

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2010070435

v.

PALO ALTO UNIFIED SCHOOL
DISTRICT,

PALO ALTO UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2011030401

v.

PARENT ON BEHALF OF STUDENT.

DECISION

Administrative Law Judge Peter Paul Castillo (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter in Palo Alto, California, on April 4 through 8, 2011, and telephonically on April 20, 2011.

Student was represented by his father (Father). Father was present on all hearing days. Student was only present on April 6, 2011.

Palo Alto Unified School District (District) was represented by Laurie E. Reynolds, Attorney at Law. Holly Wade, District's Director of Special Education, attended all hearing days.

Student filed his due process hearing request (complaint) on July 7, 2010. On August 12, 2010, the parties requested and received a continuance of the hearing dates.

The District filed its complaint on March 7, 2011, and OAH granted the District's motion to consolidate its and Student's matters for hearing on March 16, 2011, which designated Student's complaint as the primary case. At the close of the hearing, the matter was continued to May 16, 2010, for submission of closing briefs. On or about May 5, 2011, the Superior Court of Santa Clara County, in a conservatorship proceeding regarding Student, ordered that neither Parent could make decisions about Student's school without court approval. On May 13, 2011, ALJ Castillo issued an order continuing the briefing schedule until the Superior Court of Santa Clara County issued an order regarding who possessed Student's educational rights. On May 27, 2011, the Superior Court of Santa Clara County appointed a guardian ad litem for Student, who then authorized Father to represent Student for the remainder of this due process matter. On June 3, 2011, a status conference was convened to schedule the submission of closing briefs, and the matter was continued until June 13, 2011, for the submission of closing briefs. The parties submitted their closing briefs, and the matter was submitted for decision on June 13, 2011.¹

¹ To maintain a clear record, the closing briefs have been marked as exhibits. Student's brief has been marked as Exhibit S-28, and the District's brief has been marked as Exhibit D-32.

ISSUES²

STUDENT'S ISSUES FOR HEARING

Issue 1: Did the District fail to timely and appropriately assess Student by not timely conducting an occupational therapy (OT) and psychoeducational assessment during the 2009-2010 and 2010-2011 school years (SYs)?

Issue 2: During SY 2008-2009, did the District deny Student a free appropriate public education (FAPE) by failing to:

- a) Hold a timely annual individualized educational program (IEP) meeting;
- b) Provide copies to Parents of all IEPs developed during Spring 2009;
- c) Report Student's progress on goals;
- d) Develop measurable goals and goals to meet Student's unique needs in the areas of behavior, activities of daily living, social and expressive language, social skills, OT for gross and fine motor skills and academics;
- e) Address Student's adaptive skills deficits in the areas of independence, safety, activities of daily living; prompt dependency and functioning in a school environment;
- f) Make a referral to the county department of mental health for a mental health assessment;
- g) Offer social skills training;
- h) Offer an appropriate amount of weekly speech and language services in an individual setting;

² These issues are those framed in the March 29, 2011 Order Following Prehearing Conference and as further clarified at hearing. The ALJ has reorganized the issues for this Decision.

- i) Offer an appropriate amount and type of weekly OT;
- j) Make an offer of extended school year (ESY) services;
- k) Develop an appropriate individualized transition plan (ITP);
- l) Produce a copy to Parents of Student's educational records regarding student discipline;
- m) Consider a continuum of educational placement options;
- n) Make a clear written offer of services; and
- o) Have all appropriate persons attend Student's IEP meetings?

Issue 3: During SY 2009-2010, did the District deny Student a FAPE by failing to:

- a) Hold a timely annual IEP meeting;
- b) Offer appropriate accommodations and modifications for Student's general education classes;
- c) Report Student's progress on goals and tracking his progress through his report cards;
- d) Develop measurable goals and goals to meet Student's unique needs in the areas of behavior, activities of daily living, social and expressive language, social skills, OT for gross and fine motor skills and academics;
- e) Address Student's adaptive skills deficits in the areas of independence, safety, activities of daily living; prompt dependency and functioning in a school environment;
- f) Make a referral to the county department of mental health for a mental health assessment;
- g) Offer social skills training;
- h) Offer an appropriate amount and type of weekly OT;
- i) Make an offer of ESY services;
- j) Make a clear written offer of services;

- k) Convene a timely IEP meeting in response to Parents' request; and
- l) Have all appropriate persons attend Student's IEP meetings?

Issue 4: During SY 2010-2011, did the District deny Student a FAPE by failing to:

- a) Make a clear written offer of services for this school year;
- b) Offer appropriate accommodations and modifications for Student's general education classes;
- c) Develop measurable goals and goals to meet Student's unique needs in the areas of behavior, activities of daily living, social and expressive language, social skills, OT for gross and fine motor skills and academics;
- d) Address Student's adaptive skills deficits in the areas of independence, safety, activities of daily living; prompt dependency and functioning in a school environment;
- e) Offer social skills training; and
- f) Offer an appropriate amount and type of weekly OT?

DISTRICT'S ISSUES FOR HEARING

Issue 1: Was the IEP of January 6, 2011, as clarified on March 3, 2011, reasonably calculated to provide Student with meaningful educational progress in the least restrictive environment (LRE)?

PROPOSED REMEDY

As a proposed resolution, Student requests compensatory education in the areas of academics, speech and language, OT, behavior intervention and social skills. Student also requests that the District make a referral for a mental health assessment to the

county department of mental health, and provide its personnel with eight hours of training on special education rights and procedural safeguards.³

As a proposed resolution, the District requests an order that its IEP of January 6, 2011, as clarified on March 3, 2011, provided Student with a FAPE.

CONTENTIONS OF PARTIES

Student contends that the District for several years failed to develop an educational program to meet his unique needs as the District failed to develop an annual IEP, and did not provide Parents with timely progress reports. Additionally, Student asserts that the District failed to conduct timely assessments of him so the District did not have accurate information regarding his unique needs, and therefore could not properly develop an education program for him. When the District did hold IEP meetings, Student argues that the District failed to have required IEP team members attend and that its IEP offers were not clear. Additionally, Student claims the District underestimated his abilities, and the proposed goals failed to address Student's unique needs in the areas of behavior, activities of daily living, social and expressive language, social skills, OT for gross and fine motor skills, and academics. Student also asserts that the District failed to offer sufficient services to address his deficits in the areas of learning skills, speech and language, social skills and OT. Student further contends that the District did not make an adequate offer of transitional services to foster his independence and to teach him skills that he will need for postsecondary education and

³ Student's request for the District to fund a psychoeducational independent educational evaluation (IEE) was stricken at the beginning of the hearing by the ALJ because the District provided Student with an IEE in August 2010 pursuant to the parties' interim agreement.

employment. Additionally, the District failed to make a referral to the county department of mental health for a mental health assessment despite of the District's knowledge of Student's emotional problems that prevented him from accessing the curriculum. Finally, Student asserts that the District failed to make an offer of ESY services.

The District asserts that it possessed sufficient information regarding Student from prior assessments and his present levels of performance, and as a result it did not have to conduct an assessment before the end of the 2010 calendar year. The District also contends that it made timely IEP offers, including for the ESY, that properly addressed Student's unique needs and that Father failed to acknowledge the severity of Student's cognitive impairments during the IEP process, especially with his insistence that Student take general education classes, such as Spanish. Further, the District claims that it timely reported Student's progress on goals, and had required IEP team members at the meetings. The District asserts that Student did not display behavioral problems at school that necessitated a referral for a mental health assessment. Additionally, the District contends that it made an appropriate offer of transitional services, and that Father did not accept the offer because of his mistaken belief that Student can obtain a high school diploma. Finally, the District argues that its IEP offer of January 6, 2011, as clarified on March 3, 2011, provides Student with a FAPE in the LRE because it adequately addresses Student's unique needs and is reasonably calculated to allow him to make meaningful educational progress.

FACTUAL FINDINGS

JURISDICTION AND FACTUAL BACKGROUND

1. Student is presently 18 years old, and resided within the geographic boundaries of the District with his Parents, who have had shared physical custody of

Student, at all times relevant to this action. Student is eligible for special education services under the primary eligibility category of autistic-like behaviors and the secondary eligibility criteria of speech and language impairment. Student began to receive special education services soon after his third birthday, presently attends Palo Alto High School and will be in 12th grade for SY 2011-2012. During all relevant times, Father held Student's educational rights.

ALLEGED FAILURE TO TIMELY ASSESS

2. Assessments are used to assist the IEP team in determining eligibility for special education and related services, and to assist the team in making recommendations for a student's IEP. A student must be reassessed at least every three years. Student asserts that his last triennial assessment was in late 2004, and the District has failed to conduct any comprehensive assessment of Student's unique needs related to his autism, learning deficits and need for OT since then. The District asserts that it did not need to conduct a comprehensive assessment as Student's unique needs have not changed significantly since the 2004 triennial assessment. Because the District had sufficient information from educating Student during the prior three school years to requalify Student for special education services and to develop an IEP that met his unique needs, District contends it did not have to conduct an OT or psychoeducational assessment until late-2010 because it had adequate information as to Student's deficits through its work with Student.

3. During portions of SY 2007-2008, Student resided with foster parents and attended school within the District and Santa Clara Unified School District. The District held an IEP team meeting on November 28, 2007, and Father consented to the District's offer a few days later. After the team meeting, the District gave Parents a triennial assessment plan, which included psychoeducational and speech and language assessments. Parents consented to the assessment plan.

4. The District did not conduct a comprehensive psychoeducational assessment because neither the District nor Parents doubted that Student was still eligible for special education services due his autism and speech and language deficits. Further, the District had sufficient information from Student's classroom performance to develop an appropriate educational program, including social skills, without a comprehensive psychoeducational assessment. The District conducted the speech and language and limited psychoeducational assessment, which it presented at the February 26, 2008 IEP team meeting. The District did not conduct an OT assessment. The District discussed with the February 2008 IEP team members its proposed goals, services and placement, and the District obtained parental consent to implement these as an amendment to Student's November 2007 IEP.⁴ The District's February 2008 psychoeducational assessment referred to a referral by the Santa Clara Unified School District, where Student lived with his foster parents before he returned to the District, to the Diagnostic Center for a comprehensive assessment, but neither party presented any evidence about what transpired as to the referral to the Diagnostic Center.

5. The District conducted no further assessments until the end of 2010, as the parties agreed in August 2010, that the District would conduct a speech and language and OT assessment, and Nancy Sullivan, Ph.D., would conduct a neuro-psychoeducational IEE, which Dr. Sullivan subsequently completed. The only evidence Student presented that supported his claim that the District needed to reassess sooner was evidence of his behavioral problems, and a February 18, 2009 privately-obtained

⁴ Student did not assert that any of his claims regarding the District's failure to assess occurred before July 7, 2008, which is the two-year statute of limitations of claims. (Ed. Code, § 56505, subd. (l).)

social skills assessment, conducted by Michelle Garcia Winner⁵ and Pamela Crooke, neither of whom testified at hearing.

6. Father presented the February 2009 social skills report at a May 29, 2009 IEP team meeting, and the team members discussed the report. Student's case manager for SY 2008-2009, who was also his special day class (SDC) teacher, Lilliana Donchik, reviewed the report at the IEP team meeting. Ms. Donchik testified persuasively that the February 2009 social skills report reinforced what she and other District staff observed about Student's behaviors at school, and it contained strategies to address these behavioral deficits, such as creating a structured environment. Additionally, the February 2009 report also focused on Student's problems outside of school, which he did not display at school, such as the emotional outbursts he had at each of his parent's homes. Finally, the February 2009 report does not recommend that the District conduct any further assessment of Student.

7. As to Student's behavior, his problems occurred outside of school at home in and the community. Ms. Donchik and Carolyn Fox, Student's case manager and SDC teacher for SY 2009-2010, established that Father communicated to them Student's behavioral problems occurred outside of school and that he did not demonstrate these problems at school, as will be discussed in Factual Findings 27 and 28. Additionally, while Student had difficulty in his interaction with fellow students and workers at his job skills placement at the Veterans Administration (VA) hospital, his behavioral problems, as will be discussed further in Factual Finding 28, were not severe, and were easily

⁵ Ms. Winner is a well known provider of social skills training to school districts as official notice is taken of prior administrative decision. (Evid. Code, § 452; See *Student v. New Haven Unified School District* (2010) Cal.Ofc.Admin.Hrngs. Case Nos. 2009121104 and 2009101063.)

managed by the behavioral strategies implemented by the District. Finally, Student's work on social skills with Judy Niizawa, a District speech and language therapist, did not suggest that he required a formal social skills assessment. Therefore, Student did not establish that if the District had done a more comprehensive psychoeducational evaluation than the limited February 2008 assessment, that its results would have differed from Dr. Sullivan's assessment or that the District would have offered different goals or services to provide a FAPE. Therefore, Student did not establish that the District failed to timely conduct psychoeducational assessment before the neuro-psychoeducational assessment conducted at the end of 2010.

8. Finally, as to Student's OT needs, Student had need for OT services based on the November 28, 2007 IEP and June 12, 2009 IEP, which offered 50 minutes a week of direct services. Because OT was an area of suspected disability, the District needed to have assessed Student in this area, and the District did not adequately explain why it did not assess Student. However, Student did not demonstrate that if the District assessed Student sooner that its result would have been different from Quyen Lieberman's October 2010 assessment, or that the District would have needed to provide Student with different OT goals or services. Additionally, information obtained by the OT provider, Ms. Lieberman, established that his needs remained constant, and the District had sufficient information from working with Student to establish that it did not need to assess Student in this area any sooner than it did.

SY 2008-2009

Annual IEP Offer

9. School districts are required to have an IEP in place for each eligible child at the beginning of each school year. An IEP must be reviewed at least annually to determine whether the annual goals are being met. At that time, the school district must

appropriately revise the IEP to address any lack of expected progress, new assessments, information provided by parents, the child's anticipated needs, or any other matter. A school district provides a FAPE to a student if its program or placement is designed to address the student's unique educational needs, and is reasonably calculated to provide meaningful educational benefit in the LRE.

10. Student contends that the District failed to make an IEP offer during SY 2008-2009, and if the District did make an offer, the IEP failed to adequately address his unique needs by underestimating his academic ability, and not addressing his behavior, social skills and adaptive living skills needs. The District asserts that it held several IEP team meetings during this school year to develop Student's annual IEP. The District further contends that the IEPs developed at these meetings included adequate goals and services to address Student's unique needs, and that Father did not have a realistic picture of Student's abilities.

February 6, 2009 IEP Meeting

IEP MEETING ATTENDEES AND TIMELINESS

11. An IEP team needs to include parents; a general education teacher if a student is, or may be, participating in regular education; a special education teacher; a school district representative qualified to provide or supervise specially-designed instruction and knowledgeable about the general education curriculum and available resources; a person who can interpret the instructional implications of assessment results; and other individuals, when appropriate, who have knowledge about the student.

12. The District and Parents met at an annual IEP team meeting on February 6, 2009. At this IEP team meeting, District staff, including Ms. Donchik, Ms. Niizawa, and Ms. Lieberman, presented Student's present levels of performance. Tammy Zigler, not Ms. Donchik, was the District's administrative representative at all the IEP meetings

during SY 2008-2009, and the person responsible for making the District's formal, written IEP offer. No IEP document apparently exists for this IEP team meeting that clearly indicates who attended because the District, according to Ms. Wade, switched computer systems and IEP documentation was lost. Information about Student's progress in his two general education classes was presented at the February 2009 IEP team meeting, it is not clear by whom. Further, District personnel who attended this IEP team meeting did not testify if a general education teacher attended this meeting. Further, the District did not have Ms. Zigler testify, who according to the District's prehearing conference (PHC) statement is still a District employee, even though she was the District administrator for this IEP team meeting and apparently the note taker for this IEP meeting.

13. Student's last annual IEP team meeting occurred on November 28, 2007, as amended on February 26, 2008. Therefore, the District needed to hold Student's annual IEP by November 28, 2008. The District did not explain why it did not hold Student's IEP team meeting in November 2008. Ms. Zigler did not testify at hearing, and the District did not explain why she, who had the best information as to whether the District made a formal, written IEP offer, did not testify, even though she was listed as a possible witness on the District's PHC statement. Additionally, there is no documentation that the District made a formal IEP offer in February 2009. Ms. Donchik's testimony was not clear as to what occurred at the February 2009 IEP team meeting and whether the District made a formal, written IEP offer. The most she recalled is that the IEP team discussed District-drafted goals and agreed to meet later with Parents to further revise the goals. Accordingly, the District denied Student a FAPE by failing to hold his annual IEP meeting in November 2008.

IEP TEAM MEETING DISCUSSION

14. The District proposed goals and services based upon the prior IEP by focusing on functional academic skills to continue his successful progress. Student does not dispute that the parties met in February 2009, but contends that the District never made a formal IEP offer. Because of problems with the District's computerized IEP system, and apparent lack of physical records, the District did not have a copy of any IEP offer made in February 2009. What the parties discussed in February 2009, can only be reconstructed through the testimony of the participants and notes from the May 29, 2009 and June 12, 2009 IEP team meetings that incorporate discussions that occurred in February 2009.

15. Ms. Donchik reported that Student still had difficulty with his handwriting, and that Student has to focus a lot of energy to produce legible writing. As to vocational skills, Student received training in Ms. Donchik's class by practicing different jobs, and while he had difficulty in remembering job details and needed prompting to complete tasks, he could perform the tasks well if interested. Ms. Donchik recommended that Student participate in the jobs program at the VA for SY 2009-2010. Regarding his activities of daily living, Student needed assistance with grooming, keeping his clothes clean, being aware of dangerous situations, especially since Student walked home from school by himself occasionally. Student demonstrated self-stimulating behaviors, especially with playing with paper and making crinkling noises with the paper.

16. As to Student's academics, the later IEP notes do not reflect any information that Ms. Donchik presented. Her recollection was that at this time Student had made good progress towards his academic goals, but she did not state specifically whether he had met his prior goals because, as explained by Ms. Wade, the District lost Student's, among others, electronically maintained progress reports during a conversion to a new IEP computer system. However, emails from Father indicated that he asked

questions about the status of the progress reports and received these progress reports. Additionally, Student presented no evidence that the District failed to provide Parents with copies of any disciplinary records or IEPs during SY 2008-2009, or when any request for records was made.

17. Regarding OT, Ms. Lieberman presented her report of Student's progress. Ms. Lieberman is a certificated OT therapist, and has extensive experience and training in working with autistic students, including attending training by Ms. Winner. Ms. Lieberman began working with Student in middle school. She provided Student with weekly OT sessions, 50 minutes a session, in a small group, and focused on fine motor skills, motor planning, organization and job skills. Ms. Lieberman corroborated Ms. Donchik's observations about Student's fine motor skills and opined that Student required minimal to moderate prompting to complete tasks. She reported that Student did not require specialized gross motor services because he was independent with functional mobility and could access the school environment. Student was enrolled in an adaptive physical education class, and his participation and behavior improved during the course of the school year.

18. Ms. Niizawa reported on Student's speech and language progress. Ms. Niizawa has been a speech and language pathologist for approximately 40 years, and has extensive education, experience and training in working with autistic students. Student attended twice-weekly speech and language sessions, 30 minutes a session, primarily individual sessions with occasional small group sessions. Ms. Niizawa worked with Student on his two speech and language goals on social skills in understanding body language, conversation turn-taking, and initiating and continuing social conversations. She also worked with him on not repeating the same topic and avoiding making inappropriate comments, such as repeatedly remarking about a person's death. Student made steady progress on his speech and language goals as his ability to carry

on a conversation improved and his inappropriate comments were reduced. Student's speech clarity was good and he usually had appropriate facial expressions when speaking.

INDIVIDUALIZED TRANSITIONAL PLAN

19. A school district is required to develop an ITP for students who will turn 16 years old during the course of the annual IEP. The ITP is based on assessment information, a student's present levels of performance and information from the student about postsecondary interests. The ITP must contain an offer to address postsecondary goals and transition services. Student's 16th birthday occurred during the 12-month period following the February 2009 IEP team meeting. The District failed to make an ITP offer at that meeting, which denied Student a FAPE because Parents did not receive information regarding the District-proposed transition plan, and this failure prevented them from meaningfully participating in the educational decision-making process.

May 29, 2009 IEP Team Meeting

20. The parties met on April 4, 2009, to discuss further Student's IEP and for the District to present additional information as to his present levels of performance. The District possessed documentation of this IEP team meeting. While the District presented further information as to Student's present levels of performance, it did not discuss proposed goals, services and placement until the IEP team meeting on May 29, 2009.

MAY 29, 2009 IEP TEAM MEMBER ATTENDANCE

21. Student contends that the District failed to have the required persons attend Student's IEP team meetings, especially persons from his home behavioral program and classroom teachers. The District asserts that it had all relevant IEP team

members at Student's team meetings and it was Parents' responsibility to invite persons from his home behavioral program.

22. The documentation for the May 29, 2009 IEP team meeting contains little information as to who attended. The May 29, 2009 IEP does not contain a sign-in sheet. Ms. Donchik did not recall specifically as to who attended, and the IEP notes generated by Ms. Zigler do not state who attended. The evidence established that Parents, Ms. Zigler, Ms. Donchik, Ms. Lieberman and Ms. Niizawa attended. Ms. Donchik was in regular contact with Student's general education teachers, but it is not clear if a general education teacher attended the IEP meeting. The IEP does not contain a written waiver from Parents that excused a general education teacher's attendance. Because Student attended general education classes and the District proposed that Student continue attending general education classes, the District needed to ensure the attendance of a general education teacher, and the evidence did not establish that one attended.

23. Student received home behavior intervention services through the San Andreas Regional Center (SARC). Achieve Kids, a non-public agency, provided the service. The District did not invite a person from Achieve Kids to attend the IEP team meeting, and it is not clear if Student's case manager from SARC, Mindy Nguyen, attended. Ms. Nguyen had knowledge of the services that Achieve Kids provided Student and his progress. However, as discussed in Factual Finding 28, Student was not displaying the significant behaviors at school that he displayed at home. Additionally, the District was able to handle Student's behavior with the structure and behavior management strategies in his November 2007 IEP, as amended February 2008. Therefore, Student did not establish that the District needed to invite a member from Achieve Kids to attend either this, or the June 2009 IEP team meeting.

PRESENT LEVELS OF PERFORMANCE AND GOALS

24. At the IEP team meeting in May 2009, it was reported that Student made significant progress in meeting his reading comprehension and math skills. At the beginning of SY 2008-2009, Student's reading comprehension was at a third-grade level on the Brigance Inventory of Essential Skills (Brigance) that Ms. Donchik administered. Student's low score was caused in part by him not being focused during the testing. One month into the school year, Student's reading comprehension was at the fourth-grade level and in May 2009, Student's reading comprehension was at the fifth-grade level. Student's ability to decode what he read was at the fifth-grade level, and vocabulary, at a sixth-grade level.

25. In May 2009, Ms. Donchik was working with Student with division facts and long division, and Student was beginning to grasp the concepts used in long division. Student also made progress with two-digit multiplication, and was able to determine the amount of money needed for purchases up to \$20 with bills and coins. Student asserted that he could perform more difficult math problems. However, he could only do more difficult math problems by spending several hours an evening with his Father going over and over math problems, which stressed him and caused him to have behavioral problems at home. It was unrealistic for District staff to spend as much time on instruction as Father spent with Student, especially considering the stress placed on him. Therefore, the District's proposed goal in the May 2009 IEP accurately reflected his abilities and unique needs.

26. Because of Student's difficulty with his handwriting, the District worked with him on typing his written class assignments. Student attended a general education keyboarding class for the entire SY 2008-2009. Student's typing improved with the class, although he continued to type with only a few fingers.

27. Student had behavioral problems at the start of the school year, in part caused by him being in foster care during part of the prior school year. Student typically engaged in inappropriate behaviors, such as making loud sounds, interrupting others and asking inappropriate and repetitive questions, to get attention, or when stressed or nervous. At school, the District created behavioral goals in the November 2007 IEP, as amended February 2008, to regulate his own behavior by independently engaging in physical activity to calm and focus himself. Student's behavior improved during the school year, as he did not disrupt his two general education classes, which he attended with a one-to-one aide. Student's behavior regressed some after the February 2009 IEP team meeting because he encountered his former foster parents during a school outing, and was suspended for exposing himself in class. After the suspension, Student's behavior improved at school because, according to Father, Student understood the consequences of his behavior and did not like being away from high school, which he enjoyed.

28. As noted in Factual Findings 5 and 6, Father presented a written report by Ms. Winner and Ms. Crooke about Student's social skills. The report dealt with Student's difficulties outside of the home. While Student did have significant social skills deficits at school, he did not display the emotional outbursts that he did at home. Additionally, the District was aware of issues noted in the report about Student's inability to understand the perspective of others during conversations and 'stranger danger,' perseverating on a topic, and problems with organization. The District worked with Student on these areas of concern during SY 2008-2009, and used the behavioral strategies recommended in the report, such as direct instruction, awareness of others, and social thinking exercises. Ms. Winner's and Ms. Crooke's report did not necessitate any significant changes in Student's IEP.

29. Based on information presented at the three prior meetings regarding Student's present levels of performance, the District proposed goals that were a continuation of his prior goals and designed to develop functional life skills. The District proposed goals in the areas of math, written language, reading, social skills, and expressive language, but did not propose any OT goals. The District discussed with Father the proposed goals in depth at the IEP team meeting, taking into consideration his input to revise the proposed goals.

30. In math, the District proposed a functional goal for Student to identify the correct amount of change, using bills and coins, for purchases up to \$100 in four out of five trials with 80 percent accuracy. The other proposed math goal was for Student to perform two-digit by two-digit multiplication problems with 90 percent accuracy in four out of five trials. The District's proposed money math goal was adequate to meet Student's unique needs as Student required functional life skills, such as the ability to handle money. Additionally, the multiplication goal reflected Student's present levels of performance as Student did not establish that he could perform more difficult multiplication problems without spending excessive time on his homework.

31. For written language, the District proposed that Student would complete a pre-writing activity according to teacher instruction by verbally answering a question about a main idea or other question about a text, and then writing a three-to-four sentence response with one or less prompts. Student did not present evidence that this goal was not appropriate to meet his unique needs, or that the District needed to include any additional writing goals.

32. For reading, the District proposed that Student, after reading or listening to a fourth grade level reading selection, identify the main plot events, their causes, and the influence of each event on future actions with 70 percent accuracy in four out of five

trials. Student did not challenge the adequacy of this goal or that the District's present levels of performance were not accurate.

33. As to social skills, the District combined two of three goals with speech and language goals because Student's deficits crossed over these two areas. The District proposed that, in either a structured or unstructured classroom setting, Student follow conversational rules in initiating and sustaining a conversation, turn-taking, understanding body language and understanding the needs of others with 70 percent accuracy in four out of five trials. The District also proposed that Student demonstrate awareness of social cues by properly initiating or participating in turn-taking conversations with his peers when given a visual or verbal cue in three out of four interactions over three weeks. For the last social skills goal, the District proposed that Student limit the number of inappropriate questions by the use of physical activity or asking for a break in three out of five attempts.

34. Student does not challenge the appropriateness of these goals, but contends that the District needed to propose additional goals and instruction to work on his social skills, decrease prompt dependency, and teach him how to behave in the classroom, such as when to ask a question. Student asserts that the District needed to include these classroom behavior goals, and not functional skills goals, because Student's program should have been focused on him graduating from high school. However, Student did not demonstrate that at this time he was ready for an academic program, rather than the functional skills curriculum that the District proposed. All the information that the District possessed about Student in May 2009, such as his history with the District and his present levels of performance, established his need for a functional skills program rather than the program that Father sought which would be focused on academics and classroom skills needed to perform in general education classes. Student's need for a functional program was subsequently confirmed by the

assessment conducted by Nancy Sullivan, Ph.D., discussed below in Factual Findings 74 through 90. Additionally, Student failed to establish that the goals and educational program that the District proposed would not provide him with independence and academic classroom skills commensurate with his cognitive abilities.

35. Regarding the District's not proposing OT goals for Student's fine and gross motor deficits, Student did not present sufficient evidence that Student needed these goals. Father's testimony alone was not sufficient to counter Ms. Lieberman that Student did not require these goals to make meaningful educational progress. Therefore, the District's IEP proposed goals were sufficient for Student to make meaningful educational progress.

SPEECH AND LANGUAGE, AND OCCUPATIONAL THERAPY SERVICES

36. The District offered Student speech and language services in two, 30-minute group sessions a week. For OT, the District offered a weekly 50-minute group session in Student's SDC. Student asserts that he required additional speech and language and OT services in an individual setting. The District contends that based on the 2008 speech and language assessment and Student's present levels of performance at that time, its offer of related services was sufficient to permit Student to make meaningful educational progress.

37. Regarding speech and language services, the District's 2008 speech and language assessment, Ms. Niizawa's experience working with Student, and his then present levels of performance supported the District's offer, as Student needed to work with others to improve his social communication deficits. This would be more difficult in individual sessions. Student did not introduce evidence to support his contention that the District's offer was not adequate to meet his unique needs.

38. As to OT, the District proposed that Ms. Lieberman work with Student at the same time she worked on OT with his SDC classmates. Additionally, Ms. Lieberman would use this time to consult with the SDC teacher on OT tasks Student and his classmates could do in the SDC to improve their skills. Additionally, Ms. Donchik worked with the students in the SDC on fine motor tasks that they would need for job skills and independent living. While Student believes that the District needed to provide more OT services to address his deficits in handwriting and tying his shoes, Student did not present adequate evidence that the District's offer of OT services was insufficient to permit him to make meaningful educational progress.

PLACEMENT

39. Student challenges the District not consider a continuum of placement options before it proposed the functional life skills program. However, Student did not establish that the District did not consider other options simply because Father did not believe that Ms. Donchik's SDC was not appropriate for Student, and that he should have been in a higher-functioning SDC or more general education classes. The District discussed a variety of placement options and recommended a SDC for five periods a day and general educational classes for two periods, with a one-to-one aide. For part of Student's SDC time, he would go to the VA Hospital for a job-training program.

40. Ms. Donchik established that in her SDC and the job-training program, Student would learn functional academics, like making change, or how to read instructions, which he needed to learn if he wanted to live independently. Additionally, Ms. Donchik and her class aides worked with students on activities of daily living, such as grooming and household chores, along with basic job skills. Students in Ms. Donchik's class also worked on social communication, behavior management and OT to permit students to live independently and to obtain jobs. In the off-site job training program, Student would have a job coach to help him learn needed job skills.

41. Student did not establish that he has the cognitive ability to succeed with the academic program Father proposed at this and subsequent IEP meetings. As to higher-functioning SDC classes, the District was willing for Student to attend a higher-functioning SDC for English Language Arts. However, because Student lacked the skills that he needed to live independently due to his significant cognitive impairment, the District considered placement options and appropriately determined that Student should not be in an academic program, and its placement offer of a functional life skills program was appropriate to permit Student to make meaningful educational progress.

ACCOMMODATIONS AND MODIFICATIONS

42. The only accommodations and modifications the District proposed was for Student to receive a one-to-one aide in his general education classes. The District did not propose any additional accommodations or modifications because the District did not propose that Student take academic general education classes, or any general education class, for a grade. As for his special education classes, these classes already had imbedded accommodations and modifications based on the needs of the students. The accommodations and modifications Student requested as to homework assistance, for example, were not applicable because the District appropriately offered a functional life skills program, with functional academics.

INDIVIDUALIZED TRANSITIONAL PLAN

43. The District's ITP is woefully lacking any information about Student's interests, and the District failed to explain why it proposed to conduct, in the spring of a year not stated, Student's transition assessment. The ITP in the May 2009 IEP only contains one goal: for Student to work in the community in the District's job-training program. While the District's proposed goals in the remainder of the IEP adequately

address teaching Student independent living skills, the ITP fails to include adequate information about Student's postsecondary plans. The proposed ITP and IEP contain no goals about postsecondary employment and independent living, such as hygiene and household tasks, even though Ms. Donchik's SDC focused on teaching students these skills. Therefore, Student established that the District failed to develop an adequate ITP because of its lack of goals and postsecondary plans, which denied him a FAPE in failing to prepare him for independence.

June 12, 2009 IEP Team Meeting

44. While the District discussed Student's IEP on May 29, 2009, the IEP documentation does not indicate that the District made a formal offer for Parents to consider and to decide whether to grant consent. Therefore, the parties met again on June 12, 2009, in an attempt to finalize Student's IEP, and at this meeting, the District did make a formal IEP offer. As with the May IEP team meeting, the District did not have a general education teacher attend, nor obtain written consent from Parents for the general education teacher's non-attendance. Ms. Nguyen attended and could answer questions as to the behavior program. Student's court-appointed attorney attended this IEP meeting, as well as the same participants from the May 29, 2009 IEP meeting. The IEP team discussed Parents' concern about his behavior, and again went over Ms. Winner's report. As noted previously, Parents' concerns about Student's behavior focused on their concerns at home and in the community, as his outbursts with Parents were the result of his problems at home, which did not occur at school. SARC was continuing home services to address Student's behavioral problems at his Parents' homes and in the community with his Parents.

45. The District did not propose any changes to the goals from the May 2009 IEP team meeting. Father raised a concern about Student not being able to tie his shoes, and requested the resumption of the OT goal for Student to tie his shoes. However,

Student did not establish why he required a shoe-tying goal to progress in the general education curriculum or to meet educational needs related to his disability. The District did work on shoe-tying as part of adaptive living skills, along with other tasks such as grooming, hygiene, and vocational skills, which involved fine motor skills. Therefore, Student did not establish why he needed a specific goal related to tying his shoes.

46. The District did not propose any changes to its offer of speech and language services, OT, and Student's ITP. Student asserted that the District did not make an offer for the 2009 ESY. However, the District proposed that Student attend its job-training program at the VA hospital. The District did not propose any other changes to Student's program for SY 2009-2010. The IEP team meeting notes do not indicate if Parents consented to the District's IEP offer, and no evidence was presented as to whether Parents subsequently consented to the District's IEP offer for SY 2009-2010, especially since the records reflect that this IEP team meeting was continued on January 26, 2010. However, the District began to implement portions of the IEP developed at the May and June 2010 IEP team meetings as Student began to attend the District's job training program at the VA.

47. At the June 12, 2009 IEP team meeting, the District did offer the IEP developed and discussed on May 29, 2009. Information presented by the District and Parents at the June 12, 2009 IEP team meeting did not necessitate any changes to the IEP discussed on May 29, 2009, as Student continued to make meaningful educational progress. The June 12, 2009 IEP, except for the ITP, was reasonably calculated to permit Student to make meaningful educational progress, as discussed in Factual Findings 24 through 43. However, the District denied Student a FAPE by failing to have a general education teacher attend either the May or June 2009 IEP meetings, which prevented Parents from significantly participating in Student's educational decision-making

process because Parents could not discuss any issues related to Student's needs to assist him in succeeding in his general education classes.

JANUARY 26, 2010 IEP TEAM MEETING

48. Student began SY 2009-2010 attending the District's job program at the VA hospital, as well as Carolyn Fox's SDC,⁶ English MP with Jenny Chin,⁷ and general education physical education. At the beginning of SY 2009-2010, Father requested that Student take a Spanish class based on his interest in the subject, generated in part from working at the VA with Spanish-speaking staff. Father believed that Student's exposure to a second language could lead to marked improvement to his cognitive abilities. The District eventually agreed to Father's request and placed Student in the beginning Spanish class taught by Emily Garrison. It was not clear from the evidence which goals from which IEPs were worked on by Student in these classes, especially, as noted previously, since the District did not have written copies of progress reports it sent to Parents. As noted previously, emails from Father indicated that he received these progress reports.

49. The IEP team convened on January 26, 2010, as a continuation of the June 2009 IEP meeting. The delay in convening the IEP meeting was due to the District's attempting to get all persons that Father wanted to attend the meeting. Both Parents attended the IEP team meeting, along with Student; Ms. Fox; Vincent Nguyen, a SARC representative; Ms. Nguyen; Ms. Garrison; Sharon Kwan; Student's therapist; and

⁶ Ms. Fox replaced Ms. Donchik, who left her employment with the District during the summer.

⁷ English MP is a SDC for higher functioning special education students, and includes students who do not have intellectual disabilities.

Rachel Orlik, from Autism Comprehensive Educational Services, which was now providing the home behavioral services. The District proposed new goals for Student in the areas of receptive and expressive language, fluency, social skills and fine motor skills. Because Student's court-appointed attorney could not attend the IEP team meeting, Parents stated that they would not consent to the IEP until they had spoken to Student's attorney.

50. In his English class, Student was working at a fourth-grade level. His strength was reading comprehension as his answers to recall questions were usually correct. Student did not demonstrate behavior problems in Ms. Chin's class, and would ask classroom aides for assistance when needed.

51. In math with Ms. Fox, Student made progress in accurately performing multi-digit multiplication, addition and subtraction problems, and division with multi-digit numbers divided by single-digit numbers with no remainders. Student also progressed in solving word problems, and using math facts to solve real world math problems.

52. Student audited his Spanish class, and Ms. Garrison did not grade his work. Student enjoyed the class and did not display any behavior problems. Student completed his Spanish homework, but Father reported that he spent several hours an evening with Student so he could complete his homework. Student had difficulty participating in classroom activities, which were conducted in Spanish, due to his speech and language and social skills deficits. Ms. Garrison had Student take in-class exams, but only to gauge his progress and enable his class participation. Father expressed surprise at the IEP team meeting that Student was only auditing Spanish and not taking the class for a grade. While the District agreed with Father's request for Student to take Spanish for a grade, Student, due to his significant cognitive impairment, was only able to learn simple words and phrases in Spanish. Father's expectation that Student could take

Spanish for a grade and succeed was not realistic. The hours a night Student spent with Father on Spanish homework needlessly stressed Student with no proof that Student learned more than simple words and phrases commensurate with his cognitive ability.

53. Student attended two weekly speech and language sessions, which could either be individual or group, 30 minutes a session, as permitted by the November 2007 IEP. The District's proposed June 2009 IEP was for these two weekly sessions to be in a small group. Ms. Niizawa continued her work on Student's social skills, such as getting him to stop asking repetitive questions and getting him to pay attention when spoken to so he would understand more of the information presented. Student retained a lot of long-term information, and a lot less short-term information, which caused Student to ask questions based on what happened a long time ago, and not what was presently occurring. For example, he would ask repeated questions about someone who was no longer present. In Ms. Fox's SDC, Student asked fewer repetitive questions and questions about events that occurred in the past. Student's voice production and pitch continued to improve, although Student took longer to express a thought when stressed.

54. As for OT, Ms. Chin worked on Student's handwriting, and she noticed improvement with the use of lined handwriting paper if Student took his time. Ms. Lieberman consulted with Ms. Fox and worked with Student on regulating his behavior and fine motor skills, including handwriting. Otherwise, Student's handwriting was hard to read, especially because he wrote his letters too close together. Ms. Fox worked with Student on tying his shoes, and Student could tie the preliminary knot without prompting.

55. Socially, Student did not present behavior problems at school. Student got around campus and there were no disciplinary incidents, unlike the prior school year.

Student's self-stimulatory behaviors reduced as he played with paper less and made fewer inappropriate sounds. Student was most likely to display these stimming behaviors when under stress, such as when he worked with a new job coach at the VA hospital right before the winter break. However, these behaviors were reduced after the break. Finally, Student attended a general education food preparation class, which assisted Student in learning independent living skills, and Student enjoyed this class, participated in the group activities and was not a disruption to the class. During this school year, Parents did not request that the District refer Student for a county mental health referral, nor did Student demonstrate any behavioral problems that would warrant such a referral. The District's program was adequate to meet Student's social skills needs based on his progress and he did not require a social skills training program.

56. Vocationally, Student worked at the VA hospital four afternoons a week. Student started at the hospital canteen stocking dinnerware and beverages, a task that he performed well. Student transitioned to the more difficult housekeeping department, where he was assigned a new job coach. Student made inappropriate comments to his new, female job coach, and started to eat paper and hand soap. The District provided Student with additional support regarding the transition and his inappropriate behavior stopped and work performance improved.

Goals and Transition Plan

57. At the January 2010 IEP team meeting, the District maintained seven of the eight goals from the June 2009 IEP. The District modified the expressive language goal, which called for Student to initiate topical and relevant comments by increasing it from 60 percent to 80 percent proficiency, as observed by the speech and language pathologist in the speech room. This goal properly addressed Student's need to stay on-topic.

58. The District added a receptive language goal based on his improvement, which also addressed his social skills deficits. For this new goal, Student needed to learn a repertoire of appropriate questions and affirmation statements so he would not sound like he was saying the same thing repeatedly. The Student was to use the new repertoire with 75 percent proficiency, as observed in the speech and language room. This goal was appropriately designed to allow Student to engage in more socially appropriate conversation and to maintain the conversation for longer periods.

59. Another speech and language goal added regarding expressive language was to improve Student's fluency as Student had difficulty speaking when trying to recall information. The District proposed that Student remind himself that he needs sufficient time and air to produce fluent speech, with a five percent increase in the ease of speech production as observed by the speech and language pathologist in the speech room. Student did not present sufficient evidence that this goal was not appropriate.

60. Another added language and social skills goal was for Student to understand social cues and body language, and to respond appropriately by initiating or participating in turn-taking conversation with peers when given a verbal or visual cue in three out of four trials in three consecutive weeks. While the District worked on this skill in Ms. Fox's SDC and at the VA hospital, the goal was to emphasize the importance of this social skill for Student as part of a functional life program. Student did not present sufficient evidence that this goal was not appropriate to meet his social skills needs.

61. The District proposed an additional math goal for division, which called for Student to divide two-digit numbers by a single digit and determine the remainder with 80 percent accuracy in four out of five trials. This goal addressed Father's concern that the District needed to strengthen Student's math goals because Father believed that the District was not challenging Student in an area of strength. Student did not present

sufficient evidence that this goal was not appropriate to address his academic deficits based on Student's present levels of performance.

62. The final goal was an OT goal for Student's handwriting to be legible 80 percent of the time on his written assignments. This goal appropriately addressed his fine motor deficit. While the District was appropriately moving Student to write with a computer so he would not need a handwriting goal, the District included a fine motor goal because of Student's need for this skill for activities of daily living and employment. Finally, Student did not establish a need for a shoe-tying goal to make meaningful educational progress.

63. As for Student's contention that the District needed to develop goals for Student to become less prompt dependent and to learn classroom skills, Student did not require goals in this area to make meaningful educational progress. In both his general and special education classes, Student exhibited appropriate classroom skills relative to his cognitive abilities. Additionally, the District's proposed language and social skills goals would allow Student to interact appropriately with his general and special education peers and teachers, and to participate in class activities and discussions. Finally, the evidence did not establish that Student was overly reliant on his aide when in general education classes. Therefore, Student did not establish the need for additional goals to decrease prompt dependence and improve his classroom skills.

Accommodations and Modifications

64. The District continued to offer the one-to-one aide for general education classes. Father requested further accommodations and modifications at the IEP meeting to assist Student in his Spanish class to complete homework and exams so he could pass the class. Ms. Garrison had already modified her instruction to Student, including modified exams and not expecting Student to complete all his homework, especially since Student at the time was not taking Spanish for a grade. Father had the unrealistic

expectation that Student should take Spanish for a grade and spent an inordinate amount of time working with Student on his homework. Because Student was only taking Spanish to have exposure to the language because of his interest and to interact with general education students, rather than taking this class for a grade to meet high school diploma requirements, the District's proposed accommodations and modifications were appropriate for academic achievement.

Occupation Therapy

65. The District proposed that Student receive a weekly, 50-minute group OT session in his SDC. At hearing, Student presented evidence as to the OT goals, not whether the District should offer Student individual OT services outside of the classroom. Further, Ms. Lieberman was convincing that she could meet Student's unique needs in the SDC, and in consultation with Ms. Fox so she could also work with Student to improve his skills in this area. Therefore, Student did not establish that the District's offer of OT was inadequate.

2010 Extended School Year Offer

66. For the 2010 ESY, the District offered Student one hour a day, four days a week in an SDC for four weeks. For the remainder of the school day, Student would continue with the job training program at the VA hospital. Due to Student's need to learn functional life skills, the District's 2010 ESY was appropriate to meet Student's need to learn skills to live independently.

FEBRUARY 23, 2010 AND APRIL 22, 2010 IEP TEAM MEETINGS

67. There is no indication in the record that after the January 26, 2010 IEP team meeting Parents consented to the District's IEP offer. The District agreed, after the January 2010 IEP meeting, that Student take Spanish for a grade, even though the

District knew that due to his cognitive deficits that he could not meet the requirements to pass the class, even with significant accommodations and modifications. In response to Father's questions, the District team prepared a four-year plan for Student to graduate from high school, which it sent to Parents on February 18, 2010. The District did not explain why it prepared the graduation plan when it believed that a functional life skills program was appropriate for Student. The four-year plan gave Father a false hope that Student could succeed in an academic educational program. However, the District informed Parents at the February 23, 2010 IEP team meeting that it did not intend to propose an academic educational program for Student to obtain a high school diploma.

68. In attendance at the February 2010 IEP team meeting were Ms. Fox, Ms. Zigler, Student and Parents. At the meeting, Father objected that Ms. Chin was not in attendance. However, her attendance was not needed because the purpose was merely to go over the four-year plan, which Ms. Chin was not involved in developing. The attendance of Ms. Garrison was not needed, even though Father believed that her presence was necessary to discuss Student's progress in Spanish, because the meeting was only to discuss the graduation plan.

69. The District met with Parents and Student again on April 22, 2010, to discuss Student's progress. Attending this IEP team meeting were Ms. Zigler; Ms. Fox; Mary Maher, an Area Board advocate Father invited; and Jason Kunkel, Student's behavior therapist with ACES from May 2009 through March 2010, and at the time of this IEP, a volunteer advocate. Between the February and April IEP team meetings, Student was removed from the VA program due to inappropriate behavior. Between the IEP meetings, the District and Parents were in regular email contact regarding Student's progress at school.

70. Student contended that Ms. Garrison needed to attend the entire April 2010 IEP meeting. Father worked with Student for several hours a day on his Spanish homework, and wanted Student to have a Spanish tutor. However, Ms. Garrison attended for sufficient time to discuss Student's progress, and inform the team that Student received modified tests and homework because of the stress caused by him trying to complete the regular class work for all students. Also, Student was allowed to either type class work because of the additional time it took to handwrite his answers, or orally present his homework for his aide to transcribe. Therefore, Student did not establish that Ms. Garrison needed to attend the entire April 22, 2010 IEP team meeting as she reported on Student's progress, which was the point of the IEP meeting.

71. The District and Parents did not have any subsequent IEP team meetings during the SY 2010-2011. Father did contact Ms. Fox at the end of May 2010 to inquire about Student's 2010 ESY program. Ms. Fox was not teaching the 2010 ESY and referred Father to Emily Dermon, who was to teach the ESY SDC. Father wanted the District to convene an IEP team meeting to discuss 2010 ESY. The District did not adequately explain why it did not convene an IEP team meeting despite Father's request. The District did convey to Father that it intended to work on the same curriculum that it worked with Student during the school year. However, because Father still wanted Student to be on a diploma track, the District discussed by email that Student take world history MP as an independent studies class, which would give Student diploma track credit, and to see if he could handle the academic requirement. Father withheld Student from the 2010 ESY, primarily because the District refused to convene an IEP meeting, even though Ms. Dermon was willing to meet with Father to discuss Student's ESY program. Therefore, the District violated Student's procedural rights because it needed to convene an IEP meeting after Father's request, which prevented Father from participating in the educational decision-making process. However, as to any loss of

educational benefit, Student did not demonstrate that Student lost any because the District's ESY offer was appropriate.

INTERIM AGREEMENT

72. Student filed his due process hearing request in the beginning of July 2010. On August 23, 2010, Student and the District entered into an interim agreement. The interim agreement required the District to provide for an independent psychoeducational evaluation. The District also agreed to conduct speech and language, OT, vocation/transitional and functional analysis assessment (FAA) assessments.⁸ The District also agreed to provide Student with a modified class schedule during the pendency of the assessments. Student would take Spanish 2, physical education, world history, integrated science, and three periods of study skills, in which Student would work on his academic homework with Ms. Chin and his aide. The District also agreed to make a referral to Santa Clara County Mental Health for a mental health assessment.⁹

Independent Psychoeducational Assessment

73. Dr. Sullivan conducted the psychoeducational assessment. Student contends that Dr. Sullivan's assessment was improperly conducted and that the assessment findings and recommendations underestimate his ability based on her

⁸ As to the vocational/transition assessment and FAA, no evidence was introduced as to the completion of these assessments and any results.

⁹ No evidence was introduced as to whether the District made the referral and the results of the referral, if made.

mistaken belief that Student is mildly intellectually disabled.¹⁰ The District disputes Student's contention.

74. Dr. Sullivan has a bachelor of science degree, with honors, in behavioral disorders in children, and a master's degree in applied child psychology. In 1995, Dr. Sullivan obtained her Ph.D. in neuropsychology and is a California licensed psychologist. Dr. Sullivan has extensive experience in conducting neuropsychological assessments, and has assessed approximately 500 children. Dr. Sullivan has been associated with the Children's Health Council since 1996, and has been a staff neuropsychologist since 1999. About of one-half of her assessments involved children with autism, with overlap with children who also may be intellectually disabled. Dr. Sullivan was qualified, based on her education and experience, to conduct the independent psychoeducational assessment of Student.

75. As part of the assessment, Dr. Sullivan met with Parents to get background information on Student and their concerns about his education and behavior. She also reviewed Student's educational records, which did not include any prior formal psychoeducational assessment. Father expressed concern that the District was not seeking for Student to graduate with a diploma, and failed to teach Student with needed skills for academic success. Mother expressed that Student's then present educational program was placing too much stress on him and exacerbating his behavior

¹⁰ In 2010, Congress deleted references to "mental retardation" in the Individuals with Disabilities Education Act (IDEA), and replaced it with "intellectual disabilities." (Pub.L. 111-256, 124 Stat. 2643.) This decision will conform to this change in the IDEA, and use "intellectual disabilities" and not "mental retardation." (Pub.L. 111-256, § 4; [requirement that States change terminology for individuals covered by provisions of this law].)

problems, and believed that Student should be learning information that would help him as an adult. Before conducting formal testing, Dr. Sullivan observed Student on September 27, 2010, in his world history, Spanish 1,¹¹ science classes, and study skills classes.

76. In his history class, Student needed prompting by his aide to read the in-class assignment, and then to start and continue with the writing assignment. While other students were able to write a half to a full page in the time allotted, Student could only write one sentence. Student was able to independently transition from his history class to science, which is in a separate building and take his seat. The teacher reviewed changing electrons to ions and handed the class a worksheet to complete. Even with the assistance of his aide, Student could not complete the assignment because the material was above his cognitive ability and he had no idea of how to complete the assignment,

77. During the study skills class, Student worked with Ms. Chin and his aide on his class assignments, test preparation and as a reward for staying on task, Student earned time on the computer. The last class observed was Spanish. Student did not appear to be interested in the general education students in the class, nor did he attempt to participate in class discussion or raise his hand to answer any questions. On a pop quiz, Student had extreme difficulty writing his answers, which were barely legible, even with assistance from his aide. While Student needed some redirection in his classes to stay on task, he did not exhibit any behavior problems, and there were no safety issues going between classes.

¹¹ Parents and the District agreed soon after the semester started that Student should take Spanish 1 again because he had not mastered the needed skills for Spanish 2.

78. Dr. Sullivan administered her formal testing on October 1 and 29, 2010. She administered the Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV), Delis-Kaplan Executive Functioning System (D-KEFS), Wide Range Assessment of Memory and Learning, Second Edition (WRAML-2), and selected subtests from the Woodcock Johnson Tests of Cognitive Ability, Third Edition (WJTAC-3) and Woodcock Johnson Tests of Academic Achievement, Third Edition (WJTAA-3). Dr. Sullivan also gave to Parents and Student's teachers the Vineland Adaptive Behavior Scales (Vineland) and Behavioral Assessment for Children, Second Edition (BASC-2).

79. Dr. Sullivan's assessment confirmed what the parties already knew about Student's autism. Student had significant expressive and receptive language deficits consistent with individuals with autism as he had trouble expressing his thoughts and understanding the social norms of carrying on a conversation. Student engaged in stimming behaviors, as noted previously by District personnel, and had significant deficits in his fine motor skills.

80. Regarding Student's cognitive ability, on the WAIS-IV, Student's overall IQ was 60, which is mildly intellectually disabled, with 100 being average. Student's strengths were his auditory working memory, the ability to remember and use new information, and verbal comprehension, which measures general verbal skills and ability to understand and use verbal reasoning. Student's working memory standard score was 69 and his verbal comprehension score was 68, both just below the borderline average score of 70. Student's weakness was processing speed, which requires the ability to access information, plan and carry out the requested task, and he had a standard score of 50. Student's visual processing score, as measured on the perceptual organization index, was 60.

81. Dr. Sullivan corroborated her findings as to Student's cognitive deficits on the WRAML-2. Student's strength was in his ability to concentrate, as his standard score

of 85 on the attention/concentration index was in the borderline average range. However, Student's scores were much lower on the verbal and visual memory indexes with a standard score of 55 on each index. Student's overall general memory score was 55.

82. On the WJTAC-3, Student displayed similar strengths and weaknesses with a strength with memory in recalling numbers and words, with a standard score of 75. However, when Student needed to manipulate information, he displayed significant weakness, as his processing speed standard score was only 27 and his cognitive efficiency standard score was 50. This corresponded with observations by District personnel that Student could recall information, which gave the appearance that he might be higher functioning than he actually is, but when Student had to manipulate and use the information he possessed, this recall ability disappeared, demonstrating his lower actual cognitive ability.

83. With the WJTAA-3, Student's scores were commensurate with his cognitive ability found in the WAIS-IV. Student's broad reading standard score was 57, with strengths in identifying letters and words and deficits in passage comprehension. With math, Student had a standard score of 49, with strength in math calculation and weakness in math fluency. Student's broad written language standard score was 57, with strength in spelling and weakness in writing fluency. As to Student's academic index score, Student's strength was academic skills, with a standard score of 61, and weaknesses were academic fluency, a score of 48, and academic applications, a score of 41. The WJTAA-3 demonstrated that Student, when asked to perform simple tasks that required memory recall, could perform in the borderline average range. However, when given tasks that required him to manipulate information, his scores were in the intellectually disabled range. Again, the WJTAA-3 corroborated that Student would appear to be more intellectually capable when given simple tasks or tasks that he had

mastered with repetition, but his true ability would come through when given a new or complex task. Finally, Student's performance on the D-KEFS corroborated Student's inability to perform higher functioning tasks as his scaled scores on the different subtests, which measure executive functioning skills, were one, 10 being the average score, with only the motor subtest being higher at three.

84. As to academic tasks, due to Student's cognitive deficits, he could solve concrete problems, but not those that required him to make inferences. Student required modeling and repetition to learn new tasks, and the information had to be broken into smaller pieces and paired with visual and verbal information. In areas beyond those where he has rote skills, Student had trouble extracting information he had been taught and then using the information to complete unfamiliar tasks. As for Father's belief that Student should progress towards a high school diploma, Dr. Sullivan gave persuasive testimony that Student did not possess the cognitive skills to complete the academic requirements, and would not be able to pass the California High School Exit Exam.

85. Additionally, Student's scores on the two adaptive behavior rating scales were consistent with him being mildly intellectually disabled. Parents' ratings on the Vineland were consistent with each other in the communication, daily living skills and socialization domains. Student's strength was his communication skills, with standard scores in the low-70s, and his weaknesses were in daily living skills with both giving scores of 56, and socialization, with Father giving him a 60 and Mother a 64. Student had a composite score on the Vineland of 61 with Father and 63 with Mother. Ms. Fox completed the teacher form and her scores were roughly equivalent to Parents' scores as she rated his communication skills lower with a score of 64, daily living skills higher with a score of 65, and socialization 66, for a total adaptive behavior composite score of 63. An average score is 100.

86. On the BASC-2, Parents rated Student having more behavior problems than Ms. Chin and Student's aide. With a score of 60 or above indicating a high score, Father rated Student's hyperactivity at 87, aggression at 77, and conduct problems at 77, for a composite score of 84 for Student's externalizing problems. Mother's scores were much lower at 65, 64, and 62, respectively, for a composite externalizing score of 65. The scores from Ms. Fox and the aide were much lower, with Ms. Chin's composite score of 44 and the aide's of 52, which corresponded to prior observations that Student's behavior at school was not disruptive and that Student had personal issues at his Parents' homes that necessitated the home behavior program funded by SARC.

87. The greatest disparity of scores involved Student's atypicality, withdrawal and attention problems. Mother, Father and the aide rated Student as to atypicality with respective scores of 80, 93 and 85, while Ms. Chin's score was 51. On withdrawal, the aide's score was 85, which corresponds to Dr. Sullivan's observation that Student did not show interest in interacting with general education students, but Ms. Chin's score of 49 reflected that Student interacted with the SDC students. Parents' scores in withdrawal were 65 for Mother and 59 for Father. The aide also noticed more attention problems in the general education classes with a score of 76, while Parents' and Ms. Fox's scores were around 60. These score established that Student demonstrated fewer behavior problems in the structured environment of a SDC at the appropriate instructional level where there was constant interaction with others in the classroom.

88. As to Student's adaptive skills, a score of 40 or below is a low score. Mother and Father rated Student's adaptive skills at 26 and 27 respectively, while Ms. Fox's score was 39 and the aide's, 37. Mother and Father had scores between 25 through 32 for Student's social skills, leadership, activities of daily living and functional

communication, with Ms. Fox's and the aide's scores were in the mid-to-upper-30s.¹²

Parents rated Student's adaptability as a strength, with a score 37 each, and Ms. Fox and the aide with scores of 47. Again, the adaptive skills score showed that Student performed better at school with the structured environment, with the supports provided by the District.

89. Student attempted to demonstrate that Dr. Sullivan was biased in favor of the District. However, the evidence established that Dr. Sullivan properly conducted an independent assessment in all areas of suspected disability, and administered and scored all of the test instruments correctly. Her findings and recommendations, which will be discussed below as to the adequacy of the District's January 6, 2011 IEP, as clarified on March 3, 2011, were appropriate, based on the thoroughness of her assessment and her demeanor while testifying.

Speech and Language Assessment

90. Ms. Niizawa assessed Student over several days in October and November 2010. She administered the Expressive One Word Picture Vocabulary Test (EOWPVT), Receptive One Word Picture Vocabulary Test (ROWPVT), Clinical Evaluation of Language Fundamentals, Fourth Edition (CELF-4), and Test of Oral Structures and Functions (TOSF). Ms. Niizawa's assessment included informal measurement of Student based on her observation of Student during speech and language sessions.

91. Student did not challenge the accuracy of Ms. Niizawa's assessment findings or recommendations in her report. However, Student challenged the District's proposed speech and language and social skills goals in the January 2011 IEP, which were based, in part, on Ms. Niizawa's assessment. On the EOWPVT, Student possessed

¹² Activities of daily living is not rated on the school personnel rating form.

good knowledge of words to the 14-year-old level, but exhibited difficulty when he needed to relate words to pictures presented, as his standard score was 62, which is an age equivalent of five years, two months. On the ROWPVT, Student's standard score was 66, an age equivalent of seven years, seven months, as with single words he was able to reach the 13-year-old level, but had more difficulty when given more choices to identify the word. On the CELF-4, Student possessed average ability to formulate sentences and to recall numbers forwards and backwards. However, Student's scores dropped dramatically when he needed to process and manipulate information, which required more cognitive ability.

92. As to speech production, Student had a properly modulated voice when relaxed. However, when stressed, Student's loudness and tonal qualities fluctuated markedly, and he experienced trouble breathing when speaking and appeared to stutter. Student's speech disfluency had increased by a factor of two since the end of SY 2009-2010, most likely because of the additional stress of the academic program in the interim agreement. As noted previously, Student has difficulty in social conversation with turn taking and paying attention to what others are saying.

OT Assessment

93. Ms. Lieberman assessed Student's gross and fine motor skills in her OT assessment. Student did not challenge the findings of the OT assessment, but did challenge Ms. Lieberman's recommendations for OT goals and services. Student contended that additional OT services focused on his handwriting and shoe tying are needed for him to make meaningful educational progress.

94. Regarding Student's gross motor skills, he did not have significant deficits that prevented him from accessing the school campus and performing school related tasks. With his fine motor skills related to activities of daily living, Student could perform school-based dressing, eating, and toileting functions.

95. With his handwriting, on the Wold Sentence Copying Test, Student, when focused and given models, could produce legible handwriting with extra time and effort on his part. Student had difficulty writing on the lines, keeping letter size consistent and proper spacing between letters. Student's penmanship was significantly affected by his inattention and fluctuations in effort. Ms. Lieberman stated that at his age that Student's handwriting patterns were firmly established and difficult to alter, even with OT services focused on handwriting. She recommended accommodating Student's handwriting deficits through modified materials, structure and cueing, and having Student use a keyboard. Ms. Lieberman recommended that Student rote-copy writing passages 10 to 15 minutes a day in class. In her assessment, Dr. Sullivan corroborated Ms. Lieberman that at Student's age handwriting patterns are established, and that the District should work with him on functional writing, like printing his name and telephone number legibly, and teaching Student keyboarding skills. Student did not present any evidence to contradict Ms. Lieberman's recommendations regarding Student's handwriting.

JANUARY 6, 2011 IEP TEAM MEETING

96. Parents, Student's due process hearing attorney, Diana Glick,¹³ Dr. Sullivan, Ms. Lieberman, Erick Olah, Student's science teacher, Ms. Chin and Ms. Wade, met on October 15, 2010, to go over Ms. Lieberman's completed OT assessment, the preliminary results of Dr. Sullivan's assessment and Student's class progress. Mr. Olah reported similar information as Dr. Sullivan as to Student's performance in the science class, i.e., his lack of understanding, and inattention in class. A few weeks after this meeting, Parents and the District agreed to change Student's history class to foods due

¹³ Ms. Glick withdrew as legal counsel on January 13, 2011.

to the stress this class placed on Student because the homework caused behavioral problems at home.

97. The parties met again on January 6, 2011. Dr. Sullivan and Ms. Niizawa presented their final assessment reports, as discussed above. Ms. Chin reported on Student's academic performance. In his science class, Student was receiving a grade of D and failing Spanish. Ms. Chin and Student's aide noticed a significant amount of anxiety with Student, as he would shake his arms or legs, and had vocal tics. During study skills, Ms. Chin and the aide both noticed that Student would growl and grunt at the computer screen. Student did not seem to be aware that he was making these sounds as he stopped the sounds and apologized when told about them. Student did not demonstrate any behavioral outbursts in his classes. He was able to take brunch and lunch by himself and to return to class on time.

Proposed Goals

98. The District proposed a dozen goals that focused on functional life skills in the areas of math, reading, written language, social skills, speech fluency, handwriting and vocational skills. Student's contention, as before, was that the District needed to offer goals designed to permit Student to graduate with a diploma, especially in the area of classroom skills, and Student needed additional goals related to his social skills and behavioral deficits.

99. Similar to the June 2009 and January 2010 IEPs, the District proposed a functional math goal for Student to correctly identify the change, using bills and coins, for a purchase for amounts up to \$100 in four out five trials, with 80 percent accuracy. Another math goal for Student was for him to calculate two-digit by two-digit multiplication problems with 90 percent accuracy, independently in four out of five trials. The final math goal was for Student to perform division problems with remainders

using two-digit numbers divided by a single-digit number in four out five trials, with 85 percent accuracy.

100. Because Student was not taking a math class due to the interim agreement class schedule, Student's present levels of performance were from the end of SY 2009-2010 and information from Dr. Sullivan's assessment. Student attempted to establish that his math skills were higher based on Father's and Mr. Kunkel's work with him. However, they spent several hours a day working with Student on math, and obtained only de minimis improvement and placed extreme stress on Student. Additionally, Student retained very little of the information taught by Father or Mr. Kunkel. Therefore, the District proposed adequate math goals based on Student's present levels of performance, cognitive ability and his need to learn more functional skills.

101. For reading, the District proposed that Student, after reading or listening to a fourth grade level reading selection, identify the main events of the plot, their causes, and influence on each event on future actions with 75 percent accuracy in four out of five trials. The District designed this goal to address Student's deficit in making inferences and predicting future events, which he will need in employment and independent living. The District's written language goal for Student was that after teacher instruction, he would respond verbally to a question about a main idea or specific question in the text, and write a three to four sentence response with one or less prompts. This goal addressed Student's need for prompting to complete written assignments, and his need to pick out relevant information in response to a question because Student often focused on irrelevant information from a prior event. Student contended that these goals were too basic for Student. However, Student's present levels of performance and Dr. Sullivan's assessment establish the appropriateness of these goals.

102. The District proposed four social skills that addressed Student's classroom conduct, social communication, and speech and language deficits and targeted reducing inappropriate behaviors. Student's challenge to the District's proposed goals was that his behavior problems were more significant than the District acknowledged. The first goal was for Student, in either a structured or unstructured classroom setting, to follow conversational rules in initiating and sustaining social contact, interpret body language and facial cues, maintain the interest of the other person, and learn to decode hidden intent in other's messages with 70 percent accuracy over five consecutive trials. The next social skills goal was for Student to demonstrate awareness of social and body cues, and to respond appropriately by initiating or maintaining a conversation when given a verbal or visual cue in three out of four peer interactions over three consecutive weeks. These goals appropriately addressed Student's discussion of irrelevant information, failure to engage others while speaking, and inability to make inferences. These goals would allow Student to participate in special and general education classes, and assist him in communicating with others in the community and while working.

103. The next social skills goal for Student was to regulate himself and limit the number of irrelevant questions by independently engaging in physical activity or leaving the class in four out of five opportunities with one verbal prompt. This goal worked on reducing Student's prompt dependency by having Student independently perform this goal and having him focus on the present instead of asking questions about some event or person from the past. The final social skills goal for Student was to demonstrate awareness of social cues and body language and to respond appropriately by initiating or participating in turn-taking conversations with a verbal prompt or cue in three out of four interactions over three consecutive weeks. This goal appropriately addressed Student's deficit of not interacting appropriately with others during conversation.

104. District special education classroom personnel were to implement the social skills goals, and they would also be implemented during his speech and language sessions. Regarding speech and language, the District proposed a speech fluency goal, which would help Student initiate and maintain a conversation. Student had difficulty producing fluent speech 20 percent of the time due to repetitions, extending speech sounds and physical traits, such as facial grimaces or jerky head, neck or shoulder movements associated with stuttering speech, and district proposed to reduce these fluency impediments to 10 percent. Ms. Niizawa established the appropriateness of this goal, especially in conjunction with the social skills goals, to improve Student's expressive language and to engage in social communication.

105. The District proposed an OT goal for Student's handwriting to be legible 80 percent of the time on his written assignments. As previously noted, the District need not have a handwriting goal to meet Student's fine motor OT needs because there was little chance that his handwriting could be improved and that Student could write legibly if he took his time and focused. However, this goal addressed Student's independent living needs as he would need to write legibly on various applications and other forms, and the proposed goal was appropriate to address that need. As noted previously, Student did not require an additional goal to tie his shoes to make meaningful educational progress.

106. Finally, the District proposed an appropriate vocational goal for Student to explore his job interests with a job coach and case manager, and develop the needed skills to apply for a job with 90 percent accuracy, twice a year. Student did not challenge this goal as he did not believe that he needed any vocational goals because he should be focusing on an academic program to obtain a high school diploma.

107. The District held an IEP team meeting in March 2011 to further discuss the proposed goals. For this IEP team meeting, Father, with the assistance of Mr. Kunkel, sent to the District a list of proposed goals. Father's proposed goals were more academic in nature, and overly detailed as to the skills that Student was to learn based on Father's expectation that Student could obtain a high school diploma. Because of Father's focus on Student's Spanish class, the IEP team was not able to discuss in depth Father's proposed goals. Father requested goals for Spanish, but because Student did not need Spanish to make meaningful educational progress or to address a unique need, the District did not need to develop goals in this area. The remainder of the proposed goals were not appropriate because they focused on academic skills that were above Student's cognitive ability.

Accommodations and Modifications

108. For accommodations and modifications to assist Student in his general education classes, the District continued to offer an aide. The aide would assist Student by transcribing answers on worksheets, quizzes and tests, along with reading aloud test questions. Student was not clear why he needed additional accommodations and modifications and what those should be, except that the District needed to do more to assist him to succeed in an academic, not functional life skills, program. However, as noted in Factual Findings 112 through 115, the District appropriately offered a functional life skills program, and therefore the proposed accommodations and modifications were appropriate for Student to participate in his general education classes because he could not pass the needed classes for credit to obtain a high school diploma due to his intellectual disability.

OT and Speech and Language Services

109. The District offered a weekly, 30-minute group OT session in his SDC and a 30-minute individual session. Student asserted that the District did not offer adequate OT services. However, Student did not present any evidence that the District's OT service offer was not adequate to meet his needs, or that Ms. Lieberman's OT assessment and report on his present levels of performance were not accurate. Ms. Lieberman was convincing based on her respective training and experience, and time spent working with Student, that the District's OT offer was adequate to allow Student to make meaningful educational progress.

110. The District offered two weekly 30-minute individual speech and language sessions. Ms. Niizawa established the appropriateness of this service level based on the findings of her assessment, her working with Student on his speech and language and social skills goals. Student did not present evidence to challenge Ms. Niizawa's service recommendation. Therefore, the District offered adequate speech and language services for Student to make meaningful educational progress.

Placement Offer

111. A special education student must be educated with non-disabled peers to the maximum extent appropriate, and may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general education classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. The Individuals with Disabilities Education Act (IDEA) requires that a student with a disability be placed in the LRE in which the student can be educated satisfactorily. The environment is least restrictive when it maximizes a student's opportunity to mix with typical peers while still obtaining educational benefit. Whether a student is placed in the LRE requires the consideration of four factors: (1) the educational benefits of placement full-time in a less restrictive setting; (2) the non-

academic benefits of such placement; (3) the effect the student would have on the teacher and children in the less restrictive class, and (4) the costs of the less restrictive setting.¹⁴ The District asserts that its January 2011 IEP offer is the LRE because Student required a functional life skills program, and not a general education or academic special education program.

EDUCATIONAL NEEDS, VOCATIONAL VERSUS ACADEMIC PROGRAM

112. The District asserted that Student required a functional life skills program for him to learn skills he needed to live independently and to obtain and maintain employment. Dr. Sullivan's assessment established the severity of Student's intellectual disability. Student attempted to show that he made adequate progress in his general education classes, working towards graduation with a high school diploma. However, Student was not able to access the general education curriculum, even with the accommodations and modifications made by the District and aide support. Ms. Chin, Ms. Fox, and Ms. Garrison gave persuasive testimony that Student did not understand general education instruction, and the resultant stress Student experienced caused behavioral issues. Further, although Student benefitted from the higher-functioning special education classes, such as Ms. Chin's English MP, he required the intense functional academic instruction in Ms. Fox's SDC to learn independent living skills. Finally, Dr. Sullivan established that Student required a functional academic program based on his significant adaptive living skill deficits related to his cognitive impairment, which required the intensive and specialized instruction provided in Ms. Fox's SDC. The District established that based on Student's cognitive abilities, he was not capable of

¹⁴ Neither the District nor Student made any argument concerning the cost of Student's placement, so that subject is not addressed here.

accessing the general education curriculum. Instead, he required a functional life skills program, focused on teaching Student functional academics and independent life skills.

NON-ACADEMIC BENEFITS

113. Student only minimally interacted with his general education classmates due to his social and speech and language deficits related to his autism and intellectual disability. Ms. Fox and Ms. Chin established that Student interacted more with his special education classmates in his special education classes; Student, at the January 2011 IEP team meeting, indicated that he missed being with these classmates. The District's proposed education program did not isolate Student with just special education students. The District still proposed that Student attend two general education classes, foods and school service, as set forth in the District's March 3, 2011 letter, so that he would still have time with general education peers. Additionally, Student would interact with the general public in the job training program at the VA hospital, a skill he needs to maintain employment. Therefore, the District established that Student would receive more non-academic benefits in its proposed functional skills program than in his requested diploma-track program.

Effect of Student in Regular Education

114. Student was not disruptive in his general education classes as he spent most of his time working on class assignments with his aide, who could easily redirect Student. With group projects, Student would interact with his classmates with the assistance of his aide and teacher and was not disruptive. Therefore, Student's presence in a general education class had little impact, if any, on his general education teachers and classmates.

115. A balancing of the LRE factors establishes that the District's proposed educational program, focusing on functional life and academic skills, is the LRE for

Student. Student requires a functional academic program because he presently lacks the skills to live independently and maintain gainful employment. Student's request for an academic educational program so that he may graduate with a high school diploma will not provide him with the skills he needs to live independently due to his significant deficits related to his autism and intellectual disability. Further, Student will have the ability to interact with general education peers in the District's proposed program, as well as with his special education classmates, and members of the general public. Therefore, the District's proposed IEP that focuses on a functional life skills and academics is the LRE for Student.

Individualized Transition Plan

116. The ITP was developed with Student's participation, and contained specific postsecondary goals and educational program. The District's proposed goal was for Student to explore his job interests and develop the necessary paperwork, with the support of a job coach and case manager, to apply for jobs, at least two times a year with 90 percent accuracy. To achieve this goal, Student would work with a District job coach and would explore job interests and receive job preparation and training instruction. Further, the District would work with Student on independent life skills. Because Student did not want to participate at the job training program at the VA hospital for three periods a day, the District proposed, in a March 3, 2001 letter to Parents, that Student attend life skills and job-training special education classes, and receive a 30-minute individual career awareness session once a month.

117. Student's challenge to the adequacy of the District's ITP concerned his claim that the ITP should have been gearing him towards graduating with a high school diploma. Student did not challenge the adequacy of the District's proposed ITP to meet his needs to live independently and to gain and maintain employment. Therefore, the

District established, through Ms. Wade's testimony, the adequacy of the ITP to permit Student to make meaningful progress in obtaining independent living skills.

118. The District established that Student required a functional life skills program based on assessment information and Student's present levels of performance from his class work, especially because of the failure of the academic educational program in the interim agreement. The District drafted appropriate goals to meet Student's unique needs, and offered adequate speech and language and OT services. The District considered a continuum of placement options and properly determined that its proposed functional life skills program was the LRE. Therefore, the District's January 6, 2011 IEP, as clarified on March 3, 2011, was reasonably calculated to permit Student to make meaningful educational progress.

LEGAL CONCLUSIONS

1. Student has the burden of proof in this matter as to his complaint. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

ELEMENTS OF A FAPE

2. Under the IDEA and state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).)

3. In *Board of Educ. v. Rowley* (1982) 458 U.S. 176 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that the IDEA does not require school districts to provide special education students the best education available, or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, at p. 198.)

School districts are required to provide only a “basic floor of opportunity” that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. (*Id.* at p. 201; *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950-953.) The Ninth Circuit has referred to the educational benefit standard as “meaningful educational benefit.” (*N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2007) 541 F.3d 1202, 1212-1213 (*Hellgate*); *Adams v. State of Oregon* (9th Cir. 1999) 195 F.2d 1141, 1149. (*Adams*).)

4. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was implemented. (*J.G. v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801; *Adams, supra*, 195 F.3d at p. 1149.)

5. An IEP must contain a statement of measurable annual goals related to “meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum” and “meeting each of the child's other educational needs that result from the child's disability.” (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

6. The methodology used to implement an IEP is left up to the school district's discretion so long as it meets a student's needs and is reasonably calculated to provide meaningful educational benefit to the child. (See *Rowley*, 458 U.S. at p. 208; *Adams, supra*, 195 F.3d at p. 1149; *Pitchford v. Salem-Keizer Sch. Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick Sch. Comm.* (1st Cir. 2004) 361 F.3d 80, 84.)

Procedural Violations

7. In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Rowley, supra*, at pp. 205-06.) However, a procedural error does not automatically require a finding that a FAPE was denied. Since July 1, 2005, the IDEA has codified the pre-existing rule that a procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see, Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

8. The Ninth Circuit has observed that the formal requirements of an IEP are not merely technical, and therefore should be enforced rigorously. A district has an obligation to make a formal written offer in the IEP that clearly identifies the proposed program. The requirement of a coherent, formal, written offer creates a clear record that helps eliminate factual disputes about when placements were offered, what placements were offered, and what additional assistance was offered to supplement a placement. It also assists parents in presenting complaints with respect to any matter relating to the educational placement of the child. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526; *J.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010), 626 F.3d. 431, 459-460.)

PARENTS' RIGHT TO PARTICIPATE IN THE EDUCATIONAL DECISION-MAKING PROCESS

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

10. A school district has the right to select a program for a special education student, as long as the program is able to meet the student's needs; the IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D. Cal. 2007) 2007 WL 216323; *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580* (D. Minn. 2003) 259 F.Supp.2d 880, 885; *O'Dell v. Special Sch. Dist.* (E.D. Mo. 2007) 47 IDELR 216.) Nor must an IEP conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education . . . designed according to the parents' desires."], citing *Rowley, supra*, 458 U.S. at p. 207.)

11. Predetermination occurs when an educational agency has decided on its offer prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*J.G. v. Douglas County School Dist., supra*, 552 F.3d 786, 801, fn. 10.) However, school officials do not predetermine an IEP simply by

meeting to discuss a child's programming in advance of an IEP team meeting. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688, 693, fn. 3.)

ASSESSMENTS

12. A reassessment of a student shall be conducted if a school district determines that the educational or related service needs, including improved academic achievement and functional performance of the student, warrant a reassessment, or if the student's parent or teacher requests a reassessment. (34. C.F.R. § 300.106(a)(2006); Ed. Code, § 56381, subd. (a)(1).) A reassessment shall occur not more frequently than once a year, unless a parent and the school district agree otherwise, and shall occur at least once every three years, unless the parent and the school district agree, in writing, that a reassessment is unnecessary. (34. C.F.R. § 300.106(d); Ed. Code, § 56381, subd. (a)(2).)

STUDENT'S ISSUE 1: DID THE DISTRICT FAIL TO TIMELY AND APPROPRIATELY ASSESS STUDENT BY NOT TIMELY CONDUCTING AN OT AND PSYCHOEDUCATIONAL ASSESSMENT DURING SYs 2009-2010 AND 2010-2011?

13. Pursuant to Factual Findings 4, 5, 8 and 93 through 95 and Legal Conclusion 7 through 12, the District failed to timely conduct an OT assessment. The District did not conduct a formal OT assessment as part of Student's triennial assessment in February 2008 through October 2010, with Ms. Lieberman's assessment, despite knowing this was an area of suspected disability and proposing OT services. However, Student did not establish that the District's failure denied him an educational benefit or prevented Parents from meaningfully participating in the educational decision-making process. The District possessed sufficient information through its OT work with Student and Ms. Lieberman's assessment merely confirmed what the District already knew of Student's OT needs. Student did not establish what information the

District would find through a formal assessment versus observation in his SDC and OT sessions. When the District did formally assess Student in October 2010, the formal OT assessment did not provide any additional information that the District did not already possess as to Student's OT deficits. Finally, Student presented no evidence that Ms. Lieberman's OT assessment was not properly conducted or her findings were in error.

14. As to Student's contention that the District failed to conduct a timely or appropriate psychoeducational assessment, pursuant to Factual Findings 4 through 7 and 73 through 89 and Legal Conclusions 7, 8 and 12, Student did not establish that the District needed to conduct a psychoeducational assessment before Dr. Sullivan's assessment in the fall of 2010. Student did not present evidence of what information the District would have discovered if it assessed Student earlier than the District already possessed regarding Student's suspected disabilities. Additionally, Student did not establish that Dr. Sullivan improperly assessed Student or that her findings were incorrect, especially that Student is intellectually disabled. Dr. Sullivan based her findings on multiple measures, and not just a single IQ test. Besides an IQ test, Dr. Sullivan conducted academic and executive functioning testing, observed Student at school, and spoke to Parents and teachers, which were all consistent with Student being intellectually disabled and needing a functional skills educational program. Therefore, Student did not establish that the District failed to conduct a timely psychoeducational assessment and that the fall 2010 assessments were not appropriately performed or their findings incorrect.

ANNUAL IEP MEETING AND REPORTING ON PROGRESS ON GOALS

15. School districts are required to have an IEP in place for each eligible child at the beginning of each school year. (34 C.F.R. 300.323(a); Ed. Code, § 56344, subd. (c).) An IEP must be reviewed at least annually to determine whether the annual goals are

being met, and at that time, the school district must revise the IEP as appropriate to address any lack of expected progress, new assessments, information provided by parents, the child's anticipated needs, or any other matter. (34 C.F.R. 300.324(b)(1); Ed. Code, § 56343, subd. (d).) In general, when developing an IEP, the IEP team must consider: the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. (Ed. Code, § 56341.1, subd. (a).) The IEP must also contain a description "of the manner in which the progress of the pupil toward meeting the annual goals...will be measured and when periodic reports on the progress the pupil is making...will be provided" (34 C.F.R. § 300.320(a)(3) (2006); Ed. Code, § 56345, subd. (a)(3).)

STUDENT'S ISSUE 2A: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO HOLD A TIMELY ANNUAL IEP MEETING?

16. Pursuant to Factual Findings 12 and 13 and Legal Conclusions 7, 8, 9 and 15, the District failed to convene a timely annual IEP team meeting and make an IEP offer for SY 2008-2009. The last annual IEP was November 28, 2007, and while the District convened an IEP team meeting in February 2009, the District did not make an IEP offer. The District reconvened the IEP team meeting on May 29, 2009, and went over a draft IEP. However, no evidence existed that the District made a formal offer to Parents. The District finally made a formal written offer on June 12, 2009 IEP. The District asserts that although it may have committed a procedural violation, Student did not lose an educational benefit as a result because he was making meaningful educational progress with the February 26, 2008 IEP. However, the District's failure to hold a timely IEP team meeting and offer an IEP significantly prevented Parents from participating in Student's educational decision-making process because they did not know the goals, services and educational program that the District would offer. The evidence established

that the District would have offered a substantially similar IEP in February 2009 as that which it offered in June 2009, and that Father would not have consented to the IEP. However, this information is only relevant in the determination of a remedy for the violation, and is not a factor in deciding if the District violated Student's procedural rights. Therefore, the District denied Student a FAPE by failing to hold a timely annual IEP team meeting.

STUDENT'S ISSUE 3A: DURING SY 2009-2010, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO HOLD A TIMELY ANNUAL IEP MEETING?

17. Pursuant to Factual Finding 49 and Legal Conclusions 7, 8 and 15, the District convened a timely annual IEP team meeting and made an IEP offer for SY 2009-2010. While the January 26, 2010 IEP team meeting was a continuation of the June 2009 IEP team meeting, the IEP also constituted Student's annual IEP team meeting. At the January 26, 2010 IEP team meeting, the District presented Student's present levels of performance, slightly revised goals from the June 2009 IEP, with the intent that IEP team meeting constituted Student's annual meeting. Additionally, even if the January 26, 2010 meeting was not Student's annual IEP meeting, Student did not establish any procedural violation that denied him a FAPE because the District presented the same information at the January 26, 2010 IEP team meeting and made the same IEP offer as it would make an annual IEP meeting. Therefore, Student did not establish any procedural violation that denied Student any educational benefit or prevented Parents from meaningfully participating in Student's educational decision-making.

18. A district must also convene an IEP team meeting when a parent requests a meeting to develop, review, or revise the IEP. (Ed. Code, § 56343, subd. (c).) In California, the IEP team meeting must be held within 30 days from the date of receipt of the written request, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays. (Ed. Code, § 56343.5.)

STUDENT'S ISSUE 3K: DURING SY 2009-2010, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO CONVENE A TIMELY IEP MEETING IN RESPONSE TO PARENTS' REQUEST?

19. Pursuant to Factual Finding 71 and Legal Conclusions 7, 8 and 18, the District failed to convene a timely IEP meeting as to Father's request to discuss Student's 2010 ESY program, which prevented him from participating in the decision-making process. While the District did not convene an IEP meeting, the District did provide Father with the information he requested regarding Student's ESY program that it would have provided at an IEP team meeting. Father would not have been satisfied with the District's response at an IEP team meeting based on his desire to control the program. Therefore, Student did not lose any educational benefit because the District's offer was appropriate and Father would have removed Student from the ESY program even if the District held an IEP meeting. Additionally, any delays in the District convening the follow up to the June 2009 IEP meeting were caused by scheduling difficulties on Father as to availability of persons he wished to attend the IEP meeting. Therefore, the District did not deny Student a FAPE as to the follow up to the June 2009 IEP meeting.

STUDENT'S ISSUE 2C: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO REPORT STUDENT'S PROGRESS ON GOALS?

STUDENT'S ISSUE 3C: DURING SY 2009-2010, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO REPORT STUDENT'S PROGRESS ON GOALS AND TRACKING HIS PROGRESS THROUGH HIS REPORT CARDS?

20. Pursuant to Factual Findings 16, 48, 69 and 71 and Legal Conclusions 4, 7, 8, 9 and 15, the District did report to Parents Student's progress on goals and did track his progress through his report cards. Ms. Donchik and Ms. Fox were credible in their testimony that as Student's case manager for SYs 2008-2009 and 2009-2010, respectively, that they sent Parents Student's progress on his goals at the time report

cards were provided. Also, Father's emails to District personnel indicate that he possessed the progress reports. Finally, the District reported on Student's progress at the IEP meetings. Therefore, Student did not establish that the District failed to provide or track his progress through his report cards.

STUDENT'S ISSUE 2D: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO DEVELOP MEASURABLE GOALS AND GOALS TO MEET STUDENT'S UNIQUE NEEDS IN THE AREAS OF BEHAVIOR, ACTIVITIES OF DAILY LIVING, SOCIAL AND EXPRESSIVE LANGUAGE, SOCIAL SKILLS, OT FOR GROSS AND FINE MOTOR SKILLS AND ACADEMICS?

21. Pursuant to Factual Findings 24 through 35 and Legal Conclusions 2 through 6, the District developed measurable and appropriate goals to meet his unique needs. As to measurable goals, Student did not present evidence that the District's proposed goals were not measurable as Student focused on the adequacy of the goals to meet his unique needs. Regarding Student's behavior, it improved at school during SY 2008-2009 as he got used to the large high school campus and the class structure. The behavior problems Student discussed at hearing involved issues at his Parents' homes, and not at school. Student's teachers did not find Student's behavioral issues to be as extreme as they were able to easily redirect Student and improve his behavior with the goals and instructional techniques in his the November 2007 IEP, as amended in February 2008. The District did not propose a specific behavior goal because Student did not require one as the structure of the SDC, an appropriate aide when Student attended general education classes, and his social skills and speech and language goals appropriately addressed his behavioral needs. Therefore, Student did not establish that the District needed to develop a specific behavior goal to provide him with a FAPE. (Factual Findings 5, 6, 7, 27 and 28)

22. Regarding activities of daily living, the only goal Student presented any evidence on regarded shoe tying. While Student had deficits in several areas relating to daily living skills, they were addressed as part of the SDC curriculum with Ms. Donchik, who noted improvement with Student's hygiene, grooming and other activities of daily living. As to shoe tying, Student did not establish why he needed a specific goal in this area to make meaningful educational progress, and the District adequately explained at the IEP team meeting why, despite Father's requests, Student did not require this goal. (Factual Findings 35 and 38.)

23. As to social and expressive language and social skills, Ms. Niizawa established the appropriateness of the District's speech and language goals to meet Student's unique needs based on her working with Student, and the improvement he made with the goals in the District's November 2007 IEP, as amended in February 2008. Student had a significant deficit regarding his ability to carry on a conversation as he would bring up often irrelevant information, did not understand non-verbal cues and had trouble speaking without appearing to stutter. The District's proposed goals addressed these deficits and were reasonably calculated to permit Student to make meaningful educational progress. (Factual Findings 33 and 34.)

24. Finally as to fine and gross motor OT goals, Student did not establish that he needed any specific goals in these areas. As to gross motor deficits, Student did not present evidence that he required specific goals in this area. As to fine motor deficits, Student focused on his need to tie shoes, which as noted above, Student required a specific goal, and his need for a handwriting goal, which Student did not establish that he needed based on the fact, as established by Ms. Lieberman, that any further progress in this area was not expected. (Factual Findings 26, 35 and 38.)

STUDENT'S ISSUE 3D: DURING SY 2009-2010, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO DEVELOP MEASURABLE GOALS AND GOALS TO MEET STUDENT'S UNIQUE NEEDS IN THE AREAS OF BEHAVIOR, ACTIVITIES OF DAILY LIVING, SOCIAL AND EXPRESSIVE LANGUAGE, SOCIAL SKILLS, OT FOR GROSS AND FINE MOTOR SKILLS AND ACADEMICS?

STUDENT'S ISSUE 4C: DURING SY 2010-2011, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO DEVELOP MEASURABLE GOALS AND GOALS TO MEET STUDENT'S UNIQUE NEEDS IN THE AREAS OF BEHAVIOR, ACTIVITIES OF DAILY LIVING, SOCIAL AND EXPRESSIVE LANGUAGE, SOCIAL SKILLS, OT FOR GROSS AND FINE MOTOR SKILLS AND ACADEMICS?

25. The District proposed substantially similar goals at the January 26, 2010 IEP as it did in June 2009, and included, due to Father's request, a handwriting goal. Pursuant to Factual Findings 50 through 63 and 97 through 107 and Legal Conclusions 2 through 6, the District's proposed goals were reasonably calculated to permit Student to make meaningful educational progress. Student continued to make meaningful educational progress with the functional academic program contained in the November 2007 IEP, as amended in February 2008, based on his performance in his SDC and general education classes, and the job-training program. Student did not present sufficient evidence that there was a significant change in his unique needs that would necessitate a wholesale revision of the District's proposed goals from June 2009, or that Student needed specific behavior and adaptive living goals to address issues that occurred outside of school. Therefore, Student did not establish that the District denied him a FAPE by failing to offer adequate goals to permit him to make meaningful educational progress.

STUDENT'S ISSUE 2E: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO ADDRESS STUDENT'S ADAPTIVE SKILLS DEFICITS IN THE AREAS OF INDEPENDENCE, SAFETY, ACTIVITIES OF DAILY LIVING; PROMPT DEPENDENCY AND FUNCTIONING IN A SCHOOL ENVIRONMENT?

STUDENT'S ISSUE 3E: DURING SY 2009-2010, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO ADDRESS STUDENT'S ADAPTIVE SKILLS DEFICITS IN THE AREAS OF INDEPENDENCE, SAFETY, ACTIVITIES OF DAILY LIVING, PROMPT DEPENDENCY AND FUNCTIONING IN A SCHOOL ENVIRONMENT?

STUDENT'S ISSUE 4D: DURING SY 2010-2011, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO ADDRESS STUDENT'S ADAPTIVE SKILLS DEFICITS IN THE AREAS OF INDEPENDENCE, SAFETY, ACTIVITIES OF DAILY LIVING; PROMPT DEPENDENCY AND FUNCTIONING IN A SCHOOL ENVIRONMENT;

26. Pursuant to Factual Findings 34, 52, 63 and 98 through 107 and Legal Conclusions 2 through 6, Student did not establish that the District failed to address Student's adaptive skills deficits during SYs 2008-2009 through 2010-2011. The District had accurate information regarding Student's present levels of performance as to his adaptive living skills deficits based on observations from his Parents, teachers, service providers and aides, performance in his job training program and finally Dr. Sullivan's assessment. As to safety, Student safely navigated the high school campus, could walk home independently, and Father's concerns related to Student's behavior outside school, not in school. The District's educational program that focused on teaching Student necessary functional skills and academics that adequately addressed his unique needs regarding adaptive skills deficits. The District worked with Student to increase his independence and to help him to avoid becoming dependent on his aide in his general education classes. However, due to his intellectual disability, Student will always have significant adaptive skills deficits, as established in Dr. Sullivan's assessment, and the educational program used and proposed by the District over the numerous IEP team meetings during the SYs in question adequately addressed Student's unique needs.

Student's request for adaptive skills to perform in academic classes was unrealistic because Student was not cognitively capable of obtaining a high school diploma, even with significant accommodations and modifications. Therefore, Student did not establish that the District denied him a FAPE as to adaptive living skills.

STUDENT'S ISSUE 2G: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER SOCIAL SKILLS TRAINING?

STUDENT'S ISSUE 3G: DURING SY 2009-2010, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER SOCIAL SKILLS TRAINING?

STUDENT'S ISSUE 4E: DURING SY 2010-2011, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER SOCIAL SKILLS TRAINING?

27. Pursuant to Factual Findings 5, 27, 28, 86, 87, 88 and 111 and Legal Conclusions 2 through 6, Student did not establish that the District failed to offer adequate social skills training. The information in the February 2009 assessment by Ms. Winner and Ms. Crooke involved Student's social skills deficits outside of school. Additionally, the District was already implementing most of the recommendations in Ms. Winner's and Ms. Crooke's report. Dr. Sullivan established that the District's functional skills and academics program appropriately addressed Student's social skills deficit, and Student did not present evidence on how the District's educational program failed to meet his needs, except for examples that occurred outside of school when Student was with Father. Therefore, Student did not establish that the District denied him a FAPE as to social skills training.

STUDENT'S ISSUE 2H: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER AN APPROPRIATE AMOUNT OF WEEKLY SPEECH AND LANGUAGE SERVICES IN AN INDIVIDUAL SETTING?

28. Pursuant to Factual Findings 18, 36 and 37 and Legal Conclusions 2 through 6, Student did not establish that the District failed to provide him with adequate speech and language services during SY 2008-2009. Ms. Niizawa was convincing that the District offered adequate speech and language services based on her February 2008 assessment and her work with Student. Student did not introduce evidence to challenge Ms. Niizawa's testimony. Therefore, Student did not establish that the District denied him a FAPE regarding speech and language services during SY 2008-2009.

STUDENT'S ISSUE 2I: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER AN APPROPRIATE AMOUNT AND TYPE OF WEEKLY OT?

STUDENT'S ISSUE 3H: DURING SY 2009-2010, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER AN APPROPRIATE AMOUNT AND TYPE OF WEEKLY OT?

STUDENT'S ISSUE 4F: DURING SY 2010-2011, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER AN APPROPRIATE AMOUNT AND TYPE OF WEEKLY OT?

29. Pursuant to Factual Findings 17, 35, 36, 38, 62, 65, 93, 94, 95, 105 and 109 and Legal Conclusions 2 through 6, Student did not establish that the District failed to offer Student with adequate OT services during SYs 2008-2009 through 2010-2011. Student's critique of the District's OT services focused on whether the District was adequately assisting Student with his handwriting and learning to tie his shoes. As to handwriting, Ms. Lieberman established that additional work with Student in pull-out OT sessions would not improve his handwriting anymore than the work the District was doing with OT consultation in Student's SDC, and Ms. Donchik's, Ms. Fox's and Ms. Chin's work with Student in his SDC and English MP classes, along with his aide

during his general education classes. Regarding shoe tying, Student did not establish that the District needed to have had a goal in this area, or that the District's OT services were not adequate to allow Student to work on activities of daily living OT skills, like shoe tying, during his SDC and OT services provided by Ms. Lieberman. Therefore, Student did not establish that the District failed to offer adequate OT services to meet his unique needs.

IEP TEAM ATTENDEES

30. An IEP team is required to include: one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about available resources; a person who can interpret the instructional implications of assessment results; at the discretion of the parties, other individuals; and when appropriate, the person with exceptional needs. (34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].)

STUDENT'S ISSUE 20: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO HAVE ALL APPROPRIATE PERSONS ATTEND STUDENT'S IEP MEETINGS?

31. Pursuant to Factual Findings 12, 22, 23 and 44 and Legal Conclusions 7, 8, 9 and 30, the record is unclear for SY 2008-2009 about the attendance of a general education teacher at the IEP team meetings. All other required persons attended the meetings. The District was in the best position to document who attended the SY 2008-2009 IEP team meetings because it maintains Student's educational records, and Ms. Zigler, the District administrator and person who generated the IEP documentation was

available to testify. Student established through the lack of IEP documentation due to the change of computer systems that there was not a general education teacher in attendance at IEP team meetings in the SY 2008-2009. Evidentiary presumptions are on the District to produce the evidence that a general education teacher attended Student's IEP team meetings. Because Student attended general education classes and the District was proposing that Student continue to attend general education classes, the District needed to have a general education attend Student's IEP team meetings, or obtain a parental waiver, which did not occur. It was important to have a general education teacher attend IEP meetings to enable Parents to fully participate in Student's educational decision-making process. This is because Parents could then ask a general education teacher questions regarding Student's progress, especially his interaction with general education students, which were necessary questions due to his significant deficits in social skills. Although Ms. Zigler was available to testify as to whether or not there was a general education teacher attending these IEP meetings, she was not called as a witness, and no other witnesses or other documentation presented as evidence could establish that a general education teacher attended these meetings. Therefore, the District denied Student a FAPE by failing to ensure the attendance of a general education teacher at the February, May and June 2009 IEP team meetings, which prevented Parents from significantly participating in the educational decision-making process.

STUDENT'S ISSUE 3L: DURING SY 2009-2010, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO HAVE ALL APPROPRIATE PERSONS ATTEND STUDENT'S IEP MEETINGS?

32. Pursuant to Factual Findings 49, 68, 69 and 70 and Legal Conclusions 7, 8, 9 and 30, the District had a general education teacher attend the January 26, 2010 IEP team meeting as Student's Spanish teacher, Ms. Garrison attended. Although she did

not attend the entire meeting, Student did not establish that her attendance was needed for the entire meeting as Ms. Garrison presented information as to Student's progress in her class, especially how he interacted with the general education classmates and performance on homework and quizzes. Father's fixation on Student's participation in his Spanish class did not require Ms. Garrison to attend the entire IEP meeting because the District still needed to discuss his progress in his other classes, especially his SDC classes and job training program. As to a general education teacher's attendance at the subsequent April 2010 IEP meeting, this meeting was mainly informational and not for the development of any changes to Student's IEP, but Ms. Garrison attended to present information as to Student's present levels and her attendance was not needed for the remainder of the IEP meeting. Therefore, Student did not establish that the District failed to have appropriate persons attend Student's IEP team meetings as the District had a general education teacher attend the meetings. In addition, all other required persons attended the IEP team meetings at issue.

Written Offer

33. An IEP must contain the projected date for the beginning of services and the anticipated frequency, location, and duration of those services. (20 U.S.C. § 1414(d)(1)(A)(VII); Ed. Code, § 56345, subd. (a)(7).)

34. The Ninth Circuit has observed that the formal requirements of an IEP are not merely technical, and therefore should be enforced rigorously. A district has an obligation to make a formal written offer in the IEP that clearly identifies the proposed program. The requirement of a coherent, formal, written offer creates a clear record that helps eliminate factual disputes about when placements were offered, what placements were offered, and what additional assistance was offered to supplement a placement. It also assists parents in presenting complaints with respect to any matter relating to the

educational placement of the child. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526; *J.W., supra*, 626 F.3d. at pp. 459-460.

STUDENT'S ISSUE 2N: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO MAKE A CLEAR WRITTEN OFFER OF SERVICES?

STUDENT'S ISSUE 3J: DURING SY 2009-2010, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO MAKE A CLEAR WRITTEN OFFER OF SERVICES?

STUDENT'S ISSUE 4A: DURING SY 2010-2011, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO MAKE A CLEAR WRITTEN OFFER OF SERVICES FOR THIS SCHOOL YEAR?

35. For SY 2008-2009 at issue, pursuant to Factual Findings 12, 34 and 44 and Legal Conclusions 7, 8, 9, 33 and 34, the District did not make a clear written offer of services. The District failed to make an offer in February 2008 for Student's annual IEP, and then only made an offer right before the end of the school year to be implemented in SY 2009-2010. Therefore, the District denied Student a FAPE by failing to make a clear written offer for SY 2008-2009.

36. In contrast, pursuant to Factual Findings 48, 49, 67, 96, 97 and 118, the District made a clear written offer for SYs 2009-2010 and 2010-2011. Student did not establish that the June 2009 IEP was not a clear written offer for the 2009 ESY and first half of SY 2009-2010. The District timely held Student's annual IEP team meeting on January 26, 2010, and Student did not establish that this IEP was not a clear written offer of services that carried through to January 6, 2011, when the District made a timely, clear written offer of services for the remainder of SY 2010-2011. Therefore, Student did not establish that District denied him a FAPE because the District made clear written offers of services for SYs 2009-2010 and 2010-2011.

BEHAVIOR NEEDS

37. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, "strategies, including positive behavioral interventions, strategies, and supports to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324; Ed. Code, § 56341.1, subd. (b)(1).) As noted by the comments to the 2006 federal implementing regulations, "[D]ecisions [as to the interventions, supports, and strategies to be implemented] should be made on an individual basis by the child's IEP team." (64 Fed.Reg. 12620 (2006).) California law defines behavioral interventions as the "systematic implementation of procedures that result in lasting positive changes in the individual's behavior," including the "design, implementation, and evaluation of individual or group instructional and environmental modifications . . . designed to provide the individual with greater access to a variety of community settings, social contacts and public events; and ensure the individual's right to placement in the least restrictive environment as outlined in the individual's IEP." (Cal. Code Regs., tit. 5, § 3001, subd. (d).) An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1029.)

38. A student who has been determined to be an individual with exceptional needs and who is suspected of needing mental health services may, after the student's parent has consented, be referred to a community mental health service in accordance with Government Code section 7576 when the student meets criteria for referral specified in California Code of Regulations, title 2, section 60040, and the school district has, in accordance with specific requirements, prepared a referral package and provided it to the community mental health service. (Ed. Code, § 56331, subd. (a); Cal. Code Regs., tit. 2, § 60040, subd. (a).) Once a parent has signed and returned an assessment plan the LEA must develop an IEP required as a result of the assessment and convene an IEP

meeting no later than 60 calendar days from the date of receipt of the parent's written consent, unless the parent agrees in writing to an extension. (20 U.S.C. § 1414(a)(1)(C)(i)(I); Ed. Code, §§ 56043, subd. (c); 56344, subd. (a).)

STUDENT'S ISSUE 2F: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO MAKE A REFERRAL TO THE COUNTY DEPARTMENT OF MENTAL HEALTH FOR A MENTAL HEALTH ASSESSMENT?

STUDENT'S ISSUE 3F: DURING SY 2009-2010, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO MAKE A REFERRAL TO THE COUNTY DEPARTMENT OF MENTAL HEALTH FOR A MENTAL HEALTH ASSESSMENT?

39. Pursuant to Factual Findings 28, 29 and 55 and Legal Conclusions 2 through 6, 37 and 38, Student did not establish that the District needed to make a referral to the county department of mental health to assess Student. Student did not present significant behavior problems at school and he responded well to the instruction and techniques used by the District. Issues raised by Parents at IEP team meetings involved Student's behavior at home and in the community, which did not occur at school, and which were the result of family issues and pressure exerted by Father on Student to perform academically beyond his cognitive ability. The assessment conducted by Ms. Winner and Ms. Crooke only discussed Student's behavior outside of school, and behavior problems found in Dr. Sullivan's assessment related to Student's behavior at home with his Parents. Information from Student's teachers and Dr. Sullivan established that Student's behavior did not significantly interfere with his ability to access his curriculum that he required mental health services. Therefore, Student did not establish that the District denied him a FAPE by not making a mental health assessment referral to county mental health.

TRANSITION SERVICES

40. An IEP that will be in effect when a student turns 16 is required to contain an ITP. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); Ed. Code, § 56345, subd. (a)(8).) The ITP must include appropriate measurable postsecondary goals based upon transition assessments related to training, education, and employment and independent living skills if appropriate. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa); Ed. Code, § 56345, subd. (a)(8)(A).) The ITP must also list the transition services required to reach the postsecondary goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(bb); Ed. Code, § 56345, subd. (a)(8)(B).) "Transition services" means "a coordinated set of activities for an individual with exceptional needs" that: (1) is designed within a results-oriented process that is focused on improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the pupil from school to post-school activities, including postsecondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation; (2) is based upon the individual needs of the pupil, taking into account the strengths, preferences, and interests of the pupil; and (3) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).) Transition services may consist of specially designed instruction or a designated instruction and service. (34 C.F.R. § 300.43(b); Ed. Code, § 56345.1, subd. (b).)

STUDENT'S ISSUE 2K: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO DEVELOP AN APPROPRIATE ITP?

41. Pursuant to Factual Findings 19, 43, 64, 116, 117 and 118 and Legal Conclusions 2 through 6 and 40, the District failed to develop an appropriate ITP. The

District needed to have an ITP in November 2008, when it should have held Student's annual IEP team meeting, but failed to make an offer until June 2009. The District's June 2009 ITP was sparse as to postsecondary goals and transition services. While the IEP contains functional academic and skills goals, the IEP fails to tie these goals into Student's ITP for a measurable postsecondary goal. The ITP just appears to be based on discussion with Student, and the ITP and IEP contain scant information as to Student's input. The ITP stated that the District would conduct a transition assessment in the spring, without indicating whether it was spring 2009 or 2010. While the District wanted Student to participate in its functional life skills program, especially the job training program at the VA hospital, the completion of the ITP appeared to be an afterthought for the District. Therefore, Student established that the District denied him a FAPE by failing to develop an appropriate ITP.

LEAST RESTRICTIVE ENVIRONMENT

42. Federal and state law require a school district to provide special education in the LRE. A special education student must be educated with nondisabled peers "to the maximum extent appropriate," and may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general education classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii) (2006).) In light of this preference, and in order to determine whether a child can be placed in a general education setting, the Ninth Circuit, in *Sacramento City Unified Sch. Dist. v. Rachel H.* (1994) 14 F.3d 1398, 1403, adopted a balancing test that requires the consideration of four factors: (1) the educational benefits of placement full-time in a less restrictive class; (2) the non-academic benefits of such placement; (3) the effect the student would have on the teacher and children in the less restrictive class; and (4) the costs of mainstreaming the student.

43. A specific educational placement means that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the student's IEP, in any one or a combination of public, private, home and hospital, or residential settings. (Cal. Code Regs., tit.5, § 3042.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

STUDENT'S ISSUE 2M: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO CONSIDER A CONTINUUM OF EDUCATIONAL PLACEMENT OPTIONS?

44. Pursuant to Factual Findings 111 through 115 and Legal Conclusions 2 through 6, 42 and 43, the District did consider a continuum of placement options at the IEP meetings. At all the IEP meetings, Father expressed his desire that Student have a more challenging educational program and not be confined to Ms. Donchik's SDC. The District considered Father's input by ensuring that Student had appropriate general education courses, a higher functioning English special education class and functional skill classes as the District considered other options, but rejected them for not being appropriate for Student based on his present levels of performance, areas of deficit and cognitive impairment. Student did not establish that the District denied him a FAPE because Student failed to establish that the District did not consider a continuum of placement option simply because the District did not agree to Father's request.

STUDENT'S ISSUE 3B: DURING SY 2009-2010, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE ACCOMMODATIONS AND MODIFICATIONS FOR STUDENT'S GENERAL EDUCATION CLASSES?

STUDENT'S ISSUE 4B: DURING SY 2010-2011, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER APPROPRIATE ACCOMMODATIONS AND MODIFICATIONS FOR STUDENT'S GENERAL EDUCATION CLASSES?

45. Pursuant to Factual Findings 42, 64 and 108 and Legal Conclusions 2 through 6, Student did not establish that the District failed to offer him appropriate accommodations and modifications for him to make meaningful educational progress in his general education classes. The District provided Student with an aide, who made sure that Student remained on task, participated in class activities and assisted him with his class work, and allowed Student to dictate work to his aide. Father had the unrealistic expectation that Student could perform much better academically in his general education classes, especially Spanish. However, the District provided Student with adequate accommodations and modifications and Student made as much progress as he could in his general education classes based on his intellectual disability. Student did not establish other accommodations or modifications that the District should have used to make meaningful education progress, and therefore Student failed to prove that the District denied him a FAPE.

EXTENDED SCHOOL YEAR

46. California Code of Regulations, Title 5, section 3043, provides that extended school year services shall be provided for each individual with unique and exceptional needs who requires special education and related services in excess of the regular academic year. Pupils to whom ESY services must be offered under section 3043 ". . . shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression,

when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition.” (See also, 34. C.F.R. § 300.106; Ed. Code, § 56345, subd. (b)(3); *Hellgate, supra*, 541 F.3d. at pp. 1210-1211.)

STUDENT’S ISSUE 2J: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO MAKE AN OFFER OF ESY SERVICES?

STUDENT’S ISSUE 3I: DURING SY 2009-2010, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO MAKE AN OFFER OF ESY SERVICES?

47. Pursuant to Factual Findings 46 and 66 and Legal Conclusions 2 through 6, 7, 8, 34 and 46, the District made an offer of ESY for the 2009 and 2010 ESYs, as documented in the June 2009 and January 2010 IEPs. Student’s challenge to the District ESY offers focused more on the program content due to Father’s desire that Student not spend the summer in a SDC, which is not an issue for hearing, just whether the District made an offer of ESY services. Therefore, Student failed to establish that the District did not make an offer of ESY services.

EDUCATIONAL RECORDS

48. Pupil or education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act (FERPA). (20 U.S.C. § 1232; 34 C.F.R. § 99.3.) Pupil records include any item of information “directly related to an identifiable pupil, other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm or other means.” (Ed. Code, §§ 49061, 56504.) Pupil records do not include informal notes related to a pupil compiled by a school officer or employee which remain in the sole possession of the maker, and are

not accessible or revealed to any other person except a substitute. (20 U.S.C. § 1232g(4)(b); Ed. Code, § 49061, subd. (b).)

STUDENT'S ISSUE 2B: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO PROVIDE COPIES OF ALL IEPs DEVELOPED DURING SPRING 2009?

STUDENT'S ISSUE 2L: DURING SY 2008-2009, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO PRODUCE A COPY OF STUDENT'S EDUCATIONAL RECORDS REGARDING STUDENT DISCIPLINE?

49. Pursuant to Factual Finding 16 and Legal Conclusions 7, 8, 9 and 48, Student did not establish that the District failed to provide either copies of IEPs developed in spring 2009 or a copy of his educational records regarding a disciplinary incident. As to the IEPs, while the switch of computer system compromised the District's record keeping, Student did not present evidence that the District did not provide Parents with copies of the spring 2009 IEPs after each IEP team meeting. As to the disciplinary records, Student did not present evidence that Parents had even requested these records or when the District failed to produce any requested records. Therefore, Student failed to establish that the District failed to provide copies of Spring 2009 IEPs or disciplinary records.

DISTRICT'S ISSUE 1: WAS THE IEP OF JANUARY 6, 2011, AS CLARIFIED ON MARCH 3, 2011, REASONABLY CALCULATED TO PROVIDE STUDENT WITH MEANINGFUL EDUCATIONAL PROGRESS IN THE LRE?

50. The District asserted that its January 6, 2011 IEP, as clarified on March 3, 2011, was reasonably calculated to permit Student to make meaningful educational progress because it was based on accurate information as to Student's suspected disabilities, present levels of performance, contained adequate related services and properly focused on improving Student's functional life skills. Student contended that

the District's proposed IEP underestimated Student's abilities by pigeon-holing him into a functional life skills program when he should be working towards a high school diploma, and failed to provide him with adequate supports and services for him to make meaningful educational progress.

51. Pursuant to Factual Findings 24 through 27, 49 through 56, 73 through 95 and 97, the District had accurate information as to Student's unique needs from teacher observations, classroom performance and the assessments conducted by Dr. Sullivan, Ms. Niizawa and Ms. Lieberman. Dr. Sullivan's assessment accurately determined that Student was mildly intellectually disabled with an IQ of 60, with significant deficits in his ability to process complex information and to perform increasingly more difficult tasks. Dr. Sullivan correctly found that Student does not have the ability to perform academically, even with significant accommodations and modifications, at the level necessary to obtain a high school diploma, and he required a functional skills program to prepare him for independence and gainful employment. As to Ms. Niizawa's and Ms. Lieberman's assessments and recommendations for speech and language and OT services, Student did not present credible evidence to challenge their findings and recommendations.

52. Pursuant to Factual Findings 98 through 107 and Legal Conclusions 2 through 6, the District developed appropriate goals to address Student's unique needs in the areas of behavior, activities of daily living, social and expressive language, social skills, OT for gross and fine motor skills and academics. As to Student's behavior and social skills, they had improved steadily since Student entered high school. The District's proposed goals continued on the same, successful path as prior goals, by building upon the prior goals with more complex skills for Student to work on. Additionally, as to academics, especially math, Student did not demonstrate that the District's present levels of performance were not accurate and that the District proposed reading and

math goals were not difficult enough for Student. Student did not challenge the appropriateness of the District's proposed speech and language or gross motor OT goals with any credible evidence. As to fine motor OT goals, the District added a handwriting goal to placate Father, even though Student did not need this goal to make meaningful educational progress, nor did Student require a shoe-tying goal. Finally, the District's proposed goals were adequate to address Student's deficits as to his activities of daily living because the goals worked to teach him functional skills needed for independence and employment.

53. The District proposed adequate accommodations and modifications to permit Student to make meaningful educational progress during his general education classes as the aide would assist Student on tests, quizzes and worksheets, and read questions aloud to Student, which the District had implemented during the last school year for Student's Spanish class. Additionally, the District would continue to provide Student with an aide during his general educational classes. The District established that these accommodations and modifications were adequate to permit Student to make meaningful educational progress, especially since he did not require general education academic classes, like Spanish, because his educational program needed to focus on functional life and academic skills. (Factual Findings 108.)

54. The District offered adequate speech and language and OT services to address Student's unique needs. Student's challenge to the District's offer of speech and language services focused on whether these sessions, without additional social skills services, could address Student's social skills deficits, not that the District's offer was not adequate to meet his speech and language needs. (Factual Findings 109 and 110.) The District established that its functional life skills program, including speech and language services, were adequate to address Student's social skills needs. (Factual Findings 110, 112 through 118.) As to OT, Student's challenge focused on goals and not the delivery

of services. Ms. Niizawa and Ms. Lieberman established the adequacy of the District's speech and language and OT offers of related services.

55. Regarding placement, the District considered a continuum of placement options, but decided that based on all information presented at the IEP meeting that Student needed a functional life skills program and not the academic program preferred by Father. Student received little academic benefit in his general education classes due to his intellectual disability, as established by Dr. Sullivan's assessment, and he required an educational program that focused on teaching him functional life and academic skills that he could receive in a District SDC. As to non-academic benefits, the District did not isolate Student because it proposed that he attend three general education classes, which was adequate for him to get the non-academic benefit of interacting with general education students. However, Student would not benefit from Father's request of only academic classes, PE and study skill classes because Student had no peer interaction in the study skill classes, whereas he had friends and social interactions in his SDC. Therefore, the District placement offer, which was a mix of SDC and general education classes, was the LRE for Student. (Factual Findings 112 through 118 and Legal Conclusions 2 through 6, 42 and 43.)

56. Finally as to Student's ITP, the District developed an appropriate goal for Student to work on developing job interests and how to apply for a job. The ITP focused on providing services to Student through a job coach and his case manager to work on job skills, and for Student to participate in the job training program at the VA hospital. Student did not challenge the appropriateness of the ITP and Ms. Wade established the appropriateness of the ITP based on Student's unique needs. Therefore, the District's January 6, 2011 IEP was reasonably calculated to provide Student with meaningful educational progress in the LRE. (Factual Findings 116, 117 and 118.)

Relief

57. ALJs have broad latitude to fashion equitable remedies appropriate for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).)

58. Appropriate equitable relief, including compensatory education, can be awarded in a due process hearing. (*Burlington, supra*, 471 U.S. at p. 374; *Puyallup, supra*, 31 F.3d at p. 1496.) The right to compensatory education does not create an obligation to automatically provide day-for-day or session-for-session replacement for the opportunities missed. (*Park, supra*, 464 F.3d at p. 1033 (citing *Puyallup, supra*, 31 F.3d at p. 1496).) An award to compensate for past violations must rely on an individualized analysis, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*) The award may consist of additionally training for special education staff. (See *Park, ex rel. Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034.)

59. The District denied Student a FAPE during SY 2008-2009 and the first half of SY 2009-2010 because the District failed to hold a timely annual IEP team meeting, and when the District made an IEP offer, it failed to have the required IEP team members by not including a general education teacher. (Legal Conclusions 16, 17, and 31.) Additionally, Student did not have an adequate ITP from February 2008 through August 2010, when Student entered into the interim agreement that did not provide for any transitional services. (Legal Conclusion 41.) Finally, the District failed to convene an IEP meeting to discuss the 2010 ESY program after Father's request. (Legal Conclusion 19).

However, the relief Student requested at hearing focused on Student having an academic program that would permit him to graduate with a high school diploma, along with teaching Student skills and providing him with accommodations and modifications that he needed to succeed in these academic classes. Student did not demonstrate that he was intellectually capable of undertaking such course of study, even with significant District support and accommodations and modifications. Additionally, the District established that Student made meaningful educational progress with the functional life skills program that Student had upon entering high school and Student was unable to handle the educational program Father requested and obtained in the interim agreement.

60. Additionally, while the District denied Student a FAPE by failing to conduct an OT assessment from July 7, 2008 through October 2010 (Legal Conclusion 10), Student did not establish that he lost any educational benefit. Even if the District had timely assessed Student, the results of the OT assessment would have supported the District's IEP offers for OT goals and services in the June 2009 and January 2010 IEPs.

61. Student did not establish what compensatory education would be appropriate based on the District's denial of FAPE during SY 2008-2009 and the first half of SY 2009-2010. While an ALJ has the authority to craft an appropriate compensatory education award based on the evidence presented at hearing, the evidence established that Student would have made the same amount of educational progress, which was meaningful, except services related to Student's ITP, regardless of whether the District made an appropriate IEP offer in February 2009 or timely performed an OT assessment.

62. Therefore, regarding the District's denial of FAPE for failing to develop an appropriate ITP, the District needs to provide Student with an additional hour a month of career awareness or job coaching to work on skills student needs to obtain and maintain employment.

63. As to the District's failure to hold a timely IEP meeting, not having required general education teachers at Student's IEP team meetings, District's failure to adequately document who attended IEP team meetings and failure to timely assess in all areas of suspected disability, it is apparent that District high school special education staff need additional training in these areas to ensure that the procedural rights of students, including Student, are adhered to in future IEP team meetings.

ORDER

1. For SY 2011-2012, the District shall provide Student with one hour a month of career awareness or job coaching to work on skills Student needs to obtain and maintain employment.

2. Within 90 days of this Decision, the District shall provide a six-hour training to its high school special education personnel who convene IEP team meetings and draft IEPs on ensuring that the District holds timely IEP meeting, has in attendance all required IEP team meeting members, especially general education teachers, adequately documents who attended the IEP team meeting and the results of the meeting, and ensure timely assessments of students in all areas of suspected disability.

3. The District's IEP of January 6, 2011, as clarified on March 3, 2011, offered Student a FAPE in the LRE. The District may implement its IEP offer without parental permission if the Educational Rights Holder for Student wishes that Student to receive special education and related services.

4. All of Student's other requests for relief are denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided.

Student prevailed on Student Issues 2a, 2k, and 2o and partially prevailed on Student's Issues 1 and 3k. The District prevailed on Student Issues 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i, 2j, 2l, 2m, 2n, 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, 3j, 3l, 3a, 4b, 4c, 4d, 4e, 4f and District Issue 1, and partially prevailed on Student's Issue 1 and 3k.

RIGHT TO APPEAL THIS DECISION

This is a final administrative Decision, and all parties are bound by this Decision. The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. (Ed. Code, § 56505, subd. (k).)

Dated: July 15, 2011



PETER PAUL CASTILLO

Administrative Law Judge

Office of Administrative Hearings