

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022020209

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.

DECISION

August 4, 2022

On February 7, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student naming San Dieguito Union High School District, referred to as San Dieguito. On February 25, 2022, OAH continued the hearing to May 24, 2022. Administrative Law Judge Christine Arden heard this matter via videoconference using the Microsoft Teams software application on May 24, 25, and 26, 2022, and June 1 and 2, 2022.

Matthew Storey and Jennifer Holzman, attorneys at law, represented Student on all hearing days. Marymichelle Lotano, attorney at law, also appeared on behalf of Student on May 24, 2022. Parents attended all hearing days on Student's behalf.

Sarah Sutherland and Whitney Antrim, attorneys at law, represented San Dieguito on all hearing days. Tiffany Hazelwood, Director of School and Student Services, attended all hearing days on behalf of San Dieguito.

The matter was continued to June 27, 2022, to provide the parties time to complete and file their written closing briefs with OAH. The record was closed, and the matter was submitted on June 27, 2022.

ISSUES

The original numbering of the issues, as identified at the Prehearing Conference, has been reversed to facilitate analysis in this Decision.

1. Did San Dieguito Union High School District deny Student a free appropriate public education, or a FAPE, during the 2021–2022 school year by predetermining placement at San Diego Center for Children nonpublic school?
2. Did San Dieguito Union High School District deny Student a FAPE during the 2021–2022 school year by offering Student placement at San Diego Center for Children nonpublic school?

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.)

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).) Student had the burden of proof in this case. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 13 years old and in seventh grade at the Winston School, a nonpublic school, at the time of hearing. Student was placed at the Winston School by Parents. Student resided within the geographic boundaries of San Dieguito at all relevant times.

ISSUE 1: DID SAN DIEGUITO DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR BY PREDETERMINING PLACEMENT AT SAN DIEGO CENTER FOR CHILDREN NONPUBLIC SCHOOL?

Student contends San Dieguito denied Student a FAPE by predetermining its offer of placement at San Diego Center for Children, called SDCC, a nonpublic school. Student also contends San Dieguito made a “take it or leave it” offer of placement at SDCC over the objections of all members of Student’s IEP team, other than the one team member employed by San Dieguito. Student also contends San Dieguito’s predetermination of placement significantly impeded Parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and thereby denied Student a FAPE.

San Dieguito contends it did not predetermine its offer of placement at SDCC. It argues that the change from one nonpublic school to another nonpublic school did not constitute a change of placement along the continuum of possible placements. San Dieguito further contends it alone, not Parents or other IEP team members, legally had the sole right to select the providers of instruction and services identified on Student’s individualized education program, called an IEP, including the specific nonpublic school. San Dieguito further contends it considered Parents’ concerns about SDCC, but decided SDCC was an appropriate placement for Student.

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

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

STUDENT'S DISABILITIES

The Solano Beach School District, called SBSB, initially found Student eligible for special education on January 18, 2012, when she was three years old. At that time, Student was already diagnosed with anxiety, and had received services for her communication delays from the San Diego Regional Center. Student was also diagnosed with attention deficit hyperactivity disorder, called ADHD, and epilepsy.

From the time she entered school, Student was easily distracted. Student's anxiety escalated when she was exposed to others exhibiting aggressive or uncooperative behaviors, or loud, hostile speech or profanity. It usually took Student a few hours to decompress after being exposed to yelling or noncompliant conduct by other children. Student's anxiety interfered with her ability to focus and learn. Student

also had significant difficulty storing and retrieving memories. Student did not exhibit disruptive or noncompliant problem behaviors that impeded her learning or the learning of others. She was very cooperative at school and worked diligently to succeed at school, despite her learning disabilities.

During the 2018-2019 school year, when Student was in fourth grade at SBSD, Student was pulled out of her general education class to receive specialized academic instruction for her core academic classes, and related services in the areas of speech and language, occupational therapy, and counseling. However, even with these supports, Student struggled, especially with peer relationships. Student recognized the differences between herself and her peers, which exacerbated her anxiety. Student's IEP team determined because Student required a small, calm atmosphere in order to learn, a nonpublic school placement was appropriate for Student.

STUDENT STARTS AT EXCELSIOR ACADEMY IN JANUARY, 2020

In Fall of the 2019-2020 school year, when Student was in fifth grade, SBSD conducted Student's most recent triennial assessment. Those assessment results were reported to the IEP team at a meeting held on November 20, 2019. That report summarized Student's overall cognitive ability scores as below average. However, because Student's processing strengths and weaknesses varied, the scores were not considered to be reliable indicators of her overall ability. The assessments indicated Student was working at grade level in English language arts, with accommodations and adult support. She was also working on grade-level math concepts with accommodations, and adult support, but was concurrently receiving supplemental instruction on below, grade-level foundational math skills. Student's expressive

language and pragmatics were developing. Student's cognitive processing deficits, anxiety, attention and executive functioning deficits, and language-based weaknesses negatively impacted her progress in the general education curriculum.

After reviewing the results of Student's triennial assessments the IEP team began exploring nonpublic school placement options for Student. Parents toured three nonpublic schools, Banyan Tree Academy Foundation, Mount Helix, and Excelsior Academy. The team did not consider either Banyan Tree Academy Foundation or Mount Helix to be a "great fit" for Student. The IEP team recommended placement at Excelsior Academy, a very small nonpublic school with four classrooms. The elementary class at the school had only four or five students with one teacher and an aide. SBSB offered placement at Excelsior Academy in the November 20, 2019 IEP, and Parents consented to it.

Excelsior Academy did not accept children with externalized behavior problems. Its campus was quiet and calm, and had a very welcoming environment. The school had a quiet room referred to as the "Zen Den" where children could go to relax if they were feeling anxious. The small, calm, quiet campus met Student's needs.

Student started attending Excelsior Academy at the end of January 2020, and completed fifth grade there in June 2020. The commute between Student's home and Excelsior Academy took about 50 minutes. Parents drove Student to and from school and SBSB reimbursed them for the mileage of the commute. In mid-March of 2020, Excelsior Academy switched to remote instruction due to the COVID-19 pandemic, and Parents no longer had to drive Student to school.

Marta Leyva, the principal at Excelsior Academy from December 2020, to February 28, 2022, and a member of Student's IEP team, testified at hearing. Before working at Excelsior Academy she was an associate principal with the Chula Vista Elementary School District. She had also been a teacher and speech therapist for three different public school districts. Leyva had also worked as an advocate for children with learning disabilities and as a consultant to their parents. Leyva had a master's degree in educational leadership and had completed considerable training in a wide variety of special education interventions and IEP development. She had attended hundreds of IEP meetings. She answered all questions posed to her without hesitation, thoroughly, knowledgably, and confidently. Due to her extensive work with children with learning disabilities, Leyva was familiar with many of the nonpublic schools operating in San Diego County. Her testimony was extremely credible and persuasive.

Leyva explained Excelsior Academy was a school primarily for children with mild to moderate disabilities, including those with specific learning disabilities and high functioning autism. Leyva was one of the staff members that provided support to Student when she was anxious at school. It was not unusual for Student to be anxious. However, her anxiety was particularly triggered if she was exposed to negative, noncompliant, or aggressive behaviors, and loud, hostile speech, such as yelling or profanity. For example, on one occasion Student got anxious when she witnessed a homeless man in front of the school yelling angrily.

When Student was anxious she could not access her education. However, after receiving support from an Excelsior Academy staff member, Student could self-regulate, calm down, and return her attention to schoolwork. Student participated in the

grade-level curriculum at Excelsior Academy. Leyva convincingly opined Student did not require a more therapeutic or restrictive environment than the one at Excelsior Academy.

In summer of 2020, Student's family moved to a home located within the geographic boundaries of Encinitas Union School District, called EUSD, an elementary school district serving children through sixth grade. EUSD continued to offer Student placement at Excelsior Academy in an IEP dated November 16, 2020. There were 36 children enrolled in Excelsior Academy in December 2020. Student completed sixth grade there in June 2021.

EXTENDED SCHOOL YEAR DURING SUMMER 2021

EUSD students transition to San Dieguito School District in seventh grade. On June 7, 2021, EUSD convened an IEP team meeting to address Student's upcoming transition to middle school with San Dieguito. Nathan Molina, San Dieguito's special education program supervisor, attended the meeting. The IEP team made no changes to Student's November 16, 2020 IEP at the June 7, 2021 IEP meeting.

Student attended the extended school year program at Excelsior Academy during summer 2021. Although transitions from home to school were historically challenging for Student, Parents thought Student had progressed enough that she could then handle riding the school bus to and from school during the 2021 summer extended school year. EUSD's obligation to serve Student ended on June 30, 2021.

STUDENT TRANSITIONS TO SAN DIEGUITO ON JULY 1, 2021

Student became a student of San Dieguito on July 1, 2021. At that time Student was eligible for special education under the primary eligibility category of Other Health Impairment, and the secondary eligibility category of Speech and Language Impairment. On July 1, 2021, Student was part way through the extended school year program.

Molina was assigned as Student's San Dieguito case manager and its administrative designee for Student's IEP team meetings. Molina was responsible for convening Student's IEP meetings, overseeing Excelsior Academy's implementation of Student's IEP, and conveying San Dieguito's offer of a FAPE to the IEP team. Molina had never worked with Student, and did not know her personally. He observed Student once for 10 to 15 minutes at Excelsior Academy. Molina introduced himself to Student on that occasion, but they did not engage in a conversation. He was the only person on Student's IEP team who was not personally familiar with Student.

San Dieguito started providing Student's transportation between home and Excelsior Academy on July 1, 2022. Problems immediately arose on the van transporting Student to school. It was late picking Student up, so she feared being late for school. Also, several children in the van, who were going to schools other than Excelsior Academy, yelled and cried during the commute. This was very upsetting to Student and she was anxious by the time she arrived at school. These types of problems persisted for the first four days Student took the van provided by San Dieguito to school. Mother contacted Molina about the problems on the van, so he was aware Student's anxiety was triggered when she was exposed to loud, uncooperative conduct by other children.

At the beginning of the 2021-2022 regular school year Student continued to attend Excelsior Academy for seventh grade. There were 24 children attending Excelsior Academy for the 2021-2022 school year.

IEP DATED NOVEMBER 15, 2021, AND TRIAL AT THE WINSTON SCHOOL

IEP TEAM MEETINGS ON NOVEMBER 15 AND 29, 2021

Student's 2021 annual IEP meeting started on November 15, 2021. However, because Excelsior Academy staff was not prepared to report Student's present levels of performance, Leyva stopped the meeting. The IEP meeting reconvened on November 29, 2021, when the Excelsior Academy team could present data on Student's present levels of performance. At the November 29, 2022 meeting, the IEP team discussed Student's present levels of performance and progress on goals. The team was not able to complete the IEP on November 29, 2021.

IEP TEAM MEETING ON DECEMBER 13, 2021

The IEP team reconvened again on December 13, 2021, to continue reviewing Student's progress. Student met seven of her nine goals. At that meeting the team also reviewed and agreed upon Student's eligibility and present levels of performance. The team also discussed Student's anxiety and possible interventions. Student had experienced anxiety over a grandparent's recent death. Her anxiety was also triggered if she was exposed to disruptive behavior, or loud, aggressive speech, which did not occur often at Excelsior Academy. Principal Leyva had observed Student and informed the team Student's anxiety level had decreased over the past year. Student received 30 minutes a week of counseling at Excelsior Academy, which was successfully addressing

Student's social-emotional needs. Student was also in counseling with a private therapist outside of school. The IEP team agreed to reconvene the meeting to discuss new goals, complete the IEP, and update the offer of a FAPE.

STUDENT'S TRIAL WEEK AT THE WINSTON SCHOOL

Because Student had made significant progress in all areas at Excelsior Academy, in December 2021, Parents believed Student was ready to handle a nonpublic school with a larger campus. At that time there were only about 11 students attending Excelsior Academy. The Winston School had small classes, but a larger campus than Excelsior Academy. Parents thought Student would have an opportunity to grow socially by being on a larger campus, like the one at the Winston School. On December 14, 2021, Mother asked Molina to send a referral package for Student to the Winston School to start an inquiry about placing Student there for the upcoming semester. Molina remarked that the Winston School's program was not therapeutic, and refused Mother's request. Instead, Molina told Mother she could set up a trial for Student at the Winston School as a privately placed student.

Molina's remark to Mother about the Winston School not being therapeutic was curious because no one on the IEP team had opined Student needed a more therapeutic program than the one provided at Excelsior Academy. Molina had not referred a child for placement to the Winston School for over 10 years before the hearing, and he had not observed it for a number of years. Moreover, the Winston School was not one of the nonpublic schools Molina was tasked to be familiar with as a San Dieguito special education program supervisor.

Parents arranged for Student to attend the Winston School for a trial week from January 10, 2022 through January 14, 2022. Late in the afternoon on January 14, 2022, Father informed Molina in an email that Student had experienced an excellent trial week at the Winston School. Father asked Molina in his January 14, 2022 email if San Dieguito would offer Student placement at the Winston School for the upcoming Spring 2022 session. Molina did not answer Father's question directly, and instead responded that the IEP team must still complete Student's annual IEP. Molina did not ask Father for any details about Student's trial week at the Winston School. In the second half of January, 2022, Dr. Holly Reed, special education director at the Winston School, contacted Molina and informed him Student had done well during her trial week, and the Winston School determined Student would fit in well there.

IEP TEAM MEETING ON JANUARY 21, 2022

The IEP team reconvened the IEP meeting again on January 21, 2022. At that meeting the team answered Parents' remaining questions and concerns about Student's present levels of performance, and discussed the portions of the IEP which addressed special factors, statewide assessments, and new proposed goals. No one on the IEP team raised a concern at the meeting suggesting Student needed a placement in a nonpublic school which provided a therapeutic setting. By all reports Student was making progress academically, as well as socially-emotionally, at Excelsior Academy.

Parents told the team they were seeking a change of placement for Student to the Winston School. They believed a larger campus would foster Student's continued growth and independence. Also, the Winston School was only a 15-minute commute from the family's home. The length of the commute was material because Student had previously become anxious during the transition to school. Leyva had visited the

Winston School about 10 times and was quite knowledgeable about its program. Leyva told the team that the programs at Excelsior Academy and the Winston School were similar, although the academics could be challenging at the Winston School.

The team drafted a goal for Student to identify when she became anxious, and to develop skills to cope with her anxiety. The team also added a functional independence goal to Student's IEP. The team concluded Student was making progress, but still needed support to continue to succeed. There was not time to complete the IEP on January 21, 2022.

IEP MEETING ON JANUARY 24, 2022

The IEP team reconvened the meeting on January 24, 2022. Present at this meeting were Parents, Molina, Student's advocate, Maria David, and staff from Excelsior Academy who had all worked with Student. Those staff members included Leyva, and Student's education specialist, occupational therapist, counselor, and teacher. The team noted Student was working on grade-level core curriculum in all subjects. The Excelsior Academy members of the IEP team stated Student did not require modifications to curriculum, and that accommodations were sufficient to support Student's access to her academic coursework. Regarding her social emotional functioning, Student was doing well with school-based counseling and supports provided to her by staff members. Since Student texted or emailed various staff members to seek support during the school day when she was anxious, the team adjusted the number of minutes for Student's individual counseling service to reflect the additional counseling services actually provided to Student. The team also offered parent counseling services.

Molina then told the IEP team he decided Student needed a nonpublic school with an embedded therapeutic program, which neither Excelsior Academy, nor the Winston School, provided. He further stated placement at Excelsior Academy was no longer a FAPE. Molina then offered placement at SDCC, a nonpublic school where therapeutic supports were embedded in the program throughout the school day. Molina told the team Student should be supported by a school psychologist, rather than a school counselor.

Because none of the team members who were familiar with Student had mentioned the need for an embedded therapeutic program, let alone discussed the potential benefits or detriments of offering SDCC as a possible placement, it can be reasonably inferred that Molina decided before the meeting to offer placement at SDCC. Molina asked Parents to sign a release permitting San Dieguito to send Student's information to SDCC for admission consideration. Parents were shocked at San Dieguito's offer of placement at SDCC. Leyva noted she had been on SDCC's campus many times and was aware the conduct of SDCC's students was regularly rowdy and loud, which would make Student very uncomfortable and anxious.

At the meeting, Parents, Student's advocate, David, and the staff from Excelsior Academy, uniformly expressed the opinion that SDCC was an inappropriate nonpublic school placement for Student because it had far more restrictive rules than both Excelsior Academy and the Winston School. The strict rules at SDCC were necessary to manage the maladaptive behaviors of SDCC's student population. SDCC primarily served children with significant behavioral problems. The children enrolled in SDCC frequently acted out, eloped, and expressed themselves loudly and aggressively. Student's anxiety was triggered when she was exposed to this kind of conduct and speech. Student's advocate also mentioned that the commute from Student's home to

the Winston School was only 15 minutes, but the commute to SDCC from Student's home was almost an hour. The longer commute created a significant burden on Student.

Leyva and all the other members of the IEP team, except Molina, stated at the January 24, 2022 IEP meeting that SDCC was not an appropriate placement for Student, and that placement at SDCC would be bad for Student due to the behaviors of the other children enrolled there. Leyva also stated if San Dieguito would not offer Student placement at the Winston School, Student would be better off staying at Excelsior Academy, rather than transferring to SDCC, because the SDCC environment would be detrimental for Student. Leyva believed Student would be very anxious and unable to make progress on her goals at SDCC. Leyva also believed Student might even regress, both socially and academically, if she attended SDCC.

Despite the other team members' objections to SDCC as an appropriate nonpublic school for Student, Molina did not offer other placements for the team's consideration. He also did not respond to the concerns raised by all the other IEP team members that Student's anxiety would worsen if she was exposed to the negative externalized behaviors exhibited by some children attending SDCC. On January 24, 2022, when Molina made the SDCC placement offer on behalf of San Dieguito, he had not observed either SDCC or the Winston School in recent years.

Mother was surprised and upset when Molina made the offer of placement at SDCC on behalf of San Dieguito at the January 24, 2022 IEP meeting. Mother had assumed the choice of the specific nonpublic school for Student would be a collaborative one in which all IEP team members' opinions would be considered. Such collaboration had occurred when SBSB had previously placed Student at Excelsior

Academy. Molina stated only that he thought Student needed a therapeutic setting, and neither Excelsior Academy, nor the Winston School, provided the therapeutic services he had determined Student needed. Leyva responded that Student's needs were being met at Excelsior Academy.

Molina was the only member of the IEP team who thought Student needed a more therapeutic placement than Excelsior Academy or the Winston School. Parents were strongly opposed to placing Student at SDCC because they understood SDCC was a nonpublic school primarily serving children with externalized behavior problems, which was precisely the type of environment that exacerbated Student's anxiety. At the January 24, 2022, meeting Parents asked Molina what their options were. He responded by referring them to their procedural rights. He said Student would stay at Excelsior Academy at that time, since Parents did not consent to placement at SDCC. Molina also told Parents they could file for due process to challenge San Dieguito's offer of a FAPE. There was no evidence Molina informed Parents that San Dieguito would file a due process request with OAH seeking an Order confirming San Dieguito's offer constituted a FAPE. Therefore, Parents assumed they had to file a complaint in order to fight Student's placement at SDCC.

Molina then offered to assess Student. Mother refused the offer to assess Student because Mother did not think it was necessary at that time, particularly because Student would be assessed comprehensively in fall 2022, in preparation for her next triennial IEP. That was the end of the discussion during the IEP meeting regarding potential placements for Student.

SAN DIEGUITO FAILED TO COLLABORATE WITH THE IEP TEAM REGARDING PLACEMENT

Molina disregarded the unanimous opinion of all the other IEP team members, who all knew Student and had worked with her, that SDCC was an inappropriate nonpublic school for Student and it would be detrimental for her to attend SDCC. Molina did not waiver on his decision to offer Student placement at SDCC, even though it was undisputed Student's anxiety was triggered when she was exposed to noncompliant conduct of others, which was likely to occur at SDCC. Molina effectively shut down the team's discussion about identifying an appropriate nonpublic school for Student by failing to consider any nonpublic school other than SDCC.

On February 7, 2022, Parents provided San Dieguito with a signed authorization to release Student's information to SDCC. Parents toured SDCC on February 14, 2022, with its administrator, Carole Fisher. According to Mother, Fisher informed Parents a significant number of the children enrolled at SDCC elope from class and exhibit outward, noncompliant, or aggressive behaviors. Parents observed an empty room at SDCC identified as the seclusion room. Mother testified Fisher told Parents there was usually a beanbag chair in the seclusion room, but it was missing because it probably had been torn apart by a student. The tour and information provided by Fisher about SDCC confirmed Parents' concern that SDCC was not an appropriate school for Student. Therefore, Parents declined Molina's request that Student participate in a trial there. On March 1, 2022 Mother gave her written consent to all parts of the IEP dated November 15, 2021, except for the offer of placement at SDCC.

THE SDCC PROGRAM

On the SDCC campus was the nonpublic school, a residential treatment center, and a day treatment program for children with serious mental health issues. The children living at the residential treatment center went to school at the nonpublic school. If student attended the SDCC nonpublic school, she would be exposed to the negative behaviors, elopements, and noncompliant conduct likely to be exhibited by the children from the residential treatment center during the school day. Molina testified that the children in SDCC's day treatment program were integrated with the SDCC nonpublic school students at recess, and in common areas on the SDCC campus.

Because of the problem behaviors often exhibited by many of the SDCC students, they were always accompanied by an adult staff member on campus. For example, adult staff members supervised SDCC students when they walked to the bathroom, and walked from one class to another. They were not allowed to have backpacks or lockers at school. No witnesses at hearing testified that Student required such an extremely rigid structure to regulate her behavior. No one testified that Student required such rigid measures to keep her safe from injuring herself or others, or to access her education. In fact, in January, 2022, the members of Student's IEP team had added an independence goal to her IEP. The restrictive SDCC rules seemed inconsistent with the intent of fostering Student's independence.

When asked at hearing by Student's counsel if SDCC was more restrictive than the Winston School and Excelsior Academy, Molina responded "yes." During later questioning by San Dieguito's counsel, Molina attempted to recant that response, but

his inconsistent testimony was unsupported, and neither credible, nor persuasive. Molina also stated he thought SDCC was an appropriate placement for Student because of the embedded therapeutic supports there.

Leyva, and Reed also testified SDCC was more a restrictive nonpublic school than both Excelsior Academy and the Winston School. Student had never exhibited negative externalized behaviors requiring such a restrictive environment as SDCC. Nonetheless, when the other IEP team members pointed out at the January 24, 2022 IEP team meeting that the SDCC environment would likely increase, rather than decrease, Student's anxiety, Molina remained inflexible in his offer of placement at SDCC.

Molina visited SDCC only after he offered Student placement there. Molina's untimely visit appeared to be more for the purpose of preparing for litigation, rather than a good faith effort to gather information about whether SDCC would be an appropriate nonpublic school for Student. When Molina offered Student placement at SDCC at the January 24, 2022 IEP meeting, he was not aware of the differences, if any, between the licenses and credentials held by the counseling staff at SDCC, from the licenses and credentials held by the counseling staff at the Winston School.

Tiffany Hazelwood, the San Dieguito director of school and student services, testified very generally about SDCC. She did not testify with specificity about the SDCC program, or the composition of its student body. Hazelwood doubted if the SDCC program primarily served children with externalized negative behaviors, and speculated its campus was probably not locked due to fire and/or safety regulations. Her testimony was not persuasive because she had not been to SDCC in multiple years and did not testify with specificity about its student body, program, or campus. She did not appear to be very familiar with SDCC and its program.

Reed testified very credibly at hearing. Reed's testimony was knowledgeable and candid. She responded to questions without hesitation, confidently, and in detail. Reed had worked full time as a supervisor of occupational therapy at SDCC for two years between 2009 and 2011, and maintained a professional relationship with SDCC's principal, so she was very familiar with the SDCC program, personnel, and composition of the student body. Reed testified most of the students at SDCC had significant behavioral issues. Every day Reed was on campus when she worked at SDCC for two years, at least one child had to be physically restrained by staff because of noncompliant, disruptive conduct. Reed regularly conferred with James McElroy, the principal at SDCC, and was confident the program at SDCC had not changed much since she worked there full time.

Leyva had been on the SDCC campus about 15 times, and had placed four or five children there when she worked as an advocate for children with special needs. All of the children Leyva placed at SDCC had mental health and behavior problems and acted out at school. Leyva persuasively opined that the SDCC program focused on supports for social-emotional functioning and behavior intervention, and its academic program was not equipped to handle learning disabilities like Student's. Because SDCC served children with problem behaviors at risk for eloping from campus, it was a secured facility. SDCC had a far more regimented program than both Excelsior Academy and the Winston School. Student had never attended a school that had, or needed, such regimentation, and there was no indication Student required such a structured program to access her education.

Leyva and Reed testified very knowledgably about SDCC. Both were familiar with the programs on the SDCC campus, knew the current SDCC principal, and convincingly opined that most of the children there had significant behavioral deficits. It was not

unusual for children at SDCC to be physically restrained by staff due to negative, noncompliant behaviors. According to Reed, all SDCC staff members working in classrooms were trained in Crisis Prevention Institute, called CPI, nonviolent methods of physically restraining pupils. In contrast, Leyva was the only staff member at Excelsior Academy who had received training in CPI nonviolent restraint methods. The testimony of Reed and Leyva about SDCC and Student was far more persuasive and credible than the testimony of Molina and Hazelwood on those topics.

Some children from SDCC who worked through their behavior problems, eventually transferred to Excelsior Academy or the Winston School. Also, the Winston School occasionally referred a student exhibiting behavior problems to SDCC. Similarly, children at Excelsior Academy who exhibited behavior problems, occasionally transferred to SDCC to address their extreme behaviors.

EXCELSIOR ACADEMY CLOSED ON FEBRUARY 28, 2022

In the first half of February, 2022, Excelsior Academy gave San Dieguito and Parents notice it was closing on February 28, 2022. Since Parents did not consent to placing Student at SDCC, Molina offered Student four options in a prior written notice dated February 25, 2022. First, Student could start attending Banyan Tree Foundation Academy on March 1, 2022, as a "like" replacement for Excelsior Academy. Second, Student could attend SDCC. Third, Parents could place Student in a private school and she would be entitled to limited support from San Dieguito. Fourth, Student could exit from special education and related services and return to a general education program at her local public school.

Parents were dissatisfied with Banyan Tree Foundation Academy as a replacement for Excelsior Academy because Student's IEP team had considered it two

years earlier and determined it was not a good fit for Student. Consequently, Parents chose the third option Molina offered in the February 25, 2022 prior written notice, and enrolled Student in the Winston School. Student started attending the Winston School on March 1, 2022. When Excelsior closed on February 28, 2022, Parents gave San Dieguito written notice they would be privately placing Student at the Winston School and seeking reimbursement from San Dieguito for the cost of the Winston School.

SAN DIEGUITO PREDETERMINED STUDENT'S PLACEMENT AT SDCC

The IEP team must consider the concerns of the parent for enhancing the student's education and information on the student's needs provided by the parent. (20 U.S.C. § 1414(d)(3)(A) (ii) and (d)(4)(A)(ii) (III); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904].) The informed involvement of parents is central to the IEP process. 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. Parents not only represent the best interests of their child in the IEP development, but they also provide information about the child critical to developing a comprehensive IEP, which only they are in a position to know. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

A school district is required to conduct not just an IEP team meeting, but also a meaningful IEP team meeting. "Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation "at every step "as it did upon the measurement of the resulting IEP." (W.G.

v. Board of Trustees of Target Range School Dist. (9th Cir. 1992) 960 F.2d at 1479, 1485, citing Rowley, supra, 458 U.S. at 205-206. "Participation must be more than mere form; it must be meaningful." (Deal v. Hamilton County Board of Education (6th Cir. 2004) 392 F.3d 840, at p. 858 [citations omitted].) A parent who has an opportunity to discuss a proposed IEP and suggest changes, and whose concerns are considered by the IEP team, has participated in the IEP development process in a meaningful way. (Ibid.) A school district that predetermines the child's program and does not consider the parents' requests with an open mind, has denied the parents' right to participate in the IEP process. (Deal, Ibid., 392 F.3d at p. 858.)

For IEP team meetings, predetermination occurs when an educational agency has decided on its offer prior to the meeting and is unwilling to consider other alternatives. (Deal v. Hamilton County Board of Education, supra, 392 F.3d 840, 857-858. Although an educational agency is not required to accede to parents' desired placement, it must maintain an open mind about placement decisions and be willing to consider a placement proposed by the parents, as well as its own proposed placement. H.B. v. Las Virgenes Unified School Dist. (9th Cir. 2007), No. 05-56486) (9th Cir. 2007) 239 Fed. Appx. 342, 345 [nonpub. opn.].) An educational agency must make it clear to parents at the outset of an IEP meeting that the proposals offered by a school district are only recommendations for review and discussion with the parents.

If a school district brings a draft of some or all of the content of the IEP to an IEP meeting, the parents are entitled to bring to an IEP team meeting their questions, concerns, and recommendations as part of a full discussion of a child's needs and the services to be provided to meet those needs before the IEP is finalized. (*Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities* (March 12, 1999) 64 Fed. Reg. 12478-12479.)

School officials may permissibly form opinions prior to IEP meetings. However, if the district goes beyond forming opinions and becomes impermissibly and deeply wedded to a single course of action, this amounts to predetermination. (*P.C. v. Milford Exempted Village Schools* (S.D. Ohio, January 17, 2013, No. 1:11-CV-398) 2013 WL 209478, p. 7.)

A school district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of a FAPE. Substantive harm occurs when parents are denied meaningful participation in a student's IEP development. (*Deal v. Hamilton County Bd. of Educ.*, *supra*, 392 F.3d 840, 857-858.). Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed. Appx. 342, 344 [nonpub. opn.]. The law is clear a district may not present a proposal at an IEP team meeting with a take it or leave it offer, which constitutes error. (*JG v. Douglas County School Dist.*, (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.)

In *W.G. v. Board of Trustees of Target Range School Dist.*, *supra*, 960 F.2d at 1479, 1484, the Ninth Circuit recognized the IDEA's emphasis on the importance of meaningful parental participation in the IEP process. An educational agency's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of FAPE. (*Deal v. Hamilton County Bd. of Educ.*, *supra*, 392 F.3d at 858.) Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B., et al. v. Las Virgenes Unified School Dist.*, *supra*, 239 Fed. Appx. at 344; *see also, Ms. S. ex*

rel. G. v. Vashon Island School Dist. (9th Cir. 2003) 337 F.3d 1115, 1131 ["A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, then simply presents the IEP to the parent for ratification," (*citing Target Range, supra*, 960 F.2d at p.1485)].)

When all of the other IEP team members voiced their opinions that SDCC was an inappropriate placement for Student, Molina did not offer to look into other nonpublic schools as possible alternative placements for Student. Instead, Molina offered to assess Student, but did not explain how an assessment would address the dispute regarding the offer of placement at SDCC. It was clear Student did not have behavioral problems that would warrant placement at SDCC.

At the January 24, 2022 IEP meeting Molina failed to cogently respond to the specific information and reasons Parents and the other IEP members expressed as to why SDCC was an inappropriate nonpublic school placement for Student. Molina did not offer to look into the concerns expressed by Parents and all the other IEP team members about the inappropriateness of SDCC for Student.

Moreover, even though Molina based his offer of placement at SDCC on his opinion that Student needed a more therapeutic setting than Excelsior Academy and the Winston School, he never spoke with Student's private therapist, or any other member of Student's IEP team about her behavioral and social emotional needs. There was no evidence that anyone from Excelsior Academy or an IEP team member told Molina that Student needed a more therapeutic nonpublic school placement than Excelsior Academy and the Winston School. Molina's opinion that Student needed a therapeutic placement was based on a comment in the records that Student had, at times,

frequently texted or emailed several Excelsior Academy staff members for support when she was anxious. No one else on the IEP team considered this justification to place Student at SDCC.

Molina disregarded the opinions of all the other IEP team members that SDCC was not only an inappropriate placement for Student, but would likely be a harmful environment for Student. The other IEP team members uniformly opined at the meeting that the frequency of the externalized negative behaviors exhibited by students attending SDCC would increase Student's anxiety and interfere with her access to the curriculum. Molina was unyielding, and continued to offer only one placement that was objectionable to all other IEP team members.

The law required San Dieguito to engage in an open discussion of Student's educational program and show a willingness to discuss and consider the options proffered by Parents. San Dieguito failed to do that. When a school district gives parents a "take it or leave it" approach to an offer of a FAPE, it contravenes the purposes of the IDEA, which was enacted to ensure that all children with disabilities receive a FAPE, and that the rights of eligible children and their parents are protected. (Anchorage School Dist. v. M.P. (9th Cir. 2012) 689 F.3d 1047, 1055-1056.) San Dieguito was inflexible, and took a "take it or leave it" position as to the offer of placement at SDCC.

San Dieguito's implacable position on its placement offer of SDCC was contrary to the IEP team collaborative process central to the IDEA. San Dieguito took the position in its closing brief that it solely has the authority to choose providers of instruction and services, including the specific nonpublic school to be offered as placement to Student, which is true only to a limited extent. While placement has

historically referred to points along the continuum of placement options available for a child with a disability, not all nonpublic schools are the same, and can be vastly different. For this reason, a collaborative discussion of the child's individual academic, behavioral, and social emotional needs and which nonpublic school can meet those needs, is required. In this case San Dieguito failed to do this.

San Dieguito took the position the mandated collaboration of the IEP team only extends to the type of placement along the continuum of placements. Placements along the continuum become more restrictive as a child is isolated more and more from typically developing peers, but also from the classroom environment. (See Ed. Code, § 56361.) Here, SDCC provided an extremely controlled environment, far removed from the more typical school experience offered by Excelsior Academy and the Winston School, albeit in smaller setting with a small student-to-adult ratio. If all nonpublic schools provided the same program in the same setting, there would be no need for parents to tour various nonpublic schools prior to an IEP team discussing which nonpublic school is a good fit for a child before the team offers placement at a specific nonpublic school.

The Central District of California of the U.S. District Court granted student summary judgment in *William S. Hart School District v. Kimberly Antillon* (2021) 2021 WL 544926 (CV 19-8328), finding the administrative law judge, called an ALJ, did not err in finding that the school district failed to present a clear written offer of a FAPE by simply offering placement at a nonpublic school, rather than identifying the specific nonpublic school offered. If San Dieguito's position, that it has the sole authority to choose the specific nonpublic school once the IEP team decides on nonpublic school as the placement along the continuum was correct, why would the law require a school district to identify the specific nonpublic school on an IEP?

The difference between various nonpublic schools is significant. Choosing a specific nonpublic school is different than choosing the specific provider of a related service. A school district has the sole discretion to determine the identity of the speech language pathologist who will provide speech therapy to a child because it is reasonable to assume that all licensed speech therapists will have the same set of skills. That is not true about all nonpublic schools. They are not all the same. Many nonpublic schools are specialized to serve children with specific disabilities. A nonpublic school that serves children who are deaf or hard of hearing is vastly different than a nonpublic school that primarily serves children with autism. This vast difference between nonpublic schools is precisely why the entire IEP team, not just the district representative, must be allowed meaningful input into the determination of which specific nonpublic school is appropriate for a child, depending on the child's disabilities. That is why it is essential that the choice of the specific nonpublic school be collaborative, and not be predetermined by the school district, which is what occurred in this case.

The *Rowley* standard, as affirmed and restated in *Endrew F.*, required San Dieguito to provide Student access to specialized academic instruction and related services individually designed to provide educational benefit, through an IEP reasonably calculated to enable Student to make progress appropriate in light of her circumstances. The offer of a category of schools on the continuum, many of which would be inappropriate, was not sufficient to meet this standard. In any event, San Dieguito did not stop at offering a category of school in the January 24, 2022 IEP, but specifically offered SDCC. Molina, as San Dieguito's representative at the IEP, was required to have an open discussion with the other IEP team members regarding the appropriate nonpublic school placement to meet Student's needs. His refusal to do so evinced a

predetermined, unchangeable offer. The exclusion of Parents and the other IEP team members from the decision of which specific nonpublic school was appropriate for Student was inconsistent with the intent of the IDEA.

In summary, San Dieguito materially failed to comply with procedural requirements of the IDEA by predetermining its placement offer of SDCC.

SAN DIEGUITO IMPEDED PARENTS' PARTICIPATION IN THE IEP FORMULATION PROCESS

In the event of a procedural violation, a denial of a FAPE may only be found if that procedural violation

- impeded the child's right to a FAPE,
- significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child , or
- caused the child a deprivation of educational benefits.

(Ed. Code, § 56505, subd. (f)(2).) San Dieguito's error significantly impeded Parents' opportunity to participate in the decision-making process of developing a FAPE for Student in the IEP dated November 15, 2021, and developed on November 15, and 29, 2021, December 13, 2021, and January 21 and 24, 2022. As a result, San Dieguito denied Student a FAPE by predetermining the offer of placement at SDCC. Therefore, Student prevailed on Issue 1. Any findings about SDCC in this Decision apply only to the issue of whether San Dieguito predetermined its offer of placement at SDCC.

ISSUE 2: DID SAN DIEGUITO UNION HIGH SCHOOL DISTRICT DENY STUDENT A FAPE DURING THE 2021–2022 SCHOOL YEAR BY OFFERING STUDENT PLACEMENT AT SAN DIEGO CENTER FOR CHILDREN NONPUBLIC SCHOOL?

Student contends San Dieguito denied Student a FAPE during the 2021-2022 school year by offering Student an inappropriate placement at SDCC, a nonpublic school primarily for children who have behavioral deficits. Student contends SDCC is not an appropriate placement because Student's anxiety would be triggered and exacerbated by the negative and aggressive behaviors of other children attending SDCC, and Student's anxiety interferes with Student's ability to access her education. Student contends that an appropriate placement for Student is a nonpublic school, such as Winston School, with small classes, which does not admit children with aggressive and/or negative behaviors.

San Dieguito contends it did not deny Student a FAPE during the 2021 school year by offering Student placement at SDCC, because SDCC is a nonpublic school equipped to implement Student's IEP. San Dieguito further contends that SDCC is an appropriate placement for Student because she requires a therapeutic setting and SDCC is a nonpublic school with therapeutic supports embedded in its program.

Because the evidence established San Dieguito predetermined the offer of placement at SDCC in the IEP dated November 15, 2021, and significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, which resulted in a denial of a FAPE, it is not necessary to address Issue 2 in this Decision. (*Anchorage School Dist. v. M.P.*, *supra*, 689 F.3d

1047, 1054.) (It is unnecessary for a court to address substantive inadequacies of an IEP if it has identified procedural inadequacies that seriously infringe upon the parents' opportunity to participate in the IEP formulation process.) Issue 2 involves the same offer of a FAPE that is the subject of Issue 1 in this case. Since San Dieguito significantly impeded Parents' participation in the IEP formulation process there can be no legally appropriate substantive offer of a FAPE in the November 15, 2021 IEP.

PARENTS ARE ENTITLED TO REIMBURSEMENT FOR THE COST OF PLACING STUDENT AT THE WINSTON SCHOOL

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. §1415(i)(2)(C) (iii); *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996] (*Burlington*).) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, n. 11.) Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were appropriate under the IDEA and replaced services that the school district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *Burlington, supra*, 471 U.S. at pp. 369-371.) When a school district fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief that is "appropriate" in light of the purposes of the IDEA. ALJ's have broad latitude to fashion equitable remedies appropriate for a denial of a FAPE. (*Id.* at 369-370; *Forest Grove School Dist. v. T.A, supra*, 557 U.S. at 244, n. 11.)

Courts may still require a district to provide tuition reimbursement even if the child never received public education. The receipt of special education and related

services through the public school system is not a prerequisite for reimbursement. As such, the mere failure to make a FAPE available to a student with a disability can expose a district to a claim for tuition reimbursement. However, reimbursement also will depend on whether the private placement is appropriate, and whether there are any equitable considerations, such as a lack of proper notice, that would bar reimbursement. (*Forest Grove School Dist. v. T.A.*, *supra*, 557 U.S. at pp. 233, 238-240.) The parents of a child with a disability need only have requested the provision of special education and related services in order to qualify for tuition reimbursement. (*Frank G. v. Board of Educ. of Hyde Park, Cent. School Dist.* (2d Cir. 2006) 459 F.3d 356, 376, *cert. den.*, 552 U.S. 985 (2007).)

The ruling in *Burlington* is not so narrow as to permit reimbursement only when the placement or services chosen by the parent are found to be the exact proper placement or services required under the IDEA. (*Alamo Heights Independent School Dist. v. State Bd. of Educ.* (5th Cir. 1986) 790 F.2d 1153, 1160-1161.) Although the parents' placement need not be a "state approved" placement, it still must meet certain basic requirements of the IDEA, such as the requirement that the placement address the child's needs and provide him educational benefit. (*Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 13-16, 50 [114 S.Ct. 361] (*Carter*)). Parents may receive reimbursement for the unilateral placement if it is appropriate. (34 C.F.R. § 300.148(c); Ed. Code, § 56175; *Carter, supra*, 510 U.S. at pp. 15-16.) The appropriateness of the private placement is governed by equitable considerations. (*Ibid.*) The Ninth Circuit has held that to qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special education service necessary to maximize their child's potential. (*C.B. ex rel. Baquerizo v. Garden Grove Unified School Dist.* (9th Cir. 2011) 635 F.3d 1155, 1159.) However, reimbursement may be reduced or denied in a

variety of circumstances, including whether a parent acted reasonably with respect to the unilateral private placement. (20 U.S.C. § 1412(a)(10)(C)(iii); 34 C.F.R. § 300.148(d); Ed. Code, § 56176.)

In this case Parents acted reasonably with respect to their unilateral placement of Student. They gave San Dieguito proper notice of their intention to unilaterally place Student at the Winston School and to seek reimbursement for the costs of that placement from San Dieguito. There are no circumstances justifying a reduction of the costs incurred by Parents in unilaterally placing Student at the Winston School. Therefore, Parents are entitled to be reimbursed by San Dieguito for costs they incurred in placing Student at the Winston School from March 1, 2021, through the end of the summer 2022 extended school year program. Per *Carter*, Student must only show that the Winston School addressed Student's needs and provided her educational benefit.

STUDENT RECEIVED EDUCATIONAL BENEFIT AT THE WINSTON SCHOOL

The Winston School has been certified as a nonpublic school by the California Department of Education since 1989. It is accredited to award high school diplomas by the Western Association of Schools and Colleges. The Winston School serves children from sixth to 12th grade. The majority of students there have IEPs. About half the children attending the Winston School were placed there by a public school district with IEPs. It did not accept children who exhibited negative, noncompliant and uncooperative behaviors.

The teachers at the Winston School all hold teaching credentials in a single subject, or a special education teaching credential. The staff includes an occupational therapist, a speech language pathologist, a part-time clinical psychologist, and a full time therapeutic counselor who has a master's degree in counseling. Both the

psychologist and counselor provide therapeutic services to students pursuant to scheduled sessions, as well as on demand when needed. The Winston School allows their students to take breaks from class in a sensory break room if they need to re-regulate before returning to class.

Reed was familiar with Student's most recent IEP, and opined that the Winston School had the resources to implement it. Student regularly participated in class discussions. Student completed her seventh grade-level academic work in all classes and proved herself to be a very hard worker. She also received some supplemental math instruction. The Winston School's curriculum is not modified, and all Student's work was at grade level.

Student's behavior at the Winston School was good. She was compliant with rules, and withdrew if she was ever exposed to aggressiveness or loudness. For example, in one instance, Student was exposed to another child yelling at a teacher, which upset Student. It took her about 30 minutes to calm down and return to class after that incident. However, this was an unusual incident at the Winston School, since the children there did not often exhibit extreme behaviors.

Student received occupational therapy and speech and language therapy services at the Winston School. Student also received counseling twice a week. Student has also done well socially and emotionally at the Winston School. She has made friends, is happy, and wants to continue attending school there.

In this case Parent's unilateral placement of Student at the Winston School was appropriate and reasonable. Student obtained educational benefit and her needs were met at the Winston School. Therefore, Parents are entitled to be reimbursed by San

Dieguito for the costs they incurred in placing Student at the Winston School from March 1, 2022, through the end of the summer 2022 extended school year program.

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:

Did San Dieguito Union High School District deny Student a FAPE during the 2021–2022 school year by predetermining placement at San Diego Center for Children nonpublic school? Yes. San Dieguito denied Student a FAPE during the 2021-2022 school year by predetermining the offer of placement at SDCC.

Student is the prevailing party for Issue 1.

ISSUE 2:

Did San Dieguito Union High School District deny Student a FAPE during the 2021–2022 school year by offering Student placement at San Diego Center for Children nonpublic school? Because San Dieguito predetermined the offer of placement at SDCC in the IEP dated November 15, 2021, thereby significantly impeding Parents' opportunity to participate in the decision-making process regarding the offer of a FAPE to Student, which resulted in a denial of a FAPE, it is not necessary to address Student's issue number two in this Decision. Issue number two involves the same offer of a FAPE that is the subject of issue number one in this case. Because San Dieguito significantly impeded Parents'

participation there can be no legally appropriate substantive offer of a FAPE in the November 15, 2021 IEP. Therefore, there is no prevailing party for Issue 2, which did not need to be decided.

SAN DIEGUITO SHALL REIMBURSE PARENTS FOR THE COST OF TUITION AND RELATED SERVICES PROVIDED

Parents acted reasonably in placing Student at the Winston School when San Dieguito did not offer Student a FAPE. Moreover, Student obtained educational benefit and her needs were met while attending the Winston School since March 1, 2022. Therefore, San Dieguito shall reimburse Parents as addressed in the Remedies section below.

REMEDIES

EXPENSES INCURRED BY PARENTS IN PRIVATELY PLACING STUDENT AT THE WINSTON SCHOOL SINCE MARCH 1, 2022

COSTS OF TUITION

Parents paid an aggregate of \$14,990 to the Winston School for the cost of Student's tuition from March 1, 2022, through the last day of the regular 2021-2022 school year, and for the summer 2022 extended school year. Student was offered an extended school year program for summer 2022 in the IEP dated November 15, 2021. Parents chose to pay for the tuition in installments, and incurred \$165 for accrued interest. However, as this cost was unnecessary San Dieguito is not required to

reimburse Parents for the accrued interest cost. San Dieguito is also not required to reimburse the mandatory \$995 registration fee charged to Parents to enroll Student at the Winston School.

COSTS OF RELATED SERVICES

The November 15, 2021 IEP offered Student the following related services:

- 60 minutes a week of language and speech services for pragmatics;
- 150 minutes monthly of individual counseling;
- 120 minutes monthly of group counseling;
- 60 minutes a month of parent counseling;
- 600 minutes a year of occupational therapy; and home to school transportation.

The November 15, 2021 IEP also offered Student language and speech, individual counseling and transportation services during the summer 2022 extended school year.

Student received the types and amounts of related services offered on her current IEP at the Winston School. Parents were liable to the Winston School for related services provided to Student in addition to instruction, pursuant to a private pay agreement between Parents and the Winston School, which Parents signed on April 21, 2022. The Winston School started providing those related services to Student about a week after April 21, 2022, according to Mother. However, Mother was unsure exactly when those services started, whether any group counseling services had been provided, and the amount or frequency with which the services were actually provided to Student.

The private pay agreement between Parents and the Winston School established the rate of the charges for related services provided at the Winston School were as follows:

- \$85 for a 45 minute group counseling session;
- \$75 for an individual counsel session;
- \$75 for a 30 minute monthly counseling session with Parents;
- \$85 for a 45
- minute group speech and language therapy session;
- \$125 for a one hour individual speech and language session; and
- \$75 for a 30 minute individual occupational therapy session.

These hourly rates are reasonable.

At the time of hearing Parents had not yet paid for the related services provided by the Winston School to Student. Parents had not yet even been billed for those related services by the Winston School. Mother estimated Parents owed about \$900 for the related services provided to Student by the Winston School from March 1, 2022 through the end of the 2021-2022 school year. There was no evidence as to what services would be provided to Student at the Winston School during the summer 2022 extended school year.

SAN DIEGUITO SHALL REIMBURSE PARENTS FOR COSTS OF TUITION AND RELATED SERVICES

San Dieguito shall reimburse Parents the maximum amount of \$14,990 for Student's tuition at the Winston School tuition from March 1, 2022, through the end of the summer 2022 extended school year program. This reimbursement is conditioned on

Parents providing San Dieguito with invoices from the Winston School for the tuition, and proof that Parents paid those invoices. Parents must also provide San Dieguito with Student's attendance records, establishing Student's attendance at the Winston School during that period. San Dieguito shall not be required to reimburse Parents for mandatory registration fees or interest charges Parents incurred with the Winston School.

San Dieguito will also reimburse Parents for the costs of related services they incurred on behalf of Student for related services she received from March 1, 2022, through the end of the summer 2022 extended school year program at the Winston School. Parents will be reimbursed only for related services that were offered to Student in the November 15, 2021 IEP, at the rates stated in the private pay agreement dated April 21, 2022, between Parents and the Winston School, and as stated above and found to be reasonable in this Decision. Parents must provide proof to San Dieguito that such related services were actually provided to Student and that Parents paid the Winston School for those related services. San Dieguito will also reimburse Parents for the cost of the mileage for one round trip between home and school at the Federal Internal Revenue Service rate from March 1, 2022, through the end of the summer 2022 extended school year program, for each day Parents drove Student to and from the Winston School. Student shall provide to San Dieguito proof that Parents provided transportation to and from the Winston School by providing Student's attendance records from the Winston School to San Dieguito for the applicable period.

ORDER

1. San Dieguito shall reimburse Parents in the maximum amount of \$14,990 for the fees for the Winston School tuition from March 1, 2022, through the

end of the summer 2022 extended school year program at the Winston School. As a condition of the reimbursement, Parents must provide San Dieguito with invoices from the Winston School for the tuition and proof that Parents have paid those invoices, as well as attendance records establishing Student's attendance at the Winston School during that period. San Dieguito shall not be required to reimburse Parents for mandatory registration fees or interest charges they incurred with the Winston School.

2. San Dieguito shall also reimburse Parents for the costs of related services the Winston School provided to Student between March 1, 2022, through the end of the 2022 extended school year program at the Winston School. Parents will be reimbursed only for related services that were offered to Student in the November 15, 2021 IEP, at the rates stated in the private pay agreement dated April 21, 2022, between Parents and the Winston School, and as stated above and found to be reasonable in this Decision. As a condition of reimbursement Parents must provide proof to San Dieguito that the related services were provided to Student and that Parents paid the Winston School for those related services. San Dieguito shall also reimburse Parents for the cost of the mileage for one round trip between home and school at the Federal Internal Revenue Service rate for the applicable period, from March 1, 2022, through the end of the 2022 summer extended school year program at the Winston School, for each day Parents drove Student to and from the Winston School. Student shall provide to San Dieguito proof of Student's daily attendance at the Winston School as a condition to reimbursement for transporting Student

to and from school between March 1, 2022, and the end of the 2022 summer extended school year program at the Winston School.

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.

/s/

Christine Arden

Administrative Law Judge

Office of Administrative Hearings