

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

STUDENT

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015030220

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on March 3, 2015, naming Fresno Unified School District. The matter was continued for good cause on April 14, 2015.

Administrative Law Judge Rebecca Freie heard this matter in Fresno, California, on June 10, 11, 15, 16, 17, 18, 23, 24, and 25, 2015.<sup>1</sup>

Student's mother represented Student.<sup>2</sup> Student attended the hearing on a few occasions, including the date of his testimony. Student's father attended the hearing

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<sup>1</sup> No evidence was taken and no testimony was heard on June 23, 2015; however, it is counted as a day of hearing for purposes of the 45 day time line to issue a decision in this matter.

<sup>2</sup> Student had reached the age of majority at the time the complaint was filed, but signed a document granting Mother the right to represent him in this matter.

when he testified.

Diandra Netto, Attorney at Law, represented Fresno. She was assisted by Sydney Smith, Attorney at Law. Debi Clark-Fleming, Special Education Program Manager, attended the hearing as Fresno's representative on June 10, 11, 15, 16, 17, and 18, 2015, and Robyn Scroggins, Regional Instructional Manager, attended the hearing on June 23, 24, and 25, 2015, as Fresno's representative.

A continuance was granted for the parties to file written closing arguments and the record remained open until August 6, 2015. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

### ISSUES<sup>3</sup>

1) Did Fresno deny Student a free appropriate public education by committing a procedural violation that impeded Student's right to a FAPE, caused a deprivation of educational benefit, and/or significantly impeded Parents' meaningful participation in the individualized education program process on April 19, 2013, by:

- a) failing to have a speech and language therapist at the IEP team meeting; and
- b) not developing legally compliant goals?

2) Did Fresno deny Student a FAPE by committing procedural violations that impeded Student's right to a FAPE, caused a deprivation of educational benefit, and/or significantly impeded Parents' meaningful participation in the IEP process at IEP team meetings in August 2014, by:

- a) attempting to change his primary disability from Autism to speech and

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<sup>3</sup> The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

language impairment;

b) failing to provide accurate levels of academic achievement and functional performance; and

c) not developing legally compliant goals?

3) From March 4, 2013, to March 3, 2015, did Fresno deny Student a FAPE by committing a procedural violation that impeded Student's right to a FAPE, caused a deprivation of educational benefit, and/or significantly impeded Parents' meaningful participation in the IEP development process by failing to provide Parents with required progress reports regarding Student's progress meeting his annual goals?

4) Did Fresno deny Student a free appropriate public education by committing a procedural violation that impeded Student's right to a FAPE, cause a deprivation of educational benefit, and/or significantly impeded Parents' meaningful participation in the individualized education program process by fabricating the following documents after August 29, 2014:<sup>4</sup>

a) an IEP dated August 21, 2014;

b) an IEP dated August 21, 2014, stating it was amended November 18, 2014;

c) a set of progress reports;

d) documents pertaining to an IEP team meeting of February 13, 2015, held without Student or Parents being present;

e) an IEP dated February 13, 2015; and

f) another copy of the February 13, 2015 IEP, with hand-numbered pages?

5) From March 4, 2013, to March 3, 2015, Did Fresno deny Student a FAPE because Fresno failed to offer him a placement and services that would meet his unique

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<sup>4</sup> These documents were admitted into evidence as Student's Exhibits S-30, S-31, S-32, S-38, S-39, and S-40, and are listed in that order.

needs and provide him with educational benefit?<sup>5</sup>

## SUMMARY OF DECISION

The evidence in this case established that the absence of a speech and language therapist at an April 2013 IEP team meeting was a procedural violation. The purpose of the meeting was to review a Fresno assessment, and determine whether Student remained eligible for special education. Student was denied a FAPE because Parents were significantly impeded from meaningfully participating in the IEP development process due to this absence. However, based on the information known to the IEP team at the time of the April 2013 IEP team meeting, failure to develop new goals was not a procedural violation.

Student failed to meet his burden of proof concerning his issues related to IEP team meetings in August 2014. Although the draft IEP from those meetings proposed changing Student's primary eligibility from autistic-like behaviors to speech and language impairment, Parents did not consent to that change. As a result, Student's eligibility category of autistic-like behaviors remained unchanged from his previously signed and implemented IEP from December 2011. Although the baselines of the three goals developed at the August 2014 IEP team meetings were flawed by unclear baselines, and in some other regards, the evidence established that all three of the goals were designed to meet Student's needs in the areas of reading comprehension, written

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<sup>5</sup> It was made clear at the PHC on May 22, 2015, with further clarification at the beginning of the hearing on June 10, 2015, and during the hearing on June 18, 2015, that this issue does not encompass any failure by Fresno to implement an IEP. This issue is related only to Fresno's offers and the actual IEP's in effect during the time period at issue.

language, and speech and language comprehension, no additional goals were necessary for Student to receive a FAPE. Student did not meet his burden of proof in regards to his claim that the IEP team should have developed goals that addressed low scores in standardized testing including California and Fresno standardized testing, and low scores in subtests from assessment tools administered by Dr. Glidden.

Fresno was remiss in preparing some progress reports concerning Student's goals and providing them to Parents during the time period at issue. However, Fresno provided Parents with other information related to Student's progress at the time periods at issue and, therefore, failure to provide them with progress reports did not significantly impede them from meaningful participation in the IEP development process. The evidence also did not support a finding that Fresno provided Parents with "fabricated" documents. Although there were some minor disparities in documents Parents received in 2015 pursuant to a records request, and documents previously or subsequently provided to Parents, these disparities were due to characteristics of the Special Education Information System (SEIS), a software program used by Fresno in the IEP process. Student's claim that Fresno did not provide a Fresno speech and language assessment completed in February 2014 to Parents until February 2015 in response to the records request was not proven, and did not establish that the report in question was "fabricated." Lastly, Student's extremely high academic performance, including graduation from high school in June 2015 with a regular high school diploma, and very high academic class standing, demonstrated that the placement and services he received from Fresno met his unique needs and provided him with educational benefit, and therefore he was not substantively denied a FAPE during the time period at issue.

## FACTUAL FINDINGS

### JURISDICTION

1. Student resides with Parents within Fresno's boundaries. He attended sixth grade in another school district. Otherwise, from the age of three, he attended schools and programs within Fresno's boundaries. Student is 18 years of age, and graduated from Roosevelt High School (Roosevelt) near the top (within the top 10 percent) of his class of more than 400 students on June 9, 2015. He passed the math portion of the California High School Exit Exam the first time he took it in March 2013, and passed the language portion of the Exam in March 2014, his third attempt. He has been accepted as a student by California State University Fresno, and will begin attending this fall.

2. Student had multiple assessments shortly before and after he turned three years of age. The assessors diagnosed him with autism, and he was qualified in his operable IEP's as a student eligible for special education under the categories of autistic-like behaviors and/or speech and language impairment.

3. Student transferred into Roosevelt from another Fresno high school at the beginning of the 2012-2013 school year, his 10th grade, or sophomore year. He had a signed IEP dated December 19, 2011, from his previous high school.

4. Student was an active participant in all of his classes at Roosevelt during his three years there. He responded to questions, and asked his own, asked for help when necessary, and worked well with other students, both as a group participant, and assisting others who were struggling. Student performed well in classroom testing situations, and completed assignments and projects on time and accurately. This was reflected in his grades.

5. The December 19, 2011 IEP, called for Student to receive 320 minutes of specialized academic instruction each week. This specialized academic instruction consisted of a co-taught English language arts class, and a co-taught mathematics class,

as well as time each school day in a resource specialist program called Learning Strategies. Co-taught classes were comprised of both general education and special education students, and were staffed with special education teachers and/or paraprofessionals, as well as a general education teacher. This enabled students with IEP's to access the general education curriculum of these courses with the assistance of special education professionals, if such assistance was needed. In addition, Student was to receive speech and language services 30 minutes each week to address social pragmatics.

6. On September 12, 2012, an IEP team meeting was held at Roosevelt, and the team, which included Mother, consented to an amendment of the December 2011 IEP. Roosevelt did not have a separate resource specialist program classroom, and it was determined that Student no longer required time in a resource specialist class, since he was doing very well in his classes at Roosevelt. His classes included co-taught English language arts, and he required only consultation services for mathematics because he was doing so well in that class. Accordingly, his specialized academic instruction time was reduced to 288 minutes per week.

7. The IEP of December 19, 2011, as modified in September 2012, is the last fully consented-to, implemented IEP for Student as no other IEP's were fully consented to by Parents during Student's tenure at Roosevelt. In September 2014, following two IEP team meetings in August, Parents did consent to new goals for Student, and approved his participation in a social skills class for high functioning students on the autism spectrum. This class was misnamed Basic Living Skills, although it was referred to in the hearing as the Autism Social Skills class. Parents' partial consent again resulted in an amendment to the IEP of December 19, 2011.

## 2012-2013 SCHOOL YEAR

### IEP Team meeting of December 17, 2012

8. Student's last triennial assessment was in the spring of 2010. The IEP team decided that since Student was new to Roosevelt, it would be helpful to conduct an early triennial assessment, and an assessment plan was sent to Parents in October 2012. Mother signed consent to the assessment plan on October 22, 2012, and returned it to Fresno. The assessment plan called for Student to be assessed in the areas of health, academic achievement, intellectual development, language/speech communication development, and autistic-like behaviors.

9. Fresno conducted all of the assessments Parents consented to, with the exception of a speech/language communication development assessment. Fresno personnel testified that this assessment was not conducted because Roosevelt did not have a speech and language pathologist on staff.<sup>6</sup>

10. The assessments by Fresno were administered before the beginning of the running of the statute of limitations (March 4, 2013), and their results and compliance with legal requirements are not at issue. Therefore they are discussed generally, rather than specifically.

11. As part of the psychoeducational assessment, a school psychology intern, supervised by Fresno school psychologist Janel Davis, administered standardized tests in the areas of intellectual development (Wechsler Intelligence Scale for Children-IV), and reviewed responses by Mother and a teacher to the Gilliam Asperger's Disorder Scale

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<sup>6</sup> No finding is made concerning Fresno's failure to conduct a timely speech and language assessment as that was not raised as an issue in the complaint.



which measures the probability of a student having Asperger's Disorder .<sup>7</sup> The intern also interviewed Student, Parents, and at least one teacher, observed Student in at least one class and the testing environment, and reviewed previous assessments, IEP's, and school records (grades, and standardized testing results). Academic achievement testing, the Woodcock-Johnson Psycho-Educational Battery-III [Achievement Tests], was conducted by Student's case manager, Brian Vollhardt, a special education teacher.

12. The results of Fresno's psychoeducational assessment, which included all of the information from the sources described in the preceding paragraph, resulted in a conclusion by Fresno that, although Student might have a diagnosis of autism, he did not meet the criteria for special education eligibility under the category of autistic-like behavior. However, Student's continued eligibility for special education was a determination of the IEP team, considering not only the assessments, but also the input of IEP team participants, including Parents. Fresno's assessment report showed that Student had good health, average intelligence, and overall average academic achievement on the Woodcock-Johnson. Student had straight A grades at the conclusion of the previous school year.

13. Through the years Student had participated in standardized academic

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<sup>7</sup> Asperger's Disorder was a separate diagnosis in the Diagnostic and Statistical Manual, Fourth Edition (DSM-IV). The DSM-IV was revised in 2013, and Asperger's Disorder was eliminated from the Fifth Edition (DSM-V). However, the symptoms and characteristics of Asperger's were incorporated, for most part, into the diagnosis of Autism Spectrum Disorder found in the DSM-V. The special education eligibility category of autistic like behavior before July 1, 2014, was found in California Code of Regulations, title 5, section 3030, subdivision (g). These criteria are different than the characteristics of Autism Spectrum Disorder found in the DSM-V.

testing by the State of California and Fresno and received many scores that were in the below basic range in writing and reading, although he had strengths in mathematics and science. Since at least 2011, Parents had never consented to special accommodations or modifications when Student was administered standardized testing at school. Based on the credible testimony of Jamillah Finley, Student's 2013-2014 English language arts teacher, Fresno's testing results are found unreliable because students often were tested in areas that had not yet been taught. Student concurred that the Fresno standardized testing often contained questions about material he had not been taught. Further, Student's scores on both the California and Fresno standardized testing could have been affected by the lack of accommodations and modifications in the testing environment.

14. Student had below average scores on some subtests on the Woodcock-Johnson and the Wechsler scores for the most part were in the average range. Although it was clear that Student had some deficits in the area of social pragmatics, both Parents, when interviewed by the assessor, made it clear that they did not want Student to participate in any social skills classes, although such classes are often recommended for students with autism.

15. The IEP team meeting on December 17, 2012, was attended by Mother, Mr. Vollhardt, the school psychologist intern who conducted the psychoeducational assessment, Ms. Davis, and a general education teacher. The focus of the meeting was the review of the psychoeducational assessment and its finding that Student did not meet the special education criteria for eligibility as a student with autistic-like behaviors.

16. The IEP team meeting of December 17, 2012, did not result in an IEP. Mother asked that additional observations be conducted of Student in the classroom, as only one observation was reported in the written assessment. She also asked that the meeting be continued to a later date so that Father could attend. Fresno personnel

indicated that they would contact Fresno's administrative offices to see if they could arrange for Student to have a speech and language assessment.

#### The IEP Team Meeting of April 19, 2013

17. In January 2013, three additional classroom observations of Student were conducted by the psychology intern; the psychoeducational assessment report was re-written to reflect these observations. Attempts were made to convene another IEP team meeting, including the scheduling of one meeting for March 1, 2013, which was canceled by Mother 15 minutes before the meeting was to begin. The follow-up IEP team meeting to the one on December 17, 2012, was finally held on April 19, 2013.

18. Both parents attended the April 19, 2013, IEP team meeting, as did Mr. Vollhardt, Ms. Davis, the school psychologist intern, Student's English and Biology teachers, and a Fresno administrator. No speech and language therapist attended this IEP team meeting. There had been no apparent attempt by Fresno to conduct a speech and language assessment after the December 2012 IEP team meeting.

19. At the IEP team meeting Student's general education teachers reported that he was performing extremely well in the classroom setting. Parents expressed concern that several of Student's test scores on statewide standardized testing and Fresno standardized testing reflected scores in the "below basic" range. They were concerned because, despite these scores, Student was receiving straight "A's" in all his classes. There was discussion about reasons for the differences between standardized test scores and grades. Because Student was receiving high grades, there was some question as to whether he still required academic goals.

20. The revised psychoeducational report with the information concerning three additional classroom observations of Student in January 2013, was discussed and the updated report was distributed. The new report still reflected the opinion of Ms. Davis and the intern, that Student no longer met the criteria for special education as a

student with autistic-like behaviors. Parents disagreed with Fresno's assessment and, towards the end of the meeting, requested an independent psychoeducational evaluation.

21. During the IEP team meeting of April 19, 2013, there was no discussion about goals, since Fresno was recommending that Student be exited from special education, and there was no speech and language pathologist in attendance to discuss the progress on speech and language goals. At the end of the IEP team meeting, it was agreed that Student continue to receive services pursuant to the December 19, 2011 IEP, as amended in September 2012.

22. Following the IEP team meeting of April 19, 2013, Ms. Scroggins was contacted by a Fresno team member, and she telephoned Parents, and spoke to Father about the request for an independent assessment. Subsequently she met with Mother, who asked for independent educational evaluations in both speech and language, and psychoeducation. Ms. Scroggins agreed that Fresno would fund a psychoeducational independent assessment, but told Mother, Fresno would conduct the speech and language assessment with its own personnel. This was not contested by Mother. Mother was uncertain about who she wanted to conduct the independent educational assessment. She wanted either Dr. Glidden, a neuropsychologist, or the State Diagnostic Center in Fresno to conduct the assessment.<sup>8</sup> After one or two attempts to contact

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<sup>8</sup> The California Department of Education has three Diagnostic Centers, one in Fremont, another in Fresno, and the third in Los Angeles. School districts throughout California can refer students for assessments at a Diagnostic Center. Districts do this when a student presents with unusual symptoms, or the IEP team needs additional information concerning the most appropriate program and services for a student with a

Mother to find out who she wanted to conduct the independent assessment, Fresno sent Mother an assessment plan in June 2013 to sign consent for either Dr. Glidden or the Diagnostic Center. Fresno also sent another assessment plan in June 2013, for Parents to sign consent for speech and language assessment by Fresno.<sup>9</sup> Mother subsequently agreed to Dr. Glidden as the independent psychoeducational evaluator, but did not return either assessment plan until November 2013, as is discussed below.

### Student's School Performance

23. For the 2012-2013 school year, Student took Algebra II, Biology, English II, Modern World History, Physical Education (PE), Spanish II, and Video Production. These were all general education classes, and college preparatory classes. Student ended the school year with an A+ in Algebra II, an A in Biology, an A+ in English II, a B+ in Modern World History, an A in PE, an A+ in Spanish II, and an A- in Video Production. English II was a class that had special education support by way of special education teacher collaboration and paraprofessional aides. It is unclear whether the Algebra II class was also one with special education support, but Student did not raise failure to implement the IEP as an issue. There was no evidence, other than Parents' testimony (which, as discussed below was not credible in this regard), that Student did not earn these grades. Based on his grades, and supported by his testimony, it was established Student was

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disability. The Diagnostic Centers perform the assessments at no charge to school districts or families.

<sup>9</sup> No finding is made as to whether a signed assessment plan was necessary for Dr. Glidden's assessment, or the appropriateness of a new assessment plan for a speech and language assessment, since Mother had already signed consent for this assessment in October 2012.

able to access the general education curriculum for the 2012-2013 school year.

24. Roosevelt did not have a speech and language therapist on staff for the 2012-2013 school year. Student received no speech and language services for the school year, although his IEP called for him to have 30 minutes each week of speech and language services. However, failure to implement the IEP for any of the school years addressed in this case was not an issue, so this and other failures of Fresno to implement the IEP are not addressed in this Decision.

### 2013-2014 SCHOOL YEAR

25. Student began his junior year at Roosevelt with the December 19, 2011 IEP, as amended in September 2012, in effect. Roosevelt now had a speech and language therapist, Nicole Cadenasso, and Student began to receive speech and language services for 30 minutes a week, pursuant to this IEP. Ms. Cadenasso began working on the three speech and language goals from the December 2011 IEP. However, she did not believe she could assess Student until Parents returned the signed assessment plan sent to them in June 2013. Although Mother testified that she had signed another assessment plan for the speech and language assessment when she met with Ms. Scroggins in May 2013, this was not supported by the evidence.

26. After the beginning of the 2013-2014 school year, Parents were contacted at least two times and asked to return the signed assessment plans for Dr. Glidden and the speech and language assessment, so the assessment process could begin. Mother finally signed and returned the assessment plans in November 2013.

27. Ms. Cadenasso, did not begin her assessment of Student until January 2014, because of Thanksgiving and winter breaks. Her assessment was completed on February 1, 2014. However, Student was not scheduled to be assessed by Dr. Glidden until March 2014.

## Speech and Language Assessment

28. When Ms. Cadenasso assessed Student, she administered the Comprehensive Assessment of Spoken Language and the Oral and Written Language Scales. She also obtained an informal language sample through a structured interview with Student, and she provided a survey to his teachers to obtain input on Student's language use in their classes. Based on the results of her testing, Ms. Cadenasso opined that Student did meet the criteria to qualify for special education as a student with a speech and language impairment. She also opined that this language disorder could impact Student when he was in standardized testing situations. Ms. Cadenasso did not send a copy of her report to Parents when she completed it because she did not finalize her reports until an IEP team meeting had been held to discuss the report, in case her initial report contained incorrect information.

29. Right after Ms. Cadenasso completed her draft report, at least one person from Fresno contacted Parents in an attempt to convene an IEP team meeting to review the speech and language assessment. Mother said she did not want to hold the IEP team meeting concerning the speech and language assessment until Dr. Glidden had completed his assessment, so that both assessments could be discussed at a single IEP team meeting.<sup>10</sup>

### DR. GLIDDEN'S ASSESSMENT

30. Dr. Glidden conducted his testing of Student on March 14, 2014. Some of the testing included standardized test instruments that were directly administered to Student such as the Wechsler Adult Intelligence Scale-IV, Wechsler Memory Scale-III (a

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<sup>10</sup> Mother did not raise the untimeliness of an IEP team meeting to discuss the speech and language assessment as an issue in the complaint, and therefore no findings are made in this regard.

subtest), California Verbal Learning Test-II, and the Woodcock-Johnson-III Tests of Achievement, among others. Mother, Father, and at least one teacher completed various surveys designed to measure social/emotional issues and behavior, including the likelihood that Student had autism, which included the Social Communication Questionnaire, Vanderbilt Assessment Scale-Teacher Inventory, Behavior Rating Inventory of Executive Function, and the Conners-3 General Index, as well as others.

31. The appropriateness of Dr. Glidden's report was not raised as an issue in the complaint, nor was it raised by Fresno during the hearing as a defense, and therefore the report will not be discussed in detail. However, many of Dr. Glidden's findings were similar to those in Fresno's psychoeducational assessment, including academic achievement tests. Dr. Glidden's results showed that Student had low average to average cognitive abilities with strengths in areas that are predictive of high level skills in math and science, and lower abilities in areas related to writing and language. Dr. Glidden's ultimate conclusion was that although Student had a clinical diagnosis of autism, he did not meet the criteria for special education as a student with autistic-like behaviors. However, he did meet the criteria for a student with speech and language impairment because Dr. Glidden found, through his overall testing, that Student had a language disorder and he was impaired in the area of language functioning, which was impacting his reading comprehension and writing. Dr. Glidden also found that Student's language impairment impacted his social functioning. Dr. Glidden made it clear in his report that this language disorder was not because Student is bilingual in Spanish and English.

32. On the Woodcock-Johnson administered by Dr. Glidden, Student's overall reading skills were in the average range. However, his Passage Comprehension subtest score was in the low range. Passage Comprehension is one of three subtests that are administered and considered in determining the overall score in reading on the



Woodcock-Johnson. When Fresno administered the Woodcock-Johnson to Student in November 2012, Student's score on the Passage Comprehension subtest was in the low average range, although his overall reading score was in the average range. Based on all the results of his testing, Dr. Glidden diagnosed Student with a language disorder, and determined that Student's low score on the Passage Comprehension subtest was due to this.

33. Dr. Glidden's report contained several pages with specific recommendations to address various areas of impairment in Student's academic and social functioning as revealed by the testing results. One recommendation was that Student be assessed for occupational therapy. In addition, attached to the report itself were the score summaries for the various tests and surveys that Dr. Glidden conducted, as well as computer generated recommendations for some of the tests such as the Woodcock-Johnson.

34. Dr. Glidden's written report was dated March 14, 2014, the date Dr. Glidden tested Student, but the written report was not sent to Parents and Fresno until June 2014. Because only a few days were left in the school year when the parties received Dr. Glidden's report, an IEP team meeting could not be convened until August 2014 to review the report.

#### Student's School Performance

35. For the 2013-2014 school year, Student took Chemistry, English III, PE, Spanish III, Trigonometry, and United States History. These were all general education, college preparatory classes. The English III class had special education support, but the evidence established that Student was held to the same grading standards as other students. Again, it was unclear whether the Trigonometry class had special education support, but failure to implement the IEP was not raised as an issue. Student ended the school year with an A+ in Chemistry, English III, and Spanish III. He had A's at the end of

the year in PE and United States History. He earned an A- grade in Trigonometry. These grades demonstrate that Student was able to access the general education curriculum, and in fact thrived in the general education environment. Other than Parents' testimony, there was no evidence that Student did not earn these grades.

36. Ms. Cadenasso provided Student with speech and language therapy for 30 minutes each week, working on the speech and language goals from the 2011 IEP. He had not met any of the goals at the beginning of the school year. At the end of the school year he had met them all. Student had friends, was an active participant in all his classes, and interacted well with his teachers.

## THE 2014-2015 SCHOOL YEAR

### The IEP Team Meetings of August 2014

AUGUST 21, 2014

37. The IEP team meeting of August 21, 2014, was attended by Mother; John Vertson, Student's case manager and a special education teacher; Ms. Davis; a Fresno administrator; Student's Spanish teacher Adriana Cardenas; a school nurse; Dr. Glidden; Ms. Scroggins; Carl D'Souza, one of Fresno's two supervising speech and language pathologists; and Ms. Finley. The IEP team reviewed Student's present levels of academic achievement and functional performance, with Mr. D'Souza providing input on behalf of Ms. Cadenasso, who could not attend the meeting. Some of the levels of academic achievement were derived from information Mr. Vertson had received from Student's teachers who did not attend the meeting. Mother reported that Student had friends and had "blended in" at Roosevelt.

38. Dr. Glidden reviewed the results of his independent educational evaluation. Both Mr. D'Souza and Dr. Glidden agreed that Student's eligibility category should be changed from autistic-like behaviors to speech and language impairment.

Mother disagreed.

39. The five goals from the December 2011 IEP were reviewed. Mr. D'Souza was able to report progress on the three speech and language goals, but it was apparent that progress reports had never been prepared for the academic goals of reading comprehension and writing, and Ms. Finley indicated that these were still areas of struggle for Student. At hearing she testified credibly that by the end of the 2013-2014 school year, Student had met the written language goal that called for him to write a coherent thesis, and to clearly convey his perceptions in an assignment. Ms. Finley also testified credibly that Student had made progress over the year on the reading comprehension goal from 2011, which called for him to generate relevant questions and answers based on material he had read.

40. Dr. Glidden and Mr. D'Souza discussed possible new goals to address reading comprehension and written expression. They also discussed a new speech and language goal that would address Student's needs in the area of comprehension. Mr. D'Souza indicated that the reading comprehension goal could be addressed, at least in part, by the speech and language service provider.

41. The IEP could not be completed on August 21, 2014, and Mother asked for an autism specialist to review Dr. Glidden's report and attend the next meeting. It was subsequently agreed that the next IEP team meeting date would be August 28, 2014.

AUGUST 28, 2014

42. Mother attended the IEP team meeting of August 28, 2014, as did Ms. Scroggins; Mr. Vertson; Ms. Davis; Roosevelt's Principal; Mr. D'Souza; general education teacher, Yvette Vasquez; autism specialist Jody Saldivar; and Shawna Crozier, autism teacher at Roosevelt. Mother expressed her belief that Student had not received special education services at Roosevelt (a learning strategies class), and that his grades did not accurately reflect his academic progress. Mother was reminded that the amendment to

the IEP in September 2012 had removed the learning strategies class from the IEP, and she had consented to this amendment at the time. She was also advised, and the evidence established, that other than speech and language services for the 2012-2013 school year, Student had participated in the program and services called for in the IEP from December 2011, as amended in September 2012.

#### ELIGIBILITY

43. Many students with a clinical diagnosis of autism may not meet the criteria for eligibility under the category of autistic-like behaviors. Many students with autism will meet the criteria for eligibility under the category of speech and language impairment. Student did not meet the criteria for eligibility under autistic-like behaviors at any time at issue in this matter, although he did meet the criteria for speech and language impairment.

44. Throughout the IEP team meetings in August 2014, and many times during the hearing, Mother seemed unable to understand how Student could have a clinical diagnosis of autism, but everyone at August IEP team meetings, including Dr. Glidden, were saying he could no longer qualify for special education under the eligibility criteria of autistic-like behaviors. The evidence was very clear, by way of the testimony of Mr. D'Souza, Ms. Cadenasso, Ms. Davis, Mr. Vertson, and very specific language in Dr. Glidden's report, that Student's appropriate eligibility classification was speech and language impairment. The proposed IEP from the August 2014 meetings called for a change in Student's eligibility from autistic-like behaviors to speech and language impairment with a secondary disability of autism. However, because Parents did not consent to the proposed change of eligibility in the August 2014 IEP, Student's special education eligibility remained autistic-like behaviors as stated in the December 2011 IEP.

## AUGUST 2014 IEP GOALS

45. Draft goals were reviewed for reading comprehension and written language, as well as speech and language. As noted above, Mr. D'Souza and Dr. Glidden had discussed possible goals in these areas at the previous IEP team meeting.

46. In the area of reading comprehension (the area of need recognized by the goal was just "Comprehension") the baseline states, "See results of academic testing, psychoeducational testing, speech language testing Dr. Glidden IEE." Because the baseline requires a person trying to understand the goal to refer to Dr. Glidden's IEE and Fresno assessment results, the baseline is not clear, and it is unlikely that a classroom teacher would even have access to these reports. However, "reading comprehension (inferential versus factual)" is listed as a need in the notes from the IEP, and Mother's concerns about Student's reading comprehension are also contained in the notes. Mother had received Dr. Glidden's report and was aware of Dr. Glidden's findings concerning Student's weakness in the area of reading comprehension.

47. The goal for reading comprehension says, "By 8/21/2015, [Student] will cite textual evidence to support analysis of information presented explicitly in the text (ie. Dates, names, definitions, etc.), including determining where the text leaves matters uncertain, as measured by curriculum based assessments." Three short-term objectives are listed, which clarify that by October 2014 he is to be able to demonstrate 75% accuracy in doing this, "as measured by student work samples, or oral assessment on 4 out of 6 trials. . . ." By December 2014, Student's accuracy level was to be at 80%, and by March 2015, the accuracy level was to be at 85%. However, there is no final accuracy percentage stated in the goal for determination that the goal has been met. The evidence established that teachers at Roosevelt used rubrics designed for each assignment or test as the basis for grading a student. The use of rubrics allowed teachers to objectively determine Student's progress in meeting the goal. The goal

addressed some of the 12th grade standards in English language arts.

48. A written language goal was also developed by the IEP team. The baseline was identical to the previous goal's baseline. This second goal stated that "By 8/21/2015, [Student] will produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience as measured by curriculum based assessments or student work samples on 4 out of 6 trials with 85% accuracy." Again, the use of rubrics allowed teachers to objectively determine progress in meeting the goal, and it addressed some of the 12th grade standards in English language arts. Periodic short-term objectives similar to those in the previous goal were also listed.

49. The third goal on the August 2014 IEP was another comprehension goal, which contained a baseline that indicated Student had difficulty recalling information that he had read, based on recent assessments. The baseline continued with a discussion of Student's difficulties with "free recall" versus "cued recall." Free recall is the ability to remember information without being cued, or given follow up questions. Cued recall is that which has been prompted by cues and follow up questions. The goal states, "By the end of Grade 12, [Student] will read and comprehend texts at his grade level complexity band independently by correctly answering 80% of questions using techniques/strategies to demonstrate understanding of his 'free recall' and 'cued recall' memory." The goal then continues by presenting the strategies that will need to be taught to Student to enable him to attain the goal. The short-term objectives call for him to achieve the goal at a 55 percent level, then a 65 percent level, and finally a 75 percent level, which would be the level he was expected to reach in the spring of 2015, based on the levels as expressed in the previous goals. However, each objective begins with the phrase, "By the end of Grade 12, . . ." so it appears there was an error in transcribing the short-term objectives, since different dates for measuring progress were

not provided. By looking at the other goals one can infer the dates by which this progress was to be made.

#### INPUT FROM THE AUTISM EXPERTS

50. At the IEP team meeting of August 28, 2014, Ms. Crozier talked about her social skills class at Roosevelt that served students with autism who were, like Student, on a diploma track. She determined that this class would meet at least one of Dr. Glidden's recommendations: that Student participate in social skills training. In actuality, the class provided many services that were recommended in Dr. Glidden's report such as the development of study skills and strategies for learning, and dealing with implicit language and inferences, as will be discussed below. Mother agreed to visit Ms. Crozier's social skills class to see if it would be a fit for Student.

#### THE AUGUST 2014 IEP OFFER

51. Fresno agreed to conduct an occupational therapy assessment, pursuant to Dr. Glidden's recommendation in his report. The IEP contained accommodations and modifications for Student. As was the case at every IEP team meeting in the past, Student was not to be provided with any accommodations or modifications when he was administered standardized statewide or Fresno testing.

52. The IEP that was developed at the meetings of August 21, and 28, 2014, called for Student to have specialized academic instruction for a total of 554 minutes weekly, which was special education support in a general education English class, and participation in the autism social skills class taught by Ms. Crozier. In addition, Student was to receive 30 weekly minutes of speech and language services, and occupational therapy collaboration with general education teachers to address some deficiencies Dr. Glidden found in Student's visual-motor skills. Mother took the draft IEP with her to review with Father, and told the IEP team meeting participants that she would be

contacting them in the near future.

#### Parents' Response to the IEP Offer

53. On September 4, 2014, Parents responded via letter to Fresno's August 2014 IEP offer. They consented to the placement in the co-taught English class, and the social skills class, the speech and language services, and the three goals that had been developed, but they did not agree that the IEP offered Student a FAPE. They disagreed with Student's primary disability being designated as speech and language impairment, saying they felt it should continue to be autistic-like behaviors. They complained that the speech and language assessment had not been reviewed at either IEP team meeting. They also disagreed with some of the descriptions in the IEP of Student's academic achievement and functional performance. For example, some of Student's scores from the Woodcock-Johnson Fresno administered to Student in the fall of 2012 were listed on the first page that described academic achievement and functional performance, but Parents claimed they had not been discussed at the IEP team meetings in August 2014. The IEP documents from August 2014 are unclear about whether these scores were specifically discussed at one or both of these meetings, but the notes from the December 2012 and April 19, 2013 IEP team meetings, reflect discussion of the assessment results at one or both of these meetings, and those IEP's also reflect the same scores.

54. After receiving the one-page letter from Parents, Fresno attached it and made it part of the IEP from August 2014, and to the extent that Parents agreed to placement, services and goals, the IEP of December 2011, as amended in September 2012, was now further amended. This amalgamation of IEP's and amendments remained in effect for the rest of the 2014-2015 school year.



## Events After September 4, 2014

55. A Fresno occupational therapist conducted an assessment of Student in October 2014. The assessor found that Student did not have a need for school based occupational therapy in order to access the educational curriculum. Beginning on October 13, 2014, Mr. Vertson attempted to contact Parents by mail, email, and telephone to arrange an IEP team meeting to discuss the occupational therapy assessment, and to respond to Parent concerns expressed in the September 4, 2014 letter. Parents did not respond. An IEP meeting date of October 30, 2014, was set and notice of that meeting was sent to Parents. Multiple emails and voicemail messages asking if Parents would be attending the IEP team meeting received absolutely no response, and Parents did not attend the IEP team meeting which did not go forward in their absence.

56. Mr. Vertson again tried to schedule another IEP team meeting and sent Parents notice of that meeting via certified mail. The meeting was set for December 11, 2014. Parents signed the certified mail receipt for the notice. Ms. Scroggins called and left voicemail messages for Parents on their phones. Mr. Vertson sent Parents emails. Once again Parents did not respond. The meeting was convened, and because Parents were not in attendance 30 minutes after the meeting was set to begin, the IEP team agreed that another meeting date needed to be set.

57. On February 3, 2015, another IEP team meeting was scheduled for February 13, 2015. Student had now reached the age of majority, and a letter from Ms. Scroggins and the IEP meeting notice were hand delivered to him. Parents were sent a letter from Ms. Scroggins with the meeting notice and a description of previous attempts to convene IEP team meetings in October and December 2014. The letter and notice were sent via regular and certified mail. In her letter, Ms. Scroggins notified Student and Parents that even if they did not attend the February 13, 2015 IEP team

meeting, it would go forward without them. Neither Parents nor Student attended the IEP team meeting held on February 13, 2015. On February 18, 2015, the proposed IEP developed by Fresno personnel at that meeting was sent to Student and Parents with a letter from Ms. Scroggins.

58. At hearing Mother attempted to explain why no one attended the IEP team meetings that were noticed for October and December 2014, and February 2015. Mother claimed that she was suffering from medical issues and stress after she wrote the letter of September 4, 2014, and that was why she did not attend the October 30, and December 17, 2014, and the February 13, 2015, IEP team meetings. She could not explain why her medical and stress issues prevented both herself and Father from responding to the notices, phone calls and emails concerning those meetings.

59. Mother explained the absence of Parents and/or Student from the February 2015 IEP team meeting by explaining that she had already attended three IEP team meetings since the beginning of 2013, and she did not care to attend another. Furthermore, since she intended to file a complaint with OAH, there was no need for her to attend another IEP team meeting.

#### Student's Educational Progress

60. Student made academic progress in his classes for the 2014-2015 school year, as he had in earlier school years at Roosevelt, although his grades suffered somewhat. This is not uncommon for seniors who are excited about leaving high school, and realize that they will still graduate, even if they get C's or D's, because they have earned enough credits and have the requisite grade point average for a high school diploma. Student's first semester he received a B- in Advanced Placement Calculus, an A in Basic Living Skills (Autism Social Skills), an A- in Economics, an A+ in Expository Reading/Writing (an English course), an A- in PE, and a B in Honors Physics. His second semester he received grades of A- in Basic Living Skills, Expository Reading/Writing, and

PE. He received a C+ in American Government, a C in Advanced Placement Calculus, and a B+ in Honors Physics. As previously noted, he obtained his high school diploma at the Roosevelt graduation ceremony held June 9, 2015, and placed well within the top ten percent of students in his class academically.

61. At hearing, Parents testified that Student required help from them with homework almost every night, with the amount of time they spent with him ranging from 30 to 90 minutes. However, this testimony was contradicted by Student's forthright testimony that he rarely needed help from Parents with homework. For example, he testified that if he was reading independently at home and did not understand a word, he would look it up in the dictionary. And in March 2014, when Mother was interviewed by Dr. Glidden, she stated, "He's pretty good, he's responsible. He'll ask for help if he gets stuck," which does not sound like something a parent would say if their child in 11th grade required at least 30 minutes of homework assistance from parents almost every night. Accordingly it is found that Student completed his homework independently, rarely requiring assistance from Parents.

62. Parents also claimed that Student's grades were inflated, and grades were subjective decisions made by teachers. Mother referred to the high grades as "false positives." Parents seemed to think that Student was allowed to take tests repeatedly until he got a high grade, and could re-write written assignments over and over until he received a high grade. However, there was no evidence of grade inflation other than Parents' testimony, and Parents conceded that they believed grades were inflated for every student at Roosevelt, both those in general education, and those in special education. Student credibly testified that he was allowed to take a test over once in a math class, as were the other students in the class. Teachers who testified at hearing described classes that were academically rigorous, and tests and assignments graded by using rubrics specific to each test or assignment. In English classes, students were

expected to edit and rewrite multiple drafts of written assignments as part of their instruction. Parents and Student had ongoing access to Student's progress in his classes, as every teacher posted assignments and tests on a website accessible to families, and grades for assignments and tests were posted when given. If Parents truly questioned the accuracy of a grade for specific assignment or test, they could have contacted the teacher.

63. Student's participation in the Social Skills class taught by Ms. Crozier was very beneficial for him. This was a class of students who were on the autism spectrum, but were academically very high-functioning, as was Student. The class was designed to specifically teach social skills, and increase pragmatic language skills. These skills were addressed both individually with each student, as well as with small groups of students working together. One class activity involved a portion of class time each week that was devoted to teaching students the real meaning of idiomatic phrases such as "between a rock and a hard place." There was also time during the class to assist students with study and organizational skills, and to work on assignments, and this addressed the students' executive functioning, which is often a deficit with people who have autism. Student enjoyed this class and found it helpful. He was pulled out of this class to receive his weekly 30 minutes of speech and language therapy. Again, as in other school years, Student was part of a social group, had friends, and actively participated in school athletics.

#### PROGRESS REPORTS

64. The IEP of December 2011 required Fresno to provide Parents with progress reports concerning Student's goals on a quarterly basis. During the 2012-2013 school year no one prepared any progress reports concerning any of the goals from the 2011 IEP. Because there was no speech and language therapist assigned to Student that school year, it is understandable why there were no progress reports in that area. In

regards to the academic goals, it appears that Student's case manager, Mr. Vollhardt, was not aware that he should have been consulting with Student's teachers to ascertain his progress in meeting the academic goals, and ensuring that progress reports were prepared. However, it should also be noted that Parents never seemed to have noticed that they were not receiving progress reports, and they received Student's report cards which reported his grades in all the classes he was taking. Further, Student's academic progress was discussed at the two IEP team meetings convened that school year, and the psychoeducational assessment reviewed at the December 2012 and April 2013 IEP team meetings contained information concerning Student's general educational progress. Also, Student and Parents had 24-hour, seven days a week access to the page on Fresno's website specific to Student where each teacher reported on the assignments and tests in the class, and Student's grade or score on each assignment or test.

65. Ms. Cadenasso prepared progress reports for the three speech and language goals in the fall, winter and spring of the 2013-2014 school year, and the end of the school year, informing Parents of Student's progress in meeting these goals from 2011 IEP. These reports were either mailed to Parents, or sent home with Student. However, no progress reports were prepared at all for the two academic goals from the 2011 IEP.

66. At the IEP team meetings in August 2014, Ms. Cadenasso's progress reports were part of the 2011 goals that were attached to IEP documents from that meeting. Mother claimed to have never seen them before she received documents pursuant to a records request in February 2015. However, they were part of IEP documents that she received at the IEP team meetings in August 2014, and are even referenced in the letter Parents sent to Fresno on September 4, 2014.

67. The IEP from August 2014 also required Fresno to provide Parents with quarterly progress reports. The IEP of February 13, 2015, mailed to Parents on or about

February 18, 2015, with another letter from Ms. Scroggins, contains copies of the three goals that were developed in August 2014, and each shows that Student had met the short-term objective for each of the goals as of December 18, 2014. Mother was not credible when she testified that she had never received these progress reports.

#### SEIS AND STUDENT'S CLAIM OF FABRICATED DOCUMENTS

68. Fresno, like many school districts in California, uses a software program to develop and maintain IEP documents. The software program used by Fresno is the Special Education Information System, usually referred to as SEIS (pronounced sāce). Prior to an initial IEP team meeting, a member of the IEP team (often the case manager) will print out the IEP form, and fill in as many fields as possible before the meeting. This document will often be brought to the IEP team meeting labeled as a draft. As the meeting proceeds, blank fields are completed to reflect the information elicited from team members such as Student's present levels of academic achievement and functional performance. Information from recent assessments may also be quoted in this section of the IEP. If members of the IEP team have drafted goals before the meeting, the draft goal pages will be included as part of the draft IEP brought to the meeting. During the meeting the information may be changed in the draft document. Sometimes it will be changed by handwritten interlineation of the draft pages, or one of the IEP team members may have a computer at the meeting with access to the SEIS draft, and changes to the document may be made via computer. When changes have been handwritten into the document, a team member will later enter those changes in the SEIS program.

69. During the IEP team meeting there is often a school district employee who is designated as a note taker. Again, notes may be either handwritten and later entered into SEIS, or contemporaneously entered into computerized version of the IEP via computer during the meeting. Ideally all of the necessary information for an IEP will be

entered into SEIS during the meeting. It is a best practice for Parents attending the IEP team meeting to be able to take a copy of the final version of the IEP document with them from the meeting, including copies of all signature pages. Sometimes the pages of the document will be hand numbered on each page. If the IEP has been edited via handwritten interlineation that will be the version they take with them. And if there is a technical glitch, such as printer or copier failure, the IEP document should be sent to parents within a few days. If the IEP team meeting is continued to another date, the IEP from that meeting will continue to be a draft in SEIS. If an IEP team meeting is to be continued at a later date, and several days or weeks pass before the meeting occurs, the partially completed draft may be "attested and affirmed" in the SEIS program, so the next time the IEP is printed out, that will be the most recent version produced. When an IEP is consented to at or after an IEP team meeting, the final document will also be attested and affirmed in the SEIS system.

70. After the initial IEP team meeting has been held, assuming the student has been found eligible for special education and parents have consented to the IEP, that version will be affirmed and attested in the SEIS program. In addition, Fresno keeps microfilm copy of the final version of an IEP that has been consented to at Fresno's administrative offices in a system known as Lazerfiche.

71. If an amendment is made to an IEP during the course of the next year, that amendment will also be produced via SEIS. At the next annual meeting, a Fresno team member will print out the last attested and affirmed IEP to be used as a working draft at that annual IEP team meeting, and the process is repeated.

72. When a parent makes a request for student records, documents related to the IEP process, including IEP's, may be printed out via SEIS, so the parent can be provided with copies of IEP's. However, due to certain anomalies of SEIS, the formatting of an IEP, may differ slightly from the IEP parents either took home from the meeting, or

was sent to them a few days after the meeting. For example, a goal page that was originally was one page in length in the IEP a parent received following the last meeting, may now be two pages in length, with the last lines of the goals page continued on a second page. Also, previous goals with progress reports may end up being printed out and made part of a current IEP. SEIS contains all pages that might be necessary to have at an IEP team meeting, such as pages related to the IEP disciplinary process, and behavior intervention plans. These pages would not have been given to a parent following an IEP team meeting where an IEP was produced, unless the IEP team meeting was for disciplinary reasons, and/or the student required a behavior intervention plan and one was developed.

73. When SEIS prints out an IEP, the person printing out the IEP can determine which IEP pages are printed out, either just those that constitute the affirmed and attested IEP, or the affirmed and attested IEP with the addition of all pages for an IEP contained in the SEIS program. If a case manager reviews an IEP printed out in response to a records request, and all pages in the SEIS program have been printed s/he will try to remove these extraneous, irrelevant pages. The case manager may also hand-number the pages of the IEP copy before sending it to parents.

74. Student made a document request sometime in February 2015. In response to this document request, Fresno produced all of the documents it had. In terms of IEP documents, the ones produced were printed out of the SEIS system. Mother found differences between those produced in response to the records request and the copies that had been provided to her after the IEP team meetings during the time period at issue, some of which had pages that were hand-numbered.

#### IEP'S WITH 2014 DATES

75. In relation to subissues 4 (a) and (b), there are two documents that purport to be the August 2014 IEP. Both contain extraneous pages that were printed out from



SEIS pursuant to the February 2015 document request. The second IEP from August 2014 has, at the top of each page, a box that states "Amendment Date 11/18/2014." Credible testimony establishes that on November 18, 2014, Mr. Vertson changed annual review dates in the original August 2014 IEP to reflect the last annual review date was August 21, 2014, and the next annual review date as August 20, 2015. Both documents contain various extraneous pages which were not culled before the IEP's were provided to Parents in response to the documents request of February 2015. There was no evidence presented, other than Mother's claim, that either document was "fabricated," or to support any intentional act by Fresno personnel to create a false IEP.

#### Progress Reports

76. Subissue 4 (c) relates to an exhibit composed of several pages of "Progress Reports" on the speech and language goals from the 2011 IEP, and the three goals developed at the August 2014 IEP team meetings. There are two sets of progress reports for the 2011 speech and language goals, one set with the last progress being reported in March 2014, and the other with progress on those goals as of the end of the 2013-2014 school year. These are reports that Ms. Cadenasso completed. Various copies of IEP's from the August 2014 meetings have the same copies of the speech and language goals with the reports completed by Ms. Cadenasso. Additional pages of the exhibit include the goals developed at the August 2014 IEP team meetings, and these pages have progress reported on them as of December 2014. There was no evidence presented that these documents were fabricated.

#### Documents Pertaining to the February 2015 IEP Team Meeting

77. The documents addressed in subissue 4 (d) are the February 3, 2015, letters Ms. Scroggins sent to Student and Parents, telling them about prior attempts to convene IEP team meetings after August 2014, and telling them that an IEP team

meeting would be held on February 13, 2015, as well as the notice for the February 13, 2015 IEP team meeting. Additionally, the exhibit contains a copy of Ms. Cadenasso's speech and language assessment from February 2014, and the occupational therapy assessment from October 2014. The only document Student claimed was "fabricated" was the speech and language assessment, and this was because Student claimed that Parents never received the speech and language assessment until it was sent to them in February 2015.

78. Credible testimony from Mr. D'Souza and Ms. Scroggins established that the speech and language assessment was given to Mother at either the August 21, or August 28, 2015 IEP team meeting. Mother's claim that she did not receive the report until February 2015, was also diminished by the September 4, 2014, letter from Parents, in which it was stated, "Between 2012-2015 a triennial Speech and Language report was never reviewed with parents or the members of the IEP during any of the IEP meetings held." This is not the same as saying it was not provided to Parents, and one can easily infer from the letter that it was provided to Parents and they were just asking that it be reviewed at another IEP team meeting. There was no evidence that the speech and language assessment was fabricated.

#### Two IEP's Dated February 13, 2015

79. The documents addressed in Student's subissues 4 (e) and (f) are IEP's dated February 13, 2015. For ease of discussion, the document referred to in Student's subissue 4 (e) will be referred to as Exhibit 39, and the document referred to in subissue 4 (f) will be referred to as Exhibit 40. These documents are two different versions of the IEP from February 13, 2015. Exhibit 39 was internally paginated by hand by the participants at hearing when it was discovered that the document had not been paginated by Mother before being placed in the exhibit binder. It consists of 42 pages. Exhibit 40 appears to have been paginated in the upper left hand corner of each page

(in the manner Fresno sometimes paginates IEP's after an IEP team meeting has been completed), and consists of 39 pages.

80. Exhibits 39 and 40 are identical until one reaches page 25. In Exhibit 39, page 25 begins three pages of notes from an IEP team meeting that includes Mother and appears to be notes from the August 21, 2015 IEP team meeting (set A). These are followed by three pages of notes from an IEP team meeting that does not include Mother and they appear to be the actual notes from the February 13, 2015 IEP team meeting (set B). The next set of notes in Exhibit 39 are three pages of notes from a meeting that includes Mother, and these appear to be notes from the meeting of August 28 (set C). Two more pages of notes from a meeting that does not include Mother in February 2015 (set D) conclude the notes section in Exhibit 39.

81. The 11 pages of notes in Exhibit 39, are succeeded by five pages of blank worksheets used in IEP team meetings to determine various kinds of accommodations for students with IEP's when they take various standardized assessments. The second to last page of Exhibit 39 is a blank signature page for IEP team meeting attendees, and the last page is an unsigned excusal page for the attendance of a general education teacher.

82. In Exhibit 40, page 25 begins three pages of notes from an IEP team meeting that does not include Mother, and these notes are the same as set B in Exhibit 39. None of the other sets of notes are contained in Exhibit 40. Following the three pages of notes in Exhibit 40 (set B), are three pages labeled "Summary of Academic Achievement and Functional Performance" with various checked boxes (pages 28-30). Most of page 30 has checked boxes that represent Student's actual accommodations and modifications from the August 2014 IEP. Page 31 contains the signatures of the people who attended the February 13, 2015 IEP team meeting. Pages 32-36 are notices for IEP team meetings on August 21, 2014, August 28, 2014, October 30, 2014,

December 11, 2014, and February 13, 2015. Page 37 is the excusal page for a general education teacher signed by a Fresno administrator, and pages 38 and 39 are a copy of the assessment plan sent to Parents in September 2014 for their consent to the occupational therapy assessment.

#### PROVISION OF A FAPE

83. From March 4, 2013, to September 4, 2014, Student was to receive special education and related services pursuant to the IEP from December 2011, as amended in September 2012. The five goals from the IEP from December 2011 were previously discussed, and Student did not meet any of the goals before the end of the 2012-2013 school year. These were goals that addressed his needs at the time they were developed, and they continued to address his needs through the end of the 2013-2014 school year. Although it does not appear that Student's general education teachers were aware of his academic goals, the instruction Student received in his English language arts class helped him to make progress on these goals.

84. Student did not require a resource specialist class, and the elimination of this from his IEP in September 2012 was appropriate. He received very high grades in all of the courses he took without this class.

85. Student gained educational benefit from his social skills class during the 2014-2015 school year. Student was offered a social skills class for the 2012-2013 school year, and the 2013-2014 school year, but Parents refused consent for him to take the class, and it was not part of the 2011 IEP. However, he had friends and was part of a social group at Roosevelt, even without taking social skills classes.

86. Although Student had low scores on standardized tests and assessment subtests in the areas of reading comprehension and written language, he was able to access the general education curriculum in all of his classes during the time period at issue. Student admits that he reads and works too fast when he is given timed tests, and

this can affect his scores. His language disorder also impacts him when he is in testing situations.

87. There was no evidence that Student's grades were due to Parent help, or outside tutoring. Rather, Student is a very hard worker who is eager to finish assignments as soon as he can after they are given. He is an eager learner, actively participating in class discussions, and able to ask questions and self-advocate when he needs help at school. There was no evidence that Student had trouble reading or writing for school purposes to the extent that it affected his educational progress, and none of his high school teachers complained that he did.

88. Student's new goals in the August 2014 IEP, addressed his deficits in reading comprehension, written language, and comprehension generally. These goals, in conjunction with the instruction and work he did in the social skills class, and the instruction he received in his other courses, met his needs and provided him with educational benefit. Dr. Glidden made 20 individual recommendations in his report. Many of these recommendations were followed when the IEP team developed the three goals, and many activities in the social skills class also followed these recommendations. Although there were other recommendations contained in attachments to Dr. Glidden's assessments, these were computer-generated recommendations based on Student's performance on various assessments, and not tailored to Student's actual needs as were Dr. Glidden's own recommendations. An IEP team is not obligated to follow every recommendation contained in an assessment, whether it is a school district assessment or an independent assessment.

#### CREDIBILITY ISSUES

89. Fresno's witnesses provided testimony that was credible. In large part, in situations where multiple witnesses had knowledge of certain events, their testimony was consistent. There was no evidence that any of the Fresno witnesses had ongoing

communication with each other concerning Student when he was no longer in their classes, or on their caseloads. While there were minor differences in witnesses' specific recollections of certain events, or the timing of certain events, for the most part their recollections were consistent. Ms. Crozier was initially quite nervous when she began her testimony, hesitant in responding, and confused with Mother's questioning, but she relaxed as the questioning continued and she provided important and meaningful testimony that was uncontradicted.

90. Student was also credible when he testified. He was relaxed, had a sense of humor, and seemed comfortable and at ease during his testimony, and also during the few hours at other times that he attended the hearing as a party. It was clear that Parents' perception that he was a student who struggled greatly in school was not his own, although he admitted to some struggle in a few classes, not unusual for most high school students. He did not concur with Parents' testimony that his grades were inflated due to the subjective grading practices of all the teachers at Roosevelt, and was very believable in this regard. He did not agree with their testimony that he was always able to retake tests with low scores which is why his grades were so high, and this too was believable, as was his assertion that he rarely needed homework help at home.

91. Father's credibility was mixed. Although he claimed Student needed extensive help with homework, Student did not corroborate this testimony. While Father agreed with Mother that Student's grades were inflated due to teachers' subjective grading practices, he could not provide specific examples, other than vague references to conversations with teachers at Roosevelt. The testimony of Fresno's witnesses and Student was convincing evidence that Student's grades were earned by Student. It was clear, however, that Father is an involved and concerned parent, who loves his son, acknowledges his son's disabilities, but is also proud of him and is making every effort to help him to succeed. During the hearing Father talked about accompanying his son

to various college orientation meetings at CSUF, and also taking Student to the CSUF office that assesses students with disabilities for accommodations and modifications. Father is clearly focused on the future, not on the past.

92. Mother provided most of the testimony in support of Student's claims in this case. She was the first witness to testify and was administered the oath before she began her testimony. Her testimony was interrupted after the first day of hearing with the testimony of other witnesses, and she resumed testifying on June 18, and concluded her testimony on June 24, 2015.

93. Mother is a professional in the field of education with significant experience in the field of special education both as a parent, and as an educator. She is also a loving and concerned parent who has been an ardent advocate on behalf of Student and a sibling who is also in special education. However, her credibility was damaged during the hearing when her direct testimony was contradicted by information contained in various exhibits admitted into evidence, and the credible testimony of other witnesses.

94. During her testimony Mother claimed that until September 2014, she had never missed an IEP team meeting for her children. Yet the evidence showed that Parents were "no shows" at an IEP team meeting for Student on November 29, 2010, and Mother called just 15 minutes before an IEP team meeting was to start to cancel that meeting on March 1, 2013.

95. Several times during the hearing Mother complained that Student was not receiving resource specialist services at Roosevelt in a separate classroom during the time period at issue. She had to be reminded that those services had been removed from the December 2011 IEP, in September 2012, in part because Roosevelt simply did not have such a class. Instead Fresno provided Student with a co-taught English language arts class, a class that met his needs since he had needs in the areas of reading

comprehension and written language, and consultation services in mathematics class. Mother also had to be reminded that she had actually attended the September 2012 IEP team meeting when she provided consent for the removal of resource specialist services in a separate classroom

96. Adding to Mother's credibility issues was her inability to explain Parents' failure to even respond to notices sent to them for IEP team meetings on October 30, 2014, and December 11, 2014, and emails and telephone calls from Fresno personnel to follow up with them about whether they would be attending the meetings. Mother testified that she could not respond to the notices for the October 2014 IEP team meeting because she had been injured at work in August, had other health issues in the fall of 2014, had a death in the family in early October 2014, and later testified that she had been told by her doctor to stay away from stressful situations. When asked why she did not respond to the December 2014 IEP team meeting, or attend, she initially denied receiving notice of this meeting rather adamantly, and then changed her testimony to say she now remembered notice of the December meeting and then remembered the reason she did not attend, "I was sick."

97. The preceding paragraphs are just a sample of times when Mother's testimony lacked credibility; there were many other instances. When she testified, her demeanor was tense, nervous, and sometimes defensive, all of which undermined her credibility. She had a great deal of difficulty giving direct answers to questions when cross-examined by Fresno's attorney and questioned by the ALJ, even when a question required just a yes or no answer, so many of her answers were considered non-responsive. Because Mother lacked credibility, much of her testimony was given little weight.



## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>11</sup>

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)<sup>12</sup> 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 that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, 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. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; 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 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In

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<sup>11</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>12</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

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 definition of a FAPE 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).) 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].) Here, Student bore the burden of persuasion.

#### PROCEDURAL VIOLATIONS

5. In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Id.* at 205-206.) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

## MEANINGFUL PARENTAL PARTICIPATION

6. Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way] (*Fuhrmann*).)

### ISSUE 1: PROCEDURAL VIOLATIONS AT THE IEP TEAM MEETING OF APRIL 13, 2013

7. Student claims that Fresno committed procedural violations at the IEP team meeting of April 19, 2013, by not having a speech and language therapist present. Further, he claims that Fresno should have developed goals at this meeting, and failed to do so.<sup>13</sup>

8. Fresno argues that it was not required to have a speech and language

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<sup>13</sup> The ALJ has included, in some of the contentions in these Legal Conclusions, claims that Mother made when she testified, and claims that may exist in the parts of the closing brief that do not address the issue being argued, but may be pertinent to the issue being discussed in these Legal Conclusions.

pathologist at the IEP team meeting of April 19, 2013, because no speech and language triennial assessment was due until May 2013, since the last triennial speech and language assessment was conducted in May of 2010. In regards to failure of Fresno to develop goals at the April 13, 2013, Fresno claims that the psychoeducational assessment of December 2012, did not establish a need for goals in reading and writing, and side-steps the issue whether speech and language goals should have been developed at the April 13, 2013 IEP team meeting.

#### Required IEP Team Members

9. An IEP team is required to include: one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about available resources; a person who can interpret the instructional implications of assessments results; at the discretion of the parties, other individuals; and when appropriate, the person with exceptional needs. (34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].) In California, if the student is participating in general education classes, it is expected that a general education teacher will be part of the IEP team during the process of developing the IEP, and the discussion of modifications, supports and services, as well as other strategies. (Ed. Code, § 56341, subd. (b).)

10. In *M.L. vs Federal Way School District* (9th Cir. 2003) 394 F.3d 634, the Ninth Circuit Court of Appeals found that the exclusion of a general education teacher from the IEP team meeting was a major procedural violation, that significantly impeded parents from meaningfully participating in the IEP development process. In California, parents must consent in writing when they excuse the presence of a general educational

teacher from an IEP team meeting. (Ed. Code § 56341, subd. (g).)

### Requirements for Goals

11. An IEP must contain annual goals that are measurable, meet the student's unique needs, and allow him to make progress in the general education curriculum. (Ed. Code § 56345, subd. (a)(2)(A).) Goals may also meet other educational needs of the student. (Ed. Code § 56345, subd. (a)(2)(B).) "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. (b).)

12. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. An IEP is "a snapshot, not a retrospective." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrman* (3d Cir. 1993) 993 F.2d 1031, 1041.)

### Analysis

#### ABSENCE OF A SPEECH AND LANGUAGE PATHOLOGIST FROM THE APRIL 19, 2013 IEP MEETING

13. The IEP team meeting of April 19, 2013, was the continuation of an IEP team meeting in December 2012, at which time a Fresno psychoeducational assessment was reviewed. Based on the results from that assessment, Fresno was recommending that Student be exited from special education since he no longer met the criteria for eligibility as a student with autistic-like behaviors. However, a speech and language assessment had not been conducted, so the IEP team did not have a complete picture of Student and his needs. This was compounded by the fact that he was not receiving speech and language services required by his IEP, so there was no service provider in that area who could provide the team with any information regarding Student's speech and language needs. The December 2012 IEP team did not have sufficient information

before it to determine whether Student might still meet the eligibility criteria for speech and language impairment, even if he did not meet the eligibility criteria of autistic-like behavior. Since students diagnosed with autism sometimes will qualify for special education eligibility under the category of speech and language, it was important that a speech and language assessment be conducted. Therefore the IEP team meeting was not concluded, and was continued to a later date, with the hope that a speech and language assessment could be completed.

14. At the time of April 19, 2013 IEP team meeting, Student still was not receiving speech and language services, and still had not been assessed by Fresno in the area of speech and language, so there was no one to discuss progress on his speech and therapy goals, and no assessment report in that area to be reviewed at that meeting. Fresno's argument that no such assessment was yet required because one had not been done since May 2010, sidesteps the fact that Mother had signed the consent for that assessment six months before, so it should have been conducted shortly after that. Fresno did not otherwise respond to this issue.

15. The school district personnel who must attend an IEP team meeting, unless they are excused, include "a person who can interpret the instructional implications of assessments results." (Ed. Code § 56341, subd. (b).) Students who have autism may also have speech and language impairment, and although they may not qualify under the category of autism, or in the past, autistic-like behaviors, they may still qualify, as did Student in August 2014, under the eligibility category of speech and language impairment. Student had no treating speech and language pathologist since he had not been receiving speech and language therapy for the 2012-2013 school year. However, Fresno had speech and language pathology supervisors who could attend IEP team meetings in the absence of a speech and language pathologist, as did Mr. D'Souza in August 2014. Had a speech and language pathologist attended the IEP team meeting

of April 13, 2013, s/he could have impressed upon the participants why it was so important for Fresno to have completed a speech and language assessment of Student, before trying to exit him from special education solely on the basis of Fresno's psychoeducational evaluation. Accordingly, Student established there was a procedural violation because a speech and language pathologist did not attend this IEP team meeting.

#### Failure to Develop Goals at the IEP Team Meeting on April 19, 2013

16. As previously discussed, failure of Fresno to have a speech and language therapist at the IEP team meeting of April 19, 2013, was a procedural violation that significantly impeded Parents from meaningfully participating in the IEP development process. Because the five goals from the December 2011 IEP were so old, it is possible that with the assistance of Parents and other team professionals, including Ms. Davis, Mr. Vollhardt, and the general education teacher, a speech and language pathologist could have facilitated a discussion concerning the current appropriateness of the three speech and language goals from 2011. However, the only information available to the IEP team at the meeting was sparse, given the absence of a speech and language therapist. In light of *Adams*, and the snapshot rule, based on the information available to the IEP team at that time, paltry though the information might be, there was insufficient information available to the team to establish a need for new goals to be developed at that meeting. The previous finding of a procedural violation obviates the need for further analysis in this regard.

#### ISSUE 2: PROCEDURAL VIOLATIONS AT THE AUGUST 2014 IEP TEAM MEETINGS

17. Student claims that Fresno committed procedural violations at the August 21, and 28, 2014 IEP team meetings, by changing his eligibility category for special education from autistic-like behaviors to speech and language impairment. Student also



claims that Fresno's IEP from August 2014, did not accurately describe Student's academic achievement and functional performance, because it did not take into account low scores on subtests of assessments administered to Student by Dr. Glidden. Further, the goals developed at those IEP team meetings in August 2014 did not address every area of Student's needs, as they were determined by Dr. Glidden's testing, and statewide and Fresno standardized testing. At one point Mother testified that she believed Student should have a goal to address every low score on various testing results over the last several years.

18. Fresno argues that both its own assessment, and Dr. Glidden's assessment, supported a change in eligibility for Student from autistic-like behaviors to speech and language impairment. However, since Parents did not consent to a change in eligibility category, Student's eligibility category of autistic-like behaviors from the December 2011 IEP remained unchanged. Fresno also argues that all of the information in various parts of the IEP from August 2014 accurately portray Student's academic achievement and functional performance, and this information must include Student's grades and actual class performance. Finally, Fresno claims the goals developed at that IEP were legally compliant and sufficient to meet Student's needs.

#### Eligibility

19. The IEP of December 2011 showed that Student was eligible for special education under the category of autistic-like behaviors. Although the IEP developed in August 2014 proposed a change in Student's primary eligibility category to speech and language impairment, Parents, in the letter of September 4, 2014, did not agree to this proposed change. Therefore, Student's eligibility category remained autistic-like behaviors for the 2014-2015 school year, and this issue is moot.

accurate levels of academic achievement and functional performance

20. In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluation of the child, and the academic, developmental and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a)(1); Ed. Code, § 56341.1, subd. (a).)

### Analysis

21. The IEP from August 2014 contained a wealth of information concerning Student's present levels of performance, and additional information was also made available to the team by way of the Fresno speech and language assessment, Dr. Glidden's assessment, and information concerning Student's school performance from three of his general education teachers. Other general education teachers had also provided written reports with information that was included in the IEP. Mr. D'Souza and Dr. Glidden engaged in extensive conversation during the IEP team meeting of August 21, 2014, concerning Student's scores on testing by both Fresno and Dr. Glidden, what they meant, and how Student's needs could be met based on all this information.

22. Mother's focus, however, was on Student's low score on the Passage Comprehension subtest in the Woodcock-Johnson, and his low scores on the California standardized testing, and Fresno's academic testing. She did not seem as concerned about Student's low score on the Broad Written Language portion of the Woodcock-Johnson, although Dr. Glidden's 20 recommendations in his report seemed more focused on improving Student's written expression skills, rather than his reading skills. Mr. Vertson and Ms. Davis both testified that in their opinion the Passage Comprehension subtest was probably not an accurate reflection of Student's reading abilities since students with a good vocabulary tended to have higher scores this subtest. Student himself explained that he sometimes struggled with vocabulary when

reading, and if he was reading independently and did not know the definition of a word he would consult a dictionary.

23. In regards to Student's standardized test scores on both California's statewide assessments, and the Fresno assessments, there was evidence that several factors probably interacted to result in the low scores. One factor was Parents' refusal to consent to any accommodations for Student when he was administered these standardized tests. Another factor, found in Dr. Glidden's report, is that Student's language disorder can impact his "academic performance on measures that rely heavily on intact language functioning. . . [s]pecifically, this is impacting reading comprehension and written language." Reading quickly and comprehending what is read is often required if one is to excel in timed standardized tests. Student seemed somewhat aware of this issue when he explained his reading difficulties were, at least in part, based on him reading "too fast." Ms. Finley testified credibly that Fresno standardized test results were suspect because they often tested students on material that had not yet been taught in the related classes, and Student agreed with this. And Ms. Davis and Mr. Vertson both credibly opined that Student's language disorder could definitely impact him in a standardized testing situation. However, based on Student's grades in his classes, particularly English language arts, Student had developed, and continued to develop strategies to enhance his performance, notwithstanding his possible deficits in the areas of reading comprehension and written expression.

24. Mother's focus on test results, as opposed to looking at Student's day-to-day performance in the school setting, explains why she believes the IEP team in August 2014 did not consider accurate levels of academic achievement and functional performance, and therefore did not produce legally compliant goals. However, as discussed above, many other factors besides test results needed to be considered by the IEP team in determining Student's academic achievement and functional performance,

Student did not meet his burden of proof to establish that the IEP from August 2014, did not contain an accurate description of his academic achievement and functional performance.

#### Legally Compliant Goals

25. Student contends that the three goals developed at the August IEP team meetings did not meet all of his needs. Again, this claim is due to Student's focus on his low test scores in both California and Fresno standardized testing, as well as subtest results from Fresno's and Dr. Glidden's assessments. Further, Student compares his movement in grade level equivalents on psychoeducational assessments administered to him well before the beginning of the 2012-2013 school year, to grade levels for subtest scores reported in Dr. Glidden's assessment.

26. At the IEP team meetings in August 2014, Mr. D'Souza and Dr. Glidden worked to create meaningful goals that related to weaknesses Student had demonstrated when tested that were related to comprehension in general, reading comprehension, and written expression. These were areas of need determined by Dr. Glidden in his assessment, and Fresno in its assessments, and the IEP team agreed.

27. Ultimately the three goals that were developed for Student at the IEP team meeting met his needs. There were significant weaknesses in the goals since they did not have clear baselines in the goals themselves, and the comprehension goal did not contain a percentage that needed to be met for the goal to be attained. However, the goals themselves intrinsically contained sufficient information as to expectations that must be met for goals to be attained, and the goals were measurable.

28. Although Mother wanted Student to have goals in what she believed were areas of need, as demonstrated by low test scores, she could not articulate what those goals would have been. Further, there is no legal requirement that goals be specifically written to address low scores on standardized tests and assessments. If that were a legal

requirement, some students might have 15 or 20 goals or more, which would be counter-productive. Although Mother claimed that Student required goals in the area of English language development as a bilingual student, she agreed that any classwork in English could assist Student in the area of English language development. The three goals from the August 2014 IEP were measurable, and did have direct relationship to Student's present levels of performance, and the educational services to be provided to him. Student did not meet his burden of proof that the three goals from the August 2014 IEP team meetings were not legally compliant.

### ISSUE 3: PROGRESS REPORTS

29. Student contends that Fresno did not provide Parents with any progress reports concerning his goals from either the 2011 IEP, or the August 2014 IEP. As a result, they claim they were significantly impeded from meaningful participation in the IEP process. Fresno claims that Parents were provided with some progress reports. Further, they were also being provided with updated levels of performance at IEP team meetings and in various Fresno assessments, and Dr. Glidden's assessment. In addition, they were getting Student's report cards, and had 24-hour access to Roosevelt's website that would enable them to see how Student was doing in each of his classes at any time.

30. An IEP must state when periodic reports on the progress the child is making toward meeting his annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. (20 U.S.C. § 1414(d)(1)(A)(III); 34 C.F.R. § 300.320(a)(3)(ii); Ed. Code, § 56345, subd. (a)(3).)

### Analysis

31. Both the December 2011 IEP, and the August 2014 IEP require Fresno to provide Parents with progress reports related to Student's goals on a quarterly basis. There was absolutely no evidence that Fresno ever prepared progress reports on the

reading comprehension and written expression goals from the 2011 IEP. Nor were there progress reports for speech goals before the 2013-2014 school year, since Fresno was not providing Student with the speech and language services required by the December 2011 IEP. However, the evidence established that for the 2013-2014 school year, Ms. Cadenasso prepared quarterly progress reports and sent them home with Student or mailed them right after they were written, and Mother was not credible when she testified she had not received them until she got records in February 2015 pursuant to a records request. The goals with Ms. Cadenasso's progress reports on the three speech and language goals for the entire 2013-2014 school year were attached to IEP documents from the August 2014 IEP team meeting that Mother testified she had taken home with her, and were even referenced in Parents' letter of September 4, 2015.

32. The three goals developed in August 2014 had progress reports prepared for them in December 2014. The goals with the December 2014 progress reports were part of the IEP from February 13, 2015, which was sent to Parents on February 18, 2015. Mother lacked credibility when she testified she had never received them.

33. For a family to prevail on an issue they have raised concerning a school district's procedural violation, it must be proven by a preponderance of the evidence that the student was denied a FAPE due to the violation because it impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child, or caused a deprivation of educational benefits. Fresno did commit a procedural violation by never preparing progress reports on the reading comprehension and written expression goals from the December 2011 IEP. It also committed a procedural violation by not providing Parents with progress reports during the 2012-2013 school year concerning Student's progress on the speech and language goals. However, the evidence established that Parents had a wealth of information available to them during

the time period in question concerning Student's progress by way of Fresno's and Dr. Glidden's assessments, reports from teachers at IEP team meetings, report cards, and access to the Roosevelt website. Further, both Mother and Father were very active participants at the IEP team meetings they attended. Because Student did not establish that Fresno's failure to consistently provide progress reports on all goals before the 2014-2015 school year significantly impeded Parents from meaningfully participating in the IEP development process, Student is not entitled to relief for this violation.

#### ISSUE 4: "FABRICATED" DOCUMENTS

34. Student claims that Fresno "fabricated" documents. He makes this allegation because, with the exception of the February 3, 2015 letters to Student and Parent, the notice of the February 13, 2015 IEP team meeting, and the occupational therapy assessment, these documents were purportedly produced by Fresno as the result of a records request in February 2015, and Parents claim they had never seen the documents before then. Fresno denies fabricating any documents.

35. The workings of SEIS are explained in detail in the Factual Findings. As discussed in the Factual Findings, the documents referred to in subissues 4 (a) and (b), were produced by SEIS in response to the February 2015 records request, and though they contain extraneous pages due to SEIS anomalies, they are not fabricated. The documents produced that are referenced in subissue 4 (c), progress reports, were provided to Parents at other times in one form or another, and were not fabricated.

36. In regards to the speech and language assessment that is at issue in Student's Student's subissue 4 (d), multiple witnesses testified that it had been given to Mother at an IEP team meeting in August 2014, and one can infer from the language regarding the report in the September 4, 2014 letter, that Parents did have a copy of the report when they wrote the letter. There was no evidence that this document was fabricated.

## Explanation of Differences Between Student's Exhibits 39 and 40

37. Subissues 4 (e) and 4 (f) refer to Student's Exhibits 39 and 40. These documents were scrupulously reviewed and compared by the ALJ. Upon review, it is apparent that Exhibit 39 is an unattested, unaffirmed draft IEP printed out from the SEIS program by Fresno after receipt of the February 2015 records request. This occurred before the actual IEP from the IEP team meeting of February 13, 2015, Exhibit 40, had been affirmed and attested in SEIS. However, the actual notes from that meeting (set B) had already been typed into SEIS when Fresno received Mother's record request. This explains why those notes were sent to her as part of Exhibit 39. The notes pages referred to as sets A and C are notes from the August 2014 IEP team meetings. The last set of notes in Exhibit 39, set D, are draft notes that were taken into the IEP team meeting on February 13, 2015, and then revised as the meeting proceeded, which resulted in the notes that are set B. Exhibit 40 was the actual February 13, 2015 IEP that was sent to Parents and Student with letters from Ms. Scroggins dated February 18, 2015. There was no evidence that Student's Exhibits 39 and 40 were "fabricated" by Fresno.

38. Student did not establish that any Fresno personnel "fabricated" documents. Instead the evidence established that some of the documents were the result of SEIS anomalies when it prints out IEP's, and some of the documents had already been provided to Parents; Mother just did not remember previously receiving them,

## ISSUE 5: SUBSTANTIVE DENIAL OF A FAPE TO STUDENT FROM MARCH 4, 2013, TO MARCH 3, 2015

39. Student claims that he was denied a FAPE by Fresno for many reasons. Student claims that Fresno should have provided him with a program to raise him to grade-level reading, since assessments showed his reading grade level to be more than two grades below his actual grade. Student alleges that he should have been provided



with resource specialist-type services to address his reading deficits. He claims he was denied a FAPE because Fresno was trying to exit him from special education by way of the December 2012 psychoeducational assessment. Student claims that he should have been provided with goals to address every low score he received in various types of testing and assessments, because those low scores established various needs that should have been addressed by Fresno by way of goals designed to remediate those deficits, and specific services and instruction, and failure of Fresno to do so denied him a FAPE. Student claims Fresno denied him a FAPE because Fresno's IEP's did not accurately reflect his present levels of academic achievement and functional performance. Student further complains he was denied a FAPE because he was not provided with a post-secondary transition plan. Student also claims, in several parts of the closing brief, that he required services related to the acquisition of social skills.

40. Student argues that the evidence supporting a denial of a FAPE includes Student struggling in many classes, and Parents spending hours each night helping him with homework. He claims that one should not consider his high grades and class standing as evidence that he was provided a FAPE, because those grades were subjective and inflated.

41. Fresno asserts that it did provide Student with a substantive FAPE.

#### Analysis

42. Some of the claims Student raises as evidence he was denied a FAPE are addressed in other sections of this Decision, and will not be addressed here, such as the change in eligibility classification, inaccurate levels of performance, the recommendation in the December 2012 psychoeducational assessment, and the development of goals. And at the beginning of the hearing, Student asked that the claim concerning post-secondary transition planning be dismissed, so that claim will not be addressed, since it ceased to be an issue when it was dismissed.

43. As Student's representative, Mother spent a great deal of time during the hearing focused on Student's low score on the Woodcock-Johnson Passage Comprehension subtest, and the fact that the score, and other reading scores on other testing instruments, did not reflect an increase in Student's grade-level reading since he was assessed in 2010. In determining whether an IEP provides a student with a FAPE, one must look at the "big picture", not just little bits and pieces of a puzzle in isolation. In regards to Student's scores on statewide and Fresno standardized testing that Mother relies on in part to establish Student did not receive a FAPE, it is important to remember that Parents would not allow Student to have any accommodations on this testing. Evidence established that the Fresno standardized testing did not accurately measure academic skills, since it often tested students' knowledge of material they had not yet been taught. And significant evidence established that Student's language disorder affected his ability to perform well on standardized testing, especially timed testing.

44. In regards to the fact that student's score on the Passage Comprehension subtest administered by Dr. Glidden was in the low range, the evidence established that it is a test that relies on the subject having a good vocabulary. In part because of his language disorder, Student needs to increase his vocabulary, and Dr. Glidden recommended that in his report. However, Student has learned to use a dictionary when he comes across a word he does not know when reading, and not a single teacher, either testifying, or in reports reflected in IEP's, indicated that Student had a serious reading deficit, or even one at all. Both of the IEP's at issue had reading comprehension goals, and reading and writing were part of the instruction in English classes which Student took every single school year at issue. And because Student's reading comprehension is due to his language disorder, it seems unlikely that explicit reading instruction would be very effective in addressing the deficit. In fact, one of Dr. Glidden's recommendations was that Student have access to books on tape.

45. Student was exited from resource specialist class in September 2012. Mother was the only witness who seemed to think he still needed this class. The evidence established that he did not. While Parents seem to discount the hard work that Student did in high school to attain and maintain a high grade point average, claiming that all teachers at Roosevelt inflate the students' grades, this was not borne out by the evidence. Although Mother testified that Student was allowed to write and rewrite papers in English language arts, this was part of the instructional program. Students in the class were being taught to review and edit their own papers, and those of others, and they were learning that revision is necessary for good writing. In regards to Mother's claim that Student was allowed to retake tests until he received good grades, this was simply not true, based on Student's testimony which was far more credible than Mother's. Parents both asserted that grades are "subjective," and therefore cannot be trusted to establish a student's learning and achievement. However, teachers who testified were quite credible in establishing that papers and tests are not "subjectively" graded. Instead they established that rubrics are used to assess most papers and tests, and these rubrics are tailored for each assignment and test. Although Parents claimed that they spent many hours each evening helping Student with his homework, and that was why his grades were high, Student did not support this testimony.

46. Part of the substantive denial of a FAPE claim rests on the contention that Student required more social skills training. While it is true that some of that training was to be addressed by the speech and language therapist working on related goals, and Student did not receive any speech and language therapy from before December 2011, until the beginning of the 2013-2014 school year, failure to implement the IEP is not at issue, as discussed above. To the extent that the claim rests on failure of Fresno to offer Student a social skills class, the evidence was clear-cut that Fresno did make that offer more than once, and until Parents agreed to the class after the August 2014 IEP

team meetings, Parents refused to allow Student to participate in such a class.

47. Portions of Student's closing brief focus on the fact that Student was being educated under the auspices of an IEP that was several years old. It is unfortunate that Student, year after year, continued to be educated under an IEP from December 2011, as amended in September 2012, and amended again in September 2014 to the extent allowed by Parents by way of the September 4, 2014 letter of partial consent. Fresno is not blameless in this regard, since it did not assess Student in the area of speech and language until January 2014, even though a speech and language assessment was consented to by Mother in October 2012. Fresno also delayed holding IEP team meetings from December 2012 to August 2014, albeit some of the delays were caused by Fresno personnel acceding to Mother's request that the speech and language assessment be reviewed at the same IEP team meeting at which Dr. Glidden's report was to be reviewed. However, beginning with the IEP team meetings in August 2014, delays were caused by Parents, not Fresno.

48. Based on all the evidence at hearing, both testimonial and documentary, Student made educational progress and was not denied a substantive FAPE by Fresno. His grades were an accurate reflection of his perseverance, hard work, and ability to achieve academically, even though he had some deficits in academic skills. His achievement of a high school diploma and high graduating class academic standing, as well as other evidence, establish that he received a FAPE from Fresno.

## REMEDIES

1. Student established that Fresno should have had a speech and language therapist at the April 19, 2013 IEP team meeting, and also established that Fresno did not consistently prepare progress reports and give them to Parents. The first procedural error significantly impeded Parents from meaningful participation in the IEP development process.

2. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft “appropriate relief” for a party. (*Ibid.*) An award of compensatory education need not provide a “day-for-day compensation.” (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific and be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*)

3. The IDEA does not require compensatory education services to be awarded directly to a student, so staff training can be an appropriate remedy. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Ibid.*) *Student v. Reed Union School District*, (Cal. SEA 2008) 52 IDELR 240 [109 LRP 22923; Cal.Ofc.Admin.Hrngs. Case No. 2008080580] [requiring training on predetermination and parental participation in IEP’s]; *Student v. San Diego Unified Sch. Dist.* (Cal. SEA 2005) 42 IDELR 249 [105 LRP 5069] [requiring training regarding pupil’s medical condition and unique needs].)

4. The evidence established that Student was provided with a FAPE. The evidence did not establish that he is entitled to compensatory education for the

procedural violation related to Fresno's failure to have a speech and language pathologist at the IEP team meeting of April 19, 2013, although this failure did significantly impede Parents' meaningful participation in the IEP development process. However, there was no evidence presented about compensatory education for Student that could remediate this procedural violation. The procedural violation concerning progress reports was not found to significantly impede Parents' meaningful participation in the IEP development process since other sources of information provided them with information concerning Student's progress.

5. The evidence did establish that because Fresno committed these procedural violations, there is a need to have staff trained in these areas. Accordingly, Fresno is ordered to provide training to special education staff who act as case managers in the areas of best practices for ensuring the attendance of necessary IEP team members, and ensuring that progress reports on goals are timely issued and provided to parents. The training shall be provided by an outside agency, and shall be a minimum of three hours in length.

## ORDER

1. Within 90 days of this Decision, Fresno shall contract with an outside agency to provide Fresno special education staff who act as case managers, with at least three hours of training concerning the requirements and best practices to ensure required IEP team members attend IEP team meetings, and to ensure progress reports on goals are timely issued and provided to parents. This training shall be completed no later than March 1, 2016.

2. All of Student's 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 prevailed on Issue 1 (a), and partially prevailed on issue 3. Fresno prevailed on Issues 1 (b), 2, 4, and 5, and partially prevailed on Issue 3.

## 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).)

DATED: August 31, 2015

\_\_\_\_\_/s/\_\_\_\_\_  
REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings