

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN, ON BEHALF OF STUDENT,

v.

BASSETT UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011071050

DECISION

The due process hearing in this matter was held on December 12, 13, and 14, 2011, in La Puente, California, before Administrative Law Judge (ALJ) Clifford H. Woosley, Office of Administrative Hearings (OAH).

Advocate Maria Calzada appeared on behalf of Student, who was present throughout the hearing. Student's great-aunt (Guardian) also attended the hearing. Jennifer Woolverton of Leal Trejo, PC, appeared on behalf of Bassett Unified School District (District). District representatives included the Assistant Superintendent of Special Services, Cecilia Ornelas, and the Program Specialist for Special Education, Jaime Tambara.

On July 27, 2011, Student filed a Request for Due Process Hearing (complaint). On September 12, 2011, OAH granted Student's request for leave to file an amended complaint. Student filed his amended complaint on September 29, 2011. On November 16, 2011, OAH found good cause and granted Student's request for continuance of the due process hearing. On December 14, 2011, at the close of hearing, the parties were granted permission to file written closing arguments by January 6, 2012. OAH granted Student's subsequent request for a continuance to January 9, 2012, at which time written closing arguments were filed, the record was closed, and the matter submitted.

ISSUES

a) Did District fail to comply with the state and federal special education standards and procedures for graduating Student from high school with a regular diploma in 2011 and, if so, did such procedural violation deny Student a free appropriate public education (FAPE)?

b) Did District fail to provide placement and services to Student, in accordance with his June 3, June 14, and July 22, 2011 IEPs, thus entitling Student to compensatory services and/or other relief?

FACTUAL FINDINGS

1. At the time of hearing, Student was 18 years old.¹ He qualified for special education services two weeks before the end of his senior year in 2010-2011 at Bassett High School. On March 29, 2011, his Guardian had requested, in writing, that District evaluate Student. District prepared and provided a proposed assessment plan, which Guardian signed on April 11, 2011.

2. District School Psychologist, Bernardo Peinado, evaluated Student in May 2011 and prepared a Psycho-Educational Assessment Report for the initial Individual Education Program (IEP) team. Mr. Peinado reviewed Student's background history, noting that Student was a high school senior, participating in a general education curriculum. Student had previously qualified for special education services in kindergarten. Student's December 4, 2001 triennial IEP team determined that he no longer qualified, and Student was removed from special education at that time.

3. Mr. Peinado reviewed the Student's school medical records, which included recent screening of his hearing and vision, but did not note anything unusual.

¹ Student had assigned his educational right to his Guardian.

During Mr. Peinado's testing of Student, Student's behavior was appropriate at all times. He was cooperative, responsive to verbal directions, and put forth favorable effort during the testing situation. Mr. Peinado concluded that the test findings were fair and valid measures for the purposes of assessment.

4. For the evaluation, education specialist Jessica Ramirez administered the Woodcock-Johnson III Normative Update Tests of Achievement (WJ-III) on April 25 and 26, 2011. Mr. Peinado also administered standardized tests, which included the Woodcock Language Proficiency Battery – Revised (WLPB-R), the Kaufman Test of Educational Achievement – Second Edition (KTEA-II), and Wide Range Achievement Test – Revision 3 (WRAT-3). Student completed the Beery-Buktenica Developmental Test of Visual Motor Integration, Fifth Edition (Beery VMI). The test results indicated that Student's "academic skills and achievement test score in math calculation were below his expectancy level of performance." Mr. Peinado concluded that Student had a specific learning disability (SLD) concerning his sensory-motor skills that resulted in a severe discrepancy between Student's intellectual ability and achievement in mathematic calculation.

5. Mr. Peinado testified at hearing. He had been a District school psychologist for 21 years. He explained that Student's overall cognitive functioning was in the average range. In addition, there were no areas of severe discrepancy or learning disability other than the deficiency in math computation, which was related to Student's sensory-motor skills.

6. Mr. Peinado advocated monitoring Student's progress for meeting graduation requirements, as Student had represented that he wanted to graduate and receive his diploma that year, with the 2011 graduating class. Student's teachers confirmed this when they advised Mr. Peinado that Student attempted to complete his assignments and pass his tests and quizzes, in order to earn his credits for his high

school diploma. Mr. Peinado noted that Student accumulated credits necessary to graduate with his Class of 2011.

7. Mr. Peinado recommended that Student continue in academic activities that would facilitate and promote Student's achievement skills and participation in prevocational and vocational experiences. He suggested that verbal cues and/or directions supplement visual tasks whenever possible and that Student explain visual assignments in order to ensure he correctly processed what he visualized. Mr. Peinado recommended the accommodations to address the deficiency in sensory-motor skills and the specific learning disability indicated by the discrepancy in math calculation.²

INITIAL IEP OF JUNE 3, 2011

8. On June 3, 2011, District convened Student's initial IEP team meeting. The attendees included Guardian, Student, Mr. Peinado, Transition Specialist Mercille Lush, an administrator designee, and Ms. Ramirez. A copy of Student's official transcript as of May 20, 2011, was distributed to the IEP team members and made a part of the IEP document. Student's fourth quarter progress report was also shared with the team.

9. Mr. Peinado reviewed his assessment and report with the IEP team. The team agreed that Student qualified for special education services under the eligibility category of SLD with deficits in sensory-motor skills.

10. Ms. Ramirez proposed, and the team accepted, a goal and objectives in the area of math calculation. The measurable annual goal, to be attained by June 3, 2012, was as follows: When given 10 problems, including two real life scenarios, which require the addition and subtraction of fractions and mixed numbers, [Student] will

² More detailed findings are unnecessary because the appropriateness of the testing, assessments, evaluations, conclusions or recommendations was not put in issue by Student's complaint.

solve for the sum or difference, expressed in simplest terms, with 70% accuracy in three of five trials as measured by criterion assessment. The measurable benchmark or short-term objective, to be reached by November 2011, was similar to the annual goal, except it used five problems and 50% accuracy in one of two trials. The measurable benchmark or short-term objective, to be reached by April 2012, was also similar to the annual goal, except it used seven problems and 60% accuracy in three of five trials.

11. The IEP stated that Student remained in an unmodified general education curriculum, on track to graduate at the end the academic year on June 17, 2011. The team provided Student with accommodations, which included: smaller group setting for test taking in order to receive assistance from an education specialist or instructional aide; extra time on assignments, projects, or tests; tests in a quiet room (i.e., the high school's resource room); the use of notes on tests in the resource room; and the use of a calculator on math assignments and tests. The IEP team provided Student with related services of specialized academic instruction, two times a week, for 45 minutes per session, in both individual and group settings.

12. As the education specialist, Ms. Ramirez was the case manager and primary related services provider for Student. She testified at the hearing. She obtained an Education Specialist Clear Credential in July 2008 and a Level I and Cross-Cultural Language and Academic Development (CLAD) Credential in December 2007. She successfully passed the California Basic Educational Skills Test (CBEST), the California Subject Examinations for Teachers (CSET), and the Reading Instruction Competence Assessment (RICA). She had worked with the District for more than 10 years and had been a special education specialist since 2005.

13. Ms. Ramirez testified that the Student's discrepancy in math computation was sufficient to qualify Student with an SLD, and explained that she was the one who provided the twice-weekly "pull-out" related service of specialized academic instruction.

14. Though Student's goal and objectives addressed the math computation discrepancy, the IEP team recognized that the discrepancy related to Student's deficit in sensory-motor skills. Therefore, Mr. Peneido recommended – and the IEP specified for implementation – that accommodations and related services be provided in all subjects. For example, the IEP stated that Student would take his semester final examinations with the case carrier, even though most of his classes did not involve math computation. The IEP team intended the accommodations and related services to benefit Student in all academic areas.

15. The IEP team discussed Student's progress toward graduation with a regular diploma in June 2011. The IEP team expressed concern regarding Student's performance in the classes he was taking at the time. He was taking English 12B, American Government, Applied Mathematics 1, Business Technology, Sports Medicine ROP (Regional Occupational Program), and Read/Write CAHSEE (California High School Exit Examination). The IEP team explained that Student must pass English 12B, American Government, and Applied Math in order to fulfill the diploma course requirements. At the time of the IEP, Student was failing American Government and English 12B.

16. The IEP stated that California state educational requirements for graduation with a regular diploma (unmodified, general education curriculum) were 220 units, consisting of specifically required courses and elective classes, as well as 40 hours of community service, which Student had already completed. A student must also pass the California High School Exit Examination (CAHSEE), which has two parts: English-language arts (ELA) and mathematics. Student passed the CAHSEE mathematics portion in November 2009. However, he failed to pass the CAHSEE ELA, which he took in March 2011. At the time of the initial IEP, in order to graduate with a regular high school diploma with his 2011 senior class, Student needed to pass the 15 units of required courses he was taking in math, English, and American Government, as well as pass the

CAHSEE ELA.³

17. Student's progress toward these requirements was listed in the initial IEP document, contained in the official transcript that was part of the IEP document, and stated in Student's Individual Transition Plan (ITP). The ITP was given to the Guardian as part of the IEP document. Student acknowledged receiving the ITP in writing on June 3, 2011. The documentary and testimonial evidence established that the District members of the IEP team fully informed Student and Guardian regarding the requirements to graduate in June 2011, what Student needed to accomplish to meet those requirements, and where there was danger of Student not achieving the graduation requirements.

18. Mercille Lush met and interviewed Student prior to the IEP meeting. As a transition specialist, she evaluates students through interviews and surveys, providing activities and direction to assist students in transition from high school to college and work. Ms. Lush first became involved with Student in May 2011. She had Student complete a Student Transition Planning Profile and survey. Student stated that he wanted to complete high school with his diploma and attend Citrus College to study Recording Technology. She testified that Student was very insistent about graduating from high school that year. Student wanted to work part-time while attending college. Ms. Lush prepared the Student's ITP, which she presented at the initial IEP meeting.

19. The ITP listed career and vocational path activities as well as necessary documents and services to prepare for transition after high school graduation. Student needed to obtain a driver's license, California Department of Motor Vehicles identification, and transit identification.

³ The June 3, 2011 IEP does not mention that Student had again taken the CAHSEE ELA in May 2011. However, the results were not then available and did not appear on the Student's transcript.

20. The ITP listed two Post-Secondary Goals for Student. First, Student would pursue enrollment in a local community college. To achieve this goal, Student would pass his high school courses required for graduation. He would take the community college placement test and register for his college classes, as well as register with the disabled student services office. Student would also schedule an appointment to meet with the California Department of Rehabilitation (DOR) after completing the application.

21. Student's second Post-Secondary Goal was to research different job opportunities in his community. Toward this goal, Student would ask his teacher for a letter of recommendation, identify two to three companies as possible employers, and go to the companies and complete job applications. He would work with his family to obtain his California identification. Student would also schedule an appointment to meet with the DOR after completing the application. Student acknowledged in writing that he participated in developing the ITP and had received the Exit Plan Post-Secondary Recommendations.

22. Ms. Lush explained that when the IEP "linked" the ITP to Student's goal and objectives, it did not mean that Student must meet the goal to complete the ITP. Ms. Lush emphasized that ITP is an activity-based program, not dependent upon meeting measurable, academic goals and objectives. Student could complete the ITP activities without or regardless of his math computation goal. A student is not required to complete an academic goal to complete the ITP. She also stated that completion of ITP tasks is not a prerequisite to high school graduation.

23. Ms. Lush reviewed the DOR application with the IEP team and testified that she provided the application to Guardian and Student. She explained to Student and the IEP team that the DOR was a good opportunity to receive services for community college and employment. Ms. Lush told Student that he could come to her anytime to get assistance in completing the DOR application.

24. The Guardian signed the IEP, acknowledging that she participated as a member, received a copy of Parent Rights and Procedural Safeguards, and received copies of the specialist reports and the IEP. She gave her informed consent for the IEP's implementation on June 3, 2011.

25. Student's advocate advised Ms. Lush that she would assist Student in completing the DOR application and help arrange for the DOR appointment. Ms. Lush gave Student's advocate a copy of the DOR.

26. Ms. Lush assisted Student in drafting a resume and obtaining materials for the DOR application. She aided Student in looking at Citrus College, and noted that Student was excited about entering its recording studio program. She reviewed the program requirements and the college enrollment process. She explained how he would register and qualify for services and assistance from the college's disabled student service program. The program would assist him in taking the placement tests and register for classes in his preferred program. Ms. Lush and Student reviewed the documents he needed to gather and take to enroll at the college and register in classes.

27. Ms. Lush discussed the DOR application with Student, explaining that he could request further assistance from her at any time. Student wanted to obtain a bus pass, so Ms. Lush helped Student by getting his picture and completing the application. Student obtained the transit pass, which was to be his mode of transportation for commuting to college. She also assisted Student in completing his job application forms. Ms. Lush encouraged Student to ask his teachers for recommendation letters, in addition to writing a letter of recommendation herself.

28. Ms. Lush provided Student with all the ITP services outlined in the ITP. Based on her years of service as a transition specialist, Ms. Lush knew of no other services or aids she could have provided Student to prepare him for moving to community college and finding part-time employment after his high school graduation.

29. Student testified at the hearing. Student was well-mannered and respectful at all times. When asked to read from exhibits, he did so without difficulty, speaking clearly. Some questions confused Student. Many of his advocate's questions were leading, implying the "correct" answer. A significant portion of his testimony appeared rehearsed, hesitant, or insincere, especially in response to his advocate's questions. As a result, much of Student's testimony was not factually persuasive.

30. Student testified that no one pulled him from class to work on his math computation goal after the June 3, 2001 IEP. Ms. Ramirez testified that she provided the related services of specialized academic instruction for the remainder of the academic year. Twice a week she pulled Student out of class for 45-minute sessions. She also indicated that Student received all accommodations. Regarding this issue, Ms. Ramirez' testimony is more persuasive. The advocate's questions of Student implied that his special academic instruction solely had to address his math computation goal. As found above, this was not true. (See Factual Findings 13 and 14, hereinabove.) Student submitted no other persuasive evidence to indicate that he did not receive the accommodations and related services provided by the June 3, 2011 IEP. District provided the IEP specified accommodations and specialized academic instruction, for the remainder of the academic year.

ADDENDUM IEP OF JUNE 14, 2011

31. An IEP team meeting convened on June 14, 2011, as an addendum to the initial IEP of June 3, 2011. The attendees included Guardian, Student, Student's Advocate Ms. Calzada, Bassett High School Principal Salvador Flores, and Ms. Ramirez. The Guardian and advocate waived having a general education teacher present at the meeting.

32. The IEP team convened to discuss Student's graduation status. The District provided Student's fourth quarter grades and an updated transcript to Guardian.

Student had passed only two of the three courses required for graduation, English 12B and Applied Mathematics 1. Student was about to receive an "F" in American Government, which would mean that Student could not graduate high school since California state standards required American Government. Additionally, Student would be five units short of the requisite 220 units required for graduation.

33. However, as explained in testimony by District's Assistant Superintendent of Special Services, Cecilia S. Ornelas, and District's Program Specialist, Jaime Tambara, high school seniors may capture credits required for graduation by participating in an independent study, summer credit program. Ms. Ornelas has been District's special services assistant superintendent since 2006. Ms. Ornelas earned a masters of arts in education administration from California State University, Dominguez Hills, in 1997, as well as her bachelor of arts from California State University, Los Angeles, in 1989. She is a member of the Association of California School Administrators. Before coming to the District, she worked in the El Rancho Unified School District, as a teacher from 1994 to 1999, the Dean of Students from 1999 to 2001, and a principal from 2001 to 2006.

34. Her District duties include supervising and overseeing the Student Services and Special Education Departments, as well as Health Services. She serves as a liaison between schools, parents, and the community in solving disputes or issues. She supervises the preparation and submittal of all district, county/state and federal reports related to special education, expulsions/suspensions, homeless/foster youth, school attendance review boards (SARB), California Class Size Reduction (CSR) initiative, California School Age Families Education (Cal-SAFE) program, and alternative education, including referrals to county and state programs. Ms. Ornelas was qualified to testify about the credit recovery program.

35. Ms. Tambara had been the District's program specialist for the special education department since 2005. Ms. Tambara earned her bachelor of arts in child

development at California State University, Los Angeles, along with her California standard teaching credential. Ms. Tambara earned her learning handicap credential and a resource specialist program certificate at Cal Poly, Pomona. She possesses a masters of arts in reading from National University. She is a member of the California Association for Resource Specialists Plus (CARS+), Learning Disabilities Association (LDA), and California Teachers Association (CTA). Ms. Tambara worked for the District since 1974, beginning as a second grade teacher until 1976, then as a curriculum lab teacher until 1977, as an itinerant substitute teacher from 1982 to 1985, a fifth grade teacher from 1986 to 1993, and a resource specialist until 2005, when she became the District's program specialist.

36. Ms. Tambara's duties include overseeing K-12 Special Education program, making referrals to non-public schools (NPS) and non-public agencies (NPA), meeting with teachers regarding SE throughout the year, and oversight of special education compliance issues. In general, she assists teachers and staff with the special education program. Ms. Tambara was qualified to testify about the credit recovery program.

37. Ms. Ornelas and Ms. Tambara testified to various aspects of the credit recovery program and, together, their testimony provided a clear understanding of the program. Specifically, if a general education 12th grade student fails a spring semester course that is required for a diploma, the pupil would not graduate. In this situation, the high school principal has the option of allowing the student to take a grade of "incomplete" and commit to participate in an independent study of the required course during the upcoming summer school for purposes of capturing the needed units. The program is called "credit recovery," "senior recovery," or "senior make-up." If the student agrees to the program, the principal allows the student to "walk" with the senior classmates at the June graduation ceremony. The student does not receive a diploma at the ceremony but, instead, formally graduates after earning a passing grade in the credit

recovery program.

38. Ms. Ornelas said that the District designed the credit recovery program for students who are pursuing an unmodified, general education curriculum, like Student. Credit recovery is not a special education program. However, since Student received special education services, Student's IEP needed to be modified. Ms. Tambara explained that ESY was a special education summer program. If Student was going to pursue credit recovery during Summer 2011 (a general education program), he would not be participating in ESY. Therefore, the June 14, 2011 addendum IEP met to amend the IEP to reflect that Student would be attending the summer school credit recovery program as opposed to ESY.

39. Guardian received, completed, and signed the summer school application, for the credit recovery program. The form registers Student for summer school from June 20 through July 22, 2011. Student was designated to take course number EL9130, Senior Make-up, for Period 1 (7:50 a.m. to 9:50 a.m.).

40. The IEP stated that Student would complete American Government and a career awareness book by the end of summer school on July 22, 2011. In his testimony, Student referred to the career awareness book as "Pathfinder." The team recognized that Student's American Government grade changed from an "F" to an "incomplete," so that Student would have the opportunity to make up the class. The IEP stated that Student would be allowed to walk for graduation and would receive his diploma once Student completed what the IEP team had recommended. The IEP team would meet in the summer to address other concerns.

41. The IEP team also provided Student with workability applications, so Student could participate in the workability summer session. Student was assigned 100 workability hours. Ms. Lush, who did not attend the addendum IEP meeting, was responsible for supervising and coordinating the workability program. She explained

that the workability program was a California grant given to high schools to assist special education students with work experience in the community. Workability was a voluntary program, in which Student requested to participate. A student's available time and capability determined the number of workability hours. Participating students are paid for their time.

42. The IEP noted the request of Student's advocate that Student return in the fall 2011 to prepare for the CAHSEE ELA and special instruction for the driver's education handbook. The IEP did not include any discussion regarding these requests.⁴

43. The Guardian signed the IEP on June 14, 2011, acknowledging her participation and consenting to implementation.

44. Student walked with his Class of 2011 at the graduation ceremony. Student testified that he knew when he participated in graduation that he would receive a diploma after completing American Government.

2011 SUMMER SCHOOL AND WORKABILITY PROGRAM

45. Student said that he went to Bassett High School on the first day of summer school, June 20, 2011, at 7:45 a.m, for Period 1. Student said that Ms. Ramirez had already given him his book. He signed in and recorded his attendance. The summer school teacher, Mr. Pokorski, instructed him to do his work and to bring it in for correction. Mr. Pokorski told Student he was not to stay in the classroom, but that he should leave and do his studies. Student said he could not attend American Government and Pathfinder in the classroom. He said that he thought he would go for one period and do American Government and then another period for Pathfinder.

46. Student continued to report for Period I each day. He would sign in and

⁴The results of the May 2011 CAHSEE ELS were still unavailable. See footnote 3, above.

leave. He said he did the work independently. Guardian testified that she knew Student was supposed to sign in at school and then take work home to study. Student last reported to Mr. Pokorski on June 26, 2011. Student said he did not receive any instruction in American Government from Mr. Pokorski.

47. In July 1, 2011, Student, Guardian, and Student's advocate went to the District's offices and met with District Superintendent, Martin Galindo. Student and Guardian both testified that they requested the meeting to ask if Student could attend summer school at the District offices, not at Bassett High School campus. Student told his Guardian that he was being harassed at the high school by other students who were making fun of him, wondering why he was still there and why he had not graduated.⁵ Mr. Galindo gave permission for Student to do the program at the District's offices instead of Bassett High School campus. Student testified he did not recall any discussion regarding any other issue at the meeting with Mr. Galindo.⁶ Neither did Guardian. Thereafter, Student reported to the District offices for his studies, with Ms. Ramirez.

48. Student testified that he believed the application for summer school was for him to attend class each day for two classes, American Government and Pathfinder. Student's testimony was not persuasive. There was no reason for Student to assume that Pathfinder was a class. The IEP simply indicated that Student was to complete the career awareness book by the end of summer school. Completing the workbook was not a

⁵ Guardian testified that the harassment may have included vulgar or racial slurs, but she did not elaborate. Student does not raise these as an issue in his due process complaint.

⁶ Mr. Galindo testified at hearing. Other than recalling there was a meeting, he had no substantive recollection of what occurred. He acknowledged thereafter seeing Student at the District's offices.

graduation requirement. No evidence implies Pathfinder is anything other than a workbook to assist Student with post secondary education and employment.

49. Student also testified that he believed American Government was to be taught in a class. His testimony was unpersuasive. Though the IEP notes do not specify that the credit recovery program was independent study, the program was not uncommon, certainly known amongst seniors trying to meet diploma requirements to graduate. The summer school application makes no mention of American Government, or Pathfinder. Instead, the application clearly stated Student would be participating in "Senior Make-up." Student had just completed a semester of American Government class instruction. No one ever told the Student he was repeating the class. Rather, he was participating in a credit recovery. Though Student claimed that he expected class instruction, Student said he studied on his own, which was the program's design. Further, if Student was not receiving classroom instruction to which he was entitled, he, Guardian or the advocate would have told the superintendent on July 1, 2011. They did not. The evidence supports the finding that Student and Guardian were fully informed of the summer school credit recovery program for American Government, which was provided in accordance with District guidelines

50. Ms. Ramirez persuasively testified that she provided specialized academic instruction to Student during summer school. After Student's July meeting with the superintendent, Ms. Ramirez met with Student at the District's offices. She coordinated the meeting times with Student's workability schedule. She provided instruction and services to Student for approximately one hour on the morning of July 5, an hour to an hour and a half on the morning of July 8, 55 minutes on the morning of July 11, 55 minutes on morning of July 12, and about an hour on morning of July 13 between 9 and

10 a.m.⁷ Ms. Ramirez stated she met with Student between one and a half and two hours on July 14. On July 18, Student asked if he could come in earlier than scheduled, which he did, and received more than an hour of instruction. She met with Student 55 minutes on the morning of July 19, one to one and a half hours on July 20, and 55 minutes on July 21. District employee Ms. Hernandez prepared a calendar to coordinate Student's workability hours with Ms. Ramirez' hours. Both Ms. Lush and Ms. Ramirez attested to the accuracy of the calendar. The calendar confirms Ms. Ramirez also provided services for an hour on July 15.⁸

51. Ms. Ramirez explained that Student was to read each chapter in the American Government textbook, answer the questions, and do the vocabulary for each section. Student was assigned the chapter quizzes and reviews as homework. Ms. Ramirez would review the homework and then give Student an opportunity to correct errors.

52. Student testified that he did not take a final exam in the summer school

⁷ All dates are for the year 2011.

⁸ Student's advocate referred to Student's Exhibit S2, page 5, which purported to be a "timesheet" for Student's workability program between July 1 and 13, 2011, in an attempt to impeach Ms. Ramirez. Student provided no evidence as to who completed this form. Ms. Lush testified that the form was not an official timesheet (i.e., she did not sign) and did not know who completed the form. Ms. Ramirez testified that she actually met during some of the time periods that the form showed Student as working. The calendar document prepared by the District's employee Ms. Hernandez (Student's Exhibit S2, page 7), to coordinate Student's workability hours with Ms. Ramirez' hours, showed the "timesheet" to be inaccurate. Therefore, the "timesheet" did not affect the credibility of Ms. Ramirez' testimony.

program for American Government. In her testimony, the Guardian questioned how Student could have received a grade when he did not take a final exam. Ms. Ramirez testified, however, that a final exam was not the only means of measuring Student's performance. She used the textbook's unit assessments in measuring Student's progress. A unit consisted of four chapters. She had the Student answer the unit assessments. In accordance with his accommodations, Student could use his notes during the testing. Ms. Ramirez also provided Student with the specialized academic instruction.

53. Student did not complete his career awareness book by the end of summer school, even though Ms. Ramirez offered to help Student with the workbook. However, the career awareness book was not a graduation requirement and did not affect whether Student qualified to receive his high school diploma.

54. Student passed American Government. Ms. Ramirez did not issue a report card. She reported Student's grade so it would be reflected on his official transcript. She shared Student's grade at the July 22, 2011, IEP.

55. In addition to providing the services summarized in Findings of Fact 25 through 28, above, Ms. Lush supervised Student's workability program during the summer. Ms. Lush assisted Student in the interview, placement, and documents needed by the employer. She, along with the employer, monitored Student's job performance. The workability hours were coordinated through the District office so Student could attend his sessions with Ms. Ramirez. Student still had a few hours to complete for his workability program when summer school concluded on July 22.

ADDENDUM IEP OF JULY 22, 2011

56. The IEP team convened on July 22, 2011, for an addendum to the initial IEP of June 3, 2011. The attendees included Guardian, Student (who had turned 18 years old), Student's advocate, Ms. Ramirez, Ms. Lush, Ms. Ornelas as the administrative

representative, and Ms. Tambara.⁹

57. The IEP team convened to review Student's exit report. In July 2011, District was informed that Student had passed the May 2011 CAHSEE ELA test with a score of 362. Student also successfully completed the summer school credit recovery program, receiving a grade of "B-" in American Government. Student had therefore met the requirements for a regular high school diploma. Student and Guardian were informed that this would be the last IEP meeting because graduation with a regular high school diploma exited the Student from special education.

58. Ms. Lush prepared and provided an updated Exit Summary of High School Performance, along with Post-Secondary Recommendations. Guardian told the IEP team that Student had a scheduled appointment with DOR. Student's advocate advised that the DOR application would be completed with her assistance, and that she would be going to the DOR meeting to assist Student and Guardian.

59. The IEP provided Student until July 29, 2011, to complete the 100 workability hours. This assured a good report for Student, who earned five work experience credits on his official transcript, and enabled Student to be paid for all the time allotted.

60. The Student's advocate asked that Student receive help in developing a resume. The IEP stated that Ms. Lush would assist Student as part of his work experience program to complete a current resume. Student was requested to bring any necessary documents to Ms. Lush and be prepared to work on the resume by July 29, 2011.

61. The Guardian and Student did not accept or sign the IEP. The advocate

⁹ The IEP's appearance sheet does not contain Ms. Tambara's signature. She initially printed the attendance sheet and signed. However, when she reprinted the IEP document, she forgot to sign.

wrote, on the bottom of the IEP, as follows: "We do not accept the High School Diploma and request that [Student] develop the skills he still needs to develop. We request [Student] stay in High School." The Guardian then signed below.

62. Ms. Lush later met with Student. The workability employer rated Student an excellent worker.

63. In July 2011, Student took the placement exam at Citrus College and scored well enough to enroll and take college courses. Yet, Student did not enroll and begin his college courses.

LEGAL CONCLUSIONS

1. In Issue One, Student contends that District committed procedural violations, amounting to a denial of FAPE, by failing to provide prior written notice of District's intent to issue a high school diploma, failing to provide the specialized academic instruction, related services and accommodations in his IEP's, and falsely claiming that Student complied with state and District requirements for a regular high school diploma (i.e., passage of the CAHSEE ELA and receiving American Government credit). In Issue Two, Student further contends that District's failure to provide IEP mandated accommodations and related services entitles Student to compensatory services and other relief.

2. District contends that prior written notice of its intent to issue a regular diploma was not required. However, if required, the 2011 IEP's unambiguously stated that Student would be graduating with a regular diploma, meeting all prior written notice legal standards. District asserts that Student met all state and District requirements for a regular high school diploma and that it provided Student with the accommodations and related services mandated by the Student's IEP's, at all times. District further asserts that any possible procedural violations do not meet the legal threshold for a denial of FAPE.

APPLICABLE LAW

3. In a special education administrative due process hearing, the party seeking relief has the burden of proving the essential elements of its claim. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) In this matter, the Student has the burden of proof.

4. Under the Individuals with Disability Education Act (IDEA) and state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(a); 34 C.F.R. § 300.101 (2006); Ed. Code, § 56000.) A FAPE means special education and related services that are available to the special needs pupil at no charge to the parents, that meet state educational standards, and that conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006); Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39 (2006); Ed. Code, § 56031, subd. (a).) Specially designed instruction also includes accommodations that address a child's unique needs and that ensure access to the general curriculum. (34 C.F.R. § 300.39(b)(3) (2006).) "Related services" are developmental, corrective and support services that are required to assist a special needs pupil to benefit from special education. (20 U.S.C. § 1401(a)(26); 34 C.F.R. § 300.34(a) (2006); Ed. Code, § 56363, subd. (a).) In California, related services are called designated instruction and services (DIS).

5. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the United States Supreme Court addressed the level of instruction and services that must be provided to a pupil with a disability to provide a FAPE. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide the student with the best education available or to provide instruction or services that

maximize a student's abilities. (*Id.* at pp. 198-200.) The Court stated that school districts are required to provide a "basic floor of opportunity" that consists of access to specialized instructional and related services that are individually designed to provide educational benefit to the student. (*Id.* at p. 201; *J.L. v. Mercer Island School District* (9th Cir. 2009) 575 F.3d 1025, 1034, 1037-1038 & fn. 10 (*Mercer Island*).

6. There is no one test for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203 fn. 25.) A student may derive educational benefit under *Rowley* if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. A student's failure to perform at grade level is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. (*Walczak v. Florida Union Free School District* (2nd Cir. 1998) 142 F.3d 119, 130 (*Walczak*); *E.S. v. Independent School Dist., No. 196* (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *El Paso Indep. School Dist. v. Robert W.* (W.D.Tex. 1995) 898 F.Supp.442, 449-450.)

7. Under *Rowley*, the factual showing required to establish that a student received some educational benefit is not demanding. For a student in a mainstream class, "the attainment of passing grades and the regular advancement from grade to grade are generally accepted indicators of satisfactory progress." (*Walczak, supra*, 142 F.3d at p. 130.) A district need not guarantee that a student will make a month's academic progress in a month's instruction; a student may benefit even though his progress is far less than one grade level in one school year. (See, e.g., *Houston Indep. Sch. Dist. v. Bobby R.* (5th Cir. 2000) 200 F.3d 341, 349 n.3.) A two-month gain in reading in 10 instructional months has been held an adequate showing. (*Delaware Valley Sch. Dist. v. Daniel G.* (Pa. Cmwlt. 2002) 800 A.2d 989, 993-994.) A student derives benefit under *Rowley* when he improves in some areas even though he fails to improve in

others. (See, e.g., *Fort Zumwalt Sch. Dist. v. Clynes* (8th Cir. 1997) 119 F.3d 607, 613; *Carlisle Area School v. Scott P.* (3d Cir. 1995) 62 F.3d 520, 530.) A student may derive benefit while passing in four courses and flunking in two. (*Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.* (S.D.Tex. 1995) 931 F.Supp. 474, 481.)

8. The IEP is the “centerpiece of the [IDEA’s] education delivery system for disabled children” and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child, and the academic, functional and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) To determine whether a pupil was denied a FAPE, an IEP must be examined in terms of what was objectively reasonable at the time it was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; *Roland M. v. Concord Sch. Comm.* (1st Cir. 1990) 910 F.2d 983, 992 (*Roland*).)

9. Minor implementation failures are not actionable given that “special education and related services” need only be provided “in conformity with” the IEP. There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free and appropriate public education. (*Van Duyn v. Baker Sch. Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 821.) A “material” failure to implement, though, is actionable. A failure is material “when there is more than a minor discrepancy between the service a school provides to a disabled child and the service required by the child’s IEP.” (*Id.* at p. 822.) The materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. (*Ibid.*)

10. The methodology to be used to implement an IEP is left up to the district's discretion so long as it meets a student's needs and is reasonably calculated to provide some 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.)

11. In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following: impeded the right of the child to a FAPE; significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a FAPE to the child of the parents; or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f); see also, *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 (*Target Range*)). The hearing officer "shall not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian to participate in the formulation process of the individualized education program." (Ed. Code, § 56505, subd. (j).)

12. IDEA and federal regulations require a school district to provide written notice to parents before they initiate or refuse a change in a student's identification, evaluation, or educational placement. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503.) Specifically, the written notice must contain: (A) a description of the action proposed or refused by the agency; (B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by

which a copy of a description of the procedural safeguards can be obtained; (D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter; (E) a description of other options considered by the IEP Team and the reason why those options were rejected; and (F) a description of the factors that are relevant to the agency's proposal or refusal. A district must give prior written notice to the parents of a child with exceptional needs, and a reasonable time before proposing (or refusing) to initiate or change the identification, assessment, or educational placement of the child, or the provision of a FAPE. (34 C.F.R. § 300.503 (2006); Ed. Code, § 56500.4 subd. (a).)

13. Section 300.102(a)(3)(i) of Title 34 of the Code of Federal Regulations provides that an individual with exceptional needs who graduates from high school with a regular high school diploma is no longer eligible for special education and related services. (Ed. Code, § 50621.1, subd. (a).) The issue of whether a student with a disability will receive a regular high school diploma or a special education certificate when he graduates from school is not addressed by the IDEA. State law and school district policy exclusively determine diploma and graduation requirements. If a student with a disability meets all state and school district requirements for award of a regular high school diploma, he cannot be denied a diploma simply because he has a disability. (*Letter to Anonymous*, 22 IDELR 456 (OSEP 1994).) On the other hand, a school district is not required to award a diploma to a student with a disability who has not met the requirements for a regular high school diploma, even if the student has met his IEP goals. Further, the IDEA does not make achievement of a disabled student's IEP goals a prerequisite for awarding a regular high school diploma.

ISSUE 1: NO PROCEDURAL VIOLATIONS CAUSED A DENIAL OF FAPE

14. Student failed to demonstrate by a preponderance of the evidence that District committed procedural violations that denied him a FAPE. District established

that it complied with all prior written notice requirements regarding its issuance of a regular high school diploma, that District provided Student with the IEP's accommodations and related services, and that Student pursued and met all state and District requirements for a regular high school diploma. Specifically, the evidence showed that Student and Guardian were in agreement with Student's pursuit of a regular high school diploma by their full participation and concurrence with the June 3 and 14, 2011, IEP's. At no time before the July 22, 2011 IEP did Student, Guardian or Student's advocate inform the District that Student did not want to pursue and receive his high school diploma. The evidence is to the contrary. The June 2011 IEP's fully and unambiguously reflect Student's desire to graduate high school and the IEP team's efforts to provide Student with the special education services and support to achieve his goal in the general education curriculum. Further, the July 22, 2011 IEP clearly states and enumerates Student's achievement of all remaining requirements for graduation, thus causing the District to issue Student a regular high school diploma. In so doing, the evidence further demonstrates that District did not compromise delivery of Student's accommodations and specialized academic instruction and that Student legitimately met the diploma requirements.

Prior written notice

15. Student argues that the District did not provide prior written notice of intent to change Student's placement by issuing a regular high school diploma. However, the evidence indicated that prior written notice was unnecessary. A school district must provide written notice to parents before it initiates or refuses a change in a student's identification, evaluation, or educational placement. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503.) The change contemplated by the code and statute is one to which the student or parents disagree; that is, a District action that is contrary to the parents' wishes. Here, Student and Guardian agreed that Student would pursue satisfying all

requirements for receipt of a regular diploma. The evidence showed that Student told Mr. Peinado, Ms. Lush, his teachers and the IEP team that he wanted to graduate with his Class of 2011. Student intended to start community college courses, focusing on recording technology.

16. In addition, Mr. Peinado's psychoeducational assessment stated that Student wanted to pursue graduating at the end of the 2010-2011 academic year. Mr. Peinado noted that Student's teachers told him that Student worked to gain the credits to graduate. Also, in May 2011, when Ms. Lush interviewed Student for his ITP, Student emphatically told her that he wanted to graduate high school that year. When Student participated in the June 3, 2011 initial IEP, at which time he was found eligible under SLD to receive special education accommodations and related services, the IEP confirmed that Student had been and would remain on an unmodified, general education curriculum, consistent with those who sought a high school diploma. The evidence showed that because Student was a senior, the IEP team discussed Student's progress toward graduation with a regular diploma in June 2011. In that regard, the IEP team, which included Guardian and Student, reviewed the state and District requirements for graduation, indicated the requirements that Student still had to fulfill, noted Student's need to pass the CAHSEE ELA, and expressed concern at Student's performance in the required courses he was taking at that time.

17. Moreover, the evidence showed that Ms. Lush presented and reviewed Student's ITP, which she prepared with the cooperation of Student. She designed the ITP to transition Student from high school to Citrus College and part-time employment, consistent with Student's stated desires and goals. The ITP exercises, resources, information, and services plainly evidence the Student's and IEP team's distinct understanding that Student would complete his diploma requirements to graduate with his Class of 2011. The Guardian signed and agreed to the IEP and Student signed and

acknowledged receipt of the ITP.

18. Furthermore, when Student was about to fail American Government, a course required for graduation, the team, including Student and Guardian, convened on June 14, 2011 for the purpose of amending his IEP to reflect his decision to participate in a general education summer school credit recovery program, so that Student could participate in the June graduation ceremonies (i.e., "walk" with his graduating classmates). Despite Student's arguments to the contrary, the evidence establishes that Student and Guardian knew that the senior make-up program was a general education independent study program that would enable Student to capture the five units of American Government that would result in the procurement of his diploma. Student's conduct and choices persuasively established that he and his Guardian knew the purpose for the independent study credit recovery program (i.e., to obtain his high school diploma), and that they agreed that Student would pursue satisfying all requirements for receipt of a regular diploma. Guardian signed the addendum IEP and provided informed consent for its implementation. She also completed the summer school application for the senior make-up class for Student. Thereafter, Student walked with his fellow seniors at graduation, just as he agreed in the IEP, knowing that he would thereafter attend the summer school credit recovery program, so he could receive his diploma.

19. Therefore, the evidence convincingly establishes that there was no disagreement regarding Student's identification, evaluation, or educational placement that required District to provide a prior written notice. Yet, Student asserts that District had to give prior written notice when Student refused to accept his diploma at the July 22, 2011 exit IEP. This argument is disingenuous, considering that the July exit IEP merely confirmed that Student achieved his own diploma goal. Nevertheless, District was not required to send further notice because the July 22, 2011 IEP contained all

required components of a prior written notice.

20. Specifically, the evidence showed that the exit IEP team observed and noted in the IEP that Student had successfully completed the credit recovery program in American Government and had therefore passed all required courses, earning the 220 units necessary to graduate. The District also learned in July that Student has passed the May 2011 CAHSEE ELA. Consequently, the Student had met all state and District requirements for a regular high school diploma. Since Student was graduating with a regular high school diploma, he was no longer eligible for special education and related services. (34 C.F.R. § 102(a)(3)(i); Ed. Code, § 50621.1, subd. (a).) The IEP document, as well as the testimony from the attendees, convincingly establish that this was thoroughly discussed and explained at the meeting.

21. Moreover, the exit IEP plainly states the proposed action (issuing Student a regular high school diploma), the reason for the action and why Student could not remain in high school (he met all state and District graduation requirements), and the factors relevant to taking the action (successful completion of credit recovery and CAHSEE ELA). Guardian acknowledged in writing that she received notice of her procedural rights and a copy of the IEP. Also, an advocate represented Guardian and Student at the IEP meeting. Thus, the IEP contained the required components of a prior written notice and District was not obligated to send an additional writing. Student has failed to prove by a preponderance of the evidence any violation of the prior written notice requirement. No denial of FAPE occurred on this basis. (Factual Findings 6-7, 11, 15-28, 31-44, 56-63; Legal Conclusions 12-13, 14-20.)

Additional Diploma Requirements

22. Student asserts that he was not able to meet his IEP goal in math computation, did not complete the DOR application and other tasks in his ITP, and did not finish his career awareness workbook. Thus, he could not graduate. Student asserts

that he did not receive the IEP's accommodations and related services, which evidence District's primary intent to free itself of Student's special education needs. However, Student has failed to produce convincing evidence in support of these assertions, while District has convincingly established that these assertions are unfounded.

23. The evidence showed that the June 3, 2011 initial IEP team reviewed Student's diploma requirement status, stating that Student needed to complete three required courses and pass the CAHSEE ELA. The IEP unequivocally stated that Student met all other requirements. The IEP team expressed concern about Student's performance in two of the classes – American Government and English 12B. The team also said that Student needed to pass the ELA portion of the CAHSEE; he had already passed the math portion. The IEP and the ITP also establish that Student was intent on achieving the remaining requirements so he could graduate with his class. Therefore, the first IEP clearly stated what Student needed to accomplish to receive his regular high school diploma. Student had no basis to believe, or now assert, the existence of other diploma requirements.

24. Moreover, when Student was about to fail the required American Government class, the June 14, 2011 addendum IEP convened to document how Student was going to meet this requirement and "walk" with his class at graduation. The IEP stated that Student would receive his diploma upon successful completion of the summer school credit recovery program and pass the CAHSEE ELA. As such, Student knew what he needed to accomplish to obtain his diploma.

25. Student now asserts that District cannot issue him a diploma because he did not achieve his IEP goal in math calculation. The goal had a measuring date of June 2012, while the two objectives had report dates of November 2011 and April 2012. Since Student intended to graduate with his senior class, it was apparent the goal and objectives could not be measured on the report dates. Student would have already

exited high school and special education. The fact that the math calculation goal was properly written to be an annual one did not convert it into a graduation requirement.

26. Similarly, Student asserts he cannot receive a diploma because he did not complete the DOR application and other ITP post-secondary tasks and recommendations. He also did not complete the Pathfinder/career awareness workbook. Student asserts that because District failed to ensure that Student completed the DOR, other ITP activities, and the career awareness workbook, District cannot issue him a diploma. However, Student is both factually and legally incorrect. District delivered all services the IEP provided and fully supported Student in the ITP activities and career workbook. Specifically, Ms. Lush reviewed the DOR application with the IEP team and credibly testified that she provided the application to Guardian and Student. She explained to Student and the IEP team that the DOR was a good opportunity to receive services for community college and employment. Ms. Lush told Student that he could come to her anytime to get assistance in completing the DOR application, even though documentary and testimonial evidence indicated that Student's advocate had indicated she would assist Student and Guardian in the DOR process.

27. In addition, Ms. Lush credibly explained that the ITP is an activity-based program, not dependent upon meeting measurable, academic goals and objectives. She assisted Student with numerous ITP activities: drafting a resume and obtaining materials for the DOR application; aiding Student in looking at the Citrus College program requirements; reviewing the college enrollment process and explaining how he would register and qualify for services and assistance from the college's disabled student service program; reviewed with Student the documents needed to enroll at the college and register for assistance; helped Student obtain a bus pass by getting his picture and completing the application; assisted Student in completing his job application forms; and wrote a letter of recommendation herself.

28. As for the career awareness workbook, Ms. Ramirez credibly testified that she offered to help Student during the summer, but Student refused. If Student did not complete some of the ITP activities and the career awareness workbook, it was not because of any failure on the part of the District. The District demonstrated it fully supported Student in his ITP and other activities, which District designed to transition Student to community college and the workplace.

29. Special education goals and objectives are not prerequisites to a regular high school diploma. ITP activities and career workbooks are not prerequisites to graduation. Student was on an unmodified, general education curriculum track to receive a regular high school diploma. State law and school district policy exclusively determine diploma and graduation requirements. In this matter, Student met these requirements and, as such, District was required to provide Student his diploma, whether or not Student met all his IEP goals or completed all transition activities. (Factual Findings 8-63; Legal Conclusions 3, 8-10, 13.)

Student's Compliance with Diploma Requirements

30. Student contends that that he did not earn a passing grade in American Government, because he did not take a final exam. He also contends that he had not passed the CAHSEE ELA. Student asserts that District wanted to graduate Student and be relieved of its special education obligations. Student submitted no evidence in support of this proposition, and he failed to demonstrate by a preponderance of the evidence that he did not satisfy the remaining legal requirements for a regular high school diploma. District has convincingly established that Student earned his passing grade during summer school by the senior credit recovery program, through the credible testimony of Ms. Ramirez. Specifically, Ms. Ramirez, who confidently and persuasively testified to the dates and times she personally met with Student to provide specialized instruction, assisted Student on his independent study quizzes and studies,

and administered unit tests to measure Student's performance during the summer credit recovery. Ms. Ramirez persuasively testified that a final exam was not the only means of computing a pupil's course grade. She tested Student with the textbook's unit assessments, measuring his performance. At the conclusion of the program, Student passed American Government with a "B-," earning five credits for passing the only remaining course required for graduation.

31. The evidence also showed that, despite Student's assertion to the contrary, Student passed the CAHSEE ELA. The July 2011 IEP stated that District received the CAHSEE results for the May 2011 testing and that Student passed the ELA with a score of 362. District witnesses confirmed Student passed the ELA component, which was also reflected on his official transcript. Student presented no evidence to prove otherwise. As such, Student failed to meet his burden on the issue.

32. Given the above factors, Student failed to meet his burden of establishing that District committed any procedural violations. Therefore, District did not deny Student a FAPE by issuing Student's high school diploma and exiting him from special education. (Factual Findings 32-40, 45-54, 57-58; Legal Conclusions 3, 8-10, 13.)

ISSUE 2: DISTRICT DELIVERED ACCOMMODATIONS AND RELATED SERVICES IN ACCORDANCE WITH IEP'S.

33. Student failed to demonstrate by a preponderance of the evidence that District denied him a FAPE by failing to implement the accommodations and related services in his IEP's. Specifically, Student needed to prove that there was a material failure to implement the services required by the IEP. (*Van Duyn v. Baker Sch. Dist. 5J, supra*, 502 F.3d at p. 821-822.) Instead, Ms. Ramirez, who was the case carrier, convincingly testified that Student received all accommodations in accordance with the IEP during the regular school year and summer school. Ms. Ramirez herself provided the specialized academic instruction, and pulled Student from class twice a week for the 45-

minute sessions during the regular school year to do so, in accordance with the IEP. Additionally, she provided the specialized instruction during the summer school program, carefully coordinating her summer schedule with Student in order to provide him the related services.

34. Student asserts that District did not work on the math computation goal every time it provided services to Student, and therefore failed to provide the required related services. However, Student's assertion in this regard misstates the IEP's purpose in providing the accommodations and related services. The evidence showed, through the credible testimony of Ms. Ramirez, that the discrepancy in math computation qualified Student for special education services as a student with an SLD. She persuasively testified that the IEP team recognized the discrepancy related to Student's deficit in sensory-motor skills. As such, the IEP specified that the accommodations and services would apply to all subjects. For example, Student would take his semester examinations with the case carrier, even though most of his classes had nothing to do with math. The IEP benefited Student by assuring he had access to the specialized instruction and accommodations regardless of the subject matter because the services were designed to address the cause of the math calculation discrepancy. Therefore, Student received his related services in accordance with the IEP even though the services may not have always specifically addressed his math computation goal and objectives. In addition, Ms. Lush persuasively testified and detailed the many services she provided, as well as continued availability to Student. As such, and as determined in legal conclusions 26 through 29, District provided all services and supports related to Student's ITP.

35. Given the above factors, Student failed to meet his burden of establishing that District failed to provide placement and services to Student, in accordance with his June 3, June 14, and July 22, 2011 IEPs. As such, Student is not entitled to compensatory

services and/or other relief. (Factual Findings 11-62; Legal Conclusions 3-12.)

ORDER

1. All of Student's claims for relief are denied.
2. District properly issued Student a regular high school diploma in July, 2011.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

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

DATED: February 2, 2012

_____/s/_____

CLIFFORD H. WOOSLEY

Administrative Law Judge

Office of Administrative Hearings