine used Student's updated present levels of performance when drafting the March 2023 offer. However, even if Irvine did not have updated present levels of performance, it would not have denied Student a FAPE. That error would have been a procedural violation. A procedural error does not deny FAPE unless it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (l).)

Student argued in her closing brief that the use of obsolete present levels significantly impeded Parents' ability to participate in the IEP process because, without having accurate and current present levels, parents could not meaningfully collaborate on an IEP. That generality may be true in other cases, but it has no application here. All of Student's private placements during the time at issue placed her physically at home, receiving instruction and services virtually or in person under Parents' supervision. The record shows that Parents closely monitored Student's education and assisted in it. In this unusual case, Parents knew more about Student's present levels than anyone else, because those levels were established in their home, or at least their presence. Notably, Student does not identify any particular present level used in the 2023 IEP that was inaccurate.

As summarized above, the March 2023 IEP team meeting notes and hearing testimony from Irvine employees, established that Parents were the best source of Student's present levels, that Parents substantially assisted Irvine in bringing those levels up to date, and that Parents collaborated fully in the development of the IEP. Any lack of currency in the present levels used in the 2023 IEP did not significantly impair Parents' ability to participate in the IEP process or have any adverse effect on Student's education.

SPECIFIC GOALS

The 2023 IEP proposed annual goals in the areas of:

- reading comprehension,
- reading fluency,
- writing,

- math word problems,
- math fluency,
- math computation,
- money,
- time,
- semantics,
- pragmatic language,
- syntax-asking questions,
- syntax-pragmatic language,
- behavior reduction - verbal protest,
- behavior reduction - self injurious behavior,
- behavior reduction - noncompliance,
- prosocial behaviors,
- following instructions, and
- tolerating denied access.

The disputed IEP's provided very similar sets of proposed goals. The proposed goals reflected attention to all of the areas of need that Student alleges were insufficiently addressed.

Goal number one addressed reading comprehension and goal number two targeted reading fluency. Goal number three addressed writing compound sentences, and goal number four concerned writing paragraphs.

Goal number five addressed math word problems. Goal number six concerned math fluency and addressed math fluency. Goal number seven concerned math computation. Goal number eight concerned the math of money, and goal number nine related to the math of telling time.

Goal number 10 encouraged independence, and goal number 11 addressed self-regulation or self-soothing.

Goal numbers 12 and 16 concerned functional communication. Goal number 13 addressed language and syntax. Goal number 14 addressed the language of communication. Goal number 15 concerned social conversation, and goal number 17 related to perspective taking.

Irvine did not have the burden of proving that the proposed goals would have provided Student a FAPE. Student had the burden of proving they did not. Nonetheless, Irvine produced several witnesses to show that the proposed goals were carefully prepared and addressed all of Student's needs.

Nahal Wilson, a speech and language pathologist with 19 years of experience, had provided direct services to Student when she was enrolled in Irvine's Virtual Academy during Student's first, second and third grade years. Wilson attended Student's March 2023 IEP team meeting and drafted four of the offered goals. Goal 10 was for semantics because Wilson and the team recognized Student's need to improve her pragmatic language. Goal 11 was also for pragmatics and addressed Student's need to draw better inferences in social situations. Goal 12 focused on improving Student's syntax in asking questions, and Goal 14 sought to broaden Student's sentences by including who, what, where and when observations.

At hearing, Wilson described how each communication goal addressed one or more of Student's speech-related needs as identified by the present levels in the draft IEP. Wilson described how she would have implemented each goal, and opined that each of the goals would allow Student to make progress.

Meghan Sparling was Irvine's lead speech-language pathologist and was responsible for dealing with students who were privately placed. Sparling attended Student's three-part IEP team meeting in 2024. She drafted Student's present levels for communications, using a progress report provided by SpeechPoint, Student's private provider. Sparling drafted goal 13, which addressed Student's needs in sentence structure and social communication. Goal 13 also addressed

- problem-solving,
- causal relationships,
- sentence structure,
- social communication, and
- expressive communication.

Sparling also drafted goal 14, which required comparing and contrasting two items in order to meet her need for clearer communication.

Sparling also wrote goal 15 concerning social communication, and goal 16 to encourage advocacy. Sparling added that she shared these goals with her counterpart at SpeechPoint, who agreed with Sparling that they were all appropriate.

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Kaylee Strange, Student's case manager, had nine years of experience as an educational specialist. Dr. Strange testified about each of the goals offered in the 2024 IEP. In each case Dr. Strange plausibly explained the purpose of the goal and the needs it addressed. Dr. Strange also established that the goals offered in the 2023 IEP were sufficiently similar that the testimony of witnesses who testified at hearing was applicable to both IEP's. The only major difference between the two IEP's was that the 2023 offer addressed Student's behavior with goals, which in 2024 were moved to the offered behavior intervention plan.

Nicola Saltzman had been a behavior interventionist for more than 10 years. Saltzman wrote the behavior intervention plan that was part of the 2024 offer. She described the reactive strategies planned for Student's behavioral incidents. Saltzman also noted that the IEP offer provided for a behavior interventionist as a consultant, who would back up the implementation of the plan and train anyone who provided direct services to Student.

The drafters of the proposed goals in the 2023 and 2024 IEP's were all careful witnesses who were familiar with Student's history, and thoughtful in explaining how the goals addressed all of her needs. Those witnesses described a process of creating goals that was thorough, and utilized all the information Irvine was able to obtain. Independent examination shows that all the proposed goals in the two IEP's at issue were produced by that same careful process.

These were credible witnesses, and their testimony is given substantial weight here. Parents did not criticize the draft goals at the IEP team meetings. Student introduced no evidence at hearing of defects in those goals and does not specifically mention those goals in her closing brief.

Student did not prove that the goals offered her in the 2023 IEP did not adequately serve all her needs, or that there was any significant need that the proposed goals neglected. Irvine did not deny Student a FAPE in its proposed goals in that IEP.

SERVICES

The 2023 IEP offered specialized academic instruction in the Practical Classes for 720 minutes a week, and the same amount of specialized academic instruction in the general education class. It offered 60 minutes a week of language and speech services in the small group setting and 30 minutes a week in the larger classes. Finally, it offered bell-to-bell one-to-one behavior intervention services.

Student presented no evidence at hearing or argument in her closing brief concerning any possible flaws in these services. Student did not prove that the services in the 2023 IEP offer would have denied her a FAPE.

PLACEMENT

Student's most extensive argument is that she was not offered an appropriately restrictive placement. She asserted that she could not be educated in a general education environment and should have been offered a small class or individual program for the entire school day. Her argument depends primarily on the opinion of Dr. Amy Weir.

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Dr. Amy Weir, an experienced psychologist, assessed Student, wrote a report, and testified at hearing. Dr. Weir was a licensed educational psychologist employed by or associated with Variation Psychology, the group headed by Dr. Shinn. Dr. Weir was retained to answer these two referral questions:

1. Was Student's 2023-2024 IEP offer of FAPE appropriate for her needs?
2. Was Student's 2024-2025 IEP offer of FAPE appropriate for her needs?

In her assessment report and testimony at hearing, Dr. Weir answered "No" to these questions, asserting that each of the two offers was inappropriate. Student now relies in part on those conclusions.

Those reasons for referral are precisely the issues in this case, and pose questions that are predominantly legal, not psychological. Dr. Weir was unqualified to render a legal opinion on the two IEP's. Moreover, the interpretation of domestic law is a matter for the ALJ, not an expert witness, to determine. (See Evid. Code, § 801, subd. (a); *Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th 1155, 1178-1184.)

Dr. Weir's opinions, as stated in her assessment report and at hearing, were essentially exercises in litigation advocacy, not objective analysis. Dr. Weir conducted observations in 2025 of the placements proposed in the 2023 and 2024 IEP's, long after they no longer mattered to Student's instruction and were only of interest to the parties to this due process request. Dr. Weir's report included many recommendations, but it was not primarily written for educational programming.

Dr. Weir formed her views of the appropriateness of Irvine's IEP offers by applying standards much more demanding than those the IDEA requires. She testified the 2023 IEP offer was inadequate for not recognizing that Student's progress had been

minimal. In doing so she reasoned that if a Student does not make progress under an IEP, the IEP is inadequate and denies Student a FAPE. However, a lack of progress does not necessarily show that an IEP was flawed. The IDEA requires that a student be given the opportunity to make meaningful progress, but it does not guarantee that result. (*Edward M.-R. v. District of Columbia* (D.D.C. 2023) 660 F.Supp.3d 82, 113.)

The IDEA does not require an IEP to address every one of a student's identified needs, as Dr. Weir assumed. Rather, it requires the provision of a basic floor of opportunity, a program reasonably designed to allow a student to make meaningful educational progress in light of her circumstances. (*Andrew F., supra*, 580 U.S. at pp. 402-403; *Rowley, supra*, 458 U.S. at pp. 200-201.) There was no indication in Dr. Weir's assessment report or hearing testimony that she considered these standards in forming her opinions.

Dr. Weir's opinions and the factual premises on which they were based are at least in part barred from consideration here by the snapshot rule. An IEP is evaluated in light of information available to the IEP team at the time it was developed. It is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041 (citations omitted).) The key is whether the program, at the time it was drafted, was objectively reasonable. (*Adams v. State of Oregon, supra*, 195 F.3d at p. 1149; see also *L.J. v. Pittsburg Unified Sch. Dist.* (9th Cir. 2017) 850 F.3d 996, 1004; *Baquerizo v. Garden Grove Unified Sch. Dist.* (9th Cir. 2016) 826 F.3d 1179, 1187.)

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Federal district courts follow a different rule because the IDEA requires a district court to “hear additional evidence at the request of a party.” (20 U.S.C. § 1415(i)(2)(C)(ii); see *E.M. v. Pajaro Valley Unified Sch. Dist.* (9th Cir. 2011) 652 F.3d 999, 1004-1005.) Hearing officers and ALJ’s in California’s IDEA administrative proceedings have no comparable duty or authority.

The most recent IEP team meeting that produced the IEP’s analyzed here occurred in three parts on March 12, April 24, and May 29, 2024, while Student was in seventh grade. Some parts of Dr. Weir’s work, in particular her records review, are not barred by the snapshot rule because those records were available to Student’s IEP team on or before May 29, 2024, when it made the decisions at issue. But the majority of Dr. Weir’s opinions rested on site visits and interviews conducted after those IEP team meetings had been held. The majority of Dr. Weir’s conclusions were therefore not available to the IEP team when it made the decisions at issue, and cannot be used here to undermine the team’s decisions.

In her report and testimony, Dr. Weir did not distinguish between information available to Student’s IEP team in the 2023-2024 and 2024-2025 school years, and information generated only after the IEP team meetings that led to IEP offers for those years. No such distinction appears in Student’s closing brief. It is thus not possible to tell what portions of Dr. Weir’s opinions were available to the IEP teams, and what portions were not.

For the reasons above, Dr. Weir’s opinions on the sufficiency of the placements in the 2023 and 2024 IEP offers are not entitled to significant weight here.

Student does not dispute that the Practical Classes in which she would have received academic instruction were small enough for her to learn in them. Those classes had no more than five to nine students. Dr. Weir recommended in her report that a small group setting would allow Student to learn.

Dr. Weir appeared to believe that a general education classroom was too large for Student to learn because it would overwhelm her. However, there was no evidence that would support such a conjecture. How Student would fare in a general education class was entirely speculative. Even Parent did not agree with the restrictive program Dr. Weir regarded as essential for Student. Mother testified that “[Student] can be in general education, but she needs one on one teacher support.” Mother added that Student was sociable and liked other children. Under both of the disputed IEP’s, Student would have received one-to-one support in her general education classes.

Student did not prove that Irvine failed to offer her a small enough class, and did not prove that Irvine denied her a FAPE in the 2023-2024 school year.

ISSUE 2: DID IRVINE DENY STUDENT A FAPE IN THE 2024-2025 SCHOOL YEAR?

Student argues that the 2024 proposal had the same flaws as the 2023 proposal because it used the same allegedly defective present levels of performance and included placement in a general education class. Student claims that Irvine should have proposed a program that emulated her private placement.

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Irvine contends that its staff carefully considered Student's needs and drafted all necessary goals to meet them. It points out that the offer did include several of the provisions that Parent and her expert claim are necessary, such as small group instruction for academics and intensive one-to-one behavioral support. It argues that Student's progress in her private placements was either minimal or unknown.

The IEP Irvine offered Student for the school year 2024-2025 was similar to its offer for the previous school year. It would have placed Student in general education 61 percent of her school day and 39 percent of her day in a smaller environment. In general education she would have received 738 minutes a week of specialized academic instruction, and had classes in physical education, science, and an elective. She would also have had 738 minutes a week of specialized academic instruction in smaller Practical classes for English Language Arts, history and math.

The 2024 IEP would have provided Student 1,925 minutes a week of behavioral support in the general education environment. This support would have been provided by a one-to-one behavioral aide throughout the school day. The IEP included a rewritten behavior intervention plan and several behavioral goals.

The 2024 offer also included 60, 25-minute sessions of pull-out speech and language services over the course of the school year, and extended school year. It included consultation services of a behaviorist and speech and language services.

Parents did not consent to the 2024 IEP offer, and Student remained privately placed for the rest of the 2023-2024 school year and the 2024-2025 school year.

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GOALS

The 2024 IEP offer proposed annual goals in the areas of:

- reading comprehension,
- reading fluency,
- writing compound sentences,
- paragraph writing,
- math word problems,
- math fluency,
- math computation,
- math money,
- math time,
- independence,
- behavior self-regulation,
- functional communication,
- communication,
- language and syntax,
- language,
- social communication,

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- conversation,
- pragmatics, and
- perspective taking.

These proposed goals were the subject of the testimony of district witnesses Sparling, Strange and Saltzman as summarized above. That testimony illustrated how and why the goals were offered, and described the careful process by which they were written.

As before, Student in her closing brief does not criticize any particular goal or service in the 2024 IEP offer as inadequate, nor did she present evidence at hearing concerning any particular goal or service. The analysis above of the proposed goals in the 2023 IEP offer applies equally to the goals offered in 2024.

SERVICES

The 2024 IEP offered specialized academic instruction in the Practical Classes for 738 minutes a week, and the same amount of specialized academic instruction in the general education class. It offered 60 minutes a week of language and speech services in the larger classes. Finally, it offered bell-to-bell one-to-one behavior intervention services.

Student presented no evidence at hearing or argument in her closing brief concerning any possible flaws in these services. Student did not prove that the services in the 2024 IEP offer would have denied her a FAPE.

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PLACEMENT

Student asserts that she made significant academic progress in her private placements. Therefore, Student concludes, the 2024 IEP offer did not offer her a FAPE because it did not emulate the one-to-one teaching method in which she had made progress.

An IEP team is not required to consider the benefits of a program proposed by parents if its own offered program provides a FAPE. In determining the validity of an IEP, an ALJ must focus on the placement offered by the school district, not on the alternative preferred by the parents. The appropriateness of the school district's program must be upheld if it was reasonably calculated to provide the student with educational benefits. (*Gregory K. v. Longview Sch. Dist.* (9th Cir.1987) 811 F.2d 1307, 1314.)

In any event, the evidence did not support Student's claim that her progress in a one-to-one instructional setting was so significant that no other teaching model could provide a FAPE. In March 2023, Parent stated that Student had regressed in reading since the district's 2022 assessments, and was reading at the level of first or early second grade. A year later, Student visited Lakeside Middle School for two days, at Irvine's request, so Irvine could measure some present levels. The Irvine participants thought Student was reading at a first-grade level, although that may have been affected by serious behavioral difficulties with Student during the two-day informal observation. Mother attributed those difficulties to the fact that the environment was unusual.

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The highest reading level mentioned for Student in the record is third grade. Student's private speech provider Speech Point stated to an Irvine staffer that Student had made progress, but did not specify, quantify or document that claim.

There was no evidence that Student made progress in regulating her behavior during the school years examined here. Her behavioral challenges appeared more or less equal at 2e4ME, at home, and in the community. There was no evidence that Student made significant progress in any of her private placements other than 2e4ME. Student did not present at hearing the testimony of anyone from 2e4ME, nor did Student introduce any writing from 2e4ME that reflected progress of any kind. Student did not present any report cards, progress reports, work samples, or other documents that would support her claim of progress. Student did not introduce any evidence concerning her academic progress in placements other than 2eFME.

Student's claim of progress is based in part on Dr. Weir's assessment report in fall 2025. Dr. Weir stated that Student was making progress at 2e4ME, according to a conversation she had with Dr. Denis Jabri, the Director of 2e4ME. However, this statement was never reduced to writing by anyone at 2E4ME or reflected in any report cards or other document offered in evidence. Dr. Jabri was a psychiatrist, not an educator. In addition, Dr. Weir's conversation with Dr. Jabri occurred in late 2025, long after Student's IEP team had made the decisions about Student's programming at issue here. The claim of progress at 2e4ME could not have been before Student's IEP team, and therefore cannot be used retroactively to undermine the judgments Irvine made in 2023 and 2024.

Dr. Weir's conclusions were not entitled to substantial weight because of the reasons set forth above.

Student does not claim that she made any significant progress in regulating her behavior between the two IEP offers at issue. Student correctly states that the 2023 and 2024 IEP offers were similar, and then contends that the 2024 offer should have been substantially different to address the failure of the 2023 IEP to improve Student's unregulated behavior. Student contends that Irvine was obliged to offer a functional behavior assessment and strengthen its provisions for behavior regulation. Student argues that when a student's unregulated behavior has increased, it is a denial of FAPE for the district to fail to offer new and intensified behavior supports and a new functional behavior assessment.

That argument is misplaced here because Parents did not consent to the 2023 offer, and Irvine did not implement that offer. Student is essentially arguing that the behavior plan attached to the 2023 IEP offer had failed, even though it was not part of Student's program. Student cannot attribute her continuing behavioral difficulties to the inadequacy of an IEP that was never agreed to or implemented. Irvine cannot be responsible for any lack of progress, or regression, while Student was following programs designed only by Parents.

Student argues that the 2024 IEP team failed to consider the full continuum of possible placements. School districts must have available a continuum of program options to meet an eligible student's needs for special education and related services. (34 C.F.R. § 300.115; Ed. Code, § 56360.) However, the district's obligation is to make available a continuum of options, not to discuss every option at every IEP team meeting. (*Katherine G. v. Kentfield Sch. Dist.* (N.D.Cal.. 2003) 261 F.Supp.2d 1159, 1189-1190.)

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The evidence showed that the 2024 IEP team discussed placements at 2e4ME and in district schools. No other options mattered to the participants or to Students. Anna Ziemann, a mild/moderate special education teacher, testified at hearing that she helped the IEP team consider a “variety of placements.” This evidence was not contradicted. Irvine did not fail to maintain or consider the continuum of placement options.

Student did not prove that she could not learn in a general education class or that such a class would be too large for her. Student did not prove that Irvine’s 2024 IEP offer would have denied her a FAPE because of inadequate goals, services, placement, or in any other way. Because Student was unable to make the threshold showing that Irvine’s offers denied her a FAPE, her claim for reimbursement must fail. The parties’ remaining contentions relate to the adequacy of Student’s private placements and need not be decided here because she has not established entitlement to reimbursement.

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:

Irvine did not deny Student a FAPE in the 2023-2024 school year, starting on August 1, 2023, by failing to offer goals that adequately addressed Student’s needs.

Irvine prevailed on Issue 1A.

ISSUE 1B:

Irvine did not deny Student a FAPE in the 2023-2024 school year, starting on August 1, 2023, by failing to offer services to adequately address the areas of need identified above.

Irvine prevailed on Issue 1B.

ISSUE 1C:

Irvine did not deny Student a FAPE in the 2023-2024 school year, starting on August 1, 2023, by failing to offer a class size small enough to allow Student to obtain significant benefit from her education.

Irvine prevailed on Issue 1C.

ISSUE 2A:

Irvine did not deny Student a FAPE in the 2024-2025 school year by failing to offer goals that adequately addressed Student's needs.

Irvine prevailed on Issue 2A.

ISSUE 2B:

Irvine did not deny Student a FAPE in the 2024-2025 school year by failing to offer services that adequately addressed her needs.

Irvine prevailed on Issue 2B.

ISSUE 2C:

Irvine did not deny Student a FAPE in the 2024-2025 school year by failing to offer a class size small enough to allow Student to obtain significant benefit from her education.

Irvine prevailed on Issue 2C.

ORDER

All of Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Charles Marson

Administrative Law Judge

Office of Administrative Hearings