BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. FRESNO UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2012020778

CORRECTED DECISION[1]

Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH), State of California, heard this matter in Fresno, California, on May 29, through June 1, 2012.

Student's Mother and Father represented Student.[2] Student's Mother and Father were present on all hearing days. Student attended the hearing on May 29 and 30, 2012, but did not testify on his behalf.

Sang-Jin Nam and Melody Hawkins, Attorneys at Law, represented Fresno Unified School District (District). Debbi Clark-Fleming, District Special Education Manager II, attended all portions of the hearing.

Student filed a request for a due process hearing (complaint) on February 21, 2012. On April 4, 2012, OAH granted the District's request to continue the hearing dates.

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[1] The previously issued July 23, 2012 decision is corrected concerning the hearing location and paragraph 1 of the Order. No other changes to the decision were made.

[2] Student transferred his educational rights to his Mother on or about February 3, 2010.

On May 14, 2012, OAH granted the District's second request to continue the hearing dates, and the hearing was held as scheduled. At hearing, witness testimony and documentary evidence were received, and the evidentiary record was closed. At the parties' request, the ALJ allowed the parties to fax or mail written closing argument by June 22, 2012, and if either of them mailed a closing brief, the matter would be closed when OAH received the closing brief. The District submitted its closing briefs on June 22, 2012, by fax, and Student mailed his closing brief, which OAH received on June 26, 2012. The matter was submitted for decision on June 26, 2012.[3]

ISSUES[4]

1: Did the District deny Student a free appropriate public education (FAPE) by changing his special education placement from a regular high school to an adult transition program (ATP) without parental consent after the 2010-2011 school year (SY)?

2: From March 17, 2010 to the present, did the District deny Student a FAPE by significantly impeding Parents' ability to meaningfully participate in the educational decisions to change Student's placement from a regular high school to an ATP?

3: From March 17, 2010 to the present, did the District deny Student a FAPE by preventing him from participating in school activities and functions?

4: Did the District deny Student a FAPE by not providing him with special education services after the end of SY 2010-2011?

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[3] The closing briefs have been marked as exhibits. Student's brief has been marked as Exhibit S-12, and District's brief has been marked as Exhibit D-55.

[4] These issues are those framed in the May 14, 2012 Order Following Prehearing Conference and as further clarified at hearing. The ALJ has reorganized the issues for this Decision.

REQUESTED REMEDIES

Student requests that the District return Student to Fresno High School (FHS) and be ordered to permit Parent's meaningful participation in Student's educational decision-making process and develop an appropriate individualized education program (IEP) for his regular high school placement.

CONTENTIONS OF THE PARTIES

Student contends that the District unilaterally changed his placement at the end of the SY 2010-2011 SY when the District determined that Student had graduated from FHS with a certificate of completion instead of a diploma. Additionally, the District unilaterally changed Student's placement by requiring him to attend the ATP at the Instructional Media Center at the start of the SY 2011-2012, as set forth in the District's June 8, 2011 IEP offer, though student did not accept the offer. Student also asserts that the District denied Parents the ability to meaningfully participate in Student's educational decision-making process by harassing Parents and predetermining Student's educational program for SY 2011-2012.[5]. Finally, the District failed to permit Student to participate in senior class activities during SY 2010-2011 and did not provide Student with educational services after his graduation and removal from FHS.

The District argues that Parents agreed to Student moving from FHS to an ATP in his last agreed upon and implemented educational program, the October/November

[5] The issues for hearing do not involve any determination whether the District's June 8, 2011 IEP offer for Student's placement at the ATP at the Instructional Media Center provided Student with a FAPE, and does not prevent Student from filing a new complaint to challenge the adequacy of the June 8, 2011 offer of goals, services and placement. (20 U.S.C. § 1415(o); Ed. Code 56509.)

2007 IEP, which remained in effect from year to year. In that IEP, Parents agreed Student would graduate with a certificate of completion, not a regular diploma, after completing 230 credits due to Student's cognitive limitations. Further, Parents refused to agree to cooperate in the IEP process because they demanded that the District allow Student to attend a fifth year at FHS and never considered an ATP. The District contends that Student participated in most senior class activities, and that Parents have refused to permit Student to attend its ATP to receive special education services. Finally, the District contends that placement at an ATP for special education instruction and vocational training is Student's stay put placement as a natural progression after high school.

FACTUAL FINDINGS

JURISDICTION AND FACTUAL BACKGROUND

1. Student is currently 20 years old, resides with his Parents within the District's geographical boundaries and finished his senior year at FHS in June 2011. Student is eligible for special education services under the primary category of autistic-like behaviors and secondary category of intellectual disability.[6] During his attendance at FHS, Student typically attended four special day classes and two general educational classes each semester.

[6] In 2010, Congress deleted references to "mental retardation" in the 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].)

LAST AGREED UPON AND IMPLEMENTED EDUCATIONAL PROGRAM

2. Student contends that the District improperly graduated him from FHS because no IEP existed in which Parents consented to his graduation. The District asserts that the District and Parents discussed at the start of SY 2007-2008 Student's educational plans for high school and agreed that Student would work towards a certificate of completion, not a regular education diploma, and would graduate upon its completion.

3. Parents and the District met in two IEP team meetings, October 11, 2007 and November 14, 2007 (October/November 2007 IEP), during Student's ninth grade at FHS. At the end of the November 14, 2007 IEP team meeting, Parents provided written consent, and the District implemented this IEP. The IEP provided for Student to attend four special education classes and two general education classes, and Student would have a one-to-one aide for the entire school day. The District provided transportation to and from school with an aide. The IEP also provided Student with occupational therapy (OT) for 30 minutes a month with direct and consultative services; and speech and language (S/L) therapy for 30 minutes a session, two times a week, in individual or small group sessions. Student also received adaptive physical education (APE) for 20 minutes a month. The IEP also stated that Student would graduate with a certificate of completion, and not a regular education diploma, as the members of the IEP team, including Parents, acknowledged that due to Student's intellectual disability he did not have the cognitive ability to complete the graduation requirements for a regular diploma. Thus, Parents agreed in this IEP that Student's educational program would focus on teaching functional life skills, and would not be a diploma-track program that would meet all State and District academic requirements for regular graduation from high school.

4. In the District, graduating with a certificate of completion requires a student to obtain 230 credits. Neither side presented evidence regarding discussions at the October/November 2007 IEP team meeting as to Student's educational plans after he completed high school with a certificate of completion. However, at hearing, the District established that the typical progression, after a student graduates from a District high school with a certificate of completion, is that the student will enter an ATP program to receive special education services through the age of 22.

5. Student, through his Parents, attempted to demonstrate that they did not understand the District's offer and that the October/November 2007 IEP introduced at hearing, was not the IEP that Parents had agreed for the District to implement. Mother's testimony on this issue was not plausible as she is a highly educated person with a bachelor's degree and teaching credential, teaching elementary school age children within the District, and had displayed an understanding of her procedural rights and the special education process. Additionally, Student did not introduce any other IEP document or reliable evidence to establish that the October/November 2007 IEP the District presented at hearing, was not authentic or accurate.

6. After the October/November 2007 IEP team meetings, the District convened IEP team meetings each subsequent school year and Parents did not consent to any subsequent IEP.[7] During SY 2009-2010, the District discussed with Parents at an IEP team meeting plans for Student's transition from FHS to an ATP once he obtained his certificate of completion and conducted a transition assessment as the proposed IEP continued with Student graduating FHS with a certificate of completion. Contrary to Student's assertion, his last agreed-upon and implemented educational program is his

[7] The only subsequent agreed upon educational service occurred in May 2008 when Parents consented to the proposed behavior plan.

October/November 2007 IEP, which had him graduating FHS once he obtained his certificate of completion.

SCHOOL ACTIVITIES, SY 2010-2011

7. A school district must ensure that it provides special education students all supplementary aids and related services determined appropriate and necessary by the student's IEP team, including extracurricular activities, to afford students "an equal opportunity for participation" in those activities. Student contends that the District excluded him from senior class activities during SY 2010-2011 by failing to provide Parents with adequate notice of the events, not timely obtaining an aide for him to attend "Grad Night" at Disneyland and not including special education students in school wide events. The District asserts that it notified Parents at the beginning of the school year and on an on-going basis as to the senior class activities. Further, the District obtained an one-to-one aide for Student to attend "Grad Night" at the beginning of SY 2010-2011, and its exclusion of special education students, including Student, from one campus wide ceremony was due to an honest mistake.

8. Student did not establish that the District failed to inform him or Parents of the senior class activities. Starting at the end of SY 2009-2010, the District began to inform upcoming seniors, including Student, about activities that would occur during their senior year. At the start of SY 2010-2011, the District gave all students, including special education students, a senior class activity calendar. Student's one-to-one aide, Frances Rodriguez, received the calendar, made one copy for herself so she knew of the activities, and sent the calendar home with Student so Parents knew of the activities. Ms. Rodriguez was Student's one-to-one aide from SY 2000-2001 through the end of SY 2010-2011, and had a good relationship with Mother. Ms. Rodriguez was convincing that, in her experience, Student followed through in taking school information home to Parents regularly, and Parents received the school information she sent home with

Student. Additionally, Ms. Rodriguez went over the senior class calendar with Student, he had a copy of the calendar, and he would remind her of upcoming events. Parents were not as credible as Ms. Rodriguez because Mother knew of some events, and was active in obtaining information about FHS activities, especially since Student's older siblings attended FHS.

9. Student contended that the District failed to timely obtain an aide for the "Grad Night" trip to Disneyland, scheduled for June 2, 2011. However, the evidence established that the District informed all seniors and their parents, including Student and Parents, near the beginning of SY 2010-2011 of the event and the parent payment schedule. It was not a free trip and Parents were notified of the cost and payment deadline information. FHS requested approval from the District administration for several special education students, including Student, to pay a one-to-one aide to accompany them on trip to "Grad Night," which was approved shortly thereafter. Ms. Rodriguez was aware that the District had approved her attendance shortly thereafter. Parents knew that Student wanted to attend "Grad Night" because he had never gone to Disneyland, but never followed up with FHS as to whether the District approved Ms. Rodriguez's attendance, nor made any of the installment payments, even though they had the event flier. Parents could not explain why they waited until the end of April 2011, to make payment for the event, after the event had sold out, even though the flier contained the payment installment dates, nor followed up with FHS as to the status of Ms. Rodriguez's attendance. Accordingly, Student failed to establish that the District excluded him from the "Grad Night" trip because the District authorized to pay Ms. Rodriguez to attend as his aide, and Parents delayed too long in paying for it.

10. Student also asserted that the District failed to include special education students who participate in Special Olympics in the FHS "Pow Wow" assembly that honors student athletes during the first semester of SY 2010-2011. The District admitted

that FHS forgot to invite the special education students to attend the "Pow Wow" and that FHS held a separate assembly to honor the Special Olympic participants. Student did not establish that the District's exclusion of him at the regular event was more than a regrettable oversight or that it denied Student any educational benefit.

11. Finally, regarding the June 8, 2011 graduation ceremonies, the District did invite Student to participate because he completed the 230 credits. Student's name was in the graduation handout and a certificate of completion had been prepared for him. Parents decided not to permit Student to participate because the District did not agree at the June 8, 2011 IEP team meeting for a fifth year at FHS. Therefore, Student did not establish that the District failed to permit him to participate in senior class activities. Accordingly, Student did not establish that the District excluded him from senior class activities during SY 2010-2011.

PARENTAL PARTICIPATION IN STUDENT'S EDUCATIONAL PLACEMENT

12. Under the Individuals with Disabilities in Education Improvement Act (IDEA), 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. A district must fairly and honestly consider the views of parents expressed in an IEP meeting. School officials may not arrive at an IEP meeting with a "take it or leave it" attitude, having already decided on the program to be offered. School officials do not predetermine an IEP offer simply by discussing a child's programming in advance of an IEP meeting, but a district that predetermines the child's program and does not consider the parents' requests with an open mind has denied the parents' right to participate in the IEP process. Student asserts that the District engaged in a pattern of harassment and retaliation for Mother exercising her educational rights and predetermined its educational offer for Student to attend ATP. The District contends that Parents refused to consider any information that it presented as to the

appropriateness of its ATP and that, in the October/November 2007 IEP, Parents consented to his graduation from FHS after he received a certificate of completion.

Alleged District Harassment of Parents

13. Parents contended that the District harassed and retaliated against them for being vocal advocates for Students in the IEP process and predetermined its IEP offer. The only evidence Student presented related to SYs 2010-2011 and 2011-2012. Prior to SY 2010-2011, the District had a policy for visiting parents of FHS students, to first check in at the school office. However, it had not been enforced and parents, including Mother, could enter the campus during school hours without first checking-in at the front office, Mother routinely observed Student in his classes at FHS without checking in during his first three years at FHS. Dr. Adrian Palazuelos became principal at the start of SY 2010-2011, and began to enforce the school policy that parents needed to check-in at the front office because of the security risk of unknown persons wandering around the campus. Mother was not happy with the change of procedure and wanted to continue to enter the campus without checking-in. Mother's conduct towards FHS personnel who attempted to enforce the check-in policy was not cordial. Mother's conduct caused Dr. Palazuelos to order, around October or November 2010, that every time Mother wanted to visit FHS she had to check-in at the front office, staff would inform him, and Dr. Palazuelos would go over with Mother the District's civility policy before she could enter the campus.

14. Student did not establish that Dr. Palazuelos instituted this procedure to harass or retaliate against Mother for exercising her rights as a concerned parent. District was entitled, if not required by law, to screen all visitors to ensure the safety of the campus and its students. Mother did not like the change of the school visitation policy and refused to comply with the policy change. At times, when Mother entered the campus and the front office staff failed to inform Dr. Palazuelos, campus security

escorted her back to the front office because her entry on campus was without Dr. Palazuelos' knowledge and review of the civility policy with Mother. During these incidents, only one or two campus personnel would escort her, and not the five to 10 persons Mother claimed. FHS Vice Principal Michael Rivard, who oversees campus discipline and FHS safety coordinator, was convincing that at most, he and a campus security guard would escort Mother on campus to Student's class. Mother's testimony was not credible because of her extreme exaggeration of the number of campus security who would escort her.

15. Mother made similar contentions that the District attempted to harass and intimidate her and Student's Father at IEP team meetings with added security to escort them to the meeting rooms. However, Student failed to demonstrate that there were more than the assigned police and probation officer at FHS. Additionally, while Parents were active in advocating for their son and other disabled students at District community and Board meetings, Student did not establish that the District retaliated against Student in the IEP process based on Parents' advocacy. Mother's testimony was not credible because of her embellishment of incidents. For example, she claimed a "carload" of security followed her while on campus or that the District excluded her son from senior class activities. As found above, except for one event, Student was not excluded, and minimal personnel escorted her back to the office when she did not properly check in. Therefore, Student did not prove that the District engaged in a pattern of harassment and intimidation against Parents to prevent them from meaningfully participating in Student's educational decision-making process.

Predetermination

16. Student did not present any evidence that the District predetermined its IEP offer or harassed Parents during the IEP process before SY 2010-2011, and Student's evidence focused on SY 2010-2011 and SY 2011-2012. The District convened an IEP

team meeting on April 26, 2011, to discuss Student's goals, services and placement for SY 2011-2012. The main topic of discussion at this IEP team meeting was Mother's insistence that Student attend FHS for a fifth year of high school and that he work towards obtaining a high school diploma. Mother had raised this request during IEP team meetings held during SY 2009-2010. The District listened to Mother's requests for a fifth year of high school at the April 26, 2011 IEP team meeting, but she did not sway the District from its position that Student was not capable of obtaining a regular education diploma. The District based its position on Student's academic progress at FHS and his intellectual disability, and that retention in twelfth grade was not appropriate for his to transition to post-secondary life.

17. At the April 26, 2011 IEP team meeting, the District had a representative from ATP, Kathy Hernandez, to discuss the program with the team, including Parents. Ms. Hernandez is a credentialed special education teacher assigned to the District's ATP at the Instructional Media Center since SY 2010-2011. Prior to that, she taught at the District's ATP at the Fresno Community College for four years, involving students who are higher functioning than those at the Instructional Media Center. Ms. Hernandez would be Student's case manager at the ATP at the Instructional Media Center. At the IEP team meeting, Ms. Hernandez explained the ATP's focus is on teaching its students, who are between the ages of 18 through 22, job and independent living skills. Students who attend the ATP at the Instructional Media Center come from high school functional life skill programs, like Student, who have significant cognitive impairments and need significant assistance in learning skills to obtain employment and live independently. Student would learn functional life skills, such as job and independent living skills through functional academics, like reading job instructions or learning to balance a checkbook, and practicing applicable skills in the classroom and in the community. The ATP also provides vocational training in the classroom and at job sites.

18. Parents did not consent to the District's IEP offer on April 26, 2011, for SY 2011-2012 for Student to attend its ATP at the Instructional Media Center. Other than demanding that Student attend FHS for a fifth year, Parents did not explain, at this or at the May 24, 2011 and June 8, 2011 IEP team meetings, why the District's offer was not appropriate, other than Student liked going to FHS and was comfortable there with his friends. Because of Parents refusal to discuss anything but a fifth year of FHS, the District was not able to complete the IEP on April 26, 2011, and reconvened the IEP team meeting on May 24, 2011.

19. The District's proposed May 24, 2011 IEP included offers for annual reading, writing and math goals to teach Student functional academic skills in both the classroom and in the community, focusing on real life scenarios. Ms. Hernandez attended this IEP and the District invited representatives from the Fresno County Office of Education (FCOE) to discuss ATPs that it operated. The proposed IEP contained S/L and OT goals. However, the District had difficulty in developing goals because the District last fully assessed Student in 2002. The District presented proposed assessment plans at the April 26, 2011 and May 24, 2011 IEP team meetings to assess Student in the areas of academic achievement, health, intellectual development, S/L, motor development and adaptive behavior. However, Parents did not consent to these assessment plans. The District had presented Parents with similar assessment plans in previous school years, to which Parents did not consent and the District never filed a request for a due process hearing to assess Student without parental consent.

20. In the May 24, 2011 IEP, the District did not offer Student a one-to-one aide during the school day or door-to-door transportation, which Student had received pursuant to the October/November 2007 IEP. Instead, the District recommended terminating District-provided transportation and instead, offered to reimburse Parents for the costs of Student taking public transportation to and from school because he

needed to learn how to independently access transportation. Regarding the one-to-one aide, the District had offered the aide during high school because of the large campus and classes, which would not be the case with the ATP at the Instructional Media Center. The ATP had only 20 to 25 students, split between two classes, with each class having a teacher and several aides. Because of the smaller campus and additional staffing, the District did not believe Student would require a one-to-one aide at the Instructional Media Center.

21. Additionally, the District proposed terminating Student's S/L, OT and APE related services because the service providers did not believe that Student required these services, based on information obtained during service sessions and because Parents refused prior assessment requests. The May 24, 2011 IEP did continue to offer behavior intervention services, for 20 minutes a week as a pull-out service.

22. The IEP team meeting was continued to June 8, 2011, because the District could not complete the IEP process due to Parents' refusal to participate in the IEP process because of their insistence that Student remain at FHS for a fifth year. During the June 8, 2011 team meeting, the District continued to make the same offer as on May 24, 2011, and explained why, based on information obtained during Student's four years at FHS, that the ATP was appropriate. Additionally, prior District assessments found Student to have an IQ between 50 to 60, which Student did not dispute, and his academic performance at FHS established that he was not capable of obtaining a regular education diploma that Parents requested.

23. Ms. Hernandez and Christie Gunter, Regional Instructional Manager II, were both credible that during the three IEP team meetings at the end of SY 2010-2011, the District attempted to discuss its IEP offer and that all Parents wanted to discuss was how the District would provide a fifth year at FHS. Mother's testimony corroborated her refusal to discuss any placement option other than a fifth year at FHS. While Mother did

visit ATP's operated by both the District and FCOE during this process, she did not visit the ATP's with an open mind because she had predetermined where she wanted Student to attend for SY 2011-2012. Additionally, Mother did not understand the District's legal obligation to provide Student transitional services, and that the District's offer of an ATP was based on its legal obligation to provide these services.

24. While the District had begun these IEP team meetings with a draft IEP offer, the District had not predetermined its IEP offer because it was willing to listen to Parents at the IEP team meetings and would consider a different ATP placement than the ATP at the Instructional Media Center. The District did not agree with Parents' request based on Student's cognitive ability and performance at FHS in its functional skills program and heavily modified general education classes. The District was legally obligated to provide Student with post-secondary educational and vocational training. Mother visited various ATP's; however, her criticisms of the ATP's of just warehousing students are afforded little weight because of her predisposition that Student attend a fifth year at FHS and her refusal to listen to information provided by Ms. Hernandez, Ms. Gunter and FCOE staff about various ATP's during the IEP team meetings. The evidence established that Parents failed to consider to any information presented by the District as to why it believed an ATP would provide Student with a FAPE, and provided no relevant information to support their insistence that Student should attend a fifth year at FHS. Accordingly, Student did not establish that the District predetermined its IEP offer of the ATP at the Instructional Media Center.[8]

[8] As noted previously, this Decision makes no determination as to appropriateness of the District's offer of the ATP at the Instructional Media Center, as the only finding is whether the District predetermined its placement offer.

Change of Placement

25. Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise, which is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's last agreed-upon and implemented educational program. However, because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put, and progression to the next grade maintains the status quo for purposes of stay put if the local educational agency, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances

26. Student asserts that the District violated stay put when it refused to re-enroll Student at FHS for SY 2011-2012, and required Student to attend the ATP at the Instructional Media Center if Student wished to continue receiving special education services from the District. The District contended that Student's stay put placement was the ATP at the Instructional Media Center because the October/November 2007 IEP, the last agreed-upon and implemented educational program, provided that Student would attend FHS until he obtained his certificate of completion. After graduation, the natural education progression for Student would be to attend an ATP to obtain transition services through the age of 22.

27. The October/November 2007 IEP explicitly provided that Student would graduate from FHS once he obtained 230 credits to obtain a certificate of completion. The IEP states that Student's academic proficiency would be measured by his progress on IEP goals and he would receive modified grades based on his functional level and that the IEP team members, including Parents, acknowledged that Student was not a candidate for a regular education diploma. The IEP contained goals for post-secondary

outcomes for Student to obtain vocational training for supported employment[9] and to participate in community-based instruction. Mother signed a page in the IEP acknowledging that Student was not going to graduate with a regular education diploma and would graduate with a certificate of completion after obtaining 230 credits. The evidence established that the District explained the purpose and meaning of the certificate at the IEP team meeting. Parents consented to the October/November 2007 IEP and the District implemented this IEP through Student's four years at FHS because Parents did not consent to any subsequent IEP.

28. During subsequent IEP team meetings during SY 2008-2009 and SY 2009-2010, the District began discussions with Parents to plan for Student's exit from FHS and his post-secondary plans. At the June 2010 IEP team meeting, Mother began to express her desire that Student graduate with a regular education diploma. However, based on the discussions during the SY 2010-2011 IEP team meetings, and Mother's testimony, it was clear she did not understand that if Student graduated with a regular education diploma, the District's obligation to provide him with special education services would end. Moreover, Mother continued to want Student to receive special education services until the age of 22. Ms. Gunter attempted to explain to Parents at the IEP team meetings from SY 2009-2010 that the natural progression for a student who graduates with a certificate of completion is to attend an ATP to learn independent living skills.

29. At the April, May and June 2011 IEP team meetings, the District explicitly informed Parent that Student would not attend FHS for SY 2011-2012, because he would have 230 credits at the end of SY 2010-2011. Therefore, based on the

[9] Supported employment assists disabled individuals to obtain employment and perform a job. This assistance may include job coaches, transportation, assistive technology, specialized job training and individually tailored supervision.

October/November 2007 IEP, Student would leave FHS after completing the 2011 extended school year. The District established that the natural progression for a pupil with disabilities similar to those of Student is an ATP after obtaining a certificate of completion. Student did not establish that the District permits students who obtain a certificate of completion to attend a fifth year of high school or that Student did not obtain the 230 credits needed for a certificate of completion. Further, Student's progression from high school to an ATP after graduation is analogous to a student moving from elementary school to middle school and from middle school to high school.

30. While Parents never consented to Student's attendance at any ATP, the October/November 2007 IEP envisioned Student attending FHS for four years while he obtained his certificate of completion and then attending an ATP through the age of 22. Student did not establish at hearing that he was capable of obtaining a regular education diploma, as Student did not put forth any evidence, except his Parents' wish that he remain at FHS for fifth year, as a reason why he should not attend an ATP. Accordingly, Student did not establish that the District inappropriately changed his placement from FHS to the ATP at the Instructional Media Center upon his graduation from FHS. The October/November 2007 IEP, the last agreed-upon and implemented educational program, planned for Student leaving FHS after obtaining his certificate of completion and attending an ATP as natural progression for Student to obtain transition services. Accordingly, Student's progression to the ATP was not a change of placement but was his stay put placement in the changed circumstances of his completion of high school.

Provision of Education Services after June 8, 2011

31. Student asserts that the District failed to provide him with any special education services after June 8, 2011, the last day of SY 2010-2011, because of its

insistence that he attend the ATP at the Instructional Media Center and refusal to re-enroll him at FHS. The District asserts that it made numerous attempts for Student to attend the ATP at the Instructional Media Center and ready to provide all related services specified in its June 8, 2011 IEP offer. Also, the District scheduled IEP team meetings in an attempt to secure Student's attendance that Parents failed to attend.

32. Student arrived for the first day of the 2011 ESY at FHS with his one-to-one aide, Ms. Rodriguez. About halfway through the first day of the ESY, Mother came to FHS and removed Student. The District telephoned Mother to inquire if Student would return to the ESY program and received no response, and Student did not return. Around this time, June 16, 2011, Ms. Gunter sent to Parents the District's prior written notice in response to their request that Student attend a fifth year at FHS and earn a regular education diploma, which reiterated the District's June 8, 2011 IEP offer.

33. The June 16, 2011 letter stated that, despite Parents' refusal to consent to the District's proposed assessment plan, the District again offered to assess Student during the ESY. The June 16, 2011 letter stated that the District would discontinue Student's S/L, OT and APE services during SY 2011-2012 at the ATP if Parents did not consent to the assessment because the District did not have accurate assessment information. Additionally, at the ATP for SY 2011-2012, the District would not provide an aide when Student attends, whether or not Parents provided consent for the District to implement the June 8, 2011 IEP. The letter stated that the District would not provide Student with door-to-door transportation and that the District would reimburse Parents if Student took public transportation to the ATP or Parents could transport Student at their own expense.

34. Parents did not respond to the June 16, 2011 letter. On August 16, 2011, the District sent Student an information packet about the ATP at the Instructional Media Center, which stated that SY 2011-2012 would start August 22, 2012. Student did not

attend the ATP at the Instructional Media Center on August 22, 2012. Ms. Hernandez called Student's home that day to inquire about Student's attendance, but got no response.

35. On September 8, 2011, the District sent a notice to Parents inviting them to attend an IEP team meeting for September 19, 2011 at the ATP at the Instructional Media Center to discuss further the June 8, 2011 IEP offer and proposed assessment plan. On September 9, 2011, Ms. Hernandez wrote Student to inquire about his attendance at the ATP at the Instructional Media Center. Mother called Ms. Hernandez after receiving this letter and was upset because the District refused to re-enroll Student at FHS.[10] Parents did not appear for the IEP team meeting on September 19, 2011. The District cancelled the meeting and wrote Student and Mother that day requesting that they contact the District to reschedule the IEP team meeting. The District did not receive a response.

36. On September 22, 2011, Ms. Hernandez sent another IEP team meeting notice for September 30, 2011. The District did not call Parents before September 30, 2011 to confirm their attendance for the scheduled IEP team meeting despite their failure to attend the previously noticed IEP team meeting. Parents and Student did not attend the September 30, 2011 IEP team meeting. The District had prepared a draft IEP and assessment to discuss, which were the same as those the District presented at the June 8, 2011 IEP team meeting. Ms. Hernandez called Student's house after Parents and Student did not arrive for the IEP team meeting and left a message. After an hour of waiting, the District ended the IEP team meeting.

[10] The circumstances surrounding Parents visits to re-enroll Student at FHS are not relevant to this proceeding because of the factual finding that Student was not automatically entitled to return for a fifth year at FHS as stay put.

37. Ms. Hernandez subsequently sent Parents a letter about Parents' and Student's failure to attend the September 30, 2011 IEP team meeting. Included in the letter was a copy of the draft IEP, proposed assessment plan, ATP daily schedule, meeting agenda and meeting notice. The letter asked Student or Mother to contact Ms. Hernandez to schedule another IEP team meeting and to let her know when Student would attend the ATP at the Instructional Media Center. District did not receive a response, but also did not call again to arrange an IEP team meeting or find out if Student would attend the ATP.

38. On October 14, 2011, Nicole Evangelinos, District Regional Instructional Manager over the District's ATPs, sent Mother a prior written notice to explain again the District's rejection of Parents' request that Student attend a fifth year at FHS. The District sent this letter because of Parents' attempt to re-enroll Student at FHS. Except for a narrative regarding the attempts to convene IEP team meetings on September 19 and 30, 2011, Ms. Evangelinos repeated the June 16, 2011 prior written notice Ms. Gunter had sent as to why the District rejected Parents' request for a fifth year at FHS. Ms. Evangelinos explained the fact that there would be no S/L, OT or APE services without consent to the District's assessment plan and a determination of Student's need for these services based on the assessments, and the elimination of the one-to-one aide and door-to-door transportation. Ms. Evangelinos' letter, like Ms. Gunter's June 2011 letter, implied that, without a signed IEP, if Student attended the ATP at the Instructional Media Center the District would not provide the aide, transportation, S/L, OT and APE services in Student's October/November 2007 IEP as stay put. The District did not receive a response to the October 14, 2011 prior written notice.

39. On October 17, 2011, the District noticed another IEP team meeting for October 27, 2011, in response to Mother's request for a meeting in an October 7, 2011 e-mail. However, Parents and Student did not attend the October 27, 2011 IEP team

meeting, nor inform the District after the October 17, 2011 IEP meeting notice that they would not be able to attend or request alternate dates. Ms. Hernandez called Student's home when Parents and Student did not appear on October 27, 2011, but got no response. On November 4, 2011, Ms. Hernandez wrote Mother and Student regarding their absence and informing them that they could contact her to reschedule the IEP team meeting. The District did not follow up with any further contacts.

40. On January 20, 2012, the District noticed by mail to Parents another IEP team meeting for February 15, 2012, and included another assessment plan. The District scheduled the IEP meeting because Student did not attend the ATP at the Instructional Media Center at the start of the second semester. Parents attended this IEP team meeting, and as in the prior meetings refused any meaningful discussion about Student attending an ATP, as they continued to insist that Student return the FHS. The District representatives listened to Parents' request and tried to explain the appropriateness of their continued offer for Student to attend the ATP at the Instructional Media Center. Mother's response was threatening to sue individual District meeting attendees. Parents did not consent to the District's IEP offer, which was the same as offered on June 8, 2011, and did not consent to the District's proposed assessment plan. There have been no further IEP team meetings scheduled, and Student continues not to attend any ATP or post-secondary educational program.

41. Parents made the decision that Student not attend any ATP during the SY 2011-2012 because of their insistence that Student attend a fifth year at FHS, despite the District's explanation that the natural progression to the next educational and vocational level would be an ATP. Parents' actions prevented Student from participating in school activities associated with an ATP, like Special Olympics. However, if Student had attended the ATP at the Instructional Media Center without Parents' consent to the June 8, 2011 IEP, the District would not have provided Student with any of the related

services required by his last agreed-upon and implement educational program, the October/November 2007 IEP.

42. While the District has a duty to assess students to obtain current information, Ms. Gunter, the District's Regional Instruction Manager, could not explain at hearing why the District did not file a due process hearing request to assess Student over his Parents' objection. Additionally, the District failed to adequately explain why it believed it could engage in self-help by unilaterally terminating all related services because Parents did not consent to any proposed assessment plan. Finally, the District's June 18, 2011 IEP offer of S/L, OT and APE services were not comparable with those Student received at FHS, even with the change of circumstances with Student attending an ATP.

43. Therefore, for the SY 2011-2012, the District committed a procedural violation by informing Parents that it would not provide the related services as specified in Student's October/November 2007 IEP. This violation significantly impeded Parents' ability to meaningfully participate in Student's educational decision-making process because the District refused to provide stay put related services. Additionally, the District's procedural violation would have denied Student an educational benefit if he had attended the ATP at the Instructional Media Center without his required related services to meet his needs in the areas of S/L, OT, and APE. Therefore, District's procedural violation denied Student a FAPE.

Relief

44. ALJs have broad latitude to fashion equitable remedies appropriate for the denial of a FAPE. Appropriate equitable relief, including compensatory education, can be awarded in a due process hearing. 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. An award to compensate for past violations must rely on

an individualized analysis, just as an IEP focuses on the individual student's needs. 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," and may be reduced if parents have not cooperated with or obstructed the IEP process.

45. The District violated Student's procedural rights by unilaterally deciding that if Student attended the ATP at the Instructional Media Center in SY 2011-2012 without a signed IEP, the District would not provide the related services required by Student's stay put placement, based on his last agreed-upon and implemented educational program, the October/November 2007 IEP. In addition, the District's decision to violate Student's stay put placement would have denied Student educational benefit. That Parents would not have let Student attend the ATP even if the District provided all the related services in the October/November 2007 IEP, has been taken into consideration. However, Student should not be punished for his Parents' actions, especially since it is not known what Student wanted due to Parents refusal to let the District assess him, during which the District could have inquired as to his educational plan.

46. Therefore, Student is entitled to an additional year of eligibility to receive special education services and instruction through the age of 23 for the denial of an educational benefit for SY 2011-2012. The District's conduct in stating in both the June 16, 2011 and October 14, 2011 prior written notices that Student would not receive the related services set forth in the October/November 2007 IEP because Parents did not consent to the proposed assessment plan was egregious, and its position, as determined below in Legal Conclusions 23, 24 and 25, is not supported by any law. To deny Student compensatory education that would give Student needed independent living skills would be to punish him, which is not the intent of IDEA.

LEGAL CONCLUSIONS

1. Student, as the party requesting relief, has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

2. Under the federal IDEA and California 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; *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.) To determine whether a school district offered a pupil a FAPE, the focus is on the appropriateness of the placement offered by the school district, and not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

5. 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.)

6. As long as a school district provides an appropriate education, the methodology is left up to the district's discretion. (*Rowley*, *supra*, 458 U.S. at p. 208; see also, *Adams, supra,* 195 F.3d 1141; *Pitchford v. Salem-Keizer School District* (D. Ore. 2001) 155 F.Supp.2d 1213, 1230-1232; *T. B. v. Warwick School Commission* (1st Cir. 2004) 361 F.3d 80, 84. (*T.B.*).) As the First Circuit Court of Appeal noted, the *Rowley* standard recognizes that courts are ill-equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods. (*T.B.*, *supra,* 361 F.3d 80, 84 (citing *Roland M.*, 910 F.2d at pp. 992-93).) "Beyond the broad questions of a student's general capabilities and whether an educational plan identifies and

addresses his or her basic needs, courts should be loath to intrude very far into interstitial details or to become embroiled in captious disputes as to the precise efficacy of different instructional programs." (*Roland M. v. Concord Sch. Committee* (1st Cir. 1990) 910 F.2d 983, 992 (*citing Rowley,* 458 U.S. at p. 202).)

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

7. 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. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892-895; see also *Drobnicki ex rel. Drobnicki v. Poway Unified School Dist.* (9th Cir. 2009) 358 Fed.Appx. 788, 789.)

8. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including (1) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) scheduling the meeting at a mutually agreed on time and place. (34 C.F.R. § 300.322(a).) If neither parent can attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls. (34 C.F.R. § 300.322(c).) If unable to convince the parents that they should attend, the public agency must keep a record of its attempts to arrange a mutually agreed on time and

place, such as (1) detailed records of telephone calls made or attempted and the results of those calls; (2) copies of correspondence sent to the parents and any responses received; and (3) detailed records of visits made to the parents' home or place of employment and the results of those visits. (34 C.F.R. § 300.322(c).)

9. A school district has the right to select a program for a special education student. As long as the program is able to meet the student's needs; the IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D.Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323; *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580* (D. Minn. 2003) 259 F.Supp.2d 880, 885; *O'Dell v. Special School Dist. of St. Louis County* (E.D. Mo. 2007) 503 F.Supp.2d 1206.) Nor must an IEP conform to a parent's wishes 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 parent's desires."], citing *Rowley*, *supra*, 458 U.S. at p. 207.)

10. Predetermination occurs when an educational agency has decided on its offer prior to the IEP 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 meeting with a "take it or leave it" offer. (*JG 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 meeting. (*N.L. v. Knox County Schs., supra*, 315 F.3d at p. 693, fn. 3.)

11. The Supreme Court has noted that the IDEA assumes parents, as well as school districts, will cooperate in the IEP process. (*Shaffer v. Weast, supra,* 546 U.S. at 53 [noting that "[t]he core of the [IDEA] ... is the cooperative process that it establishes between parents and schools"]; see also, *Patricia P. v. Bd. of Educ. of Oak Park* (7th Cir.

2000) 203 F.3d 462, 486; *Clyde K. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 35 F.3d 1396, 1400, fn. 5 [rejecting a "my way or the highway" approach by parents' attorney].) Parents who refuse to cooperate in a district's efforts to formulate an IEP are generally not entitled to relief. (See, e.g., *Loren F. v. Atlanta Indep. Sch. Sys*. (11th Cir.2003) 349 F.3d 1309, 1312; *MM v. Sch. Dist. of Greenville Cty*. (4th Cir.2002) 303 F.3d 523, 535; *M.S. v. Mullica Tp. Bd. of Educ*. (D.N.J. 2007) 485 F.Supp.2d 555, 568 [denying reimbursement because parents failed to cooperate in completion of IEP]; *E.P. v. San Ramon Valley Unified School Dist.* (N.D.Cal., June 21, 2007, Case No. C05-01390) 2007 WL 1795747, pp. 10-11.). When parental non-cooperation obstructs the process, courts usually hold that violations do not deny the pupil a FAPE. (See *C.G. v. Five Town Community School Dist.* (1st Cir. 2008) 513 F.3d 279.)

TRANSITION SERVICES

12. "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).)

STAY PUT

13. Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)[11]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

14. Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist*. (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 ["stay put" placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability.].) In *Van Scoy*, the Court explained as follows:

> Courts have recognized, however, that because of changing circumstances the status quo cannot always be exactly replicated for the purposes of stay put. *Ms. S. ex rel. G. v. Vashon Island School District*, 337 F.3d 1115, 1133-35 (9th Cir. 2003). In the present case, the circumstances have

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

> changed because [the student] has moved from kindergarten into first grade, which includes additional time in the classroom. Certainly the purpose of the stay-put provision is not that students will be kept in the same grade during the pendency of the dispute. The stay-put provision entitles the student to receive a placement that, as closely as possible, replicates the placement that existed at the time the dispute arose, taking into account the changed circumstances.

(*Van Scoy*, supra, 353 F.Supp.2d at p. 1086.)

15. Stay put may apply when a child with a disability files for a due process hearing on the issue of whether regular graduation from high school (which ends IDEA eligibility) is appropriate. (*Cronin v. Bd. of Educ. of East Ramapo Cent. Sch. Dist.* (S.D.N.Y. 1988) 689 F.Supp. 197, 202 fn. 4 (*Cronin*); see also *R.Y. v. Hawaii* (D. Hawaii February 17, 2010, Civ. No. 09-00242) 2010 WL 558552, pp. 6-7.) Stay put applies because if it did not, schools would be able to end special education eligibility for students by unilaterally graduating them from high school. (*Ibid.*) However, a student is not entitled to stay put because he had already graduated with a certificate of completion when the complaint was filed. (See *B.A.W. v. East Orange Bd. of Educ.* (D.N.J. August 31, 2010, Civ. No. 10-4039) 2010 WL 3522096, p. 4.)

16. A district is required to provide written notice to the parents of the child whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. (20 U.S.C. §1415(b)(3).) This includes a student's graduation with a regular diploma and exit from high school as the graduation constitutes a change in placement due to the termination of services upon graduation. (34 C.F.R. 300.102(a)(3)(iii).) It also includes a student exiting high school with a

certificate of completion and continuing to receive special education services through the age of 22.

ASSESSMENT PROCESS

17. To assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental and procedural rights under the IDEA and state law. (20 U.S.C. § 1414(b)(l); Ed. Code, § 56321, subd. (a).) The assessment plan must be understandable, explain the assessments that the district proposes to conduct, and state that the district will not implement an IEP based on the assessment without the consent of the parents. (Ed. Code, § 56321, subds. (b)(l)-(4).) A school district must give the parents and/or the student at least 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

18. Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(B)(i); Ed. Code, § 56321, subd. (a)(2).) A school district can overcome a lack of parental consent for an initial assessment or reassessment if it prevails at a due process hearing regarding the need to conduct the assessment. (20 U.S.C. §§ 1414(a)(1)(D)(ii)(I), 1415(b)(6)(A),1414(c)(3); *Schaffer, supra,* 546 U.S. at pp. 52-53 [school districts may seek a due process hearing "if parents refuse to allow their child to be evaluated."]; Ed. Code, §§ 56501, subd. (a)(3), 56506, subd. (e), 56321, subd. (c).) If a parent does not consent to an initial assessment or re-assessment, the school District may, but is not required to, file a request for a due process hearing. (34 C.F.R. § 300.300(a)(3)(i); Ed. Code, §§ 56321, subd. (c)(2), 56506, subd. (e).)

ISSUE 1: DID THE DISTRICT DENY STUDENT A FAPE BY CHANGING HIS SPECIAL EDUCATION PLACEMENT FROM A REGULAR HIGH SCHOOL TO AN ATP WITHOUT PARENTAL CONSENT AFTER SY 2010-2011?

19. Pursuant to Factual Findings 2 through 6 and 25 through 30, and Legal Conclusions 1 through 6 and 12 through 16, the District did deny not Student a FAPE because Student's last agreed-upon and implemented educational program, the October/November 2007 IEP, only had Student attending FHS until he obtained his certificate of completion. Parents consented to the October/November 2007 IEP, which provided that Student would leave FHS once he obtained his certificate of completion. The evidence established that the natural progression for Student after high school was to receive functional educational and vocational transition services at an ATP through the age of 22. While Parents began to request, at the end of SY 2009-2010, that Student obtain a regular education diploma, Student presented no evidence that he was capable of obtaining a regular education diploma with his significant cognitive deficits and present levels of performance. In addition, Parents did not appear to understand, during that time or at hearing, that by law special education services would cease once Student obtained a regular education diploma. The October/November 2007 IEP envisioned that once Student obtained his certificate of completion, the District would continue providing special education services through the age of 22 and he would attend a program to provide services to transition to post-secondary life. Student did not introduce sufficient evidence to prove that he did not earn the 230 credits needed for certificate of completion, or that the natural progression after graduation would not be an ATP. Even though Parents did not consent to any IEP after the October/November 2007 IEP, or any IEP that explicitly provided for Student's placement in an ATP after high school, Student graduated from FHS in June 2011, and stay put does not prevent his progression to the next grade or educational level, which would be a post-secondary

educational program, like the ATP at the Instructional Media Center. Accordingly, Student did not prove that the District denied him a FAPE.

ISSUE 2: FROM MARCH 17, 2010 TO THE PRESENT, DID THE DISTRICT DENY STUDENT A FAPE BY SIGNIFICANTLY IMPEDING PARENTS' ABILITY TO MEANINGFULLY PARTICIPATE IN THE DECISION TO CHANGE STUDENT'S PLACEMENT FROM A REGULAR HIGH SCHOOL TO AN ADULT TRANSITION PROGRAM?

20. Pursuant to Factual Findings 13 through 23, 40 and 41, and Legal Conclusions 1 through 11, the District did not significantly impede Parents' ability to meaningfully participate in the decision for Student to graduate from FHS and attend the ATP at the Instructional Media Center. The District did not create a hostile environment for Parents at FHS simply by enforcing the school policy that all visitors, including Mother, check-in at the front office. Dr. Palazuelos did not institute the policy to harass Mother and his requirement that he review the District's civility policy at every visit was done because of her rude conduct to FHS who attempted to enforce the school visitation policy. Additionally, Student did not establish that the District had numerous security personnel follow Mother on the FHS campus or escort her back to the front office. During the SY 2009-2010 and SY 2010-2011 IEP team meetings, the District did listen to Parents' repeated requests to change the October/November 2007 IEP for Student to obtain a regular education diploma and/or attend a fifth year at FHS, and the fact that the District disagreed with Parents' request does not mean that the District predetermined its decision. Instead, Parents did not present any information at these IEP meetings that Student was capable of obtaining a regular education diploma, even with an extra year at FHS, or why he should attend a fifth year after obtaining a certificate of completion instead of an ATP. Accordingly, Student did not prove that the District significantly impeded Parents' ability to participate in the decision-making process that Student should graduate FHS with a certificate of completion and move to an ATP.

PARTICIPATION IN NON-ACADEMIC ACTIVITIES

21. A school district must ensure that it provides to a special education student all supplementary aids and services determined appropriate and necessary by the student's IEP team, including extracurricular activities, in the manner necessary to afford the student "an equal opportunity for participation" in those activities. (34 C.F.R. § 300.107(a).)

ISSUE 3: FROM MARCH 17, 2010 TO THE PRESENT, DID THE DISTRICT DENY STUDENT A FAPE BY PREVENTING HIM FROM PARTICIPATING IN SCHOOL ACTIVITIES AND FUNCTIONS?

22. Pursuant to Factual Findings 7 through 11 and 41, and Legal Conclusions 1 through 6 and 21, the District did not prevent Student's participation in school activities. During SY 2010-2011, Student participated in senior class activities as Ms. Rodriguez made sure Parents and Student had a copy of the activity schedule, along with her own copy, and encouraged Student's participation. For the "Grad Night" trip to Disneyland, the District approved Ms. Rodriguez's attendance and Parents, despite receiving the handout with the payment schedule, waited until it was too late to reserve and pay for Student. For SY 2011-2012, Parents' decision that Student not to attend the ATP caused him not to participate in school activities and functions. Finally, the District's failure to include Special Olympic participants at the FHS "Pow Wow" was caused by a simple oversight and did not deny Student a FAPE. Therefore, Student did not establish that the District prevented him from participating in school activities and functions.

ISSUE 4: DID THE DISTRICT DENY STUDENT A FAPE BY NOT PROVIDING HIM WITH SPECIAL EDUCATION SERVICES AFTER THE END OF SY 2010-2011?

23. Pursuant to Factual Findings 2 through 6 and 31 through 43, and Legal Conclusions 1 through 8, 17 and 18, the District was ready and willing to provide

Student with special education instruction at the ATP at the Instructional Media Center and it was Parents who decided that Student should not attend. Parents expressed their displeasure by unilaterally removing Student from FHS on the first day of the 2011 ESY, and attempting to re-enroll Student at FHS at the start of SY 2011-2012. However, the District decided that if Student attended the ATP, regardless of whether Parents consented to the June 8, 2011 IEP, the District would not provide Student with the related stay put services required by the October/November 2007 IEP (a one-to-one aide, door-to-door transportation, S/L, OT and APE), because Parents had not signed the assessment plan for the District to obtain assessment information to determine whether Student still required these related services. The fact that the District provided Parents and Student with prior written notice rejecting their request for a fifth year of high school does not allow the District to decide unilaterally not to provide the related services in Student's last agreed-upon and implemented educational program for purposes of stay put. The District's removal of all related services did not, as closely as possible, replicate Student's last agreed-upon and implemented educational program, taking into consideration Student's progressive change from high school to an ATP, as required in *Van Scoy*.

24. Additionally, the OAH cases the District cites as authority to terminate related services because of Parents' refusal to agree to the District's assessment request are not applicable. *Oxnard Elementary School District v. Student* (January 26, 2007) Cal.Ofc.Admin.Hrngs. Case No. 2006020772 and *Los Angeles Unified School District v. Student* (June 23, 2011) Cal.Ofc.Admin.Hrngs. Case No. 2011030595, involved cases where the school district filed for due process and requested that OAH issue an order to compel student to participate in the requested assessment over the objections of parents. The ALJ in each case granted the school district's assessment request and held that if parents failed to make the student reasonably available for an assessment, the

student would not be entitled to special education services. In this case, the District failed to avail itself of this process to compel Student's assessment, and therefore is not entitled to cease providing special education services without first filing for due process.

25. Therefore, the District refused to provide special education services called for in the October/November 2007 IEP for purposes of stay put. While Parents would have refused to have Student attend the ATP at the Instructional Media Center even if the District provided the related services in the October/November 2007 IEP, the District's conduct in blatantly deciding to engage in self-help, which the stay put provisions in the IDEA explicitly prohibit, is inexcusable. The District's position refusing to provide Student's related services, repeated in several letters and communications with Parents, negatively impacted their decisions and exacerbated the dispute between the parties. The District committed a procedural violation that would have prevented Student from obtaining an educational benefit and significantly impeded Parents' ability to participate in the decision-making process through its unilateral conduct to terminate services. Additionally, the District never requested a due process hearing for OAH to make a determination whether its June 8, 2011 IEP provided Student with a FAPE, as Student's complaint merely challenges the change in placement without parental consent, and not the adequacy of the District's June 8, 2011 IEP offer. (See *Anchorage School Dist. V. M.P.* (9th Cir. July 19, 2012, No. 10–36065) ___ F.3d ___, 2012 WL 2927758, p. 6.) Therefore, the District denied Student a FAPE by refusing to provide him with special education services included in his last agreed-upon educational program if Student attended the ATP at the Instructional Media Center without a consented to IEP.

Relief

26. 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*).)

27. 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, ex rel. Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 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 additional training for special education staff. (See *Park, supra*, 464 F.3d at p. 1034.)

28. In an appropriate case an ALJ may grant relief that extends past graduation, age 22, or other loss of eligibility for special education and related services as long as the order remedies injuries the student suffered while he was eligible. (*Maine School Admin. Dist. No. 35 v. Mr. and Mrs. R.* (1st Cir. 2003) 321 F.3d 9, 17-18 [graduation]; *San Dieguito Union High School Dist. v. Guray-Jacobs* (S.D.Cal. 2005, No. 04cvl330) 44 IDELR 189, 105 LRP 56315 [same]; see also *Barnett v. Memphis City Schools* (6th Cir. 2004) 113 Fed.App. 124, p. 2 [nonpub. opn][relief appropriate beyond age 22].)

29. Pursuant to Factual Findings 44 through 46 and Legal Conclusions 23 through 28, the District denied Student a FAPE by unilaterally deciding to change the related services if Student attended the ATP at the Instructional Media Center for SY 2011-2011. Despite the fact that Parents would not have enrolled Student in the ATP at

the Instructional Media Center even if the District agreed to provide Student with the related services specified in the October/November 2007 IEP, compensatory education is warranted based on the District's prohibited exercise of egregious self-help to force Parents to sign the proposed assessment plan when the District had an available remedy of filing a due process hearing request to assess Student. Additionally, the District's conduct would have denied Student an educational benefit of not receiving the related services in the October/November 2007 IEP with no proof, through any assessment, that he no longer required these related services. Accordingly, the appropriate award of compensatory education is an additional year of special education related services until Student reaches the age of 23, based on the District's denial of FAPE.

30. Additionally, the testimony of Ms. Gunter and Ms. Evangelinos established that the District has provided its regional instruction managers with misinformation claiming that it may unilaterally decide to change a student's related services if the District provided prior written notice and parents have continually refused to permit the District to assess the student. Accordingly, additional training to District regional instruction managers is needed to ensure that the District will not unilaterally engage in self-help if a parent refuses to consent to an assessment plan.

ORDER

1. Student shall receive as compensatory education an additional year of special education services and instruction until Student reaches the age of 23. The District shall provide Student with the level of related services specified in his October/November 2007 IEP as to a one-to-one aide, door-to-door transportation, S/L, OT, APE and behavior intervention services if Student attends the ATP at the Instructional Media Center, until the parties agree otherwise as to Student's educational program or the District requests a due process hearing and obtains an order from OAH that it may change Student's educational program.

2. Within 90 calendar days of this decision, the District shall provide its special education regional instruction managers with six hours of training on the IDEA and California requirements for parental consent to assessment plans and stay put, including requesting a due process hearing if a parent refuses to consent to a District-requested assessment, and stay put requirements when a special education student changes grades or completes or graduates from high school.

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 partially prevailed on Issue 4 and the District prevailed on Issues 1, 2 and 3 and partially prevailed on Issue 4.

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. A party may also bring a civil action in the United States District Court. (Ed. Code, § 56505, subd. (k).)

Dated: August 9, 2012

/s/
PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings