

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

LUCIA MAR UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2019020827

DECISION

Lucia Mar Unified School District filed a due process hearing request with the Office of Administrative Hearings on February 22, 2019. On March 11, 2019, OAH continued Lucia Mar's case for good cause.

Administrative Law Judge Laurie Gorsline heard this matter in Arroyo Grande, California on April 9, 10, 11, 18 and 19, 2019.

Attorney Jan Tomsy represented Lucia Mar. Lucia Mar's Director of Special Education, Jennifer Handy, Ed. D. attended all days of hearing. Parent represented Student. Student attended a portion of the first day of hearing.

At the close of hearing on April 19, 2019, the ALJ granted the parties' request for a continuance to May 14, 2019, for the parties to file written closing arguments. The record was closed and the matter was submitted for decision on May 14, 2019.

## ISSUE<sup>1</sup>

Did Lucia Mar Unified School District's September 21, 2018 individualized education program, developed at IEP team meetings on September 21, October 12, and November 9, 2018, offer Student a free appropriate public education?

## SUMMARY OF DECISION

Lucia Mar failed to prove that the September 21, 2018 IEP developed at the September 21, October 12 and November 9, 2018, IEP team meetings offered Student a FAPE. Lucia Mar did not establish it complied with all of the IDEA's procedural requirements in developing the September 21, 2018 IEP, and that all of the special education and related services offered in the IEP were reasonably calculated to enable Student to receive educational benefit. Lucia Mar failed to make a clear, coherent offer of special education and related services which Parent could understand and evaluate to decide whether to accept. The IEP inconsistently stated the amount of time offered in the extended school year for specialized academic instruction and occupational therapy services. Lucia Mar failed to prove that the group occupational therapy services offered during the extended school year were appropriate. Lucia Mar did not prove that Student's three speech goals were based on accurate baselines and as such, it failed to prove that the speech goals and speech services offered were appropriate. Although many of Lucia Mar's witnesses testified about the appropriateness of the fall 2018 IEP Annual Goals, it failed to prove that Student had a reasonable chance of attaining all of

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<sup>1</sup> The ALJ rephrased the issue for clarity as allowed by the holdings in *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].)

the goals within a year, and that all of the goals were objectively measurable and appropriately designed to measure progress. Lucia Mar failed to prove that it sent legally compliant IEP team meeting notices to Parent regarding the IEP team meetings held in September, October and November 2018 and that it invited Student to these IEP team meetings. It held the October 2018 IEP team meeting without the general education teacher being present or properly excused in writing. Lucia Mar failed to prove that the assessment it administered in preparation for the fall 2018 IEPs, upon which its offer of special education and related services was based, was properly administered by trained personnel or that the assessment results were reliable. Because of Lucia Mar's multiple procedural violations, along with its failure to prove both procedural and substantive compliance, the evidence failed to establish that the September 2018 IEP offered Student a FAPE.

## FACTUAL FINDINGS

1. Student was a 20-year-old male at the time of the due process hearing. He was eligible for special education and related services since preschool, and at the time of the due process hearing was eligible under the primary category of multiple disabilities and secondary category of orthopedic impairment. Since preschool, Student resided within Lucia Mar Unified School District with Parent. Parent was the limited conservator for Student with the power to make decisions concerning Student's education since he was 18 years of age.

## BACKGROUND

2. Student had a very rare genetic chromosomal abnormality which caused developmental delays. He had cognitive delays, macrocephaly, a left-foot deformity, mild scoliosis, a seizure disorder, was hypotonic (had low muscle density), and he had skin ulcers related to complications from post-operative surgery. Included in Student's

health cumulative file at Lucia Mar was a letter dated August 23, 2004, from a doctor at Stanford University Medical Center stating that Student had been diagnosed with a chromosome abnormality, which may manifest as a variety of clinical symptoms. The letter stated Student's macrocephaly, global developmental delays with cognitive impairment and seizures were secondary to his chromosome abnormality. The doctor who wrote the letter recommended occupational, physical and speech therapy for continued progress in his development. The doctor stated that she would support a request for a heavy duty wheelchair as a transportation aid when Student was fatigued and refused to walk because he was not easy to carry and did not fit into a standard stroller.

### OCTOBER 2016 ANNUAL IEP

3. Student's annual IEP team meeting began on October 14, 2016, and took place over the course of five IEP team meetings with Parent in attendance. Student's eligibilities of multiple disabilities or orthopedic impairment impacted his ability to access the general education curriculum due to delays in cognitive, adaptive, social and academic skills without individual and small group instruction and modifications/accommodations. Student enjoyed talking with people and engaging others in conversation. He wanted to help whenever he could by being involved in school social events. He enjoyed working with his hands. He was motivated by praise and had great empathy. In math, he was working on sequencing cards with the numbers 1 through 5. In writing, he could make three to five marks with a writing instrument and could trace the initials of his name and other three letter words with prompts. In reading, he could match symbols/pictures to five activities, and enjoyed pointing out pictures, and identifying objects. In communication development, he enjoyed brief communicative interactions. He had difficulty with vocabulary and struggled to consistently name objects in the absence of verbal cues. In gross motor/fine motor development, he could walk independently during warm up activities and when

prompted could move both arms at the same time. He used both hands-on functional tasks and could touch, point and scroll when using a touchscreen device. Vocationally, when given three mastered tasks and instructions to begin them, he struggled to stay focused without being distracted and complete tasks without prompts. He was working on being able to perform four-step tasks independently. In adaptive/daily living skills, he was monitored while eating to prevent overstuffing, needed to be prompted to use the bathroom and was assisted with toileting tasks. His food needed to be cut into small pieces and he needed staff to remind him to eat slowly. He needed the support of a handrail to maintain balance while urinating. He wore bilateral foot orthotics and used a wheelchair to and from the bus. He had the following healthcare plans: seizure disorder, general care, toileting, and mealtime procedures. Student's areas of need were identified as communication, functional academics, vocational, physical education, motor skills, social/emotional, and daily living skills.

4. Lucia Mar's offer of special education and related services included 1065 minutes per week of specialized academic instruction in a special day class for four periods per day and two periods of general education at his home school of Arroyo Grande High School; 30 minutes per day of mentoring/transition services; 120 minutes per month of individual speech services; 120 minutes per month of individual/group occupational therapy; 100 minutes per minutes per month of individual/group adapted physical education; extended school year services; transportation; annual goals, and a transition plan. Lucia Mar offered an alternate curriculum leading to a certificate of completion. The October 2016 IEP was the last agreed upon and implemented IEP before the due process hearing.

#### 2017 TRIENNIAL ASSESSMENTS AND IEP

5. Lucia Mar conducted triennial assessments in Spring 2017. The assessments were reviewed during IEP team meetings in 2017. As part of its offer of a

free appropriate public education, Lucia Mar offered specialized academic instruction in the adult transition program for 840 minutes per week, and 720 minutes per week of work experience education. Parent did not consent to the 2017 triennial IEP.

#### LUCIA MAR ADULT TRANSITION PROGRAM

6. In January 2018, all three classrooms comprising the Lucia Mar adult transition program were relocated to the Mesa View campus located about five miles from Arroyo Grande High School. The adult transition program had approximately 20 students in it, ranging in ages from 18 to 22. The students were grouped into one of the three classrooms based on levels of ability and deficits. One classroom was comprised of students with the most intensive needs, mostly nonverbal, and all needed support toileting. Gina Rose taught this class. The middle level classroom was comprised of students who were verbal, but nonreaders, who needed less support, and were at the kindergarten to third grade level, academically. Stacey Morgan taught the middle level class. The third classroom was comprised of students who required the least amount of support, reading at a fifth-grade level for fluency and second or third grade for comprehension. Michael Rinehart taught in this classroom, which was the most advanced class in the adult day program. He was an education specialist employed as a Lucia Mar adult transition teacher since 2015. He held a bachelor's degree in elementary education since 2005 and a special education mild moderate credential since 2007. He worked for Lucia Mar for almost 13 years, as a special day class teacher for six years, and as a resource teacher for three years at Arroyo Grande High School. Mr. Rinehart was the only adult day program teacher who testified at hearing and he was unfamiliar with Student.

7. The adult transition program included classroom instruction and community-based instruction, with opportunities to interact with typical similar-aged adults. The instruction included rotation doing work-related tasks at various job sites,

including a restaurant, a market, and an organic farm, and community integration related activities which focused on recreation and leisure, such as traveling to a local university, buying and eating lunch on campus, and visiting adult day programs. The program also included on campus participation in physical education, working with technology in the classroom, structured leisure time, eating lunch on campus, and campus tasks or activities such as basic janitorial jobs, taking down the flag and cooking. The adult transition program helped students develop skills to integrate into and access the community. Some adult transition program students had the opportunity to work with typically functioning high school students through a mentoring program at a nearby high school. There was a nurse assigned to Mesa View, who was also assigned to service other campuses.

8. Marco Dovideo was Lucia Mar's special education area administrator for the adult transition program and Arroyo Grande High School for over two years. He held a master's degree in special education, and credentials in mild moderate special education since 2009 and general education social science since 2003. Prior to working for Lucia Mar, he was a high school special education coordinator for three years, responsible for facilitating daily operations of special education and was an IEP administrative designee. He also worked as a special day class teacher in a mild-moderate classroom, co-taught at the high school level and was an adult transition program teacher. His duties at Lucia Mar included evaluating staff, providing support to school site staff and attending IEPs.

9. According to Mr. Dovideo, the mission of the adult transition program was to allow students to meaningfully participate and contribute to their community regardless of disability. He was on the adult transition program campus three days per week for an hour, depending on the number of IEPs he had to attend. He was familiar with Ms. Morgan's class because he spent some time in her classroom. Some students

who attended the adult transition program went on to work with the Tri-Counties Regional Center in an adult day program. The adult transition program helped prepare students for those programs by mirroring those experiences.

## 2018 INDEPENDENT EDUCATIONAL EVALUATIONS

10. Parent requested and Lucia Mar funded independent educational evaluations in February 2018 in three areas, physical therapy, augmentative communication, and psychoeducation. The independent assessors prepared written reports which the IEP team reviewed at an IEP team meeting in spring 2018. The independent psychoeducation report stated that Student had been in the class for two years, had "outgrown" his special day class on the Arroyo Grande High School campus, and that the adult transition program was currently the best fit for Student's educational needs. The augmentative communication evaluation report recommended that Student learn strategies to cue his communication partner as to his intended meaning, continue to use scripts and repetition to teach Student more communication functions, attempt use of videotaped social interactions to teach Student more skills and continue the current speech therapy. The physical therapy assessment report stated that Student would benefit from improved orthotics, and that he did not need a walker or wheelchair, or school-based physical therapy services.<sup>2</sup>

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<sup>2</sup> None of the independent assessors testified at hearing. Lucia Mar offered no explanation as to why the assessors did not testify. As such, less weight was accorded to the information stated in the reports than had the assessors testified because, for example, Lucia Mar failed to establish that the assessors were properly credentialed, provided accurate information, or otherwise adhered to legal requirements for assessment administration.



## 2018-2019 ARROYO GRANDE HIGH SCHOOL PLACEMENT AND RELATED SERVICES

11. Ashley Sarmiento was Student's special education teacher in a moderate severe special day class at Arroyo Grande High School since August 2018. She held a master's degree in educational counseling, and credentials as an educational specialist intern for teaching a moderate severe classroom and pupil personnel services in educational counseling. She completed her coursework for becoming a board-certified behavior analyst. Between 2016 and 2018, she was an instructional assistant in Student's classroom, assigned to another student. Prior to her employment at Lucia Mar in 2016, she worked for the San Luis Obispo County of Education as a behavior health specialist and supervisor of autism services for a total of 10 years. Her duties as a teacher at Lucia Mar included collaboration with staff, development and collection of data, goal monitoring, and writing goals. She had experience in writing behavior goals through her work as an autism services supervisor.

12. Ms. Sarmiento's 2018-2019 special day classroom was comprised of students in grades eight through 12-plus with moderate to severe disabilities. Student was her oldest student, and one of two students in grade 12-plus. The other grade 12-plus student in her class was 19 years old. Ms. Sarmiento was not aware of other students on the Arroyo Grande High School campus that were 20 or 21 years of age. She had seven classroom-based instructional assistants, although some aides were assigned to particular students. Her classroom was not an adult transition program classroom, although the class took trips to the donut store and made and simulated purchases to practice math skills to help with transition to the adult transition program. Her classroom also had a kitchen and her students worked on daily living skills, such as basic cooking, brushing teeth, and washing dishes. She visited the adult transition program toward the end of 2017-2018 school year and was aware of the services offered in that program. Parent did not give written permission for Student to

participate in the community-based activities Ms. Sarmiento instituted during the 2018-2019 school year.

13. At hearing, Ms. Sarmiento described Student as a fun and happy student. He worked hard in class, was very sociable and had a great sense of humor. He was supported by a one- to-one aide since 2016, and in her opinion, required a one-to-one aide at all times for support, including redirection, and to access his educational program. She saw Student as someone working on basic skills in reading, writing and math, including identifying letters, numbers and words, and that it took repetitive lessons for mastery of skills. He could not read or do simple addition independently. He could write some letters and trace words. Student moved around the classroom independently, but had balance issues, and when he wore his orthopedic braces “he did great.” He was able to identify different emotions he felt and participated in groups, but worked better in smaller groups because he got distracted. Student interacted with technology in the classroom and he was working on letter formation in writing. He could use the toilet, interact with peers, follow directions, and work on daily living skills.

#### RELATED SERVICES DURING THE 2018-2019 SCHOOL YEAR

##### Speech and language services

14. Student received speech and language services at Lucia Mar during the 2018-2019 school year.

##### Occupational Therapy

15. Brenda Radtke was a licensed occupational therapist since 1980, employed by Lucia Mar since 2014, and was authorized to provide occupational therapy services to children in public schools. She held a master’s degree and bachelor’s degree in occupational therapy, and certifications in swallowing, hand therapy and assistive technology. She worked at Arroyo Grande High School for three years and at the adult

transition program for two years.

16. Ms. Radtke was Student's occupational therapist service provider in elementary school, and since 2015 provided individual services to Student for 30 minutes per week. She worked on his skills in the following areas: fine motor, motor planning, daily living and self-care. Generally, he made progress in his fine motor skills and ability to attend. Student required an aide throughout the school day. Feeding was always a safety concern. Student required support eating because of concerns with stuffing and eating too fast. She helped develop the mealtime plan and toileting plan with the school nurse which were being implemented at school and helped train Student's aides. Technology was one of Student's preferred activities, along with socializing, and movement. He could walk a long distance, but moved more cautiously with orthotics, which he wore to provide alignment of his feet and prevent more deformity.

#### Adapted Physical Education

17. Anna Paquette was an adapted physical education teacher for Lucia Mar since August 2017. She held a bachelor's degree in kinesiology since May 2015, and mild moderate and multiple subject credentials, along with an adaptive physical education authorization since 2017. She had one year of experience teaching an elementary school special day class as an intern.

18. Ms. Paquette provided adapted physical education services to Student since August 2017. Adapted physical education meant modification of activities to permit students greater access to that activity. She described Student as very friendly and she thought he responded well to staff prompts and input. Student attended physical education daily and used orthotics. She provided services to Student once per week for 30 to 50 minutes during physical education. She worked with him one-on-one during that time, passing the basketball, walking the track, and doing rhythmic

gymnastics. He could elevate his heart rate and perform in a large group. He required some modeling, but could follow those models, and was willing to participate.

#### STUDENT'S ANNUAL NEEDS DETERMINATION INVENTORY

19. Student's Annual Needs Determination Inventory was an assessment which Lucia Mar began to use during the 2016-2017 school year to assess present levels of skills and provide guidance in writing IEP goals. The Inventory Assessment was developed by the Riverside County Office of Special Education and evaluated students in areas of math, reading, communication, fine and gross motor, community instruction, job skills instruction, science and writing. Two portions of the Inventory Assessment were relevant to transition planning, including the transitional education/employment and transition community. Lucia Mar provided training to certain members of its staff regarding the Inventory Assessment. The Inventory Assessment had publisher instructions and a written report of the results of the Inventory Assessment was generated by the assessment. Lucia Mar provided formal reports for use at triennial IEPs, but written reports were not routinely prepared for annual IEPs.

20. At hearing, Mr. Dovidio explained that although he had never administered the Inventory Assessment, he was responsible for introducing it to Lucia Mar. According to him, it was an inventory of skills, not a norm-referenced assessment, and was designed for students with intellectual disabilities. It was a useful assessment because it provided present levels of performance based on four categories of ability and assisted staff in writing IEP goals. It was used as an annual assessment for all students in the adult transition program to determine present levels and IEP goals. Lucia Mar did not require parental consent for administration of the assessment to students because it was not a norm-referenced assessment. According to Mr. Dovidio, parental consent was only required for norm-referenced assessments. In 2017, he had a discussion with Parent who expressed concerns about the Inventory Assessment and the

intelligibility of the report it generated for Student's triennial IEP.

21. According to Mr. Rinehart, the Inventory Assessment was geared toward students with lower abilities. He described it as a standardized assessment used for goal writing, which led to a standard score and that it was used for triennial assessments.

22. At the beginning of the 2018-2019 school year, as part of her preparation for writing IEPs, Ms. Sarmento conducted an assessment of all of her students, including Student, using the Inventory Assessment. Parent did not sign an assessment plan for administration of the assessment to Student. The administration of the Inventory Assessment to Student took place over several sessions, between the week of August 20, 2018 and the first week of September 2018.

23. According to Ms. Sarmento, the Inventory Assessment was appropriate for Student's cognitive level and abilities. It was developed to assess students with intellectual disabilities. She labeled it a formative and a summative assessment which she described as an evaluation after the task, meaning formative, and during the task, meaning summative. According to Ms. Sarmento, there was a rubric for scoring tasks, and Student earned a particular score based on the number of prompts he required. It did not generate a standard score, but Ms. Sarmento did not know if it was a standardized assessment.

#### PREPARATION OF THE DRAFT OF THE FALL 2018 IEP

24. Based on the Inventory Assessment results, her classroom observations and collaboration with some members of Student's IEP team, Ms. Sarmento prepared some of Student's present levels of performance for the upcoming fall 2018 IEP and drafted some of the proposed goals, specifically annual goals 1 through 9 and 11 and three transition goals. She did not write Annual Goal 10 or Speech Goals 1, 2 and 3. When asked who she collaborated with to create the present levels, for gross and fine motor skills, she stated she spoke to the adapted physical education teacher and the

occupational therapist, however her testimony was equivocal regarding present levels of performance in communication development. Later, she admitted the present levels in communication development were input by the speech language pathologist and she did not collaborate on this section. She agreed with Lucia Mar's attorney during questioning at hearing that other providers physically input information into the IEP, but she failed to specifically identify all of the other people or all of the information input by them. She admitted that the majority of the information on gross and fine motor development was from the adapted physical education teacher and the occupational therapist. The lack of clarity in her testimony adversely affected her credibility.

25. Ms. Sarmiento prepared a transition plan, with proposed goals and collaborated with other team members regarding proposed services, placement and different portions of the IEP. As part of her preparation of the transition plan, Ms. Sarmiento interviewed Student by sitting with him, showing him pictures and talking about the things he enjoyed. Student spoke to her about his interests in music, art, computers, and dance. She looked at his present levels of performance and where she "liked to see him go" as he transitioned. She was aware of some portions of his prior IEPs, including the prior offer of the adult transition program.

26. Student's post-secondary goals drafted by Ms. Sarmiento included a training/education goal of participation in a community-based adult day program to continue to learn and use functional skills. He had a post-secondary employment goal of participation in a community-based adult day program to gain vocational experience after he turned 22 years of age. He had a third post-secondary goal for independent living to manage his self-care routines, pursue leisure and recreational activities, communicate wants and needs appropriately, as well as safely access the community. Activities to support the goals included learning functional skills in Lucia Mar's adult transition program and participation in community-based activities. All three of his goals

were connected to some of his annual goals.

#### SEPTEMBER 2018 HEALTH ASSESSMENT UPDATE

27. Cameron Epley was both a registered nurse and a credentialed school nurse employed by Lucia Mar assigned to Arroyo Grande High School since March 2018. His responsibilities as a school nurse included oversight of the health and wellness of all students on campus, providing staff training for emergency services and students' health needs, and acting as a resource for health-related education needs.

28. Mr. Epley reviewed Student's various care plans when he began employment with Lucia Mar. He supported Student's health needs on campus since March 2018, but did not provide any direct nursing services to Student at school or medication administration. His impression of Student was that he was an energetic, friendly and likable young man. He did not see Student easily fatigued very often and opined that Student could walk independently and did not need a heavy-duty wheelchair.

29. Student had various care plans in place which had been updated over the years, including a school mealtime procedure plan dated August 2018 to prevent Student from choking or overstuffing himself. To Mr. Epley's knowledge, there was no incident where Student choked or overstuffed himself since March 2018. Student also had a seizure disorder care plan for the 2018-2019 school year. Based on review of his medical records, Mr. Epley opined that Student had not had a seizure since age five. Student also had a medical care plan for the 2018-2019 school year in place, which served the purpose of informing staff about Student's medical history, day-to-day tasks they may have to perform, and the medication he was taking. Student had a toileting plan dated August 2018 consisting of a 23-step protocol. He sometimes needed prompting to go to the bathroom. Once Student was actually using the bathroom, Mr. Epley estimated that Student could perform the steps on the plan with 80 percent

independence depending on the circumstances. Student had episodes of loose stool which on average occurred once per month, but sometimes occurred three or four times per month. Mr. Epley denied staff advised him of any health emergency for the 2018-2019 school year, but admitted that in March 2018, he asked Parent to take Student home after Student had multiple bouts of loose stool for over an hour and was very pale in appearance, sweating and was in pain. There had been many episodes of loose stool lasting upwards of 45 minutes per episode that have occurred since April 2018 which required Mr. Epley to go into the classroom to assess Student.

30. The seizure plan, the toileting plan, the mealtime procedure plan and health care plan were not part of Student's IEPs. The plans were kept in the health office in Mr. Epley's personal office, in the moderate severe classroom and in the front office. He monitored the instructional assistants training and their day-to-day ability to work with Student regarding his mealtime plan and toileting plan, as well as making certain they were aware of his seizure care plan and could respond in the event of a seizure activity. He provided the yearly training to Student's instructional assistants and Ms. Sarmiento.

31. In September 2018, Mr. Epley drafted an updated written health summary in preparation for Student's fall 2018 IEP after reviewing Student's previous medical documentation, cumulative health file, and Parent input regarding health-related information. Parent told him in an email in September 2018 that there were no changes in Student's medical needs other than that Student was taking a larger dose of one anti-psychotic medication. The September 2018 health summary listed Student's diagnosis, his medications, his doctors, and his school health care plans. It stated that Student required prompting to empty his bladder at times and time to complete toileting, and he needed a handrail for balance. It also stated that Student had multiple vision deficits and failed his hearing exam in April 2017. It reported that Student had a mealtime plan



due to Student's risk of choking, he wore bilateral ankle foot orthotics and he used a wheelchair with a safety harness to and from the bus. Mr. Epley shared his updated health summary with Mr. Dovideo.

32. At hearing, Mr. Epley testified that Student's plans provided more support than Student needed. However, that testimony was given little weight because of the numerous inconsistencies and other issues with Mr. Epley's testimony which adversely affected his overall credibility. For example, Mr. Epley's testimony regarding the care plans was filled with contradictions and inconsistencies. He admitted he would have had to speak to Student's medical doctors to fully understand Student's medical issues and develop appropriate care plans. He claimed the care plan was accurate based on the information he had, and asserted he had not been able to talk to any of Student's doctors because Parent had not signed the requests for information providing consent. He later admitted he never sought Parent's written permission for access to Student's healthcare providers. When asked if he ever attempted to discuss with Parent obtaining Parent's consent, he was noticeably uncomfortable. He claimed he did not recall, but "believed" a conversation occurred at the Spring 2018 IEP meeting, but again stated he was not certain if it actually occurred. Mr. Epley was aware that Student had been seen by a multitude of medical doctors, including a primary physician, a neurologist, an orthopedist, an eye doctor, and an audiologist, among others. He agreed it would have been beneficial to speak to Student's doctors to understand Student's current conditions and admitted he wanted to speak to a doctor about Student's use of the wheelchair. Later, he attempted to contradict his earlier testimony, claiming that other than the loose stool issue he had not seen medical issues regarding Student that were of a concern to him and he did not see any concern that would have caused him to feel the need to speak to a doctor. He also asserted he would not change anything in the care plans even if he thought they should be changed unless he had Student's doctor's

approval. He then contradicted his testimony, claiming he would have modified the plans if they needed modification, but claimed he did not do so because he did not believe anything on the various plans needed to be changed. He also inconsistently claimed he never signed off on the care plan, but later admitted he approved the care plan for the school year. Mr. Epley was not a credible witness.

#### FALL IEP TEAM MEETING NOTICES

33. Jennifer Handy was the Director of Special Education at Lucia Mar since July 1, 2018. Her duties included oversight of all special education staff. She held a master's degree in educational counseling, an educational doctorate in educational leadership, a single subject general education teaching credential, and a pupil personnel services credential which authorized her to provide school counseling. Prior to her employment with Lucia Mar in 2018, she was a high school English teacher for three years, and she worked in an elementary school district as a school counselor for four years, an assistant principal for three years, a principal for just over three years, and held positions at the district level, including as director of special programs with duties similar to her duties at Lucia Mar.

34. Based on Lucia Mar's usual practice, Dr. Handy believed Lucia Mar provided Parent with date and time options for the fall 2018 IEP meeting, and then an IEP meeting notice was sent to Parent based upon the date Parent selected. Dr. Handy did not know when the IEP meeting notice was sent to Parent. Parent sent an email to Lucia Mar stating which meeting she planned to attend, but Parent never signed and returned any meeting notice.

35. At hearing, Mr. Dovidio claimed he provided written notices to Parent for the fall 2018 IEP team meetings, but he offered no details as to the dates those notices were sent to Parent or the contents of those notices.

## THE FALL 2018 ANNUAL IEP TEAM MEETINGS

36. Student's annual IEP team meeting took place over the course of three days: September 21, October 12 and November 9, 2018. The annual IEP team meeting also served as a transition IEP team meeting, and a meeting held pursuant to Parent's request. Dr. Handy took notes at all three meetings.

### September 21, 2018 IEP Team Meeting

37. Those in attendance at the September 21, 2018 IEP team meeting included Parent, Mr. Dovidio (as facilitator and administrator), Dr. Handy, Ms. Morgan, Ms. Sarmento, Ms. Paquette, Ms. Radtke, Shelby Solis Vidal (Student's general education dance teacher), Judy Stasek (a speech language pathologist assigned to Arroyo Grande High School), Kari Holtzman (a school psychologist) and Alfonso Gutierrez (a representative from the Tri-Counties Regional Center). The IEP recorded that Lucia Mar provided Parent with a copy of Parent's Rights and Procedural Safeguards but there was no evidence of its content. At the meeting, staff asked Parent to sign the meeting notice, but Parent wanted the date the notice was sent changed to September 21, 2018. Lucia Mar refused to change the date. Parent participated in the IEP team meeting.

38. The IEP team was provided with a draft copy of the IEP and began to review it. The purpose of the meeting was stated on the draft IEP as annual, transition and Parent requested IEP team meeting. As the team went over the IEP, Mr. Dovidio made handwritten revisions on the draft IEP. The team reviewed Student's present levels of performance. Ms. Sarmento reviewed Student's strengths, preferences and interests. Student greeted his peers and was helpful to staff and peers throughout the day. He looked forward to art and dance classes, and he enjoyed music. He demonstrated concern for others, was kind and considerate, and had a great sense of humor.

39. The team reviewed assessment and health information. Present levels were

provided by IEP team members. Ms. Sarmento reviewed Student's preacademic/academic functioning, social/emotional, and vocational levels. Ms. Stasek reviewed Student's communication development present levels. Ms. Paquette reviewed Student's present level related to physical education. Ms. Paquette shared that she was unable to speak to whether Student's ability to participate was impacted by his orthotics. Ms. Paquette highlighted that she was not a medical professional and that Student used the walker when he did not have his orthotics. Ms. Radtke reviewed Student's fine motor development present levels. Parent asked to review the health present levels. The information in the September 2018 health summary prepared by Mr. Epley had been included in the present levels of performance listed in the draft IEP reviewed by the IEP team. The team discussed Student's toileting skills and whether his level of independence could affect his access to adult day programs. Parent reported Student passed his hearing exam and updated the names of Student's doctors. Mr. Dovidio addressed the areas of need to be addressed by the goals. The areas of need were identified on the IEP as communication, functional academics, vocational, social emotional/behavioral, adaptive daily living skills and gross motor.

40. Mr. Dovidio reviewed the transition plan with the team. Ms. Sarmento reviewed the assessment used to inform the transition plan. The IEP team was not provided with the Inventory Assessment report to review. Parent asked for a copy of the results of the transition assessment results and Lucia Mar agreed to provide a copy to Parent. Ms. Sarmento orally shared a description of the Inventory Assessment. Parent asked about video modeling and Mr. Dovidio shared that video modeling was not currently a part of Student's IEP. Ms. Sarmento shared she used video modeling in the classroom. At hearing, Ms. Sarmento claimed that video modeling was part of Student's current IEP, which was inconsistent with Mr. Dovidio's statement at the IEP team meeting and Dr. Handy's testimony at hearing that she did not believe it was part of his

2016 IEP. Ms. Sarmiento's unfamiliarity with the IEP she was charged with implementing adversely impacted her credibility as a reliable historian.

41. Ms. Morgan shared some information about the adult transition program. Special factors and low incidence services were reviewed. Progress on October 2016 goals was reviewed. Student met both speech goals, his adapted physical education goal, and six of his eight other annual goals.

42. The IEP team did not finish the IEP team meeting on September 21, 2018. To simplify scheduling another meeting, Parent was asked if she would excuse any of the IEP team members from the continued IEP team meeting. Parent was not informed as to what would be discussed at the next IEP team meeting. Parent stated she would excuse the general education dance teacher, Ms. Solis Vidal, and the adult transition program teacher, Ms. Morgan. The team agreed to meet on October 12, 2018.

#### October 12, 2018 IEP Team Meeting

43. The IEP team reconvened on October 12, 2018. Those in attendance included Parent, Mr. Dovidio (as facilitator and administrator), Dr. Handy, Ms. Morgan, Ms. Sarmiento, Mr. Dovidio, Diana Schmid (a speech language pathologist), Ms. Sarmiento, Ms. Paquette, Ms. Radtke, Dr. Handy, and Mr. Gutierrez. The IEP stated that the general education teacher and the adult transition service teacher were excused from the IEP team meeting, however, Lucia Mar did not obtain written permission from Parent excusing them. Ms. Stasek did not attend the meeting because she left her employment with Lucia Mar before October 12, 2018. Neither Ms. Schmid nor Ms. Stasek testified at hearing. At hearing, Dr. Handy claimed she collaborated with Ms. Stasek on the proposed speech goals and acted "as a bridge" between Ms. Stasek and Ms. Schmid, but offered no details. Dr. Handy provided Ms. Stasek's cell phone information to Ms. Schmid.

44. IEP team members were provided with a copy of the draft IEP and notes

from the September 2018 IEP team meeting. Proposed goals were reviewed. Ms. Schmid read the three proposed speech baselines and goals. The IEP notes recorded that Ms. Schmid was able to speak to “checking in” on the baseline for Speech Goal 1. The notes also recorded that because Ms. Schmid had to attend another meeting, she reviewed the proposed services with Parent and reported they were sufficient. Parent expressed concerns at the meeting about the group speech services. The IEP notes documented that Parent agreed with Dr. Handy’s recommendation that individual speech services be provided for 30 minutes of the monthly service minutes. The IEP noted that Ms. Schmid was excused with Parent’s approval, however, there was no evidence Parent provided written consent to excuse Ms. Schmid.

45. Ms. Paquette reviewed and the remaining members of the IEP team discussed Annual Goal 10, gross motor development/fitness. Ms. Sarmento reviewed and the IEP team discussed all of the remaining goals, specifically Annual Goals 1 through 9 and 11.

46. The IEP notes stated that before the conclusion of the meeting, Ms. Paquette said she had another meeting to attend. Before she left, she shared the consultation service recommendation. The IEP noted that Parent gave permission for Ms. Paquette to leave the meeting, but there was no evidence presented at hearing that Parent provided written permission to excuse Ms. Paquette.

47. After Ms. Paquette left the meeting, the remaining team members reviewed Lucia Mar’s offer of special education and related services. The draft IEP had a section which listed a continuum of placement options. Mr. Dovidio read this list to the IEP team, but other than the adult transition program, no other placement options were explained or discussed.

48. Mr. Dovidio explained that Lucia Mar believed that the adult transition program was appropriate. Parent questioned how FAPE could be offered without all IEP

team members present. Mr. Dovideo explained that Parent had excused some members of the team and that their input had already been provided. Parent stated she agreed that Student should be enrolled in the adult transition program, but she was "leery with what the program is." Harmful effects related to selection of the least restrictive environment were reviewed, including limited access to typically developing peers. Parent expressed concerns about the safety of the building which housed the adult transition program.

49. Ms. Sarmiento provided Parent with samples of video modeling. She also gave Parent a written copy of the Inventory Assessment results Parent requested at the September 21, 2018 IEP team meeting. At hearing, Dr. Handy explained that the results were in the form of a standard assessment report which documented how Student performed in each part of the assessment. Although Dr. Handy never administered the Inventory Assessment, she attended trainings on it. She described it as a formative and summative assessment that compared Student to himself. A formative assessment meant a casual assessment such as a quiz at the end of a lesson, and a summative assessment meant a more formal assessment such as a standardized assessment. Dr. Handy also described the Inventory Assessment as a summative assessment, with formative assessments built into it. It was designed to measure small progressive growth targets and, according to Dr. Handy was administered two or three times per year, but at least annually to all Lucia Mar students with intellectual disabilities.

50. The members of the Lucia Mar IEP team agreed that there was insufficient time to properly discuss the offer of FAPE, particularly the frequency and duration of services, and location of services. The team agreed to reconvene to review data and complete the offer of FAPE.

November 9, 2018 IEP Team Meeting

51. The IEP team reconvened on November 9, 2018. Those in attendance

included Parent, Mr. Dovidio (as facilitator and administrator), Dr. Handy, Ms. Sarmento, Ms. Paquette, Ms. Radtke, Ms. Solis Vidal, Ms. Holtzman, and Ms. Schmid. A draft copy of the IEP was provided to the team members along with copies of the notes from the two prior meetings. Mr. Dovidio provided an overview of what had been had been covered so far in the prior meetings and directed the IEP team members to turn to page 25 of the draft IEP, the proposed offer of FAPE, which was where the team had left off at the October 12, 2018 IEP team meeting.

52. The team discussed the following matters in the following order. Parent expressed concerns regarding the safety of the building where the transition program operated. Mr. Dovidio provided an overview of the adult transition program. Parent asked about the requirement of students to hold a food handler's certificate to work at job sites in the adult transition program. Mr. Dovidio did not believe it was an issue, but Lucia Mar agreed to research the laws governing who needed a food handler's card and whether Parent's concerns were legitimate. The IEP team discussed public transportation to the Mesa View campus. Mr. Dovidio transitioned the meeting to a discussion of the proposed accommodations, modifications and other supports. Mr. Dovidio highlighted that Student was receiving services in a specialized environment and that many supports were embedded in the program. Parent asked the team members to individually speak to their opinions regarding Student's accommodations, modifications and other supports. Ms. Sarmento, Ms. Holtzman, Ms. Radtke, Ms. Solis Vidal, Ms. Schmid, Ms. Paquette and Parent offered their opinions and a change to the draft IEP was made. The team had a discussion regarding Parent's questions related to access to an apartment-like environment, the swimming pool, and specifically identifying Student's one-to-one aide.

53. The team discussed the speech services. Parent agreed that speech services should be in a group rather than individual services, and the team agreed.



Extended school year services were discussed and based on Student's historical data an assumption was made that Student needed extended year services, agreed to add a one-to-one aide for the extended school year, and occupational therapy services for 90 minutes over the entirety of the extended school year.

54. Mr. Dovidio reviewed the educational setting and Parent confirmed her understanding after explanation regarding Student's school of residence. Mr. Dovidio offered the adult transition program and then reviewed the percentage of time that Student would be outside the classroom. Parent expressed concerns regarding where Student ate lunch, and safety as related to students from a neighboring campus to the Mesa View campus. The team discussed activities to support Student's transition to the adult transition program, including Parent and Student opportunities to visit the site. The IEP team discussed Parent's concerns regarding collaboration between Lucia Mar and the Tri-Counties Regional Center. Dr. Handy explained that Parent could accept the offer of FAPE with an exception, to which Parent replied she would not do. Mr. Dovidio highlighted that Student would continue to work toward a certificate of completion as opposed to a diploma. Parent did not consent to any part of the IEP at the November 9, 2018 IEP team meeting.

55. After the November 9, 2018 IEP team meeting, Parent contacted Mr. Dovidio and informed him that she had not received a final version of the IEP. On November 15, 2018, Mr. Dovidio sent Parent a clean version of the September 2018 IEP which had incorporated most of the handwritten revisions from the IEP team meetings and attached the typewritten notes from each of the three IEP team meetings. Parent received a copy of the final version of the IEP. Parent did not consent to any portion of the September 2018 IEP, as revised.

#### FALL 2018 OFFER OF FAPE

56. Lucia Mar's offer of special education and related services dated

September 21, 2018 developed at the IEP team meetings held on September 21, October 12, and November 9, 2018, consisted of the following with a start date specified as September 21, 2018 and the end date specified as September 20, 2019: specialized academic instruction in Lucia Mar's adult transition program for 840 minutes per week; group speech and language services for four 30-minute sessions totaling 120 minutes per month; individual occupational therapy services for 60 minutes per month; 30 minutes of mentoring per week in the adult transition program; 720 minutes of work experience education in the adult transition program; numerous accommodations/modifications, including video modeling and a seatbelt buckle guard; transportation; and a certificate of completion. Other supports offered included access to nursing services, a one-hour team meeting once every six to eight weeks; a one-to-one instructional assistant throughout the school day inclusive of the extended school year; 30 minutes per month of speech language pathologist consultation services; 60 minutes per month of occupational therapy consultation services; and 25 minutes per month of adapted physical education consultation services.

57. Lucia Mar offered extended school year services from June 17, 2019 to July 26, 2019, a total of six weeks, which included group specialized academic instruction, 30 minutes of weekly group speech services, and group occupational therapy services. The specialized academic instruction offered in the IEP was inconsistent, offering both "280 minutes served daily" and "Monday-Thursday for 3 hours." At hearing, Dr. Handy admitted the "3 hours" was an error, although she had difficulty at hearing correctly computing the 280 minutes into its hourly equivalent. At first, she stated that the IEP should have instead reflected four hours to match the number of minutes on the IEP, and only after being further questioned about it, she indicated that the IEP should have specified four hours and 40 minutes. She admitted this error was never corrected, but she understood Student did not attend extended school year in 2018 and that Parent

had recently informed one of Student's teachers that Parent did not intend to have Student attend the 2019 extended school year. The offer for occupational therapy services was also inconsistent because it listed both that Student would receive services for "90 minutes per month" for the extended school year and "90 minutes for the entirety of ESY."

58. Lucia Mar offered three speech goals, and an additional eleven annual goals labeled as follows: functional math (Goal 1), vocational (Goal 2), safety/vocational/functional reading (Goal 3), functional reading/communication (Goal 4), communication (Goal 5), job training (Goal 6), technology (Goal 7), following instructions (Goal 8), attention (Goal 9), gross motor development/fitness (Goal 10), and self-advocacy (Goal 11). Lucia Mar also offered a transition plan, which included three separate post-secondary goals in the areas of training/education, employment and independent living, linked to Student's annual goals.

59. Among the goals developed by Lucia Mar, Goal 5 required Student when presented with questions such as "Are you lost?" or "Do you need help?" or "Who are you with?" to present a form of identification in four out of five trials over a two-week period. Goal 6 required Student to independently complete four steps of new vocational tasks, e.g., sweeping, wiping tables, preparing ingredients for cooking/baking, loading/unloading dishwasher, in three out of five trials over a two-week period. The baseline listed on Goal 6 recorded that Student could complete four different four-step tasks with 90% accuracy in four out of five trials with two gestural prompts, washing hands, loading and unloading the dishwasher and preparing a simple snack. Goal 7 required Student to "access social stories or a preferred app through technology with one gestural prompt" in eight out of 10 trials over a two-week period. The baseline recorded that Student could already access social stories with one gestural prompt through technology in four out of four trials in a two-week period. Goal 9 required

Student to sustain attention for up to six minutes for preferred activities in four out of five trials over a two-week period and on an un-preferred activity for four minutes without getting distracted in four out of five trials over a two-week period. Goal 9's baseline documented that Student was able to sustain attention for up to three minutes when working in a preferred situation in five out of five trials, and in an un-preferred activity he was unable to sustain attention for one minute without getting distracted in four out of five trials.

#### LUCIA MAR WITNESSES' TESTIMONY REGARDING THE OFFER OF SPECIAL EDUCATION AND RELATED SERVICES

Dr. Handy

60. At hearing, Dr. Handy explained that specialized academic instruction was instruction which took place in the classroom. Mentoring and work experience was instruction provided in the community outside the classroom. Mentoring focused on leisure services provided in the community, and work experience was focused on community based instruction involved with work. Student's health care plans were not part of his IEP because this allowed the school nurse to work directly with Parent to quickly modify the plans and Dr. Handy did not believe that the plans were required for Student to access the curriculum.

61. Dr. Handy opined that the adult transition program was appropriate for Student. She visited the adult transition program, observed the classrooms and believed Student was best suited for Ms. Morgan's classroom. Student was 20 years old and would be turning 21 in June 2019, and there was only one year left to prepare him for independence at his level in the community. The adult transition program would give him opportunities to go out into the community to practice and learn skills, interact with age appropriate peers, and have experiences to afford him leisure and work experience. Dr. Handy believed the goals, accommodations and modifications offered in the fall

2018 IEP were appropriate. The goals challenged Student and Student would get the support he needed with the relevant providers to meet them.

62. Dr. Handy's opinions were somewhat undermined by her admitted unfamiliarity with Student. Although she had some unspecified interaction with Student through visits to his high school classroom, she admitted she did not know him well enough to know if Student enjoyed school or not. She was unaware whether of Student used public transit, and was uninformed as to his community involvement or what leisure activities he participated in outside of school. She also did not know whether Student wore diapers.

Mr. Rinehart

63. In Mr. Rinehart's opinion, it was important for students going on to the adult day program to develop skills and access to the community. The adult transition program readied students for the participation in adult day programs. He reviewed the proposed fall 2018 IEP, but he did not know Student. He believed Student could benefit from the adult transition program, and that Ms. Morgan's class was the appropriate setting based on the stated present levels of performance. In Mr. Rinehart's opinion, the transition plan, services, and accommodations listed in the fall 2018 IEP could be implemented in the adult transition program. However, he admitted that he was unaware of Student's various care plans, and that it was important for him to review the care plans before any recommendation could be made regarding any specific program for Student.

64. Mr. Rinehart reviewed the academic goals in Student's fall 2018 IEP. He believed all of these goals could be implemented in the adult transition program, but he qualified his answers about the appropriateness of some of the goals for Student based on his unfamiliarity with Student. He opined that Goal 3 was a very important goal for Student; Goal 4 was similar to tasks on the Inventory Assessment; regarding Goal 5, he

did not know how he would tie the questions in the goal and the targeted task together. Goal 6 was measurable, but Mr. Rinehart characterized it as “a stretch” because the baseline had two prompts and the proposed goal had no prompts. The adult transition program provided access to technology to implement Goal 7. According to Mr. Rinehart, the appropriateness of Goal 8 depended on whether Student needed the level of support indicated by the goal. Goal 9 did not appear to be a problem to implement and measure, but Mr. Rinehart opined that it was “lofty” and “a stretch” because it required a 100 percent increase by Student in sustaining attention in a preferred task situation. He expressed concern about Student’s ability to meet the goal within a year because he did not know Student.

Mr. Dovideo

65. During Mr. Dovideo’s tenure he had the opportunity to interact with Student, but he admitted he did not know him very well. He attended Student’s IEP meetings since the 2016-2017 school year. At hearing, Mr. Dovideo described Student as very friendly, social, and kind, and that he asked a lot of questions. Mr. Dovideo frequented Student’s classroom and did some unspecified goal work with him, but most interactions with Student were social. He was unfamiliar with Student’s cumulative file other than his most current IEP, but he read Student’s special education file.

66. Mr. Dovideo believed that the adult transition program was the appropriate placement for Student, specifically the middle classroom, because Student was an adult and the program would have given him rigorous instruction for academic skill growth and he would have benefitted from instruction in a more natural setting to prepare him for life. In Mr. Dovideo’s opinion, the services, goals, and transition plan could have been implemented in the adult transition program. Student’s care plans were not part of his IEP, but they could have been implemented in Ms. Morgan’s classroom. Student used briefs, but he was relatively independent in toileting. In his opinion,

Student did not need a positive behavior intervention plan because his behavior was not severe enough to warrant such a plan.

67. Mr. Dovidio did not write any of the fall 2018 IEP goals. At hearing, he said he thought they were appropriate because they were rooted in good baselines. He did not otherwise specifically address any of the goals offered in the fall 2018 IEP. He did not draft the individual transition plan, but thought it was appropriate.

Ms. Sarmento

68. Ms. Sarmento believed the offer of placement made at the fall 2018 IEP was appropriate. It was important for Student to learn the skills for independent living and vocational and community-based skills before he turned 22 years old, and the adult transition program was designed to teach those skills. Her classroom did not provide Student with sufficient opportunities for community-based instruction. Student's current placement was in high school geared toward high school students, as compared to the adult transition program which was geared toward teaching functional living and vocational job skills.

69. Ms. Sarmento believed that the consultation time offered in the fall 2018 IEP was important so that staff could work on the skills taught by the service providers. She believed that the adapted physical education consultation of 25 minutes was an appropriate amount of time, but she did not give any reasons for her opinion. In her opinion, the accommodations and modifications offered were appropriate.

70. At hearing, Ms. Sarmento explained her creation of fall 2018 proposed Annual Goals 1 through 9 and 11. In her opinion, Student's goals were appropriate for mastery of skills, explaining that Student would not continue to hold skills unless he continued to use the skills he mastered. Annual Goal 1 was an appropriate goal because it addressed functional math needs and making purchases in the community, and the present level was based on observation and discrete trial trainings. Goal 2 was a

vocational goal which addressed the skill of signing documents by initialing them. Goal 3 was a safety/vocational/functional reading goal meant to expand on Student's ability to identify signs. Goal 4 was labeled a functional reading/communication goal, meant to expand upon Student's ability to retell a story to develop the skill of sequencing and communication. It would have been measured by having Student point to three simple pictures and have him sequence the pictures and say three words about the story, and Ms. Sarmiento would have built into the task pictures with words. Goal 5 was labeled a communication goal and was meant to build on Student's skill of identifying his feelings, and his ability to present his identification if someone asked him certain questions. Ms. Sarmiento thought this was an important skill to build independence which addressed communication and safety. She was uncertain if Student could accurately present information about himself. Goal 6 was labeled job training and was meant to build on Student's ability to complete four-step vocational tasks to develop his independence in job and vocational skills without prompts.

71. Goal 7 was labeled a technology goal and according to Ms. Sarmiento, it was meant to build upon Student's skill of accessing technology. It required Student to "access social stories or a preferred app through technology with one gestural prompt" in eight out of 10 trials over a two-week period. According to the baseline, Student could already access social stories with one gestural prompt through technology in four out of four trials in a two-week period, but Ms. Sarmiento wanted Student to also access a preferred application he could navigate. Ms. Sarmiento explained that "social stories" were on a tablet in the classroom which read the story to Student, and a preferred application was just another application. Student was only accessing the social stories and she wanted him to access other applications beyond social stories. At hearing, Ms. Sarmiento agreed that based upon the "or" wording in the goal, Student could meet the goal without ever accessing the preferred application. Although the goal required one



gestural prompt to satisfy the goal, she claimed she would have determined that Student met the goal if he did not require a prompt.

72. Goal 8 was labeled "following instructions." According to Ms. Sarmento, it was important for safety and increasing Student's skill of following directions, by having him follow three consecutive direct instructions. She opined this goal was ambitious and attainable within a year.

73. Goal 9 was labeled an attention goal and according to Ms. Sarmento, was meant to develop vocational or leisure skills by having Student sustain attention for a longer period of time. Ms. Sarmento did not specifically address the attainability of this goal within a year.

74. Goal 11 was labeled self-advocacy and according to Ms. Sarmento, was meant to help Student advocate for himself. He could ask for help with one prompt, but he did not further explain. The goal required Student to use a script without a cue after a communication breakdown to help him explain his request for assistance. At hearing, Ms. Sarmento did not specifically address the attainability of this goal within a year.

#### Maria Woolley

75. Maria Woolley was a licensed speech language pathologist since 2001 and was employed by Lucia Mar since 2014. She held a master's degree in communication disorders since 2001, a clinical/rehabilitative service credential since 2005 which allowed her to practice in public schools, and a certificate of clinical competence since 2001 which allowed her to practice nationally. She had experience working with children with moderate to severe disabilities. At Lucia Mar, she was assigned to provide services at the high school level other than Arroyo Grande High School, and at the Mesa View adult transition program. She provided services in the adult transition program in a variety of settings, including the work sites.

76. Ms. Woolley provided speech services to Student for two years during

elementary school and she saw him briefly during summer 2018 during a single casual encounter in the community. She only reviewed parts of the fall 2018 IEP and never read the IEP notes. There was no evidence at hearing she had ever looked at any other school records or assessments pertaining to Student or attended any of his IEP team meetings.

77. In her opinion, Student's fall 2018 IEP Speech Goals 1, 2 and 3 could be implemented in the adult transition program and were appropriate assuming the baselines were accurate. She had no independent knowledge of the fall 2018 IEP goal baseline accuracy. She opined that the group speech services offered in the fall 2018 IEP were appropriate to implement the goals in the adult transition program, and to have a weekly direct service lesson to either pre-teach a skill targeted by his IEP or augment a skill that the special education staff was teaching. According to Ms. Woolley, the consultation services offered were needed for planning, coaching staff and discussing goal progress outside of the direct service, but Ms. Woolley did not respond directly as to whether the consultation minutes offered was an appropriate amount of time for providing consultation. She later opined that judging from Student's speech goals the number of minutes offered seemed appropriate, but she would make that determination after he entered the program.

Anna Paquette

78. According to Ms. Paquette, proposed Goal 10's baseline was accurate and was based upon data collected on Student's prior goal. Goal 10 was meant to foster Student's greater independence in gross motor skills and his interest in leisure activities. She could implement Goal 10 in the adult transition program. She recommended the 25 minutes of adapted physical education consultation monthly offered in the IEP which she opined at hearing, was a sufficient amount of time to implement Goal 10 because fitness and leisure related activities had already been adapted and modified as part of the Mesa View program.

Brenda Radtke

79. In Ms. Radtke's opinion, the adult transition program was an appropriate placement because Student was ready to work in community-based instruction and bring the skills he learned to the real world setting. All of Student's care plans could have been implemented in the adult transition program. Ms. Radtke collaborated with Ms. Sarmiento in developing some of the goals. In her opinion, the baselines for Goals 2 and 6 were accurate and the goals were appropriate for developing Student's skills. Goal 7 was written to assist Student in developing leisure skills and vocational skills.

80. At hearing, Ms. Radtke explained that she proposed the occupational therapy services in Student's fall 2018 IEP. She recommended a reduction in direct service during the regular school year offered in the October 2016 IEP because Student had made progress and did not require that same level of service, and it gave her an opportunity to collaborate more with staff regarding the goal. There was a need for Student to practice skills every day and not just when she was working with him. She proposed the number of minutes offered so he could practice the skills and generalize the skills learned across settings. Student would still be getting 120 minutes per month during the regular school year, split between direct services and consultation.

#### PARENT'S TESTIMONY REGARDING HER DISAGREEMENT WITH THE OFFER OF SPECIAL EDUCATION AND RELATED SERVICES

81. Parent opined at hearing that the offer of FAPE was not appropriate because Lucia Mar did not understand Student and his needs have not been met. The adult and transition program was not appropriate because Student would be lost given his multiple medical conditions, cognitive impairment, transition needs, and time required for him to process the transition. Student was like an adult with Alzheimer's and there were only three people in the world like him. Student required a one-to-one aide who was a behaviorist that could understand him. Student took medicine for his

behaviors. She has helped develop Student's meal, health, seizure and orthopedic plans.

82. Student had an orthopedic impairment to his left foot, and he sustained many falls. In order to correct the problem, his foot had to be broken and set in August 2015, and Student was in a wheelchair after his surgery. Although Parent stated she agreed on the independent assessors who wrote the independent assessment reports, she did not agree with them because the independent assessors had limited information. Specifically, Parent claimed Mr. Dovideo did not provide to the independent physical therapy assessor with the information the assessor needed regarding Student's orthopedic impairment and the assessor was not made aware that Student was not wearing his orthotics at the time of the assessment because they were soiled. According to Parent, Student had an orthotics plan since 2015 that was developed with the school nurse, a school nurse was required to oversee that plan, and there was no school nurse at the Mesa View site.

83. Parent visited Mesa View both before and after it opened in January 2018, and one time between February and April 2018. Based on her unspecified discussions with all three of the adult transition program teachers, Parent believed there were no qualified teachers that understood Student, and that moving him to the adult transition program would cause him to regress. She claimed that Ms. Rose did not think Student belonged in her classroom; neither Ms. Morgan's nor Mr. Rinehart's classroom met Student's needs. In Parent's opinion, Student fit between Ms. Rose's and Ms. Morgan's classrooms. Lucia Mar should have explored other alternatives for Student other than the adult transition program.

84. Parent opined that the adult transition program did not offer all of the supplements and specialized services that Student needed; more supports were needed to implement Student's IEP at the Mesa View site. In Parent's opinion, the program did not offer community-based instruction and no integrated employment accompanied it.

Mr. Dovidio refused to identify a specific aide for Student. There were no steps taken to introduce Student to the adult transition program, Lucia Mar did not specifically answer her questions as to how Student's meal plan would be implemented, and staffing was inadequate. Student required constant reminding for his day-to-day living, and he learned by watching a video multiple times on a continuous basis. Nothing in the proposed IEP described that Lucia Mar would teach Student in this manner and staff did not listen to Parent's concerns. The video modeling was not specified clearly enough in the IEP to support Student's transition goals and there was no designated access to technology. According to Parent, Student required a safety belt so he could have community-based instruction and that the IEP was not clear that Student would be safe given his eloping. Safety was not fully addressed in the offer and the offer was vague as it related to Student's transition goals. Parent believed Student needed a positive behavior intervention plan in order to implement his IEP. Parent also thought that information was not fully shared between the IEP team members as to what was in each member's individual files.

## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>3</sup>

1. 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)<sup>4</sup> et seq.; Ed. Code, § 56000, et seq.; Cal.

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<sup>3</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>4</sup> All references to the Code of Federal Regulations are to the 2006 version unless otherwise specified.

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).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, which meet state educational standards, and conform to the child's individualized education program. (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 general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School Dist. 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. *Rowley* expressly rejected an

interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.) In a recent unanimous decision, the United States Supreme Court clarified FAPE as “markedly more demanding than a ‘merely more than the de minimus test’ . . . .” (*Endrew F. v. Douglas School Dist. RE-1* (2017) 580 U.S. \_\_\_ [137 S.Ct. 988, 1000] (“*Endrew F.*”).) School districts must “offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” (*Id.* at p. 1002.)

4. 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).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (j).) 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. 49, 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 case, Lucia Mar bears the burden of proof.

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5. Lucia Mar contends that it met its burden of proof in establishing that its offer dated September 21, 2018, developed at the IEP team meetings held on September 21, October 12 and November 9, 2018, was a FAPE. Lucia Mar argues that all required members of the IEP team participated in the development of the fall 2018 IEP and that the IEP included all legally required components delineated in Education Code section 56345. Lucia Mar contends that the fall 2018 IEP was both substantively and procedurally sound and any procedural violations that may have occurred did not amount to a denial of FAPE or deny Parent her opportunity to participate in the IEP process. Lucia Mar claims that because Parent refused to consent to the fall 2018 IEP, it initiated this due process hearing to advocate for Student so that Student has the opportunity to interact with age-appropriate peers and to experience age-appropriate work and leisure activities to progress to his post-secondary goals.

6. Student contends that the fall 2018 IEP was not appropriate because it did not address all of Student's needs. Student argues that the adult transition program was not appropriate because Student would be lost given his multiple medical, developmental and transition needs. Parent argues that the program was inadequate because the Mesa View campus where the adult transition program was located did not



have a nurse on campus to oversee Student's orthotics plan, and safety was not fully addressed in the IEP. Parent believes that placement in the adult transition program would cause Student to regress, and that Lucia Mar should have explored other placement alternatives.

7. The legal analysis of a school district's compliance with the IDEA consists of two parts. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) In a District-filed case conducted pursuant to Education Code section 56505, a hearing officer shall not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the individualized education program. (Ed. Code, § 56505, subd. (j).)

8. The IDEA requires that school districts establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of FAPE by such agencies. (20 U.S.C. § 1415(a).) A written explanation of all the procedural safeguards under the IDEA shall be included in the notice of a parent's or guardian's rights. (Ed. Code, § 56321, subd. (a).) A copy of the procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a); Ed. Code, § 56301, subd. (d)(2).) Education Code section 56500.1, subdivision (b) requires that parents be informed about procedural safeguards at an IEP team meeting.

9. The IDEA's procedural safeguards are intended to protect the informed involvement of parents in the development of an education for their child. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994].) "[T]he informed involvement of parents" is central to the IEP process. (*Ibid.*) Protection of parental participation is "[a]mong the most important procedural safeguards" in the IDEA. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) "Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA." (*Id.* at p. 892.)

10. Procedurally, 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(b) & (c); Ed. Code, §§ 56304, 56341.) Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or afforded the opportunity to participate, including (1) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and (2) scheduling the meeting at a mutually agreed on time and place. (34 C.F.R. § 300.322(a).) In addition to other requirements, the notice must indicate the purpose, time, and location of the meeting and who will be in attendance. (34 C.F.R. § 300.322(b)(1)(i).) It must also inform the parents of the provisions in 34 Code of Federal Regulations section 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child). (34 C.F.R. § 300.322(b)(1)(ii).)

11. For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, the notice of an IEP team meeting must indicate that (1) the purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child in accordance with 34 Code of Federal Regulations

section 300.320(b), (2) that the school district will invite the student, and (3) identify any other agency that will be invited to send a representative. (34 C.F.R. § 300.322(b)(2).) A public agency must invite a child with a disability to attend the child's IEP team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under 34 Code of Federal Regulations section 300.320(b). (34 C.F.R § 300.321(b)(1).) If the child does not attend the IEP team meeting, the IEP team must take other steps to ensure that the child's preferences and interests are considered. (34 C.F.R § 300.321(b)(2).) To the extent appropriate, with the consent of the parents, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. (34 C.F.R. § 300.321(b)(3).)

12. Unless excused by the parent in writing, the public agency must ensure that the IEP team for each child with a disability includes the parents of the child; a regular education teacher if the child is, or may be, participating in the regular education environment; a special education teacher; and a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum and is knowledgeable about available resources. (34 C.F.R. § 300.321.) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and at the discretion of the parent or school district, to include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).) It is only necessary for a general education teacher who has instructed the child in the past or who may instruct the child in the future to be present at the IEP team meeting. (*R.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 93-940.)

13. A school district is required to conduct not just an IEP team meeting, but a

meaningful IEP team meeting. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1485, *superseded in part by statute on other grounds.*) A school cannot independently develop an IEP, without meaningful participation, and then present the IEP to the parent for ratification. (*Id.* at p. 1484.) "Participation must be more than mere form; it must be meaningful." (*Deal v. Hamilton County Board of Educ.* (6th Cir. 2004) 392 F.3d 840, 858 [citations omitted].) A school district that predetermines the child's program, and does not consider parents' requests with an open mind, has denied the parents' right to participate in the IEP process. (*Ibid.*; *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131, *superseded on other grounds by statute.*)

14. In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a).)

15. Assessments are required to determine eligibility for special education, and what type, frequency, and duration of specialized instruction and related services are required. (20 U.S.C. § 1414(a); 34 C.F.R. § 300.303; Ed. Code, §§ 56043(k), 56381, subd. (a).) To assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321(a).) Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1); Ed. Code, § 56381, subd. (f).) In accordance with Section 300.300(d)(1) of Title 34 of the Code of Federal Regulations, parental consent is not required before reviewing existing data as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children, unless before administration of that test or assessment, consent is required of the parent of all the children. (Ed. Code, § 56321, subd. (e).)

16. Each public agency must ensure that assessments and other evaluation materials used to assess a child are, among other things, administered by trained and knowledgeable personnel and administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b) & (c); Ed. Code, §§ 56320, 56381, subd. (e); 34 C.F.R. § 300.304.) The personnel who assess the student shall prepare a written report. (Ed. Code, § 56327.) A school district's failure to conduct appropriate assessments may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.)

17. An IEP is a written document for each child with a disability that includes: a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; and a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320.) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III); Ed. Code, § 56345, subd. (a)(3).) An IEP must include a statement of the special education and related services, based on peer-reviewed research to the extent practicable, 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, as well as 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).) It must also contain a statement of supplementary aids and program modifications or supports that will be provided, along with an explanation of the extent to which the pupil will not

participate with nondisabled pupils in the regular class. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).) The IEP need only include the information set forth in title 20 United States Code section 1414(d)(1)(A)(i), and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code, § 56345, subds. (h) & (i).)

18. Beginning not later than the first IEP to be in effect when the child turns 16 and updated annually thereafter, the IEP must include: (1) appropriate measureable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals. (34 C.F.R. § 300.320(b).)

19. The IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D. Cal. 2017, No. CV16-04356-BRO) 2017 WL 2864945; see also Ed. Code, § 56345; 20 U.S.C. § 1414(d)(1)(A)(i).) An examination of the goals in an IEP is central to the determination of whether a student received a FAPE. "[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

20. The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a

reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS 1988) 213 IDELR 118.) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges v. Spartanburg County School Dist. Two* (D.S.C. 2011, No. 7:10-cv-01873-JMC) 57 IDELR 128 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].)

21. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) 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.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) In other words, the IEP must be reasonably calculated to enable the child to achieve educational benefit appropriate in light of the child's circumstances. (*Andrew F., supra*, 580 U.S. \_\_\_, 137 S.Ct. at p. 1002.) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams, supra*, 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Board of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

22. School districts are required to provide each special education student with a program in the least restrictive environment. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate: 1) that children with disabilities are educated with non-disabled peers, and 2) that special classes or separate schooling occur only if the nature or severity of the 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); 34 C.F.R. § 300.114(a).)

23. In determining the educational placement of a child with a disability, a school district must ensure that: 1) 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; 2) placement is determined annually, is based on the child's IEP, and is as close as possible to the child's home; 3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; 4) 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 5) 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.)

24. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit has balanced the following factors: 1) "the educational benefits of placement full-time in a regular class"; 2) "the nonacademic benefits of such placement"; 3) "the effect [the student] had on the teacher and children in the regular class"; and 4) "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.)

25. If a school district determines 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. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1050.) 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 or instruction in the home, in hospitals, or other institutions. (Ed. Code, § 56361.)

26. Meaningful parental participation requires that the IEP document fulfill the IDEA's explicit requirement of written prior notice to parents when a school district proposes, or refuses, to initiate or change the educational placement of a disabled child. (See 20 U.S.C. §1415(b)(3).) The procedural requirement of a formal written IEP offer creates a clear record and eliminates troublesome factual disputes years later about what placement and services were offered. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 ("Union").) A formal written offer is therefore more than a mere technicality, and this requirement should be rigorously enforced. (*Ibid.*) Parents must be able to use the IEP to monitor and enforce the services that their child is to receive. When a parent is unaware of the services offered to the student, and therefore cannot monitor how these services are provided, a FAPE has been denied, whether or not the parent had ample opportunity to participate in the formulation of the IEP. (*M.C. v. Antelope Valley Union High School Dist., supra*, 858 F.3d 1189, 1197.) A discussion at an IEP team meeting of the services to be provided to a student does not amount to an offer. (*Id.* at p. 1199.)

27. A formal, specific offer from a school district (1) alerts the parents of the need to consider seriously whether the proposed placement is appropriate under the IDEA, and (2) helps parents determine whether to reject or accept the placement with supplemental services. (See *Union, supra*, 15 F.3d at p. 1526.) Although *Union* involved a district's failure to produce any formal written offer, numerous judicial decisions have

invalidated IEPs that, although an offer was made, were insufficiently clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing. (See, e.g., *A.K. v. Alexandria City School Bd.* (4th Cir. 2007) 484 F.3d 672, 681; *Knable v. Bexley City School Dist.* (6th Cir. 2001) 238 F.3d 755, 768; *Bend- LaPine School Dist. v. K.H.* (D. Ore., June 2, 2005, No. 04-1468-AA) 2005 WL 1587241, p. 10; *Glendale Unified School Dist. v. Almasi* (C.D. Cal. 2000) 122 F.Supp. 2d 1093, 1108; *Mill Valley Elem. School Dist. v. Eastin* (N.D. Cal., Oct. 1, 1999, No. 98-03812) 32 IDELR 140; see also *Marcus I. v. Department of Education* (D. Hawaii, May 9, 2011, No. 10-00381) 2011 WL 1833207, pp. 7-8.) As recognized by one court, *Union* requires “a clear, coherent offer which [parent] reasonably could evaluate and decide whether to accept or appeal.” (*Glendale Unified School Dist. v. Almasi, supra*, 122 F.Supp. 2d at p. 1108.)

28. Lucia Mar failed to comply with all the procedural and substantive requirements of the IDEA and California law regarding the fall 2018 IEP developed at the IEP team meetings held on September 21, October 12 and November 9, 2018. Lucia Mar did not establish it complied with all of the IDEA’s procedural requirements in developing the fall 2018 IEP, and that all of the special education and related services offered in the fall 2018 IEP were reasonably calculated to enable Student to receive educational benefit appropriate for Student’s circumstances.

#### IEP Team Meeting Notices and Attendance at the Meetings

29. Lucia Mar did not prove that it gave the required notice for the fall 2018 IEP team meetings or that required IEP team members attended each of the fall 2018 IEP team meetings.

30. The law required Lucia Mar to give written notice to Parent that the purpose of the September 21, 2018 IEP team meeting was to consider Student’s postsecondary goals and transition services in accordance with 34 Code of Federal

Regulations section 300.320(b). In the notice, Lucia Mar was also required to inform Parent that it would invite Student to the IEP team meeting and to identify any other agency that would be invited to send a representative to the meeting. Consistent with the mandatory notice, Lucia Mar was also required to invite Student to the fall 2018 IEP team meetings to attempt to obtain his input because one of the purposes of those meetings was to consider Student's post-secondary goals and the transition services needed to assist Student in reaching those goals.

31. Lucia Mar did not prove it gave the requisite notice to Parent or that it invited Student to the September 21, October 12 or November 9, 2018 IEP team meetings. None of the witnesses testified that Lucia Mar invited Student and Lucia Mar failed to include as hearing exhibits or have admitted into evidence the IEP team meeting notices. Although Mr. Dovidio testified he sent meeting notices to the Parent for each of the IEP team meetings held in the fall of 2018, there was no persuasive evidence as to the contents of these meeting notices or when they were sent. Although Dr. Handy testified about the practice regarding sending the notices, she did not testify as to the contents of the meeting notices or know when they were sent. Because Lucia Mar offered no evidence as to the contents of the IEP team meeting notices it failed to prove that the notices indicated that the purpose of the meeting was consideration of the postsecondary goals and transition services for Student, that the school district would invite Student or that it identified any other agency invited to attend. Lucia Mar's failure to provide the requisite notice or invite Student to the IEP team meetings interfered with Parent's participation in the IEP formulation process. Parent was never informed that Student could directly participate in the IEP team meetings where Student's post-secondary goals and transition services would be developed to ensure that Student's preferences and interests were considered. Giving the proper notice would have alerted Parent to the importance of Student's participation such that Parent

could have had Student attend the meetings.

32. The law required Lucia Mar to include his regular education teacher at the fall 2018 IEP team meetings because Student was, and may have continued to participate, in the regular education environment. During the 2018-2019 school year, part of Student's day was spent in the general education environment. He attended a general education dance class taught by Ms. Solis Vidal. At the conclusion of the September 2018 IEP team meeting, Parent was asked if she would excuse any of the IEP team members from the continued IEP team meeting. Although Parent stated she would excuse the general education dance teacher, Parent never consented in writing to the teacher's absence in future meetings. Ms. Solis Vidal did not attend the subsequent October 2018 IEP team meeting, even though Lucia Mar never obtained Parent's written permission to excuse her.

33. The failure to have Student's general education teacher at the October 12, 2018 IEP team meeting was a procedural violation that interfered with Parent's opportunity to participate in the IEP formulation process. When Lucia Mar asked at the September 2018 meeting if Parent would excuse any of the team members from the next meeting, Lucia Mar never informed Parent as to what would be discussed at that next meeting. At the October 2018 IEP team meeting, the team discussed Student's proposed goals and began to discuss the offer of special education and related services. After Parent objected to the failure to have all IEP team members present, the meeting was adjourned and reconvened on November 9, 2018, with Ms. Solis Vidal in attendance. However, at the November 9, 2018 IEP team meeting, the team did not go back and revisit the items discussed at the October 12, 2018 IEP team meeting, particularly the proposed goals or the list of placement options. At the beginning of the meeting, Mr. Dovidio merely provided an overview of what had been covered in the prior meetings and directed the IEP team to turn to page 25 of the draft IEP,

which was the proposed offer of FAPE, where the team had left off at the October 12, 2018 IEP team meeting. Consequently, Parent did not have the opportunity to obtain Ms. Solis Vidal's input during the conversation of the proposed goals or other matters discussed only at the October 12, 2018 meeting. The evidence established that input from the entire IEP team was important to Parent.

### Assessments

34. The law required Lucia Mar to conduct a transition assessment for the development of Student's transition plan. In August and September 2018, Lucia Mar administered the Inventory Assessment as part of its development of Student's fall 2018 IEP, including his present levels of performance, proposed goals and transition plan. Parent did not consent to the Inventory Assessment and Lucia Mar failed to prove that it was not required to obtain Parent's consent to administer this assessment. Mr. Rinehart testified that the Inventory Assessment was a standardized assessment and Mr. Dovidio testified that parental consent was required for norm-referenced assessments. Lucia Mar argues that Parent consent was not required for the Inventory Assessment because it was administered to all children in Lucia Mar's moderate/severe programs, including Ms. Sarmento's class, to gather information regarding those students' functioning across domains to assist in goal development and educational planning for those students. Consistent with Lucia Mar's argument, the weight of evidence established that the Inventory Assessment was given only to students at Lucia Mar with IEPs, specifically students with intellectual disabilities or lower cognition which included Ms. Sarmento's class. However, the evidence did not prove that the Inventory Assessment was administered to all children. Lucia Mar cites no authority that "all children" as that language is used in Education Code section 56321 subdivision (e) meant some special education students. Having failed to obtain Parent's consent for the assessment, Lucia Mar interfered with Parent's opportunity to participate in the IEP process. Even if

Parent's consent to administration of the Inventory Assessment was not required, Lucia Mar did not prove the procedural and substantive compliance necessary to establish the fall 2018 IEP offered Student a FAPE.

35. Lucia Mar's offer of special education and related services, including Student's transition plan was largely based on the results of the Inventory Assessment administered by Ms. Sarmento. However, Lucia Mar did not prove that the assessment was properly administered by Ms. Sarmento. There was no persuasive evidence that at the time Ms. Sarmento administered the Inventory Assessment she was either trained in giving this assessment or that it was administered in accordance with the publisher's instructions. At the time of her assessment of Student, Ms. Sarmento had been a teacher at Lucia Mar for less than a month and while some witnesses testified that Lucia Mar provided training to them, there was no evidence Ms. Sarmento ever received training on this particular assessment before she administered it to Student. Her lack of familiarity with the assessment was evident when she admitted that she did not know whether the Inventory Assessment was a standardized assessment or not.

36. Lucia Mar failed to prove the validity and reliability of the Inventory Assessment. At hearing, Lucia Mar failed to offer as evidence a copy of the written report of the assessment results provided to Parent, at the October 12, 2018 IEP team meeting. Lucia Mar's witnesses testified inconsistently in their descriptions of the Inventory Assessment. Mr. Dovidio testified that it was not a norm-referenced assessment, but Mr. Rinehart described it as a standardized assessment used for goal writing, which led to a standard score and that it was used for triennial assessments. Ms. Sarmento, the person who actually administered the assessment to Student did not know if it was a standardized assessment. She defined it as a formative assessment, which she described as an evaluation after the task, and a summative assessment, which she described as an evaluation during the task. Although at one point Dr. Handy

characterized the Inventory Assessment as a summative assessment with formative components, she testified that a formative assessment meant a casual assessment, and a summative assessment meant a more formal assessment such as a standardized assessment. Dr. Handy's and Ms. Sarmento's descriptions of the Inventory Assessment were confusing and seemed incongruent.

37. The lack of a written report, the inconsistencies in the witnesses' testimony about the assessment, together with the failure to prove that Ms. Sarmento properly administered the assessment, all contributed to Lucia Mar's failure to establish that the Inventory Assessment, the only assessment conducted before the fall 2018 IEP meetings began, was valid and reliable. Having failed to prove that this foundational assessment was appropriate, Lucia Mar failed to establish that the 2018 IEP FAPE offer was reasonably calculated to enable Student to make progress appropriate in light of his circumstances.

#### Speech Present Levels, Goals and Services

38. Lucia Mar did not prove that the speech goals developed as part of the September 2018 IEP, and the baselines on which they were based, were appropriate. Specifically, as part of Student's September 2018 IEP, Lucia Mar developed three speech goals. The evidence established that the speech goals were developed by former Lucia Mar speech language pathologist Ms. Stasek who had been assigned to Arroyo Grande High School prior to October 12, 2018. Ms. Stasek did not testify at hearing, and there was no persuasive evidence presented at hearing regarding Ms. Stasek's familiarity or knowledge regarding Student or how the fall 2018 IEP speech baselines were determined or if they were accurate.

39. Dr. Handy claimed that she collaborated with Ms. Stasek on the proposed speech goals, however, Dr. Handy was not a speech language pathologist and there was no evidence presented at hearing as to what that "collaboration" entailed. In fact, by her

own admission, Dr. Handy was not very familiar with Student having only become employed at Lucia Mar in July 2018. In any event, Dr. Handy offered no substantive opinions regarding the adequacy of the speech goals or speech baselines, but only an unsupported conclusion that the goals were appropriate.

40. Ms. Schmid attended the October and November 2018 IEP team meetings after Ms. Stasek left Lucia Mar. Although Dr. Handy claimed to act "as a bridge" between Ms. Stasek and Ms. Schmid regarding the speech goals, she offered no details as to what that entailed. Further, there was no persuasive evidence that Ms. Schmid ever spoke to Ms. Stasek about Student's baselines or proposed goals, or that Ms. Schmid had any familiarity or knowledge of Student. With the exception of a reference to "checking in" on the baseline for Speech Goal 1, the IEP notes indicate that Ms. Schmid merely read the three proposed speech baselines and proposed goals to the IEP team. In any event, Ms. Schmid did not testify at hearing; as a result, the evidence failed to establish that she actually confirmed the baseline regarding any of the speech goals.

41. Ms. Woolley's testimony regarding the speech goals failed to establish the goals were appropriate. Ms. Woolley's opinion that Student's proposed speech goals could be implemented in the adult transition program and were appropriate was based on her assumption that the baselines were accurate. She had no independent knowledge of the fall 2018 IEP goal baseline accuracy. Contrary to Lucia Mar's argument, Ms. Woolley was not familiar with Student. She provided speech services to Student for two years while he was in elementary school and she saw him only once in summer 2018 during a casual encounter. She only reviewed parts of the fall 2018 IEP and never read the IEP notes. There was no evidence at hearing she ever looked at any other school records or assessments pertaining to Student or attended any of his IEP team meetings.

42. Although Ms. Sarmiento was at first equivocal as to whether she



collaborated with the speech language pathologist on the speech goals, the evidence established that Ms. Sarmiento did not write the present levels of performance in the area of communication or the speech goals. At hearing, she admitted the present levels in communication development were input by the speech language pathologist and she did not collaborate on this section. Ms. Sarmiento was not asked to comment on the accuracy of the present levels of performance she did not write or specifically testify about the adequacy of the speech goals. As such, Lucia Mar did not prove the appropriateness of the speech goals by her testimony.

43. Because Lucia Mar failed to establish the speech goals were appropriate, it also failed to establish the speech services offered as part of the fall 2018 IEP were appropriate. Ms. Woolley's testimony that the services offered appeared appropriate was based on her assumption that the proposed goals were based on accurate baselines which Lucia Mar did not prove. Since her testimony about the appropriateness of the speech goals was based on this foundational element, which was not substantiated, her testimony as to the appropriateness of the speech services offered as part of the fall 2018 IEP was not convincing. Lucia Mar did not prove the speech services proposed were reasonably calculated to enable Student to receive educational benefit. Lucia Mar failed to prove that the speech goals were appropriate, and as a result, it failed to prove that the fall 2018 IEP offer of special education and related services offered FAPE.

#### Annual Goals 1 through 11

44. The remaining annual goals developed as part of the fall 2018 IEP did not fully comply with the requirements of the IDEA and California law. Lucia Mar did not prove that all of Student's Annual Goals 1 through 11 were appropriate. Although many of Lucia Mar's witnesses testified about the appropriateness of the fall 2018 IEP Annual Goals, it failed to prove that Student had a reasonable chance of attaining all of the goals within a year, and that all of the goals were understandable, objectively

measurable, and appropriately designed to measure progress. As a result, Lucia Mar did not prove that the fall 2018 IEP offered FAPE.

45. Specifically, Lucia Mar did not prove that Annual Goals 1 through 5, and 11 were appropriate because there was no specific evidence establishing that Student had a reasonable chance of attaining those goals within a year. Mr. Dovidio opined that the fall 2018 IEP goals were appropriate because they were rooted in good baselines, but he admitted to not know Student very well, he did not write the goals, and he did not otherwise testify about any of the specifics regarding the appropriateness of the goals; as a result, his opinion was not persuasive. Dr. Handy testified she believed the goals were appropriate, but her opinion was undermined by her admitted unfamiliarity with Student and she did not offer any testimony about the specifics of the goals. Accordingly, her testimony was also unconvincing.

46. None of the witnesses who testified specifically about any of these goals, Ms. Sarmiento, Mr. Rinehart, and Ms. Radtke, precisely or persuasively addressed Student's ability to attain these goals within a year. Mr. Rinehart reviewed the academic goals in Student's fall 2018 IEP, and although he believed all of the proposed goals could be implemented in the adult transition program, he was unfamiliar with Student and he did not specifically address the attainability of the proposed goals 1 through 5, and 11. In fact, Mr. Rinehart repeatedly qualified his testimony regarding the appropriateness of some of Student's goals based on his unfamiliarity with Student. He also testified that he was unaware of Student's various care plans, and admitted that it would have been important for him to review the care plans before any recommendation could be made regarding any specific program for Student.

47. Mr. Rinehart also revealed other flaws in Goal 5. Goal 5 was a communication goal which required Student, when presented with questions such as "Do you need help?" or "Who are you with?", to present a form of identification in four

out of five trials over a two-week period. When asked about Goal 5, Mr. Rinehart admitted that he did not know how he would tie the questions in the goal and the targeted task together. On its face and as Mr. Rinehart's comment indicates, the response of presenting identification did not appear to be an appropriate response to all of the questions listed in Goal 5. As such, Goal 5 was not an appropriate measure of Student's progress in performing the targeted task.

48. Lucia Mar did not prove that Student had a reasonable chance of attaining Goal 6 within a year. Goal 6 was labeled a job training goal and, according to Ms. Sarmento, was meant to build on Student's ability to complete four-step vocational tasks to develop his independence in job and vocational skills without prompts. The baseline stated that Student could complete four different four-step tasks with 90% accuracy in four out of five trial with two gestural prompts, washing hands, loading and unloading the dishwasher and preparing a simple snack. The proposed goal required Student to independently complete four steps of new vocational tasks, e.g., sweeping, wiping tables, preparing ingredients for cooking/baking, loading/unloading dishwasher, in three out of five trials over a two-week period. Ms. Sarmento testified about Goal 6, but she never specifically addressed Student's ability to attain this goal within a year. The only other witness to specifically address Goal 6 was Mr. Rinehart, and he opined that the goal could be measured, but characterized it as "a stretch" because the baseline had two prompts and the proposed goal had no prompts.

49. On its face, Goal 7 failed to include appropriate objective criteria and evaluation procedures to measure progress. Goal 7 was labeled a technology goal. The baseline stated Student could already access social stories with one gestural prompt through technology in four out of four trials in a two-week period. The proposed goal required Student to "access social stories or a preferred app through technology with one gestural prompt" in eight out of 10 trials over a two-week period. Ms. Sarmento

testified that the purpose of the goal was to have Student access new technology, i.e., a preferred app instead of the social stories app. She agreed that based upon the “or” wording in the goal, Student could meet the goal without ever accessing the preferred application by instead accessing the social stories app (a task he had already mastered). Further, because Goal 7 provided for a one gestural prompt, rather than a maximum number of prompts, the goal could not appropriately measure Student’s progress. More particularly, if Student required no prompting but accomplished the task, he would have failed to meet the goal since the goal specifically required one prompt to complete the task. Although the goal required one gestural prompt to satisfy the goal, Ms. Sarmento claimed she would have determined that Student met the goal if he did not require a prompt. However, as written, Goal 7 did not provide for an objective determination of Student’s progress in accessing new technology. Lucia Mar also failed to offer any evidence to prove that Student had a reasonable chance of attaining Goal 7 by September 2019. None of the witnesses who testified about Goal 7, Ms. Sarmento, Mr. Rinehart, and Ms. Radtke, specifically addressed Student’s ability to attain this goal within a year. Lucia Mar did not prove Goal 7 was appropriate.

50. Lucia Mar did not prove that Student had a reasonable chance of attaining Annual Goal 9 within a year. Goal 9 addressed attention. On its face, the goal required Student to double the time he was able to attend in a preferred situation, and more than triple his ability to attend while engaged in an un-preferred activity. Specifically, the baseline stated that Student was able to sustain attention for up to three minutes when working in a preferred situation in five out of five trials, and in un-preferred activity he was unable to sustain attention for one minute without getting distracted in four out of five trials. The goal required Student to sustain attention for up to six minutes for preferred activities in four out of five trials over a two-week period and on an un-preferred activity for four minutes without getting distracted in four out of five trials

over a two-week period. There was no evidence that Student had a reasonable chance of attaining this goal within a year. Ms. Sarmiento testified about Goal 9, but she never specifically addressed Student's ability to attain this goal within a year, and in particular, how Student could be expected to sustain attention for four minutes during an unpreferred activity when he could not sustain attention for even one minute of time. The only other witness to specifically address Goal 9 was Mr. Rinehart. He believed that Goal 9 could be implemented and measured within the adult transition program. It was also his opinion that the goal was lofty" and "a stretch" because it required a 100 percent increase by Student in sustaining attention during a preferred activity and he did not know if Student was capable of meeting the goal within a year. Lucia Mar did not prove Goal 9 was appropriate.

#### Placement

51. In developing the fall 2018 IEP, Lucia Mar was required to comply with all of the procedural requirements, including the law pertaining to pre-determination and parental participation. Although school district personnel may bring a draft of the IEP to the meeting, 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 Disabilities* (March 12, 1999) 64 Fed. Reg. 12478-12479.)

52. Lucia Mar did not prove it responded to all of Parent's concerns before the fall 2018 IEP was finalized. The November 9, 2018 IEP team meeting was convened because there was insufficient time during the October 12, 2018 IEP team meeting to properly discuss Lucia Mar's offer of FAPE after Parent objected to Lucia Mar's failure to have all of members of the IEP team present at the IEP team meeting, including the general education teacher, the adult transition program teacher, the adapted physical

education teacher, and the speech language pathologist. During the November 9, 2018 meeting, Parent asked about the requirement of students to hold a food handler's certificate to work at some of the job sites as part of the adult transition program. Mr. Dovideo told Parent he did not believe it was an issue, but Lucia Mar agreed to research the laws governing who needed a food handler's card and whether Parent's concerns were legitimate. Parent was entitled to have her questions answered and to have the information that Lucia Mar promised to research before the IEP was finalized. There was no evidence that ever occurred.

53. The failure to answer Parent's questions regarding the adult transition program work sites, before the fall 2018 IEP was finalized, interfered with Parent's opportunity to participate in the IEP process because Parent did not have this information in considering Lucia Mar's offer of placement.

#### Extended School Year Services

54. Lucia Mar did not make a clear offer of special education and related services. The fall 2018 IEP offer of specialized academic instruction for the 2019 extended school year was not a clear, coherent offer which Parent reasonably could evaluate and decide whether to accept or appeal. The IEP offer extended to Parent at the conclusion of the November 9, 2018 IEP team meeting, with the final version of the IEP sent to Parent on November 15, 2018, set forth an inconsistent offer of specialized academic instruction for the extended school year. It erroneously and inconsistently offered both "280 minutes served daily" and "Monday-Thursday for 3 hours." At hearing, Dr. Handy candidly admitted that the "3 hours" was an error, and that the IEP should have instead stated four hours and 40 minutes per day.

55. Parent was not provided with a clear offer for specialized academic instruction for the 2019 extended school year necessary for Parent's effective participation in the IEP formulation process. The representation that the offer was for

one hour and 40 minutes less per day than was actually being offered for the entirety of the extended school year was a significant mistake. There was no evidence presented at hearing that this error was ever corrected, or that Parent was aware of the error, or informed of the mistake regarding the actual time offered per day for specialized academic instruction. The offer gave the false impression that 280 minutes per day of specialized academic instruction was equivalent to three hours per day, four days per week, instead of four hours and 40 minutes per day, four days per week. Parent likely would have relied on the representation regarding the stated number of hours per day, rather than the stated minutes. At hearing, even Dr. Handy had difficulty computing the 280 minutes into its hourly equivalent.

56. Lucia Mar's claim that Student did not attend the 2018 extended school year in 2018 and that Parent did not intend to have Student attend the 2019 school year extended school year did not mitigate the school district's obligation to make a clear offer. There was no persuasive evidence presented as to the reasons why Parent may have communicated that Student did not plan to attend the 2019 extended school year. Parent had a right to know how much time Student would actually spend in the special education classroom, and the failure to accurately convey this information was a significant procedural violation. When a parent is unaware of the services offered to the student, and therefore cannot monitor how these services are provided, a FAPE has been denied, whether or not the parent had ample opportunity to participate in the formulation of the IEP. (*M.C. v. Antelope Valley Union High School Dist.*, *supra*, 858 F.3d 1189, 1197.)

57. Lucia Mar did not prove that its offer of extended school year occupational therapy services was a clear, coherent offer which Parent reasonably could evaluate and decide whether to accept or appeal. The written offer of FAPE regarding occupational therapy listed it both as 90 minutes per month for the extended school year and also for

90 minutes for the entirety of the extended school year. The extended school year was six weeks long; as such, the offer for occupational therapy services for 90 minutes in total and also for 90 minutes per month was inconsistent. Although the written notes attached to the fall 2018 IEP indicate that Parent was orally informed that the offer was for 90 minutes of occupational therapy services over the entirety of the extended school year, the written offer on the FAPE page of the IEP was nonetheless inconsistent, and therefore, unclear.

58. Lucia Mar presented no persuasive evidence to justify the inconsistency in the written offer for occupational therapy services for the extended school year. The evidence established that addressing Student's occupational therapy needs was particularly important to Parent. As such, providing a written offer to Parent with accurate information about the amount of time offered for occupational therapy services was also essential, and the failure to make an enforceable clear written offer interfered with Parent's ability to use the IEP to monitor and enforce the services in the written offer had Parent consented to the IEP.

59. Lucia Mar did not prove that the extended school year occupational therapy services offered in the fall 2018 IEP were appropriate. During her testimony, Ms. Radtke specifically explained that the services offered during the regular school year were the appropriate amount and type of services Student needed based on his progress. However, Ms. Radtke did not specifically address the occupational therapy services proposed for the 2019 extended school year. Unlike the individual and consultative services offered during the regular school year, the occupational therapy services during the extended school year were offered in a group setting. Ms. Radtke did not specifically explain this discrepancy or otherwise establish the appropriateness of delivering the occupational therapy services in a group setting. She also neglected to offer a specific opinion about the appropriateness of the amount of minutes offered



during the extended school year for occupational therapy services. Lucia Mar did not prove the extended school year occupational therapy services were reasonably calculated to enable Student to receive educational benefit. As such, Lucia Mar failed to meet its burden of proof.

60. In summary, Lucia Mar did not meet its burden of demonstrating procedural and substantive compliance regarding the fall 2018 IEP for the 2018-2019 regular and extended school year. It did not prove that it offered Student a FAPE because of these significant procedural and substantive violations.

## ORDER

Lucia Mar's request to have the September 21, 2018 IEP declared a FAPE is denied. The IEP dated September 21, 2018, developed at the September 21, October 12, and November 9, 2018 IEP team meetings, shall not be implemented without parental 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, Student was the prevailing party on the only issue presented.

## RIGHT TO APPEAL

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: June 6, 2019

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*/s/*

LAURIE GORSLINE

Administrative Law Judge

Office of Administrative Hearings