NOT FOR PUBLICATION

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HUNTER BANTA, Individually and on behalf of his minor son, I.B., Plaintiff - Appellant, v. KEITH HAYASHI; KENNETH S. FINK, M.D.; JOHN AND JANE DOES, 1-25; DOES, Entities 1-10, Defendants - Appellees.	No. 24-3324 D.C. No. 1:23-cv-00222-JAO-WRP MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Jill Otake, District Judge, Presiding

Submitted February 14, 2025**
Honolulu, Hawaii

Before: S.R. THOMAS, BRESS, and DE ALBA, Circuit Judges.

Plaintiffs I.B. and his father Hunter Banta (collectively, Banta) claim that Hawaii's Department of Education failed to provide I.B. with a free appropriate

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

public education (FAPE) under the Individuals with Disabilities Education Act (IDEA). The district court affirmed the administrative hearing officer's determinations that the Department of Education's failure strictly to comply with I.B.'s individualized education program (IEP) was not material, and that placement in a residential treatment facility was not an appropriate remedy. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

"The question of whether a school district's IEP provided a FAPE is reviewed de novo." *Crofts v. Issaquah Sch. Dist. No. 411*, 22 F.4th 1048, 1053 (9th Cir. 2022). "Courts must, however, give '"due weight" to judgments of education policy' when reviewing state administrative hearing decisions." *L.A. Unified Sch. Dist. v. A.O.*, 92 F.4th 1159, 1168 (9th Cir. 2024) (quoting *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1311 (9th Cir. 1987)). "Administrative findings that are thorough and careful," as they are in this case, "are entitled to 'particular deference.'" *Id.* (quoting *JG v. Douglas Cnty. Sch. Dist.*, 552 F.3d 786, 793 (9th Cir. 2008)).

1. The district court did not err in concluding that I.B. was not denied a FAPE. "To determine whether a student was denied a [FAPE], the court assesses first 'whether the IDEA's procedures were complied with and second whether the district met its substantive obligation to provide a FAPE.'" *Id.* at 1169 (quoting *Crofts*, 22 F.4th at 1054). As to procedure, there is no basis for Banta's assertion that the hearing officer was biased or precluded from serving in that role under 20

U.S.C. § 1415(f)(3)(A)(i). As to substance, we discern no error in the district court's conclusion that I.B. was not denied a FAPE when his registered behavior technician was out on maternity leave. This discrepancy with the IEP was not material because during this time, I.B. received individualized support from other staff members and continued to make academic progress. *See L.A. Unified*, 92 F.4th at 1170 ("Only 'material' failures to implement an individualized education program violate the statute." (quoting *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007))).

2. Even assuming a material failure of I.B.'s IEP, the district court properly found that placement in a residential treatment facility would not be an appropriate remedy. When determining whether a residential placement is appropriate, we "must focus on whether the residential placement may be considered necessary for educational purposes, or whether the placement is a response to medical, social, or emotional problems that is necessary quite apart from the learning process." *Ashland Sch. Dist. v. Parents of Student E.H.*, 587 F.3d 1175, 1185 (9th Cir. 2009) (brackets omitted) (quoting *Clovis Unified Sch. Dist. v. Cal. Off. of Admin. Hearings*, 903 F.2d 635, 643 (9th Cir. 1990)). The latter types of problems do not justify residential placement under the IDEA. *See id.*

In this case, the district court and hearing officer reasonably relied on the testimony of I.B.'s special education teacher that I.B.'s educational needs could be

met in the current school setting, and that his aggressive episodes were more uncontrollable at home rather than at school, where his behavior and coping skills were improving. The district court and hearing officer likewise reasonably discounted the testimony of Drs. Carlton and Brownstein because they were less familiar with I.B.'s educational experience. Banta's reliance on the hearing officer decision in *Student v. Dep't of Ed.*, Department of Education-SY2324-026 (Dep't of Att'y Gen. Mar. 18, 2024), is misplaced because the student there displayed extensive aggressive and self-injurious behavior at school, which is not the case here.[1]

3. There is no merit to Banta's argument that the district court committed procedural error in its resolution of this case. The district court did not deny Banta the opportunity to conduct discovery or present evidence. Banta's other allegations of procedural error are likewise unfounded.

AFFIRMED.

[1] To the extent Banta argues that I.B. was not provided with mental health services, the argument is both unexhausted and unsupported. In addition, because we affirm the district court's decision that I.B. was not denied a FAPE, we do not reach defendant Fink's arguments that he is not a proper party to this case, or, in the alternative, that Banta failed to exhaust his administrative remedies against Fink and the Department of Health. Finally, Banta's claim under Section 504 of the Rehabilitation Act fails "[b]ecause a school district's provision of a FAPE under the IDEA meets Section 504 FAPE requirements." *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1099 (9th Cir. 2013).