

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. 2013050219

DECISION

Alexa J. Hohensee, Administrative Law Judge (ALJ), from the Office of Administrative Hearings (OAH), heard this matter on July 16 and 17, 2013, in Van Nuys, California.

Student's father (Father or Parent) represented Student. Student's sister attended the first day of the hearing.

Attorney Donald A. Erwin represented Los Angeles Unified School District (District). Jacqueline Campos, District representative, attended both days of hearing.

Parent on behalf of Student filed Student's request for due process hearing (complaint) on May 6, 2013. On June 19, 2013, OAH granted District's request to continue the hearing for good cause. At the end of the hearing, at the joint request of the parties, the hearing was continued to July 19, 2013, for submission of closing briefs. District timely filed a closing brief. Parent did not file a closing brief. The record was closed on July 19, 2013.

## ISSUES<sup>1</sup>

1. Did District deny Student a free appropriate public education (FAPE) from September 2011 to May 6, 2013 by:

- (a) Failing to provide appropriate instruction, services or placement; and
- (b) Failing to provide an appropriate transition plan and transition goals?

2. Did District commit a procedural violation that denied Student a FAPE by failing to include Parents as individualized education program (IEP) team members for the April 11, 2013 IEP?

3. Did District deny Student a FAPE by graduating him with a regular high school diploma at the end of the 2012-2013 school year?<sup>2</sup>

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<sup>1</sup> The issues have been refined from those set forth in the prehearing conference (PHC) order to more accurately reflect the issues stated in the complaint and reordered for purposes of analysis. Student's complaint challenged Student's program from September 2011, but it was clear that Student was referring to the beginning of the 2011-2012 school year, and Issues 1(a) and 1(b) are analyzed from the beginning of the 2011-2012 school year.

<sup>2</sup> After Student rested his case, District moved to dismiss Student's complaint on the ground that Student had failed to meet his burden of proof. District's motion was denied on several grounds, including that (i) OAH limits motions to dismiss to prehearing motions based on dispositive procedural grounds, such as lack of jurisdiction, (ii) the motion was an untimely motion for summary judgment made after the hearing had begun, and OAH does not hear motions for summary judgment, and (iii) Father's testimony presented sufficient evidence on the issues to require findings of fact and conclusions of law.

## FACTUAL FINDINGS

### JURISDICTION AND BACKGROUND INFORMATION

1. At the time of hearing, Student was a 19-year-old adult under the limited conservatorship of his mother (Mother), Father and a third conservator. The limited conservators' authority included the power to make educational decisions for Student.

2. Student has lived with Mother and Father (jointly Parents) within the boundaries of District at all times relevant to this proceeding, and was eligible for special education prior to his graduation with a regular high school diploma as a child exhibiting autistic-like behaviors.

3. Student began attending North Hollywood High School (NHHS), within District, at the beginning of the 2009-2010 school year. Student was 15 years old, and beginning ninth grade.

4. In October 2009, Christy Holcombe, in District's Department of Transition Services (DOTS), assessed Student with an assessment tool called the Janus for purposes of developing a plan for Student to transition to postsecondary life after high school. The results of the Student's assessment indicated that Student enjoyed music, film making and editing, and video games, and planned to take film classes in college and get a job in the film or music industry.

### MARCH 1, 2011 IEP

5. On March 1, 2011, a few weeks before Student turned 17, District convened an annual review IEP team meeting. The meeting was attended by Parents,

NHHS Principal Carrie Schwartz,<sup>3</sup> Student's special education teacher, a general education teacher, and Student's service providers.

6. Student was reported to have met his goals in English language development (learn 50 new words) and physical education. Student met his reading goal, although his present levels of performance (PLOP's) reported that he had difficulty with comprehension, and was "often unable to analyze, synthesize and interpret" written information to elicit inferences. Student also met his written language goal (to write a four- to-five sentence persuasive paragraph), but was reported to lack clear understanding of the objectives of the class assignments without adult cuing and prompting. Student struggled in mathematics, and was reported to be able to "add and subtract simple arithmetic problems ... [and] with the help of a multiplication chart ... accurately calculate simple multiplication problems," but had difficulty retaining math facts and concepts and working independently without adult cuing and prompting. Student did not meet either of his expressive language goals, as he could not answer "wh" questions (who, what, when, where, why) 70 percent of the time, and was unable to describe stories. Student did not meet his vocational education goal to seek clarification of assignments.

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<sup>3</sup> Ms. Schwartz had a master's degree in education, and teaching credentials in multiple subjects (K-12), special education mild/moderate and administration. At the time of hearing, Ms. Schwartz had worked for District for 29 years, with over 11 years teaching disabled students with multiple eligibilities, including autism and SLD, and had worked over five years as a K-12 special education program specialist and six years as an assistant principal in middle school prior to becoming a high school assistant principal at NHHS. Ms. Schwartz knew Student before coming to NHHS, as she had attended IEP team meetings for Student as a program specialist.

7. In the area of social/emotional, Student's PLOP's stated that Student "continues to be interested in learning more about video games. He is looking forward to the fall when he will take filming. This is an area of great interest for him. He talks about his projects and about a script he is writing." The social/emotional PLOP's also noted that despite intensive behavior intervention, Student continued to act negatively to discipline, social pressures and instructional pressures, and exhibited frustration by hitting, kicking, knocking things down and yelling, which required Student to exit the classroom for 45-60 minutes to calm down. Student had not met his social/emotional goal to "verbally express his feelings of frustration to staff in an age appropriate manner by identifying triggers to his frustration and then problem solving." Student did not meet his behavior goals to stay on task with minimal prompting for 50 minutes, to respond appropriately to another classmate to engage in pro-social activities or conversations with verbal encouragement, or to work cooperatively and appropriately with another student on a district-directed assignment with two to four verbal prompts. The team revised and adopted Student's existing reading, written language, mathematics, APE , language pragmatics and English language development goals. Student's social/emotional goal was revised to provide that Student would learn to use coping skills to decrease angry outbursts and increase his ability to form friendships, and his behavior goals were revised to have Student initiate peer interaction and engage in turn taking at least three times with conversation pertinent to the topic, and to use a stress ball or its functional equivalent to appropriately reduce his frustration level. Student's behavior service plan (BSP) was revised to address Student's "outburst/rage/explosive reactions" and "hitting, kicking yelling and scratching" with use of a stress ball as a replacement behavior and strategy for coping with frustrating situations. Student's vocational education goal, to ask the teacher questions to clarify assignments without prompting, was retained without change.

8. The team developed and adopted an individualized transition plan (ITP) to support a career pathway for Student in the "Arts, Media and Entertainment Technology Career Cluster." The ITP indicated that all activities from the March 2010 ITP had been completed. It stated that Student had been assessed on March 7, 2011, a few days before the IEP team meeting, but no assessment information was incorporated into the ITP or used to update the description of Student's interests and abilities from his 2009 ITP, which was retained word-for-word without change.

9. The ITP adopted by the March 1, 2011 IEP team consisted of three sections:

- 1) Section One, "Education/Training," designated Student, Parents, Student's counselor and his special education teacher responsible for Student to "go online and explore a vocational training program(s)/college(s), their location and the cost of the program" as an activity in support of a transition goal to "enroll in a 2 or 4 year college."
- 2) Section Two, "Employment," designated Student, Parents, Student's counselor and his special education teacher responsible for Student to "research an identified career of interest using web-based technology or by speaking with business representatives" as an activity in support of a transition postsecondary employment goal to "go to college to study film-making." It also designated the same individuals responsible for Student to "practice how to find specified areas within his/her own school and neighborhood" as a community experience activity.
- 3) Section Three, "Independent Living," stated that "[a]fter graduation from high school, [Student] plans to live with his parents," and designated Student, Parents, Student's counselor and his special education teacher responsible for Student to "monitor local weather forecast to plan outings and appropriate

attire” as an activity in support of an independent living goal to “live with his parents.”

10. Student was going to be entering his junior year, and the ITP included a generic list of requirements for graduation under both the general education and alternative curriculums. It stated that graduation under either curriculum standard required 230 course credits, and that general education students were also required to take courses in computer literacy, “career pathway,” and “service learning,”<sup>4</sup> as well as to pass the California High School Exit Exam (CAHSEE). The ITP documented that the IEP team had reviewed with Parents the number of credits Student had completed and still needed in order to graduate. Neither the ITP, nor the remainder of the IEP, stated that Student would be exempt from the CAHSEE. At the March 2011 IEP team meeting, Parents were not informed that passing the CAHSEE, identified in the ITP as necessary requirement to graduate under the general education curriculum, would not be required of Student.

11. The March 1, 2011 IEP offered home-to-school transportation, and added an injury prevention and safety goal (to “identify 3 strategies to maintain a safe environment on the bus to reduce risk of injuries”). Student was offered continued placement at NHHS in a special day class (SDC) for students with specific learning disabilities (SLD) and general education, with language and speech (LAS) services, counseling, adaptive physical education (APE) services, a one-on-one behavior intervention instruction (BII) aide (behavior aide) throughout the school day, behavior intervention development (BID), instructional accommodations and an extended school

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<sup>4</sup> No evidence was submitted on what the computer literacy, career pathway or service learning courses entailed.

year (ESY) program. The IEP also stated that Student would participate in all state and district assessments with accommodations, including the CAHSEE.

12. Parents consented to the March 1, 2011 IEP on March 11, 2011.

#### 2011-2012 SCHOOL YEAR

13. During the 2011-2012 school year, while Student was a junior in 11th grade, he began to grow more frustrated during class, and bit and physically assaulted his BII aide. In September 2011, Father met with Ms. Schwartz informally and asked that Student be transferred to a new school and placed in SDC classes with a modified curriculum. Ms. Schwartz did not act on Father's request, and did not schedule an IEP team meeting to address Father's placement concerns or to address Student's escalating behaviors.

14. Student turned 18 years of age on March 30, 2012.

#### April 13, 2012 IEP

15. District convened the annual review of Student's March 1, 2011 IEP on April 13, 2012. At the time of that meeting, Parents were in the process of obtaining court-ordered conservatorships for Student. Prior to the meeting, Father asked District to reschedule the annual review until after the conservatorship orders were obtained, but District did not do so.

16. The April 13, 2012 IEP team meeting was attended by Parents, Ms. Schwartz, a general education teacher, Ms. Holcombe from DOTS, Student's service providers and general education teacher David Sanchez. Mr. Sanchez had been Student's case carrier and chemistry teacher during the 2011-2012 school year. He had also taught biology to Student the prior year.

17. Ms. Holcombe has multiple degrees and credentials, including a special education credential and a certificate for teaching life skills, and has worked for District

in DOTS for the past 10 years. As a DOTS representative, she was tasked with assessing 15-year-old students, providing instruction to ninth, 10th and 11th grade students, and attending IEP team meetings. She had an "open door" policy for students who needed assistance on academics, or completing resumes, job applications, college applications or financial aid applications. Every semester, she gave one class lesson in each grade about such things as determining what they are good at, why academic success is important, and high school graduation requirements. At the 12th grade level, she discussed postsecondary options, staying "on track," outside resources, college applications and resumes. The purpose of these classes was to make the students knowledgeable about transitioning to life after high school. She also performed additional assessments as needed and on request.

18. Mr. Sanchez has a bachelor's degree in administration and business management. He possesses a clear credential (K-12) and a special education credential (mild to moderate), as well as an autism certificate. He began teaching at District in 2003 as a resource specialist assisting students in English and math, and taught history and science to learning disabled students in middle school for seven years before being assigned to NHHS to teach high school science, biology, marine biology and chemistry. Mr. Sanchez used repetitive teaching, visuals, charts, graphs and hands-on learning to teach the general education curriculum. His classes used the same books as the general education classes and covered the same material, although the pacing was not as fast. Mr. Sanchez measured each student's progress individually, as each learning disabled student learned differently.

19. Mr. Sanchez found that Student was a pleasure to have in his class, had a good attitude, liked school, wanted to learn, stayed in his seat, knew the routine, and was a good student. Mr. Sanchez did not have any trouble with Student in his biology or chemistry classes. It was his opinion that Student was able to access the curriculum and

do the work in biology and chemistry with samples and repetition, and “a little assistance.” Mr. Sanchez appeared genuinely concerned about his students, and Student in particular. However, his testimony was occasionally contradictory, which adversely impacted his credibility; for example, Mr. Sanchez testified at one point that his SLD classes kept pace with the general education classes, and at another point that the pace was slower in his SLD classes. Mr. Sanchez’s testimony regarding Student’s presentation seemed at odds with Student’s PLOP’s, his testimony regarding Student’s abilities tended to be qualified, and he did not appear knowledgeable or experienced concerning the development of high school transition plans. For these reasons, his testimony on Student’s presentation, abilities, and transition needs was less persuasive.

20. The PLOP’s in the April 2012 IEP indicated that Student failed to meet his goals or any objectives in math, writing, English language development, or adaptive behavior. In math, Student could solve simple to more complex math equations using addition and subtraction with regrouping, and could solve single-digit multiplication problems, but could not convert decimals to fractions, perform long division, solve problems involving a square, circle or rectangle, and could not graph. In writing, Student could write simple sentences, use periods and question marks correctly, and write a paragraph with adult assistance, but needed “constant prompting on all writing tasks,” and did not understand how to write supporting paragraphs or a conclusion for a given topic. In English language development, Student did not understand multi-step directions, was unable to summarize tasks assigned by the teacher, and had difficulty understanding vocabulary even when spoken with a specific context. Student met his reading goal “with assistance” of comparing figurative and literal meanings from a vocabulary list, and could decode grade-level text and identify the main ideas of reading materials, but was unable to sequence events in a grade-level reading passage and struggled with identifying the meaning of unfamiliar words. Although Student was in

SDC core academic classes, he struggled to keep pace with the class when reading passages aloud. Student met his written pragmatics goal of exhibiting proper topic maintenance "during structured activities with prompts," although, even with organizers and prompts, his work often did not address the reader appropriately and frequently went off on a tangent.

21. Student made progress on, but did not meet, his social/emotional goal, as he was still "working" on forming friendships, continued to occasionally tantrum in class, and had resorted to using profanity. Student met his behavior goal of using a stress ball to reduce his anxiety level, but continued to be unable to stay on task without one-on-one cuing from his behavior aide. Student's behavior PLOP's indicated that Student had made progress in coping with frustration and that his outbursts had reduced in the past few months, but that when Student was unable to control his frustration he exhibited "rapidly escalating aggression" that required trained staff to de-escalate, and included "screaming, cursing, hitting, throwing things and self-injurious behavior." These outbursts required maximum support by behavior staff and other school staff, and occurred when Student was overwhelmed or frustrated. Student also needed frequent prompts from his behavior aide to participate in class and access the curriculum. Student met his injury prevention and safety goal of maintaining a safe environment on the bus, but was also reported to need transportation due to safety and communication concerns.

22. Student failed to meet his vocational education goal of asking his teacher questions to clarify assignments without prompting 30 percent of the time. Student was reported to have a good attitude, and to work hard when prompted, but struggled to stay on task and complete assignments even with moderate prompting.

23. The IEP team revised and adopted goals in the same areas as the 2011 IEP, and revised Student's BSP to provide more accommodations to decrease his frustration

in the classroom and teach Student de-escalation techniques and strategies. Student's vocational education goal was changed from asking for clarification of assignments to beginning a task within one to two minutes, and working until the task was completed with minimal prompts. Student's APE services were discontinued, as his gross motor skills were intact and he had met the State physical education requirements to graduate.

24. As to Student's ITP, none of the activities from the March 2011 ITP had been completed. The education/training activity (explore vocational and college programs) was not completed because Student was "still in H.S. [high school]." The employment activity (research careers of interest and speak with business representatives) was not completed because Student was "not working." The community experience activity (practice finding areas within school and neighborhood) was not completed because Student was "not involved in community activities," and the independent living activity (monitor local weather forecasts to plan outings) was not completed because Student was "living at home."

25. Mr. Sanchez prepared the draft ITP for Student's senior year. A month or two prior to the IEP team meeting, he attempted to administer a "transition inventory" questionnaire on career interests to Student. The questionnaire usually takes 30-40 minutes to complete, but Mr. Sanchez worked on it with Student for two to three days and did not complete it. Mr. Sanchez testified that he had completed the transition inventory and reported on it to the IEP team, but he was not credible on this fact. Specifically, there was no evidence that Mr. Sanchez possessed the education, experience and training to conduct a transition assessment. Further, his testimony was not corroborated by Ms. Holcombe, who did not recall any discussion of transition assessments at the IEP team meeting. Similarly, the April 2012 ITP document itself did not corroborate Mr. Sanchez, because it contained no reference to a transition inventory having been completed and instead vaguely stated in the section for assessment results

that Student “will follow areas of interest and strengths which *seems* to [be] music and computers” (emphasis added). Finally, a career interest survey was listed on the ITP as an activity yet to be completed the following spring, and there were no concurrent entries in Student’s counseling notes indicating completion of life skills or career assessments. Definitive assessment results were not available or used to develop the April 2012 ITP.

26. Section One of the April 2012 ITP did not contain an education/transition goal, which was a significant change from prior ITP’s. The ITP did include an education/training activity for Student to “practice transitioning between tasks independently or with identified supports.” Instead of an education goal, the ITP contained only an employment goal, at Section Two, for Student to “participate in supported employment.” The activity in support of the employment goal was for Student to “complete a career interest survey and list results” by February 1, 2013. The community experience activity was for Student to “obtain a state identification card or driver’s license.” Section Three stated that Student “will continue to live with parent after graduating from high school and fulfill duties at home such as chores,” with an independent living goal for Student “to live with family/relatives,” and an independent living activity to “practice locating needed items in grocery store.” Only Student and Parents were listed as responsible for the activities in the ITP.

27. Mr. Sanchez believed that registering Student for computer and music classes for the fall semester of his senior year was sufficient to fulfill Student’s education/training and employment transition needs. Mr. Sanchez expected Parents to support the community experience and independent living activities because he believed that school staff could not help Student to acquire the transition skills he had identified. Mr. Sanchez regularly posted information on his website about interesting places for students to visit as a transition resource.

28. The ITP again incorporated a generic graduation requirement list, showing that 230 credits and the CAHSEE were needed to graduate under the general education curriculum. Parents were informed that Student had sufficient credits to graduate, but were not informed that Student was exempt from passing the CAHSEE. The ITP prepared by Mr. Sanchez was adopted by the IEP team.

29. Ms. Holcombe provided Parents with a brochure on an expensive private program for high school students with autism, called Exceptional Minds, and recommended that Parents call and see if there were scholarships available so that Student could attend.

30. Student was offered continued placement at NHHS in SLD SDC's for core curriculum, and general education for electives, with LAS, counseling, a BII behavior aide throughout the school day, BID, instructional accommodations and the same services for 2012 ESY, with less hours for a shorter school day. The IEP also stated that Student would participate in all state and district assessments with accommodations, including the CAHSEE.

31. Parents disagreed with the April 13, 2012 IEP and neither Student nor Parents consented to it. Father told the IEP team that he did not believe that Student had the skills necessary to have acquired the credits Student was said to have earned. Father requested that Student be placed in an SDC with a modified curriculum, and receive more transition services. However, as Student had turned 18 prior to the meeting, and held his own educational rights, Ms. Schwartz would not document Parents' concerns on the IEP. Instead, Parents were told that the IEP team meeting would be reconvened, and their disagreements with the IEP would be noted if and when Parents were appointed Student's conservators.

32. In spring 2012, Student took the California Standards Test (CST) with accommodations and scored "below basic" in English Language Arts and History, and

“far below basic” in Math and Science. Despite these low scores and PLOP’s indicating that Student could barely do simple addition and multiplication problems, elicit or comprehend inferences from reading materials, or answer “wh” questions, Student passed all of his 11th grade classes and earned excellent grades: “B” and “B” in American Literature, “A” and “A” in U.S. History , “C” and “C” in Algebra 2, and “C” and “B” in Chemistry.

33. On June 14, 2012, Mother, Father and a third person were appointed limited conservators for Student, pursuant to letters of conservatorship issued by the Superior Court of California (conservatorship letters).<sup>5</sup> Among the limited powers granted Student’s conservators was the right to make decisions regarding Student’s education.

#### 2012-2013 SCHOOL YEAR

34. In fall of the 2012-2013 school year, Father informed Ms. Schwartz that Parents had been appointed conservators of Student, and requested that the April 2012 IEP team meeting be reconvened to discuss Student’s placement. Ms. Schwartz did not act upon Father’s request. Her reason for doing so was that Father had not provided her with the letters of conservatorship.

35. According to Ms. Schwartz, she requested that Father provide her with the conservatorship documents. However, her testimony was less persuasive than that of Father, who testified that she had not made such a request. Ms. Schwartz was requiring that a physical copy of a court order be included in Student’s educational record, and if such an obligation was placed on a parent, it should have been documented in writing.

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<sup>5</sup> Student filed a certified copy of the conservatorship letters with OAH on May 8, 2013, and official notice of those letters is taken pursuant to Gov. Code, section 11515, as a fact that may be judicially noticed by the courts of this State.

In demeanor, Ms. Schwartz seemed genuinely surprised by questions of whether she had requested conservatorship documents from Parents in writing and dismissive of a need to do so.

36. On the other hand, Father testified persuasively that he had placed a copy of the conservatorship letters in his wallet immediately after his appointment; had them available at all times in the event of an emergency, or to show persons who requested to see the documentation, such as medical providers or the bank, upon request; and that had he known that Ms. Schwartz wanted to see the actual conservatorship letters, he would have shown them to her. Father seemed genuine in his concern for his son, and in having papers that would give him authority to care for his son readily at hand. Parents had promptly obtained the conservatorship orders within 45 days of Student turning 18 years of age. Father provided a copy of the conservatorship letters to the California Department of Education (CDE) as part of an investigation into a complaint he filed with the CDE against District, and Ms. Schwartz testified that she had received a copy of the letters from the CDE. Father's testimony was often very general as to time or place of events, but he was careful to be as accurate as possible; he readily admitted when he had blurred his recall of events specific to Student with Student's sibling, and corrected himself whenever he realized that he had misstated a fact, such as a date, during earlier testimony. However, on the issue of obtaining conservatorship letters, Father's recall was clear, convincing and consistent with the court documents. It also defies logic that parents who had been conscientious in obtaining a conservatorship for their son would have failed to respond to a school official's request for a copy of the conservatorship letters.

37. The lack of a copy of the court ordered conservatorship letters in Student's records was the result of Ms. Schwartz's failure to ask. Had Ms. Schwartz requested a copy of the conservatorship letters from Father, Father would have provided her with

one. Instead, Father verbally informed Ms. Schwartz throughout the 2012-2013 school year that Parents had been appointed Student's conservators and requested that an IEP team meeting be convened to document Parents' concerns about Student's program and to address Student's escalating behaviors. Ms. Schwartz had heard many parents of adult students with disabilities state that they were going to have their children conserved, but she knew that most parents did not follow through. Therefore, she routinely did not act upon notice of such an appointment until she had a copy of the conservatorship letters in hand. In response to Father's repeated requests throughout the 2012-2013 school year that an IEP team meeting be convened, Ms. Schwartz did nothing.

38. On August 15, 2012, Margaret Hall, a NHHS academic counselor, changed Student's senior year Film class to the Algebra Tutoring Lab at the request of a teacher, confirmed by Ms. Schwartz. This was done even though Student's excitement about taking the Film class was documented in his IEP, Student had expressed an interest in film editing as a career, and Student had passed Algebra 2 and was not taking a math class that semester.

39. Ms. Hall testified at hearing. She has a master's degree in counseling, and credentials in adult teaching and school counseling. She has worked with District since 1983, and has experience working with students with autism and learning disabilities. At the time of hearing, she was an academic counselor,<sup>6</sup> and had been assigned to NHHS in 2010. Her duties included making sure that students were on track for graduation, with a focus on working with students behind in credits. She had a case load of 450 students at NHHS, all of whom were on the diploma track except for 15 students working toward a certificate of completion. She saw the students on her case load twice

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<sup>6</sup> Ms. Hall provided only academic, not therapeutic, counseling services.

per year, sometimes more often for seniors, in groups and individually to conduct graduation checks, to make sure that the students were taking the required classes and a sufficient number of credits to graduate on time. She also counseled students referred to her with minor infractions of school rules. Ms. Hall did not have Student on her caseload until his senior year, 2012-2013. No evidence was produced that Ms. Hall had ever reviewed Student's IEP's, or was aware that Student had an ITP.

40. On September 15, 2012, Ms. Hall met with Student and his behavior aide to perform a graduation check. Ms. Hall typed into the counseling notes that Student had acquired 200 credits, was on track to graduate, and "if he passes his classes this year, which I am confident he will, he will graduate in June." Student had earned credits during ESY, and was in a position to earn 260 credits by the end of his senior year. Ms. Hall had Student sign the counseling notes, and sent a copy home with him for Parents' signatures. Father did not receive the note, and Ms. Hall did not receive a copy signed and returned by either Parent. Ms. Hall did not contact Parents when she did not receive a signed copy of the meeting notes to her, as she only followed up with parents if a student was behind in credits, failing classes or having behavior problems.

41. On October 3, 2012, Student took and failed both the English Language Arts and Mathematics portions of the CAHSEE.

42. In October 2012, Ms. Hall sent a form letter home with Student, addressed to Parents and informing them that in order to graduate and earn a diploma, District students were required to earn 230 credits, take a prescribed course of study, and pass the CAHSEE. The letter also informed Parents that Student had completed 200 credits, but had not passed the CAHSEE. Ms. Hall underlined "not passed" twice, and hand wrote onto the letter "Please call me." Parents never received the letter. Ms. Hall's intention was to explain to Parents that Student was exempt from passing the CAHSEE, as were all students with IEP's. Ms. Hall did not reference the exemption in the letter itself, but she

understood that the requirement of passing the CAHSEE was widely known, and she wanted to “clear up any confusion” that might have existed about Student’s requirements to graduate.

43. On February 7, 2013, Ms. Hall performed another graduation check with Student. She sent a copy of the notes of that meeting home with Student, which stated that Student was “on track to graduate in June,” but also included at the top of the notes, again, that Student had not passed the CAHSEE. Father did not receive the note, and Ms. Hall did not receive a return copy signed by either Parent. Ms. Hall did not follow-up with Parents regarding this note because it was not her policy to do so if a student was on track to graduate.

44. On March 20, 2013, Ms. Schwartz, the assistant principal, sent Student a letter with three IEP team meeting invitations enclosed, proposing meeting dates of April 3, 4 or 11, 2013. The letter included, in bold and underlined type, that if Student did not confirm his attendance on one of the proposed dates, the District would convene the meeting on the third date, April 11, 2013, without him. Prior to sending the letter, District did not make serious attempts to contact Parents by telephone to schedule a mutually convenient IEP team meeting date. Ms. Schwartz testified that her special education clerk had called Parents several times without response before the letter was sent, but Ms. Schwartz’s testimony was given no weight, as she had no personal knowledge regarding such calls, no evidence was produced documenting District attempts to contact Parents by telephone, Ms. Schwartz did not know if District staff had verified, or even attempted to verify, the correct telephone numbers for Parents when the purported calls were not returned, and Father testified that no telephone calls or messages had been received.

45. On April 4, 2013, Father filed a compliance complaint with the CDE, asserting that District had failed to respond to his requests that Student be given a

different placement, and that the April 13, 2012 IEP team meeting had never been reconvened and completed. The filing of the CDE complaint gave District written notice that Parents held Students' educational rights.

46. On April 9, 2013, Ms. Holcombe met with Student and had him complete a Senior Transition Inventory (STI), which is completed by every senior at NHHS. The STI prompts discussion on life after high school regarding academic and career plans. Ms. Holcombe also used that meeting to verify Student's address and telephone number, so that she could follow up with him after graduation, which is something she is required to do by DOTS. She gave Student a number of brochures on life choices, postsecondary disabled student services, post-high school options, the benefits of going to college or vocational training, how to apply for financial aid, and important documents needed by every student.

47. On April 10, 2013, Parents met Ms. Schwartz on campus and asked her to reschedule the April 11, 2013 IEP team meeting. Father reminded Ms. Schwartz that Parents now held Student's educational rights. Ms. Schwartz did not reschedule the IEP team meeting, and Student's IEP went forward on April 11, 2013 without Student or either parent present.

#### April 11, 2013 IEP

48. The April 11, 2013 IEP team meeting was attended by Ms. Schwartz, a special education teacher, general education teacher Greg Gilliland, Ms. Holcombe from DOTS, a school psychologist and Student's BID service provider. The meeting was designated as one for an "exit" IEP, as Student was scheduled to graduate on June 7, 2013, and would no longer be eligible for special education.

49. Mr. Gilliland has a bachelor's degree in computer science, and a master's degree in administration. He has teaching credentials in physical education, computers and health. He is one of the two to three percent of distinguished teachers to receive

the prestigious National Board certification. He has been an educator for over 30 years, and mentors other District teachers. Although he has no special training in working with students with disabilities, Mr. Gilliland testified that he was a “preferred” teacher for students with IEP’s, because he taught the curriculum in a way that was as accessible to learning disabled students as it was to gifted students.

50. Mr. Gilliland had Student in his Web Development class in fall 2012, and in his Exploration of Computer Science class in Spring 2013. There were about 32 students in each class. Mr. Gilliland considered it the role of Student’s behavior aide to ensure that Student’s autism was not interfering with his access to the curriculum, by monitoring behavior and mood, refocusing Student on tasks, and assisting the teacher with accommodations. Before each class, Mr. Gilliland told the aide what the class would cover that day. Mr. Gilliland never saw an outburst from Student or had any other problems with Student. Mr. Gilliland observed that Student listened to music on an MP3 player to help him stay calm, and that using computer time as a reward was an effective motivator for Student. In Web Development, the students worked on such assignments as creating an online resume for a fictitious person, adding a picture to the resume, and then adding hyperlinks to a reference page or work history. In the computer exploration class, the students worked on building a simple robot, creating phone applications and creating games. Student had made a very good computer animation game that Mr. Gilliland told Student to show his parents. Student received “A” grades in both of Mr. Gilliland’s classes, and in Mr. Gilliland’s opinion, Student was making progress and accessing the curriculum.

51. Student’s academic PLOP’s in the April 2013 IEP reported progress on his “current” IEP, from March 2011. Student met his English language development goal of recognizing idioms, analogies and metaphors in literature and text, and was developing an understanding of figurative language, although he needed to work on responses to

questions about text requiring the use of inference. Student met his pragmatic language goal of exhibiting appropriate topic maintenance during structured language activities, although he continued to have difficulty with pragmatic language skills and struggled to initiate conversations independent of general greetings. He did not meet his reading goal of comparing the figurative and literal meanings of a list of words because he had not achieved 75 percent accuracy in doing so, and continued to have trouble with reading comprehension questions involving inferences. Student did not meet his written language goal of writing an interpretive response with a hypothesis and supporting judgments on a grade level core literature passage, but his writing had improved significantly with the use of a graphic organizer with prompts and support. Student did not meet his math goal of solving monomial and polynomial equations, and although he was able to add and subtract simple arithmetic problems, he had difficulty with problems involving multiplication and division.

52. Student met his social/emotional goal of identifying triggers that cause frustration and using coping skills to decrease angry outbursts and increase his ability to form friendships, and faced disappointment without inappropriate reactions, particularly when he worked with his behavior aide to “modify the assignment and achieve compliance and success.” Student met his behavior goals of using a stress ball to avoid injuring himself or others when frustrated, although he was unable to ask for the stress ball independently. Student also met his behavior goal of initiating social conversations with peers, and without prompting carried on short conversations about video games. Student continued to be unable to stay on task without one-to-one cuing and prompting, and had escalating behaviors when tired or transitioning between activities. Student met his injury and safety goal of identifying three strategies to maintain a safe environment on the bus. Student did not meet his vocational education goal of asking the teacher to clarify assignments, but his teachers reported that Student could follow

classroom instruction and routines, was well mannered, and would participate in class discussions with prompting. Student was unable to work independently without adult cuing and prompting, and had difficulty demonstrating real comprehension of what was asked of him.

