

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH Case No. 2017041175

LOS ANGELES UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2017020037

DECISION

Los Angeles Unified School District filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on January 31, 2017, naming Parents on behalf of Student. Parent filed with OAH a complaint naming District on April 27, 2017. The parties stipulated to consolidating the cases and to waiving the 30-day resolution session that normally would have attached to Parent's complaint. By order dated May 2, 2017, the two cases were consolidated and the 45-day timeline for issuance of the decision in the consolidated cases was commenced, based upon the parties' waiver of the resolution session.

Administrative Law Judge Alexa J. Hohensee heard this matter in Van Nuys, California on May 8, 9 and 10, 2017.

Parent represented Student, attended the hearing, and testified on behalf of Student.

Karl H. Widell, Attorney at Law, represented District. A District representative attended each day of the hearing.

A continuance was granted for the parties to file written closing arguments until May 22, 2017. Upon receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES

DISTRICT'S CASE

1. Did the May 26, 2016 individualized education program offer Student a free appropriate public education in the least restrictive environment?

STUDENT'S CASE

2. Did District deny Student a FAPE for the 2016-2017 school year by:
- a. Failing to identify all of Student's areas of need;
 - b. Failing to consider pertinent data necessary to identify Student's unique educational needs;
 - c. Failing to include adequate and measurable goals in the IEP of May 26, 2016;
 - d. Failing to consider the adverse impact of Student's placement in a general education classroom on Student and the other students and teachers;
 - e. Denying Parent meaningful participation in the IEP process at the May 26, 2016 IEP team meeting, specifically by (i) failing to address parental concerns, (ii) failing to discuss the full array of placement options, including nonpublic

- schools, and (iii) predetermining Student's placement;¹and
- f. Failing to offer Student a program with appropriate academic curriculum and the supports in the May 26, 2016 IEP that were necessary to allow Student to make educational progress?

SUMMARY OF DECISION

The May 26, 2016 IEP met all procedural requirements. District identified all of Student's areas of need and conducted an IEP team meeting comprised of all required team members to review the assessments and develop an IEP for Student. The IEP contained: accurate present levels of academic achievement and functional performance; appropriate and measurable annual goals; special education, related services, supplementary aids and services, and program modifications and supports; an explanation of the extent of Student's removal from the regular class setting, a behavior support plan, an individual transition plan and accommodations for State and District testing.

The District assessments and IEP team members provided the team with comprehensive and pertinent data on Student's educational needs. The IEP team developed annual goals in behavior, social emotional functioning and pragmatics, and a behavior support plan to address Student's educational needs. The IEP team determined that the least restrictive environment in which Student could receive educational benefit

¹ Student's complaint alleged that District had predetermined the agenda and refused to discuss Parent's request for independent educational evaluations at the December 1, 2016 IEP team meeting. However, Parent withdrew her independent evaluations request and no December 1, 2016 IEP team meeting was held, and that sub-issue was moot and not addressed at hearing.

was a general education setting, with appropriate services and supports for Student to make progress on his annual goals within that setting. Accordingly, the May 26, 2016 IEP offered Student a FAPE in the least restrictive environment.

District did not deny Parent meaningful participation in the IEP process at the May 26, 2016 IEP team meeting. The IEP team discussed the concerns raised by Parent, including whether Student needed a small class setting and nonpublic school placement, whether a public school placement would be emotionally harmful to Student or negatively impact his classmates, whether Student would be safe on a public school campus, and how to transition Student from private to public school. The IEP team discussed nonpublic school placement, but determined that Student could access the curriculum in a general education classroom with supports at his school of residence. The IEP team members approached the discussion of placement with open minds, and did not predetermine Student's placement.

District prevailed on all issues.

FACTUAL FINDINGS

1. Student was 14 years old and in eighth grade at the time of the hearing. He resided with Parents within the boundaries of District at all relevant times.
2. Student was eligible for special education and related services as a child with autism.
3. Student's home school within District was Nightingale Elementary School (Nightingale).

2015-2016 SCHOOL YEAR

4. During the 2015-2016 school year, Student attended Bridges Academy (Bridges), a private school. Student was in eighth grade, and had attended Bridges since fifth grade. Bridges was a small school with small class sizes. Bridges did not provide any

special education services to its students.

5. On August 24, 2015, Parents and District entered into an agreement that settled a prior due process complaint. The agreement required that District assess Student and hold an IEP team meeting before the end of the 2015-2016 school year to offer Student a FAPE for the 2016-2017 school year. Student would be assessed in the areas of general ability, academic performance, language functioning, motor abilities and social emotional status. Parents consented to the assessments.

6. On September 28, 2015, Bridges informed Mother that Student was pulled out of classes several times because he was dysregulated and had made insensitive or disrespectful statements.² Student had difficulty taking the perspective of others, and could appear to be bullying other students when he just thought that he was being funny. Bridges informed Mother that it would isolate Student with adults during breaks and lunch to “work on self-control.”

7. During the 2015-2016 school year, Student’s progress reports from Bridges ranked his academic and social emotional performance on the basis of whether he was significantly below expectations, below expectations, meeting expectations, above expectations, or significantly above expectations.

8. In October 2015, Student’s academic scores were generally at or above expectations, with the highest scores in science. Student was on the cusp of meeting expectations in math. Socially, Student was below expectations in habits, attitudes and

² Bridges staff did not testify at hearing, and the specific behaviors characterized as regulating, processing or inappropriate commentary were not explained. However, consistent with other evidence, it could be reasonably inferred that Student was not coping with adverse situations, had difficulty understanding the consequences of his actions, and was disrespectful, insensitive or speaking out of turn.

behavior, productivity and social-emotional development. Student did not self-advocate or seek out help, did not complete assignments or complete them on time, did not persevere, and failed to be empathetic or show respect for others and their ideas. Student performed significantly below expectations in physical fitness. Student did not take physical fitness seriously, and did not show respect to his peers and teachers. Bridges teachers noted generally that Student had a difficult time transitioning between classes, was disorganized and did not use his time well. Student also had difficulty writing, and distracted other students by calling out inappropriately in class.

9. In December 2015, Student's scores had generally improved in attitude and behavior, productivity and social emotional development. He continued to score low on transitions from break, prioritizing tasks, communicating with teachers, and time on task. Student was meeting expectations in most of the graded math concepts. His math teacher noted that Student displayed improved self-regulation and was sent out of class less frequently. Student's media technology teacher noted Student struggled with focus, self-regulation and appropriate classroom behavior. Student's physical fitness scores improved slightly to below expectations.

10. In January 2016, Student was meeting or above expectations in his academic subjects and arts, with occasional below expectation scores in completing tasks independently, self-regulation, self-advocacy and perseverance. Student's physical fitness scores remained below expectations. Student's science teacher noted that Student still required redirection during class, continued to have outbursts, and needed a lot of reinforcement to complete written projects. Student's humanities teacher noted that Student's thoughts and understanding were good, but his writing required further complexity and depth. The art teacher noted that Student still required social-emotional development.

11. By March 2016, Student was at or above expectations in his academic

subjects and arts, and significantly above expectations in science. He still earned some below expectation scores in waiting to be called upon, following instructions, showing respect for others, and independence in completing tasks on time. Student even received a significantly below expectations score in science for self-regulation (ability to control actions, understanding behavioral expectations), and his science teacher noted a lack of motivation in working on non-preferred class projects. Student's math scores improved to meeting or above expectations, and his math teacher noted that Student had improved in self-regulation and self-advocacy by asking for breaks as needed. However, in physical fitness, Student's grades were again significantly below expectations. He required prompts to participate in class activities rather than leaving the physical fitness room. His humanities teacher noted that Student did not timely complete assignments or revise his work, particularly punctuation and grammar.

12. On February 10, 2016, Bridges emailed Mother that Student had been sent to the middle school director's office, become upset, and run out of the office. Student was escorted back to the office and assigned to write an essay about why he was in trouble, and how he could improve his decisions and not overreact.

13. On February 12, 2016, Bridges emailed Mother that Student had been unable to regulate. Student had fled the director's office, and Mother was informed that if Student left campus, Bridges would call the police. Student did not leave the campus.

14. On May 6, 2016, Bridges emailed Mother reporting that Student and several other middle school students had thrown decorations around the cafeteria after a school party. Student then stomped on some decorations and left the cafeteria with the other students without cleaning up the mess. Student was called into the middle school director's office for acting disrespectfully, but Student yelled at the director because Student thought the director was being ridiculous. As a result, Student was required to write an apology letter to the parents who arranged the party and to pick up

trash for a week.

15. Mother did not provide copies of the Bridges emails to District, or inform District of these incidents.

ASSESSMENTS BY DISTRICT

16. In April 2016, Lorraine Nepomuceno, a District credentialed special education teacher, conducted an assessment of Student's academic skills. She was familiar and experienced in issuing and interpreting the test instruments used. Ms. Nepomuceno administered a battery of standardized tests of academic achievement over two sessions so as not to fatigue Student. She reviewed Student's report cards and obtained narrative input from Student's humanities teacher, who stated that Student understood course concepts, could work independently on class projects, and was able to communicate his ideas in class. The humanities teacher reported that Student was a strong conceptual writer, but needed to work on revisions and editing. Student's math teacher reported that Student often solved and calculated problems in his head, but that Student answered too quickly and did not write out his work, leading to unnecessary errors on classwork and homework. Student also failed to turn in homework assignments.

17. Student's scores on the standardized tests demonstrated advanced reading skills, with good comprehension. Student had average broad writing skills, but displayed weak manual writing skills, with multiple misspellings, mixed letter case, and failure to write neatly or correct his work. Student had average math scores, and was observed by Ms. Nepomuceno to work too fast, make frequent careless errors (for example, putting the decimal in the wrong place), and give up easily on problems he didn't understand. Ms. Nepomuceno concluded that Student would perform better in math with more focus and better attention to detail. Both the results of academic testing and the teacher narratives demonstrated that Student was capable of

performing grade level work in a general education classroom.

18. Ms. Nepomuceno observed Student for one hour in his humanities class at Bridges in May 2016. She would have liked to spend more time observing Student in different school settings, but Bridges did not permit her to do so. Bridges permitted only one District assessor to observe Student at a time and limited observations by all observers to one hour. Bridges also limited all assessors except one to observation during Student's humanities class. Ms. Nepomuceno observed Student walking to the classroom, dropping his book bag outside the classroom and entering another room before timely arriving before class began. During class, the students made PowerPoint presentations, and Student ate lunch at his desk, listened to other reports, and contributed to the class discussion, although he called out without raising his hand or waiting his turn.

19. Ms. Nepomuceno concluded that Student needed to improve in writing conventions, writing multiple paragraphs, math calculation and math reasoning. Student required direct instruction and explicit modeling when writing a coherent composition and multiple step math problems, and she recommended the following accommodations: small group structured setting, word processor for written tasks, checks for comprehension, repetition and re-teaching, presentation of information through multiple modalities, structured assignments, organizational aids and use of memory techniques (such as mnemonics, chunking and cuing). Ms. Nepomuceno's testimony at hearing was clear and informative, and in light of her thorough assessment, education, training and experience, her opinions on Student's educational needs and the program and placement to meet those needs, were very persuasive.

20. In April 2016, school psychologist Rafael Jimenez conducted a psychoeducational assessment of Student's cognitive processing ability and behaviors, including social emotional functioning. Mr. Jimenez had a degree in psychology, and

had been a school psychologist for nine years. He had conducted 350-500 psychoeducational assessments that included social emotional functioning and behavioral needs, and was well qualified to conduct the psychoeducational assessment of Student. At hearing, Mr. Jimenez testified with conviction about Student's potential for strong social and behavioral growth. His opinions regarding Student's educational needs and the services and programs to meet those needs were accorded significant weight.

21. Mr. Jimenez tested Student's cognitive abilities using a variety of standardized tools and did a thorough review of Student's educational records. The testing was done at a District school near Bridges and Student appeared comfortable walking through unfamiliar school corridors. Student completed assessment questions independently with breaks between tasks. Student tested in the high average and average range on most mental processes with the exception of planning, in which he scored in the low average range. Student had average to superior visual-motor processing skills and average auditory perceptual skills. Mr. Jimenez concluded that Student had age appropriate cognitive abilities with no psychological processing deficits.

22. Student's educational records reflected aggressive behavior in the past. Mr. Jimenez gathered information on Student's current behavior from Bridges teachers, progress reports and Mother. Student's teachers reported that Student was doing well behaviorally, and was able to self-regulate, although he still spoke out of turn in class. Student's English teacher reported that Student was well-behaved, listened and participated fully in class, and was usually good at following directions, although he needed repetition and was inconsistent on task completion. Student's math teacher reported that Student generally interacted with his peers appropriately during class but tended to call out, had difficulty completing work on a timely basis and had difficulty

following directions. Student required breaks, prompts and scaffolding to organize his work. Student told Mr. Jimenez that he liked playing video games and researching scientific topics, and had friends who came over to his house to play video games. Mother reported that Student had improved in peer relations, but said inappropriate things, was disruptive in class, and had difficulty completing homework.

23. Mr. Jimenez observed Student in his humanities class at Bridges. He saw Student walk to the classroom, interact with peers, and rush to class at the last minute to be on time. In class, Student followed the lesson, gave insightful responses to the teacher, and worked independently with some prompts. When the students shared their work, Student gave his own opinions and was on point. Student called out, but when classroom staff asked Student not to share out of turn, Student complied.

24. Mr. Jimenez concluded that Student had sufficient social emotional skills to act appropriately in a typical school setting. He opined that Student's appropriate behavior in the busy hallways of an unfamiliar public school at the testing site was predictive of appropriate behavior at a new school, and that Student had the social emotional functioning to transition to a public school campus. Mr. Jimenez concluded that Student had behavioral characteristics similar to many youth diagnosed with autism spectrum disorder, such as speaking out in class, but that District staff was well trained to prompt students like Student and to implement a behavior support plan.

25. Helen Tin, a licensed school occupational therapist with four years of providing school-based services and assessments, conducted an occupational therapy assessment of Student in May 2016. She was well qualified to assess Student, and her testimony at hearing was credible and persuasive. She observed Student in his humanities class, during which Student was working with the class to complete a flag project and independently doing research on a computer. He used a footrest, and occasionally picked at his skin, but was generally focused and engaged. Ms. Tin also

observed Student during Ms. Nepomuceno's academic testing, and although Student required periodic breaks to avoid becoming restless and was overly excited to be finished with assessments, he acted appropriately and presented with an appropriate arousal level. On standardized testing of motor proficiency, Student scored within the average range for fine motor ability (ability to manipulate and use small items) and visual motor integration (responding to visual information, such as copying). Student displayed some gross motor difficulties, such as dribbling a ball, but improved quickly with repetition and demonstrated the ability to participate in school-based gross motor activities. In her opinion, Student did not have needs that required occupational therapy.

26. Ilene Clingmon, a credentialed speech language pathologist, assessed Student in the area of language and speech. She interviewed Mother, whose primary concern was that Student learn to read conversational cues to determine if other people were engaged and whether he was speaking and interacting appropriately. Student's teachers completed a communication performance rating scale, and indicated that Student had strong oral communication skills, used appropriate vocabulary, demonstrated logical arguments, communicated in a clear manner, and was comfortable and confident with oral presentations in front of peers. They identified areas of weakness as the addition of irrelevant details, tendency to veer off topic, interrupting peers and poor ability to wait his turn to contribute to group discussions. Student's teachers accommodated Student by giving Student prompts or redirection when he was off-topic or interrupting, allowing him to work independently, and suggesting scripts.

27. Ms. Clingmon observed Student for 20 minutes in his science class at Bridges, which had five students. The students were working individually or in small groups, and the teacher moved between them. Student spoke out loud to nobody in particular as he worked. At one point, Student became excited and walked over to the teacher and interrupted her to share his thoughts, but then waited quietly after the

teacher asked him to wait. Ms. Clingmon determined that Student had a few pragmatic areas that were still developing, but that his communication abilities and other pragmatic (social language) abilities were adequate for participation in educational settings.

28. Ms. Clingmon administered a variety of standardized assessment instruments. Student's scores indicated that Student had skills in the average range, but her observations and informal assessments demonstrated that Student's autism and pragmatic language deficits might impact his progress and participation in the general education curriculum. In particular, Student had needs in the use of appropriate language in specific situations and the understanding of social rules.

29. Ms. Clingmon did not testify at hearing. Instead, Jamie Falcon, a licensed speech and language pathologist testified about Ms. Clingmon's assessment report. Ms. Falcon was familiar with Student because she assessed Student herself in 2015, and reviewed Student's educational records, including the May 2016 assessment and May 26, 2016 IEP, in preparation for her testimony. Ms. Falcon held bachelor's and master's degrees in speech pathology, a credential in clinical rehabilitation services, a license in speech-language pathology, a certification of clinical competence in speech-language pathology, and had been a speech language pathologist with District for 17 years. She was qualified to interpret Student's May 2016 speech assessment, and her opinions on Student's language needs and an appropriate program and services to address them, were credible and persuasive.

30. Ms. Falcon opined that the results of Ms. Clingmon's assessment appeared to be valid. The results were consistent with the results she obtained in 2015, in which Student's recall was good, he displayed good vocabulary skills, his grammar was generally correct, he could ask and answer questions, and he could appropriately maintain a conversation. She opined that Ms. Clingmon assessed in all areas of

suspected need within the field of speech and language, and that the assessment correctly identified Student's deficits in the area of pragmatics.

31. Ms. Nepomuceno, Mr. Jimenez, Ms. Tin and Ms. Clingmon assessed Student using a variety of assessment instruments, ranging from standardized tests to observation, to gather relevant functional, developmental and academic information in order to determine his unique needs. The assessments were not racially, sexually, or culturally biased, were given in Student's primary language of English, and were presented to Student in a form most likely to yield accurate information on what Student knew and could do academically, developmentally and functionally. The assessments were valid for the purpose for which they were used, and the results were valid. The assessors each found their assessment results to be an accurate and valid description of Student's functioning. The assessments were technically sound, administered by trained and knowledgeable persons in accordance with the instruments' instructions, and were sufficiently comprehensive to identify all of Student's special education and related service needs.

MAY 26, 2016 IEP TEAM MEETING

32. On May 26, 2016, District convened an IEP team meeting to review assessments and make an offer of FAPE for the 2016-2017 school year. Mother, Ms. Nepomuceno, Mr. Jimenez, Ms. Yin, Ms. Clingmon, the school nurse, administrative designee and Nightingale guidance counselor Michelle Farahzad, general education teacher John Valencia, and least restrictive environment specialist Annette Townsell attended the meeting. Bridges teachers were invited to attend, and although they declined, they provided District assessors with substantial feedback during the assessments.

33. District provided Mother with copies of the District assessments. The meeting lasted approximately six hours. Student attended the beginning of the IEP team

meeting, but then stayed in the Nightingale. Accompanied by a District staff member, Student occasionally walked across campus to the IEP team meeting room to check in with his Mother.

34. Prior to the meeting, Ms. Nepomuceno gathered information and opinions from the other assessors to create a draft IEP. The draft contained a summary of Student's present levels of performance, and proposed goals with baseline information. The summary of Student's present levels in each area contained a section that explained whether, and the manner in which, Student's disability affected his involvement and progress in the general education curriculum. At the meeting, the draft IEP was projected onto a large screen for the team, and changes were made as the IEP team reviewed the information in the draft document.

35. Ms. Nepomuceno presented the results of the academic assessment. She identified writing and math as areas of need, although she informed the team that Student's difficulty in math was in working too fast and making needless mistakes rather than a lack of understanding mathematical concepts.

36. Ms. Nepomuceno proposed annual writing and prevocational goals. The team discussed and refined the proposed goals with Mother's input. The writing goal required Student to write a multi-paragraph essay with well-developed structure, writing convention and increased supporting detail through revision and editing. The prevocational goal required Student to participate in class and complete assignments with an increased level of accuracy and to reduce the number of mistakes due to carelessness by pacing himself and revising his work. Ms. Nepomuceno told the team that the prevocational goal addressed Student's math needs, as Student understood the math concepts presented, but needed to learn to do multi-step math steps correctly and check his work.

37. Mr. Jimenez presented the results of the psychoeducational assessment,

including cognitive ability, social emotional functioning and behavior. Mr. Jimenez concluded that Student was very bright, with no psychological deficits and highly capable, although Student exhibited deficits in self-regulation. He opined to the team that Student had needs in the area of social emotional functioning and behavior, and should learn coping skills and how to engage appropriately with others.

38. Mr. Jimenez proposed two annual goals in the areas of social emotional functioning and behavior support. The social emotional goal required Student to demonstrate positive coping skills to stay regulated when dealing with negative social interactions, such as rejection, criticism and disagreement. The behavior support goal required Student to participate in classroom discussions and lessons appropriately, by raising his hand and waiting to be called.

39. The IEP team developed a behavior support plan to address speaking out inappropriately in the classroom to support the behavior goal. The plan described the situations in which the behavior was most likely to occur based upon the assessors' conversations with the Bridges teachers. Mr. Jimenez and Ms. Nepomuceno proposed ways to remove Student's need to use that behavior, including signaling transitions, providing breaks, the use of specific support words, cueing Student, verbal praise for appropriate behavior, and peer modeling. They also proposed a replacement behavior that Student raise his hand and wait to be called upon to contribute ideas or feelings about topics discussed. The team discussed strategies and curriculum materials to teach Student how to follow schedules and routines, anger management, social skills, a communication system, a self-management system, and to motivate Student with positive praise to reinforce appropriate behavior. The plan also called for the teacher to use a silent hand gesture as a prompt for Student to raise his hand, and for the teaching assistant to tap Student's shoulder as a reminder to wait his turn.

40. Ms. Clingmon presented the results of the language and speech

assessment. She proposed a language and speech goal to address Student's pragmatics skills, requiring Student to demonstrate perspective-taking and respond or react appropriately in his natural environment. At hearing, Ms. Falcon opined that the speech goal of taking another's perspective appropriately addressed Student's identified pragmatics need, and was measurable through observation or formal assessment.

41. Ms. Tin reviewed the occupational therapy assessment, and opined that Student did not require a fine or gross motor goal, or occupational therapy services.

42. Each of the annual goals appropriately addressed Student's areas of need. Each goal contained a description of how progress on that goal would be measured. For example, the social emotional goal provided that Student would demonstrate positive coping skills to stay regulated when dealing with negative social interaction (e.g., rejection, criticism, and disagreement) in four out of five trials per week with minimal adult support (one to two prompts) as reported by the teacher or observed by the school counselor. Each goal contained two incremental objectives to be achieved in September 2016 and January 2017, with Student being required to demonstrate an increasing percentage of success as the year progressed. Each goal also provided for periodic reports of Student's progress to be shared for four periods over the course of the year.

43. The team discussed placement. Annette Townsell, a District least restrictive environment specialist, led that part of the IEP team meeting. Ms. Townsell had a master's degree in education administration, and credentials in administrative services, education specialist instruction and single subject teaching, and testified credibly and convincingly at hearing. She was qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of Student. She was knowledgeable about the general education curriculum and she was knowledgeable about the availability of school district resources. After listening to the assessment

reports and Mother's input, and in light of Student's past academic success in a general education program at a private school, the District team members determined that Student could be educated in a general education classroom with supports and accommodations.

44. Student's home school, Nightingale, was a magnet school of rigorous programs in science, technology, engineering and math, commonly known as "STEM" subjects.³ Nightingale's classes had two adults in each class: a teacher and a credentialed resource specialist in English and math, and a teacher and a teaching assistant in the other classes. The science, technology, engineering and math classes had fewer students than the non-STEM classes, with 20-25 students, for an adult to student ratio of one-to-ten to one-to-twelve. Nightingale also had a robotics program that participated in a Statewide competition. Ms. Farahzad had responsibility for the special education students at Nightingale, and assured the team that she could schedule Student's classes to place him in science and engineering classes of high interest to Student, including robotics. The STEM classes at the Nightingale had gifted students with autism, and the Nightingale teaching staff had experience working with students with autism. District members of the IEP team opined that a general education program at a STEM magnet school like Nightingale would be a good fit for Student.

45. With regard to supports and accommodations in a general education classroom, Ms. Nepomuceno recommended that Student receive a daily 45-minute block of in-class (often referred to as "push-in") support from a resource specialist with a special education credential to support Student's writing and prevocational goals. Mr. Jimenez and Ms. Farahzad recommended that Student meet with the school counselor

³ For the 2017-2018 school year, Nightingale also offered classes in business entrepreneurship and technology, and new medical magnet classes.

for 30 minutes each week to support Student's behavior plan, and social-emotional and behavior goals. The school counselor would teach Student strategies to understand the perspective of others and to cope with negative interactions, and would assist Student with the transition to public school. After discussion with the teachers in the meeting, Ms. Clingmon told the team that social communication skills were already being addressed sufficiently in the classroom with general education strategies. District teachers were highly trained to address students with pragmatic needs similar to Student's, and general education students would provide modeling. Therefore, Ms. Clingmon concluded that Student did not require direct language and speech support, but would benefit from having a speech pathologist consult with Student's teachers to give them in-class lessons and strategies to support Student and to teach him appropriate social communication and classroom behavior.

46. In Ms. Falcon's opinion, the offered indirect consult services to address the pragmatics goal was appropriate for Student to make progress. She noted that the reference to measuring skills in "natural environments" meant measuring them across school settings, such as in the classroom or at recess. She explained that through consultation with a speech pathologist, Student's general and special education teachers could address Student's needs with general education strategies or the accommodations listed in Student's IEP. She opined that progress could be measured by observation during lessons and group work, particularly as to whether he was responding to other's feelings.

47. Mother wanted Student in a small setting, and preferred classrooms like those at Bridges, with about eight students per class. However, the District team members believed that Student did not need the support of a small setting all day, and could attend general education classes with the support of a resource specialist for English Language Arts. The resource specialist was a credentialed special education

teacher who would provide individualized academic instruction to students to help them succeed in their academic classes and achieve their annual goals. Student required help with writing and math, as targeted by his writing and prevocational goals. At Nightingale, the resource specialist used the push-in delivery model to assist the general education teacher in working with students on her caseload. The general education teachers provided curriculum content at grade level standards, and the resource specialist consulted with those teachers to create interventions (such as breaking into small groups or utilizing visuals) and special education plans (utilizing strategies specific to the annual goals) to support students in the classroom. District team members felt that push-in services during English Language Arts would give Student the necessary support to improve the depth and accuracy of his written assignments, as well as to learn organizational strategies such as pacing and editing that would help him achieve his prevocational goal and succeed at math.

48. Mother expressed to the other members of the team that Parents' November 17, 2015 agreement with District required discussion of a variety of placement options, including nonpublic school, which had been offered to Student in prior years. Mr. Jimenez explained that although Student had exhibited severe behaviors in the past that required a restrictive nonpublic school placement with other disabled children, Student was now capable of accessing his education in a general education setting. Mr. Jimenez opined that Student was able to self-regulate, at grade level academically, and would do well on a traditional campus. He also expressed that Student should be with typically developing peers to learn how society functioned and how to respond appropriately to challenging situations. Ms. Townsell added that Student would receive social benefit from a general education placement, including opportunities to model social behavior. Ms. Farahzad told Mother that she had many students on the Nightingale campus who became frustrated in class, and that

Nightingale staff taught them how to use stress techniques to deescalate. The teachers would also allow their students to take a break and visit the counselor's office if needed. District team members expressed their belief that Student could transition successfully to the regular education program at Nightingale.

49. Mother expressed surprise that District was not offering Student placement at a nonpublic school. Mother believed that Student needed a small school, with small classes, and a gifted curriculum, such as that offered by a newly-opened nonpublic school, STEM3 Academy, for gifted students on the autism spectrum. Mother was concerned that her son was academically superior to the general education students at Nightingale because he had superior standard scores in science and was taking a 10th grade science class at Bridges. The District team members assured Mother that Student would be academically challenged in the gifted STEM magnet program at Nightingale, and would be highly motivated in the science and technology classes.

50. Nightingale had gifted students on the autism spectrum, and its staff utilized activities and lesson planning to challenge those students and allow them to achieve and excel. Ms. Farahzad, the guidance counselor at Nightingale, was responsible for the students in the STEM program. She held a bachelor's degree in psychology and a master's degree in school counseling, with credentials to teach students with mild to moderate disabilities and in pupil services. Ms. Farahzad's testimony at hearing regarding the STEM magnet program, and how it could meet Student's needs for a smaller setting and challenging curriculum, was informative and convincing. Ms. Farahzad opined that the STEM classes would be of high interest to Student, would keep him motivated, and give him the advantage of being able to work with general education peers. Ms. Townsell noted that all of the STEM students have the same schedule and would follow each other from class to class and support each other in navigating the campus.

51. Mother expressed concern that it might be emotionally harmful for Student to be in a school with typical peers, because Student did not understand that others did not think the way he did, and his autism affected his interactions with people. Mr. Jimenez explained that navigating a larger campus and interacting with typical peers was an important life skill for Student. District members of the team believed that Student would receive educational benefit from being in general education on a comprehensive campus, as he could make friends with local peers, participate in school activities, and generalize socialization skills. Student would also learn the correct use of words, facial expressions and effective communication from exposure to peer-to-peer modeling. District team members believed that, with guidance by the school counselor and his teachers in consultation with the speech therapist, exposure to the opinions of typical peers in general education would give Student opportunities to understand the perspective of others. Team members were also aware that Nightingale teachers used the opportunity of having students with behaviors in their classrooms to teach all students how to be empathetic and to work with peers with different learning styles.

52. Mother expressed concern that her son's behavioral difficulties, particularly speaking out in class, would negatively impact the other general education students in his classes. Mr. Jimenez explained that Student's speaking out in class would be addressed by the behavior support plan, with the support of his general education and special education teachers, in consultation with the speech therapist. Weekly support by the school counselor would also address that concern.

53. Mother also expressed concern about Student's transition from a small private school to a public middle school. Ms. Clingmon indicated that Student had good communication skills, and would be able to articulate any needs during the transition. Ms. Nepomuceno explained that Student's case manager at Nightingale would monitor Student's needs as a transfer student, and that the case manager or Parents could

request an IEP team meeting if they felt additional supports should be put in place. Mr. Jimenez, Ms. Nepomuceno and Nightingale staff had successfully transitioned other students from private and nonpublic schools to public school by working with the parents, teachers, and IEP teams of those students, and Mr. Jimenez and Ms. Nepomuceno believed that Student would be able to transition well.

54. The team discussed supports for Student in general education at Nightingale. The Nightingale school day was divided into seven periods, with an elective period. The team discussed having Student take his elective period in the Learning Center as an accommodation. The Learning Center offered academic support to special education students with their classwork and homework, and was taught by a credentialed special education teacher with the assistance of a paraprofessional. District team members felt that a period in the Learning Center would not only provide additional support for Student's academic needs, but would provide extra support for the transition to public school. The team also discussed ways to help Student with the transition, including: showing Student around the school, providing a map of the campus, introducing Student to his teachers and service providers, designating an administrator for Student to connect with in case of any difficulties, and scheduled time with the school counselor to discuss successes and challenges. Mr. Jimenez opined at the meeting and at hearing that this type of support would make the transition workable for Student.

55. Mother expressed concern about Student's safety if he wanted to elope from the Nightingale campus. District team members explained that Nightingale was a closed campus, with an adult stationed at all entrances and exits, and that Student would not have an opportunity to leave campus without permission. Student's acquisition of coping strategies pursuant to his social emotional goal, and the direct counseling services and indirect consultations with Student's teachers, would teach

Student to appropriately use breaks as an accommodation.

56. The team discussed having the teachers divide their entire class into small groups for instruction if Student had difficulty, so Student would not be differentiated from his classmates. Other accommodations included preferential seating, a calculator to check answers, visuals, use of a word processor for longer written tasks, breaks when requested, reminders to use replacement behaviors, self-monitoring tools and positive reinforcement. The team also developed an individual transition plan to help Student prepare for his transition to high school in 2017-2018.

57. At the end of the meeting on May 26, 2016, District offered Student placement in the general education setting in the STEM magnet program at Nightingale with 225 minutes of weekly resource support (45 minutes per day), 30 minutes weekly of counseling and guidance, 60 minutes monthly of language and speech consultation to Student's teachers, the accommodations and supports discussed, including a behavior support plan, and an individual transition plan. The offer specified each of these services by frequency, duration and location. The entry for resource specialist services stated that Student will be removed from the classroom for zero minutes, indicating a push-in service. Only the counseling and guidance services were provided outside the classroom. The IEP stated that Student will be outside of general education for two percent of the time each week.

58. The assessors and District staff who testified at hearing had the education, training and experience to give meaningful opinions regarding Student's educational needs, particularly regarding his need for positive behavior interventions. The September 2015, February 2016 and May 2016 emails from Bridges concerning Student's behavior were not shared with District, but when informed of the contents of email at hearing, these witnesses unanimously opined that Bridges' response to possible inappropriate behavior was punitive, and did not take into account Student's disability,

particularly his difficulty with writing and taking the perspective of others, and did not demonstrate positive behavior intervention. Ms. Nepomuceno, Mr. Jimenez and Ms. Falcon opined that the behaviors exhibited by Student, such as being disrespectful to others and failing to self-regulate, would be appropriately addressed by the goals in the IEP for Student to take the perspective of others, demonstrate positive coping skills when dealing with negative interactions, and participate in classroom discussions appropriately with the behavior support plan and services offered in the May 26, 2016 IEP.

59. On June 13, 2016, Mother wrote to District that she disagreed that the May 26, 2016 IEP offered Student a FAPE, and that Parents would continue Student's enrollment at Bridges and seek reimbursement.

60. On June 17, 2016, District responded to Mother declining to reimburse Parents for tuition at Bridges. The letter reviewed the program and services offered in the May 26, 2016 IEP, and asserted that the offer constituted a FAPE. District also offered to conduct an amendment IEP team meeting within 30 days of the start of the 2016-2017 school year, to address Mother's concerns regarding Student's placement at Nightingale and any transition concerns that might arise.

61. On October 27, 2016, Mother requested an IEP team meeting to discuss her concerns about the May 26, 2016 IEP offer. District promptly noticed an IEP team meeting to be held on December 1, 2016.

62. On November 6, 2016, Mother disputed the appropriateness of District's assessments and made a written request for independent educational evaluations. Mother also requested that the IEP team discuss her evaluation request.

63. On November 9, 2016, Ms. Farahzad responded to Mother that whether the District would fund independent evaluations was an administrative, and not an IEP team, decision. The December 1, 2016 IEP team meeting would discuss Student's

educational needs, programs and services, but would not be part of District's decisions regarding Mother's independent evaluation request.

64. On November 16, 2016, District filed with OAH a due process request to defend its assessments rather than fund independent evaluations. Mother subsequently withdrew her request for independent evaluations and the matter was dismissed.

65. Mother asked that the December IEP team meeting be rescheduled, and no IEP team meeting took place on December 1, 2016.

66. On January 30, 2017, Mother observed a STEM class at Nightingale magnet. The class covered a part of the eighth grade curriculum that Student had covered earlier that year at Bridges.

67. Mother testified at hearing. Her description of Student's educational needs was generally consistent with that of District assessors, although she was primarily concerned with Student's inability to read social cues and disrespect for authority. Mother was very happy with the progress that Student had made at Bridges, despite Student's continued dysregulation, lack of organization, and poor social communication skills. Mother attributed Student's progress in eliminating aggressive behavior to Bridges' empathetic teachers, small campus and small class size. She recognized that Student did well cognitively but needed help in learning to take the perspective of others and meeting expectations, such as participation in physical education. She believed that Bridges understood Student, and so was the best placement, despite its lack of special education services. Mother did not have formal training in teaching, or as a school psychologist. Mother opined that Student would have been bored in the Nightingale's STEM magnet class she observed, or berated the other students for knowing less than he did, because he already knew the information presented. However, she was not familiar with eighth grade curriculum or order of presentation, and there was no evidence that the Bridges eighth grade class covered more curriculum content

than the Nightingale eighth grade class.

68. Student did not call any qualified special education teachers, psychologists, occupational therapists or speech pathologists to contradict the testimony of District witnesses as to the sufficiency of District's assessment, identification of Student's needs or the appropriateness of the goals, services and program offered in the May 26, 2016 IEP.

LEGAL AUTHORITIES AND CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁴

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.;⁵ Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.)

⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁵ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

“Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA’s procedures with the participation of parents and school personnel that describes the child’s needs, academic, and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(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. The Supreme Court revisited and clarified the *Rowley* standard in *Endrew F. v. Douglas County School Dist.*, __ U.S. __; 137 S.Ct. 988 (March 22, 2017) (*Endrew*). It explained that *Rowley* held that when a child is fully integrated into a regular classroom, a FAPE typically means providing a level of instruction reasonably calculated to permit advancement through the general education curriculum. (*Id.*, 137 S.Ct. at pp. 1000-1001, citing *Rowley*, 458 U.S. at p. 204.) As applied to a student who was not fully integrated into a regular classroom, the student’s IEP must be reasonably calculated to enable the student to make progress appropriate in light of his or her circumstances. (*Endrew*, 137 S.Ct. at p. 1001.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code 56505, subd. (l).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this consolidated matter, District had the burden of proof on District's issue and Student had the burden of proof on Student's issues.

ISSUES 2(A) AND 2(B): IDENTIFICATION OF STUDENT'S NEEDS

5. Student contends that District did not identify all of Student's areas of need prior to the May 26, 2016 IEP team meeting, specifically academic deficits in math and behavioral support in physical education, including Student's propensity to elope from both classes. District argues that it conducted a comprehensive assessment and the May 26, 2016 IEP team addressed all of Student's educational needs.

6. School district evaluations of students with disabilities under the IDEA serve two purposes: (1) identifying students who need specialized instruction and related services because of an IDEA-eligible disability, and (2) helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.) The first refers to the initial evaluation to determine if the child has a disability

under the IDEA, while the latter refers to the follow-up or repeat evaluations that occur throughout the course of the student's educational career. (See 71 Fed. Reg. 46,640 (Aug. 14, 2006).) California law refers to a reevaluation as a "reassessment." (Ed. Code, § 56381.)

7. A local educational agency must assess a special education student in all areas of suspected disability, including if appropriate, health and development, vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social/emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).) A local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. (20 U.S.C. § 1414(b)(2)(A).) The assessments used must be: selected and administered so as not to be discriminatory on a racial or cultural basis; provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; used for purposes for which the assessments are valid and reliable; administered by trained and knowledgeable personnel; and administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304(c)(6).) The local educational agency must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical, and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) The IEP team must consider the assessments in determining the child's educational program. (34 C.F.R. § 300.324(a)(1)(iii).)

8. The weight of the evidence established that District identified all of Student's areas of educational need.

9. Ms. Nepomuceno, Mr. Jimenez, Ms. Clingmon and Ms. Tin were well qualified to conduct the assessments, and gathered information with appropriate test instruments and methods, using a variety of instruments and sources. They gathered important information from Mother and Student's private school teachers, and observed Student in the school setting as permitted by Bridges. The results were valid and provided the IEP team with accurate and comprehensive information on Student's functional, developmental and academic abilities and performance.

10. District's assessments were comprehensive and performed in all areas of suspected disability: psychoeducational, including academic and social emotional functioning, language and speech and motor skills. Parents interpreted the information gathered by District's assessments differently, but Student did not show that further assessment was needed to inform the IEP team in identifying Student's educational needs.

11. Student was capable of understanding and performing grade level work, but his social communication deficits, lack of coping strategies, poor organizational skills, failure to check his work and lack of assignment completion interfered with his academic and social progress. The IEP team identified each of these needs from the information gathered by District's assessments, which included: formal and informal tests of ability and skills; review of Student's IEP's, educational records, progress reports and information reported by Bridges teachers; assessor observations; interviews and questionnaires completed by Mother as part of the assessment process; and input of Mother, assessors, and credentialed District staff during the May 2016 IEP. Student did not show that District failed to consider pertinent data necessary to identify Student's unique educational needs. The emails from Bridges to Mother were not provided to

District, so could not be considered by the IEP team. Moreover, multiple teacher reports and progress reports from Bridges, summarized for the IEP team in Mr. Jimenez's psychological assessment report, provided the IEP team with the pertinent information contained in the emails pertaining to Student's difficulty with self-regulation and treating others with respect.

12. District did not fail to identify Student's needs in math or for behavior support. The IEP team drafted a goal to address Student's habits of doing mathematical calculations in his head too quickly, and failing to check his work. The IEP clearly identified this as interfering with his access to curriculum. Student's academic assessment results and progress reports indicated that Student could grasp mathematical concepts, but needed the organizational skills (including pacing and checking his work) addressed by the annual prevocational goal. As Student progressed to higher math requiring multi-step calculations, he needed to ensure the accuracy of his calculations at each step. The fact that the annual goal was labeled a prevocational goal, rather than a math goal, is of no consequence, as the IEP team identified and addressed Student's need for special education and services that would support Student in his math classes.

13. District had not failed to identify a need for behavioral support, specifically in physical fitness. Student's physical fitness grades indicated that Student needed to be prompted to come to class and remain in class and displayed a lack of perseverance. Student was significantly below expectation in self-regulation, showing disrespect for others. The IEP team identified Student's need for behavioral intervention and support for these types of behavior. They addressed this by the social emotional goal to demonstrate positive coping skills and self-regulation, and the pragmatics goal to demonstrate perspective taking and appropriate social responses across school settings. Student's behavior was addressed by special education services, including speech

pathologist consultation with Student's teachers, which would include consultation with the physical fitness teacher. Student's behavior was specifically targeted by speech pathologist strategies to teach Student social communication skills, and Student's weekly meetings with the school counselor to learn self-regulation and coping strategies. According to the Bridges progress reports and teacher interviews, Student displayed poor coping behaviors across school settings. The IEP appropriately addressed Student's behavioral needs across school settings as well. Accordingly, there was no need to single out Student's conduct in physical fitness as a specific behavioral need, or to write a separate annual goal to address Student's behaviors in physical fitness.

14. Student did not prove that he had a problem with eloping from classes or the school campus, nor that this should have been identified as an educational need. Rather, Student sometimes needed prompting to get to class, requested breaks, and would wander out of his physical fitness class if not motivated. Such conduct was addressed by the goals, accommodations and services offered in the May 26, 2016 IEP. This did not rise to the level of a separate unidentified need. Student would have been unable to leave Nightingale because it had an adult stationed at each exit, and strategies learned as part of the social emotional goal would have addressed coping and self-regulation in the classroom.

15. In summary, the May 26, 2016 IEP team had accurate, reliable and sufficiently comprehensive assessment information to appropriately and fully identify Student's educational needs, and discussed and identified those needs.

16. Student failed to meet his burden of proving by a preponderance of the evidence that District denied Student a FAPE by failing to identify all of Student's areas of need or to consider pertinent data necessary to identify those needs.

ISSUES 2(C): GOALS

17. Student contends that the May 26, 2016 IEP required, but did not include,

a goal in math, and that the goals developed were not measurable. District asserts that the goals were adequate and measurable.

18. 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 curriculum; and (2) meet each of the pupil'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, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

19. In addition, the IEP must include "appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved," and a statement of how the student's progress toward the goals will be measured. (Ed. Code, § 56345, subd. (7), (9); 20 U.S.C. § 1414(d)(1)(A)(i)(III).) An examination of an IEP's goals is central to the determination of whether a student has received a FAPE. In *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), the court stated: "[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit." (*Id.*, at 195 F.3d p. 1149.)

20. However, a district is not required to develop goals for areas covered by the general curriculum for which the student needs only accommodations and modifications. (Fed. Regs., Appendix A, *Part 300 – Assistance to States for the Education of Children with Disabilities* (1999), discussing language also contained in the 2004 reauthorization of the IDEA at 20 U.S.C., § 1414(d)(1)(A)(i)(II).)

21. The annual goals included in the May 26, 2016 IEP were measurable, and together addressed all of Student's educational needs.

22. As discussed at Issues 2(a) and 2(b) above, District identified all of Student's needs at the IEP team meeting of May 26, 2016. The goals developed at that meeting were designed to meet Student's needs and enable him to make progress in the general curriculum, as well as to increase his ability to engage in reciprocal social communication. The goals were annual, with incremental objectives to be achieved in September 2016 and January 2017. The IEP included appropriate objective criteria, evaluation procedures, and schedules for determining, on an annual basis whether the annual goals were being achieved and a statement of how the student's progress toward the goals would be measured. For example, Student's progress on his social emotional goal to demonstrate positive coping skills to stay regulated would be measured in 4 out of 5 trials per week as reported by the teacher or observed by the school counselor. Incremental objectives ensured that Student's progress would be measured no less than three times during the school year, including annual review. Both the method of calculation of progress and the frequency of measurement met the statutory requirements for measurability of annual goals. Thus, Student did not prevail on Issue 2(c).

ISSUE 2 (E): PARENTAL PARTICIPATION, DISCUSSION OF CONTINUUM AND PREDETERMINATION

23. Student contends that Mother was denied meaningful participation in the IEP team meeting because the team failed to address her concerns, discuss the full array of placement options, including nonpublic school, and predetermined Student's placement. District contends that Mother's concerns were considered, that placement options were considered without predetermination, and that Mother was provided a meaningful opportunity to participate in development of Student's IEP.

Parental Participation

24. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*) [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

Continuum of Placement Options

25. Districts must ensure that students with disabilities are educated to the maximum extent appropriate with children who are not disabled at the school the student would attend if he or she was not disabled. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. 300.114(a) & 300.116; Ed. Code, § 56301.) If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires a further determination of whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

Predetermination

26. Predetermination occurs when an educational agency has decided on its offer prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP team meeting with a “take it or leave it” offer. (*JG v. Douglas County School Dist.*, (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.) However, school officials do not predetermine an IEP simply by meeting to discuss a child's programming in advance of an IEP team meeting. (*N.L. v. Knox County Schools, supra*, 315 F.3d 688 at p. 693, fn. 3.)

27. Mother was informed of Student's problems, attended the May 26, 2016 IEP team meeting, expressed disagreement regarding the IEP teams decisions on placement and requested that the IEP be changed or that Parents be reimbursed for Student's enrollment in a private school.

28. The May 26, 2016 IEP team meeting was approximately six hours long, and the IEP document was projected for everyone to see, with the present levels of performance, goals and services discussed and revised with input from team members as the meeting progressed. Mother was present for the assessment reports by Ms. Nepomuceno, Mr. Jimenez, Ms. Clingmon and Ms. Tin. Mother was given ample opportunity to ask questions about the assessments and the assessors' opinions, and by all accounts actively participated in the discussion of Student's needs and the supports he required to access his education. Mother disagreed with the placement offer, and the IEP team had further discussions regarding nonpublic schools as an option. She also wrote to District requesting reimbursement for Student's tuition at Bridges. Mother had meaningfully participated in the development of Student's IEP.

29. District also scheduled an IEP team meeting for December 1, 2016 at Mother's request, but Mother requested that the meeting be rescheduled. There was no

evidence presented that District did not cooperate with Mother in rescheduling the requested meeting, or interfered with her participation in the IEP process in any way. Mother's IEP team meeting request did not indicate what concerns Mother wished to address, and the evidence did not establish that Mother had additional information for the team's consideration, or that would have changed the offer of FAPE.

30. Here, the May 26, 2016 IEP team reasonably determined that Student could be educated in the general education environment, and so was not required to consider more restrictive placements on the continuum of program options. As discussed further at Issues 2(d) and 2 (f), below, Student no longer exhibited the severe behaviors that warranted a nonpublic school offer in past years. Nonetheless, Ms. Townsell led the IEP team discussion on nonpublic school placement, and why District team members did not believe that Student required such a restrictive setting.

31. Although Mother preferred a smaller school and wanted to discuss a nonpublic school placement, a school district has the right to select a program for a special education student, as long as the program is able to meet the student's needs; the IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D. Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323; *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580* (D. Minn. 2003) 259 F.Supp.2d 880, 885; *O'Dell v. Special Sch. Dist. of St. Louis* (E.D. Mo. 2007) 503 F.Supp.2d 1206.) A school district is not required to "maximize the potential" of each special needs child. (*Rowley, supra*, 458 U.S. at p. 200.) Nor must an IEP conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education . . . designed according to the parents' desires."], citing *Rowley, supra*, 458 U.S. at p. 207.) Mother expressed surprise at not being offered a nonpublic school for gifted students with autism, and the team discussed why a nonpublic school was not

being offered.

32. As discussed above, the IDEA and California law require school districts to educate children with disabilities in general education at the student's home school to the maximum extent appropriate. The team discussed Mother's request for a nonpublic school placement, such as the STEM3 Academy, but District team members determined that Student could be educated in its general education STEM magnet program with gifted students at Student's home school. The fact that District was statutorily obligated to offer Student placement in general education at Student's home school if he would be able to access the curriculum with special education and related services support did not render the offer predetermined.

33. In summary, Student failed to meet his burden of proving by a preponderance of the evidence that District denied him a FAPE by denying Mother meaningful participation in the IEP team meeting of May 26, 2016. The May 26, 2016 IEP team addressed Mother's concerns, discussed Mother's request for a nonpublic school, and did not predetermine Student's placement.

ISSUES (1), 2(D) AND 2(F): FAPE AND THE LEAST RESTRICTIVE ENVIRONMENT

34. District contends that the May 26, 2016 IEP offered Student a FAPE in the least restrictive environment, that is, that District complied with all procedural requirements and that the IEP was reasonably calculated to enable Student to receive educational benefit. Student contends that District denied Student a FAPE because the IEP team failed to consider the adverse impact of Student's placement on the other students and teacher in general education, and because the IEP failed to offer Student a program with appropriate curriculum or the supports necessary to allow Student to make educational progress.

35. When a school district seeks to demonstrate that it offered a FAPE, the legal analysis has two prongs. First, it must be determined whether the district has

complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp 206-207.) Second, the district must show that the IEP developed through those procedures was designed to meet the child's unique needs and reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams, supra*, 195 F.3d 1141, 1149.) A school district's determinations regarding special education are based on what was objectively reasonable for the district to conclude given the information the district had at the time of making the determination. A district cannot "be judged exclusively in hindsight" but instead, "an IEP must take into account what was, and what was not, objectively reasonable...at the time the IEP was drafted." (*Ibid.*, citing *Fuhrmann, supra*, 993 F.2d at p. 1041.)

Procedural Requirements – Applicable Law

36. The IEP process must include a comprehensive assessment of the Student in all areas of suspected disability. (34 C.F.R. § 300.303(b)(1); Ed. Code, § 56381(a)(2).) The results of the assessments must be documented in writing and shared with the parents. (Ed. Code, §§ 56327, 56329.)

37. Each meeting to develop, review or revise the IEP of an individual with exceptional needs must be conducted by an IEP team. (Ed. Code, § 56341, subd. (a).) The IEP team must include: one or both of the parents or a representative chosen by the parents; not less than one regular education teacher if the pupil is, or may be, participating in the regular education environment; not less than one special education teacher, or where appropriate, one special education provider to the student; a representative of the school district who is (a) qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of the student, (b) knowledgeable about the general education curriculum, and (c) knowledgeable about the availability of school district resources; an individual who can interpret the

instructional implications of assessment results; at the discretion of the parent, guardian or school district, other individuals with knowledge or special expertise regarding the student; and, if appropriate, the student. (20 U.S.C., § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).)

38. The IEP team must include at least one teacher or specialist with knowledge in the suspected area of disability. (See *Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1499.) Any team member who is qualified to interpret the results of an assessment may do so. (20 U.S.C. § 1414(d)(1)(B)(v); 34 C.F.R. 300.321 (a)(5); Ed. Code, § 56341, subd. (b)(5).) During the IEP team meeting, the parent must have an opportunity to meaningfully participate by discussing and providing input on the proposed IEP, asking questions and expressing concerns, and having those questions and concerns considered. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.)

39. An annual IEP must contain a statement of the child's present levels of academic achievement and functional performance, including the manner in which the child's disability affects involvement and progress in the general education curriculum. (34 C.F.R. 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1)(a).)

40. Legal Conclusions 18 through 20 are incorporated herein by reference.

41. An IEP must contain a statement of the special education, related services, supplementary aids and services, and program modifications or supports to be provided to the student. It must also specify the frequency, duration, and location of those services. (20 U.S.C. § 1414(d)(1)(A)(i)(IV) & (VII); 34 C.F.R. § 300,320(a)(4) & (a)(7); Ed. Code, § 56345(a)(4) & (a)(7).) The IEP must also contain an explanation of the extent to which the student will not participate with nondisabled children in the regular class. (20 U.S.C. 1414(d)(1)(A); 34 C.F.R. §300.320(a)(5); Ed. Code, §56345(a)(5).)

42. An IEP must contain a statement of appropriate accommodations necessary to measure the student's academic achievement and functional performance

on State and districtwide assessments. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. 300.320(a)(6); Ed. Code, § 56345(a)(6).

43. If a child's behavior interferes with his or her learning or the learning of others, the IDEA requires that the IEP team, in developing the IEP, "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1),)

44. For students 16 years of age and older, or when otherwise appropriate, the IEP should contain an individual transition plan for the student. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300,320(b); Ed. Code, § 56345(a)(8).)

Substantive Offer – Applicable Law

45. For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, the school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314; 20 U. S.C. § 1401(9).) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) The IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education . . . designed according to the parent's desires"], citing *Rowley, supra*, 458 U.S. at p. 207; see also *Miller v. Bd. of Education of the Albuquerque Public Schools* (D.N.M. 2006) 455 F.Supp.2d 1286, 1307-1309; *aff'd on other grounds, Miller v. Bd. of Education of the Albuquerque Public Schools* (10th Cir. 2009) 565 F.3d 1232.)

46. In determining the educational placement of a child with a disability a

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

47. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that (1) children with disabilities are educated with non-disabled peers; and that (2) special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).) To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect the student has on the teacher and children in the regular class; and (4) the costs of mainstreaming the student. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement

outside of general education was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's Syndrome].)

48. If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options.⁶ (*Daniel R.R., supra*, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

Procedural Requirements – Analysis

49. As discussed at Issues 1(a) and 1(b), District comprehensively assessed Student in all areas of suspected disability. Assessment areas of general ability, academic performance, language functioning, motor abilities and social emotional status were agreed upon by the parties in their November 17, 2015 agreement.⁷ That agreement

⁶ "Mainstreaming" is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

⁷ The agreement also provided for a health and development assessment by the school nurse, which was completed. Neither party submitted evidence of a dispute regarding the assessment and report of Student's health or development.

also included Parents' consent to the assessments. Parents were provided with copies of the assessment reports, and the assessments were discussed at the May 26, 2016 IEP team meeting with Mother's participation.

50. All required team members were present at the May 26, 2016 IEP team meeting, including Mother, the regular education teacher, Ms. Nepomuceno in her dual capacities of special education teacher and academic assessor, and Ms. Townsell as the school district representative familiar with District resources. Also present were assessors Ms. Nepomuceno, Mr. Jimenez and Ms. Clingmon, and specialist Ms. Townsell, who were each familiar with Student's disability of autism. Each assessor was well qualified to interpret the results of the assessments to the IEP team. Bridges teachers declined to attend, but provided input to the team through assessment interviews and questionnaire responses. As discussed at Issue 2(e), Mother was an active participant in the team discussions and provided extensive input, she asked questions and expressed concerns, and those questions were answered and her concerns considered. Accordingly, the May 26, 2016 IEP team meeting was appropriately comprised and conducted.

51. As to documentation of the information considered by the team, and the special education and services offered by District, the May 26, 2016 IEP contained statements of Student's present levels of academic and functional performance. Those present levels were embodied in the detailed summaries of the results of Student's assessments, as well as in the baselines provided for each of Student's annual goals. Each summary of Student's present levels included a section that explained if and how Student's disability affected involvement and progress in the general education curriculum.

52. The IEP contained measurable academic and functional goals designed to meet Student's needs and enable Student to make progress in the general education

curriculum. It also contained descriptions of how that progress would be measured and provided for Parents to receive report cards, as well as reports on Student's progress on goals, in September 2016 and January 2017.

53. The IEP contained a statement of the special education and related services to be provided to Student, specifically, 30 minutes per week of direct counseling and guidance services, 225 minutes per week (45 minutes per day) of direct resource specialist instruction, and 60 minutes per month of indirect consultation language and speech services. The services were specified by frequency, duration and location, and the IEP stated that Student would be outside of general education for two percent of the time each week for guidance and counseling services.

54. The IEP stated that Student would participate in State and District testing, and identified supports, accommodations and variations for Student to participate in that testing.

55. Student's behavior of calling out in the classroom had been consistently identified by the Bridges teachers, and observed by District's assessors, to be disruptive to classroom discussions and activities. The IEP team considered and included a behavior support plan in the IEP that described the positive behavioral interventions, supports, and other strategies that would be used to address that behavior.

56. Student was not yet 16 years old, however, the IEP contained an individual transition plan to support Student in his areas of educational interest, particularly science, with goals to prepare for high school classes in the areas of robotics, computers and engineering.

57. In summary, the IEP contained: present levels of performance; measurable annual goals; special education, related services, supplementary aids and services, and program modifications or supports; the extent of Student's removal from general education, accommodations for State and District testing, a behavior support plan and

an individual transition plan. Accordingly, District satisfied all procedural requirements for documentation of the offer of special education and related services, and the basis for that offer, in the May 26, 2016 IEP.

Substantive Offer – Analysis (Special Education and Related Services)

58. Applying the *Rowley* standard, the weight of the evidence established that the May 26, 2016 IEP was designed to meet Student’s unique needs and reasonably calculated to provide Student with educational benefit.

59. As discussed at Issues 2(a) and 2(b), District’s comprehensive assessments informed the IEP team that Student was capable of understanding and performing grade level work, but his disability of autism exhibited as social communication deficits, a lack of coping strategies, poor organizational skills and failure to complete work that interfered with his academic and social progress. Student was below or significantly below expectations on his 2015-2016 progress reports in timely work completion, time management, following instructions, self-advocacy, self-regulation, perseverance and showing respect or empathy for others and their ideas, despite meeting or exceeding expectations in understanding of academic concepts. The adverse effect of Student’s disorganization was dramatically apparent in math, the only academic subject in which Student’s grades did not meet expectations, as Student’s habits of doing the math in his head and failing to check his work led to careless errors and incorrect answers as the curriculum progressed to multi-step calculations. Student’s lack of understanding of social cues and inability to regulate his actions led to behaviors such as calling out in class in a disruptive manner and lack of regard for the ideas and feelings of others. Based on the information available and discussions at the team meeting, the IEP team correctly identified that Student had educational needs in the realms of social emotional functioning, prevocational skills, pragmatics and behavior.

60. As discussed at Issue 2(c), the May 26, 2016 IEP team addressed each of

Student's needs by developing goals that appropriately addressed those needs. The team also developed an IEP that offered Student educational services and placement designed to meet these needs and reasonably calculated to provide Student with educational benefit.

61. Thirty minutes a week of guidance and counseling services were offered, and Mr. Jimenez and Ms. Farahzad persuasively testified that those services, at that frequency and duration, would allow Student to make progress on his social emotional and pragmatics goals by teaching him the coping skills to stay regulated during negative social interactions, and to recognize and value others' viewpoints and perspectives. They also credibly opined that these services would appropriately and adequately support Student in his transition from private to public school, and provide Student with a familiar adult on campus to contact if he became stressed or frustrated.

62. Similarly, Ms. Nepomuceno testified convincingly that 45 minutes per day of resource support delivered to Student in the classroom was the appropriate level of support to allow Student to make progress on his writing and prevocational goals.

63. Lastly, Ms. Falcon credibly and persuasively testified that 60 minutes per week of indirect consultation services between a speech pathologist and Student's teachers was the appropriate level of support to allow Student to make progress on all his goals. The speech pathologist would give each teacher strategies and techniques to teach Student the skills targeted by his goals into the classroom curriculum, including his behavior goal of learning to raise his hand and wait to be called to participate in classroom discussions. These services included consultation with the physical fitness teacher to provide strategies for teaching Student the social and coping skills necessary to comfortably participate in the physical activities of that class.

64. The IEP offered Student instructional accommodations, such as small group instruction as needed, multi-modal teaching strategies, request breaks, use of a

word processor for longer written tasks and positive reinforcement/motivation. Many of these same accommodations were provided to Student at Bridges, and were effective in assisting Student to access the curriculum. The IEP included as an accommodation that Student attend the Learning Center during his elective period, where he would get additional support in organizing and completing his schoolwork. Ms. Nepomuceno, Mr. Jimenez, Ms. Falcon and Ms. Farahzad testified credibly and persuasively that these accommodations were appropriate to provide Student with the additional support he needed to make progress on his goals and in the general education curriculum.

65. Student did not establish that he required a small classroom or small school to make educational progress. The information available to the IEP team established that Student was capable of accessing grade level curriculum in a general education classroom, but that Student's autism manifested in behaviors and habits that interfered with that access and needed to be addressed with services and supports. Student appropriately navigated the hallways at the unfamiliar school where he was tested by Mr. Jimenez, and the Nightingale campus during the May 26, 2016 IEP, demonstrating that he could access the campus of a large school. The guidance and counseling, resource specialist and language consult services were adequate and appropriate to address Student's behaviors, and the educational professionals testified persuasively that this support would be sufficient for Student to succeed in general education classrooms at his home school.

66. The May 26, 2016 IEP provided a level of instruction reasonably calculated to permit Student to advance through the general education curriculum. Accordingly, Student failed to meet his burden of proving that he was denied a FAPE for failure to offer sufficient special education and services.

Substantive Offer – Analysis (Least Restrictive Environment)

67. Here, applying the *Rachel H.* factors to the facts shows that a general

education was appropriate and that District offered Student placement in the least restrictive environment.

68. As to the first *Rachel H.* factor, Student was already receiving educational benefit from general education. Bridges did not provide special education or related services to its students, but the progress reports available to the IEP team showed that Student managed to meet or exceed the grade level expectations with academic instruction using general education teaching techniques. Although Student needed prompts and redirection to follow instructions, complete his work, wait his turn or respect the ideas of others, Student was absorbing the material and capable of mastering grade level work despite occasionally being off-task and needing periodic breaks from the classroom. Student could benefit educationally from a general education placement.

69. As to the second *Rachel H.* factor, the non-academic benefits of a general education placement, Student would benefit from a general education placement. Ms. Nepomuceno explained that it was important for Student to learn how to function with his peers, that general education provided him with the social benefit of participating in school activities with peers, and that being at his home school gave him the opportunity to make local friends. Student would have an opportunity to generalize the skills he learned during guidance and counseling, and his friends would move to high school with him. Mr. Jimenez opined that placement in a general education program with typical peers would give Student's social learning an opportunity to develop. A public school program would provide Student an environment in which to learn how to interact appropriately with typical peers and how to respond to challenging situations that Student's private school placement did not provide. Although the emails from Bridges to Mother were not available to the IEP team, when given an opportunity to read them, Mr. Jimenez opined that Bridges responded to Student's inappropriate

behaviors in a punitive manner without regard to his disability, particularly his difficulty with writing and taking the perspective of others. Ms. Nepomuceno, Mr. Jiminez and Ms. Falcon and Ms. Farahzad persuasively opined that a general education placement at Nightingale with behavioral and social language support would provide Student with non-academic benefit.

70. As to the third *Rachel H.* factor, even though Student's behaviors had an effect on the teacher and general education students, and his calling out was particularly disruptive, there was no evidence that the Bridges teachers were unable to conduct their classes because of Student's interruptions and disruptions. According to Ms. Farahzad, even typically developing middle school children are disruptive in class. Mr. Jimenez and Ms. Farahzad testified convincingly that Nightingale's teaching staff was well trained to work with students who called out during class, and that with a behavior support plan, counseling services and speech pathologist consultations with teachers, Student would not have such an adverse impact in the classroom as to weigh against a general education placement.

71. Finally, as to the last *Rachel H.* factor, cost, there was no evidence that providing Student with the related services offered was prohibitive, or that a nonpublic school placement was not offered due to cost. To the contrary, the IEP team developed the program that offered the level of support necessary for Student to make progress on his behavior, social emotional and pragmatics goals.

72. In conclusion, each of the four *Rachel H.* factors weighed in favor of Student's placement in a general education setting at the time of the May 26, 2016 IEP. Student would obtain educational and non-academic benefit from a general education placement, would not have a sufficiently adverse impact on the teacher and students to warrant a change to a more restrictive setting, and the cost of the full inclusion program was not prohibitive. The law required District to ensure, to the maximum extent

appropriate, that Student was educated with non-disabled peers as close as possible to his home and in the school that he would attend if he did not have a disability. Therefore, a general education placement was the least restrictive environment for Student.

73. Student could be satisfactorily educated solely in a regular education environment, and the IEP team was not required to determine which of the more restrictive settings on the continuum of options would ensure that Student was to be mainstreamed to the maximum extent appropriate per *Daniel R.R.* Although the team discussed a nonpublic school placement at Mother's request in accordance with the 2015 settlement agreement, it was not otherwise required to consider the continuum of restrictive placements.

74. Parent expressed a desire to have the IEP team place student at STEM3 Academy, a nonpublic school for gifted students with autism. However, per the *Rachel H.* analysis above, placement in a school with only disabled students would not have been the least restrictive environment for Student. In addition, a school district has the right to select the program offered, as long as the program is able to meet the student's needs, and the district is ultimately responsible for ensuring that FAPE is offered. (*Letter to Richards*, 55 IDELR 107 (OSEP 2010).) No one factor is determinative in placement, and parental preference cannot be either the sole or predominant factor in placement decisions. (See, e.g., *Letter to Burton*, 17 IDELR 1182 (OSERS 1991); *Letter to Anonymous*, 21 IDELR 674 (OSEP) 1994); *Letter to Bina*, 18 IDELR 582 (OSERS 1991).) The Ninth Circuit has held that while the school district must allow for meaningful parental participation, it has no obligation to grant the parent a veto over any individual IEP provision. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.)

75. District met its burden of proving by a preponderance of the evidence that it offered Student a FAPE in the least restrictive environment. Student did not meet his

burden of proving by a preponderance of the evidence that the May 26, 2016 IEP failed to offer Student an appropriate placement in the least restrictive environment.

ORDER

1. District's May 26, 2016 IEP offered Student a FAPE in the least restrictive environment.
2. District may implement the May 26, 2016 IEP without parental consent if Student is enrolled in a District school and requests special education and related services.
3. All of Student's requests for remedies are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District prevailed on all issues heard in these consolidated cases.

RIGHT TO APPEAL THIS DECISION

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

Dated: June 28, 2017

/s/

ALEXA J. HOHENSEE

Administrative Law Judge

Office of Administrative Hearings