

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**IN THE MATTER OF:  
CORONADO UNIFIED SCHOOL DISTRICT**

**v.**

**PARENT ON BEHALF OF STUDENT.  
OAH CASE NUMBER 2019090388**

**DECISION**

Coronado Unified School District filed a due process hearing complaint with the Office of Administrative Hearings on September 11, 2019, naming Parent on behalf of Student. The Office of Administrative Hearings is referred to as OAH.

Administrative Law Judge Linda Johnson heard this matter in San Diego, California on October 8, and 9, 2019. Attorney Justin Shinnefield represented Coronado. Niamh Foley, Coronado's Director of Student Services, attended the hearing on Coronado's behalf. No one appeared on Student's behalf.

At the beginning of the hearing the undersigned Administrative Law Judge made several attempts to contact Parent but he did not respond.

At Coronado's request OAH continued the matter to October 30, 2019, for written closing briefs. Coronado timely submitted a written closing brief. Parent did not submit a closing brief. On October 30, 2019, the record was closed and the matter was submitted for decision.

## **ISSUE**

The issue set forth below has been clarified consistent with *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443. No substantive changes have been made.

Did Coronado offer Student a free appropriate public education in its June 12, 2019 individualized education program?

## **SUMMARY OF DECISION**

Coronado proved that its June 12, 2019 individualized education program, referred to as an IEP, offered Student a free appropriate public education, referred to as FAPE, in the least restrictive environment. Coronado provided uncontroverted evidence that Student no longer required a residential treatment center placement. Therefore, Coronado may implement the June 12, 2019 IEP, without parental consent.

## **FACTUAL FINDINGS**

Student was fifteen years old at the time of the hearing. Coronado initially found Student eligible for special education in 2015 under the eligibility category of emotional disturbance. Coronado placed Student at the San Diego Center for Children in its residential treatment program on January 18, 2016, and he began attending the onsite

nonpublic school on January 19, 2016. Student's Parent resided within Coronado Unified School District's boundaries during all relevant periods.

### **MAY 17, 2018 TRIENNIAL EVALUATION**

On March 14, 2018, Coronado sent Parent an assessment plan for Student's triennial evaluation. Parent signed the assessment plan on April 9, 2018. Coronado conducted a triennial evaluation for Student and held a triennial IEP team meeting on May 17, 2018. Coronado assessed Student's academic achievement, health, intellectual development, motor development, social emotional behavior, adaptive behavior, and conducted a records review.

Jeremy Handysides, a special education teacher for Coronado, conducted the academic achievement evaluation. Mr. Handysides used a standardized academic achievement test to determine Student's current academic strengths and weaknesses. Student scored in the average to high average range for reading, writing, and mathematics. Student's overall academic functioning was average to high average when compared to his age and grade equivalent peers.

Adam Sayre, a school psychologist for Coronado, conducted the psychoeducational evaluation. Katie Ghio, mental health clinician for Coronado, conducted the educationally related mental health services evaluation. Mr. Sayre used standardized intelligence testing to assess Student's current level of cognitive functioning. Student scored in the average range for verbal comprehension, fluid reasoning, working memory, and processing speed. Student scored in the high average range on the visual spatial tests. Overall Student's cognitive functioning was in the average range. Mr. Sayre administered a standardized test to assess Student's auditory and phonological processing, short-term memory and auditory processing, and long-term storage and retrieval. Student's scores were all in the average range and did not

indicate any areas of concern. Mr. Sayre also administered a standardized test to determine Student's visual-motor integration. Student scored in the average range. Visual-motor integration was not an area of concern.

Mr. Sayre and Ms. Ghio administered two behavior rating scales to Student, his teachers, and his therapist at the residential facility, Marissa Jones. Student's adaptive skills and internalizing problems were average. Student was at-risk for externalizing problems. Student had clinically significant aggression problems and was at-risk for conduct problems. Student did not have any learning problems but was at risk for attention issues and had clinically significant hyperactivity. Student rated himself clinically significant for relations with parents, interpersonal relations, self-esteem, sensation seeking, atypicality, locus of control, social stress, anxiety, depression, sense of inadequacy, attention problems, and hyperactivity. Student also rated himself at-risk for attitude to teachers and somatization.

Student had elevated or very elevated scores in emotional distress, worrying, social problems, separation fears, hyperactivity and impulsivity, and upsetting thoughts or physical symptoms. Student also had very elevated scores in attention deficit hyperactive disorder hyperactivity and impulsivity, oppositional defiant disorder, major depressive episode, manic episode, generalized anxiety disorder, separation anxiety disorder, obsessive-compulsive disorder, and autism spectrum disorder.

Based on the testing results, Coronado's assessors concluded that Student continued to meet the eligibility criteria under emotional disturbance and other health impairment. Student's main area of need was social emotional related to his impulsive behavior.

## **MAY 17, 2018 IEP TEAM MEETING**

On May 17, 2018, Coronado held an IEP team meeting to review the triennial evaluation results. Parent attended the meeting. During the meeting, Mr. Sayre and Ms. Ghio reviewed the results of the triennial evaluation. The IEP team determined that Student continued to qualify for special education under the eligibility categories of emotional disturbance and other health impairment.

The IEP team then reviewed progress on goals and present levels of performance. The IEP team drafted three new goals, two social emotional goals and a technology goal.

After discussing Student's present needs, the IEP team agreed that Student no longer needed a behavior intervention plan, but school staff would continue to monitor his behavior. Based upon the triennial evaluation and Student's present performance, Coronado team members recommended that Student transition from the San Diego Center for Children's residential treatment center placement to his home, but continue to attend the center's nonpublic school. Parent disagreed with the 2018 IEP offer. Parent was in the military and would be deployed beginning October 2018, until an unknown date. He was concerned that transitioning Student from a structured residential treatment program to home, while Parent was deployed would be unsuccessful.

Coronado continued to place Student at the San Diego Center for Children's residential treatment program for the 2018-2019 school, because of Parent's disagreement with the IEP.

## **2018-2019 SCHOOL YEAR**

During the 2018-2019 school year Student resided and attended school at the San Diego Center for Children. At school Student did not demonstrate problem or unsafe behaviors on 144 out of 170 school days. Student's inappropriate behaviors included leaving a designated area without permission, climbing on and jumping over objects in the common area, using profanity, not following computer rules, making inappropriate sexual remarks, knocking over a chair, throwing objects, punching and kicking padded walls, and one incident of pushing staff. School staff successfully resolved all of Student's behavior problems through verbal dialogue. Overall Student's behavior was impulsive but he responded well to redirection. When upset Student responded aggressively at times. However, when he calmed down, he took responsibility for his actions and appropriately expressed his feelings.

Student participated in football, choir, advanced drumming, and softball. Student received four PeacePreferral awards during the school year for a daily act of peace building and received a peace builder of the week award twice. Student performed well academically. During the first semester of the 2018-2019 school year Student received an A or A minus in all of his classes except for a C plus in independent living skills. Student continued to progress academically during the second semester of the 2018-2019 school year. He received As or Bs in every class, except a C minus in integrated mathematics.

In the residential setting Student exhibited some defiant behaviors. He argued with staff and talked back. He had some difficulty with boundaries, including horse playing and name calling. Additionally, Student was impulsive and had some difficulty managing his mood. At times he shut down and refused to talk about his family. Yet, this was a significant improvement from when he began at San Diego Center for

Children. In the beginning his behavior consisted of suicidal ideation, head banging, and running away. Student no longer demonstrated significant safety concerns.

Julie Cole, a licensed clinical social worker for San Diego County of Education, attended monthly treatment team meetings with San Diego Center for Children staff to discuss Student's progress. Ms. Cole reported the information to Ms. Ghio and they also discussed Student's progress. Both Ms. Cole and Ms. Ghio were concerned about Student's continued placement at the residential treatment center. Both credibly testified that Student had made the progress required to step down from the residential treatment center and return home. Both witnesses were concerned that if Student did not step down after meeting his goals and working hard to return home then he would begin to feel institutionalized. Both saw Student feeling hopeless that he had not seen any reward for his hard work and progress.

Ms. Jones worked with student consistently beginning in October 2017. Ms. Jones worked closely with Student and met with him at least weekly. Student actively participated in therapy sessions with Ms. Jones. Ms. Jones was impressed with the progress Student made, and although he still had some behavior challenges, his behavior was no longer a safety concern.

### **JUNE 12, 2019 IEP AND TEAM MEETING**

Coronado held an annual IEP team meeting on June 12, 2019. Parent and Step-Parent attended as well as Ms. Ghio, Niamh Foley, Coronado's Director of Student Services, Kathryn Leontieff, Coronado's program specialist and general education teacher representative, Sara Brown, Coronado's case manager and special education teacher, James Mcelroy, San Diego Center for Children School Principal, Ms. Cole, Ms. Jones, Rosanna Lewton, San Diego Center for Children special education teacher, Tina Reyes, San Diego Center for Children life skills coordinator, and Ervey Salinas,

San Diego Center for Children residential director. Coronado offered Parent procedural safeguards and reviewed the agenda for the IEP team meeting.

Student did not meet his self-regulation goal, to independently request a five-minute break when dysregulated with 100 percent accuracy on five out of five trials. Student also did not meet his technology goal, to use technology appropriately on 100 percent of school days across multiple quarters. Student met his behavior goal, to take ownership for his wrongdoings or misbehavior on four out of five occasions over a four-week period.

The IEP team reviewed Student's present levels of performance. Student's independent reading level was seventh and ninth grade, his instructional level was eighth and 11th grade, and his independent level was 10th grade. Student's spelling skills were above 12th grade and he wrote at grade level. Student could use a graphic organizer to write clear and cohesive responses using precise language that was appropriate to task, purpose, and audience. Student willingly assisted other students with writing during group activities. Student's mathematics skills were above 12th grade. He received a B plus in integrated mathematics one A and a B in integrated mathematics one B. At the time of the IEP team meeting Student was in integrated mathematics two A.

Student had age appropriate receptive and expressive communication skills and social pragmatic skills. Student had some difficulty communicating and following social norms which stemmed from his social emotional challenges. Student had age appropriate fine and gross motor skills.



Student's greatest area of need was social emotional. His behavior fluctuated widely at school depending on his relationship with staff. Student was impulsive, he moved quickly and at times jumped off walls and benches in the school courtyard. Occasionally Student left designated areas without permission and used profanity. However, once Student calmed down he consistently took responsibility for his actions and was able to problem solve with staff. Based on Student's present levels of performance the IEP team created four new goals for Student.

The IEP offered Student a vocabulary goal, a vocational goal, and two social emotional goals. Student's vocabulary goal was to learn 25 vocabulary words at his grade level, including how to spell, pronounce, and define the word with at least 80 percent accuracy per quarter. Student's vocational skills goal was to create a personal resume that included his full name, contact information, level of education, volunteer experience, work experience, and specialized skills. Student's first social emotional goal was to comply with school rules, including rules related to using computers, as evidenced by maintaining his computer use privileges at school and earning an average of 98 percent of his weekly productivity points each quarter. Student's second social emotional goal was for self-regulation. When faced with a frustrating situation at school Student would initiate an agreed upon coping skill to self-regulate prior to acting out and remain safe at least 95 percent of school days per quarter.

The IEP team then reviewed Student's individual transition plan. An individual transition plan assisted Student's transition to postsecondary education, employment, and independent living, and was required for pupils over 16 years of age. Student was interested in being a chef and attending Job Corps San Diego after graduating from

high school. The transition plan properly included a postsecondary education goal, an employment goal, and an independent living goal.

Parent participated during the IEP team meeting. He asked questions about Student's present levels of performance and the IEP team answered his questions. Parent was pleased with Student's progress.

The IEP team reviewed the offer of FAPE. Coronado offered 360 minutes daily of specialized academic instruction at a nonpublic school with a low student to teacher ratio, 220 minutes monthly of individual therapy through the residential treatment center, 90 minutes weekly of group therapy through the residential treatment center, 30 minutes monthly of career awareness, 100 minutes monthly of parent counseling, and extended school year. Student's supplementary aids and services were positive reinforcement during class for appropriate behavior, strategic seating, supervised breaks, teachers to check for understanding of academic materials and task requirements, repeated directions, tasks broken down in to smaller pieces, teacher redirection, and advanced notice of schedule changes. Coronado continued to offer a transition from the residential treatment center back to the home environment.

Coronado included a comprehensive transition plan in the IEP that the team discussed in detail during the meeting. The transition plan to the home environment included consecutive off ground passes and mid-week phone calls or visits during a 90 day period that would gradually increase to overnight visits. Student and Parent would be supported during this transition. A staff member from San Diego Center for Children or wraparound services would be present for the entirety of the day passes. After five successful passes Student would have one overnight visit. After two successful overnight visits Student would have a two-night visit. After completion of the pass schedule the IEP team would determine if Student was ready to fully transition home.

During the overnight visits Student and Parent would be supported by wraparound services. Wraparound services are comprehensive therapeutic services designed to support transitions. Coronado would provide the wraparound services from a nonpublic agency. The wraparound services were offered 24 hours a day, seven days a week, to support the transition. After each off ground pass or visit the treatment team would meet to discuss and problem solve any concerns or issue that arose during the visit or pass. The transition plan was flexible but would begin immediately as Student agreed to participate in counseling with Parent.

Once Student transitioned back to the home environment Coronado would transport him to San Diego Center for Children's nonpublic school. Additionally, Student's counseling services would transfer to the nonpublic school.

Parent did not consent to the IEP at the conclusion of the IEP team meeting and requested additional time to review the IEP. On August 30, 2019, after not having heard from Parent, Coronado sent Parent a prior written notice letter asking Parent to consent to the IEP. As of the hearing, Parent had not consented to the IEP.

## **LEGAL CONCLUSIONS**

### **INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA**

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

1. To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related

- services designed to meet their unique needs and prepare them for employment and independent living, and
2. To ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "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 *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. The Supreme Court revisited and clarified the *Rowley* standard in *Endrew F. v. Douglas County School Dist.* (March 22, 2017) 580 U.S. \_\_ [137 S.Ct. 988] (*Endrew F.*). It explained that *Rowley* held that when a child is fully integrated into a regular classroom, a FAPE typically means providing a level of instruction reasonably calculated to permit advancement through the general education curriculum. (*Id.*, 137 S.Ct. at pp. 1000-1001, citing *Rowley, supra*, 458 U.S. at p. 204.) As applied to a student who was not fully integrated into a regular classroom, the student's IEP must be reasonably calculated to enable the student to make progress appropriate in light of his or her circumstances. (*Endrew F., supra*,

137 S.Ct. at p. 1001.) The Ninth Circuit has affirmed that its FAPE standard comports with *Endrew F.* (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535 [nonpub. opn].)

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, evaluation, 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, 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. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this matter, Coronado had the burden of proof on the issue decided.

### **DETERMINATION OF FAPE IN A DISTRICT-FILED CASE**

When a school district seeks to prove that it provided a FAPE to a particular student, it must also show that it complied with the procedural requirements under the IDEA. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204, 206-207.)

The IDEA requires that certain members participate in any IEP team meeting, unless excused by the Parent. This includes:

- One or both of the student's parents or their representative;
- A regular education teacher if a student is, or may be, participating in regular education;

- A special education teacher;
- A representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about available resources;
- A person who can interpret the instructional implications of assessments results; and
- At the discretion of the parties, other individuals; and when appropriate, the person with exceptional needs.

(34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5.)

Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan.

(*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.)

Additionally, the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

An annual IEP must contain a statement of measurable annual goals related to “meeting the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum” and “meeting each of the child’s other educational needs that result from the child’s disability.” (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child’s goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child’s special education program. (*Letter to Butler*, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

The IEP document created by the IEP team must include a statement of the special education and related services that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must include: a projected start date for services and modifications; and, the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) An IEP must include a post-secondary transition plan during the school year in which the child turns 16 years old. (Ed. Code, § 56043, subd. (g)(1).)

In determining whether an IEP offers a FAPE, the focus is on the adequacy of the school district’s proposed program. (See *Gregory K. v. Longview School District* (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 a parent, even if that program will result in

greater educational benefit to the student. (*Ibid.*) As stated earlier, when a child is fully integrated into a regular classroom, a FAPE typically means providing a level of instruction reasonably calculated to permit advancement through the general education curriculum. (*Endrew F., supra*, 137 S.Ct. at pp. 1000-1001, citing *Rowley, supra*, 458 U.S. at p. 204.) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

Lastly, the school district must ensure that the program is designed following a number of general procedural requirements so that the student is placed in the least restrictive environment:

- 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 account the requirement that children be educated in the least restrictive environment;
- Placement is determined annually, is based on the child's IEP and is as close as possible to the child's home;
- Unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled;
- In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and



- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(34 C.F.R. § 300.116.)

## **JUNE 12, 2019 IEP**

Coronado convened an IEP team meeting on June 12, 2019. All necessary team members were present including Parent, a general education teacher from Coronado, and special education teachers from Coronado and San Diego Center for Children. Additionally, Student's therapist and the director from the residential treatment center attended to provide input on Student's behavior and needs from a residential standpoint. Coronado also had the mental health liaison from San Diego County Office of Education attend to provide input on placement.

The IEP team discussed progress on previous goals, present levels of performance, new goals, Student's independent transition plan, accommodations, services and supports, and placement. Parent actively participated in the IEP team meeting. Parent asked questions and participated in the discussions regarding each part of the IEP.

### **Annual Goals**

The June 12, 2019 IEP team developed measurable annual goals related to Student's present levels of performance. The goals addressed his writing and vocational needs with a vocabulary goal and resume writing goal. The team also developed two behavior goals to address following computer rules and dealing with frustrating situations. The team discussed the need for a behavior intervention plan and agreed,

for the second year in a row, that Student's behavior did not rise to the level of needing a behavior intervention plan.

The weight of the evidence established that the June 12, 2019 IEP annual goals addressed the full range of Student's needs, with each goal addressing one or more skill deficits. The goals described what the IEP team reasonably expected Student could accomplish within a 12-month period.

The June 12, 2019 IEP team discussed post-secondary goals and a transition plan as Student would turn 16 prior to the next annual review. Student completed a career test and provided input regarding his goals after completing high school.

### **Special Education and Related Services**

Applying the *Rowley* standard, as restated and affirmed in *Endrew F.*, the weight of the evidence established that the June 12, 2019 IEP was designed to meet Student's unique needs and was reasonably calculated to provide Student with educational benefit appropriate in light of his circumstances.

Student's main area of need was social emotional related to his impulsive behavior. The June 12, 2019 IEP offered Student specialized academic instruction in a nonpublic school with a low student-to-adult ratio and both individual and group counseling. The IEP included supports to reinforce positive behavior, allow for regular breaks and redirection, checks for understanding, and advanced notice when his schedule would change. This proposed level of instruction and support was reasonably calculated to confer a meaningful benefit and permit Student to advance through the general education curriculum.

Coronado did not propose to change student's school placement at the nonpublic school. Rather, Coronado proposed transitioning Student back home from the residential setting. Parent disagreed with the transition at the IEP team meeting citing, for the second year in a row, his inconsistent work schedule. Parent did not appear at the due process hearing to offer any additional information as to why the transition home was inappropriate based on Student's current needs.

An educational agency formulating a special education program for a disabled pupil is not required to furnish every special service necessary to maximize the child's potential. (*Rowley, supra*, 458 U.S. at p. 199.) Instead, an educational agency satisfies the FAPE standard by providing adequate related services such that the child can take advantage of educational opportunities. (*Park v. Anaheim Union High School* (9th Cir. 2006) 464 F. 3d 1025, 1033.) To determine whether a district offered a student a FAPE, the analysis must focus on the adequacy of the district's proposed program and not on the family's preferred alternative. (*Gregory K., supra*, 811 F.2d at p. 1314.) An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp.2d 127, 139 [IDEA does not provide for an "education . . . designed according to the parent's desires"], citing *Rowley, supra*, 458 U.S. at p. 207.) Nor does the IDEA require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, 458 U.S. at pp. 198-200.) If the school district's program meets the substantive *Rowley* factors, then that district provided a FAPE, even if the child's parents preferred another program and even if the parents' preferred program would have resulted in greater educational benefit. (*Gregory K., supra*, 811 F.2d at 1314.)

Student did not require a residential treatment center placement. Ms. Ghio, Ms. Cole, and Ms. Jones all testified persuasively that Student made substantial progress on his goals and his behavior improved dramatically from when he was first placed at San Diego Center for Children's residential program. Student no longer needed a behavior intervention plan and only had two behavior goals. Although Student still exhibited some inappropriate behaviors, they were limited to leaving a designated area without permission, using profanity, jumping or climbing on objects outside, making inappropriate comments, or not following computer rules. Student's initial behavior that required a residential treatment center placement was more significant. Student had suicidal ideations, a tendency to run away, and head banged. However, Student worked through these issues and no longer exhibited serious behavior and safety concerns. This evidence demonstrated that Student did not require Parent's preferred residential treatment center placement.

The weight of the evidence established that the June 12, 2019 IEP offered Student sufficient special education and related services to meet his needs, and enabled him to receive educational benefit and advance through the general education curriculum.

### **Least Restrictive Environment**

To provide the least restrictive environment, school districts must first ensure, to the maximum extent appropriate, that children with disabilities are educated with non-disabled peers; and second, that special classes or separate schooling occur only if the nature or severity of the child's disability 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); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).)

To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors:

- The educational benefits of placement full-time in a regular class;
- The non-academic benefits of such placement;
- The effect the student has on the teacher and children in the regular class;  
and
- 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. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of general education was the least restrictive environment for an aggressive and disruptive student with ADHD and Tourette's Syndrome].)

If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d 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.)

The continuum of program options includes, but is not limited to:

- Regular education;
- Resource specialist programs;
- Designated instruction and services;
- Special classes;
- Nonpublic, nonsectarian schools;
- State special schools;
- Specially designed instruction in settings other than classrooms;
- Itinerant instruction in settings other than classrooms; and
- Instruction using telecommunication instruction in the home or instructions in hospitals or institutions.

(Ed. Code, § 56361.)

Given the restrictiveness of a residential treatment center, there are also specific factors that must be considered when determining whether to place a special education student away from his family and peers.

A school district must provide a residential placement to a student with a disability if such a placement is necessary to provide the student with special education and related services. (34 C.F.R. § 300.104.) The test for determining whether a residential treatment center placement provides FAPE is whether the placement is necessary to provide special education and related services to meet the student's educational needs. (*Ashland School District v. Parents of RJ* (D. Or. 2008) 585 F. Supp.2d 1208, 1231, affirmed, (9th Cir. 2009) 588 F.3d 1004.) The analysis for determining whether a residential treatment center placement is appropriate hinges on whether the

placement is necessary for educational purposes. (*Clovis Unified School District v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.3d 635, 643.)

The Ninth Circuit Court of Appeals identified three possible tests for determining when a school district is responsible for the cost of a residential placement:

1. when the placement is "supportive" of the child's education;
2. when medical, social or emotional problems that require residential placement are intertwined with educational problems; and
3. when the placement primarily aids the student to benefit from special education. (*Ibid.*)

By this standard, Coronado, as the moving party, had the burden of proving that a residential treatment center was not necessary to educate Student.

Here, Student did not need a residential treatment center placement. Coronado established that Student's inappropriate behaviors no longer warrant such a restrictive setting. Coronado provided uncontroverted evidence that Student did not have any problems getting to school in the morning or any behavior problems while at the residential setting as a result of academic pressures or incidents that occurred at school. Student's behavior at the residential setting was limited to defiance, difficulty with boundaries, impulsivity, and some difficulty managing his mood. A residential treatment center placement was the most restrictive placement on the continuum that Coronado could offer. Student had been placed at San Diego Center for Children for almost three years and had met his behavior goals. Student no longer exhibited suicidal ideation and no longer had significant behavior concerns, and it was time for him to return home as he no longer required a residential placement to receive a FAPE.

Coronado's offer of FAPE still included a nonpublic school placement where he received academic benefit as had been successful academically, had access to grade level curriculum, and met grade level academic standards. Student received nonacademic benefit from the nonpublic school as it was a small supportive environment with built in emotional supports.

Student previously met his goals that required a residential treatment center and was languishing in a restrictive placement that he no longer needed. To continue maintaining Student in such a restrictive setting was a detriment to his wellbeing. Ms. Ghio, Ms. Cole, and Ms. Jones all testified persuasively that Student was at risk of becoming institutionalized if he continued to be placed in a residential treatment center after he met his goals.

The June 12, 2019 IEP placement offer complied with all procedural requirements. The placement decision was made during the annual IEP review by a group of knowledgeable team members. The IEP team had a detailed discussion about Student's needs, consideration of potential harmful effects on Student, and the least restrictive environment, with the assistance of knowledgeable school representatives. Coronado offered Student placement at San Diego Center for Children's nonpublic school with a thoughtful and supported transition from the residential treatment center to the home environment.

Coronado sustained its burden of proof establishing the June 12, 2019 IEP made an appropriate offer of special education placement and related services in the least restrictive environment for Student.



## **ORDER**

Coronado's June 12, 2019 IEP offered Student a FAPE in the least restrictive environment. Coronado may implement the IEP without Parent's consent.

## **PREVAILING PARTY**

Pursuant to 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. Here, Coronado prevailed on the sole issue at hearing.

## **RIGHT TO APPEAL THIS DECISION**

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: November 13, 2019

*/s/*

Linda Johnson

Administrative Law Judge

Office of Administrative Hearing