BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2011110413

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter on March 13, 14, and 15, 2012, in Van Nuys, California.

Thomas Beltran, Attorney at Law, represented Student. Student's mother (Mother) attended all three days of hearing.

Patrick Balucan, Attorney at Law, represented the Los Angeles Unified School District (District). District's Due Process Specialists, Dr. Deborah Neal, Dr. Jeanique Wells, and Sharon Snyder, attended the first, second, and third day of hearing, respectively.

Student filed his request for due process hearing (complaint) on November 9, 2011. On December 14, 2011, and again on February 2, 1012, for good cause shown, OAH granted the parties' joint request for continuance. On February 28, 2012, for good cause shown, OAH granted Student's request for continuance.

On March 15, 2012, at the close of the hearing, the parties were granted an additional continuance to file written closing arguments by April 9, 2012. Upon the timely receipt of the written closing arguments, the record was closed and the matter was submitted.

ISSUES

1. Did District deny Student a free appropriate public education (FAPE) because Student's placement was changed by his graduation at the end of the 2010-2011 school year?

2. Did District deny Student a FAPE between November 9, 2009 and November 9, 2011, by failing to provide him with an adequate transition plan and services for his post-high school needs?

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND INFORMATION

1. At the time of hearing, Student was a 19-year-old young man, who resided in the District. Student had been eligible for special education under the eligibility category of other health impaired (OHI) until June 2011, when District declared Student ineligible upon his receipt of his high school diploma. On September 25, 2010, when Student was 18-years-old, Student authorized Mother to be his educational rights holder. Mother also serves as Student's conservator.

2. Student has a lengthy medical history. When Student was two-years-old, he was diagnosed with a medical condition called congenital fiber type disproportion, which is a non-progressive muscle weakness with motor and speech delays. He also had a depressed sternum, which required corrective surgery when he was two-years-old. When he was three-years-old, he had myringotomy, which required the placement of ear tubes. When he was five-years-old, he was diagnosed with attention deficit hyperactivity disorder (ADHD). When he was eight-years-old, Student had eye surgery to correct strabismus. When Student was 16-years-old, he had joint surgery on his right big toe.

3. Since second grade, Student has attended the Frostig Center (Frostig), which is a non-public school (NPS) certified by the California Department of Education (CDE). Frostig serves children with mild to moderate learning disabilities from the first through twelfth grades.

4. Dr. Christine Schneiders, Frostig's head of school for the last two years, testified at hearing. Dr. Schneiders has worked for Frostig for 11 years, previously as the director of teacher training, where she trained teachers and developed the curriculum. Overall, she has worked in the field of education for over 30 years. She received her bachelor's degree in 1976 from the University of Iowa, her master's degree in 1980 and her doctorate in 1988, respectively, from the University of New Orleans, and holds a mild-to-moderate teaching credential. At hearing, Dr. Schneider explained that because Frostig is certified by CDE, its courses must meet state standards.

5. During Student's first year of high school at Frostig (i.e, 2007-2008 school year), when Student was 15-years-old and in the ninth grade, Student earned above-average grades in all of his classes. Specifically, Student earned a B- in his first and second semesters of English, a B in his first and second semesters of pre-algebra, a C+ and a B in his first and second semesters of world history and geography, respectively, a B- in health, an A in the first and second semesters of physical education, an A in the first and second semesters of computer applications, and B's in his life skills class, his career education class during 2008 extended school year (ESY), and in his language arts class during the 2008 ESY.

6. During Student's second year of high school (i.e., 2008-2009 school year), when Student was 16-years-old and in the 10th grade, Student earned above-average grades in all of his classes. Specifically, Student earned a B and B- in the first and second semesters, respectively, in algebra, a B in the first and second semesters in physical education, a C+ in psychology, an A in music, an A in his computer applications class, a

B in his life skills class, a B and B+ in the first and second semesters, respectively, of English, and a B+ and B in the first and second semesters, respectively, of biology. Student passed his ESY language arts and ESY math classes.

SEPTEMBER 29, 2009 TRIENNIAL IEP

7. On September 29, 2009, when Student was 17-years old and in the 11th grade, the IEP team convened for Student's triennial review, and to develop his IEP for the 2009-2010 school year. The attendees included Mother; Student's father (Father); Student; Stephanie Bailey, who was District's administrative designee; Jay Carlton, who was a special education teacher; a school nurse; an adaptive physical education (APE) teacher; an occupational therapist; a speech and language pathologist; an agency representative, Rita Zobayan, who was Frostig's transitions instructor; Frostig's principal; Frostig's speech and language provider; and Frostig's counselor.

8. The team discussed Student's goal achievement from his previous IEP, and noted that he had not met his math, APE, and pragmatic language goals.

9. The team discussed Student's present levels of performance. In the area of health, the IEP noted that Student required daily medication therapy, had attention and focusing difficulties, and muscle weakness and speech delays. In the area of math, the IEP noted weaknesses in word clusters, regrouping, decimals, division with remainders, algebra, number concepts, patterns, measurement, charts, graphs, tables, and probability. Student also did not independently seek assistance when he was unsure or had questions.

10. The IEP noted that in the area of reading, Student's comprehension and recall were a relative strength, but he struggled with reading fluency. He needed extended time to read classroom material. In the area of written expression, although it was a relative strength, his work samples indicated a lack of understanding as to how to combine ideas to create more advanced sentences. He required consistent teacher

support in order to help construct and implement complex sentences into his expository writing assignments. In the area of writing mechanics, he struggled with capitalization and punctuation.

11. In the area of speech and language, the IEP noted that Student made slow and steady progress on his social language skills, but continued to have difficulty with responding to questions in a timely manner. He could make eye contact, was aware and sympathetic to the needs and feelings of others, wanted to impress his parents with achievements and accomplishments, evidenced excellent receptive and expressive skills, understood figurative speech, and exhibited knowledge and auditory comprehension of words at his age level. However, he had difficulty sustaining eye contact over time, had difficulty transferring and generalizing his skills to unstructured, novel, and everyday experiences, had difficulty using the phone to get information, had difficulty interacting appropriately with peers, and had scattered thoughts.

12. In the area of social-emotional functioning, the IEP noted that Student had a positive attitude and a good sense of humor, and participated freely in group activities. Student was not afraid to say what he thought or how he felt, and was willing to be there for others if they needed him.

13. In the area of counseling, the IEP noted that Student could recognize inappropriate behavior in others, but had difficulty recognizing his own inappropriate/boundary-crossing behavior, and the negative effect that behavior had on making friends. He also missed social cues which affected his social functioning.

14. In the area of motor abilities, the IEP noted that Student did not exhibit functional writing with a pencil, as his writing was compromised by his congenital fiber type disproportion condition, which impacted his motor control, particularly in activities requiring fine and precise movements. Student required assistive technology in the form of a keyboard to write. In the area of adaptive physical education (APE), Student met his

state physical education requirements, and, as such, the APE teacher did not believe Student required any further APE services.

15. In the area of transition/prevocational skills, the IEP noted that Student was a hard worker and did not hesitate to lend a hand to his fellow classmates and/or teachers. He contributed to group activities with creativity, enthusiasm, and a fun sense of humor. He was proficient on the computer and was able to do the work necessary to correct his mistakes. However, Student often looked to authority figures to make decisions for him where independent decision-making was appropriate.

16. The team developed goals for Student. Specifically, the team developed goals in the area of math to improve his geometry skills, reading to address his fluency deficits, written expression to help him combine ideas to create more advanced sentences, and writing mechanics to improve his capitalization and punctuation skills. The team also developed goals in the area of social-emotional functioning to assist him in reading situations and responding appropriately, counseling to help Student develop strategies to make friends, pragmatic language to help him give immediate and clear responses to questions, motor abilities to improve his writing legibility and upper trunk strength, and transition/prevocational functioning to improve his ability to independently make responsible decisions.

SEPTEMBER 29, 2009 INDIVIDUAL TRANSITION PLAN (ITP)

17. The team developed an ITP in connection with his September 29, 2009 IEP. Specifically, IEP team member, Rita Zobayan, who was the post-secondary transitions coordinator at Frosting, as well as an unofficial guidance counselor and the senior activities coordinator, prepared a draft ITP in collaboration with Student, and presented it to the IEP team. Ms. Zobayan provided testimony at hearing. Ms. Zobayan attended Glendale Community College for three years, and then transferred to the University of California at Berkeley, where she received her bachelor's degree in English. She also

earned her teaching credential in 1996 in single-subject English, as well as her Cross-Cultural Language and Academic Development (CLAD) certificate. Ms. Zobayan also attended California State University at Northridge, where she received her master's degree in school counseling in 2006, which allowed her to provide guidance counselor services. She was an English teacher in a public high school in the Hayward Unified School District for four years. Previously, she was a writing laboratory instructor while at Glendale Community College, as well as a private tutor. Overall, she has 10 years of experience in education.

18. In her capacity as a post-secondary transitions coordinator, she prepares the curriculum and teaches the transitions class for grades 9 through 12, attends parent-teacher conferences, and attends IEP meetings. In her transitions class, she teaches the students subjects within various units, such as finances, self-awareness, and public transportation. The purpose of the class is to teach some of the skills needed for the real world. As such, the students work on basic skills for post-secondary activities, where the bulk of the class occurs inside of the classroom, with the hope that the students will use those skills in the real world. However, the class does not prepare the students for every real world experience. In her capacity as a senior activities coordinator, she plans senior trips, purchases senior items like sweatshirts, arranges for caps and gowns, and notifies parents that their children have qualified for graduation. In her capacity as an unofficial guidance counselor, she reviews the students' transcripts.

19. Ms. Zobayan interviewed Student on September 17, 2009. At hearing, Ms. Zobayan explained that when she conducts ITP interviews, they last anywhere from 20 to 40 minutes, and she generally asks the students their areas of interests, strengths, weaknesses, what they would like to do after high school, whether they are interested in employment, where they envision themselves living after high school, how active they are in their community, and whether they have any interest in driving or using public

transportation. Ms. Zobayan included the details of her interview of Student in the ITP, which showed that Student's interests included computers, video games, and reading. He also liked to write poetry. Student indicated that it was his goal to work on his social skills, to stop staring at people, and to learn when to "back off" from people. Student would continue to seek help from his parents, from school staff, and from his providers, as he had come to realize that he needed to work on his independent living skills and social skills in order to be successful in life. Student advised that he was interested in working with computers, particularly in the area of web design, and was also interested in attending technical school to learn more about computers.

20. Ms. Zobayan noted on the ITP that Student's goals included obtaining his high school diploma, receiving post-high school vocational training, and earning his associate's degree. In order to meet those goals, the ITP set forth certain activities Student needed to complete. Specifically, Student would enroll in classes that included his curriculum for his junior year, participate in job-related basic skills instruction, complete instruction in money management or other life skills, attend vocational school, attend community college, as well as complete his transitions class. At hearing, Ms. Zobayan explained that, as the transitions instructor, she arranged for guest speakers to share with her class about careers, took her class on field trips, visited colleges specifically designated for young adults with learning disabilities, and had a post-secondary fair. Her class also learned job-related basic skills, such as following instructions, being reliable, and completing tasks.

21. Ms. Zobayan listed two transition services to support the designated activities designed to help Student reach his identified goals. Specifically, Ms. Zobayan indicated that by September 2010, Student "will research the duties, responsibilities, training, education requirements, salary, benefits, and working conditions of a web designer, as evidenced by the transitions report." The transitions report, which outlined

Student's performance in the transitions class, was typically generated by Ms. Zobayan. The ITP showed that along with Student, the transitions teacher, would be responsible for implementing this transition service. Also by September 2010, Student "will research post-secondary placements that offer an education in web design, as evidenced by the transitions report." The ITP showed that along with Student, the transitions teacher, would be responsible for implementing this transition service. At hearing, Ms. Zobayan explained that she supported Student in completing these activities in her transitions class.

22. Ms. Zobayan indicated on the ITP that for community experiences, Student would need to develop community transportation skills. At hearing, Ms. Zobayan explained that she concluded Student needed to develop community transportation skills, because Student had advised her that he was not going to, or was not ready to get, a driver's license. She listed as a transition service that by September 2010, Student "will plan and complete a trip on public transportation once a month, as evidenced by parent report." In addition to Student, the ITP listed Student's parents and family as the individuals responsible for implementing this service. At hearing, Mother recalled no one talking to her about this objective, and did not recall discussing the appropriateness of this objective at the meeting. At hearing, Ms. Zobayan advised that, in addition to parental support for this goal, her transitions class provided a unit where the students would plan trips from one destination to another by using the Metro's website.

23. Ms. Zobayan indicated on the ITP for post-school living, based on Student's desire to live with his family after graduation, that Student would have supported living, and would live with family or relatives. As such, she listed as a transition service that by September 2010, Student "will learn how to do laundry, including sorting, setting the correct temperature, drying, folding, and putting away clothes, as per by parent report." The ITP listed Student, his parents, and his family as

the individuals responsible for implementing this goal. Ms. Zobayan advised at hearing that learning to do laundry was also part of the curriculum of her transitions class.

24. In the area of post-school education and employment, Ms. Zobayan set forth on the ITP that Student would have vocational training and supported employment. She listed as the transition services that Student, by September 2010, "will continue to learn about basic independent living skills and basic finances in the transition class, as evidenced by classwork." The ITP listed Student and the transitions teacher as the individuals responsible for implementing this goal. At hearing, Ms. Zobayan explained that her transitions class curriculum included students learning about accounts and budgeting. She also noted on the ITP that Student, by September 2010, with the help of his parents and family, "will complete a minimum of 16 hours of community service this year, as evidenced by service log."

25. The IEP team adopted the draft ITP and included it as a component of the September 29, 2009 IEP.

26. Although Ms. Zobayan could not recall Student's eligibility category at hearing, she explained that she was familiar with Student's abilities, as she had worked with Student in her classroom for several years. She believed that Student had some unrealistic expectations about himself, and that much of the ITP was based on his view of himself. For example, Ms. Zobayan had concerns whether Student had the executive functioning, social skills, organizational skills, and the problem-solving skills to have a career in computers, but admitted she was not computer savvy enough to know for sure. She was also concerned whether Student would be able to work independently without prompting. At hearing, she advised that the ITP was a fluid document, which meant it could have been changed at the time of the meeting if necessary, particularly if Parents had indicated that something in Student's interview or his preferred goals were inaccurate.

SEPTEMBER 29, 2009 IEP OFFER

27. The team agreed that Student needed to remain at a NPS for 100 percent of his school day, with instructional accommodations and modifications, and that Student would participate in regular State and District assessments. The team discussed whether to keep Student on the diploma track, or switch him to the certificate track, and discussed the difference between the two. Specifically, District members explained that on the diploma track, Student would stop receiving services after earning his diploma, while the certificate track would permit Student to receive services up to the age of 22, but he would receive no diploma. Parents advised that they wanted Student to remain on the diploma track. The IEP noted that Student would take the California High School Exit Examination (CAHSEE). The IEP also noted that Student would participate in high school graduation/culmination exercises by September 30, 2011.

28. With the exception of the APE assessment results, which prompted the District members not to offer APE services, Mother consented to all aspects of the IEP, including the ITP, on October 13, 2009.

GRADES FOR THE 2009-2010 SCHOOL YEAR

29. In geometry, Student received a grade of B- in the first semester, and a C in the second. In his computer applications class, Student received an A- in the first semester, and a B+ in the second. In physics, Student received an A- in the first semester, and a B in the second semester. In his ESY language arts and math classes, Student received a "pass."

30. In his transitions class,[1] Student earned a B+ in the first semester, and an A in the second. At hearing, Ms. Zobayan explained that she based grades on her students' completion of classwork and participation in class discussions. She further explained that Student's grades included his completion of the transportation and budget units in her class. She conducted no test to determine whether Student could generalize the things he learned in transitions class in the real world, or whether he actually acquired the skills taught in transitions class. However, Ms. Zobayan saw some areas where Student lacked the ability to generalize, such as learning the skill of shaking hands with a pretend employer and introducing himself in the classroom, and required prompting for him to complete those tasks in the real world.

31. In English, Student received a B+ in the first semester, and a B in the second. Student's English teacher, Jay Carlton, provided testimony at hearing. Mr. Carlton has worked at Frostig for 13 years. For five of those years, Mr. Carlton has worked as a high school classroom teacher, where he teaches language arts and mathematics. Prior, he worked in the art, physical education, and computer programs at Frostig, and was also a teacher's assistant. He received his bachelor's degree in sociology from the University of Oregon in 1995, and his master's degree in film art from the College of Design in 2003. Mr. Carlton holds a level one teaching credential. Mr. Carlton taught his English class in accordance with state standards. While in Mr. Carlton's class, Student worked hard, had strong comprehension, turned in all of his classwork and homework, participated by raising his hand often to discuss the books the class had been assigned to read, and was a "decent" student. Sometimes, Student did

[1] On his transcript, the transitions class is entitled Career Education.

not comprehend the material, but he was often one of the students in Mr. Carlton's class that was able to discuss main ideas and characters in the book. At hearing, Mr. Carlton could not recall Student's reading level, but believed it was higher than fourth grade. Student expressed himself better on the computer than writing by hand. Student completed projects in Mr. Carlton's class, such as book reports, power point presentations, and participated in Frostig's annual academic fair. In the academic fair, Student dismantled a computer and gave a presentation about each computer part and its purpose, was enthusiastic, and conveyed his message well.

32. Mr. Carlton also taught U.S. History, where Student received a B- in the first semester, and a B in the second. Mr. Carlton based the grade on class participation, projects, homework, and classwork. Mr. Carlton taught U.S. History in accordance with state standards.

33. By the end of the 2009-2010 school year, Student had earned 195 cumulative credits.

SEPTEMBER 21, 2010 ANNUAL IEP

34. On September 21, 2010, when Student was 18-years-old and a senior in high school, the IEP team convened for Student's annual review, and to develop his IEP for the 2010-2011 school year. The attendees included Mother; Father; Student; Ms. Bailey; Lee Fox, who was a special education teacher; Ms. Zobayan; Frostig's IEP administrator; and Frosting's school counselor.

35. The team discussed Student's goal achievement, and noted that Student met most of his goals, but failed to meet his motors abilities, written expression, writing mechanics, and counseling goals. Specifically, the IEP indicated that Student needed more time to work on his motor abilities and counseling goals, and that he continued to require teacher prompting in the areas of written expression and writing mechanics.

36. The team also discussed Student's present levels of performance. In math, Student had difficulty with dividing with remainders, data, algebra, patterns, measurement, geometry, word problems, computations with estimation, and simple division. In the area of reading, Student demonstrated difficulty in connecting and clarifying main ideas. In the areas of written expression and writing mechanics, Student's paragraph writing samples did not have proper paragraph structure (i.e., topic, detail, and concluding sentences), did not use complex sentences, did not use quotation marks, did not indent, and did not edit for common mistakes like capitalization and punctuation.

37. In the area of speech and language, Student continued to need cues to give simple greetings and farewells, and to initiate conversations concerning the interest of others. In occupational therapy, Student continued to demonstrate a poor pencil grasp.

38. In counseling, the IEP noted that Student dealt with several highly stressful personal situations which caused him stress and anxiety, which resulted in the shift of the counseling to focus on Student's immediate needs to help him resolve the overwhelming nature of his emotional issues. In the area of social-emotional functioning, although Student usually had a positive attitude, engaged in social activity with peers, and knew how to appropriately ask others for assistance, Student did not appropriately self-advocate when he was dissatisfied with staff decisions.

39. In the area of transitional/vocational skills, the IEP noted that Student often failed to use informal greetings when entering a new social arena. He also failed to use standard greetings when approaching peers during lunch, and would just skip to a conversation about one of his interests, like computers.

40. The IEP team developed new goals for Student. Specifically, the team developed goals in the area of math to improve his number sense skills, reading to help

Student connect and clarifying main ideas, written expression to help him compose a single paragraph including indented and edited sentences, and writing mechanics to improve his quotation skills. The team also developed goals in the area of social-emotional functioning to assist him in self-advocating, counseling to help Student develop strategies to manage his stress and anxiety, pragmatic language to help him use appropriate greetings, motor abilities to improve his writing legibility, and transition/prevocational functioning to help him independently greet his teacher and peers.

41. Ms. Zobayan advised the IEP team that Student was on track to graduate at the end of the 2010-2011 school year, as he was current on the number of credits required to earn his diploma. No team member recommended or requested that Student be switched to the certificate track, including Mother.

SEPTEMBER 21, 2010 INDIVIDUAL TRANSITION PLAN (ITP)

42. The team developed an ITP in connection with his September 21, 2010 IEP. Specifically, Ms. Zobayan, in collaboration with Student, prepared a draft ITP and presented it at the IEP meeting. At hearing, Mother advised that she recalled no in depth discussion about the ITP, and if there was any discussion about it, it was very quick and cursory. Mother's recollection was not corroborated by any documentary or testimonial evidence.

43. The ITP identified "Information Technology Career Cluster" as Student's career choice, which referenced Student's desire to work with computers. Ms. Zobayan noted in the ITP that Student completed three of the four transition activities from his September 9, 2009 ITP, namely his education/training activity, his employment activity, and his independent living skills activity. However, Student did not complete his community experiences activity, as Student had advised Ms. Zobayan that he did not plan and take public transit trips.

44. In the area of education/ training, the ITP noted that Student's interests and abilities were in the areas of language, interpersonal skills, and self-skills. Ms. Zobayan explained that Student, based on the results of a Multiple Intelligences test Student took, that Student had a good vocabulary and good word knowledge, had a good ability to interact with others, and was self-aware. The Multiple Intelligences test was a self-assessment designed to help understand overall personality, preferences, and strengths. The ITP also noted that Student's education/training transition activity required Student, upon his completion of high school, to participate in a vocational training program. The ITP noted that the education/training activity to support that goal required Student, by September 1, 2011, to "go online and explore vocational training program(s) / college(s), their location, and the cost of the program." The ITP identified Student, Parents, Student's family, and the transitions teacher as the individuals responsible for this activity. Ms. Zobayan supported Student in completing this activity in her transitions class.

45. In the area of employment, Ms. Zobayan gave Student the Career Occupation Preference System (COPS II) assessment, which revealed that Student's interests and abilities were in the areas of technology, science, and service. In that regard, the ITP noted that Student's employment post-secondary goal was to participate in supported employment. Ms. Zobayan explained that a supported employment program would conduct an intake interview, put Student in a job that matched his abilities, and then assist Student to work in that location, while providing resources for him to work at that location, such as a job coach. The ITP identified the employment development transition activity as Student to "explore supported employment options available through outside agencies," by June 16, 2011, and listed Student, Parents, Student's family, and the transitions teacher as the individuals responsible for implementing this goal. Ms. Zobayan supported Student with this goal by having

multiple conversations with Student and Parents concerning the Employment Resource Guide, as well as programs offered by the Department of Rehabilitation.

46. In the area of community experiences, the ITP indicated that, by June 16, 2011, Student "will invite peers to a social function he has organized," and listed the individuals responsible for implementing that goal as Student, Parents, Student's family, and the transition teacher. Ms. Zobayan supported Student by helping him determine what kind of functions he could do, and what people he could potentially invite. According to Mother, Student did not complete this activity.

47. In the area of independent living, the ITP noted, pursuant to an assessment Ms. Zobayan conducted entitled the Teenager Survival Checklist, that Student showed significant need in the areas of meals, geography, math, home maintenance, operating some appliances, and transportation. The ITP also noted that the independent living transition activity was for Student, upon completion of high school, to participate in supported living. The ITP indentified as an independent living activity to support the goal as Student to "visit/tour a variety of adult housing options," by June 16, 2011, and that Student, Parents, Student's family, and the transition teacher would be the individuals responsible for implementing this goal. Ms. Zobayan supported Student with his independent living transitions goal by having multiple discussions with Student and Parents concerning the Employment Resource Guide, and provided examples of independent living programs, such as Moving Forward, the Independence Center, and Taft Independent Living program.

48. The ITP reflected that the team, including Student and Mother, reviewed Student's individualized graduation plan, in relation to the number of credits Student had completed, credits in which Student was currently enrolled, and credits needed to graduate.

49. The IEP team adopted the draft ITP and included it as a component of the September 21, 2010 IEP.

SEPTEMBER 21, 2010 IEP OFFER

50. The team agreed that Student needed to remain at a NPS for 100 percent of his school day, with instructional accommodations and modifications. District members also offered 60 minutes per week of counseling and guidance, 60 minutes per week of speech and language therapy with an emphasis on pragmatic language, 30 minutes per week of direct occupational therapy services, and 45 minutes per month of consultation occupational therapy services.[2]

51. Mother consented to all aspects of the IEP, including the ITP, on October 5, 2010. Student also signed the IEP.

CAHSEE AND TEACHER ASSESSMENTS

52. Student enrolled in District's CAHSEE preparation class at the beginning of the 2010-2011 school year.

53. On October 5 and 6, 2010, Student took the CAHSEE in English-language arts and mathematics, respectively, and did not pass. Student needed a score of 350 to pass. Student received a score of 325 and 317 in English-language arts and mathematics, respectively.

54. On November 9 and 10, 2011, Student took the CAHSEE in English-language arts and mathematics, respectively, and did not pass. Student needed a score

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[2] The IEP also provided for 38.5 hours of compensatory occupational therapy hours.

of 350 to pass. Student received a score of 311 and 300 in English-language arts and mathematics, respectively.

55. In January 2011, the computer teacher at Frostig conducted a computer assessment of Student, and then shared the results with Ms. Zobayan. The computer teacher advised that while Student had knowledge of computers, his performance on the assessment tasks indicated that he would not be able to work independently in that field. Student expressed to Ms. Zobayan that he still wanted to work with computers, even though he would not be able to do so independently, but could with support like a job coach. Ms. Zobayan was unaware of any barriers that would prevent Student from participating in supported employment programs.

56. On February 1 and 2, 2011, Student took the CAHSEE in English-language arts and mathematics, respectively, and did not pass. Student needed a score of 350 to pass. Student received a score of 310 and 328 in English-language arts and mathematics, respectively.

57. On March 8 and 9, 2011, Student took the CAHSEE in English-language arts and mathematics, respectively, and did not pass. Student needed a score of 350 to pass. Student received a score of 311 and 291 in English-language arts and mathematics, respectively.

58. In March 2011, pursuant to Mother's request, Ms. Zobayan compiled a list of strengths, improvements, and areas of need from Student's teachers. The areas of need concerned Student's motor skills; his ability to analyze and synthesize complex and/or abstract ideas or information; difficulty transitioning from place to place and from task to task; difficulty with problem solving; trouble with time management and prioritizing tasks; difficulty following up on things independently; needing constant prompting and reassurance; having a one-track hyper-focused mind, particularly in the area of computers; Student's unrealistic expectations of his abilities, particularly as they

related to his proficiency with computers; and difficulty thinking for himself, as he was very much invested in pleasing his mother.

59. On May 10 and 11, 2011, Student took the CAHSEE in English-language arts and mathematics, respectively, and did not pass. Student needed a score of 350 to pass. Student received a score of 319 and 315 in English-language arts and mathematics, respectively.

60. In the spring of 2011, Ms. Zobayan, in her capacity as a senior activities coordinator, notified all parents, including Mother and Father, that their children, including Student, had qualified for graduation, and that she would arrange for the provision of caps and gowns for the upcoming June graduation ceremony.

JUNE 7, 2011 EXIT IEP

61. On June 7, 2011, the IEP team met for the purpose of exiting Student from special education due to his upcoming graduation and delivery of his diploma. District failed to provide Student or Parents with a letter setting forth prior written notice of its proposed change in placement to graduate Student from high school. The attendees included Mother; Father; Student; Ms. Bailey; Mr. Fox; a school psychologist; a related service staff member; Ms. Zobayan; and Frostig's IEP administrator. Because it was an exit IEP, the June 7, 2011 IEP document consisted of a recital of the previous IEP and ITP of September 21, 2010. At hearing, Ms. Bailey explained that Welligent, which is the computer system District uses to track IEPs, automatically populates the exit IEP and ITP with the information from the previous IEP and ITP.

62. The team reviewed Student's individualized graduation plan. Specifically, Ms. Zobayan advised the team that Student had met the requisite number of credits to graduate, and that Student would be receiving his high school diploma. As such, Student would no longer be eligible for special education services.

63. Student's attorney, Mr. Beltran, pursuant to Mother's request, telephoned the IEP team during the meeting, and declared that graduation would constitute a change in placement. Mr. Beltran expressed that he and Parents wanted Student to continue receiving services, and sought clarification concerning the process to resolve the matter.

64. At hearing, Mother explained that she had previously researched a number of post-high school programs, was unsuccessful in finding a program for Student, and had concluded that Student required additional services to help prepare him to participate in a post-high school program. Ms. Bailey, who was the administrative designee at the meeting, provided that clarification, and also testified at hearing. Ms. Bailey has been employed by District for 12 years, and has been a school psychologist with District's NPS department for four years. Prior, she was a school psychologist with the public school unit for six years, and before that, was a substitute teacher for two years. She received her bachelor's degree in psychology in 1999 from the University of Southern California, her master's degree in counseling with an emphasis in school psychology from California State University at Los Angeles in 2003, and holds a school psychology credential. Ms. Bailey explained to Mr. Beltran and the IEP team the difference between the District's Informal Dispute Process compared to requesting and IDEA due process hearing, and advised that the informal process was designed to resolve matters without the necessity of filing a formal due process complaint.[3]

[3] At hearing, Ms. Bailey recalled stating nothing assuring this matter could be resolved at the informal dispute process, while Mother testified that Ms. Bailey did, in fact, make such a representation. For the purposes of this hearing, there is no need to

65. District continued to provide Student instruction, support, and services after the June 7, 2011 exit IEP meeting.

66. On June 13, 2011, Mother noted her disagreement on the IEP document, and expressed her concern that Student had not met acceptable transitional goals. She also expressed that she disagreed with the ITP, and that the ITP was "not calculated to give [Student] a free and appropriate education." Mother also requested an assessment of Student's functional abilities, expressed that he should be eligible for transition services, and that Student needed services in accordance with a properly developed ITP. Finally, Mother indicated that she wished to utilize District's Informal Dispute Process.

GRADES FOR THE 2010-2011 SCHOOL YEAR

67. In his consumer math class, Student received a C- in the first semester, and a C in the second semester. In United States government and political economics class, Student received an A- in the first semester, and an A in the second semester. In art, Student received an A in the first semester, and in his computer applications class, which Student took in the second semester, he received an A-. Student received a "pass" in his CAHSEE preparation course, which was offered during the first semester.

68. In his senior transitions class, Student received an A- in the first semester, and a B in the second. At hearing, Ms. Zobayan explained that the class worked on laundry, and conducted research online to explore vocational training programs and colleges, their locations, and the costs of the program.

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resolve this disagreement, as it has no impact on resolving the substantive issues raised by the complaint.

69. In English, Student received a C+ in the first semester, and a C in the second semester. His English teacher, Donald Lee Fox, Jr., provided testimony at hearing. Mr. Fox has worked at Frostig as a special education teacher for six years. Prior, he was a substitute teacher in a different school district, and one-to-one aide, a physical education assistant, a physical education teacher, and was an intern for a church. He received his bachelor's degree in liberal arts and his master's in teaching from Chapman University in 2004 and 2008, respectively, and holds a special education credential, a clear credential, and a multiple subject credential. Mr. Fox taught his English class in accordance with state standards. Mr. Fox formulated grades by assessing each student's participation in class, quality of projects, classwork, homework, and participation in the academic fair. At the beginning of the school year, he assessed each student in his class, and determined that Student was, at a minimum, at the ninth grade level in reading. He could read novels on his own, could comprehend what he read, and often led the class in discussions about the book. Mr. Fox also gave tests in his English class, where he would first present the students with test questions a week in advance, go over the answers in class, ask the students to study for three days at home, and then Mr. Fox would give the test of the questions presented in a different order. Student performed adequately in his class, completed work at a satisfactory level, and turned in enough homework to earn a grade in the "C" range.

70. Mr. Fox also taught Global Studies, in which Student received a B in the first and second semesters. Mr. Fox taught Global Studies in accordance with state standards. The class studied the culture of two dozen countries. Mr. Fox based Student's grade on his powerpoint presentations and class participation. Student demonstrated an understanding of the subject matter, and would ask questions of other power point presenters, and sometimes respectfully debated others over different points of view.

71. Mr. Fox also took his classes on field trips. On one trip, his class rode the Metro to Union Station and went to Universal Studios. Before going on the trip, he required the students to look up the trip online to see how much it would cost, and had them map the route, which each student did on his or her own, including Student. All of the students stayed together on the trip in one group, which included six adults and 20 students. Mr. Fox noted no mobility issues in Student, and, in his opinion, Student had no difficulty with money, citing a time when he gave his students money to go to 7-Eleven, and Student returned with the correct change.

72. At the end of the 2010-2011 school year, Student had earned 260 cumulative credits, and had an overall 3.2 grade point average.

73. Student graduated on or about June 16, 2011, and District mailed to Student his high school diploma. District ceased all special education instruction, support, and services for Student when he earned his high school diploma.

AFTER HIGH SCHOOL

74. Mother attended an Informal Dispute Process meeting in summer 2011 for the purpose of seeking a continuation of services, including transition services, for Student. At hearing, Mother explained that Student's ITP should have been adjusted after the computer teacher advised that Student did not possess the requisite skills to work with computers independently. Consequently, Student had and continued to struggle to figure out what he would do for a career. In addition, Mother explained that mobility has been and continued to be a constant need for Student, and that, despite the representation in the ITP that Student completed his independent living skills activity, cooking and laundry has been and continued to be constant needs for Student. Also, Mother believed that basic independent living skills should have included resume writing, interviewing, relationship skills in the work force, as well as grooming, hygiene, and dressing, but Student still had needs in these areas. In addition, to Mother, Student

should have learned how to budget, use a check book, understand how much a person needs to live on, understand insurance needs, manage income, pay bills, manage housing and personal expenses, know if he had been appropriately charged, and know how to balance money, but Student still had needs in those areas. Mother and District failed to resolve the matter during the Informal Dispute Process meeting, which resulted in Mother filing, on Student's behalf, the present due process matter against District.

75. After receiving his diploma, Student began participating in the Accessible Community Program on December 24, 2011. Student worked in a thrift shop with a shadow-aide. The Accessible Community Program was designed to teach work skills, but it is not a vocational training program. Student volunteered there for five hours a day, three times a week. At hearing, Mother explained that she was under the impression that the ITP would have provided Student with vocational training. In addition, despite her request made to the Accessible Community Program that Student be given an opportunity to participate in the living skills program, the program did not initially approve Student. Apparently, Student had behavior problems, such as picking at his fingers, resistance to instruction, and hygiene issues. Consequently, Student had to undergo a behavioral modification program, and thereafter, was approved for eight hours of independent living skills.

STUDENT'S EXPERT WITNESS

76. Dr. Martha Jean Ottina provided expert testimony on Student's behalf. Dr. Ottina served as a school psychologist for District for 20 years, and retired in 2006. In her capacity as a school psychologist for District, Dr. Ottina conducted assessment of students from preschool through 12th grade, for public school and non-public school sectors, and attended approximately 1,000 IEP meetings. She provided consultations to families and community agencies, provided educational therapy, and participated in staff development and crisis counseling. During the period in which she worked for

District, Dr. Ottina maintained a private practice as a clinical psychologist, which she began three years before working for District. Her private practice addressed neuropsychology, families with disabled or mentally ill parents, developmental disabilities, learning disabilities, child psychology, assessments, therapy, consultations, and adult psychology, including severe mental illness and post-traumatic stress disorder. Before becoming a psychologist, Dr. Ottina worked for 10 years as a special education teacher, and seven years as a general education teacher. She earned her bachelor's degree in speech, English, and communication disorders, and her master's degree in speech from the University of California at Los Angeles (UCLA). She earned her doctorate in psychology from the United States International University in San Diego, which is now called Alliant International University, and completed post-graduate studies in neuropsychology and psychopharmacology. She is a state licensed psychologist, holds licenses as a national certified school psychologist (retired), and holds California life credentials in learning handicaps and general secondary matters. Dr. Ottina has conducted research in the areas of mental retardation and genetics, and is a member of the American Psychological Association, the National Association of Neuropsychology, the International Association of Neuropsychology, the American Association for the Advancement of Science, and the Eye Movement Desensitization and Reprocessing (EMDR) International Association.

77. Dr. Ottina met Student and Mother for the first time approximately five days prior to hearing, for approximately one and one-half hours, at Student's home. Dr. Ottina also met Student's daycare provider, Gabby, at Student's home. Student showed Dr. Ottina his bedroom, computer, and his yard, and they talked about what he could and could not do. She reviewed documents prior and subsequent to her meeting with Student, including Student's evidence binder, some evaluations Mother had provided her, including one from UCLA, as well as a transitions notebook Student had worked on

from his transitions class. Neither the transitions notebook, nor any evaluations, including the one from UCLA, was offered or received into evidence. Dr. Ottina also reviewed information from the California Department of Education regarding transition to adult living.

78. Dr. Ottina reviewed Student's September 29, 2009 IEP and ITP. At hearing, Dr. Ottina explained that in her opinion the goals listed in the ITP were inadequate. Specifically, Dr. Ottina opined that the two goals set forth under transition services to support the activities on the ITP, which provided that by September 2010, Student would (1) research the duties, responsibilities, training, and education requirements, salary, benefits, and working conditions of a web designer, as evidenced by the transitions report; and (2) research post-secondary placements that offered an education in web design, as evidenced by the transitions report, were inappropriate because Student did not have the computer skills to do the necessary research, and therefore, would not be able to meet these goals. Dr. Ottina watched Student play a game on the computer, but noted that Student did not know what word processing was. As such, Dr. Ottina contended that the goals should have included language explaining, with detailed specificity, how he was supposed to reach these goals. In addition, Dr. Ottina opined that Student did not know what the term "post secondary placement" meant, and further explained that his ITP goals needed to be broken down into measurable increments, similar, in essence, to those found for academic IEP goals. As they were stated in the ITP, these goals, according to Dr. Ottina, were not measurable, as the goals did not establish exactly how much research Student needed to complete to reach the goals. However, given the scope of her testimony, it appeared that Dr. Ottina either ignored or did not consider that the individuals set forth in the ITP to implement these goals included not only Student, but the transitions teacher as well, such that Student would receive the necessary guidance to research these topics.

79. Similarly, Dr. Ottina opined that the transition services to support community experiences set forth on the ITP, namely that Student would plan and complete a trip on public transportation once a month, as evidenced by parental report, was not measurable. She opined that Student required guidance in increments to reach this goal, and that Student could not reach this goal independently. However, it again appeared that Dr. Ottina either ignored or did not consider that Student was not required to meet this goal independently, as the ITP indicated that Student, as well as his family, would be responsible for helping Student reach this goal.

80. Dr. Ottina also concluded that the transition services to support post-school living, namely that Student, with assistance from his family, would learn how to do laundry, including sorting, setting the correct temperature, drying, folding, and putting away clothes, as evidenced by parental report, was not measurable. She opined that mixing all of these tasks in one goal was not practical, and the goal did not list how many times each one of these tasks should have been completed before the goal was considered met.

81. Finally, Ms. Ottina opined that the transition services to support post-school education and employment, namely that Student, by September 2010, with the help of the transitions teacher, would continue to learn about basic independent living skills and basic finances in the transitions class, as evidenced by classwork, was not specific enough, as it did not establish what "basic finances" or "independent living skills" meant.

82. Dr. Ottina reviewed Student's September 21, 2010 IEP and ITP. At hearing, Dr. Ottina shared a number of criticisms about the ITP. First, Dr. Ottina concluded that despite the ITP's representation that Student had completed three of the four transition activities from his September 9, 2009 ITP, namely his education/training activity, his employment activity, and his independent living skills activity, she disagreed that

Student had completed his independent living skills activity (i.e., learning how to do laundry, including sorting, setting the correct temperature, drying, folding, and putting away clothes). Dr. Ottina based this conclusion on the fact that when she met Student, he did not seem to really understand or remember such that he could generalize those skills, despite the work Student completed on the subject in his transitions class. Dr. Ottina also opined at hearing, based on her review of the UCLA report Mother had provided her, that Student had autism. Neither party presented any independent evidence at hearing to corroborate Dr. Ottina's opinion on this point.

83. Dr. Ottina also criticized the ITP where it noted that Student's education/training transition activity would be for Student, upon his completion of high school, to participate in a vocational training program, and, as such, the education/training activity to support that goal would be for Student to go online and explore vocational training programs and colleges, their locations, and the costs of the program. Dr. Ottina opined that Student could not explore costs online without help, as he did not understand money at that level, such that even if he was able to research the costs online, he would not know what they meant. However, again it appeared that Dr. Ottina dismissed the fact that Student was supposed to meet this activity with the assistance of his Parents, family, and the transitions teacher.

84. Dr. Ottina also criticized the employment development transition activity in the ITP as Student's exploration of supported employment options available through outside agencies. Dr. Ottina opined that the goal was not measurable, and that Student would not be able to accomplish this goal on his own. Again, Dr. Ottina did not consider that Student was not required to complete the goal independently, as his Parents, family, and the transitions teacher were also responsible for implementing this goal.

85. Finally, Dr. Ottina criticized the ITP where it noted that the independent living transition activity was for Student, upon completion of high school, to participate

in supported living, and that the independent living activity to support that goal was for Student to visit or tour a variety of adult housing options by June 16, 2011. Dr. Ottina explained that to participate in supported living was a service provided by an agency, therefore, there was no reason to include a goal requiring Student to visit a variety of adult housing options. Dr. Ottina further concluded that the goal was not measurable.

86. Dr. Ottina reviewed Student's June 7, 2011 exit IEP, which included information from the September 21, 2010 IEP showing that Student met most of his goals, but failed to meet his motors abilities, written expression, writing mechanics, and counseling goals. Specifically, the September 21, 2010 IEP indicated that Student needed more time to work on his motor abilities and counseling goals, and that he continued to require more teacher prompting in the areas of written expression and writing mechanics. Based on this, Dr. Ottina concluded that Student should not have been exited at that time, as he had met only five of his nine goals. However, Dr. Ottina conceded that the goals were designed to be reviewed annually, that the June 7, 2011 IEP occurred three months prior to his annual IEP, and that it was possible that the goals could have been met by that time.

87. Dr. Ottina explained that in her opinion, instead of exiting Student from special education, District should have assessed Student by conducting a Vineland Adaptive Behavior Scale to measure his personal and social skills needed for everyday living. In addition, the assessment should have included an interview of Parents and Student, as well as an observation of Student on the school campus and in the community. Thereafter, the IEP team should have written goals for Student to work on. Also, Dr. Ottina questioned the veracity of school personnel who advised that Student had met his credits requirement in order to receive his diploma, as his abilities did not suggest to Dr. Ottina that Student could have truly met the graduation requirements. At hearing, however, Dr. Ottina admitted that she never observed Student in the classroom,

never observed him do any classwork, never observed him do any homework, never interviewed any teachers, and never conducted any formal assessment of Student, including the Vineland Adaptive Behavior Scale.

88. Finally, Dr. Ottina explained at hearing that although Student's eligibility category was OHI, the team should not have ignored the fact that Student had been diagnosed by UCLA as having autism, and, as such, the ITP goals contained in the ITPs were not individualized to Student's needs. Specifically, Dr. Ottina believed that many of the goals were impractical, as autistic people tended to be literal and concrete, as she believed Student to be. Therefore, all of his ITP goals should have been broken down into smaller increments in a very obvious way in order for Student to generalize.

89. Overall, Dr. Ottina's testimony was not given significant weight. Dr. Ottina spent only one afternoon with Student, did not conduct any formal assessments of him, did not interview any of his teachers, and did not observe Student in a classroom setting, yet she, with nothing more, questioned the veracity of District staff who advised that Student had earned the requisite number of credits to graduate. In addition, Dr. Ottina opined after spending such a short period of time with Student, that he could not have met his independent living skills activity of learning how to do laundry, including sorting, setting the correct temperature, drying, folding, and putting away clothes, because she believed Student to be autistic, and, as such, would have had difficulty understanding or remembering such that he could generalize those skills. However, there is no evidence that Dr. Ottina tested Student herself, to determine whether he could perform laundry tasks, or any other tasks, whether Student could generalize tasks, or whether his purported autism absolutely interfered with his ability to complete ITP goals and activities. In fact, it appears that Dr. Ottina did nothing more than review documents, talk to Mother, and briefly watch Student function in his home environment. Moreover, Dr. Ottina concluded that the ITP goals and activities were inappropriate

based on her belief that Student could not complete them independently, despite the fact that each ITP goal and activity was designed for Student to accomplish with the assistance of the transitions teacher, Student's parents, and/or Student's family. Dr. Ottina cited no research, study, or any other authority upon which she based her opinion that ITP goals and activities must be designed for the Student to accomplish without assistance. Finally, as for her criticism of the ITP's containing immeasurable goals, her opinion regarding the degree of measurability was inconsistent with relevant law, as discussed in more detail below.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. As the petitioning party, Student has the burden of persuasion on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

ISSUE ONE: CHANGE IN PLACEMENT

2. Student contends that District denied him a FAPE by changing his placement by graduating him at the end of the 2010-2011 school year.[4] Student also contends that District changed the placement without providing prior written notice of

[4] In his closing brief, Student alleged that District failed to adhere to stay put provisions that required District to halt Student's graduation upon Mother's expressed disagreement at the June 7, 2011 exit IEP meeting. Whether this claim is meritorious or not will not be considered here, as Student failed to include this allegation in his complaint. Consequently, the claim falls outside of the scope of the hearing. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

its intent to do so.[5] Student further contends that District's decision to graduate him was inappropriate, because he was not sufficiently prepared academically, socially, or functionally. District disagrees, and contends that it provided Student with a FAPE at all times, and that graduating Student and issuing him a high school diploma was appropriate.

FAPE

3. California special education law and the IDEA provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code § 56000.) FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) "Special education" is defined as "specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability…." (20 U.S.C. § 1401(29).) California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California,

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[5] Neither the parties at the prehearing conference, nor the Order Following the Prehearing Conference, explicitly identified prior written notice as an issue, but Student's complaint does reference it. As such, this Decision will briefly address the issue below.

related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

4. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.)

5. An IEP is a written document detailing, in relevant part, the student's current levels of academic and functional performance, a statement of measurable academic and functional goals, a description of the manner in which goals will be measured, a statement of the special education and related services that are to be provided to the student and the date they are to begin, an explanation of the extent to which the child will not participate with nondisabled children in a regular class or other activities, and a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).) The statement of measurable annual goals must be designed to "[m]eet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum" and "[m]eet each of the pupil's other educational needs that result from the individual's disability." (Ed. Code,

§ 56345, subd. (a)(2)(A) & (B); see also 34 C.F.R. § 300.320(a).) The IEP must also contain a "description of the manner in which the progress of the pupil toward meeting the annual goals . . . will be measured . . . ." (Ed. Code, § 56345, subd. (a)(3).) When developing an IEP, the IEP team must consider the child's strengths, the parent's concerns, the results of recent assessments, and the academic, developmental and functional needs of the child. (Ed. Code, § 56341.1, subd. (a).)

PRIOR WRITTEN NOTICE

6. As with all IEP meetings, the procedural safeguards of the IDEA apply, including the prior written notice requirement of 34 of the Code of Federal Regulations, part 300.503 (2006).[6]

7. Written notice must be given to the parent of a child with a disability a reasonable time before a public agency proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child. (34 C.F.R. § 300.503(a)(1).) Further, the content of such notice must include (1) a description of the action proposed; (2) an explanation of why the agency proposes to take the action; a description of each evaluation, procedure, assessment, record or report the agency used as a basis for the proposed action; a statement that the parents of a child with a disability have protections under procedural safeguards; sources for the parents to contact to obtain assistance in understanding the provisions of this part; a description of other options that the IEP team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the

[6] All subsequent references to the Code of Federal Regulations are to the 2006 edition.

agency's proposal. (34 C.F.R. § 300.503.) The IDEA, however, does not contain any specific requirements concerning information the school district must disclose to the parents in its prior notice of intent to graduate a student with a disability with a regular high school diploma.

8. Failure to provide prior written notice may result in a procedural violation of the IDEA. While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. 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: (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. (Ed. Code, § 56505, subd. (f)(A)-(C); see also *Amanda J. v.Clark County School District* (9th Cir. 2001) 267 F.3d 877, 892.)

GRADUATION

9. As provided in 34 Code of Federal Regulations part 300.102(a)(3)(i), 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).) However, if it is determined by the IEP team that special education services are required beyond a student's 18th birthday, the district of residence is responsible for providing special education and related services to students between the ages of l8 to 22 years, inclusive. (Ed. Code, § 56041).

10. 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 an award of a regular high school diploma, he cannot be denied a diploma simply because he has a disability. (*Letter to Anonymous* (OSEP 1994) 22 IDELR 456.) 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. (*Special Sch. Dist. of St. Louis County* (OCR 1989) 16 IDELR 307.) Further, the IDEA does not make achievement of a disabled student's IEP goals a prerequisite for awarding a regular high school diploma, as the statute, as a general matter, does not establish standards for graduation. (*See, e.g., Letter to Richards* (OSEP 1990) 17 IDELR 288, 289.)

11. Some parents challenge their child's readiness for graduation by asserting that an award of a regular high school diploma is a violation of the school district's duty to provide FAPE under the IDEA. However, these claims are not generally successful. In *Tindell v. Evansville-Vanderburgh School Corporation* (2011) 805 F.Supp.2d 630, 275 Ed. Law Rep. 655, 57 IDELR 71, a 19-year-old student with a diagnosis of autism spectrum disorder in a residential placement, who earned high school credits for his diploma and targeted enrollment in a local community college, challenged his graduation and exit from special education. The court determined that Student was not entitled to continued special education services. Parents had challenged the appropriateness of student's transition planning, and had contended that the student was not ready to graduate because he had not made sufficient progress in the areas of social, life, and vocational skills as set forth in his IEP, and was not ready to leave his residential placement. The court concluded student was properly graduated, with no continued right to residential placement and services, despite the opinion of an outside evaluator that determined that student should continue in his residential placement for his social and emotional needs. The court further reasoned that the IDEA did not require school districts to guarantee a particular result or level of functioning as a result of the IEP, but

only that the IEP for the student be reasonably calculated to provide educational benefits when it is developed. (*Id.* at pp. 633-634.)

12. Similarly, in *Doe v. Marlborough Public Schools* (2010) 54 IDELR 283, 2010 WL 2682433, a 19-year-old student with an ADHD diagnosis and social, emotional, and behavioral difficulties, had earned credits for issuance of diploma, yet challenged being exited from special education upon graduation. The court found that the school district properly graduated the student, entitling him to no further services, despite his parents' contention that student was not ready for independent living. The court reasoned that the service obligation for a school is to show that it developed an IEP reasonably calculated to provide educational benefits, up to the time of the issuance of the diploma, and that the fact that student may not be ready for independent living did not alter or change the school's responsibilities. (*Id.* at p. 288.)

13. In addition, in *Bruno v. Greenwich Board of Education* (2006) 45 IDELR 14, when the student met established requirements for issuance of diploma, but did not otherwise meet IEP objectives, the court concluded that student continued to have serious special problems and could have benefitted from continued IEP services to improve social skills, but that the school's obligation was limited to providing an IEP reasonably calculated to enable the child to receive educational benefits until aging out of service, or receiving a regular high school diploma. (*Id.*at p. 17.)

14. Also, in *In re Child with Disability* (SEA VA 1988) 401 IDELR 220, the court upheld a school district's decision to terminate special education services for an 18-year-old student with learning and emotional disabilities, who had been awarded a regular high school diploma on the basis of his academic performance, but had not achieved his IEP goals and objectives. It was held that school districts could elect to terminate special education services to disabled students who had met all regular

education graduation requirements and was not bound to fulfill IEP goals and objectives. (*Id.*)

15. In 2008, the Legislature added section 60852.1 to the Education Code, requiring the State Superintendent of Schools to create a panel to make recommendations regarding alternate means for eligible students with disabilities to demonstrate that they have achieved the same level of academic achievement in the content standards in English language arts and mathematics required for passage of the CAHSEE. This legislation further required that by October 1, 2009, the State Board of Education would consider the recommendations of the panel and adopt regulations for alternative means by which eligible students with disabilities may demonstrate that they have achieved the same level of academic achievement in the content standards required for the passage of the CAHSEE. The companion statute, Education Code section 60852.2, defines an eligible student with a disability. This definition includes determinations that: (1) the student is subject to an IEP pursuant to the IDEA which indicates that the student has a anticipated graduation date and is scheduled to receive a high school diploma on or after January 1, 2011; (2) the student has not passed the CAHSEE; and (3) the student has attempted to pass the unpassed parts of the CAHSEE, at least twice since the 10th grade, including once in the 12th grade with accommodations and modifications as specified in the student's IEP. (Ed.Code, §§ 60852.2, subds. (a)(1), (a)(2) and (a)(4).) Commencing with the 2009-2010 school year, an eligible pupil with a disability is not required to pass the CAHSEE as a condition of receiving a diploma of graduation or as a condition of graduation from high school. (Ed. Code, § 60852.3, subd. (a).) An eligible pupil with a disability is a pupil with an IEP pursuant to the IDEA that indicates that the pupil is scheduled to receive a high school diploma, and that the pupil has satisfied or will satisfy all other state and local

requirements for the receipt of a high school diploma, on or about July 1, 2009. (Ed. Code, § 60852.3, subd. (c).)

16. Graduation is a change in placement, and the school district is required to convene an IEP meeting prior to terminating special education services. (*Letter to Hagen-Gilden* (OSEP 1996) 24 IDELR 294; *Letter to Steinke* (OSEP1994) 21 IDELR 379.) The purpose of this IEP meeting is to ensure that the graduation requirements are being met and IEP goals and objectives have been achieved. (*Letter to Richards*, *supra*, 17 IDELR 288.) The IDEA does not include a requirement that an IEP contain specifically identified graduation criteria or a graduation plan; however, to the extent that a student's disability impacts his ability to earn a regular high school diploma, meeting graduation requirements may become an IEP goal. (34 C.F.R. § 300.320(a).)

17. IEP decisions about graduation are not specifically included in the topics that must be discussed by IEP teams and documented in the written IEP. (34 C.F.R. §§ 300.320 through 300.324.) The IDEA, however, does impose upon the school district the duty to conduct a meaningful IEP meeting with the appropriate parties. (*W.G. v. Bd. of Trustees* (9th Cir. 1992) 960 F. 2d. 1479, 1485 (*Target Range*).) Those parties who have first hand knowledge of the child's needs and who are most concerned about the child must be involved in the IEP creation process. (*Shapiro v. Paradise Valley Unified School District No. 69* (9th Cir. 2003) 317 F. 3d. 1072, 1079.) In order to fulfill the goal of parental participation in the IEP process, the school district is required to conduct, not just an IEP meeting, but a meaningful IEP meeting. (*Target Range, supra,* 960 F.2d at p. 1485.) A parent who has had an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way. (*Fuhrmann v.East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*).)

18. An IEP is assessed in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Ibid.*, citing *Fuhrmann, supra*, 993 F.2d at p. 1041.) It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

ANALYSIS OF ISSUE ONE

Prior Written Notice

19. Here, Student established, by a preponderance of the evidence, that District committed a procedural violation when it failed to provide prior written notice of its intent to change Student's placement by graduating Student from high school at the end of the 2010-2011 school year.[7] However, as discussed below, District's procedural violation did not result in a denial of FAPE, as it did not significantly impede the parent's opportunity to participate in the decision-making process, did not impede Student's right to a FAPE, and did not cause a deprivation of educational benefits.

20. Specifically, the evidence showed that the violation did not impede Parents' opportunity to participate in the decision-making process, as Parents already had full knowledge, dating back to 2009, of District's intent to graduate Student at the end of the 2010-2011 school year. This was evidenced by Parents' attendance at the September 29, 2009 and September 21, 2010 IEP meetings, where the team established that Student was on the diploma track and, as set forth in the September 29, 2009 IEP, scheduled for graduation by September 30, 2011. In fact, Parents specifically requested

[7] In addition, District concedes in its closing brief that it never sent Student a letter indicating the graduation change in placement.

at the September 29, 2009 IEP meeting, when Student was in the 11th grade, that Student remain on the diploma track, even after District members explained that Student would stop receiving services after earning his diploma. In that regard, Student enrolled in District's CAHSEE preparation course during the first semester of his senior year (i.e., the 2010-2011 school year), for which he received a "pass." Student also took the CAHSEE five times during his senior year in an effort to pass the exit exam, evidencing his intent and desire to graduate, despite the change in the law commencing in the previous school year, which eliminated the requirement that Student pass the exam as a condition of receiving his diploma.[8] In addition, at the September 21, 2010 IEP meeting, the evidence showed, through the credible testimony of Ms. Zobayan, that she advised the IEP team, including Parents and Student, that Student was on track to graduate at the end of the 2010-2011 school year, as he was current on the number of credits required to earn his high school diploma. She also, in her capacity as a senior activities coordinator, notified Parents in the spring of 2011 that Student had qualified for graduation, and arranged for the provision of caps and gowns for the upcoming June 2011 graduation ceremony. Furthermore, Mother fully and meaningfully

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[8] As set forth in Legal Conclusion 15, pursuant to Education Code section 60852.3, subdivisions (a) and (c), Student, as a pupil with a disability with an IEP indicating that he was scheduled to receive a regular high school diploma, was not required to pass the CAHSEE as a condition of receiving a diploma of graduation or as a condition of graduation from high school, as long as he satisfied or would satisfy all other state or local requirements for the receipt of a high school diploma, in this case, the completion of the necessary coursework and earning the requisite number of credits for a high school diploma.

participated in the June 7, 2011 exit IEP meeting, where Mother had full knowledge of District's intent to graduate Student at the end of the 2010-2011 school year, by virtue of the two previous IEPs to which she provided her consent, as well as by Ms. Zobayan's previous notification that Student had qualified to graduate and participate in graduation ceremonies. At that meeting, not only did Mother have an opportunity to express her concerns about Student's impending graduation, but she even elicited input from Student's counsel, who contributed telephonically. As such, and given Parents' longstanding knowledge of District's plan to graduate Student, District's failure to provide prior written notice did not impede Parents' opportunity to participate in the decision-making process.

21. Similarly, District's failure to provide prior written notice did not result in a deprivation of educational benefits, or in the impediment of Student's right to a FAPE. The evidence showed that District continued to provide special education instruction, support, and services until Student earned his high school diploma. Additionally, as discussed in more detail below, District appropriately graduated Student at the end of the 2010-2011 school year, and therefore, had the right to terminate special education services and support at that time. Given the above, Student failed to establish that District's failure to provide prior written notice resulted in a denial of FAPE, as it did not significantly impede the parent's opportunity to participate in the decision-making process, did not impede Student's right to a FAPE, and did not cause a deprivation of educational benefits. (Factual Findings 1-89; Legal Conclusions 1-21.)

Appropriateness of Graduation

22. Student also failed to establish by a preponderance of the evidence that District denied him a FAPE when it changed his placement by graduating Student at the end of the 2010-2011 school year, as the evidence showed that District properly graduated Student and issued his diploma. In particular, the evidence showed that

Student fully earned his high school diploma, substantiated by his successful passage of all of his courses, which, according to the credible testimony of Dr. Schneiders, met state standards. In fact, Student earned above-average grades in all of his classes during his ninth and 10th grade years, and in the majority of his classes during his 11th and 12th grade years, earning only one grade in the C range during the 2009-2010 school year, and four grades in the C range during the 2010-2011 school year. In addition, according to the credible testimony of Student's teachers, Mr. Carlton and Mr. Fox, who taught Student's English, U.S. History, and Global Studies classes, Student validly earned passing grades in their classes evidenced by his performance on projects such as book reports, powerpoint presentations, his participation at the academic fair, his participation in class discussions, and his completion of classwork and homework. Finally, according to the credible testimony of Ms. Zobayan, Student earned all of the necessary credits to receive his high school diploma, specifically 260 cumulative credits, by the end of the 2010-2011 school year. Thus, District appropriately graduated Student, and issued his diploma.

23. Student contends, however, that District should not have graduated him, as he was academically, socially, and functionally deficient. Specifically, Student contends he performed significantly below grade level, had not met all of his academic IEP goals, that social and communication skills continued to be areas of need for him, and that his independent living skills were not sufficient for post-high school demands. However, case authority, as set forth in Legal Conclusion 10 above, provides that the IDEA did not make achievement of a disabled student's IEP goals a prerequisite for awarding a regular high school diploma. (See, *Letter to Richards, supra,*17 IDELR at pp. 288-289; *Special Sch. Dist. of St. Louis County, supra*, 16 IDELR at p. 307.) Also, even when a student continues to have serious special problems, who could actually benefit from continued IEP services to improve social and independent living skills, a school

district's obligation is limited to developing and providing an IEP reasonably calculated to provide educational benefits, only up to the time of the issuance of the diploma or until a student ages out of service. (See, *Doe v. Marlborough Public Schools, supra*, 54 IDELR at p.288; *Bruno v. Greenwich Board of Education, supra*, 45 IDELR at p. 17.)

24. Here, the evidence showed that District developed and provided an IEP reasonably calculated to provide Student with an educational benefit, up to the issuance of his diploma. Specifically, in the September 29, 2009 and September 21, 2010 IEPs, the IEP teams determined that Student had needs in the areas of math, reading, written expression, writing mechanics, social-emotional functioning, counseling, pragmatic language, motor abilities, and transition/prevocational functioning, determined Student's present levels of performance in these areas, and then developed specific goals to address Student's needs. In that regard, District offered and provided Student continued placement at Frostig, an NPS certified by the CDE to provide instruction in accordance with state standards, instructional accommodations and modifications, 60 minutes of counseling per week to address his social-emotional needs, 60 minutes of speech and language therapy per week, with an emphasis on pragmatic language, and 45 minutes of occupational therapy per month to address Student's motor deficits. In addition, the teams developed ITP's as a component of the IEPs that included information concerning Student's area of interest (i.e., computers), and activities in the areas of education/training, employment, community experiences, and independent living skills.[9] In that regard, District offered and provided Student with transition classes to assist Student with completing his transition activities and goals, which included,

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[9] The appropriateness of the ITP's themselves is also discussed in more detail below, under Issue Two.

according to the credible testimony of Ms. Zobayan, units covering finances, self-awareness, public transportation, careers, field trips, visits to colleges specifically designated for young adults with learning disabilities, job-related basic skills, laundry, accounts, budgeting, online research, and information about supported employment programs.

25. Given the extensive academic, social-emotional, speech and language therapy, occupational therapy, and the transition instruction services offered and provided, District afforded Student IEP's that were reasonably calculated to provide educational benefit to him, up until he earned his diploma at the end of the 2010-2011 school year. As such, District met its IDEA obligations to Student, and was permitted to terminate special education services to Student when he met his graduation requirements, irrespective of whether he continued to have academic, social, and functional needs or not. Given the above factors, Student failed to establish by a preponderance of the evidence that District denied Student a FAPE when it changed Student's placement by graduating him at the end of the 2010-2011 school year. (Factual Findings 1-89; Legal Conclusions 1-25.)

Issue Two: Transition Plan and Services

26. Student contends District denied him a FAPE by failing to provide him with an adequate transition plan and services for his post-high school needs. Specifically, Student argues that his ITP goals were neither individualized nor measurable, were not based upon age appropriate transition assessments, and that the transition process was not outcome oriented. District disagrees and contends that it provided Student with a FAPE at all times.

Applicable Law

27. As discussed above, California special education law and the IDEA provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code § 56000.) FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) (*See* Legal Conclusion 3, incorporated by reference.)

28. As discussed above, *Rowley* held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs, and reasonably calculated to "confer some educational benefit" upon the child. (*Rowley, supra,* 458 U.S. at pp. 200, 203-204.) (*See* Legal Conclusion 4, incorporated by reference.)

29. As discussed above, an IEP is a written document detailing, in relevant part, the student's current levels of academic and functional performance, a statement of measurable academic and functional goals, a description of the manner in which goals will be measured, a statement of the special education and related services that are to be provided to the student and the date they are to begin, an explanation of the extent to which the child will not participate with nondisabled children in a regular class or other activities, and a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).) (*See* Legal Conclusion 5, incorporated by reference.)

30. As discussed above, an IEP is assessed in light of information available at the time it was developed; it is not judged in hindsight, and must be assessed in terms of what was objectively reasonable when the IEP was developed. (See *Adams, supra,* 195 F.3d at p. 1149; *Fuhrman, supra,* 93 F.2d at p. 1041.) (*See* Legal Conclusion 18, incorporated by reference.)

31. Beginning not later than the first IEP to be in effect when a child with a disability turns 16, and updated annually thereafter, the IEP must also include appropriate measurable post-secondary goals related to training, education, employment, and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa)-(bb); 34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8).) Every such IEP must also include transition services to assist the child in reaching those post-secondary goals. (*Ibid.*)

32. "Transition services" are defined as "a coordinated set of activities for an individual with exceptional needs that":

> (A) 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 post-secondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation; (B) is based upon the individual needs of the pupil, taking into account the strengths, preferences, and interests of the pupil, and (C) 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).)

33. The term "process" in the definition of transition services "denotes a praxis or procedure; it does not imply a substantive standard or a particular measure of progress." (*Lessard v. Wilton-Lyndeborough Coop. Sch. Dist.* (1st Cir. 2008) 518 F.3d 18, 28.) "In considering the adequacy of a myriad of transition services, an inquiring court must view those services in the aggregate and in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefits. Were the law otherwise, parents could endlessly parse IEPs into highly particularized components and circumvent the general rule that parents cannot unilaterally dictate the content of their child's IEP." (*Id.* at p. 30.) The "IDEA does not require an ideal or optimal IEP, simply an adequate one." (*Ibid.*)

34. The failure to properly formulate a transition plan may be a procedural violation of the IDEA that warrants relief only upon a showing of a loss of educational opportunity or a denial of a FAPE. (*Board of Education v. Ross* (7th Cir. 2007) 486 F.3d 267, 276 [despite transition plans being a mandatory component of an IEP, notation in IEP that the transition plan would be "deferred" was procedural violation]; *A.S. v. Madison Metro School Dist.* (D. Wis. 2007) 477 F.Supp.2d 969, 978 [allegation of inadequate transition plan treated as procedural violation]; see also *Virginia S., et al. v. Dept. of Ed., State of Hawaii* (D.Hawaii, January 8, 2007, Civ. No. 06-00128) 2007 U.S. Dist. Lexis 1518 [transition plan violated procedural requirements of IDEA, but was ultimately found to be harmless error, when it was not based on an interview with the student or parents, did not reference student's interests, and which generically

described post-secondary goals as graduation from high school and employment following post-secondary education].)

35. School districts are not required to ensure that students are successful in achieving all of their transition goals. In *High v. Exeter Township Sch. Dist.* (E.D. Pa 2010) 54 IDELR 17, 2010 WL 363832 (*Exeter*), the court determined that the school district was not required to ensure student was successful in fulfilling her desire to attend college, as the IDEA was meant to create opportunities for disabled children, and not to guarantee a specific result. (*Id.* at p. 21, citing *Rowley, supra,* 458 U.S. at 192.) The court in *Exeter* also discussed how a transition plan compares with an IEP, and noted that the statutory requirements for transition plans contain no progress monitoring requirement. An IEP must include a method to measure a child's progress; however, a transition plan must only be updated annually and include measurable post-secondary goals and corresponding services. (*Exeter, supra*, 54 IDELR at pp. 20-21.)

36. School districts are not obligated to provide a transition plan that takes into account all possible post-secondary outcomes. (*Simi Valley Unified School District* (CA SEA 2008) 50 IDELR 267.)

Analysis of Issue Two

37. Student failed to demonstrate by a preponderance of the evidence that District denied him a FAPE by failing to provide him with an adequate transition plan and services between November 9, 2009 and November 9, 2011 for his post-high school needs. The evidence showed that the IEP team, which included Parents and Student, developed appropriate transition plans on September 29, 2009 and September 21, 2010 that met the statutory requirements of the IDEA. Specifically, both plans accurately identified Student's post-secondary interests in working in the career field of computers (i.e., web design), obtaining post-high school vocational training to learn more about computers, and obtaining his associate's degree. In that regard, and in compliance with

the statute, both plans included measurable post-secondary goals and activities related to training, education, employment, and independent living skills to address Student's needs. Specifically, the September 29, 2009 ITP indicated that Student would participate in job-related basic skills instruction, complete instruction in money management or other life skills, attend vocational school, attend community college, as well as complete his transitions class. In that regard, the ITP included two transition services designed to assist Student in reaching his identified goals: (1) that by September 2010, Student "will research the duties, responsibilities, training, education requirements, salary, benefits, and working conditions of a web designer, as evidenced by the transitions report," and that, along with Student, the transitions teacher would be responsible for implementing this transition service; and (2) by September 2010, Student "will research post-secondary placements that offer an education in web design, as evidenced by the transitions report," and that, along with Student, the transitions teacher would be responsible for implementing this transition service. The credible testimony of Ms. Zobayan established that in her transitions class, she supported Student in completing these activities.

38. In addition, the September 29, 2009 ITP included a measurable community experience goal, in response to Student's representation to Ms. Zobayan that he was not going to, or was not ready to get, a driver's license. Specifically, the goal required that by September 2010, Student "will plan and complete a trip on public transportation once a month, as evidenced by parent report." Although the ITP listed Student, his parents, and his family as the individuals responsible for implementing of this goal, the credible testimony of Ms. Zobayan established that her transitions class provided a unit where the pupils, including Student, planned trips from one destination to another by using the Metro's website. The ITP also included a measurable post-school living goal where, in response to Student's expressed desire to live with his family after graduation, the ITP indicated that by September 2010, Student "will learn how to do laundry,

including sorting, setting the correct temperature, drying, folding, and putting away clothes, as per by parent report." Although the ITP listed Student, his parents, and his family as the individuals responsible for implementing this goal, the evidence established, through the credible testimony of Ms. Zobayan, that learning to do laundry was also part of the curriculum of her transitions class. Finally, the September 29, 2009 ITP included two measurable post-school education and employment goals to support Student's desire to receive vocational training and supported employment. The first goal stated that by September 2010, Student "will continue to learn about basic independent living skills and basic finances in the transitions class, as evidenced by classwork," and that, along with Student, the transitions teacher would be responsible for implementing this goal. According to the credible testimony of Ms. Zobayan, her transitions class curriculum included material about accounts and budgeting. The second goal provided that by September 2010, Student "will complete a minimum of 16 hours of community service this year, as evidenced by service log," and that Student, his parents, and his family would be responsible for implementing that goal.

39. Similarly, the September 21, 2010 ITP included measurable post-secondary goals in the areas of education and training, employment, community experiences, as well as in independent living. Specifically, in the area of education and training, the ITP noted that Student, upon completion of high school, would participate in a vocational training program, and in that regard, required Student, by September 1, 2011, to "go online and explore vocational training program(s) / college(s), their location, and the cost of the program." The ITP identified Student, Parents, Student's family, and the transitions teacher as the individuals responsible for this activity. The evidence established, through the credible testimony of Ms. Zobayan, that she supported Student in completing this activity in her transitions class. In addition, the ITP, in the area of employment, noted that Student would participate in supported employment, and in

that regard, by June 16, 2011, would "explore supported employment options available through outside agencies." The ITP identified Student, Parents, Student's family, and the transitions teacher as the individuals responsible for this activity, and, as established through the credible testimony of Ms. Zobayan, she supported Student with this goal by having multiple conversations with Student and Parents concerning the Employment Resource Guide, as well as programs offered by the Department of Rehabilitation.

40. In addition, the September 21, 2010 ITP included a measurable community experience goal. Specifically, the ITP indicated that, by June 16, 2011, Student "will invite peers to a social function he has organized," and listed the individuals responsible for implementing that goal as Student, Parents, Student's family, and the transition teacher. According to the credible testimony of Ms. Zobayan, she supported Student by helping him determine what kind of functions he could organize, and what people he could potentially invite. Finally, the September 29, 2009 ITP included a measurable independent living goal related to Student participating in a supported living environment, that by June 16, 2011, Student would "visit/tour a variety of adult housing options," and listed Student, Parents, Student's family, and the transitions teacher as the individuals responsible for implementing this goal. According to the credible testimony of Ms. Zobayan, she supported Student with his independent living transitions goal by having multiple discussions with Student and Parents concerning the Employment Resource Guide, and provided examples of independent living programs, such as Moving Forward, the Independence Center, and Taft Independent Living program.

41. Given the above, the transition plans of September 29, 2009 and September 21, 2010 were appropriate given Student's needs, preferences, and interests at the time, and in conjunction with the accompanying IEPs, provided "some educational benefit" as set forth by the Supreme Court in *Rowley*.

42. Student contends, however, that his ITP post-secondary goals were not measurable, as the goals did not include baseline information, and, as such, was impossible to determine how close Student was at the onset to achieving the goal, or what type of instruction he would need. In that regard, Student relied on the testimony of Dr. Ottina, who asserted the post-secondary goals were not measurable because they were not broken down into specific increments, like those found for academic IEP goals. Also, Student contends that the transition process was not outcome oriented. However, neither the evidence nor the law supports Student's position. The evidence showed that every goal listed in the ITPs included definitive or specific results-oriented terms describing exactly what Student was expected to do to reach the post-secondary goals he identified, and provided a timeframe for which to accomplish each activity. Specifically, the ITPs used phrases such as Student "will research," "will plan and complete," and "will learn," as well as phrases requiring Student to "visit" and to "tour", by a specified date. These phrases denoted activities that could have been observed as occurring or not occurring, and, as such, were measurable. Student cited no authority for the proposition that ITP post-secondary goals must be written like academic goals that include benchmark objectives in order to be measurable, and there is no requirement under the IDEA that post-secondary goals be written in that way. Indeed, case authority establishes that the statutory requirements for transition plans contain no progress monitoring requirement, unlike the annual goals in areas of need contained in an IEP. (See *Exeter, supra*, 54 IDELR at pp. 20-21.)

43. Student further contends that his ITP goals were not individualized. However, the evidence does not support Student's position. The evidence showed that Ms. Zobayan prepared the draft ITPs, in collaboration with Student, who Ms. Zobayan interviewed, as well as observed in her transition class. Student's parents fully participated in the IEP team meetings at which the post-secondary goals were

memorialized, and did not offer any indication that they were not appropriate for Student. As such, the ITPs accurately identified Student's interests of working in the career field of computers (i.e., web design), obtaining post-high school vocational training to learn more about computers, and obtaining his associate's degree, and, as established above, included goals in accordance with Student's needs, preferences, and interests at the time.

44. Finally, Student contends his ITP goals were not based upon age appropriate transition assessments. This position is contrary to the evidence. The evidence showed that Ms. Zobayan assessed Student in the area of independent living by giving Student, who was a teenager, the Teenager Survival Checklist. In addition, Ms. Zobayan assessed Student in the area of education and training by giving Student a Multiple Intelligences test, which was a self-assessment designed to help understand overall personality, preferences, and strengths. Student presented absolutely no evidence demonstrating that the Multiple Intelligences test was not an age-appropriate transition assessment. Similarly, Student failed to present any evidence demonstrating that the COPS II assessment that Ms. Zobayan gave Student to assess his interests and abilities in the area of employment was not an age-appropriate assessment.

45. Despite Student's assertions that the ITPs were defective, the fact remains that the IDEA does not require an ideal or optimal IEP, simply an adequate one. Similarly, although the ITP must be developed by a "results oriented process," a student is not denied a FAPE simply because he or she did not achieve the post-secondary goals. (*See* Legal Conclusion 33.) As established above, District provided Student with more than adequate ITP's considering their depth and comprehensiveness. As such, Student has failed to establish by a preponderance of the evidence that District denied him a FAPE by failing to provide him with an adequate transition plan and services

between November 9, 2009 and November 9, 2011. (Factual Findings 1-89; Legal Conclusions 1, 26-45.)

ORDER

All of Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District prevailed on all issues.

RIGHT TO APPEAL 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 ninety days of receipt of this decision. (Ed Code, § 56505, subd. (k).)

DATED: May 16, 2012

_____/s/_____

CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings