

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BELLFLOWER UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2018120367

DECISION

Bellflower Unified School District filed a due process hearing request with the Office of Administrative Hearings on December 11, 2018. On December 21, 2018, OAH continued Bellflower's case for good cause.

Administrative Law Judge Laurie Gorsline heard this matter in Bellflower, California on February 19, 20 and 21, 2019.

Attorney Eric Bathen represented Bellflower. Program Administrator Matthew Adair attended all days of hearing. Attorney Lauren-Ashley Caron represented Student on February 19, 2019. Parents and Student did not appear. Ms. Caron then filed notices withdrawing as counsel on February 19, 2019 and February 20, 2019. On the morning of February 20, 2019, Ms. Caron and Mother filed declarations stating that Parents were aware of their rights to retain counsel and defend the case, but had chosen not to defend the case, and that Parents were aware the hearing would proceed on February 20, 2019, in Parents' absence. Parents did not attend or defend the matter after their counsel withdrew.

At the close of hearing on February 21, 2019, the ALJ granted Bellflower's request

for a continuance to March 12, 2019, to file written closing argument. Accordingly, the record was closed and the matter was submitted for decision on March 12, 2019.

ISSUE¹

Did Bellflower Unified School District offer Student a free appropriate public education in the February 2018 individualized education program?

SUMMARY OF DECISION

Bellflower failed to prove that the February 2018 IEP developed at the February 12 and 13, 2018, IEP team meetings offered Student a FAPE. Bellflower did not establish it complied with all of the IDEA's procedural requirements in developing the February 2018 IEP, and that all of the special education and related services offered in the February 2018 IEP were reasonably calculated to enable Student to receive educational benefit. Bellflower failed to make a clear, coherent offer of special education and related services which Parent could understand and evaluate to decide whether to accept. The IEP incorrectly stated the percentage of time Student would have been in the regular classroom and special education classroom settings. The IEP did not identify the type of counseling and guidance services offered, and the amount of individual counseling, as

¹ On the first day of hearing, before opening statements, the ALJ rephrased and clarified the issue stated in Bellflower's February 5, 2019 prehearing conference statement and February 8, 2019 prehearing conference order as allowed by the holdings in *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].)

opposed to group counseling, was not specified. Bellflower also failed to prove that the 1200 minutes of counseling services per year was offered in a frequency sufficient for Student to receive a FAPE. The transportation services offered were not sufficiently specific. Of the three goals developed for Student, two of them were woefully deficient because they could not objectively measure Student's progress. Bellflower held IEP team meetings on February 12 and 13, 2018, without the school nurse being present or properly excused in writing. Bellflower failed to prove that all of the assessments upon which its offer of special education and related services was based fully complied with law, and not all of the assessment reports included the requisite information to meet legal standards. Because of Bellflower's multiple procedural violations, along with its failure to prove both procedural and substantive compliance, the evidence failed to establish that the February 2018 IEP offered Student a FAPE.

FACTUAL FINDINGS

1. Student was a 10-year-old male at the time of the due process hearing. As of February 2018, he was eligible for special education and related services under the primary category of other health impairment. At relevant times, Student resided within Bellflower Unified School District with Parents. English was the only language spoken in the home.

BACKGROUND

2. Student attended Stephen Foster Elementary School between kindergarten and third grade. At that time, he was not eligible for special education. Foster Elementary was a traditional five-day-a-week, kindergarten through grade six elementary school. Student's school records reflected that his kindergarten teacher reported he was a model student throughout the year. In first grade, Student's teacher noted behavior changes. He had difficulty focusing, remaining on task, completing

assignments, and interacting with peers. During second grade, Student displayed disruptive behaviors inside and outside of the classroom. His discipline records reflected that Student engaged in verbal threats, defiance, disrespectful behavior, had pushed a peer, and urinated on the grass. The school counselor met with Parents to discuss behavior concerns. During third grade, Student's school records documented he wrote inappropriate words and missed homework assignments. His teacher reported persistent social problems. He received general education individual and group counseling at school and private therapy, but the private therapy was discontinued because Student did not participate. In May 2017, Parents requested a psychoeducational assessment from Bellflower, but rescinded the request a few weeks later.

LAS FLORES EDUCATIONAL CENTER

3. Parents withdrew Student from Foster Elementary and enrolled him at Bellflower's Las Flores Educational Center for fourth grade for the 2017-2018 school year. Las Flores served students ranging from kindergarten to grade 12. It offered both a general education classic independent study program, and a general education blended independent study program where students received language arts and math instruction three days per week and worked on social studies, science and physical education independently at home. Students had the option of attending Friday classes in technology, art, science, or music. The Las Flores campus had approximately 250 students, and less than ten students had an IEP. Las Flores did not offer special education classroom programs.

2017-2018 FOURTH GRADE SCHOOL YEAR AT LAS FLORES

4. Laura Sanzaro taught the Las Flores general education blended independent study program during the 2017-2018 school year. Ms. Sanzaro had been

employed at Bellflower for 15 years, and was a credentialed general education teacher at Las Flores since 2014. She had a master's degree in curriculum.

5. During the 2017-2018 school year, Student attended fourth grade in Ms. Sanzaro's class. Mother reported to Ms. Sanzaro that she enrolled Student at Las Flores because of Student's issues at Foster Elementary. Student attended school on Tuesdays, Wednesdays and Thursdays, as well as a half-day on Fridays. Student's classroom consisted of 24 students in the third and fourth grades for language arts, and 18 fourth grade students in class during math instruction. Parents were required to check in once per month for science and social studies independent study work. The classroom contained flexible seating which allowed students to choose their own seat, including bean bags, yoga balls, and mats on the floor.

6. Ms. Sanzaro began noticing behavior issues with Student a few weeks after the school year began. In October 2017, Student engaged in small disruptions, such as shouting out or trying to get attention, but his behaviors escalated. In November 2017, he imitated a gunshot gesture toward Ms. Sanzaro that resulted in Student's two-day suspension. Student's behaviors occurred on a daily basis, although there was a slight improvement for a short period around the beginning of February 2018. Student's fourth grade disciplinary records documented incidents of disruption of classroom instruction, using violent and inappropriate words, pounding on the desk, refusing to leave class, defiance, and property damage in the form of drawing on the carpet. Student's behaviors interfered with Ms. Sanzaro's ability to teach her class.

7. In an effort to address Student's behaviors, school staff provided him breaks, talked to him to calm him, employed a quiet environment in the office for de-escalation, and used a reward system for completed work. He was also provided with accommodations in the form of shortened assignments and extra time to complete his work. Ms. Sanzaro and Las Flores principal Tamara Zylla assisted in these efforts. Student

received no school counseling or outside therapy during the fourth grade.

ASSESSMENT PLAN

8. On multiple occasions beginning in October 2017, Ms. Zylla voiced concerns to Kevin Yoshioka about Student's behaviors and Parents' reluctance to have Student assessed for special education. Mr. Yoshioka was Bellflower's school psychologist since 2013. He held a master's degree in marriage and family therapy, a master's degree in school psychology and a pupil personnel services credential. His duties included conducting psychoeducational evaluations, developing behavior plans, providing designated instructional services counseling, responding to crisis intervention, participating in individualized education program team meetings, and acting as a case manager. Between 2011 and 2012, he was a Bellflower guidance counselor providing counseling services to both regular and special education students. Las Flores was one of the school sites he was responsible for during the 2017-2018 school year and he visited that site weekly.

9. In late October 2017 or early November 2017, Mr. Yoshioka explained the assessment process to Mother in order to make her feel more comfortable about it. Mr. Yoshioka informed Mother he would be sending an assessment plan to Parents.

10. On November 14, 2017, Bellflower sent Parents an initial assessment plan requesting consent for assessments in the following areas by the following professionals: academic achievement, intellectual development, and motor development by the school psychologist; health by the school nurse; social emotional/behavior by an educationally related mental health services psychologist; and a functional behavior assessment by a board certified behavior analyst. Bellflower included a copy of the notice of Parents' Rights and Procedural Safeguards with the assessment plan provided to Parents. Bellflower received Parent's signed consent to the assessment plan on November 27, 2017.

INITIAL ASSESSMENTS FOR SPECIAL EDUCATION

Multi-Disciplinary Assessment

11. Bellflower conducted an initial multi-disciplinary assessment of Student which was summarized in a written report dated February 2, 2018, and signed by school psychologist Mr. Yoshioka, on February 12, 2018. The report reflected assessments in health, academics, intellectual development and processing abilities, social emotional/behavior and adaptive behavior, by the following assessment team: Mr. Yoshioka and the school nurse. Only Mr. Yoshioka testified at hearing.

12. The report stated that a health screening was performed by the school nurse. Student was reported to have passed the vision and hearing screening tests. Mother reported that Student saw an audiologist in 2016 due to complaints that he did not hear various commands and directions.

13. Mr. Yoshioka's assessment consisted of a review of records, observations, teacher and parent interviews/reports, and a review of current educational performance. He administered the Differential Ability Scales, Second Edition to measure Student's intellectual functioning. The Test of Auditory-Perceptual Skills, Third Edition; the Test of Visual Perceptual Skills, Third Edition; and the Wide Range Assessment of Memory and Learning, Second Edition; were used to measure Student's processing abilities. Student's academic abilities were measured by the Woodcock Johnson IV Academic Achievement Test. To measure Student's social/emotional/behavioral and adaptive functioning status, he used the following assessment tools: Behavior Assessment System for Children, Third Edition; Gilliam Autism Rating Scale, Third Edition; Autistic Diagnostic Observation Schedule, Second Edition; and Childhood Autism Rating Scale, Second Edition.

14. Mother reported that Student's social interactions at home and in the community were not appropriate for his age as he had a hard time relating to or talking to peers his age. Mother reported concerns regarding Student's sensitivity and anxiety

since first grade. Student had been seeing a private therapist, but stopped because he did not talk during therapy. The private therapist identified Student as “highly sensitive,” which was characterized by being very aware, sensitive to the environment (e.g., physical traits, sounds, and voices), asking a lot of questions, and being a perfectionist. At school, he was defiant and did not complete his work, but his stress improved since he began attending Las Flores. At home, it was difficult to get him to complete assignments.

15. Ms. Sanzaro reported that Student could meet grade level standards when he was compliant and completed his work. Student’s main issue was his behaviors, which distracted him and others in the classroom, limiting his work production. The behaviors included disobeying directives from the teacher, talking back to the teacher, using profanity toward other students, being loud, not completing work, and instead engaging in his own interests such as writing in his personal journal.

16. Mr. Yoshioka observed Student during testing, in the classroom and on the playground. He had difficulty developing a rapport with Student because Student did not like answering questions about his day or personal life, and because Student avoided answering questions by claiming he did not know. Student demonstrated over-focused and anxious behaviors by over analyzing and taking very long to answer questions. Mr. Yoshioka had to test Student over multiple days to avoid Student becoming fatigued. On the playground, he observed Student writing in his personal journal and playing a game with a group of younger students. In the classroom, Student worked on his journal instead of participating in the classroom assignment even after the teacher prompted him to complete his assignment. He groaned at having to do group work, responded sporadically, became distracted, was reported to have cursed at other students, did not complete his work, and was sent to the office due to his behavior.

17. The Differential Abilities Scales measured the general ability to perform complex mental processing involving conceptualization and transformative information based on three scales. Student's overall cognitive score was in the High Average range, with High Average verbal reasoning and nonverbal reasoning, and Average spatial reasoning.

18. The Test of Auditory Perceptual Skills measured auditory processing skills necessary for development, use, and understanding of language utilized in academic and everyday activities. Student scored within the Average range on all but one subtest, on all indexes, and had an overall composite score within the Average range.

19. The Test of Visual Perceptual Skills measured visual perceptual strengths and weaknesses. The report stated that Student's overall perception fell in the High Average range based on three index scores (Basic, Sequencing and Complex Indexes) which were comprised of seven subtests. The Visual Closure subtest was one of two subtests upon which the Complex Index was based. The report contained a chart which listed the subtests, Student's scaled scores on the subtests, and a description of the score, i.e., High Average, Average, or Superior. Below the chart was a narrative explanation of Student's scores. Discrepancies existed between the scores listed on the chart and the narrative. The chart listed Student's Sequencing Index score as falling in the High Average range, but the narrative stated that it fell within the Average range. The narrative stated that Student's Complex Index score fell in the High Average range, but the chart described his score as falling in the Superior range. Similarly, on the Visual Closure subtest, the narrative stated his score fell in the Average range, but the chart described his score as falling in the High Average range. District did not address these discrepancies during the hearing.

20. The Wide Range Assessment was a test battery designed to assess memory ability, including immediate and delayed recall, and sought to differentiate

between verbal, visual, and global memory deficits. It was comprised of six subtests that produced three index scores: Verbal Memory Index, Visual Memory Index, and an Attention/Concentration Index. The three index scores combined to form the General Memory Index. On the General Memory Index, Student scored in the Low Average range, displaying below age appropriate skills in his overall general memory functioning. He fell in the Low range on the Verbal Memory Index, suggesting his ability to recall newly learned information was below expectancy in relation to same age peers. On the Visual Memory Index, his score fell within the Low Average range, suggesting he displayed below age appropriate skills to remember and learn visual information. On the Attention/Concentration Index, his score fell within the Superior range, suggesting he displayed above age appropriate skills in his ability to recall non-meaningful rote, sequential information.

21. During a portion of the Verbal Memory scale testing, the assessor noted that Student showed some anxiety, over focus on details, frustration, disinterest, and a lack of motivation, often saying he did not know or giving a minimal answer. On a portion of the Visual Memory scale testing, Student was agitated that he only had a short time to look at a picture, which Mr. Yoshioka opined could have affected his performance. During the Attention/Concentration scale testing, Student appeared much more motivated. The report stated that the Wide Range Assessment did not exhibit a fully accurate depiction of Student's memory abilities because he showed varying levels of motivation and resistance when having to do the test, and at times, gave minimal information to move on to the next task. Student was visibly frustrated, and therefore the assessor cautioned that the results should be taken with extreme caution.

22. The Woodcock Johnson assessed academic achievement. Student's scores fell in the Average range in letter and word recognition, reading comprehension and fluency, and math application and calculation. His lowest score was in math fluency,

where he was in the Borderline range. The assessor noted that Student was visibly agitated that he was being timed on the task, and he was at the same time trying to be as methodical and careful as possible, which lowered his score. In written expression, Student scored in the Superior range, displaying above age appropriate writing skills, although his responses were overly detailed with extraneous information.

23. Ms. Sanzaro and Mother responded to the Behavior Assessment System for Children, Third Edition, which evaluated aspects of Student's behavior and personality. In the portion of the report which described this assessment, the report erroneously referred to it as the second edition even though Mr. Yoshioka administered the third edition; in all other places the report correctly referred to the assessment as the third edition. The report explained that for adaptive behaviors, T-scores of 30 or below were usually considered Clinically Significant, otherwise T-scores of 70 and above were considered Clinically Significant. At hearing, Mr. Yoshioka stated that a scaled score of 69 to 70 and above was Clinically Significant, although this conflicted with his report. Scaled scores in the Clinically Significant range suggested a high level of maladjustment. Scores in the At-Risk range may have identified a significant problem not severe enough to require formal treatment, but may have needed monitoring. The F Index was designed to assess the possibility that a rater has depicted a child's behavior in an inordinately negative fashion. The Consistency Index identified situations when the rater has given inconsistent responses to items that were typically answered in a similar way.

24. Parent's F Index and Consistency Scale on the Behavior Assessment System were within acceptable range. Mother rated Student within the At-Risk range on the Externalizing Problems (Hyperactivity, Aggression, and Conduct Problems) and Internalizing Problems (Anxiety, Depression, and Somatization) composites. Of the six areas rated, Parent's score of 73 for Depression was the only score which was stated to fall in the Clinically Significant range based on the scale of 70, although Parent's score

was 69 for Aggression. Parent reported Student was withdrawn, pessimistic and/or sad, and that Student sometimes displayed aggressive behaviors such as being argumentative and defiant. The Behavioral Symptoms Index (Attention Problems, Atypicality, and Withdrawal) composite score was in the Clinically Significant range. Parent reported Student engaged in behaviors considered strange or odd and generally seemed disconnected from his surroundings. He had difficulty maintaining necessary levels of attention, was generally alone, and had difficulty making friends. The Adaptive Skills Index (Adaptability, Social Skills, Leadership, Functional Communication, and Activities of Daily Living) composite score could not be calculated because of missing scale scores, but in the four areas rated, only Adaptability fell in the Clinically Significant range. Parent reported Student had extreme difficulty adapting to changing situations.

25. Ms. Sanzaro's ratings of Student on the Behavior Assessment System produced an F Index score that fell within the Extreme Caution range. She rated Student within the Clinically Significant range on three of the five Index composites, including Externalizing Problems, Behavioral Symptoms, and Adaptive Skills. Of the fifteen areas rated, Aggression, Conduct Problems, Depression, Atypicality, Withdrawal, Adaptability, and Social Skills fell in the Clinically Significant range. Ms. Sanzaro reported that Student displayed a high number of aggressive behaviors and may be reported as being argumentative, defiant, and/or threatening to others. He frequently engaged in rule-breaking behaviors. He was withdrawn, pessimistic and/or sad, generally seemed disconnected from his surroundings, was generally alone, and had difficulty making friends. He had difficulty adapting to changing situations, took longer to recover from difficult situations, and had difficulty complimenting others and making suggestions for improvement in a tactful and socially acceptable manner.

26. Mr. Yoshioka did not explain or communicate in his report his determination as to whether Ms. Sanzaro's ratings were an accurate reflection of

Student or an exaggeration. At hearing, Mr. Yoshioka explained that Ms. Sanzaro's responses on the Behavior Assessment System were in the overly extreme range, which required Mr. Yoshioka to use his own judgment to determine if these ratings were an accurate reflection of Student, rather than the Ms. Sanzaro's "cry for help."

27. The Gilliam Autism Rating Scale was a screening test designed to identify persons with autism. Mother and Ms. Sanzaro completed rating scales. Based on Mother's responses, the results showed an "Unlikely" probability of autism. Ms. Sanzaro's responses indicated a "Very Likely" probability of autism. Ms. Sanzaro reported Student was very preoccupied with stimuli of abnormal intensity and displayed ritualistic behaviors. He did not initiate conversation with peers, was indifferent to others' attention, became frustrated quickly when he could not do something, and became upset when routines were changed. He also used precise speech, displayed superior knowledge, and had an excellent memory.

28. The Autism Diagnostic Schedule was a standardized assessment designed to obtain information in the areas of communication and reciprocal social interactions for purposes of identifying children with autism. Student could not complete the test because Mother reported Student was very anxious after answering questions and asked to discontinue the test. During testing, Student was asked a series of questions about the tasks and appeared anxious about the expectations of his answer. He became visibly frustrated by the questions, often rolling his eyes and claiming not to know or remember the answers.

29. The Childhood Autism Rating Scale asked respondents to rate an individual on a scale from one to four in key areas related to autism diagnosis. On the high functioning scale, Student scored in the Minimal to No Symptoms group based on the school psychologist's observations, interviews and impressions from working with Student.

30. Mr. Yoshioka included language in his report representing that all of the tests administered and test results were valid except as noted. The report also included a representation that in accordance with Education Code section 56320, the following considerations had been made with regard to the procedures and materials to ensure compliance with all Federal and State regulations: All test materials were administered in English, have been validated for the specific purpose for which they were used, and were administered by trained personnel in conformance with the instructions provided by the producer of the tests. Relevant health, environmental, cultural, economic, and language factors were reviewed and testing was structured to compensate of these factors. Tests and other assessment materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient. Tests were selected that provide results which accurately reflect the student's aptitude and achievement and are not influenced by impaired sensory, manual, or speaking skills.

31. The written report contained a summary discussion of the assessment results which conflicted in some areas with the information in the body of the report. Mr. Yoshioka concluded that the results of the processing, academic, and behavioral assessments were a valid sample of Student's current level of functioning except as noted with the Wide Range Assessment and Autism Diagnostic Schedule. Mr. Yoshioka summarized that Student's visual processing scores were in the High Average range for the Basic, Sequencing and Complex Composites; however, this summary conflicted with the narrative in the body of the report where it was reported that Student scored in the Average range on the Sequencing Index of the Test of Visual Perceptual Skills, rather than the High Average range stated in the summary. Similarly, in the body of the report, the chart of Test of Visual Perceptual Skills results indicated Student scored in the

Superior range on the Complex Index, not the High Average range reported by Mr. Yoshioka in the summary.

32. Mr. Yoshioka made findings which were detailed in his written report. Despite Student's high cognitive and academic scores, he showed very over-focused behaviors such as asking very meticulous and over analytical questions, asking if he got the questions correct, and re-asking directions. At times, this behavior caused Student some anxiety which led to longer response times and Student not wanting to attempt the task at all, which was evident on the Math Fluency section of the Woodcock Johnson, the Wide Range Assessment, and the Autism Diagnostic Schedule. The "Borderline" score on the math facts fluency subtest did not appear to be an accurate estimate of Student's knowledge, but more indicative of his response when he did not like the expectations of the assignment. Student did not like the idea of being timed or evaluated and did not participate in answering questions he deemed too personal or if there was a chance he could get the question wrong. These behaviors were observed in the classroom. Student rejected tasks in the classroom and avoided tasks or work, at times showing oppositional and defiant behaviors. These behaviors were described with previous counselors, including his private therapist who ended sessions because Student refused to participate. These types of behaviors were also evident in some of the results of the Behavior Assessment, the Gilliam Rating Scale, and the Children's Rating Scale. Mr. Yoshioka opined that these problems did not seem to come from having autism spectrum disorder, but "related to a combination of ADD-over focused type of issue, as well as oppositional and defiant behaviors," characterized by perseveration that could cause excessive worrying, becoming inflexible, and being obsessive, argumentative, and oppositional. Student's behaviors were a combination of over focusing on the details of a task that made it appear daunting, causing him to refuse to participate as well as daily oppositional defiant behaviors. In Mr. Yoshioka's opinion, although Student received

general education counseling, along with accommodations and reward contingency systems for work production, these were not effective in alleviating the behaviors and Student's issues with work completion. Mr. Yoshioka concluded Student met special education eligibility criteria under other health impairment due to suspected attention deficit disorder. Student did not meet criteria for eligibility under autistic-like behaviors, emotional disturbance, or specific learning disability.

Educationally Related Mental Health Services Assessment

33. Student's initial evaluation included an educationally related mental health assessment by Ivan Varela. Mr. Varela was Bellflower's school psychologist between 1999 and 2017. He was Bellflower's behavior intervention psychologist since 2017. He also held a pupil personnel services credential, and obtained a master's degree in counseling with a specialization in school psychology in 1999, and a bachelor's degree in psychology in 1995. As a behavior intervention psychologist, he conducted educationally related mental health evaluations and provided educationally related mental health services counseling. As a school psychologist, he conducted assessments, provided counseling, developed behavior support plans, consulted with parents, teachers and administrators, and was a case manager. He completed about 12 educationally related mental health services assessments, which were assessments which focused more on mental health issues, including behavior and social issues.

34. Mr. Varela assessed Student and prepared a written report dated February 1, 2018. Student was referred for this assessment to determine if social/emotional/behavioral services were required to support him in his educational placement due to a history of defiant and disruptive behaviors.

35. As part of his assessment, Mr. Varela reviewed Student's file; collaborated with Mr. Yoshioka; observed Student during the assessment, in the classroom, and at recess; conducted Parent, teacher, and staff interviews; and obtained information from

Parent reports. He also administered the Behavior Assessment System and the Achenbach System of Empirically Based Assessment, both standardized assessment tools.

36. Student's teacher reported that his behaviors were preventing him from participating in class. He was easily irritated when asked a question or given directions. He was defiant, easily distracted, could get fixated on little things, and often blurted out inappropriate words and noises, or with inappropriate volume to gain peer attention during instruction. His classmates sometimes chose not to sit near him because of his behaviors.

37. Father reported that Student was kind, compassionate, inquisitive, and a deep thinker. Parents had concerns in the social-emotional area, and with Student's anxiety and sensitivity. At home, he was defiant and did not complete his work.

38. During testing, Student's overall reactions were normal and appropriately modulated. He was cooperative. He often asked for clarification of the questions, and made an extra effort to answer carefully. He showed slight insight into the recognition of his own problem behaviors, but he mostly identified them as mild, and described himself in a positive way. In the classroom, Student was slightly more off-task than his peers. He engaged in a group lesson for a short period and then made comments out loud unrelated to the required activity. He had to be reminded to stay in his seat. He sighed when his teacher redirected him after she discovered he was playing a game on his Chromebook, and he refused to follow her instructions. When his teacher asked the class to have a discussion among themselves, Student chose not to interact with his classmates. During recess, he wrote in his personal journal and engaged in group play appropriately with his brother.

39. The Achenbach System was a comprehensive evidence-based evaluation that assessed competencies; strengths; adaptive functioning; and behavioral, emotional,

and social problems. Ms. Sanzaro and Mother completed the evaluation forms. Scores ranged from Non-Significant to Clinical. Scores in the Borderline range were considered to be high enough to be of concern but not so clearly deviant as scores in the Clinical range. Scores in the Clinical range were the result of a significantly high number of reported behaviors to be of clinical concern.

40. Based on Ms. Sanzaro's scores, Student's overall academic performance was in the normal range, but his scores were in the clinical range for Total Adaptive Functioning. His syndrome scale scores (which looked at problems that tended to co-occur and included Total Internalizing Problems, Total Externalizing Behaviors, and Total Problems) were all in the Clinical range. His subscale specific syndrome scale scores for Withdrawn/Depressed (co-occurring symptoms of social withdrawal and depression) and Social Problems (problems associated with peer engagement) were in the Borderline range, while Aggressive Behavior (explosive, bullying, or argumentative behaviors) fell in the Clinical range, and the remaining five categories, including Conduct Problems were in the Non-significant range. These results indicated that his teacher reported more problems than were typical of boys Student's age. On the DSM-Oriented Scales, which consisted of problem items consistent with the diagnostic categories of the DSM-IV, Student scale scores on Oppositional Defiant Problems (uncooperative, defiant and hostile behavior toward authority), and Stress Problems (emotional/behavioral/physical reactions to stressing events), were in the Clinical range. His scale score on Depressive Problems (depressed mood most of each day) was in the Borderline range, and the remaining six categories were in the Non-significant range.

41. Based on Mother's scores on the Child Behavior Checklist, Student scored in the Clinical range on Total Competence, including his Social Problems scale. His syndrome scores for Total Internalizing Problems was in the normal range, Total Externalizing Behaviors was in the Borderline range, and Total Problems was in the

Clinical range. These results indicated that Mother reported Student had more problems than boys his age, particularly in the areas of Thought Problems (displaying false belief about others, paranoia, hearing or seeing things that others do not see, and feelings that do not match situation), which scores fell in the Clinical range, as well as Aggressive Behavior and Attention Problems (ability to pay attention and stay focused), which scores fell in the Borderline range. On the DSM-Oriented Scales, Student scale scores on Oppositional Defiant Problems and Sluggish Cognitive Tempo (displays of dreaminess, mental foggy, inconsistent alertness, and a slow working speed) fell in the Clinical range, and his scores on the Depressive Problems scale and the Obsessive-Compulsive Problems scale (displays of unwanted thoughts and repetitive, ritualistic behaviors) were in the Borderline range, and the remaining five categories were in the Non-significant range.

42. Student completed the Behavior Assessment System self-report. His responses suggested non-elevated levels of concern in relation to school-related problems. He reported school often felt good to him and he almost always felt his teacher trusted him. He had no significant self-reporting of maladaptive areas of concern in internalizing problems. Overall, he did not report feelings of loneliness, hopelessness, or negative self-work. His current functioning in the area of emotional symptoms fell within a non-significant range. He reported he did not have trouble paying attention to what he was doing or difficulty concentrating during the assessment. His level of personal adjustment fell within a non-significant range. He reported he could rely on his Parents, was good at making decisions and was always happy with himself.

43. Mr. Varela's written report contained a summary. He concluded that the results of the social-emotional assessments indicated Student appeared to have been experiencing varying degrees of behavioral/emotional challenges in both the school and

home settings. Mr. Varela recommended educationally related mental health services due to Student's significant behavioral challenges in the school setting. He found that Student's behavioral challenges impeded his access to education. Mr. Varela recommended direct services which addressed coping skills to help regulate Student's behavior and emotions, along with intense prosocial skills training, and behavior modification support to reduce negative behavior such non-compliance and work refusal. At hearing, Mr. Varela explained that he recommended direct educationally related mental health services counseling to teach Student coping strategies, and social skills training to teach him to share and cooperate in the classroom because his lack of skill in these areas was significantly interfering with Student's ability to perform in the classroom.

Functional Behavior Assessment

44. Caroline Thompson conducted a functional behavior assessment between December 2017 and January 31, 2018. Ms. Thompson was a behavior intervention specialist employed by Bellflower since 2014. She held a bachelor's degree in psychology, a master's degree in teaching, and was a board certified behavior analyst since 2009. She has conducted approximately 275 functional behavior assessments. Her duties at Bellflower included supervision of behavior assistants, staff training, providing consultation to classroom teachers on behavior management techniques, and conducting functional behavior assessments.

45. At hearing, Ms. Thompson explained that a functional behavior assessment was an analysis of challenging behaviors with the goal to identify those behaviors, describe what they look like, and determine why those behaviors were occurring.

46. Ms. Thompson's assessment included the following tools: three classroom/recess observations; records review, interviews of Mother and Ms. Sanzaro, an environmental analysis, Antecedent-Behavior-Consequence Collected Data, and the

Functional Analysis Screening Tool. Ms. Thompson prepared a written report dated January 31, 2018.

47. Ms. Thompson's report contained a description of the interviews with Mother and Ms. Sanzaro. Mother reported her concerns with Student's escalating in-class behaviors, including acting out, being defiant, and not doing work. Student was also struggling with doing work at home. Mother reported that a quiet space and relaxation helped to calm Student when his behaviors escalated, and to obtain Student's best behavior he had to feel valued and worthy. Mother believed Student felt that others did not like him.

48. Ms. Sanzaro reported concerns with Student's disruptive behavior and defiance. She was also troubled by Student's violent drawings, cursing, talking down to peers, not following classroom routines, blurting out, and poor social interaction. He intentionally disrupted class instruction which required Ms. Sanzaro to stop teaching, and he was non-compliant when asked to stop his disrupting behavior. Ms. Sanzaro believed Student's behavior was attention-seeking and reported he defied her direct commands 90 percent of the time.

49. The functional behavior assessment report contained a chart of five behaviors Ms. Thompson saw during her three observations in the classroom and at recess, and the frequency of those behaviors, specifically: non-compliance (six times), confrontational comments (eight times), rude remarks (two times), interruptions (seven times), and off-task behavior (11 times). The report also contained a separate section entitled functional behavior assessment. In that section, targeted behaviors were identified as: non-compliance (which included observations of non-compliance, confrontational comments, and rude remarks) which Student engaged in a total of 16 times during the assessment at a rate of 3.6 times per hour, and off task-behavior which Student engaged in 11 times at a rate of 2.5 times per hour. Although she charted

interruptions during the observations, Ms. Thompson did not explain in her report why the targeted behavior of non-compliance included rude remarks which occurred only twice and only during one observation, but did not include interruptions which occurred seven times and during all three days of observation.

50. Ms. Thompson completed the Functional Analysis Screening Tool to determine potential maintaining variables for non-compliance and off-task behavior. The report contained a chart of the possible function of the behavior and the number of times she scored it with a "yes." Ms. Thompson reported that the results indicated that non-compliance and off-task behavior may be maintained by negative reinforcement in the form of escape/avoidance of undesirable activities. Ms. Thompson did not describe what the Functional Analysis Screening Tool consisted of or explain in her report or at hearing how the results as depicted on the chart were derived, including how the variables were determined, and what was meant by the terms "indirect assessment," and "indirect observations," and how those differed from her direct observations. The report also contained separate charts of the antecedents, behaviors, and consequences for Student's non-compliant and off-task behaviors. Ms. Thompson hypothesized about the function of Student's non-compliance and off-task behaviors. Based on her "indirect observations" and descriptive analysis she concluded that Student's non-compliant behavior was likely maintained by negative reinforcement in the form of escape/avoidance of task demand and unwanted feedback/consequences from staff and that Student's off-task behavior was likely maintained by negative reinforcement in the form of escape/avoidance of task demands.

51. Ms. Thompson concluded that the results of the assessment indicated a likelihood Student's behaviors (i.e., non-compliance and off-task behavior) would interfere with his ability to meet academic goals, and recommended a behavior intervention plan to reduce this problem. She also recommended a more detailed

“reinforcer” assessment if it was determined that the items in Student’s current environment were insufficient to sustain his attention. She made no recommendation in her report for behavioral services, but deferred to the IEP team for determination.

52. Ms. Thompson conducted an environmental analysis to determine if there was something in the classroom contributing to Student’s behaviors which, if modified, could “make the behaviors go away.” She determined there were none. This specific determination was not included in her report.

BELLFLOWER’S BEST PROGRAM

53. The Behavior Emotional and Social Teaching classroom, referred to as the BEST program, consisted of a mild moderate self-contained special day classroom for fourth through sixth graders whose behaviors impeded their learning. It was located on the campus of Washington Elementary School. The classroom consisted of an average of 12 students and two adults, with a maximum of 15 students permitted to attend. The students were most often taught in small group instruction covering the general education curriculum. Students were typically placed in a BEST classroom for a minimum of one year, and when their behaviors improved, they were placed in a less restrictive setting. The goal of the BEST program was to have students self-reflect and monitor behavior independently so they could return to the general education classroom. Las Flores and Foster Elementary did not offer the BEST program.

EVENTS PRIOR TO FEBRUARY 2018 IEP TEAM MEETING

54. Bellflower’s Program Administrator, Matthew Adair, visited Las Flores several times between November 2017 and February 2018, to observe Student and gain an understanding of his performance. Mr. Adair has been the Program Administrator since July 2017. He held a bachelor’s degree in organizational leadership, a master’s degree in business administration and credentials in elementary education,

administrative services and special education. His duties included supervision of special education staff, supporting special education staff in legal and policy compliance, handling due process complaints, and facilitating IEP team meetings. He was knowledgeable about Bellflower's special education programs and to a certain extent, acted as Bellflower's custodian of records for special education, in that he responded to records requests. Prior to working for Bellflower, he was employed by Los Angeles Unified School District as a due process department litigation coordinator where he researched, resolved, and attended hearings involving special education disputes, and provided IEP compliance training to administrators and staff. He had over seven years teaching experience as a resource specialist and in a special day class.

55. In the period between November 2017 and February 12, 2018, Mr. Adair spoke to each of the persons assessing Student, as well as Ms. Sanzaro and Ms. Zylla about his observations and to obtain feedback. Ms. Sanzaro told him Student was not producing a lot of work product, was defiant, and engaged in behaviors to escape from doing work and participating in class.

56. Bellflower's 2017-2018 winter break began on December 22, 2017, and school resumed on January 8, 2018. Bellflower sent Parents an Invitation to Individual Educational Program Team Meeting/Notice of Meeting dated January 25, 2018. The Notice of Meeting stated that the meeting would be held on February 6, 2018, at Las Flores. The Notice of Meeting also identified staff who would attend as a general education teacher, a special education teacher, an administrative designee, a psychologist, an educationally related mental health services psychologist, and a board certified behavior analyst.

57. On January 31, 2018, Mother signed and returned the Notice of Meeting, stating that she planned to attend. Mother later contacted Mr. Yoshioka and informed him that February 6, 2018, was no longer a good date for the IEP team meeting.

58. Bellflower sent Parents an Invitation to Individual Educational Program Team Meeting/Notice of Meeting dated February 5, 2018. The Notice of Meeting stated that the meeting would be held on February 12, 2018, at Las Flores. The Notice of Meeting also identified staff who would attend as a general education teacher, a special education teacher, an administrative designee, a psychologist, an educationally related mental health services psychologist, a board certified behavior analyst, and a special education program specialist.

59. On February 6, 2018, Mother signed and returned the Notice of Meeting, stating that she planned to attend the February 12, 2018, IEP team meeting and bring an advocate.

THE FEBRUARY 2018 IEP TEAM MEETINGS

60. Student's initial IEP team meeting took place over the course of two days: February 12 and 13, 2018. Mr. Adair took the notes at the meetings.

61. Those in attendance at the February 12, 2018, IEP team meeting included Parents, a family friend/advocate, Mr. Adair, Mr. Yoshioka, Mr. Varela, Ms. Thompson, Ms. Zylla, Ms. Sanzaro, and special education teacher/education specialist Veronica Vallecillo. The IEP team provided Parents with a copy of Parent's Rights and Procedural Safeguards. Parents participated in the IEP team meeting.

62. On February 12, 2018, Bellflower provided Parents copies of the assessments and some pages of a draft IEP, but did not provide the IEP pages entitled "Offer of FAPE –EDUCATIONAL SETTING" or "Offer of FAPE-SERVICE." The IEP team reviewed Student's strengths detailed by Ms. Sanzaro, the assessments and proposed behavior intervention plan, and discussed special education eligibility. Mother expressed concerns that Student's behaviors escalated since attending Las Flores. Mr. Yoshioka reported that Student's visual processing skills were in the high average to average range, that with regard to verbal memory/attention testing Student appeared not to want to participate

in the testing, and that the subtest results might not be valid. Father reported Student had difficulty with re-engaging in school activities on Tuesday mornings after a three and one-half day break from the classroom and that Student was becoming overly-exhausted due to testing. Mr. Yoshioka reported Student refused to answer questions he believed Student could answer, and Student preferred activities that comforted him such as writing in his journal. Mr. Yoshioka explained he did not believe Student had characteristics of autism, but that Student qualified for special education under the category of other health impairment for his attention and over-focus deficits.

63. Ms. Thompson reported that Student's refusal to answer questions could be due to any number of reasons. She also opined that if Student could learn the skills to request a self-initiated break it could greatly help reduce his inappropriate behaviors. She told the team that Ms. Sanzaro reported Student engaged in disruptive behavior that required instruction to stop, such as drumming on his desk, that he sketched violent images, and that he did not comply with directives approximate 95 percent of the time (which conflicted with the 90 percent figure in her assessment report). She did not believe the school environment or classroom contributed to any unwanted behaviors. She reported that Student's non-compliant behavior could be seen as many as 20 times in an average school day, and that the behaviors seemed to be motivated by escape from non-preferred activities. Ms. Thompson suggested that Student would benefit from an environment that focused on improving Student's behavior through structured interventions and tactics, such as a high rate of reinforcement, a smaller setting, workload/assignments being heavily accommodated, and the teaching of self-coping strategies.

64. Mr. Varela discussed the Achenbach System ratings of Student's behavior. Mr. Varela reported that Ms. Sanzaro's scores in the area of Conduct Problems (defined as frequently behaved in extremely troubling aggressive behaviors, property,

destruction, deceit, and serious violations of rules), fell into the Clinical range. This was inconsistent with the results in his written report which stated that Student's score in the area of Conduct Problems was in the Non-Significant range. There was no evidence Mr. Varela explained this discrepancy during the February IEP team meetings, and it was not addressed by any witness at hearing. He also stated that it was common for a student to see himself differently than parents and teachers. Mr. Varela recommended that Student focus on coping skills and prosocial skills.

65. Parents needed to think about eligibility before they could make a decision. The team agreed to reconvene at Las Flores on February 13, 2018.

66. The IEP team reconvened on February 13, 2018. With the exception of Parents' friend, the same people attended both IEP team meetings. Bellflower provided Parents with a copy of Parent's Rights and Procedural Safeguards. Parents participated in the IEP team meeting.

67. The IEP team reviewed proposed goals and discussed the behavior intervention plan. The IEP team outlined and explained the continuum of placement options, including general education with no supports, general education with resource specialist support, self-contained special day class, and a self-contained special-day behavior class, referred to as a five-day a week BEST program located at Washington Elementary. Ms. Thompson explained that the BEST program was a behavior class designed around best behavior practices to improve a student's behavior with mainstreaming to general education as behavior warranted, and eventually transitioning the student out of the program. Mr. Yoshioka recommended a team approach and he, along with Ms. Vallecillo, opined that the five-day BEST program could provide the consistency needed for Student's behavior improvement. Mr. Varela explained that counseling services could be provided to Student as part of the BEST program, and Ms. Thompson explained that Washington Elementary had a social skills program. Mr.

Yoshioka recommended that Student receive 1200 minutes per year of counseling and guidance, and noted that Washington Elementary had a full-time school psychologist assigned to the site.

68. Ms. Thompson asked Parents if they had any questions before Ms. Thompson was excused from the meeting. No one had questions. Ms. Thompson left the meeting about 40 minutes before it concluded. At hearing, Ms. Thompson claimed she was present for the entire IEP team meeting, which conflicted with the IEP team meeting notes, and negatively affected her credibility.

69. The IEP team discussed special factors, state testing, extended school year, accommodations, special education eligibility, and the BEST program. Bellflower made an offer of special education and related services. Bellflower provided a copy of the entire IEP dated February 12, 2018, including the meeting notes to Parents at the conclusion of the meeting on February 13, 2018. Mr. Adair's practice was to read the notes back to the team at the end of each IEP team meeting before providing a copy to parents, but he could not recall at hearing if he read the notes at Student's IEP team meetings. Parents informed the team they would take the IEP home to consider before making any decisions.

THE FEBRUARY 2018 IEP OFFER

70. The February 2018 IEP contained a description of Student's present levels of performance which was derived from, among other things, the assessments. The special factors page of the IEP contained the statement that Student's behaviors impeded his learning or the learning of others. The IEP identified Student's areas of need as social skills, self-coping, and behavior. The IEP contained an offer of special education and related services for the period of February 12, 2018 to February 12, 2019, which consisted of, among other things, the following: other health impairment special education eligibility and specialized academic instruction within the special education

BEST program at Washington Elementary for 1425 minutes weekly. The "Offer of FAPE – EDUCATIONAL SETTING" page stated that the special education services offered in the IEP were not offered at Student's home school, and that Student's behavioral and social needs required consistent five-day comprehensive social emotional intervention. On that same page, the IEP incorrectly quantified the amount of time Student would be in the general education environment if Parent accepted the proposed BEST placement as 79 percent of the school day, and 21 percent of the school day outside the general education environment. These percentages were inconsistent with the placement offer of 1425 minutes weekly of specialized academic instruction contained on the "Offer of FAPE – SERVICE" page.

71. At hearing, Mr. Adair demonstrated genuine surprise when he looked at the "Offer of FAPE – EDUCATIONAL SETTING" page and compared it to the "Offer of FAPE – SERVICE" page of the February 2018 IEP. He truthfully explained that the IEP had incorrectly quantified the amount of time Student would be in and outside the general education setting based on Bellflower's offer of placement in the BEST program for 1425 minutes per week. Mr. Adair candidly volunteered that the IEP should have stated that Student would have been outside of a general education setting 79 percent of the time, not the 21 percent indicated on the IEP, and that Student would have been in a general education setting 21 percent of the time, not the 79 percent stated in the IEP.

72. At hearing, Mr. Yoshioka and Ms. Thompson opined that the BEST program was an appropriate setting at the time of the February 2018 IEP. According to Mr. Yoshioka, based on his assessment and the functional behavior assessment, Student needed a comprehensive system in place with small group instruction where the entire class responded to the same incentive, where staff was trained so that Student could not benefit from peer attention, and where Student had access to the school psychologist for intervention when needed. Ms. Thompson did not believe Las Flores was an

appropriate setting for Student. Student required behavioral expertise to eliminate his behaviors, which was available in the BEST program. In her opinion, the BEST classroom would have been a perfect match to teach Student self-management and self-coping skills.

73. Bellflower offered transportation in the form of "Corner pick-up" because the BEST program was not available at Student's home school. However, the IEP failed to specify if "Corner pick-up" meant home residence to Washington Elementary, home school to Washington Elementary, or something else. According to Mr. Adair, Foster Elementary was Student's home school; the IEP identified Student's "Residence School" as Las Flores.

74. Bellflower marked the box that Student did not qualify as a student needing extended school year services because he was able to recoup the information from having a summer break.

75. Bellflower offered group and individual counseling and guidance for 1200 minutes yearly. At hearing, Mr. Adair clarified that 1200 minutes of counseling per year was equivalent to about two hours per month. The February 2018 IEP did not specify how many minutes of group counseling versus how many minutes of individual counseling Student would receive. The February 2018 IEP also did not identify the type of counseling offered, specifically whether it was educationally related mental health services counseling or designated instructional services counseling.

76. At hearing, Mr. Varela was adamant that the type of counseling and guidance offered in the February 2018 IEP was educationally related mental health services counseling which he had recommended as part of his assessment, rather than designated instructional services counseling, commonly referred to as "DIS" counseling provided by the school psychologist. According to Mr. Varela, he would have been the person responsible for delivering the educationally related mental health services

counseling offered to Student upon Parent consent, not the school psychologist. Although not reflected in his assessment or the IEP team meeting notes, Mr. Varela recommended Student receive a minimum of 30 minutes per week of direct services to address the areas of concern he identified through his assessment. If Mr. Varela had recommended designated instructional services counseling instead of educationally related mental health services counseling, he would have so specified in his report. Educationally related mental health services counseling was different than "DIS" counseling, the former being a more intense, higher level of counseling which employed more techniques and was evidence-based, as compared to designated instructional services counseling which did not use a curriculum. Mr. Varela explained that the involvement of the Washington Elementary school psychologist or designated instructional services counselor would have been limited to responding to crisis situations and would not have provided the regular direct counseling services offered Student in the February 2018 IEP.

77. Mr. Yoshioka' testimony regarding the offer for counseling and guidance conflicted with Mr. Varela's testimony. Mr. Yoshioka claimed that the counseling and guidance offered in the February 2018 IEP was designated instructional services counseling provided by the on-site Washington Elementary school psychologist. He explained that Student needed a comprehensive system approach which included someone he trusted and with whom he had built a relationship to help him practice his coping strategies in the moment, such as the on-site school counselor or psychologist at Washington Elementary. He claimed he was very clear at the IEP meeting it was preferable to have someone on-site who could have responded "in the moment" rather than having an off-site person who might not have been readily available. When asked if the IEP team offered designated instructional services counseling or educationally related mental health services counseling, Mr. Yoshioka claimed that it was his

understanding that the “counseling and guidance” offered could have been provided by the school counselor under certain circumstances, the school psychologist, or the educationally related mental health services psychologist.

78. The IEP team also offered a behavior intervention plan as part of the February 2018 IEP. According to Ms. Sanzaro, it was not possible to fully implement the proposed behavior intervention plan in her Las Flores classroom. The IEP also offered classroom accommodations in the form of extended time, frequent breaks, visual cues, reduced distractions, positive praise, and feedback. Classroom modifications in the form of shortened assignments to focus on a mastery of key concepts were offered for a 15-minute duration weekly. Bellflower offered no evidence at hearing which explained how this would be implemented. Bellflower also included training of school personnel on the behavior intervention plan for a duration of “30” yearly, but the offer did not specify if “30” referred to minutes, hours, days or something else. Bellflower offered no evidence at hearing that “30” offered an adequate amount of training.

79. The February 2018 IEP offered three annual goals. Goal 1 was a behavior goal with classroom staff as the persons responsible, and required Student by February 2019 to comply with staff directions (e.g., cease behavior, take a break, make a different decision, etc.) in 70 percent of opportunities for three consecutive days. Although he did not write Goal No. 1, at hearing Mr. Varela opined that it was an appropriate goal because it addressed Student’s difficulties in complying with directions.

80. Goal 2 was labeled a social/emotional goal, with the “DIS Counselor” as the person responsible, and required “[b]y February 2019, when given a frustrating situation (i.e. undesired task, demand, and/or undesired peer behavior), with a minimum of one prompt, [Student] will utilize coping strategies (i.e. take a break, deep breaths, etc.) and return to and remain on task with a calm body and mind for a minimum of 10 minutes with an average of 75% over 4 consecutive school weeks, across all classroom

environments as measured by anecdotal records and teacher observations.”

81. Mr. Varela wrote Goal 2 to help Student develop coping strategies, but at hearing he was unable to explain why it listed the “DIS Counselor” as the person responsible, and agreed it should have listed “ERMHS counselor” or “DIS/ERMHS counselor,” instead of “DIS Counselor.” According to Mr. Varela, he would have been working with Student on this goal during the educationally related mental health services counseling sessions offered in the IEP, and he assumed the listing of “DIS Counselor” as the person responsible for Goal 2 was a mistake on the IEP. He was not certain if the “ERMHS” school psychologist and DIS counselor were synonymous. Mr. Yoshioka assisted Mr. Varela in developing Goal 2. Mr. Yoshioka claimed that the DIS counselor was a school psychologist, although in other places in his testimony he drew a distinction between the school counselor and the school psychologist. According to Mr. Yoshioka, the DIS counselor would have been the person reporting on Goal 2 and taking data on observations during counseling sessions with Student. Both Mr. Varela and Mr. Yoshioka agreed the classroom staff were also responsible for working on Goal 2.

82. Goal 3 was labeled a “ProSocial” goal, listing the “DIS counselor” as the person responsible for the goal. Mr. Varela wrote this goal to address Student’s passive non-compliance in the classroom, and according to him, he would have been working with Student on this goal during the educationally related mental health services counseling sessions offered in the IEP. According to Mr. Adair, the prosocial goal was meant to teach Student positive social skills because he had some trouble working with peers. Goal 3 stated that “[b]y February 2019, [Student] will demonstrate pro-social skills in the classroom that will result in reducing instances of passive non-compliance (becomes purposely and increasingly distracted through ignoring tasks, demands, or staff directives) with a minimum of 2 prompts with 80% accuracy within the educational

environment, across 2 consecutive weeks and measured by anecdotal records and teacher observations.”

EVENTS AFTER THE FEBRUARY 2018 IEP TEAM MEETINGS

83. Parent partially consented to the February 2018 IEP on February 27, 2018. Bellflower stored student information in the Aeries Student Information System. It listed the date of February 27, 2018, next to the term special education. Bellflower staff informed Mr. Yoshioka that Mother accepted the counseling offered in the IEP. In February and March 2018, Mr. Yoshioka repeatedly attempted to contact Mother to set up a time with Mother to arrange to provide counseling to Student at the District office. He received an email from Mother on or about March 2018, instructing him not to contact her again.

84. Ms. Sanzaro understood that Parents wanted the behavior intervention plan in the February 2018 IEP implemented. She received training on implementation of the behavior intervention plan, and to the extent it was possible she implemented portions of the plan in her classroom. Student’s behaviors did not improve after the February 2018 IEP team meetings and Ms. Sanzaro communicated almost daily with Parents.

85. Between the February 2018 IEP meetings and February 2019, Mr. Adair had a number of discussions with Parents about their pending issues with the February 2018 IEP. In April 2018, Mr. Adair contacted Parents and proposed having an IEP team meeting to discuss the pending issues Parents had with the February 2018 IEP. On or about April 16, 2018, Mr. Adair sent Parents an Invitation to Individual Educational Program Team Meeting/Notice of Meeting, listing the purpose of the meeting as “Amendment.” The Notice of Meeting indicated that the meeting would be held on May 8, 2018, at Las Flores.

86. Mother contacted Mr. Adair and informed him that she could not meet on

the proposed date, and asked for a June 2018 IEP date. On or about May 2, 2018, Mr. Adair sent Parents an Invitation to Individual Educational Program Team Meeting/Notice of Meeting, listing the purpose of the meeting as "Amendment." Mr. Adair sent the Notice of Meeting because Parents had not fully consented to the IEP and he wanted to discuss Parents concerns to work them out. The Notice of Meeting indicated that the meeting would be held on June 12, 2018, at Las Flores. Parents notified Mr. Adair that they were unavailable for the proposed meeting and Mr. Adair asked Mother to let him know when Parent was available. Mother told Mr. Adair that she did not agree with the February 2018 IEP because she wanted Student to remain at Las Flores.

87. On or about September 2018, Mr. Adair contacted Parents to try to schedule an IEP team meeting in October 2018 to discuss Parents' concerns with the February 2018 IEP. Parents responded through counsel, requesting independent educational assessments and informing Bellflower that they did not want to attend another IEP team meeting until the independent assessments were completed. Bellflower agreed to provide the assessments and contracted with the assessors to perform the evaluations, specifically, independent educational evaluations in the following areas: psychoeducation, educationally related mental health services, and functional behavior.

88. Lindsey Hunt was the special education special day class teacher in the BEST program since August 2016. She held a master's degree in special education and credentials in education specialist instruction. Her 2018-2019 BEST classroom consisted of nine students, all of whom had behaviors and an IEP, and five adults.

89. On October 9, 2018, Ms. Hunt observed Student for three hours in his general education class of fifth and sixth graders at Las Flores. Ms. Hunt observed Student during math instruction. In the classroom of about 30 students, a portion of the class received instruction and the other portion of the class worked independently on

their Chromebooks. Student had difficulty working with his peers, tried to gain attention, and had difficulty staying seated and remaining on-task. In Ms. Hunt's opinion, the classroom size was too large for Student to maintain attention and stay on task. She spoke to Ms. Zylla, but did not speak to the teacher or Parents. Based on her observation, Ms. Hunt concluded the BEST program Bellflower offered in the February 2018 IEP was appropriate for Student.

90. Sometime in the fall of 2018, Parents' counsel notified Bellflower that Parents did not agree that the February 2018 IEP offered FAPE, and that Parents planned to withdraw Student from Bellflower, privately place him, and seek reimbursement. In December 2018, Parents informed Bellflower that Student was withdrawing from Bellflower and that he was going to attend private school. Student was not enrolled at and did not attend a Bellflower school between December 2018 and the last day of hearing.

91. In January 2019, Bellflower held another IEP team meeting where the IEP team reviewed the independent educational assessments. Mother and her counsel attended that IEP team meeting telephonically.

92. Shortly after the January 2019 IEP team meeting, Parents requested a tour of the BEST program classroom. In early February 2019, Mr. Adair and Ms. Thompson took Mother on a tour of the BEST program at Washington Elementary.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA²

1. This hearing was held under the Individuals with Disabilities Education Act,

² Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

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)³ et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education 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, which meet state educational standards, and conform to the child's individualized education program. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

³ All references to the Code of Federal Regulations are to the 2006 version unless otherwise specified.

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.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.) In a recent unanimous decision, the United States Supreme Court clarified FAPE as "markedly more demanding than a '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.*").) School districts 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).) 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, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, Bellflower bears the burden of proof.

ISSUE: THE FEBRUARY 2018 INITIAL IEP

5. Bellflower contends that Student's February 2018 initial IEP, developed at IEP team meetings held on February 12 and 13, 2018, offered Student a FAPE because it was reasonably calculated to enable Student to make progress appropriate in light of his circumstances. Bellflower argues that it complied with the IDEA's procedural requirements. It claims that the program of special education and related services offered Student was designed for students with behavior issues, but Parents refused to consent to the IEP, other than special education eligibility and counseling for a limited period of time, and then unilaterally placed Student in private school in December 2018.

6. Student's attorney withdrew as counsel of record before making an opening statement and Parents did not appear at hearing. However, in his prehearing conference statement, Student actively sought relief from OAH requesting a

determination that the February 2018 IEP was inappropriate and an order for reimbursement for Student's private placement as a result of Bellflower's failure to provide Student a FAPE.

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

8. An IEP is a written document for each child with a disability that includes: a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; and a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320.) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).) An IEP must include a statement of the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) The IEP need only include the information set forth in title 20 United

States Code section 1414(d)(1)(A)(i), and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code, § 56345, subds. (h) & (i).)

9. The IDEA requires that school districts establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of FAPE by such agencies. (20 U.S.C. § 1415(a).) A copy of the notice of a parent's rights shall be attached to the assessment plan. A written explanation of all the procedural safeguards under the IDEA shall be included in the notice of a parent's or guardian's rights. (Ed. Code, § 56321, subd. (a).) A copy of the procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year, except that a copy shall also be given to the parents upon initial referral or parental request for assessment. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a); Ed. Code, § 56301, subd. (d)(2).) Education Code section 56500.1, subdivision (b) requires that parents be informed about procedural safeguards at an IEP team meeting.

10. The IDEA's procedural safeguards are intended to protect the informed involvement of parents in the development of an education for their child. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994].) "[T]he informed involvement of parents" is central to the IEP process. (*Ibid.*) Protection of parental participation is "[a]mong the most important procedural safeguards" in the IDEA. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) Parents not only represent the best interests of their child in the IEP development process, but also "provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know." (*Ibid.*) "Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA." (*Id.* at p. 892.)

11. Procedurally, the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(b) & (c); Ed. Code, §§ 56304, 56341.) Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or afforded the opportunity to participate, including (1) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and (2) scheduling the meeting at a mutually agreed on time and place. (34 C.F.R. § 300.322(a).) In addition to other requirements, the notice must indicate the purpose, time, and location of the meeting and who will be in attendance. (34 C.F.R. § 300.322(b).)

12. Unless excused by the parent in writing, the public agency must ensure that the IEP team for each child with a disability includes the parents of the child; a regular education teacher if the child is, or may be, participating in the regular education environment; a special education teacher; and a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum and is knowledgeable about available resources. (34 C.F.R. § 300.321.) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and at the discretion of the parent or school district, to include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).)

13. A school district is required to conduct not just an IEP team meeting, but a meaningful IEP team meeting. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1485, *superseded in part by statute on other grounds.*) "Participation must be more than mere form; it must be meaningful." (*Deal v. Hamilton County Board of Educ.* (6th Cir. 2004) 392 F.3d 840, 858 [citations omitted].)

14. Assessments are required to determine eligibility for special education, and what type, frequency, and duration of specialized instruction and related services are required. (20 U.S.C. § 1414(a).) In evaluating a child for special education eligibility and prior to the development of an IEP, a district must assess in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.) To assess or reassess a student, a school district must provide proper notice to the parents of the child. (20 U.S.C. § 1414(a)(1)(D) & (b)(1); Ed. Code, § 56321.) Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(D) & (c)(3); 34 C.F.R. § 300.300(a) & (c); Ed. Code, §§ 56321, 56381, subd. (f).)

15. When a student is referred for special education assessment, the school district must provide the student's parent with a written proposed assessment plan within 15 days of the referral, not counting days between the pupil's regular school sessions or terms, or days of school vacation in excess of five school days from the date of receipt of the referral. (Ed. Code, § 56321, subd. (a).) The parent has at least 15 days to consent in writing to the proposed assessment. (Ed. Code, § 56321, subd. (c)(4).) The district has 60 days from the date it receives the parent's written consent for assessment, excluding vacation and days when school is not in session in excess of five schooldays, to complete the assessments and develop an IEP, unless the parent agrees in writing to an extension. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f), 56302.1, subd. (a), 56381(a).) The proposed assessment plan is also required to contain certain information, including but not limited to, an explanation of the types of assessments to be conducted. (Ed. Code, § 56321, subd. (b).) The assessment may begin immediately upon receipt of the parent's consent. (Ed. Code, § 56321, subd. (c)(4).)

16. The assessment must be conducted in a way that: (1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; (2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and (3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 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); Ed. Code, §§ 56320, 56381, subd. (e); 34 C.F.R. § 300.304.) The determination of what tests are required is made based on information known at the time. (See *Vasherresse 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 the concern prompting the assessment was reading skills deficit].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).) Assessors must be knowledgeable about the student's suspected disability and must pay attention to student's unique educational needs such as the need for specialized services, materials, and equipment. (Ed. Code, § 56320, subd. (g).) Any health assessment of pupils shall be made in accordance with Education Code section 56320 and shall be conducted by a credentialed school nurse or physician who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, § 56324.)

17. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development, and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) consistent with superintendent guidelines for low incidence disabilities (those affecting less than one percent of the total statewide enrollment in grades kindergarten through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) Within 60 days of parental consent to the assessment, the assessment report must be provided to the parent, and an IEP team meeting must be held to consider the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, §§ 56302.1, subd. (a), 56329 subd. (a).)

18. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) In other words, the IEP must be reasonably calculated to enable the child to achieve educational benefit appropriate in light of the child's circumstances. (*Endrew F., supra*, 580 U.S. ___, 137 S.Ct. at p. 1002.) Whether a student was offered or denied a FAPE is determined by looking to

what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Board of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

19. School districts are required to provide each special education student with a program in the least restrictive environment. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate: 1) that children with disabilities are educated with non-disabled peers, and 2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a).)

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

21. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit has balanced the following factors: 1) "the educational benefits of placement full-time in a regular class"; 2) "the nonacademic benefits of such placement"; 3) "the effect [the student] had on the

teacher and children in the regular class"; and 4) "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.)

22. If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction or instruction in the home, in hospitals, or other institutions. (Ed. Code, § 56361.)

23. Meaningful parental participation requires that the IEP document fulfill the IDEA's explicit requirement of written prior notice to parents when a school district proposes, or refuses, to initiate or change the educational placement of a disabled child. (See 20 U.S.C. §1415(b)(3).) The procedural requirement of a formal written IEP offer creates a clear record and eliminates troublesome factual disputes years later about what placement and services were offered. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 ("*Union*").) A formal written offer is therefore more than a mere technicality, and this requirement should be rigorously enforced. (*Ibid.*) Parents must be able to use the IEP to monitor and enforce the services that their child is to receive. When a parent is unaware of the services offered to the student, and therefore cannot monitor how these services are provided, a FAPE has been denied, whether or not the parent had ample opportunity to participate in the formulation of the IEP. (*M.C. v.*

Antelope Valley Union High School Dist., *supra*, 858 F.3d 1189, 1197.)

24. A formal, specific offer from a school district (1) alerts the parents of the need to consider seriously whether the proposed placement is appropriate under the IDEA, and (2) helps parents determine whether to reject or accept the placement with supplemental services. (See *Union*, *supra*, 15 F.3d at p. 1526.) Although *Union* involved a district's failure to produce any formal written offer, numerous judicial decisions have invalidated IEPs that, although an offer was made, were insufficiently clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing. (See, e.g., *A.K. v. Alexandria City School Bd.* (4th Cir. 2007) 484 F.3d 672, 681; *Knable v. Bexley City School Dist.* (6th Cir. 2001) 238 F.3d 755, 768; *Bend-LaPine School Dist. v. K.H.* (D. Ore., June 2, 2005, No. 04-1468-AA) 2005 WL 1587241, p. 10; *Glendale Unified School Dist. v. Almasi* (C.D. Cal. 2000) 122 F.Supp. 2d 1093, 1108 ("*Glendale*"); *Mill Valley Elem. School Dist. v. Eastin* (N.D. Cal., Oct. 1, 1999, No. 98-03812) 32 IDELR 140; see also *Marcus I. v. Department of Education* (D. Hawaii, May 9, 2011, No. 10-00381) 2011 WL 1833207, pp. 7-8.) *Union* requires "a clear, coherent offer which [parent] reasonably could evaluate and decide whether to accept or appeal." (*Glendale*, *supra*, 122 F.Supp. 2d at p. 1108.)

25. The IEP must describe the services offered and their anticipated frequency, location and duration of services. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).) It must also contain a statement of supplementary aids and program modifications or supports that will be provided, along with an explanation of the extent to which the pupil will not participate with nondisabled pupils in the regular class. (*Ibid.*) In addition, the IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (*Jessica E. v. Compton Unified School Dist.* (C.D. Cal. 2017, No. CV16-04356-

BRO) 2017 WL 2864945; see also Ed. Code, § 56345; 20 U.S.C. § 1414(d)(1)A(i).) An examination of the goals in an IEP is central to the determination of whether a student received a FAPE. In *Adams*, the court stated: “[W]e look to the [IEP] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit.” (*Adams, supra*, 195 F.3d at p. 1149.)

26. The purpose of annual goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child’s present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler* (OSERS 1988) 213 IDELR 118.) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges v. Spartanburg County School Dist. Two* (D.S.C. 2011, No. 7:10-cv-01873-JMC) 57 IDELR 128 [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].) A failure to offer an appropriate goal is a procedural violation of the IDEA.

27. Here, Bellflower failed to prove that the February 2018 IEP, developed at the IEP team meetings held on February 12, and 13, 2018, offered Student a FAPE. Bellflower did not comply with the procedural and substantive requirements of the IDEA and California law regarding the February 2018 IEP offer of special education and

related services. Bellflower did not comply with the IDEA's procedural requirements in developing the February 2018 IEP, and did not prove the special education and related services offered in the February 2018 IEP were reasonably calculated to enable Student to receive educational benefit.

Specialized Academic Instruction

28. The February 2018 IEP offer of specialized academic instruction was not a clear, coherent offer which Parents reasonably could evaluate and decide whether to accept or appeal. The "Offer of FAPE" pages provided to Parents at the conclusion of the February 13, 2018 IEP erroneously advised Parents that if they consented to placement in the BEST classroom, Student would be in a general education setting 79 percent of his day and in a special education setting 21 percent of the day. In fact, the opposite was true. Mr. Adair candidly admitted that the figures on the educational placement page of the IEP were wrong, and conflicted with the services page of the IEP providing for 1425 minutes per week of specialized academic instruction in the BEST classroom.

29. Parents were not provided with a clear offer for specialized academic instruction necessary for their effective participation at the 2018 IEP team meetings. There was no evidence presented at hearing that Parents were ever informed of the mistake regarding the time allocated between general and special education settings. Based on his demeanor at hearing, Mr. Adair did not discover this mistake until he looked at the February 2018 IEP during his testimony. Not obvious to a lay person, the 1425 minutes per week of specialized academic instruction was inconsistent with the representation that placement in the BEST classroom was for only 21 percent of the school day. This significant procedural violation could create the false impression that for the majority of Student's school day, he would be in a general education setting.

30. Providing Parents with accurate information about the amount of time Student would be in a special education setting was particularly important given

Parents' hesitancy to have Student in special education, as demonstrated by Mother's reluctance to have Student assessed for special education and Parents stated need to carefully consider the IEP offer of special education and related services after two days of team meetings. Parents had a right to know how much time Student would spend in the special education setting, and the failure to accurately convey this information was a significant procedural violation.

Counseling And Guidance Services

31. The February 2018 IEP did not offer Student a FAPE because it did not make a clear and specific formal offer of counseling and services. The February 2018 IEP did not specify whether the counseling and guidance services offered were educationally related mental health services counseling as recommended by Mr. Varela or designated instructional services counseling as claimed by Mr. Yoshioka. Educationally related mental health services counseling was a different type of counseling than "DIS" counseling in that it was an evidence-based, more intense, and higher level of counseling which employed more techniques than designated instructional services counseling.

32. Mr. Varela and Mr. Yoshioka attended both days of the February 2018 IEP, yet their testimony conflicted as to the type of counseling services offered in the February 2018 IEP. Mr. Varela was adamant that the type of services the IEP team offered were educationally related mental health services counseling provided by the Bellflower behavior intervention psychologist. In contrast, Mr. Yoshioka claimed that the counseling services were designated instructional services counseling provided by the school psychologist at Washington Elementary.

33. Although the IEP team meeting notes reflected that on February 13, 2018, Mr. Yoshioka explained that Washington Elementary had a full-time school psychologist assigned to that site, this did not resolve the conflicting testimony of the two Bellflower

witnesses. The notes did not remove the IEP ambiguity, much less overcome Bellflower's duty to document the services offered with sufficient specificity for Parents to understand the type of counseling offered. The fact that Washington Elementary had a full time school psychologist on-site to whom Student would have access did not prove that the IEP offer was for designated instructional services counseling. According to Mr. Varela, the on-site school psychologist would have been available to respond in the event of a crisis, but would not have been providing regular designated instructional services counseling to Student because the direct services offered in the IEP were for educationally related mental health services counseling provided by the behavior intervention psychologist.

34. Mr. Varela's and Mr. Yoshioka's inconsistent testimony clearly demonstrated that the IEP team itself was unclear of the type of counseling services meant by the Bellflower's February 2018 IEP offer of counseling and guidance, impermissibly leaving it up to those implementing the IEP to determine whether to regularly provide the higher level educationally related mental health services counseling or the lower tier designated instructional services counseling. The failure to specify the level of counseling offered in the IEP fell short of the IDEA requirement that the IEP specifically detail the related services Bellflower proposed to provide to Student that Parents could reasonably evaluate and decide whether to accept.

35. Compounding the problem, the February 2018 IEP offered a combination of 1200 minutes per year of individual and group counseling, but did not separately specify the number of minutes of individual counseling, in contrast to group counseling, to be provided. Mr. Adair claimed that 1200 minutes per year of counseling was the equivalent of two hours per month, and Mr. Varela testified he recommended a minimum of 30 minutes per week of direct services. However, nothing in the February 2018 IEP specified that any particular amount of individual or group counseling had to

be provided on a weekly or monthly basis. Again, it was impermissibly left up to those implementing the IEP to determine how much individual and group counseling Student received in any given week or month, as well as the amount of individual counseling, as opposed to group counseling, Student received on a yearly basis. Bellflower offered no evidence at hearing explaining these ambiguities in its IEP offer for individual and group counseling. It failed to prove that the amount of individual and group counseling was sufficiently clear and specific to permit Parents to make an intelligent decision about the individual and group counseling services offered in the February 2018 IEP.

36. Bellflower also did not establish that its offer of 1200 minutes of counseling and guidance per year substantively offered Student a FAPE. Mr. Varela was charged with the specific task of assessing Student to determine his need for social/emotional/behavioral services. According to Mr. Varela's testimony at hearing, Student required a minimum of 30 minutes per week of direct services in the form of educationally related mental health services counseling; yet, the February 2018 IEP offered only 1200 minutes per year of counseling and guidance pursuant to Mr. Yoshioka's oral recommendation made during the IEP team meeting on February 13, 2018. At hearing, Mr. Yoshioka never specifically addressed Mr. Varela's testimony regarding his opinion that Student required a minimum of 30 minutes per week of direct counseling services. Regardless, there was no evidence presented which persuasively established that the yearly frequency stated in the February 2018 IEP was reasonably calculated to enable Student to receive educational benefit. The IEP only required the frequency of the counseling on a yearly basis; it follows that personnel implementing the counseling services were not required to provide Student with any counseling on a regular weekly or monthly basis. Because the evidence established that Student required the counseling services more frequently than yearly, Bellflower failed

to establish substantive compliance with the IDEA, and as such, did not prove the February 2018 IEP offered Student a FAPE.

Supplemental Aids & Services And Other Supports

37. Bellflower failed to make a clear formal offer with regard to the modifications and other supports identified in the February 2018 IEP. As part of its offer of special education and related services, the February IEP offered yearly classroom training for school personnel regarding the behavior intervention plan for a duration of "30," but did not specify if that number referred to minutes, hours, days, or something else. In addition, Bellflower offered a classroom modification in the form of shortened assignments to focus on a mastery of key concepts, which the IEP specified would be for a 15-minute duration weekly. There was no evidence offered by Bellflower which established how the modification of 15 minutes in duration was intended to be implemented. On its face, a modification of 15 minutes in duration was unclear. The IEP did not specify if the 15 minutes meant that Student's assignments were shortened by 15 minutes, if his assignments were shortened to 15 minutes, if he would focus on mastery of key concepts for 15 minutes, or whether the 15 minutes' duration referred to something else.

38. There was no testimony offered at hearing specifically addressing the ambiguities in the IEP offer with regard to modifications and other supports. Because Parents did not have a copy of a draft of the FAPE pages containing the modifications and supports until the end of the IEP team meeting on February 13, 2018, they were unable to ask explicatory questions about the offer during the February 2018 IEP team meetings. Bellflower failed to prove that its offer of program modifications and other supports was sufficiently clear and specific to permit Parents to make an informed decision about those items offered in the February 2018 IEP.

Transportation

39. Bellflower failed to establish it made a clear offer of transportation services in the February 2018 IEP. The IEP offered "Corner pick-up" because the BEST program was not offered at Student's home school. The offer was ambiguous because it did not specify whether Bellflower was offering transportation to Washington Elementary from Student's home or from his home school, and if from his home school, whether home school meant Foster Elementary or Las Flores. Although Mr. Adair testified that Foster Elementary was Student's home school, the IEP identified Student's "Residence School" as Las Flores. Because the offer of transportation services was unclear, Parents did not have the requisite information to make an informed decision about the transportation services offered in the February 2018 IEP.

Annual Goals

40. The annual goals developed as part of the February 2018 IEP did not fully comply with the requirements of the IDEA and California law. Specifically, as part of Student's initial IEP, Bellflower developed three annual goals in the three areas of need stated in the IEP. Goal 1 was a behavior goal, Goal 2 was a social/emotional goal, and Goal 3 was labeled a prosocial goal. Bellflower failed to prove that Goals 2 and 3 were appropriate, and as a result, it failed to prove that the February 2018 IEP offer of special education and related services offered FAPE.

41. On its face, annual Goal 2 was not objectively measurable and failed to include appropriate objective criteria and evaluation procedures to measure progress. Goal 2 required Student, when given a frustrating situation, with a minimum of one prompt, to utilize coping strategies and return to and remain on task with a calm body and mind for a minimum of 10 minutes with an average of 75 percent over four consecutive school weeks as measured by anecdotal records and teacher observations. It designated the "DIS Counselor" as the person responsible for the goal. Significantly,

Bellflower offered no evidence as to how school staff would have been able to objectively determine if Student had “a calm body and mind for 10 minutes,” because Goal 2 was premised in part on the impossible feat of requiring staff to know what was in Student’s mind. Goal 2 was also ambiguous because it did not define what was precisely meant by “an average of 75 percent.” Because it was not specified, it was unclear if it referred to an average of 75 percent of opportunities, 75 percent of the ten-minute period, or something else. Because Goal 2 provided for a minimum of one prompt, rather than a maximum number of prompts, the goal could not measure Student’s social/emotional progress. More particularly, if Student required no prompting but accomplished the task, he would have failed to meet the goal since the goal required at least one prompt to complete the task. In contrast, if Student required one, 10, or 100 prompts to complete the same task, he would have met the goal because he did it with more than one prompt. As written, Goal 2 did not provide for an objective determination of Student’s social/emotional progress. Goal 2 was also unclear because the DIS counselor was the only person designated as responsible for the Goal 2. Mr. Varela admitted this was a mistake because the “DIS Counselor” was not the person who would have provided the direct counseling services to Student, but rather, it would have been the behavior intervention psychologist providing the educationally related mental health services counseling working with Student on Goal 2. Bellflower’s witnesses also admitted that classroom staff would have been working on this goal. Bellflower also failed to offer any evidence to prove that Student had a reasonable chance of attaining Goal 2 by February 2019.

42. On its face, annual Goal 3 was not objectively measurable, and Bellflower offered no evidence that established Student had a reasonable chance of attaining Goal 3 by February 2019. Goal 3 required Student to “demonstrate pro-social social skills in the classroom that will result in reducing instances of passive non-compliance (becomes

purposely and increasingly distracted through ignoring task, demands or staff directives with a minimum of two prompts with 80% accuracy with the education environments across two consecutive weeks and measured by anecdotal records and teacher observations.” It also designated the DIS counselor as the person responsible for the goal. As with Goal 2, as written, Goal 3 was not a proper objective method for measuring Student’s progress in work completion or social skills because it required a minimum of two prompts, rather than a maximum number of prompts for goal achievement. Specifically, if Student required no more than prompts to accomplish the task, he would have failed to meet the goal since the goal required at least two prompts. However, if Student required three, or 30 prompts to complete the same task, he would have technically met the goal because he did it with more than two prompts.

43 Bellflower failed to meet its burden of proof in establishing that Goal 3 would have assisted Student in making progress in the area of social skills. Although labeled a “ProSocial” goal, Mr. Varela testified he wrote this goal to address Student’s passive non-compliance in the classroom. Even assuming the goal addressed the area of social skills, Goal 3 did not provide for an appropriate way to objectively measure Student’s progress. It failed to define the “pro-social” skills contemplated by the goal, and there was no evidence presented at hearing as to how school staff would have been able to objectively determine if a skill was a “pro-social” skill within the meaning of the goal. In addition, Bellflower offered no evidence as to how staff would have been able to differentiate between the demonstration of a “pro-social” skill in the classroom that “will result in reducing instances of passive non-compliance” as compared to the demonstration of a “pro-social” skill that did not result in instances of passive non-compliance. In particular, Goal 3 failed to specify the amount of time between Student’s demonstration of so-called “pro-social” skills in the classroom and the reduction of

instances of passive non-compliance to have been considered a result of Student's demonstration of "pro-social" skills.

44. Goal 3 was also flawed in other ways. It is uncertain what was meant by "80% accuracy." The term "accuracy" was not understandable in the context of this goal and Bellflower presented no evidence at hearing explaining how Goal 3 would have measured Student's compliance progress. Like Goal 2, Goal 3 designated the "DIS counselor" as the only person responsible for Goal 2, rather than classroom staff and the behavior intervention psychologist. As such, Goal 3 was also defective.

Attendance At The February 2018 IEP Team Meetings

45. Bellflower failed to prove that all required IEP team members attended the February 2018 IEP team meetings. Accordingly, Bellflower failed to demonstrate the procedural compliance necessary to prove the February 2018 IEP offered Student a FAPE.

46. The November 2017 assessment plan provided for initial assessments in several areas including a health assessment by the school nurse. The law required the health assessment to be conducted in compliance with Education Code section 56320 by a credentialed school nurse or physician who was trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. A health assessment performed by the school nurse was cursorily referred to in the multi-disciplinary assessment as a vision and hearing screening, which was reviewed at the February 12, 2018, IEP team meeting.

47. The law required Bellflower to have in attendance at the IEP team meeting where the assessment was reviewed those individual(s) who could interpret the instructional implications of assessment results. (34 C.F.R. § 300.321(a).) The school nurse who assessed Student did not attend either of the February IEP team meetings. Bellflower failed to prove that there was anyone else present at the February 2018 IEP

team meetings who could answer questions about the initial health assessment performed by the school nurse. Bellflower offered no evidence on this issue during the hearing, including whether Parents waived in writing the attendance of the school nurse at the February 2018 IEP team meetings.

Assessments

48. Bellflower was entitled to assess Student based upon Parent's November 2017, consent to the written assessment plan. The assessment plan required Bellflower to conduct an assessment of Student's academic achievement, health, intellectual development, motor development and perceptual skills, social emotional/behavior and functional behavior. Although the evidence proved Bellflower undertook to conduct these assessments and written reports were prepared, Bellflower failed to establish that the assessments upon which the February 2018 IEP offer of special education and related services were based met all legal standards for assessments. The evidence demonstrated some of the assessment reports were not legally sufficient, therefore, Bellflower failed to prove the information available to the IEP team was reliable.

MULTIDISCIPLINARY ASSESSMENT

49. Mr. Yoshioka's assessment report was not legally sufficient. It contained numerous errors and inconsistencies with regard to the assessment results and was incomplete. In order to make an informed decision about Bellflower's February 2018 IEP offer for special education and related services, Parents had a right to a psychoeducational evaluation report containing complete and accurate information.

50. For example, on the Test of Visual Perceptual Skills there were discrepancies between the scores listed on the chart and in the narrative explaining the results of the assessment tool contained in the report. The chart listed Student's Sequencing Index score as falling in the High Average range, but the narrative stated that it fell within the

Average range. The narrative stated that Student's Complex Index score fell in the High Average range, but the chart described his score as falling in the Superior range. Similarly, on the Visual Closure subtest, the narrative stated his score fell in the Average range, but the chart described his score as falling in the High Average range.

51. The summary at the end of the report also contained errors. It stated that Student's visual processing scores were in the High Average range for the Basic, Sequencing, and Complex Composites. However, this summary conflicted with the narrative in the body of the report where the results of the Test of Visual Perceptual Skills were detailed; it stated that Student scored in the Average range on the Sequencing Index, not in the High Average range as reported in the summary. The information in the summary also conflicted with the chart of results for the Test of Visual Perceptual Skills in the body of the report which stated that Student scored in the Superior range on the Complex Index, not the High Average range as reported in the summary.

52. Mr. Yoshioka's assessment was also incomplete. Ms. Sanzaro's ratings of Student on the Behavior Assessment System produced an F Index score that fell within the Extreme Caution range. Mr. Yoshioka explained at hearing that Ms. Sanzaro's responses were in the overly extreme range, which required him to determine if her scores represented an exaggeration of Student's behaviors. The report did not contain any specific findings on this issue. In addition, at hearing when discussing the Behavior Assessment System, Mr. Yoshioka stated that a scaled score of 69 to 70 and above was Clinically Significant, but this was not stated in his report. For Aggression, Parent's score was a 69 which the report identified as falling in the At-Risk range, not in the Clinically Significant range.

EDUCATIONALLY RELATED MENTAL HEALTH SERVICES ASSESSMENT

53. As part of his educationally related mental health services assessment, Mr.

Varela administered two standardized assessment tools, the Behavior Assessment System, and the Achenbach System which referred to the diagnostic categories of the DSM-IV. Bellflower presented no evidence that Mr. Varela administered the most current version of the Achenbach System. As such, Bellflower failed to prove the assessment which provided part of the basis for the February 2018 IEP was appropriate.

54. During the IEP team meetings, Mr. Varela reported on the results of his assessment. In at least one place, Mr. Varela's written report on the scores conflicted with the information he provided to Parents during the February 12, 2018, IEP team meeting. Specifically, he reported to Parents at the February 12, 2018, IEP team meeting that Ms. Sanzaro's scores on the Achenbach System ratings of Student's behavior in the area of Conduct Problems (defined as frequently behaved in extremely troubling aggressive behaviors, property, destruction, deceit, and serious violations of rules) fell into the Clinical range. In contrast, his written report stated that this score was in the Non-Significant range. It was unclear from the evidence presented if the information in Mr. Varela's report was incorrect or whether what he communicated during the IEP team meeting was inaccurate. In any event, Bellflower did not address these discrepancies during the hearing.

FUNCTIONAL BEHAVIOR ASSESSMENT

55. Bellflower conducted a functional behavior analysis which was foundational for the February 2018 IEP offer of special education and related services. The functional behavior assessment report was deficient. Because Bellflower failed to demonstrate procedural compliance for the functional behavior assessment, it did not prove the February 2018 IEP offered Student a FAPE.

56. As part of her functional behavior assessment, Ms. Thompson used the Functional Analysis Screening Tool to determine potential maintaining variables for non-compliance and off-task behavior. Ms. Thompson did not define the Functional Analysis

Screening Tool, establish that she administered the most current version of Functional Analysis Screening Tool, that it was used for purposes for which the assessment was valid and reliable, or that it was administered in accordance with the publisher's instructions. Ms. Thompson did not describe what the Functional Analysis Screening Tool consisted of or explain in her report or at hearing how the results as depicted on the chart were derived, including how the variables were determined, and what was meant by the terms "indirect assessment," and "indirect observations," and how those differed from her direct observations. Her report failed to adequately explain the basis of her determinations made from the Functional Analysis Screening Tool, including that Student's non-compliance and off-task behavior may be maintained by negative reinforcement in the form of escape/avoidance of undesirable activities.

57. Ms. Thompson charted five behaviors she observed during her observations, specifically, non-compliance (six times), confrontational comments (eight times), rude remarks (two times), interruptions (seven times), and off-task behavior (11 times). In analyzing Student's behaviors in the functional behavior assessment part of her report, Ms. Thompson did not include the charted behavior of interruptions, and the written report contained no explanation as to why the targeted behavior of non-compliance included rude remarks (which occurred only twice and during only one observation), but did not include interruptions (which occurred seven times and during all three days of observation). The law specifically required the written report to include not only the relevant behavior noted during observation of Student, but the relationship of that behavior to Student's academic and social functioning, as well as the educationally relevant health, development, and medical findings. Ms. Thompson's report included her observations of the interrupting behavior, but without explanation, failed to make any findings or determinations with regard to such behavior. At the very least, the report should have explained why interruptions were charted, but excluded

from the functional behavior assessment analysis.

58. As part of her assessment, Ms. Thompson conducted an environmental analysis to determine if there was something in the classroom contributing to Student's behaviors which, if modified, could "make the behaviors go away." During the February 12, 2018, IEP team meeting, and at hearing, she stated that she concluded there was nothing in the classroom contributing to Student's behaviors. Although this determination and the basis for making this determination should have been included in her report, it was not. Ms. Thompson's failure to include all of her findings in her report rendered the report procedurally deficient.

59. In summary, the evidence established that Bellflower engaged in multiple procedural violations. Among other things, Bellflower failed to make a clear offer of special educational and related services for specialized academic instruction, counseling and guidance, and transportation services. Two of the three annual goals developed were not appropriate objective measures for determining Student's progress in his areas of unique needs. Bellflower did not prove it held the initial IEP team meeting with all required members present and not all of the assessments and assessment reports supporting its 2018 IEP offer of special education and related services complied with the law. Bellflower also failed to establish that the February 2018 IEP offer of special education and related services substantively complied with the law, specifically that the 1200 minutes per year of counseling and guidance was offered with sufficient frequency to be a FAPE.

60. Bellflower did not meet its burden of demonstrating that the 2018 IEP offered Student a FAPE because of these significant procedural and substantive violations. The February 2018 IEP did not offer a FAPE.

ORDER

Bellflower's request to have the February 2018 IEP declared a FAPE is denied. The

IEP dated February 12, 2018 developed at the February 12 and 13, 2018 IEP team meetings, shall not be implemented without parental consent.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student was the prevailing party on the only issue presented.

RIGHT TO APPEAL

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

DATED: April 15, 2019

_____/s/

LAURIE GORSLINE

Administrative Law Judge

Office of Administrative Hearings