

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

STUDENT, by and through PARENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH Case No. 2016060696

LOS ANGELES UNIFIED SCHOOL DISTRICT,

v.

STUDENT, by and through PARENT.

OAH Case No. 2016061298

DECISION

Student, by and through Parent, filed a due process hearing request (complaint) with the Office of Administrative Hearings on June 10, 2016, naming Los Angeles Unified School District. District filed a complaint against Student on June 28, 2016. On July 7, 2016, OAH consolidated District's case with Student's case. On July 27, 2016, Student filed an amended complaint. The filing date of Student's amended complaint controlled the decision due date.

Administrative Law Judge Sabrina Kong heard this matter in Gardena, California, on September 20, 22, 28, 29, October 4, and 5, 2016, and in Van Nuys, California, on

October 10, 2016.

Miho Murai, Attorney at Law, represented Student. Mother attended the hearing on all days. Student attended the hearing on October 5, and 10, 2016. Mary Kellogg, Attorney at Law, represented District. Theresa Kent, District's Litigation Coordinator, attended the hearing on September 20; Juan Tajoya, District's Due Process Specialist, attended the hearing on September 22; Thomas Ramirez, District's Due Process Specialist, attended the hearing on September 28 and October 4, 2016; Ryan McNeill, District's Due Process Specialist attended the hearing on September 29 and October 5; and Patricia Tamez-Simplicio, District's Research and Resolution Specialist, attended the hearing on October 10, 2016.

A continuance was granted for the parties to file written closing arguments and the record remained open until November 8, 2016. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES¹

DISTRICT'S ISSUE:

1. Was District's February 1, 2016 speech and language assessment appropriate such that Student is not entitled to an independent educational evaluation at the public's expense?

¹ The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

STUDENT'S ISSUES:²

1. Did District deny Student a free appropriate public education from July 27, 2014, through July 27, 2016, by failing to conduct: (a) a behavioral assessment; and (b) an assistive technology assessment?
2. Did District deny Student a FAPE from July 27, 2014, through July 27, 2016, by failing to conduct an appropriate: (a) speech and language assessment; and (b) a transition assessment?
3. Did District deny Student a FAPE by failing to conduct triennial assessments, including psycho-educational and social emotional assessments, before March 13, 2016?
4. Did District deny Student a FAPE by failing to ensure that: (a) a general education teacher and a transition service provider were at the January 14, 2015 individualized education program team meeting; and (b) a general education teacher was at the February 29, 2016 and May 18, 2016 IEP team meetings?
5. Did District deny Student a FAPE by failing to provide a prior written notice to Parent regarding: (a) District's recommendation to terminate speech and language services at the February 29, 2016 IEP team meeting; and (b) graduating Student in June 2016?
6. Did District deny Student a FAPE by:

² On the first day of hearing, the parties agreed to redefine the issues from the September 13, 2016 pre-hearing conference with more specificity; Student withdrew the issue of District's failure to conduct an educationally related mental health assessment. Issues 5(b) and 6(c) were raised in Student's amended complaint and were not defined by the parties at the September 13, 2016 pre-hearing conference. The parties agreed to add them to the complaint September 22, 2016.

- (a) impeding Parent's³ right to participate in the IEP process at the (i) January 14, 2015 IEP team meeting; (ii) February 29, 2016 IEP team meeting; and (iii) May 18, 2016 IEP team meeting;
- (b) predetermining its offer of general education placement at Vista High School and services including speech and language, counseling, behavioral, assistive technology, and transition services at the January 14, 2015 IEP team meeting, the February 29, 2016 IEP team meeting, and the May 18, 2016 IEP team meeting; and
- (c) predetermining its decision to graduate Student at the January 29, 2016 IEP team meeting, and the May 18, 2016 IEP team meeting?

- 7. Did District deny Student a FAPE by failing to provide a performance summary at the May 18, 2016 exit IEP team meeting?
- 8. Did District deny Student a FAPE by failing to respond to Parent's April 26, 2016 written request for Student's educational records?
- 9. Did District deny Student a FAPE by failing to offer and provide Student:
 - (a) Appropriate (i) placement; (ii) speech and language services; (iii) counseling services; (iv) behavioral services; (v) assistive technology services; and (vi) transition services at the January 14, 2015 IEP team meeting; and
 - (b) Appropriate (i) placement; (ii) speech and language services; (iii) counseling services; (iv) behavioral services; (v) assistive technology services; and (vi) transition services at the February 29, 2016 IEP team meeting?
- 10. Did District deny Student a FAPE at the end of the 2015-2016 school year by inappropriately: (a) awarding him a high school diploma and graduating Student; and

³ The parties agreed that this issue referred specifically to "Parent", and did not include Student.

(b) terminating him from special education related services?

SUMMARY OF DECISION

District proved in its Issue 1 that Student was not entitled to an independent speech and language evaluation because Student did not consent to District's speech and language assessment. For the same reason, Student did not prove that District's speech and language assessment was inappropriate resulting in a denial of FAPE.

Student proved in Issues 1(a) and 9(b)(iv) that District failed to conduct a functional behavioral assessment, and failed to offer appropriate behavioral services to address his maladaptive behaviors, including significant class absences without leave,⁴ from April 14, 2015, to May 20, 2016. Student also proved in Issue 9(b)(ii) that District denied him a FAPE by terminating his speech and language services at the February 29, 2016 IEP team meeting. Student did not meet his burden on all other issues.

As a remedy to District's failure to conduct a functional behavior assessment, and to offer appropriate behavioral services to address Student's significant absences from April 14, 2015, to May 20, 2016, and District's failure to offer Student speech and language services at the February 29, 2016 IEP team meeting, Student is awarded a total of 69 hours of District funded compensatory services from non-public agencies providing: 60 hours of one-to-one academic instruction and 9 hours of speech and language services.

FACTUAL FINDINGS

1. Student was 19 years old at the time of the hearing and resided within District with Mother at all relevant periods. Student was eligible for special education

⁴ References to Student's absences throughout this Decision mean class absences without leave.

under the category of other health impairments because of his attention deficit hyperactivity disorder.

2014-2015 SCHOOL YEAR

2. Student entered high school in the fall of 2011, and was required to meet the graduation requirements of the 2015 graduating class, regardless of what year he later graduated. Student needed 230 credits to graduate. District's graduation requirements were consistent with the state graduation requirements, which for the 2015 graduating class included: four years of English; two years of math, including Algebra; two years of laboratory sciences, one year each of physical and biological science; three years of social sciences, including economics and government; two years of physical education; one semester of health; one year of applied technology; and one year of visual and performing arts, for a total of 155 core curriculum credits and 75 elective credits. A "D" or better was a passing grade. Further, a student with disabilities must take the California High School Exit Exam, but did not need to pass as a condition of receiving a diploma.

3. Student transferred from Kayne Eras Center to Vista High School⁵ on November 3, 2014, in the 12th grade fall semester of the 2014-2015 school year. Both Kayne Eras and Vista High School were non-public schools. Student took the Exit Exam while he was at Kayne Eras. Kayne Eras certified that Student had completed 204 credits towards graduation at the time of the transfer.

4. Ms. Aranda-Harris was the assistant principal of only the general education curriculum students, and only supervised the teachers who taught the general education curriculum students at Vista High School. She held an autism certificate. Vista High

⁵ This Decision uses Vista High School to refer to both Vista Del Mar and Vista High School as witnesses used and exhibits referred to those terms interchangeably.

School students had behavioral disabilities. It had a low student to staff ratio, usually between 3 to 12 students in each classroom; and in-house clinical and behavioral staff, all of whom received 8 to 10 hours of initial behavioral training and 4 hours of continued behavioral training each summer. Behavioral supports available to all students included a room for de-escalation, therapy to target inappropriate behaviors, and behavioral staff to observe, follow, coach and reinforce behavioral strategies and enforce campus safety.

5. On November 3, 2014, District administered the Kaufman Test of Academic Achievement to Student. Student's reading and oral language scores were low; his math and written language scores were below average.

6. On December 15, 2014, Student and another male student provoked each other through the classroom window. When the other student entered the classroom, they pushed each other. Both resisted redirection, but were eventually separated by staff. This incident resulted in a physical violence report.

JANUARY 14, 2015 IEP TEAM MEETING

7. Mother, Student, special education teacher Hillary Adler, District's administrative designee Lashonn Bowell, clinician Lloyd Bronstein, speech and language staff Susan Weinberger, assistant principal Jayne Merrill, and Curtis Anderson⁶ attended the January 14, 2015 IEP team meeting. The IEP team considered whether Student could be educated in the general education classroom, or in a general education site in a special day program, and concluded that a non-public school was the appropriate setting for Student.

8. The IEP team discussed Student's present levels of performance. Student made progress toward achieving both his reading and math goals. He could not

⁶ No one offered evidence as to Mr. Anderson's position.

compose multi-paragraph essays. Student did not consistently attend class and did not meet his behavior goal of attending class prepared, completing assignments, taking notes and managing time. He did not participate in transitional activities of identifying what school he would attend after high school, the requirements and grades needed, or completing a resume. Because of his absences, he needed more time to meet his pragmatic language goal of improving social language skills. He partially met his social emotional goal of identifying, and initiating social interactions with appropriate strategies to gain attention.

9. The Individual Transition Plan was developed by Student and the special education teacher, and implemented by Chana Shriki. Ms. Shriki held a bachelor's degree in psychology, a master's degree in counseling, and a teaching credential. She had been a career counselor at Vista High School since 1989. She worked part-time, and only attended IEP team meetings on the days she worked. The special education teacher attended the IEP team meeting to discuss Student's transition plan in Ms. Shriki's absence. Student's transition plan included college and career awareness preparation. In a transition survey, Student indicated that he was interested in law enforcement or the military, and wanted to live independently. Student's education training and post-secondary school goals, and transition goals for independent living and employment required enrolling/attending a vocational training program; filling out a Free Application for Federal Student Aid; participating in a field trip to learn more about a specific job or industry, and writing a trip summary; and practicing self-management skills such as accepting feedback, making changes, prioritizing tasks, and time management. At the time of the IEP team meeting, Student had not participated in work experience education, or any employment activity or education training activity.

10. Mr. Bronstein was Student's counselor from November 2014 through the 2014-2015 extended school year. Mr. Bronstein reported that Student was easily

distracted. He had a difficult time reintegrating into class or an assigned task, and resorted to negative attention seeking behaviors to engage with peers. Student's participation in many classes decreased after November 2014; Mr. Bronstein attributed it to Student's low motivation. Student did not need additional counseling because Student did not use all available counseling time in his January 2014 IEP. He reported that although Student's absences were a problem, they were common amongst students at Vista High School, and that counselors and behavioral staff handled them by talking to students and incentivizing students to attend class, sometimes by awarding monetary gift cards. Mr. Bronstein typically recommended a social emotional assessment when a student was not progressing toward his social emotional goal, or when the behaviors were different than that addressed in the existing goal. By January 14, 2015, Mr. Bronstein had four counseling sessions with Student. He opined that Student progressed, and was forming a therapeutic bond with Mr. Bronstein. Therefore, even though Student did not meet his social emotional goal from January 2014, Student did not need a social emotional assessment at the time.

11. From November 3, 2014, to December 19, 2014, out of 68 school days Student had 42 absences; was late 3 times; refused to do classwork 11 times; refused to follow directions 5 times; disrupted class 3 times; did minimum classwork/participated in class once; fought/exhibited assaultive behaviors toward peers once; provoked peers once; and slept in class once. Each of these maladaptive behaviors impacted Student's educational access, but was not individually analyzed through a functional behavior assessment when they did not abate. Student was capable of responding appropriately to peers and staff when he was not frustrated; and recognized when he was frustrated by peers and would appropriately remove himself from the situation 50 percent of the time. Student had difficulty sustaining engagement in all classes, refused to complete work and participate in classroom activities, and talked to peers during class when he

was not supposed to do so. He completed less than 10 percent of his assigned work throughout all his classes. When upset or frustrated, Student left class without permission 70 percent of the time and did not return for the remainder of the period. The accommodations Student received for his inappropriate behaviors included prompting, and encouragement from staff to maintain desired behaviors; discussion of alternative behaviors; preferred tasks upon completion of required tasks; seating near staff to increase focus and participation; verbal and tangible rewards given for positive behaviors; immediate rewards and consequences; and clear statements and frequent review of rules and consequences.

12. The IEP team developed a behavior support plan based on Student's moderate need for support. Student's poor attendance, minimal work completion, and refusals to work impeded his education. His lack of work production and class disruption required instruction to stop and resulted in lost instructional time. Student's behaviors occurred twice each hour, 20 minutes each time, and were of medium intensity. The predictors of the behaviors were: events from previous environments; internal physical/emotional state; peer conflict; and lack of choices, freedom, desirable activities, and friends. Transition skills, unclear consequences and effective communication with Parent were missing in Student's environment. The IEP team recommended providing as supports: breaks; different work areas; praising successes; and verbal praise. The behavior support plan provided Student with a tangible, desired item as motivation for Student to complete assignments. Student's desire to avoid attention from staff would help him remain on task and remain in the classroom. Student needed to: learn better communication, negotiation, and self-management skills; follow schedules and routines; make structured choices; and request breaks. Student identified through a survey that he liked computer time, free time, listening to music, verbal praise, and earning extra test points. Student's desired activities were included in the behavior support plan to

reinforce appropriate behaviors. Student would be prompted for expected behaviors, reminded that he would be given a break once work was completed, and that continued refusal to attend class would result in being sent to a de-escalation room, and that additional negative behavior would result in a call to Mother.

13. Student did not wish to be pulled out of class for speech therapy. He did not believe he needed speech therapy. Student was receptive to assistance with language skills when lessons were provided in the classroom. Student could retell events in sequential order with elaborate detail with 70 percent accuracy with moderate support, and Student spoke using simplistic sentences and required prompting to provide details. Student continued to benefit from encouragement to formulate complex sentences using new vocabulary; though Student exhibited language skills growth, he required assistance to state his personal preference and struggled with social pragmatic skills such as taking another's perspective based on what they said.

14. Mother expressed concern that Student was not academically prepared, and asked that Student continue at Vista High School and not graduate in June 2015. District provided a copy of the Parent's Guide to Special Education Services including the Procedural Rights and Safeguards to Parent. District informed both Student and Mother that the educational decision making rights would transfer to Student when he turned 18, unless a court determined otherwise. Mother consented to allow District to conduct academic assessments in preparation for the 2016 triennial IEP.

15. District offered Student an IEP with placement in a non-public school 100 percent of the time; 60 minutes per week of counseling; 60 minutes per week of speech and language services; transportation; and extended school year. Student would be educated on the general education curriculum. Accommodations included: modeling; individualized and/or small group instruction with close proximity control; extended response time; instruction repetition; scaffolding and/or shortened assignments;

behavior management system; visual cues; concrete examples; and tangible reinforcements. Student would be working towards a high school diploma. All IEP attendees were aware that Student's disability impacted his ability to maintain focus, attention, involvement, and progress in the general education curriculum. Mother consented to the January 14, 2015 IEP. Mother did not request another placement, additional counseling, additional speech and language services, a one-to-one aide to keep Student from leaving his classes, or other assessments or services at the January 14, 2015 IEP team meeting.

16. Mother claimed at hearing that the teachers at Vista High School inappropriately modified Student's curriculum because the January 14, 2015 IEP reading present levels of performance listed an accommodation which stated that Student received "adjusted assignments and time"; and the math present levels of performance used the phrase "Accommodation/Modification" which stated that Student "use[d] calculator and math manipulative, adjusted assignments length and time." Special education teacher, Andrea Aranda-Pierce, explained at hearing that the phrase "Accommodation/Modification" was commonly referenced together in documents, and Student only received accommodations. The accommodations listed in Student's IEP were accommodations, not modifications, despite Mother's personal belief to the contrary.

17. Ms. Aranda-Pierce taught Student government classes in the 2014-2015 school year. She held a Clear Education Specialist Instruction Credential and an autism certificate since July 2015 and a Level One Educational Specialist Instruction Credential for teaching students with mild to moderate disabilities since November 2010. She worked for Vista High School since 2003, first as a teacher's assistant, then as a teacher for students with mild to moderate disabilities since 2006. She had never conducted a functional behavior assessment and was not trained to conduct one beyond

participating in a fictional case study.

18. Mother claimed at hearing that at the January 14, 2015 IEP team meeting, District IEP team did not discuss placement other than Vista High School, did not discuss a modified curriculum, did not discuss services other than what was ultimately the FAPE offer, and did not go over the behavior support plan, or the transition plan. She claimed District's IEP team did not explain other special education eligibilities, or what "other health impairment" meant. She claimed that she was a slow reader and the IEP team did not provide her a draft of the IEP document in advance of the IEP team meeting. She also claimed that she could have a learning disability that impacted her understanding of the IEP; did not understand what occurred at the IEP team meeting; consented to the IEP because she did not understand it; and trusted that District would provide Student what he needed. Mother did not inform any of District's IEP team members that she did not understand any aspects of the IEP, that she needed additional explanation, that she may have a learning disability, or that she required any accommodations. Although Mother claimed at hearing she believed Student required a different placement and more services, she did not request them at the IEP team meeting.

19. For the period from November 3, 2014, to January 16, 2015, Student received: an "F" for Algebra 1B and Government; a "D" for Economics; and a "C" for English 11B, English 12A, Spanish, and Physical Education. Mother interpreted "Mod" listed next to the English 11B and English 12A classes in Student's report card meant that Student's curriculum was inappropriately modified. Ms. Aranda-Harris explained that the word "Mod" appearing next to the English 11B and English 12A classes in Student's 2014-2015 report card was a computer generated mistake and did not indicate that Student's classes with Ms. Adler were modified from the general education curriculum. Ms. Adler only taught general curriculum courses, and the modified curriculum courses had different names from the general education curriculum courses.

20. On March 18, 2015, Student and another student argued over an earlier incident. Both got into each other's space ignoring redirection from staff, and resulted in the other student punching Student's eye, breaking his glasses, and causing a small gash above his left eye. This incident resulted in a physical violence report.

21. By March 27, 2015, Student had made partial progress towards his pragmatic language goal. He had made no progress towards his social emotional goal as he needed more time because of his absences.

22. On May 4, 2015, Student and another student started fighting. A few punches were thrown without any injuries before staff separated them. The fight resulted in a physical violence report. On May 19, 2015, Student's ex-girlfriend verbally provoked Student, and he walked away. When she continued to verbally harass him, Student referred to her with a profane word, which prompted her to attack Student. This incident also resulted in a physical violence report.

23. By June 12, 2015, Student had made substantial progress towards his pragmatic language goal. He had made no progress towards his transition goal as he needed more time because of excessive absences, tardiness, and incomplete assignments. Student had made no progress towards his reading goal because of incomplete assignments, and he needed more time because of excessive absences. He had made no progress towards his math goal because of incomplete assignments. Student had made no progress towards his written language goal because of incomplete assignments, and he needed more time because of excessive absences. He had only made partial progress towards his social emotional goal because he needed more time because of his absences.

24. For the period from January 20, 2015, to June 12, 2015, Student received: an "F" for U.S. History, Government, and Health; and a "D" for English 12B, English 9B, and Science A. English 9b (with a reading emphasis) and English 12B (with a writing

emphasis) could be taken together in one semester. In June 2015, Student did not meet the graduation requirements and did not graduate.

2015-2016 SCHOOL YEAR

25. Isabelle Rothbard was Student's counselor from August 2015 to June 2016. She spoke with Mr. Bronstein before counseling Student. She felt she had limited rapport with Student because he was resistant to counseling, was anxious, had difficulty with trust, and expressing thoughts and feelings, and preferred meeting in the campus courtyard over her office during one-to-one counseling sessions. Ms. Rothbard offered Student another counselor, including one outside of school, hoping Student would be more receptive and engaged in one-to-one counseling; and had her interns follow-up, but Student was not interested. Student participated and was engaged most of the time during group counseling. She opined Student would progress if he were more engaged in one-to-one counseling.

26. On September 17, 2015, Student intentionally threw a ball and hit a female student in the chest, hurting her. This incident resulted in an injury report. Student turned 18 years old on October 3, 2015.

27. Dr. Brian Roper provided Student with speech and language therapy from October 2015 until Student was discharged from speech and language therapy. Dr. Roper held a certificate of clinical competence from the American Speech and Language Hearing Association, a master's degree in Clinical Psychology, and a doctorate degree in philosophy in Cognitive and Developmental Psychology. He was also licensed by California in speech and language pathology and audiology, and certified as an autism specialist. He was licensed to provide speech and language therapy since 2003 and began working with students on the autism spectrum the same year. He reported that Student did not enjoy speech and language therapy, participated sometimes, and accessed group speech services when provided in the classroom. Although Student

made progress towards his January 2015 speech and language goal, his task avoidance behaviors, inappropriate comments interrupting sessions, talking to peers in group sessions, and sometimes complete refusals to participate prevented further progress. He noted that the classroom setting was most beneficial for Student to address perspective and turn taking goals. Dr. Roper's ability to provide speech and language services to Student was impeded by Student's absences.

28. By October 23, 2015, Student had made substantial progress towards his pragmatic language goal. He had made no progress towards his transition goal as he needed more time because of excessive absences, tardiness, and incomplete assignments. Student had made no progress towards his reading goal as he needed more time because of excessive absences and incomplete assignments. He made no progress towards his math goal because of incomplete assignments. Student had made no progress towards his written language goal as he needed more time because of excessive absences, and incomplete assignments. He had only made partial progress towards his social emotional goal because he needed more time because of his absences.

29. On November 5, 2015, Student hit a female student with a folded belt, and stopped when staff intervened and informed him that such was inappropriate behavior. Student explained they were playing. This incident resulted in a report. On November 9, 2015, Student approached another student unprovoked twice and attempted to instigate a fight. Staff was able to prevent the fight both times. This incident also resulted in a report.

30. On November 16, 2015, District administered the Kaufman Test to Student. Student's reading, math, and oral and written language scores were below average. That same day, District mistakenly sent an assessment plan to Mother, instead of to Student who was already 18. The assessment plan sought to assess Student in the areas of

health, academic performance, language function, social emotional status, and career/vocational assessments. On December 11, 2015, Mother signed an assessment plan permitting District to conduct health, academic performance, language function, social emotional status, and career/vocational assessments of Student.

31. For the period of August 17, 2015, to January 15, 2016, Student received: an "F" for English 12, Strategic Lit A, Government, Algebra 2A, and Musical Instrument; a "B-" for Health; and a "B" for Spanish 1A. Ms. Aranda-Pierce taught Student English, strategic literature, government and history classes in the 2015-2016 school year. English and Strategic Literature classes were also considered homeroom. She did not provide Student with any modifications, but provided his IEP accommodations to explain, and present materials in a way that permitted Student to access the 12th grade common core standards.

32. By January 15, 2016, Student had made substantial progress towards his pragmatic language goal, but had not meet his objectives in the January 14, 2015 IEP goals because he needed more time because of the absences. He had made no progress towards his transition goal, and no reason was noted. Student had made no progress towards his reading goal because he needed more time because of excessive absences and tardiness. He had made no progress towards his math goal because he needed more time because of excessive absences and tardiness. Student had made no progress towards his written language goal because of incomplete assignments, and he needed more time because of his absences. He had only made partial progress towards his social emotional goal because he needed more time because of his absences. Student also needed to continue developing his ability to identify and use positive coping skills.

33. On February 1, 2016, Danielle Baltazar conducted a speech and language assessment of Student. Ms. Baltazar held a bachelor's and a master's degree in Communicative Disorders, had been licensed as a speech and language pathologist

since 2001, and a member of American Speech and Hearing Association. She worked for District as a speech and language pathologist since 2002, and was the District's nonpublic school assessor from 2011-2016. Ms. Baltazar also had a private speech and language pathology practice since 2005. She conducted 35-50 speech and language assessments per year while working with District. Her duties with District as a speech and language pathologist included assessing and treating students, attending IEP team meetings, and collaborating with teachers and parents regarding students. She had worked with hundreds of students with attention disorders, and was aware Student was diagnosed with ADHD and qualified for special education under other health impairments. She was qualified to assess Student's needs in speech and language.

34. Ms. Baltazar reviewed Student's IEP goals and spoke with Dr. Brian Roper, Student's speech and language provider at Vista High School. She attempted to contact Mother for an interview. She left voicemail messages for Mother on four separate occasions, including before, after, and on the assessment date. Mother did not respond. Ms. Baltazar selected tests free of racial, cultural, and sexual biases, and tested Student in his primary language of English. She provided and administered the assessment materials to yield accurate information on what Student knew; the testing instruments were designed to gather accurate information on Student's language abilities. An aide accompanied Student to be assessed by Ms. Baltazar on February 1, 2016. Student did not display any sensory issues (such as body awareness issues, or sensitivity to lights or sounds); did not display problems with fine motor issues; and did not display any other impairments which inhibited his performance, or interfered with her assessment, except for defiant and non-compliant behaviors. Ms. Baltazar attempted to establish a rapport with Student, by providing extra time, breaks, positive reinforcements, explaining the purpose of the assessment, and asking if Student had any questions. Student did not want to be assessed and was uncooperative during the assessment. His refusal to

complete standardized assessment tasks affected the validity of the assessment results. As a result of Student's oppositional behavior during assessment, Ms. Baltazar could only assess Student's speech and language skills by relying on: Ms. Aranda-Pierce's completion of the Clinical Evaluation of Language Fundamentals, Fourth Edition, observational rating scale and pragmatics profile, both criteria referenced instruments; Ms. Baltazar's observations of Student's performance in the classroom and in the school yard; the Communication Severity Scales; and three subtests from the standardized Comprehensive Assessment of Spoken Language, Fourth Edition. Ms. Baltazar used a language sample, with a minimum of 50 utterances, to evaluate Student's ability to produce language in the natural setting, which included the assessment interview, and class and school yard observations. She also reviewed Student's 2010-2011 school year results of the Goldman Friscoe Test of Articulation, Second Edition, to opine on Student's articulation skills.

35. Ms. Baltazar has administered the Clinical Evaluation of Language observational rating scale and pragmatics profile thousands of times. The Clinical Evaluation of Language observational rating scale measured Student's reading, writing, speaking and listening skills from Ms. Aranda-Pierce's perspective. Ms. Aranda-Pierce noted that Student always had trouble following written directions, and often had trouble: paying attention, following spoken directions, understanding new ideas, looking at people when talking or listening; getting to the point, using correct grammar, using complete sentences, and providing details when talking and writing; understanding and explaining what was read, identifying the main idea, remembering details; writing down thoughts, and putting words in the right order when writing sentences. The Clinical Evaluation of Language pragmatics profile measured Student's pragmatic language performance such as expected skills for social and school interactions from the teacher's perspective. Based on Ms. Aranda-Pierce's responses to the profile checklist, Student

demonstrated inadequate communication abilities in the curriculum context (skills that were common daily skills necessary for obtaining, responding to, and giving information) and classroom activities (classroom language use, interpretation of nonverbal communication skills, knowledge of social scripts/situations, and understanding of both posted and implied rules required in curricular and non-curricular activities). Despite Ms. Aranda-Pierce's responses showing Student had inadequate communication abilities, Ms. Baltazar concluded that Student's overall score on the pragmatics profile established that he had adequate communication abilities.

36. Ms. Baltazar observed Student in class completing and correcting work and following directions without support for about 10 minutes. When Student saw Ms. Baltazar, he placed his head on his desk indicating he did not want to be observed. She also observed Student in the school yard for 20 to 30 minutes engaging, conversing, and playing basketball with his peers. Although Ms. Baltazar could not hear the substance of Student's conversations with his peers, she concluded his peers understood him based on their body language. She observed Student making eye contact and taking turns with his peers, laughing, and appeared happy. Ms. Baltazar evaluated Student's language sample and concluded he did not have voice or fluency issues such as stuttering, and evaluated Student's skills in the several areas. In semantics, Student provided a limited speech sample during the assessment, used simple statements and refused to elaborate, but communicated his desires, including the desire to end assessment, using complete sentences, with adequate and functional vocabulary, without errors or difficulty. In grammatical structures, Student used age appropriate grammar. In pragmatics, Student advocated for himself, and asked a variety of questions. In phonology, Student was 100 percent intelligible in all contexts. Ms. Baltazar noted from her records review and interview with Dr. Roper, Student consistently refused to participate in all settings, including classes, speech therapy, and her

assessment.

37. Ms. Baltazar used the Communication Severity Scales, a non-standardized rating system, used to identify the language severity issues based on time and frequency of language, articulation, voice and fluency performances in various settings. She was familiar with and had used this rating scale hundreds of times. Ms. Baltazar concluded from Student's scores that Student was more capable in his language skills than formal testing showed.

38. Ms. Baltazar was unable to finish administering the entire Comprehensive Assessment; she only completed testing Student's expressive and receptive vocabulary. Ms. Baltazar had administered the Comprehensive Assessment, hundreds of times. Student tested in the average to low average expressive and receptive vocabulary skills. However, those results were unreliable and impacted by Student's behavior during testing. Student repeatedly complained about completing the assessment, telling Ms. Baltazar that he did not like, and wanted to stop, speech therapy, and he could not wait to get out of school. Student refused to participate in the Expressive and Receptive One-Word Picture Vocabulary Tests. Although Ms. Baltazar inadvertently failed to include the grid with the standardized scores of the Comprehensive Assessment, she summarized and considered the test results, and included them in her overall findings in the February 8, 2016 report. Her report was provided to and considered by the February 28, 2016 IEP team.

39. Dr. Roper opined that standardized testing was an important part of an overall speech and language assessment, along with naturalistic data such as direct observation of language production and reception. He agreed with Ms. Baltazar's assessment of Student's abilities and with the findings in the February 8, 2016 speech and language assessment.

40. On February 12, 2016, District's IEP coordinator, Brigitte Vollmann-Smith,

called Student and asked him to consent to assessments. Student advised her that he did not want to be assessed in any area and Ms. Vollmann-Smith documented his refusal on the assessment plan as "Client does not want assessment" with Student's name next to it.

FEBRUARY 29, 2016 IEP TEAM MEETING

41. Mother, Student, Ms. Aranda-Pierce, Dr. Roper, Ms. Baltazar, District's administrative designee Eric Fitzpatrick, Ms. Rothbard, assistant principal Melodi Patterson (who attended in Danielle Aranda-Harris' absence), and Ms. Shriki attended the February 29, 2016 IEP team meeting. Mr. Fitzpatrick informed everyone at the beginning of the IEP team meeting, that they had the right to provide input, participate, and ask questions regarding placement and services; and if anyone felt they did not have enough information, he could provide them with more information; and neither Student nor Mother indicated they did not understand their rights or needed more information. He provided a copy of the Procedural Rights and Safeguards to Student and Mother. Because Student was already 18 years old and held his own educational rights, Mother was invited as a courtesy. He opined that a psycho-educational evaluation was not mandatory for Student's triennial IEP team meeting because Student's January 14, 2015 IEP team decided that test was not needed, and that only academic assessments were needed. The IEP team considered whether Student could be educated in the general education classroom, or educated in a general education site in a special day program, and concluded that a non-public school was the appropriate setting for Student. Mr. Fitzpatrick opined that a general education teacher did not need to attend Student's IEP team meetings because FAPE for Student did not include transferring him back into a general education environment, or into dual enrollment. A placement change in light of Student's slow progress in 2016 would have hindered his June 2016 graduation prospects.

42. The IEP team discussed Student's present levels of performance in academics, his speech and language assessment, his behavior support plan, his transition plan, and in counseling. Student's present levels of performance showed that Student met only one objective of both his social-emotional and behavior goals, and did not meet his reading, math, writing, and transition goals. He had progressed in maintaining positive peer relationships, and when he attended counseling he was polite and respectful. He was often resistant to one-to-one counseling, preferring group counseling. Student had difficulty verbalizing his thoughts and feelings, was often quiet and withdrawn, could be easily distracted, struggled to maintain attention in class, and exhibited disruptive behaviors in class with difficulty accepting redirection from teachers. Student was able to comply with class and school rules, could self-advocate for his academic and emotional needs, and could work cooperatively in pairs and small groups. He had difficulty arriving to class on time 80 percent of the time, was engaged in class 50 percent of the time in five out of six classes daily. He engaged in disruptive verbal exchanges with peers multiple times daily, and had difficulty avoiding negative peer interaction 80 percent of the time. Although he had 234 credits toward graduation, Student had difficulty passing the required classes needed for graduation because of excessive absences and lack of work production. Despite cumulative data of disruptive, assaultive, and aggressive exchanges with peers impacting Student's education since November 13, 2014, the IEP team did not consider a functional behavior assessment analyzing each behavior.

43. He read with proper pacing and intonation in the Language! curriculum. He demonstrated understanding by answering literal questions accurately, and understood phrases and idioms with staff assistance. He struggled with inferential comprehension questions and required staff assistance when completing individual assignments. He had difficulty completing written work and participating in oral reading

activities. He could add and subtract whole numbers and could perform problems with decimals. He was unable to multiply or divide multi-digit numbers with proficiency. He could not write a multi-paragraph essay with proper organization, punctuation, and spelling without staff assistance. He needed help to organize his thoughts, and was unable to independently edit and revise written assignments. Student communicated effectively with staff and peers.

44. Ms. Aranda-Pierce drafted the February 29, 2016 behavior support plan after reviewing Student's behavioral and attendance records, and speaking with Student's teachers and counselors. She concluded that absences were the biggest challenge that impeded Student's education, and made minor changes to interventions and supports from Student's January 14, 2015 behavior support plan to create the February 29, 2016 behavior support plan. She was aware that generally students eloped to escape difficult work, social situations, stress, or frustration. She opined at hearing that a behavior support plan was different from a functional behavior assessment, that the functions of Student's behavior were never determined through a functional behavior assessment, but that further behavior assessment was unnecessary because excessive absences was already determined as the behavior impeding Student's education.

45. The February 29, 2016 behavior support plan identified excessive absences from multiple classes daily as impeding Student's education and added negative interaction with peers to the list of the reasons impeding Student's education. Student's absences occurred twice daily for 45 minutes each time, and were characterized as low intensity, with a moderate need for a behavior support plan. The IEP team added over stimulation and performing work at a level higher than Student's ability to the behavior support plan; and events from previous environments were taken off the list of behavior predictors, or situations in which the behaviors were likely to occur. Obtaining a gain in

peer status through misbehavior was an issue in Student's environment. Transition skill was no longer cited as missing in the environment. Effective communication replaced communication with Parent as missing in the environment. The IEP team also added accommodating work, providing high interest materials, providing cues and peer models to Student; and verbal praise was eliminated. Student would model proper classroom behavior to gain peer attention. Student needed anger and self-management. Student preferred free time, specific verbal praise, recognition of his strengths and talents, and earning extra tokens and points were identified as reinforcers for appropriate behaviors. Student would be prompted for expected behaviors, recognized for proper behavior, and provided with the choice between speaking one-on-one with staff and taking a break.

46. Ms. Shriki collaborated and provided information to Ms. Aranda-Pierce to fill out the transition information in the Student's IEPs during the 2015-2016 school year. As a member of the Senior Transition Group Student participated in: (i) the interest survey researching schools, careers, salaries; (ii) resume and interview technique training; (iii) trips to companies; (iv) independent living skill training such as shopping and budgeting; (v) finance training such as money management, lessons such as how to save money, open a bank, taking out a loan, and obtain money for college; and (vi) exploration on education choices including trade school, four year colleges, community colleges, and on the job training. The Senior Transition Group was not listed on the transcript, but occurred usually during a student's Government or Economics class, and usually met once a week for 45 minutes. Anthony Aldridge helped Student, but was unable to complete the Federal Student Aid application because Mother would not provide the required financial information. Student participated in workability program coordinator Corey Dickerson's three session job preparation workshop that worked on resume, proper work attire, job skills and retention.

47. Ms. Baltazar recommended and the IEP team discussed termination of speech and language services. Both Ms. Baltazar and Dr. Roper agreed that Student had progressed to a point where all he needed in speech and language was classroom and social practice. The IEP team discussed in length terminating Student's speech and language services. Although Ms. Rothbard opined that Student could benefit from such services, Student did not wish to continue receiving speech and language services. The IEP team also discussed graduation in the context of Student passing his classes.

48. District offered Student placement in a non-public school 100 percent of the time, with 60 minutes per week of counseling during the regular school year, transportation, and extended school year with counseling services reduced to 30 minutes per week because of the shortened schedule during the extended school year. Student would be educated on the general education curriculum. Accommodations were the same as listed in the January 14, 2015 IEP. Student would be working towards a high school diploma. He received college and career awareness preparation, and participated in work experience education through his transition plan. Student continued to be interested in a criminal justice career, and wanted to attend a community college, live independently, either in his own apartment, or with roommates. He had not participated in employment activity, education training activity, or independent living activity because he needed more time because of absences. Student's education training and post-secondary school goals, transition goals for independent living, and employment required: enrolling/attending in a two or four year college; filling out a Federal Student Aid application; identification of skills needed in various occupations of interest; and opening a checking/savings account.

49. Mother disagreed with the termination of speech and language services because she felt that Student could not complete his thoughts and express himself. Student disagreed with his Mother, was upset over his Mother's negativity, and left the

meeting. Student did not like IEP team meetings because he disliked adults talking about him. Ms. Rothbard opined at hearing that Student had a hard time standing up to his Mother, was intimidated by the process, and shut down. The IEP team meeting ended shortly after Student left.

50. By March 18, 2016, Student had made partial progress towards his transition goal because of excessive absences, tardiness, and had not met his objectives from the January 14, 2015 IEP because of too many absences. He had made no progress towards his reading goal as he needed more time because of excessive absences and tardiness; and had not met his objectives from the January 14, 2015 IEP because of too many absences. He had made no progress towards his math goal because of incomplete assignments; and had not met his objectives from the January 14, 2015 IEP. He had made partial progress toward his written language goal because of incomplete assignments and he needed more time because of his absences; and had not met his objectives from the January 14, 2015 IEP.

51. Mr. Fitzpatrick had two or three conversations with Student before Student signed the February 29, 2016 IEP on April 21, 2016. Student was hesitant to sign the IEP because he was concerned that Mother would be upset with him if he signed. Mr. Fitzpatrick explained to Student that it was Student's choice whether to sign the IEP because he was already 18 years old, but he did not pressure Student to sign the IEP. He also explained to Student that signing the IEP would terminate his speech and language services. District provided a copy of the IEP document to Student.

52. On April 26, 2016, Mother requested Student's educational records without including Student's written consent for the request of such records. On April 28, 2016, District responded to the April 26, 2016 educational records request by sending them by mail.

53. As of May 6, 2016, Student had an incomplete in Mr. Johnson's Algebra 1B

class because of too many absences. The class was small and had eight students with one teacher's aide. Mr. Johnson opined that Student could do the work in his Algebra 1B class with extra support and scaffolding to slowly increase his ability. He did not modify Student's curriculum, but provided the IEP accommodations. Because Mr. Johnson and Ms. Aranda-Pierce believed Student was on track to pass his classes and graduate, Student's incomplete in Algebra 1B on May 6, 2016 did not prevent the exit IEP team meeting from proceeding. Ms. Aranda-Pierce drafted the Summary of Performance with Student's help. The computer generated a template, and she highlighted information she needed Student to provide. After Student filled out the form, Ms. Aranda-Pierce asked Student more questions, and the two completed the form with Student sitting beside her, providing missing information or more details as Ms. Aranda-Pierce typed up the Summary of Performance. Ms. Aranda-Pierce gave Student different drafts of the Summary of Performance multiple times. Student shared at hearing that District did not give him a copy of the Summary of Performance at the May 18, 2016 IEP team meeting, but did not dispute that District discussed the Summary of Performance at the IEP team meeting, or that District gave Student the final draft of the Summary of Performance on May 18, 2016. Sometime before the May 18, 2016 IEP team meeting, Student stated specifically to several IEP team members that he did not want his Mother to attend the May 18, 2016 exit IEP team meeting.

MAY 18, 2016 EXIT IEP TEAM MEETING

54. Student, Ms. Aranda-Pierce, Ms. Rothbard, Ms. Shriki, Mr. Fitzpatrick, and Ms. Aranda-Harris attended the exit IEP team meeting. Mr. Fitzpatrick informed everyone at the beginning of the IEP team meeting, that they had the right to provide input, participate, and ask questions regarding placement and services; and if anyone felt they did not have enough information, he could provide them with more information. Student did not indicate that he did not understand his rights nor needed

more information. Mr. Fitzpatrick provided Student with a copy of the Procedural Rights and Safeguards. The IEP team meeting lasted from 30 minutes to an hour. The IEP team discussed Student's abilities in core subject areas, accommodations he needed, his plan to attend a community college, and the Summary of Performance drafted by Ms. Aranda-Pierce and Student. Because this was an exit IEP, the IEP team did not have a comprehensive discussion of goals and present levels of performance. Mr. Fitzpatrick opined that a general education teacher did not need to attend Student's IEP team meeting because FAPE for Student did not include transferring him back into a general education environment, or into dual enrollment at the exit IEP team meeting when Student could graduate in less than a month.

55. Student shared at hearing that he told Mr. Fitzpatrick that he wanted his Mother to attend the meeting. Mr. Fitzpatrick called Mother several times, left a message, sent Student back to class, and waited for Mother's response. When Mother did not respond, Mr. Fitzpatrick reconvened the IEP team meeting. Student did not object to holding the May 18, 2016 IEP team meeting without his Mother. Mr. Fitzpatrick spoke at the meeting about Student's goal of graduating, grades, what Student needed to do to graduate, and explained that signing the IEP meant that Student was done with IEP team meetings, but not necessarily done with high school. Mr. Fitzpatrick also explained to Student that the May 18, 2016 IEP team meeting was the final IEP, and that his special education services would terminate upon graduation, but that he had to pass his classes before he could graduate. Student did not express any reservations about graduation, was excited to graduate, and shared that his brother would help him enroll in El Camino Community College. District provided a copy of the IEP document to Student at the end of the meeting, and he signed it sometime that day. District did not pressure Student to sign the May 18, 2016 IEP document.

56. Although Vista High School set forth timelines to submit make-up work,

each teacher had discretion to provide extra credit work for a student who had incomplete work, exceeded the deadline for make-up work submission, or who had too many absences. A few weeks before graduation, Ms. Aranda-Pierce arranged with Mr. Johnson for Student to do extra credit work so Student could complete the coursework needed to graduate. Student completed some of the extra credit work from his Algebra 1B class by himself and some of it with the assistance of other teachers or teachers' assistants while at school. The teachers or teachers' assistants sat next to Student, explaining the math problems, or rewriting the problems in a different way, to help Student understand how to complete the work. Student took approximately 45 minutes to complete each page of the extra credit, math worksheet, and a few weeks to complete the five extra credit work packets. Student checked with Ms. Aranda-Pierce and Mr. Johnson to ensure he had done enough quality work to graduate. Student had failed the Government class twice, and did not want to fail it for the third time. Ms. Aranda-Pierce and Mr. Johnson opined at hearing that if Student were motivated to attend class, he could succeed as demonstrated when Student completed the extra credit work in the late spring of 2016 because he was wanted to graduate. Student failed several classes while at Vista High School because he did not attend class, did not complete work, or turned in inaccurate or incomplete work.

57. Student worked for CVS from April to May 25, 2016, and successfully completed the full 100 hours as a part of the workability program. Ms. Dickerson corrected and rebutted Mother's misconception that Student had been fired at CVS for stealing. She was not aware of any thefts by Student, clarified that Student was not fired, and that Student's CVS supervisor had been pleased with Student's performance. After Student completed the CVS workability program, Ms. Dickerson encouraged and helped Student complete an online application for a permanent position at CVS. Student also participated in the on-campus EBay, woodworking, and café job training. For EBay,

Student took the manager position and worked on inventory control, stocking, and sales. He participated in woodshop where he made several items. He also participated in the food services job and earned an online food handlers' certificate. Student's participation in the Senior Transition Group had been sporadic during the 2014-2015 school year because of his many absences, but Student participated fully by the end of the 2015-2016 school year. Student also participated in the senior luncheon where he spoke about his experiences leading up to his attendance at Vista High School, thanked his teachers, and was excited about graduation.

58. From January 19, 2016, to June 10, 2016, Student received a "D" for U.S. History and Algebra 1B; a "C" for Spanish 1B, Government, and Woodshop; a "B-" for English 12A and Strategic Lit B. Student could take Algebra 2A before taking, or passing Algebra 1B, and needed to pass Algebra 1B to obtain a diploma. Strategic Literature A and Strategic Literature B were not required to be taken consecutively, and Student did not need to pass one class before taking the other. Ms. Aranda-Pierce taught Student English, Strategic Literature, Government and History classes in the 2015-2016 school year. English and Strategic Literature classes were also considered homeroom. She used the Language! program without deviation, but did not know whether the program itself contained modifications from the general education curriculum. Language! was an intensive language intervention program which followed the curriculum of the 12th grade common core standards and focused on reading (including excerpts from novels, such as David Copperfield) decoding, comprehension and writing skills. Teachers typically used the Language! program for students whose academic scores were in the elementary grade levels, but also used for students who scored in the high school levels academically because of the program's intensive writing feature. Student could complete all work with assistance and earned all the grades he received. She did not provide Student with any modifications, but provided his IEP accommodations to

explain, and present materials in a way that permitted Student to access the 12th grade common core standards. She opined that Student's skills were too high for the modified curriculum because those students had first grade decoding and reading skills, and no comprehension skills. She also opined that Student would not be successful in a general education program without his IEP accommodations and without the Language! program. She assigned a 40 percent weight towards participation, and allowed her students to make up participation points by doing extra credit work after school, and provided full credit for all late work to all of her students. She did not believe Student required any other assistive technology other than the supports such as PowerPoint, and a reader with highlighted words that Student already had in the regular classroom.

59. Rose Girgis was District's counselor in charge of reviewing transcripts and verifying that students met graduation requirements for their graduating class. She reviewed Student's transcripts and verified that Student was on track to meet his graduation requirements three times throughout the 2015-2016 school year. On June 9, 2016, she certified Student met his graduation requirements and could graduate in June 2016.

60. On June 8, 2016, Student signed a document appointing Mother as his educational rights holder. On June 9, 2016, Student revoked his signature to the May 18, 2016 exit IEP document, and stated that he did not understand at the time what he had signed. Student revoked his consent to the May 18, 2016 IEP and turned his educational rights over to his Mother so she could help him because he was concerned that he did not have the proper reading and writing skills to succeed in community college. Neither the revocation, nor the assignment of educational rights was provided to District before Student graduated. Student graduated Vista High School on June 10, 2016. Mother did not permit Student to participate in the graduation ceremony.

61. Mother claimed at hearing that Student was incapable of performing 12th

grade level work independently, that the teachers at Vista High School inappropriately modified Student's curriculum and inflated his grades. Student did not need to complete 12th grade level work independently, without any assistance, to receive a high school diploma on a general education curriculum from Vista High School. Although Student had elementary academic skills, his teachers could provide individual assistance and other strategies to help Student access the 12th grade common core standards. This was considered an accommodation and not a modification of the general education curriculum because the curriculum was not changed, but broken down in a way which helped Student understand, complete work, and access the 12th grade common core standards. Student's teachers all used textbooks, supplemental materials, and lesson plans that followed the 12th grade common core standards for the general education curriculum.

62. Mother did not request that District assess Student in any areas of need when Student was at Vista High School. Although Mother claimed at hearing that Student was bullied, she never told anyone, or filed a written complaint with Vista High School. If Student needed further assessments, each of Student's teachers and counselors would have recommended them; however, they all opined at hearing that they had enough information to plan for Student's educational program.

POST-GRADUATION PRIVATE ASSESSMENT - DR. ROBERT ROME

63. Dr. Robert Rome has been a licensed California psychologist since 1984, and had a private clinical psychology practice where he evaluated children, adolescents, and adults for the juvenile delinquency court, regional centers, and school districts. Over the past five years, he conducted 25 independent evaluations, 5 of which related to public education; and testified in 15 due process hearings, 3 of which were on behalf of school districts. He conducted a psychological evaluation of Student on July 19, 2016, at Student's home. Student was at times resistant to being assessed by Dr. Rome, but was

capable of being redirected to continue the testing after a discussion of Student's interest in attending community college. Dr. Rome based his evaluation on a review of previous reports; interviews with Mother and Student; and observations of Student at the time of evaluation. He administered a variety of standardized testing instruments, including reports from Mother and Student.

64. Dr. Rome opined that Student's scores from the Woodcock-Johnson, Fourth Edition, that he administered, were practically identical to, and only a few points away from, Student's scores from District's November 2015 Kaufman Test. He concluded Student's language and communication skills, adaptive function (including communication), daily living, and socialization skills were mildly deficient. He concluded that Student's auditory and visual perceptual and processing skills were in the borderline range. He noted that Student could carry on a brief discussion, but spoke in a very low voice, barely opening his mouth, and could not be understood. Dr. Rome noted that Mother's report of Student's needs with daily living skills contradicted Vista High School's transition plans, which reported Student's interest in law enforcement, the military, and attending community college. The interests Student expressed in his school transition plan indicated that Student was functioning at a higher level than Mother reported.

65. Dr. Rome also concluded Student had significant problems with socialization, attention and hyperactivity. Student denied having issues with ADHD, hyperactivity, and depression in his self-report. Because this contradicted with school reports and records, and contradicted with what Student shared with Dr. Rome during his assessment, Dr. Rome considered Student's self-report, but did not rely on it when concluding that Student was depressed from coping with his environment, and low social skills. Further, Dr. Rome found Student's self-report on his social skills unreliable. Student reported that: he did not have a difficult time making friends; that classmates

did not dislike him; he was never uncomfortable around people; others never hated Student's company; sometimes friends and others sought help from Student; he often got along with others; sometimes people liked him; and people always found him fun. Dr. Rome opined that Student's perspective of his social skills were not accurate when compared with Mother's reports and Dr. Rome's observations. Mother reported that Student was fired from his workability job at CVS for stealing. Dr. Rome opined that Student would not have been fired if District provided him with a job coach.

66. Dr. Rome opined that District should have conducted a functional behavior assessment of Student in January 2015 to address all of Student's inappropriate behaviors including excessive absences, impulsivity, aggression, and assaults. The January 14, 2015 behavior support plan was inappropriate because it did not identify a complete list of Student's behaviors, including impulsivity and aggression, that Vista High School knew existed and was documented by the December 2014 through November 2015 incident reports. Dr. Rome concluded Student's lack of progress resulted from District's failure to provide a one-to-one aide.

67. Dr. Rome diagnosed Student with autism spectrum disorder, mood dysregulation disorder, and specific learning disorders with impairments in reading, written expression and math. Based on Dr. Rome's diagnosis, Mother claimed at hearing that Student was autistic, should be retained in high school, and should attend Village Glen, as his brothers did. Mother believed Student was autistic because people had difficulty understanding Student when he spoke; verbally threatened his peers; did not independently dress himself until he was 14 years old; could only cook using the microwave; and was incapable of performing household chores well. Mother opined that Student could not stay home, ride the bus, run errands, or drive by himself because Student was easily distracted and frustrated.

68. Dr. Rome also opined that because District did not "treat" Student's autism

spectrum disorder, it should provide Student with two years of compensatory services, and recommended: (i) 800 hours of one-to-one instructional aide to keep Student on task for classroom instruction, and accompany Student to speech therapy, and other school related services; (ii) 80 hours of speech and language therapy twice a week, if Student were re-enrolled in special education; (iii) family, group, individual, and anger management therapy; (iv) 1200 hours of one-to-one academic instruction; and (v) the Lindamood-Bell program. He recommended that Student's diploma be rescinded, that Student be enrolled in a non-public school or private school with a low student to staff ratio, with a modified curriculum, and continued to receive special education services through age 22.

69. Teachers and staff opined that Vista High School was appropriate for Student because of its therapeutic, small student to staff ratio which provided Student individualized attention, behavioral staff to ensure safety and redirect inappropriate behaviors, and counselors to provide crisis counseling and confidence building; and that he did not need a one-to-one aide. They did not believe that a modified curriculum would be appropriate for Student because it only focused on independent daily living skills, and would be too low for Student's abilities. They also opined that one-to-one aides were unnecessary and ineffective in preventing absences because they could not use force to prevent students from leaving class; and having a one-to-one aide at Vista High School would not help reduce Student's absences, but would stigmatize him with his peers. None of the teachers and counselors observed Student speaking in a very low voice, barely opening his mouth, or incapable of being understood. Student's teachers and counselors all opined that Student did not fit the criteria of a student with autism because Student: was able to communicate with them, spoke clearly, pronounced words clearly, made eye contact, engaged in reciprocal conversations with other teachers, counselors, staff, and peers; asked peers social questions and information about

themselves, and his peers appeared to understand Student. Further, Student was social, had friends and maintained those friendships, did not exhibit restrictive interests, or repetitive behaviors, and cared for his peers and was aware of their feelings.

70. Although Dr. Rome was not a speech pathologist, he disagreed with Ms. Baltazar's conclusion that Student did not demonstrate speech and language needs. She was unable to complete assessing Student when he refused to continue; therefore District had no reliable basis for terminating Student's speech and language services. Dr. Rome did not speak with any of Student's teachers, or counselors, or anyone from Vista High School regarding Student. He also did not ask Student's teachers to complete any rating scales. Dr. Rome did not observe Student at Vista High School for his July 2016 assessment, had no specific knowledge of Student's curriculum at Vista High School, and had not observed Student with peers at school. Dr. Rome had no experience teaching the common core curriculum, and no expertise in interpreting common core standards, but reviewed the common core standards for an hour in connection with this case. No one provided Dr. Rome's July 19, 2016 report to District or Student's IEP team, because Student was not in school at the time of the assessment. Therefore, Dr. Rome's report carried little weight. Dr. Rome's opinions were relevant and credible only as to what District knew, or should have known, at the time of Student's IEP meetings.

SUSAN HOLLAR - STUDENT'S SPEECH AND LANGUAGE EXPERT

71. Student's expert, Susan Hollar, opined on the appropriateness of District's February 8, 2016 speech and language assessment. Ms. Hollar received a master's degree in Communicative Disorders and Sciences. She was licensed in California through, and a member of, the California Speech and Language Association and had been working as a speech pathologist since 2001. She had multiple certifications in the areas of communication and speech. Ms. Hollar was the principal of Hollar Speech/Language Services, a private firm, and performed assessments, including

independent educational evaluations. She attended IEP team meetings, and provided therapy and school trainings for people with speech disorders. Ms. Hollar conducted 30-45 speech and language assessments per year, and consistently assessed older individuals who were resistant to testing, including those on the autism spectrum, and/or with bipolar, emotional disturbance, and ADHD. She elicited cooperation from test subjects by using whatever strategies needed to calm the test subject before starting with formal testing. In her experience, test subjects who were resistant needed to be tested in several sessions. If she had been asked to assess Student, she would have built rapport before formally testing Student, stopped when Student became anxious, incorporated Student's likes and dislikes into the process, observed Student at school before assessment, spoken with his parent, teachers, counselors, and allowed Student to have someone with whom Student was comfortable present during the assessment. She would also review records and perform standardized testing.

72. Ms. Hollar reviewed Student's IEP's for the 2014-2015 and 2015-2016 school years; report cards; school service records; the 2014 and 2015 results from the Kaufman Test; Student's graduation speech as a work sample; Ms. Baltazar's speech and language report; the protocols for the Comprehensive Assessment, the Communication Severity Scale, and the Clinical Evaluation Language observation rating scale; and Dr. Rome's July 19, 2016 report. She did not assess, speak with, or provide speech therapy to Student, and did not speak with any of Student's service providers from Vista High School. She noted that Student's Kaufman Test for both 2014 and 2015 were low in oral expression and listening comprehension. Student's oral expression scores increased from 2014 to 2015, from one to eight percent; and his listening comprehension scores decreased from one to less than one percent. Ms. Hollar opined that it was unusual for scores to decrease within a year, and attributed it to lack of skills improvement or motivation in test taking; lack of attention and focus; or test presentation

inconsistencies. Based on Student's writing sample, she opined that Student's writing was on a fifth grade level.

73. Ms. Hollar opined that District's February 8, 2016 speech and language assessment was inappropriate, and did not meet the American Speech and Language Association's standards for speech and language assessments because it did not adequately assess the Student's ability to use vocabulary; his grammar skills; his social ability to hold a conversation and make inferences; and voice fluency. The American Speech and Language Association's standards for speech and language assessments required standardized testing and integration of information from other sources. Specifically, District's February 8, 2016 speech and language assessment did not consider enough background information and had limited standardized testing, and limited results, including missing subtests, for the Comprehensive Assessment. It did not have a Student language sample for accurate review of Student's ability levels, and relied on Student's outdated Goldman Fristoe results from the 2010-2011 school year. It also did not integrate Student's standardized tests scores with other components to determine Student's classroom intelligibility, and ability to pronounce words. Lastly, it inappropriately concluded that Student did not meet eligibility for speech and language impairment despite the teacher rating scale results indicating that Student was impacted in the classroom with speaking, listening, reading and writing problems, and records showing Student struggled in class and had to repeat his senior year.

74. Although a review of Student's records showed he had speech and language deficits, Ms. Hollar did not have enough information to offer any opinions on what Student's speech and language needs were, what services Student required, whether Student required a central auditory processing disorder assessment, and/or whether Student required a modified curriculum. Ms. Hollar opined that the District's speech and language assessment did not have enough information to support its

conclusion that Student did not have speech and language needs in February 2016.

STUDENT'S TESTIMONY

75. Although Student had never seen the assessment plan with the words "Client does not want assessment" and shared that his name which appeared on that document was not his signature, he did not refute that he told Ms. Vollmann-Smith he did not wish to be assessed. He never told anyone specifically that he did not want a social emotional assessment, and claimed at hearing he would have agreed to one, if someone asked him. Student did not participate in Ms. Baltazar's speech and language assessment because she asked him personal questions which he felt had nothing to do with the speech and language assessment which made him uncomfortable. He participated in Dr. Rome's psycho-educational assessment because it was conducted in his home, where he felt comfortable.

76. Student needed help with assignments in algebra, history and writing. He preferred group counseling over individual counseling. He did not like to be pulled out of class for counseling or for speech therapy. Although Student expressed to teachers and staff that he was excited about graduation, and that he did not need speech therapy while he was at Vista High School, he changed his mind by the time of the hearing. Student did not want to stay at Vista High School, but felt unprepared for community college. He liked the idea of dual enrollment in high school and community college, and was concerned his future success would be impaired if he did not return to high school and acquire the necessary skills. He felt community college was more difficult than Vista High School because, unlike Vista High School which did not give homework, homework was required in community college.

LEGAL AUTHORITY AND CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁷

1. This due process hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)⁸; Ed. Code, § 56000, et seq.; and 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 FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living; and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services as may be 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 called designated instruction and services].) In general, an IEP is a written

⁷ Unless otherwise indicated, the legal citations in this introduction are incorporated by reference into the analysis of each issue decided below.

⁸ All subsequent references to the Code of Federal Regulations are to the 2006 edition.

statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel, and which sets forth the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [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*, to date, 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. 950, fn. 10.)

4. The IDEA affords parents or 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) & (h); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505, 56505.1; 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, § 56505, 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, sub. (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 due process hearings is preponderance of the evidence].) In this case District has the burden of proof as to its one issue; and Student has the burden of proof as to his issues.

DISTRICT'S ISSUE 1, AND STUDENT'S ISSUES 1(A), 1(B), 2(A), 2(B), 3 - ASSESSMENTS

5. Student contends District failed to conduct functional behavioral, assistive technology, psycho-educational and social emotional assessments; and inappropriately conducted speech and language and transition assessments. District contends Mother agreed at the January 14, 2015 IEP team meeting to allow District to conduct only an academic assessment in preparation for Student's triennial IEP team meeting. When District asked Student for permission to assess in other areas, he did not consent to other assessments. District also claimed Student did not need other assessments. District contends it could not complete Student's February 1, 2016 speech and language assessment because Student did not cooperate or participate; therefore, Student was not entitled to an independent evaluation.

6. Assessments are required to determine eligibility for special education, and what type, frequency and duration of specialized instruction and related services are required. In evaluating a child for special education eligibility and prior to the development of an IEP, a district must assess him in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related service's needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

7. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.) To assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56381, subd. (a).) Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(B)(i); Ed. Code, § 56321, subd. (a)(2).)

8. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development, and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) consistent with superintendent guidelines for low incidence

disabilities (those affecting less than one percent of the total statewide enrollment in grades kindergarten through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) Within 60 days of parental consent to the assessment, the assessment report must be provided to the parent (Ed. Code, § 56329, subd. (a)(3)), and an IEP team meeting must be held to consider the assessment. (Ed. Code § 56302.1, subd. (a).)

9. A student may be entitled to an independent educational evaluation⁹ if he or she disagrees with an evaluation obtained by the public agency and requests an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. §300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an independent evaluation as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an independent evaluation].) In response to a request for an independent evaluation, an educational agency must, without unnecessary delay, either: (1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (2) ensure that an independent evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

10. An IEP is a “snapshot” and must be evaluated in terms of what was

⁹ Federal law uses the term “evaluation” instead of the term “assessment” used by California law, but the two terms have the same meaning and are used interchangeably in this Decision.

objectively reasonable when the IEP was developed. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

11. A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 *superseded by statute on other grounds, as stated in R.B. v. Napa Valley Unified School Dist.* (9th Cir.2007) 496 F.3d 932, 939.)

Student's Issue 1(a) - Functional Behavioral Assessment

12. Legal authority and conclusions paragraphs 6 through 11 are incorporated by reference.

13. When a child's behavior impedes the child's learning or that of others, the IEP team must consider strategies, including positive behavioral interventions, and supports to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i) & (b); Ed. Code, § 56341.1, subd. (b)(1).) The legislature intended that children with serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions. (Ed. Code, § 56520, subd. (b)(1).) A person recognized by the National Behavior Analyst Certification Board as a board certified behavior analyst may, but is not required to, conduct behavior assessments and provide behavior intervention services for individuals with exceptional needs. (Ed. Code, § 56525, subds. (a) and (b).) An IEP that does not appropriately address behaviors that impede a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029; *County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467-68.)

14. Student met his burden by the preponderance of evidence that District committed a procedural violation by not assessing Student's functional behavioral needs. At the very latest, District should have started the process on February 14, 2015, a month after the January 14, 2015 behavior support plan was implemented. By February 14, 2015, Student had been at Vista High School for over three months - enough time for Vista High School to realize that the January 14, 2015 behavior support plan and its in-house strategies/supports to encourage Student's class attendance was unsuccessful, and Student's excessive absences were still interfering with his academic performance.

15. Further, the January 14, 2015 behavior support plan was incomplete and inappropriate because it did not address Student's other maladaptive behaviors documented in the incident reports which were also causing his elopement. By February 14, 2015, District was aware of Students' impulsivity, assaults, and aggression which should have been further analyzed in addition to the excessive absences. Student's grades continued to decline and he made minimal progress toward his goals during the 2015 spring semester. He did not graduate with his class in June 2015, and had to repeat his senior year the during the 2015-2016 school year. While behavioral staff was present to counsel Student, coach and encourage his class attendance, they did not have the needed information and data from a functional behavior assessment to provide Student with effective support. If District had initiated the functional behavior assessment process by February 14, 2015, the assessment would have been completed and an IEP meeting held within 60 days. This would have identified Student's complete set of maladaptive behaviors, their functions, appropriate positive behavioral intervention strategies and replacement behaviors, all specifically tailored to Student's needs. From April 14, 2015, until May 20, 2016, Student did not receive the full benefit of his educational program because District did not have sufficient information to properly intervene and motivate Student to attend class by addressing all his behavioral

needs appropriately, and did not have an effective behavior support plan in place. After May 20, 2016, Student received full education benefits by completing extra credit work upon realizing that graduation was within his grasp. At the very least, a functional behavior assessment would have revealed that Student's desire to graduate could have been used as an effective motivator well before May 2016.

16. Instead, for both the 2014-2015 and 2015-2016 school years, District consistently relied only on Vista High School's in-house behavioral services and the January 14, 2015 behavior support plan, even when they were ineffective in addressing behaviors that continued to impede Student's educational progress. District's January 14, 2015 behavior support plan was not effective either from its inception in January 14, 2015, or a year later when Ms. Aranda-Pierce, who had no experience conducting functional behavior assessments, made only minor changes to the January 14, 2015 behavior support plan. The teachers and counselors attributed the lack of goal and academic progress to Student's absences and motivation deficiencies throughout his career at Vista High School without conducting a functional behavioral assessment to properly identify each of Student's behaviors, their functions, and positive behavioral intervention strategies to address all of his maladaptive behaviors. Their opinions that Student did not need a functional behavior assessment, because they claimed they had all the information they needed about Student, were not persuasive when balanced in light of overwhelming evidence that Student's failing grades and minimal goal progress should have triggered a closer look from data acquired by a functional behavior assessment.

17. Student did not receive the educational benefit of all his class instruction because his behaviors resulted in his failure to regularly attend classes. District's failure to initiate a functional behavioral assessment was a denial of FAPE to Student from April 14, 2015 (60 days after the date District should have commenced the functional

behavior assessment) until May 20, 2016, (when Student received full education benefits by completing extra credit work upon realizing that graduation was within his grasp). The remedy for this is discussed below.

Student's Issue 1(b) - assistive technology assessment

18. Legal authority and conclusions paragraphs 6 through 11 are incorporated by reference.

19. When developing a pupil's IEP, the IEP team shall also "[c]onsider the communication needs of the pupil." (20 U.S.C. § 1410(1); Ed. Code, § 56341.1, subd. (b)(4).) In addition, the IEP team shall consider whether the pupil requires assistive technology services and devices. (20 U.S.C. § 1414(d)(3)(B)(v); Ed. Code, § 56020.5.) An "assistive technology device" is defined as "any item, piece of equipment or product system [other than a surgically implanted device]...that is used to increase, maintain or improve functional capabilities of an individual with exceptional needs." (20 U.S.C. § 1410(1); Ed. Code, §56020.5.)

20. Although Student contended District needed to conduct an assistive technology assessment, Student did not present any evidence triggering assessment in this area during the statutory period. Neither of Student's experts, Dr. Rome or Ms. Hollar, opined that Student required an assistive technology assessment to receive FAPE. Student did not meet his burden of proving District's failure to conduct an assistive technology assessment was a procedural violation.

Issue 2(b) - transition assessment

21. Legal authority and conclusions paragraphs 6 through 11 are incorporated by reference.

22. Beginning at age 16 or younger, the IEP must include a statement of needed transitions 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. (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. (Ed. Code, § 56345, subd. (a)(8)(A).)

23. "Transition services" are defined as a coordinated set of activities designed within a results-oriented process, focused on improving the academic and functional achievement of the individual to facilitate movement from school to post-school activities, including postsecondary education, vocational education, and integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation. Transition services are to be based upon individual needs, taking into account individual strengths, preferences, and interests. Transition services include instruction, related services, community experiences, development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. Transition services may be special education or related services. (Ed. Code, § 56345.1, subd. (a); 20 U.S.C. § 1401(34).)

24. Student's January 14, 2015 and February 28, 2016 IEP's had appropriate measurable postsecondary goals and a transition plan. The transition plans provided for vocational and employment education and training, independent living skills training, continuing education, and community and vocational experiences. The transition plans identified Student's vocational preferences and interests. Student participated in drafting his transition surveys with Ms. Andrea-Pierce's help, participated in transition classes and in Vista High School's workability program, worked for CVS, and obtained a food handler's certificate. Student did not prove District was required to do more in

assessing, identifying or supporting his transitional needs. Although Student had not fully participated in transition education and training during the 2014-2015 school year, Student participated in all of the transition services, activities and classes by the end of 2016. Student did not meet his burden of proving that District committed a procedural violation by not conducting an appropriate transition assessment.

District's issue 1 and Issue 2(a)- Speech and Language Assessment

25. Legal authority and conclusions paragraphs 6 through 11 are incorporated by reference.

26. District contends it properly initiated Student's February 2016 speech and language assessment, but could not complete it because of Student's lack of cooperation. Student contends District did not conduct an appropriate assessment. District met its burden and Student did not.

27. When a student who has been receiving special education services reaches the age of 18, all educational rights are transferred to the student, and the district shall notify the student and the parent of the transfer of rights. (Ed. Code, § 56041.5.) If no guardian or conservator has been appointed for the student, the student becomes a "parent" for purposes of special education law. (Ed. Code, § 56028, subd. (a)(2).) The local education agency shall provide any required notice of procedural safeguards to both the student and the student's parents. (Ed. Code, § 56041.5.) If the student has been determined to be incompetent, the student's conservator is a "parent" for the purposes of special education law. (Ed. Code, § 56028, subd. (b)(2).) A judicial decree may authorize a responsible adult to act as the parent and make educational decisions for a disabled student. (Ed. Code, § 56028, subd. (b)(2).)

28. As a preliminary matter, to determine whether District appropriately assessed Student in speech and language requires an analysis whether District appropriately issued an assessment plan to obtain consent. Here, Student held his own

educational rights from October 3, 2015, the date he turned 18 years old, until he transferred his rights to his Mother on June 8, 2016. Mother did not hold educational rights when she signed an assessment plan consenting to various assessments on December 11, 2015. Therefore, her signature was ineffective to confirm Student's consent to the assessment plan.

29. District's failure to send an assessment plan to Student for his consent for assessments was a procedural violation. However, it did not result in a denial of FAPE or educational benefit to Student or deprive him of the right to participate in the development of his IEP. Student consented to District's speech and language assessment by showing up, but he withdrew his consent during the assessment by refusing to participate. When Ms. Vollmann-Smith called to obtain consent for various assessments in February 2016, Student did not consent and told her categorically he did not wish to be assessed in any area. Therefore, Student did not show that District's failure to provide him an assessment plan to consent to the speech and language, impeded Student's opportunity to participate in the decision-making process, deprived him of educational benefits, or impeded his right to a FAPE.

30. Next, Student contends District's speech and language assessment was inappropriate. Ms. Baltazar was a qualified assessor with the proper experience and speech and language pathologist credentials. She chose the proper instruments to assess Student. Ms. Baltazar attempted to assess Student with the Comprehensive Assessment, but was unable to complete standardized testing because Student refused to cooperate and informed Ms. Baltazar that he did not want to be assessed. Mother also ignored Ms. Baltazar's multiple attempts to obtain information for the assessment. Ms. Baltazar did the best she could with informal observations, Ms. Aranda-Pierce's cooperation in completing the observational rating scale and pragmatics profile, information from Dr. Roper, using the Communication Severity Scale which did not

require Student's input, and by reviewing Student's records. Ms. Hollar's opinion that District's February 8, 2016 speech and language assessment was inappropriate because it was compromised with limited standardized testing information, and did not meet speech and language testing standards was persuasive. While District's failure to properly assess Student in speech and language was a procedural violation, it did not result in a FAPE denial because Ms. Baltazar could not complete standardized testing because Student did not consent. Even though at hearing Student explained that he did not participate in District's speech and language assessment because he was uncomfortable with Ms. Baltazar's personal questions, and Ms. Hollar shared that she would have utilized different strategies to obtain Student's cooperation, they were all inconsequential, because Student did not allow District to assess him in this area.

31. In District's Issue 1, District met its burden of demonstrating that it properly initiated the February 2016 speech and language assessment, and could not properly complete standardized testing because Student, who was an adult, did not consent. In Student's Issue 2(a), Student did not meet his burden of persuasion that District's failure to conduct an appropriate speech and language assessment was a FAPE denial or deprived him of the opportunity to participate in the IEP process. Therefore, Student is not entitled to an individual evaluation in this area because he prevented District from completing its speech and language assessment.

Issue 3 - Psycho-educational and social-emotional assessments

32. Legal authority and conclusions paragraphs 6 through 11, 27, and 28 are incorporated by reference.

33. Student did not prove that District should have conducted a psychoeducational or social emotional assessment during the applicable statutory period. District's failure to send an assessment plan to Student for his consent to psycho-educational and social emotional assessments was a procedural violation.

However, it did not result in a denial of FAPE or educational benefit to Student, or deprived him of the right to participate in the development of his IEP. When Ms. Vollmann-Smith called to obtain consent for various assessments in February 2016, Student did not consent and told her categorically he did not wish to be assessed in any area. Although Student did not specifically refuse a social emotional assessment, his categorical refusal to be assessed in all areas included the social emotional assessment. Therefore, Student did not show that District's failure to provide him an assessment plan to consent to psycho-educational and social emotional assessments, impeded Student's opportunity to participate in the decision-making process, deprived him of educational benefits, or impeded his right to a FAPE.

34. At January 14, 2015 IEP team meeting, when Student was a minor, Mother only consented to District's conduct of an academic assessment in preparation of Student's triennial IEP. Therefore, District did not need to conduct any assessments other than the Kaufman Test in preparation for the triennial IEP, and its failure to do so was not a procedural violation. Further, even if District's failure to conduct assessments other than the Kaufman Test were a procedural violation, Student did not present evidence to support that the procedural violation impeded Student's right to a FAPE, significantly impeded his opportunity to participate in the decision-making process, or deprived Student's educational benefits.

35. First, Student's expert, Ms. Hollar, did not opine that Student required a social emotional or psychoeducational assessment to provide the IEP team with necessary information to develop a FAPE offer. Second, although Student's expert Dr. Rome opined that Student required social emotional and psycho-educational assessments to receive a FAPE, his opinion was not as persuasive as teachers and counselors who saw Student more frequently and observed him at school. Dr. Rome never observed Student at school and only observed Student once during assessment at

home. Both of Student's counselors, Mr. Bronstein and Ms. Rothbard, reported that they had enough information from counseling sessions and observations of Student, and that they did not need a social emotional assessment to obtain more information to provide him with counseling, or for his triennial IEP. Student did not present any evidence rebutting Mr. Bronstein's, or Ms. Rothbard's opinions.

36. With respect to the psycho-educational assessment, Dr. Rome agreed that his July 2016 psycho-educational evaluation results using the Woodcock-Johnson were practically identical to District's November 2015 Kaufman Test. Essentially, District had the same information from conducting its Kaufman Test to consider Student's educational needs as it would have if it conducted a full psycho-educational assessment--successfully rebutting Student's contention that a psycho-educational evaluation was necessary for a FAPE.

37. Student did not meet his burden of demonstrating that District was required to conduct social emotional and psycho-educational assessments for his triennial IEP team meeting or that it procedurally violated the IDEA by not doing so.

ISSUES 4(A), 4(B), 5(A), 5(B), 6(A)(I),(II),(III), 6(B), AND 6(C) - NECESSARY IEP TEAM MEMBERS, PRIOR WRITTEN NOTICE, PARENTAL PARTICIPATION AND PREDETERMINATION AT IEP TEAM MEETINGS

38. Student contends District committed procedural violations when it did not have the general education teacher present at the January 14, 2015, February 29, 2016, and May 18, 2016 IEP team meetings; did not have the transition service provider at the January 14, 2015 IEP team meeting; failed to provide prior written notice before terminating Student's speech and language services, and before graduating him in June 2016; prevented appropriate parental participation; and predetermined placement and services in all three IEP team meetings. District contends that parent had the opportunity to meaningfully participate in the IEP decision making process until Student

turned 18 and did not want Mother at the May 18, 2016 IEP team meeting. District also contends that all necessary IEP team members were present. Further, District contends that it did not need to give written notice before terminating Student's speech and language services, or graduating Student because those issues had been discussed at the February 29, 2016 and May 18, 2016 IEP team meetings.

Issues 4 (a) and 4(b) - required iep team members

39. An IEP team is required to include: one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about available resources; a person who can interpret the instructional implications of assessments results; at the discretion of the parties, other individuals; and when appropriate, the person with exceptional needs. (34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].) The input provided by a regular education teacher is vitally important in considering the extent to which a disabled student may be integrated into a regular education classroom and how the student's individual needs might be met within that classroom. (*Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F. 3d 840.) Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 977, 892.)

40. To constitute a denial of FAPE, procedural violations must result in deprivation of educational benefit or a serious infringement of the parent's opportunity to participate in the IEP process. (*Ibid.*) (*See A.G. v. Paso Robles Joint Unified School Dist.* (9th Cir. 2014) 561 Fed.Appx. 642, 643.)

41. Legal authority and conclusion paragraph 11 is incorporated by reference.

42. A general education teacher was not present at the January 14, 2015, the February 29, 2016, or the May 18, 2016 IEP team meetings, and neither Parent, nor Student, waived the attendance of the general education teacher. However, this had no impact on the fundamental issues and discussions at any of the IEP team meetings. Student was at a non-public school without any general education teachers and where he received substantial accommodations to access the general education curriculum. Despite Student's contentions that the IEP team should have considered dual enrollment, concurrently at Vista High School and in a community college, mainstreaming into a general education setting was an inappropriate alternative for Student because he struggled to pass his classes, and required extensive redirection and academic assistance. During the January 14, 2015 IEP team meeting, Mother advocated for Student to be retained at Vista High School, and not graduate in June 2015, because he was not ready for community college. Further, it would be inappropriate for Student to enroll at a community college during the time of both the February 29, 2016 and the May 18, 2016 IEP team meetings, because a placement change so close to graduation, and during a time when graduation was uncertain because of Student's incomplete work and extensive absences, could hinder Student's minimal progress at Vista High School.

43. The general education teacher's unexcused absences at the January 14, 2015, February 29, 2016 IEP and May 18, 2016 IEP team meetings were inconsequential because the evidence did not support that Student required the expertise of a general education teacher. Placement in a general education setting was never a viable option for Student during any of these three IEP team meetings. Student did not present any evidence that a non-public school setting was an inappropriate "least restrictive environment", or that a general education setting was an appropriate "least restrictive environment" for Student for the 2014-2015 or 2015-2016 school years, requiring the

presence of a general education teacher at his IEP meetings. Student did not meet his burden of persuasion that the absence of a general education teacher was a procedural violation.

44. Student did not present evidence that a transition service provider was absent at the January 14, 2015 IEP team meeting. Although the sign in sheet did not specifically state "transition service provider" next to anyone's name, District presented evidence supporting that the special education teacher, here Ms. Adler, usually collaborated with a career counselor to draft the transition plan. Further, Student did not present any evidence supporting that any of the District attendees at the IEP, including Ms. Adler, did not qualify as a transition service provider. Therefore, because Ms. Adler was present at the January 14, 2015 IEP team meeting, and the evidence supported that the transition plan was incorporated into the January 14, 2015 IEP document and transition services were offered and provided, Student did not meet his burden of persuasion that a transition service provider was not at the IEP team meeting, or that the absence of one was a FAPE denial.

Issues 5(a) and 5(b) - no prior written notice

45. A parent must be provided "written prior notice" when a school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.) The notice must include a description of the action refused by the school district, an explanation of why the district refuses to take the action, a description of each evaluation procedure, test, record, or report used as a basis for the refused action, a description of any other factors relevant to the district's refusal, a statement that the parents have protection under the procedural safeguards of IDEA, and sources for the parents to contact to obtain assistance. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.)

46. Student claims District failed to give Parent prior written notice after Student turned 18 before terminating Student's speech and language services at the February 29, 2016 IEP team meeting and before graduating Student in June 2016. Student held his own educational rights during both the February 29, 2016 and May 18, 2016 IEP team meetings. District was not required to provide Parent with any notice regarding Student's education services after Student turned 18. Further, Student attended the May 18, 2016 IEP team meeting, and attended the February 29, 2016 IEP team meeting with Mother during which both provided input. Student's and Mother's concerns were considered and discussed when District recommended termination of speech and language services at the February 29, 2016 IEP team meeting. The IEP team discussed Student's future plans at the May 18, 2016 IEP team meeting and District informed Student he would graduate if he passed his classes. Student did not voice any disagreement or concerns at the May 18, 2016 IEP team meeting about graduation, and was looking forward to graduation. After the IEP team meetings concluded, District provided the IEP documents to Student. This was all of the notice to which Mother (even if she held Student's educational rights) and Student were entitled. Student did not prove District had any duty under the IDEA to provide additional notice to Mother in a separate document following each IEP team meeting. District did not procedurally violate the IDEA by failing to give Mother prior written notice. Student did not meet his burden of persuasion on this issue.

Issues 6(a) and 6(b) - parental participation and predetermination

47. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses

disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

48. Predetermination occurs when an educational agency has decided on its offer prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP meeting with a "take it or leave it" offer. (*JG v. Douglas County School Dist.*, (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.)

49. Legal authority and conclusions paragraph 27 is incorporated by reference.

50. District did not commit a procedural violation by not giving Mother the opportunity to participate in the development of Student's educational programs in January 2015, February 2016 or May 2016. Mother attended and participated actively at the January 14, 2015 IEP team meeting. The IEP team discussed Student's present levels of performance and his speech and language, counseling, behavioral, academic and transition needs, and Mother had the opportunity to ask questions about the appropriateness of Student's placement and services and provided input at the meeting. Although Mother claimed at hearing that: (i) she did not agree with the placement and services offered at the January 14, 2015 IEP team meeting; (ii) Student should be assessed in various areas and should receive more speech and language and counseling services; and (iii) she did not understand the IEP and signed it without understanding what she was signing; she did not communicate any of this to District at the January 14, 2015 IEP team meeting. Her testimony at hearing - that the IEP team did not discuss anything other than what was ultimately the FAPE offer - was not as persuasive because

Mother expressed to District IEP team members at that meeting that she did not believe Student was prepared to graduate, and wanted Student to be retained. As a result, the IEP team discussed continued placement at Vista High School, and District recommended that Student continued to be placed in a general education curriculum with accommodations at Vista High School, for the 2015-2016 school year. Mother provided input and had the opportunity to ask questions at the January 14, 2015 IEP team meeting. Student did not prove Mother consented to the IEP without understanding it. District did not deprive Mother of the opportunity to participate meaningfully at the January 14, 2015 IEP team meeting.

51. Student was 18 years old at both the February 29, 2016 and May 18, 2016 IEP team meetings. He held his own educational rights until June 8, 2016. Student did not prove that District was required to invite Mother to either of these two IEP team meetings. Mother attended the February 28, 2016 IEP team meeting, and expressed her disagreement with District's decision to terminate Student's speech and language services. The special education teacher, District's administrative designee, clinician, speech and language staff, career counselor, and Ms. Baltazar all attended the February 29, 2016 IEP team meeting to discuss Student's placement and services, including counseling, behavioral, transition and special and language services with Student.

52. Unlike the February 29, 2016 IEP team meeting when Mother was invited as a courtesy because Student did not object, Mother was not invited to the May 18, 2016 IEP team meeting because Student stated he did not want Mother there. Student claimed at hearing that he asked for Mother's presence on that date, and the evidence showed that District staff called several times and left messages for Mother, proceeded when Mother did not respond, and Student did not object to the IEP team meeting proceeding without her. Student was so upset over Mother's disagreement with the termination of speech and language services at the February 29, 2016 IEP team meeting

that he left. Therefore, it was persuasive that Student initially did not want Mother invited to the May 18, 2016 IEP team meeting, and later did not object to proceeding with the May 18, 2016 IEP team meeting when Mother did not respond to District's calls. Because the May 18, 2016 IEP team meeting was an exit IEP, District made no offer of placement or services, but instead discussed with Student his future plans, including the possibility of graduation, and termination of special education services upon graduation.

53. For the same reasons discussed above, Student also did not prove the IEP team predetermined Student's offer of placement or services at the January 14, 2015 IEP team meeting, resulting in depriving Mother of the opportunity to participate meaningfully in the outcome of the final IEP offer. Mother actively participated in the development of the January 14, 2015 IEP offer.

54. Student did not prove District predetermined Student's February 29, 2016 IEP offer. Although the continuum of placement was not specifically discussed at the February 29, 2016 IEP team meeting, the IEP team's decision to not do so did not amount to predetermination. Student was scheduled to graduate in June 2016 if he met graduation requirements. At the time, Student was struggling to obtain passing grades in some of his classes because of missing assignments, absences, and lack of motivation. Those issues could not be addressed with a placement change. A placement change three and a half months before scheduled graduation was unwarranted and would have interfered with Student's receipt of a FAPE. Shortly after the IEP team discussed Ms. Baltazar's recommendation of terminating Student's speech and language services, Student was upset and left because Mother got into a heated discussion while disagreeing with District's recommendation of terminating Student's speech and language services. Both Mother and Student had input about District's termination of speech and language services. Mother did not want the speech and language services to end. Student did not want the speech and language services to continue.

55. Student did not prove that District predetermined the offer of placement or services at the May 18, 2016 IEP team meeting. District tracked Student's performance, graduation requirements, and informed Student about them during both the February 29, 2016 IEP and the May 18, 2016 IEP team meetings. Student asked questions about graduation at the May 18, 2016 IEP team meeting. The IEP team informed him if he met his graduation requirements by obtaining passing grades in his spring semester classes, he would graduate in June 2016. Student did not present any evidence supporting that the District predetermined its decision to graduate Student at the May 18, 2016 IEP meeting without giving Student the opportunity to participate meaningfully in the discussion.

56. In summary, Student did not meet his burden of demonstrating that District impeded Mother's right to participate in the January 14, 2015, February 29, 2016 or the May 18, 2016 IEP team meetings; or predetermined placement and/or services at the January 14, 2015, February 29, 2016, or May 18, 2016 IEP team meetings; or predetermined graduating Student at the February 28, 2016 or the May 18, 2016 IEP team meetings.

ISSUE 7 - NO PERFORMANCE SUMMARY AT MAY 18, 2016 IEP TEAM MEETING

57. Student contends District denied him a FAPE by failing to provide him with a performance summary at the May 18, 2016 IEP team meeting. District contends it provided Student with the performance summary before the May 18, 2016 IEP team meeting, and on May 18, 2016.

58. The evidence showed that Ms. Aranda-Pierce collaborated with Student in drafting multiple drafts of the Summary of Performance before the May 18, 2016 IEP team meeting; and she provided each of the drafts to Student before the IEP team meeting. The IEP team also discussed the Summary of Performance at the May 18, 2016 IEP team meeting, and provided a copy of same to Student that same day. Student did

not present any evidence to the contrary, and did not meet his burden of persuasion on this issue.

ISSUE 8 - FAILURE TO RESPOND TO THE APRIL 26, 2016 RECORDS REQUEST

59. Student contends that District failed to timely and completely respond to Mother's request for a copy of his educational records on April 26, 2016. District contends Mother did not have the right to request the records, but that it timely sent the records on April 28, 2016.

60. To guarantee parents the ability to make informed decisions about their child's education, the IDEA grants parents of a child with a disability the right to examine all relevant records relating to their child's "identification, evaluation and educational placement." (20 U.S.C. §1415(b)(1).) Parents may request copies of their child's educational records at any time, and are entitled to receive those copies within five business days of their request. (Ed. Code § 56504.)

61. Legal authority and conclusion paragraph 27 is incorporated by reference.

62. Student was 18 years old on April 26, 2016, and held his own educational rights until he transferred them to Mother on June 8, 2016. Mother was not legally authorized to obtain educational records without Student's written consent on April 26, 2016. Student did not prove that his written consent accompanied Mother's April 26, 2016 educational records request. Therefore, District was not required to respond to the records request. Because Mother's April 26, 2016 educational records request was invalid, the issue of whether the records District sent was complete was irrelevant and not discussed. This was not a procedural violation. Student did not meet his burden of persuasion on this issue.

ISSUE 9 - PLACEMENT AND SERVICES

63. Student contends District denied him a FAPE because it did not offer

appropriate placement and services at the January 14, 2015 and February 29, 2016 IEP team meetings. District contends it offered Student a FAPE at both IEP team meetings.

64. Legal conclusion 10 is incorporated by reference.

65. 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. (See *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer 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 pupil with some educational benefit in the least restrictive environment. (*Ibid.*)

Issues 9(a)(i) and 9(b)(i) - placement

66. In determining the educational placement of a child with a disability a school district must ensure that: (1) the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment; (2) placement is determined annually, is based on the child's IEP and is as close as possible to the child's home; (3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; (4) in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (5) a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116.) "Each public

agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services” and that providing a continuum of alternative placements includes “the alternative placements listed in the definition of special education” and “supplementary services” to be provided in conjunction with regular class placement.” 34 C.F.R. § 300.115. (*See E.F. and J.F. v. New York City Department of Education* (E.D.N.Y., August 19, 2013, No. 12-CV-2217(MKB)) 2013 WL 4495676 and *A.D. v. New York City Department of Education*, (S.D.N.Y., March 19, 2013, No. 12-CV-2673 (RA)), 2013 WL 1155570 , *8 [Once the district determined the appropriate least restrictive environment where student could be educated, it was not obligated to consider and inquire into more options on the continuum].)

67. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate: (1) that children with disabilities are educated with non-disabled peers; and (2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).) To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: (1) “the educational benefits of placement full-time in a regular class”; (2) “the non-academic benefits of such placement”; (3) the effect [the student] had on the teacher and children in the regular class”; and (4) “the costs of mainstreaming [the student].” (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050].

68. Here, when considering the factors of *Rachel H.*, *supra* 14 F.3d at p. 1404,

District's IEP team members and Dr. Rome persuasively testified that a non-public school, with a low student to staff ratio and therapeutic setting, was the least restrictive environment for Student. Vista High School fit the description and was therefore the appropriate least restrictive environment for Student. Other than Student's expressed interest in a community college and high-school dual enrollment, there was no evidence supporting that enrollment in a general education setting was appropriate for Student at the time of the January 14, 2015, or the February 29, 2016 IEP team meetings. At the January 14, 2015 IEP team meeting, Student was failing most of his classes and made no goal progress, so the IEP team agreed that Student was not ready for graduation. Although Student made more goal progress and failed fewer class by the time of the February 29, 2016 IEP team meeting, Student still required Vista High School's academic, behavioral and therapeutic supports such that enrollment in a general education setting would be inappropriate, disruptive, and hinder Student's minimal progress at Vista High School. Neither of Student's experts, Dr. Rome or Ms. Hollar, opined that Vista High School was inappropriate for Student at the time of the two IEP team meetings.

69. Student did not prove a modified curriculum was appropriate for his needs, or that District should have offered such a program at the January 14, 2015 and February 29, 2016 IEP team meetings. Ms. Aranda-Harris and Ms. Aranda-Pierce credibly opined that a modified curriculum would be below Student's capabilities. Student's teachers all credibly opined Student could do all the work in the general education curriculum, with assistance and accommodations. Dr. Rome's recommendation of a modified curriculum for Student was not as persuasive as that of the teachers who taught and observed Student, participated in the discussion at both IEP team meetings about Student's abilities to access the general education curriculum using various strategies. Ms. Hollar who reviewed Dr. Rome's report and the same records that Dr. Rome reviewed, did not have enough information to conclude whether Student required

a modified curriculum, and would need input from the IEP team to be certain.

70. Student did not prove that a placement other than Vista High School with the general education curriculum was appropriate at the time of the January 14, 2015 or the February 29, 2016 IEP team meetings.

Issues 9(a) (ii) and 9(b)(ii) - Speech and Language Services

71. A child who demonstrates difficulty understanding or using spoken language, to such an extent that it adversely affects his or her educational performance and such difficulty cannot be corrected without special education services, has a language or speech impairment or disorder that is eligible for special education services. (Ed. Code, § 56333.)

72. Student did not prove the IEP team's offer of speech and language services at the January 14, 2015 IEP team meeting was inappropriate. Although Dr. Rome opined that Student should have been provided more speech and language services, the speech difficulties Dr. Rome observed while assessing Student, and his conclusion that Student could not be understood, were contradicted by all of the teachers and counselors. Dr. Rome's only contact with Student was during an in-home assessment, and he never observed Student interacting with peers. He was not a speech pathologist. As a result, Dr. Rome's opinions and conclusions were not as persuasive as teachers, service providers, and counselors on this issue. Ms. Hollar credibly opined Student had speech and language deficits, but did not opine that the speech and language services offered at the January 14, 2015 IEP team meeting were inappropriate.

73. However, Student met his burden that District did not offer appropriate speech and language services at the February 29, 2016 IEP team meeting. While District's failure to conduct an appropriate speech and language assessment was not a FAPE denial because of Student's failure to consent and cooperate with testing, this did not justify District's termination of speech and language services. The lack of updated

and reliable standardized testing results, albeit from Student's actions, significantly impacted the IEP team's ability to appropriately address Student's needs in speech and language in February 2016. Dr. Roper and Ms. Hollar agreed that standardized testing and an assessor's observations were integral components of a complete speech and language assessment. Because standardized testing was a crucial component to determine Student's speech and language needs, the absence of reliable standardized testing results from the February 8, 2016 assessment, and Ms. Baltazar's reliance on outdated testing results from the 2010-2011 school year, Ms. Baltazar's conclusion that Student did not demonstrate speech and language needs in 2016 was not persuasive. Ms. Baltazar's and Dr. Roper's opinions that all Student needed in February 2016 was practice in the area of speech and language was not persuasive in the absence of more information about Student's needs. District should have at least maintained the same speech and language services offered in the January 14, 2015 IEP until it could properly evaluate Student's needs.

74. Student proved District denied him a FAPE by terminating his speech and language services at the February 29, 2016 IEP team meeting from April 21, 2016, when Student consented to the IEP, until he graduated on June 10, 2016.

Issues 9(a) (iii) and 9(b)(iii) - Counseling Services

75. Student did not prove District's offer of counseling services at the January 14, 2015, or the February 29, 2016 IEP team meetings were inappropriate. Mr. Bronstein's and Ms. Rothbard's opinions on the type and quantity of counseling services that Student needed were persuasive as they were his counselors during the 2014-2015 and 2015-2016 school years. Mr. Bronstein agreed with the 60 minutes of weekly counseling offered, and did not believe that Student needed additional counseling beyond the 60 minutes per week. Ms. Rothbard agreed with the reduction of counseling services to 30 minutes per week during the extended school year. Although Dr. Rome

recommended that Student receive family, group, and individual counseling in July 2016, he did not specifically opine that the counseling services District offered to Student at the January 14, 2015 and the February 29, 2016 IEP team meetings were inappropriate. Student offered no credible evidence contradicting the credible testimony offered by District.

Issues 9(a) (iv) and 9(b)(iv) - Behavioral Services

76. Student did not prove District's offer of behavioral services at the January 14, 2015 IEP team meeting was inappropriate. District appropriately provided a behavior support plan, in addition to Vista High School's in-house behavioral services, to address Student's excessive absences which the January 14, 2015 IEP team knew was impeding his education. The behavior support plan did not specifically identify Student's other maladaptive behaviors, including aggressions, because at the time of the January 14, 2015 IEP team meeting, Student only had one incident of aggressive behavior.

77. However, by the time of the February 29, 2016 IEP team meeting District had enough information based on Student's incident reports, continued excessive absences, minimal goal and academic progress to trigger District's obligation to assess, as discussed above. All of that information contributed to his inability to graduate with his class in June 2015. District should have known that making only minor changes to the January 14, 2015 behavior support plan and Vista High School's in-house behavioral services were not enough. District should have known the services would continue to be ineffective in addressing Student's maladaptive behaviors and would continue to severely impede his access to his education. Student missed instructional hours and was denied educational benefits he would otherwise accessed. As discussed above in the behavior assessment section, if District conducted a functional behavioral assessment it would have had sufficient information to offer appropriate behavioral supports.

78. Therefore, Student proved District's offer of the February 29, 2016

behavior support plan, which was essentially the January 14, 2015 behavior support plan with minor changes, denied Student a FAPE as to the related services of behavioral supports.

79. Student did not prove, however, that District denied him a FAPE by failing to provide him with a one-to-one aide. Although Dr. Rome opined that District should have provided Student with a one-to-one aide to prevent Student's excessive absences and to access his academics, speech and language, and counseling services, his opinion was unpersuasive because he never observed Student at school interacting with his peers and never spoke with any of Student's teachers and counselors. On the other hand, District staff credibly and persuasively opined that an aide would be inappropriate and would stigmatize Student. Because Student's behaviors were influenced by peers, an aide would have had a negative effect on Student. Student admitted at hearing that one of the reasons he left Mr. Johnson's class was because he received too much attention from the classroom aide. A one-to-one aide would not have been effective, or required for a FAPE.

Issues 9(a) (v) and 9(b)(v) - Assistive Technology

80. Ms. Aranda-Pierce opined that all the assistive technology supports Student needed, including PowerPoint, was already available in the classroom. Student did not rebut District's evidence, or showed that he needed any additional assistive technology. Therefore, District did not deny Student a FAPE by not offering assistive technology services at the January 14, 2015 and the February 29, 2016 IEP team meetings.

Issues 9(a) (vi) and 9(b)(vi) -Transition Services

81. Legal authority and conclusions paragraph 23 is incorporated by reference.

82. Student did not prove that the transition services offered at the January

14, 2015 and the February 29, 2016 IEP team meetings were inappropriate. District provided transition plans at both IEP team meetings. The Senior Transition Group was available for Student both the 2014-2015 and 2015-2016 school years. Dr. Rome's opinion that District should have provided a job coach to prevent Student from being fired at CVS was unpersuasive because it was predicated on inaccurate information from Mother. Student was never fired from CVS, but did well on the job. Neither of Student's experts opined that the transition services District offered were inappropriate or failed to meet Student's needs known to the IEP team at the time of either IEP team meeting.

83. In conclusion, Student met his burden of proof that District's termination of speech and language services and its failure to offer any behavioral supports other than the behavior support plan at the February 29, 2016 IEP team meeting denied Student a FAPE. The remedy for this will be discussed below. Student did not prove District's offer of placement and services was a denial of FAPE at the January 14, 2015 IEP team meeting. Student did not prove that District's offer of placement, counseling, and transition services, or the lack of an offer of assistive technology services, denied Student a FAPE at the February 29, 2016 IEP team meeting.

ISSUE 10 - INAPPROPRIATE GRADUATION AND SPECIAL EDUCATION TERMINATION

84. Student contends District inflated his grades, improperly graduated him, and terminated his special education services. District contends Student did the required work in an unmodified manner, met the high school graduation requirements, earned his diploma and was properly exited out of special education.

85. A pupil who is identified by an IEP as a child with a disability who requires special education and related services to receive a FAPE remains eligible after the age of 18, provided the pupil was enrolled in or eligible for the services prior to his 19th birthday, and has not yet completed her prescribed course of study, met proficiency standards, or graduated from high school with a regular high school diploma. (Ed. Code,

§ 56026, subd. (c)(4).) A pupil with exceptional needs who has met all state and school district requirements and graduates from high school with a regular diploma is no longer eligible for special education and related services. (Ed. Code, § 56026.1, subd. (a).)

86. The issue of whether a student with a disability will receive a regular high school diploma or a special education certificate when he graduates from school is not addressed by the IDEA. State law and school district policy exclusively determine diploma and graduation requirements. A regular high school diploma must be fully aligned with the State's academic standards. (34 C.F.R. § 300.102(a)(3)(iv).) If a student with a disability meets all state and school district requirements for an award of a regular high school diploma, he cannot be denied a diploma simply because he has a disability. (*Letter to Anonymous 22 IDELR 456* (OSEP 1994).) Further, the IDEA does not make achievement of a disabled student's IEP goals a prerequisite for awarding a regular high school diploma, as the statute, as a general matter, does not establish standards for graduation. (*Letter to Richards 17 IDELR 288, 289* (OSEP 1990).)

87. Neither the IDEA nor California education law requires that each graduating student exhibit academic proficiency on a 12th grade level. Instead, the State requires that a student complete the curriculum, and have sufficient passing credits in each required area of study. In California, when an individual with exceptional needs meets public education agency requirements for completion of a prescribed course of study designated in the student's IEP, the public education agency which developed the IEP shall award the diploma. (Cal. Code Regs., tit. 5, § 3070.) If a student with a disability meets all state and school district requirements for a diploma, then he cannot be denied it purely because he has a disability. To do so would constitute discrimination based on disability, prohibited under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701, et seq.). (*Letter to Runkl, 25 IDELR 387*(OCR 1996); *Letter to Anonymous 22 IDELR 456* (OSEP 1994).)

88. The school district is required to convene an IEP meeting prior to terminating special education services. (*Letter to Hagen-Gilden* 24 IDELR 294 (OSEP 1996); *Letter to Steinke* 21 IDELR 379 (OSEP1994); 34 C.F.R. 300.102(a)(3)(iii).) The purpose of this IEP meeting is to ensure that the graduation requirements are being met and IEP goals and objectives have been achieved. (*Letter to Richards, supra*, 17 IDELR 288.) The IDEA does not include a requirement that an IEP contain specifically identified graduation criteria or a graduation plan; however, to the extent that a student's disability impacts his ability to earn a regular high school diploma, meeting graduation requirements may become an IEP goal. (34 C.F.R. § 300.320(a).) Commencing with the 2009-2010 school year, a student who has an IEP stating that the student is scheduled to receive a high school diploma that has satisfied all requirements to receive a diploma, is not required to pass the Exit Exam as a condition of receiving a diploma of graduation or as a condition of graduation from high school. (Ed. Code, § 60852.3, subds. (a), (c).)

89. Here, District convened an exit IEP for Student on May 18, 2016. The IEP team advised Student that special education services would end upon graduation. Student had been on a diploma track. Student had earned the requisite 230 credits, had completed the necessary courses with passing grades with accommodations, and took the Exit Exam. Mother's speculations that Student's passing grades were inflated, that Student's curriculum was inappropriately modified in violation of his IEP, and that Student could not perform the course work for which he earned credit were unsupported by any credible evidence. Even though the ability to do 12th grade level work was not a requirement for graduation, Ms. Pierce and Mr. Johnson persuasively opined that Student was able to do the grade level work with his IEP accommodations. Student's June 9, 2016 consent revocation to the May 18, 2016 IEP document was insufficient to delay graduation or prevent District from exiting him from special education. Once general education graduation requirements were met at the end of the

2015-2016 school year, District was required to award Student a regular high school diploma. By June 10, 2016, Student had met all of high school graduation requirements pursuant to his IEP accommodations for the Class of 2015.

90. Therefore, Student did not prove District improperly awarded him a high school diploma, graduated him and terminated his special education services. Student's graduation with a regular high school diploma was appropriate. Upon graduation, District appropriately terminated Student from special education related services.

REMEDIES

1. Student requests independent assessments and compensatory education to compensate for the assessments and services Student should have received if District provided a FAPE. Student also requests that District rescind his diploma, retain him in high school and make him eligible for special education services until he turned 22 years old. District contends no remedies are appropriate because Student did not meet his burden of persuasion on any issue.

2. Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*Burlington v. Department of Education* (1985) 471 U.S. 359, 374 [105 S.Ct. 1996, 85 L.Ed. 2d 385].) In addition to reimbursement, school districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at p.1496.)

3. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would

have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

4. Although Student was entitled to compensatory relief, Dr. Rome's recommendation for compensatory services was excessive and inappropriate. Dr. Rome did not observe Student at school and did not have the appropriate information to make educational recommendations consistent with Student's needs. His recommendations were based on his mistaken impression that District was required to "treat" Student for the autism spectrum disorder medical diagnosis, as opposed to providing Student with access to a FAPE under *Rowley*. Further, an independent functional behavioral assessment was not an appropriate remedy because Student had already graduated. Academic assistance and speech and language services would be appropriate as Student could benefit from these services.

5. Student was entitled to relief based on District's failure to conduct a functional behavioral assessment and failure to offer appropriate behavioral supports at the February 29, 2016 IEP team meeting. District's conduct denied Student a FAPE for approximately 40 weeks, including the 2015 extended school year, and excluding time when school was not in session, from April 14, 2015, (60 days after District should have commenced the process to assess Student's functional behaviors) to May 20, 2016, (when Student received full education benefits by completing extra credit work upon realizing that graduation was within his grasp). Therefore, an appropriate remedy would be 60 hours of District funded one-to-one academic instruction from a non-public agency calculated from multiplying 40 weeks by one and a half hours each week. District's termination of speech and language services at the February 29, 2016 IEP team meeting also denied Student a FAPE for approximately six weeks, from April 21, 2016, (the date Student consented to the February 29, 2016 IEP terminating speech and language services) to June 10, 2016, (the date he graduated). Therefore, an appropriate

remedy would be nine hours of District funded speech and language services from a non-public agency calculated from multiplying six weeks by one and a half hours each week. Student is awarded a total of 69 hours of District funded compensatory services from non-public agencies providing one-to-one academic instruction and speech and language services. The academic instruction shall be with a credentialed teacher experienced in teaching students with ADHD and/or language difficulties. The speech and language services shall be with a speech pathologist who could work on transition based communication skills used in a community college and/or work related settings.

ORDER

1. Student is awarded a total of 69 hours of District funded compensatory services from non-public agencies providing: 60 hours of one-to-one academic instruction and nine hours of speech and language services. The academic instruction shall be with a credentialed teacher experienced in teaching students with ADHD and/or language difficulties. The speech and language services shall be with a speech pathologist who could work on transition based communication skills used in a community college and/or work related settings.

2. Within 10 days of the date of this decision, District shall provide Student with: (a) a list of three academic instruction non-public agencies with a credentialed teacher experienced in teaching students with ADHD and/or language difficulties; and (b) a list of three speech and language non-public agencies with speech pathologists. Within 20 days of the date of this decision, Student shall communicate to District, in writing, the name of the non-public agencies Student has chosen from the lists provided by District. If Student does not provide this information to District, District shall select the non-public agency, or agencies, to provide the 69 hours of compensatory services. Within 45 days of the date of this decision, District shall contact and fund the non-public agency, or agencies, of Student's choice to provide 60 hours of one-to-one academic

instruction and nine hours of speech and language services.

3. Any compensatory service time awarded by this Decision must be used by August 1, 2018, or Student will forfeit the unused hours.

4. All other requests for relief are 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, Student was the prevailing party as to Student's Issues 1(a) and 9(b)(ii) and 9(b)(iv); and District was the prevailing party as to its one issue and Student's Issues 1(b), 2(a)(b), 3, 4(a)(b), 5(a)(b), 6(a)(i),(ii),(iii), 6(b), 6(c), 7, 8, 9(a) (i),(ii)(iii),(iv),(v),(vi), 9(b)(i),(iii),(v),(vi), 10(a) and 10(b).

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 22, 2016

/s/ _____

SABRINA KONG

Administrative Law Judge

Office of Administrative Hearings