53. The IEP team revised and adopted goals in the areas of reading, writing, English language development, pragmatic language, social/emotional, behavior and injury prevention. Rather than updating the April 2012 vocational education goal (promptly begin and complete tasks), the team readopted Student's March 2011 vocational education goal of asking his teacher for clarification of assignments. The team recharacterized and adopted Student's March 2011 social/emotional goal of decreasing angry outbursts as a counseling goal. Student was offered the same placement and services through June 7, 2013, the date scheduled for Student's graduation.

54. The April 2013 IEP reported "transition services" in the PLOP's for Student's vocational education goal: on October 29, 2012, Student had met with the DOTS teacher in the senior students classroom and discussed postsecondary plans; on March 7, 2013, DOTS teacher gave a lesson to Student's class on how to apply to community college and the class practiced filling out a college application; on March 20, 2013, the DOTS teacher went over handouts with Student's senior class on important documents and life choices, discussed postsecondary options and gave out information on obtaining student identification, setting up an appointment with disabled students services, how to apply for financial aid, and how to get and keep a job; and on April 9, 2013, Student completed a senior transition inventory and discussed options available in postsecondary areas of interest.

55. The April 11, 2013 IEP contained an ITP. The ITP indicated that an assessment had been completed on April 2, 2013, but no information from that

assessment was documented. Rather, the April 2013 ITP contained the same word-for-word description of Student's interests as had been contained in his 2009 ITP. A Section One education/training goal of enrolling in a two or four year college, which had been deleted from the April 2012 ITP, was adopted, accompanied by an education/training activity of "with assistance from counselor, will explore programs avail[able] to address areas of interest" by June 1, 2013. At Section Two, the previous employment goal of participating in supported employment was deleted from the ITP, and replaced with Student "will explore programs that address his interest in film making," and an employment transition activity of "discuss postsecondary options with DOTS provider" by June 1, 2013. A community experience transition activity of "tour a local college and identify 5 important locations on a campus map" by March 1, 2012 (over a year past) was included. Section Three stated that Student intended to live with his parents after graduation, and set an independent living goal of "live with family/relatives," with an independent living activity of "practice a daily hygiene/grooming routine."

56. By the end of the 2012-2013 school year, Student earned the following grades: "C" in Composition, "A" and "A" in Algebra Tutoring Lab, "A" in Principals of American Democracy, "A" in Science, "C" in Modern Literature, "A" in Economics, "A" in Web Development, "A" in Exploring Computer Science, and "B" and "C" in Introduction to Theatre.

57. On June 6, 2013, Ms. Hall performed one last graduation check and confirmed that Student had earned 260 credits, 30 more than he needed to graduate. Student's overall grade point average (GPA) was 3.2, and he was ranked 186 in a class of 648.

58. On June 7, 2013, Student graduated with a regular high school diploma and was exited from special education.

## LEGAL CONCLUSIONS

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 1(A) – DID DISTRICT DENY STUDENT A FAPE FROM SEPTEMBER 2011 TO MAY 6, 2013, BY FAILING TO PROVIDE APPROPRIATE INSTRUCTION, SERVICES OR PLACEMENT?

2. In Issue 1(a), Student contends that District failed to provide him with a FAPE from September 2011 through May 6, 2013, by failing to provide him with appropriate instruction and services, and placing Student in general education classes. Student contends that he was unable to access the general education curriculum and should not have been placed on a diploma track. District contends that it provided an educational program specifically designed to meet Student’s unique needs for the 2011-2012 and 2012-2013 school years and ESY’s in the appropriate placement.

3. The Individuals with Disabilities Education Act (IDEA) and California special education law 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) (emphasis added); 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); Cal. Code Regs., tit. 5, § 3001, subd. (p).)

4. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.ED.2d 690] (*Rowley*), the United States Supreme Court addressed the level of instruction and services that must be provided to a pupil with a disability to satisfy the requirements of the IDEA. The Court determined that a student’s IEP must be reasonably calculated to provide the student

with some educational benefit, but that the IDEA does not require school districts to provide the student with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.* at pp. 198-200.) The Court stated that school districts are required to provide a "basic floor of opportunity" that consists of access to specialized instructional and related services that are individually designed to provide educational benefit to the student. (*Id.* at p. 201; *J.L. v. Mercer Island School District* (9th Cir. 2009) 575 F.3d 1025, 1034, 1037-1038 & fn. 10 (*Merced Island*).

5. The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley* to date, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*Merced Island, supra*, at pp. 1037 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "'meaningful' educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at pp. 1037-1038, fn. 10.)

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

attainment of passing grades and regular advancement from grade to grade are generally accepted indicators of satisfactory progress." (*Walczak, supra*, 142 F.3d at p. 130.)

7. An IEP is evaluated in light of the information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*)). "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) Whether a student was denied a FAPE is ultimately evaluated in terms of what was objectively reasonable at the time the IEP was developed. (*Adams*, 195 F.3d at p. 1149.)

8. When a student alleges the denial of a FAPE based on the failure to implement an IEP, in order to prevail, the student must prove that any failure to implement the IEP was "material," which means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822 (*Van Duyn*)). "There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education." (*Id.* at p. 821.)

9. Excluding Student's ITP's and transition needs and services, which are addressed at Issue 1(b), no evidence was produced that Student had areas of need from September 2011 through May 6, 2013, that were not identified by District and addressed by his placement and services.<sup>7</sup>

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<sup>7</sup> The conclusions in the analysis of Issue 1(a) are separate from, and do not address, Student's transition needs or Student's transition goals and services, which are analyzed and discussed at Issue 1(b).

10. Here, during September 2011 through May 6, 2013, District determined that Student had academic needs in the areas reading (comprehension), English language development (understanding the meanings of words), written language (putting his ideas into writing), and pragmatic language (use of idiomatic language and inferences), and pragmatic language needs that resulted in difficulty initiating conversations with peers, maintaining a conversation, and understanding multi-step directions. District also determined that Student had social/emotional needs that resulted in his inability to communicate appropriately with peers and adults, and behavioral needs that resulted in off-task behavior, an inability to work independently, and verbal and physical aggression in response to frustration. District identified Student's areas of need and they were discussed during the reports on his PLOP's in his annual IEP team meetings, and addressed with goals supported by instruction, related services and placement. Student produced no evidence that Student had needs that were not identified at those meetings, or not addressed by the instruction, related services, and placement provided to Student.

#### 2011-2012 School Year

11. Student did not meet his burden of showing by a preponderance of the evidence that District failed to provide Student with appropriate instruction and services to meet Student's unique needs during the 2011-2012 school year.

12. Pursuant to the March 1, 2011 IEP, District provided Student with specialized instruction from credentialed special education teachers in core academics in SDC classrooms for students with learning disabilities, and general education classes for elective courses, with accommodations to enable access to the general education curriculum. District also provided LAS services to support Student's pragmatic language goals, and the one-to-one assistance of a behavior aide at all times and across all settings, to prompt, cue and assist Student in order to reduce maladaptive behaviors,

enable Student to access the curriculum and to ensure Student's safety and the safety of others. APE services were provided to support Student's APE goal of engaging in group APE activities. The weight of the evidence showed that this instruction and these related services appropriately addressed Student's unique needs, as Student made progress in the general education curriculum. (Factual Findings 1-47 and Legal Conclusions 1, 3-8.)

13. Academically, although Student did not meet his March 1, 2011 IEP goals or objectives in math, writing, or English language development by the time of the April 13, 2012 IEP team meeting, a student is not required to meet all of his goals so long as he makes progress towards some goals. Student met his goals in reading, with assistance, and in language pragmatics, during structured activities with prompts. Student passed his 2011 fall classes with A's, B's and C's, and by April 2012 was on track to pass his spring classes with A's and B's and one C, and to advance to the 12th grade. Student's strong grades reasonably indicated to the April 2012 IEP team that Student was making satisfactory progress. Student scored below basic in the 2012 CST's in English Language Arts and History, and far below basic in Math and Science; however, there was no expert testimony that such scores are incompatible with Student's high achievement in those areas in the classroom, nor was evidence produced that those scores were published and available to the IEP team by the time of the April 2012 meeting. (Factual Findings 1-47.)

14. In the area of behavior, which is discussed in more detail below, by April 2012 Student had met his behavior goal from the March 2011 IEP of learning to use a stress ball to deal with frustration, and his injury prevention goal of identifying strategies for remaining safe on the bus. Student had met objectives toward his social/emotional goal to identify triggers for his outbursts and use relaxation exercises, and his behavior goal to initiate pro-social conversational exchanges. (Factual Findings 1-47.)

15. Taken as a whole, the weight of the evidence showed that Student made progress with the level of instruction and related services provided by District during the 2011-2012 school year, and thereby obtained some educational benefit. (Factual Findings 1-47 and Legal Conclusions 1-14.)

16. The April 13, 2012 IEP offered the same level of instruction and services that had allowed Student to make satisfactory academic and behavioral progress over the past year. This supported the revised goals in Student's previously identified areas of need for the 2012 ESY (for fewer classes and a shortened school day) and the 2012-2013 school year. Student produced no evidence that Student developed new educational needs during the 2011-2012 school year, that the needs identified in the April 2012 IEP were incomplete or incorrect, or that the instruction and services offered in the April 2012 IEP failed to address Student's unique needs. On the weight of the evidence, the instruction and services offered in the April 13, 2012 IEP were reasonably calculated to provide Student with some educational benefit, and therefore appropriate. (Factual Findings 1-47 and Legal Conclusions 1-15.)

17. As to placement, Student failed to meet his burden of proving by a preponderance of the evidence that his 2011-2012 placement was not appropriate. District is required to educate disabled students with their non-disabled peers to the maximum extent possible. Student was placed in special education classes with other disabled students only for core academic courses, such as math, English and ELD, where Student required specialized instruction due to the volume, pace and complexity of the material. Although there was evidence that Student became frustrated and exhibited aggressive behaviors when he did not understand the curriculum or teacher directions, Student was able to access the general education curriculum taught in the SLD SDC and general education courses with the instructional supports and services provided by District. Student's one-on-one behavior aide minimized Student's off-task behavior, lack

of attention. and distractibility, which enabled Student to access to the general education curriculum in all classes without modification. Therefore, the weight of the evidence showed that Student's placement in SDC classrooms for core academics, and general education classes for the remainder of the school day, maximized Student's education alongside non-disabled peers in the least restrictive environment. As discussed above, Student made academic and behavioral progress in this placement during the 2011-2012 school year, and it was therefore appropriate. (Factual Findings 1-47 and Legal Conclusions 1, 3-16.)

#### 2012 ESY and 2012-2013 School Year

18. Student failed to meet his burden of showing by a preponderance of the evidence that Student did not obtain education benefit from the instruction and services provided by the District during the 2012 ESY and 2012-2013 school year.

19. During 2012 ESY and the 2012-2013 school year, District continued to provide the instruction and related services called for in the March 1, 2011 IEP,<sup>8</sup> which was still the operative IEP as neither Student nor Parents had consented to the April 2012 IEP. By April 2013, Student had met his English language development and pragmatic language goals, and two objectives towards his written language goal. Student appeared to regress in his reading skills, as he no longer met his reading goal, but a student is not required to meet all of his goals to make meaningful educational progress. Student's fall 2012 grades were four A's, one B and one C, and Student was on track to earn all A's and two C's in spring 2013 and earn a regular high school diploma, which indicates that Student was making progress. Student produced no evidence that

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<sup>8</sup> The instruction and services provided during 2012 ESY were essentially the same provided during the 2011-2012 school year, but for fewer hours and a shortened school day.

the progress on his goals during 2012-2013 was reported incorrectly, or that the grades awarded were inaccurate. In the area of behavior, which is discussed in more detail below, Student met all of his March 2011 behavior goals by April 2013, by learning to effectively use a stress ball, with prompting, which reduced the frequency and duration of his aggressive behavior and helped him to engage in social exchanges with his peers. Student was able to access the general education curriculum in Mr. Gilliland's computer classes without modification. The weight of the evidence established that Student made progress with the level of instruction and related services provided by District during the 2012 ESY and 2012-2013 school year and thereby obtained some educational benefit. (Factual Findings 1-47 and Legal Conclusions 1, 3-18.)

20. The April 11, 2013 IEP offered the same level of instruction and related services that had allowed Student to make satisfactory academic and behavioral progress in the 2011-2012 and 2012-2013 school years, in support of revised goals in Student's previously identified areas of need. Student produced no evidence that he had developed new needs during the 2012-2013 school year, that the needs identified in the IEP were incomplete or incorrect, or that the instruction and services offered in the April 2013 IEP failed to address any of Student's educational needs. On the weight of the evidence, the instruction and services offered in the April 11, 2013 IEP were reasonably calculated to provide the student with some educational benefit, and therefore appropriate. (Factual Findings 1-47 and Legal Conclusions 1, 3-19.)

21. The weight of the evidence showed that from the time of the April 11, 2013 IEP team meeting through May 6, 2013, a period of approximately one month, Student continued to make educational progress. During that time Student continued to earn passing grades, ultimately completing the requirements to graduate with a regular high school diploma, and graduating with a 3.2 GPA and a 186 rank out of 648 students. Student failed to prove by a preponderance of the evidence that the instruction and

related services provided by District during that one month period were not appropriate. (Factual Findings 1-47 and Legal Conclusions 1, 3-20.)

22. For his senior year, Student's placement was again in SLD SDC's for core curriculum, and in general education classes for electives. As in 2011-2012, Student was able to access the general education curriculum without modification, and make progress, in both classroom settings. Therefore, the weight of the evidence showed that Student's placement during the 2012-2013 school year was appropriate. (Factual Findings 1-47 and Legal Conclusions 1, 3-21.)

#### Behavior Needs and Services

23. At hearing, aside from the lack of transition services, Father's primary criticism of Student's educational program was its inability to eliminate Student's aggressive behavior over a period of two years. Father testified that Student's behaviors were escalating from 2011 to 2013, that he was called multiple times to pick Student up from school due to Student's behaviors, and that in November 2012, he arrived one day to find Student on the sidewalk outside the school and restrained by multiple adults. His testimony of escalating behaviors was corroborated in part by the behavior and social/emotional PLOP's, which indicated that Student's reactions to frustration had increased in severity from hitting, kicking and throwing things in March 2011 to rapidly escalating aggression in April 2012 that resulted included biting and striking his behavior aide. By April 2012, trained staff was required to assist Student's behavior aide in removing Student from the classroom during a tantrum, and Student required "moderate to maximum supervision" throughout the school day for safety. However, Student failed to produce evidence that Student required different behavior services, in type, frequency or duration, than those that were offered or provided.

24. There was significant evidence that Student's behaviors were improving from September 2011 through May 6, 2013, in frequency and duration, if not severity.

The March 1, 2011 IEP, developed near the end of his 10th grade year, indicated that Student required 45-60 minutes to recover from a meltdown. However, the April 11, 2013 IEP, developed at the end of Student's senior year, reported that the number of verbal and physical outbursts had decreased, and lasted for only 10-40 minutes, although Student continued to require maximum support from the behavior aide and school staff during outbursts. The April 2013 IEP behavior PLOP documented significant progress in Student's ability to verbalize frustration instead of engaging in disruptive behaviors, and Mr. Sanchez and Mr. Gilliland testified that Student was a pleasure to have in class, in the 11th and 12th grades, respectively.

25. The weight of the evidence showed that, from September 2011 through April 2013, Student's tantrumming behaviors decreased while his skill at coping with frustration increased. Student produced no evidence that additional or alternative behavior supports would have been more effective in reducing the frequency, duration or severity of Student's outbursts, but even if he had, the IDEA does not require that District provide Student with the best behavior supports or maximize Student's behavioral gains. Student also produced no evidence that Student's behaviors increased between the April 12, 2013 IEP team meeting and the time Student filed his complaint on May 6, 2013. (Factual Findings 1-58 and Legal Conclusions 1, 3-24.)

26. In summary, with the exception of Student's transition needs addressed at Issue 1(b), Student failed to meet his burden of proving by a preponderance of the evidence that from September 2011 through May 6, 2013, District failed to offer or provide Student with appropriate instruction and related services or placement. (Factual Findings 1-58 and Legal Conclusions 1, 3-25).

ISSUE 1(B) - DID DISTRICT DENY STUDENT A FAPE FROM SEPTEMBER 2011 TO MAY 6, 2013, BY FAILING TO PROVIDE AN APPROPRIATE TRANSITION PLAN AND TRANSITION GOALS?

27. In Issue 1(b), Student contends District denied him a FAPE by failing to provide him with an appropriate transition plan and transition goals for his post-high school needs. Specifically, Student argues that from the beginning of the 2011-2012 school year through the date of filing, he had not been appropriately assessed regarding his transition needs, his ITP goals were not individualized, and the transition services identified in the transition plan were inadequate to meet his needs or not provided. District contends that Student did not establish that the ITP goals were inappropriate, or that the ITP's were inappropriate or not implemented.

28. Legal Conclusions 1-8 are incorporated herein by reference.

29. Beginning at age 16 or younger, the IEP must include a statement of needed transitions services for the child. (Ed. Code, § 56043, subd. (h).) The IEP in effect when a student reaches 16 years of age must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); Ed. Code, §§ 56043, subd. (g)(1), 56345, subd. (a)(8).) The plan must also contain the transition services needed to assist the pupil in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8)(A); *Board of Education of Township High School District No. 211 v. Ross, et al.* (7th Cir. May 11, 2007) 47 IDELR 241, 107 LRP 26543.)

30. Transition services are a coordinated set of activities that are (1) designed within an outcome-oriented process that is focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or

community participation; (2) based on the student's individual needs, taking into consideration the student's strengths, preferences and interests; and (3) include 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 functional vocation evaluation. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).) Generally, it is inconsistent with the IDEA to delay transition services until a few months before a student's graduation. (*Letter to Hamilton* (OSEP 1995) 23 IDELR 721, 23 LRP 3421.)

31. 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 (*Lessard*).

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.*)

32. School districts are not required to ensure that students are successful in achieving all of their transition goals. The IDEA was meant to create opportunities for

disabled children, and not to guarantee a specific result, such as acceptance into college. (*High v. Exeter Township Sch. Dist.* (U.S. Dist. Ct., E.D.Pa., Feb. 1, 2010, Civ. A. No. 09-2202 2010) 2010 WL 363832, \*4, 54 IDELR 17 (*Exeter*), citing *Rowley, supra*, 458 U.S. at 192.) The court in *Exeter* also compared a transition plan 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 postsecondary goals and corresponding services. (*Exeter, supra*, at \*6.)

33. A transition plan that fails to comply with the procedural requirements, such as one comprised of generic and vague post-high school goals and services that are equally applicable to almost any high school student, and is not based on the specific student's needs or fails to take into account the student's strengths, preferences, and interests, does not comply with the procedural requirements of the IDEA. (*Virginia S. v. Dept. of Educ.* (U.S. Dist. Ct, D.Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, \*10. (*Virginia S.*.)

34. In the event of a procedural violation of the IDEA, a denial of FAPE may only be found if that procedural violation impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2).) When a transition plan fails to comply with the procedural requirements, but the ITP or IEP provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural violation is harmless. (*Virginia S., supra*, at \*10.) A transition plan that is procedurally deficient, but does not result in a loss of educational opportunity, does not result in a denial of FAPE. (*Ibid.*)

35. Here, a preponderance of the evidence demonstrated that District denied Student a FAPE by failing to provide him with an adequate transition plan and goals between September 2011 and May 6, 2013. The evidence established that (i) Student's March 2011 and April 2012 ITP's lacked individualized goals and activities; (ii) the April 2012 ITP failed to offer any transition services to be provided by District; (iii) District failed to implement Student's March 2011 ITP during the 2011-2012 or 2012-2013 school years; (iv) the April 2013 ITP was developed too late to provide any benefits; and (v) the vocational education and behavioral goals and services in the March 1, 2011, April 13, 2012, and April 11, 2013 IEP's did not adequately address Student's transition plan. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-34.)

(i) Student's March 2011 and April 2012 ITP's lacked individualized goals and activities

36. The weight of the evidence established that from September 2011 through May 6, 2013, Student's junior and senior years, District relied on a stale transition assessment administered by Ms. Holcombe in 2009 to address Student's postsecondary transition needs. An academic interest inventory was administered in January 2011, and Mr. Sanchez attempted, but did not complete, a transition assessment in February 2012. However, from 2009 forward, District failed to administer comprehensive, age-appropriate assessments to determine Student's postsecondary transition needs in the areas of education, employment, community experiences or independent living skills. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-35, 37-44.)

37. Unlike an IEP, an ITP is not a strictly academic plan, but gathers information on numerous areas of postsecondary need, such as safety skills, navigation skills, problem solving skills and self-advocacy, to name a few. (See *Exeter*, at \*6.) Although the development of the March 2011 ITP is outside of the period of time in dispute here, the lack of current, age-appropriate assessments in Student's junior and

senior years meant that Student's individualized transition needs were not, and could not have been, adequately addressed from September 2011 through May 6, 2013. This was more than a harmless procedural error. Neither Student nor Parents were given any documentation on reevaluations or any feedback on Student's specific transition program, because there was none, impeding the right of Student and Parents to participate in the IEP process.<sup>9</sup>

38. An IEP team's failure to consider alternative educational possibilities that had a strong likelihood of consideration but for a procedural error, can result in a lost educational opportunity even if the student cannot definitively demonstrate that the IEP outcome would have been different but for the procedural error. (See *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) \_\_ F.3d \_\_, 2013 WL 2631518 at \*7 (*Doug C.*), citing *M.L. v. Federal Way Sch. Dist.* (9th Cir. 2003) 394 F.3d 634, 656 (Gould, J. concurring in part and concurring in the judgment) (*M.L.*)). In *M.L.*, the Ninth Circuit found the lack of a regular education teacher on an IEP team to be more than a harmless procedural error because, without a regular education teacher, the team could not give proper consideration to a student's ability to be included in general education classes.<sup>10</sup> In *Doug C.*, the Ninth

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<sup>9</sup> Parents held Student's educational rights as of June 14, 2012, and Father repeatedly requested that IEP team meetings be convened to review Student's services during the 2012-2013 school year. (Factual Findings 1-58.)

<sup>10</sup> Justice Alarcon found the improper composition of an IEP team to be a "structural defect" that so prejudiced a student's right to consideration of likely opportunities that a review of hearing officer or lower court findings on the merits of such a team's substantive recommendations for clear error would produce a "futile advisory opinion which is beyond our judicial power or competence." Justice Gould, in his concurring opinion, found a team's inability to "better consider" strongly likely

Circuit held that the failure to “properly consider an alternative educational plan,” that likely would have been considered had the parent been able to attend and present the benefits of a preferred placement, resulted in a substantive denial of educational opportunity although the parent could not demonstrate that the student’s placement would have been different had the preferred placement been considered. (*Doug C., supra*, at p. \*7.) Similar reasoning applies here, where District failed to present any age-appropriate assessment information to Student’s IEP teams on which to develop an ITP. As discussed below, the total lack of information on Student’s transition needs for IEP team consideration resulted in the IEP teams’ inability to address Student’s transition to postsecondary adult life, and denied Student of educational opportunity, despite Student’s lack of showing on the type of transition plan and services that should have been provided to him.

39. As to the development of the April 13, 2012 ITP, it is notable that Mr. Sanchez attempted a transition inventory of Student in February 2012, but was unable to complete a simple 30-minute assessment over a period of two to three days. That alone should have alerted District to the fact that Student faced serious postsecondary academic, employment and independent living hurdles that needed to be identified and addressed. Without an age-appropriate transition assessment related to training, education, employment and independent living skills by the time of the April 13, 2012 IEP team meeting, District could not, and did not, individualize the transition goals and services that Student needed in his senior year of high school to prepare for transition to post-school activities. Without an age-appropriate assessment, Student and Parents had insufficient information to meaningfully participate in developing a plan to ease

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opportunities for a student to participate in general education classes be inherently more than a harmless error. (*M.L.*, at p. 648.)

Student's transition into postsecondary life at college, on the job, in the community, or toward independent living. Without age-appropriate information, the IEP team lacked critical information to enable it to develop an appropriate transition plan for Student. The IEP team's inability to consider alternate transition plans for Student was more than a harmless procedural error, as it deprived Student of an educational opportunity and resulted in a substantive denial of a FAPE. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-38, 40-44.)

40. Further, consistent with the lack of transition assessments, the April 13, 2012 ITP contained generic goals that highlight its lack of individualization for Student: the employment goal was to complete a career interest survey, apparently because District had not completed one since 2009; the community experience goal was to obtain a State identification card or driver's license, although there was no plan for how Student would use the identification card and Student was clearly unable to drive; and the independent living goal was to "live with family" and perform unidentified household chores, without consideration of whether living in a home where Student might be left alone and unattended throughout the day was a viable postsecondary option. Special education teachers do not necessarily have the competency, experience or training to assess a student's postsecondary needs, let alone draft a transition plan, and there was no evidence produced that Mr. Sanchez had any knowledge, training, or experience in developing postsecondary transition plans, and could not have drafted an individualized plan without information on Student's transition needs in the areas of education, training, employment, community experiences, or independent living skills. Ms. Holcombe had the education, experience and training to develop a transition plan for Student, but also had no information available on Student's abilities, independent living skills, or other transition needs.

41. Also, despite Student being on a diploma track, no postsecondary education or training goal was included in the April 2012 ITP. The ITP's education/training activity, to practice transitioning between tasks independently or with (un)identified supports, was too vague to be useful. Neither the type of tasks, their level of complexity, nor their relationship to Student's postsecondary education or employment were indicated.

42. In the area of community experiences, there was no evidence that District had ever observed Student off campus for the purpose of measuring his ability to navigate and interact within his community. Student had annually met his injury prevention goals of using strategies to be safe on the school bus, but no goal was developed to transition Student to the post-school step of taking public transportation. Failure to provide students with an opportunity to learn how to use public transportation erects barriers to community inclusion. To travel in his community after graduation, Student would need to know how to read and understand bus schedules, get on and off the right bus, pay the fare, and respond to the approach of strangers. The April 2012 ITP did not consider travel training (34 C.F.R. 300.39(b)(4)(2006)) to address Student's post-school needs, or include any other plan to expose Student to community experiences. Although the proposed activity of obtaining a State identification card provided Student with a means of identifying himself, that activity did not itself provide Student with skills to transition successfully to adult life and responsibility beyond the school setting.

43. As to independent living, Student's April 2012 independent living activity to practice locating items in a grocery store failed to take into consideration necessary related skills, such as whether Student was able to get to a grocery store, to make appropriate food and household supply choices, to purchase groceries and bring them home, or whether Student would become distracted or lost. District's independent living

activity was so vague and immeasurable as to be meaningless. The lack of an independent living skill assessment resulted in District being unable to develop goals sufficiently individualized to be useful in transitioning Student to post-high school independent living.

44. The transition process is supposed to include annual updating of the interests and outcomes for the student and development of goals and activities reflecting the skills that the student will need to achieve these goals. The failure of District to conduct an age-appropriate assessment of Student prior to developing the April 2012 ITP prevented the IEP team from having a complete picture of Student's abilities, preferences, and transition needs, which impeded Student's right to a FAPE, significantly impeded Student's and Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, and caused deprivation of educational benefits. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-43.)

(ii) April 2012 ITP failed to offer services to be provided by District

45. In addition to not being individualized, the April 2012 ITP was procedurally deficient because it failed to make District responsible for providing Student with transition services. Instead, the ITP designated Student and his family solely responsible for completing transition activities and working with Student to achieve his goals. There was no evidence that District would supervise, monitor or even know of the April 2012 ITP activities if and when they occurred.

46. A school district cannot unilaterally delegate its transition responsibilities to parents. (*In re Child with Disabilities* 21 IDELR 624 (SEA CT 1994). A school district is the party ultimately responsible to the student for ensuring that the transition services called for in the student's IEP are implemented. (*Gallup-McKinley County Schs.* 108 LRP 21191 (SEA NM 2007), citing *Martinsville City Public Schs.* 16 IDELR 1088 (OCR 1990).) Although school districts are not required to ensure that students achieve their

transition goals, the lack of need to guarantee success does not discharge District of its statutory obligation to provide transition services to Student to assist him in attempting to reach his goals.

47. District's failure to offer any transition services in support of Student's April 13, 2012 ITP was more than a mere procedural violation in which services to be provided were not properly or thoroughly documented. Given the severity of Student's needs, as demonstrated by his need for a behavior aide throughout the school day, District's failure to plan for provision of individualized transition services during Student's senior year impeded Student's right to a FAPE and deprived him of educational benefit, and resulted in a denial of a FAPE. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-46).

(iii) District failed to implement Student's March 2011 ITP during the 2011-2012 and 2012-2013 school years

48. The evidence established that District did not provide any of the transition services called for in the March 1, 2011 ITP during Student's junior or senior years. Further, the reasons documented on Student's April 2012 ITP for such failure to provide services during the 2011-2012 school year do not survive scrutiny and do not excuse District's wholesale failure to implement the ITP.

49. The education/training activity in the March 2011 ITP was for Student to go online and explore vocational training and college programs. This activity was marked on the April 13, 2012 ITP as not completed because Student was "still in H.S. [high school]." The IDEA must be construed in light of its purpose. (*Chapman v. Houston Welfare Rights Organization* (1979) 441 U.S. 600, 608.) "Congress in the IDEA placed 'added emphasis on transition services so that special education students leave the system ready to be full productive citizens, whether they go to college or a job.'" (*Carrie I. v. Department of Educ., State of Hawaii* 869 F. Supp.2d 1225, 1224 (D.Hawaii 2012),

citing 150 Cong. Rec. S11653-01, S11656 (Nov. 19, 2004).) If school districts were excused from providing services to assist disabled student to transition to postsecondary education while they were receiving their secondary education, the IDEA's mandate to prepare disabled students over the age of 16 for postsecondary activities would be rendered unenforceable and inoperative, which cannot be what Congress intended. Such an interpretation of the IDEA eviscerates the congressional response to the number of high-school age disabled students leaving the school setting unprepared for adult life and responsibility. District's failure to implement the education/training activity in the March 2011 ITP for this reason constituted a substantive denial of a FAPE to Student. (Factual Findings 1-58 and Legal Conclusions 1-48).

50. The March 2011 ITP employment transition activity was for Student to "research an identified career of interest using web-based technology or by speaking with business representatives," in support of Student's transition goal to "go to college to study film-making." District reported this activity as not completed on the April 13, 2012 IEP because Student was "not working." Under such reasoning, employment transition services would only be available to disabled students already placed in internship and on-site job training programs, and school districts would not be required to address the needs of the majority of high school students, particularly those on a diploma track, to develop important pre-employment skills. District's interpretation of its transition obligations would violate public policy because it would permit a school district to circumvent its obligations to a wide swath of high school special education students, regardless of their individualized needs for assistance in preparing for the transition to postsecondary employment. Such conduct is contrary to the letter and spirit of the IDEA, and District's failure to implement the employment activity in the

March 2011 ITP resulted in a substantive denial of educational benefit to Student. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-49).

51. The community experiences activity in the March 2011 ITP was for the Student to “practice how to find specified areas within his/her own school and neighborhood.” This activity was marked as not completed on the April 13, 2012 ITP because Student was “not involved in community activities.” As discussed in Legal Conclusion 42, above, the failure to provide students with an opportunity to learn how to physically access their neighborhoods erects barriers to community inclusion. Community experiences are an important part of the IDEA. This is exemplified in the U.S. Department of Education’s actions to broaden the population of disabled students with access to transportation. In its 2006 regulations, the Department removed travel training from inclusion in the definition of orientation and mobility services in order to avoid the definition being “misinterpreted to mean that travel training is available only for children who are blind or visually impaired.” (71 Fed.Reg. 46,573 (Aug. 14, 2006).) Transition services are expressly defined as a coordinated set of activities to, among other things, facilitate the child’s movement from school to community participation, based upon the individual child’s needs taking in the child’s strengths, preferences and interests, including community experiences. (34 C.F.R. 300.43(a)(1)(iii).) It is unlikely that Congress, in fashioning a plan to ease the transition of disabled students from the campus to the outside world, intended that school districts withhold services from those very students isolated from the surrounding community. District’s failure to implement the community experiences transition activity because Student was “not involved in community activities” contradicted the express purpose of transition planning under the IDEA and constituted a substantive denial of a FAPE to Student. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-50).

52. The March 2011 ITP designated an independent living goal for Student to “monitor local weather forecast to plan outings and appropriate attire” as an activity in support of an independent living goal to “live with his parents.” This activity was marked as not completed on the April 13, 2012 IEP because Student was already “living at home.” Such an interpretation of Student’s transition needs fails to acknowledge the purpose of the transition provisions of the IDEA, to provide disabled students with the skills they need to transition to adult life. Transition services emphasize the acquisition of functional skills to enable students to enter the workforce, postsecondary education or vocational training, and where appropriate, to live as autonomously as possible. District’s interpretation of the IDEA, that student living at home did not require independent living services, constitutes no more than an abdication of responsibility for teaching functional life skills to students whose parents make their home available to their disabled high school students, before and after graduation. Many disabled students live with their parents, and there is no justification for categorically excluding these students from programs teaching the independent living skills that might enable them to someday live independently, or to exercise what autonomy they can as adults living within their family home. District’s failure to implement Student’s independent living goal because he was living at home resulted in a loss of educational opportunity and a denial of a FAPE to Student. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-52).

53. The evidence also established that District also did not provide the transition services called for in the March 1, 2011 ITP during Student’s senior year.

54. Although Student’s April 2013 ITP reported that all Student’s transition activities from the “current” IEP had been completed, the evidence was otherwise. If, and to the extent, the report was referring to the April 2012 ITP, all activities in that ITP were

the responsibility of Student and Parents, and neither Student nor Parents were at the April 12, 2013 IEP team meeting to report on transition activities.

55. The March 2011 education/training transition activity required Student to “go online and explore a vocational training program(s)/ college(s), their location, and the cost of the program,” and the employment transition activity required Student to “research an identified career of interest using web-based technology, or by speaking with business representatives.” The activities documented in the April 11, 2013 IEP (in the vocational education PLOP’s) were that a “DOTS teacher” met with Student’s senior class on October 29, 2012, to discuss postsecondary plans, on March 7, 2013, to give a class lesson on how to apply to community college, and on March 20, 2013, to review a standard packet of brochures with Student. None of these activities fulfill the education or employment transition activities listed in the March 2011 ITP. They are neither online nor web-based, nor do they involve speaking with a college or business representative. The documented services were also provided to seniors generally, and not personalized to Student. Student’s documented difficulty attending to class instruction, understanding multi-step instructions, and comprehending written materials brings into serious question whether such group classes and voluminous reading materials can be said to have completed an exploration of vocational training and college programs with Student at all. None of these services addressed the education or employment transition activities, let alone community experience or independent living activities, written into the ITP in effect during Student’s senior year.

56. Student’s ITP’s documented that he made and edited films in his spare time, and the April 13, 2012 IEP documented that Student was looking forward to taking Film in his senior year. Arguably, a class in film would have at least partially addressed Student’s vocational goals by providing a structured class on a career of interest. However, for reasons unknown, Student was transferred out of the Film class for the

2012-2013 school year, and placed in an algebra tutoring lab, although he wasn't taking math and had already passed algebra. Student had already acquired his 230 credits for graduation by the end of his first semester of senior year, and District had an opportunity to implement Student's ITP through an elective class in his area of interest, but failed to do so. Student did take Web Development, a class that covered the creation of an online resume for a fictional person, but there was no evidence produced that Web Development, or any service provided to Student, focused on creating a resume for Student, incorporating Student's interests and Student's accomplishments, to assist Student in his own transition to postsecondary employment. The computer exploration class involved building a robot and designing a computer game, but no evidence was produced that this class, or any of its lessons, were individualized to support Student's unique transition needs as identified in his ITP's.

57. Ms. Holcombe provided Parent at the April 2012 IEP team meeting with information on a private program that might provide Student with pre-employment filmmaking skills during the 2012 ESY or 2012-2013 school year. However, as District made no offer to fund this program, this referral did not meet any part of District's obligation to provide Student with transition services during his senior year.

58. In sum, the weight of the evidence established that District failed to provide the services called for in the March 1, 2011 ITP during 2011-2012 or 2012-2013 school years. District's wholesale failure to implement the March 1, 2011 ITP in either Student's junior or senior years resulted in a loss of educational opportunity and constituted a substantive denial of a FAPE to Student. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-57).

(iv) April 2013 ITP was developed too late to provide substantive transition benefits

59. The April 11, 2013 IEP reported that an STI assessment was completed on April 9, 2013. However, to the extent it explored Student's academic and functional ability to participate in supported employment, the STI was conducted less than two months prior to Student's graduation from high school. This was too late to guide the team in developing sufficient activities to provide meaningful benefit to Student before he transitioned out of high school.

60. The April 11, 2013 ITP constituted a 180-degree change in direction from the prior year's ITP, which had eliminated the educational goal and substituted a goal to participate in supported employment. The activities provided in the ITP, that Student would explore available programs to address Student's areas of interest, discuss postsecondary options with a DOTS provider, and practice daily hygiene/grooming routines, were too vague and too late to meaningfully identify and address Student's educational, employment, community experience and independent living transition needs, particularly with only eight weeks of high school remaining.

61. The weight of the evidence established that the April 11, 2013 ITP constituted a significant change in the direction of Student's postsecondary education, training and employment goals and activities, and was developed too late to provide him with meaningful educational benefit, resulting in a substantive denial of a FAPE. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-60.)

(v) The vocational education and behavioral goals and services in the March 1, 2011, April 13, 2012, and April 11, 2013 IEP's did not adequately address Student's transition plan

62. Per *Lessard*, where an ITP is deficient, the court must look to the remainder of the IEP to determine whether the IEP, taken in its entirety, was reasonably calculated to provide the student with the services required to meet the student's postsecondary

transition needs. Here, the lack of age-appropriate information on Student's transition needs rendered the IEP teams uninformed and unable to address Student's transition needs, in an ITP or other areas of the IEP. Neither the March 1, 2011, April 13, 2012, nor April 11, 2013 IEP's identified or addressed Student's postsecondary transition needs.

63. The April 13, 2012 IEP team dropped the prior IEP's vocational education goal to independently seek clarification of assignments, on which Student had not made progress over the previous two years. Instead the April 2012 IEP team adopted a vocational education goal for Student to promptly begin a task (apparently without seeking clarification) and to work at completing the task with minimal prompts. However, Student was already able to complete tasks with prompts, as documented throughout his IEP's and by his passing grades. This April 2012 vocational education goal was insufficient, in combination with the inadequate April 2012 ITP, to implement a plan for Student to transition to postsecondary education, training, employment, community involvement or independent living.

64. Mr. Sanchez believed that Student's enrollment in computer classes in his senior year would meet Student's transition needs, because computers were an area of interest for Student, but the April 2012 IEP did not indicate how these general education courses would address Student's unique needs in transitioning to postsecondary adult life. Mr. Sanchez made postsecondary information available to students on his website, but the IEP does not reflect that, or that Student had the knowledge, ability or opportunity to access this information and apply it to his own transition difficulties. Holcombe implemented an "open door" policy for all students during the 2011-2012 and 2012-2013 school years, but no evidence was produced that Student was aware of that policy, and implementation of such a policy would not adequately support a deficient ITP, particularly for a student with communication difficulties as severe as those of Student.

65. The following year, the April 11, 2013 IEP team re-inserted the vocational education goal of seeking clarification of assignments into Student's IEP, without offering more support than had been previously offered. Student had failed to make any progress on this goal after working on it for two years with the level of services offered in the April 13, 2012 IEP. That vocational education goal, without additional support to enable Student to make progress on that goal, was inadequate to coordinate with the 2013 transition plan to meet Student's transition needs, particularly without instruction and services to address postsecondary transition to college, training, employment, community experiences or independent living. This vocational education goal also suffered from the same deficits as the rest of the April 2013 IEP: it was part of an untimely and insufficient attempt to provide Student with a postsecondary transition plan after two years without transition services, and mere weeks before Student's graduation.

66. At all times from September 2011 through May 6, 2013, Student's IEP's included behavior goals and behavior support for Student to practice de-escalation techniques and social conversation that would arguably have benefitted Student as an adult. However, these goals were too general and lacked the specificity to implement a plan to provide for Student's transition to postsecondary education, employment and adult life. Throughout the period at issue, Student's IEP teams, teachers and service providers lacked age-appropriate information on Student's postsecondary educational, training, employment, community experience and educational needs, or direction on how Student's behaviors specifically impacted each of those transition areas. Although Ms. Holcombe attended Student's April 13, 2012, and April 11, 2013 IEP team meetings, there was no evidence produced that the team considered Student's postsecondary transition needs when developing Student's behavior goals and services.

67. The weight of the evidence established that the instruction and services implemented under the March 1, 2011 IEP, or offered in the April 13, 2012, or April 11, 2013 IEP's, taken as a whole with the respective ITP's, were not reasonably calculated to ease Student's transition to postsecondary education, employment, community participation or independent adult living, resulting in a denial of a FAPE to Student. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-67.)

68. Student is entitled to compensatory education for District's failure to provide appropriate transition goals and/or services to Student from September 2011 through May 6, 2013. Student's remedy for this denial of a FAPE will be discussed in the remedies section below.

#### ISSUE 2 – DID DISTRICT COMMIT A PROCEDURAL VIOLATION THAT DENIED STUDENT A FAPE BY FAILING TO INCLUDE PARENTS AS TEAM MEMBERS FOR THE APRIL 1, 2013 IEP?

69. In Issue 2, Student contends that he was denied a FAPE because Parents, as his conservators, were denied an opportunity to meaningfully participate in the April 11, 2013 IEP team meeting. District disagrees, contending that it made multiple attempts by telephone and in writing to schedule the April IEP team meeting with Parents, but Parents refused to attend. Additionally, District argues that Parents never proved that they were Student's conservators, and that District had no duty to ensure their attendance at an adult student's IEP.

70. Legal Conclusions 1-8, 29-34, 38 and 36 are incorporated herein by reference.

71. When a student with exceptional needs is a minor, his or her parents hold the educational rights for the student. Once the student reaches the age of majority at 18 years of age, the educational rights transfer to the student, with the exception of a student who has been determined to be incompetent. (Ed. Code, § 56041.5.) A student's

conservator is a “parent” for the purposes of special education law. (Ed. Code, § 56028, subd. (b)(2).) A judicial decree may authorize a responsible adult to act as the parent and make educational decisions for a disabled student. (Ed. Code § 56028(b)(2).) The local educational agency must notify the parents of the transfer of educational rights. (*Id.*; see also 34 C.F.R., § 300.520(a)(3).)

72. Federal and state law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, § 56304.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) The IDEA’s requirement that parents participate in the IEP process ensures that the best interests of the child will be protected, and acknowledges that parents have a unique perspective on their child’s needs, since they generally observe their child in a variety of situations. (*Amanda J. ex rel. Annette J. v. Clark County School District* (9th Cir. 2001) 267 F.3d 877, 890.)

73. The regulatory framework of the IDEA places an affirmative duty on educational agencies to include parents in the IEP process. (*Doug C.* at \*4.) An IEP team meeting may only be conducted if the parents affirmatively refuse to attend. (*Ibid.*, citing *Shapiro v. Paradise Valley Unified Sch. Dist.* (9th Cir. 2003) 317 F.3d 1072, 1078.) Frustration in scheduling meetings with the parent, or difficulty working with the parent, does not excuse a failure to include the parent in a student’s IEP team meeting when the parent expresses a willingness to participate. (*Id.* at \*5). A school district cannot eschew its affirmative duties under the IDEA by blaming the parents. (*Anchorage Sch. Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1055.) A school district’s attempt to timely meet an annual IEP review deadline does not trump parental participation and warrant refusal to

reschedule it at parent's request. (*Doug C.*, *supra*, at \*5.) Neither may a school district refuse to reschedule the meeting to avoid disrupting the other IEP team members' schedules, as the IDEA requires that the parent's attendance take priority over other members' attendance. (*Ibid*, citing *Shapiro* 317 F.3d at 1078 [a district cannot exclude a parent from an IEP team meeting in order to prioritize its representatives' schedules].) Infringement on the parent's ability to participate in the IEP formulation process is reason alone to conclude that the student was denied a FAPE. (*Id.*, at \*7.)

74. Here, District was on notice from fall 2012 that Parents had been appointed Student's conservators by judicial decree and held Student's educational rights. Per *Doug C.*, the affirmative duty to ensure parental participation in the April 11, 2013 IEP team meeting was borne by District, not Parents. If District wanted to impose a documentation requirement that Parents provide a copy of the conservatorship letters for inclusion in Student's records prior to allowing Parents to meaningfully participate in the development of Student's IEP, this should have been made absolutely clear to them. It is not surprising that confusion arose around District's pre-condition to parental participation, as District never requested in writing that a copy of the conservatorship letters be provided for Student's cumulative record. Documentation of written notice to parents creates a clear record and eliminates troublesome factual disputes. (See, e.g., *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 [a formal IEP offer makes a clear record and eliminates later disputes about what placement and services were offered].) If District harbored any doubts about whether or not Parents were authorized to make educational decisions for their adult son after receiving verbal notification from Father in September 2012, District was on notice by April 4, 2013, when Father filed his CDE complaint, that Parents held Student's educational rights by judicial decree. The CDE complaint was filed over a week prior to the April 11, 2013 scheduled date for the annual IEP team meeting, and District had ample opportunity to obtain from Parents or

the CDE any documentation it required to fulfill its affirmative duty to ensure parental participation in the upcoming IEP.

75. The IDEA required District to reschedule the meeting at Parents' request. At the time of the request, Student's graduation was still two months away, and there was ample time to reschedule the annual review and exit IEP. Parents' participation was paramount, particularly after the conservatorship had been granted, and District failed to meet its affirmative duty to ensure Parents' participation in Students' annual IEP.

76. However, as discussed in more detail below regarding Issue 3, the April 11, 2013 IEP team meeting was held as Student was about to meet the requirements for graduation, in which event District was required to issue him a regular high school diploma, with the result of terminating Student's eligibility for special education. Because Student's graduation upon meeting District requirements was mandatory, Parents cannot establish that there was a strong likelihood that other educational opportunities would have been considered had Parents been given the opportunity to participate in the April 11, 2013 IEP team meeting.

77. Student failed to meet his burden of showing by a preponderance of the evidence that Parents' loss of opportunity to meaningfully participate in the April 11, 2013 IEP team meeting resulted in a denial of educational opportunity that denied him a FAPE. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-68, 71-76.)

### ISSUE 3 – DID DISTRICT DENY STUDENT A FAPE BY GRADUATING HIM WITH A REGULAR HIGH SCHOOL DIPLOMA AT THE END OF THE 2012-2013 SCHOOL YEAR?

78. In Issue 3, Student contends that he was improperly graduated with a regular high school diploma because he was unable to do the work required to pass the courses for which credit was given. District disagrees, arguing that Student did the required class work and met the requirements for graduation from high school with a regular diploma.

79. Legal Conclusions 1-8, 29-34, 38, 36, and 71-73 are incorporated herein by reference.

80. A pupil who is identified by an IEP as a child with a disability who requires special education and related services to receive a FAPE remains eligible after the age of 18, provided the pupil was enrolled in or eligible for the services prior to his 19th birthday, and has not yet completed her prescribed course of study, met proficiency standards, or graduated from high school with a regular high school diploma. (Ed. Code, § 56026, subd. (c)(4).) A pupil with exceptional needs who graduates from high school with a regular diploma is no longer eligible for special education and related services. (34 C.F.R. § 300.102(a)(3)(i)(2006); Ed. Code, § 56026.1, subd. (a).)

81. 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. A regular high school diploma must be fully aligned with the State's academic standards. (34 C.F.R. § 300.102(a)(3)(iv)(2006).) 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 22* IDELR 456 (OSEP 1994).) 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. (*Letter to Richards 17* IDELR 288, 289 (OSEP 1990).)

82. Neither the IDEA nor California education law requires that each graduating student exhibit academic proficiency on a 12th grade level. Instead, the State requires that a student complete the curriculum, and have sufficient passing credits in each required area of study. In California, when an individual with exceptional needs meets public education agency requirements for completion of a prescribed course of

study designated in the student's IEP, the public education agency which developed the IEP shall award the diploma. (Cal. Code Regs., tit. 5, § 3070.) If a student with a disability meets all state and school district requirements for a diploma, then he cannot be denied it purely because he has a disability. To do so would constitute discrimination based on disability, prohibited under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701, et seq.). (*Letter to Runkl*, 25 IDELR 387(OCR 1996); *Letter to Anonymous* 22 IDELR 456 (OSEP 1994).)

83. The school district is required to convene an IEP meeting prior to terminating special education services. (*Letter to Hagen-Gilden* 24 IDELR 294 (OSEP 1996); *Letter to Steinke* 21 IDELR 379 (OSEP1994); 34 C.F.R. 300.102(a)(3)(iii).) 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).) Commencing with the 2009-2010 school year, a student who has an IEP stating that the student is scheduled to receive a high school diploma who has satisfied all requirements to receive a diploma, 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, subds. (a), (c).)

84. The weight of the evidence established that by June 7, 2013, Student had met all of District's requirements for completion of the prescribed course of study designated in Student's IEP. Student had earned the requisite 230 credits, had completed the necessary courses, and was exempt from passing the CAHSEE. At all times, Student's IEP's stated that Student was on a diploma track. Ms. Hall, the academic

counselor, reviewed Student's academic file repeatedly throughout Student's senior year to verify that all graduation requirements had been met. Once these general education graduation requirements were met at the end of the 2012-2013 school year, District was required to award Student a regular high school diploma, and Student's graduation with a regular high school diploma was therefore appropriate.

85. Student failed to meet his burden of demonstrating that Student had not met one or more of the requirements for a regular high school diploma. The only teachers who testified, Mr. Sanchez and Mr. Gilliland, stated that Student was able to do the grade level work. Father's speculation that Student's passing grades were inflated, or a mere pretense, is insufficient to meet his burden of establishing by a preponderance of the evidence that Student could not perform the course work for which he earned credit. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-68, 71-77, 80-84.)

86. Student's argument that Parents had not consented to a waiver of the CAHSEE requirement is unavailing. Since 2009, the CAHSEE was waived for all students with IEP's, such that Parents' consent to the waiver was not required.

87. Student failed to meet his burden of establishing by a preponderance of the evidence that Student had not met the requirements for graduation, and that Student's graduation was therefore inappropriate. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-68, 71-77, 80-86.)

## REMEDY

88. As discussed above at Issue 1(b), Student met his burden of demonstrating that he was denied a FAPE by District's failure to develop or implement an appropriate transition plan from September 2011 through at least April 11, 2013. Accordingly, Student is entitled to compensatory education. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-68, 71-77, 80-87).

89. Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168] (*Forest Grove*) .)

90. An ALJ can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265.) Compensatory education awards depend upon the needs of the disabled child, and can take different forms. (*R.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1126.) Typically, an award of compensatory education involves extra schooling, in which case "generalized awards" are not appropriate. (*Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497 (*Puyallup*).) "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Ibid.*)

91. In an appropriate case an ALJ may grant relief that extends past graduation, age 22, or other loss of eligibility for special education and related services as long as the order remedies injuries the student suffered while he was eligible. (*Maine School Admin. Dist. No. 35 v. Mr. and Mrs. R.* (1st Cir. 2003) 321 F.3d 9, 17-18 [graduation]; *San Dieguito Union High School Dist. v. Guray-Jacobs* (S.D.Cal. 2005, No.

04cvl330) 44 IDELR 189, 105 LRP 56315 [same]; see also *Barnett v. Memphis City Schools* (6th Cir. 2004) 113 Fed.App. 124, p. 2 [nonpub. opn][relief appropriate beyond age 22].)

92. Here, District's two years of failure to provide transition services, and its failure to develop an adequate transition plan or offer appropriate transition services at any time during Student's junior or senior years in high school, resulted in a loss of educational opportunity and denied Student a FAPE. (Factual Findings 1-58 and Legal Conclusions 1, 3-26, 29-69, 71-77, 80-87).

93. In his complaint, Student requested as relief for the lack of appropriate transition services a transition plan recommended by a private transition assessment and an educational program for the 2013-2014 school year. Student has graduated with a regular high school diploma and is no longer eligible to receive special education services. However, as District denied Student a FAPE by failing to assess Student to determine his age-appropriate transition needs, an appropriate compensatory award is for Student receive an assessment of his current transition needs by an independent consultant with considerable experience in planning, implementing and monitoring transition plans for students with autism and behavior difficulties in the areas of focus to task, comprehension of multi-step instructions, and physical and verbal outbursts when experiencing frustration, to be funded by District. Such a compensatory award is "reasonably calculated to provide the educational benefits that likely would have accrued from the special education services the school district should have supplied in the first place." (*Reid v. District of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 524.)

## ORDER

1. District shall retain an independent consultant, who is acceptable to Parents and who has training and experience in planning, implementing and monitoring transition plans for adults with disabilities, such as Tierra del Sol, no later than 45 days after service of this decision on District.

2. District shall retain and direct the independent consultant to conduct a complete and thorough assessment of Student's needs for transition to adult life, resulting in a written report that includes a description of Student's transition needs, a suggested set of activities to further the transition to adult life in light of those needs, and recommendations of agencies other than District whom Parent can contact for assistance. The assessment shall include multiple measures of Student's transition needs, with the goal of identifying a clear plan for Student's further education and training, employment, and acquisition of living skills.

3. District is not required to provide these compensatory services if Student moves outside of the jurisdictional boundaries of District.

## PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on Issue 1(b). District prevailed on Issues 1(a), 2 and 3.

## 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: August 16, 2013

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/s/  
ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings