BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CASTRO VALLEY UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015010039
CASTRO VALLEY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015020202

DECISON

On December 23, 2014, Parent filed a due process hearing request on Student's behalf in Office of Administrative Hearings case number 2015010039 (Student's Case) naming the Castro Valley Unified School District as respondent. On January 29, 2015, Castro Valley filed a due process hearing request in OAH case number 2015020202 (Castro Valley's Case) naming Student on respondent.

On February 9, 2015, the matters were ordered consolidated and the consolidated cases were continued for good cause. Student's case was designated as the lead case for calculating applicable timelines.

Administrative Law Judge Joy Redmon heard this consolidated matter in Castro Valley, California, on June 9, 10, and 26, 2015, and July 2, and 8, 2015. A continuance was

granted and the record left open until Monday, August 3, 2015, for the parties to file written closing arguments. Written closing arguments were timely received, the record was closed, and the matter was submitted for decision.

Attorney Mark Zeller represented Student. Parents were present throughout the hearing on Student's behalf. Attorney Tracy Tibbals represented Castro Valley. Dr. Suzy Williams, Castro Valley's Director of Special Education, was present on Castro Valley's behalf throughout the hearing.

ISSUES

STUDENT'S ISSUE

Did Castro Valley deny Student a free appropriate public education during the 2013-2014 and 2014-2015 school years by failing to offer and provide appropriate services and supports to address Student's needs arising from his disability of emotional disturbance including:

a. appropriate goals to address emotional disturbance and executive functioning;
b. individual therapy; and
c. helping Student to establish a close relationship with a teacher or mentor as treatment to address his emotional needs?

CASTRO VALLEY'S ISSUE

Was Castro Valley's November 19, 2013, IEP, as amended, designed to meet Student's unique needs, reasonably calculated to provide Student educational benefit in the least restrictive environment, and was it properly implemented

after parental consent was provided?

SUMMARY OF DECISION

This Decision holds that Castro Valley denied Student a free appropriate public education at all times adjudicated in this Decision. Specifically, Castro Valley failed to offer appropriate goals and services to address his social-emotional needs stemming from anxiety. Additionally, this Decision holds that from the end of February 2014 through the end of the 2013-2014 School year, Castro Valley failed to implement Student's specialized academic instruction after Student's resource specialist program teacher left on leave. Castro Valley established that Student did not require residential placement to receive a FAPE.

This Decision orders partial reimbursement for Student's unilateral residential placement. The percentage of expenses attributable to room and board are not reimbursed as it was not established Student required a residential placement to receive a FAPE. Partial reimbursement is ordered for the percentage of tuition attributable to academics and therapy, the enrollment fee, technology and book expenses, and Student's airline ticket expense for Student to attend the program.

PROCEDURAL MATTERS

The time periods in the issues raised by each party in these consolidated cases are partially overlapping. The issues were reviewed with the parties at the outset of the hearing and no adjustments to those identified above were requested by either party. This section clarifies the time periods and issues covered in this Decision.

Student broadly placed the 2013-2014 school year at issue but did not assert in his complaint, during the pre-hearing conference, or at the outset of the due process hearing, that Castro Valley should have determined Student was eligible for special education and related services prior to the time he was found eligible on November 19,

2013. As no denial of FAPE can be established for a child who is not eligible for special education and related services, no legal conclusions are made regarding events occurring prior to Student's eligibility because he did not place earlier eligibility at issue. (See *R.B.v. Napa Valley Unified School District* (9 Cir. 2007) 496 F.3d 932, 942.)

Castro Valley seeks a determination regarding whether or not the November 19, 2013 IEP, *as amended,* offered and provided Student a FAPE. The IEP was amended on January 8, 2014. Therefore, the analysis of Castro Valley's issue commences on January 8, 2014.

The parties were not specific regarding when their asserted issues concluded. According to the amended IEP, the offered services had three concluding dates: other special education and related services consisting of individual tutoring was intended to be short-term and offered services through February 12, 2014; specialized academic instruction was offered through November 19, 2014; and individual counseling was offered through January 27, 2015. It is determined that Castro Valley's issue addresses the time period from January 8, 2014, through January 27, 2015, and this Decision addresses that time period for this issue.

Student broadly placed at issue the 2014-2015 school year. However, Student only raised contentions related to the IEP dated November 19, 2013. Student did not assert any new IDEA claims, either procedural or substantive, occurring during the 2014-2015 school year arising after the IEP dated November 19, 2013, was set to expire. For example, Student did not assert that Castro Valley was required, but failed, to hold Student's annual IEP team meeting during the 2014-2015 school year. Similarly, Castro Valley did not seek a determination that it offered Student a FAPE after the IEP identified above expired. Neither party presented evidence regarding whether or not an IEP team meeting was held or an offer for services was made for the remainder of the 2014-2015 school year. Accordingly, under both Student's and Castro Valley's issues, this Decision

only reaches a determination up through January 27, 2015. Apart from other legal exclusions that may apply, *this* Decision does not preclude the parties from separately litigating issues arising before November 19, 2013, and after January 27, 2015.[1]

FACTUAL FINDINGS

JURISDICTION

1. Student was a 15-year-old boy at the time this matter proceeded to hearing. He is eligible for special education and related services under the category of emotional disturbance.

2. Student's residence is within the boundaries of Castro Valley. Up until the summer of 2014, Student primarily lived with Mother during the week in Castro Valley, and spent weekends with Father, Stepmother, and his younger half-sister in a neighboring city.

3. Student was diagnosed at age eight by pediatric neuropsychologist Teresa Doyle with Attention Deficit Hyperactivity Disorder, predominantly hyperactive-impulsive type, with limited self-regulation affecting executive functioning, behavioral

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[1]The Individuals with Disabilities Education Act (IDEA) contains a section that modifies the general analyses regarding res judicata and collateral estoppel.The IDEA specifically states that nothing in the Act shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.(20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.)Therefore, although parties are precluded from re-litigating issues already heard and decided in previous due process proceedings, parents are not precluded from filing a new due process complaint on issues that could have been raised and hearsd in the first case, but were not.

compliance, and emotional adjustment. Student's ADHD was treated with medication at various times throughout his childhood and adolescence.

STUDENT'S MIDDLE SCHOOL YEARS

4. Student's cognitive ability is in the superior range. Student was disorganized during middle school and frequently turned in homework assignments late. To combat this, Father spent most weekends working with Student on homework and classwork to ensure Student maintained passing grades. Student academically performed at or above grade level across all areas during elementary and middle school. Additionally, Student scored in the proficient or advanced range in all areas tested on the STAR [Standardized Testing andReporting], test from second through eighth grade. The STAR was statewide academic testing administered by the California Department of Education until the end of the 2012-2013 school year.

5. Behaviorally, Student exhibited traits consistent with ADHD throughout elementary and middle school. He exhibited some minor maladaptive behaviors at school. He was impulsive, would blurt out answers in class, and rushed through assignments sacrificing accuracy for speed. Student also exuded an air of confidence. He was smart, attractive, well-liked by his peers, and athletically gifted, playing traveling ice hockey at the elite level for a professional junior hockey team. His outgoing nature led to teachers having to ask him to settle down or refocus his attention to academic tasks. Student was generally compliant with teacher requests.

6. Student exhibited more frequent and intense maladaptive behaviors in the home environment. The behaviors were exhibited most often at Mother's house. Throughout middle school, he was often emotionally dysregulated, deceptive, defiant, ignored or protested parental requests, and verbally and psychically lashed out at Mother. Student frequently lied to Parents about work being completed, or teachers having excused him from assignments.

7. Although not married to one another, Parents attended private therapy both together and with Student to address his behaviors and to maintain consistent expectations across environments. Student attended individual therapy throughout elementary and middle school.

8. By eighth grade Student and Parents had a tense relationship, in part, because Father had to work for hours with Student on weekends to ensure Student kept up with his school work. Ultimately, Parents reached out to Castro Valley for school-based support for Student. In the fall of 2012, during eighth grade, Castro Valley placed Student on a Section504 plan to address his needs stemming from ADHD, specifically difficulty focusing.[2]

9. Student effectively compartmentalized his more intense maladaptive behaviors and only exhibited them in the home environment and not at school. Parents were convinced that Castro Valley did not understand the nature or severity of Student's needs. During November 2012 Parents obtained an updated neuropsychological evaluation from Dr. Doyle, who had previously assessed Student when he was 8 years old.

10. Dr. Doyle reconfirmed Student's diagnosis of ADHD and determined he had developed Oppositional Defiant Disorder. Dr. Doyle also determined Student likely met the criteria for Disruptive Mood Dysregulation Disorder but diagnosed him with

[2]A 504 plan is an accommodation plan created pursuant to Section 504 of the Rehabilitation Act of 1973. (29 U.S.C. § 794; see 34 C.F.R. § 104.1 et. seq. (2000).)Generally, the law requires a district to provide program modifications and accommodations to children who have physical or mental impairments that substantially limit a major life activity such as learning.

Depression Not Otherwise Specified at that time.[3] Of greatest concern to Dr. Doyle, however, was that Student had narcissistic traits including a grandiose sense of importance, feelings of entitlement, and an explosive interpersonal style. Dr. Doyle theorized that these traits had not yet crystalized into a full mood disorder.

11. Emotionally, Student had an outward appearance of self-assurance and confidence that masked deeper insecurities and anxiety. When Student was challenged with a difficult academic task, he put extreme effort into avoiding the task. During eighth grade, Father's intense supervision and weekend catch-up sessions kept Student from falling behind. Student continued to make educational progress during eighth grade; achieving passing grades in all subjects, and maintaining appropriate peer and teacher interactions. Parents, however, were increasingly concerned because they observed Student's maladaptive behaviors becoming more frequent and intense in the home environment.

12. During the spring of 2013, Parents requested that Student be assessed for special education eligibility because they believed the Section 504 plan would not be sufficient to meet his needs during high school, as the academic and organizational demands would increase. Castro Valley agreed to assess Student.

[3]At the time the report was completed Disruptive Mood Dysregulation Disorder was proposed for the DSM-V that was yet to be published.The criteria Student met for DMDD was recurrent temper outbursts in the form of verbal rages or physical aggression that are inconsistent with the child's developmental level, persistently irritable or angry mood between temper outbursts.As the DSM-V was not yet published, Dr. Doyle ascribed the diagnosis of Depression, Not Otherwise Specified to capture Student's challenges with mood regulation.

CASTRO VALLEY'S ASSESSMENT OF STUDENT IN 2013

13. Castro Valley school psychologist Curt Palmer was initially tasked with coordinating a multi-disciplinary team to assess Student. The assessment began at the end of the 2012-2013 school year and was completed after Student matriculated to high school. Mr.Palmer elected to continue coordinating Student's assessment rather than pass responsibility for its completion to the psychologist assigned to Castro Valley High School. Student's IEP team considered his eligibility under the categories of emotionally disturbed, other health impaired, and specific learning disability.

14. Mr. Palmer spoke with Student's then treating therapist Ricardo Murguia as part of Student's initial special education assessment. Mr. Murguia informed Mr. Palmer that he felt that Student was not emotionally disturbed, but that Student maintained a demanding schedule outside of school that made it difficult for Student to keep up with academic work.

15. Mr. Palmer also reviewed Student's most recent neuropsychological evaluation conducted by Dr. Doyle. Dr. Doyle's report included recommendations for family therapy, individual therapy, medication re-evaluation, educational support, and parental strategies. Under the section for educational support, Dr. Doyle made two alternate recommendations. Dr. Doyle suggested that if Student required an out-of-home placement, that Parents meet with a particular educational consultant endorsed by Dr. Doyle to determine "the most appropriate path." The basis for considering an out-of-home placement was to contain Student's physically aggressive behavior toward Mother, specifically anger, irritability, explosive episodes, verbal abuse, and physical altercations with Mother. These behaviors were generally not present at Father's home and were never demonstrated in the school environment.

16. Alternatively, Dr. Doyle's report concluded that Student's Section 504 plan needed to be maintained in the public school setting. She recommended five standard

accommodations including preferential seating, regular communication among parents and teachers, extended time for tests and assignments, an extra set of physical education clothes to be kept at school, and frequent reminders to stay on task and turn in assignments.

17. Dr. Doyle also made specific parental recommendations. She identified 60recommendations, observations, strategies, and/or sub-strategies for Parents to utilize in addressing Student's behavior outside the school environment. The primary emphasis was on parenting strategies because Student did not demonstrate similar needs at school.

18. In addition to reviewing Dr. Doyle's report, Mr. Palmer spoke with Dr. Doyle as part of his assessment. Dr. Doyle recommended to Mr. Palmer that Student be held accountable for following through on accommodations and that he would benefit from an individual person, such as a school counselor, with whom he could develop a meaningful and authentic relationship in the school environment. Dr. Doyle also suggested attendance was an area of concern for Student. Dr. Doyle did not recommend or opine to Mr. Palmer that Student required a residential placement for educational purposes.

19. Mr. Palmer reviewed Student's eighth grade attendance. Student had been absent for 11 days and went to the health office 62 times. Mr. Palmer met with the school nurse to determine the impetus for each visit to the health office. He determined that 64percent of the visits were for scrapes or a bump occurring during free play at school, for 9percent of the visits Student was objectively ill, and 3 percent of the visits were because Student forgot to take his morning medication and was waiting for Mother to bring it to school. The balance included 14 health complaints of nausea or headaches (these somatic complaints were scattered across the school day, as opposed to taking place during any particular subject), and single incidents of being able to take

a test in the nurses office and for an unexcused physical education class. Student's voluminous visits to the health office were not due to anxiety or generalized school avoidance.

THE 2013-2014 SCHOOL YEAR IEP PROCESS

The IEP Team Meeting on September 11, 2013

20. Student's initial IEP team meeting was held on September 11, 2013, just a few weeks after Student matriculated to high school. Grades were not yet available for Student's high school classes. Student's IEP team reviewed the assessments, attendance records, and his academic record. At that time, the Castro Valley members of Student's IEP team concluded that Student did not meet eligibility criteria for special education under the categories of emotionally disturbed, other health impaired, or specific learning disability. The decision largely hinged on Student's impressive academic performance in middle school. Mr. Palmer informed Student's IEP team that if his attendance or grades declined in high school, another IEP team meeting could be requested to determine eligibility at that time.

21. Parents were very dissatisfied with the IEP team meeting outcome. Father immediately ceased providing Student additional academic support outside of the school environment. While Mother encouraged Student to come to school, she welcomed the student attendance review board process and any potential consequences if Student refused to come to school because she wanted him to learn that there would be societal consequences and not just parentally imposed consequences for his actions.

November 19, 2013 IEP[4]

22. Following the September IEP team meeting, Student's school attendance declined, and he failed to complete numerous assignments in his academic classes. A second IEP team meeting was held on November 19, 2013, after first quarter grades had been issued. At that time, Student had F's in Physical Education, Biology, Cultures and Geography, and D's in Geometry and English. Regarding attendance, Student had missed three full days and seven partial days, mostly for being late or missing his first period class.

23. Student's IEP team reviewed the new information. According to Parents, when Father withdrew the support he had traditionally provided, Student developed poor school attendance and failed to complete assignments. As he "dug himself deeper into a hole," his anxiety increased and he became stuck in a cycle where he could no longer mask his vulnerabilities at school and he became depressed.

24. Mr. Palmer was not entirely convinced that Student's anxiety or depression was as pronounced as Parents believed, or the cause of Student's recent decline. He thought another explanation could have been that Student was exerting more control over his grades and attendance than he had previously been permitted. Additionally, Student's participation with a traveling ice hockey team required him to attend practices that kept him out until 9:30p.m. or later at least two nights per week, and traveling on weekends for tournaments. This theory was another plausible explanation considering the psychoeducational test results Student obtained a few months earlier. For example, on the Behavior Assessment System for Children 2nd Edition, Parents rated Student's

[4]The November 19, 2013 IEP contained accommodations, modifications, and an offer for specialized academic instruction.As this issue relates to Student's contentions, only the contested portions of the IEP are analyzed herein.

anxiety in the average range. Similarly, Student rated himself in the average range for anxiety and depression. On the Reynold's Adolescent Depression Scale, Student had no scores warranting further evaluation, and his overall depression total placed him in the 5th percentile of non-depressed youth. On the Piers-Harris Children's Self-Concept Scale, Second Edition, Student rated himself in the average to above average range in all areas including freedom from anxiety. His total self-concept was deemed High Average.

25. Mr. Palmer explained at hearing that due to the plausibility of conflicting root causes, when Student's then current performance was juxtaposed with the previous assessment information, he could not rule out anxiety as the root cause of Student's decline. Therefore, Mr. Palmer and the other Castro Valley members of Student's IEP team concluded that Student was eligible for special education and related services under the category of emotionally disturbed primarily due to anxiety.

26. The scores obtained by Mr. Palmer did not differ significantly from those obtained by Dr. Doyle. She interpreted the results differently. Dr. Doyle established that Student had anxiety that was masked by bravado. Additionally, Student's anxiety also was a form of remorse which led her to conclude his narcissistic traits had not yet crystalized into a personality disorder.

27. Dr. Doyle and Mr. Palmer established that Student suffered from anxiety. Student's anxiety was the root cause of several of the needs he displayed in the school environment. For example, if Student fell behind academically, rather than catch up, he retreated from school (attendance need) and avoided work (task completion need). The underlying anxiety, therefore, was its own area of need for Student.

STUDENT'S NEEDS

28. As of November 2013 Student had social-emotional needs stemming from anxiety, attendance, work completion, and organization needs. Work completion and organization needs stemmed from a more global executive functioning deficit. The

November IEP proposed three goals to address Student's needs.

29. The first goal, identified as a vocational goal, focused on completing and turning in assignments. The second, an attendance goal, required Student to attend school regularly, missing no more than 2 full days or 8 class periods per month. The third goal focused on Student's social-emotional needs stating that "when given appropriate RSP support and guidance, Student will form a relationship with a trusted adult on campus (i.e. RSP teacher) and go to that adult for support with problem solving, work completion and organization …." To implement those goals, Student was offered 285 minutes weekly of specialized academic instruction in the form of one daily period of a resource specialist program class named Academics. The IEP also included accommodations to be implemented in his general education classes.

30. On November 22, 2013, Maureen Kennedy, a Castro Valley program specialist, emailed Parents a copy of the IEP asking them to review it and inviting them to either sign the IEP or let her know if they had questions. This IEP constituted Castro Valley's offer of special education and related services to Student from November 19, 2015, until the next IEP offer was made, as Parents could have accepted it at that time.

Student's Need For Goals - Emotional Disturbance

31. The emotional needs Student exhibited at home included anger, rage, and physical aggression. These maladaptive behaviors were understandably very concerning to Parents. These behaviors, however, were never present in the school setting. Therefore, Student did not have educational needs concerning these behaviors. On the contrary, Student was socially outgoing, affable, and well-liked by peers and staff. Therefore, these maladaptive behaviors did not interfere with his ability to progress in the general curriculum and Castro Valley was not obligated to offer goals addressing these needs.

32. Mr. Palmer established that the basis for Student's eligibility as

emotionally disturbed stemmed from social-emotional needs rooted in anxiety. Castro Valley argued that Student's anxiety manifested at school as failure to complete assignments and attendance problems; two areas addressed in Student's goals. While these two areas were affected by Student's anxiety, there were no goals directly addressing anxiety, which was an independent area of need. Student's IEP required a goal directly addressing anxiety rather than just these two manifestations. This was particularly important for Student as the failure to complete assignments is also consistent with ADHD and not just anxiety. How Student's anxiety manifests largely depends on situational demands and will change over time as the environment changes. By not having a goal targeting anxiety, the root cause was left unaddressed.

Student's Need for Goals - Executive Functioning

33. Castro Valley asserted that Student's vocational goal requiring Student to complete and turn in assignments with 90 percent accuracy when given a timeline met his executive functioning needs. This assertion was not supported by the evidence.

34. Dr. Doyle and Mr. Palmer had similar definitions for executive functioning. They established that executive functioning describes one's ability to organize, plan, and execute tasks. Student required strategies to foster mental flexibility, planning, organization, and self-monitoring to ensure work completion.

35. The one goal included in the November 19, 2013 IEP that arguably addressed executive functioning was insufficient to meet Student's need in this area. It is unclear to what the term "timeline" in the goal refers. It could refer to the timeline for an individual assignment, for a class, or for all classes for the school year. The goal expects that if a person gives Student a timeline he will be able to figure out how to plan and execute the discrete tasks necessary to keep up on all assignments. As with the previous goal, it may address an individual manifestation of Student's limitation in an area (work completion) but it does not address the underlying need of improving executive

functioning skills that can be generalized beyond an individual task.

Student's Need for Goals - Relationship with Trusted Adult

36. Dr. Doyle established that Student needed to develop a relationship with a trusted adult on campus to help reduce his anxiety and increase his work completion. Father established that when Student fell behind on assignments, rather than dig in and complete them, Student had two approaches. He would avoid the work, shut down, and fall further behind; or he would attempt to manipulate teachers into excusing assignments. If Student developed a genuine connection with a trusted adult on campus, Student would have someone to help him face and meet high school's academic demands.

37. Student's November 19, 2013 IEP proposed to address this need through a specific goal. Student's resource specialist program teacher was identified as the person who was to become the trusted adult and the IEP indicated that Student would seek out this adult for support with problem solving, work completion, and organization with 90 percent accuracy, with 3 out of 4 opportunities, as measured by student and teacher report.

38. The evidence established that Student had an outwardly grandiose personality that masked an internal vulnerability. This was compounded by the fact that despite social popularity in middle school, he was now a newly matriculated freshman on a much larger campus. Additionally, for the first time in his academic career he was receiving D's and F's rather than A's and B's. Student needed a trusted adult on campus, but this goal did not provide Student an opportunity to self-select the adult, and it did not indicate how, where, or how often they would meet. Castro Valley should have offered Student the services of meeting with an adult for a fixed frequency and duration and allowed Student to have some choice in the specific adult identified.

39. The goal alone did not meet Student's need in this area. Besides being

unmeasurable because its achievement was completely subjective, it was impossible for Castro Valley to track as written. Human beings do not typically take stock of the total number of times they may need help with problem solving, work completion, and organization. Certainly the trusted adult would have no way of knowing how often Student subjectively believed he needed help with these issues. As such, it would be impossible for one to establish what constituted "90% accuracy" and "3 out of 4 opportunities" for Student to reach out to the trusted adult. Moreover, as stated above, Student needed this as a specific service in order to facilitate his work on this goal and the IEP did not offer such a service to Student.

STUDENT'S NEED FOR SERVICES

Individual Therapy[5]

40. Student asserted that he required individual therapy to address his social-emotional needs rooted in anxiety. Castro Valley claims that Student had individual therapy outside of school and that school-based therapy would have conflicted with Student's outside therapy and therefore it was not warranted.

41. Student's IEP team initially concluded in September 2013 that he did not meet the criteria for eligibility primarily due to his strong academic performance. After maintaining average to above average grades for his entire educational career, Student's grades plummeted to all D's and F's within the first three months of high school and the District acknowledged the contributing factor of his anxiety. Student did have anxiety

[5]The parties used the terms counseling and therapy interchangeably in this hearing.For the purpose of this Decision, individual therapy or counseling both refer to school-based services provided by a licensed school psychologist or other qualified employee, unless otherwise specified.

that was interfering with his ability to benefit educationally and the evidence established that school–based therapy services were an appropriate intervention for Student. Student established that he required school-based therapy to progress in the general curriculum. Castro Valley did not establish that Student's private therapy obviated their independent obligation to provide services addressing his anxiety in the school environment.

42. Despite his rapid decline, the Castro Valley members of Student's IEP team incorrectly concluded that school-based therapy was not necessary, or it would conflict with his private therapy. This position was based on speculation, not on objective information. No updated testing was completed leading up to the November IEP team meeting. Castro Valley did not offer to conduct any further assessment, and no one from Castro Valley confirmed its position with Student's private therapist. In light of the rapid change in Student's needs and his recognized anxiety, Castro Valley did not establish that Student's needs could be appropriately addressed in one special education class without counseling services.

November 22, 2013, through January 7, 2014

43. As noted above, Ms. Kennedy sent Parents a copy of Student's proposed IEP on November 22, 2013. Parents did not respond. Student's attorney, who attended the November 19, 2013 IEP team meeting, sent Castro Valley's attorney a 9-page, single spaced letter on December 10, 2013.

44. The December 10, 2013 letter did not focus on Parents' primary objections to the proposed IEP. Their complaints were not prioritized. Rather, the letter proposed a complete overhaul to the IEP and detailed suggested revisions to nearly each section including minor word changes. Among other requests, the letter proposed narrative paragraphs for baselines and revised language to each proposed goal. Additionally, multiple sub-goals were requested and suggested language was provided. A

"contingency plan" was requested if the IEP failed. The attorney included his impression of individual IEP team members, including Student's case manager. The letter demanded that all references to Dr.Doyle's diagnosis of Oppositional Defiant Disorder be redacted from the IEP and that the copy of Dr. Doyle's report that was to be kept in Student's file be redacted, as well. Finally, Student's attorney asked that Castro Valley's attorney pass the letter along to Ms. Kennedy as a precursor to having his clients contact Ms. Kennedy.

45. Parents had valid concerns regarding some components of Student's proposed IEP. The December 10, 2013 letter did not focus the Castro Valley members of Student's IEP team on these concerns. Instead, the letter was overly prescriptive, and ultimately diluted Parents' concerns by making the voluminous requests virtually equivalent to each other in importance.

46. After receiving the letter, Ms. Kennedy spent time evaluating each of Student's requests and met with four other people separately to discuss the individual requests. Castro Valley scheduled another IEP team meeting for January 8, 2014, after winter break. In light of the extensive nature of the requests, and Castro Valley's two-week winter break, the reconvened IEP team meeting was held within a reasonable period of time.

November 19, 2013 IEP as Amended on January 8, 2014

47. Student continued to have the same needs in January as he had the previous November (social-emotional needs rooted in anxiety, including need for relationship with a trusted adult, attendance, work completion, organization/executive functioning). His grades in his academic classes remained in the D-F range and he continued to have missing assignments in all classes.

48. The parties reconvened on January 8, 2014, and amended Student's IEP to address the majority of the concerns that Parents raised during that meeting, and in the

December 10, 2013 letter. Castro Valley proposed goals in the same areas as offered in November 2013, but revised the language to more closely approximate Student's requested revisions. It was also determined that Anna Castellanos, the high school's school psychologist who replaced Mr. Palmer, would meet with Student following the IEP team meeting to propose counseling services and a goal to meet his social-emotional needs. At the meeting's conclusion, Parents signed the IEP with the proposed amendments.

REVISED GOALS

Social-Emotional Needs - Anxiety

49. Castro Valley asserted that its proposed organization goal and social/emotional goal for Student to develop a relationship with a trusted adult appropriately addressed Student's social-emotional needs stemming from anxiety. This was not supported by the evidence.

50. Ms. Castellanos attended the January 8, 2014 IEP team meeting for seven minutes. She informed the team that she would meet with Student and determine what goals and services, if any, would be needed to address Student's social/emotional needs stemming from anxiety. The rest of the IEP team did not participate in the development of this part of the IEP.

51. Ms. Castellanos met with Student. She drafted an IEP amendment page dated January 20, 2014, and a proposed goal. Parents waived a formal meeting and consented to the amendment and goal on February 8, 2014.

52. The amendment indicated that a counseling goal was added. Student had needs in the areas of anxiety, attendance, work completion, and organization. The goal should be in an area of need, not rooted in a service like counseling. The goal stated that, with "appropriate support and guidance", Student will develop appropriate work completion and management techniques to help reduce anxiety and increase work

completion.

53. As discussed above with the previous goal, this goal still did not address Student's anxiety directly and did not allow any measurement of Student's improvement in anxiety. This was an organizational goal designed to improve his work completion, which was affected by both his executive functioning deficits and anxiety, but was only one manifestation of his anxiety. Ms. Castellanos did not testify at hearing and it was not established that this goal was designed to address Student's social/emotional needs, specifically anxiety.

54. The other proposed goal proffered by Castro Valley to address Student's anxiety was a social/emotional goal regarding developing a relationship with a trusted adult. The goal was not modified from the one proposed on November 19, 2013. For the same reasons found above, the goal was not designed to meet Student's social/emotional needs and was not measurable.

55. Student's IEP dated November 19, 2013, as amended on January 8, and January 20, 2014, did not appropriately address Student's social-emotional needs arising from anxiety.

Work Completion and Organization Needs - Executive Functioning

56. Student's vocational goal was revised to require that when given a set of due dates in each of his general education classes, and access to the school's website and grade book, Student would track, complete, and turn in assignments in all classes. The purpose of the goal was to increase Student's task completion.

57. Student's IEP also included the organizational goal drafted by Ms. Castellanos that also called for Student to maintain an assignment notebook and develop an organizational system with the support of the school psychologist.

58. These two goals were measurable and designed to meet Student's work completion and organization needs stemming from his executive functioning deficits.

Attendance Needs

59. To meet Student's attendance needs, his IEP team proposed an attendance goal and also modified his school schedule upon parental consent to the IEP. The revised goal indicated that when Student was given the yearly school calendar, he would attend regularly, accessing resource specialist program support to monitor that he miss no more than 2 full days or 8 class periods per month.

60. Student's IEP team also adjusted Student's school schedule so that he no longer had a first period class. The goal was intended to work in concert with the modified school schedule proposed by Student's IEP team to improve Student's attendance.

61. Student's attendance goal coupled with the modified scheduled was designed to meet Student's attendance need. The goal was also measurable.

AMENDED RELATED SERVICES

Individual Counseling

62. Student's amended IEP added 2-thirty minute counseling sessions per month with the school psychologist. Although the frequency and duration may have been sufficient to meet Student's needs in the school environment stemming from anxiety, Castro Valley did not meet its burden to show that the services were actually designed to address this need.

63. The IEP amendment dated January 20, 2014, that added individual counseling also stated that it added a counseling goal. The added goal actually addressed executive functioning deficits. The only documentary evidence presented regarding the services Ms.Castellanos provided during individual counseling included a graphic organizer. Further, Mindy Castro, Student's case manager for part of the school year, established that Ms. Castellanos worked with Student to develop an organizational

system. Student needed school based counseling to address his mental health need of anxiety.

64. Ms. Castellanos fundamentally misunderstood the basis for the counseling request. The focus of the counseling did not address Student's social-emotional needs and was insufficient to assist Student to benefit from special education.

Individual Tutoring

65. In January 2014 Student had missing assignments in all academic classes. His semester grades had just been issued and Student received D's and F's. Typically, semester grades are final and Students are not permitted to make up work from a prior semester to have a grade adjusted.

66. Student's IEP team wanted to provide Student a fresh start under the IEP and proposed letting him make up the missing work from the prior semester. Ms. Kennedy proposed that Student be given 1,500 minutes of individual tutoring after school to catch up on missing assignments from the first semester, at Castro Valley's offices, with a credentialed teacher, and that he be permitted to have his grades adjusted to reflect the made-up work.

67. Ms. Kennedy established that to obtain a credentialed teacher and funding from Castro Valley's Special Education Department, the services were listed on the IEP as home instruction. Student's IEP team members, including parents, knew the offered services were for individual tutoring out of school. This service met Student's need to improve his task completion by providing him extra assistance to catch up with missing assignments from the first semester.

Placement

68. The issue of placement is the central dispute in this case. Student's IEP offered one period a day of specialized academic instruction in a resource specialist

program class that Castro Valley calls Academics. Parents believed that Student's needs could not be met in any Castro Valley placement because his social-emotional needs were so significant that he required a full-time residential placement.

69. Up until high school, Student made educational progress in all areas. He performed average to above average in all classes and on standardized tests, he had appropriate peer and teacher relationships, and he exhibited minor maladaptive behaviors in the school environment, mostly attributable to ADHD. In high school, his academic performance and attendance declined rapidly. Even with this decline, Student's social interactions and behavior in high school remained appropriate.

70. It was the Academic teacher's responsibility to coordinate implementation of Student's IEP. As a part of the class, the Academics teacher and a student access the school's web-based grading system that includes information on completed and missing assignments. To verify the information, the Academics teacher continually interacts with the general education teachers. They work to develop organizational systems to break down assignments into manageable parts to ensure completion. If Student fell behind, the Academics class gave him an opportunity to work on missing assignments or to receive additional help to complete work with upcoming due dates.

71. Appropriate goals for Student could be implemented in the Academics class and were reasonably calculated to confer educational benefit, with the addition of appropriate counseling services. The offer of counseling services as made was not reasonably calculated to provide educational benefit because it did not address his needs related to anxiety, but did address his organizational and task completion issues rooted in his executive functioning deficits. Had the counseling services been focused on anxiety, those services in combination with the Academics class, would have been reasonably calculated to confer educational benefit.

72. The Academics class also permitted Student to spend the majority of the

school day in general education classes with his typically developing peers. Student was social and gained confidence being with his typically developing peers. Student's presence in the general education classes had no detrimental impact on his peers or teachers. There was no evidence presented that cost was a factor in Student's placement in Castro Valley. The placement, as offered, was the appropriate placement for Student.

73. Student asserted that he required full-time residential placement to meet his needs. Dr. Doyle testified that the residential placement was necessary to avoid Student's narcissistic traits from crystalizing into a personality disorder. She testified that to achieve this, Student required a full-time placement that provided physical containment to eliminate his physical aggression; immediate confrontation in the moment to break down his grandiosity; requiring him to experience reorganization of his self-vision and his vision of others; and to improve his self-discipline.

74. Dr. Doyle's testimony in 2015 differed significantly from the recommendations included in her 2012 report. The only mention of residential placement in the report was one sentence stating that *if* an out-of-home placement became necessary she recommended a particular educational consultant. This statement is in direct response to the physical and verbal aggression Student directed towards Mother, not behaviors in the school setting. The report itself recommended fairly common Section 504 accommodations that included extended time to turn in work and preferential seating. Nothing in Dr. Doyle's report was remotely close to the recommendations she made during the hearing.

75. Dr. Doyle was asked to clarify the discrepancy, in part because she has not seen or interacted with Student since 2012 and did not observe him in the school setting. She testified that it was a failure in her report. She explained that at that time, she drafted the report to ask for the minimum amount of services based on the belief that school districts would not offer more. She explained that now her reports are more

robust. This explanation was not persuasive.

76. Dr. Doyle's explanation does not account for the conversation she had with Mr. Palmer in September 2013, nearly a year after her report was completed. Mr. Palmer invited Dr. Doyle to share her opinions. Dr. Doyle augmented her recommendations during the conversation to specifically include the need for Student to develop a relationship with a trusted adult. Had she had the same conviction at that time regarding residential placement as she did at hearing, she would have informed Mr. Palmer of such. Accordingly, little weight is given to her recommendation regarding placement.

77. Zachary Oelerich, Student's private therapist in June 2014 at the time Student left for the wilderness program, also endorsed Student's need for a residential program. Mr.Oelerich opined that by June 2014 Student required a 24 hour per day therapeutic milieu because of Student's maladaptive behaviors in the home and school environment.

78. Mr. Oelerich did not observe Student at school and did not speak with his teachers. Mr. Oelerich established that Student was often not a reliable information source. Accordingly, the majority of the information provided about Student's behaviors came from Parents. Student's maladaptive behaviors in the home were escalating at that time, particularly toward Mother. The intensity of Student's home behaviors shaped Parents' beliefs regarding his school behaviors. These maladaptive behaviors, however, were not present at school.

79. Additionally, during that same time the Mr. Oelerich believes Student required a residential placement, Student's downward academic slide began to level off and his attendance increased. While these gains were not attributable exclusively to Student's IEP because it was not reasonably calculated to provide educational benefit overall, some of the appropriate aspects (such as Student's adjusted school schedule,

late start time, one-to-one tutoring to make up missing assignments, and assistance with Student's executive functioning deficits) did have a positive impact. For the forging reasons, little weight was given Mr. Oelerich's opinion regarding Student's need for residential placement to meet his educational needs.

80. As discussed above, placement in the Academics class with additional counseling services constituted an appropriate placement for Student. Student did not require residential placement to benefit from special education for the time period at issue in this Decision.

ACCOMMODATIONS

81. Student's IEP provided for accommodations in his general education classes including reduced or shortened assignments if mastery was shown per teacher/student agreement; note taking support in all classes; longer assignments broken down into manageable chunks; preferential seating near motivated peers; a home school communication system consisting of emails to Parents if Student started to fall behind; checking for understanding; extended time to complete long-range assignments or projects 1 weekend past the due date; flexible seating in the learning center for tests; and flexible scheduling of up to 150 percent of the time for test completion. These accommodations supported Student's ability to access the curriculum in his general education and special education classes and were appropriate. There was no evidence that Student needed additional accommodations.

IEP Implementation

82. Parents consented to the amended IEP on January 8, 2014, and to the organizational goal (identified as counseling goal) on February 8, 2015. Immediately following parental consent, Student's schedule was changed to eliminate his first period class and to add his Academics (resource specialist program) class.

83. On January 10, 2014, Maureen Kennedy arranged for Karl Bowers to implement Student's 25 hours of individual tutoring after school to catch up on missed assignments. Thereafter, Mr. Bowers and Student met at Castro Valley's offices to complete Student's missing first semester work. This IEP service was implemented.

84. Ms. Kennedy established that Ms. Castellanos met with Student during the time designated for individual counseling throughout the spring of 2014. As found above, the time was spent working on organizational strategies to meet Student's executive functioning needs and not his social-emotional needs stemming from anxiety. Because the services were already found not to provide educational benefit, there is no need to determine implementation of this service.

85. Initially, Sarah Hamilton was Student's Academics teacher. Ms. Hamilton worked with Student's general education teachers to coordinate his assignments; she printed out his assignment completion and grades from the school's computer system and provided it to Student. Ms. Hamilton also requested from Mother an advance schedule of known absences for hockey tournaments so she could obtain assignments ahead of time. Student's IEP was implemented regarding placement from January 8, 2014, through the end of February.

86. Sometime between February 27, 2014, and March 12, 2014, Ms. Hamilton went out on leave and did not return for the rest of the school year. Castro Valley did not establish exactly when Ms. Hamilton left. The last confirmed communication from her regarding Student was on February 27, 2014.

87. Following Ms. Hamilton's departure Parents' frustration with Castro Valley continued to grow. They were constantly chasing down information. Mother learned of Ms.Hamilton's departure via an email bounce back. Parents requested another IEP team meeting to help understand who was responsible for implementing Student's IEP following Ms. Hamilton.

88. An IEP team meeting was held on April 7, 2014. Student's IEP was not amended during this meeting. By this time Ms. Castro was assigned as Student's case manager. She taught an Academics class and maintained a full caseload. Student was not assigned to her Academic's class. Ms. Castro stepped in and attempted to coordinate Student's IEP. She met with the instructional aide assigned to Student's Academics class and asked the aide to keep a journal documenting her observations of Student's work and behavior in the Academics class. Ms. Castro checked in with Student weekly in an attempt to monitor his progress. Ms. Castro emailed Student's general education teachers and Parents. She diligently attempted to work with Student.

89. Despite Ms. Castro's efforts, the specialized academics instruction portion of Student's IEP was not implemented following Ms. Hamilton's departure. Castro Valley did not establish that Student's goals continued to be implemented. For example, Ms. Castro was unaware that she was expected to be the trusted person with whom Student developed a relationship. She believed that any adult on campus could appropriately implement this goal.

90. In addition to not implementing Student's goals with fidelity, the Academics class became little more than a study hall. Castro Valley did not establish how many substitute teachers were assigned to the class for the remainder of the year, who they were, what their credentials were, whether or not they had seen Student's IEP, and whether they worked to implement any of the goals contained therein.

91. Student exploited the situation, frequently reporting that he had completed assignments or had them excused when in fact he had not. During the time the aide was keeping a journal for Ms. Castro, Student played video games and accessed his cellular telephone in class; both prohibited activities. Student's specialized academic instruction in his IEP was not implemented from February 27, 2014, (the last documented interaction from Ms. Hamilton) through the end of the school year.

92. Student did end the school year with improved second semester grades (an A in independent study Physical Education, a B and B- in Health and English, a C+ and a C in Academics and Biology, and a D- in Physical Education). This improvement is attributable, in part to the adjusted schedule implemented following Parents' January consent. To implement the IEP, Student's schedule was adjusted to eliminate Geometry, Cultures and Geography, and Spanish. Accordingly, the improvement was not entirely attributable to Student's IEP as important components were not implemented for several months. Even so, Student did not establish that he needed more than the Academic class implemented properly and the counseling services to address anxiety and he did not establish that a residential placement was necessary for him to receive educational benefit.

93. Student's maladaptive behaviors continued at home. After the 2013-2014 school year ended, Parents elected to send Student to a wilderness program for the summer to address his maladaptive behaviors. The relationship between Student and Parents improved. Toward the end of the wilderness program, one of the counselors recommended that Parents send Student to a therapeutic residential boarding school rather than for him to return home because he could relapse into old behavior patterns.

94. Parents had been working with an educational consultant. She recommended five residential placements. Two were in Montana, one was in Idaho, one in North Carolina, the last was New Summit Academy in Costa Rica. Parents selected New Summit because there was a community service component, it was boys only, and the school averaged 30 students total.

95. On August 17, 2014, Father sent Ms. Kennedy an email requesting an IEP team meeting, informing her that Parents were revoking consent to Student's IEP, and that they intended to enroll Student in a private placement and seek reimbursement. On September 12, 2014, Parents took Student to Costa Rica and he was enrolled at New

Summit on September 13, 2014.

96. An IEP team meeting was held on September 17, 2014, where Mother informed the team regarding Student's placement at New Summit. That same day, Ms.Kennedy sent Parents prior written notice informing them that she believed Castro Valley had offered Student a FAPE and rejecting the request for tuition reimbursement.

NEW SUMMIT ACADEMY

97. New Summit is a for-profit school incorporated in Panama and located in Costa Rica. Director and co-founder, Heather Tracy, testified regarding the school and Student's progress since enrolling.

98. New Summit is a therapeutic boarding school. The focus of the school's education involves physical health, educational attainment, emotional development, ethical behavior, civic engagement, and general life skills. A therapist and therapeutic assistants provide counseling after school and on weekends.

99. Ms. Tracy established that Student has made progress decreasing his anxiety since enrolling in the program. He has also made academic progress. Student earned A's, B's, and C's in all academic classes. His courses were academically rigorous and included English 10, Literature and Composition, Geometry, World History, U.S. History and Government, Spanish, Art, and Physical Education.

100. The base monthly tuition during 2014 was $7,500 and it increased to $7,875 in 2015. The base tuition is allocated 25 percent for academics, 30 percent for therapy, 30-35 percent for room and board, and 10-15 percent for administrative costs. There are also related monthly expenses for miscellaneous items including medical appointments, lab work, and other non-educational expenses. The school also charged a $3,000 enrollment and visa fee. The airfare to fly Student to Costa Rica from the wilderness program was $810.71.

101. Student has attended New Summit continuously since enrolling in

September 2014.

LEGAL CONCLUSIONS

INTRODUCTION - LEGAL FRAMEWORK UNDER THE IDEA[6]

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and their implementing regulations. (20U.S.C. §1400 et. seq.; 34 C.F.R. § 300.1 (2006)[7] et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability.(20U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34

[6]Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

[7]All subsequent references to the Code of Federal Regulations are to the 2006 version.

C.F.R. §300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§56032, 56345, subd. (a).)

3. 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 Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the FAPE definition articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [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 p. 951, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. §1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (l).)

5. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) This is a consolidated case with partially overlapping time periods. Student's issue covers the time period from November 19, 2013, through January 27, 2015, (See Procedural Matters section above). Castro Valley's issue covers the time period from January 8, 2014, through January 27, 2015. Castro Valley seeks a finding that it offered and provided Student a FAPE, which is a broader contention than the more specific denials alleged by Student. Accordingly, Student bears the burden of proof as to his issue from November 19, 2013, through January 7, 2014. Castro Valley bears the burden of proof regarding all claims from January 8, 2014, through January 27, 2015, due to the fact that its contention that it offered and provided Student a FAPE necessarily incorporates Student's more narrow claims.

NOVEMBER 19, 2013 - JANUARY 7, 2014

Goals - Emotional Disturbance and Executive Functioning

6. Student alleges the goals contained in the November 2013 IEP failed to address all areas of need, specifically his social/emotional needs that formed the basis for his emotionally disturbed eligibility, executive functioning needs, and the need to develop a relationship with a trusted adult. Castro Valley argues that they met all legal requirements and that the IEP provided Student a FAPE.

7. The IEP must contain a statement of measurable annual goals designed to: (1)meet the student's needs that result from his disability to enable the student to be involved, and progress, in the general curriculum; and (2) meet each of the student's other educational needs that result from his disability. (20 U.S.C. §1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the student's goals will be measured. (20 U.S.C. §1414(d)(1)(A)(III); Ed. Code, §56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd.(c).)

8. Student asserts that he had social-emotional needs arising from anxiety, and also due to his anger, rage, and physical aggression. Student's anger, rage, and physically aggressive behaviors were never present in the school setting where Student was socially outgoing, affable, and well-liked by peers and teachers. Therefore, these maladaptive behaviors did not interfere with his ability to be involved, and progress, in the general curriculum. Student did not establish that these out of school behaviors had any effect on this education. Accordingly, Castro Valley was not obligated to offer goals addressing these behaviors.

9. Student did have social-emotional needs rooted in anxiety. Student's November 19, 2013 IEP contained no goals addressing the anxiety directly. It contained

goals that addressed how Student's anxiety manifested itself, such as work completion issues, which were also tied to Student's executive functioning. The failure to have a goal targeting anxiety left the root cause unaddressed and Student required a goal to specifically address his anxiety.

10. Castro Valley asserted that the vocational goal requiring Student to complete and turn in assignments with 90 percent accuracy when given a timeline met his executive functioning needs. This assertion was not supported by the evidence. This goal was insufficient to meet Student's executive functioning need. The goal is ambiguous on its face because it is unclear as to what the term "timeline" refers. The goal expects that if a person gives Student a timeline, he will be able to figure out how to plan and execute the discrete tasks necessary to keep up on all assignments. The goal may address a single manifestation of Student's limitation in an area (work completion), but it does not address the underlying need of improving executive functioning deficits that can be generalized beyond an individual task.

11. The goal revealed that the Castro Valley members of Student's IEP team fundamentally misunderstood this area of need. Team members believed that by addressing individual manifestations of anxiety (such as work completion and organization), it would address the underlying cause. The evidence established that the manifestations would change given the situation, but to truly meet Student's underlying anxiety need would require that the anxiety itself be directly addressed. If not, Student's anxiety would continue to manifest in other ways.

12. Student also argued that he needed to develop a relationship with a trusted adult to enable him to be involved, and progress, in the general curriculum. Castro Valley agreed and proposed a goal specifically related to developing a relationship with a trusted adult to whom Student could go for help if he began to fall behind. The purpose of the goal was to create a safety net for Student with a person

with whom he felt comfortable enough to share his internal vulnerability. In theory, Student would go to that person for help organizing and keeping up on assignments to prevent him from falling behind academically. The goal, as drafted, did not meet the intended purpose.

13. The goal designated the resource specialist program teacher as the trusted adult. It did not permit Student any discretion to self-select the adult. It included no information regarding when or how the relationship would be formed and fostered. Therefore, this goal was not designed to meet his unique need or reasonably calculated to confer educational benefit.

14. Student's November 19, 2013 IEP did not include goals to address each of Student's areas of need. Specifically, it failed to adequately address Student's social-emotional needs stemming from anxiety, his executive functioning needs, and his need to develop a relationship with a trusted adult. As a result of these failures, the IEP was not reasonably calculated to confer Student educational benefit and denied Student a FAPE. This denial of FAPE extended from November 19, 2013, through Castro Valley's next offer to Student on January 8, 2014.

Related Services - Individual Therapy

15. Student argued that he required the related service of individual therapy. The term "related services" (designated instruction and services (DIS) in California) includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from education. (20 U.S.C. § 1401(26); Ed. Code, §56363.) Related services must be provided if they are required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).) An educational agency satisfies the FAPE standard by providing adequate related services such that the child can take advantage of educational opportunities. (*Park v. Anaheim Union HighSchool* (9th Cir. 2006) 464 F.3d 1025, 1033.)

16. Student's assessing school psychologist established that Student's eligibility for special education was rooted in anxiety. That anxiety, in part, caused Student's grades and attendance to decline significantly between September and November 2013. Despite this, Castro Valley asserted that school-based therapy was not necessary or would conflict with private therapy. This assertion was not based on any objective evidence as no educationally related mental health assessment was conducted after Student's grades and attendance declined, nor did anyone from Castro Valley speak with Student's private therapist to confirm its position.

17. The weight of the evidence established that Student required individual counseling in the school setting related to his social-emotional need rooted in anxiety to benefit from his education. Student's IEP from November 19, 2013, through January 7, 2014, did not meet Student's unique needs and was not reasonably calculated to confer educational benefit. Accordingly, Castro Valley failed to offer Student a FAPE during that time period.

JANUARY 8, 2014, THROUGH JANUARY 27, 2015

Goals

18. Student's IEP was amended on January 8, 2014, to include revised goals. It was also agreed that Ms. Castellanos would meet with Student following the IEP team meeting and propose a counseling goal and individual services if warranted after the meeting. Parents provided consent to the IEP on January 8, 2014. Ms. Castellanos met with Student and proposed adding individual counseling and a counseling goal on January 20, 2014. Parents consented to these amendments on February 8, 2014.

19. At the IEP team meeting on November 19, 2013, Castro Valley proposed a goal to improve Student's attendance which was an area of need. The goal accurately identified Student's then present level of performance, set forth a measurable target for

attendance improvement, and included how the improvement was to be measured. This goal met Student's need and permitted him to progress in the general curriculum because it required him to be present more often to receive educational services.

20. In addition to the attendance goal, Student's IEP team revised his schedule at the January 8, 2014, meeting to eliminate his first period class. Student attended hockey practice multiple nights per week, arrived home late, and frequently overslept or refused to get up on time impacting first period. This goal, coupled with the schedule revision, met Student's need and was reasonably calculated to confer educational benefit. Student's attendance did improve and his attendance record demonstrated that he was making progress, continually meeting the goal's monthly objective.

21. At the January 2014 IEP team meeting, Castro Valley also proposed two goals to meet Student's organization and work completion needs stemming from his executive functioning deficits. The first goal's present level of performance addressed work completion citing Student's total number of missing assignments by class. The revised goal removed the prior version's reference to a "timeline" and instead called for Student to be given a set of due dates in each general education classes. It called for him to track and turn in assignments with 90 percent accuracy and identified that progress would be measured by teacher grade books and reports.

22. In addition to the above goal, Ms. Castellanos proposed an organization goal. It identified his then present level of performance regarding work completion at 10 percent. The goal called for the school psychologist to help Student develop management techniques including maintaining a notebook and developing an organizational system. The goal called for Student to increase work completion by 60 percent. Progress would be measured by grades and psychologist observation.

23. The goals would permit Student to progress in the general curriculum by improving his ability to demonstrate his learned knowledge. The goals were measurable

and directly linked to Student's present levels of performance. The two goals met Student's organization and work completion needs stemming from his executive functioning deficits and were reasonably calculated to provide him educational benefit.

24. Castro Valley proposed only one goal to address Student's social-emotional needs regarding developing a relationship with a trusted adult on campus. This goal was not amended from the one proposed in November 2013. For the reasons set forth above, the goal remained insufficient to meet Student's social-emotional needs and was not reasonably calculated to confer educational benefit.

25. The deficiencies described above constituted a denial of FAPE. No new goals were offered to Student throughout the remainder of the IEP. Therefore, this denial extended from January 8, 2014, through January 27, 2015, the conclusion of the time period at issue in this case.

Related Services

26. By January 2014 the Castro Valley members of Student's IEP team agreed that he required individual counseling by the school psychologist to benefit from his education. As noted above, however, Ms. Castellanos misunderstood that her services were required to address Student's school-based anxiety and not merely isolated manifestations of the anxiety. Therefore, even though individual counseling sessions were offered, they were not designed to help Student benefit from his education or take advantage of his educational opportunities. The focus was on developing an organizational system. This omission constituted a denial of FAPE from January 8, 2014, through the January 27, 2015.

27. The second related service offered by Castro Valley was 25 hours of tutoring by a credentialed teacher working individually with Student to complete missing assignments from first semester. Student argued at hearing that this service was inappropriate because Castro Valley did not follow the legal requirements for providing

home hospital instruction. Specifically, the law requires that when recommending *placement* for home instruction for a pupil with exceptional needs, the IEP team shall have in the assessment information a medical report from the attending physician and surgeon or the report of the psychologist, as appropriate, stating the diagnosed condition and certifying that the severity of the condition prevents the pupil from attending a less restrictive placement. (Cal. Code Regs., tit. 5, §3051.4, subd (d) (Section 3051.4(d)) (emphasis added).) The report shall include a projected calendar date for the pupil's return to school. (*Id.* (emphasis added).) The IEP team shall meet to reconsider the IEP prior to the projected calendar date for the pupil's return to school. (*Id.*)

28. The IEP offers the tutoring as "other special education/related service." Ms.Kennedy established that it was identified as "home instruction" as an internal funding mechanism only. No members of Student's IEP team, including Parents, thought that a Home Hospital placement was offered. Student attended school at his high school throughout this time period.

29. It is determined that the individual tutoring was a related service and not intended as a placement. Therefore, the home hospital provisions of the IDEA were not triggered. It is further determined that this was an appropriate related service to assist Student to benefit from his education because he could make up work from the prior semester. Accordingly, the IEP, as amended in January 2014, was not defective because it called the related service of tutoring "home instruction."

Placement in Least Restrictive Environment

30. Student contends that he required residential placement to meet his needs. Castro Valley asserts that a general education placement with one period per day of Academics was the appropriate placement in the least restrictive environment for Student.

31. Student's IEP offered him a general education placement with one period

per day of resource specialist program support in the form of an Academics class. Local educational agencies must ensure that a continuum of program options is available to meet the needs of individuals with exceptional needs for special education and related services. (Ed. Code, § 56360.) School districts are required to ensure that a variety of potential educational placements are available to special education students, including placements in general education classes, special day classes, and resource classes at district schools, and placement at certified non-public schools if appropriate. There is no requirement that every possible program option available in a school district be addressed at an IEP meeting.

32. Federal and State law requires school districts to offer a program in the least restrictive environment for each special education student. (See 34 C.F.R. §§ 300.114, et. seq. (2006).) A special education student must be educated with non-disabled peers "[t]o the maximum extent appropriate," and may be removed from the regular education environment only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(i) & (ii) (2006).) A placement must foster maximum interaction between disabled students and their non-disabled peers "in a manner that is appropriate to the needs of both." (Ed. Code, § 56031.) The law demonstrates "a strong preference for 'mainstreaming' which rises to the level of a rebuttable presumption." (*Daniel R.R. v. State Bd. of Ed*. (9th Cir. 1989) 874 F.2d 1036, 1044-1045; see also § 1412 (a)(5)(A); *Rowley, supra*, 458 U.S. at p. 181 n.4; *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834.) However, if it is determined that a child cannot be educated in a general education environment, then the analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed., supra,* 874 F.2d at p. 1050.)

33. In *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1400-1402, the Ninth Circuit held that the determination of whether a particular placement is the "least restrictive environment" for a particular child involves an analysis of four factors, including (1) the educational benefits to the child of placement full-time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district's proposed setting. "

34. In this case, the evidence established that at the time the placement offer was made, January 2014, considering the nature and severity of Student's disabilities, education in the general education setting with one period per day of a resource specialist program class and counseling services 2 times a week for 30 minutes were an appropriate placement in the least restrictive environment. Each of the four *Holland* factors supports this conclusion. Student had always been educated with his typically developing peers, and up until matriculating to high school had average to above average academic performance. Receiving the additional supports and services offered in his IEP was intended to help support Student's needs so that he could continue to access the general education curriculum. Student received substantial non-academic benefits from interacting with his typically developing peers as he was social, outgoing, and well liked. The record established that Student had no detrimental impact on his general education teachers or peers. Finally, cost was not a factor in determining Student's general education placement.

35. Parents repeatedly cited the progress Student has made at New Summit as evidence that he required residential placement. Even if residential placement at New Summit confers Student greater educational benefit than the one offered by Castro

Valley, that comparison is not relevant under the law. The IDEA requires neither that a school district provide the best education to a child with a disability, nor that it provide an education that maximizes the child's potential. (*Rowley, supra*, 458 U.S. at 197, 200; *Gregory K. v. Longview School Dist.* (9thCir.1987) 811 F.2d 1307, 1314.) The focus is on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K., supra*, 811 F.2d at 1314.)

36. In this case, Castro Valley established that a general education placement with one period of resource specialist program services daily, along with appropriate related services such as counseling and tutoring, was the appropriate placement in the least restrictive environment. He did not require residential placement to receive a FAPE.

IEP Implementation

37. Student contends that Castro Valley failed to implement critical components of his IEP. Castro Valley asserts that it did implement Student's IEP with fidelity. A failure to implement an IEP may deny a child a FAPE and thereby give rise to a claim under the IDEA. (*Van Duyn v. Baker Sch. Dist.5J* (9th Cir. 2007) 502 F.3d 811 (*Van Duyn*).) Minor implementation failures are not actionable given that special education and related services need only "conform" to the IEP. A school district is not statutorily required to maintain perfect adherence to the IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs "when there is more than a minor discrepancy between the service a school provides to a disabled child and the service required by the child's IEP." (*Id.* at pp. 815, 821-822.) *Van Duyn* specifically rejected a "per se" standard whereby any failure to implement the IEP as written gave rise to an automatic IDEA violation. Instead, when implementation failures occur, it requires analysis of the nature, extent and impact of the failure. (*Id.* at pp. 824-825.)

38. In this case, Castro Valley failed to implement Student's IEP. Ms. Hamilton's departure at the end of February through the end of the 2013-2014 school year, Castro Valley failed to implement Student's specialized academic instruction. The relationship between Parents and Castro Valley suffered due to the lack of coordination following Ms. Hamilton's departure. Additionally, Castro Valley did not establish that Student received specialized academic instruction in his Academics class from March through the end of the year. Ms.Castro attempted to step in but that was merely a stop-gap measure. She did not provide direct instruction to Student. Rather, Ms. Castro had the instructional aide keep tabs on Student's work (or lack thereof) and his behavior.

39. Castro Valley was unable to establish who, or how many substitutes, taught the Academics class following Ms. Hamilton's departure. It did not establish the credentials held by the substitute/s, whether or not they were familiar with Student's IEP, or whether or not his goals continued to be worked on in Academics. The impact of the failure was that Student exploited the situation, frequently lying about the status of his assignments in other classes. His Academics class became little more than a study hall where Student played games on the computer and his telephone.

40. These IEP implementation failure was significant. It was material and rose to the level of a denial of FAPE from the end of February 2014 through the end of the school year.

41. Parents notified Castro Valley of their decision to remove Student from Castro Valley and seek reimbursement for a private placement in August 2014 more than 20 days before placing him at New Summit. Castro Valley did not amend its IEP. Accordingly, the denial of FAPE as discussed above is considered a violation that continued through the IEP's expiration on January 27, 2015.

REMEDIES

1. Student established a denial of FAPE in all areas alleged for the time

period from November 19, 2013, through January 7, 2014, and established that Castro Valley failed to offer appropriate goals to meet Student's social-emotional and executive functioning needs; failed to offer needed individual therapy; and failed to offer an appropriate goal to address Student's need to establish a close relationship with a trusted adult. Student established that these failures denied him a FAPE from January 8, 2014, through January 27, 2015, when all offered components of Student's IEP were set to expire.

2. Castro Valley failed to establish that it offered and provided Student a FAPE from January 8, 2014, through January 27, 2015. Specifically, Castro Valley failed to offer goals designed to meet Student's social-emotional needs; failed to offer appropriate individual counseling as a related service; and failed to implement components of Student's IEP including failing to provide his specialized academic instruction from the end of February 2014 through the end of that that school year. These violations denied Student a FAPE from January 8, 2014, through January 27, 2015.

3. As a remedy,Student seeks reimbursement for his private placement at New Summit, including all related expenses such as transportation, housing, parental visits, and monthly related expenses. Student seeks reimbursement for these expenses from the time he enrolled at New Summit in September 2014 through the time of hearing. Castro Valley argued that all claims for reimbursement should be denied, in part, because Parents withdrew Student from Castro Valley only four and one-half months after consenting to the IEP.

4. A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and the private placement was appropriate. (20 U.S.C. §1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *School Committee of Town*

of Burlington, Mass. v. Department of Educ. (1985) 471 U.S. 359, 369-370 [105 S. Ct. 1996, 85 L.Ed. 2d 385] (reimbursement for unilateral placement may be awarded under the IDEA where the district's proposed placement does not provide a FAPE).) The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, pp. 11 &14 [114 S.Ct. 361, 126 L.Ed.2d 284] [despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement was found to be reimbursable where the unilateral placement had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade and where expert testimony showed that the student had made substantial progress].)

5. Reimbursement may be reduced or denied if the parents' actions were unreasonable. (20 U.S.C. § 1412(a)(10)(C)(iii)(III); 34 C.F.R. § 300.148(d)(3).) For example, in *Patricia P. v. Board of Educ. of Oak Park* (7th Cir. 2000) 203 F.3d 462, 469 (*Patricia P.*) the Seventh Circuit Court of Appeals held that a parent who did not allow a school district a reasonable opportunity to evaluate a child following a parental unilateral placement "forfeit[ed] their claim for reimbursement." In *Patricia P.* reimbursement was denied where the parent had enrolled the child in a private school in another state and at most offered to allow an evaluation by district personnel if the district personnel traveled to the out-of-state placement. (*Ibid.*)

6. ALJ's have broad discretion in crafting appropriate remedies for FAPE denials. The broad authority to grant relief extends to the administrative law judges and hearing officers who preside at administrative special education due process proceedings. (*Forest Grove School District v. T.A.* (2009) 129 S.Ct. 2484, 2494, fn. 11; 174 L.Ed.2d 168].)This ALJ considered carefully the specific FAPE denials, the parties' conduct, and the reasonableness of Parents' decision to enroll Student at New Summit.

7. At no time at issue in this case was it found that Castro Valley offered and provided Student a FAPE. In light of the failures documented above, it was reasonable that Parents revoked their consent to Student's IEP and sought a unilateral placement. Parents timely and appropriately notified Castro Valley regarding their intent to place Student at New Summit.[8]

8. This ALJ has concerns about whether or not cases such as *Burlington* and *Florence County* extend so far as to make reimbursement a potential remedy for a private placement located in Costa Rica, incorporated in Panama, and not subject to the laws of the United States. This concern is compounded by the fact that Student did not require residential placement to meet his needs. Additionally, Parents were not without other options. The educational consultant they hired specifically referred them to four other residential placements located within the United States. While it was well within Student's Parents' discretion to make the decision to place Student at New Summit for the benefit of their family, whether or not it is appropriate under the law to reimburse them for this decision is another question.

9. At the conclusion of the hearing, this ALJ invited the parties to brief the issue of reimbursement for an out-of-country placement. Castro Valley declined the invitation and did not address this concern in its closing brief, focusing instead on its position that it continually offered and provided Student a FAPE and that residential placement was not needed. The legal objection Castro Valley raised was that the ALJ is

[8]Castro Valley argued in its closing brief that Parent's notice was untimely because it was made fewer than 10 days before the school year was set to begin.Castro Valley did not assert this as an affirmative defense in the hearing.Moreover, Parents' provided notice of their intent to place Student in New Summit nearly a month before actually enrolling him in the program.

precluded from ordering a placement in a non-certified school. However, *Florence County* specifically allows reimbursement for placement in a non-certified school. Further, prospective placement was not raised as an issue in this case given the time period that is at issue.

10. No finding is made regarding whether or not reimbursement for an out-of-country placement is or is not permissible as a matter of law. In this case, however, the ALJ interprets Castro Valley's silence as waiving this possible defense.

11. Student established that New Summit met his social-emotional and academic needs and that he has received educational benefit. These are two areas in which Castro Valley failed to offer and provide Student a FAPE. Student seeks reimbursement for first and last month's tuition that was pre-paid; an enrollment and visa fee; refundable deposit, technology and book costs; monthly tuition from September 2014 through August 2015; ancillary monthly expenses charged by New Summit; and travel costs for Student and Parents for placement and parent visits. The ALJ determines that partial reimbursement is an appropriate remedy in this case. Full reimbursement is not awarded because Student did not require a residential placement to meet his educational needs. Additionally, his needs could have been met in a far less restrictive setting, certainly one located in the United States.

12. As was discussed above, the time period adjudicated in this case terminated at the IEP's expiration in January 2015. As no findings are made beyond that time, no remedy is awarded beyond January 2015. Additionally, it was previously determined that Student did not require a residential placement to meet his needs.

13. Ms. Tracy established that the percentage of the monthly tuition attributable to academics and therapy is 55 percent. Student's total tuition for September 2014 through January 2015 was $34,875.00 ($4,500 prorated for September, $7,500 for October through December, and $7,875 for January). This ALJ determines that

reimbursement for 55 percent (the amount attributable to academics and therapy) will be awarded. That amount is $19,181.25.

14. Additionally, Parents are entitled to reimbursement for the enrollment fee and technology and text book fee. That amount equals $3,850.00.

15. Parents are also entitled to reimbursement for Student's flight to Costa Rica. Student did not establish that he incurred the expense of a return flight before January 27, 2015. The one-way ticket cost was $810.71.

16. Castro Valley will be ordered to reimburse Parents $23,841.96.

17. Student's other claims for relief are denied. Specifically, the ancillary monthly expenses charged by New Summit are not deemed educationally related expenses. Additionally, as residential placement was not required for Student, the cost of Parent's flights to and from Costa Rica will not be reimbursed. The tuition paid for the time period not subject to this Decision is not reimbursed. Nothing in this Decision, however, limits the parties from adjudicating the time period following January 27, 2015, if they so choose.

ORDER

1. Within 30 days from the date of this Decision, Castro Valley will reimburse Parents $23,841.96 for the percentage of tuition, enrollment fee, technology and book fee, and one-way transportation for Student deemed appropriate in this Decision.

2. No additional receipts will be required from Parents as sufficient documentation was submitted as evidence in this case.

3. Student's other claims for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard

and decided. Here, Student substantially prevailed on all issues heard and decided.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).

DATE: August 25, 2015

/s/

JOY REDMON

Administrative Law Judge

Office of Administrative Hearings