

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL
DISTRICT.

OAH Case No. 2016090418

DECISION

Student filed a request for due process hearing on September 6, 2016, naming San Mateo-Foster City School District. The matter was continued for good cause on October 21, 2016.

Administrative Law Judge Dena Coggins heard this matter in Oakland, California, on March 1, March 2, March 7, March 8, March 9, and March 14, 2017.

Advocate Naum Morgovsky represented Student at the hearing. Mother attended most hearing days. Student was not present.

Attorney Lenore Silverman represented San Mateo-Foster City at the hearing. Molly Barton, San Mateo-Foster City's Assistant Superintendent, attended each day of hearing.

At the conclusion of the hearing, the matter was continued to April 6, 2017, to afford the parties an opportunity to submit written closing briefs. The record closed with the parties' submission of closing briefs and the matter was submitted for decision.¹

ISSUES²

Issue 1: Did San Mateo-Foster City commit the following procedural violations in the September 5, 2014³ individualized education program, resulting in a denial of a free appropriate public education through November 5, 2014:

¹ Both parties submitted closing briefs on April 6, 2017, then resubmitted their closing briefs on April 7, 2017. Student's closing brief was corrupted and could not be opened by OAH. Student was notified and resubmitted her closing brief the following day. San Mateo-Foster City submitted a corrected closing brief to correct two typographical errors in its original closing brief. On April 7, 2017, the District filed an objection to the late filing of Student's closing brief and objected to OAH's consideration of Student's closing brief. San Mateo-Foster City's objection is overruled, as it failed to establish how the resubmission of Student's closing brief prejudiced San Mateo-Foster City.

² The issues have been rephrased and reorganized for clarity. The issues have been renumbered from the prehearing conference order. 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.)

³ OAH extended the statute of limitations period to September 5, 2014, based upon a state holiday that fell on September 5, 2016. The order was issued on February 24, 2017.

- (a) failing to sufficiently identify the members of the IEP team in the August 28, 2014 notice of meeting;
- (b) excluding Student's special education teacher from the IEP team and replacing her with a teacher who was unfamiliar with Student;
- (c) permitting several members of the IEP team to participate in the September 5, 2014 IEP team meeting, by telephone without Mother's prior knowledge and without Mother's consent;
- (d) predetermining Student's IEP;
- (e) developing the IEP with false, misleading, and outdated present levels of performance;
- (f) failing to include an adequate description of the manner in which Student's progress toward meeting her annual goals would be measured;
- (g) failing to state when periodic reports on Student's progress would be provided;

At hearing, the issues were further clarified. Specifically, the February 28, 2017 order following prehearing conference, stated the IEP at issue in Student's Issue 1 related to the September 5, 2015 IEP. At hearing, Student's advocate clarified the IEP at issue was dated September 5, 2014.

In Student's Issue 1(c), Student's advocate clarified at hearing that the IEP meeting at issue occurred on September 5, 2014, not September 5, 2015, as stated in the February 28, 2017 order following prehearing conference.

In Student's Issue 4, Student's advocate clarified at hearing that the amended IEP at issue was dated May 1, 2014, not May 14, 2014, as stated in the February 28, 2017 order following prehearing conference.

- (h) failing to provide measurable goals; and
- (i) failing to include a statement of the special education and related services and supplementary aids and services based on peer-reviewed research to any extent they were to be provided to Student?

Issue 2: Did San Mateo-Foster City deny Student a FAPE from September 5, 2014, through November 5, 2014, by offering Student a placement at Edgewood in the September 5, 2014 IEP?

Issue 3: Did San Mateo-Foster City deny Student a FAPE, from September 5, 2014, through November 5, 2014, by failing to include Mother in the development of the referral packet and failing to remove and/or correct inaccurate, false, and misleading information from the referral packet?

Issue 4: Did San Mateo-Foster City deny Student a FAPE, from September 5, 2014, through November 5, 2014 by Edgewood's failure to provide the therapy mandated by Student's September 6, 2013 IEP, and May 1, 2014 amended IEP?

SUMMARY OF DECISION

Student contends San Mateo-Foster City denied her a FAPE, procedurally and substantively, from September 5, 2014, through November 5, 2014. San Mateo-Foster City denies all allegations that it failed to offer or provide Student a FAPE during the relevant period.

This Decision holds that San Mateo-Foster City committed a procedural violation when it failed to include a special education teacher who had previously taught Student as a member of the IEP team on September 5, 2014. However, Student failed to prove that this procedural violation resulted in a denial of FAPE to Student. This Decision further holds that San Mateo-Foster City did not deny Student a FAPE, either procedurally or substantively, from September 5, 2014, through November 5, 2014, as to any of the remaining issues alleged by Student.

FACTUAL FINDINGS

JURISDICTION

1. Student is a 12-year-old student who lived within the boundaries of San Mateo-Foster City at all relevant times. Student qualifies for special education under the primary category of emotional disturbance.⁴

STUDENT'S BACKGROUND AND HISTORY OF BEHAVIORAL CHALLENGES

2. Student has a history of physical aggression at home and at school, which has been well-documented and will be discussed more fully below. Student's behavior resulted in a psychiatric hospitalization six months before the relevant period because of behavior occurring outside of school. Student has been diagnosed with attention deficit/hyperactivity disorder – combined type, disruptive behavior disorder – not otherwise specified, and night terrors.

3. Student transferred from Belmont-Redwood Shores School District to San Mateo-Foster City on March 3, 2014, after her family moved into the school district's boundaries. Student was attending Edgewood nonpublic school in San Francisco,

⁴ Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational program: (A) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (B) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) inappropriate types of behavior or feelings under normal circumstances; (D) a general pervasive mood of unhappiness or depression; and/or (E) a tendency to develop physical symptoms or fears associated with personal or school problems. (34 C.F.R. § 300.8(c)(4)(i); Cal. Code Regs., tit. 5, § 3030, subd. (b)(4).)

California at the time she disenrolled from Belmont-Redwood Shores. This placement was pursuant to an IEP. Edgewood provides a therapeutic day treatment program for its students. Day treatment services provide a mental health component embedded in students' educational programs with smaller class sizes, additional staffing, and staff trained and knowledgeable about behavior intervention. Day treatment at Edgewood is to include therapy services, group therapy, individual therapy, parent counseling 40 minutes per week, and one-to-one behavior services throughout the school day. Student also received in-home wraparound services once per week beginning in January 2014 from Edgewood.

JUNE 6, 2013 IEP

4. While enrolled at Belmont-Redwood Shores, the IEP team drafted an annual IEP for Student on June 6, 2013. Mother consented to the June 6, 2013 IEP.

5. The IEP team determined Student needed goals in the areas of mental health, family therapy, and occupational therapy/fine motor to receive educational benefit. The IEP team proposed six goals in the areas of behavior, mental health, and occupational therapy. The June 6, 2013 IEP offered Student individual and group day treatment services, parent counseling, occupational therapy, specialized academic instruction, and intensive individual services. This was the IEP in effect when Student moved into the boundaries of San Mateo-Foster City.

PSYCHIATRIC HOSPITALIZATION AT JOHN MUIR

6. As discussed above, Student was enrolled at San Mateo-Foster City on March 3, 2014. At that time, Student continued to have behavioral challenges. She had frequent meltdowns and needed to be restrained in a harness in the car because of her unsafe behaviors during transportation. Student was transported to school by her family. Mother described her behavior as "very challenging." Although Student

continued in her placement at Edgewood at the time of enrollment, Mother expressed concerns to Griffith Montgomery, Student's San Mateo-Foster City program specialist, that Student needed a more restrictive placement.⁵

7. On March 18, 2014, Student was admitted involuntarily to John Muir Behavioral Health Center for self-injurious behavior. She was discharged on March 27, 2014. John Muir staff provided Mother with a history and physical exam report, psychiatric admission evaluation, and discharge summary. John Muir staff provided diagnostic impressions in the psychiatric admission evaluation, diagnosing bipolar disorder, manic type; cyclothymic disorder; intermittent explosive disorder, and attention deficit hyperactivity disorder, combined type. According to the discharge summary, Student required one-on-one nursing support because of her lack of impulse control, unstable mood, and self-injurious behaviors at the beginning of her hospitalization. The summary further detailed Student's behavior that included yelling, cursing at staff, inability to focus or participate in group activities, and aggressive behavior towards Mother during hospital visits. The information contained in the John Muir documents provides insight into the information known by the IEP team during the relevant period.

MAY 1, 2014 IEP TEAM MEETING

8. At the time Student enrolled in San Mateo-Foster City, Mother informed staff that she believed Student required a residential treatment program. On April 25, 2014, San Mateo-Foster City sent an assessment plan to Mother proposing to assess

⁵ At hearing, Student argued San Mateo-Foster City unduly delayed responding to Mother's request to meet with its staff about Student upon her enrollment. No finding is made as to that allegation, as that issue falls outside of the relevant time period.

Student in the areas of academic achievement, health, intellectual development, motor development, social/emotional functioning, adaptive behavior, and mental health. San Mateo-Foster City determined reassessment was necessary to better understand Student's current levels of functioning and gather information about her educationally related needs.

9. On April 29, 2014, Naum Morgovsky, advocate and family member of Mother and Student, provided an edited assessment plan to John Barfield, San Mateo-Foster City Director of Special Education, and Mr. Montgomery. Mr. Morgovsky, who claimed to be acting as "attorney-in-fact" for Mother, consented to the assessment plan, but indicated it was imperative the assessment be completed immediately, and requested the assessors review several documents pertaining to Student, including the John Muir documents. Mr. Morgovsky attached the John Muir discharge summary, psychiatric admission evaluation, and history and physical exam report to the signed assessment plan. However, consent to the assessment was subsequently withdrawn by Mother through Mr. Morgovsky on April 30, 2014.

10. On May 1, 2014, San Mateo-Foster City convened an IEP team meeting for the purpose of a 30-day review of Student's placement at Edgewood, progress on goals, review of services, and discussion of parent concerns. At the time of the meeting, Student was in the third grade at Edgewood. Mother; Mr. Morgovsky; and Mr. Montgomery attended the meeting. Additionally, Alexis Morgan, San Mateo Children and Family Services caseworker;⁶ Keri Kirby, Director of Education at Edgewood; Carly

⁶ Mr. Morgovsky requested the presence of San Mateo Children and Family Services at the IEP team meeting in an email to Mr. Barfield on April 24, 2014. Edgewood referred Student to the agency on multiple occasions while she attended Edgewood because of injuries observed on Student by Edgewood staff. It appears from the

Earnshaw, Student's therapist at Edgewood; Jessica Colangelo, Student's special education teacher for the 2013-2014 school year at Edgewood; and Jason Murray, Edgewood behavior program manager also attended the meeting.

11. Ms. Kirby discussed Student's academic and social strengths, behavioral difficulties, target behaviors, current behavior intervention plan, and progress on goals in great detail. Student was performing in the above average range in reading and reading fluency, could comprehend grade level material, and was considered to be skilled in mathematical fluency. Ms. Earnshaw, who had been working with Student since January 2013, discussed Student's behavior support plan, behavior in the classroom, the therapeutic interventions she utilized with Student, and her opinion that Student required a more restrictive placement in a residential setting.

12. Student had significant behavioral challenges at school. According to Ms. Kirby, Student's behavioral difficulties resulted in missed learning opportunities and she completed minimal work assignments at school. Student was reported to be leaving her assigned area at school approximately 20 to 30 times per day. Student was noted to exhibit assaultive behaviors such as hitting, kicking, fighting, stabbing, and scratching classroom staff one to 10 times per day, and exhibiting sexualized behaviors one to two times per day. The sexualized behaviors were described by Ms. Kirby as saying provocative things and taking off her clothes. Ms. Kirby informed the IEP team that Student's behavior had significantly regressed since the beginning of 2014, her participation in class declined, she presented with significant anxiety, and she was only spending 10 percent of her time in the classroom. Mother expressed concern about injuries she believed Student received from restraints by Edgewood staff. Edgewood

evidence that the concerns relating to the San Mateo Children and Family Services referrals were not substantiated.

staff believed Student's behavioral challenges precluded her from receiving academic benefit in her school environment.

13. During the meeting, San Mateo-Foster City, again, proposed a comprehensive assessment of Student in the area of academic achievement, health, intellectual development, motor development, social/emotional functioning, adaptive behavior, and mental health in order to consider whether Student required a residential placement to receive educational benefit. Mother would not consent to the assessment plan without San Mateo-Foster City specifying the exact amount of time it would take to complete the assessments. San Mateo-Foster City's response that the assessments could take up to 60 days to complete was not well-received by Mother and Mr. Morgovsky because they believed Student needed residential treatment without delay. Mother did not consent to the contents of the amendment to the IEP or the assessment plan proposed during the meeting.

14. Following the meeting, San Mateo-Foster City proposed limiting its assessment to an expedited educationally related mental health assessment to determine if Student required residential placement to benefit from her education. The assessment was to be conducted by a licensed educational psychologist and would be completed within two weeks. San Mateo-Foster City proposed convening an IEP team meeting on May 13, or May 14, 2014, to discuss the results of the assessment and recommendations. Mother consented to the revised assessment plan.

EDUCATIONALLY RELATED MENTAL HEALTH ASSESSMENT

15. San Mateo-Foster City referred Student to Pamela Mills, Ed.D., Ph.D., to conduct the educationally related mental health assessment of Student. Dr. Mills conducted the mental health assessment on May 6, May 7, and May 9, 2014. The purpose of the assessment was to assist the IEP team in determining whether Student

required a residential treatment facility to receive educational benefit. Dr. Mills prepared a report of Student's assessment results on May 14, 2014.⁷ Dr. Mills testified at hearing.

16. Dr. Mills is a licensed psychologist and educational psychologist. She received doctorates in clinical psychology and counseling psychology, a master's degree in education, and bachelor's degree in sociology and psychology. She has a California Life Standard teaching credential; California Life Designated Services Credential in counseling; California Designated Services Credential in school psychology; and California Administrative Services Credential. Dr. Mills is in private practice as a psychologist and educational consultant, providing psychological, psycho-educational, and behavioral assessments, among other things. Previously, she was the interim Executive Director of Special Education at San Francisco Unified School District, a supervisor/program administrator at San Francisco Unified School District, and the Director of school psychology master of arts/credential program at Alliant International University. She has also been a lead psychologist at San Francisco Unified School District, clinical psychologist at Kaiser Permanente Medical Group, therapist, and educational consultant. Dr. Mills has received advanced training in autism and developmental disabilities, learning disabilities, attention deficit hyperactivity disorder, neuropsychology, and behavioral and emotional assessment and intervention.

17. Dr. Mills observed Student in the classroom, and reviewed records including IEP's, a 2013 psycho educational assessment, behavior assessment, occupational therapy report, and the John Muir Hospital intake and discharge summaries. Dr. Mills interviewed Mother; Molly Schembri, case manager at Edgewood in

⁷ The mental health assessment was found to have met all legal requirements in a decision by the Office of Administrative Hearings on December 10, 2014, in OAH case number 2014100402.

the wraparound program; Ms. Morgan, CPS case worker; Ms. Kirby; Dan Ecklund, mental health rehabilitation services lead; and Jacob Dillon, Edgewood classroom support staff. Student's special education teacher, Ms. Colangelo, and Edgewood therapist, Ms. Earnshaw, were not interviewed despite Dr. Mills' attempts to reach them.

18. Based on assessment results, Dr. Mills recommended the IEP team discuss the benefits of placing Student in a therapeutic residential program to address her educational, behavioral, and emotional needs.

19. On May 7, 2014, Mr. Morgovsky sent a letter to San Mateo-Foster City providing a ten-day notice of intent to unilaterally place Student in a private placement if it failed to offer or approve a placement for Student that would meet her educational needs. Mother did not subsequently unilaterally place Student in a private placement and Student remained at Edgewood.

MAY 14, 2014 IEP TEAM MEETING

20. The IEP team met on May 14, 2014. Mother and Grandmother attended the meeting. Mr. Morgovsky attended the meeting by telephone. Also, Mr. Barfield; Mr. Montgomery; Ms. Kirby; Jason Murray, behavior manager; Dr. Mills; and Melanie Seymour,⁸ counsel for San Mateo-Foster City attended the meeting. Additional meeting attendees included Ms. Schembri; Ms. Colangelo; Billy Broomer, program manager for the wraparound program at Edgewood; and Ms. Morgan. The purpose of the meeting was to give Dr. Mills an opportunity to review the results of Student's mental health assessment results.

⁸Ms. Seymour's last name has been changed to Larzul since the time of the IEP team meeting. For clarity of the record, she will be referred to as Ms. Seymour in this Decision.

21. Dr. Mills shared Student's mental health assessment results and a summary of her observations of Student with the IEP team. Dr. Mills opined Student was not receiving an appropriate education at Edgewood based on the assessment results and her observation of Student in the school setting. All members of the IEP team and Dr. Mills believed Student required placement at a residential treatment facility to receive a FAPE based on the information available to the IEP team at the time of the meeting. Mother agreed.

22. The entire IEP team, including Mother, believed Student was not receiving educational benefit at the nonpublic school and recommended Student be placed in a residential treatment program. The need for residential treatment was based upon Dr. Mills' report, information from Mother, Ms. Morgan, and Edgewood staff.

23. The IEP team discussed residential treatment program options. Mother signed consent to release and exchange information allowing San Mateo-Foster City to provide records requested by the residential treatment programs for acceptance determinations by the residential programs. San Mateo-Foster City agreed to send referral packets to specific residential treatment programs in and out of the state by the following week. The IEP team offered continued placement at Edgewood while referring Student to residential placement facilities.

24. At the meeting, Mother consented to the contents of the amendment to the IEP dated September 6, 2013.

REFERRAL TO RESIDENTIAL TREATMENT PROGRAMS

25. San Mateo-Foster City sent referral packets to several residential treatment programs. The referral packets contained records relating to Student, including the John Muir hospitalization summaries and a detention report prepared by San Mateo County Human Services Agency, Children and Family Services, in connection with a dependency proceeding based upon a referral regarding general neglect. The detention report

contained information about Student's prior welfare history, need for continued detention, and witness statements.

26. Student was not accepted by any of the residential treatment programs identified for referral by the IEP team. Their decision not to accept Student into those programs was before the relevant period in this matter.

2014 EXTENDED SCHOOL YEAR

27. Student received extended school year services at Edgewood between June 2, 2014, and July 18, 2014. Student made significant behavioral improvements during the extended school year, both at home and at school. Student began taking Abilify in late May 2014 or early June 2014 to regulate her mood and attention. Mother believed Student's behavioral gains during the extended school year, were due to Student's new medication regimen.

AUGUST 28, 2014 ASSESSMENT PLAN AND NOTICE OF MEETING

28. On August 28, 2014, San Mateo-Foster City provided Mother with notice of a September 5, 2014 IEP meeting in a notice of meeting. In the notice of meeting, the date, time, and location of the meeting was provided. The notice of meeting stated the meeting was an IEP team meeting for Student and stressed the importance of Mother's participation in the development of an appropriate education for Student. The meeting notice also provided Mr. Montgomery's contact information, if Mother desired further information about the purpose of the meeting or about her procedural safeguards. The notice provided the position of the IEP team members who San Mateo-Foster City anticipated would be attending the meeting. San Mateo-Foster City identified an administrator/designee, psychologist, Dr. Mills, Edgewood Director, Edgewood therapist, Edgewood special education teacher, Edgewood clinical case manager, Mr. Morgovsky,

and Grandmother. Mr. Morgovsky signed the meeting notice as Mother's attorney-in-fact, indicating Mother planned to attend the meeting.⁹

29. On August 28, 2014, San Mateo-Foster City also prepared an assessment plan for Student. San Mateo-Foster City proposed assessing Student to determine her continued eligibility for special education services and present levels of academic performance and functional achievement. San Mateo-Foster City proposed assessing Student in the areas of academic achievement, health, intellectual development, language/speech communication development, motor development, social/emotional functioning, and adaptive/behavior.

30. Mr. Morgovsky signed the assessment plan on September 2, 2014, consenting to the assessment plan only if San Mateo-Foster City identified who would be conducting the assessments with particularity, instead of providing only the title of the examiner, as well as the proposed assessors' qualifications to conduct the assessment and the procedures that would be utilized. Consent was revoked at the next IEP team meeting on September 5, 2014.

SEPTEMBER 5, 2014 IEP TEAM MEETING

31. On September 5, 2014, San Mateo-Foster City convened an IEP team meeting. Mother, Mr. Morgovsky, and Grandmother attended the meeting. Mr. Bartfield, Mr. Montgomery, Dr. Mills, Ms. Schembri, and Ms. Seymour were also present at the meeting. Staff attending from Edgewood included Ms. Kirby; Ms. Earnshaw; and Matthew Wilson, Student's new special education teacher for her fourth grade year at Edgewood. The Edgewood staff attended the meeting telephonically. At the time of the

⁹No findings are being made as to the propriety of Mr. Morgovsky being able to sign documents as an "attorney-in-fact" in place of Mother as the issue has not been raised or litigated in this matter.

meeting, Student was in the fourth grade, but had not attended school since the extended school year because Mother did not allow her to return to Edgewood.

32. San Mateo-Foster City personnel arrived at the meeting with a draft copy of the IEP. The draft copy was not presented to Mother, as the IEP team discussed items, such as academic achievement and functional performance, goals, related services, accommodations and modification, and placement options during the meeting, and the draft was revised accordingly.

33. The purpose of the meeting was an annual review of Student's IEP. Edgewood staff noticed dramatic improvements in Student's behavior during the extended school year after Student started taking Abilify, but believed the short time period of improved behavior was not sufficient to provide an accurate picture of Student's potential. Ms. Kirby reported there was a reduction in the need to physically restrain Student and Student was able to spend more time in the classroom with her peers, increase her time in therapy with Ms. Earnshaw, and transition to having therapy sessions without the need for classroom staff to supervise her in the room. Ms. Kirby estimated Student was able to spend about 50 percent of time in the classroom during the extended school year, and her ability to sustain attention was estimated to have increased from three to five minutes to 20 to 30 minutes. Ms. Kirby also noted Student was able to raise her hand and verbalize a need for help. Neither Ms. Kirby nor Ms. Earnshaw testified at hearing, so no determination is made as to the truthfulness of these statements. However their observations as shared with the IEP team is helpful in determining what information the IEP team knew regarding Student at the time of the IEP team meeting.

34. At the time of the meeting, Student required specialized therapeutic support in order to build positive behavioral skills and coping strategies. Edgewood staff reported Student was in the above average range for reading and reading fluency, and

was able to comprehend grade level and above grade level selections. She maintained grade level proficiency in mathematics. Mr. Wilson reviewed Student's present levels of performance in the area of academics through the extended school year. Edgewood staff provided a report of Student's present levels of academic and functional performance, which reviewed her target behaviors before and after beginning her medication regimen. Mr. Wilson expressed a concern that Edgewood was unable to get an accurate baseline of Student's academic levels because her behavior was impeding her ability to complete school work. Mr. Wilson had never met Student, never taught her at any time, and was only familiar with her from information provided to him by others.

35. Mother presented a letter from Trudy Hartman, M.D., Student's treating psychiatrist, dated August 24, 2014, to the IEP team. The letter stated Dr. Hartman was a board certified psychiatrist licensed to practice in California. While Dr. Hartman did not testify at hearing, the information she provided in her letter is helpful in understanding what information the IEP team had when making its offer of a FAPE at the meeting. Dr. Hartman noted that Student started taking Abilify on May 29, and Dr. Hartman observed significant improvement in Student. Dr. Hartman did not observe Student having tantrums, Student transitioned from the waiting room to Dr. Hartman's office easily, was less anxious and hyperactive, and could play with one toy for a longer period of time. Dr. Hartman opined Student required a special school for emotionally disturbed children.

36. Ms. Schembri, a marriage family therapist, provided wraparound services through Edgewood to Student, beginning in January 2014, which was to help support Student and her family. Wraparound services included family therapy, in-home behavior coaching, family conferences, and case management. Mother testified that Ms. Schembri did not provide the amount of therapy Student was to receive between January 2014 and April 2014, and she did not believe the therapy provided by Ms. Schembri was

helpful, although it is not clear what amount of wraparound services Ms. Schembri did or did not provide. Mother declined all wraparound services except behavior coaching once per week after April 2014. Behavior coaching was stopped in August 2014 pursuant to Mother's request.

37. For Student to receive educational benefit, the IEP team determined Student required goals in the area of mental health, family therapy, and occupational therapy to address fine motor needs. The evidence at hearing provided information regarding three of Student's goals. Ms. Earnshaw discussed those three proposed goals during the meeting.

38. The first goal was to address Student's anxiety symptoms, including grinding her teeth, picking her skin, running from adults, and irritability. The goal was to decrease Student's anxiety symptoms to three times per day as reported by Student's family therapist and school staff. Student's baseline for exhibiting anxiety symptoms was noted as 10times a day.

39. The second goal was to decrease aggressive outbursts, including hitting, kicking, cursing, and throwing objects from a baseline of two times per day to a goal of one time per day as reported by her therapist and school staff.

40. The third proposed goal was for Student to improve impulse control, including staying focused on task, sitting in her seat or assigned area, and considering consequences before acting from a baseline of two times a day to a goal of 10times a day as reported by Student's family therapist and school staff.

41. The IEP team discussed revising and updating the proposed goals once an assessment of Student was completed. Ms. Earnshaw's recommendation of residential treatment for Student had not changed since the prior IEP team meeting, because she did not believe there was enough information about Student to make any changes to the recommendation. Ms. Earnshaw did not testify, so it is unclear exactly what she

relied upon in making her recommendation for residential treatment for Student. The Edgewood staff stayed for about one-half of the meeting before ending the call. The Edgewood staff left the meeting before a discussion ensued regarding the offer of FAPE from San Mateo-Foster City staff.¹⁰

42. The IEP team discussed a range of learning environments for Student including day treatment programs and a residential treatment program. The IEP team, including Mother, agreed that Student should remain in a therapeutic day treatment program based upon the information known to the IEP team at the time of the meeting, including her substantial behavioral improvement during the extended school year after beginning Abilify.

43. Mr. Bartfield and Mr. Montgomery, members of the IEP team, testified at hearing. Both agreed that at the time of the IEP team meeting Student should remain in a therapeutic day treatment program.

44. Mr. Bartfield has been the Director of Special Education at San Mateo-Foster City since 2012. In his current position, he manages the special education department; directly supervises psychologists, speech/language pathologists, occupational therapists, physical therapists, hearing specialists, and program specialists; and oversees special education instruction by special day class teachers and resource specialists. Prior to his current role, he was a school psychologist for 10 years, and a special day class teacher for five years. He has a master's degree in educational psychology, an education specialist degree in school psychology, and a bachelor's degree in sociology. He has a professional administrative credential, professional pupil

¹⁰ No determination is made as to whether the IEP members were properly excused from the meeting because this was not raised as an issue in Student's complaint.

personnel services credential in school psychology, and has received behavior intervention case manager training.

45. Mr. Montgomery testified at hearing. He has been a program specialist for San Mateo-Foster City since 2013. He has also held positions at other school districts as a resource specialist, instructional associate, and instructional aide. He has a master's degree in special education and bachelor's degree in liberal arts. He has a professional clear education specialist instruction credential, mild/moderate disabilities. As a program specialist, Mr. Montgomery is responsible for overseeing San Mateo-Foster City students placed at nonpublic schools, organizing IEP team meetings, handling family concerns, and attending IEP team meetings.

46. The IEP team offered supplementary aids, services and other supports for Student. Those aids, services, and supports included occupational therapy consultation with classroom staff and family, snacks available throughout the day, visual representation of daily schedule, notes of encouragement from adult staff members, and individual incentive chart on Student's desk with targeted behavior to work on. Also, Student was offered breaks at the end of instructional period as needed, breaks to visit the sensory room, walks to the garden and around campus, and specialized supports to be used in the vehicle used by Student's family to transport Student to and from school. The IEP team also offered Student curb to curb transportation to Edgewood.

47. The IEP team's offer of FAPE included group specialized academic instruction for 1,585 minutes per week, individual and group day treatment services for 900 minutes per week, individual and group, parent counseling for 60 minutes per week, and individual occupational therapy for 45 minutes per week. All services were to begin on September 5, 2014, and were to be provided by a nonpublic school. The IEP team offered Student extended school year services, which were the same services, same duration and frequency, and same provider as the services offered during the school

year. All extended year services were to begin on June 1, 2015. Mother was to be informed of Student's progress each trimester by a progress summary report.

48. San Mateo-Foster City was willing to transition Student to another appropriate nonpublic school upon acceptance because Mother was dissatisfied with Edgewood. The IEP team discussed the development of referral packets for referral of Student to nonpublic schools other than Edgewood. Mother did not want certain information included in the referral packet about Student, including information relating to sexualized behavior. The IEP team agreed to provide Mother with a list of records requested by the nonpublic schools to which Student was to be referred before any records were sent to the nonpublic schools. Mother signed releases of information forms to allow San Mateo-Foster City to contact nonpublic schools to inquire about the referral process only, but not to exchange information until receiving approval from Mother and Mr. Morgovsky.

49. Mother requested Student be provided with home instruction while Student was being referred to nonpublic schools. San Mateo-Foster City agreed to respond to Mother's request after the meeting, but made an offer to continue Student's placement at Edgewood while exploring other nonpublic school placement options.¹¹ Edgewood was willing to continue with Student's placement and there was no evidence that Edgewood could not implement Student's IEP while she attended school there.

50. Mother actively participated in the IEP team meeting, along with Mr. Morgovsky, and provided substantial input regarding referrals to other schools and expressed concerns about Student's continued placement at Edgewood.

¹¹ In Student's May 14, 2014 IEP, Mother consented to Student's placement remaining at Edgewood; therefore, Edgewood was the last agreed upon placement at the time of the meeting.

51. The IEP team drafted an assessment plan to assess Student in the area of social/emotional functioning, adaptive behavior, and health assessment. The IEP team proposed assessing Student in order to obtain Student's present levels of performance and functional behavior since Student had made significant behavioral changes, but had not attended school since the extended school year. Although Mother signed the assessment plan at the IEP meeting, she did not indicate whether she was consenting to the assessment plan on the form because she did not check the box indicating consent.

52. Mother did not consent to the September 5, 2014 IEP.

SAN MATEO-FOSTER CITY'S ATTEMPTS TO REACH AGREEMENT REGARDING REFERRAL PACKETS FOR NONPUBLIC SCHOOLS

53. Shortly after the meeting, on September 8, and September 9, 2014, Mr. Montgomery emailed Mother and Mr. Morgovsky. In the email correspondence, Mr. Montgomery stated he had been in contact with several of the potential nonpublic schools the IEP team discussed as potential placement options for Student. In the emails, Mr. Montgomery provided Mother and Mr. Morgovsky information about the specific documents requested by each school to begin the referral process. Mr. Montgomery received no response and followed up with another email on September 9, saying San Mateo-Foster City needed Mother to sign new releases of information to allow it to submit the requested referral information to the nonpublic schools.

54. Mother would not consent to allow San Mateo-Foster City to send referral packets to the nonpublic schools without first approving all documents that would be sent, and removing documents previously provided in the referral packets for residential treatment programs, including the mental health assessment report prepared by Dr. Mills, the San Mateo Children and Family Services detention report, information contained in IEPs, and the hospitalization summaries from John Muir. Consequently, the referral packets for nonpublic schools were never created.

55. Following the IEP team meeting, in a letter dated September 10, 2014, Mr. Morgovsky stated that it would be improper and extremely risky to submit the same information sent in the referral packets to residential programs to a nonpublic school because the family believed the residential program referral packets contained inaccurate and misleading information, including the information in Dr. Mills' report. In another letter to Mr. Montgomery, Mr. Morgovsky asked that he be allowed to interview Edgewood staff who were formerly members of the IEP team and contributed to and/or created the information contained in the September 5, 2014 IEP. Mr. Morgovsky and Mother believed some of the information contained in the proposed IEP document was inaccurate, misleading, and outdated, including the information about Student's sexualized behaviors. Parent wanted to interview Ms. Colangelo and Ms. Earnshaw. Mr. Morgovsky asked to audio record the interview. Ms. Colangelo continued to work at Edgewood, but in a different capacity.

56. In an email dated September 12, 2014, Ms. Seymour informed Mother and Mr. Morgovsky they could interview Edgewood staff, but the interviews could not be recorded out of concern about the adversarial nature of recorded interviews. Additionally, Ms. Seymour indicated that written questions to seek input from Edgewood staff was another avenue Mother could use. In an email sent the same day, Ms. Seymour informed Mother and Mr. Morgovsky that San Mateo-Foster City considered Mother's request during the September 5, 2014 IEP team meeting for Student to receive home instruction, but denied the request because San Mateo-Foster City believed Student was offered a FAPE and there was no reason, medical or otherwise, that Student should be instructed in the home at that time.

57. On October 7, 2014, San Mateo-Foster City noticed an IEP meeting for October 17, 2014 to address all of Mother's concerns. Mother did not agree to attend the IEP meeting.

CALIFORNIA VIRTUAL ACADEMIES

58. On or about October 16, 2014, California Virtual Academies, a public charter school chartered by a school district in a different Special Educational Local Plan Area, sent a request to San Mateo-Foster City for release of Student's records. Specifically, CAVA requested Student's most recent IEP and psychological and speech evaluations. The request stated Student was enrolling in CAVA. San Mateo-Foster City sent CAVA Student's records. Mother believes Student was enrolled at CAVA on or about October 16, 2014, and started classes on or about November 3, 2014. Student was disenrolled from San Mateo-Foster City at the time she was enrolled at CAVA.

59. CAVA sent a letter to San Mateo-Foster City, dated July 17, 2015, stating Student had withdrawn from CAVA. On August 3, 2015, and August 7, 2015, counsel for San Mateo-Foster City sent a letter to Mr. Morgovsky and Mother asking whether Student was still enrolled in CAVA and explaining that if Student was requesting special education services from San Mateo-Foster City, she must be enrolled in San Mateo-Foster City and show proof of residency.

60. On August 28, 2015, CAVA sent a letter to San Mateo-Foster City indicating that Mother withdrew Student from CAVA on July 13, 2015. The letter informed San Mateo-Foster City that CAVA believed Student was enrolled at Esther B. Clark, a nonpublic school in Palo Alto, the family declined CAVA's placement offer, and refused to reenroll Student at CAVA. Mother unilaterally enrolled Student at Esther B. Clark in August 2015 for the 2015-2016 school year.

61. The evidence did not establish Mother informed San Mateo-Foster City of any intent to unilaterally place Student at Esther B. Clarke.

62. On September 11, 2015, counsel for San Mateo-Foster City again sent a letter to Mr. Morgovsky and Mother inquiring into Student's enrollment in school, and attaching an assessment plan to obtain Student's current levels of need if Student was

seeking special education services from San Mateo-Foster City if she continued to meet residency requirements of San Mateo-Foster City. Student did not respond to the inquiry until the following school year when Student re-enrolled in San Mateo-Foster City in June 2016.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA.¹²

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1(2006); Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000, et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (2) to ensure that the rights of children with disabilities and their parents are protected; and (3) to assist States, localities, educational service agencies, and Federal agencies in providing for the education of all children with disabilities. (20 U.S.C. § 1400(d)(1)(A)-(C); 34 C.F.R. 300.1; 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 a parent or guardian, meets state educational standards, and conforms to the child's IEP. (20 U.S.C. § 1401(9)(A-D); 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, subd. (a).) "Related services" are transportation and other developmental, corrective and

¹² Unless otherwise indicated, the legal citations in this Introduction are incorporated by reference into the analysis of each issue decided below.

supportive services that are required to assist the child to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

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

desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. In *Andrew F. ex rel., Joseph F. v. Douglas County School Dist.* (March 22, 2017) No. 15-827, 2017 WL 1066260, at *6 (*Andrew F.*), the Supreme Court clarified that “for children receiving instruction in the regular classroom, [the IDEA’s guarantee of a substantively adequate program of education to all eligible children] would generally require an IEP ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” Put another way, “[f]or a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” (*Id.* at *10 (citing *Rowley*, at pgs. 203-04).) The Court went on to say that the *Rowley* opinion did not “need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level.” (*Id.* at *11.) For a case in which the Student cannot be reasonably expected to “progress[] smoothly through the regular curriculum,” the child’s educational program must be “appropriately ambitious in light of [the child’s] circumstances” (*Ibid.*) The IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at *12.) Importantly, “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” (*Ibid.*)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501,

56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C); Ed. Code, § 56505, subd. (l).) As the petitioning party, Student has the burden of proof by a preponderance of the evidence on all issues in this case. (*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 an Individuals with Disabilities Education Act administrative hearing decision is preponderance of the evidence].)

ISSUE 1(A): DID SAN MATEO-FOSTER CITY COMMIT A PROCEDURAL VIOLATION BY FAILING TO SUFFICIENTLY IDENTIFY THE MEMBERS OF THE IEP TEAM IN THE AUGUST 28, 2014 NOTICE OF MEETING RESULTING IN A FAPE TO STUDENT?

6. Student contends San Mateo-Foster City committed a procedural violation resulting in a denial of a FAPE to Student by providing Mother with a notice of meeting for the September 5, 2014 IEP team meeting that did not identify the name of the IEP team members who would be in attendance. San Mateo-Foster City asserts it was not required to identify the names of individuals who would be attending the IEP team meeting.

Procedural Violations

7. The United States Supreme Court highlighted the importance of the IDEA's procedural requirements. (*Rowley*, at p. 200). Despite that importance, a procedural violation is not automatically considered a FAPE denial. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033 n.3; *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1089.) Procedural inadequacies that result in a loss of

educational opportunity or seriously infringe on a parent's opportunity to participate in the IEP formulation process clearly result in a denial of FAPE. (*Shapiro v. Paradise Valley Unified Sch. Dist.* (9th Cir. 2003) 317 F.3d 1072, 1078; see also *Amanda J. v. Clark County School Dist.*, (9th Cir. 2001) 267 F.3d 877, 892.) "[T]he informed involvement of parents" is central to the IEP process. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994].)

8. Among the most important procedural safeguards are those that protect parents' right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Education* (9th Cir. 2013) 720 F.3d 1038, 1043-1044) (Doug C.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(b).) The IDEA requires that school districts provide notice to parents early enough to ensure that they have an opportunity to attend the IEP meeting. (34 C.F.R. §§ 300.322(a)(1)-(2); 300.501(b)(2).)

9. Notice of an IEP team meeting must indicate the purpose, time, and location of the meeting and who will be in attendance. (34 C.F.R. §§ 300.322(b)(i); Ed. Code, § 56341.5, subd. (c).) The meeting notice must also inform the parents of the provisions in title 34 of the Code of Federal Regulations sections 300.321(a)(6) and (c), relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child, and section 300.321(f), relating to the participation of certain individuals at the initial IEP team meeting. (34 C.F.R. § 300.322(b)(ii).) The school district is not required to identify individuals who will be attending the IEP team meeting by name, as long as the notice identifies the individuals by position. (*Letter to Livingston*, 21 IDELR 1060 (OSEP 1994))["While public agencies could elect to indicate in the notice the names, as well as the positions of the individuals who will be in attendance, there is no requirement for public agencies to do so."].)

Analysis

10. San Mateo-Foster City provided Mother with notice of the September 5, 2014 IEP team meeting in the August 28, 2014 notice of meeting. The August 28, 2014 meeting notice is dated outside the relevant period. Accordingly, this claim fails on that reason alone. However, even if it is assumed that the procedural violation did not occur until the meeting took place, which was during the relevant period, Student did not meet her burden on this issue.

11. The meeting notice included the time and location of the proposed meeting, as well as the purpose of the IEP team meeting scheduled for Student. The notice also provided a contact person if Mother wanted further information regarding her procedural safeguards or the purpose of the meeting. Additionally, the notice indicated who would be in attendance. Specifically, the notice identified an administrator/designee, psychologist, Dr. Mills, Edgewood Director, Edgewood therapist, Edgewood special education teacher, Edgewood clinical case manager, Mother's attorney-in-fact, and Grandmother.

12. Although it may have been helpful for Mother to prepare for the IEP team meeting if she knew exactly who was going to be in attendance, instead of just the attendees' positions, the law does not require such specificity for proper notice of an IEP team meeting. Therefore, San Mateo-Foster City did not commit a procedural violation resulting in a denial of a FAPE to Student by failing to identify the specific names of individuals who would attend the September 5, 2014 IEP team meeting in the notice of meeting.

ISSUE 1(B): DID SAN MATEO-FOSTER CITY COMMIT A PROCEDURAL VIOLATION RESULTING IN A DENIAL OF A FAPE TO STUDENT BY EXCLUDING STUDENT'S SPECIAL EDUCATION TEACHER FROM THE IEP TEAM AT THE SEPTEMBER 5, 2014 IEP TEAM MEETING AND REPLACING HER WITH A TEACHER WHO WAS UNFAMILIAR WITH STUDENT?

13. Student contends the District denied Student a FAPE by failing to have a special education teacher familiar with Student in attendance at the September 5, 2014 IEP team meeting. San Mateo-Foster City argues Student failed to establish that it denied Student a FAPE by excluding Student's former special education teacher from the IEP team meeting.

14. A school district must ensure the IEP team includes: (1) parents of the child; (2) not less than one regular education teacher of the child, if the child is, or may be, participating in the regular education environment; (3) not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; (4) a district representative; an individual who can interpret the instructional implications of evaluation results; (5) other individuals who have knowledge or special expertise regarding the child; and (6) whenever appropriate, the child with a disability. (34 C.F.R. § 300.321(a)(1)–(7); Ed. Code, § 56341, subd. (b)(1)–(7).)

15. Although the special education teacher or provider on a child's IEP does not need to be the child's current teacher or provider, the individual selected must have worked with the child. (*R.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007) 496 F.3d 932, 940 (“[w]e interpret the statute and regulation to require a special education teacher who actually taught the student.”))

Analysis

16. Ms. Colangelo, Student's special education teacher for the 2013-2014 school year, participated in Student's two IEP team meetings prior to the IEP team

meeting at issue. She did not, however, attend Student's September 5, 2014 IEP team meeting, which occurred during the 2014-2015 school year. During the 2014-2015 school year, Mr. Wilson was assigned to be Student's fourth grade special education teacher. Mr. Wilson participated in the IEP team meeting and provided information about Student to the IEP team. However, Mr. Wilson had never met nor taught Student at any time, and no other special education teacher or provider of Student was in attendance at the meeting. Accordingly, San Mateo-Foster City committed a procedural violation by failing to have a special education teacher who previously taught Student in attendance at the IEP team meeting.

17. It is Student's burden to prove the procedural violation resulted in a loss of educational opportunity or seriously infringed on Mother's opportunity to participate in the IEP formulation process. Student did not establish that the failure to have a special education teacher who taught Student at the IEP team meeting resulted in a loss of educational opportunity. Mr. Wilson was able to provide pertinent information to the IEP team regarding Student's present levels of performance in academics that he received from those familiar with Student. Additionally, based on the information provided during Student's May 1, 2014 and September 5, 2014 IEP team meetings, Ms. Kirby and Ms. Earnshaw had substantial knowledge of Student's behavioral challenges in the classroom, academic performance, behavior intervention plan, and academic and social strengths. Additionally, the IEP team was provided with information from Ms. Kirby and Ms. Earnshaw about Student based on their own personal knowledge of Student. Neither disagreed with the information provided by Mr. Wilson. Further, at the time of the meeting, the IEP team proposed assessing Student to obtain current assessment results to allow the team to craft an educational program and goals that would meet her current needs. Therefore, the IEP team had up-to-date information about Student, and wanted to obtain additional information about Student through assessment,

notwithstanding the fact that a special education teacher who taught Student was not present during the IEP team meeting.

18. Additionally, while Ms. Colangelo was not at the IEP team meeting, she was still employed at Edgewood, and San Mateo-Foster City agreed that Mother could interview Ms. Colangelo or other Edgewood staff to gather any additional information Mother was concerned was false, misleading or outdated and contained in the September 5, 2014 IEP. The only restriction on Mother's request to interview Edgewood staff was that the interviews could not be recorded out of a concern of the adversarial nature that would be created by recording the staff members. Mother had an opportunity to ask about concerns about Student from a teacher who taught and observed Student on a daily basis. However, Mother chose not to do so. Based on these circumstances, this procedural violation did not result in a denial of FAPE to Student during the relevant period. And Student also cannot now complain that Mother was denied meaningful participation since she was given the opportunity to obtain additional information about Student from Ms. Colangelo and provide that to the team, but did not avail herself of this opportunity.

ISSUE 1(C): DID SAN MATEO-FOSTER CITY COMMIT A PROCEDURAL VIOLATION RESULTING IN A DENIAL OF A FAPE TO STUDENT BY PERMITTING SEVERAL MEMBERS OF THE IEP TEAM TO PARTICIPATE IN THE SEPTEMBER 5, 2014 IEP MEETING BY TELEPHONE WITHOUT MOTHER'S PRIOR KNOWLEDGE AND WITHOUT MOTHER'S CONSENT?

19. Student contends Edgewood staff's participation in the IEP team meeting by telephone without Mother's prior knowledge or consent was a procedural violation resulting in a FAPE denial. San Mateo-Foster City argues no procedural violation occurred because IEP team members are not prohibited from attending the IEP team

meeting by telephone, and, in fact, Student's advocate previously attended an IEP team meeting by telephone.

Analysis

20. The local educational agency and parent may agree to use alternative means of meeting participation, such as video conferences and conference calls to conduct IEP team meetings and placement meetings. (20 U.S.C. § 1414(f).)

21. Members of the IEP team from Edgewood attended the September 5, 2014 IEP team meeting by telephone. The IEP team meeting notice did not inform Mother those participants would appear by telephone. However, Mother was fully aware Edgewood staff was attending the meeting by telephone at the commencement of the meeting, and she raised no concern about their participation by telephone. In fact, the family, specifically Mr. Morgovsky, had participated by telephone at a prior IEP team meeting with no disagreement by any IEP team member. Mother's failure to object to the participation by phone is seen as agreement for the meeting to go forward.

22. The Edgewood IEP team members participated fully in the meeting prior to leaving the meeting at about the halfway point. The Edgewood IEP team members answered Mother's questions and provided insight into Student's performance, progress towards goals, and behavioral challenges. Accordingly, Student failed to establish San Mateo-Foster City committed a procedural violation resulting in a FAPE denial by permitting Edgewood IEP team members to participate in the IEP team meeting by telephone.

ISSUE 1(D): DID SAN MATEO-FOSTER CITY COMMIT A PROCEDURAL VIOLATION RESULTING IN A DENIAL OF A FAPE TO STUDENT BY PREDETERMINING STUDENT'S SEPTEMBER 5, 2014 IEP?

23. Student contends San Mateo-Foster City predetermined Student's placement at Edgewood by the time of the September 5, 2014 IEP team meeting. San Mateo-Foster City argues it did not predetermine Student's placement at Edgewood.

24. Predetermination occurs when members of the IEP team from the school district unilaterally decide a student's placement prior to the IEP team meeting. The school district must ensure that parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. (34 C.F.R. §§ 300.327, 300.501(c)(1).)

Analysis

25. During the IEP team meeting, the team discussed Student's present levels of academic achievement and functional performance, behavioral challenges, and goals. A discussion ensued about Student's substantial improvements in behavior during the extended school year. The team discussed residential placement, but ultimately decided to reassess Student to determine her current needs and to offer continued placement at a nonpublic school in light of her improved behavior and increased ability to access her education in the nonpublic school setting. Student was to remain at Edgewood while referrals were made to a new nonpublic school for Student.

26. While Mr. Montgomery arrived at the IEP team meeting with a draft IEP, the finalized IEP contained information relating to the IEP team's discussion of Student's present levels, behavioral improvements, progress toward goals, proposed goals, and discussion of other nonpublic schools. Mother actively participated in the IEP team meeting, along with Mr. Morgovsky, and provided substantial input regarding referrals to other schools and expressed concerns about Student's continued placement at

Edgewood. The IEP draft underwent changes based on the IEP team's discussion and Mother's input. The IEP team considered alternative placements to Edgewood and agreed to make referrals to schools other than Edgewood for Student. Consequently, Student failed to establish the District predetermined Student's IEP. Student did not meet her burden of proof as to this issue.

ISSUE 1(E): DID SAN MATEO-FOSTER CITY COMMIT A PROCEDURAL VIOLATION RESULTING IN A DENIAL OF A FAPE TO STUDENT BY DEVELOPING THE SEPTEMBER 5, 2014 IEP WITH FALSE, MISLEADING, AND OUTDATED PRESENT LEVELS OF PERFORMANCE?

27. Student contends information contained in Student's IEP, including Student exhibiting sexualized behaviors, was false, misleading, and Student's present levels were outdated because the information only contained information prior to the current school year. San Mateo-Foster City disagrees that the information was false and misleading, and argues the information relating to Student's present levels of performance was current through the time Student was permitted to attend school.

28. An IEP is a written statement for each child with a disability that is developed, reviewed, and revised in an IEP team meeting, and must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum. (20 U.S.C. § 1414(d); 34 C.F.R. § 300.320(a)(1)(i-ii); Ed. Code, § 56345.) The statement of present levels provides a baseline for developing educational programming and measuring future progress.

Analysis

29. Edgewood provided present levels of academic achievement and functional behavior to the IEP team. The information relating to Student's present levels provided to the IEP team was only available through the 2014 extended school year,

because Mother refused to allow Student to attend Edgewood for the 2014-2015 school year. However, the extended school year had only ended on or about July 18, 2014. Only seven weeks had elapsed since Edgewood personnel had seen Student at the time of the IEP team meeting in September. Student did not call any witnesses from Edgewood or elsewhere to testify at hearing to establish that this information was inaccurate.

30. While Mother believes information relating to Student's sexualized behaviors, contained in the September 5, 2014 IEP, is false and misleading, Mother did not observe Student at school each day to know whether such behavior was occurring there. And while some of the special incident reports detailed information that one might consider sexualized behaviors by Student, Student did not provide any evidence as to what specifically Edgewood staff believed constituted Student's sexualized behavior. Student failed to establish that the present levels provided to the IEP team by Edgewood, including information about Student exhibiting sexualized behavior, or any other information in Student's IEP's, was in any way false, misleading or outdated by the time of the IEP team meeting. Accordingly, Student did not establish that San Mateo-Foster City committed a procedural violation in connection with this issue.

ISSUES 1(F) AND 1(H): DID SAN MATEO-FOSTER CITY COMMIT PROCEDURAL VIOLATIONS RESULTING IN A DENIAL OF A FAPE TO STUDENT BY FAILING TO INCLUDE AN ADEQUATE DESCRIPTION OF THE MANNER IN WHICH STUDENT'S PROGRESS TOWARD MEETING HER ANNUAL GOALS WOULD BE MEASURED AND FAILING TO PROVIDE MEASURABLE GOALS IN STUDENT'S SEPTEMBER 5, 2014 IEP?

31. Student contends the September 5, 2014 IEP did not contain an adequate description of the manner in which Student's progress toward meeting her goals would be measured and failed to provide Student with measurable goals. San Mateo-Foster City asserts that both an adequate description of the manner Student's progress toward goals would be measured and measurable goals were provided in the IEP.

32. An annual IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general education curriculum; and (2) meet each of the child's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, 210 IDELR 118 (OSERS 1988).) The purpose of measurable goals and objectives is to allow the IEP team to determine whether the pupil is making progress in an area of need. (See Ed. Code, § 56345.) The IEP team must write IEP goals in a way that allows for an objective measurement of the child's progress toward achieving the annual goal. (71 Fed. Reg. 46,662(2006).) The IEP goals should also include a description of how the IEP team will measure the child's progress toward achieving the annual goals. (71 Fed. Reg. 46,662 (2006).)

Analysis

33. The IEP team proposed three IEP goals for Student in the September 5, 2014 IEP.¹³ In each of Student's three goals in the area of anxiety, aggressive outbursts, and impulse control, the proposed goal provided the identified area of need, a clear description of the goal and the manner in which Student's progress toward meeting the

¹³ The IEP indicated that Student required goals in the areas of mental health, family therapy, and occupational therapy/fine motor; however, the only goals provided in evidence related to the three goals discussed above. Therefore, no finding is made as to the measurability of any other goals proposed in the September 5, 2014 IEP that were not put into evidence at hearing.

goal would be measured, Student's baseline, and who would be reporting on Student's progress towards meeting the goals. Each goal was measurable as written in the IEP and would allow the IEP team to determine whether Student was making progress in the area of need.

34. Student did not meet her burden of establishing San Mateo-Foster City failed to provide measurable goals or failed to provide an adequate description of the manner in which Student's progress towards meeting the goals would be measured in Student's September 5, 2014 IEP.

ISSUE 1(G): DID SAN MATEO-FOSTER CITY COMMIT A PROCEDURAL VIOLATION RESULTING IN A DENIAL OF A FAPE TO STUDENT BY FAILING TO STATE WHEN PERIODIC REPORTS ON STUDENT'S PROGRESS WOULD BE PROVIDED IN THE SEPTEMBER 5, 2014 IEP?

35. Student contends the September 5, 2014 IEP did not inform Mother when period reports on Student's progress would be provided to her. San Mateo-Foster City asserts the IEP did state when periodic reports would be provided.

36. An IEP must state when periodic reports on the progress the child is making toward meeting the annual goals will be provided. (20 U.S.C. § 1414(d)(A)(III); 34 C.F.R. 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).)

Analysis

37. The September 5, 2014 IEP stated Mother was to be informed of Student's progress each trimester by a progress summary report, which provided Mother with sufficient notice of when periodic reports on Student's progress toward meeting her goals would be provided. Therefore, Student's claim that the District committed a procedural violation resulting in a denial of FAPE by failing to state when periodic reports on Student's progress would be provided in the September 5, 2014 IEP is meritless. Student did not meet her burden on this issue.

ISSUE 1(I): DID SAN MATEO-FOSTER CITY COMMIT A PROCEDURAL VIOLATION RESULTING IN A DENIAL OF A FAPE TO STUDENT BY FAILING TO INCLUDE A STATEMENT OF THE SPECIAL EDUCATION AND RELATED SERVICES AND SUPPLEMENTARY AIDS AND SERVICES BASED ON PEER-REVIEWED RESEARCH TO ANY EXTENT THEY WERE TO BE PROVIDED TO STUDENT?

38. Student contends the September 5, 2014 IEP did not include a statement of the special education and related services and supplementary aids and services that were to be provided to Student. San Mateo-Foster City argues that the IEP included this information.

39. An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to: (1) advance appropriately toward attaining the annual goals; (2) be involved in and make progress in the general education in the general education curriculum in accordance with this section, participate in extracurricular and other nonacademic activities; and (3) be educated and participate with other children with disabilities and nondisabled children in the activities the section. (20 U.S.C. § 1414(d)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).)

40. The IEP must include the projected start date of the services and the anticipated frequency, location, and duration of those services. (34 C.F.R. § 300.320(a)(7).) Peer-reviewed research is "research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before the research is published". (71 Fed. Reg. 46,664 (2006).)

Analysis

41. Student's September 5, 2014 IEP contained a statement of the special education and related services to be provided to Student. Specifically, she was to be provided with specialized academic instruction, day treatment services, parent counseling, and occupational therapy. She was also to be provided the same special education and related services during the extended school year. The IEP included the projected start date of the services, anticipated frequency, location, and duration of those services.

42. Student's September 5, 2014 IEP also included a statement of the supplementary aids, services, and other support Student would receive. Those supports included occupational therapy consultation with classroom staff and family, snacks available throughout the day, visual representation of the daily schedule, and notes of encouragement from adult staff members. Additional supports to be provided to Student included an individual incentive chart on her desk with targeted behavior to work on, breaks at the end of instructional period as need, which included visits to the sensory room, walks to the garden, and walks around campus, and safety supports to be used in parent-provided vehicle to and from school. San Mateo-Foster City also offered Student curb-to-curb transportation to school. The IEP stated the projected start date of the supports, anticipated frequency, location, and duration of those services. Student did not show the special education and services, related services, and supplementary aids and services offered in Student's September 5, 2014 IEP were not based on peer-reviewed research.

43. Accordingly, Student did not meet her burden in establishing San Mateo-Foster City committed a procedural violation resulting in a denial of a FAPE by failing to include a statement of the special education and related services and supplementary

aids and services based on peer-reviewed research to any extent they were to be provided to Student in her September 5, 2014 IEP.

ISSUE 2: DID SAN MATEO-FOSTER CITY DENY STUDENT A FAPE FROM SEPTEMBER 5, 2014, THROUGH NOVEMBER 5, 2014, BY OFFERING STUDENT A PLACEMENT AT EDGEWOOD IN THE SEPTEMBER 5, 2014 IEP?

44. Student contends the offer of placement at Edgewood in the September 5, 2014 IEP was inappropriate and resulted in a denial of a FAPE to Student. San Mateo-Foster City counters that the offer of placement at a nonpublic school, namely, Edgewood, pending Student's acceptance into another nonpublic school was appropriate.

45. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to constitute a FAPE under the IDEA, the offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid*; see also *Capistrano Unified School Dist. v. Wartenberg* (9th Cir. 1995) 59 F.3d 884, 893 [citing *Rowley, supra*, 458 U.S. at 188-189].) For Student, who is not receiving any of her education in general education, the IDEA requires an educational program reasonably calculated to enable Student to make progress appropriate in light of the Student's circumstance. (*Andrew F.*, 2017 WL 1066260, at *11.)

46. In California, "specific educational placement" is defined as the "unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.) 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. (*Gregory K. v. Longview School Dist., supra*, 811 F.2d at p. 1314.) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

47. The educational benefit to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467)[citing the district court, "Because [Student] required mental health counseling to accomplish her IEP goals, the Hearing Officer correctly measured the effectiveness of [the placement's] counseling in determining the appropriateness of the ... program as a whole."].)

Analysis

48. At the September 5, 2014 IEP team meeting, the team considered a range of learning environments for Student. However, due to Student's intensive behavioral, emotional, safety, and psychiatric needs, the IEP team agreed that participation in a therapeutic day treatment program at a nonpublic school was necessary for Student to access her education. The IEP team believed she required specialized therapeutic behavior support in order to build positive behavioral skills and coping strategies. The evidence did not establish that Edgewood could not provide an appropriate therapeutic day treatment program with therapeutic behavior support to Student.

49. During the 2014 extended school year, Student made remarkable gains in her behavior both at home and at school. Although no one from Edgewood testified at hearing, the IEP team was aware Edgewood staff, Mother, and Student's treating

psychiatrist noticed dramatic improvements in Student's behavior during the extended school year after Student began taking Abilify. The IEP team was aware Edgewood staff noticed a reduction in the need to physically restrain Student and Student was able to spend more time in the classroom with her peers, increase her time in therapy, and transition to having therapy sessions without the need for classroom staff to supervise Student in the room. Student was able to spend substantially more time in the classroom than the prior school year. Mother agreed Student had made behavioral improvements during the extended school year. And while Edgewood members of the IEP team expressed a belief at the IEP team meeting on September 5, 2014, that Student required a residential treatment program, no one testified at hearing as to the specific reasons they believed this to be true. Other members of the team, including Mother, agreed that Student no longer required a residential treatment program.

50. In the September 5, 2014 IEP, Student was offered specialized academic instruction, day treatment services, parent counseling, and occupational therapy to be provided by a nonpublic school under contract with the special educational local plan area or the District. The same special education and related services were offered for the 2015 extended school year. The IEP team offered continued placement at Edgewood until a new nonpublic school accepted Student and the District agreed to act quickly to begin the referral process to acceptable nonpublic schools. Edgewood was the last agreed upon placement pursuant to the May 14, 2014 IEP. The District proposed assessment of Student in the areas of social/emotional functioning, adaptive behavior, and health assessment to obtain her present levels of academic achievement and functional behavior, as Mother had not allowed her to return to school, so more recent assessment of Student's present levels was not available to the IEP team.

51. Student did not meet her burden of showing the September 5, 2014 offer of placement at a nonpublic school, specifically Edgewood, was not appropriate to meet

her academic, social and emotional needs that affected her academic progress, school behavior, and socialization. Student is not receiving any of her education in general education, and she did not establish that the offered educational program was not reasonably calculated to enable her to make progress appropriate in light of her circumstance.

52. Student's advocate spent a significant amount of time during hearing arguing that Edgewood's use of restraints, referral of Student to San Mateo Children and Family Services, and conclusions that Student exhibited sexualized behavior, which Mother believes to be false, to prove Edgewood was not an appropriate placement for Student. However, these allegations alone do not prove by a preponderance of the evidence that the offer of placement at Edgewood while the District secured admission of Student into a new nonpublic school was not appropriate. Student did not provide sufficient evidence to establish that the District denied Student a FAPE from September 5, 2014, through November 5, 2014, by offering her a placement at a nonpublic school, and continuing Student's placement at Edgewood pending acceptance to a new nonpublic school.

ISSUE 3: DID SAN MATEO-FOSTER CITY DENY STUDENT A FAPE, FROM SEPTEMBER 5, 2014, THROUGH NOVEMBER 5, 2014, BY FAILING TO INCLUDE MOTHER IN THE DEVELOPMENT OF THE REFERRAL PACKET AND FAILING TO REMOVE AND/OR CORRECT INACCURATE, FALSE, AND MISLEADING INFORMATION FROM THE REFERRAL PACKET?

53. Student contends Mother was not included in the development of referral packets to nonpublic schools and those referral packets contained inaccurate, false, and misleading information that the District failed to remove and/or correct. San Mateo-Foster City asserts no referral packets were in fact developed during the relevant period,

so Student could not have been denied a FAPE for conduct relating to nonexistent referral packets.

Analysis

54. During the September 5, 2014 IEP team meeting, the IEP team discussed the development of referral packets to be sent to nonpublic schools. Mother expressed concern that the information appearing in the referral packets for nonpublic schools would contain the same information provided in the referral packets sent to residential treatment programs before the relevant period. At the September 5, 2014 IEP team meeting, the IEP team agreed to provide Mother with a list of records requested by the nonpublic schools to consider Student for acceptance into those programs. On September 8, and September 9, 2014, Mr. Montgomery provided Mother and Mr. Morgovsky with lists of the specific documents requested by each school to begin the referral process. In a letter dated September 10, 2014, Mr. Morgovsky stated that it would be improper and extremely risky to submit the same information sent in the referral packets to residential programs to a nonpublic school because the family believed the residential program referral packets contained inaccurate and misleading information, including the information in Dr. Mills' report. Parent would not consent to release of the information requested by the nonpublic schools. San Mateo-Foster City noticed an IEP meeting for October 17, 2014 to address Parent's concerns, which the family rejected. San Mateo-Foster City never sent referral packets to any of the identified nonpublic schools, because Mother never provided consent to release the information requested by the nonpublic schools, and she wanted to approve all of the documents that would be sent and remove some of the documents containing information she deemed inaccurate, false, and misleading that previously appeared in the referral packets to residential treatment programs.

55. Referral packets were never developed by San Mateo-Foster City because of disagreement between the parties over the inclusion of certain documents. No referral packets were sent to any schools during the relevant time period due to this disagreement, and no decision regarding placement was made by any nonpublic school during the relevant period.

56. Student did not establish San Mateo-Foster City denied her a FAPE, from September 5, 2014, through November 5, 2014, by failing to include Mother in the development of the referral packets. Student's claim that San Mateo-Foster City failed to remove and/or correct inaccurate, false, and misleading information from the referral packet is meritless, as no referral packets were developed during the relevant period because Mother failed to cooperate.

ISSUE 4: DID SAN MATEO-FOSTER CITY DENY STUDENT A FAPE, FROM SEPTEMBER 5, 2014, THROUGH NOVEMBER 5, 2014 BY EDGEWOOD'S FAILURE TO PROVIDE THE THERAPY MANDATED BY STUDENT'S SEPTEMBER 6, 2013 IEP AND MAY 14, 2014 AMENDED IEP?

57. Student contends San Mateo-Foster City failed to implement Student's September 6, 2013 IEP and May 14, 2014 amended IEP by failing to provide her with the therapy offered in those IEP's. San Mateo-Foster City asserts that it could not implement Student's IEP during the relevant period because Mother refused to allow Student to attend school and refused in-home wraparound services.

58. A school district must implement a student's IEP with all required components. (34 C.F.R. § 300.323(c)(2).) A failure to implement an IEP may deny a child a FAPE and thereby give rise to a claim under the IDEA. (*Van Duyn v. Baker Sch. Dist.* (9th Cir. 2007) 502 F.3d 811, 821.) Minor implementation failures are not actionable. (*Ibid.*) A school district is not statutorily required to maintain perfect adherence to the IEP. (*Ibid.*) When a school district does not perform exactly as called for by the IEP, the district does

not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. (*Id.* at pp. 821-822.) A material failure occurs "when there is more than a minor discrepancy between the service a school provides to a disabled child and the services required by the child's IEP." (*Id.* at pp. 815, 821-822.)

Analysis

59. The therapy offered in Student's September 6, 2013 IEP, included individual and group day treatment services, parent counseling, and occupational therapy. It is not clear from the evidence or Student's request for due process hearing what specific therapy she believes Edgewood failed to provide. The May 14, 2014 amendment IEP, did not amend the therapy services provided to Student.

60. During the relevant period, Mother refused to allow Student to attend Edgewood in order to receive the special education and related services offered in Student's September 6, 2013 IEP. Because Student was not present at school, Edgewood could not implement Student's September 6, 2013 IEP that provided for therapy services at school. It is unclear from the record whether the wraparound services provided by Edgewood in the home were considered part of the therapy services offered in Student's IEP. To the extent that wraparound services were to be included as part of the therapy services offered in Student's September 6, 2013 IEP, Mother declined all of the services provided, which included family therapy and monthly family conferences, except Mother agreed to behavior coaching once per week at the home. The in-home behavior coaching services stopped in August 2014 based pursuant to Mother's request and Student did not provide sufficient evidence to establish she was not receiving the appropriate amount of in-home behavior coaching services during the relevant period. San Mateo-Foster City was unable to implement Student's September 6, 2013 IEP because of Mother's refusal to allow Student to attend school or receive wraparound services at home.

61. Student did not meet her burden of establishing that San Mateo-Foster City denied her a FAPE, from September 5, 2014, through November 5, 2014, by Edgewood's failure to provide the therapy mandated by Student's September 6, 2013 IEP and May 14, 2014 amended IEP.

REMEDIES

1. Student did establish San Mateo-Foster City committed a procedural violation by failing to have a special education teacher at the September 5, 2014 IEP team meeting who had actually taught Student. Student requests an order requiring San Mateo-Foster City to reimburse Mother for any and all expenditures necessary for Student to attend California Virtual Academy for the 2014-2015 school year. Student further requests an order requiring San Mateo-Foster City to reimburse Mother for tuition paid to Esther B. Clark School for the 2015-2016 school year and requiring San Mateo-Foster City to provide compensatory therapy to Student.

2. 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 (*Puyallup*).) These are equitable remedies that courts may employ to craft "appropriate relief" to a party. (*Id.* at p. 1497.) An award of compensatory education need not provide a "day-for-day compensation." (*Ibid.*) 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.)

3. Although Student established San Mateo-Foster City committed a procedural violation by not having a special education teacher present who knew Student, she did not establish that this resulted in a denial of a FAPE, or impeded Mother participation in the IEP team development process. Therefore, no remedy is awarded.

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. San Mateo-Foster City prevailed on all issues.

RIGHT TO APPEAL

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

DATED: April 14, 2017

_____/s/_____

DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings