

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT, AND CAPISTRANO UNIFIED
SCHOOL DISTRICT.

CASE NO. 2025110384

CASE NO. 2025120687

DECISION

APRIL 1, 2026

On November 5, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student naming Capistrano Unified School District, called Capistrano, in case number 2025110384. On December 9, 2025, OAH granted the parties' joint request for continuance. On December 11, 2025, OAH received a due process hearing request from Capistrano naming Parent on behalf of Student in case number 2025120687. On December 23, 2025, OAH consolidated the two cases, and identified Student's case as the primary case for determining statutory deadlines.

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Administrative Law Judge Jennifer Kelly heard the matter via videoconference on January 27 and 28, and February 3, 4, and 5, 2026.

Attorney Matthew Zerby represented Student. Parent attended all hearing days on Student's behalf.

Attorney Tracy Petznick Johnson represented Capistrano. Kathy Purcell, Capistrano's Executive Director of Alternative Dispute Resolution Compliance, attended all hearings days on its behalf, except for January 28, 2026. Deborah Afill, Legal Specialist, attended the hearing on January 28, 2026, on Capistrano's behalf.

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

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

On January 21, 2026, Student filed a motion to correct issues and remedies as set forth in OAH's Order Following Prehearing Conference dated January 16, 2026. After discussion with the parties at the start of the due process hearing, and with Capistrano's agreement, the ALJ modified Issue 5 regarding failure to implement Student's IEP during the 2025-2026 school year to include speech and language, occupational therapy, IEP accommodations, and IEP goals, and clarified that Student's requested resolutions included compensatory education. Student withdrew his request to modify Issue 1 to add failure to implement speech and language and occupational therapy services, goals, and accommodations during the 2024-2025 school year.

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In his closing brief, Student raised numerous issues that were not alleged in the complaint or raised at the prehearing conference or the start of hearing. These issues include FAPE denials based on:

- Capistrano's failure to develop an appropriate behavior intervention plan;
- Capistrano's failure to provide Parent progress reports on IEP goals and allow Student to attend extracurricular activities;
- Capistrano's lack of oversight of Ocean View nonpublic school during the 2024-2025 school year;
- Excessive removal and isolation of Student from his classroom;
- Failure to provide parent counseling;
- Failure of Ocean View's board-certified behavior analyst to observe and report behavior incidents to Parent, and
- Predetermination of Student's placement offer.

Student did not seek leave to amend the complaint to add issues, and Capistrano did not consent at any time to amending the issues for hearing except for the modification of Issue 5, as discussed above. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i) [the party requesting the hearing may not raise issues at the due process hearing that were not raised in the complaint unless the other party agrees].)

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The ALJ changed the wording in Issues 1 and 5 from “failing to materially implement” to “materially failing to implement” consistent with the legal standard for determining failure to implement claims as articulated by the United States Court of Appeals for the Ninth Circuit in *Van Duyn ex rel. Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 815, 822 (*Van Duyn*.) The ALJ also added an October 24, 2025 IEP team meeting to Issue 3 to conform with the evidence at hearing.

At the end of the hearing, the ALJ reminded the parties that their closing briefs should focus on the issues determined for hearing and the facts they contended proved or disproved the issues. Student disregarded this instruction and added numerous issues not pending before OAH, and referred to facts not contained in the record. Student’s attorney is admonished that in the future he must refrain from adding new facts and issues when filing closing briefs with OAH.

Accordingly, this Decision does not address the new issues raised by Student in his closing brief. (See, e.g., *H.B. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344-345 [nonpub. opn.].) No issues were added to the issues to be determined at hearing at any time, and this Decision decides only those issues agreed upon, as stated in the Order Following Prehearing Conference dated January 15, 2026, and discussed and agreed to by the parties on the first day of hearing, January 27, 2026.

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STUDENT'S ISSUES

1. Did Capistrano deny Student a FAPE during the 2024-2025 school year by materially failing to implement Student's September 4, 2024 IEP, as incorporated into a written settlement agreement, and amended on October 22, 2024, November 12, 2024, and January 30, 2025, specifically Student's:
 - a. behavior intervention plan;
 - b. board-certified behavior analyst consultation services pursuant to the January 30, 2025 IEP amendment; and
 - c. specialized academic instruction?

2. Did Capistrano deny Student a FAPE during the 2025-2026 school year by failing to adequately assess Student in all areas of suspected disability in its August 19, 2025 multidisciplinary assessment report, including in:
 - a. psychoeducation;
 - b. speech and language;
 - c. occupational therapy;
 - d. functional behavior; and
 - e. special circumstances instructional assistance?

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3. Did Capistrano deny Student a FAPE during the 2025-2026 school year in the August 21, 2025 IEP, as continued to August 28, September 4, September 12, and October 24, 2025, by failing to offer Student placement in the least restrictive environment, specifically offering a nonpublic school called InSTEPPS instead of a general education classroom with one-to-one aide support?
4. Did Capistrano deny Student a FAPE during the 2025-2026 school year at the September 4, 2025 IEP team meeting by failing to consider an independent educational evaluation by Dr. Greg Endelman?
5. Did Capistrano deny Student a FAPE during the 2025-2026 school year, through November 5, 2025, by materially failing to implement Student's September 4, 2024 IEP, as incorporated into a written settlement agreement, and amended on October 22, 2024, November 12, 2024, and January 30, 2025, specifically Student's:
 - a. behavior intervention plan;
 - b. board-certified behavior analyst consultation services pursuant to the January 30, 2025 IEP amendment;
 - c. specialized academic instruction;
 - d. speech and language services;
 - e. occupational therapy services;
 - f. all IEP accommodations; and
 - g. all IEP goals?

CAPISTRANO'S ISSUE

6. Were Capistrano's speech and language and occupational therapy assessments in the August 19, 2025 multidisciplinary assessment and report appropriate?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All subsequent references to the Code of Federal Regulation is to the 2006 version, unless otherwise noted. The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

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

In this consolidated matter, Student had the burden of proof for his issues, and Capistrano had the burden of proof on its issue. 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).) This Decision does not cite to the administrative record because it was not created before this Decision was issued. OAH Decisions are written in an accessible font, format, and style as required by state and federal law regarding accessibility to individuals with disabilities.

Student was 10 years old at the time of the hearing. Student resided with his Parent within Capistrano's boundaries. Student qualified for special education under the categories of autism, other health impairment due to attention deficit hyperactivity disorder, and speech or language impairment. As a result of his disabilities, Student had academic delays and severe behavioral problems that impacted his ability to access his education. Student attended Ocean View, a nonpublic school, during the 2024-2025 school year through April 4, 2025. At the time of hearing, Student received educational instruction in the home setting by Parent and Student's private board-certified behavior analyst and registered behavior technicians.

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SEPTEMBER 4, 2024 SETTLEMENT AGREEMENT AND PARENT'S CONSENT TO THE AUGUST 23, 2024 AMENDMENT IEP

A nonpublic school means a private, nonsectarian school that enrolls special education students pursuant to an IEP and is certified by the California Department of Education. (Ed. Code, § 56034.) A nonpublic school is an alternative special education service available to local educational agencies and parents. (Ed. Code, § 56366.) A master contract for a nonpublic school and a local educational agency must be developed in accordance with Education Code section 56366. A master contract or individual services agreement may be terminated for cause by either party upon 20-days' notice. (*Ibid.*)

Student has a history of behavioral and self-regulation issues related to his disability. During the 2023-2024 school year while in third grade, Student attended Capistrano's therapeutic behavior intervention class located on a comprehensive elementary school campus. The therapeutic intervention class was designed for students with significant behavioral and emotional needs. Student's maladaptive behaviors included eloping from the classroom, punching and hitting his teachers and one-to-one aide, and verbal threats to and attempted assaults on his peers.

In October 2023, Capistrano offered Student placement at a nonpublic school because Student did not make expected progress on his behavior and academic goals, notwithstanding the supports provided in the therapeutic behavior intervention program. Parent disagreed with Capistrano's placement offer. Parent and Capistrano each filed due process hearing requests with OAH during the 2023-2024 school year, which were consolidated in OAH case numbers 2024070833 and 2024071036. The parties resolved their dispute and memorialized the terms of their agreement in a

written settlement agreement fully executed on September 4, 2024. Under the terms of the September 4, 2024 settlement agreement, Parent consented to an IEP amendment dated August 23, 2024, including Student's placement at Ocean View nonpublic school for the 2024-2025 school year.

Pursuant to the parties' September 4, 2024 settlement agreement, Capistrano agreed to amend Student's IEP to:

- add intensive individual services, called a one-to-one aide for the full school day;
- modify its offer of occupational therapy to two times monthly direct services in 30 minute sessions;
- add consultation services between Capistrano and Ocean View two times monthly for 30 minute sessions;
- add one, 60-minute monthly session of parent counseling through Ocean View;
- add curb to curb transportation between Student's home and Ocean View; and
- maintain Student's current level of services for speech and language and parent counseling by Capistrano.

Capistrano agreed to place Student at Ocean View beginning on the first day that Capistrano could make curb to curb transportation available. Parent agreed to allow Capistrano to conduct a functional behavior assessment for Student, and signed an assessment plan on August 30, 2024, which was attached to the written settlement

agreement. The parties agreed Capistrano would convene an IEP team meeting on or before October 29, 2024, to review Student's transition to Ocean View and the results of Capistrano's functional behavior assessment and to develop Student's annual IEP.

The settlement agreement expressly provided that in the event of a disagreement between the parties during the 2024-2025 school year, Student's stay-put placement would be the educational program specified in that agreement. Further, in the event Ocean View could not serve Student or provide 20-day notice that it could no longer meet Student's needs during the 2024-2025 school year, Capistrano was required to offer Student a comparable nonpublic school. The parties agreed, "the first alternative NPS [nonpublic school] considered shall be InSTEPPS."

ISSUES 1a, 1b, AND 1c: DID CAPISTRANO DENY STUDENT A FAPE DURING THE 2024-2025 SCHOOL BY MATERIALLY FAILING TO IMPLEMENT STUDENT'S SEPTEMBER 4, 2024 IEP, AS INCORPORATED INTO A WRITTEN SETTLEMENT AGREEMENT, AND AMENDED ON OCTOBER 22 AND NOVEMBER 12, 2024, AND JANUARY 30, 2025, SPECIFICALLY STUDENT'S BEHAVIOR INTERVENTION PLAN, BOARD-CERTIFIED BEHAVIOR ANALYST CONSULTATION SERVICES, AND SPECIALIZED ACADEMIC INSTRUCTION?

Student contends Capistrano, through Ocean View, denied him a FAPE by materially failing to implement Student's behavior intervention plan, behavior consultation services following the January 30, 2025 amendment IEP, and specialized academic instruction in Student's September 4, 2024 IEP, as amended on October 22, 2024, and January 30, 2025. Student contends Ocean View improperly removed

Student from the classroom to a separate setting when he engaged in maladaptive behaviors and did not track data on Student's behaviors. Student contends he spent approximately 51 percent of the school day outside the classroom and did not receive specialized academic instruction.

Capistrano contends Student's October 22, 2024 IEP team considered the results of Capistrano's functional behavior assessment and determined Student's behavior impeded his learning and that of others. Capistrano contends its school psychologist identified seven target behaviors, developed a behavior intervention plan based on the assessment, and recommended strategies and interventions to the October 22, 2024 IEP team. The October 22, 2024 IEP team adopted a behavior intervention plan that identified the function of Student's behaviors and outlined proactive strategies and replacement behaviors to address those behaviors. Capistrano argues it offered 45-minutes weekly for behavior consultation services by a board-certified behavior analyst in the January 30, 2025 amendment IEP, to address Student's continued maladaptive behaviors. Capistrano argues Ocean View adequately implemented the behavior intervention plan, behavior consultation services, and specialized academic instruction throughout the 2024-2025 school year.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), 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 that 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 School Dist. RE-1* (2017) 580 U.S. 386, 402 (*Endrew F.*))

Special education is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) Related services are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [in California, related services are also called designated instruction and services].)

Specialized academic instruction is an instructional service, individualized based on a student's needs, and provided by a credentialed special education teacher. (Cal. Code Regs., tit. 5, § 3053, subd. (c); see also Ed. Code, § 56001, subds. (n) & (o))

A student's unique needs are not limited to the child's academic needs, but may also include social and emotional needs that affect academic progress, school behavior and social behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) An IEP team must consider the use of positive behavioral interventions and supports, and other behavioral strategies, when a child's behavior impedes his learning or the learning of others. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1); *Positive, Proactive Approaches to Supporting Children With Disabilities: A*

Guide for Stakeholders, U.S. Department of Education, Office of Special Education Programs (OSEP) Policy Support 22-01 (Office of Special Education Rehabilitative Services (OSERS), July 19, 2022.)

Positive behavior interventions and supports include conducting a functional behavior assessment, implementing a behavior intervention plan, and individual counseling. (OSERS, *Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders*, *supra*.) A functional behavior assessment is not defined by the IDEA or California state law. The United States Department of Education's Office of Special Education and Rehabilitative Services defined a functional behavior assessment as a process for identifying the reasons behind, or factors contributing to, a child's behaviors. (*Id.* at p. 8.) A functional behavior assessment is conducted to develop appropriate, effective behavioral interventions that address the cause of the behavior rather than using a punitive approach to stop or reduce the behavior. (*Ibid.*)

The IDEA's implementing regulations do not require the IEP team to use any particular method, strategy, or technique. (71 Fed. Reg. 46683 (Aug. 14, 2006).) However, a school district must ensure that a child is assessed in all areas of suspected disability. (34 C.F.R. § 300.304(c)(4).) A functional behavior assessment is an evaluation under the IDEA and must comply with the IDEA's evaluation procedures. (34 C.F.R. §§ 300.304 through 34 C.F.R. 300.31.) A school district must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty. (34 C.F.R. § 300.310(a) (2006).)

A school district must implement all required components of a student's IEP. (34 C.F.R. § 300.323(c).) A school district's material failure to implement the child's IEP may violate the IDEA. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn, supra*, 502 F.3d at p. 822.) A student must prove that any failure to implement was material, meaning that the services provided to a disabled child fell significantly short of the services required by the IEP. (*Ibid.*) No statutory requirement of perfect adherence to the IEP exists, nor is there any statutory reason to view minor implementation failures as denials of FAPE. (*Id.* at p. 821.)

However, the materiality standard does not require that the child suffer demonstrable harm to prevail. (*Ibid.*) The proper course for a school district that wishes to make material changes to an IEP is to reconvene the IEP team meeting pursuant to state law, and "not to decide on its own to no longer implement part or all of the IEP." (*Ibid.*)

STUDENT FAILED TO PROVE THE BEHAVIOR INTERVENTION PLAN, BEHAVIOR CONSULTATION SERVICES, AND SPECIALIZED ACADEMIC INSTRUCTION WERE NOT MATERIALLY IMPLEMENTED BETWEEN SEPTEMBER 4 AND NOVEMBER 5, 2024

Student's first day of school at Ocean View was September 4, 2024. Ocean View's campus was located on a church site. Ocean View served students with unique needs from third through 12th grades. It provided therapeutic, individualized one-to-one and small group instruction to accommodate students' academic, emotional, behavioral, and developmental needs. Ocean View also provided educational services to young adults

with disabilities up to 22 years of age. Ocean View had seven classrooms, including one elementary school classroom. Ocean View also had a separate calming room, called the sanctuary, which was a separate room used by students to deescalate or work in a quiet space with fewer distractions.

Student's elementary school class during the 2024-2025 school year had seven students, including Student. All Ocean View staff had Crisis Prevention Institute training, a program focused on de-escalation of behaviors and management of disruptive or assaultive behavior. Some of the support staff were registered behavior technicians. Student was assigned a one-to-one aide, who reported directly to Student's special education teacher, Nicole Daley.

Student exhibited maladaptive behaviors two days after starting at Ocean View. Between September 6 and October 4, 2024, Student engaged in five behavior incidents documented by Ocean View and reported to Capistrano. These behaviors included:

- aggressively chasing a peer;
- throwing objects;
- verbal threats towards a peer;
- kicking and hitting staff resulting in marks and bruising;
- spitting and running away from staff;
- screaming and threatening his special education teacher and one-to-one aide; and
- stabbing staff with a plastic fork.

Ocean View's Director Helen Condas testified at hearing. Condas was a licensed clinical social worker. She worked as the director for Ocean View since 2006. Condas was familiar with Student from observing him at Ocean View, attending his IEP team

meetings during the 2024-2025 school year, and helping Ocean View staff implement positive behavior interventions when Student's behaviors escalated. Condas was responsible for creating behavior incident reports and communicating with Parent and Capistrano's case carrier, Kurina Owens.

Condas opined at hearing that Ocean View implemented Student's positive behavior interventions and strategies during the 2024-2025 school year. Condas's testimony was corroborated by incident reports she prepared and forwarded to Capistrano. Condas communicated regularly with Parent about Student's progress in-person, and by telephone or email. Condas explained that when Student became escalated, Ocean View's special education teacher, one-to-one aide, and staff used positive behavior interventions. These included:

- standing in front of Student to block him from hurting others;
- encouraging Student to use calming breaths;
- verbal redirection;
- walking laps around campus with staff;
- giving Student alternative choices when he could not access a preferred item;
- allowing Student breaks to de-escalate; and
- praising Student when he complied with instructions.

Student did not introduce into evidence the August 23, 2024 IEP or the behavior intervention plan in effect at the time he started school at Ocean View. Student did not elicit testimony from any witness or documentary evidence proving which components

of the behavior intervention plan were not implemented. Although Student generally argued his behavior intervention plan was not implemented for this period, there was no persuasive evidence supporting this contention.

Student also did not establish that his IEP at the start of the 2024-2025 school year included behavior consultation services. The evidence proved that behavior consultation services were not added to Student's IEP until January 30, 2025. Therefore, Student was not entitled to, and Capistrano had no obligation to implement behavior consultation services, until after Parent consented to this service on January 31, 2025.

Student did not prove that he did not receive the specialized academic instruction required under his August 23, 2024 IEP, which was in effect at the start of the 2024-2025 school year, through November 5, 2024, when Parent consented to Student's October 22, 2024 annual IEP. Student did not present evidence of the amount or duration of specialized academic instruction he purportedly missed, or for what period.

Condas's testimony established that Student's specialized academic instruction was implemented by special education teacher Daley. Daley was responsible for preparing Student's academic materials, supervising Student's one-to-one aide, grading Student's assignments and tests, and tracking progress on Student's behavior and academic goals. Although Parent believed Student did not receive specialized academic instruction, Parent had no personal knowledge of how Daley and Student's aide

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implemented Student's specialized academic instruction. Parent did not observe Daley or Student's one-to-one aide working with Student, and Student did not call them to testify at hearing.

Based on an absence of evidence, Student failed to prove Capistrano denied him a FAPE by materially failing to implement the behavior intervention plan, behavior consultation services, or specialized academic instruction between September 4 and November 5, 2024.

OCTOBER 22, 2024 IEP TEAM MEETING TO REVIEW CAPISTRANO'S FUNCTIONAL BEHAVIOR ASSESSMENT AND DEVELOP STUDENT'S ANNUAL IEP

On October 22, 2024, Student's IEP team met to discuss Student's transition to Ocean View, review Capistrano's functional behavior assessment, and conduct Student's annual IEP review. Due to time constraints, the IEP team meeting was continued to November 12, 2024. The October 22, 2024 IEP, as continued to November 12, 2024, is referred to collectively in this Decision as the October 22, 2024 IEP. The October 22, 2024 IEP team included Parent, Student's attorney Matthew Zerby, and private board-certified behavior analyst Golnoush Javaheri. Capistrano's IEP team members were case carrier Owens, mental health coordinator Jaye Lynn Thompson, and school psychologist Cara McEachin. Ocean View's IEP team members were

- director Condas,
- speech-language pathologist Kristin Bruning,
- school counselor Nicholas Conroy,

- clinical supervisor Penny Sullenger, and
- special education teacher Daley.

The November 12, 2024 IEP team included the same members, with the addition of Ocean View's occupational therapist Daniel Guirao.

The procedural safeguards were emailed to Parent before the IEP team meeting.

OCTOBER 2024 FUNCTIONAL BEHAVIOR ASSESSMENT

Capistrano's school psychologist McEachin presented her functional behavior assessment and findings to the IEP team. In conducting the functional behavior assessment, McEachin reviewed Student's health and developmental history and educational records. She interviewed Parent, special education teacher Daley, school counselor Conroy, and Student's in-home board-certified behavior analyst Javaheri. McEachin collected data over 14 days between September 6 and October 19, 2024, and observed Student in structured and unstructured settings.

McEachin's assessment hypothesized the function of Student's behaviors was to obtain something, such as a person, activity or object. If Student's behaviors escalated, his behavioral function changed to obtaining attention from staff or peers to escape the task presented to him. McEachin suggested functionally equivalent replacement behaviors, including choosing another activity or person to play with, accepting a nonpreferred activity, or accepting a nonpreferred situation and engaging in a learned coping mechanism.

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McEachin determined Student's behaviors impeded his learning and that of his peers and recommended a behavior intervention plan. Student's behaviors occurred across all school settings, both inside the classroom and outside during structured and unstructured times. The maladaptive behaviors were most likely to occur when a nonpreferred peer was in the vicinity, or when Student received a nonpreferred response or consequence.

McEachin developed an updated behavior intervention plan based on data collection and observations. The behaviors that impeded Student's learning were identified as:

- eloping out of the area, described as leaving a designated area without permission;
- destruction of property, defined as
 - hitting,
 - kicking,
 - pushing,
 - ripping, or
 - otherwise harming objects;
- aggression, defined as
 - hitting,
 - kicking,

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- punching,
- biting or
- pushing;
- sexual behavior towards others and self; and
- threats, defined as comments expressing intention to harm others.

McEachin presented the functional behavior assessment and recommendations to the October 22, 2024 IEP team. Parent shared that the behaviors identified in the functional behavior assessment were “pretty much spot on.” Parent shared that Student made tremendous progress at home, and that the antecedent to his behaviors was not having access to preferred items. School counselor Conroy shared that Student could apply skills he learned within the therapeutic setting, but he could not generalize these skills in the school setting. Daley shared that Student became dysregulated when denied access to items and peers, and then he engaged in impulsive behaviors. Parent and Javaheri described effective strategies used at home, including giving Student the choice of two items.

The October 22, 2024 IEP offered six functionally equivalent replacement behavior and social-emotional goals to increase Student’s use of replacement behaviors, reduce the frequency of Student’s problem behavior, and generalize these skills. The first behavior goal sought for Student to react appropriately without arguing or becoming upset when given a direction by staff. The second behavior goal aimed for Student to follow directions when given a prompt or cue without arguing. The third behavior goal sought for Student to attend to a fine or gross motor task for up to

30 seconds without prompting or use of a visual token board. Student's special education teacher was responsible for implementing the first two behavior goals. The occupational therapist was responsible for implementing the third behavioral goal.

The IEP offered three social-emotional goals which related to Student's behaviors. The first social-emotional goal aimed for Student to use coping skills, such as breathing techniques, asking for a break, or using a sensory item, when experiencing emotional distress. The occupational therapist and school counselor were responsible for implementing this goal. The second social-emotional goal sought for Student to engage in positive peer interactions, such as saying hello, demonstrating appropriate boundaries, and sharing common interests. The school counselor was responsible for implementing this goal. The third social-emotional goal sought for Student to engage in positive staff interactions, such as responding to greetings from staff, following directions, and asking for help. The school counselor was responsible for implementing this goal.

The October 22, 2024 IEP team offered Student a behavior intervention plan. The plan sought to replace Student's problem behavior with appropriate classroom behaviors and expectations when provided adult support. The behavior intervention plan was based on Capistrano's functional behavior assessment, input from Student's private board-certified behavior analyst, and discussion by the IEP team. The behavior intervention plan was attached to the October 22, 2024 IEP.

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The behavior intervention plan included supports to remove the likelihood of Student using the target behaviors. These supports included:

- limiting the amount of verbal prompting and ignoring problem behaviors;
- using simple language;
- teaching social stories to help accept “no” from peers;
- using a “break” or “help” card;
- frequent reinforcement for appropriate behaviors;
- frontloading transitional warnings;
- limiting free play in the classroom;
- building in structured breaks; and
- using a timer, a visual schedule, and a visual token economy.

The behavior intervention plan included the following teaching strategies to establish, maintain, and generalize replacement behaviors:

- providing praise and attention to Student for appropriate behaviors, particularly when he appropriately interacted with peers or attended to nonpreferred tasks, and
- providing Student reinforcers, including preferred items, movement breaks, or attention, each time Student tolerated a transition, or completed a task.

The behavior intervention plan included changes to the environment to support Student including modified demands, a break area in the classroom where Student could take a short break from nonpreferred tasks, positive re-directing, and allowing choices. It recommended teaching strategies for Student to learn replacement behaviors, identified reinforcement procedures for maintaining the replacement behaviors, and reactive strategies if the problem behaviors occurred. It also recommended functionally equivalent replacement behaviors and teaching strategies and materials needed for Student to learn the replacement behaviors.

The October 22, 2024 IEP offered a wide range of accommodations to support Student's access to his educational program. These accommodations included

- first-then language,
- a visual token economy,
- providing transitional warnings and positive reinforcements,
- providing a visual timer and schedule, and
- frequent movement breaks.

The October 22, 2024 IEP offered Student the following related services:

- 360 minutes daily specialized academic instruction;
- 360 minutes daily special circumstance instructional assistance, called a one-to-one aide;
- 30 minutes weekly individual counseling;

- 60 minutes weekly group counseling;
- 30 minutes two times weekly direct speech and language services;
- 30 minutes two times monthly individual occupational therapy services;
- 30 minutes two times monthly occupational therapy consultation services;
- 60 minutes monthly direct parent counseling services through the nonpublic school;
- 60 minutes weekly parent counseling services through Capistrano's contracted provider;
- daily round trip transportation; and
- extended school year services.

The October 22, 2024 IEP team determined a nonpublic school placement was the least restrictive environment for Student due to the nature and severity of his disability. Student would spend 100 percent of the school day outside the regular education classroom for special education services.

Parent consented to the October 22, 2024 IEP on November 5, 2024.

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STUDENT FAILED TO PROVE THE BEHAVIOR INTERVENTION PLAN, BEHAVIOR CONSULTATION SERVICES, AND SPECIALIZED ACADEMIC INSTRUCTION WERE NOT MATERIALLY IMPLEMENTED BETWEEN NOVEMBER 5, 2024, AND JANUARY 30, 2025

Student argues the behavior intervention plan developed following Capistrano's functional behavior assessment was defective because it did not include critical components, including a crisis plan. Student argues the behavior intervention plan could not have been implemented because Ocean View did not collect data on Student's behaviors and Student did not make progress towards his behavior goals.

Capistrano argues the behavior intervention plan was developed following the functional behavior assessment conducted in fall 2024. Capistrano argues Parent consented to the IEP and behavior intervention plan, and that it was sufficiently implemented by Ocean View after Parent provided consent on November 5, 2024. Capistrano further asserts that Student did not meet his burden of proving that Capistrano materially failed to implement Student's specialized academic instruction.

Student failed to meet his burden of proving by a preponderance of the evidence that Capistrano, through Ocean View, materially failed to implement the behavior intervention plan, behavior consultation services, or specialized academic instruction between November 5, 2024, and January 30, 2025. There were 44 school days between November 5, 2024, and January 30, 2025. During this period, Student continued to engage in maladaptive behaviors. Condas offered persuasive testimony Student's behavior intervention plan was implemented by Daley and Student's one-to-one aide. Condas's testimony was persuasive on this issue because of her regular communications

with Daley, Parent, and Capistrano about Student's behavior challenges, and observations of Daley and Student's aide working with Student. Her testimony was corroborated by notes from amendment IEP team meetings held on January 30 and March 19, 2025, to address Student's continued behavior challenges and his lack of expected progress on his behavior and social-emotional goals.

Condas persuasively explained at hearing that sometimes the positive intervention strategies were not effective to regulate Student's behaviors, such as re-directing Student, or offering him a break or alternate activity. When Student made verbal or physical threats or actions, Ocean View removed him from the classroom for the safety of Student and others. For example, Student threatened to kill a peer and threw a metal water bottle, physically assaulted his special education teacher, made verbal and physical threats, and made sexual comments. In these situations, Student was given the choice of sitting at a table outside, going for a walk, or working with his one-to-one aide in the sanctuary. Student's one-to-one aide supervised him at all times.

Case carrier Owens offered testimony consistent with Condas about Ocean View's implementation of Student's behavior intervention plan during this period. Owens communicated regularly with special education teacher Daley and Condas. Owens also visited Ocean View regularly during the 2024-2025 school year and observed Student in the classroom or the sanctuary. Based on communications with Daley and Condas and her observations, Owens understood Daley and Student's one-to-one aide implemented the behavior intervention plan, including redirecting Student, standing in front of Student to block him when he aggressed towards peers, and providing verbal reinforcement.

Student did not call as witnesses the people responsible for implementing Student's IEP and behavior intervention plan, specifically special education teacher Daley, school counselor Conroy, and Ocean View's occupational therapist. They were responsible for implementing Student's academic, behavior and social-emotional goals, and the behavior intervention plan. Student failed to offer evidence that these providers failed to implement the behavior intervention plan, which was his burden.

Instead, Student called Parent as a witness in support of the implementation claim. Parent presented as a loving and concerned advocate for Student. She testified in detail about Student's behavior challenges and the tremendous progress he made in the home setting using principles of applied behavior analysis. Parent believed the behavior intervention plan was not implemented because Student's behaviors did not improve at Ocean View. However, for the period between November 5, 2024, and January 30, 2025, Parent did not explain what part of the behavior implementation plan was not implemented, when this occurred, or her basis of knowledge for this claim. She also believed Ocean View did not provide Student's specialized academic instruction, but this was based on speculation. Therefore, her testimony on whether Ocean View implemented the October 22, 2024 IEP as to the behavior intervention plan and specialized academic instruction, was unpersuasive. Parent challenged the adequacy of the behavior intervention plan, although that was not an issue at hearing.

Student also called Javaheri as a witness in support of the implementation claim. Javaheri held a master's degree in applied behavior analysis and was a board-certified behavior analyst since 2020. Javaheri worked as the Clinical Director of Aria Behavior Clinic since 2021. Javaheri provided direct behavior services and oversaw registered behavior technicians in the home setting.

Javaheri was critical of Capistrano's behavior intervention plan because she believed it did not contain necessary components, such as identifying precursors to behavior, a crisis plan, a reinforcement schedule, or a prompt hierarchy. However, the adequacy of the behavior plan was not at issue, and therefore, Javaheri's testimony did not support Student's claim that Ocean View or Capistrano failed to implement the behavior intervention plan.

Like Parent, Javaheri believed the behavior intervention plan was not implemented because Student's behaviors did not improve. However, her conclusions were based on speculation and not upon personal observations. Parent and Javaheri also incorrectly presumed that a school district must guarantee a particular result, or in this case eradicating Student's behaviors. This is not the law. (*Endrew F., supra*, 580 U.S. at p. 398.)

Similarly, Parent and Javaheri incorrectly believed Ocean View should have tracked and reported progress data on Student's behavior intervention plan. Neither the October 22, 2024 IEP, nor the behavior intervention plan required Capistrano to track progress on Student's behavior. Rather, Capistrano was required to track progress on Student's IEP goals. (20 U.S.C. § 1414(b)(1)(A)(i)(III); Ed. Code, § 56345.10; see also *Capistrano Unified School Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1135 [the IDEA does not require the IEP team to rely on specific kinds of quantitative data when measuring progress towards goals].) In his closing brief, Student did not offer legal authority supporting his argument Capistrano was required to track data on Student's behaviors. Student did not meet his burden of proving Capistrano materially failed to implement Student's behavior intervention plan during this period.

Student also did not prove that Capistrano failed to implement behavior consultation services. As discussed, Capistrano did not offer behavior consultation services until the January 30, 2025 IEP, therefore Capistrano had no obligation to implement this service prior to that date. Finally, Student offered no evidence that Capistrano failed to implement specialized academic instruction.

Student failed to prove by a preponderance of evidence that Capistrano materially failed to implement the October 22, 2024 IEP, specifically Student's behavior intervention plan, behavior consultation services, or specialized academic instruction between November 5, 2024, and January 30, 2025.

JANUARY 30, 2025 AMENDMENT IEP TEAM MEETING AND ADDITION OF BEHAVIOR CONSULTATION SERVICES

Despite implementation of the behavior intervention plan, Student's maladaptive behaviors continued after Parent's consent to the October 22, 2024 IEP on November 5, 2024. In response, Capistrano convened an IEP team meeting on January 30, 2025, to address Student's ongoing behavioral challenges at Ocean View. Parent, attorney Zerby, and Javaheri attended the meeting. Capistrano's IEP team members were case carrier Owens, mental health coordinator Thompson, and school psychologist McEachin.

Ocean View's members were

- director Condas,
- special education teacher Daley,
- Ocean View's contracted board-certified behavior analyst Peggy Truong,

- speech-language pathologists Maya Thomas and Andrea Gaulin,
- school counselor Conroy, and
- clinical supervisor Sullenger.

The IEP team recognized that Student's maladaptive behavior continued to impede his learning and that of others. The IEP team believed it was not beneficial for Student to be out of the classroom and apart from his peers. Based upon a review of behavior data, the IEP team noted that Student's maladaptive behaviors occurred across settings and throughout the school day. In an effort to address Student's continued behavioral challenges, Capistrano offered to increase Student's behavior services to include 45-minutes weekly behavior consultation services by a board-certified behavior analyst. Behavior consultation services are evidence-based interventions recommended by a board-certified behavior analyst in collaboration with teachers or individuals working with a student.

Board-certified behavior analyst Truong advised the IEP team that she would act as the liaison between Ocean View and Parent, and would collaborate with Student's special education teacher and staff about positive behavior strategies for Student. Parent and attorney Zerby agreed to the additional services. The IEP team agreed to reconvene on March 19, 2025, to review Student's progress.

Parent consented to the January 30, 2025 amendment IEP on January 31, 2025.

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STUDENT STARTED THE SCHOOL DAY IN THE SANCTUARY ROOM FROM JANUARY 31 THROUGH APRIL 8, 2025

Student contends Capistrano materially failed to implement his behavior intervention plan by removing him from the classroom into the sanctuary for extended periods of the day. Student argues removal from the classroom without Parent's consent and IEP team approval was an unauthorized change of placement. Student further argues he was improperly isolated and secluded.

Capistrano contends Ocean View materially implemented the behavior intervention plan in the classroom and in the sanctuary. Capistrano further contends Ocean View implemented essential components of the behavior intervention plan, including a visual schedule, token reward system, and frequent verbal praise.

Seclusion is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. (Ed. Code, § 49005.1, subd. (i); *U.S. Dept. of Education Restraint and Seclusion: Resource Document*, p. 10 (May 15, 2012).) Seclusion does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming. (Ed. Code, § 49005.1, subd. (i).)

The use of procedures to deal with children who are endangering themselves and others, including timeouts, detentions, or the restriction of privileges, does not constitute a change of placement. (*Honig v. Doe* (U.S. 1988) 484 U.S. 305, 325 325 [108

S.Ct. 592, 605] (*Honig*), citing 20 U.S.C. § 1415(e)(3) and comments to 34 C.F.R. § 300.513 (1987).) School administrators are justified in protecting the safety of others by removing students who are a danger and providing a cooling down period. (*Ibid.*)

The evidence proved that Capistrano, through Ocean View, materially failed to implement Student's behavior intervention plan following Parent's consent to the January 30, 2025 amendment IEP on January 31, 2025. Specifically, on occasions when Student posed a threat to himself or others, Ocean View removed Student from the classroom to a separate setting. After Student de-escalated, Student remained in the separate setting and outside of the classroom for extended periods. This was not identified as a positive behavior strategy in Student's IEP or behavior intervention plan.

Student's problem behaviors continued after the January 30, 2025 amendment IEP. He engaged in verbal and physical aggression towards both staff and students, including the following incidents:

- On February 2, 2025, Student argued with Daley and stated he did not want to follow directions. After five redirections, Student was told he needed to work in the sanctuary. Student dropped on the ground and refused to get up. He threatened to kill a female peer more than 20 times. Student pushed his aide, ran away from Daley, and tried to kick and hit Daley.
- On February 5, 2025, Student attempted to throw a stool at a female peer. Student's one-to-one aide removed the stool before Student could release it. Daley and Student's one-to-one aide directed Student out of the room. Student grabbed, hit, and bit

his one-to-one aide and hit Daley multiple times. Student hit another staff member on the head with a closed fist. He stated he wanted to beat up his female peer so she would be his friend.

- On February 13, 2025, during transportation home from school, Student picked up a pillow and took out the stuffing. When directed by the driver to stop, Student verbally refused to stop. Another student passenger grabbed the pillow away from Student, after which Student yelled and used profanity. Student reached for the pillow and hit the other student's arm. Staff used a crisis intervention method to deflect Student away from his peer and remove Student from the car. After he was out of the car, Student banged on the car window towards his peer and kicked and hit the driver.

Board-certified behavior analyst Truong testified at hearing. Following the January 30, 2025 amendment IEP team meeting, Truong met with special education teacher Daley and school counselor Conway on February 5, 2025, to discuss Student's behaviors and develop strategies to minimize Student's escalating behaviors. Truong reviewed the plan with and received input from Javaheri on February 11, 2025.

Student often arrived at school in a dysregulated state. Student engaged in verbal threats and serious aggression toward peers and staff when denied access to preferred objects or peers. Truong believed that Student should view the classroom as a reinforcer. She recommended that Student begin his school day in the sanctuary and use a visual

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schedule with activities to be completed. Student would check off tasks when completed and receive verbal praise. Student then would earn time in the classroom with his peers and teacher, typically at the end of the day, or the following school day.

Truong sent Parent an email on February 12, 2025, notifying her of this change to Student's schedule. Beginning around February 18, 2025, Student started his day in the sanctuary rather than his classroom. On some days, Student spent 50 percent of the day in the sanctuary. Student generally went to lunch and recess with his peers.

Private board-certified behavior analyst Javaheri observed Student at Ocean View approximately four times. She observed him in the sanctuary, during recess and in the classroom. During her observations of Student in the sanctuary, he worked with his aide on academics or laid on a chair. According to Student's aide, Student spent most of the day in the sanctuary and had to earn his right to go to the classroom. This fact was consistent with Truong's testimony and notes from the January 30, 2025 amendment IEP. On one occasion, Javaheri observed Student in the classroom for 10 minutes. Student sat in the back of his classroom and read with his one-to-one aide. During recess, Javaheri observed Student playing by himself.

At hearing, director Condas and Truong could not answer questions about how much time Student spent in his classroom daily after February 18, 2025. Truong appeared uncomfortable when asked if Ocean View implemented Student's behavior intervention plan with fidelity. She hesitated and appeared nervous when answering this question, which negatively impacted her credibility. She reluctantly answered that she believed Ocean View implemented the behavior intervention plan, "in light of the circumstances."

Condas also did not offer persuasive testimony about how much time Student spent in his classroom after February 18, 2025. Like Truong, Condas appeared uncomfortable when this question was posed to her. Although Condas generally explained Ocean View was concerned about Student's safety and that of others, she could not answer how much time Student spent in the classroom.

There was some evidence that Student spent time in the adult transition classroom around the third week of February 2025. The adult transition classroom was defined as a classroom for young adults with disabilities up to age 22. At hearing, Condas testified that Student went to this classroom with his one-to-one aide because his classmates were afraid of him. She further explained Ocean View wanted to "break the cycle" of Student's hyperfocus on a female classmate. She did not offer a reasonable explanation why it was appropriate for Student to be in that classroom with young adults. Upon learning that Student spent some days in the adult transition classroom, Capistrano communicated to Ocean View that this was not acceptable. Thereafter, Student started each school day in the sanctuary.

Student proved that Capistrano, through Ocean View, materially failed to implement his behavior intervention plan by allowing Student to remain in the sanctuary after he had de-escalated on an unspecified but significant number of school days. Student's behavior intervention plan included changes to his environment to support his replacement behaviors, including a break area in the classroom where Student could take a short break from nonpreferred tasks. The behavior intervention plan provided the break area should be neutral and not include preferred items. The break area could include neutral activities, like books or fidgets, sensory objects used to improve

self-regulation. Student's behavior intervention plan did not include removing Student to a separate location to work on academics, and certainly not for the majority of the school day.

At hearing, Javaheri offered persuasive testimony about the negative impact of Student's removal from the classroom on mitigating his maladaptive behaviors. She explained that an antecedent to his behaviors was access to his peers. She opined removing Student from the classroom outside the presence of his peers was inconsistent with Student's behavior intervention plan. By removing Student from his peers, a primary antecedent of his maladaptive behavior was removed. As a result, Student could not work on replacement behaviors, or socially acceptable, positive actions as a substitute to his challenging behaviors. Javaheri understood from her conversations with Truong and correspondence from Condas to Parent, that Student had to earn his right to interact with his peers and access the classroom, which she viewed as a punishment. She opined that when Student was removed from the function of his behaviors, specifically access to peers, his maladaptive behaviors actually increased. Javaheri's testimony was persuasive in establishing a material failure to implement the behavior intervention plan from January 31 through April 8, 2025.

Student's other witness, Dr. Gregory Endelman, was similarly critical of Ocean View's extended removal of Student from his peers. Dr. Endelman held a Doctor of Education and was a licensed school psychologist. Dr. Endelman was familiar with Student from conducting a private psychoeducational evaluation in summer 2025. Dr. Endelman assessed Student in Student's home in two or three sessions lasting approximately five hours in total. Dr. Endelman documented his findings and recommendations in a September 2, 2025 report.

In conducting his evaluation, Dr. Endelman reviewed Student's health and developmental records, reviewed Student's prior special education assessments and educational records, interviewed Parent, and administered cognitive testing, academic achievement testing, autism rating scales, behavior rating scales, and visual motor and visual perception assessments.

Based on his assessments, Dr. Endelman opined Student could self-advocate, liked to talk, and wanted to make new friends. However, Student's social skills were delayed compared to his same-aged peers. Student needed to be taught social skills and strategies when denied access to preferred items. Dr. Endelman opined removing Student from his peers prevented him from working on his behavior and social-emotional goals, and reinforced Student's escape behavior. Dr. Endelman's opinion on this issue was persuasive based on his experience and qualifications.

MARCH 19, 2025 AMENDMENT IEP AND 20-DAY NOTICE BY OCEAN VIEW TO TERMINATE ITS CONTRACT FOR STUDENT

On March 19, 2025, Capistrano held an amendment IEP team meeting to review Student's behavioral progress. Parent, attorney Zerby, and Javaheri attended the meeting. Capistrano's team members were Owens, Thompson, and school psychologist Lisa Woodland, who was serving as a parent counselor. Ocean View's team members were directors Condas and Sullinger, Truong, school counselor Conroy, and special education teacher Daley.

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The IEP team noted that Student's behaviors had continued, despite the following changes to his program since January 30, 2025:

- having Student start his day in the sanctuary to ensure he was regulated and to review his expectations;
- providing a visual schedule breaking down his day by task;
- displaying the reinforcements Student was working towards on the visual schedule;
- having staff give detailed praise to Student;
- providing Student with a clear folder with cash dollars he earned towards reinforcers;
- embedding breaks during Student's academic time; and
- implementing 45 minutes weekly behavior consultation services by a board-certified behavior analyst.

At the time of the meeting, Student engaged in the following behaviors between January 30 and March 18, 2025:

- 26 acts of aggression;
- 70 threats;
- five acts of destroying property; and
- five acts of sexual behavior towards others.

Ocean View relayed to the IEP team that it was providing 20-days' notice of its intention to terminate its contract for Student with Capistrano. Capistrano's individual service agreement for Student terminated on April 8, 2025.

Student proved that Capistrano, through Ocean View, materially failed to implement Student's behavior intervention plan between January 31 and April 8, 2025. Student's IEP and behavior intervention plan did not include removing Student from his classroom to an alternate setting. The behavior intervention plan did not state how long Student should spend in an alternate setting, how it would be documented, or who could decide to remove him from the classroom. The behavior intervention plan did not state when Student should be returned to the classroom, who would be notified, or how Parent could know about the amount of time Student spent in the separate setting. Although the behavior intervention plan recommended a break area in the classroom where Student could take a short break from nonpreferred tasks, it did not recommend that Student spend prolonged periods outside the classroom, or suggest this intervention could decrease the likelihood of his maladaptive behaviors.

Student's removal from the classroom when he engaged in behaviors that created a danger to himself and others was permitted under the IDEA and state law. Student's argument these removals constituted an improper change of placement was unpersuasive and contrary to the law. (*Honig, supra*, 484 U.S. at p. 323.) Student also wrongly characterized Student's time outside the classroom as isolation or seclusion. (Ed. Code, § 49005.1) At all times during the school day Student was supported by his one-to-one aide or Ocean View staff, including during the times he was in a separate setting for the purpose of calming.

However, the evidence proved Student often remained in the sanctuary long after he had cooled down. Condas, Owens, and Truong each observed Student in the sanctuary. They described Student as being in a calm state and working on academics with his aide, or laying on the couch. On examination, Condas disagreed that Student

did not have access to his peers because he saw them during recess and lunch. By the March 19, 2025 IEP, Student spent as much as 51 percent of the school day outside his classroom. This was not a temporary removal from his regular instructional area to prevent or moderate escalation of Student's maladaptive behaviors or merely allow him to become sufficiently self-controlled to rejoin his classmates. The length of time spent in the sanctuary was not reasonably related to Student's need for a cool down period, was unreasonable in light of his age, and did not conform to the behavior intervention plan.

Here, Ocean View used timeouts or calming periods extensively and beyond what was permissible. A preponderance of evidence proved that Ocean View extensively used timeouts in the sanctuary to manage Student's behaviors, instead of implementing the positive behavior interventions required by his IEP and behavior intervention plan. This deprived Student of the ability to work on his behavior and social-emotional goals, removed him from his peers and special education teacher, and denied Student a FAPE.

Student met his burden of proving Capistrano denied him a FAPE from January 31 through April 8, 2025, by materially failing to implement his behavior intervention plan.

Student prevailed on Issue 1a.

BEHAVIOR CONSULTATION SERVICES WERE IMPLEMENTED BETWEEN JANUARY 31 AND APRIL 8, 2025

Student failed to meet his burden of proving Capistrano materially failed to implement the 45-minutes weekly behavior consultation services added to the January 30, 2025 amendment IEP. At hearing, Truong offered uncontradicted testimony that she provided 45-minutes weekly consultation services following the January 30, 2025

IEP team meeting through Student's last day at Ocean View. Truong consulted with Daley, Condas, and Conway about behavior strategies. She also sought input from Javaheri about what techniques worked for Student in the home setting.

Student argued that Truong did not provide Parent weekly emails summarizing her observations, as requested by Parent at the January 30, 2025 amendment IEP team meeting. Parent requested at that meeting that Truong summarize her observations of Student, including antecedent and replacement behaviors and include these in a weekly email to Parent. Truong sent Parent periodic emails between January 31 and April 8, 2025, but not weekly as Parent requested. This evidence was insufficient to prove a material failure to implement behavior consultation services.

Student did not meet his burden of proving Capistrano failed to implement behavior consultation services from January 31 through April 8, 2025.

SPECIALIZED ACADEMIC INSTRUCTION SERVICES WERE IMPLEMENTED BETWEEN JANUARY 31 AND APRIL 8, 2025

Student did not present evidence of the amount or duration of specialized academic instruction Student purportedly missed for this period. Student argued, without evidentiary support, that Student could not have received any specialized academic instruction while he was at Ocean View, specifically during the times he worked with his one-to-one aide in a separate setting. Although Parent believed Student did not receive specialized academic instruction, she had no personal knowledge of how Daley and Student's one-to-one aide implemented the service. She did not observe Daley or

Student's one-to-one aide working with Student. Neither Daley nor the one-to-one aide testified at hearing, which impacted Student's ability to elicit testimony or have the witnesses discuss documentary evidence that proved Student's contention.

At hearing, Condas, Owens, Truong offered consistent testimony that Student was provided specialized academic instruction by Daley and Student's one-to-one aide. Student did not offer testimony or documentary evidence contradicting their testimony.

Student failed to meet his burden of proving by a preponderance of evidence that Capistrano materially failed to implement Student's specialized academic instruction between January 31 and April 8, 2025.

CAPISTRANO FAILED TO IMPLEMENT STUDENT'S BEHAVIOR INTERVENTION PLAN, BEHAVIOR CONSULTATION SERVICES AND SPECIALIZED ACADEMIC INSTRUCTION FROM APRIL 8 THROUGH MAY 27, 2025

Student argues Capistrano failed to implement his October 22, 2024 IEP after Ocean View's 20-day notice expired and Student no longer attended Ocean View. Specifically, Student contends Capistrano did not implement his behavior intervention plan, behavior consultation services, and specialized academic instruction.

Capistrano argues that its FAPE obligation to Student following Ocean View's 20-day notice was to locate a comparable nonpublic school placement. It further argues it acted diligently to locate a nonpublic school placement, specifically InSTEPPS, and

made interim services available to Student while it located another placement, but Parent chose not to access these services. Capistrano argues that InSTEPPS accepted Student effective May 27, 2025, but Parent declined this placement.

Student did not challenge the appropriateness of Capistrano's offer of delivery of specialized academic instruction in the home setting during the interim period while it located a comparable nonpublic school placement. Therefore, this Decision does not address that topic.

Ocean View's issuance of a 20-day notice to terminate its individual service contract for Student was not within Capistrano's control. This situation is analogous to other events that constitute a change of circumstance and prevent a school district from implementing an IEP as specified in a student's IEP. For example, courts have held that when a school closes, the school district "is required to provide the student with a similar placement which closely replicates the last agreed-upon and implemented placement." (*J.M. v. Chino Valley Unified School Dist.* (C.D. Cal. 2018) 2018 WL 6075349, *7 (*J.M.*)) Similarly, the Ninth Circuit Court of Appeals has determined that when a student transfers to a new district and there is a disagreement on appropriate placement, the new district must adopt a plan that approximates the student's old IEP as closely as possible. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35 (*Vashon Island*), superseded by statute at 20 U.S.C. § 1414(d)(1)(B); see also *R.F. Frankel v. Delano Union School Dist.* (E.D.Cal 2016) 224 F.Supp.3d 979 (*Frankel*), citing *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School Dist.* (C.D.Cal. 2005) 353 F.Supp.2d 1083, 1086 (*Van Scoy*)).

OAH has held that a nonpublic school's unilateral cancellation of a service contract constitutes a change of circumstances requiring the school district to offer a comparable nonpublic school placement. (*Student v. Newport-Mesa Unified School Dist.* (2017) OAH case number 2017051378.) Similar to the facts in this matter, in *Newport-Mesa Unified School District*, OAH denied student's stay put motion where the nonpublic school terminated the student's service contract, which represented a change of circumstances. OAH orders are not binding precedent but may be persuasive authority. (Cal. Code Regs., tit. 5, § 3085.)

The March 19, 2025 amendment IEP team discussed Student's placement following his last day at Ocean View. With the exception of Parent, the IEP team determined that Student required a small, structured learning environment with embedded behavioral supports in a nonpublic school capable of immediate response to Student's aggressive behaviors, which Ocean View could not provide. Case carrier Owens informed the IEP team that Capistrano would promptly initiate a search for a comparable nonpublic school and would provide interim services pending a nonpublic school's acceptance of Student.

The March 19, 2025 amendment IEP offered Student the following interim services while Capistrano located a nonpublic school placement:

- five hours weekly specialized academic instruction in the home;
- 30 minutes weekly individual counseling delivered virtually;
- 15 minutes monthly speech and language consultation services delivered virtually;

- 15 minutes monthly occupational therapy consultation services delivered virtually; and
- 60 minutes weekly parent counseling services delivered virtually.

Capistrano confirmed in an email exchange with Parent on March 20, 2025, that Student's extended school year services would be provided in his prospective nonpublic school placement.

Between March 19 and April 22, 2025, Parent and Capistrano communicated about changes to Capistrano's offer of interim services. Parent requested increased weekly specialized academic instruction of 10 to 15 hours in the home. Parent also requested that Student's occupational therapy, speech and language, and counseling services be provided in Student's home.

Capistrano sent Parent prior written notices on April 15 and 22, 2025. Capistrano offered:

- 10 hours weekly specialized academic instruction in the home setting;
- 30 minutes, two times weekly speech and language services in-person with Capistrano's contracted provider. The services would be provided in the speech and language provider's office;
- 30 minutes weekly individual counseling in person with Capistrano's contracted provider at their office;
- reimbursement to Parent for transportation to and from Student's speech and language and counseling services; and

- 30 minutes monthly virtual occupational therapy services (15 minutes with Parent and 15 minutes with the in-home specialized academic instruction teacher).

Parent did not agree to a reduction of Student's related services.

The evidence established a gap in Student's services from April 8 through May 27, 2025. Capistrano offered Student significantly less specialized academic instruction than required by his October 22, 2024 IEP. Capistrano's offer of 10 hours weekly was one third of the amount he was offered in the October 22, 2024 IEP. Although Student's specialized academic instruction was delivered in a group setting under his October 22, 2024 IEP versus individually in Capistrano's interim offer, two hours daily fell significantly short of that required by his IEP.

Capistrano's interim offer did not include 45-minutes weekly behavior consultation services, although this was required by Student's IEP. Capistrano's failure to offer behavior consultation services over this period constituted a material failure to implement Student's IEP. Behavior services, including his behavior intervention plan, were integral components of Student's IEP, especially in light of Student's known maladaptive behaviors. Although Student was receiving instruction in the home setting and the antecedents to Student's behaviors, namely access to peers, were removed, this did not excuse Capistrano from implementing Student's IEP behavior services.

The evidence proved Capistrano denied Student a FAPE from April 8 through May 27, 2025, by failing to implement Student's behavior intervention plan, behavior consultation services, and specialized academic instruction.

Student prevailed on Issues 1a, 1b, and 1c.

CAPISTRANO MADE A COMPARABLE NONPUBLIC SCHOOL
PLACEMENT AND RELATED SERVICES AVAILABLE STARTING
MAY 27, 2025

After Ocean View terminated its individual services contract for Student, Capistrano was obligated to find a comparable program for Student. Several nonpublic schools were considered by the March 19, 2025 amendment IEP team, including The Craig School, Port View and InSTEPPS. Parent believed The Craig School and InSTEPPS were not appropriate for Student. Parent was concerned the long commute times to these nonpublic schools would be difficult for Student and that his anxiety could increase. Instead, Parent wanted Capistrano to consider placement at a program within Capistrano. The Capistrano IEP team members believed Student required a small, structured setting with integrated behavior interventions, which was not available within Capistrano. All members of the IEP team, except Parent, agreed placement at a nonpublic school was appropriate for Student at the time and he was not ready for a district program.

Capistrano encouraged Parent to participate in the referral process. On March 20, 2025, Capistrano sent Parent a release of information authorization form for Port View, InSTEPPS, Olive Crest Academy, and Rossier Park Elementary, to allow Capistrano and these entities to exchange personally identifiable information about Student for the purpose of considering admission by these schools. Capistrano communicated to Parent that Student's extended school year program would be implemented at an identified nonpublic school.

Although not acknowledged by Student at hearing or in his closing brief, the parties agreed in their September 4, 2024 settlement agreement that in the event Ocean View issued a 20-day notice that it could not meet Student's needs during the 2024-2025 school year, Capistrano would be required to offer an alternate comparable nonpublic school. The first alternate nonpublic school considered "shall be InSTEPPS." If more than one nonpublic school accepted Student for admission, Capistrano agreed to offer the nonpublic school closest to Student's home.

In a prior written notice dated April 22, 2025, Capistrano notified Parent it located a nonpublic school placement appropriate to meet Student's social, emotional, and behavioral deficits. The notice informed Parent that Capistrano believed Student was not ready to transfer to a less restrictive setting at that time, and Student's October 22, 2024 IEP would be implemented at InSTEPPS.

Capistrano's April 22, 2025 prior written notice informed Parent that Student's start date at InSTEPPS was May 27, 2025, and his interim home services would end on May 23, 2025. Capistrano's prior written notice described the services that would be implemented at InSTEPPS, which were those specified in Student's October 22, 2024 IEP, as amended on January 30, 2025.

Parent did not accept Capistrano's placement offer at InSTEPPS. In a May 1, 2025 letter to Capistrano by Parent's attorney, Parent provided written consent to implementation of the March 19, 2025 IEP but rejected placement at InSTEPPS. Parent notified Capistrano she would continue to educate Student in the home setting until the parties reached an agreement for his school placement. Parent requested 15 to 20 hours

weekly specialized academic instruction, 30 minutes two times weekly speech and language services, and 30 minutes, two times monthly occupational therapy consultation services.

At hearing and in his closing brief, Student maintained an untenable position that his educational program following Ocean View's 20-day termination notice was not an interim program pending nonpublic school placement, but an ongoing program of individual services to be provided at home. The weight of the evidence established that Parent believed there were no nonpublic schools that could address Student's needs and she wanted Student to continue receiving specialized academic instruction and related services outside the school setting with providers and at locations of her choosing. Alternatively, Parent wanted Student to return to a district program. Parent incorrectly believed Student was entitled to receive related services at home, even after Capistrano made a comparable nonpublic school available to Student.

Capistrano established that InSTEPPS was a comparable program to Ocean View effective May 27, 2025. Capistrano's witnesses, including director of special services for nonpublic schools Dr. Loren Thurston, school psychologist Erin Pegan, speech-language pathologist Emily Horan, and occupational therapist Lindsey Morris offered detailed, persuasive testimony about the InSTEPPS program, as discussed in Issue 3 below.

Dr. Thurston had worked as a school psychologist, a lead school psychologist, and program manager for Capistrano since 2006. Beginning in the 2025-2026 school year, Dr. Thurston worked as the director of special education services for nonpublic schools for Capistrano. Dr. Thurston was responsible for identifying nonpublic school and residential placement for students within the district who required a more restrictive

placement not available within Capistrano. Dr. Thurston was familiar with Student from attending his IEP team meetings and identifying nonpublic schools that could meet Student's unique needs.

Dr. Thurston was familiar with InSTEPPS and offered persuasive testimony establishing it was comparable to Ocean View. InSTEPPS had a similar student-to-staff ratio and behaviorally trained staff. InSTEPPS offered direct instruction in a structured setting using principals of applied behavior analysis. At InSTEPPS, Student would receive specialized academic instruction by a credentialed special education teacher with support by a behaviorally trained one-to-one aide. A board-certified behavior analyst was onsite to provide consultation services to special education teachers and staff. InSTEPPS could implement the related services offered in Student's October 22, 2024 IEP.

Student did not refute Dr. Thurston's testimony, or offer persuasive evidence establishing that InSTEPPs placement was not comparable to Ocean View. No witness or documentary evidence suggested that Student's October 22, 2024 IEP could not be implemented at InSTEPPS.

Although Capistrano offered to implement Student's October 22, 2024 IEP at InSTEPPS starting May 27, 2025, Parent did not consent to implementation of services and placement and elected to home school Student. Parent continued to provide educational instruction to Student at home at the time of hearing.

Student failed to prove Capistrano denied him a FAPE by failing to implement his October 22, 2024 IEP after May 27, 2025.

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ISSUE 2b AND 2c: DID CAPISTRANO DENY STUDENT A FAPE DURING THE 2025-2026 SCHOOL YEAR BY FAILING TO ADEQUATELY ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY IN ITS AUGUST 19, 2025 MULTIDISCIPLINARY ASSESSMENT REPORT IN SPEECH AND LANGUAGE AND OCCUPATIONAL THERAPY?

ISSUE 6: WERE CAPISTRANO'S SPEECH AND LANGUAGE AND OCCUPATIONAL THERAPY ASSESSMENTS IN THE AUGUST 19, 2025 MULTIDISCIPLINARY ASSESSMENT AND REPORT APPROPRIATE?

Student's Issues 2b and 2c and Capistrano's Issue 6 are analyzed together because they involve the legal adequacy of Capistrano's speech and language and occupational therapy assessments and August 19, 2025 multidisciplinary report.

Capistrano contends in Issue 6 that it appropriately assessed Student's strengths and weaknesses in its speech and language and occupational therapy assessments conducted as part of its three-year evaluation and August 19, 2025 multidisciplinary report. Capistrano further asserts Student's IEP team had sufficient information about Student's needs in speech and language, fine and gross motor, and sensory needs to develop Student's educational program. Therefore, Capistrano argues Student is not entitled to independent evaluations at public expense.

Student contends in Issues 2b and 2c that Capistrano's speech and language and occupational therapy assessments were not appropriate.

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School district evaluations of students with disabilities under the IDEA serve two purposes: identifying students who need specialized academic instruction and related services because of an IDEA-eligible disability; and helping IEP teams identify the special education and related services the student requires. (20 U.S.C. § 1414(a); 34 C.F.R. §§ 300.301, 300.303.) The IDEA uses the term evaluation, while the California Education Code uses the term assessment. In this Decision, the terms mean the same thing and are used interchangeably. (34 C.F.R. § 300.300; Ed. Code, § 56302.5.)

Once a school district identifies a student as a child with a disability in need of special education and related services, and a parent consents to services, the school district has an ongoing duty to evaluate the needs of that student. Specifically, school districts must conduct a reevaluation if the student's educational or related service needs, including academic achievement and functional performance, warrant a reevaluation, or if the student's parents or teacher request a reevaluation. (20 U.S.C. § 1414(a)(2)(A); 34 C.F.R. § 300.303(a).) A student receiving special education services must be reassessed at least once every three years, unless the parent and the school district agree in writing that it is not necessary. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ed. Code, § 56381, subd. (a)(2).)

An assessment or reassessment of a student may not be conducted unless the school district provides proper notice to the student or his parents. (20 U.S.C. §§ 1414(b)(1) & (c)(3), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) Within 15 days of a student's referral for assessment, the school district must give the parent a proposed assessment plan. (Ed. Code, § 56321,

subd. (a).) The notice consists of the proposed assessment plan and a copy of parental and procedural rights under the IDEA and state law. (20 U.S.C. § 1414(c)(i); Ed. Code, § 56321, subd. (a).) The assessment plan must be in language easily understood by the general public and provided in the parent's native language. (Ed. Code, § 56321, subd. (b)(i), (ii).) The assessment plan must explain the assessments the district proposes to conduct, and that the district will not implement an IEP without the parent's consent. (34 C.F.R. § 300.300(a)(ii); Ed. Code, § 56321, subds. (b)(1)-(4).) The proposed written assessment plan must include a description of any recent assessments conducted, including any available independent assessments and any assessment information the parent requests to be considered. (Cal. Code Regs., tit. 5, § 3022.) The assessment plan must advise the parent that an IEP team meeting will be scheduled to discuss the assessment results and recommendations. (Ed. Code, § 56329, subd. (a)(1).)

School districts must follow statutory guidelines for the qualifications of the assessors and the contents of the assessments. In conducting an evaluation, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A)-(C); 34 C.F.R. § 300.304(b)(1); Ed. Code, § 56320.) The school district must not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining the appropriate educational program for the child. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).) Assessments and other

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evaluation materials must not be discriminatory on a racial or cultural basis, and must be administered in a language and form likely to yield accurate information. (20 U.S.C. § 1414(b)(3)(A)(i) and (ii); 34 C.F.R. § 300.304(c)(i) and (ii).)

Assessments and other evaluation materials must be administered in accordance with the publisher's instructions and used for valid and reliable purposes. (20 U.S.C. § 1414(b)(3)(A)(iii), (vi); 34 C.F.R. § 300.304(c)(1)(iii), (iv).) Assessments must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability of the child. (20 U.S.C. § 1414(b)(3)(C); 34 C.F.R. § 300.304(c)(6); Ed. Code, § 56320, subd. (f).) Further, the student must be assessed in all areas related to a suspected disability, including if appropriate

- health,
- vision,
- hearing,
- social and emotional status,
- general intelligence,
- academic performance,
- communicative status, and
- motor abilities. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).)

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Assessments must be conducted by individuals trained and knowledgeable about the student's disability and competent to perform the assessment, as determined by the local educational agency. (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (b)(3), 56322.) A credentialed school psychologist must conduct a psychological assessment. (Ed. Code, § 56324.)

Assessors must prepare a written report of each assessment that includes, among other things:

1. whether the student may need special education and services;
2. the basis for making that determination;
3. the relevant behavior noted during the observation of the student in an appropriate setting; and
4. the relationship of that behavior to the student's academic and social functioning.

(Ed. Code, § 56327.) The report must be given to the parent or guardian. (20 U.S.C. § 1414(b)(4)(B); 34 C.F.R. § 300.306(a)(2); Ed. Code, §§ 56302.1, subd. (a), 56329, subd. (a)(3).)

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A school district's failure to appropriately assess a child may constitute a procedural violation of the IDEA. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033 (*Park*)). However, a procedural violation results in a denial of FAPE only if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parents' opportunity to participate in the decisionmaking process; or
3. caused a deprivation of educational benefits.

(20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2); *W.G. v. Bd. of Trustees of Target Range School Dist. No. 23, Missoula Mont.* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*), superseded in part by statute on other grounds.)

At the time of hearing, Student's last agreed-upon IEP was the October 22, 2024 IEP. Student's three-year evaluation was due on October 21, 2026. On March 24, 2025, Parent's attorney requested independent educational evaluations for Student in psychoeducation, speech and language, functional behavior, and educationally related mental health services based on Parent's disagreement with Student's previous three-year evaluation that was completed in October 2023. In response, Capistrano proposed that it conduct an early comprehensive three-year evaluation of Student and Parent withdraw her request for independent educational evaluations. Parent agreed, and her attorney withdrew the request for independent educational evaluations on March 31, 2025. Capistrano timely provided Parent an assessment plan on April 14, 2025, and Parent consented on April 15, 2025.

The April 14, 2025 assessment plan explained the information sought through the evaluation of various areas. The plan proposed to evaluate Student in

- academic achievement,
- speech and language development,
- intellectual development,
- processing abilities,
- social-emotional functioning,
- adaptive behavior,
- functional behavior, and
- special circumstances instructional assistance.

The plan identified a school psychologist to assess Student's:

- intellectual development;
- processing abilities;
- social-emotional functioning, and adaptive behavior;
- functional behavior, and special circumstance instructional assistance: and
- an education specialist to assess Student's academic achievement.

A speech-language pathologist would assess Student's speech and language development. An occupational therapist would assess if Student had sensory processing and/or fine motor deficits impacting his ability to access his education.

The April 14, 2025 assessment plan was written in Parent's native language of English. The plan was easy to understand, explained the reason for the proposed

assessments, and explained the types of assessments to be conducted, including who would conduct the assessments. The assessment plan stated the assessment would include a review of records, observations, and interviews. It stated the assessors would use standardized tests, interviews, record review, and observations, and an IEP team would review the assessments before a program was proposed and, with Parent's consent, implemented.

The assessment plan was legally sufficient.

CAPISTRANO'S SPEECH AND LANGUAGE ASSESSMENT WAS APPROPRIATE

Capistrano proved that its speech and language assessment was appropriate. Capistrano speech-language pathologist Emily Horan conducted the speech and language assessment and issued a written report that was incorporated into Capistrano's multidisciplinary assessment report dated August 19, 2025. Horan was well-qualified and competent to assess Student in speech and language. Horan held a master's degree in communication sciences and disorders and was a licensed California speech-language pathologist since 2020. Horan provided direct speech services in individual and group settings to students in sixth through eighth grades. Horan was responsible for assessing students at her assigned school, and for Capistrano's students who were placed at nonpublic schools. Horan had training in applied behavior analysis therapy and social skills facilitation.

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RECORDS REVIEW, INTERVIEWS, AND OBSERVATIONS

Horan gathered information about Student's speech and language needs and abilities from a variety of sources. Horan reviewed Student's prior assessments and IEPs, spoke to Parent about her concerns, and observed Student during testing sessions and in the home environment. Horan reviewed records, conducted interviews, and administered standardized and non-standardized testing instruments.

Horan observed Student in his home for approximately two hours on July 10, 2025. Board-certified behavior analyst Javaheri, a registered behavior technician, and Parent were present during the observation. Student responded to questions with verbal prompting from his registered behavior technician. He followed one-step directions independently. Horan observed some stuttering events and recited scripts, meaning Student repeated words several times. He responded to questions using short utterances and did not expand, comment, or ask follow-up questions. While reading a book, Student mumbled and his speech intelligibility decreased. He required verbal cues to focus on his work. Student's tasks were broken into 30 minutes of academic work and 30 minutes of playtime.

Horan observed Student during testing in Capistrano's district office on May 29 and 30, 2025. She observed Student for 45 to 60 minutes in each session. During testing, Student answered questions but had difficulty remaining on topic. He asked how much time was left to complete the tasks. He demonstrated a willingness to perform well and asked for feedback. He responded positively to verbal praise and reinforcement.

At hearing, Horan opined that Student's use of language during observations at home and during testing were similar. Student used simple sentences. He used more vocabulary during structured activities. During unstructured conversations, he did not spontaneously ask questions.

TESTING INSTRUMENTS

Horan used a variety of standardized assessment measures. Specifically, Horan administered the following assessments:

- Peabody Picture Vocabulary Test, Fifth Edition;
- Expressive One-Word Picture Vocabulary Test;
- The Clinical Evaluation of Language Fundamental, Fifth Edition;
- Test of Pragmatic Language, Second Edition;
- Stuttering Severity Instrument for Children and Youth, Fourth Edition; and
- Test of Childhood Stuttering Observational Rating Scale.

Standardized tests are considered valid for an expressive or receptive language disorder when a person scores at least 1.5 standard deviations below the mean, or below the seventh percentile for his chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).)

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The Peabody Picture Vocabulary Test was a norm-referenced assessment of how well a person can match a word that is heard to objects, actions or concepts presented in full-color pictures. Student identified familiar words, but struggled with less familiar words. His overall score was 71, which fell in the below average range.

The Expressive One-Word Picture Vocabulary Test measures how well a person can name a picture, object, or concept that is shown to them in a color picture. Student attempted 102 responses and had 21 errors, resulting in a score of 79, which fell in the below average range.

The Clinical Evaluation of Language Fundamentals was a comprehensive language assessment that obtained information about a student's expressive and receptive language abilities in word classes, formulated sentences, recalling sentences, and semantic relationships. Student overall score of 59 fell in the 0.3 percentile, or the deficient range. Sub-scores across the board were all in the first percentile or below, or the deficient range.

The Test of Pragmatic Language, Second Edition, measures the effectiveness of a student's pragmatic language skills. Pragmatics is the use of language in social situations. Student's overall score of 77 fell in the sixth percentile, or the below average range. Overall, Student could not provide a rationale for appropriately understanding social environments. He struggled with abstract communication questions, inferential questions, and responding appropriately with peers in a social context.

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The Test of Childhood Stuttering Observational Rating Scale was a questionnaire that evaluated the fluency of a child's speech. Parent completed the rating scale. Overall, Parent did not observe any stuttering events, although he sometimes avoided saying words or became frustrated when he could not speak fluently.

The Stuttering Severity Instrument for Children and Youth measured stuttering severity in children and adults. Student completed oral tasks in reading and speaking. Student displayed stuttering in producing syllables in both tests. Student also displayed repetitions in sounds, syllables and whole words.

At Parent's request, Horan reviewed a private speech and language recommendations form dated June 2, 2025, from Providence Speech and Hearing Center. The one-page form included boxes with check marks and handwritten notes by a speech-language pathologist. It was unclear what the recommendations were based on and how these recommendations applied to the school setting. Student did not call the evaluator as a witness at hearing. Therefore, the report was not reliable and did not tend to prove or disprove the adequacy of Horan's evaluation.

Horan administered the standardized testing instruments in accordance with the publishers' instructions and the results accurately reflected Student's performance on the tests. Horan's assessment did not rely on any single measure or assessment as the sole criterion for determining Student's continued special education needs. The assessments were administered in Student's native language of English. Student offered no evidence that the assessment was discriminatory in any way, or that Student's scores on the standardized assessments were inaccurate.

Horan used measures relevant to Student's educational needs, and designed to provide Student's IEP team with information on how his speech and language needs impacted his education in relation to academic and social functioning. Horan did not have concerns with Student's articulation or ability to functionally communicate or be understood by his communication partners. His use of language was inconsistent at the sentence levels. Horan found that Student had expressive and/or receptive language deficits in language development and in pragmatics. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(11).) Student could participate in simple and routine conversations, but struggled to engage in complex conversations. He required support when presented with social problems. Horan also found that Student had a moderate fluency disorder in sound, syllable and word repetitions.

Horan recommended Student continue to receive speech and language services. Horan summarized the tests results and interpretation of the results in a written report, which was incorporated into Capistrano's August 19, 2025 multidisciplinary report. The report was well organized and easy to understand. It included each assessment measure Horan used and gave a detailed explanation of Student's performance. Horan recommended Student receive school-based speech and language services to address his communication needs. The speech-language assessment report was legally sufficient. Based on Horan's unavailability, Capistrano's lead speech-language pathologist Hannah Foerstel presented Capistrano's speech-language assessment at the August 28, 2025 IEP team meeting. Parent expressed concerns about Student's stuttering and Foerstel provided strategies. Horan attended the other IEP team meetings held to develop goals and services.

Student did not offer persuasive evidence challenging the appropriateness of the speech and language assessment. Student did not challenge the assessment or their results. He did not dispute the assessor was trained and competent to assess Student in these areas. Student did not call a speech-language pathologist to refute the appropriateness of the speech and language evaluation. Student did not offer evidence proving the assessment was not sufficiently comprehensive to address Student's needs in speech and language. In summary, there was a lack of evidence challenging this assessment.

Student failed to meet his burden of proving Capistrano's speech and language assessment was not appropriate. Capistrano prevailed on Issue 2a.

Capistrano met its burden of proving by a preponderance of the evidence that its speech and language assessment was appropriately conducted. Capistrano prevailed on Issues 6 with respect to the speech and language assessment.

CAPISTRANO'S OCCUPATIONAL THERAPY ASSESSMENT WAS APPROPRIATE

Capistrano proved that its occupational therapy assessment was appropriate. Capistrano occupational therapist Lindsay Morris conducted the occupational therapy assessment and issued a written report that was incorporated into Capistrano's multidisciplinary assessment report dated August 19, 2025. Morris was trained and competent to conduct the assessment. Morris had been a registered and licensed occupational therapist practicing in the school setting for 15 years. Morris provided direct occupational therapy services to Capistrano's students, consulted with staff about

sensory strategies and accommodations for students, and assessed students at her school site and for Capistrano's students placed at nonpublic schools. Morris was qualified to assess Student's occupational therapy needs.

Morris gathered information about Student's fine motor skills and sensory processing from multiple sources, including a records review, observation of Student during testing and in the home school setting, input from Parent, work samples, and standardized assessment measures. Morris assessed Student's fine motor skills and sensory processing needs pursuant to the April 14, 2025 assessment plan. Morris assessed Student on May 29, and June 18, 2025.

PARENT FEEDBACK AND OBSERVATIONS

Morris obtained Parent input through a parent input form. Parent described Student as a caring and compassionate child who loved school and wanted to make friends. Student's maladaptive behaviors occurred when he was denied access to a preferred item or activity. Parent was concerned that school staff working with Student were not properly trained in applied behavior techniques and strategies to meet his needs.

Morris sent a teacher input form to special education teacher Daley, but did not receive a response. Daley sent a follow-up email, but had not received a response at the time of her written report. Morris documented this in her written report.

Morris observed Student during testing and at his home. Morris conducted testing in Capistrano's district office on May 29, 2025. The testing session lasted 90 minutes. Student was compliant during testing and transitioned between working

with speech-pathologist Horan and Morris. When transitioning between activities Student asked when he could see Parent, but was easily redirected. During testing, he asked for feedback and responded well to positive feedback. He displayed self-stimulatory behavior by scripting language to himself and fidgeted in his chair near the end of the session. Morris opined these behaviors demonstrated his attention was fading. He completed subtests in five-to-10-minute increments, followed by a short break.

Morris observed Student in the home setting on June 18, 2025, for approximately 90 minutes. Student greeted Morris and went back to work with his registered behavior technician and board-certified behavior analyst on reading and math lessons. Student's board-certified behavior analysis front loaded information, used a timer, and provided Student frequent sensory and movement breaks, including playing games or working on exercise equipment. Student wrote legibly on the whiteboard. Student engaged in scripted self-talk during portions of the observation. He completed both his math and reading lessons with prompting.

TESTING INSTRUMENTS

Morris administered the following assessment measures:

- Bruininks-Oseretsky Test of Motor Proficiency, Third Edition; and
- The Sensory Processing Measure-2.

Morris administered these measures according to the publishers' instructions. Student's skills were accurately reflected in the results.

Morris administered the Bruininks-Oseretsky Test of Motor Proficiency, Third Edition to assess Student's motor functioning. This was an individually administered test that assessed motor functioning of children four to 21 years of age. The Fine Motor Control Composite consisted of two subtests: Fine Motor Precision and Fine Motor Integration. The Fine Motor Precision subtest measured activities that required precise control of finger and hand movement. It included tasks such as

- drawing, folding, or cutting within a specified boundary;
- coloring circles with precision;
- connecting dots;
- folding paper; and
- cutting a circle.

The Fine Motor Integration subtest assessed control and coordination of Student's hands and fingers for grasping, writing, and drawing. The manual coordination composite examined control and coordination of arms and hands for manipulating objects.

Student scored in the below average range on the Fine Motor Precision subtest. He could pick up small objects using a pincer grasp, adequately hold scissors, and used his left hand to manipulate paper when cutting. Student scored below average on the Fine Motor Integration subtest. This subtest required Student to reproduce drawings of various geometric shapes that ranged in complexity. Student could copy the shapes presented, except for a cube. He often did not draw the shape with a closed endpoint or drew over specific lines repeatedly.

The Manual Dexterity subtest measured motor skills involved in control and coordination of arms and hands for manipulating tasks. Student scored in the well below average range on this subtest. He could complete a variety of tasks including stringing blocks, placing pegs on a pegboard or sorting cards, but he completed these tasks slower than his same-aged peers.

Morris also reviewed a handwriting sample by Student. His writing was legible and had consistent spacing between words. Student's writing was large, but this did not impact its legibility. Student could log into and navigate his computer.

Morris concluded Student presented with below average fine motor precision and fine motor integration skills, and well below average manual dexterity skills. She did not believe Student's fine motor skill deficits impacted his ability to access his academic curriculum.

Morris determined Student's sensory needs through observations and a testing instrument called the Sensory Processing Measure 2. This consisted of rating forms that assessed sensory processing and social participation in children ages five through 12. At hearing, Morris explained that sensory processing is the ability to receive, organize, and interpret sensory information in the environment. This rating scale was given to Parent and special education teacher Daley.

Parent rated Student as having moderate difficulties in vision, hearing, and body awareness. She rated Student as having typical difficulties in touch, taste, and smell, and balance and motion. Parent identified Student as having moderate difficulties in social participation and severe difficulties with planning and ideas. Daley rated Student as having severe difficulties in all areas, except for taste and smell.

Morris determined Student displayed sensory processing deficits in processing, planning, and social participation. Student displayed adequate visual attention during testing. During testing and in home observation, Student needed prompting to stay on task after 30 to 40 minutes of work and displayed fidgeting and self-talk. He needed frequent sensory breaks to maintain regulation. Morris recommended that Student continue to receive occupational therapy services in the school setting.

Morris' assessment was sufficiently comprehensive to identify Student's needs in fine motor and sensory processing needs. Student did not offer persuasive evidence that proved Capistrano's occupational therapy assessment should have assessed Student in any other areas. Morris administered the assessment in Student's native language of English. Student offered no evidence the assessment was discriminatory in any way, or that the assessment results were inaccurate.

Morris prepared a written report, which was included in Capistrano's August 19, 2025 multidisciplinary assessment. The report was well organized and easy to understand. It included each measure Morris used and gave a detailed explanation of Student's performance. Morris recommended occupational therapy accommodations to support Student in the school setting.

Morris was present at the August 28, 2025 IEP team meeting to provide insight and clarification. Parent had a copy of the report, and an opportunity to ask questions and participate in review of the occupational therapy assessment. The August 19, 2025 occupational therapy report was legally sufficient.

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Similar to Issue 2b, Student did not challenge Morris' qualifications or competence to evaluate Student's fine motor and sensory processing needs. Student did not challenge the testing measures selected or challenge the assessment results. Student did not call an occupational therapist to offer testimony refuting the adequacy of the assessment. Based on an absence of evidence, Student failed to meet his burden of proof on Issue 2c.

Capistrano prevailed on Issue 2c.

Capistrano met its burden of proving by a preponderance of the evidence that its occupational therapy assessment was appropriately conducted.

Capistrano prevailed on Issues 6 with respect to occupational therapy.

ISSUE 2a AND 2e: DID CAPISTRANO DENY STUDENT A FAPE DURING THE 2025-2026 SCHOOL YEAR BY FAILING TO ADEQUATELY ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY IN ITS AUGUST 19, 2025 MULTIDISCIPLINARY ASSESSMENT REPORT IN PSYCHOEDUCATION, AND SPECIAL CIRCUMSTANCES INSTRUCTIONAL ASSISTANCE?

Student contends Capistrano's multidisciplinary assessment was incomplete and flawed. During hearing and in his closing brief, Student did not challenge the adequacy of Capistrano's psychoeducational and special circumstances instructional assistance assessments, but instead argued the placement offer made by Capistrano was inappropriate. Student appears to have abandoned these issues.

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Capistrano contends its multidisciplinary assessment and August 19, 2025 report was comprehensive and met all legal requirements. Capistrano contends it appropriately assessed Student in all areas of

- suspected disability,
- specifically intellectual development,
- academic achievement,
- social-emotional-adaptive behavior,
- perceptual processing, and
- Student's need for special circumstances instructional assistance during the school day.

Capistrano further argues that Student did not meet his burden of proof on these issues.

ISSUE 2a: CAPISTRANO'S PSYCHOEDUCATIONAL ASSESSMENT WAS APPROPRIATE

Student did not prove Capistrano failed to adequately assess Student in psychoeducation. Capistrano school psychologist Erin Pegan conducted the psychoeducation assessment. Pegan was trained and competent to conduct the assessment. Pegan was a credentialed school psychologist since 2010. She held a master's degree in educational psychology and a Pupil Personnel Services Credential. Pegan conducted approximately 10 to 20 psychoeducational evaluations annually, and

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over the course of her career had conducted hundreds of psychoeducational evaluations and functional behavior assessments. She conducted approximately 10 special circumstances instructional assistance assessments each year.

Pegan considered if Student met continued eligibility under criteria for autism and other health impairment. Pegan completed her assessment over six days on May 15, 16, 22, and 30, June 12, and August 19, 2025. Pegan evaluated Student's

- intellectual development,
- academic achievement,
- social-emotional-adaptive behavior,
- perceptual processing, and
- need for special circumstance instructional assistance during the school day.

Pegan's findings and conclusions were contained within the August 19, 2025 multidisciplinary assessment report

RECORDS REVIEW, INTERVIEWS, AND OBSERVATIONS

Capistrano's psychoeducational assessment was based on relevant functional, developmental, and academic information about Student using a variety of assessment tools. Pegan chose a variety of assessment tools to conduct Student's psychoeducational assessment, including standardized tests, rating scales, and observations of Student in the home school setting, in the community, and during assessments. Pegan interviewed Student, Parent, Student's private board-certified behavior analyst Javaheri, and Student's special education teacher while he was at Ocean View.

Pegan reviewed Student's educational records, prior assessments, Student's health records, private evaluations, and letters from Student's physicians submitted by Parent. Pegan selected the assessment tools based on Student's academic, developmental, and functional capabilities. Pegan reviewed Capistrano's previous evaluations for Student, and private evaluations obtained by Parent. Pegan summarized the results of the evaluations in her report.

Pegan observed Student during testing sessions. Parent identified a preferred reinforcement before each session that Student could earn contingent on his behavior and effort. Pegan believed this strategy was effective because Student appeared motivated by the reward. Student followed directions and demonstrated a desire to do well. He was provided breaks every 20 to 30 minutes. During testing, he frequently exhibited difficulty sustaining attention. He looked around the room, asked questions about his surroundings, and engaged in self-talk.

Student was instructed at home at the time of her assessment, and therefore Pegan could not conduct an observation in the educational setting. However, Pegan observed him at a community pool for 40 minutes on May 30, 2025. Student greeted Pegan. Student played with toys in the pool area. He did not interact with other children, other than to tell a younger child that one of the toys belonged to Student. He transitioned to the water park and played by himself. Overall, Student followed Parent's instructions and transitioned between activities with reminders and support.

Pegan observed Student in his home school setting on June 12, 2025, for 45 minutes. Javaheri and a registered behavior technician provided Student academic instruction. Javaheri informed Pegan that Student participated in two, three-hour instructional sessions daily. He worked for three hours in the morning, followed by a

one to two hour break, and a three-hour afternoon session. His instruction alternated between preferred and nonpreferred content. He followed a routine that included visual aids, a written schedule, and token board. Student transitioned from scheduled breaks to academic tasks with prompting and counting strategies. He responded well to verbal praise and earned rewards at the end of each instructional block. Frequent adult support, consistent reinforcement, and pairing work tasks with preferred activities were in place throughout the session.

VALID SELECTION AND ADMINISTRATION OF TESTING INSTRUMENTS

Pegan evaluated Student in Capistrano's district office on May 15, 16, and 22, 2025. The first two sessions lasted 75 minutes and the final session lasted 30 minutes.

Pegan measured Student's intellectual development and processing skills using:

- the Wechsler Intelligence Scale for Children, Fifth Edition and
- the Beery-Buktenica Development Test of Visual Motor Integration, Sixth Edition.

Pegan assessed Student's social-emotional and behavioral functioning using:

- the Behavior Assessment System for Children, Third Edition;
- Autism Spectrum Rating Scale;
- Conners Rating Scale, Fourth Edition; and
- Vineland Adaptive Behavior Scales, Third Edition.

The testing instruments were selected to evaluate specific areas of Student's suspected needs, administered in accordance with the instructions provided by the producers of the tests, and relied on for the purposes for which the tests were designed. The testing instruments were administered in Student's primary language of English, were validated and properly normed, and not racially, culturally, or sexually discriminatory.

INTELLECTUAL ABILITY AND PROCESSING SKILLS

The Wechsler Intelligence Scale for Children, Fifth Edition was an individually administered clinical instrument for assessing the intellectual ability of children aged six years through 16 years and 11 months. The assessment evaluated five cognitive areas:

- verbal comprehension,
- visual spatial,
- fluid reasoning,
- working memory, and
- processing speed.

The Wechsler Intelligence Scale also provided a score that represented a child's general intellectual ability, called a Full Scale Intelligence Quotient.

Student's performance on the Weschler Intelligence Scale for Children showed Student's verbal comprehension was below average. Student's performance indicated Student experienced challenges in verbal reasoning, word retrieval, and using language to clearly express ideas.

The visual spatial subtest was composed of visual puzzles and block design components. This subtest measured a child's ability to evaluate visual details and understand visual spatial relationships. Student's performance on this subtest fell in the average range. This indicated Student worked successfully with visual patterns and construction tasks.

Student's score on the fluid reasoning subtest showed a mixed pattern of abilities. Student scored in the very low range in recognizing visual patterns and applying abstract reasoning. However, he scored in the average range in using quantitative reasoning. Pegan reported these scores indicated Student could have difficulty identifying abstract visual relationships. Student scored in the low average range on the working memory subtest, which could result in challenges in following multistep directions, retaining information, or keeping track of details.

The processing speed index measured a child's speed and accuracy in visual identification, decision making, and decision implementation. Student scored in the extremely low range on the coding subtest and in the very low range on the symbol search subtest. Pegan reported these results indicated Student worked at a much slower pace on tasks requiring quick and accurate visual processing, such as classroom work, test-taking, and other timed activities. Student's Full Scale Intelligence Quotient fell in the very low range, with a composite score of 72.

The Beery-Buktenica Development Test of Visual Motor Integration measured the ability to look at and copy geometric designs of increasing difficulties. It assessed an individual's ability to integrate their visual and motor abilities, also called perceptual-motor skills. Student's standard score of 79 fell in the moderately below average range.

This score suggested Student had difficulty with tasks requiring coordination of visual perception and fine motor skills, such as handwriting, copying from the board, and completing written assignments.

SOCIAL-EMOTIONAL AND BEHAVIORAL FUNCTIONING

The Behavior Assessment Systems for Children used normed-referencing rating scales to measure emotional and behavioral difficulties, and adaptive skills. Parent and education specialist Daley completed the rating scales.

Parent and Daley both identified clinically significant concerns with emotional regulation and overall behavior. Parent and Daley both rated Student as clinically significant in behavior. Both Parent and Daley rated Student's adaptive skills as at-risk or clinically significant across the home and school environments. Pegan reported that overall, while Student had challenges both at home and in school, the school environment presented more severe concerns in behavior, attention, and emotional regulation.

The Autism Spectrum Rating Scale was designed to measure behaviors associated with autism spectrum disorders for children and youth aged two through 18 years. Parent and Daley completed the rating scales. Both Parent and Daley rated Student in the very elevated range for behaviors associated with autism. Both Parent and Daley identified significant concerns in unusual behaviors, atypical language, and behavioral rigidity. They rated Student in the elevated range for peer and adult socialization, social-emotional reciprocity, sensory sensitivity, and attention. Overall, the scores indicated patterns of social, communication, and behavioral challenges associated with autism spectrum disorder.

The Conner Rating scales assessed a student's behaviors related to attention deficit hyperactivity disorder and related disorders. The rating scales included Student's behaviors in

- inattention,
- hyperactivity-impulsivity,
- learning problems,
- executive functioning,
- aggression and peer relations.

Parent and Daley reported slightly elevated concerns in inattention and executive functioning. Parent rated Student slightly elevated or average in hyperactivity, impulsivity, and emotional regulation, although Daley rated him in the elevated range in the classroom environment. Parent rated Student as very elevated for peer relations, whereas Daley rated his peer relations as elevated. Parent identified challenges in schoolwork and family life, while Daley rated Student average in schoolwork. Pegan concluded that Student demonstrated consistent attention challenges across settings, with more intense hyperactivity, impulsivity, and emotional dysregulation observed in the classroom.

The Vineland Adaptive Behavior Scales was a norm-based standardized measure of an individual's ability to function in everyday life. A student's function was compared to that of his same aged peers. Parent and Daley's ratings were significantly different, and suggested that Student demonstrated stronger adaptive functioning within the home environment, and had more difficulties applying adaptive skills in the structured school setting.

ACADEMIC ACHIEVEMENT

Case carrier and education specialist Owens administered the Woodcock Johnson Tests of Academic Achievement, Fourth Edition to assess Student's academic performance levels in reading, mathematics, and written language. Owens had the qualification and experience to conduct this assessment. Pegan incorporated the results from this assessment into her report.

Student's basic reading skills were in the average range as compared to his same-age peers. Student's overall reading comprehension was in the very low range. Student read passages slowly and had difficulty identifying correct words in passages and recalling key details.

Student's reading fluency was in the low range overall. Student's math calculation skills were in the very low range overall, and his math problem-solving skills were in the low range. Student scored in the low range overall in written expression.

Pegan administered the Wechsler Individual Achievement Test, Fourth Edition to assess Student's listening comprehension and oral expression. Student's listening comprehension scores were in the very low range. His oral expression scores were in the low average range.

WRITTEN REPORT

Pegan produced a written report of the psychoeducational assessment, which included whether Student required special education and related services. The report was included in the August 19, 2025, multidisciplinary assessment. The report included

the results from the various informal and standardized tests, and the assessor's behavioral observations, during testing, at home, and in the community. The report analyzed whether Student met eligibility criteria for special education and related services under the categories of autism and other health impairment. Capistrano provided Parent a copy of the report. Pegan shared the results of her assessment at the August 21, 2025 IEP team meeting.

Pegan explained the basis upon which her determinations were made and noted relevant observations and behaviors. She described the relationship of her assessment findings to Student's academic and behavioral functions, and determined the assessment results were not primarily due to environmental, cultural, or economic factors. Pegan concluded Student remained qualified for special education and related services due to autism and other health impairment because of his diagnosis of attention deficit hyperactivity disorder.

Student did not challenge Pegan's knowledge of Student's disability or her competence to perform the assessments. Student did not question the validity or reliability of the testing instruments or offer evidence that the tests were not administered in accordance with the instructions provided by the producers of the tests. No evidence suggested that the testing results were not valid or reliable.

Student failed to meet his burden of proving by a preponderance of the evidence that the August 19, 2025 psychoeducational assessment and report failed to meet all legal requirements.

Capistrano prevailed on Issue 2a.

ISSUES 2e: SPECIAL CIRCUMSTANCES INSTRUCTIONAL
ASSISTANCE ASSESSMENT WAS APPROPRIATE

Student contends that Capistrano's special circumstances instructional assistance assessment was not appropriate. Capistrano contends its special circumstances instructional assistance assessment was appropriate. It contends its evaluated Student's need for adult assistance through records reviews, observations, and interviews with special education teacher Daley and Parent.

At hearing, Student did not offer evidence establishing the special circumstances instructional assistance assessment was not appropriate. Student did not question any witnesses, including school psychologist Pegan, who conducted the assessment, about how the assessment was conducted or elicit testimony suggesting it was not adequate. No witness offered testimony refuting the appropriateness of the evaluation. Therefore, based on an absence of evidence, Student failed to meet his burden of proof on this issue.

Capistrano prevailed on Issue 2e.

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ISSUE 2d: DID CAPISTRANO DENY STUDENT A FAPE IN THE 2025-2026 SCHOOL YEAR BY FAILING TO ADEQUATELY ASSESS STUDENT IN FUNCTIONAL BEHAVIOR?

Student contends Capistrano denied him a FAPE by failing to conduct an appropriate functional behavior assessment. Student contends Capistrano's functional behavior assessment did not consider the appropriate functions of Student's behavior and was based largely on a review of records instead of data collection and observations of Student in the classroom.

Capistrano contends that its functional behavior assessment and report met all legal requirements. Capistrano argues it conducted observations of Student in the home and community settings because Student was not attending school at the time of its assessment. Capistrano contends the functional behavior assessment provided updated information for Student's IEP team to determine appropriate behavior interventions and supports.

In performing a reassessment, an IEP team and other qualified professionals must review existing assessment data on the child, including:

- evaluations and information provided by the child's parents;
- current classroom-based, local, or state assessments and classroom-based observations; and
- observations by teachers and related services providers.

(20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. § 300.305(a)(1); Ed. Code, § 56381, subd. (b)(1).)

An assessment must be designed not only to determine whether the child has a disability, but also to gather relevant functional, developmental, and academic information about the child. (20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.304(b)(1).) A school district must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty. (34 C.F.R. § 300.310(a).) The assessor must include in their written report the relevant behavior noted during the observation of the student in an appropriate setting. (Ed. Code, § 56327, subd. (c).)

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park, supra*, 464 F.3d at p. 1031.)

Student proved Capistrano committed a procedural violation by failing to conduct an appropriate functional behavior assessment. The purpose of the functional behavior assessment was to evaluate Student's targeted behaviors in the school setting and to see if they impacted Student's ability to learn and participate in school. The assessment was not comprehensive or reliable because it did not include a classroom observation.

School psychologist Pegan conducted the functional behavior assessment in August 2025, and documented the assessment results in a written report dated August 21, 2025. The assessment was largely based on a review of Student's cumulative school

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records to determine his history of behaviors and formerly identified antecedents and recommendations. Based on a records review and interviews with Parent, Javaheri, and Daley, Pegan identified the behaviors to be assessed as

- eloping,
- destruction of property,
- aggression,
- sexual behavior towards others and self, and
- inappropriate bathroom behavior.

Pegan observed Student during academic instruction at home on August 19, 2025. Pegan detailed her observations in her August 21, 2025 functional behavior assessment report. During the observation, Student worked with his registered behavior aide on academic tasks in reading comprehension, math, and written expression. Student required frequent prompting, reassurance, and step-by-step guidance. He frequently sought adult confirmation before responding or writing. He required structured breaks to sustain engagement. Overall, Pegan observed Student required intensive adult support and frequent reinforcement to complete academic tasks.

Pegan did not observe any of the targeted behaviors during her observations. In her functional behavior assessment report, Pegan noted the limitations of her assessment based on Student's participation in a home-based program. Pegan could not observe Student in a school environment where historically the majority of the targeted behaviors occurred. At hearing, Pegan explained that Student's home program removed peer interactions and significantly reduced the academic and social demands that previously

were antecedents to Student's behaviors. Pegan recommended that the IEP team consider collecting additional data about Student's behaviors, including anxiety relating to transportation upon Student's return to a school setting.

At hearing, Pegan explained that Student's home environment lacked a primary antecedent observed in the school setting, specifically access to peers. Pegan opined the information she gathered contained new information about Student's behaviors after the October 2025 functional behavior assessment, and could be useful for Student's IEP team to develop effective positive behavioral strategies for Student.

Student's witnesses Javaheri and Dr. Endelman offered persuasive testimony establishing the functional behavior assessment was inadequate because it failed to identify the current target behaviors and collect data on their frequency, intensity and duration. Javaheri persuasively explained Capistrano's functional behavior assessment and report was deficient because it failed to identify the antecedents of Student's behaviors, identify the targeted behaviors, and the consequences for each identified behavior. The report lacked necessary components, including

- functional equivalent replacement behaviors,
- proactive or reactive strategies,
- reinforcers,
- a prompt fade plan, and
- a crisis plan.

Dr. Endelman's testimony was consistent with Javaheri. In his opinion, the functional behavior assessment did not identify or collect data on Student's current target behaviors, but presumed his previous behaviors of verbal and

physical aggression, and elopement still existed, despite lack of observations and data collection. Dr. Endelman opined that because Capistrano did not analyze the correct target behaviors, the assessment and resulting behavior intervention plan was incomplete and unreliable.

Javaheri and Dr. Endelman's testimony was persuasive and established Capistrano's functional behavior assessment was inappropriate. Although Pegan effectively updated and summarized Student's history of maladaptive behaviors, her assessment was not sufficiently comprehensive or reliable.

Student proved that Capistrano's functional behavior assessment was not appropriate. Student further proved this procedural error denied Student a FAPE. The absence of the required classroom observation affected the information available to Student's IEP team regarding Student's classroom behavior's impacting his education. The failure to identify updated antecedents, behaviors, and consequences deprived the IEP team of updated information about Student's current behaviors, which was necessary to develop an updated behavior intervention plan, goals, and accommodations.

Student proved by a preponderance that Capistrano denied him a FAPE by failing to conduct an appropriate functional behavior assessment.

Student prevailed on Issue 2d.

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ISSUE 3: DID CAPISTRANO DENY STUDENT A FAPE DURING THE 2025-2026 SCHOOL YEAR IN THE AUGUST 21, 2025 IEP, AS CONTINUED TO AUGUST 28, SEPTEMBER 4, SEPTEMBER 12, 2025, AND OCTOBER 24, 2025, BY FAILING TO OFFER STUDENT PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT, SPECIFICALLY OFFERING A NONPUBLIC SCHOOL CALLED INSTEPPE INSTEAD OF A GENERAL EDUCATION CLASSROOM WITH ONE-TO-ONE AIDE SUPPORT?

Student contends Capistrano denied him a FAPE in the August 21, 2025 IEP by failing to offer Student placement in the least restrictive environment. In his statement of issues, Student contended he should have been offered placement in a general education setting with one-to-one aide support. At hearing and in his closing brief, Student argued that Student's maladaptive behaviors were extinguished at the time of Capistrano's August 21, 2025 placement offer. Student argues Capistrano should have offered Student placement in the Structured Autism Class, a special day class at Capistrano, together with one-to-one support by a behaviorally trained aide under the supervision of a board-certified behavior analyst.

Capistrano contends the August 21, 2025 IEP offered Student a FAPE in the least restrictive environment. Capistrano contends its offer of placement at a nonpublic school was required to meet Student's behavioral, social-emotional, sensory processing, and speech and language needs that could not be met in special education classroom on a comprehensive public school campus. Capistrano contends Student required direct specialized academic instruction in a highly structured setting with behavior

supports by a one-to-one aide to make progress towards his IEP goals. Capistrano further argues that a nonpublic school placement was less restrictive than Student's home placement.

In 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 School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)) A school district is not required to place a student in a program preferred by the parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) A school district's offer of special education services to a disabled child must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*; *Endrew F., supra*, 580 U.S. at p. 399). A review of an IEP must consider whether the IEP was reasonable, not whether the court regards it as ideal. (*Endrew F., supra*, at p. 399.) For a child who is not fully integrated in the regular classroom and not able to achieve at grade level, the child's educational program must be appropriately ambitious in light of his circumstances. (*Endrew F., supra*, at p. 402.)

An IEP is evaluated in light of information available to the IEP team at the time it was developed and not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041). "An IEP is a snapshot, not a retrospective." (*Ibid.*) Whether a student is denied a FAPE is evaluated in terms of what was reasonable at the time the IEP was developed. (*Adams, supra*, at p. 1149.)

In determining the educational placement of a child with a disability, a school district must ensure that:

- the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into consideration the requirement that children be educated in the least restrictive environment;
- placement is determined annually based upon the child's IEP and is as close as possible to the child's home;
- unless the IEP specifies otherwise, the child must attend the school that he would attend if non-disabled;
- in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or the quality of services he needs; and
- a child with a disability is not removed from education in an age-appropriate regular classroom solely because of needed modifications to the general education curriculum.

(34 C.F.R. § 300.116; Ed. Code, § 56342.)

The determination of an appropriate educational placement under the IDEA considers whether the placement provides Student with a FAPE in the least restrictive environment. The IDEA requires school districts ensure that children with disabilities are educated alongside their nondisabled peers "[t]o the maximum extent appropriate." (20 U.S.C. § 1412(a)(5)(A).) School districts may remove a disabled child from the regular

classroom “only when the nature or severity of the student’s disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56040.1; *Los Angeles Unified School Dist. v. A.O.* (9th Cir. 2024) 92 F.4th 1159, 1176, citing *D.R. ex tel. R.R. v. Redondo Beach Unified School Dist.* (9th Cir. 2022) 56 F.4th 636, 646, quoting 20 U.S.C. § 1214(a)(5)(A) [a school district may not remove a student from a regular education classroom solely because of needed modifications in the general education curriculum].) This requirement reflects the IDEA’s strong preference for educating children with disabilities in a regular classroom environment. (*Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834 (*Poolaw*).

The issue of whether education in the regular classroom, with supplemental aids and services, can be achieved satisfactorily is a fact-specific inquiry. (*Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048 (*Daniel R.R.*)). If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires a further determination whether the child has been mainstreamed to the maximum extent appropriate considering the continuum of placement options. (*Id.* at p.1050.) Mainstreaming is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

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School districts, as part of a special education local plan area, must have available a continuum of program options to meet the instructional and service needs of special education students. (34 C.F.R § 300.115(a); Ed. Code, § 56360.) The continuum of program options must include instruction in

- regular classes,
- special classes,
- special schools,
- home instruction, and
- instruction in hospitals and institutions.

The continuum must also include provision for supplementary services, such as a resource room or itinerant instruction to be provided in conjunction with regular class placements. (*Ibid.*) A school district can only place a student in a nonpublic school if no appropriate public education is available. (Ed. Code, § 56365, subd. (a).)

The Ninth Circuit has developed a four-factor evaluation to determine if a placement is in the least restrictive environment. Those four factors are:

1. the educational benefits available in the general education classroom, supplemented with appropriate aids and services, as compared with the educational benefits of the special education classroom;
2. the non-academic benefits of interaction with children without disabilities;

3. the effect the student has on the teacher and children in the regular class; and
4. the costs of mainstreaming the student.

(*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R.*, *supra*, 874 F.2d at pp. 1048-1050.]

FAPE OFFER IN AUGUST 21, 2025 IEP

Capistrano held a five-part IEP team meeting lasting approximately eight hours to review its August 19 2025 multidisciplinary evaluation, August 21, 2025 functional behavior assessment, consider Dr. Endelman's independent psychoeducational evaluation, and offer Student a FAPE. The IEP was developed in IEP team meetings held on August 21 and 28, September 4 and 12, and October 24, 2025, referred to collectively as the August 21, 2025 IEP.

The August 21, 2025 IEP team included all necessary IEP team members. Parent, attorney Zerby, and Javaheri attended all parts of the August 21, 2025 IEP team meeting. Private evaluator Gregory Endelman attended all the IEP team meetings, except on August 28, 2025. Pegan, Horan, Morris, Owens, counselor Lisa Woodland, and special education director for nonpublic schools Dr. Thurston attended all parts of the IEP team meeting.

The August 21, 2025 IEP team determined Student continued to meet eligibility criteria for special education services under the primary disability of autism due to deficits in verbal and nonverbal communication and social interaction, which negatively

impacted his access to general education activities. Student also met eligibility criteria for other health impairment due to attention deficit hyperactivity disorder, and speech or language impairment.

The IEP team reviewed Student's present levels of academic achievement and functional performance in

- communication,
- behavior,
- social-emotional,
- written expression,
- mathematics and
- reading.

The IEP team determined Student's behaviors impeded his learning of self or others. Student required behavior goals and a behavior intervention plan.

The August 21, 2025 IEP offered Student five goals in communication in

- pragmatic language,
- semantics,
- syntax,
- fluency, and
- social interaction.

The IEP offered two goals in behavior. The behavior goals aimed for Student to use coping strategies when presented with nonpreferred activities and to follow directions when given verbal prompts or cues. The IEP offered three social-emotional goals. Goal one, an emotional regulation goal, sought for Student to improve his ability to regulate his emotions by using coping strategies. Goal two aimed for Student to verbally express his emotions when faced with aversive stimuli. Goal three aimed for Student to demonstrate positive interactions when greeting others. The IEP offered Student six academic goals in

- writing paragraphs,
- division,
- multiplication,
- word problems,
- reading comprehension, and
- identifying main ideas in passages.

The August 21, 2025 IEP offered a wide range of accommodations, including

- first-then language,
- simple language,
- transitional warnings,
- a visual schedule,
- a visual token economy, and
- frequent breaks.

The IEP offered supports to school personnel to enable Student to advance towards attaining his goals, including consultation with specialists, environmental supports and modifications within the classroom, and consultation with an occupational therapist for proactive sensory strategies.

A NONPUBLIC SCHOOL PLACEMENT WAS THE LEAST RESTRICTIVE ENVIRONMENT

Student's August 21, 2025 IEP team considered the continuum of placement options, specifically:

- general education;
- general education with specialized academic instruction;
- related services;
- a separate class with specialized academic instruction; and
- a nonpublic school.

Parent expressed a preference for placement at an elementary school within Capistrano. The IEP team determined Student required a small, structured setting with integrated behavior interventions, that was not available at Capistrano. All members of the IEP team, except Parent, agreed placement at a nonpublic school was appropriate for Student.

The Capistrano IEP team members determined that due to the nature and severity of Student's disability, he required small group instruction in a therapeutic environment to address his unique needs. Based on Student's present levels of performance, assessment results, the extent and impact of his educational needs, and

the goals developed by the IEP team, it concluded that the benefit of special education and related services exceeded any harmful effect. At the conclusion of the five-part IEP team meeting, Capistrano offered Student the following program:

- 360 minutes daily direct specialized academic instruction at a nonpublic school under contract with Capistrano;
- 360 minutes daily one-to-one aide support;
- 30 minutes weekly direct speech-language services at the nonpublic school;
- 30 minutes weekly group speech-language services at the nonpublic school;
- 30 minutes monthly speech-language consultation services;
- 30 minutes weekly occupational therapy consultation services;
- 30 minutes weekly individual counseling services at the nonpublic school;
- 30 minutes weekly group counseling services at the nonpublic school;
- 60 minutes weekly direct parent counseling; and
- round trip curb-to-curb transportation with one-to-one aide support.

Student would spend 100 percent of the time outside the regular classroom for special education services. Capistrano's witnesses, including school psychologist Pegan, director Dr. Thurston, speech-language pathologist Horan, occupational therapist

Morris, and case carrier Owens persuasively testified in support of a nonpublic school placement for Student. Each witness was highly qualified and experienced in their respective field and was familiar with Student from assessments, observations, or attendance at IEP team meetings. Their testimony was persuasive in establishing a nonpublic school placement was the least restrictive setting for Student.

Pegan opined that based on Capistrano's recent three-year assessment and development of goals, Student required a highly structured setting with one-to-one aide support. Student required a high adult to student ratio, and a program with embedded behavior supports.

Speech-language pathologist Horan offered persuasive testimony in support of a nonpublic school placement for Student. She opined Student's communication goals could be implemented at a nonpublic school where Student would have access to peers with similar language abilities for small group services. Student's special education teacher, paraprofessionals, and related service providers also could serve as communication partners for Student.

Based on her occupational assessment of Student, Morris opined Student required occupational therapy services to learn skills to independently self-regulate, ask for breaks, and express his needs. Morris opined Student's sensory and coping goals could be implemented in a highly structured setting with a special education teacher, one-to-one aide support, and accommodations, including a token economy and frequent verbal praise. Student also would benefit from a dedicated sensory room for breaks and de-escalation.

Case carrier Owens also believed a nonpublic school placement was the least restrictive placement for Student. Owens opined that Student could benefit from a program based on principles of applied behavior analysis and an onsite board-certified behavior analyst. Owens also stressed the importance of having related services provided on site, such as speech and language, occupational therapy, and counseling.

Dr. Thurston was responsible for locating a nonpublic school placement that could meet Student's needs. In addition to InSTEPPS, which had already accepted Student for admission, Dr. Thurston identified five nonpublic schools that could meet Student's needs. On June 9, 2025, Capistrano sent Parent the authorization to release information to Port View, Del Sol, Olive Crest Academy, Rossier Park Elementary, and The Craig School. Parent signed an authorization allowing Capistrano and these five public schools to exchange personally identifiable information for Student.

Parent toured some of the nonpublic schools, including The Craig School, InSTEPPS, and Port View. At the September 4, 2025 IEP team meeting, Parent stated she would not agree to any nonpublic school placement because she did not think they could meet Student's needs. Parent did not believe The Craig School was appropriate for Student. She was concerned it was located too far from Student's home, its location on a church site with armed guards, and a high student-to-teacher ratio. The Craig School did not offer Student placement.

Capistrano offered placement at Port View at part four of the IEP team meeting held on September 12, 2026. Parent believed Port View was not academically or behaviorally appropriate for Student based on her observation of the school two years

earlier. Parent also was concerned that Port View was located too far from Student's home and his anxiety and maladaptive behaviors could be triggered by the long drive. However, Parent and attorney Zerby agreed Parent would tour Port View again.

Parent toured Port View after the September 12, 2025 IEP team meeting. After her tour, Parent continued to believe placement at Port View was not appropriate. Port View offered conditional acceptance, but Parent rejected the placement.

The IEP team reconvened on October 24, 2025, to consider an appropriate nonpublic school placement. Parent reiterated her unwillingness to have Student attend a nonpublic school. Parent was concerned that Student could not earn a diploma if he attended nonpublic school. She also was concerned Student could exhibit maladaptive behaviors during transportation to and from school. Dr. Endelman was appreciative of Port View and InSTEPPS' focus on autism and behavior modification. He did not express to the October 24, 2025 IEP team, or at hearing, that either Port View or InSTEPPS could not meet Student's needs. However, he expressed concerns about the small class size at InSTEPPS and its lack of small group instruction. In his opinion, Capistrano should have offered a program within the district.

At the conclusion of part five of the IEP team meeting on October 24, 2025, Capistrano offered Student placement at InSTEPPS. Capistrano offered round trip transportation with one-to-one aide support to Student's transition from home to school and maladaptive behaviors during transportation. At hearing, the evidence

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proved that Capistrano arranged to have a contracted transportation service that could pick-up Student at school in the event of an emergency, which would alleviate any concerns Parent had about having to drive to pick-up Student.

Parent requested at the October 24, 2025 IEP team meeting that Capistrano provide Student in-home related services for specialized academic instruction, speech and language, and occupational therapy. Parent did not consent to the offer of placement and services in the August 22, 2025 IEP.

THE NON-ACADEMIC BENEFITS OF FULL-TIME PLACEMENT IN A SPECIAL DAY CLASS AT CAPISTRANO DID NOT JUSTIFY A LESS RESTRICTIVE PLACEMENT

In *Rachel H.*, the court considered the factors for determining placement of a child with a disability in the regular classroom. Here, neither Student nor Capistrano believed placement in a regular classroom with supplementary aids and supports was appropriate for Student. However, the four-factor test articulated in *Rachel H.* is instructive in determining if a less restrictive setting than a nonpublic school was appropriate.

At hearing, there was no dispute about the first and fourth factors under *Rachel H.* Considering the first factor, the educational benefits in the general education classroom, neither Student nor Capistrano believed that a general education classroom supplemented with appropriate aides and services was appropriate for Student due to the severity of

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his behaviors. The fourth factor, the costs of mainstreaming Student, was not an issue. Rather, the crux of the parties' disagreement about Student's placement lies in weighing the second and third *Rachel H.* factors:

- the non-academic benefits of full-time placement in a less restrictive setting, such as a special day class at Capistrano; and
- the effect the presence of the child has on the teacher and peers in a less restrictive setting. (*Rachel H., supra*, 14 F.3d at p. 1404.)

Student did not prove that the non-academic benefits of full-time placement in a special day class weighed in favor of a less restrictive placement. The weight of the evidence proved Student required a small, highly structured setting with embedded behavior supports, not available in a less restrictive setting.

During the 2024-2025 school year, Capistrano attempted behavioral strategies to minimize Student's maladaptive behaviors. Capistrano added behavior and social emotional goals, a behavior intervention plan, and a variety of accommodations to Student's October 22, 2024 IEP.

When Student's maladaptive behaviors continued, Capistrano offered 45-minutes weekly behavior consultation services in the January 30, 2025 amendment IEP with the goal of developing additional or different behavior strategies. However, as discussed in Issue 1a above, Student's behaviors continued, resulting in Ocean View deciding it could no longer serve Student and issuing a 20-day termination notice. As a result of his behavior challenges, Student did not receive significant non-academic benefits at the

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nonpublic school, particularly because of his struggles with his peers. Arguably, Student could not receive non-academic benefits in a special day class on a comprehensive campus with more access to peers.

Dr. Endelman testified in support of a less restrictive placement for Student. Dr. Endelman was familiar with InSTEPPS and toured the program with Parent. He observed a classroom with two students and a classroom teacher. Dr. Endelman testified positively about some components of the InSTEPPS program. He believed the sensory room with an array of sensory activities, including balls, ladders, and mats for tumbling could be beneficial for Student. Dr. Endelman agreed InSTEPPS' focus on applied behavior analysis methodology and strategies for students with autism could benefit Student, specifically in self-regulation and behavioral skills. He was concerned, however, that Student would not have access to typically developing peers and small group instruction, and therefore would not have the benefit of peer modeling.

Dr. Endelman recommended that Capistrano offer Student placement in Capistrano's Structured Autism Class. Dr. Endelman described the program as an intensive, highly structured autism program which focused on language and social skills. He understood the program had a high staff-to-student ratio, paraprofessionals trained in autism specific methodologies and principles of applied behavior analysis, and small group instruction. He believed Student could benefit from access to neurotypical peers during lunch, recess, and other campuswide activities.

On examination, Dr. Endelman conceded that moving Student from the home setting with a two-to-one adult to student ratio to the Structured Autism Class with eight to 10 students on a comprehensive campus constituted a substantial change in

placement. He agreed that a change of placement from the home setting to a highly structured nonpublic school setting with a low student-to-teacher ratio, embedded applied behavior analysis methods, and controlled access to peers was less restrictive than his current home setting.

However, Dr. Endelman hypothesized that given appropriate behavior supports, Student could benefit from interactions with a larger group of similarly situated peers in the Structured Autism Classroom. He believed that because Student did not display physically aggressive behaviors while he was being instructed at home beginning in April 2025, his previous aggressive behaviors were extinguished.

Dr. Endelman's opinion that Student's aggressive behaviors were extinguished such that they would not reoccur, or would be less severe, after Student returned to a school setting was speculative and not persuasive. Dr. Endelman's opinion overlooked the magnitude and severity of Student's behaviors at school, especially his physical aggression towards his peers, teacher, and staff. Dr. Endelman did not observe Student in a school or in a community setting, and his opinions did not sufficiently consider the impact of Student's behaviors on others.

Dr. Thurston's testimony was more persuasive than Dr. Endelman's in establishing that the non-academic benefits did not weigh in favor of a less restrictive placement. Dr. Thurston was familiar with InSTEPPS from her role as director of special education services for nonpublic schools. Dr. Thurston toured the school with Parent and Dr. Endelman. InSTEPPS could implement Student's October 24, 2024 IEP, as amended on January 30, 2025. InSTEPPS was located on a church campus, and had classrooms, a sensory room, a running track, and eating area. The classrooms had

highly noticeable visual schedules. The program had a structured schedule and high staff-to-student ratio. At time of the tour, InSTEPPS had 10 students. At the time of hearing, it had approximately 15 students.

At her tour with Parent, Dr. Thurston had a lengthy discussion with the director of InSTEPPS, who assured her InSTEPPS could meet Student's needs. In response to Parent's concerns about transportation, the director assured Dr. Thurston and Parent that in the event of an emergency, transportation would be available for Student.

At hearing, Dr. Thurston explained that the Structured Autism Class was somewhat different than what Dr. Endelman believed. The Structured Autism Class had a highly modified curriculum and academically the students performed significantly lower than Student. Most of the students in the classroom were nonverbal. Further, the location of the Structured Autism Class on a comprehensive school campus created more noise, stimuli, and access to peers. In light of Student's antecedent behavior in being denied access to peers, there was a greater likelihood he could become dysregulated.

Pegan was familiar with InSTEPPS and had toured the program multiple times. Pegan offered testimony consistent to Dr. Thurston about the benefits of InSTEPPS, including its highly structured program, sensory room, and high adult-to-student ratio. Pegan offered persuasive testimony about the need for Student to access his peers in a controlled environment with adult support. She explained that gradual and controlled introduction of Student to his peers could likely reduce the likelihood or seriousness of any maladaptive behaviors. Further, Student would have opportunities to learn social skills with the support of his one-to-one aide and the use of positive reinforcers. Pegan

convincingly opined that Student needed to reintegrate back to in-person school and peer interactions with structured support that could be provided at a nonpublic school like InSTEPPS. Pegan agreed with Dr. Endelman that the objective was for Student's maladaptive behaviors and social-emotional deficits to improve to a level sufficient for him to return to a comprehensive public school campus. However, at the time of Capistrano's placement offer in the August 21, 2025 IEP, Student required additional behavior and social-emotional supports not available at Capistrano.

Pegan strongly disagreed that a special day class, such as Capistrano's Structured Autism Class, was the least restrictive environment for Student. Although Student made some academic progress at Ocean View and during his interim home placement, he had a history of maladaptive behaviors triggered by access to peers. Capistrano's Structured Autism Class had some components that could meet Student's needs, including visual schedules, one-to-one aide support, embedded applied behavior analysis principals, and access to similarly situated and neurotypical peers. However, Pegan did not believe that program was appropriate for Student at the time based on his need for structured support to make progress on his social-emotional and behavior goals.

Parent and Dr. Endelman believed that the nonacademic benefit of attending Capistrano's Structured Autism Class weighed in favor of a less restrictive placement. Although Parent preferred this placement, this does not mean it was appropriate for Student. Parents, no matter how well intended, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child. (*Rowley, supra*, 458 U.S. at p. 208.)

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The testimony by Capistrano's witnesses, including Dr. Thurston and Pegan, was more persuasive than Parent and Dr. Endelman about the lack of non-academic benefit Student could receive in a less restrictive setting. Their testimony was more persuasive based upon their qualifications and experience, and knowledge of the programs offered by Capistrano.

Here, Student did not prove the nonacademic benefits in a less restrictive setting outweighed placement at a nonpublic school, specifically InSTEPPS.

IMPACT ON TEACHERS AND PEERS IN LESS RESTRICTIVE ENVIRONMENT

The third factor under *Rachel H.* considers the impact the student has on his teachers and peers in a less restrictive setting. Student's potential impact on the teachers and peers in a special day class weighed in favor of a more restrictive placement.

Although Student made some progress on his academic goals, his maladaptive behaviors were still severe in April 2025, when he stopped attending Ocean View, despite implementation of intensive behavior interventions. Student's behavior did not subside to an acceptable level to consider a transition back to the public school setting. The negative effect Student's presence could have on his teacher, aides, and classmates in the nonpublic school setting outweighs the benefit Student might receive from access to peers in a less restrictive setting.

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Dr. Endelman believed that with appropriate behavior supports, Student's maladaptive behaviors would not occur in a special day class, or would be significantly reduced. He based this opinion largely on Student's behaviors at home, which were substantially less than those occurring at school with the presence of peers. Although Dr. Endelman presented as a highly qualified and experienced school psychologist, his opinion was not persuasive on this issue.

The number of disruptive and physically aggressive incidents at Ocean View precluded consideration of returning Student to special day class at Capistrano. The March 19, 2025 amendment IEP documented 26 acts of aggression, 70 threats, and five acts of destroying property. These incidents happened quickly and often physically harmed Student's teacher and staff.

Although Parent believed that Ocean View exaggerated the extent of Student's maladaptive behaviors, the opinions by Condas, Truong and Owens, as supported by contemporaneous documents created at or near the time of the behavior incidents, were more convincing in establishing the severity of Student's maladaptive behaviors at Ocean View and their impact on Student's teacher and peers.

At hearing, Condas convincingly testified about the negative impact Student's maladaptive behaviors had on his teacher and peers. Student's peers were frightened of him because of his verbal and physical aggression towards them. Student's frequent acts of verbal and physical aggression disrupted the classroom learning environment. Condas explained Student's peers were angry and upset at him because he physically hurt their teacher. Student's behaviors also impacted his special education teacher.

Daley was physically assaulted and bruised on several occasions. Other staff working with Student, including his one-to-one aide, also experienced physical aggression by Student. Condas's testimony was persuasive in demonstrating a less restrictive placement was not appropriate at the time of the August 21, 2025 IEP.

In summary, Capistrano's witnesses, including Dr. Thurston, Pegan, Owens, Horan, and Morris, and Condas was more persuasive than Dr. Endelman in proving that Student required a small, highly structured nonpublic school setting to make progress on his academic, behavior, and social-emotional goals. The Capistrano witnesses were qualified and experienced in their respective fields, and familiar with Student based on assessments, observations, and attendance at IEP team meetings. Their testimony was more persuasive than Parent and Dr. Endelman in establishing a nonpublic school was the least restrictive setting for Student. Condas's testimony about the impact of Student's on his teacher and peers was persuasive based upon her observations of Student at Ocean View.

Student did not meet his burden of proving by a preponderance of the evidence that Capistrano denied him a FAPE by failing to offer Student placement in the least restrictive environment. Capistrano prevailed on Issue 3.

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ISSUE 4: DID CAPISTRANO DENY STUDENT A FAPE DURING THE 2025-2026 SCHOOL YEAR AT THE SEPTEMBER 4, 2025 IEP TEAM MEETING BY FAILING TO CONSIDER AN INDEPENDENT EDUCATIONAL EVALUATION BY DR. GREGORY ENDELMAN?

Student contends Capistrano failed to consider Dr. Gregory Endelman's independent educational evaluation. Student argues Capistrano did not adopt any of Dr. Endelman's recommendations.

Capistrano contends it considered Dr. Endelman's recommendations at the September 4, 2025 IEP team meeting. Capistrano contends it was not required to adopt Dr. Endelman's recommendations.

When presented with a private expert's evaluation report or independent educational evaluation at public expense, a school district must consider the results of the assessment, in any decision made with respect to the provision of FAPE to a student. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.502(c)(1) (2006); Ed. Code, § 56329, subd. (c).) The IDEA does not require a school district to adopt the conclusions of the evaluation. (*Ibid.*; *Michael P. v. Hawaii Dept. of Educ.* (9th Cir. 2011) 656 F.3d 1057, 1066, fn. 9 (*Michael P.*) [citing 34 C.F.R. § 300.502(c)(1)].) Evidence that the district IEP team members engaged in a lengthy discussion of the evaluation at an IEP team meeting or altered the IEP provisions in response to suggestions by the evaluator may prove the school district considered the evaluation. (*Id.* at p. 1066, fn. 9.)

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Student did not prove by a preponderance of the evidence Capistrano denied him a FAPE by failing to consider Dr. Endelman's independent educational evaluation at the September 4, 2025 IEP team meeting. Dr. Endelman attended Student's IEP team meetings on August 21, September 4 and 12, and October 24, 2025. Dr. Endelman presented his report and recommendations at the September 4, 2025 IEP team meeting.

Student's argument that Capistrano dismissed Dr. Endelman's report was unconvincing. Dr. Endelman discussed his report at length, clarified some issues, posed questions to the IEP team, and answered their questions. Dr. Endelman reviewed the results of Student's cognitive testing. The team discussed that Dr. Endelman and Capistrano's cognitive testing reflected a similar cognitive profile for Student. Consistent with Capistrano's evaluation, Dr. Endelman determined Student met eligibility criteria for special education under the category of autism.

Dr. Endelman reviewed his recommendations with the September 4, 2025 IEP team. Dr. Endelman recommended Student be placed at in the Structured Autism Class at Capistrano. At the time of the September 4, 2025 IEP team meeting, Dr. Endelman had not observed the Structured Autism Class, but researched it based on publicly available information. Dr. Endelman told the IEP team that Parent wanted Student to be educated with higher functioning, verbal students. Parent believed Student had not previously been successful in district programs based on a lack of staff training.

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The Capistrano team members were familiar with the Structured Autism Class and did not believe it was an appropriate placement for Student at the time. Capistrano arranged for Dr. Endelman to tour the Structured Autism Class, which he did subsequent to the September 4, 2025 IEP team meeting.

At hearing, Dr. Endelman described the September 4, 2025 IEP team meeting as a “participatory” meeting. School psychologist Pegan was receptive to his comments and recommendations for Student’s behavior intervention plan. Dr. Endelman did not suggest that his recommendations were not considered.

The evidence established Capistrano considered Dr. Endelman’s report, arranged for him to tour its Structured Autism Class, and was receptive to his recommendations. No evidence suggested Dr. Endelman was not permitted time to fully present his report. No evidence was offered that a properly constituted IEP team was not present while Dr. Endelman shared his report and recommendations. The evidence established Dr. Endelman presented his report and recommendations, but Capistrano did not agree with Dr. Endelman’s recommendations for Student’s placement.

Student failed to meet his burden of proving Capistrano denied him a FAPE by failing to consider Dr. Endelman’s independent educational evaluation at the September 4, 2025 IEP team meeting.

Capistrano prevailed on Issue 4.

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ISSUES 5a THROUGH 5g: DID CAPISTRANO DENY STUDENT A FAPE DURING THE 2025-2026 SCHOOL YEAR BY MATERIALLY FAILING TO IMPLEMENT THE OCTOBER 22, 2024 IEP DURING THE 2025-2026 SCHOOL YEAR?

Student contends Capistrano materially failed to implement his October 22, 2024 IEP, as amended on January 30, 2025, during the 2025-2026 school year. Student contends Capistrano was obligated to implement the program and related services in the home setting until the parties agreed on placement.

Capistrano contends it offered to implement Student's October 22, 2024 IEP, as amended on January 30, 2025, at InSTEPPS effective May 27, 2025, but Parent did not agree to InSTEPPS. Capistrano argues it was ready, willing and able at all times to implement Student's IEP at InSTEPPS, but Parent declined.

The evidence proved Capistrano was ready, willing and able to implement Student's October 22, 2024 IEP at InSTEPPS beginning May 27, 2025. As discussed in Issue 1, Ocean View's unilateral termination of its contract for Student's attendance at Ocean View on March 19, 2025, was not within Capistrano's control, and represented a change of circumstances requiring Capistrano to offer Student placement in another nonpublic school. (*Frankel, supra*, 224 F.Supp.3d at p. 985, citing *Van Scoy, supra*, 353 F.Supp.2d at p. 1086.)

Services provided in an IEP are tied to a particular location. An IEP must include the "anticipated frequency, location, and duration of ... services." (20 U.S.C. § 1414(d)(1)(A)(i)(VII).) Here, Student's October 24, 2024 IEP contemplated his special

education and services would be provided in the school setting. Although Parent believed Capistrano was obligated to provide Student's special education and related services at home after she rejected a comparable placement at InSTEPPS, this is not consistent with the law. (*C.L. v. Lucia Mar Unified School Dist.* (C.D.Cal. Jan. 9, 2014) 2014 WL 117339, *10, *affd sub. nom. C.L. ex rel. V.L. v. Lucia Mar Unified School Dist.* (9th Cir. 2016) 646 Fed.Appx. 524 [the IDEA does not require a school district to transplant the entirety of services offered in an IEP, which contemplated in-school instruction, to a student's home environment during interim periods when student's parent and IEP team were considering changes to student's educational placement].)

The evidence established that beginning May 27, 2025, Capistrano offered to implement Student's October 22, 2024 IEP. However, Parent rejected this placement. Capistrano is not obligated to compensate Student for Parent's election to decline a public school option.

Student failed to meet his burden of proving Capistrano denied him a FAPE by failing to implement his October 22, 2024 IEP during the 2025-2026 school year. Capistrano prevailed on Issues 5a through 5g.

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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, SUBSECTIONS a, b, AND c:

Capistrano denied Student a FAPE during the 2024-2025 school year by materially failing to implement Student's behavior intervention plan in Student's October 22, 2024 IEP from January 31 through April 8, 2025.

Capistrano denied Student a FAPE during the 2024-2025 school year by materially failing to implement Student's behavior intervention plan, behavior consultation services, and specialized academic instruction from Student's October 22, 2024 IEP, during the period April 8 through May 27, 2025.

Student prevailed on Issue 1a, 1b, and 1c.

ISSUE 2, SUBSECTIONS a, b, c, AND e:

Capistrano did not deny Student a FAPE during the 2025-2026 school year by failing to adequately assess Student in its August 19, 2025 multidisciplinary assessment and report in psychoeducation, speech and language, occupational therapy, and special circumstances instructional assistance.

Capistrano prevailed on Issue 2, subsections a, b, c, and e.

ISSUE 2, SUBSECTION d:

Capistrano denied Student a FAPE during the 2025-2026 school year by failing to adequately assess Student in functional behavior.

Student prevailed on Issue 2, subsection d.

ISSUE 3:

Capistrano did not deny Student a FAPE during the 2025-2026 school year in the August 21, 2025 IEP, as continued to August 28, September 4 and 12, and October 24, 2025, by failing to offer Student placement in the least restrictive environment, specifically offering a nonpublic school at InSTEPPS instead of a general education classroom with one-to-one aide support.

Capistrano prevailed on Issue 3.

ISSUE 4:

Capistrano did not deny Student a FAPE during the 2025-2026 school year at the September 4, 2025 IEP team meeting by failing to consider an independent educational evaluation by Dr. Gregory Endelman.

Capistrano prevailed on Issue 4.

ISSUE 5, SUBSECTIONS a, b, c, d, e, f, AND g:

Capistrano did not deny Student a FAPE during the 2025-2026 school year, through November 5, 2025, by materially failing to implement Student's September 4, 2024 IEP, as incorporated into a written settlement agreement, and

amended on October 22, 2024, November 12, 2024, and January 30, 2025. Capistrano did not materially fail to implement Student's behavior intervention plan, board-certified behavior analyst consultation services pursuant to the January 30, 2025 IEP amendment; specialized academic instruction; speech and language services; occupational therapy services, all IEP accommodations, and all IEP goals.

Capistrano prevailed on Issue 5, subsections a, b, c, d, e, f, and g.

ISSUE 6:

Capistrano's speech and language and occupational therapy assessments as reported in the August 19, 2025 multidisciplinary assessment were appropriate. Capistrano prevailed on Issue 6.

Student is not entitled to independent educational evaluations at public expense in speech and language and occupational therapy.

REMEDIES

Student prevailed on Issues 1a, 1b, and 1c. Capistrano denied Student a FAPE by materially failing to implement Student's behavior intervention plan during the 2024-2025 school year from January 31 through April 8, 2025. Capistrano denied Student a FAPE during the period April 8 through May 27, 2025, by materially failing to implement Student's behavior intervention plan, behavior consultation services, and specialized academic instruction from his October 22, 2024 IEP. Student also prevailed on Issue 2d. Capistrano denied Student a FAPE by failing to adequately assess Student in functional behavior. Student is entitled to a remedy for these FAPE denials.

As remedies for Capistrano's FAPE denials, Student requests:

- placement at a special day class within Capistrano's district;
- a functional behavior assessment;
- development of a behavior intervention plan;
- training for Capistrano's staff;
- compensatory education for missed services in speech and language, occupational therapy, counseling, academic instruction, one-to-one aide support, and social skills support for the 2024-2025 and 2025-2026 school years, and
- independent educational evaluations in speech and language and occupational therapy.

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 *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable power extends to administrative law judges who hear and decide special education administrative due process matters. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

In remedying a FAPE denial, the student is entitled to relief that is appropriate in consideration of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496-97 (*Puyallup*).) School

districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Park, supra*, 464 F.3d at p. 1033; *Puyallup, supra*, 31 F.3d at p. 1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. (*Puyallop, supra*, 31 F.3d at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Ibid.*)

Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531F.Supp.2d 245, 265; *Orange Unified School Dist. v. C.K.* (C.D.Cal. June 4, 2012, No. SACV 11-1253 JVS(MLGx) 2012 WL 247839, *12.) Compensatory education is an equitable remedy that depends upon a fact-specific and individualized assessment of a student’s current needs. (*Puyallup, supra*, 31 F.3d at p. 496.; *Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*) However, hour-for-hour relief for a FAPE denial is not required by law. (*Puyallup, supra*, 31 F.3d at p. 1497.) An independent educational evaluation at public expense may also be awarded as an equitable remedy, if necessary to grant appropriate relief. (*Los Angeles Unified School Dist. v. D.L.* (C.D.Cal. 2008) 548 F.Supp.2d 815, 822-823.)

Student proved Capistrano denied him a FAPE by failing to implement his October 22, 2024 IEP from April 8 through May 27, 2024. Based on Capistrano’s school calendar there were 29 school days between April 8 and May 27, 2025. Capistrano

offered Student two hours daily, or 58 hours specialized academic instruction, when it should have offered six hours daily, or 174 hours for this 29-day period. Capistrano did not offer 45-minutes weekly behavior consultation services.

In total, Capistrano failed to implement 174 hours of group specialized academic instruction and four and one-half hours behavior consultation services. However, Student did not offer persuasive evidence or testimony regarding what amount of compensatory is required for Student to catch up to where he should have been absent the FAPE denial. Nonetheless, the evidence established that Capistrano failed to implement a substantial amount of related services that Student's IEP team deemed necessary for Student to receive a FAPE. Student is entitled to compensatory education but not for an hour for hour award.

This remedy takes into consideration that if Capistrano implemented the 174 hours of specialized academic instruction owed, it would be in a group setting. Therefore, it is appropriate to award Student one-half, or 87 hours, of compensatory education from a nonpublic agency. Student also is entitled to an hour-for hour award of four and one-half hours behavior consultation services.

The compensatory education award for individual instruction shall be provided in-person at the nonpublic agency, or in Student's home if agreed to between the nonpublic agency and Parent. Capistrano shall reimburse Parent for round trip transportation to the nonpublic agency providing these services based on the Internal Revenue Service's Standard Mileage Rate of \$0.725 cents per mile for 2026. The compensatory education for behavior consultation services may be provided, at Capistrano's discretion, by its related service providers, or a nonpublic agency.

As a remedy for Issue 2d, Student is entitled to an independent educational evaluation in functional behavior by a qualified provider through a nonpublic agency. The independent functional behavior assessment shall be conducted in the school setting upon Student's return to a nonpublic school placement. The independent functional behavior assessment shall be conducted by an assessor who is not currently working with Student in the home setting.

ORDER

1. Capistrano shall directly fund a total of 87 hours individual academic instruction through a nonpublic agency. Within 15 days of this Decision, Capistrano shall provide Parent a list of nonpublic agencies with whom Capistrano has a contract. Parent shall notify Capistrano of its selected nonpublic agency within two weeks of selecting a provider. These compensatory education hours shall be available to Student through the end of the regular 2027-2028 school year.
2. Capistrano shall provide Student four and one-half hours behavior consultation services by a board-certified behavior analyst. These services may be implemented, at Capistrano's discretion, by Capistrano's related service providers, or a nonpublic agency. These services may be provided virtually, at Capistrano's district office, or at the office of the nonpublic agency. These hours shall be available to Student through the end of the regular 2026-2027 school year.

3. Capistrano shall fund an independent functional behavior evaluation by a qualified provider selected by Parents to determine Student's behavior needs and their impact on Student's educational program. The functional behavior assessment shall be conducted in the nonpublic school setting, and may not be conducted by a board-certified behavior analyst working with Student in the home. The selected assessor must meet Capistrano's cost and other criteria for independent educational evaluations. Parents shall provide Capistrano with contact information for their selected assessor within 45 calendar days after this Decision. Within 30 business days of receipt of this contact information, Capistrano shall contract with the assessor to perform the independent functional behavior assessment. Capistrano shall cooperate with all reasonable requests of the assessor.
4. Capistrano shall convene an IEP team meeting to consider the results of the independent functional behavior assessment within 30 days of submission of the written assessment report.
5. Capistrano shall reimburse Parent for round trip transportation from Student's home to the related service providers' offices and the functional behavior evaluator's office based on the Internal Revenue Service's Standard Mileage Rate of \$0.725 cents per mile for 2026.

6. Capistrano's speech and language and occupational therapy assessments documented in Capistrano's August 19, 2025 multidisciplinary assessment and report were appropriate such that Student is not entitled to independent educational evaluations at public expense in speech and language and occupational therapy.
7. All 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.

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings