

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019060636

PARENT ON BEHALF OF STUDENT,

V.

BELLFLOWER UNIFIED SCHOOL DISTRICT.

DECISION

AUGUST 21, 2020

On June 15, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Bellflower Unified School District. Bellflower Unified School District is called Bellflower. OAH granted a joint request for a continuance on July 5, 2019, and again on October 8, 2019. On December 18, 2019, OAH granted Student's request to file an amended complaint. On January 8, 2020, OAH granted a joint request for continuance for good cause

Administrative Law Judge Judith L. Pasewark heard this matter initially in Bellflower, California on March 3, 4, 5, and 10, 2020. Attorneys Andrew C. Greer and

Omar M. Naime represented Student. Parents attended each day on behalf of Student. Attorney, Eric Bathen represented Bellflower. Matthew Adair, Bellflower's Program Administrator attended each day on behalf of Bellflower. Student did not attend the hearing.

On March 13, 2020, OAH continued the hearing due to ALJ illness, and on March 23, 2020, OAH issued a General Order continuing all special education hearings until further notice due to the Covid-19 pandemic. The hearing resumed via video conferencing on June 17 and 18, 2020. At that time, Attorneys Andrew C. Greer and Omar M. Naime represented Student, and Father attended each day on behalf of Student. Marcia Brady and Richard Brady, Attorneys, represented Bellflower in place of Attorney Eric Bathen. Mr. Adair attended each day of hearing on behalf of Bellflower. Student did not attend the hearing.

At the parties' request, OAH continued the matter to July 13, 2020, for written closing briefs. The record was closed, and the matter was submitted on July 13, 2020.

ISSUES

1. Did Bellflower deny Student a free appropriate public education, referred to as a FAPE, by failing to offer an individualized education program, referred to as an IEP, in the June 5, 2017 addendum IEP, November 29, 2017 annual IEP, December 29, 2018 triennial IEP, January 22, 2019 addendum IEP, February 27, 2019 addendum IEP, March 27, 2019 addendum IEP, and April 10, 2019 addendum IEP, that included appropriate goals and services, in the following areas:
 - a. speech and language; and
 - b. behaviors, counseling, and socialization?

2. Did Bellflower deny Student a FAPE from June 14, 2017, through June 14, 2019, by failing to timely and appropriately assess Student in all areas of suspected disability?
3. Did Bellflower deny Student a FAPE by revoking Student's inter-district permit based on Student's needs and related to his disability and by failing to provide him with any special education or related services from May 2019 to June 14, 2019?
4. Did Bellflower deny Student a FAPE from June 14, 2017, through June 14, 2019, by failing to implement his IEP?
5. Did Bellflower deny Student a FAPE from June 14, 2017, through June 14, 2019, by failing to facilitate appropriate parental participation by:
 - a. Failing to ensure participation of appropriate IEP team members; and
 - b. Failing to provide timely prior written notice regarding its refusal to initiate or change assessments, goals or services; and by failing to include a statement regarding parental protection under the procedural safeguards?

Student's issues as stated in the Prehearing Conference Order extensively overlapped each other. Therefore, Student's issues were condensed and reorganized to provide a more cohesive analysis in this Decision without making any substantive changes to Student's issues. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.) At hearing, Student withdrew his issue challenging Bellflower's psychoeducational and speech and language assessments.

JURISDICTION

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this case, Student requested the hearing and bears the burden of proof.

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

At the time of hearing, Student was a 14-year old ninth grader. Student qualified for special education and related services under the primary category of other health impairment, and the secondary category of speech and language impairment. Student's eligibility as other health impaired was due to a brain tumor and subsequent surgery which resulted in a seizure disorder, and a vagal nerve stimulator and shunt placed in the back of his head.

Prior to the 2018-2019 school year, Student resided within the boundaries of Bellflower. Subsequently, the family moved to La Mirada, California, within the boundaries of another school district. On October 8, 2018, Parent applied for an inter-district transfer permit, which Bellflower approved on December 5, 2018. Therefore, Bellflower constituted Student's local educational agency for the claims alleged in Student's complaint. Student attended school in Bellflower for the 2018-2019 school year until May 14, 2019, when Bellflower revoked the transfer permit.

ISSUE ONE: DID BELLFLOWER DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT AN IEP THAT INCLUDED APPROPRIATE GOALS AND SERVICES IN SPEECH AND LANGUAGE, AND BEHAVIORS, COUNSELING AND SOCIALIZATION?

Student contended each of the seven IEPs and amendments developed between June 14, 2017 and June 14, 2019, failed to offer a FAPE.

Student argued each of Bellflower's relevant IEPs generally denied Student a FAPE. This contention as pled, is vast, undefined, and redundant to Student's other issues and contentions. To deny a student a FAPE, the school district must fail to provide specialized instruction and related services which were individually designed to provide educational benefit. The determination of whether the school district provided a FAPE is made by examining the individual components and circumstances which make up the IEP in relation to the student's unique needs. Thus, this determination is made about specific shortcomings of the IEP, not generalities.

At hearing, Student's claims focused on speech and language, behavior, counseling and socialization. These contentions broke down into several specific claims, which spanned the entire statutory period of this matter. Specifically, Student contended Bellflower failed to provide appropriate and measurable goals; gather baseline information to generate goals in known areas of need; offer goals in the area of self-advocacy, frustration tolerance, socialization, counseling and bullying; and create a behavior intervention plan. Bellflower contended each of Student's IEPs provided Student with FAPE.

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

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide

educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (*Endrew F.*))

"Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.)

"Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106), reversed in part on other grounds by *Schaffer, supra*, 546 U.S. 49, 56-58.)

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.) 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 educational benefit appropriate in light of the student's circumstances, in the least restrictive environment. (*Ibid.*; *Endrew F.*, *supra*, 580 U.S. ____ [137 S.Ct. at p. 1000.]) 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 v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp. 2d 127, 139 [IDEA did not provide for an "education...designed according to the parent's desires."].) 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.*) A school district has the right to select the program offered, as long as the program can meet the student's needs, and the district is ultimately responsible for ensuring a FAPE is offered. (*Letter to Richards* (OSEP January 7, 2010).) The Ninth Circuit has held that while the school district must allow for meaningful parental participation, it has no obligation to grant the parent a veto over any individual IEP provision. (*Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.)

California Education Code section 56345 is a statutory framework for the IEP. An IEP must include 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; Ed. Code, § 56345, subd. (a)(1) & (2).) An IEP must include a description of how progress towards the goals developed will be measured and reported. (Ed Code, § 56345, subd. (a)(3).

An IEP must include a statement of the special education and related services, and supplementary aids and services, based on peer-reviewed research to the extent practicable, that will be provided to the student, and program modifications or supports for school personnel, that will be provided to enable the student to advance appropriately toward attaining the annual goals, being involved in and making progress in the general education curriculum and participate in extracurricular and nonacademic activities, and to be educated and participate with other individuals with exceptional needs and nondisabled pupils. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) 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 evaluations 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).)

The U.S. Office of Special Education and Rehabilitative Services and the Office of Special Education Programs described bullying as the use of real or perceived power over a target where the aggression is repeated, or has the potential to be repeated, over

time. Acts of bullying include physical, verbal, emotional, or social behaviors ranging from blatant aggression to subtle and covert behaviors. (Office of Special Education and Rehabilitative Services, Office of Special Education Programs *Dear Colleague Letter*, (August 20, 2013; 113 LRP 33753 (*Dear Colleague 2013*).)

JUNE 5, 2017 IEP ADDENDUM

Parents consented to Student's 2016-2017 annual IEP and the June 5, 2017 addendum which addressed Student's transition into the sixth grade. The IEP team determined Student made good progress in all areas, including speech and language. The IEP team amended Student's IEP to reflect anticipated changes as Student transitioned to middle school commencing August 28, 2017. The IEP team placed Student in a special day class for language arts, math, science and history, and general education for his electives and physical education. Group speech and language services continued for 55 minutes per week. Student qualified for extended school year services.

Student did not raise an exception to the two-year statute of limitations in this matter. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) The 2016-2017 IEP, as well as the June 5, 2017 IEP addendum were developed prior to the June 14, 2017 commencement of the statute of limitations. Parent's consented to the IEP and its addendum. Student contends goals contained in those IEPs were inappropriate and immeasurable. Those goals, as written, however, are beyond the scope of this Decision. (*K.P. v. Salinas Union High Sch. Dist.* (N.D. Cal., April 8, 2016, No. 5:08-CV-03076-HRL) 2016 WL 1394377 [nonpub. opn.], pp. 10-11.)

Parents raised concerns that Student was picked on and was easily frustrated in class. Cindy Weeks, Student's special education teacher in elementary school testified at

hearing. Ms. Weeks reported Student would get upset and cry in class when he was frustrated. She did not believe Student required behavior interventions in his IEP because regular classroom methods were successful in bringing him down. Likewise, counseling was unnecessary as Student did not present with issues which could not be handled appropriately in class.

Although the 2016-2017 IEP remained in effect until November 29, 2017 Student presented insufficient information to suggest Student's educational or emotional needs significantly changed after June 16, 2017, which required modification prior to the November 29, 2017 annual IEP.

NOVEMBER 29, 2017 ANNUAL IEP

Student contends the November 29, 2017 IEP, and each IEP thereafter, failed to offer appropriate goals in the areas of self-advocacy, frustration tolerance, behavior, socialization, counseling and bullying. Student further contends his speech and language goals were inappropriate and unmeasurable; he was not provided a behavior intervention plan; nor was he offered extended school year services.

Student's annual IEP for the 2017-2018 school year took place on November 29, 2017, when he was in seventh grade. Parents and Student attended the IEP team meeting along with a Bellflower school psychologist, education specialist, speech and language pathologist, and general education teacher.

States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479,

1483.) (*Target Range*). Citing *Rowley, supra*, the court also recognized the importance of adherence to the procedural requirements of the IDEA, but noted that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at 1484.)

Procedural violations may constitute a denial of a FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parents' opportunity to participate in the IEP process. (*Ibid.*) These requirements are also found in the IDEA and California Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if it:

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

(20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

The IEP team discussed Student's strengths and weaknesses. Parents expressed their concerns regarding Student's academic progress. Student met his annual goals, but, based on his grades, Parents did not agree that Student made progress. Bellflower measured Student's IEP success based on goal progress, and Parents measured Student's success on grades. Parents requested academic tutoring because they felt Student was not reading at the appropriate level. Parents reported Student did not always comprehend what he heard. He did not ask for help because he struggled with expressing himself. Parent acknowledged Bellflower offered Student the afterschool tutoring program which was available to all students. Parents did not enroll Student in this program because they felt Student required intense one-to-one remediation during

the school day. Parents did not observe the afterschool program as they believed it offered assistance with homework completion rather than intensive reading assistance.

Parents reiterated their concerns that Student was picked on, describing these as incidents of bullying. On October 17, 2017, during his physical education class, Student was hit on the shunt implanted in the back of his head by another student at the urging of other students. Parent reported the incident to Michael Espinoza, the assistant principal in charge of student discipline, but Mr. Espinoza did not generate an Incident Report. Instead, Mr. Espinoza held the aggressor accountable, had her apologize to Student, and moved Student to a different physical education class. Student did not establish that the October 17, 2017 aggressive incident rose to the level of bullying or was more than an isolated incident of rough play between peers.

Vanessa Lopez, Student's seventh grade counselor, attended the November 29, 2017 IEP team meeting. As Student's case manager, she had the most direct contact with Parents and Bellflower staff. She reported a handful of telephone calls and communications with Parents, and met with Student regarding his grades and behavior. Ms. Lopez confirmed that Student often initiated his conflicts, and the IEP team acknowledged Student experienced setbacks in his social/emotional behavior. Student exhibited needs in self-advocacy. Parents expressed concern that Student did not have the social skills to understand bullying. Other students' aggressive behaviors overwhelmed Student, and he responded negatively to those types of behaviors. The IEP team sought to increase Student's communication ability for self-advocacy to allow Student to stand up to others at the time of confrontation. However, the IEP team developed no self-advocacy goal. Instead, the IEP team relied upon Student's pragmatic's goal which utilized social scenarios and role-playing.

The IEP team determined Student transitioned well into the middle school setting. He showed maturity in most classroom settings and his behavior was very acceptable to his teachers. Student could excel in areas of interest, such as his art class. He came to school prepared with his materials and could be a good student when he chose to be so motivated. On the other hand, Student showed a lack of endurance with academics. Student remained on task for 30 to 40 minutes, but then would shut down, and require a break to continue. This behavior impacted Student's classroom performance and subsequent grades. Despite this acknowledgement, the IEP team failed to develop any behavior goals or create a cohesive behavior plan for Student. Instead, the IEP team left it to individual teachers to redirect Student or otherwise manage his shutdowns.

Academically, Student continued to perform in low to very low ranges, operating at an average second grade level in the subjects of reading, math and writing. Student sometimes struggled with attention and focusing on tasks and staying on topic with peers. His comments towards his peers were somewhat reflective of his difficulties with social pragmatics.

Although he was in the seventh grade, Student performed at the second grade level in academics. The IEP team developed academic goals in reading, math and writing. The reading goal sought to increase Student's reading comprehension level to third grade, by distinguishing main ideas and supporting details in expository text. The math goal sought to increase Student's computation with whole numbers, and solve problems involving addition, subtraction, multiplication and division. The writing goal sought to increase sentence structure by writing and speaking in simple and compound sentences.

The IEP team acknowledged Student's failure to meet his speech and language goals. As a result, the IEP team developed speech and language goals which were phrased almost identically to his 2016-2017 goals. The pragmatics goal sought, through social scenarios, role-playing, social scenes or similar materials, to increase Student's appropriate responses or solutions to such scenarios with no more than one cue. The inferences goal sought to increase Student's ability to make correct inferences in passages at his instructional level with no more than one cue. Parents commented that neither of the speech goals provided benchmarks or short-term objectives. Short-term goals, however, are not required by statute or case law. Only the information set forth in title 20 United States Code section 1414(d)(1)(A)(i) must be included, 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) and (i).)

To support the IEP goals, the IEP team offered Student 50 minutes per week of group speech and language services, and four class periods per day of specialized academic instruction in a special day class. The IEP did not offer extended school year. Although Student received extended school year services in elementary school, Ms. Weeks did not find it necessary because Student did not regress during the summer break. The IEP team determined Student's regression and recoupment rates appeared typical.

At the time of the November 29, 2017 annual IEP, Bellflower's description of Student's negative interaction with peers as the generally inappropriate behavior of pubescent horseplay was more accurate than Parents' conclusions that Student was bullied. However, Student's reactions to peer confrontations were inappropriate, and self-advocacy was discussed as an area of need. The IEP team provided Student a

pragmatics goal designed to assist Student with appropriate social interaction. Other than his skirmishes with peers, Student presented as a hard working student who presented no behavior issues in class. Although teachers noted Student's lack of stamina and endurance, Student still remained on-task 30-40 minutes at a time, and teachers individually accommodated his endurance deficits on an as-needed basis. It would have been preferable to memorialize the teacher accommodations in the IEP, and Student could have benefited from a self-advocacy goal. Student, however, failed to establish that these specific omissions prevented him from making meaningful educational progress at this time.

Kayla Solomon, Student's speech and language pathologist, attended the November 29, 2017 IEP team meeting. At hearing Ms. Solomon's testimony seemed sarcastic. The prior speech and language pathologist drafted the goals in the 2017 IEP. Ms. Solomon would not define measurement terms in the goals, such as minimal verbal cues, because she did not create the goals. She would not commit to defining another provider's criteria. Her testimony however, did not establish that the goals, as written, were inappropriate or not capable of implementation. As example, Student's inference goal stated, "By November 2018, given a passage at his instructional level, Student will make correct inferences about the passage in 80 percent of opportunities with no more than one verbal or visual cue across three separate sessions as measured by clinician data collection. The service provider who implements the IEP goals, is often not a member of the IEP team that creates the goal. Ms. Solomon clarified that she implemented the goals by collecting data on the specific number of prompts to track Student's progress. This rendered the goals measurable.

The IEP team did not dispute Student's failure to meet his speech and language goals, but failure to meet a goal is not a denial of a FAPE. Further, it is not uncommon for new goals to act as a continuation of the old goals, with the intent to obtain proficiency. As example, in Student's inference goal, his baseline reported 55 percent accuracy given two-to-three verbal cues. The new goal sought to increase Student's proficiency to 80 percent accuracy with one cue. Student's pragmatics and inferencing goals were appropriate in relation to his unique needs.

Parents consented to the IEP.

As of November 29, 2017, the incidents of parent-described bullying were not yet pervasive, and Student was an active participant in such events. Student provided no evidence that counseling or a one-to-one aide were required at this time. Student's classroom behaviors were not disruptive, and Student did not establish a behavior intervention plan was needed. Although an independent self-advocacy goal would have been appropriate, Student's speech goals appropriately addressed social communication, pragmatics, and inferences. Nor did Student establish a need for extended school year.

Based upon the information available to the IEP team at the time, the November 29, 2019 IEP was reasonably calculated to provide Student meaningful educational benefit. Student failed to sustain his burden of proof to establish the November 29, 2017 IEP denied Student a FAPE.

NOVEMBER 29, 2018 IEP

Student's triennial IEP team meeting commenced on November 29, 2018, when he was in eighth grade. Parents and Student attended the IEP team meeting along with

a Bellflower school psychologist, education specialist, and counselor. The general education teacher was excused in writing from attending the IEP team meeting.

Parents again expressed their concern with Student's ongoing inability to self-advocate in confrontational circumstances. They remained concerned for his health and safety at school.

The IEP team reviewed Student's progress on goals and his present levels of performance. Student met his academic goals with assistance. Letter and word recognition and comprehension continued as areas of weakness. Spelling, in particular, was an area of concern which impacted Student's written expression. Parents reported Student was bullied and humiliated for his spelling difficulties. Student's abilities in math were strong, with Student performing within the range of most of his peers. Once again, Student did not meet his speech goals, which had only marginally changed since 2016. Student continued to have difficulty identifying and explaining appropriate responses to social scenarios as well as making inferences.

Student generally exhibited compliant behavior in class. His social/emotional behaviors of shutting down however, continued to raise concern that his frustration level was getting in the way of his academic ability. His inability to work through issues caused him frustration. This frustration resulted in task avoidance if something became too hard. Student continued to show a lack of endurance if he needed to exert a lot of mental energy. Student's grades ranged from an "A" in physical education to an "F" in boys' chorus. Incomplete work and missing assignments impacted Student's grades.

Bellflower did not conduct a formal psychoeducational assessment for the 2018 triennial IEP. The IEP team reviewed a triennial psychoeducational assessment report

dated November 29, 2018, prepared by Abraham Aryadad, the school psychologist. Mr. Aryadad is a Ph.D. candidate at Chapman University. He holds a bachelor's degree in psychology, master's degree in education, and a pupil personnel service credential. He is also a board certified behavior analyst. Mr. Aryadad testified at hearing to defend his psychoeducational report. He presented a cutting-edge approach to psychoeducational assessment. Mr. Aryadad explained he considered standardized tests to be screenings and ultimately of little assistance in determining ways to assist a student with a disability to access his education. Mr. Aryadad considered standardized testing to be behind the times, which he used only when necessary to comply with federal and state requirements. Instead, Mr. Aryadad preferred to look beyond scores in standardized testing and instead use curriculum based assessments to pull out the finer information to determine what and how to teach a student. To accomplish this, Mr. Aryadad looked at research in relation to a student's disability. For example, an academic assessment would produce more valuable information than a standardized cognitive assessment. As a result, Mr. Aryadad did not reassess Student's cognitive functioning, but relied on the information in Student's 2015 assessment report in which Student scored in the very low to low average range. Mr. Aryadad concluded Student's cognition remained stable at the 2015 levels.

Mr. Aryadad opined that the triennial psychoeducational assessment was structured to determine what problems were continuing in Student's academic development, what needed to change, increase or decrease and what changes in teaching strategies were needed. In his opinion, these questions were answered by a review of records and work samples, observations, and administration of the Kaufman-Brief, third edition.

Student scored between low and below average on the letter and word recognition and reading comprehension subtests. Student scored within the very low to low average range in spelling. Student exhibited a basic understanding of some sounds, but continued to have difficulties with verbal comprehension. Student scored within the average range in math.

Mr. Aryadad made several academic recommendations to adopt a teaching strategy known as MEAL, to improve Student's reading and writing skills. MEAL utilized identification of a Main idea, followed by Evidence, explanations and examples of the main idea, Analysis of the main idea, and Linking of the paragraph to the paper's thesis. Mr. Aryadad provided a significant number of web links to common core based games which he recommended to improve Student's academics.

Information regarding Student's social-emotional development was based upon input from Student, Parent and teachers. Student's history teacher reported Student turned in incomplete work which reduced his grade. The teacher found Student motivated to do well and earn higher grades, yet his low frustration level impeded his ability to complete his work. Student's English teacher reported Student tried to do everything requested of him in class, but he became frustrated when he did not comprehend what was asked of him. As a result, if work was not completed in class, Student would not take it home to complete it. Student's math teacher reported Student would benefit and improve his grades by staying on task. Student tended to get frustrated very easily, and once that happened, he would shut down and had a hard time getting past it. If he made a mistake, he gave up. Sometimes Student would cry, and one needed to be careful responding to or correcting Student, because it was uncertain how he would react.

In spite of these findings Mr. Aryadad determined that although Student's frustration level remained low, his resilience improved. Mr. Aryadad conceded the behavior component of the psychoeducational assessment was not completed, and the assessment report did not determine whether Student required behavioral intervention. Mr. Aryadad admitted conducting the Behavior Assessment System for Children, Third Edition, also called the BASC3, which addresses behavior, but the rating scales were not scored, included in the assessment report, or discussed at the IEP team meeting. Mr. Aryadad also had not completed his evaluation of Student's social/emotional or behavioral needs, because he wanted to discuss these needs with the IEP team to know what these behaviors "looked like." He wanted to discuss whether typical positive reinforcement would suffice as behavior intervention. This was indicative of his preference for problem-solving rather than reporting standardized scores. Unfortunately, there was insufficient time at both the November 29, 2018 and January 22, 2019 sessions of the triennial IEP team meetings to complete discussion of the psychoeducational assessment, and the assessment remained incomplete.

Mr. Aryadad's behavior recommendations addressed Student's behavior in performing academics, and suggested breaking down assignments into smaller chunks to be tackled piece by piece; setting goals for the work period; preplanning when tasks demands might be difficult; and providing verbal praise. Other than suggesting a coping goal, the psychoeducation assessment lacked useful information for the IEP team.

Mr. Aryadad did not address the subject of bullying in a helpful manner. Rather, Mr. Aryadad did not consider the behavior of middle school students to constitute bullying. In his opinion, middle-school students regularly insulted each other. He

believed Student would engage in such conduct himself, but Student did not like it when it was directed at him. Mr. Aryadad did not recommend a self-advocacy goal or any similar behavior goals.

Karl Meeks was Student's special education teacher and case carrier in the seventh and eighth grade. Mr. Meeks provided most of the academic information at the triennial IEP team meeting. At the hearing, Mr. Meeks presented as an experienced, and an old-school educator, the opposite of Mr. Aryadad. Mr. Meeks acknowledged Student's low and failing grades, but reported Student's academic abilities, particularly in reading comprehension, were very low. Grade-level curriculum was broken down to the level of vocabulary Student could understand. Mr. Meeks considered a passing grade of D good based upon Student's cognitive level, although some of Student's low grades were due to Student's frustration and resulting task avoidance, as well as incomplete assignments. Mr. Meeks did not recommend a goal for work completion or frustration.

At hearing Mr. Meeks expressed his special education philosophy. His guiding principles included focus on academics and create as few goals as possible, because more goals muddy things and confuse students. He also believed in trying to develop a bond with the student and add behavior goals only if really necessary. Mr. Meeks felt a behavior intervention plan would be a stigma to Student, and not needed because Student was not significantly disruptive. Further, Student's frustrations and attention issues were self-contained. Mr. Meeks did not support creation of goals or accommodations for breaks, because Student's mental fatigue could not be measured. Each teacher appropriately determined how to deal with fatigue and breaks on an "as needed" basis.

The IEP team discussed Student's present levels of performance in academics. Letter and word recognition and reading comprehension were unique areas of need with Student performing better than only 2 percent of his same-aged peers. Student's spelling was within the very low to low range, which was an area of unique need which also impacted his written expression. Student performed within the range of most same-aged peers in math computation.

The IEP crafted academic goals in Students areas of need. A math goal sought to increase Student's ability to solve multi-step linear equations and word problems. A reading goal sought to increase Student's word recognition by evaluating the structural elements of eighth grade core literature. A writing goal sought to self-edit writing assignments for spelling, grammar and punctuation errors with the use of a writing rubric. A spelling goal sought to increase spelling, word recognition and pronunciation. Each goal contained a baseline which was not disputed by Parents.

The IEP team reviewed the triennial speech, language and communication evaluation report dated November 29, 2018. Monica Roman conducted the speech and language assessment. Ms. Roman has both a bachelor's and master's degree in speech and language pathology, and is a licensed speech and language pathologist. She noted that during the assessment Student put his head on the table, which affected his ability to fully concentrate. Some of Student's errors were due to his distractibility, fatigue and inability to remember the information presented. The speech and language assessment report showed Student continued to have challenges in the areas of expressive and receptive language, as well as pragmatic language skills. He scored below average to deficient in all sub-tests of the Comprehensive Assessment of Spoken Language, Second Edition. Student exhibited difficulties constructing compound and complex sentences,

using socially accepted language, and comprehending the exact meaning of words and sentences when presented orally. The assessor noted additional areas of weakness in making accurate inferences from information orally presented, and use of verb tenses, plurals, and pronouns. Ms. Roman recommended the IEP team establish receptive, expressive and pragmatic goals in two areas. First, the correct use of regular, irregular and simple future verb tense forms and plurals within complex and compound sentences while engaged in comparing and contrasting tasks. Second, identifying information from instruction level passages by answering inferential questions and making predictions; and using socially acceptable language and norms in a variety of social scenarios.

Although he made some progress, Student had not met any of his speech and language goals since 2015-2016. The speech goals in 2017 were strikingly similar to those of 2016, and sought mastery by 2018. As of the 2018 annual IEP, Student did not meet any of his speech and language goals. Student continued to present with challenges when attempting to identify and explain appropriate responses to social scenarios as well as with making inferences from a passage.

A social communication goal sought to have Student provide socially appropriate responses and solutions in social scenarios. A receptive and expressive language goal sought the use of accurate nouns, adjectives, possessive pronouns, plurals and verb tenses in complex and compound sentence when comparing and contrasting in paragraphs. An inference goal sought to increase Student's ability to make accurate assumptions and predictions. While the goals mimicked assessment report recommendations, they remained the same as had been adopted in 2016, and 2017.

The IEP team discussed appropriate accommodations, and discussed a continuum of placements. Bellflower's offer of a FAPE consisted of 220 minutes per day of specialized academic instruction in a special day class and 50 minutes per week of group speech and language service. Bellflower did not offer extended school year as Student did not show a pattern of loss of skills during school breaks beyond those to be expected for all students. The speech and language goals offered in the 2018 annual IEP had been ineffective in increasing Student's speech skills. Continuing the goals into 2017 was reasonable in an attempt to provide more time to attain mastery. Presenting the same goals for a third year without success, however, indicated a need for new goals or strategies. Unfortunately, the speech and language assessment offered little to provide the IEP team with information to craft effective goals designed for Student to successfully increase his skills. The speech and language goals were inappropriate, and had been unsuccessful in providing Student education benefit. The speech and language goals denied Student a FAPE.

Mr. Aryadad supported his failure to conduct cognitive testing by reporting Student's cognitive levels were not in issue because his eligibility had not changed. This reasoning was flawed for several reasons. First, 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).) The purpose of a triennial evaluation is to revisit eligibility. Student experienced a brain injury and seizures, both of which were unstable by definition. Whether Student's cognitive level had shifted due to his medical condition was of high importance in determining his educational program. Further, without current cognitive testing, the IEP team could not consider all possible categories of eligibility, such as specific learning disability, or consider possibly different means of

addressing weaknesses, such as Student's reading comprehension. More disturbing, by utilizing the 2015 cognitive scores, Bellflower predetermined Student's cognitive levels. By doing so, Bellflower relieved itself of needing to consider whether more challenging goals were appropriate. Bellflower could not provide an IEP reasonably calculated to enable Student to make progress appropriate in light of his circumstances. (*Andrew F. supra at p. 1000.*)

Bellflower's failure to conduct a thorough triennial assessment further resulted in a psychoeducational assessment report that insufficiently addressed Student's social-emotional areas. The psychoeducation evaluation observations were replete with references to Student's low frustration levels, difficulty staying on-task and completing assignments, and shutting down and crying. These behavioral observations were reiterated by Parents and discussed by the IEP team. Yet the IEP team failed to create goals for self-advocacy and task avoidance which had become areas of need based upon Bellflower's own observations and the information readily available to the IEP team. Given the psychoeducational assessment deficiencies, and the IEP team's failure to create appropriate goals, Student was left with unaddressed social/emotional issues, which negatively impacted his ability to access his education, and thus denied him a FAPE.

JANUARY 22, 2019 ADDENDUM IEP

Bellflower held an addendum IEP team meeting on January 22, 2019 to review Student's progress and determine appropriate supports and services. Bellflower members of the IEP team consisted of the program administrator, educational specialist, counselor, school psychologist, and general education teacher. Parents attended with an advocate. Parents, through their advocate, provided the IEP team with a six-page

document entitled "Parent Agenda," which was read to the IEP team and attached to the IEP document.

Mr. Adair, Bellflower's program administrator, became involved with Student's special education program at the January 22, 2019 IEP team meeting due to the attendance of an advocate on behalf of Student. Based upon the testimony of Bellflower witnesses who attended the January 22, 2019, IEP team meeting, including that of Mr. Adair, the advocate dominated the meeting and pursued demands and discussion of the Parent Agenda. The advocate did not testify at hearing, and her qualifications in special education remain unknown. The Parent Agenda nevertheless presented a thorough delineation of parental concerns which Parents felt were consistently ignored by Bellflower, but which had to be addressed so Student could make progress. Although Parents consented to Student's previous IEPs, they asserted the November 29, 2019 IEP did not address all of Student's unique needs, did not offer appropriate services, did not provide appropriate goals, accommodations or modifications, and did not provide Student a FAPE.

Parents requested more goals addressing academics, self-advocacy, completing homework, and task initiation. The IEP team agreed to gather baseline information to generate goals in the requested areas.

Bellflower conducted a vision and hearing screening, but did not conduct a health assessment for the November 29, 2018 triennial IEP. The health coordinator did not attend this IEP team meeting. Based upon previous inappropriate staff responses to Student's seizures, Parents requested Bellflower create an individualized health care plan for Student, including a seizure action plan, and shunt precautions.

Parents contended Student regressed tremendously during extended school breaks and requested extended school year services. Mr. Meeks opined Student did not require extended school year services. He was not worried about Student losing skills. He reported the IEP team added extended school year services to Student's IEP simply because Parents requested it.

Parents requested the IEP team amend the November 29, 2018 IEP to add 60 minutes per day of resource service program pull-out services and an additional 20 minutes per week of individual speech and language services. Parents also requested that speech and language services be continued during extended school year at the increased level of service. The IEP team agreed to provide speech services during the extended school year.

Parents requested the IEP be amended to specifically include two 30-minute sessions of computer training for Student, Parents and staff; consultation between Student's case carrier and general education teachers; and weekly email communication between teachers and Parents regarding classwork assignments, homework, tests, quizzes and projects. Additionally, Parents requested that they be provided monthly speech therapy logs, communication regarding the accommodations being provided to Student, IEP goal progress reports on a quarterly basis and copies of teacher charted work and Student work samples along with the quarterly IEP goal reports.

A list of 23 accommodations and modifications were requested, many of which were teaching strategies.

The IEP team agreed to timely reconvene the IEP team meeting so that the health coordinator could attend. Mr. Adair told Parents their requests for increased speech

services would be addressed at the next IEP team meeting with the speech pathologist present. Any remaining issues would be addressed in a letter of prior written notice. Parents did not consent to the January 22, 2019 IEP addendum.

Bellflower convened the January 22, 2019 Addendum IEP team meeting to review Student's progress, goals and services. Parents' robust agenda could not be fully discussed in the time allotted for the team meeting, and the IEP team agreed to reconvene the IEP team meeting at a later date to complete their review and discussions. As the IEP team's review remained incomplete, Bellflower offered no changes to the November 29, 2018 annual IEP. Although Bellflower subsequently agreed to conduct the assessments requested by Parents, including the functional behavior analysis and independent assessments, these assessments had yet to be completed. Student's speech and language goals remained unproductive, and Student's social-emotional areas remained unaddressed. As a result, the denial of a FAPE resulting from the November 29, 2018 IEP remained uncured.

PRIOR WRITTEN NOTICE TO PARENT AGENDA

On February 6, 2019, Bellflower's Mr. Adair sent a letter of prior written notice to Parents. In this letter to Parents, Mr. Adair agreed to many parental requests. Bellflower agreed to assess Student in the areas of health, occupational therapy, adaptive physical education, assistive technology, and functional behavior, and immediately provided an assessment plan to Parents. The assessment plan and authorizations to release information were attached to the letter. Upon completion of the assessments, Bellflower would hold an IEP team meeting to discuss further changes to Student's IEP, including the development of a behavior intervention plan. In the meantime, Mr. Adair

agreed to hold an amendment IEP team meeting to review goals in the areas requested by Parents. Bellflower staff would draft proposed goals in the areas of reading comprehension, paragraph writing, self-advocacy, completing and turning in assignments, and task initiation to be presented at the addendum IEP team meeting. Further, Parent's request for a peer buddy would also be discussed at the next IEP team meeting.

Parents, in the Parent Agenda, requested educational records of all IEP progress reports and corresponding work samples and/or data collection for the 2017-2019 school years. Bellflower provided Parents with Student's 2017-2019 progress reports, but noted work samples and data collection were not maintained indefinitely. Those items were not part of Student's cumulative file or educational records, and therefore could not be produced.

Parents, in the Parent Agenda, requested Bellflower confirm Student remained on track for a high school diploma in 2023, and further explain how Student would earn his diploma, considering he was performing at the second percentile in academics with a second grade proficiency level when compared to his peers. Mr. Adair's letter explained graduation from high school was based upon credits, not upon standardized test scores. The letter also explained that the IEP team would determine which services, supports and accommodations might be needed for Student to earn the credits for a diploma, and whether it would take Student additional time to complete necessary diploma credits or whether a non-diploma certificate of completion of curriculum was appropriate for Student.

Mr. Adair's letter informed Parents that Bellflower's health coordinator provided seizure first-aid training to all school instructional and health assistants every August, and Mr. Adair attached to the letter a copy of Bellflower's emergency seizure treatment plan. Mr. Adair agreed to develop an individualized healthcare plan for Student. Previously, on January 31, 2019, the health coordinator met with Parent to review Bellflower's seizure training materials, and allowed Parent to share any feedback she felt staff should be aware of regarding Student. Mr. Adair's letter noted Parents had not returned Student's VP Shunt emergency care plan, which needed to be completed by Student's doctor. Once returned, the emergency plan would be completed, provided to staff and attached to Student's IEP. An additional copy of the Seizure Emergency Care Plan, Seizure Record, and Authorization for Any Medication Taken During School forms were attached to the letter.

Parents believed Student made no academic progress, evidenced by his second percentile status in academics, and requested remediation services and compensatory education services, consisting of supplemental one-to-one educational services from a non-public agency; before and after school tutoring from a special education teacher; and intensive math and reading instruction using research-based programs samples and/or data collection for the 2017-2019 school years. Mr. Adair acknowledged this request for remedial services, and responded that Bellflower provided Student a FAPE, and therefore offered no compensatory services.

FEBRUARY 27, 2019 ADDENDUM IEP

Bellflower held a follow-up IEP team meeting on February 27, 2019 to discuss unanswered issues from the January 22, 2019 Addendum IEP team meeting, as well to

address the matters included in the Parent Agenda and Mr. Adair's February 6, 2019 letter of prior written notice.

The program administrator, educational specialist, counselor, speech and language pathologist, health coordinator, school psychologist, general education teacher, Parent and Student's advocate attended the IEP team meeting.

Ms. Wong, Bellflower's health coordinator, attended the IEP team meeting, but had not completed Student's health assessment, as she required additional information. She provided an update on Student's health needs and said all staff had been provided information regarding Student's seizures. The IEP team agreed to add two hours of annual staff training on Student's seizure action plan and VP shunt, to be repeated for any new staff as needed. Student's case coordinator and speech and language pathologist had not yet completed the seizure training.

Although not usually part of an IEP, a copy of the seizure plan materials was attached to the IEP and provided to Student's teachers.

The IEP team agreed to provide Student a laptop. Mr. Adair agreed to follow-up with Parent to provide computer training to Parents. The IEP team agreed to add extended school year services to the IEP. The IEP team agreed to add 15 minutes per month of consultation between Mr. Meeks, as the education specialist, and Student's other teachers. The IEP team agreed to provide Parents with weekly emails from teachers and service providers with updates on Student's progress.

The IEP team discussed speech and language at length. Parent questioned how goals were measured, and sought clarity on Student's instructional level as stated in the speech goals. Mr. Meeks reported overall, Student performed on a third grade level.

Parent requested an additional 20 minutes per week of individualized speech services to address expressive and receptive language. The IEP team agreed to do so, and asked Parent if additional goals were needed. At the January 22, 2019 IEP team meeting, Parents specifically requested a self-advocacy goal. Mr. Adair's February 6, 2019, prior written notice letter acknowledged this request, and stated data would be collected and a proposed goal presented at this IEP team meeting. Bellflower did not collect data and did not present a proposed goal. The advocate again suggested a self-advocacy goal in relation to situations Student perceived as bullying. The speech and language pathologist agreed to create a goal, and the IEP team agreed to prepare a self-advocacy goal. Additionally, to address the bullying issue, the IEP team agreed to add 30 minutes per week of counseling. No goals were drafted to accompany the counseling service.

The IEP team agreed to reconvene the IEP team meeting to complete discussions regarding accommodations and present the self-advocacy and counseling goals. Mr. Adair agreed to provide Parents and the advocate with a copy of the agreed-upon changes to the IEP by February 28, 2019.

The February 27, 2019 IEP team meeting was intended to complete review and discussions initiated at the January 22, 2019 IEP team meeting. This did not happen. Admittedly, the IEP team had numerous issues to discuss, and limited time to do so. Bellflower acceded to most of the parental requests. Nevertheless, Student's social emotional issues were not adequately addressed. Bellflower agreed at the January 22, 2019 IEP team meeting and again in its February 6, 2019 letter of prior written notice that the IEP team would create a self-advocacy goal and have a draft prepared for the February 27, 2019 IEP team meeting. This did not happen. The IEP team addressed the issue of bullying by offering 30 minutes of counseling, but failed to create a goal to

accompany the service. Bellflower failed to provide the long-awaited self-advocacy goal, and delayed its creation even further. Thus, Bellflower had a third opportunity to remedy the November 29, 2018 IEP denial of FAPE, but failed to do so. The November 29, 2018 denial of FAPE remained uncured.

BULLYING REVISITED

California has a more expansive definition of bullying than the federal guidance interpreting the IDEA cited earlier in this Decision. The California Education Code defines bullying as "a severe or pervasive physical or verbal act or conduct by a pupil or group of pupils ... directed toward one or more pupils" that causes or is "reasonably predicted" to cause a reasonable student to experience one or more of the following:

- fear of harm to his or her person or property;
- a substantially detrimental effect on his or her physical or mental health;
- a substantial interference with his or her academic performance; or
- a substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school. (Ed. Code, § 48900, subd. (r).)

Parents remained steadfast in their concerns regarding bullying. The incidents involving Student continued and increased in frequency and impacted Student's emotional status.

On March 7, 2019, Student was involved in a mutually aggressive incident during physical education where he was punched in the face. On another occasion, another student attempted to take Student's backpack while he was using the bathroom. Student also reported to his parents of other incidents which emotionally affected him.

He reported a group of boys threw food at him in the cafeteria. On another occasion, peers made fun of him by asking Student to spell, knowing Student had difficulties with spelling. Others made fun of Student and pointed out he was alone. Parents emailed a list of incidents to the school principal requesting intervention.

Additionally, Parents requested a one-to-one aide because they were concerned about Student's physical safety, given his medical condition. The parties, however, did not share an understanding of what type of aide could be beneficial. Although Parent's phrased their request as a one-to-one aide, they did not want an adult aide attached to Student throughout the day. They knew this would only add to Student's anxiety, as it would single him out for additional humiliations. What they wanted, albeit inarticulately expressed, was a shadow aide or adult supervision to discreetly monitor Student from a distance to insure his safety yet not make him more of a target. Having discounted any consideration of bullying, Bellflower offered a full-time one-to-one aide, to monitor Student's physical health and safety. As expected by Parents, Student perceived this as making him a target, and increased his anxiety.

Parents met with Michael Lundgren, the Principal at Bellflower Middle School, to request incident reports on these bullying incidents. Mr. Lundgren denied these incidents amounted to bullying, and continued to describe these events as mutual horseplay of pre-adolescents. At hearing, the principal admitted he did not have an official definition of bullying and maintained his opinion that "boys will be boys." This opinion is not supported by law.

Horseplay or not, Student perceived the continuing aggressive activities of his peers as threatening. By March 2019, the incidents experienced by Student were sufficiently numerous to constitute pervasive physical and verbal acts conducted by

other students, specifically directed towards Student. In their totality, the incidents resulted in Student's perceived fear of harm and had a substantially detrimental effect on Student's physical and mental health. As such, the incidents as reported by Parents constituted bullying, and Bellflower underestimated its impact on Student's physical and emotional well-being.

A letter from Student's pediatric neurologist dated March 12, 2019, supported this conclusion. The doctor reported Student's seizure activity had increased, and Student's seizure activity could possibly be increasing due to additional stress in his current school environment as reported by Parents. The letter noted that, based on his medical needs and individual differences, Student may be at high risk for social conflicts with peers. The letter requested that Bellflower take a proactive stance in working with Student to avoid these types of situations. With any current offenses from other students towards Student, the neurologist requested school officials implement the school's safety plan and disciplinary protocol and include a follow-up meeting with Parents. The letter strongly requested school-based counseling to help Student practice effective communication skills and constructive conflict resolution.

If the bullying of a student with a disability causes the student not to receive meaningful educational benefit, it can constitute a denial of a FAPE under the IDEA. (*Dear Colleague Letter, supra*, OSERS (August 20, 2013).) It does not matter whether the bullying is related to the student's disability. (*Ibid.*) Therefore, a determination of whether bullying has denied a student a FAPE requires a two-step analysis: whether bullying occurred, and whether the bullying resulted in the student not receiving educational benefit within the meaning of *Rowley*. There is a "strong likelihood" that bullying of a disabled student will result in the denial of a FAPE. (*Ibid.*)

"Although there are no hard and fast rules regarding how much change in academic performance or behavior is necessary to trigger the school's obligation to convene the IEP team ... a sudden decline in grades, the onset of emotional outbursts, an increase in the frequency or intensity of behavioral interruptions, or a rise in missed classes or sessions of Section 504 services would generally be sufficient." (*Dear Colleague Letter, supra.* 464 IDELR 115.)

As of mid-March 2019, Student sufficiently established incidents of bullying resulted in increased anxiety and stress, and may have contributed to increased seizure activity. The second tier of analysis for denial of a FAPE requires that the bullying resulted in Student not receiving educational benefit. Bellflower recognized Student's lack of self-advocacy skills and inability to deal with peer confrontation. Bellflower knew Student required goals for behavior and counseling. Bellflower continually promised to draft such goals, but continually failed to do so. Although the speech goals addressed social pragmatics, they had proven ineffective at improving Student's social communication. As a result, Student was not provided the self-advocacy skills to assist him in dealing with peer confrontation, or the counseling goals needed to address the ongoing bullying. Without these skills, Student's anxiety increased and his seizure activity increased, thereby limiting his ability to benefit from his education. Bellflower's failure to identify the bullying of Student resulted in a denial of a FAPE.

MARCH 27, 2019 ADDENDUM IEP

Bellflower convened an addendum IEP team meeting on March 27, 2019, to discuss parental concerns and review the assistive technology assessment report. Bellflower's general education teacher, adaptive physical education specialist, behavior

specialist, program administrator, school psychologist, special education teacher, occupational therapist, health coordinator, Parent, and Student's advocate attended the IEP team meeting.

Ms. Wong reviewed health documents with Parents to determine what additional health information they wanted to add to the IEP. Parents agreed the documents added at the prior IEP team meeting were sufficient. Parents requested the health coordinator's information be added to Students present levels section of the IEP. The IEP team agreed. Ms. Wong also reported on health and seizure training for staff.

The assistive technology assessor reviewed her assessment report with the team. Student had difficulty with reading decoding and comprehension. She believed Student would benefit from text-to-speech technology, and had obtained a subscription for the service for Student. Tasks that required reading caused Student to focus on decoding more than on the assignment. The assessor suggested Student either have an audio book or have passages read to him by staff. She also suggested incorporating visuals to Student's lessons would be appropriate. The assessor recommended 20 minutes per month of direct assistive technology services for Student. The assistive technology assessor recommended several assistive technology programs for trials, and the IEP team agreed to trials of three different programs. The IEP team also offered two hours per year of assistive technology consultation and training for Parents. Parents agreed with the offer of assistive technology.

Mr. Meeks again noted Student did not ask for help at school. Parents once again noted the IEP team needed to work on Student's self-advocacy. Parents reported on the March 7, 2019 bullying incident. The general education teacher confirmed the incident and acknowledged the three students involved where known to victimize other

students. Bellflower had not prepared the self-advocacy or counseling goals promised in January 2019. Mr. Adair agreed the goals would be drafted by the school psychologist by April 3, 2019.

In response to Parents' January 22, 2019, request for additional tutoring, the IEP team agreed to provide Student with two hours per week of intensive reading instruction after school. The IEP team further discussed Parents' earlier request for additional reading instruction in a pull-out resource class. However, the team determined the after school program would suffice. Parents agreed.

Proposed accommodations were approved and additional accommodations were added by the IEP team.

The IEP team revisited Parents' request for a one-to-one aide during unstructured times between classes, and during lunch and breaks. Additional concern was raised regarding physical education as Bellflower's resolution to a prior bullying incident was to move Student's changing room to coach's office rather than the gym. The assistant principal who oversees special education determined that changing in the coach's office would be less invasive than the presence of a one-to-one aide in the gym. The IEP stated Student's services included intensive individual services. This one-to-one direct service would be provided weekly on an individual basis during unstructured times of passing periods, snack, lunch and to/from direct instruction services, later clarified in the April 10, 2019 addendum IEP, as 442 minutes per week of individual service. The IEP notes show Parent initialed the IEP in agreement to implement the contents of the amendment to the November 29, 2018 annual IEP.

Bellflower offered significant enhancements to Student's IEP in academics as requested by Parents. Yet Bellflower again failed to provide the self-advocacy goal. Student's speech and language goals remained inappropriate. Although Bellflower adjusted the one-to-one aide to only unstructured time, Student was still singled out by other students during physical education because he was now required to change clothes in the coach's office. Bellflower failed to address the bullying issue, and Student's non-academic deficits remained underserved. All of these components significantly contributed to Student's perception of bullying, which added to his increasing anxiety and increased danger of seizure, all of which prevented him from accessing his education.

APRIL 10, 2019 ADDENDUM IEP TEAM MEETING

Bellflower conducted an IEP team meeting on April 10, 2019, to review Bellflower's functional behavior assessment, occupational therapy assessment and adaptive physical education assessment, conducted as Bellflower agreed in Mr. Adair's prior written notice letter of February 6, 2019. A general education teacher, adaptive physical education specialist, behavior specialist, program administrator, school psychologist, special education teacher, occupational therapist, Parent and Student's advocate attended this IEP team meeting.

Caroline Thompson, Bellflower's behavior intervention specialist, reviewed her functional behavior assessment with the IEP team. Ms. Thompson holds a bachelor's degree in psychology and a master's degree in teaching. She is a board certified behavior analyst. Ms. Thompson testified at hearing and presented as a competent witness. Based upon the data collected, she opined Student engaged in off-task

behaviors to gain peer attention which reinforced peer socialization. Ms. Thompson determined Student's behaviors did not warrant behavior services. She considered Student's displays of frustration as not inappropriate or maladaptive. Rather, his behavior was socially appropriate. Student was not disruptive, and he could independently get himself back on task. Ms. Thompson observed situations in which Student could have asked for help, but did not. Sometimes it appeared Student did not understand the help he was given. Ms. Thompson commented she was working with Student on self-advocacy and recommended the IEP team create a self-advocacy goal.

Parents requested several accommodations, primarily regarding academics. The IEP team adopted the requested accommodations. The IEP team, including Parents and Student's advocate, agreed Student's behaviors were manageable in class. With the additional accommodations suggested by the behavior specialist and Parents, the IEP team agreed Student did not require a behavior intervention plan.

Nina Rezvani, the school psychologist providing Student's counseling, reviewed proposed goals generated for self-advocacy and response to peer conflict. Ms. Rezvani is a licensed educational psychologist and holds masters' degrees in school counseling and educational psychology. Ms. Rezvani proposed goals she was informally utilizing with Student to work on conflict solving and problem solving skills to help him learn to self-advocate. Parents reported they also were working with Student to learn these skills at home, and felt Student would benefit from the proposed goals. The IEP team, including Parents, consented to the self-advocacy goals, and to maintain the current counseling services. The proposed goals were not put in writing at the IEP team meeting.

The occupational therapist reviewed the occupational therapy assessment and reported Student resisted performing some of the more challenging tasks in the test. With redirection and encouragement, Student completed the tasks. The assessor reported Student's behavior skills were mostly adequate but inconsistent in the areas of completing tasks and coping behaviors. Student exhibited some difficulties with fine motor skills, but overall, his fine motor skills were observed as functional. Student's motor planning skills were mostly adequate with inconsistent performance in areas of planning and execution. Student's visual motor skills tested within the functional range in most areas, but were inconsistent in the areas of copying complex shapes and far-point copying. The occupational therapist determined Student did not require occupational therapy services, but recommended a pencil grip to help with hand fatigue, and typing for longer assignments.

Parents disagreed with the occupational therapy assessment. The advocate reported Student's handwriting was at a second grade level. Student experienced hand shaking due to his medication. Parents believed that occupational therapy had helped Student in the past, and now requested occupational therapy to address Student's handwriting. The occupational therapy responded that occupational therapy would not stop Student's shaking and his writing would be best served with assistive technology. Student presented no evidence to suggest the omission of a handwriting goal, or provision of occupational therapy services constituted a denial of FAPE for Student. Parents simply disagreed with the recommendations of the report and requested an independent occupational therapy assessment.

The adaptive physical education specialist reviewed her report and determined Student did not require adaptive physical education. The IEP team, including Parents, agreed adaptive physical education services were not needed.

Parents did not consent to the April 10, 2019 IEP at this time, nor did they receive a copy of the proposed amended IEP document.

After completing the assessments requested by Parents, and reviewing the reports, the IEP team adopted the long awaited self-advocacy goal and other recommendations offered by the assessors, Parents, and Student's advocate. Parents agreed no additional areas of need were identified, and no additional goals or services were required. With the exception of occupational therapy, Parents agreed with the recommended changes to the November 29, 2018 IEP offered on April 10, 2019.

Bellflower's final offer of FAPE amending the November 29, 2019, consisted of

1. Specialized academic instruction consisting of 220 minutes per day in the mild/moderate self-contained special education classroom;
2. Speech and language services consisting of 50 minutes per week of small group, and 20 minutes per week of individual services;
3. Assistive technology services consisting of individual services, 20 minutes per month;
4. Intensive individual services consisting of 442 minutes per week on an individual basis during unstructured times of passing periods, snack, lunch, and to/from services; and
5. Counseling and guidance services consisting of 20 minutes per week on an individual basis, and 10 minutes per week of collaborative services.

Bellflower's offer of FAPE at the April 10, 2019 IEP team meeting, which also incorporated the previously amended goals, services, and accommodations was designed to meet the student's unique needs and was reasonably calculated to provide

Student with educational benefit appropriate in light of the student's circumstances. In theory, the April 10, 2019 addendum IEP, as discussed at the IEP team meeting constituted a FAPE. The document entered into evidence as the April 10, 2019 addendum IEP, however, did not include the self-advocacy goal agreed to at the IEP team meeting. Parent testified Student did not receive the completed April 10, 2019 IEP for their consent until June 2019. Mr. Adair acknowledged that, in the usual course of business, the IEP documents reviewed at the IEP team meeting were drafts. Completed final copies were sent to parents shortly after the IEP team meeting. Ms. Rezvani confirmed Parents were not provided the final draft of the IEP on April 10, 2019, because she had not added the self-advocacy goal into the computer program for the IEP document. Further, no good reason was put forth by Bellflower as to the lengthy delay.

The evidence supports a finding that Parents did not receive the completed April 10, 2019 IEP until June 2019, and could not consent to its contents until that time. Therefore, the April 10, 2019 addendum IEP was incomplete and could not constitute an offer of FAPE until the self-advocacy goal was added to the document, and the IEP, in its entirety, was presented to Parents for consent.

ISSUE TWO: DID BELLFLOWER DENY STUDENT A FAPE FROM JUNE 14, 2017 THROUGH JUNE 14, 2019, BY FAILING TO TIMELY AND APPROPRIATELY ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY?

Student contends Bellflower failed to timely and appropriately assess Student in all suspected areas of disability. Specifically, he contends Bellflower failed to assess Student in the areas of functional behavior, assistive technology, occupational therapy,

adaptive physical education and educationally related health. Parents requested these additional assessments at the January 22, 2019 IEP team meeting. Student made additional contentions about the appropriateness of the November 29, 2018 triennial assessments, but those arguments became moot when Student withdrew his requests for independent educational evaluations at hearing. Bellflower contends it appropriately assessed Student in all areas of suspected disability.

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).) A local educational agency must conduct a reassessment at least once every three years, called a triennial reassessment, unless the parent and the agency agree that it is unnecessary. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).) The agency must also conduct a reassessment if it determines the educational or related service needs of the child, including improved academic achievement and functional performance, warrant a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

The determination of what tests are required is made based on information known at the time. (See *Vasherese v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where the concern prompting the assessment was reading skills deficit].)

As part of the Parent Agenda presented at the January 22, 2019 IEP team meeting, Parents requested Bellflower conduct comprehensive assessments in assistive technology, occupational therapy, and adaptive physical education. Parents requested

they be allowed to complete appropriate assessment questionnaires to ensure their meaningful participation in developing the IEP. Parents also requested that Bellflower conduct a functional behavior assessment and create a behavior intervention plan to address Student's inappropriate behaviors, specifically Student's off-task behaviors, non-compliance, task avoidance, and shutting-down behaviors.

In the February 6, 2019 prior written notice letter, Bellflower agreed to all of these assessments, and sent Parents the proposed assessment plan. Parents signed the assessment plan on February 8, 2019. The IEP team meetings to review the assessment reports occurred on or before April 10, 2019. Bellflower offered Student the assessment plan, and completed the assessments within the statutory time frames.

The IEP team reviewed the adaptive physical education assessment which did not find Student eligible for adaptive physical education. Student's skills in all areas tested were appropriate and allowed him access to the general education physical education program. Parent agreed with the recommendation of the report. Parent requested an accommodation for Student to ask for breaks when hot. The IEP team agreed to add the accommodation. Student presented no evidence that the assessment failed to assess him in any area of suspected disability.

The parties reviewed the occupational therapy assessment report at the IEP meeting of April 10, 2019. The occupational therapy assessment, conducted by Gallagher Pediatric Therapy, did not recommend occupational therapy services for Student. Parents disagreed and requested an independent occupational therapy assessment. Mr. Adair stated he would respond in a letter of prior written notice. As discussed above, further discussion of independent educational assessments is moot.

The IEP team reviewed the functional behavior assessment to determine whether Student required a behavior intervention plan. Ms. Thompson concluded Student did not require a behavior intervention plan. Student presented no evidence that he required one.

Student's request for additional assessments at the January 22, 2019 IEP team meeting read like a laundry list of available areas of assessments which were available in special education. The record did not reflect any significant reasons for requesting these assessments. For example, the advocate requested an assistive technology assessment, even though Bellflower already provided Student with a Chrome Book as a normal part of his class. Parent's provided no specifics as to what else needed to be explored in the assessment. Student relied on the contention that if Bellflower agreed to do the assessments, it was because it knew there was an identified area of need. No such evidence was presented to support this contention. To the contrary, Mr. Adair testified Bellflower agreed to the assessments because "you can't have too much information." Bellflower's agreement to Parents' requests did not reflect a predetermined area of need. It merely indicated Bellflower's agreement to explore deficit possibilities which might require attention in areas of concern raised by Parents.

Student also contended that if an assessment determined a student would benefit from services in the area assessed, then the school district previously failed to assess in all areas of suspected need. Were this true, Student invalidated his contention. None of the assessments requested by Parents, resulted in a need for goals or services in the areas assessed. Student, however, takes this argument further with his contention that his expert witness, Dr. Michael Taubman, established Student's need for counseling and a behavior intervention plan as early as 2017. Although thorough and insightful,

Dr. Taubman did not assess Student or prepare a written report; nor did he share any of his opinions and recommendations with Bellflower prior to hearing. Therefore, his conclusions regarding substantive denials of FAPE were not relevant in relation to what was known by the IEP team at the time each IEP was drafted.

If a child's behavior interferes with his learning or the learning of others, the IDEA requires the IEP team, in developing the IEP, to "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029.)

A functional behavior assessment and the creation of a behavior intervention plan are normally done after various interventions are used which prove not to be effective. The exception to that is where the behaviors endanger the child or others.

Miranda Kennebrew, Student's eighth grade special education math teacher, acknowledged Student had a low frustration level with math as well as with peers. He shut down, internalized, or cried once a week for a period ranging from five to fifteen minutes. She did not believe Student required a behavior intervention plan because his behaviors were manageable. Student could recompose himself with a break.

Ms. Kennebrew reported Student presented with no bigger behavior problem than the average middle-school student. Although Student complained of bullying, he provided no specifics. She noted name calling was a typical activity for middle school students, and Student initiated name calling the same as his classmates.

The evidence showed Student presented no disruptions in the classroom. He exhibited behaviors which related to frustration levels, remaining on task, anxiety, and mental fatigue. Student failed to establish that any of these areas of weakness were sufficient to put Bellflower on notice that a functional behavior assessment was needed, or a behavior intervention plan necessary. Prior to the January 22, 2019 IEP team meeting, the IEP team discussed Student's behavior challenges, and determined that the other interventions and strategies used by individual teachers were sufficient to address Student's deficits. Student's expert witness's testimony, referenced at length in the Remedies section of this decision, opined Student required a functional behavior assessment, or at minimum a behavior intervention plan. This information and opinion, no matter how valid, was not presented to Bellflower until the hearing. Therefore, the *Adams* standard applies, and Bellflower can only be held to those facts, reasonable at the time the IEP was developed. (*Adams, supra* 195 F.3d 1141 at p. 1149.) Student failed to establish Bellflower failed to assess Student in timely fashion or in all areas of suspected need.

ISSUES THREE AND FOUR: DID BELLFLOWER DENY STUDENT A FAPE BY REVOKING HIS INTER-DISTRICT PERMIT BASED UPON STUDENT'S NEEDS AND RELATED TO HIS DISABILITY AND BY FAILING TO IMPLEMENT HIS IEP OR PROVIDE HIM WITH ANY SPECIAL EDUCATION OR RELATED SERVICES FROM MAY 10, 2019 THROUGH JUNE 14, 2019?

Determination of the validity of Bellflower's administrative policies regarding enrollment, inter-district transfer rules, and teacher contracts are beyond the scope of the IDEA. Student contends, however, Bellflower denied Student a FAPE, by failing to

follow statutory or case law which require an IEP team meeting to change the placement for a special education student. Student contends Bellflower administrators unilaterally determined Student qualified for home-hospital instruction as a change in placement without holding an IEP team meeting and obtaining parental input. Bellflower contends Parents removed Student from his special day class placement by virtue of his doctor's request for home-hospital instruction.

A school district denies Student a FAPE when it holds an IEP team meeting to consider placement and services without parents, even when parents had already decided the student would not be attending a district school. (*D.B. ex rel. Roberts v. Santa Monica-Malibu Unified School Dist.* (9th Cir. 2015) 606 Fed. Appx. 359, 360 [nonpub. opn.]; see also *Anchorage School Dist. v. M.P.*, 689 F.3d 1047, 1055 ["[T]he IDEA, its implementing regulations, and our case law all emphasize the importance of parental involvement and advocacy, even when the parents' preferences do not align with those of the educational agency."].)

Student attended school in Bellflower pursuant to an inter-district transfer permit issued December 5, 2018. Bellflower granted the permit to accommodate Student's after-school day care, which was provided by a relative who resided in Bellflower. The permit extended to the end of the 2018-2019 school year, subject to written terms and conditions provided to Parents. The conditions expressly stated a permit could be denied or revoked at any time if the reason for the original issuance of the permit was no longer valid and/or Student's status or program changed.

On May 1, 2019, Student's advocate emailed a copy of a letter from Dr. Le, Student's physician, to Mr. Adair requesting home-hospital instruction. The advocate

requested notification of when home-hospital instruction would be set up. Mr. Adair responded the same day, writing that Ms. Wong would contact Parents to coordinate the paperwork. On May 8, 2019, the advocate emailed Mr. Adair reporting Parents had provided Ms. Wong with the requested information on May 3, 2019, and inquiring when home-hospital instruction and related services would begin. Also on May 8, 2019, Parent emailed Ms. Lopez seeking confirmation of when home-hospital instruction and services would begin. On May 9, 2019, Mr. Adair emailed Parents to confirm their home address, to which Parents responded the same day.

Ms. Wong conducted a follow-up call with Dr. Le, as Bellflower staff was unaware Student was experiencing an increase in seizures. Dr. Le reported increased activity in Student's vagal nerve stimulator readings, and Student recently suffered a large seizure at home. Dr. Le reported Student's seizures were currently not under control, which is why he requested home-hospital instruction. Dr. Le mentioned the possibility of sudden unexpected death in epilepsy. Based upon Student's critical condition, Dr. Le confirmed he did not recommend modified school days or modified hours, or independent study. Bellflower interpreted this information to mean Student was medically home-bound.

Bellflower's contention that Parents removed Student from his special day class placement because Dr. Le requested home-hospital instruction was unsubstantiated.

Dr. Le's letter reported a flair up of Student's epilepsy, and requested home services for a finite period, May 2, 2019 through June 30, 2019. Nothing indicated Student required a permanent change in his educational placement, nor did any of Parent's communications reflect Student would not return to school. Bellflower scheduled an IEP team meeting for May 17, 2019, but cancelled it when, Mr. Lundgren

sent his May 10, 2019 letter terminating Student's inter-district transfer. While Mr. Adair and Mr. Lundgren disagreed about who made the determination to terminate the transfer, the outcome remained certain. Bellflower did not hold an IEP team meeting upon receiving a request for home-hospital instruction, even though it perceived home-hospital instruction as a change in Student's educational placement.

Mr. Adair indicated home-hospital instruction did not necessarily involve a change of placement. Home-hospital instruction was often provided for a temporary period and consisted of one hour per day of home instruction and related services, if practical. Dr. Le's letter recommending home-hospital instruction reported a flair up of Student's epilepsy and requested home services for a finite and temporary period, May 2, 2019 through June 30, 2019. Nothing suggested Student required a permanent change in his educational placement. An IEP team needed to consider a continuum of alternate and lesser restrictive placements, and discuss any appropriate modifications to Student's operative IEP. Mr. Adair's testimony reflected Bellflower staff discussed the request for home-hospital instruction outside of an IEP team meeting. He discussed possibilities with Ms. Wong. Other options were available for discussion, which would not subject Student to the termination of the inter-district transfer. Further, there had been no IEP team discussion of whether a change of placement was necessary or whether Student qualified for temporary home-hospital instruction, which was available to all students upon showing of temporary medical need.

Parents were not included in any discussion of a continuum of placement options and educational services available at this time. Options and possible modifications were not discussed with the IEP team as a whole. Parents' exclusion from all decision making

on these matters, amounted to Bellflower's unilateral change of placement. This was a glaring omission of parental inclusion in a placement decision.

Bellflower contended that if Student's placement was home-hospital, there was no need for day care, and therefore no need to attend school within Bellflower. Bellflower, however, acted too hastily by terminating Student's placement without holding an IEP team meeting to determine if a change was actually required. An IEP team needed to consider a continuum of alternate and lesser restrictive placements, and discuss any appropriate modifications to Student's operative IEP. Therefore, at the time of the termination of the transfer, Student's official placement was still in the special day class placement, not home-hospital. Even assuming Parents intended to remove Student from Bellflower, the obligation to offer and hold an IEP team meeting remained. Ignoring Student's IEP placement and special education needs was not an option. It bears repeating that it is a fundamental rule under the IDEA that parents must be a part of any group that makes placement decisions. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5.) Therefore, Bellflower's failure to hold an IEP team meeting prior to terminating Student's inter-district transfer resulted in a denial of FAPE, by denying meaningful parental participation in the IEP process, which resulted a denial of access to education and educational benefit to Student.

Student contends Bellflower failed to provide him any special education and related services as of May 10, 2019, when it terminated the inter-district transfer. Bellflower contends its obligation to provide Student special education and related services when it terminated the inter-district transfer, which returned Student to his school district of residence.

An IEP team did not discuss a change of placement to home-hospital instruction for Student. For IDEA purposes, Student's placement remained as determined in his last agreed upon IEP. In spite of the many IEP team addendums, Student's placement did not change from special day class as stated in his November 29, 2018 triennial IEP. In reliance on the termination of the inter-district transfer, Bellflower abandoned its obligation to implement Student's IEP. This resulted in no special education or related services being provided to Student between May 10, 2019 and June 13, 2019, thusly denying Student a FAPE for this period.

Student contends Bellflower did not provide Parents with the completed April 10, 2019 IEP for their signature until June 2019. This resulted in Bellflower's failure to implement the April 2019 IEP as of that date, and further prevented Student's new school district from implementing Student's last agreed upon IEP. For the reasons discussed above, Bellflower's abandonment of Student's special education program as of May 10, 2019, constituted a failure to implement Student's operative IEP, thereby denying Student a FAPE.

Even assuming Bellflower appropriately terminated Student's inter-district transfer, its failure to provide Student with a complete copy of his operative November 29, 2018 IEP and all subsequent amendments, until June 2019, made it impossible for Student to enroll in his school district of residence and obtain special education and related services for the remainder of the 2018-2019 school year, again denying him a FAPE for this period.

ISSUE FIVE: DID BELLFLOWER DENY STUDENT A FAPE BY FAILING TO FACILITATE APPROPRIATE PARENTAL PARTICIPATION BY: (A) FAILING TO ENSURE PARTICIPATION OF APPROPRIATE IEP TEAM MEMBERS AND (B) FAILING TO PROVIDE TIMELY PRIOR WRITTEN NOTICE REGARDING ITS REFUSAL TO INITIATE OF CHANGE ASSESSMENTS, GOALS OR SERVICES AND (C) FAILING TO INCLUDE A STATEMENT REGARDING PARENTAL PROTECTION UNDER THE PROCEDURAL SAFEGUARDS?

Student contends that Parents were denied meaningful parental participation in the IEP process by Bellflower's failure to have required IEP team members present at the IEP team meetings, failure to obtain parental consent for assessment, and failure to provide prior written notice and parental safeguards.

Special education law places a premium on parental participation in the IEP process. School districts must guarantee that parents have the opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(1).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904].) Parental participation in the IEP process is also considered "(A)mong the most important procedural safeguards." (*Amanda J. v. Clark County School* (9th Cir. 2001) 267 F.3d 877, 882.)

An educational agency must therefore permit a child's parents "meaningful participation" in the IEP process. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337

F.3d 1115, 1131-1132 (*Vashon Island*.) The standard for “meaningful participation” is an adequate opportunity to participate in the development of the IEP. Although a student’s parents have a right to meaningful participation in the development of an IEP, a district “has no obligation to grant [a parent] a veto power over any individual IEP provision.” (*Ibid.*) A parent has meaningfully participated in the development of an IEP when she is informed of her child’s problems, attends the IEP meeting, expresses her disagreement regarding the IEP team’s conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036.)

Merely because the IEP team does not adopt the placement, services, or goals advanced by parents, does not mean that the parents have not had an adequate opportunity to participate in the IEP process. (*B.B. v. Hawaii Dept. of Educ.* (D. Hawaii 2006) 483 F.Supp.2d 1042, 1051.)

Student contends Bellflower failed to include appropriate IEP team members at the IEP team meetings, which denied Parents meaningful participation in the IEP process. Student contends the health coordinator was not present at each of Student’s IEP team meetings, and focused on Ms. Wong’s absence from January 22, 2018 addendum IEP team meeting.

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.) Unless excused in writing by the parent, the IEP team is required to include:

- one or both of the student’s parents or their representative;

- a regular education teacher if a student is, or may be, participating in the regular education environment;
- a special education teacher;
- 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;
- someone who can interpret the instructional implications of assessment results; and
- at the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the child.

(20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].) Finally, whenever appropriate, the child with the disability should be present. (20 U.S.C. § 1414(d)(1)(B)(vii); 34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b)(7).)

Given the medical complications of Student’s disability, and Student’s known seizure activity, Ms. Wong, the health coordinator, constituted an individual who had knowledge or special expertise regarding the child. Her attendance at IEP team meetings, however, was discretionary. Although Parents expressed concern regarding Student’s safety due to his medical condition, Student did not establish the absence of the health coordinator had any impact on Student’s education.

Ms. Wong was not present at the January 22, 2019 IEP team meeting when Parents had questions regarding health protocols and seizure training. In response to parental concerns about Student’s seizure plan, Bellflower agreed to develop a health

plan and reconvene the IEP team meeting to include the health coordinator. Ms. Wong subsequently attended the February 27, 2019 IEP team meeting and worked directly with Parents to develop a seizure plan which was attached to Student's IEP. Ms. Wong holds a bachelor's degrees in nursing and economics, as well as a master's degree in public administration, health services, administration. She is a registered nurse and public health nurse, and is credentialed as a school nurse, with a special teaching authorization in health credentials. Ms. Wong proved an exceptional witness, with a take-charge attitude. She actively sought out Parents for their input regarding Student's health and medications. She reported that all Bellflower staff received annual seizure training. She developed the individual seizure training for staff working with Student based upon the information provided by Parents. While Parents were concerned that the health coordinator did not attend all of Student's IEP team meetings, Student's contention was based more upon parental anxiety, than lack of parental participation. The health coordinator was not a required member of the IEP team. Bellflower appropriately sought health information from Parents annually. Ms. Wong followed up with Student's doctors upon receiving their correspondence. Parents fully participated in the preparation of health plan and seizure protocols offered by Bellflower. Student did not establish the health coordinator's absence from the IEP team meetings resulted in denial of educational benefit to Student or prevented meaningful parental participation.

With the exception of the health coordinator, as analyzed above, Student failed to present any evidence that any required members of the IEP team failed to attend any IEP team meeting without written consent.

Student contends Bellflower did not obtain parental consent for the 2018 triennial assessment, and did not report the findings of the BASC3 behavioral

assessment as part of the 2018 triennial assessment. Student's contentions regarding the triennial assessments were not specifically included in its statement of issues. The omission of the BASC3 was pursued at hearing. Bellflower raised no objection to the evidence offered as overreaching the scope of Student's issue regarding parental participation. Therefore, under *Andrew F.*, (*supra*), the findings are relevant to a determination of denial of parental participation in the IEP process.

To assess or reassess a student, a school district must provide proper notice to 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).) 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. (34 C.F.R. § 300.300(d)(1); Ed. Code, § 56321, subd. (e).)

When a student is referred for assessment, the school district must provide the student's parent with a written proposed assessment plan within 15 days of the referral (with limited exceptions that are not applicable here. (Ed. Code, § 56321, subd. (a).) The parent shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision, and the assessment may begin immediately upon receipt of the parent's consent. (Ed. Code, § 56321, subd. (c)(4).)

There are two parts to the legal analysis of a school district's compliance with the IDEA. 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 was reasonably calculated to enable the child to receive educational benefit appropriate in light of the child's circumstances. (*Ibid.*; *Andrew F.*, *supra*, 137 S.Ct. at p. 1000.) A school district's failure to timely and properly assess is a procedural violation of the IDEA. (*Department of Educ., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1196; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032.)

Student's 2018 triennial assessments were not solely based on a review of records and existing data. Mr. Aryadad administered the Kaufman Test of Educational Achievement, third edition, as well as the BASC3 during Student's psychoeducational assessment. Ms. Roman administered the Comprehensive Assessment of Spoken Language in the Student's speech and language assessment. The assessments conducted by Bellflower required parental consent. Parents established neither of them signed an assessment plan for Student's triennial assessments. Bellflower did not rebut Parents' evidence by producing the assessment plan stating the areas in which it sought to assess Student, let alone an executed assessment plan which provided consent to assess. Nor did Bellflower present evidence or argument to suggest such an assessment plan existed. Without an assessment plan, Parents were omitted from the assessment process. Student sustained his burden of proof to establish Bellflower's conduct in failing to obtain parental consent to assess significantly impeded parent's opportunity to participate in the decision making process regarding the provision of a FAPE to Student. Bellflower's procedural violation thereby constituted a deprivation of a FAPE.

Mr. Aryadad utilized the BASC3 ratings scales which were completed by Parent and Mr. Meeks. Mr. Aryadad failed to score the BASC3 ratings scales, and report his findings from that assessment. The failure to share the BASC3 results deprived Parents of information relating to Student's educational needs.

The BASC3 ratings scales were designed to provide information about a student's behaviors and social/emotional functioning. Social/emotional functioning and behavior were the two most highly disputed areas of concern between Parents and Bellflower. Regardless of Mr. Aryadad's rationale for omitting the BASC3 scores from the psychoeducational assessment, the failure to provide the BASC3 results deprived the entire IEP team of relevant information collected on behalf of Student. This information was clearly important to Parents, and, had it been presented, could have been determinative to the IEP team's decisions regarding Student's social/emotional and behavioral status and services.

The depth of these two violations of parental participation was significant. Bellflower not only failed to inform Parents of the areas of intended assessment, but it also failed to provide information in the areas it actually did assess. This omission deprived Parents of meaningful parental participation in the IEP process, and made it impossible to fully develop an IEP designed to meet the child's unique needs. The failure to obtain parental consent to assess and the failure to report BASC3 assessment results, constituted a denial of FAPE.

Student contends Bellflower failed to generate incident reports involving the bullying of Student, and failed to share such incident reports with the IEP team, resulting in a denial of meaningful parental participation in the IEP process.

Timothy Espinoza, the assistant principal at Bellflower Middle School, oversaw special education as well as discipline at the school site. He investigated several of the bullying incidents directed at Student. While he did not recall the incidents reported by Parent in October 2017, he did recall investigating the 2019 incident in the cafeteria. He did not prepare an incident report nor did he discuss the incident at the IEP meeting

which he attended. He explained there were over 2300 students and 100 teachers on the combined middle school and high school campus. Incidents occurred, but not all required reporting or intervention. In response to behavior incidents, he stated he was not required to do everything a parent may request, if reasonable alternatives were available. Further, incident reports were not discussed at IEP team meetings because the content primarily concerns the other student who was the aggressor in the incident.

The Incident Report from March 7, 2019 was the only Incident Report presented at hearing. Parents informed both Mr. Espinoza and Mr. Lundgren of numerous other incidents, however no written reports or confirmation of investigations were presented by either party.

Student provided no authority to suggest investigation and production of Incident Reports are required by the IDEA to provide a FAPE. To the contrary, with the exception of manifestation determinations, Bellflower's disciplinary policies are outside the jurisdiction of OAH. Therefore, Bellflower had no obligation under special education law to prepare incident reports or to provide them to Parents

FAILURE TO DEVELOP GOALS AND SERVICES AS AGREED

In general, Parents testified that at each IEP team meeting they were allowed to express their concerns and participate in discussions. As described by one parent, the IEP team "heard her" but did nothing in response to her requests. Student's claims for failure to develop goals and services as agreed at each IEP team meeting is overbroad. Student's contentions of merit regarding self-advocacy, counseling, and speech have been otherwise analyzed and decided in the other issues herein. Further discussion would be redundant.

Student contends Bellflower failed to provide prior written notice each time it failed to grant parental requests at each IEP team meeting. Specifically, Student contends Bellflower failed to provide prior written notice when it failed to offer tutoring, failed to develop a self-advocacy goal, and failed to offer counseling, a behavior intervention plan, and extended school year. Student further contends Bellflower failed to provide prior written notice when it failed to include the BASC3 assessment results.

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 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).) The notice must include a full explanation of all procedural safeguards and be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent. (20 U.S.C. § 1415(d)(2); 34 C.F.R. §§ 300.503(c)(1), 300.504.) Education Code section 56500.1, subdivision (b) requires that parents be informed about procedural safeguards at an IEP team meeting.

Student's claims failure to provide prior written notice for every item discussed at each IEP team meeting is overbroad. Student, however, made several valid contentions which were supported by the evidence. Each time Bellflower agreed to create self-advocacy and counseling goals, and then failed to do so, Bellflower significantly impeded Parents' opportunity to participate in the IEP process. Bellflower's failure to

collect data as agreed and its failure to appropriately respond to Parent's questions, "get back" to Parents or provide prior written notice in a timely fashion delineating why it had not fulfilled its promises, significantly impeded Parents' opportunity to participation in the IEP process.

Meaningful parental participation in the IEP process does not equate to acceding to parental demands. When a school district disagrees with a parental request, it is required to provide prior written notice. At each IEP team meeting Parents raised concerns regarding bullying and Student's need for self-advocacy skills. As procedural violations, these events, if reviewed individually, constituted but technical violations of the IDEA. Standing alone, none of these violations establish a denial of FAPE. On the other hand, when taken together, this consistent series of technical violations created a pervasive pattern of chaos, which left Parents in the dark regarding Student's IEP and progress, and thusly denied Student a FAPE.

Student contends Bellflower failed to provide prior written notice regarding a reading intervention program as discussed at the February 27, 2019 IEP team meeting.

At the that IEP team meeting, Parent requested that an additional 60 minutes per day of one-to-one specialized academic instruction or tutoring be added to the IEP to improve Student's reading skills. Mr. Adair suggested possible after school reading training and stated he would get back to Parent with more information within a few days. Student contends Mr. Adair did not respond to Parents or provide prior written notice to this request.

Mr. Adair arranged for tutoring by Alicia Dorman, a tutor trained in research-based programs. Admittedly it took some time to find the appropriate teacher and

process the contract to pay her. Nevertheless, tutoring services began in Spring 2019. Mr. Meeks reported Student may not have attended the after school tutoring, as Student did not want to go, and objected to attending. Mr. Adair responded to Parents' request in a timely fashion. No prior written notice was necessary, nor did Mr. Adair's actions constitute a procedural denial of FAPE.

Bellflower's failure to provide prior written notice in May 2019, is of greater concern. As determined in Issue Three, Bellflower unilaterally changed Student's placement without an IEP team meeting prior to doing so. Mr. Lundgren's May 10, 2019, letter to Parents terminated Student's inter-district transfer based upon a change to his program in a home-hospital instruction placement. Further, pursuant to a letter dated May 14, 2019, Mr. Adair cancelled an IEP team meeting based upon Mr. Lundgren's unilateral determination of Student's placement. Neither letter constituted prior written notice to Parents. Bellflower did not provide a written explanation of how or why it determined Student's placement changed or why the IEP team meeting was cancelled. Neither letter contained a copy of procedural safeguards. The failure to provide Parents with a written explanation of Bellflower's rationale in attempting to terminate Student's placement, coupled with the failure to protect parental rights to be informed about Student's IEP, denied Student a FAPE. It precluded Parents from any understanding of Bellflower's reasoning for its actions, and failed to inform Parents of their rights of recourse to its decision.

REMEDIES

ALJ's have broad latitude to fashion appropriate equitable remedies for FAPE denials. (*School Comm. Of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed. 2d 385]; *Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th

Cir. 1994) 31 F.3d 1489, 1496.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516 (c)(3)(2006).) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d at p. 1497.)

Compensatory education is an equitable remedy that depends upon a fact-specific and individualized assessment of a student's current needs. (*Ibid.; Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d, 516, 524.) The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. (*Reid, supra*, 401 F.3d at p. 524; *R.P. ex rel. C.P. v. Prescott Unified School Dist.*, (9th Cir. 2011) 631 F.3d 1117, 1125.) Hour-for-hour relief for a denial of FAPE is not required by law. (*Puyallup, supra*, 31 F.3d at p. 1497.)

COVID-19 IMPLICATIONS

On June 18, 2020 the California Department of Public Health issued guidance mandating that, subject to certain exemptions, all people in the State of California must wear face coverings in any indoor public space, when engaged in work, and while outdoors in public spaces. The Department also requires persons to maintain social distancing of at least six feet between people, when feasible. Therefore, the compensatory relief requested by Student takes into consideration the practicality of such remediation in relation to the COVID-19 mandate.

Dr. Taubman, Student's expert witness, testified at hearing. Dr. Taubman holds a Ph. D in developmental and child psychology and is a licensed clinical psychologist in California. Dr. Taubman is the executive director of Actum Clinical and Behavioral

Services. He presented with a 22 page vitae, which described his extensive professional and teaching experience. In preparation for his testimony Dr. Taubman completed an extensive review of Student's records, including prior relevant IEPs, progress reports and grades, assessment reports and independent evaluation reports. He also interviewed Parent and Student. He did not speak to teachers or Bellflower staff nor did he observe Student in the school setting. Dr. Taubman's involvement with this matter commenced after the filing of Student's complaint. As a result, his opinions regarding Student's areas of need in relation to the deficits of the IEPs were not considered in determining the issues of substantive denials of FAPE.

Dr. Taubman, however, presented as a highly credible expert in explaining Student's current needs for remediation in the areas in which Bellflower denied Student a FAPE.

Dr. Taubman opined that Student's behavioral issues of increasing frustration and shutting down was inescapable in Student's records between 2017 and 2019. These behaviors impeded Student's education in limiting his access to his academics. Bellflower did not provide adequate goals and services in the area of socialization.

Bellflower did not appropriately address the issue of bullying. Dr. Taubman opined Student's need for counseling and counseling goals were crucial due to the incidents of bullying. He expressed that Student was still dealing with the emotional consequences of being bullied at Bellflower.

Student requires compensatory counseling to address residual emotional issues and anxiety due to bullying, and due to Bellflower's failure to create appropriate self-advocacy and counseling goals throughout the statutory period of his complaint.

Dr. Taubman recommended Student receive a front-loaded counseling program consisting of two 30-minute counseling sessions per week for the first six months, and one 30-minute counseling session per week thereafter for the next 18 months. These services could be delivered remotely or in person.

Student is awarded 80 hours of counseling services to be provided through a non-public agency of Student's choice, either in person or remotely, as available, at a rate not to exceed \$150.00 per hour, to be completed on or before June 30, 2022. Student may access the counseling services in the manner recommended by Dr. Taubman, or in any other manner recommended by the counselor.

Student requires a compensatory socialization skills program, due to Bellflower's failure to appropriately address Student's self-advocacy needs and peer interaction for the period of November 29, 2018 through the end of the 2018-2019 school year. Dr. Taubman recommended a social skills program to consist of 30 minutes per week of individual services and 30 minutes per week of group services, for one year.

Student is awarded 30 hours of social skills training to be provided through a non-public agency of Student's choice, either in person or remotely, as available, not to exceed Bellflower's contract rate for such non-public services, to be completed on or before June 30, 2022. The social skills program should conform to the level of services Dr. Taubman recommended.

Student's complaint seeks compensatory audio processing services, but Student did not establish that auditory processing deficits were a factor in Bellflower's denial of a FAPE. Student's request for compensatory audio processing services is denied.

Student requested academic and speech and language compensatory education to be determined through an award of independent educational evaluations in those areas. Bellflower provided Student all assessments requested by Parents during the operative period of Student's complaint. Subsequently, Student withdrew his issue requesting independent educational evaluations on the first day of hearing. Therefore, Student's request for independent educational assessments to determine compensatory education in the area of academics and speech and language is denied.

Student failed to establish Bellflower denied Student a FAPE in the area of speech and language. Therefore, Student's request for compensatory speech and language services is denied.

Throughout the two-year period of Student's complaint, Bellflower's IEP notes, assessments and other documents were replete with examples and warnings from teachers and staff that Student's behaviors of shutting down, task avoidance and frustration, prevented or limited his academic success. While much was promised by Bellflower, little was provided in a timely fashion. Therefore, Student is awarded 80 hours of compensatory academic tutoring to be provided by a non-public agency, either in person or remotely, as available, at a rate not to exceed Bellflower's contract rate for such non-public services, and to be completed on or before June 30, 2022.

The IDEA does not require compensatory education services to be awarded directly to a student, so school district staff training can be an appropriate remedy. (*Park, supra*, 464 F.3d 1025, at p. 1034) [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so.] Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to

benefit the specific pupil involved, or to remedy violations that may benefit other pupils. Teacher training is an appropriate remedy as the IDEA does not require compensatory education services to be awarded directly to a student. (*Park, ex rel. Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1034.)

Bellflower's unilateral termination of Student's placement and revocation of his inter-district transfer in May 2019, without holding an IEP team meeting to discuss the proposed change in placement to home-hospital, constituted Bellflower's most flagrant denial of a FAPE. The time frame for such violation, May 15, 2019 through June 12, 2019, was de minimus, plus the 80 hours of compensatory academic education awarded above will remediate this loss instruction. This violation, however, coupled with Bellflower administrators' ignorance of the definition of bullying and its ramifications, along with Bellflower's continuing failure to provide goals and services as promised, created an educational environment in which Student was not able to receive a FAPE.

By no later than June 30, 2021, Bellflower shall provide three hours of training to all special education staff and all administrators at its middle school campuses. The training content shall include the following: school district policy on bullying and bullying's emotional impact on students; the requirements of the IDEA to provide parents meaningful participation in the IEP process; the need to write clear and measurable goals; and the need to hold an IEP team meeting prior to making changes in a student's placement or IEP. The training shall be provided by qualified professionals from an educational institution, by qualified special education attorneys from an outside law firm who did represent Bellflower in this matter, or other similar entity. Training shall not be provided by Bellflower employees or legal representatives.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

Issue 1, subsection a, as to speech and language, Bellflower did not deny Student a FAPE, in the June 5, 2017 addendum IEP, November 29, 2017 annual IEP, December 29, 2018 triennial IEP, January 22, 2019 addendum IEP, February 27, 2019 addendum IEP, March 27, 2019 addendum IEP, and April 10, 2019 addendum IEP, that included appropriate goals and services, and Bellflower prevailed on Issue 1, subsection a.

Issue 1, subsection b, as to behaviors, counseling, and socialization, the June 15, 2017 addendum IEP and November 29, 2017 annual IEP offered Student a FAPE. Bellflower prevailed on Issue 1, subsection b, as to these IEPs. The November 29, 2018 annual IEP, the January 10, 2019 addendum IEP, the February 27, 2019 addendum IEP, March 27, 2019 addendum IEP, and the April 10, 2019 addendum IEP failed to offer Student a FAPE. Student prevailed on Issue 1, subsection b, as to these IEPs.

Issue 2: Bellflower did not deny Student a FAPE by failing to timely and appropriately assess Student in all areas of suspected disability. Bellflower prevailed on Issue 2.

Issue 3 consolidated with Issue 4: Bellflower denied Student a FAPE by revoking Student's inter-district permit and by failing to provide him with special education or related services from between May 10, 2019 and June 14, 2019. Student prevailed on the consolidated Issue 3 and Issue 4.

Issue 5: Bellflower denied Student a FAPE by failing to implement his IEP after May 10, 2019. Student prevailed on Issue 5.

Issue 6, subsection a. Bellflower did not fail to ensure participation of appropriate IEP team members. Bellflower prevailed on Issue 6, subsection a.

Issue 6, subsection b. Bellflower denied Student a FAPE by assessing Student without parental consent, and failing to disclose BASC-3 assessment results to the IEP team. Student prevailed on Issue 6, subsection b.

Issue 6, subsection c. Bellflower did not deny parental participation in the IEP process by failing to provide Parents with Incident Reports. Bellflower prevailed on Issue 6, subsection c.

Issue 6, subsection d. Bellflower denied Student a FAPE by failing to develop goals and services as agreed at IEP team meetings. Student prevailed on Issue 6, subsection d.

Issue 7, subsection a. Bellflower did not fail to provide prior written notice regarding proposed tutoring in reading. Bellflower prevailed on Issue 7, subsection a.

Issue 7, subsection b. Bellflower failed to provide prior written notice regarding its decision to change Student's placement and cancel the May 14, 2019 IEP team meeting, resulting in a denial of FAPE. Student prevailed on Issue 7, subsection b.

ORDER

1. Student is awarded 80 hours of counseling services to be provided through a non-public agency of Student's choice, either in person or remotely, as available, at a rate not to exceed \$150.00 per hour, to be completed on or

- before June 30, 2022. Student may access the counseling services in the manner recommended by Dr. Taubman, or in any other manner recommended by the counselor. These services are not stay put.
2. Student is awarded 30 hours of social skills training to be provided through a non-public agency of Student's choice, either in person or remotely, as available, not to exceed Bellflower's contract rate for such non-public services, to be completed on or before June 30, 2022. These services are not stay put.
 3. Student is awarded 80 hours of compensatory academic tutoring to be provided by a non-public agency, either in in person or remotely, as available, at a rate not to exceed Bellflower's contract rate for such non-public services, and to be completed on or before June 30, 2022. These services are not stay put.
 4. By no later than June 30, 2021, Bellflower shall provide three hours of training to all special education staff and all administrators at each of their middle school campuses. The training content shall include the following: school district policy on bullying and bullying's emotional impact on students; the requirements of the IDEA to provide parents meaningful participation in the IEP process; the need to write clear and measurable goals; and the need to hold an IEP team meeting prior to making changes in a student's placement or IEP. The training shall be provided by qualified professionals from an educational institution, by qualified special education attorneys from an outside law firm, or other similar entity. Training shall not be provided by Bellflower employees or legal representatives.
 5. All other requested relief is denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction with 90 days of receipt.

/s/

JUDITH L. PASEWARK

Administrative Law Judge

Office of Administrative Hearings