

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN MARCOS UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2017120623

DECISION

San Marcos Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on December 14, 2017 naming Student. The matter was continued for good cause on January 2, 2018.

Administrative Law Judge Tiffany Gilmartin heard this matter in San Marcos, California, on March 20, 22, 23, April 10, 11, 12, 13, and 17, 2018.

Sarah Orloff and Tiffany Santos, Attorneys at Law, represented San Marcos Unified School District. Dawn Dully, executive director of special education attended the hearing on behalf of San Marcos.

Cindy Lane, Attorney at Law, represented Student. Mother attended the entire hearing. Maria McFarland, a paralegal, attended the entire hearing. Father attended half of the day on March 22 and on March 23. Student did not attend, but testified on April 13, 2018.

A request for continuance was granted to allow the parties to file written closing arguments, and the record remained open until May 7, 2018. Upon timely receipt of the

written closing arguments, the record was closed and the matter submitted for decision.

ISSUE

Did Student's April 27, 2017 individualized education program, as modified on November 3, 2017, offer her a free appropriate public education in the least restrictive environment?

SUMMARY OF DECISION

The April 24, 2017 IEP, as modified on November 3, 2017, offered Student a FAPE in the least restrictive environment. San Marcos proved Student could be satisfactorily educated on a comprehensive campus with appropriate services and supports. If Student is enrolled in the San Marcos Unified School District, San Marcos may implement the April 24, 2017 IEP as modified on November 3, 2017, without parental consent.

FACTUAL FINDINGS

1. Student is a 14-year-old female who resided in the District at all relevant times, and was eligible for special education under the categories of specific learning disability and speech or language impairment. She was also dyslexic and struggled with anxiety.

2. Since second grade, Student was enrolled at NewBridge School, a non-public school. NewBridge School is a transitional kindergarten through eighth grade program designed to help children with disabilities, especially dyslexia, learn and then return to comprehensive schools. Student was placed there by San Marcos through the IEP process.

3. Student is described as a wonderful, young lady. She is kind, compassionate, and makes friends easily. She is a hard-working and respectful student

who takes her education very seriously. Her goal is to complete high school and attend a four-year university. University of California, Berkeley was identified as her dream school because of its commitment to social justice. Student wanted to teach special education after college.

4. Student was assessed for her triennial assessment in 2015. Brett Klepacki was the school psychologist assigned to Student's case and he conducted Student's 2015 triennial evaluation. Mr. Klepacki testified at the hearing. Jontue Koff had worked with Student since 2012 and was Student's occupational therapist. Ms. Koff completed the occupational therapy portion of Student's triennial assessment in 2015. She was familiar with Student's needs. Ms. Koff also testified at the hearing.

5. Student's last agreed upon and implemented IEP was dated May 10, 2016. It contained 11 goals. By May 2017, Student met eight of her goals. Student met her goals in listening comprehension, reading fluency, two in mathematics, typing, comprehension-figurative language and vocabulary, and self-advocacy. The three unmet goals were one in phonics and two in writing.

6. In anticipation of transitioning Student to high school, six IEP team meetings were held between April and November 2017. The IEP team meetings were held on April 27, 2017, June 6, 2017, June 21, 2017, August 17, 2017, August 21, 2017 and November 3, 2017.

April 27, 2017 IEP team meeting

7. In preparation for the first IEP team meeting in April 2017, Karen deBie, Student's case manager, reviewed her educational records and observed Student at NewBridge. Ms. deBie testified at the hearing. Ms. deBie holds a certificate in behavior analysis and a master's of art in education, with a concentration in counseling, and educational specialist degree in school psychology, all from San Diego State University. Ms. deBie's current assignment with San Marcos is as the special education coordinator

where she works as the case manager and provides IEP support to District placed students at non-public schools. Ms. deBie's testimony was relevant, thoughtful, thorough, and consistent with the documentary evidence. It was given substantial weight.

8. On April 27, 2017, Ms. deBie arranged the first IEP team transition meeting. The team began by thoroughly reviewing Student's progress on her previous IEP goals and reviewing her present levels of academic and functional performance. The IEP team notes and hearing testimony established that the team examined each of Student's previous 11 goals individually and discussed goals she met and goals she had not. Overall the team agreed that Student had made progress on her goals.

9. The IEP team members identified Student's areas of need in reading and listening comprehension, writing, math, specifically word problems, written expression, anxiety and coping. The team reviewed Student's present levels and functional performance. Steve Mayo, the director of NewBridge, who testified during the hearing, was present to provide feedback on Student's progress at NewBridge. Mr. Mayo subbed for her classroom teacher numerous times; and, as part of his administrative duties, had observed her over the past seven years close to one hundred times. Mr. Mayo informed Student's IEP team during the initial meetings in 2017 of Student's present levels coming out of New Bridge. His information about her present levels and needs was relevant, accurate, and given due weight. The IEP team also had access to Student's most recent progress report from NewBridge where she was earning excellent marks in all subjects. This progress report provided detailed feedback on curricular areas, what students were asked to specifically study, and the results of informal student assessments. The IEP team was also able to consider the progress report on Student's IEP goals prepared by NewBridge. Student was found to have made tremendous growth in reading where she would now read independently at home. Student's attendance at a

homework club helped significantly in reducing her school anxiety while at home. In mathematics, Student still needed assistance in note taking support in order to retain information and master the process.

10. The April 27, 2017 IEP team meeting was continued so the family could tour multiple placement options. Options under consideration at this time included non-public schools, private parochial schools, private schools, and comprehensive public school settings.

June 6, 2017 IEP team meeting

11. The IEP meeting was reconvened on June 6, 2017. When the meeting reconvened the family had an opportunity to tour the BASE program at Mission Hills High School, California Coast Academy, High Tech High School, Cathedral Catholic, and the Classical Academy. The discussion surrounding the continuum of services and programs the IEP absorbed a significant amount of time during the June 6, 2017 meeting.

12. Mother, who testified at the hearing, was an active IEP team member and participated robustly in Student's educational planning. Student's transition to high school was a significant concern for Mother. Mother relied on the advice and counsel of an educational advocate, Dr. Sara Frampton. Dr. Frampton, who did not testify, played a significant role for Parents in Student's IEP team meetings and educational planning. While the IEP team meetings were on-going, Mother was in the process of starting a new job. She deferred to Dr. Frampton on issues relating to Student's education. Dr. Frampton recommended California Coast Academy to Mother in April 2017. Dr. Frampton also recommended Mother consider Winston School or Cathedral Catholic. Student and Mother visited California Coast in May 2017. During the hearing, Parents stipulated they were afforded a meaningful opportunity to participate in the IEP development process.

13. At the June 6, 2017 IEP meeting, Student, who testified at the hearing, shared her thoughts with the other IEP team members about the various programs. Student was articulate and thoughtful. She loved NewBridge Academy because it felt like a family. The California Coast Academy was her favorite program because it was most similar to her experience at NewBridge. Student had the opportunity to tour the BASE program at Mission Hills High School. After Student reported to the other IEP team members her feelings that the BASE program would not fit her needs, the team looked at other programs.

June 21, 2017 IEP team meeting

14. The team reconvened the IEP team meeting on June 21, 2017. At this meeting, the team reviewed proposed new goals for Student. Student was also present at this meeting and was able to provide her feedback on the proposed goals.

15. Garth Phillips, who testified at the hearing, was a special education teacher on special assignment for San Marcos during the 2016-2017 school year. As part of his duties he attended IEPs and worked with teachers in ensuring student needs were met. He observed Student during her time at NewBridge. Student was engaged in her lessons, working independently, taking notes, asking questions and being an active learner.

16. At this meeting, the team explored San Marcos High School's mild/moderate program of co-taught courses, specialized academic instruction, and general education course was initially discussed as a way to challenge Student academically and help her meet her long-term academic goals. One of Student's concerns was that she would not receive sufficient attention in a co-taught class; however, Mr. Phillips observed her in a class of 16 students with specialized learning needs, accessing her education. A co-taught classroom is a core educational class taught by two credentialed teachers. One teacher is a credentialed general education

teacher who is responsible for the core academic instruction. The second teacher is a credentialed special education teacher who is responsible for supporting students with IEPs in accessing the curriculum as it is being taught by the general education teacher. Student, Mother, and advocate all identified the positive relationship the family has with San Marcos staff as a positive in facilitating her transition.

17. In July 2017, while the IEP team meetings were still on-going, Mother enrolled Student at California Coast Academy and paid a \$300 tuition deposit. Mother never informed the San Marcos IEP team members of Student's enrollment and seat deposit payment.

August 17, 2017 IEP team meeting

18. The team agreed to reconvene the meeting on August 17, 2017. Mother cancelled the meeting at the last minute and the team agreed to attempt to reconvene another time.

August 21, 2017 IEP team meeting

19. When the team reconvened on August 21, 2017, the team reviewed previous meeting notes. Student toured San Marcos High School and looked through the window at a co-taught classroom. Student also, over the summer, did a test enrollment at Winston School, a non-public school, for two days and found the students there academically unmotivated.

20. As a result of Student's feedback, Ms. deBie suggested San Marcos High School in the mild to moderate program with co-taught classes, specialized academic instruction and general education courses for Student. Wendy Gammarano, who also testified at the hearing, described the typical 9th grade schedule and the literacy academy that San Marcos could offer Student. Student was also interested in the variety of electives San Marcos could offer such as sign language and art classes. Ms.

Gammarano was a credentialed special education teacher as well as the special education department chair at San Marcos High School. She'd worked for San Marcos High School for seven years. Ms. Gammarano's duties included teaching specialized academic instruction courses, managing Student IEP cases, and assisting in course selections.

21. Ms. deBie encouraged Student to try San Marcos High School. The program at San Marcos High School was selected because the San Marcos members of Student's IEP team believed she would succeed in the supportive setting, but also have access to typically developing peers and social activities. The other supporting factor in selecting San Marcos High School was Student's familiarity with staff members such as Ms. Gammarano, the education specialist, and Ms. Koff and Mr. Klepacki.

22. At some point during the meeting, Student asked to speak to Dr. Frampton privately. Shortly after Dr. Frampton and Student spoke, Dr. Frampton informed the other IEP team members that Student would be withdrawing from San Marcos Unified School District and be unilaterally placed in a private school. Student was present when Dr. Frampton informed the IEP team of Mother's intention to unilaterally place Student at California Coast Academy.

23. Prior to terminating the meeting, Ms. deBie offered San Marcos High School within the mild/moderate program of co-taught classes, specialized academic instruction, and general education classes along with services and supports as its FAPE offer. Student's IEP remained unconsented to following the August 21, 2017 IEP team meeting. The next day Ms. deBie attempted to schedule another IEP meeting to finalize Student's IEP. In correspondence with Ms. deBie, Dr. Frampton disagreed with scheduling another meeting so soon after the previous one. Dr. Frampton also informed San Marcos that all correspondence with parents was to be routed through her. Dr. Frampton's correspondence with San Marcos was aggressive and condescending. At this

time, Mother was not responding to the correspondence San Marcos was sending regarding Student. However, the documentary evidence supports Ms. deBie inquiring into dates at the beginning of the school year when Parents would be available to no avail.

August 22-23, 2017 First and second days of School at San Marcos High School

24. Approximately one hour following the IEP team meeting on August 21, 2017, Mother emailed Ms. Gammarano and informed her that Student would be attending San Marcos High School the following day. When Ms. Gammarano received Mother's email, she worked after hours to initiate a program for Student. The first day of the 2017-2018 school year at San Marcos High School was a non-academic day. All students rotated through abbreviated class schedules that allowed them to participate in welcome back assembly programming. Ms. Gammarano arranged for Student to shadow her brother, an 11th grader, and his one-to-one aide for the first day of school. Student was relieved that the first day of school allowed her to spend time with her brother and his aide.

25. On the second day of school on August 23, 2017, Student told her mother to stay close to school should she want to leave early so Mother could pick her up. As a result, Mother worked from a nearby Starbucks on day two. Student left San Marcos early.

26. After Student left early on the second day of school, Mother arranged for Student to have an emergency session with her therapist, Dr. Susan Trueblood. Dr. Trueblood testified at the hearing. Dr. Trueblood recommended Student not return to school that week. Dr. Trueblood's opinion was not supported by any evidence. Dr. Trueblood was not a member of Student's IEP team, had never provided an assessment of Student, had vague knowledge of what an IEP was, had never reviewed her

educational records, and had no way of providing any guidance to the appropriateness of Student's educational placement. Moreover, she never shared information regarding Student's need for an emergency therapeutic meeting or her concerns related to Student's current academic program with the IEP team. For these reasons, Dr. Trueblood's testimony was not persuasive.

August 24, 2017 LAST day of School at San Marcos High School

27. On the third day of school, Student went to her regularly assigned classes. During Student's Algebra support class, Student was initially overwhelmed by the class, but was moved to the front row and paired up with a fellow student who she regarded as "awesome," and then Student realized she understood the subject being taught. While Student was in American Sign Language, Ms. Koff came in to observe her and sat next to her. Student told Ms. Koff she wanted to leave and was immediately escorted to Mr. Klepacki's office. Mr. Klepacki's office was located in what San Marcos High School called the "helping hallway." When Student appeared in his office, her demeanor appeared calm. Mr. Klepacki was aware Student had left early on the second day of school. Mr. Klepacki's goal on day three was to get Student to attend her fourth period class. While Student was in Mr. Klepacki's office, Student informed him her Mother was at the school ready to pick her up. Student left and never returned to San Marcos High School.

28. The IEP team was aware Student struggled with anxiety. Mr. Klepacki understood her anxiety was primarily oriented towards academic performance. Testimony and documentary evidence point to Student's anxiety centering on school. Student sought an alternative assignment for a "fun run" in physical education where it was a timed exercise activity. She also preferred to know her schedule in advance. Advanced schedule knowledge and understanding expectations assisted Student in mitigating her anxiety. Both Ms. Gammarano and Mr. Klepacki believed it was very

common for students transitioning into high school to experience anxiety around their new circumstances. Mr. Klepacki considered every day a student came to school “a win.”

29. Student alleged during the hearing, her anxiety was far greater than what the IEP team understood it to be. However, the evidence was inconsistent. On several occasions, Mother referred to Student’s anxiety as “crippling.” This was contradicted by Student’s active participation in protest marches for social issues, attendance at multiple IEP team meetings where she advocated for her preferred placement and her demeanor while testifying on her own behalf at the due process hearing.

30. Sherry Jasmer, who testified at the hearing, had worked with Student’s eleventh grade brother as a District provided one-to-one aide since he was in the first grade. Ms. Jasmer had known the entire family for many years. Despite her many years working with the family, Ms. Jasmer was unaware of Student’s anxiety. Ms. Jasmer’s testimony did not support Student’s contention regarding the severity of her anxiety.

31. Ms. deBie continued to try to schedule another IEP team meeting to finalize Student’s IEP. Dr. Frampton thwarted attempts by San Marcos to schedule another IEP meeting. At Mother’s request, Mother was not engaged in correspondence San Marcos was sending regarding Student. However, the documentary evidence established Ms. deBie inquired into dates at the beginning of the school year when Parents would be available to no avail.

November 3, 2017 IEP team meeting

32. On October 18, 2017 Ms. deBie sent a letter that was mailed and emailed to both Parents with an IEP team meeting notice for November 3, 2017. As both parents held Student’s educational rights, Ms. deBie sent each individual invitations to the November 3, 2017 IEP meeting. On October 18, 2018, she mailed and emailed a copy of the IEP invitation, identifying November 3, 2017. In the letter she indicated, if parents requested an alternative date, she would work with their schedule. Father indicated in

the affirmative he would be present at the meeting; however, Mother never responded.

33. For the November 3, 2017 IEP team meeting, Father and Student's stepmother were present; as was Karen deBie, San Marcos' special education coordinator; Brett Klepacki, school psychologist; Niki Sestina, special education coordinator; Jontue Koff, occupational therapist; Kelly Carr, assistant principal; Wendy Gammarano, education specialist; Chester Owen, general education teacher and Gina Pecile, speech and language pathologist. Mother had previously attended or participated via telephone at all other meetings and was invited to the November 3, 2017 meeting, but did not attend. This was a legally comprised IEP team meeting.

34. Father was offered a copy of Parent rights and the procedural safeguards. The team reviewed the IEP page-by-page. The team reviewed each proposed goal individually. Father indicated he was in agreement with the goals. Chester Owen, the general education teacher, who testified at the hearing made a suggestion about writing out expectations to help alleviate some of Student's concerns. The team reviewed and discussed the services and accommodations for Student. Finally, the team presented the educational setting and the numerous placement options available for Student. After considering all the options, the San Marcos members of the IEP team recommended a comprehensive high school setting at San Marcos High School with services and supports being provided.

35. To support Student in meeting her goals, the April 27, 2017, as modified on November 3, 2017, IEP offered services and accommodations. Some of the accommodations included preferential seating; access to word prediction program; permission to use calming techniques and movement breaks at Student's discretion; graph paper; directions that would be read; clarified; and repeated with visual and auditory cues; access to audiobooks; checks for understanding; use of an assignment organizer; extended times for assignments when necessary; alternative testing location;

and near point written model when copying information. Her work load would be modified to allow her to demonstrate subject master in a shorter assignment.

36. Mr. Klepacki was a member of the November 3, 2017 IEP team meeting. Mr. Klepacki worked for San Marcos Unified School District as a school psychologist since 2011. His duties included being part of the non-public school assessment team, counseling students, performing risk assessments, developing behavior intervention plans, collaborating with teachers to support Student's needs, and counseling students. He holds a master's degree in educational psychology and an education specialist degree in school psychology from Chapman University. Mr. Klepacki was knowledgeable about her cognitive abilities, emotional needs and academic goals, and had conducted her 2015 triennial assessment. He coordinated a campus tour for Student of San Marcos High School. Mr. Klepacki was familiar with the co-taught classroom model at San Marcos High School, knowledgeable about the faculty who would be providing instruction, informed about Student's individual needs and the supportive services Student would need to access her education. Mr. Klepacki opined a comprehensive school setting was the best fit for Student as it was an environment that would support her goal of attending a four-year university, provide her access to the University of California A-G requirements required for admission, the need for her to earn a high school diploma, and the wealth of social and extra-curricular activities available. His testimony was thorough, complete, and consistent with the documentary evidence. It was given substantial weight.

37. Ms. Koff was also a member of the November 3, 2017 IEP team meeting. Ms. Koff provides occupational therapy for San Marcos Unified School District students. Ms. Koff worked with Student on her gross and fine motor development. Ms. Koff recommended no change to the number of minutes Student received for occupational therapy. Ms. Koff also recognized Student's anxiety in not wanting her disabilities to

stand out. Thus, she recommended Student be able to access the time at her discretion to help Student make the transition to more independent learning. Ms. Koff's testimony was helpful and persuasive.

38. Gina Pecile, the speech and language therapist testified at the hearing. Ms. Pecile was part of the November 3, 2017 IEP team meeting. Ms. Pecile has a master of science in communication sciences and disorders. Ms. Pecile has a certificate of clinical competency from the American Speech, Language, and Hearing Association. Part of her duties at San Marcos Unified School District was to work with IEP teams to develop appropriate goals for students with communication disorders. Ms. Pecile had limited contact with Student. Ms. Pecile's testimony was limited to discussing the speech and language services and goals as she had never assessed or provided direct services to Student. In that limited context, her testimony provided insight into the District's offered speech and language services.

39. Six new goals were crafted for Student. The team reviewed them individually at the November 3, 2017 IEP team meeting. Goal one was in equation solutions/ word problems that asked Student to create equations and inequalities in one variable, including ones with an absolute value and including word problems, and use them to solve problems at 80 percent accuracy on at least three occasions. Goal two addressed writing. It asked her to write a multiple paragraph argument using supporting claims to analyze the topic with valid reasoning and use of sufficient evidence measured against curriculum based assessments on at least four of five trials. Goal three also dealt with writing, specifically, self-editing. This goal called for Student to produce clear and coherent writing that is appropriate to the task and purpose and audience as measured by curriculum based assessments on at least four of five trials. Goal four addressed reading comprehension, specifically, asked Student to be able to cite textual evidence of grade level text, when read aloud to her, to support her analysis of information

presented explicitly in the text at 80 percent accuracy. Goal five addressed Student's anxiety, specifically, supporting her growing self-advocacy skills that called for her to email or speak to a self-selected or mutually agreed upon staff person and develop a plan of action to address her concerns. Student would satisfy this goal by self-reporting a satisfaction of 80 percent or greater on a ten point scale over four consecutive weekly check-ins. Finally, the last goal, number six, dealt with her social emotional and organization needs, or specifically, for Student to learn and utilize an organizational strategy to keep track of assignment due dates and expectations on a planner. The goal asked Student to meet this goal 100 percent of the time over four consecutive weeks. San Marcos offered Student measurable goals in all areas of need.

40. Parents, Student, and the entire IEP team were actively involved in the creation of the goals. The team also included Mr. Mayo in the on-going development of Student's high school goals. However, Mr. Mayo's testimony about her placement was underdeveloped. The documentary evidence supported Mr. Mayo's position was Student could succeed at a comprehensive campus. His caveat was Student needed well-trained support. However, while testifying, Mr. Mayo seemed to try to distance himself from his previous statement. Mr. Mayo, further, was unfamiliar with San Marcos' program. He had never observed a co-taught class at San Marcos, was unaware the student-to-teacher ratio in the co-taught program was comparable to NewBridge or aware the Literacy Academy used the Orton-Gillingham techniques just like at NewBridge. While Mr. Mayo's testimony on Student's present levels and goals was valuable, his lack of familiarity of San Marcos' program impacted the weight his opinion was given on placement.

