

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MOUNTAIN VIEW-LOS ALTOS UNION
HIGH SCHOOL DISTRICT.

OAH Case No. 2016050172

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on April 28, 2016, naming Mountain View-Los Altos Union High School District. The matter was continued for good cause on June 8, 2016.

Administrative Law Judge B. Andrea Miles heard this matter in Mountain View, California, on August 24, 25, 30, and 31, 2016, and September 1, 7, 8, 9, 13, 14, 20, 21, and 22, 2016.

Roger A. Greenbaum, Attorney at Law, represented Student. Student's father attended the hearing every day and Mother attended on the day that she testified.

Laurie E. Reynolds, Attorney at Law, represented Mountain View-Los Altos throughout the hearing. In conjunction with Ms. Reynold's representation, Lenore Silverman, Attorney at Law, represented Mountain View-Los Altos on August 24 and 25, 2016. Kathy Sulaver, Mountain View-Los Altos's former Special Education Director, attended the hearing on behalf of Mountain View-Los Altos.

A continuance was granted for the parties to file written closing arguments, and the record remained open until October 17, 2016. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES

Issue 1: During the 2014-2015 school year, did Mountain View-Los Altos deny Student a free appropriate public education by committing the procedural violation of failing to have an individualized education program in place for Student at the beginning of the school year?

Issue 2: During the 2014-2015 and 2015-2016 school years, did Mountain View-Los Altos deny Student a FAPE by committing the procedural violations of failing to include in the March 25, 2015 IEP:

- a. accurate present levels of performance; and
- b. appropriate annual goals?

Issue 3: Did Mountain View-Los Altos deny Student a FAPE during the 2014-2015 and 2015-2016 school years by committing the following procedural violations during the March 25, 2015 IEP team meeting:

- a. failing to consider a continuum of placement options;
- b. predetermining its offer of placement at a therapeutic program at a local public high school; and
- c. failing to engage in in-depth fact gathering regarding the creation of an Individualized Transition Plan?

Issue 4: Did Mountain View-Los Altos deny Student a FAPE during the 2014-2015 school year and the 2015-2016 school year ending April 8, 2016, by failing to offer and provide Student appropriate:

- a. services and placement;
- b. Individualized Transition Plan; and
- c. extended school year services?

Issue 5: During the 2015-2016 school year, did Mountain View-Los Altos deny Student a FAPE by committing the procedural violation of failing to have an IEP in place

for Student at the beginning of the school year?

Issue 6: During the 2015-2016 school year, did Mountain View-Los Altos deny Student a FAPE by committing the procedural violations of failing to include in the April 8, 2016 IEP:

- a. accurate present levels of performance; and
- b. appropriate annual goals?

Issue 7: Did Mountain View-Los Altos deny Student a FAPE during the 2015-2016 school year by committing the following procedural violations during the April 8, 2016 IEP team meeting:

- a. failing to consider a continuum of placement options;
- b. predetermining its offer of placement at a therapeutic program at a local public high school; and
- c. failing to engage in in-depth fact gathering regarding the creation of an Individualized Transition Plan?

Issue 8: Did Mountain View-Los Altos deny Student a FAPE during the 2015-2016 school year, beginning April 8, 2016, by failing to offer and provide Student appropriate:

- a. services and placement; and
- b. Individualized Transition Plan?

SUMMARY OF DECISION

In November 2014, Parents removed Student from his private high school to attend a 30-day residential assessment program because of a physical altercation between Student, Mother, and Stepfather. The assessment program recommended that Parents place Student residentially based solely on safety concerns in the home, namely, the potential for Student's aggression to increase as he expanded his circle of peers and spent more time socializing. In January 2015, Parents unilaterally placed Student in a therapeutic residential program in Utah. Subsequently, Parents requested that Mountain

View-Los Altos assess Student for special education services.

On March 25, 2015, Mountain View-Los Altos found Student eligible for special education services and offered Student placement in its therapeutic program with counseling services and speech and language services. Parents declined the offer and elected to continue Student's placement at the therapeutic residential program. On April 8, 2016, Mountain View-Los Altos again offered Student placement in its therapeutic program with counseling services and speech and language services. Parents again declined the offer and Student remained at the therapeutic residential program until he graduated several months later.

This Decision primarily revolves around Student's assertion that he required residential placement to receive a FAPE. In his complaint, Student raised a number of procedural and substantive allegations spanning a two year period, including the allegation that the placement and services offered by Mountain View-Los Altos in the March 25, 2016 IEP and the April 8, 2016 IEP failed to offer Student a FAPE. As part of the requested relief, Student seeks reimbursement of the costs of the therapeutic residential program, the educational component of the program, and related expenses. Student failed to show that he required the very restrictive setting of a residential placement to receive educational benefit. Student failed to meet his burden of proof on all issues, therefore, the requested relief is denied.

FACTUAL FINDINGS

JURISDICTION

1. Student is a 17-year-old young man. He lived with Mother, Stepfather, and his younger brothers within the geographical boundaries of Mountain View-Los Altos during the 2013-2014, 2014-2015, and 2015-2016 school years, until Parents placed him at Northwest Passage Child and Adolescent Center in Wisconsin on November 21, 2014

and then at Waterfall Canyon Residential Treatment Facility in Utah in January 2015. Mother maintained her residence within the geographical boundaries of Mountain View-Los Altos at all times relevant to this case.

2. Student was originally found eligible for special education services in 2006 under the eligibility category of specific learning disability. Since his being found eligible for special education, Student has not been found ineligible for special education.

RELEVANT FAMILY HISTORY

3. Parents adopted Student from an orphanage in Kazakhstan when he was three and one half years old. Parents were informed that Student's biological mother surrendered him to the orphanage when he was approximately two months old. Parents received little information about the care Student received at the orphanage and his medical background, although the adoption documentation indicated that Student was born with syphilis.

4. As part of the adoption process, Parents were required to spend two weeks in Kazakhstan before the adoption could be finalized. During that time, Mother felt that Student did not "like" her and that he preferred his caregiver at the orphanage. Even after the adoption, Mother felt that Student did not perceive her as his mother, but merely as a caregiver. Mother believes that Student never bonded with her.

5. Student presented with very different behaviors when interacting with Mother and Father. From the beginning, Student perceived Father as a playmate or peer rather than an authority figure. He would play aggressively with Father and challenge him. When interacting with Father, Student would be loud, hyperactive, and aggressive. When interacting with Mother, Student would be calmer, distant, and muted. These dynamics did not change significantly over the years.

6. About a year after Student's adoption, Mother gave birth to a son. Student was accepting of his new brother. When they were younger, Student and his brother

had a close relationship. However, as Student became a teenager, he began to bully his brother first physically, and then verbally. Mother and Father also had another biological son before they separated in 2007. While Student was accepting of this sibling, who was eight years younger, he was not as accepting of him as he was his other brother.

7. Parents divorced in 2008, but Father continued living in the family home. Mother remarried and Stepfather moved into the family home. Stepfather and Father had an amicable relationship, so Father continued living in the family home for several more years on a part-time basis. Mother and Stepfather had a son together in 2010. Student received counseling to address his feelings regarding Parents' divorce and the changes in the family structure. Once Father moved out of the family home, Student had a difficult time adjusting. He became more aggressive and angry towards Father.

8. In 2012, Father married his girlfriend, whom he had dated for five years. Student was not accepting of Father's new wife (Stepmother) and made no effort to develop a relationship with her. Once Father and Stepmother had a baby, Student became even more resistant to the relationship, and would not call his Stepmother or new brother by name. Student refused to spend the night at Father's home and rarely visited. Father generally visited Student at the family home or at his parents' home in Livermore. Student blamed Father's new child for the demise of the family. Student continued living full time with Mother and Stepfather.

9. In 2012, Student became more physically aggressive toward his younger brothers. On one occasion in 2012, Father intervened in a sibling altercation, and Student hit Father in the face and body, causing bruising. After that incident, Student became distant toward Father. Student felt alienated from the family and felt that his brothers did not understand him because he was adopted. Student's feeling of disconnection from his family members has played a predominant role in his life.

10. At the time of the hearing, Mother was finishing her doctor of philosophy

in neuropsychology. In July 2016, Mother began temporarily living in Colorado to complete her residency. Stepfather continued to live in the family home with three of Student's younger brothers. Mother traveled back and forth between California and Colorado.

RELEVANT EDUCATIONAL HISTORY

11. Student experienced speech delays with his native language of Russian and subsequently with English. English was the predominant language in the family home, although Mandarin was spoken at times. Student demonstrated both speech and social delays. Parents had Student evaluated by a developmental pediatrician who confirmed the delays. However, the pediatrician told Parents that such delays were not abnormal for a child of Student's background.

12. In kindergarten, Student exhibited academic delays. In the summer of 2005, Davis Center for Dyslexia diagnosed Student with the learning disorder, dyslexia. Subsequently, Student received remediation for dyslexia from the Davis Center. In 2006, when Student was in second grade in another school district in California, Parents asked that Student be assessed for special education services due to his diagnosis and his academic delays. Subsequently, Student was found eligible for special education under the criteria of specific learning disability and was offered special education services through an IEP. The evidence is unclear whether Parents consented to the offered IEP or whether Student received any services through the offered IEP.

13. In third grade, due to Student's diagnosis of dyslexia, Parents unilaterally placed Student at Charles Armstrong, a private school designed for students with learning deficits. Charles Armstrong is located in the Belmont-Redwood Shores Elementary School District. Student remained at Charles Armstrong until his completion of eighth grade.

14. In November 2010, Parents had Student evaluated by Tenna Lee Sutcliffe,

M.D., because of concerns involving Student's difficulties with memory and learning. Parents were also concerned about the confrontational and oppositional behaviors Student was exhibiting with Father. Mother and Student's teacher both reported concerns about Student's mood and anxiety level. Dr. Sutcliffe recommended a special education eligibility assessment. Dr. Sutcliffe also recommended that Student continue receiving counseling to address his oppositional behaviors and mood issues. Student had been receiving counseling since his Parents' separation in 2007.

Belmont-Redwood Shores Assessment and Offer of Services

15. In November 2010, Parents requested that Belmont-Redwood Shores assess Student to determine whether he qualified for special education services. Charles Armstrong is located within the Belmont-Redwood Shores School District's boundaries. Belmont-Redwood Shores is part of the San Mateo County Special Education Local Plan Area (SELPA). Belmont-Redwood Shores agreed to assess Student. Belmont-Redwood Shores' psychoeducational assessment found a significant discrepancy between Student's ability and achievement in the areas of reading and math due to Student's auditory processing deficits. The psychoeducational assessment also found that Student exhibited characteristics associated with the diagnostic criteria for Asperger's Syndrome Disorder as specified in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition¹ and that Student met the criteria for special education eligibility under the category of Autism Spectrum disorder.

¹ In May 2013, the Diagnostic and Statistical Manual, Fifth Edition was released. The Diagnostic and Statistical Manual, Fifth Edition eliminated Asperger's Syndrome disorder as a separate disorder. The Fifth Edition provides broader diagnostic criteria for Autism Spectrum Disorder.

16. Belmont-Redwood Shores' speech and language assessment found that Student's language skills were below average, with particular weaknesses in the areas of grammatical usage, vocabulary, and pragmatic language. Additionally, Student's auditory processing skills in the areas of phonology and memory were below average. The assessor recommended that Student receive speech and language services.

17. Based on Belmont-Redwood Shores's assessments and reporting by Student's teacher at Charles Armstrong, the IEP team determined that Student was eligible for special education under the categories of specific learning disability and autism. The team also found that Student qualified for speech and language services. Parents informed Belmont-Redwood Shores of their intention to have Student continue attending Charles Armstrong and that they were not interested in the provision of an IEP for Student at that time. Belmont-Redwood Shores offered Student 60 minutes of consultative services a year under an Individualized Service Plan.

Dr. Jacknow's Assessment

18. In May 2011, Parents had Student assessed by Dale Jacknow, M.D., to gain understanding of Student's developmental strengths and weaknesses. Student had been experiencing some social and behavioral issues that concerned Parents. In part, Parents were concerned that Student might have a thought disorder, as he appeared to have difficulty separating fantasy from reality.

19. Dr. Jacknow's assessment found that Student demonstrated deficits in phonological processing and word retrieval. Dr. Jacknow also found that Student demonstrated deficits in social reasoning and pragmatic language, with particular difficulties in his ability to interpret idioms, irony, and sarcasm. These deficits made it difficult for Student to understand social interactions. Dr. Jacknow recommended that Student attend Charles Armstrong for eighth grade and a high school with a "small, structured, nurturing environment" that could address his "academic, language, and

social learning needs.” She also recommended that Student receive reading intervention, speech and language therapy, and social skills training.

20. Dr. Jacknow referred Student for a psychiatric assessment to explore whether Student had a thought disorder. As a result of the referral, Student received a psychiatric assessment by a private psychiatrist. That psychiatrist did not diagnose Student with a thought disorder.

Eighth Grade

21. Student attended Charles Armstrong for eighth grade. Student continued to experience difficulties socially and academically. Parents were concerned that Student seemed to be drawn towards peers who had behavioral problems. He reported to Parents that he was a victim of some bullying at school. Although Student socialized with his peers at school, he rarely socialized with peers away from school.

Ninth and Tenth Grade

22. Beginning in the summer of 2014, Student attended Palo Alto Preparatory High School for ninth grade. Palo Alto Preparatory High School is located within the geographic boundaries of Mountain View-Los Altos. Palo Alto Preparatory is a year-round, small private high school that provides classes of seven to 10 students. The school has a maximum enrollment of 80 students.

23. During Student’s first semester at Palo Alto Preparatory, he experienced difficulties with the academic curriculum due to his learning deficits. To address those deficits, Palo Alto Preparatory provided Student with accommodations and modifications in several of his academic classes. Those accommodations and modifications were decided on by the Palo Alto Preparatory staff and agreed to by Parents. They were not part of an IEP process. Although Student received accommodations and modifications, he did not receive special education services while

at Palo Alto Preparatory.

24. With the instituted accommodations and modifications, Student made academic progress during his first two years of high school, receiving mostly B's and C's. Student enjoyed attending school at Palo Alto Preparatory and did not exhibit behavioral problems during his freshman and sophomore years. Although Student had friends at school, Student was not particularly social with his peers outside of school. Student spent most of his time at home playing video games and mixing music. Towards the end of his sophomore year, he began to spend time outside school socializing with his peers.

CHILD FIND

25. Mountain View-Los Altos is a high school district for students in grades ninth through twelfth. In March 2012, when Student was still in eighth grade, Mother attempted to enroll him in Mountain View-Los Altos for the following school year. Mountain View-Los Altos's registrar required Mother to provide certain documentation before Student could be officially enrolled. After a short delay, Mother provided the registrar with required documentation and Student was enrolled. A little over a month later, Mother sent the registrar an email indicating that Student would not be attending Mountain View-Los Altos during the 2012-2013 school year because Parents had enrolled him in a private school. No evidence was presented to prove that Mountain View-Los Altos had any information during that approximately one month period that Student was potentially a student with special needs.

26. Mountain View-Los Altos has placed students at Palo Alto Preparatory through the IEP process. Palo Alto Preparatory's director and the dean of students have attended IEP meetings held by Mountain View-Los Altos. In the past, Palo Alto Preparatory has referred students to Mountain-View Los Altos to be assessed for special education services. At no point did Palo Alto Preparatory refer Student to Mountain

View-Los Altos for assessment. Mountain View-Los Altos also sends letters to the area private schools regarding its special education services.

27. Mountain View-Los Altos relies on its Special Education Local Plan Area (SELPA), the Santa Clara SELPA, to conduct its global child find activities. The SELPA places ads in various newspapers with information notifying the public of special education resources available to students. It also posts the information on a Spanish language news website. Every year the SELPA invites Palo Alto Preparatory along with other private schools in the area to come to a meeting, a portion of which is devoted to child find activities.

28. Additionally, Mountain View-Los Altos utilizes the Student Study Team process to identify students who may need special education services. However, this process is intended to identify students who are attending school in the district. Students who are enrolled in Mountain View-Los Altos receive a handbook which contains information about special education.

2014-2015 SCHOOL YEAR

Fall Semester

29. Student continued attending Palo Alto Preparatory in the fall of 2014. At the beginning of the new school year, Palo Alto Preparatory did not implement the modifications and accommodations previously provided for Student. Due to this oversight, Student experienced academic difficulties, which negatively impacted his self-esteem. As a result, Student became frustrated and short-tempered at home. Eventually, Parents discovered the error and the modifications and accommodations were reinstated in early October 2014.

30. During this same period, Student expanded his social circle and spent more time away from the family home. He also started dating a girl from school.

Student felt that Parents were unwilling to understand that he had “changed” and that he wanted to spend time with friends outside of the home. Student began staying out late and did not tell Parents where he was going. This caused additional strife between Parents and Student. At the hearings, Father faulted himself and Mother for not adequately conveying their expectations or boundaries to Student once he began spending more time outside of the home.

31. At Parents’ request, Student began seeing a counselor at Palo Alto Preparatory. Although, Palo Alto Preparatory provides counseling services for students, its program is not considered a therapeutic program. On October 6, 2014, Student began seeing Lisa Di Marino, a private licensed marriage and family therapist with whom Palo Alto Preparatory contracted to provide counseling services. He met with Ms. Di Marino on a weekly basis. She was already familiar with Student, because the administration had asked her to “check-in” on Student one or two times in late 2013. Student saw Ms. Di Marino seven times between October 6, 2014, and November 17, 2014.

32. Overall, Student responded in a positive manner after Palo Alto Preparatory reinstated modifications and accommodations. Student’s mood improved and he became optimistic about completing his missing assignments. Student expressed these feelings during a counseling session with Ms. Di Marino.

PRECIPITATING INCIDENT

33. On the evening of October 20, 2014, Student was involved in a physical and verbal altercation with Mother and Stepfather at the family home. Earlier in the evening, Mother had inquired about Student’s girlfriend and he became upset and verbally abusive to Mother in front of his three younger brothers. The verbal altercation ended when Student went to his room. When Stepfather arrived home, Mother described the incident to him. Student overheard and became angry over Mother’s

comments. He charged out of his room to where Mother and Stepfather were talking. While Student was upset, he kicked at the family dog, a German Shepard.

34. Student became increasingly angry with Mother and Stepfather when they laughed at a comment he made. As Student stepped forward toward Mother, Stepfather stepped in between them because he thought Student might physically assault Mother. A struggle ensued, during which Student hit Mother in the face and Mother hit Student back. Mother and Stepfather subdued Student on the ground in the prone position. Once Student became calmer, they let him go. Student fled the house on his bicycle. During the incident, Stepfather's finger was injured.

35. During the incident, Student made some statements that caused Mother to have concerns about Student's thought process and grasp of reality. This was not the first time that Mother had these concerns. Throughout the years, Mother felt that Student showed signs of delusional thinking. However, there was no evidence that a mental health professional diagnosed Student with a thought disorder. Rather, when Student became upset, he had a difficult time expressing himself and his speech became disjointed and confusing.

36. Student went to his friend's home in San Francisco. With the permission of Parents, Student remained at his friend's for the next week. Mother did not want Student to return to the family home because she was concerned that he might become physically violent. Student refused to stay at Father's home.

37. Mother sent an email to the administrators of Palo Alto Preparatory and to Ms. Di Marino on the night of the October 20, 2014 incident explaining that there had been a physical altercation; Student had left the home; and that she did not know if Student would be attending school the next morning. Sometime after Ms. Di Marino received the email, she offered family counseling services to Mother. However, Mother declined because she felt scared of Student and hesitant to meet with him, even in a

therapeutic setting.

38. Following the incident, Student told Father that he wanted to burn down the family home and that he wanted to hurt the family members who live in the house. When Father discussed the gravity of Student's comments, Student did not appear to understand. Student's comments and attitude concerned Parents.

39. While staying at his friend's home in San Francisco, Student used the train and his bicycle to get to and from school in Palo Alto. After moving out of his friend's home, Student went to live temporarily with Father's parents in Livermore. Student stayed with his grandparents for the next several weeks. Livermore is located in the eastern part of the Bay Area and is a distance from Palo Alto Preparatory. Grandparents drove Student to and from school at Palo Alto Preparatory. Student did not act violently or aggressively during his stay with grandparents. Father visited Student while he lived with grandparents. However, during those visits, Student spent much of the time in his room and did not interact much with Father.

40. At no point after the incident did Student miss a day of school. However, he did miss some class time because he was having difficulty concentrating in school and completing his work. With the permission of his teachers, Student would leave class and spend time in the hallway or in the office when he was having a difficult time focusing.

41. After the incident, Student reported to Ms. Di Marino that he felt depressed. At times Student would "shut down" during class. During these times, Student would put his head down on his desk, cover his face with his hair, or ask to leave class. Student's primary distress was over his relationships with the people in his life. During his sessions with Ms. Di Marino, he reported concerns over his relationships with his family, friends, and girlfriend. Despite Student's feelings of depression during that period, he did not act in an aggressive or confrontational manner at school.

42. Student viewed school as a safe place. On one occasion after the October 20, 2014 incident, the director of Palo Alto Preparatory found Student on the school grounds early in the morning. Student told him that he had slept there the night before and that Mother and Stepfather did not want him to return home.

Exploring Other Educational Placements

43. Parents discussed alternative place with Chris Keck, the administrator of Palo Alto Preparatory. He recommended that they explore placing Student in a wilderness program. Wilderness programs are primarily designed for students who are experiencing behavioral issues. Parents contacted at least one wilderness program for information, but were told that Student was not appropriate for their program.

44. The wilderness program referred Parents to Jennifer Heckman, a private educational consultant. Dr. Heckman has a doctorate in educational administration and policy analysis and a masters of arts in counseling psychology. Dr. Heckman's consulting firm advises parents of children who are experiencing behavioral issues regarding educational service and placement options. Dr. Heckman has not taught high school, has not been an administrator in a public school setting, and is not a licensed therapist. She had limited experience counseling patients as part of her internship in 1993. Her only experience with the IEP process took place in 1978-1980 when she says she attended IEP meetings as a community resource specialist with Easter Seals.

45. Parents retained Dr. Heckman to advise them on potential placements for Student. As part of her consulting process, she met with Mother, Father, and Student's paternal grandmother to help understand Student's struggles. She also reviewed some of Student's school records and assessments provided to her by Parents. Dr. Heckman did not meet with Student.

46. Dr. Heckman recommended that Student receive a thorough assessment in a 30-day residential placement setting before making any decisions about where to

place Student. She did not recommend that Parents contact Mountain View-Los Altos to have Student assessed or to seek special education placement options. In November 2014, based on Dr. Heckman's recommendation, Parents elected to have Student assessed by Northwest Passage Child and Adolescent Center in Wisconsin. Northwest Passage utilizes an interdisciplinary, 30-day assessment process in a residential setting.

Northwest Passage Assessment

47. On November 21, 2014, Parents hired a transportation company to escort Student to Northwest Passage. Student was not told that he was going to Northwest Passage until that morning.

48. Northwest Passage conducted a behavioral assessment, educational assessment, health assessment, family and child assessment, chemical health assessment, neuropsychological assessment, psychiatric assessment, and psychosocial assessment of Student. At the end of the assessment process, the team of assessors met to discuss their findings, which were compiled in an assessment team summary report. The report was admitted as evidence in this case.

49. Each day at Northwest Passage, staff recorded observational notes about Student's mood and behavior. Throughout his stay at Northwest Passage, Student did not exhibit behavioral problems or signs of aggression. Initially Student isolated himself from the other participants in the program, but eventually he began interacting and participating in group activities. Student also attended academic classes at Northwest Passage. His academic progress is discussed below.

BEHAVIOR ASSESSMENT

50. Kyle Newkirk, Student's primary counselor at Northwest Passage, wrote the behavior assessment report. The behavior assessment was based on review of case record, observations by direct care staff, and collateral consultations with Student's case

manager and clinical staff at Northwest Passage. Mr. Newkirk conducted observations of Student during group discussions, activity sessions, individual counseling sessions, group recreational activities, and unstructured leisure time.

51. The behavior assessment rated Student's behavior while he was in recreational settings, group settings, interacting with peers, and interacting with adults. The numerical rating system used a "one" as the lowest rating and a "five" as the highest rating. Student received all fours and fives on the assessment. He received fives in all subcategories of peer interaction and adult interaction. Student always spoke to staff in a polite and respectful manner, even in times of stress.

52. Behavior strategies that worked well for Student were use of positive encouragement, allowing for processing time, speaking to Student in a calm supportive tone, allowing Student time alone to process, and the use of soothing activities, such as music or sensory items. Student's behavior never escalated to the point that staff needed to utilize any particular strategy to help Student gain control of his emotions. When feeling stressed, Student chose to isolate himself to process his feelings, often using music or lifting weights as the means to manage his stress. The report lists a number of behavior strategies that were not utilized with Student "due to his lack of emotional instability."

53. The daily shift reports supported the behavior report's findings. The daily shift reports indicated that Student behaved appropriately with staff and peers. One daily shift report dated November 26, 2014, did note that Student had been overheard saying some "mean" things to a female peer. Overall, the reports indicated that Student he did not present any behavioral problems during his time at Northwest Passage, but that he lacked motivation to complete his schoolwork.

EDUCATIONAL ASSESSMENT

54. Cari Colegrove, a teacher at Northwest Passage, completed Student's

educational assessment. Ms. Colegrove did not testify during the hearing. Her report included Student's scores on the Wechsler Individual Achievement Test, Third Edition, but the meaning of those test scores was not interpreted in her report.

55. Ms. Colegrove's report indicated that Student was very quiet and reserved during the majority of his time at Northwest Passage. He rarely interacted with his peers in the classroom and he did not seek the help of staff when having difficulty with an assignment. During the last week of the program, Student began socializing more with peers during class time. Once Student began socializing with peers, he required frequent prompting and redirection to complete the required task. Despite the need for prompting and redirection, Student was never disrespectful towards staff members and complied with most expectations.

56. While at the program, Student read the Percy Jackson series, which consisted of five books, and the book, Lawn Boy Returns. Student was required to demonstrate his understanding of the books by answering a series of reading comprehension questions in his weekly reading log. After some explanation from staff, Student was able to complete the reading comprehension questions.

57. Student was also given an algebra pretest consisting of 50 to 60 problems. It took Student 12 days of 45 minute sessions to complete the test. However, he completed the test with approximately 90 percent accuracy. Student showed little interest in academic work. When assigned to a group project, he would allow the other students to take the lead and complete most of the work.

58. The assessment provided numerous recommended teaching techniques and strategies to assist Student academically. Some of the recommendations included: reading intervention to help increase Student's reading comprehension; structured resource or study time so that Student could receive help with his homework; extra support and time on assignments; use of positive reinforcements; visual instructions and

repetition; a designated person for Student to go to when he struggles academically; transition activities and goal setting to help Student move forward towards post-secondary goals; placement in a small, highly structured educational environment with small group instruction.

CHILD AND FAMILY ASSESSMENT

59. Melissa Gendreau, a therapist with Northwest Passage, conducted the child and family assessment that consisted of a records review, clinical interviews of Student, Parents, Ms. Di Marino, and collateral consultations with direct care staff and the assessment team members. Ms. Gendreau did not testify at the hearing. However, Parent's testimony supports the accuracy of the background information in Ms. Gendreau's report.

60. During clinical interviews, Parents provided information about the family history and dynamics. Mother provided detailed information about the incident of October 20, 2014. In reading the report, it is evident that although Father and Mother agreed on many things about Student, they also had different views on Student's social development.

61. Ms. Gendreau recommended that Student be placed in a residential therapeutic environment due to "safety concerns" based on the possibility that Student's reactivity towards Parents and his siblings would increase as his desire for peer relationships and socialization increased. She recommended that Student be placed in a program that was "predicable" and "structured" with staff experienced in working with young adults with history of developmental trauma. She recommended that Student receive individual therapy to help him focus on developing and managing his relationships with his family members in a healthy and effective manner. She specifically recommended therapy to assist Student identify the triggers to his reactivity and develop the means to be able to best tolerate the distress he felt.

62. Ms. Gendreau did not recommend that Student participate in family therapy. Instead, she recommended that Parents work on processing their own emotions and “potential grief” over their relationship with Student which was not what they had imagined it would be, so they could be supportive of Student.

PSYCHOEDUCATIONAL ASSESSMENT

63. Robert T. Law, a licensed pediatric neuropsychologist, conducted the psychoeducational assessment of Student. He has worked as a neuropsychologist conducting neuropsychological assessments for Northwest Passage for eight years. Dr. Law conducts approximately 70 psychoeducational assessments per year. He compiled his findings, along with some of the findings of the other team members in his written report.

64. Dr. Law’s assessment consisted of standardized testing, non-standardized testing, clinical interviews of Student and Parents, and a review of records. Dr. Law utilized the Wechsler Intelligence Scale for Children, Fourth Edition, to measure Student’s intellectual abilities. The testing placed Student’s full-scale intelligence quotient at 78, which is below average. However, due to the significant discrepancies in the testing results, Dr. Law reached the conclusion that the score was not an accurate reflection of Student’s general intellectual functioning. Dr. Law determined that Student’s working memory and processing speed deficits were impacting the accuracy of the score. After adjusting for the impact of his deficits, Dr. Law determined Student’s intelligence quotient to be 90 or in the average range.

65. In interpreting Student’s test scores on the Wechsler Individual Achievement Test, Third Edition, he found Student to have below average to impaired math, spelling, and reading decoding skills. Based on those findings, he diagnosed Student with a reading disorder, mathematics disorder, and a disorder of written expression.

66. Student's test scores on the Beery-Buktenica Developmental Test of Visual-Motor Integration, showed Student to have a weaknesses in visual-motor planning and organization. Student wrote with his left hand but used his right hand for other motor functions. The testing on the Grooved Pegboard Test showed that he had scores ranging from average to impaired on fine motor and dexterity tasks. Use of his right hand during the test yielded average results, while use of his left hand yielded impaired results.

67. Assessment of Student's executive processing skills, revealed significant variability in his skill level. Student had a relative strength in his visual planning and sequencing skills, mild weaknesses in conceptual problem solving, significant difficulties in verbal fluency, and rapid shifting of attention. These results were consistent with the discrepancies in the intellectual testing, which indicated Student had stronger reasoning and conceptualization abilities compared to his poor performance related to weaknesses in working memory and processing speed. As a result, Student's planning and problem solving skills may be disrupted at times of emotional stress and frustration.

68. It was unknown whether Student had been exposed to alcohol or drugs during gestation. Dr. Law found that Student exhibited some characteristics of encephalopathy due to fetal alcohol exposure. Student's small stature, smaller head circumference, and smaller spacing between his eyes can be indicative of fetal alcohol exposure. These features combined with his cognitive deficits in the areas of working memory, processing speed, rapid mental shifting, learning, central auditory processing,² executive functioning, led Dr. Law to diagnose Student with a cognitive disorder, not otherwise specified, due to static encephalopathy with alcohol exposure unknown. Dr. Law defined the term "not otherwise specified" to mean that even though a person

² Dr. Law based this finding on prior assessments he reviewed.

presents with some of the symptomology of the disorder, but only a general diagnosis is warranted. In this case, Dr. Law was not able to confirm that Student had encephalopathy due to fetal alcohol exposure because of the lack of medical documentation surrounding Student's birth.

69. The assessment revealed that Student showed mood regulation difficulties that appeared to be strongly associated with his early history of instability of caretakers prior to adoption, difficulty adjusting to his adoption, and insecure attachments. Student's mood regulation issues caused Dr. Law to diagnose Student with a mood disorder, not otherwise specified, stemming from a developmental trauma disorder. Dr. Law established that developmental trauma is significant trauma and stressors that impact a person's functioning later in life, particularly in the areas of emotional regulation, sense of self, self-esteem, and ability to maintain relationships, and to empathize with others. Dr. Law primarily based the mood disorder diagnosis on the information provided by Parents and from Student's scores on the Behavior Assessment System for Children.

70. Additionally, Dr. Law diagnosed Student with parental-child relational problems stemming from his attachment difficulties and rigidly defined interpersonal style of interacting with Parents. He did not diagnose Student with Autism Spectrum Disorder, despite Student's prior diagnosis and he did not address Autism as a diagnosis.

71. During the clinical interview, Student denied any past or current hallucinations and denied any thoughts of self-harm. However, Dr. Law recommended that mental health professionals continue to monitor Student to determine whether he had an emerging thought disorder or bipolar disorder. Part of Dr. Law's concerns were based on Student's responses to the questions on the Minnesota Multiphasic Personality Inventory-Adolescent, which showed an elevation on the hypomania scale

and borderline elevation on the psychopathic deviant scale due to elevated feelings of social alienation and self-alienation.

72. As part of his assessment, Dr. Law made a series of recommendations regarding Student's treatment and education. He recommended that Student participate in individual therapy to help him improve his behavioral controls, interpersonal skills, and coping strategies.³ In his report, he refers the reader to Ms. Gendreau's report for more detailed information on therapeutic recommendations. Dr. Law did not recommend family therapy. Dr. Law did not recommend that Parents contact their local school district.

Parents' Decision to Place Student at Waterfall Canyon

73. The Northwest Passage assessment team recommended that Parents place Student in a therapeutic residential program due to the Student's potential volatility in the home. The assessment team did not recommend a residential placement because Student was at risk of suicide or self-harm. Additionally, none of the reports provided by Northwest Passage indicated that Student required a therapeutic residential program for educational purposes. Besides having a residential assessment program, Northwest Passage maintains a separate therapeutic residential program. However, Northwest Passage has a policy of not recommending specific programs. Northwest Passage did not recommend that Parents contact their local school district, give the school district their report, or seek any public special education services.

74. The Northwest Passage team completed its assessment of Student by

³ Dr. Law also references that the individual therapy should address Student's chronic stealing behavior. However, neither his report nor his testimony explained this reference. Evidence was presented of only one instance of Student taking one or more game cards from a store.

December 23, 2014. However, Parents elected not to have Student return home for the holidays. Student continued to reside at Northwest Passage while Parents made a decision on where to place Student.

75. Dr. Heckman used the information from the Northwest Passage assessment to select several residential programs for Parents. She contacted each of the programs to determine whether Student would be an appropriate fit. Parents continued to be unwilling for Student to live in their homes. Ultimately, Parents elected to place Student at Waterfall Canyon Academy and attend its nonpublic school, Oak Grove School, in Ogden, Utah. Waterfall Canyon provides the therapeutic residential programming for Student, while Oak Grove School provides the educational programming. Waterfall Canyon is designed to transition its students back into the family home or into an independent living situation. The majority of Waterfall Canyon's students are on the autism spectrum or have multiple diagnoses including mental health issues. Parents made no effort to contact Mountain View-Los Altos in order to share a copy of the new assessment or ask for an IEP during the time Student was at Northwest Passage and while looking for alternative placements, despite being familiar with the IEP process. Despite the fact that Parents were actively looking for residential placements from December 23, 2014 through January 7, 2015, they did not give notice to Mountain View-Los Altos of their impending placement of Student.

76. On January 7, 2015, Student was admitted to Waterfall Canyon. A specialized transportation company escorted Student from Northwest Passage to Waterfall Canyon. The residential program consists of two houses for boys of Student's age. Student started in the first house and once he completed the requirements of that phase of the program, he moved to the second house, which provided less assistance and expected more independence. As students complete each step of their program, they gain privileges.

Mountain View-Los Alto's Assessment

77. On January 9, 2015, Student's attorney sent an email to Mountain View-Los Altos's associate superintendent asking that it assess Student for special education services and providing notification that Student was currently in residential placement. Mountain View-Los Altos provided Parents with an assessment plan that indicated the areas of assessment. Parents consented to the assessment plan. After obtaining Parents' consent Mountain View-Los Altos initiated the assessment process.

78. Since Student was living at Waterfall Canyon, Damara Nasca, a speech and language pathologist, and Nicole Behaylo, a school psychologist, both with Mountain View-Los Altos, traveled to Ogden, Utah to conduct assessments of Student. The assessors had the opportunity to meet with Student individually and observe him in classes.

PSYCHOEDUCATIONAL ASSESSMENT

79. Ms. Behaylo conducted the psychoeducational assessment. She has 12 years of experience as a school psychologist. During her career, she has conducted over 1,200 assessments of school age children. She is also a licensed Applied Behavioral Analysis therapist with experience working with children with autism. Ms. Behaylo focused her assessment on determining Student's present levels of performance and his eligibility for special education. She utilized record review, interviews of Parents and Student, standardized testing, observations, and rating forms as the means of assessment. Ms. Behaylo detailed her findings in a 45-page written report.

80. Based on her assessment, Ms. Behaylo found that Student met the qualifications for special education under the category of specific learning disability. Student's test results illustrated the existence of a significant discrepancy between his ability and achievement in in the areas of basic reading, math reasoning, and written expression that was due to Student's multiple processing disorders. Specifically, she

found Student to have processing disorders in the in the areas of auditory processing, sensory motor processing, and possibly visual processing. Although, the test results supported a finding that Student had a visual processing disorder, Ms. Behaylo viewed those results with caution because Student's records indicated that he required corrective lenses, but Student was not wearing and did not possess corrective lenses.

81. Ms. Behaylo reviewed the potential areas of eligibility of autism, other health impairment, and emotional disturbance, but found that Student did not meet the eligibility criteria in those areas. Student displayed some characteristics of autism spectrum disorder, but he did not meet the eligibility criteria. Additionally, Ms. Behaylo opined that some of those characteristics exhibited by Student may be attributable to developmental trauma. Dr. Law had diagnosed Student with developmental trauma disorder, which is marked by some of the same characteristics as autism, such as difficulty with social understanding and social relatedness, high tolerance for pain, and pragmatic language deficits. Ms. Behaylo also noted that although Student had been found eligible for special education under the category of autism in the past, he had never received a medical diagnosis of autism.

82. Student's executive functioning deficits were an area of concern. The evidence established that executive functions are a collection of processes responsible for guiding, directing, and managing a person's cognitive, emotional, and behavioral functions. The Behavior Rating Inventory of Executive Functioning showed that Student had difficulty adjusting to changes in routine or task demands; difficulty modulating emotions; difficulty initiating problem solving approaches; and difficulty monitoring his own behavior. Ms. Behaylo addressed these deficits in the recommendations portion of her report.

83. Although Dr. Law diagnosed Student with a mood disorder, Ms. Behaylo found that Student did not meet the eligibility criteria for emotional disturbance. Testing

results supported Ms. Behaylo's conclusion that Student did not meet the criteria for emotional disturbance. The result of the Clinical Assessment of Depression, which is an assessment tool used to measure depressive symptoms over a person's lifespan, showed that Student was in the normal range for depressed mood, anxiety, diminished interest, and cognitive and physical fatigue. The Adolescent Psychopathology Scale, Short Form, showed Student was not exhibiting clinical symptoms of major depressive disorder, generalized anxiety disorder, proneness to anger or violence, oppositional defiant disorder, or suicidality. The Behavior Depression Inventory, Second Edition, indicated that Student was experiencing only mild levels of depression.

84. Student's aggressive and violent behavior reported by Parents only occurred in the home setting. At Palo Alto Preparatory, Northwest Passage, and Oak Grove School, Student did not exhibit violent or aggressive behavior. However, the assessment showed that Student is perceived to be at risk for developing social problems, emotional distress, separation fears, social anxiety, defiant and aggressive behaviors within the school setting.

85. On March 25, 2015, just prior to the IEP team meeting set to review the assessment results, Ms. Behaylo met with Parents and reviewed her draft report. Parents pointed out some mistakes in the background information section of the report, which Ms. Behaylo corrected.

SPEECH AND LANGUAGE

86. Ms. Nasca conducted the speech and language assessment of Student. Her assessment consisted of formal testing, informal testing, rating scales, observations, speech and language samples, and review of records. She conducted the testing over two sessions. Ms. Nasca determined Student's voice, fluency, and articulation to be at age-level expectations. However, testing indicated that Student had deficits in the areas of expressive and receptive language, with his receptive language scores being slightly

higher than his scores in expressive language.

87. Student had adequate expressive language skills to make his needs known, carry on a conversation, interact with others, and expressive his ideas. However, he demonstrated weakness in areas of vocabulary, forming sentences with correct verb tenses, integrating sentence components to create complete grammatically accurate prepositions, and identifying relationships between words. Student showed difficulty retrieving words from memory and was slow to respond to word finding tasks.

88. The assessment showed that Student had difficulty understanding orally presented stories and recalling sentences. Student's receptive language deficits could make it difficult for Student to follow directions during academic instruction, write dictation, copy and take notes, and learn vocabulary. Additionally, he had trouble interpreting the meaning and the relationship between concepts presented verbally or in text materials required for academics.

89. Ms. Nasca assessed Student's pragmatic skills using, in part, the Social Language Development Test, Adolescent. This standardized assessment tool tests a student's social language skills that focus on social interpretation and interaction with peers. Student scored in the average to high average range on all of the subtests, except the Interpreting Ironic Statements subtest, on which he scored in the low average range. That subtest measured Student's ability to listen to a recording and show an understanding of the dialogue, including idioms, and identifying irony and sarcasm. Student had some difficulty on the Pragmatic Judgment subtest of the Comprehensive Assessment of Spoken Language. The subtest measures a student's knowledge and application of social rules of language. Student had trouble finding the right words to express his thoughts, often answering in one to two word answers and not giving enough information to make his thoughts and ideas clear.

90. Along with the standardized testing, Ms. Nasca had the opportunity to

observe Student interacting with his peers and staff members. He initiated questions and made appropriate comments with his communication partners; answered questions asked of him in a timely and concise manner; and seemed to enjoy making jokes. Student expressed an interest in his communication partners and shared his own thoughts and feelings, although he had difficulty following basic linguistic rules during conversations and generating the words necessary to expand on his thought or idea.

91. Ms. Nasca found that Student met the criteria for special education services under the category of speech and language impairment. She recommended that he receive speech and language services to develop his expressive and receptive language skills by working on vocabulary and understanding the main idea of curriculum-related texts. She did not recommend that Student receive social skills training because the standardized testing and observations indicated that Student did not have a deficit in social skills.

INDIVIDUALIZED TRANSITION PLAN

92. During her assessment of Student, Ms. Behaylo gathered information about Student's interests and intentions for the future, to help prepare an individualized transition plan for Student. While Student was attending Palo Alto Preparatory, it was Parents' intention for Student to graduate with a high school diploma, attend a community college, and obtain gainful employment. Student shared the same intention. Even after Parents placed Student at Waterfall Canyon, Student's intention remained the same.

93. Ms. Behaylo administered an informal assessment, the Hopes and Dreams Assessment, to Student to help determine how to support his post high school transition. She asked him a series of questions about his dreams, strengths, career interests, learning preferences, personality, potential hurdles, needed accommodations, post high school education plans, and employment plans. Ms. Behaylo wrote Student's

answer on the summary form because Student asked her to act as his scribe. This action was allowable under assessment protocols. The summary of Student's answers was attached as part of the written IEP.

94. Student reported that his dreams were to play football on a good team; get a job; and find a mate. At the time of assessment, Student was trying to join a local recreational football team. Student's reported career interests on the assessment were consistent with those he previously reported, namely wanting to coach kids' sports teams. Student had previously volunteered as an assistant coach of a kid's sporting team and had enjoyed the experience.

95. The staff at Oak Grove administered the Career Occupation Preferences System Inventory and a Career Interest Questionnaire to Student. The results showed that Student was interested in being a disc jockey, a BMX biker, or working in some sort of video gaming career. The evidence showed it is not uncommon for students to have similar career interests as those specified by Student. Prior to being placed outside the home, Student spent a great deal of his time using computer software to mix music. The Career Occupation Preferences System Inventory showed Student's preferred career clusters to be arts skilled, art professional, and service professional. This information was reported on the Individualized Transition Plan portion of the IEP.

March 25, 2015 IEP Team Meeting

96. Approximately a week to a week and one half after Ms. Behaylo and Ms. Nasca returned from their trips to Utah, they met with Ms. Sulaver, Mountain View-Los Altos's director of special education, and Dr. Susan Flatmo, Mountain View-Los Altos's clinical services coordinator to discuss experiences during their assessments and the information they had learned. At the time of the meeting, neither of the assessors had tabulated their testing results. No decisions about placement were made during this meeting.

97. On March 25, 2015, Mountain View-Los Altos held an IEP team meeting to determine whether Student was eligible for special education services and, if determined eligible, to develop an IEP for Student. The IEP team consisted of the following: Parents; Student; Kristen Krauss, a general education teacher with Mountain View-Los Altos; Kathy Sulaver, director of special education; Dr. Flatmo; Ms. Behaylo; Ms. Nasca; Darlene Pinkston, director at Oak Grove; Rodney Davenport, a teacher at Oak Grove; and Mr. Sorenson, a special education specialist with Oak Grove. Student and the staff members from Oak Grove appeared by telephone. Student left early due to transportation needs.

98. During the meeting, both Ms. Behaylo and Ms. Nasca presented their assessment findings. Parents had an opportunity to ask questions and provide their input. They remained relatively quiet throughout the meeting, but actively listened.

99. Dr. Flatmo contacted Lisa O’Hearn-Keck, dean of students at Palo Alto Preparatory; Ebbie Russett,⁴ Student’s therapist at Waterfall Canyon, and Ms. Lisa Di Marino prior to the IEP team meeting to gather additional information about Student. Student had been attending individual and group therapy with Ms. Russett since late January 2015. Dr. Flatmo presented a summary of those conversations at the IEP team meeting.

100. At the March 25, 2015 IEP team meeting, Mountain View-Los Altos found Student eligible for special education services under the categories of specific learning disability and speech and language disorder. Neither Parents nor the Oak Grove members of the IEP team disagreed with that proposal.

101. The evidence did not support a finding that Mountain View-Los Altos predetermined its offer of placement. To the contrary, the evidence showed that the IEP

⁴ In much of the evidentiary documentation, her name is listed by her maiden name Ebbie Cabrara. Prior to the hearing, she married and changed her name.

team fully discussed the issue of placement. The district members of the IEP team listened to and considered the input of the Oak Grove members and Parents. As Student had attended general education courses at both Palo Alto Preparatory and Oak Grove, the team discussed placement in general education classes. However, the IEP team felt that Student required more support due to his social and emotional needs. Since Parents had already placed Student at Waterfall Canyon, the possibility of residential placement was discussed. The district members of the IEP team believed that Student could receive a FAPE in a less restrictive environment. The option of Mountain View-Los Altos's therapeutic program was presented because it addressed Student's need for social-emotional supports combined with special education classes in a less restrictive environment than a residential placement. Although Student argues in his closing brief that it is undisputed that Mountain View-Los Altos predetermined its offer of placement, the evidence does not support his argument.

102. The district members of the IEP team did not present the option of the residential placement, Rebekah's House. In the past, Mountain View-Los Altos had placed students who were transitioning from residential treatment programs back to the district. The issue of Rebekah's House was raised during the hearing. The program was located in Gilroy, California, which was approximately an hour from Mountain View-Los Altos's therapeutic program.

103. At the meeting, Mountain View-Los Altos presented the IEP offer, which was effective beginning March 25, 2015, and ending March 25, 2016. Parents declined to accept the offer at that time and indicated that they wanted their attorney to review it before making any decisions.

March 25, 2015 IEP Offer

PRESENT LEVELS OF PERFORMANCE AND GOALS

104. As of March 24, 2015, Student's was receiving an A in math, a B+ in

English, an A- in Fitness for Life, a B in Healthy Lifestyles, a B+ in U.S. Government, and a D- in Chemistry. The IEP team was informed of Student's grades at the IEP team meeting and Student's transcripts from Palo Alto Preparatory and Oak Grove School were included as part of the IEP.

105. The IEP team discussed Student's strengths and weaknesses. Five of Student's Oak Grove teachers provided written feedback about Student's strengths and weaknesses at school, which was included in the written IEP. In addition, Student's teachers from Oak Grove updated the team on Student's progress during the IEP team meeting. Student's math teacher indicated that he believed that Student should advance to a higher-level math class. Student's present levels in the area of academics were identified accurately in the written IEP.

106. Ms. Nasca's assessment data formed the basis for Student's present levels of performance in the areas of speech and language. The written IEP accurately represented these levels. Included with that information was a summary of the teacher feedback provided by three of Student's teachers at Oak Grove as part of Ms. Nasca's assessment.

107. The written IEP also included present levels of performance for Student's fine motor and gross motor skills. The IEP documented Parents' concern about Student's fine motor skills. However, those concerns were contradicted persuasively by the testimony of staff members at Waterfall Canyon and Oak Grove based on their work with Student. Ms. Behaylo had the opportunity to observe Student writing during her assessment. She had no concerns with his fine motor skills during her assessment. She was able to read his handwriting and was able to score the paragraph he wrote.

108. Student's social-emotional and behavioral present levels of performance were based on the assessment data and were accurately reflected in the written IEP. The notes section also details many of the interpersonal and behavioral issues that Student

was facing. The information provided by the Oak Grove teachers also addressed Student's behavior in class.

109. Student's present level of performance in regards to his adaptive living skills was depicted accurately in the written IEP. Student's scores on the Vineland Adaptive Behavior Scale, administered as part of Ms. Behaylo's assessment, showed that Student's personal care, academic, and community living skills were rated as moderately low.

110. The March 25, 2015 IEP accurately identified Student's areas of need as reading, writing, math, study skills, life skills, therapy, expressive language, and receptive language. The IEP offered Student eight goals to address those needs. With the input of the Oak Grove members of the IEP team, a life skills goal and a functional math goal were added to the IEP offer.

111. The academic goals were aligned to grade-level content standards. The special education classes in the therapeutic program used the same materials as the general education classes. However, the teaching staff in the special education used various techniques, such as scaffolding, to allow their students to access the materials. However, the offered math goal was not aligned with grade level curriculum. Student had already met his math requirements for graduation. The math goals were less of an academic goal and more of a life skills or independent living skills goal because it focused on improving Student's skills working with and understanding the value of money. The IEP intended for the goal to be supported by Student's assigned case manager and instructional assistant in the study skills classes. The goal was added at the suggestion of the Oak Grove members of the IEP team. Student did not provide any testimony of experts or any other evidence to support his argument that the offered academic goals did not align to grade-level content standards.

112. In his closing brief, Student took particular issue with the appropriateness

of the offered therapy goal. The goal indicated that by March 26, 2016, with staff support, Student would identify what is causing him stress, manage day-to-day stress with routines, and use coping strategies for stress reduction in eight out of 10 opportunities across settings. To support that goal, the IEP offered Student placement in the therapeutic program and individual counseling services. This goal may use the term "stress," but its purpose is to provide Student with the tools to help him manage his emotional dysregulation and allow him to remain in class and engaged so he can benefit from his education. This goal addressed Student's mood disorder diagnosis because it focused on assisting Student in utilizing the techniques he learned in therapy to process and control his emotions.

113. The IEP offered Student a goal in the area of expressive language and a goal in the area of receptive language. Both of these goals addressed Student's deficits as identified during the speech and language assessment. The goals were tied directly into Student's academic curriculum as Student's expressive and receptive language deficits affected his ability to perform academically. The expressive and receptive language goals were clear, measurable, and appropriately met Student's needs. Student did not present expert testimony from any witnesses with experience in constructing and implementing speech and language goals to counter Mountain View-Los Altos's speech and language pathologist's expert opinion.

114. The life skills goal recommended by the Oak Grove members of the team focused on Student learning to access community resources and transportation services. Although this goal is not listed as a transition goal, it helps support Student's post-secondary transition plan.

115. All eight of the goals included in the IEP contained methods to measure Student's progress on the goals. The testimony of Mountain View-Los Altos's witnesses, including that of one of the special education teachers from the therapeutic program,

supports a finding that the academic goals were measurable and appropriately addressed Student's needs.

SERVICES AND PLACEMENT

116. Mountain View-Los Altos offered Student placement in its therapeutic program. The therapeutic program is designed for high school students who need additional therapeutic support during their school day. The class sizes are small, anywhere from five to 15 students, so that students can receive individualized attention. In class, Student would receive small group instruction, as recommended by Northwest Passage. Each of the classes has a special education teacher and instructional assistant. The IEP offered Student 50 minutes specialized instruction in the therapeutic special day class 16 times weekly. The IEP offered Student two periods of special education study skills to support his transition, address his executive functioning needs, and work on his life skills goal. It also offered Student one period of special education English and one period of special education U.S. History.

117. The program is comprised of eight or nine classrooms that are located close to each other on the Los Altos High School campus. The idea behind the location of the classrooms was to create a smaller environment for students who were experiencing emotional difficulties.

118. Students in the program are assigned a case manager, who is also a teacher in the program. The case managers' caseloads are kept small (10 to 12 students) so that they can devote more attention to each student. In the event that Student experienced emotional dysregulation, he could leave class and receive the assistance that he needs from either his case manager, an instructional assistant, or one of the program's four therapists.

119. The IEP offered Student 50 minutes of individual counseling every week. However, the therapeutic program has counseling services embedded into the program.

Students in the program can access counseling services, as needed, throughout the school day. Although students are assigned a particular therapist, the program has three full time therapists and one part time therapist so a counselor is available at all times. Student could utilize the skills that he worked on in counseling in class daily. The therapy goal was designed to be worked on both in and out of counseling sessions. The therapeutic program's staff members are trained to help implement student's social-emotional goals in the classroom setting. Staff members would remind Student to implement the techniques he was learning to help him regulate his emotions. This support from staff members, would allow Student to be able to generalize the skills he learned in the classroom.

120. In the event that Student began to shut down emotionally, staff would immediately check in with him and provide academic or emotional support as needed. Many of the students in the program share a similar profile to Student. The program is equipped to work with students who are having emotional and academic issues.

121. Since Student had met his Algebra requirement and the two years of math requirement, the IEP did not offer Student specialized academic instruction in math. However, since Student still had needs to address in the area of math, such as working with money and difficulty with fractions, Mountain View-Los Altos offered to address those needs in its Crossroads Independent Study Program. That program would allow a more tailored curriculum to address Student's particular needs in the area of math.

122. Prior to becoming the clinical services coordinator, Dr. Flatmo, was a therapist with the therapeutic program. Her office was located in one of the therapeutic program classrooms. During the IEP team meeting, she explained the program to the IEP team members. Ms. Behaylo first thought of the therapeutic program as a placement option for Student after conducting her assessment of him. She felt that his needs could be met through the therapeutic program. Overall, the evidence showed that Student's

needs could be met in the therapeutic program.

123. Student contended in his closing brief that he required a therapeutic residential treatment program. However, the recommendation by Northwest Passage and Dr. Heckman to place Student in a therapeutic residential treatment program was not based on Student's educational needs, but instead on his inability to live in the family home. When Parents notified the IEP team that Student could not live in either of their homes and that they did not have a place for Student to live in the area, Dr. Flatmo provided them with information about two programs where children could live in the event that they were unable to live at home.⁵ Neither Parent contacted those programs or did any research into other similar options.

124. The March 25, 2015 IEP also offered Student 25 minutes weekly of individual speech and language therapy to support the offered expressive and receptive language goals, based on Ms. Nasca's assessment.⁶ Student did not provide any compelling evidence that the amount and duration of these services did not meet Student's speech and language needs. Student did not require group speech and language services to address his social communication needs, as none were identified during the speech and language assessment.

125. The combination of the services and the placement offered by the IEP were designed to meet the student's unique needs and support the offered goals. The

⁵ These programs, Bill Wilson Center, Quezel House, and the county services for adopted children are not special education placements.

⁶ Student argues in his closing brief that the present levels of performance were not accurate because the assessments used to establish them were deficient. However, Student did not allege that allegation in his complaint. As such, it will not be addressed in this Decision.

service and placement were reasonably calculated to provide the student with some educational benefit in the least restrictive environment.

EXTENDED SCHOOL YEAR SERVICES

126. At the March 25, 2015 IEP meeting, the team discussed whether Student required extended school year services. The district members of the IEP concluded that Student was on track for graduation and that the assessment information did not support that Student was in danger of experiencing a regression of skills over an extended break from school or that he would have limited ability to recoup such skills. Student did not present any compelling evidence that Student required extended school year services to receive an educational benefit.

INDIVIDUALIZED TRANSITION PLAN

127. Student indicated during the Hopes and Dreams assessment that his post high school education plan was to get a job. However, during the IEP team meeting, he indicated that he was undecided on his goal after high school and that he might go to college. The IEP team, including Student, discussed the results of the Hopes and Dreams assessment. Student reiterated that he would like to work with children. The Individualized Transition Plan was updated based on input from Student.

128. The individualized transition plan contained two goals for Student. The first goal provided for Student to research and compare junior colleges, colleges, or universities to find schools that will fit his skills, interests, and abilities. To support his goal the individualized transition plan offered access to career day, college fairs, college orientation, college/career resource center, and Naviance (a computer system used for researching schools and vocational programs).

129. The second goal focused on Student researching and exploring realistic post high school career opportunities. To facilitate this goal, Student would be provided

access to community based education actives such as volunteering and job shadowing, and career day events.

130. Both goals were supported by the offered services of 30 minutes yearly of vocational counseling, 10 minutes monthly of career awareness counseling, and 10 minutes per month of college awareness and preparation. Mountain View-Los Altos's workability and placement specialist would provide these services. Both the workability and placement specialist and Student's case manager would work with Student on writing an effective resume, learning effective interviewing skills, and finding employment opportunities. The case manager would work with Student during the study skills class to support these goals.

2015-2016 SCHOOL YEAR

131. Student remained at Waterfall Canyon and attended Oak Grove School throughout the 2015-2016 school year until graduating in July 2016.

Student's Progress

132. Student had been participating in weekly family counseling since late January 2015. Father participated on a weekly basis, but Mother was generally unavailable to participate due to her schedule. Initially, Mother participated two times a month then her participation lessened and eventually she stopped participating all together. In addition to family therapy, Father spoke on the phone to Student on a weekly basis. Initially, Mother also spoke to Student by phone on a weekly basis, but then they stopped speaking because every phone call would devolve into an argument.

133. Student continued to progress through the required steps of the residential program. On July 27, 2015, Student moved from the residential program into the transitional living portion of the program. The transitional living program required Student to gain the living skills to be able to move on to independent living. The

program required Student to set up a personal bank account, work on budgeting, keep a timely schedule, obtain a valid state identification card, set up an email account to use for personal and business use, learn the local public transportation system, complete a resume, seek employment, set up volunteer and community service work, understand the process for restocking household supplies, and work on his communication with staff, peers, community members, and family members.

134. Despite Student achieving enough points to be able to have a home visit, Parents did not allow him to return home for a visit over the 2015 summer. Student became negative and depressed when he was not allowed to return home for a summer visit. During that time, Student began calling his parents by their first names. However, Student's mood improved dramatically once the rest of the students returned from their summer home visits.

135. By September 2015, Student was volunteering at the school as a janitor to help build his job skills. Student's volunteer job as a janitor turned into a paid position. By the end of September 2015, Student had met most of the requirements of the transitional living program detailed above. During the second quarter of the year, Student moved to a new transitional living house that required house members to take more responsibility in maintaining the house.

136. On March 21, 2016, Student moved from the transitional living program to the independent living program. Parents decided that it would be too expensive to have Student live in California so they wanted to prepare him to live on his own in Utah. Once Parents made that decision, Student's goals became graduating and developing an independent living situation. Student planned to get an apartment with several of his friends and support himself by working.

137. Waterfall Canyon and Oak Grove School elected to use the IEP goals proposed by Mountain View-Los Altos. Parents did not object to the use of these goals

as inappropriate for Student. Student worked on the therapy goal with Ms. Russett. Student made significant progress on the goal until the brief setback of not being able to go on a home visit. Academically, Student still struggled to find the motivation to complete his work. Student progressed in his classes, but he often did not complete his assignments. Student was able to work at grade level in reading comprehension when he was focused.

138. Oak Grove did not provide Student with instruction by special education teachers nor did it provide Student with a formal program of instruction to remediate his reading deficits. The only special education teacher at Oak Grove taught intellectually delayed students. The classes she taught would have been at a level far below Student's skill level. The closer he came to graduating, the less effort Student exerted. Student was fearful of life after graduation.

139. At Waterfall Canyon, Student received 30 to 45 minutes of speech and language therapy each week in a group setting during the regular school year. Student did not receive speech and language services during the summer of 2015, because Waterfall Canyon's speech and language therapists did not work during the summer months. Additionally, Waterfall Canyon discontinued speech and languages after the therapist determined that Student had met his goals.

140. Student's therapist, Ms. Russett, did not feel that the family therapy provided Student with much value. Student was often unwilling to address uncomfortable topics during the therapy. Student made some progress during family therapy as evidenced in a session when Student engaged with Parents and asked about home and family. Student regressed once Parents refused to allow him to visit home. Father visited Student at Waterfall Canyon in July 2015. The visit went well and the two had an opportunity to work on their relationship. Student was allowed to stay overnight with Father in his hotel during the visit. The visit had a positive effect on Student's and

Father's relationship. In September 2015, after being encouraged to visit by Ms. Russett and Dr. Heckman, Father and Mother visited Student. Student was not particularly warm to Father and Mother during that visit.

April 8, 2016 IEP Team Meeting

141. Parents and Mountain View-Los Altos were unable to meet on March 25, 2016, the time for Student's annual IEP meeting due to scheduling conflicts. Parents agreed that Mountain View-Los Altos could open the record to begin the meeting and then continue it until they could be present.⁷

142. On April 8, 2016, Mountain View-Los Altos held Student's annual IEP team meeting. The IEP team consisted of the following: Father; Student; Tomas Ibarra, a general education teacher with Mountain View-Los Altos; Erica Starks, an educational specialist with Mountain View-Los Altos; Bana Jones Green, a program specialist with Mountain View-Los Altos; Ms. Sulaver; Dr. Flatmo; Ms. Nasca; Richard Fujii, a workability placement specialist with Mountain View-Los Altos; Suzanne Ciraulo, school administrator at Waterfall Canyon; Mark Nye, the Independent Living Program coordinator at Waterfall Canyon; Ms. Russett; Alicia Sherman, community advisor at Waterfall Canyon; and Mr. Sorenson. Student and the staff members from Waterfall Canyon and Oak Grove appeared by telephone. Parents recorded the IEP team meeting with the agreement of Mountain View-Los Altos.

143. Student had turned 18 years old on January 6, 2016. This meant that Student held his own education rights. However, Student had transferred his education rights to Parents so that they could make decisions regarding the IEP process.

144. A draft IEP had been provided to the team members and they were invited

⁷ This Decision makes no findings as to the timeliness of this IEP since it is not at issue in this case.

to provide their feedback throughout the meeting. Ms. Russett asked to start with the Student's social-emotional progress. She provided her input on Student's present levels of performance, which were incorporated in the IEP. Dr. Flatmo followed up on Ms. Russett's reporting. She provided a summary of the conversations regarding Student's social and emotional progress that she had had with Ms. Russett over the past year. Ms. Russett had nothing to add to this summary. Father agreed to excuse Ms. Russett early and signed a written excusal form.

145. The IEP team then discussed Student's present levels of performance. Since Student was attending Oak Grove School, its staff members provided information on Student's progress. The Oak Grove speech and language pathologist indicated that Student had met his goal and she recommended discontinuation of services. Conversely, Ms. Nasca recommended continuing services and proposed several new goals.

146. The draft goals were review by the IEP team. The team members determined that an independent living goal was not necessary due to Student's already developed independent living skills. Dr. Flatmo proposed a new task completion goal instead of the study skills goal that was included in the draft IEP. The goal included as a part of the IEP offer.

147. The IEP team discussed the provision of services and placement options for Student. Student was scheduled to graduate from Oak Grove in June 2016. Although Mountain View-Los Altos provided a draft IEP, that draft did not contain a provision of services or placement. That information was added during the IEP team meeting based on the IEP team's discussion.

148. The IEP offer was presented to Father and Student during the meeting. Both Father and Student declined the offer. Parents had already decided that Student would be remaining in Utah after graduation from Oak Grove School, due to the high cost of living in the Bay Area.

April 2016 IEP Offer

149. Since Student was on track to graduate in June or July 2016, the IEP offer was calculated only to cover the period beginning April 8, 2016, and ending July 10, 2016. If Student had not graduated by that date, the IEP team could have met and either extended the date of the IEP or formulated a new IEP.

PRESENT LEVELS OF PERFORMANCE AND GOALS

150. The present levels of performance included in the April 2016 written IEP offer were accurate and detailed. The Oak Grove and Waterfall Canyon staff members, who had been working with Student, provided the information about Student's progress and present levels. Student did not present any evidence that the present levels of performance were inaccurate.

151. The IEP offered Student goals in the areas of reading, writing, math, executive functioning, social-emotional functioning, expressive language, and receptive language. The proposed goals addressed Student's needs and were measurable. For example, the expressive language goal identified that Student had difficulty with basic syntax and semantics skills. The goal required Student to be able to demonstrate accurate word retrieval abilities at moderately complex conversation levels 80 percent of the time given moderate cues in two out of three opportunities in the employment, community, and school setting.

SERVICES AND PLACEMENT

152. The Mountain View-Los Altos members of the IEP team felt strongly that by placing Student in the therapeutic program as offered and described at the 2015 IEP team meeting, that he would be able to receive a FAPE in the least restrictive environment. The IEP offered Student five special education classes in the therapeutic program. In order to meet Mountain View-Los Altos's graduation requirements, he

needed to complete an English class, Economics, U.S. History, and two study skills classes. All of the offered classes would be special education classes. Student would receive instruction on functional math skills during the study skills classes. This plan would allow Student to graduate by the middle of June or beginning of July 2016.

153. The IEP offered Student 45 minutes of individual counseling services per week. This amount of counseling, when combined with the embedded counseling services of the therapeutic program, was sufficient to meet Student's needs and help him make progress on the proposed social-emotional goal. The therapy goal was very similar to the prior year's goals, however, the required accuracy level was raised to 90 percent, because the Oak Grove staff reported that Student was successfully practicing the skills required of the goal 80 percent of the time in the classroom.

154. The IEP also offered Student 30 minutes of individual speech and language therapy per week. This was sufficient time to help Student make appropriate progress on the proposed speech goals. The speech and language goals were designed to allow Student to work on the needed skills during the individualized therapy sessions with direct services and in his special education classes with the assistance of his teachers. Although the speech and language goals were designed as annual goals, Student would have had the opportunity to make progress on those goals during the period of time that IEP offered services.

155. Mountain View-Los Altos proposed a plan to help support Student's transition from Waterfall Canyon to the therapeutic program. Initially, the therapist would check-in with Student daily. Student would have immediate access to his case manager in the event Student experienced a problem. Student would be provided with social support during lunch, such as a "lunch bunch" group so he could establish new relationships with his peers.

INDIVIDUALIZED TRANSITION PLAN

156. The Oak Grove staff administered the Career Occupation Preference System Interest Inventory in February 2016 and the Career Interest Questionnaire in late January 2016. In addition, the IEP team gathered information from the staff members of Waterfall Canyon and Oak Grove and Student regarding his transition needs and goals. Based on this data, Mountain View-Los Altos developed an Individualized Transition Plan.

157. The Individualized Transition Plan offered Student two transition goals, one addressing post high school education and the other employment. Student had been undecided on whether he wanted to attend college after high school. The goal required Student to research and compare junior college and college choices. The individualized transition plan offered Student 30 minutes yearly of services of to support this goal.

158. The second transition goal required Student to develop his interviewing skills, fill out job applications, and obtain a part time job working at least 20 hours per week. Not only would the workability specialist support the two goals, but also he would work with Student to help him access the Transition Partnership Program. The Partnership Program helps students find a career and transition into life after high school. This relationship would extend after Student finished high school. The individualized transition plan offered Student 20 minutes monthly of services. Additionally, Student's case manager would support both of these goals during Student's study skills class.

TESTIMONY OF STUDENT'S EXPERTS REGARDING THE IEP OFFER

159. Student presented Megan Elizabeth McCormick and Dr. Heckman as experts, who both testified that the 2015 and 2016 IEP offers were deficient. Dr.

McCormick, a school psychologist in Utah, provides assessment and consultative services to parents in addition to her work in public education. She did not conduct any assessments or testing of Student. She reviewed Student's records, the IEP offers, and interviewed Student and staff members at Waterfall Canyon/Oak Grove. Dr. McCormick focused the vast majority of her testimony and her report on her position that the IEP was deficient because it did not find Student to be eligible under the category of emotionally disturbed. She opined that the eligibility category drives the goals, services, and placement and that failure to find Student eligible under emotionally disturbed evidenced that the goals, services, and placement were not appropriate. Her testimony and report only superficially addressed the goals of the IEPs. Dr. McCormick's testimony was unconvincing as a student need not be found eligible for services under a specific eligibility category to be offered or provided services to meet their needs in that area.

160. Dr. Heckman's testimony was given little weight on the issues of the appropriateness of the IEP offers. She has virtually no experience in the IEP process. Her last experience participating in the IEP process was back in the late 1970's. Student presented her as an expert in this area, but she did not have the experience of one and her testimony in this area is given no weight.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁸

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it.

⁸ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

(20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁹ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment, higher education, and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means that special education and related services are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A);

⁹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. §

1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (l).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, Student filed the complaint, thus he bears the burden of proof on all issues.

ISSUE 1: DURING THE 2014-2015 SCHOOL YEAR, DID MOUNTAIN VIEW-LOS ALTOS FAIL TO HAVE AN IEP IN PLACE FOR STUDENT AT THE BEGINNING OF THE SCHOOL YEAR?

5. Student contends that Mountain View-Los Altos failed in its child find obligation when it failed to identify Student as a child in need of special education services and have an IEP offer in place for Student at the beginning of the 2014-2015 school year. Mountain View-Los Altos argues that it did not fail its child find obligation and it had no knowledge that Student was a child in need of special education services at that time.

6. A district must have an IEP in effect for each child with exceptional needs at the beginning of each school year. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a)(2006); Ed. Code, § 56344, subd. (b).)

7. The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and evaluate all children with disabilities residing in the state who are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).) This duty is commonly referred to as "child find." California law specifically incorporates child find in Education Code section 56301, subdivision (a) and

(b).

8. Child find applies to parentally-placed private school children, defined as children who are enrolled by their parents in private school. (34 C.F.R. § 300.131; Ed. Code § 56170.) The IDEA regulations and the Education Code specify that child find for children enrolled by their parents in private school, including the duty to assess those children, is the responsibility of the district in which the private school is located. (34 C.F.R. § 300.131, Ed. Code § 56171.) This responsibility extends to reassessments. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46593 (August 14, 2006), (hereafter, Comments to Regulations).) The purpose of this child find activity is to ensure the equitable participation of parentally placed private school children in services that a school district may provide to children who attend private school in the district, as well as an accurate count of those children. (Office of Special Education Programs (OSEP), *Letter to Eig*, January 28, 2009, 52 IDELR 136 (hereafter *Letter to Eig*.)

9. The child find activities a school district undertakes for parentally-placed private school children must be similar to the activities undertaken for the school district's public school children, and must be completed in a time period comparable to that for student attending public school in the school district. (34 C.F.R. § 300.131(c) & (e); Ed. Code, § 56301, subds. (c)(1) & (3).) The U.S. Department of Education has elaborated upon the meaning of "similar" activities in this context, stating that "similar" activities might generally include, but are not limited to, such activities as widely distributing informational brochures, providing regular public service announcements, staffing exhibits at community activities, and creating direct liaisons with private schools. (Comments to Regulations, *supra*, 46593.) "Comparable" time period means that the school district's child find activities must be conducted within a reasonable period, without undue delay, and may not be delayed until after the school district conducts

child find for public school children. (*Ibid.*)

10. The IDEA and the California Education Code do not specify which activities are sufficient to meet a school district's child find obligation, and there is no requirement that a school district directly notify every household within its boundaries about child find. However, California law obligates a SELPA to establish written policies and procedures for use by its constituent local agencies for a continuous child find system. (Ed. Code § 56301, subd. (d)(1).) The school district must actively and systematically seek out "all individuals with exceptional needs, from birth to 21 years of age," including children not enrolled in public school programs, who reside in a school district or are under the jurisdiction of a SELPA. (Ed. Code, § 56300.) The school district's duty for child find is not dependent on any request by the parent for special education testing or services. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518.)

11. In this case, Mountain View-Los Altos complied with its child find obligations by sending letters to the area private schools about its special education services and by inviting those private schools to a meeting each year, during which Mountain View-Los Altos's child find obligation was discussed. Palo Alto Preparatory, where Student had been unilaterally placed, was invited to and attended those meetings. Additionally, Mountain View-Los Altos had a long standing relationship with Palo Alto Preparatory and had established a relationship where Palo Alto Preparatory could refer students to it for special education assessments. Despite this relationship, Palo Alto Preparatory did not bring Student to the attention of Mountain View-Los Altos.

12. Additionally, Mountain View-Los Altos complied with its child find obligation by reaching out to the parents within its district boundaries, like Mother, through newspaper and website ads. Parents were aware of the special education process because they had accessed services through two other school districts. They chose to place Student at Palo Alto Preparatory, not because they were unaware of the

availably of special education services, but because they felt it was the best placement for their child.

13. A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability, and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)¹⁰ The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, (*Adams*)(citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041).)

14. In this case, Mountain View-Los Altos had no knowledge of, or reason to suspect, that Student was a child in need of special education services. Although Mother enrolled Student in the district for the following school year, it was for such a limited period of time that District would not have had knowledge of Student's potential need for special education. Moreover, Student failed to present any evidence that Mountain View-Los Altos had actual knowledge that Student was a child with needs or that it failed its other child find duties. Student did not show that Parent provided Mountain

¹⁰ In a footnote in an unpublished decision, the Ninth Circuit Court of Appeals recently noted that it has not yet articulated a test for determining when the child find obligation is triggered. (*G.M. ex. rel. G.M. v. Saddleback Valley Unified Sch. Dist.* (9th Cir. 2014) 583 Fed.Appx. 702, 703, fn. 1.)

View-Los Altos any information which would have put it on notice regarding Student's needs, including, but not limited to providing copies of previous assessments, previous IEP documents or simply writing a letter explaining that Student had been previously identified as a student with special needs. Since Mountain View-Los Altos had not identified Student as a child in need of special education services, it had no obligation under the law to have an IEP in place for Student at the beginning of the 2014-2015 school year.

ISSUE 2: DID MOUNTAIN VIEW-LOS ALTOS FAIL TO INCLUDE IN THE MARCH 25, 2015 IEP ACCURATE PRESENT LEVELS OF PERFORMANCE AND APPROPRIATE ANNUAL GOALS?

15. The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.)

16. Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams, supra*, 195 F.3d 1141, 1149.)

17. 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 (*San Diego*)). 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.)

18. An IEP must contain a statement of measurable annual goals related to “meeting the child’s needs that result from the child’s disability to enable the child to be involved in and progress in the general curriculum” and “meeting each of the child’s other educational needs that result from the child’s disability.” (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd.(a)(2).) The IEP must also contain a statement of how the child’s goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III); Ed. Code, § 56345, subd.(a)(3).) The IEP must show a direct relationship between present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040,subd. (c).) The IDEA does not require a particular number of goals nor does it require goals for every particular manifestation of the Student’s disability.

19. In a November 16, 2015 joint letter, the Office of Special Education and Rehabilitative Services and the Office of Special Education Programs state that IEP goals must align with state academic content standards for the grade in which the special education student is enrolled. The agencies explained that aligning IEP goals with grade-level content standards reflects the IDEA's emphasis on having high expectations for students with disabilities.¹¹ (*Dear Colleague Letter*, 66 IDELR 227 (OSERS 2015).)

20. Student failed to meet his burden that the March 25, 2015 IEP was defective because it failed to include accurate present level of performance. The present levels of performance contained in the IEP were derived from Mountain View-Los Altos’s assessments, Northwest Passage’s assessments, and input from the Waterfall Canyon and Oak Grove staff members, as well as Parents. Although Student argues in his closing brief that the results of Mountain View-Los Altos’s assessment paints a dramatically different picture of Student than Northwest Passages’, when compared the two

¹¹ These offices are a division of the United States Department of Education and are charged with administrating the IDEA and developing its regulations.

assessments have relatively the same findings. Ms. Behaylo even cited to Northwest Passage's assessments in the psychoeducational assessment report she produced. The March 25, 2015 IEP accurately and completely listed Student's present levels of performance as they were based on the assessment data.

21. Student's IEP includes eight measurable annual goals designed to meet each of Student's identified areas of need. The goals addressed Student's needs in the areas of reading, writing, math, study skills, life skills, therapy, expressive language, and receptive language. The IEP included a description of the manner in which Student's progress toward meeting the annual goals would be measured. Additionally, the IEP team aligned the academic goals with the state standards, thus allowing Student access to the general education curriculum. The goals were appropriate and met all statutory requirements.

ISSUE 3: DID MOUNTAIN VIEW-LOS ALTOS COMMIT THE FOLLOWING PROCEDURAL VIOLATIONS DURING THE MARCH 25, 2015 IEP TEAM MEETING?

A. Failing to Consider a Continuum of Placement Options

22. Student argues that Mountain View-Los Altos committed the procedural violation of failing to consider a continuum of placement options for Student at the March 25, 2015 IEP team meeting. Student's argument is based in part on the theory that Mountain View-Los Altos should have considered the option of Rebekah's House in Gilroy as a place for Student to live while he attended the district's therapeutic program. Mountain View-Los Altos contends that it complied with the law by having a continuum of placement options available for Student.

23. School districts, as part of a special education local plan area, must have available a continuum of program options to meet an eligible student's needs for special education and related services. (34 C.F.R. § 300.115; Ed. Code, § 56360.) This continuum must include instruction in regular classes, special classes, special schools,

home instruction, and instruction in hospitals and institutions. (34 C.F.R. § 300.115(b)(1) (2006); see also Ed. Code, §§ 56360, 56361.)

24. The district's obligation is to make available a continuum of options, not to discuss every one of them at every IEP team meeting. (See *A.D. v. New York City Dept. of Educ.* (S.D.N.Y., March 19, 2013, No. 12-CV-2673 (RA)), 2013 WL 1155570, p. 8 [nonpub. opn.]; *L.S. v. Newark Unified Sch. Dist.* (N.D.Cal., May 22, 2006, No. C 05-03241 JSW) 2006 WL 1390661, pp. 5-6 [nonpub. opn.]; *Katherine G. v. Kentfield Sch. Dist.* (N.D.Cal. 2003) 261 F.Supp.2d 1159, 1189-1190.)

25. Student's argument is not compelling. Mountain View-Los Altos met its duty of having a continuum of placement options available for Student. Additionally, Student did not establish that residential placement at Rebecca's House was either appropriate for Student or necessary for him to receive a FAPE. As such, failure to identify or discuss placement at Rebekah's House or any other placement option was not a procedural violation.

B. Predetermining its Offer of Placement

26. Federal and State law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.)

27. "[T]he informed involvement of parents" is central to the IEP process. (*Winkelman v. Parma City Sch. Dist.* (2007) 550 U.S. 516, 524 [167 L.Ed.2d 904]). Protection of parental participation is "[a]mong the most important procedural safeguards" in the Act. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877,

882.)

28. Predetermination of an IEP offer violates the above requirements. It occurs when a school district has decided on its offer prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B. v. Las Virgenes Unified Sch. Dist.* (I) (9th Cir. 2007) 239 Fed.Appx. 342, 344-345 [nonpub. opn.].) A district may not arrive at an IEP team meeting with a “take it or leave it” offer. (*JG v. Douglas County Sch. Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.) “Participation must be more than mere form; it must be meaningful.” (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858 [citations omitted].)

29. However, a meeting of school district personnel in advance of an IEP team meeting to prepare for the meeting is permissible, and does not constitute predetermination. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693, fn. 3.)

30. Student argues that Mountain View-Los Altos denied Parents meaningful participation during the IEP team meeting by predetermining the offer of placement to be its therapeutic program. The majority of Student’s argument in this area is based on the fact that Ms. Nasca, Ms. Behaylo, Ms. Sulaver, and Dr. Flatmo met to discuss Ms. Nasca’s and Ms. Behaylo’s preliminary findings after they returned from assessing Student in Utah. Mountain View-Los Altos argues that the offer was not predetermined and that it grew out of the discussion over Student’s needs.

31. The meeting that occurred between Ms. Nasca, Ms. Behaylo, Ms. Sulaver, and Dr. Flatmo when they met to discuss Ms. Nasca’s and Ms. Behaylo’s preliminary findings did not constitute predetermination. Even if some of the members of the IEP team had opinions regarding appropriate placement and services for Student, as long as they remained willing to consider other possibilities, the offer was not predetermined. The IEP team discussed multiple placement options, including general education, residential placement, and the therapeutic program. Student failed to meet his burden

of proving that Mountain View-Los Altos committed the procedural violation of predetermining its offer of placement.

C. Failing to Engage in In-Depth Fact Gathering

32. Beginning at age 16 or younger, the IEP must include a statement of needed transition services for the child. (Ed. Code, § 56043, subd. (h).) The IEP in effect when a student reaches 16 years of age must include appropriate, measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); Ed. Code, §§ 56043, subd. (g)(1), 56345, subd. (a)(8).) The plan must also contain the transition services needed to assist the pupil in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8)(A).)

33. Student argues that Mountain View-Los Altos committed a procedural violation by failing to engage in in-depth fact gathering for its proposed Individualized Transition Plan. Mountain View-Los Altos argues the contrary, that it gathered sufficient information about Student's transition needs through its own assessment and two conducted by Oak Grove School.

34. The law requires that post-secondary goals be based upon "age appropriate" transition assessments; it does not prescribe that a formal transition assessment must be performed, or that standardized measures be used. Relevant information may be obtained from a variety of sources, including record review, interviews, assessment materials, as well as testing instruments, each of which may individually constitute an assessment.

35. Mountain View-Los Altos actively engaged in fact gathering in order to be able to provide the IEP team with sufficient information about Student's transition needs to be able to offer Student an appropriate Individualized Transition Plan. It conducted its own assessment and utilized the results of Oak Grove's assessments to gather sufficient

information. Student failed to meet his burden of proof as to this issue.

ISSUE 4: DID MOUNTAIN VIEW-LOS ALTOS FAIL TO OFFER AND PROVIDE STUDENT A FAPE DURING THE 2014-2015 SCHOOL YEAR AND THE 2015-2016 SCHOOL YEAR ENDING APRIL 8, 2016?

A. Appropriate Services and Placement

36. Student contends that Mountain View-Los Altos denied him a FAPE during the 2014-2015 school year and the 2015-2016 school year, ending April 8, 2016, because it failed to offer him residential placement. In addition, Student argues that the services offered did not provide him a FAPE. Mountain View-Los Altos argues that its placement and services met Student's needs and therefore did not deny him a FAPE.

37. A special education student's placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to him. (Cal. Code Regs., tit. 5, § 3042(a).)

38. 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, not that preferred by the parent. (*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 constitute a FAPE under the IDEA, the offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203 fn. 25.)

39. Under *Rowley*, an IEP provides a FAPE if it offers a child access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204.) Educational benefit includes the

student's mental health needs, social and emotional needs that affect academic progress, school behavior, and socialization. (*San Diego, supra*, 93 F.3d 1458, 1467.)

40. Both federal and state laws require a special education child to be educated in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a) (2006); Ed. Code, § 56040.1.) This means that a school district must educate a special needs pupil with non-disabled peers "to the maximum extent appropriate." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56040.1.) The least restrictive environment doctrine requires a school district, in making placement decisions, to offer a placement "as close as possible to the child's home." (34 C.F.R. § 300.116(b)(3); see 71 Fed.Reg. 46588 (Aug. 14, 2006) ["The Department has consistently maintained that a child with a disability should be educated in a school as close to the child's home as possible, unless the services identified in the child's IEP require a different location."].)

41. The evidence established that the placement offered in the Mountain View-Los Altos's therapeutic program was reasonably calculated to provide Student with a FAPE. The combination of the offered counseling and embedded counseling resources would have provided Student with the individual counseling that was recommended by Northwest Passage. Neither Palo Alto Preparatory nor Oak Grove School provided Student with special education services, whereas, this IEP offered Student specialized instruction in small special education classes. This specialized instruction would have provided Student with the academic support that he needed to be able to access his education and make progress on his goals.

42. Additionally, the speech and language services offered by Mountain View-Los Altos would have helped Student progress and benefit from his education. The speech and language services were targeted to address Student's deficits, as identified in Ms. Nasca assessment. Student did not provide any expert testimony to contradict

that the offered speech and language services were not appropriate to meet Student's needs and allow him to progress towards meeting his goal. Conversely, the evidence presented by Mountain View-Los Altos supported the finding that the offered speech and language services were appropriate for Student's needs.

43. The combination of the placement and the services offered in the March 25, 2015 were reasonably calculated to provide Student with an educational benefit in the least restrictive environment. Student did not meet his burden of proving that the offered placement and services were not appropriate. Student's argument that he required placement in a residential program to receive a FAPE is not compelling, as he failed to prove that Student's need for residential placement was educationally related.

44. Residential placement is, by its nature, considerably more restrictive than day school. (*See Kerkam by Kerkam v. Superintendent, D.C. Public Schools*. (D.C. Cir. 1991) 931 F.2d 84, 87; *G.D. v. Westmoreland School Dist.* (1st Cir.1991) 930 F.2d 942, 948; *Carlisle Area School v. Scott P. By and Through Bess P.* (3d Cir. 1995) 62 F.3d 520, 534, *amended* (Oct. 24, 1995).) The IDEA does not define a therapeutic placement; however, both day schools and residential facilities can qualify as therapeutic placements. By their very nature, therapeutic placements require a student's removal from the general education environment. As a result, a therapeutic placement is one of the most restrictive placements on the least restrictive environment continuum. (34 C.F.R. § 300.115.) Given their restrictive nature, removal of a student with disabilities to a residential setting complies with the least restrictive environment mandate in only extremely limited situations for students with severe disabilities who are unable to receive a FAPE in a less restrictive environment. (*Carlisle Area Sch. Dist. v. Scott P., supra*, 62 F.3d at p. 523.)

45. A district's responsibility under the IDEA is to remedy the learning-related symptoms of a disability, not to treat other, non-learning related symptoms. (*Forest*

Grove School District v. T.A. (9th Cir. 2011) 638 F.3d 1234, 1238-39 [no abuse of discretion in denying parent reimbursement where district court found parent sought residential placement for student's drug abuse and behavior problems.] An analysis of whether a residential placement is required must focus on whether the placement was necessary to meet the child's educational needs. (*Clovis Unified School District v. California Office of Administrative Hearings* (9th Cir. 1990) 903 F.2d 635, 643 (Clovis).) If "the placement is a response to medical, social, or emotional problems ... quite apart from the learning process," then it cannot be considered necessary under the IDEA. (*Ibid.*, accord *Ashland School Dist. v. Parents of Student R.J.* (9th Cir.2009) 588 F.3d 1004, 1009.)

46. Here, Parents were unwilling to let Student live at home due to difficult family dynamics and safety concerns. Northwest Passages recommended a residential placement for Student, solely on the basis that he could not live at home due to safety concerns. Those safety concerns were based on the potential that Student's physicality at home might escalate as his desire to become more social increased. Thus, the basis for recommending residential placement was not educationally related. While it is true that Student was having difficulty in school in the fall of 2014, much of Student's difficulty was attributable to Palo Alto Preparatory's failure to implement the accommodations and modifications to assist Student academically. As soon as Mountain View-Los Altos implemented the accommodations and modifications, Student's mood improved and he had an optimistic outlook about school. In fact, Palo Alto Preparatory had been a positive and comfortable environment that Student clung to when he experienced discord with his family.

47. After the physical altercation with Mother and Stepfather, Student had trouble maintaining his focus in class and regulating his emotions. He missed class time due to experiencing the emotional turmoil of being removed from his home and feeling

alienated from his family. However, this period was very brief, because Parents removed him from school and placed him in the residential assessment program. There is no evidence Student required the very restrictive placement of a residential program to address the difficulties Student was having focusing and regulating his emotions in school. The assessment team at Northwest Passage recommended residential placement strictly to address the potential for the increase in Student's physicality in the home environment.

B. Appropriate Individualized Transition Plan

48. Transition services are a coordinated set of activities that are (1) designed within an outcome-oriented process that is focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation; (2) based on the student's individual needs, taking into consideration the student's strengths, preferences and interests; and (3) include instruction, related services community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocation evaluation. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).)

49. The adequacy of transition services must be viewed in aggregate in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefit. (*Lessard v. Wilton-Lyndeborough Coop. Sch. Dist.* (1st Cir. 2008) 518 F.3d 18, 28-30.)

50. School districts are not required to ensure that students are successful in achieving all of their transition goals. The IDEA was meant to create opportunities for disabled children, and not to guarantee a specific result, such as acceptance into

college. (*High v. Exeter Township Sch. Dist.* (U.S. Dist. Ct., E.D.Pa., Feb. 1, 2010, Civ. A. No. 09-2202 2010) 2010 WL 363832, *4, 54 IDELR 17 (*Exeter*), citing *Rowley, supra*, 458 U.S. at 192.) The court in *Exeter* compared a transition plan with an IEP, and noted that the statutory requirements for transition plans contain no progress monitoring requirement. An IEP must include a method to measure a child's progress; however, a transition plan must only be updated annually and include measurable postsecondary goals and corresponding services. (*Exeter, supra*, at *6.)

51. When a transition plan fails to comply with the procedural requirements, but the individual transition plan or IEP provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural violation is harmless. (*Virginia S. v. Dept. of Educ.* (U.S. Dist. Ct, D.Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, *10.) A transition plan that is procedurally deficient, but does not result in a loss of educational opportunity, does not result in a denial of FAPE. (*Ibid.*)

52. Student argues he was denied a FAPE during the 2014-2015 school year and the 2015-2016 school year ending April 8, 2016 because Mountain View-Los Altos failed to offer Student an appropriate Individualized Transition Plan.¹² Mountain View-Los Altos argues that the offered plan met Student's transition needs.

53. Prior to leaving Palo Alto Preparatory, Student had been on track to graduate from high school and hoped to attend junior college. Like many teenagers, Student had some possibly unrealistic career goals, such as becoming a disc jockey or

¹² Student also argues that the offered transition plan should not have designated Student to graduate with a high school diploma, but instead have Student continue in special education until he was 21. This contention was not pled as an issue in this case and will not be addressed as such.

BMX racer. Part of the offered Individualized Transition Plan was designed to help Student focus on realistic career goals. On the surface the amount of offered service time seemed low, but combined with the IEP's placement offer and other services (i.e. the study skills class and case manager's services), the offer was appropriate to meet Student's needs. Additionally, the computer services, college visits, job fairs, and other services listed in the transition plan supported the goals. Therefore, Mountain View-Los Altos did not deny Student a FAPE by failing to offer Student an appropriate Individualized Transition Plan.

C. Extended School Year Services

54. Student contends that he was denied a FAPE because he was not offered extended school year services. Mountain View-Los Altos argues that Student did not require extended year services because Student's needs did not warrant it.

55. Extended school year services must be offered if the IEP team determines, on an individual basis, that the services are necessary for a child to receive a FAPE. (34 C.F.R. § 300.106 ; Ed. Code, § 56345, subd. (b)(3).)

56. The purpose of special education during the extended school year is to prevent serious regression over the summer months. (*Hoelt v. Tucson Unified Sch. Dist.* (9th Cir. 1992) 967 F.2d 1298, 1301; *Letter to Myers* (OSEP 1989)16 IDELR 290.) The mere fact of likely regression is not enough to require an extended school year placement, because all students "may regress to some extent during lengthy breaks from school." (*MM v. School Dist. of Greenville County* (4th Cir 2002) 303 F.3d 523, 538.) In California, eligibility for extended school year requires, among other things, a finding by the IEP team that "interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition." (Cal. Code Regs., tit. 5, § 3043, 1st

par.)

57. In this case, Student did not meet his burden to show that he was at risk for regression with limited recoupment as a result of a break in services over the summer break. All students face some level of regression over the summer break. The question becomes whether the regression is coupled with limited recoupment capacity, rendering impossible or unlikely that Student would attain the level of skills that he would have attained had it not been for the break in services. Student completed his course work and was able to graduate with a high school diploma. Student failed to meet his burden of proving that he was likely to regress or that he would have limited ability to recoup. Accordingly, Mountain View-Los Altos did not deny Student a FAPE by failing to offer him extended school year services.

ISSUE 5: DID MOUNTAIN VIEW-LOS ALTOS COMMIT THE PROCEDURAL VIOLATION OF FAILING TO HAVE AN IEP IN PLACE FOR STUDENT AT THE BEGINNING OF THE 2015-2016 SCHOOL YEAR?

58. Student's argument on this point is confusing. He appears to argue that Mountain View-Los Altos was required to have a signed IEP in place at the beginning of the 2015-2016 school year. Mountain View-Los Altos argues that it had the IEP in place and ready to implement once Parents consented.

59. Mountain View-Los Altos had an IEP offer in place for Student beginning March 25, 2016, and was prepared to implement the IEP as soon as Parents provided their consent. This offer was in place and offered placement and services to Student from March 25, 2015 to March 25, 2016, including the beginning of the 2015-2016 school year. Therefore, Student failed to meet his burden on this issue.

ISSUE 6: DID MOUNTAIN VIEW-LOS ALTOS FAIL TO INCLUDE IN THE APRIL 8, 2016 IEP ACCURATE PRESENT LEVELS OF PERFORMANCE AND APPROPRIATE ANNUAL GOALS?

60. The present levels of performance included in the April 8, 2016 IEP were derived from the staff members at Waterfall Canyon and Oak Grove who worked with Student on a regular basis. Student argues that they are inaccurate, but he presented no evidence to support that argument. Student did not present any compelling evidence that controverted the accuracy of the present levels.

61. The goals in the April 8, 2016 IEP were designed to address Student's areas of need and were directly tied to Student's present levels of performance. The IEP itself was only designed to be valid through July 10, 2016, as Student was on course to graduate by that date. The goals addressed Student's areas of needs and were supported by offered services. Student failed to meet his burden of proving on this issue.

ISSUE 7: DID MOUNTAIN VIEW-LOS ALTOS COMMIT THE FOLLOWING PROCEDURAL VIOLATIONS DURING THE APRIL 8, 2016 IEP TEAM MEETING?

A. Failing to Consider a Continuum of Placement Options

62. Both Student's and Mountain View's arguments regarding this issue are much the same as they were for the March 25, 2015 IEP team meeting. The law only requires Mountain View-Los Altos to have a continuum of placement options available for Student. Student did not present sufficient evidence to prove that Mountain View-Los Altos committee the procedural violation of failing to consider a continuum of placement options at the April 8, 2016 IEP team meeting.

B. Predetermining Its Offer of Placement

63. Merely because Mountain View-Los Alto offered the same placement as

previously offered does not mean that it predetermined its offer. Much discussion went on during the IEP team that would impact placement options. The district members of the IEP team felt strongly that Student could receive an educational benefit a less restrictive environment than residential placement. Student did not establish that the placement offer was predetermined.

C. Failing to Engage in In-Depth Fact Gathering

64. As with Student's argument on this issue for the March 25, 2015 IEP team meeting, his argument is without merit. The IEP team relied on two separate transition assessments conducted by Oak Grove, Student's input, and the input of the Waterfall and Oak Grove staff members. The level of fact gathering that took place at the April 8, 2016 IEP team meeting was sufficient to allow the team to develop an appropriate Individualized Transition Plan.

ISSUE 8: DID MOUNTAIN VIEW-LOS ALTOS DENY STUDENT A FAPE DURING THE 2015-2016 SCHOOL YEAR, BEGINNING APRIL 8, 2016?

A. Services and Placement

65. Student argues in his closing brief that Mountain View-Los Altos denied Student a FAPE by failing to offer Student the placement and services of a residential treatment program residential or placement Rebekah's House, a residential program, or a comparable program. Mountain View-Los Altos argues that its offer of placement in its therapeutic program combined with its offer related services constituted an offer of FAPE.

66. The offer of services and placement from Mountain View-Los Altos addressed Student's needs and provided him with the counseling to meet his social-emotional needs, the speech and language services to address his expressive and reception language needs, and academic needs through specialized instruction in five

special education classes per day. Student did not prove that the amount or duration of the services were insufficient such that Student would not be able to receive some educational benefit.

67. From the time he was placed at Waterfall Canyon until the time of the IEP team meeting, Student did not experience any episodes of aggression or violence. He did not have any suicidal or homicidal ideations. However, Parents continued not to allow Student to live in either of their homes. They had even decided that after graduation it would be best for Student to live on his own in Utah because it would be too expensive for him to live in California. The only reason that residential placement had been recommended by Northwest Passage was because Student was a safety risk at home. Parents had not pursued any of the options suggested by Dr. Flatmo for teenagers, like Student, who could not live at home. Student failed to prove that Mountain View-Los Altos's offer of placement and services would not provide Student with some educational benefit in the least restrictive environment. Additionally, Student's argument that he needed residential placement to receive to FAPE, failed to establish that residential placement was necessary to meet Student's educational needs.

B. Individualized Transition Plan

68. Student argues that the Individualized Transition Plan did not adequately address Student's needs. Mountain View-Los Altos argues the contrary. The Individualized Transition Plan offered in the April 8, 2016 IEP was similar to that offered the year prior. Although the time until Student's graduation from high school was short, the goals, supports, and services offered by the Individualized Transition Plan still provided Student with appropriate goals and services to assist Student in transitioning from high school to either post secondary education or employment.

ORDER

All relief sought by Student is denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Mountain View-Los Altos prevailed on all issues.

RIGHT TO APPEAL

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

DATED: November 7, 2016

/s/

B. ANDREA MILES

Administrative Law Judge

Office of Administrative Hearings