

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT.

OAH Case No. 2018020218

DECISION

Student filed a Due Process Hearing Request on February 5, 2018, with the Office of Administrative Hearings, State of California, naming Bellflower Unified School District. On May 16, 2018, Student filed an amended complaint. On June 26, 2018, OAH granted the parties' joint request for continuance.

Administrative Law Judge Clifford H. Woosley heard this matter at District's facilities in Bellflower, California, on September 18, 19, 20, and 26, 2018.

Attorneys Alexander T. Diaz and Phillip Sparks represented Student. Mother attended on behalf of Student and was assisted by a Spanish interpreter throughout the hearing. Attorney Eric Bathen represented Bellflower Unified School District. Program Administrator, Matthew Adair, attended on behalf of Bellflower Unified School District.

At the parties' request, OAH granted a continuance to October 29, 2018, for the filing of written closing arguments. On October 29, 2018, the parties submitted their final written closing briefs, the record was closed, and the matter submitted for decision.

ISSUES

1. Did Bellflower deny Student a free appropriate public education by failing to conduct a social-emotional assessment since February 5, 2016?
2. Did Bellflower deny Student a FAPE by failing to assess Student in all areas of known or suspected disability since November 2016 for:
 - (a) Speech and language; and or
 - (b) Assistive technology?
3. Did Bellflower deny Student a FAPE between February 5, 2016 and November 17, 2016, by failing to address Student's behaviors that impeded his learning by not providing or offering:
 - (a) A behavior support plan regarding Student's distractibility and inattentiveness, failure to do his homework, and/or nonparticipation in the classroom; and or
 - (b) Appropriate behavior intervention in the form of full-time aide support and behavior supervision or one-to-one adult assistance?
4. Did Bellflower deny Student a FAPE in the November 2016 individualized education program by failing to:
 - (a) Accurately measure and report Student's present levels of performance;
 - (b) Develop and offer appropriate goals in the areas of math, language and self-help;
 - (c) Offer a nonpublic school placement or a special day class with appropriate supports;
 - (d) Offer appropriate individual and group resource support or specialized academic instruction for math;
 - (e) Offer appropriate speech and language services; and or
 - (f) Address Student's behaviors that impeded his learning by not offering:

- (1) A behavior support plan regarding Student's distractibility and inattentiveness, failure to do his homework, and or nonparticipation in the classroom; and or
 - (2) Appropriate behavior intervention in the form of full-time aide support and behavior supervision or one-to-one adult assistance?
5. Did Bellflower deny Student a FAPE in the May 31, 2017 IEP by:
- (a) Not offering:
 - (1) A nonpublic school placement or a special day class with appropriate supports;
 - (2) Appropriate individual and group resource support or specialized academic instruction for math; and or
 - (3) Appropriate speech and language services; and
 - (b) Not addressing Student's behaviors that impeded his learning by not offering:
 - (1) A behavior support plan regarding Student's distractibility and inattentiveness, failure to do his homework, and or nonparticipation in the classroom; and or
 - (2) Appropriate behavior intervention in the form of full-time aide support and behavior supervision or one-to-one adult assistance?
6. Did Bellflower deny Student a FAPE in the October 26, 2017 IEP by:
- (a) Making a predetermined offer of placement and services;
 - (b) Significantly impeding Parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to Student by conveying that the goals and accommodations were sufficient to address Student's social emotional and behavior needs and failing to discuss other options;
 - (c) Not offering:

- (1) A nonpublic school placement or a special day class with appropriate supports;
- (2) Appropriate individual and group resource support or specialized academic instruction for math; and or
- (3) Appropriate speech and language services;
- (d) Not addressing Student's behaviors that impeded his learning by not offering:
 - (1) A behavior support plan regarding Student's distractibility and inattentiveness, failure to do his homework, and/or nonparticipation in the classroom; and or
 - (2) Appropriate behavior intervention in the form of full-time aide support and behavior supervision or one-to-one adult assistance?

7. Did Bellflower deny Student a FAPE by failing to timely provide to Parent a complete copy of Student's educational records, specifically, the October 26, 2017 IEP, in response to Student's January 14, 2018 request?¹

SUMMARY OF DECISION

In Issue 6(a), Student proved by the preponderance of evidence that Bellflower predetermined its offer of placement and services at the October 2017 annual IEP. The evidence demonstrated that Student was not academically benefiting from his general education inclusion for his academic classes, yet Bellflower offered the same placement, with no discussion or analysis. Student similarly proved Issue 6(c)(1), demonstrating that the October 2017 IEP's offer to continue with the general education inclusion placement

¹ Bellflower's motion to dismiss Student's issue alleging a denial of FAPE, because Bellflower breached a February 2018 interim agreement, was granted on the first day of hearing and the issue was dismissed without prejudice.

was not appropriate. A special day class was the appropriate placement offer because Student thrived in the small group setting. Bellflower should have assessed Student to establish the need to move him to a more restrictive placement.

In Issues 4(e), 5(a)(3), and 6(c)(3), Student proved Bellflower failed to offer appropriate speech and language services in the November 2016 annual IEP, the May 2017 amendment IEP, and the October 2017 annual IEP. The November 2015 triennial IEP provided two 30-minute speech therapy sessions a week. Bellflower reduced the speech therapy to one session a week in the November 2016 annual IEP, which was an unexplained, unsupported and improper reduction of speech therapy services. Student was, and continued to be, entitled to two 30-minute sessions per week, until an assessment or knowing agreement indicated otherwise. District assessed and again offered Student two speech sessions a week in the April 2018 IEP.

In Issue 1, Student did not prove that Bellflower should have conducted a social-emotional assessment. Student did not demonstrate that he exhibited symptoms or behaviors that warranted social-emotional assessment before the next scheduled triennial IEP. In Issues 2(a) and 2(b), Student failed to prove Bellflower should have assessed for speech and language and for assistive technology, after the November 2016 IEP. The Bellflower speech pathologist monitored and reported Student's speech and language levels of performance, validating Student's progress on his speech and language goals. No persuasive evidence indicated a suspected disability that required an assistive technology assessment.

In Issues 3(a), 3(b), 4(f)(1), 4(f)(2), 5(b)(1), 5(b)(2), 6(d)(1), and 6(d)(2), Student did not prove that Bellflower denied Student a FAPE because the evidence established that Student did not have behaviors warranting a behavior intervention plan or aide support. In Issues 4(a) and 4(b), Student did not prove the November 2016 annual IEP failed to provide a FAPE because of inaccurate present levels of performance or inappropriate

goals. Student did not present evidence that the IEP team inaccurately measured or reported Student's present levels of performance. The IEP team approved understandable and measurable academic; the IEP team reasonably chose not to develop a new math goal. Student did not prove that Student required self-help or other behavior goals in the November 2016 IEP.

In Issues 4(c) and 5(a)(1), Student did not prove the November 2016 and May 2017 IEP's failed to provide a FAPE by not offering a nonpublic school or special day class. Student made academic progress in his general education inclusion, with daily resource specialist pullout, which therefore remained the least restrictive environment. A more restrictive placement, like a special day class or nonpublic school, was not merited.

On Issues 4(d), 5(a)(2), and 6(c)(2), Student did not prove that Bellflower did not offer Student resource support or specialized academic instruction in math. The IEP's provided, and Student received, daily resource specialist pullout services where Student received one-on-one or small group support for all academics, including math. Student did not meet his burden as to Issue 6(b), failing to demonstrate that Mother was unable to participate in the October 2017 annual IEP decision-making process because she could not discuss whether the goals and accommodations sufficiently addressed her concerns for Student's social-emotional and behavior needs. The IEP team meeting notes and witness testimony confirm that the team listened and responded to Mother's concerns.

On Issue 7, Student failed to submit evidence to support his claim that Bellflower denied Student a FAPE by failing to timely provide a complete copy of Student's educational records in response to Student's request. Student did not meet his burden of proof by providing evidence of an appropriate remedy for Bellflower's delay in offering a special day class. There was sufficient evidence to prove Student is entitled to compensatory remedies for speech, as discussed below.

FACTUAL FINDINGS

1. Student was 10 and a half years old, attending a fifth-grade mild-to-moderate special day class at Bellflower's Thomas Jefferson Elementary School, at the time of the hearing. He lived with Parents within Bellflower's geographical boundaries at all times relevant herein. Bellflower initially assessed Student in 2012 and found that he qualified for special education placement and services under the eligibility of speech or language impairment.

2015-2016: SECOND GRADE

2. Student was in teacher Maria Rivera's second-grade general education class at Jefferson Elementary during the 2015-2016 school year. Student received speech and language group therapy and resource specialist services. He lived with his Parents and three siblings. Spanish and English were spoken in the home, but Student used English in school.

3. Bellflower assessed Student for his November 2015 triennial individualized education program team meeting. He was seven years old. A speech pathologist gave Student a speech and language assessment. Bellflower's school psychologist, Kevin Yoshioka, performed a psychoeducational assessment.

4. Bellflower convened Student's triennial IEP on November 20, 2015. All requisite team members attended, including Mother, who was provided a Spanish interpreter. The pathologist and Mr. Yoshioka presented their findings; Student's general education teacher reported on his classroom performance.

5. Bellflower did not translate the assessment reports into Spanish for Parents. Mother was provided a Spanish interpreter at every IEP meeting. Assessors presented and discussed their assessments and evaluations, assuring that Mother understood and participated in the discussions. Mother's ability to knowledgeably

participate in the IEP meetings and assessment reviews was not compromised because assessments were not first translated into Spanish. In addition, the IEP documents and participants' testimony confirmed Mother's participation in every IEP team meeting, where she made comments, sought clarifications, and received explanations. Mother understood the placement and services offered and she knowledgeably agreed to and signed the IEP's.

6. Student displayed average cognitive abilities with a weakness in receptive and expressive verbal skills. His verbal ability fell in the low average range. His nonverbal and spatial reasoning were in the average range. His spelling, reading comprehension, and math comprehension were in the low average range while his math computation was in the average range. Student had continued delays with receptive and expressive language in the areas of morphology and syntax. His articulation, voice, and fluency were in the average range.

7. Student did not always volunteer in the general education class, unless asked, but he was good at asking for clarification about instructions and expressing his wants and needs. In the resource specialist small group setting, Student was using longer phrases and some short sentences when answering or asking questions. His verbal responses improved when given vocabulary development exercises related to a theme that was discussed in group.

8. Student did not present with any social emotional issues. He had friends, played well with others, was respectful to adults, and displayed self-control in the classroom. Student was always on time for school, followed classroom rules, and took responsibility for his actions. The team found that Student's behaviors did not impede his learning or the learning of others.

9. The IEP team found that Student continued to qualify for special education because of speech-language impairment in the areas of morphology/syntax and

articulation. He had delays in receptive and expressive language. Student met all of his annual IEP academic and speech goals. The team prepared new goals in reading fluency, reading comprehension, math computation and speech.

10. The team considered various placement options and determined that Student should remain in a general education classroom, with resource services consisting of 45-minute small group sessions, five times a week. Student would also receive two 30-minute group speech therapy sessions a week. Student was in a general education class, extracurricular activities, and non-academic activities 80 percent of the school day. Mother signed and accepted the IEP's placement and services.

11. Student's final trimester grades were 3's (met the standard) for numbers and operations in base ten, geometry, and achievement in technology. He received 2's (approaching standard) or "appropriate progress" in all other subjects, work habits and social development. His second-grade teacher commented that Student "had been a role model with his behavior all year."

2016-2017: THIRD GRADE

12. Student was in Ms. Rivera's third-grade general education class during the 2016-2017 school year at Jefferson Elementary. Student received speech and language group therapy, resource specialist services, and accommodations.

November 18, 2016 Annual IEP

13. Bellflower convened Student's annual IEP on November 18, 2016. All requisite team members attended, including Mother, who was provided a Spanish interpreter. The team reviewed Student's present levels of performance. The resource specialist program teacher, Gina Sena, reported that math continued to be his strength and the general education teacher reported that Student made academic progress since the beginning of the year. Student was still struggling with vowel sounds and reading at

grade level text, forgetting to apply grade level phonics, but improved his oral reading. Student met his three academic annual goals. The team proposed new academic goals in reading fluency, reading phonics, and writing. Math was a comparative strength and the team chose to have the annual goals focus on English language arts.

14. Speech pathologist Maria Teresa Cendana had worked with Student since kindergarten and stated that Student was more vocal. Student met his two annual speech goals. The pathologist proposed two new annual speech goals in articulation and morphology/syntax. The team concluded that Student continued to meet the eligibility requirement for speech-language impairment. Student would continue to receive speech and language services and special academic instruction to address deficits in the areas of morphology/syntax, articulation, and receptive and expressive language.

15. Mother inquired about programs that could address the needs of those like Student, whom she believed was really far behind. Ms. Sena explained that Student was not that far behind and that if he should need more specialized services, the team could consider a more restrictive setting, like a special day class. Ms. Rivera said Student was showing progress; he was not at peer level, but he was catching up.

16. Mother asked about exiting Student from the resource specialist program. The team explained that when Student masters the skills in his deficit areas, exiting may be an option. However, at that time, Student needed specialized academic instruction. Mother acknowledged that Student had made progress.

17. Bellflower identified Student as an English learner and provided Student with English language learner development support in the form of English language mainstream immersion in the general education environment. Mother said that she wanted to help Student when at home, but he refused to speak Spanish. The team suggested that Mother talk to Student about the reasons for his lack of interest in

communicating in Spanish. The team encouraged Mother to continue to speak Spanish to Student, to avoid creating a communication block between them in the future.

18. The team considered various placement options and determined that Student should remain in a general education classroom; with resource services consisting of 45-minute small group specialized academic instruction sessions, five times a week.

19. The IEP stated that Student “would continue with” one 30-minute group speech therapy session a week. This was a reduction in speech therapy services, which had been two 30-minute sessions a week. The speech pathologist did not suggest reducing services. The IEP team did not review a speech and language assessment nor discuss changing Student’s speech services. The IEP document gave no reason for the service reduction.

20. Mother consented to and signed the IEP’s placement and services.

21. Bellflower’s IEP document contained a copy of an October 21, 2016 assessment plan for academic and language/speech assessments. Mother signed the Medi-Cal/Medicaid waiver on page two on November 10, 2016. However, though dated, the signature line giving permission for the assessments was blank and unsigned. Parent did not grant permission to assess.

22. A teacher on yard duty completed an incident report on May 5, 2017, stating that Student was thrown to the ground by another pupil and choked. The report did not state the circumstances leading up to the incident, whether Student was physically harmed, or what action was taken.

23. Mother testified at the hearing. She told school officials, usually through Jefferson Elementary front office’s Spanish-speaking staff, that Student was suffering from anxiety and depression. She forcefully contended that Student was bullied on the bus and in school, so that he resisted going to school. She testified that Student told her

that other children would not play with him, told him he was stupid, and was bullied at school and on the bus. She said that Student would be angry and defiant at home, resisted and was nervous about doing homework, and sometimes damaged things.

24. No teacher, aide, or administrator saw Student being harassed or bullied. Further, Student did not ever tell or complain to school personnel that he was harassed or bullied at school. Other than the May 5, 2017 incident, Student was not physically harmed, harassed, or bullied in the classroom, during lunch, on the playground, or on the bus.

25. Bellflower referred Student to school counselor Melvin Barrientos when Mother continued to express concerns about anxiety and bullying. Mr. Barrientos held individual counseling sessions with Student, developing strategies for dealing with pressure and stress. However, when asked, Student told Mr. Barrientos that he was not having any issues, like bullying, at school. Mr. Barrientos observed Student on the playground socializing well with other students; he did not see any signs of bullying or harassment.

May 31, 2017 Amendment IEP

26. Bellflower convened an amendment IEP team meeting at Mother's request regarding Student's academics and nervousness, on May 31, 2017. All requisite team members attended, including Mr. Barrientos, Mr. Yoshioka, Mother, and a Spanish interpreter.

27. Mother reported to the IEP team that she felt that Student was being bullied at school and on the bus and claimed not to have heard what Bellflower was doing in response to her concerns. She asked about additional adults on the playground. Bellflower team members explained that the number of adults on the playground already exceeded the legally required ratio. Mr. Barrientos described the individual counseling, noting that Student said he was not having any issues at school.

The individual counseling would continue, at least 30 minutes a week. Mr. Yoshioka also said he would interact with Student, so Student knew there was another adult available on campus. He encouraged Mother to establish good communication with next year's fourth grade teacher, so they could address any issues that may occur.

28. Mother asked Mr. Yoshioka if Student's tendency to make up stories was normal. Mr. Yoshioka said that the stories might be a way of Student expressing himself. He suggested that Mother continue to listen to Student and provide advice. Mr. Yoshioka told Mother about outside counseling support through the ChildNet Youth and Family Services. He later provided her with the application form, which Mother said she completed and returned to Mr. Yoshioka. However, Mr. Yoshioka did not receive the completed form, which should have been returned to Bellflower's ChildNet coordinator.

29. Mother was concerned that Student was not making appropriate academic progress. Ms. Rivera reported that Student made progress in his phonemic awareness since the beginning of the school year. However, he was still below grade level based on Bellflower's expectations. Mother said that Student struggled to read or speak in complete sentences in Spanish and Ms. Rivera confirmed that Student was not fluent in Spanish. Student was currently reading at second grade, second month level, which was less than one year below grade level. Student's fluency score improved to reading 51 words per minute. Word recognition scores were at the second-grade level. Student correctly spelled three one syllable words at the beginning of the year but was then able to correctly spell eight words. Student could read many words but struggled to correctly write words that included various phonic patterns. His sight word recognition scored 76 out of 100, which demonstrated significant progress over the prior year.

30. Ms. Rivera shared writing samples with the team, observing that Student could move through the writing process and create a five-paragraph essay with support. The resource specialist said that Student was making progress in his reading goals but

needed additional support with his writing. Although Student was not at grade level, he was making progress. Mr. Yoshioka discussed how Student's disability meant that his progress would be slower than nondisabled pupils.

31. The IEP team reviewed Student's accommodations, which included oral reminders, flexible seating, and teacher reading test questions aloud. Student participated in reading club. He received small group specialized academic instruction for English language arts and math, 45 minutes a day, five days a week. The IEP team agreed to increase the resource specialist small group minutes to 60 minutes a day for the following school year. When asked, Mother said that she had no concerns regarding speech. Speech services continued at 30 minutes a week. The IEP team reviewed and accepted the meeting notes. Mother signed and agreed to the May 2017 amendment IEP. Mother said she did not subsequently receive a Spanish translation of the IEP.

32. School Ended June 15, 2017. Student's final trimester grades were a 3 (met the standard) in technology, 1's (does not meet the standard) in reading foundational skills, writing, language, and fractions, and 2's (approaching standard) in all other subjects. He had S's (satisfactory) in effort for all academic classes, health, visual and performing arts, and characteristics of success (e.g., completing work assignments, respectful of others, etc.). His third-grade teacher commented that Student was a pleasure to have in the class.

2017-2018: FOURTH GRADE

33. Student attended Paula L. Pearson's fourth-grade general education class during the 2017-2018 school year at Jefferson Elementary. Student received speech and language group therapy, resource specialist services, accommodations, and daily English learner group instruction.

October 26, 2017 Annual IEP

34. Bellflower convened Student's annual IEP on October 26, 2017. All requisite team members attended, including Mother, who was provided a Spanish interpreter.

35. Mother told the team that she was concerned that Student was academically behind, had low self-esteem, was poorly behaved, and had occasional pain when running in the home setting. The team reported that Student fully participated in weekly physical education classes and that he runs during recess. Student never complained of discomfort at school. Mother said that Student would to be evaluated by his doctor by the end of the month. Student did not exhibit low self-esteem or poor behavior at school. Ms. Lara reported that Student was well-behaved and got along with others.

36. The team reviewed Student's present levels of performance. Student Scored "Standard Not Met" in both English language arts and math on the Smarter Balanced assessments.² He scored "Beginning" on the California English Language Development Test.³ Student was reading fourth-grade level multi-syllable words with 40

² Smarter Balanced assessments of math and English language arts are tests based on the Common Core State Standards and were created for member states in the Smarter Balanced Assessment Consortium. The tests form part of the state's California Assessment of Student Performance and Progress. Student scores are categorized in four achievement levels that indicate whether a student has exceeded, met, nearly met, or did not meet the standards, in grades 3-8 and 11.

³ The California English Language Development Test is given each year to students who are still learning English.

percent accuracy. He read at a fourth-grade level text at 80 words per minute. Student could add multi-digit numbers with regrouping at 80 percent accuracy but could not subtract multi-digit numbers with regrouping. He could solve one-step math word problems with 70 percent accuracy. When Student wrote, he made spelling, capitalization, and grammar errors, with many run-on sentences, though he could stay on the writing topic. Student met all last year's IEP academic goals, except in writing. He met both of his speech and language goals.

37. Ms. Pearson was a credentialed elementary school teacher and testified at the hearing. She taught at Jefferson Elementary for 20 years, kindergarten through sixth grade. The general education classes had about 30 students. She had students with IEP's, some with resource pullout like Student and others from special day classes. Ms. Pearson knew Student before he started to attend her fourth-grade class because his sisters had borrowed books from her classrooms. Ms. Pearson described Student as a sweet, respectful boy, who was always punctual for his resource group class, but less punctual for his speech therapy. Ms. Pearson demonstrated a caring attitude and concern for Student's academics and well-being.

38. Ms. Pearson told the IEP team that Student did not participate in discussions or volunteer to answer questions in the general education classroom, though he had recently improved. Ms. Pearson would provide Student a sentence frame when she called on him, giving a means of answering, but he would typically not respond. Student required multiple reminders to complete work and directions to be given one step at a time. He did not finish most of his class and homework assignments. Ms. Pearson explained that she was working with Student to increase his independence in class. She felt that Student was not motivated. Student was well-behaved and got along with his fellow students. He was well-liked by his peers, who were very supportive. He was on time each day for school and had good attendance. He was well groomed

and took care of his personal needs.

39. Special education teacher and resource specialist, Debra Lara, testified at hearing. She had an undergraduate degree in psychology and a master's in special education; she held Level Two Education Specialist Instruction and Professional Clear Single Subject - English credentials. Ms. Lara was a special day class special education teacher for four years and then a resource specialist teacher for 12 years. She started at Bellflower in fall 2017.

40. Ms. Lara pulled Student from the general education classroom once a day, five days a week, for 60-minute small group sessions. The resource class had eight students. Student's IEP provided specialized academic instruction for English language arts and math. Ms. Lara did not observe Student in his general education class but was aware that he did not participate in class discussion and would not finish assignments. However, Student performed, did assignments, participated in discussion, and answered questions in the small resource group. Student got along with the resource group pupils and did not exhibit any negative behaviors.

41. Ms. Pearson and Ms. Lara had weekly conferences. They discussed throughout the school year that Student performed and participated in his small daily resource group but not in the general education classroom. When Student was in his English learners' small group, which was in the general education setting, Student enjoyed reading and speaking. Ms. Pearson and Ms. Lara concluded that the larger general education class affected Student's willingness to participate and apply himself.

42. The IEP team reviewed, discussed, and updated last year's three academic annual goals in reading decoding, reading fluency, and writing and spelling. The team approved three new academic goals in writing sentences, math subtraction, and multiplication. The resource teacher Ms. Lara was primarily responsible for implementation and monitoring of these six academic goals. Ms. Pearson would be

responsible for two additional goals in work completion and behavior (to raise his hand and participate in class).

43. Ms. Cendana presented the new speech and language morphology/syntax (grammar) goal. Mother felt that Student especially struggled with the use of verbs. Therefore, Ms. Cendana promised to provide Mother with materials to be used at home for review.

44. The team discussed placement options but did not analyze whether Student was benefitting academically from his general education inclusion. Bellflower team members testified they believed that Student deserved the opportunity to remain in the general education classroom, with special academic instruction in English language arts and math in a daily small resource specialist group.

45. The IEP provided Student with accommodations and modifications. Student could use a multiplication chart and have questions read to him in the classroom. State tests would be in a separate setting at the most beneficial time of day, including extra time on a test within a testing day and supervised breaks within a test section.

46. Bellflower's FAPE offer was placement in a general education classroom, with 60 minutes of small group specialized academic instruction, five days a week, by a resource specialist teacher. Student would continue to receive language and speech therapy, once a week for 30 minutes.

47. The notes were read to the IEP team. The team reviewed all parts of the IEP with Mother. Student was in a general education class, extracurricular activities, and non-academic activities 80 percent of the school day. Mother signed and accepted the IEP. Mother asserted that she did not subsequently receive a Spanish translation of the IEP.

Fourth Grade Performance

48. Ms. Pearson's fourth-grade classroom was bright and inviting, with sections and walls devoted to English language arts, science, math, nonfiction, and privilege books (for borrowing or reward). The room contained the teacher's desk, document camera desk, water fountain, cupboard space, three computers, and a cart for charging up to 36 Chromebooks. The Chromebooks were shared with two other classrooms and used for teaching and testing.

49. Student was on a general education curriculum in both his general education class and his resource small group class. Ms. Lara used Student's IEP goals to guide the specialized academic instruction, which may have been at different grade level standards, depending on Student's progress.

50. Student was not participating in the general education class discussions. He was not raising his hand and, when called upon, would smile but not participate. Student also did not want to focus on his class assignments. Student had difficulty staying on task in the general education classroom. He required teacher prompting approximately four to six times a day to complete work. For example, Ms. Pearson would remind Student to use one pencil or keep his hands on the desk. She used positive behavior interventions and strategies, such as rewards, affirmation, verbal praise, access to privilege books, time to draw, applause and acknowledgement by his peers. Student would act like he was doing his work, but he often did not return to task. Student avoided tasks by cleaning out his desk, searching his backpack, or going to the bathroom at inappropriate times. He did not enjoy writing, journaling, or computer time. Math was his strength, but he produced little work product.

51. Early in the year, Ms. Pearson entered into a contract with Student and Mother, assuring that everyone was aware of their role in completing homework. For example, Ms. Pearson gave Student a homework sheet every morning, which Student

would complete and she would review. Yet, Student's lack of production in the general education setting worsened as the year progressed. He completed little class work. He returned almost no homework by the end of the year. His work product was messy. Ms. Pearson believed that Student lacked confidence in the larger, general education class. He would say the work was too hard or that he did not understand. Ms. Pearson tried some of Ms. Lara's techniques, but with little success. Student was not performing to his capabilities in the general education setting.

52. Student performed and participated in his resource specialist small group. Student made steady academic progress in fluency and decoding, writing, and math computation. Student benefited from specialized academic instruction, including step-by-step instruction, thinking maps, modeling, prewriting, peer editing, and graphic organizers. Math was Student's academic strength. Ms. Lara's methods depended on the specific math goal. For example, she would use manipulatives and other strategies for single digit multiplication. She would directly teach Student or teach him in a smaller group of about four pupils. Ms. Lara reminded Student to slow down when he was rushing to complete work. This occurred about once a week. Student was very motivated in the small group environment, partaking in discussions and completing assignments. Student did not generalize his resource group performance into the general education classroom.

53. Student made progress on each of his IEP academic goals by the first reporting period of March 2018. Student quickly met his multiplication and math/subtraction goals. Student's fluency and decoding substantively increased as the school year progressed.

54. Mother frequently complained at the school office that Student was afraid, inattentive, depressed, anxious, and rejected by other children. Mother acknowledged that she could be forceful and sometimes exaggerated, saying she was like a mother

tiger and would do and say what was needed to get the Bellflower to do something.

55. Ms. Pearson and Ms. Lara did not have any concerns regarding Student's social relationships. Student had friends from both his general education class and resource small group. He socialized with other children at lunch and recess, interacting and playing games.

56. Mother strongly asserted that Student was being bullied indicating that Student said two girls socked him in the face. Student later admitted this incident was untrue and he had lied to Mother. In February 2018, the principal and vice-principal suggested that Bellflower start using a "Daily Wellness Chart," confirming for Mother that teachers were regularly checking in with Student. Student willingly participated and would mark a sad or happy face to indicate how he was doing before and after recess each day in response to his teachers' inquiries.

57. Bellflower had a strict anti-bullying policy with a bullying protocol for documenting any observed or reported bullying. Bellflower had more than adequate staff during lunch and recess to properly monitor and guide pupils' behaviors. Ms. Pearson, Ms. Lara, and other school personnel never saw Student harassed, hit, or hurt by another. Student never reported to a teacher or other school personnel that he was hurt or bullied by another. In fact, when he got hurt by tripping over a base while playing ball, he wanted everyone to know that no one else had hurt him. Student was not bullied, intimidated, or harassed at school.

58. On the second trimester report card, Student received 1's in reading, writing, listening, speaking, algebraic thinking, fractions and measurement, and social studies. He had 2's in mathematic number operation in base 10 and science.

59. Considering Student's struggles in the fourth-grade general education class and Mother's expressed concerns that Student was falling further behind academically, Bellflower advanced Student's triennial assessment, which otherwise

would have taken place in fall 2018. On February 23, 2018, Bellflower drafted, and Mother signed, an Assessment Plan for Bellflower to assess Student in the areas of academic achievement, social emotional/behavior, health screening, intellectual development, language and speech, and motor development.

60. In addition to a multidisciplinary and speech and language assessment, a Bellflower behavior intervention psychologist would conduct an educationally related mental health services assessment and a nonpublic agency's board-certified behavior analyst would perform a functional behavior assessment.⁴

APRIL 2018 MULTIDISCIPLINARY TRIENNIAL PSYCHOEDUCATIONAL ASSESSMENT

61. School psychologist, Mr. Yoshioka assessed and evaluated Student, issuing an April 18, 2018 multidisciplinary psychoeducational triennial assessment report. He testified at the hearing. Mr. Yoshioka had a master of science in psychology and possessed a master of arts in marriage and family therapy and a master of arts in school psychology, with a California Pupil Personnel Services credential. He was a school psychologist with Bellflower for six years and previously with Hermosa Beach City School District for one year. Mr. Yoshioka's education, credentials, and experience qualified him to conduct Student's psychoeducational assessment, interpret the results of the assessment and prepare the report.

Testing, Classroom and Playground observations of Student.

62. Student was cooperative during tests, which were about 45 minutes a session. He did not engage in avoidance behaviors and attempted all tasks asked of

⁴ The advanced triennial assessments and the April 2018 IEP team meetings were not at issue in the hearing. However, both parties referred to the assessments and IEP offers throughout the hearing.

him. When he did not know an answer, he would guess, not wanting to say he did not know. He struggled with some open-ended questions but did better with closed-ended questions. Student did not show any signs of frustration or being upset over the testing or the accuracy of his answers. He smiled and laughed when appropriate and did not fidget. He would sometimes lose focus during verbal tasks but was more attentive during activities with manipulatives or visuals. Mr. Yoshioka would inquire of Student regarding any concerns or problems on the playground. Student did not have concerns or problems and showed no signs of anxiety or social issues when talking to Mr. Yoshioka.

63. Mr. Yoshioka twice observed Student in the classroom, for two 20-minute periods. Student did not show any behaviors out of norm with his peers. At times, Student sat and stared at his paper or around the room. Ms. Pearson went and discussed the writing with Student, who returned to work. Student did not show signs of anxiety. On another day, Student played kickball, smiling and socializing with his peers. Mr. Yoshioka did not observe any irregular behaviors by Student.

English Language Proficiency and Bilingual Verbal Ability

64. Mr. Yoshioka interviewed Student, who spoke good English. Student took the Bilingual Verbal Ability Test Normative Update which evaluated Student's verbal cognitive ability. The tests were first administered in English and then again in Spanish. Student's bilingual verbal ability was in the average range. His English language proficiency was fluent when compared to same-age native English speakers.

Intellectual Development, Processing, and Academic Achievement

65. Mr. Yoshioka administered the Wechsler Intelligence Scale for Children, 5th Edition, which was a psychometrically sound, reliable and valid measure of cognitive abilities. Student's general cognitive ability was within the average range of intellectual

functioning, as measured by his full scale intelligence quotient. Student also took the Cognitive Assessment System, Second Edition, with an overall measure of cognitive functioning in the average range. Student's only area of weakness was in verbal spatial relations (understanding verbal cues).

66. On the Test of Auditory-Perceptual Skills, Third Edition, Student's overall index score fell within the average range, indicating that Student's visual perceptual skills were age appropriate. Student took the Wide Range Assessment of Memory and Learning, Second Edition, Student's general memory index was low average. The Beer-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition assessed that Student's integration of his visual and motor abilities were in the average range, demonstrating age appropriate skills.

67. Student took the Kaufman Test of Educational Achievement Test, Third Edition. Student scored in the borderline range for letter and word recognition, indicating he had below age appropriate skills in decoding and word identification, compared to his same age peers. Student was in the border line range for reading and vocabulary comprehension, with below age appropriate skills in using context clues and completing sentences with a missing word. His sentence reading fluency was in the average range. Student's writing sample scores were within the borderline range. Spelling was in borderline range. Student struggled to write cohesive sentences and multiple paragraphs with proper spelling and grammar. Student's math calculation score was in the average range. Math fluency was below average.

68. Mr. Yoshioka opined that Student's academic performance had improved over the prior years in some areas but not in others. The assessments demonstrated Student had made some academic progress, but he was below grade level.

Social-Emotional and Behavior

69. Mr. Yoshioka used various instruments to assess Student social-emotional

state and behaviors. Mother claimed Student had significant emotional and behavior issues which Bellflower was not addressing.

BEHAVIOR ASSESSMENT SYSTEM FOR CHILDREN

70. The Behavior Assessment System for Children, Third Edition, examined numerous aspects of Student's behavior and personality, including positive (adaptive) as well as negative (clinical) dimensions. Mother, Ms. Pearson, and Ms. Lara completed rating scales based upon their personal observations of Student; Mother's rating scale was in Spanish.

71 The Behavior Assessment provided validity indexes that measured whether the rater had an acceptable response pattern, were consistent, and were reliable (*F* Index). An *F* Index assessed the possibility that a rater depicted a child's behavior in an inordinately negative fashion. Mother's ratings of Student produced an *F* Index score, requiring that use of Mother's scale responses should be interpreted with "extreme caution." Her externalizing and internalizing composite scores were in the clinically significant range. Student's anxiety was in the at-risk range, shown by worry, nervousness, and/or fear. Mother had the behavioral symptoms index as clinically significant. Withdrawal was clinically significant; Mother reported that Student was generally alone, had difficulty making friends, and was unwilling to join group activities. Attention problems were clinically significant. Mother's ratings scored the adaptive skills composite in the clinically significant range, as well as leadership, activates of daily living, functional communication working with others effectively, and safely and efficiently performing daily tasks.

72. Ms. Pearson's Behavior Assessment ratings revealed concerns related to Student's study skills, learning and attention, in her general education class. Her remaining ratings were generally in or near the norm, with nothing rated clinically significant. Ms. Lara's ratings had Student in the normal range for all behavior symptoms

and adaptive behavior indexes and composites.

GILLIAM AUTISM RATING SCALE AND AUTISM DIAGNOSTIC OBSERVATION SCHEDULE

73. Mr. Yoshioka evaluated Student for autism because Mother had reported some autistic-like behaviors, using the Gilliam Autism Rating Scale, Second Edition. Like the behavior assessment, Mother and the teachers viewed Student very differently. Mother's scales scores showed a very likely probability of autism. Ms. Pearson's and Ms. Lara's scale responses rated Student as unlikely for probability of autism.

74. Mr. Yoshioka administered the Autism Diagnostic Observation Schedule, Second Edition, Module 4. Student's responses confirmed that he displayed appropriate social emotional expression and relationships, with no repetitive behaviors. Student did have some receptive and expressive language issues, which were a sign of his speech and language delays rather than autism. Student did not have autism spectrum disorder.

Summary of Results

75. Mr. Yoshioka summarized his assessment findings, initially noting that Student's cognitive functioning was in the average range. Student struggled with verbal comprehending and expressing verbal information. Testing showed this hindrance was not due to English as a second language. Auditory processing and auditory memory were low average to borderline; visual processing and visual memory were stronger. These differences were consistent with Student's speech language impairment.

76. Academically, Student's overall reading was borderline. Math computation was a strength, but weaker for math concepts and word problems. Written expression was a weakness. Student performed better in small group instruction; in the general education setting, Student struggled generalizing his resource group skills, receiving low report card grades.

77. Mother's view of Student significantly differed from school personnel. Mr.

Yoshioka's observations, the teacher scale responses, and the teacher interviews showed no observation of or concern for anxiety, depression, and bullying. Student had been seeing the school counselor, Mr. Barrientos, for more than a year. Mr. Barrientos had no concerns regarding Student's social emotional state. He told Mr. Yoshioka that the counseling was more to satisfy Mother's concerns than Student's needs. School records had no behavioral incident report records and no bus referrals. Student did not have issues regarding social reciprocity, emotional understanding, rigid behaviors, or self-stimulatory behaviors. Student's only areas of concern were verbal expression and elaborative language, which were due to his speech and language deficits rather than autism or behavior issues.

Eligibility

78. Student met the criteria for specific learning disability. The assessment results indicated a severe discrepancy between Student's intellectual ability and achievement. Student met the eligibility criteria for other health impairment because of suspected attention deficit disorder. Student did not meet the eligibility criteria for autistic-like behaviors or emotional disturbance. Mother saw Student differently, reporting clinically significant behaviors, anxiety, depression, and adaptive skill deficits. However, these behaviors were simply not seen in the school setting. Student demonstrated more expressive and receptive verbal deficits and memory deficits in the 2018 assessments than the November 2015 triennial IEP.

APRIL 2018 EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT

79. Ivan Varela was a behavior intervention psychologist who conducted an educationally related mental health services assessment of Student, issuing an April 17, 2018 report. He had a bachelor of arts in psychology, a master of science in counseling, with a specialization in school psychology, and a California Pupil Personnel Services

credential. He worked for Bellflower for 20 years. Mr. Varela's education, credentials, and experience qualified him to conduct Student's educationally related mental health services assessment, interpret the results, and prepare the report.

80. Mr. Varela garnered Student's current functioning by interviewing Ms. Pearson and Ms. Lara. He talked to Jefferson Elementary principal and to Mr. Yoshioka. Mother reported depression-like behaviors, low self-esteem, negative mood, and low frustration threshold. She said Student was bullied at school. She said Student hallucinated by talking to imaginary. The school counselor, who had been seeing Student for about a year, told Mr. Varela that Student was in counseling because of Mother's concerns, which the counselor had not observed.

81. Mr. Varela interviewed and observed Student over three different assessment sessions. Student did not have unusual mannerisms. His mood and affect were normal and congruent, with no signs of hostility, irritability, or anxiety. Student initiated conversation about different events in his life, with normal and appropriately modulated reactions. Student demonstrated self-awareness and insight by recognizing his own anger management problems at home. He said he liked school (rating it 10 out of 10), particularly science; English language arts was his least favorite subject.

82. Student had no maladaptive behaviors during Mr. Varela's observations. Student transitioned with no difficulties, was positive, and engaged in class. At recess, Student parallel played with socially appropriate intermittent interactions. In the small group setting, Student raised his hand, participated in group discussion, answered teacher questions, followed directions and worked on his assignments. Student collaborated with his assigned partner, sharing comments, and taking turns in listening and speaking. Ms. Lara chose Student and his partner as the best collaborative partnership in the group.

83. Mr. Varela administered Conners, Third Edition, rating scales to evaluate

Student's behavior in school and home setting, to assess for attention deficit/hyperactivity disorder and comorbid problems, such as depression. Mother had very elevated scores in defiance, aggression and peer relations, and elevated concerns for learning problems, hyperactivity, and executive functioning. Mr. Pearson and Student had scores in the very elevated level for inattention. Ms. Lara had no very elevated scores. Mr. Varela observed, after later talking to Student, that Student rated items by specific situations and not in generalities. Student would connect an item with a specific situation related to the home setting (e.g. got upset, sad when sisters do not play with him). His answers did not necessarily represent his general feelings or reactions.

84. On the Conners anxiety screener, Student identified no items on the depression screener. Student's self-reporting again demonstrated insight about his inattentiveness and learning problems. On the Spence Children's Anxiety Scale-Child, Student's score was within the normal range for anxiety symptoms in children. The Depression Self-Rating Scale for Children found Student not at risk for depressive-like symptoms. On the Behavioral and Emotional Ratings Scale, Second Edition, the teachers' responses confirmed that Student demonstrated a higher degree of behavioral and emotional strengths in his small resource specialist group than in the general education setting.

85. Mr. Varela concluded that Student did not have behavioral or emotional characteristics that significantly impacted his ability to benefit from his special education program. Student therefore did not require educationally related mental health services.

APRIL 2018 FUNCTIONAL BEHAVIOR ASSESSMENT

86. Rahil Roussos conducted a functional behavior assessment, issued an April 9, 2018 report, and testified at the hearing. Ms. Roussos had bachelor and master degrees in psychology and was a board certified behavior analyst for more than 10 years. She was the clinical director of the nonpublic agency, Behavior and Education, Inc.

in Manhattan Beach, California. Ms. Roussos' education, certification, and experience qualified her to conduct Student's functional behavior assessment, interpret the results, and prepare the report.

87. Ms. Roussos interviewed Mother at the family's home for well over an hour and was able to directly observe Student in the home setting. Mother reported the same behaviors and concerns that she reported to Mr. Yoshioka and Mr. Varela. Ms. Roussos did not see any of the behaviors described by Mother. Student was compliant, respectful, and played with a sister. He spoke to Ms. Roussos in English and to Mother in Spanish. Student did not demonstrate any problematic behaviors, saying "goodbye" when Ms. Roussos left.

88. Ms. Roussos observed Student in the classroom, at lunch, and during recess on two different days, for more than two hours on each occasion. Student responded to teacher's requests, interacted with his peers, engaged in conversations, independently copied work, and complied with all individual and group instructions during the observation time at 94 percent of provided opportunities. In the resource specialist small group, Student was engaged and involved. He quickly responded to teacher's redirection. Student appropriately engaged with peers in and outside the classroom. Ms. Roussos did not observe any problem behaviors.

89. Ms. Roussos administered the Adaptive Behavior Assessment System, Third Edition. Mother's rating scale responses reported extreme conduct which severely impacted Student at home. Ms. Roussos never saw these extreme behaviors during her observations at school or in the home setting. The teachers did not report any behaviors of concern, except for noncompliance in working on assignments in the general education classroom.

90. Ms. Roussos conducted an indirect assessment of Student's non-compliance and concluded that Student's noncompliance was not a behavior that

required behavior intervention. She suggested some strategies when Student was noncompliant but, as confirmed by her assessment of replacement behavior, Student's noncompliance was insignificant and not an area of concern. She did not believe that Student required further goals to address noncompliance because the behavior did not warrant being targeted. She concluded that Student was not in need of behavior intervention, a behavior intervention plan, or additional behavior goals.

APRIL 2018 SPEECH AND LANGUAGE ASSESSMENT

91. Ms. Cendana conducted a speech and language assessment of Student, and found that Student presented with a language delay in the areas of semantics and morphology-syntax. He was age appropriate in his speech, articulation, fluency, and voice. Student qualified for special education services as a student with a speech or language impairment. She recommended that Student continue to receive remediation speech and language services to facilitate improved expressive semantic skills and morpho-syntactic skills.

APRIL 2018 IEP TEAM MEETINGS

92. Bellflower convened Student's amendment IEP team meeting on April 23, 2018, to review the assessments and evaluate Student's placement and services. All requisite team members attended, including Mother and Spanish interpreter.

93. Mr. Yoshioka, Mr. Varela, Ms. Roussos, and Ms. Cendana presented and reviewed their reports. Mother regularly asked questions or made comments throughout the meeting. Mr. Yoshioka suggested that specific learning disability be Student's primary eligibility and that speech or language impairment be his secondary eligibility. The team and Mother agreed. Mr. Varela and Mr. Roussos reported Student did not exhibit problem behaviors which required behavioral services, a behavior intervention plan, or behavior goals.

94. Ms. Lara started to review goals but the meeting was adjourned after two hours and forty-five minutes. Bellflower reconvened Student's amendment IEP team meeting on April 30, 2018; all requisite team members attended. Mother attended and was provided with a Spanish interpreter.

95. Ms. Lara continued her discussion of Student's proposed goals. Mother was very involved in asking questions about grade levels and performance and how academic and behavioral goals differed. Mother agreed to the goals.

96. The team agreed that the assessments and observations demonstrated that Student performed better and was more productive in a small group setting. They discussed placement in a mild-to-moderate special day class, with no more than 15 students, with specialized academic instruction in the classroom. Student and his day class peers would be with the general education students for lunch, recess, physical education, chorus and assemblies. Over the prior year, Student decreasingly participated in the general education classroom, while fully partaking in his small English learners' group and resource specialist support. Therefore, the team decided that the special day class placement would best service Student accessing his core academics. Mother agreed Student needed to be in a small group and wanted to see the special day class.

97. Mother agreed with Ms. Cendana's proposed additional speech goal in semantics and her recommendation to increase speech service to two 30-minute sessions a week. The team reviewed and agreed to Student's accommodations, some of which were added based upon the assessments.

98. Bellflower's offer of FAPE was a mild-to-moderate special day class, five days a week, for 261 minutes a week. Student would be in general education for physical education, lunch, recess, chorus, and assemblies. Speech and language services would be twice a week for 30 minute sessions. Special education counseling would be one 30 minute session per week. Mother signed and accepted the IEP.

99. Mother requested that Bellflower not change Student's placement until the following school year. Therefore, Student remained in Ms. Pearson's general education class and Ms. Lara's resource specialist group for the remainder of fourth grade. Student did not return any homework in Ms. Pearson's general education classroom for the remainder of the year. Student started attending his special day class for fifth grade in spring 2018.

STUDENT'S EXPERT, DEBORAH M. NEAL, ED.D.

100. Dr. Deborah M. Neal testified as a special education expert on behalf of Student. Dr. Neal obtained a bachelor of arts in psychology, a master's degree in education, and a doctorate of education. She possessed a life standard teaching credential for early childhood, a Pupil Personnel Services credential in school psychology, and a Professional Administrative Services credential. She has been an educational consultant since 2013. Previously, she worked for the Los Angeles Unified School Bellflower as a Specialist in the Due Process Department, Division of Special Education, from 2004 to 2012 and as a school psychologist from 1994 to 2003. She had experience in psychoeducational assessment, special education eligibility, related services, and placement.

101. Dr. Neal reviewed all of Student's assessments, school records, and IEP documents. She observed Student for about an hour in his fifth-grade mild-to-moderate special day class. She did not assess, evaluate, or talk to Student. She did not talk to Mother or Father. She did not talk to any of Student's teachers, assessors or providers, other than Mr. Adair to arrange for the observation. Dr. Neal wrote an 11-page Case Report, summarizing her review of records and observation, providing opinions regarding perceived inadequacies in some assessments and IEP services, and listing recommendations of appropriate remedies.

102. Dr. Neal had worked with Student's attorney's law firm on 25 to 30 cases,

but this was the first time she testified on behalf of the firm's clients. The firm used her reports primarily for resolution negotiations. Student's attorney paid Dr. Neal hourly; she spent about 15 hours reviewing records, observing Student, and writing the Case Report.

103. Dr. Neal opined that the November 2016 IEP should have included additional goals for reading comprehension and math, saying each of Student's deficits required a goal. She also believed that the 45 minutes a day of resource specialist services was insufficient, as confirmed when resource specialist time was increased later in the year.

104. Dr. Neal indicated that the records demonstrated consistent reports of Student suffering from extreme anxiety and depression, low self-esteem, anger, and lack of confidence. Accordingly, she said counseling should have been provided and Bellflower should have referred Student for further social-emotional assessment.

105. In the May 2017 IEP amendment, Bellflower increased Student's resource specialist support to 60 minutes a day. Dr. Neal agreed that this was appropriate because Student performed better in a small group setting. However, she believed resource should have been increased by the previous IEP; therefore, the May 2017 IEP team should have offered compensatory special academic instruction.

106. The October 2017 annual IEP included goals for work completion and raising his hand. Dr. Neal said the goals were understandable and measurable. However, she opined that each of Student's deficits required a goal. She did not offer written, proposed goals.

107. Dr. Neal criticized the April 2018 Multidisciplinary Psychoeducational Evaluation's lack of recommendations to the IEP team regarding methodologies and strategies to be used in the classroom instruction and education program. The numerous assessments should have enabled Dr. Yoshioka to provide specific

suggestions on how to address Student's deficits.

108. Dr. Neal opined that Dr. Yoshioka should have used projective instruments to gain insight into Student's social interactions, self-esteem, and confidence. Dr. Neal contended that some projective tests should have been used for Bellflower to meet its assessment obligations. Dr. Yoshioka strongly disagreed with the use of projective tests. Projective tests were most frequently used in therapeutic settings, were not standardized, and would typically lack both validity and reliability.

109. Dr. Neal opined assistive technology, like a calculator, was needed to support Student's relative strength in math. Student used a Chromebook in class and an assistive technology assessment might assist Student to better make use of the computer. She opined an occupational therapy assessment would be helpful, in light of Student's messy writing.

110. She recommended that Bellflower provide 100 hours of compensatory intensive instruction in reading, 100 hours of compensatory intensive instruction in math, and 100 hours of compensatory service in speech and language. She did not explain how she computed the requested hours. She also said Bellflower should fund an independent educational evaluation for a full psychoeducational assessment, even though she acknowledged that Bellflower's assessment was legally appropriate.

111. Dr. Neal's testimony was not persuasive. Her report was primarily a record review. Her testimony regarding goals, assessments, related services, and compensatory education had little weight because she did not assess or talk to Student, did not talk to Mother or Father, and did not contact or interact with any of Student's teachers or providers.

LEGAL AUTHORITIES AND CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁵

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)⁶ 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 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 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

⁵ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁶ All subsequent references to the Code of Federal Regulations are to the 2006 version.

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 Dist. 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.) In a recent unanimous decision, the United States Supreme Court declined to interpret the FAPE provision in a manner that was at odds with the *Rowley* court's analysis, and clarified FAPE as "markedly more demanding than the 'merely more than the de minimus test.'" (*Endrew F. v. Douglas School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (*Endrew F.*)). The Supreme Court in *Endrew F.* stated that a school district must "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." (*Id.* at p. 1002.)

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. (j).)

5. 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].) Here, Student carries the burden of proof.

6. The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and the district agree otherwise, but at least once every three years unless the parent and Bellflower agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related service needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) A district must also convene an IEP team meeting when a parent requests a meeting to develop, review, or revise the IEP. (Ed. Code, § 56343, subd. (c).)

7. The personnel who assess the student shall prepare a written report that shall include the following: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior

noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) consistent with superintendent guidelines for low incidence disabilities (those effecting less than one percent of the total statewide enrollment in grades K through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

8. A pupil shall not "be determined to be an individual with exceptional needs" if they do not meet the eligibility criteria under federal and California law. (Ed. Code, § 56329, subd. (a)(2).) The law defines an individual with exceptional needs as one who, because of a disability, "requires instruction and services which cannot be provided with modification of the regular school program" in order to ensure that the individual is provided a FAPE. (Ed. Code, § 56026, subd. (b).) Thus, "a child is not considered a 'child with a disability' if it is determined that a child only needs a 'related service' and not special education." (*W.H. v. Clovis Unified School Dist.* (E.D. Cal. 2009) 2009 WL 1605356, at p. 21 (*Clovis*), citing 34 C.F.R. § 300.8(a)(2)(i) (2006).)

9. A procedural violation results in liability for denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) (*Target Range*.)

10. Amendments to an existing IEP can be made without convening the whole IEP team, and without redrafting the entire document. (20 U.S.C. § 1414(d)(3)(D) & (F); 34

ISSUE 1 – FAILURE TO CONDUCT SOCIAL-EMOTIONAL ASSESSMENT SINCE
FEBRUARY 5, 2016

11. Student argued that Bellflower should have conducted a social-emotional assessment of Student from at least February 5, 2016. Student stated that Mother regularly notified Bellflower that Student was depressed, anxious, angry, destructive, fearful, bullied by other students, and without friends at school, but that Bellflower failed to respond and assess. Bellflower contended that it responded to Mother's expressed concerns, but the emotions and behavior Mother described were not observed by Bellflower teachers or personnel.

12. Student failed to meet his burden of proving that Bellflower denied him a FAPE because it did not conduct a social-emotional assessment after February 5, 2016. Bellflower heard Mother's assertions, but Student did not exhibit the emotions and behaviors described by Mother in the school setting. Further social-emotional assessment after the October 2015 triennial IEP was not warranted.

13. The predominant theme of Student's contentions was that Bellflower simply ignored Mother's pleas for help. Here, though, the evidence demonstrated that Bellflower listened to Mother, responded to her expressed concerns, and regularly appraised Student's social and emotional well-being. Student's November 2015 triennial psychoeducational assessment found that Student did not present with any social, emotional, or behavioral issues. He had friends, played well with others, was respectful to adults, and displayed self-control in the classroom. Student was always on time for school, followed classroom rules, and took responsibility for his actions.

14. Ms. Rivera was Student's second and third grade teacher; her comments indicated a caring and appreciative attitude toward Student. She was very complimentary of Student's conduct, noting in the final second grade report card that

Student “had been a role model with his behavior all year.” At the November 2016 annual IEP, the IEP team listened and responded to Mother’s inquiries. The Bellflower members of the IEP team had no concerns regarding Student’s social and emotional well-being. At the end of third grade, Ms. Rivera said Student was a pleasure to have in the class.

15. Mother told school officials that Student was suffering from anxiety and depression. She forcefully contended that Student was bullied on the bus and in school, so that he resisted going to school. She said Student told her that other children would not play with him, told him he was stupid, and was bullied at school and on the bus. She said Student was angry and defiant at home, resisted doing homework, and sometimes damaged things. The evidence did not corroborate Mother’s assertions regarding bullying or Student’s social, emotional, and behavioral status at school.

16. A May 5, 2017 incident report indicated Student was thrown to the ground by another pupil and choked. The report does not state the circumstances leading up to the incident, whether Student was physically harmed, or what action was taken. Student did not provide any other evidence regarding the incident. Other than the May 5, 2017 incident, Student was not physically harmed, harassed, or bullied in the classroom, during lunch, on the playground, or on the bus. No teacher, aide, or administrator saw Student being harassed or bullied. Further, Student did not ever tell or complain to school personnel that he was harassed or bullied at school.

17. Bellflower referred Student to school counselor Melvin Barrientos when Mother continued to express concerns about anxiety and bullying in the spring 2017. Mr. Barrientos held individual counseling sessions with Student, who told Mr. Barrientos that he was not having any issues at school, like bullying. Mr. Barrientos observed Student on the playground socializing well with other students; he did not see any signs of bullying or harassment. The team explained to Mother at the May 2017 IEP that

Bellflower personnel did not observe any bullying and Student did not complain of any bullying or harassment.

18. Ms. Pearson did not observe the emotions and behaviors described by Mother during Student's fourth grade. Though Student was reticent to participate in the general education class discussions and work, Student was not angry, depressed, or upset. Student interacted with his classmates, played games and socialized at recess, was respectful, and on time, with a pleasant demeanor. Ms. Lara reported that Student was well-behaved and got along with others. In February 2018, Bellflower started using the Daily Wellness Chart, confirming for Mother that teachers were regularly checking in with Student. Student did not report any issues of concern. Student did not exhibit low self-esteem or poor behavior at school and a social-emotional assessment was not warranted.

19. Three of Student's advanced triennial assessments further confirmed that Bellflower did not improperly delay social-emotional assessment. In the multidisciplinary psychoeducational assessment, Mr. Yoshioka's observations, the teacher scale responses, and the teacher interviews showed no observation of or concern for anxiety, depression, and bullying. Mr. Barrientos had no concerns regarding Student's social emotional state. School records had no behavioral incident report records and no bus referrals. Student did not have issues regarding social reciprocity, emotional understanding, rigid behaviors, or self-stimulatory behaviors.

20. In the educationally related mental health services assessment, Mr. Varela concluded that Student did not have behavioral or emotional characteristics that significantly impacted his ability to benefit from his special education program. In the functional behavior assessment, Ms. Roussos did not find any other problem behaviors and concluded that Student was not in need of a behavior intervention.

21. The three assessments established that Mother's view of Student

substantively differed from the child observed by teachers and school personnel. The behavior assessment scales' protocols warned that Mother's responses were extremely elevated and should be viewed with extreme caution. Mother's responses were not substantiated by other responders. Mr. Varela's personal observations of Student in class, resource group, on the playground, and during assessment sessions did not corroborate Mother's reports of defiance, aggression, depression, and poor peer relations. Ms. Roussos' school and home observations could not confirm Mother's reports that Student was defiant, destroyed property, would wander about the classroom when too noisy, and was daily rejected and called names by fellow students. Mother's adaptive behavior scales reported extreme conduct which severely impacted Student; the teachers' responses did not.

22. Mother admitted that she would sometimes be forceful and exaggerate, and do what she thought necessary to get assistance. Here, Bellflower responded to, but could not corroborate, Mother's concerns. The spring 2018 assessments confirmed that Student had not exhibited emotions, behaviors, or social deficiencies, which would have triggered an obligation to have earlier conducted a social-emotional assessment.

23. Student did not meet his burden of proving by a preponderance of the evidence that Bellflower denied Student a FAPE by not conducting a social-emotional assessment since February 5, 2016. Bellflower prevailed on Issue 1.

ISSUES 2(A) AND 2(B) – FAILURE TO ASSESS FOR SPEECH AND LANGUAGE AND ASSISTIVE TECHNOLOGY SINCE NOVEMBER 2016

24. Student contends that Bellflower denied Student a FAPE since November 2016 for not assessing Student in speech and language and assistive technology. Bellflower states Student did not exhibit any speech and language needs that required further assessment after the November 2015 triennial. Further, Student did not have a suspected disability that called for an assistive technology assessment.

25. For purposes of evaluating a child for special education eligibility, the district must ensure that "the child is assessed in all areas of suspected disability." (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all of the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

26. A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304 (b)(1).) The assessments used must be: (1) selected and administered so as not to be discriminatory on a racial or cultural basis; (2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; (3) used for purposes for which the assessments are valid and reliable; (4) administered by trained and knowledgeable personnel; and (5) 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).)

27. If the evaluation procedures required by law are met, the selection of particular testing or evaluation instruments is at the discretion of the school district. Once selected, the instrument must be administered in accordance with the instructions provided by the producer, including use of composite scores if called for by the instructions. (Off. of Special Education Programs (OSEP) interpretative letter, *Letter to*

Anonymous (September 17, 1993), 20 IDELR 542; cited approvingly in *Parent v. Manteca Unified School Dist.* (2013) Cal.Ofc.Admin.Hrgs. Case No. 2011060184.) The personnel who assess the student must prepare a written report of the results of each assessment, and provide a copy of the report to the parent. (Ed. Code, §§ 56327 and 56329.)

28. A school district's failure to conduct appropriate assessment or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)

29. Student failed to meet his burden by proving by a preponderance of the evidence that Bellflower denied Student a FAPE by delaying speech and language assessment and by not administering an assistive technology assessment. The Bellflower speech pathologist monitored and reported Student's speech and language levels of performance, validating Student's consistent advancement on his speech and language goals.

30. Bellflower conducted a speech and language assessment for Student's November 2015 triennial IEP team meeting, with speech and language goal recommendations. Thereafter, at every IEP, the Bellflower speech pathologist reported that Student met or made substantial progress on his goals and would then draft new speech goals. Student had delays with receptive and expressive language in the areas of morphology and syntax. Student did not present any persuasive evidence that Student displayed speech and language deficits that were not identified in November 2015, not addressed in the annual speech goals, or not addressed by the speech services. Ms. Cendana did not detect any speech deficits that were not previously identified and addressed in her April 2018 speech and language assessment. The evidence demonstrated that Bellflower was not required to conduct another speech and language

assessment from November 2016 to April 2018.⁷

31. Student did not present persuasive evidence that Student should be assessed for assistive technology related services. Student had messy handwriting when he did not want to do an assignment and rushed to finish. No evidence indicated he was more likely to do the assignment with technological support.

32. Dr. Neal suggested an assistive technology assessment because Student had some math goals for which technology would be helpful. However, Student's accommodations included the use of a multiplication chart, which was consistent with his math goals. Dr. Neal also observed Student use a Chromebook in his fifth-grade special day class and therefore believed an assessment might help Student better use the technology. As Ms. Pearson confirmed, though, Student had been using the Chromebook for some assignments and tests. Student presented no evidence that Student was unable to make full use of the technology.

33. Student did not carry his burden of proving by a preponderance of the evidence that Bellflower denied Student a FAPE by not conducting an assistive technology assessment and delaying a speech and language assessment until April 2018. Bellflower prevailed on Issue 1(a) and Issue 1(b).

ISSUES 3(A) AND ISSUE 3(B) – FAILURE TO PROVIDE A BEHAVIOR INTERVENTION PLAN OR AIDE SUPPORT FROM FEBRUARY 5, 2016 TO NOVEMBER 17, 2016

34. In Issue 3(a), Student contends that Bellflower denied Student a FAPE by not providing a behavior intervention plan to address Student's distractibility and inattentiveness, failure to do homework, and nonparticipation in the classroom, from

⁷ Whether Student was receiving the proper amount of speech and language services is addressed in Issue 4(c), below.

two years before filing of the complaint to the November 17, 2016.

35. Student's November 2015 triennial IEP team found that Student's behaviors did not impede his learning or the learning of other. Ms. Rivera commented in Student's final second grade report card that Student had been a role model with his behavior all year. For third grade, Ms. Rivera reported Student was a pleasure to have in her class. Though she said Student would occasionally be distracted or reticent to participate in class, he was easily redirected or encouraged to participate. She did not report a problem with homework. Student did not present any evidence that Student's behaviors were different as reported.

36. Also, as Ms. Roussos later discussed in her functional behavior assessment, Student was not demonstrating any behaviors – including inattentiveness – that warranted behavior interventions or a behavior intervention plan. Student did not demonstrate he had behaviors different from what Ms. Roussos evaluated, before November 17, 2016. Student did not meet his burden of proof as to Issue 3(a).

37. In Issue 3(b), Student asserts that Bellflower denied Student a FAPE because Student was not given behavior intervention in the form of full-time aide support and supervision or one-to-one adult assistance, from two years before the complaint was filed to November 17, 2016. The evidence demonstrated that Student did not have behaviors, at any time, that merited intensive intervention such as full-time or one-on-one aide support. Student did not meet his burden of proof as to Issue 3(b).

Bellflower prevailed on Issue 3(a) and Issue 3(b).

ISSUE 4 – DENIAL OF FAPE IN THE NOVEMBER 2016 ANNUAL IEP

38. Student asserted that the November 18, 2016 annual IEP did not provide him with a FAPE, because of various insufficiencies and inaccuracies. District contends the November 2016 IEP provided Student with a FAPE, designed to provide him educational benefit in light of his circumstances.

39. An IEP is a written document describing a child's "present levels of academic achievement and functional performance" and a "statement of measurable annual goals, including academic and functional goals" designed to meet the child's educational needs. (Ed. Code, § 56345, subd. (a)(1), (2); 34 C.F.R. § 300.320(a) (2006).) The IEP must also contain: (i) a description "of the manner in which the progress of the pupil toward meeting the annual goals...will be measured and when periodic reports on the progress the pupil is making...will be provided" (Ed. Code, § 56345, subd. (a)(3); 34 C.F.R. § 300.320(a)(3) (2006)); (ii) a statement of the special education and related services and supplementary aids and services to be provided to the pupil and a statement of program modifications and supports to enable the pupil to advance toward attaining his goals and make progress in the general education curriculum (Ed. Code, § 56345, subd. (a)(4); 34 C.F.R. § 300.320(a)(4) (2006)); (iii) an explanation of the extent, if any, that the pupil will not participate with nondisabled pupils in the regular class or activities (Ed. Code, § 56345, subd. (a)(5); 34 C.F.R. § 300.320(a)(5) (2006)); and (iv) a statement of any individual appropriate accommodations necessary to measure academic achievement and functional performance of the pupil on state and district-wide assessments. (Ed. Code, § 56345, subd. (a)(6); 34 C.F.R. § 300.320(a)(6).)

40. 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 team 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 [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].)

41. A required member of an IEP team includes the individual who can interpret evaluation or assessments result. (34 C.F.R. § 300.321(a)(5).) Typically, this is the person who conducted the assessment. A parent has the discretion to invite and include other individuals, who have knowledge or expertise regarding the child, including service providers, to the IEP team meeting. (34 C.F.R. § 300.321(a)(6).) A required member of the IEP team may be excused from attending an IEP team meeting if the parent, in writing, and the school district consent to the excusal and the excused IEP team member submits, in writing to the parent and the IEP team, its input into the IEP development prior to the meeting. (34 C.F.R. § 300.321(e)(2).)

42. To determine whether the District offered Student a substantive FAPE, the analysis must focus on the adequacy of the school district's proposed program, not the parents' preferred alternative. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1314.)

43. The Ninth Circuit Court of Appeals has endorsed the "snapshot" rule, explaining that the actions of the school cannot "be judged exclusively in hindsight ... an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann, supra*, 993 F.2d 1031, 1041.)

Issue 4(a) – Inaccurate Present Levels of Performance

44. Student contends that Bellflower inaccurately measured and reported Student's present levels of performance at the November 18, 2016 IEP. Bellflower argued the present levels of performance were accurately measured, reported, and discussed at the IEP team meeting.

45. Ms. Rivera, Ms. Sena, and Ms. Cendana all reported on Student's progress, present levels of performance, and goal achievement. Student met his three academic

goals and two speech and language goals. Ms. Rivera reported to Mother that Student was not at grade level, but that he had academically progressed, which Mother acknowledged.

46. Student did not present evidence that the team members inaccurately measured and reported Student's present levels of performance and, therefore, failed to meet his burden of proof. Bellflower prevailed on Issue 4(a).

Issue 4(b) –Appropriate Goals in Math, Language, and Self-Help

47. Student contends that Bellflower failed to develop and offer appropriate goals in the areas of math, language, and self-help. Bellflower contends the offered goals were appropriate, understandable, and measurable.

48. After reviewing Student's present levels of performance, the IEP team reviewed and approved new academic goals in reading fluency, reading phonics, and writing. Each of the goals considered Student's progress, identified a thoughtful and challenging next step for Student's growth, and was understandable and measurable. Math was a comparative strength; Student met his annual math goal and was making progress in math. The team therefore chose to focus the annual goals on English language arts. Ms. Cendana proposed two new speech goals in articulation and morphology/syntax. Mother agreed to the goals. Student did not present credible or persuasive evidence that Student required self-help or other behavior goals in November 2016.

49. The evidence supports the finding that the November 2016 goals were appropriate. Student did not meet his burden of proof and Bellflower prevails on Issue 4(b).

Issue 4(c) – Failure to Offer Nonpublic School or Special Day Class with

Appropriate Supports

50. Student contends that Bellflower denied Student a FAPE because the November 2016 IEP failed to offer placement in a nonpublic school or a special day class with appropriate supports. Bellflower asserts that the general education placement, with daily specialized academic instruction, was the proper placement in the least restrictive environment, at that time.

51. The IEP team thoroughly discussed placement for Student. Student needed specialized academic instruction in his deficit areas at that time. Ms. Rivera said Student was showing progress in the general education setting; he was not at peer level, but he was catching up. Ms. Sena explained that Student was not far behind but that, if he needed more specialized services in the future, the IEP team could consider additional resource or a more restrictive setting, like a special day class.

52. The IEP team thoughtfully considered Student's performance and determined that the least restrictive environment was to continue with general education inclusion and daily 45-minute resource specialist pullout for specialized academic instruction. A more restrictive placement, like a special day class or nonpublic school, was not warranted. Student was academically progressing and benefiting from his general education class inclusion. Student did not present credible or persuasive evidence to the contrary. The November 2016 IEP placement offer was reasonably calculated to confer Student with educational benefit, so he could make progress appropriate in light of his circumstances, in the least restrictive environment. Bellflower prevailed as to Issue 4(c).

Issue 4(d) – Failure to Offer Individual and Group Resource Support or Specialized Academic Instruction for Math

53. In Issue 4(d), Student asserted that the November 2016 IEP failed to offer individual and group resource support, or specialized academic instruction, for math.

Bellflower contends the IEP properly provided daily resource specialist support, which included small group and individual instruction, in all of Student's academics.

54. Here, Student failed to prove that Student was not receiving specialized academic instruction for math. As Ms. Lara reported, Student's resource specialist services included both English language arts and math support. The IEP provided for daily 45-minute pullout sessions with a resource specialist teacher in a small group of about eight or nine students, where Student received smaller group or one-to-one instruction. Student argued that the absence of a math goal meant Student did not receive adequate resource specialist support for math. The evidence established that the resource specialist program supported Student in all his general education academics, regardless of specific IEP goals. Student did not present persuasive or credible evidence that the resource special math support was not appropriate or inadequate.

55. Bellflower prevailed on Issue 4(d).

Issue 4(e) – Failure to Offer Appropriate Speech and Language Services

56. In Issue 4(e), Student contends that the November 2016 IEP did not offer appropriate speech and language services while Bellflower asserted the services met Student's needs. Here, Student has met his burden of proof that the November 2016 annual IEP failed to offer appropriate speech services.

57. The November 2015 triennial IEP team reviewed a speech and language assessment and then provided two 30-minute speech therapy sessions a week. However, the November 2016 annual IEP document inexplicably reduced Student's speech services to once a week. The IEP stated that Student "would continue with" one 30-minute group speech therapy session a week.

58. Though there was an October 2016 proposed assessment plan for a speech and language evaluation, it was unsigned, and Bellflower did not assess speech. The IEP team did not review a speech and language assessment nor discuss changing

Student's speech services. The speech pathologist did not suggest reducing services. The IEP document gave no reason for the service reduction. Though Student thereafter made progress on his speech goals, the November 2015 speech assessment and triennial IEP team concluded Student was entitled to two sessions per week to make appropriate progress. This was an unexplained, unsupported and improper reduction of speech therapy services.

59. Student proved by a preponderance of the evidence that the November 2016 IEP did not provide appropriate speech and language services. Student prevailed on Issue 4(e).

Issue 4(f) – Failure to Provide a Behavior Intervention Plan or Aide Support

60. In Issue 4(f)(1), Student contends that the November 2016 annual IEP denied Student a FAPE by failing to address his behaviors with a behavior intervention plan to address Student's distractibility and inattentiveness, failure to do homework, and nonparticipation in the classroom.

61. Student's November 2016 triennial IEP team found that Student's behaviors did not impede his learning or the learning of others. Ms. Rivera commented in Student's final third grade report that Student was a pleasure to have in her class. Ms. Sena reviewed Student's progress in the resource specialist group. Distractibility, homework, and class nonparticipation were not cited as concerns. Student did not present persuasive evidence that Student's behaviors were different than reported by IEP team members.

62. Notably, Student did not demonstrate that the Student's distractibility, failure to do homework, or general classroom nonparticipation were behaviors that required a behavior intervention plan. Ms. Roussos evaluated Student's behaviors in her functional behavior assessment and determined that Student was not demonstrating any behaviors requiring behavior interventions or a behavior intervention plan. Student

did not demonstrate Student's behaviors, at the time of the November 2016 annual IEP, differed from what Ms. Roussos evaluated. Student did not meet his burden of proof as to Issue 4(f)(1).

63. In Issue 4(f)(2), Student asserted that the November 2016 annual IEP denied Student a FAPE because Student was not given behavior intervention in the form of a full-time aide support and supervision or one-to-one adult assistance. The evidence demonstrated that Student did not have behaviors, at any time, that merited intensive intervention such as full-time or one-on-one aide support. If Student could not demonstrate behaviors that merited a behavior intervention plan, Student certainly did not warrant full-time or one-on-one aide support. Student did not meet his burden of proof as to Issue (f)(2).

64. Student failed to meet his burden of proving Bellflower denied him a FAPE by not providing a behavior support plan or behavior intervention in the form of an adult aide. Bellflower prevailed on Issue 4(f)(1) and Issue 4(f)(2).

ISSUE 5 – WHETHER BELLFLOWER DENIED STUDENT A FAPE IN THE MAY 2017 AMENDMENT IEP

65. Student asserted that the May 31, 2017 amendment IEP did not provide him with a FAPE, because of various insufficiencies. Bellflower convened the amendment IEP at Mother's request regarding Student's academics and nervousness. Mother felt that Student was being bullied at school and was falling behind academically.

66. In Issue 5(a)(1), Student contends Bellflower did not provide a FAPE because the IEP did not offer a nonpublic school placement or a special day class with appropriate supports. Bellflower responded that there was no basis for a nonpublic school placement and that the IEP team determined Student should have the opportunity to continue to be included in the general education classroom, with an increase in the daily resource specialist pullout minutes.

67. The IEP team thoroughly discussed Mother's concerns regarding bullying. The team correctly represented that Student was not being bullied or harassed, that more than adequate adults monitored the playground, and that Student affirmatively stated he did not have these issues in his weekly school counseling sessions. Student did not prove by a preponderance of the evidence that he was being bullied or harassed at school. Therefore, Student's alleged bullying or harassment was not a basis for changing Student's placement.

68. The IEP team thoroughly discussed Student's academic performance. Ms. Rivera reported that Student made progress in phonemic awareness. Student was reading at second grade, second month level, which was less than one year below grade level. Student's fluency score improved; his word recognition scores were at the second-grade level. His sight word recognition significantly improved over the prior year. She shared writing samples with the team. The resource specialist reported Student made progress in his reading goals but needed additional support with his writing.

69. The evidence demonstrated thoughtful consideration of Student's placement. Because Student needed further support in his writing, the team increased the resource specialist small group minutes to 60 minutes a day for the following school year. Though Student was not progressing as quickly as Mother wanted, Student was making progress in the general education inclusion placement. A more restrictive placement, like a special day class or nonpublic school, was not necessary because Student was academically benefiting in the general education classroom. Student did not present credible or persuasive evidence to the contrary. The May 2017 amendment IEP placement offer was reasonably calculated to confer Student with educational benefit, so he could make progress appropriate in light of his circumstances, in the least restrictive environment. Bellflower prevailed as to Issue 5(a)(1).

70. In Issue 5(a)(2), Student asserted that the May 2017 amendment IEP failed

to offer individual and group resource support, or specialized academic instruction, for math. Bellflower contends the IEP properly provided daily resource specialist support, which included small group and individual instruction, in all of Student's academics.

71. Here, Student was receiving adequate specialized academic instruction for math. The IEP team carefully considered the report of Student's slow progress in writing, but Student's teachers did not report any change in Student's math performance. The IEP provided daily 60-minute pullout sessions with a resource specialist teacher in a small group, where Student received one-to-one or smaller group instruction. The resource specialist program supported Student in all his general education academics, including math, regardless of specific IEP goals. Student did not present persuasive or credible evidence that the resource special math support was not appropriate or inadequate. Bellflower prevailed as to Issue 5(a)(2).

72. In Issue 5(a)(3), Student contends that the May 2017 amendment IEP did not offer appropriate speech and language services while Bellflower asserted the services were adequate. Here, Student has met his burden of proof that the IEP failed to offer appropriate speech services.

73. As found in Issue 4(e) above, the November 2016 annual IEP improperly reduced Student's speech and language services to one 30-minute session a week. The May 2016 IEP team did not discuss speech and language services other than stating they would continue with one session a week. However, Student was entitled to two 30-minute sessions per week. The November 2015 speech assessment and triennial IEP team decided Student needed two speech sessions a week. Student proved by a preponderance of the evidence that the May 2017 amendment IEP did not provide appropriate speech and language services. Student prevailed on Issue 5(a)(3).

74. In Issue 5(b)(1) Student contends that the May 2017 amendment IEP denied Student a FAPE by failing to address his behaviors with a behavior intervention

plan to address Student's distractibility and inattentiveness, failure to do homework, and nonparticipation in the classroom.

75. Nothing in the May 2017 IEP indicated that Student's behaviors had changed since the October 2017 annual IEP or that Student's behaviors had since proved to be a concern. Ms. Roussos later evaluated Student's behaviors in her functional behavior assessment and determined that Student was not demonstrating any behaviors warranting behavior interventions or a behavior intervention plan. Student did not demonstrate that Student's behaviors at the time of the May 2017 amendment IEP had changed or become a concern since the prior IEP or that they differed from what Ms. Roussos evaluated. Student did not meet his burden of proof as to Issue 5(b)(1).

76. In Issue 5(b)(2), Student asserted that the May 2017 amendment IEP denied Student a FAPE because Student was not given behavior intervention in the form of a full-time aide support and supervision or one-to-one adult assistance. Testimonial and documentary evidence demonstrated that Student did not have behaviors, at any time, that merited intensive intervention such as full-time or one-on-one aide support. If Student could not demonstrate behaviors that warranted a behavior intervention plan, Student certainly did not warrant full-time or one-on-one aide support. Student did not meet his burden of proof as to 5(b)(2).

ISSUE 6 – WHETHER BELLFLOWER DENIED STUDENT A FAPE IN THE OCTOBER 2017 ANNUAL IEP

77. Student asserted that the October 26, 2017 annual IEP did not provide him with a FAPE, because of various insufficiencies.

Issue 6(a) – Predetermination of Placement and Services

78. In Issue 6(a), Student contends that Bellflower had predetermined its offer

of placement and services. Bellflower asserts that Bellflower IEP team members listened to and responded to Mother's concerns, reported and discussed present levels of performance, amended and added goals, and offered general education placement with resource support as the least restrictive environment.

79. Federal and State law requires that a district must afford parents of a child with a disability the 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.) The IEP team must consider the concerns of the parent for enhancing the student's education, and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) and (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904] ["[T]he informed involvement of parents" is central to the IEP process.]) Parental participation in the IEP process is considered "[a]mong the most important procedural safeguards." (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

80. A school district is required to conduct, not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485, superseded on other grounds by statute (*Target Range*); *Fuhrmann, supra*, 993 F.2d 1031, 1036.) "Participation must be more than a mere form; it must be meaningful." *Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, 858 (emphasis in original). A parent who has an opportunity to discuss a proposed IEP and suggest changes, and whose concerns are considered by the IEP team, has participated in the IEP development process in a meaningful way. (*Fuhrmann, supra*, 993 F.2d at pp. 1031, 1036.)

81. Predetermination is a procedural violation of the IDEA that occurs in connection with an IEP team meeting, when a district has decided on its offer prior to the meeting, such as when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B. v. Las Virgenes Unified School Dist.*, 239 Fed.Appx. 342, 344-345.)

82. *In Sacramento City Unified School. Dist. v. Rachel H.* (9th Cir. 1994), 14 F.3d 1398, the Ninth Circuit Court of Appeal utilized a four-factor test to determine whether a special education classroom placement was more appropriate than a general education, or "mainstream," classroom. The *Rachel H.* analysis is a balancing test considering (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits, such as social interaction, of such placement; (3) the effect of the student's presence upon the teacher and children in the regular class; and (4) the costs of mainstreaming the student. (*Id.*, 14 F.3d at p. 1404.)

83. Student met his burden of proving by the preponderance of evidence that Bellflower predetermined its offer of placement and services at the October 2017 annual IEP. The evidence demonstrated that Student was not academically benefiting from his general education inclusion for his academic classes, yet Bellflower offered the same placement, with no discussion or analysis.

84. Here, teacher reports and present levels of performance clearly indicated that Student was not participating in his general education class. Ms. Pearson had been Student's new general education teacher a couple of months before the October 2017 annual IEP meeting. She told the IEP team that Student resisted doing class and homework assignments, did not participate in class discussions, would not volunteer to answer questions, and was not meaningfully responding to redirection and prompts. Student did not meet the English language arts and math standards on the Smarter Balanced assessments. He made spelling, capitalization, and grammar errors, with many

run-on sentences. He did not meet the prior annual IEP's writing goal and his grades decreased. She felt that Student was not motivated.

85. In stark contrast, Student thrived in his resource specialist pullout small group, where he performed, did his assignments, participated in discussions, and answered questions. Ms. Lara and Ms. Pearson met weekly and puzzled over why Student would not perform in the general education classroom. They noted that Student would participate in his English learners' small group. Ms. Pearson and Ms. Lara concluded that the larger general education class affected Student's willingness to participate and apply himself.

86. The Ninth Circuit held that academic needs weigh most heavily in the *Rachel H.* analysis, so the realization that mainstreaming was not providing educational benefit could be dispositive of the entire least restrictive environment analysis. (*Katherine G. ex rel. Cynthia G. v. Kentfield School Dist.* (2003) 261 F. Supp. 2d 1159, 1173-74 (citing *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 836-37).). In Student's prior IEP's of 2016 and 2017, present levels of performance and Ms. Rivera's reports indicated that Student academically benefited in his general education classroom. Here, the October 2017 IEP team could not have come to a similar conclusion if they had seriously considered Ms. Pearson's and Ms. Lara's reports. The Bellflower IEP team members did not meaningfully consider alternate placement options.

87. A school district is required to conduct, not just an IEP team meeting, but a meaningful IEP team meeting. Despite the clear reports that Student was not accessing his academics in the general education classroom, Bellflower offered the same general education inclusion placement with no real discussion or analysis. Student correctly argued that even if the Bellflower members of the IEP team felt uncomfortable about changing to a more restrictive environment, they should have ordered full assessment of Student to support their conclusion, one way or the other. The IEP team did not do so.

88. Student met his burden of proving by a preponderance of the evidence that Bellflower did not hold a meaningful team meeting that properly considered the appropriateness of continuing Student's general education inclusion placement with resource specialist services and, therefore, predetermined placement and denied Student a FAPE. Student prevailed on Issue 6(a).

Issue 6(b) – Impeding Parent's Participation Regarding Goals and Accommodations to Address Social-Emotional/Behavior Needs.

89. In Issue 6(b), Student asserts that Bellflower impeded Mother's ability to participate in the October 2017 annual IEP's decision-making process regarding goals and accommodations to address Student's social-emotional and behavior needs. Bellflower contends that Student did not exhibit social, emotional, and behavioral concerns, yet the IEP team listened and responded to Mother's concern, allowing her to fully participate.

90. Student failed to prove by a preponderance of evidence that Mother could not and did not participate in discussing her social, emotional, and behavior concerns for Student. The IEP team meeting notes and witness testimony confirm that the team listened to Mother's concerns that Student had low self-esteem and was poorly behaved. The team responded, again explaining that Student did not exhibit low self-esteem or poor behavior at school. The unequivocal evidence supported a finding that Mother had the opportunity to and did participate in the IEP team meeting regarding Student's social-emotional and behavior needs.

91. The evidence failed to demonstrate that Mother was unable to participate in the October 2017 annual IEP decision-making process because she could not discuss whether the goals and accommodations sufficiently addressed her concerns for Student's social-emotional and behavior needs. Bellflower prevailed on Issue 6(b).

Issue 6(c) – Special Day Class, Specialized Academic Instruction, and
Appropriate Speech and Language

92. In Issue 6(c)(1), Student contends Bellflower denied Student a FAPE because the IEP did not offer a nonpublic school placement or a special day class with appropriate supports. Bellflower responded that no basis existed for a nonpublic school placement and that the IEP team determined Student should have the opportunity to continue to be included in the general education classroom, with an increase in the daily resource specialist pullout minutes.

93. As already determined in Issue 6(a) above, Bellflower denied Student a FAPE by offering the same general education inclusion placement without discussing that it was not providing academic benefit. Here, Student presented no evidence to support a nonpublic school placement. However, the evidence supported a finding that the general education inclusion placement was not providing educational benefit to Student and that the Bellflower's offer of the same placement was not appropriate.

94. Given the evidence that Student thrived in the small group setting, a special day class was the appropriate placement offer. As Student correctly argued, Bellflower was obligated to at least order an assessment to determine an appropriate more restrictive special day class environment. Student has met his burden and prevailed on Issue 6(c)(1).

95. In Issue 6(c)(2), Student asserted that the October 2017 annual IEP failed to offer individual and group resource support, or specialized academic instruction, for math. Bellflower contends the IEP properly provided daily resource specialist support, which included small group and individual instruction, in all of Student's academics.

96. Even though Bellflower's offer may not have provided a FAPE for the reasons discussed above, it provided Student with adequate specialized academic instruction for math. The IEP provided daily 60-minute pullout sessions with a resource specialist teacher in a small group, where Student received one-to-one or smaller group

instruction that supported Student in general education academics, including math. The IEP team added an additional goal for math. Student did not present persuasive or credible evidence that the resource special math support was not appropriate or inadequate. Bellflower prevailed on Issue 6(c)(2).

97. In Issue 6(c)(3), Student contends that the October 2017 annual IEP did not offer appropriate speech and language services; Bellflower asserted the services were adequate. Here, Student met his burden of proof that the IEP failed to offer appropriate speech services.

98. As found in Issue 4(e) above, the November 2016 annual IEP improperly reduced Student's speech and language services to one 30-minute session a week. The October 2017 IEP team did not discuss speech and language services other than stating they would continue with one session a week. Student was entitled to two 30-minute sessions per week, until an assessment or knowing agreement indicated otherwise. Student prevailed on Issue 6(c)(3).

99. In Issue 6(d)(1) Student contends that the October 2017 annual IEP denied Student a FAPE by failing to address his behaviors with a behavior intervention plan to address Student's distractibility and inattentiveness, failure to do homework, and nonparticipation in the classroom.

100. Nothing in the October 2017 annual IEP indicated that Student's behaviors had changed since the May 2017 amendment IEP, the October 2017 annual IEP, or that Student's behaviors had since proved to be a concern. Student continued not to manifest behaviors that required a behavior intervention plan.

101. The October 2017 annual IEP team members were informed that Student was not academically benefiting in his general education inclusion setting. He would not participate, do his assignments and homework, and not pay attention. In contrast, he was fully involved in his resource specialist group class and was easily redirected,

completing his work. Student did not present persuasive or credible evidence that these behaviors merited a behavior support plan. Ms. Roussos later evaluated Student's behaviors in her functional behavior assessment and determined that Student was not demonstrating any behaviors warranting behavior interventions or a behavior intervention plan. Student did not demonstrate that Student's behaviors at the time of the October 2017 annual IEP should be addressed by a behavior support plan. Student did not meet his burden of proof as to Issue 6(d)(1).

102. In Issue 6(d)(2), Student asserted that the October 2017 IEP denied Student a FAPE because Bellflower did not provide Student with behavior intervention in the form of a full-time aide support and supervision or one-to-one adult assistance. The evidence demonstrated that Student did not have behaviors, at any time, that merited intensive intervention such as full-time or one-on-one aide support. If Student could not demonstrate behaviors that warranted a behavior intervention plan, Student certainly did not warrant full-time or one-on-one aide support. Student did not meet his burden of proof as to 6(d)(2).

ISSUE 7 – FAILURE TO TIMELY PROVIDE STUDENT'S EDUCATIONAL RECORDS

103. Student alleged that Bellflower denied Student a FAPE by failing to timely provide a complete copy of Student's educational records in response to Student's January 14, 2018 request. Bellflower correctly avers that Student did not submit evidence in support of this issue. Therefore, Student did not meet his burden of proving by a preponderance of the evidence that he was denied a FAPE because Bellflower failed to timely respond to a record request. Bellflower prevailed on Issue 7.

REMEDY

1. Student demonstrated that the October 2017 annual IEP failed to offer him a FAPE because of predetermination in Issue 6(a) and inappropriately offering the

general education inclusion placement instead of a more restrictive setting in Issue 6(c)(1). Student also proved that the Bellflower improperly denied Student one 30-minute session of speech and language services since the November 18, 2016 IEP in Issues 4(c).

2. Courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, n. 11.) Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*Burlington* at p. 374.)

3. When a school district fails to provide a FAPE to a student with a disability, the student is entitled to relief that is “appropriate” in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. at p. 369-371.) Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the school district has failed to provide a FAPE. (*Id.*; *Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F. 3d 1489, 1496.) A school district also may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup, supra*, 31 F.3d at p.1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. An award of compensatory education need not provide a “day-for-day compensation.” (*Id.* at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.)

Analysis re Delay in Special Day Class

4. Student argued that Bellflower should have at least ordered assessments,

at the October 2017 IEP, to fashion an appropriate more restrictive placement offer. Bellflower would also use assessments to design goals and accommodations in a more restrictive placement.

5. Mother signed a February 28, 2018 assessment plan, advancing the triennial assessments that otherwise would have taken place in fall 2018. Bellflower assessed Student for academic achievement, social emotional/behavior, health screening, intellectual development, language and speech, and motor development. Bellflower personnel conducted a multidisciplinary psychoeducational assessment, a speech and language evaluation, and an educationally related mental health services assessment. Ms. Roussos performed a functional behavior assessment. The April 2018 IEP team reviewed the assessments at two meetings, where Bellflower offered Student placement in a mild-to-moderate special day class, with related services, accommodations, and supports. Mother signed and accepted the April 2018 IEP.

6. Bellflower should have offered an assessment plan sooner, and in particular at the October 26, 2017 annual IEP, instead of continuing the general education inclusion and resource specialist placement. Bellflower had a 60-day time period, after Mother returned the signed assessment plan (presumably the same day), within which Bellflower would assess and hold an IEP. (Ed. Code, § 56043(c).) The 60 days were calendar days but did not include days between the pupil's regular school sessions, terms, or days of school vacation in excess of five school days. (Ed. Code, § 56344(a).) Bellflower's closure for Thanksgiving break did not exceed five days and, therefore, was included in the 60 days. Bellflower was closed 11 consecutive school days for winter vacation; these 11 days were not included. 60 calendar days from October 26, 2017 was December 25, 2017; 11 days were added for winter break, with the extended 60th day landing on January 5, 2018. Bellflower did not return from winter break until January 8, 2018, which was the last day upon which Bellflower could have timely held the IEP

meeting.⁸

7. Bellflower convened the IEP meeting, based upon the February 2018 signed assessment plan, on April 23, 2018. However, if Bellflower had properly offered assessment at the October 26, 2017 IEP, the IEP team meeting would have convened by January 8, 2018. April 23, 2018 was 106 days after January 8, 2018; or 15 weeks and a day. In other words, Student would have been assessed and likely offered a placement in the mild-to-moderate special day class about 15 weeks earlier if the Bellflower offered to assess at the October 2017 annual IEP.

8. Student seeks compensatory education, through a nonpublic agency. However, Student has not carried his burden of proof regarding the remedy. For example, he did not offer evidence indicating how one might deduce appropriate compensatory education for a 15-week delay in a special day class placement. Dr. Neal suggested 100 hours of intensive compensatory instruction in reading and 100 hours for math; however, she provided no basis for the 100-hour requests. More significantly, Mother forbade Bellflower from changing Student's placement from the general education class to the special day class; she wanted Student to start the special day class the following year in fifth grade. Therefore, Student would have remained in the general education inclusion placement for the remainder of fourth grade, whether the IEP started in January or April 2018. Student did not offer any evidence that Mother would have chosen differently had the IEP started in January 2018.

9. Though an administrative law judge has broad equitable powers to fashion a remedy for a district's failure to provide FAPE to a student, the remedy cannot be speculative. An award to compensate for past violations must be "reasonably calculated to provide the educational benefits that likely would have accrued from special

⁸ Relevant Bellflower school year calendars were admitted as evidence.

education services the school district should have supplied in the first place.” (*Reid ex rel. Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) Student did not meet his burden of proof by providing evidence of an appropriate remedy for Bellflower’s delay in offering a special day class.

Analysis re Reduced Speech and Language Services

10. Bellflower improperly denied Student one 30-minute session of speech and language services each school week from November 18, 2016 IEP to the April 30, 2018 IEP, when it offered two 30-minute speech and language sessions a week, following assessment.

11. Bellflower’s school calendars indicated 26 weeks of school remained in the 2016-2017 school year after November 18, 2016. 31 weeks of school passed in the 2017-2018 school year before April 30, 2018. Therefore, Student was without one 30-minute session per week for 57 school weeks, meaning he failed to receive 25 and a half hours of speech services to which he was entitled. Rounding up, Student is entitled to 26 hours of speech and language services.

12. Therefore, Bellflower shall fund 26 hours of speech and language services to be provided by nonpublic agency of Student’s choice, not to exceed \$120 per hour.

ORDER

Bellflower Unified School District shall fund 26 hours of speech and language services to be provided by a nonpublic agency. Student shall choose the nonpublic agency, regardless of whether the agency already has a contract with Bellflower. Bellflower shall directly pay the nonpublic agency, not to exceed \$120 per hour, as opposed to reimbursing Parents for their payment to the nonpublic agency. Student shall have up to 24 months from the date of this decision to use the 26 hours of nonpublic agency speech and language services.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Student prevailed on Issues 4(e), 5(a)(3), 6(a), 6(c)(1) and 6(c)(3).

Bellflower prevailed on Student Issues 1, 2(a), 2(b), 3(a), 3(b), 4(a), 4(b), 4(c), 4(d), 4(f)(1), 4(f)(2), 5(a)(1), 5(a)(2), 5(b)(1), 5(b)(2), 6(b), 6(c)(2), 6(d)(1), 6(d)(2) and 7.

RIGHT TO APPEAL THIS DECISION

This was a final administrative Decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

DATED: November 27, 2018

_____/s/

CLIFFORD H. WOOSLEY

Administrative Law Judge

Office of Administrative Hearings