41. San Marcos made a free appropriate education offer of a comprehensive school setting. San Marcos also offered the following services: 855 minutes weekly of specialized academic instruction served in a co-taught general education classroom in

the subjects of Algebra, English language arts, and Biology; 285 minutes weekly of specialized academic instruction in the literacy academy; individual speech and language support for 930 minutes yearly; 30 minutes weekly of group occupational therapy; and 30 minutes weekly of individual counseling; and an one-to-one aide for 1,567 minutes per week.

42. San Marcos' literacy academy was based on Orton-Gillingham strategies to support students who struggle with dyslexia and other reading issues. The academy is taught by a teacher trained in reading instruction and Orton-Gillingham methodology. Student benefitted from the Orton-Gillingham-based instruction she received while at NewBridge. Continuing these learning strategies would positively impact Student and meet her needs.

43. Father testified at the hearing. Correspondence from Father and the IEP team meeting notes from November 2017 indicated Father was in agreement with San Marcos' offer. However, evidence was introduced by both parties that showed Father and Mother were involved in a family court dispute. Mother obtained a court order from the Superior Court of California that directed him to cooperate with Mother in Student's due process matter. His testimony was inconsistent with the documentary evidence provided. When Father testified, he tried to distance himself from previous correspondence with San Marcos. This vacillation negatively affected Father's credibility.

44. Father did not consent to the November 3, 2017 IEP at the time of the meeting. Following the November 3, 2017 IEP team meeting, on December 4, 2017, Ms. deBie mailed both Parents a copy of the IEP along with a cover letter summarizing the contents of the IEP offer including placement at San Marcos High School and a recounting of the specific services Student would receive as part of her IEP.

IEP Document

45. Errors in the IEP were discovered during testimony. Three specific errors

were identified. First, Student's present levels of academic and functional performance were duplicated from Student's last IEP of May 10, 2016. San Marcos stipulated that the information was the same. A self-population error in the program that generates IEP documents was identified as the source of the issue. Student's IEP team thoroughly discussed Student's actual present levels of performance. The IEP notes as well as the testimony at hearing established that the proposed goals were based on Student's accurate present levels as reported to the team and not the ones incorrectly identified on the document. The evidence established this error was ministerial in nature.

46. The second error is contained on the service page of the IEP under the "service options considered by the IEP team." Specifically, a non-public school setting was identified as an "appropriate option" for Student, which was contrary to the discussions at all prior IEP team meetings. It was even contrary to Student and Parents' wishes as the non-public school identified as possible placement was deemed to not be academically appropriate by Student to meet her needs. Finally, the services page inadvertently identifies the concluding date of the non-public school delivery of speech and language services as August 21, 2018 rather than August 21, 2017, like all other non-public school delivered services Student received.

47. Undoubtedly, San Marcos IEP team members should have more carefully reviewed the document before sending the draft to Parents. Even so, the intent of the document and clarity of the offer was established by reviewing the IEP in its entirety, including the meeting notes. These minor ministerial mistakes did not render the IEP unclear or result in an inability to determine whether it offered Student a FAPE.

48. Father did not consent to the November 3, 2017 IEP at the time of the meeting. Following the November 3, 2017 IEP team meeting, on December 4, 2017, Ms. deBie mailed both Parents a copy of the IEP along with a cover letter summarizing the contents of the IEP offer including placement at San Marcos High School and a

recounting of the specific services Student would receive as part of her IEP.

49. San Marcos filed for due process on December 14, 2017.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA¹

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)² et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment 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 individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are

¹ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

² All subsequent references to the Code of Federal Regulations are to the 2006 version.

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

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

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

4. The Supreme Court recently clarified and expanded upon its decision in *Rowley*. In *Endrew F. v. Douglas County School District*, the court stated that the IDEA guarantees a FAPE to all students with disabilities by means of an IEP, and that the IEP is required to be reasonably calculated to enable the child to make progress appropriate in light of his or her circumstances. (*Endrew F. v. Douglas County School District* (March 22, 2017, No. 15-827) 580 U.S. ____ [137 S.Ct. 988, 996, 197 L.Ed.2d 335]).

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (l).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) By this standard, San Marcos had the burden of proof for the issue alleged in this matter.

6. San Marcos contends the April 27, 2017 IEP, as modified on November 3,

2017, offered Student a FAPE in the least restrictive environment such that San Marcos should be allowed to implement the IEP without Parents' consent.

7. Student argued that San Marcos cannot prove the April 27, 2017 IEP, as modified on November 3, 2017, offered Student with a FAPE in the least restrictive environment; 2) the IEP is fatally flawed on its face; 3) the IEP failed to satisfy a two-prong legal analysis; ³4) San Marcos cannot prove it substantively offered Student a FAPE due to her unique circumstances, that it did not address all her areas of need, the goals were not appropriate for her, in light of all the information San Marcos had on Student, the November 3, 2017 IEP did not offer Student with a FAPE; and 5) San Marcos did not prove that San Marcos High School placement was the least restrictive environment for Student.

General requirements for individual education programs

8. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) Whether a school district offered a FAPE

³ Student raised for the first time in closing brief two new issues: 1) San Marcos failed to have an IEP in effect at the start of the school year; and, 2) San Marcos changed Student's placement where parent was not present and without providing a prior written notice. These issues are not addressed in the Decision because they were raised for the first time in closing argument, and are outside the scope of the single issue raised by San Marcos in this case.

is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041.)

Procedural compliance

9. Federal and State law require that parents of a child with a disability be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) Accordingly, at the meeting parents have the right to present information in person or through a representative. (Ed. Code, § 56341.1.)

10. An IEP team must include at least one parent; a representative of the local educational agency; a regular education teacher of the child if the child is, or may be, participating in the regular education environment; a special education teacher or provider of the child; an individual who can interpret the instructional implications of assessment results, and other individuals who have knowledge or special expertise regarding the pupil, as invited at the discretion of the district, the parent, and when appropriate, the student. (20 U.S.C. § 1414(d)(1)(B)(i), (iv-vi); Ed. Code, § 56341, subds. (b)(1), (5-6).)

11. A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement with the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v.*

Knox County Schs. (6th Cir. 2003) 315 F.3d 688, 693.) Providing parents with an adequate opportunity to participate in the development of the IEP will satisfy the “meaningful participation” standard. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131-1132 (*Vashon Island*)). The ability to retain experts to participate in the team meetings and incorporate their suggestions is also sufficient to satisfy adequate participation. *D.S. v. Bayonne Board of Educ.* (3rd Cir. 2010) 602 F.3d 553, 565; This does not give parent veto power over any individual IEP provision. (*Vashon Island, supra*, pp. 1131-1132.)

12. A procedural violation of the IDEA results in a denial of FAPE only if it impedes the child’s right to a FAPE, significantly impedes the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents’ child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii).)

13. Parents stipulated that they had an adequate opportunity to participate in Student’s IEP team meetings. Moreover, Parents also had the opportunity for their expert to attend all IEP team meetings, provide suggestions, and accept feedback. Dr. Frampton’s opinions had a profound influence on Parent’s participation in the IEP process. Parents deferred to Dr. Frampton on scheduling, goals, and placement decisions. Further, it was Dr. Frampton who informed San Marcos that Student was withdrawing from San Marcos to be unilaterally placed at California Coast Academy. San Marcos adequately met its burden that Parents were provided an opportunity to meaningfully participate in the IEP process.

14. San Marcos also ensured Student had an adequate opportunity to participate in the IEP process. When Student provided feedback that the BASE program would not meet her needs, San Marcos adjusted placement locations. San Marcos’ placement considerations was in large part based on information Student, Parents, and

their advocate provided them in terms of her future goals and desire to attend college. San Marcos' staff was actively engaged in finding an appropriate placement for Student. San Marcos held six meetings that were attended by one or both parents. San Marcos personnel responded after work hours when the advocate informed them Student would be unilaterally placed only to reverse course a short time later and informed them she would attend school the next day.

15. San Marcos held six IEP meetings between April 27, 2017 and November 3, 2017. At the November 3, 2017, the team went through every page of the IEP. Mother was invited to this meeting and elected to not respond to the request. Father, who jointly held Student's educational rights, was present and had an opportunity to ask questions about Student's present levels, goals, support services, and placement.

16. Student alleges this meeting was not lawfully convened because the IEP team meeting did not include a special education teacher who had ever taught Student at the November 3, 2017 IEP team meeting. Student argued it is a procedural violation for an IEP team to be convened without a special education teacher who had previously taught the child. Student's reliance on *R.B. v. Napa Valley Unified School District* (9th Cir. 2007) 496 F. 3d 932, 940 is misplaced. This meeting was not an isolated event, but one that stretched over eight months and six IEP team meetings. Student's previous special education teacher, Mr. Mayo, participated in two of the six IEP meetings. Further, at every IEP team meeting, San Marcos had personnel present who were credentialed special education providers and were knowledgeable about San Marcos' services and program. Student further alleged San Marcos failed to have a member qualified to assess a student with learning disabilities and observe her in a general education environment. Mr. Klepacki was qualified to observe Student. Mr. Klepacki had observed Student in her placement at NewBridge where she was attending when the IEP meeting period began. San Marcos met its burden that the November 3, 2017 IEP team meeting

was legally comprised.

Clarity of Placement Offer

17. In *Union School District v. Smith* (9th Cir.1994) 15 F.3d 1519, cert. den., 513 U.S. 965 (*Union*) the Ninth Circuit held that a district is required by the IDEA to make a clear, written IEP offer that parents can understand. *Union* emphasized the need for rigorous compliance with this requirement, finding that the requirement of a formal, written offer creates a clear record which helps to eliminate subsequent factual disputes regarding when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any.

18. Student alleged San Marcos' IEP offer was fatally flawed on its face because of three errors; two typographical errors on the offer of services page of the IEP, and the incorrect present levels of academic and functional performance. Specifically, the IEP on page 26 of 27, buried at the end of the paragraph discussing service options, that the IEP listed placement as a nonpublic school setting. Additionally, Student alleged the speech and language offer was unclear because it listed two speech and language services, one delivered in a nonpublic school setting initiating on April 27, 2017 and ending on August 21, 2018, and a second speech and language service delivered by the District, initiating on August 22, 2017 and concluding on April 27, 2018.

19. Under *Union*, school districts are held to rigorous compliance with a formal written offer that creates a clear record that will eliminate subsequent factual disputes regarding when placements were offered, what placements were offered, and what educational assistance was offered to supplement the placement. The errors themselves and the potential impact was carefully considered. Upon review of the document itself, and due weight given to the fact that the IEP process lasted eight months and extended over six team meetings, it is concluded that Student's argument is without merit.

20. The evidence established the IEP team complied with the law to review, Student's placement, and in selecting the least restrictive environment, consideration is given to any potential harmful effect on the Student and the quality of services she needs. (34 § C.F.R. 300.116.) The issue of placement was thoroughly addressed at all of the IEP team meetings. Parents and Student were given an opportunity to tour placements and alternative placements were discussed. The team listened to Parents, Student, and the advocate's thoughts on placement, considered their feedback, and made adjustments to the IEP as necessary. At the conclusion of the IEP meeting on November 3, 2017, San Marcos made a formal written offer. It was followed up with a mailing to each parent from Ms. deBie on December 4, 2017 that summarized San Marcos' offer and included the entire April 27, 2017 IEP, as modified on November 3, 2017. The educational page setting delineates Student's placement in a regular classroom. Testimony and documentary evidence demonstrate that there was no dispute that Parents did not understand where San Marcos proposed as placement for Student. In fact, the heart of this dispute was Student and Parent's disagreement with where San Marcos proposed placing Student for her freshman year in high school. A comprehensive campus was not Student or Mother's preferred placement, but the evidence does not support that the offer of such, even with the two typographical errors, was unclear. Neither of these typographical errors interfered with Parents' ability to understand what San Marcos intended to offer. Furthermore, neither typographical error interferes cumulatively with Parents' ability to understand what San Marcos offered.

21. The evidence further established the IEP team complied with the law in reviewing Student's present levels of academic and functional performance. The IEP team had full and robust participation of Student, her parents, and her advocate. The IEP team elicited feedback from the director of her previous school. The IEP team also

reviewed her academic performance at NewBridge, had access to her most current progress reports where she was receiving excellent grades, as well as an updated progress report on her IEP goals prepared by NewBridge. San Marcos established the goals it offered in the April 27, 2017, as modified by November 3, 2017 IEP, was based on the accurate present levels as thoroughly discussed during the IEP team meetings.

Individual education program contents

22. 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); Ed. Code, §§ 56032.)

23. The IEP shall also include a statement of the program modifications or supports for school personnel that will be provided to the student to allow the student to advance appropriately toward attaining the annual goals, to be involved and make progress in the general education curriculum, and to participate in extracurricular activities and other nonacademic activities. (34 C.F.R. § 300.320(a)(4)(i), (ii); Ed. Code, § 56345, subds. (a)(4)(A), (B).)

24. In developing an IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluations of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a).) The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect

academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.)

25. The April 27, 2017 IEP, as modified on November 3, 2017, included all the content required by law. It addressed Student's needs, offered measurable academic and functional goals addressing those needs, and contained a statement of the special education related services and program modifications and accommodations. Substantive discussion occurred about Student's present levels of academic performance. Student's goals were drawn from the information the IEP team gathered from all sources included the input of NewBridge director, Mr. Mayo and Father. The IEP established the accommodations, modifications, and supports necessary to adequately address Student's needs such as preferential seating, access to word prediction software, and the ability to use self-soothing techniques when she grew anxious. The IEP appropriately determined the extent to which Student could participate in regular education programs, and concluded her needs could be met in a co-taught classroom for three core subjects, and specialized academic instruction to support her dyslexia.

FAPE requirements

26. San Marcos contends the April 27, 2017 IEP, as modified by the November 3, 2017, offers Student a FAPE in the least restrictive environment and it should be allowed to implement over Parent's objections. Parent disagrees and contends the placement is not appropriate due to Student's anxiety.

27. To determine whether a school district substantively offered a student a FAPE, the focus must be on the adequacy of the district's proposed program, not parent's preferred program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811

F.2d 1307, 1313-1314.) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, comported with the student's IEP, and was in the least restrictive environment, then the school district provided a FAPE, even if the student's parents preferred another program, and even if the parents' preferred program would have resulted in greater educational benefit. (*Ibid.*) School districts need to "offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." (*Endrew F., supra*, (2017) 580 U.S. ___, [137 S. Ct. 988].)

28. San Marcos received feedback from Student on placement suggestions and adjusted accordingly. San Marcos developed a plan that would provide Student with general education class instruction with a student-to-teacher ratio similar to what she was accustomed to at NewBridge, with additional support from a one-to-one aide; the special education teacher in the co-taught classes would provide Student-specific scaffolding for Student to best access her education; Student would receive specialized academic instruction in literacy academy reinforced with Orton-Gillingham strategies she is familiar with from NewBridge; and Student was offered numerous services she had previously received, but adjusted to her new identity as a high school student. For example, Student could access her occupational therapy time at her discretion, and Student would receive speech and language services individually, to not require her to miss classroom instruction.

29. The April 27, 2017 IEP, as modified on November 3, 2017, may not, in Parent's eyes, be ideal, but the IEP nevertheless, is reasonably calculated to allow Student to make appropriate progress, and the offered placement, given the academic and emotional supports is the least restrictive environment for Student in the circumstances. Student alleges the April 27, 2017 IEP, as modified on November 3, 2017,

failed to address all areas of Student's unique needs. Student based this argument on the testimony of Mr. Mayo who provided input to the team, but did not have the goals he individually proposed adopted verbatim. Student alleges that Mr. Mayo's testimony was uncontroverted. Mr. Mayo was part of a team process, and while his opinion carried weight, he was not the sole arbiter of what was appropriate for Student's education. The evidence established that the additional goals were not required for Student to receive FAPE.

30. San Marcos' offer was designed to meet Students unique needs and was reasonably calculated to provide her educational benefit enabling her to make progress appropriate in light of her circumstances.

Least restrictive environment

31. Both federal and state law require a school district to provide special education in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a); Ed. Code, § 56040.1.) This means that a school district must educate a special needs pupil with nondisabled peers "to the maximum extent appropriate," and the pupil may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii); Ed. Code, § 56040.1; see *Sacramento City Unified Sch. Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398,1403; *Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1136-1137.)

32. In light of this preference, and in order to determine whether a child can be placed in a general education setting, the Ninth Circuit, in *Sacramento City Unified Sch. Dist. v. Rachel H.*, *supra*, at pp. 1403, adopted a balancing test that requires the consideration of four factors: (1) the educational benefits of placement full-time in a less

restrictive class; (2) the non-academic benefits of such placement; (3) the effect the student would have on the teacher and children in the less restrictive class; and (4) the costs of mainstreaming the student. (*Id.*, 14 F.3d at p. 1404.)

33. Here, San Marcos established that Student's needs could be met at a comprehensive campus in co-taught classes, with specialized academic instruction related services, and accommodations. Student was able to perform academically, participate in collaborative learning instructions, and complete the same level of work as her peers with appropriate accommodations. Student wished to remain at a smaller campus with more individualized attention, but the evidence established that such a placement was not compliant with San Marcos' legal obligation to educate her in the least restrictive environment. Accordingly, San Marcos' offer of comprehensive campus, in a program in a general education setting for 85 percent of the time, that will lead to her earning a high school diploma, where she attends supportive, co-taught classes with typically developing peers for 855 minutes per week, has a full-time individual aide for 1567 minutes per week, and also receives 285 minutes weekly of specialize academic instruction, 30 minutes weekly of individual counseling, 930 minutes yearly of speech and language therapy, and 30 minutes weekly of occupational therapy appropriate for Student to receive a FAPE. The offered IEP offer constitutes the least restrictive environment for Student. The supports, services, and accommodations with the exception of the proposed 15 percent of the day where she will receive non-mainstream instruction in the literacy academy were designed to take place in a general education classroom with minimal negative impact to Student's general education access.

34. Student alleges San Marcos failed to meet its burden and Student's placement is rightfully a more restrictive environment. Only Student and Mother presented evidence that Student required a more restrictive environment. NewBridge director Mr. Mayo advised Student could integrate into a comprehensive campus with

the proper supports. Mr. Mayo was not able to provide testimony on whether he deemed San Marcos' co-taught classrooms as sufficient for Student because he had never observed the program. However, San Marcos put on significant evidence that Student's educational and emotional needs would be met at a comprehensive campus, and that she did not require a more restrictive environment to access her education. The co-taught classroom environment had a similar student-to-teacher ratio that Student was accustomed to at NewBridge. Student would be exposed to typically-developing peers in general education curriculum. Student's unique needs would be supported through her enrollment in the literacy academy that provided Orton-Gillingham-based reading support and her one-to-one aide. Student would continue to receive speech and language and occupational therapy for the same time amount Student received at NewBridge. Student would receive weekly individual counseling that she did not receive at NewBridge. San Marcos, further, recognized Student's commitment to her academics and concern about missing instructional time, and provided that Student could access these services individually and at her discretion to best facilitates Student's growing independence as a student. San Marcos' placement offer, though not the preferred one of Parent or Student, met the legal burden of providing Student an education in the least restrictive environment.

35. San Marcos was obligated to file for due process under California Education Code section 56346 subdivision (f) when it was unable to obtain consent from parents as to its IEP offer. The Ninth Circuit in *I.R. v. Los Angeles Unified School District* (9th Cir. 2015) 805 F.3d 1164 reaffirms the importance of resolving the disputed IEP promptly "so that the necessary components are implemented as soon as possible." (*Id.* at p. 1169.) Moreover, in *Endrew F.*, the court emphasizes the reasonableness over ideal in crafting an appropriate program of education, a "fact-intensive exercise" that includes school officials and the input of parents. (*Endrew F.*, at p. 999.) It would be counter to

both *I.R.* and the IDEA's mandate of resolving a dispute promptly, and the reasonableness of *Andrew F.*, to find the three errors identified in the IEP rose to the level that would require San Marcos to start the IEP process anew. To find against San Marcos on such a tiny technical error would frustrate the spirit and purpose of the law. Thus, the appropriate course of action is to amend the errors, provide parents with a copy, and to move forward in educating Student.

36. San Marcos complied with the IDEA's procedural requirements and substantively offered Student a FAPE. The April 27, 2017 IEP, as modified by November 3, 2017, satisfied all procedural compliance under the IDEA. Further, San Marcos has established by the preponderance of the evidence that it met its burden in formulating an IEP that was designed to meet Student's unique needs and reasonably calculated to provide Student with educational benefit and permits her to make progress appropriate in light of her circumstances. The evidence showed this is a Student who has goals of attending a four year university and ultimately becoming a special education teacher. The education program offered by San Marcos was reasonably calculated to support her efforts to achieve those goals. Eight days of testimony and documentary evidence demonstrate San Marcos' April 27, 2017 IEP, as modified on November 3, 2017, was an offer of a free appropriate public education.

ORDER

1. The April 24, 2017 IEP, as modified on November 3, 2017, offered Student a FAPE in the least restrictive environment.

2. San Marcos shall revise the IEP, correct the typographical errors as identified above, and provide parents a corrected copy. Upon correction, San Marcos may implement the April 24, 2017 IEP, as modified on November 3, 2017, without parental consent if Student is enrolled in a District school and continues to receive special education and related services.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. San Marcos prevailed on the only issue that was heard and decided in this case.

RIGHT TO APPEAL

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

DATED: May 25, 2018

/s/

TIFFANY GILMARTIN

Administrative Law Judge

Office of Administrative Hearings