

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL
DISTRICT,

OAH Case No. 2015010431

FOLSOM CORDOVA UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2014121009

DECISION

Folsom Cordova Unified School District filed a due process hearing request with the Office of Administrative Hearings, case number 2014121009 (District's Case) on December 24, 2014, naming Student. Student filed a due process hearing request with OAH, case number 2015010431 (Student's Case) on January 9, 2015, naming District. On February 23, 2015, OAH issued an order consolidating District's and Student's Cases. On April 2, 2015, OAH granted Student's motion to amend the complaint in Student's Case and designated Student's Case as the primary case for the purposes of establishing the 45-day timeline for decision issuance in the consolidated cases.

Administrative Law Judge Sabrina Kong heard this matter in Rancho Cordova, California, on May 28, 2015, June 8, 9, 10 and 11, 2015.

Parents represented Student, and attended the hearing on all days.

Rebecca Feil, Attorney at Law, represented District. Betty Jo Wessinger, District's Special Education Director, attended the hearing on May 28, 2015. Hunt Lin, District's Special Education Secondary Coordinator, attended the hearing on June 8, 9, 10 and 11, 2015.

The matter was continued to July 6, 2015, for the parties to file written closing arguments. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES¹

STUDENT'S ISSUES:

1. Did District procedurally and substantively deny Student a FAPE during the 2012-2013 school year, starting from January 9, 2013 by:

- (a) Failing to assess Student in all areas of suspected disability, specifically in executive functioning and auditory processing²;
- (b) Denying Parents meaningful participation in the individualized education program team meetings held on January 18, 2013, March 1, 2013, April 5, 2013, and May 21, 2013;

¹ 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.)

² Auditory processing was an issue in Student's due process complaint and added as an issue at hearing per Parents' request because Parents inadvertently left it out at the Pre-Hearing Conference.

- (c) Predetermining Student's IEP dated January 18, 2013³;
- (d) Failing to provide Student with a measurable reading comprehension goal;
- (e) Failing to provide goals in all areas of need, specifically in: (i) math; (ii) executive function; (iii) attention; and (iv) anxiety; and
- (f) Failing to provide Student with a psychoeducational and academic independent evaluation as agreed to by District?⁴

2. Did District procedurally and substantively deny Student a FAPE during the 2013-2014 school year by:

- (a) Failing to have an IEP in place at the beginning of the school year;
- (b) Failing to implement Student's IEP by not providing Student with specialized academic instruction in Student's: (i) English class; and (ii) math class;
- (c) Failing to change Student's math placement;
- (d) Failing to provide prior written notice to Parents when they requested Student

³ At hearing, Parents requested that the January 18, 2013 date be substituted for the May 21, 2013 date because the May 21, 2013 date was a mistake and a continuation of the January 18, 2013 annual IEP. District did not object to the substitution, and the ALJ made the change.

⁴ At hearing, Parents withdrew the issue in the May 22, 2015 Order Following PHC alleging that District failed to provide speech and language sessions contained in the IEP. Because speech and language was not an issue at hearing, details regarding speech and language goals, services, etc. were included in this decision as context for discussion of relevant evidence. At hearing, Parents withdrew issues alleging that District denied Student a FAPE by: 1(f) failing to implement Student's IEP accommodations and modifications for the 2012-2013 school year, and 2(b) (ii) failing to implement Student's IEP by not providing accommodations in all classes for the 2013-2014 school year.

receive additional math support, an independent study period, or specially designed academic instruction in English;

- (e) Failing to have a general education teacher help decide Student's accommodations, appropriate positive behavioral interventions and supports, supplementary aides and services, program modifications, and supports for school personnel during the October 18, 2013, January 10, 2014, and February 28, 2014, IEP team meetings;
- (f) Failing to provide student with transition goals and services; and
- (g) Unilaterally determining and developing Student's IEP dated January 10, 2014?

3. Did District procedurally and substantively deny Student a FAPE during the 2014-2015 school year by:

- (a) Failing to implement Student's IEP, specifically regarding: (i) specialized academic instruction in English class; and (ii) accommodations and modifications in Student's math⁵ and history classes;
- (b) Failing to provide Student with transition goals and post-secondary transition services;
- (c) Failing to have an annual IEP team meeting; and
- (d) Failing to provide IEP progress reports?

DISTRICT'S ISSUE:

1. Is District entitled to assess Student in accordance with its April 10, 2014 assessment plan without parental consent?

⁵ Per Parents' request, ALJ substituted math for science at hearing because math was the subject stated in Student's complaint regarding this issue, not science, an error Parents failed to correct at the PHC.

SUMMARY OF DECISION

Student did not demonstrate that during the 2012-2013 school year District inappropriately failed to assess Student in executive function and auditory processing, or that Parents were denied meaningful participation in the January 18, 2013, March 1, 2013, April 5, 2013, or May 21, 2013 IEP team meetings, or that District predetermined Student's January 18, 2013 IEP. Student also did not demonstrate that the 2012-2013 reading comprehension goal was not measurable, or that District's failure to provide goals in math, executive function and anxiety was inappropriate, or that District failed to provide a psychoeducational and academic independent evaluation as agreed.

Student did not demonstrate that during the 2013-2014 school year District failed to have an IEP in place at the beginning of the school year, or failed to implement Student's IEP by not providing specialized academic instruction in his math class. Further Student did not establish that District inappropriately failed to change Student's math placement, or failed to provide prior written notice to Parents regarding math support, an independent study period, or specialized academic instruction in English. Student did not prove that general education teachers did not help decide Student's placement, services, supports and accommodations during the October 18, 2013, January 10, 2014, and February 28, 2014 IEP team meetings. Student also did not demonstrate that District failed to provide him with transition goals and services during the 2013-2014 school year, or that District unilaterally determined and developed Student's January 10, 2014 IEP. Student did not demonstrate that during the 2014-2015 school year District inappropriately failed to hold an annual IEP team meeting, or failed to provide IEP progress reports which resulted in a FAPE denial, or failed to implement Student's IEP by not providing accommodations and modifications in Student's math and history classes, or that District did not provide Student with transition goals and post-secondary transition services.

However, Student demonstrated that District failed to provide Student with an attention goal during the 2012-2013 school year and that failure impeded his access to a FAPE. Student also demonstrated that District failed to implement his IEP by not providing specialized academic instruction in his English class from October 18, 2013, to the end of the second quarter of the 2013-2014 school year, and during one quarter of the 2014-2015 school year. The remedy is that District shall provide, and/or fund, 54 hours of one-to-one academic tutoring to Student.

District demonstrated that it is entitled to assess Student pursuant to the April 10, 2014 assessment plan, without parental consent. The remedy is that District shall commence assessment of Student at the beginning of the 2015-2016 school year.

FACTUAL FINDINGS

1. Student is a 17-year-old male who resided in the District at all relevant times. He was found eligible for special education by District under the category of speech and language impairment, and the IEP team agreed to add specific learning disability as a secondary eligibility on May 6, 2014.

2. On March 14, 2012, Parents entered into a settlement agreement with District where they consented to Student's May 20, 2011 IEP. The May 20, 2011 IEP specified that Student would be educated in a regular classroom, general education environment 99 percent of the time, with 1 percent of the time in special education speech and language, pull out services of 20 sessions yearly at 25 minutes each session. The settlement agreement specified that Student would receive English language arts for 50 minutes each school day of specialized academic instruction. The May 20, 2011 IEP included goals regarding semantics, organization and planning, auditory processing/self-advocacy, passage/oral comprehension, and passage comprehension. The May 20, 2011 IEP included the following supports for Student's instruction: (i) directions given in a variety of ways; (ii) visual supports; (iii) preferential seating; (iv)

adequate time/extended time for assignment completion; and (v) use of assignment notebook and study sheets.

3. On May 11, 2012, an annual IEP meeting was held and goals were proposed by the District members of the IEP team. On August 9, 2012, Parents drafted an Attachment 1 to the May 11, 2012 IEP. While Attachment 1 stated that Parents agreed with the May 11, 2012 IEP with exceptions, the exceptions were so extensive and contradictory that there was no agreement to the May 11, 2012 IEP. The following facts overwhelmingly supported that Parents did not agree to the May 11, 2012 IEP as Parents' stated extensive exceptions, with handwritten revisions specifying who could implement the goals proposed by the District and conditioning their agreement to the IEP upon acceptance of their handwritten revisions. Further, Parents' statement that the services in the March 14, 2012 settlement agreement remained "stay put" and "in effect", with a statement on the top of Attachment 1 stating that Parents agreed to all 15 pages of the IEP, and on the bottom of Attachment 1 a contradictory statement providing that Parents only agreed to 12 of the 15 pages of the IEP, plus un-contradicted testimony from District's witnesses at hearing that there was no agreement to any of Parents' changes in Attachment 1.

4. In the Spring of 2012 Student scored 317 in English language arts and 334 in general math in his California Standardized Testing and Reporting. These scores were within the basic performance levels.

ASSESSMENT (PSYCHOEDUCATIONAL AND ACADEMIC)

5. On January 11, 2013, school psychologist Shauna Williams performed a psychoeducational assessment on Student. She was a school psychologist for 15 years, and has assessed over 700 students over her career. Ms. Williams reviewed Student's special educational records, his cumulative file, State and District academic achievement results, grades for the first semester of 2012-2013 school year, teachers' reports, and

2010 and 2011 private assessment reports of neurologist Maria Moleski, and speech pathologists Donna Northcutt and Jane Johnson in assessing Student. Ms. Williams performed the Test of Auditory Processing Skills-Third Edition, on Student and concluded that he had below average to average auditory processing skills and auditory memory, below average ability to recall basic auditory information, and low average ability to understand spoken information and use of the information to draw conclusions and make inferences. She noted that Student's scores could have been impacted by his difficulty to sustain attention and concentration.

6. Ms. Williams administered the Behavior Assessment Scale for Children, Second Edition questionnaires to four of Student's teachers, one of the Parents, and Student. One teacher reported that Student had attention problems in the clinically significant range, with significant difficulty maintaining necessary levels of attention at school. Two teachers reported Student had social skills issues in the clinically significant range as Student had difficulty complimenting, and making suggestions in a tactful and socially acceptable manner. Three teachers reported Student had behaviors in the at-risk range. Such at-risk behaviors included Student being disconnected from his surroundings, difficulty in adapting to changing situations and taking longer to recover from difficult situations than students his age, and social skills. Further, Student had communication deficits; poor expressive and receptive communications skills; difficulty seeking/finding information by himself; easily upset, frustrated and angered because of environmental changes; and reacted negatively when confronted with changes in activities or routines. Student also took longer to recover from difficult situations, lacked creativity, and/or had trouble getting others to work together effectively, and had weak study skills. One of the Parents and one teacher did not report any behaviors in the clinically significant or at-risk range. Ms. Williams did not conduct a cognitive assessment of Student.

7. As to social-emotional functioning, Student's self-rating showed that he worried; was nervous; unable to relax; and had test anxieties, headaches, sore muscles, stomach ailments, and dizziness. Student's self-rating indicated he felt good about himself, but was insecure regarding his academic performance because of difficulty interpreting verbal information which caused him stress and anxiety, but did not present as anxiety to others.

8. Cathleen Buonauro was District's special education teacher for 20 years, had a masters' degree in special education, and had assessed Student's academic and functional skills in December 2012 by conducting the Wechsler Individual Achievement Test-Third Edition over three days and during different class periods. Student scored between 85 and 115, in the average range, in subtests, including receptive and expressive vocabulary, sentence composition and repetition, spelling, oral expression and oral fluency, proper expression and intonation, math problem solving and numerical operations. Ms. Buonauro found that math fluency was an area of relative strength for Student because he scored above grade average on all three math subtests with standard scores ranging from 117-125. Student's written essay demonstrated above average theme development and organization with appropriate transitions and elaborations. Student scored a 97, or a grade level equivalence of a sixth grader, in a reading comprehension subtest, demonstrating the ability to return to a passage to find the correct answer, and the ability to infer on occasions. Listening comprehension was an area of relative weakness for Student. For example, when instructed to point to the picture that matched the word "doze", Student pointed to a moving man, instead of a sleeping man.

9. Ms. Williams recommended that Student continued to be eligible for special education under specific learning disorder and for the IEP team to consider speech and language impairment eligibility. She also recommended the following to the

IEP team: (i) have Student highlight and annotate relevant information to assist Student in recounting pertinent information; (ii) have Student utilize a thesaurus for correct word usage; (iii) have Student identify and verbalize to teachers what Student believed was the most effective strategy for classroom success; and (iv) have Student initiate one-to-one meeting with his teachers at the beginning of each term to foster good communication, and share Student's sensitivities and challenges to lessen anxiety.

2012-2013 SCHOOL YEAR

January 18, 2013 IEP Team Meeting

10. On January 18, 2013, an annual/triennial IEP team meeting was held. Parents, Student, Ms. Williams, Ms. Buonauro, speech and language therapist Anne Jones, program specialist Beth Marjerison, principal John Dixon, general education math teacher Scott Seffen, and general education teacher for advisory Jessica Mann attended.

11. Parents provided a written packet listing their concerns, requests and a summary of Student's issues, performance, present levels, and other information they deemed important (Written Packet) for the IEP team. At the IEP, Mother shared that Student was struggling in math. She requested one-to-one assistance for 20 minutes a day in his Algebra class, because she did not believe Student was getting enough help. Mr. Seffen shared that he could help Student both before school and during Student's advisory class, in addition to help available to Student in the advisory class. Ms. Buonauro advised that the instructional assistant in Mr. Seffen's math class was also available to help Student. Mr. Seffen noted Student's attention issues. Student asked for a change in seating in his math class and Mr. Seffen agreed to move Student to an area with fewer distractions. Student acknowledged that he understood the math materials, but sometimes made calculation errors. Mr. Seffen suggested that Student take the time to check answers after a test, and Student agreed. The IEP team also discussed Student's

California Standardized Testing and Reporting results with Parents expressing concern that Student dropped 30 points in the English language arts section between 2011 and 2012. Ms. Buonauro reviewed Student's academic assessment report, sharing that Student's writing was at grade level, he had good grammar skills and an A in English, and that his classroom performance reflected higher abilities than his English language arts 2012 California Standardized Testing and Reporting results. Ms. Williams provided the psychoeducational assessment report to Parents before the IEP team meeting, asked if Parents had any questions at the meeting, and Parents did not. Student and Mother requested that Student be pulled out of physical education class for speech and language sessions, and Ms. Jones addressed the different options for speech and language pull out sessions, which Mother agreed to discuss with Student. After two hours, the IEP team agreed to reconvene on February 1, 2013, to complete the IEP.

12. On January 23, 2013, Parents informed District that they disagreed with District's academic assessments and requested an independent assessment. On February 19, 2013, District asked Parents what area of the Wechsler Individual Achievement Test-Third Edition, in which Parents wanted Student to be further examined, explained that Student could not be re-administered the Wechsler Individual Achievement Test-Third Edition, within a year, and proposed that another special education teacher administer the Woodcock-Johnson Achievement Test. On February 21, 2013, District sent Parents District's Criteria for Independent Evaluations, which stated that evaluators must be located within the greater Sacramento area, and that those outside of the area would be approved if Parents demonstrated the necessity of using personnel outside the specified area. On February 21, 2013, Parents sent District an updated Written Packet in preparation for the March 1, 2013 IEP team meeting, rescheduled from February 1, 2013, at Parents' request. On February 24, 2013, Parents informed District that they chose Mary Gwaltney for the independent psychoeducational evaluation. On February 25,

2015, District informed Parents that it was not aware that Parents wanted an independent psychoeducational evaluation because they previously requested an independent academic assessment, and asked again if Parents were receptive to another special education teacher performing the academic assessment. Parents responded that they wanted Ms. Gwaltney to perform the independent assessment. District responded that Parents' request would be addressed at the continued IEP team meeting.

13. On February 27, 2013, Parents submitted a summary of Student's educational history in preparation for the March 1, 2013 IEP team meeting. Parents requested that District address in advance of the IEP team meeting as many issues as possible in writing. On February 28, 2015, in response, Ms. Marjerison wrote a four page letter in which she explained the roles of the case manager and program specialist, extended school year, regression, specialized academic instruction; answered questions about various classes and goals; and explained that some of the items in the Written Packet required input from the IEP team.

March 1, 2013 IEP Team Meeting

14. Parents, Student, Ms. Marjerison, Dr. Dixon, Ms. Williams, Ms. Buonauro, Ms. Jones, program coordinator Sunny Lofton, non-public agency speech therapist Vicki Berezin, counselor Christine Portney, and general education teacher Hedi Schultz attended the March 1, 2013 IEP team meeting. At Parents' request, general education teacher Ms. Schultz attended the entire meeting.

15. Parents provided at the IEP team meeting both a January 18, 2013 and a March 1, 2013 Written Packet. Ms. Schultz, the physical/earth science teacher, reported that Student was doing a great job and had a B- in her class. She reported that he was engaged during lectures, asking questions and contributing during open class discussions; had good work completion, though sometimes he fell behind; and although his test scores were low his class performance was good. Parents shared that private

tutoring helped Student improve his grade.

16. Although he did not attend the March 1, 2013 IEP meeting, Mr. Seffen provided written input for the meeting. He reported that Student's grade in Algebra with support class was a B- at the time of the IEP, and that Student scored a 78 percent and a 86 percent on the last two tests. Mr. Seffen shared that Student had good citizenship, attitude, attendance, and work completion, and that Student's participation and preparedness were average. Ms. Hammer⁶ was the instructional assistant and provided daily support to Mr. Seffen's Algebra class. Mr. Seffen also shared that Student received math enrichment from Ms. Quinton⁷ and Ms. Hammer during Student's advisory class period. Ms. Hammer shared that Student understood and learned math concepts quickly, solved simple and complex math problems consistently, and asked her for help on a daily basis.

17. Ms. Jones reviewed the speech and language report. Ms. Berezin and District representatives updated the IEP team as to Student's progress on goals. District proposed new goals. Parents had questions about the reading level passage used for auditory comprehension, and expressed that they did not find that goal to be measureable. Although District and the speech and language specialists disagreed with Parents that the goal was immeasurable, they incorporated a standardized score into the goal per Parents' request. Parents also disagreed with Student being listed as one of the persons responsible for measuring goal progress. District believed that as part of the IEP team Student should be partially responsible for his progress, but removed Student as the responsible person on all the proposed goals, except for two, per Parents' request. Parents requested a reading comprehension goal, and Ms. Buonauro agreed to

⁶ The parties did not provide evidence as to Ms. Hammer's first name.

⁷ The parties did not provide evidence as to Ms. Quinton's first name.

draft one. District also agreed to Parents' request that the speech goals be offered in an amendment to the May 2012 IEP so that Parents could consent to the speech goals and implementation could commence immediately, independent of the completion of the January 18, 2013 annual IEP. Parents wanted age and grade equivalents incorporated into the goals. Ms. Buonauro and Ms. Schultz reassured Parents that teachers understood the IEP absent age and grade equivalents and, after discussion of the inappropriateness of incorporating same, District did not incorporate age and grade equivalents to the goals. Although the IEP team commenced discussion of the accommodations and modifications for Student, it was not completed. After two hours, the IEP team agreed to reconvene to complete the annual IEP.

18. On March 5, 2013, Ms. Marjerison agreed to Parents' selection of Ms. Gwaltney to perform the independent psychoeducational assessment. On March 6, 2013, Ms. Marjerison provided District's list of independent psychoeducational assessors for Parents to consider because Ms. Gwaltney was unavailable to perform assessments.

March 8, 2013 Addendum to May 2012 IEP

19. The IEP team drafted an addendum dated March 8, 2013, to the May 2012 IEP and Parents consented to the following five goals: (i) supralinguistics/listening; (ii) critical thinking/supralinguistics; (iii) semantics/syntax/contextual clues; (iv) reading comprehension; and (v) pragmatic language. At hearing, Father explained that Parents consented to the reading comprehension goal because it was better than not having any reading comprehension goal. While at hearing various District personnel's testimony conflicted with Father's testimony regarding whether Parents consented to the reading comprehension goal, Father's testimony was more persuasive because it was corroborated by District's progress reports on the reading comprehension goal. Parents' marked changes to the accommodations and modifications page of the March 8, 2013 addendum on which they handwrote "OK to implement pending further discussion and

finalization...3/11/13" was not an agreement.

20. The reading comprehension goal provided that

"By 1/17/2014 *[Student]* will interact with reading material (handouts provided by teachers and/or available online) independently by annotating important information contained in the reading material along with highlighting key words, phrases and concepts so that he can reference these annotated notes to recall relevant information needed to respond to question with 85% accuracy at least 85% of time as measured by teacher observation. *[Student]* will also use sticky notes in textbooks identifying key information such as vocabulary and key concepts to find the information necessary to accurately answer assignment and test questions with 85% accuracy at least 85% of the time as measured by staff observation and/or improvement on course tests."

21. On March 29, 2013, Parents informed District that they had selected Lisa Sporri, Ph.D., to perform a neuropsychological assessment and an academic assessment of Student. Dr. Sporri was a pediatric neuropsychologist with a masters' degree in special education. Dr. Sporri was located in San Francisco, outside the geographic area of District's Criteria for Independent Educational Evaluations. On April 3, 2013, District again forwarded Parents a copy of its Criteria for Independent Educational Evaluations and asked that Parents pick someone within District's geographical area, because District was not aware of any special circumstances that dictated the use of a provider outside of District's geographical area.

April 5, 2013 IEP Team Meeting

22. The triannual IEP was continued from March 1, 2013, to April 5, 2013. Parents, Student, Ms. Marjerison, Dr. Dixon, Ms. Williams, Ms. Buonauro, Ms. Jones, and Mr. Lofton, general education English teacher Janice Johnson and general education guitar teacher Vince Martini attended the April 5, 2013 IEP team meeting.

23. Parents provided another Written Packet for the IEP team before the IEP team meeting. At the meeting, Parents discussed their proposed goals in the Written Packet, and expressed concerns with Student's reading comprehension because Student's 2012 California Standardized Testing and Reporting scores fell 30 points compared to the 2011 California Standardized Testing and Reporting scores. Therefore, Parents proposed a goal that Student would achieve state standards, measured by the California Standardized Testing and Reporting and the California High School Exit Exam. District disagreed with using California Standardized Testing and Reporting and California High School Exit Exam as the proper goal measurement. Parents also requested that District provide Student with 20 minutes of one-to-one instruction in each class, and that all materials be provided to Student a week in advance of it being taught in class. District agreed to continue providing materials to Student in advance, but stated that the "one week in advance time frame" would not be practical. Parents requested that Student be taught from a lower grade level curriculum. District disagreed because his teachers reported he was accessing grade level materials. District also disagreed that Student required increased services.

24. At the time of the April 5, 2013 IEP team meeting, Student had A's in English, science, and guitar, and a C- in math. Ms. Johnson shared that Student was always on target when she checked with him for understanding in the English class that she co-taught with Ms. Buonauro. Ms. Johnson rated Student's attendance, work completion, and participation as good; Student's citizenship, attitude, and preparedness

as average; and Student's grammar and reading as excellent. Ms. Johnson described Student as self-sufficient, bright, and capable of complex and critical thought. When focused, his contributions to group discussions were insightful and interesting. Ms. Johnson noted that Student struggled with attention, requiring task redirection at a rate of 20 times per class period and, if not closely watched and kept on task, was a distraction to himself and others. Mr. Martini described Student as organized, on task, meeting all expectations, and enthusiastic in guitar. Mr. Martini had no concerns about Student's progress in music. Ms. Buonauro reviewed written information regarding Student's classroom performance in math submitted by Mr. Seffen and Ms. Hammer, and in physical/earth science submitted by Ms. Schultz. Mr. Seffen rated Student's citizenship, attitude, and preparedness as average; work completion and attendance as good; and participation as poor, stating that Student was disrespectful when called upon to answer questions when he did not know the answer. Mr. Seffen included a copy of Student's math test for the IEP team where Student scored 38 out of 75 because of careless errors which could have been avoided if Student checked for accuracy before turning in the test. After a test, Student would review the content and errors with Ms. Hammer. Ms. Hammer reported that she checked with Student for understanding on every concept presented in class and that Student asked her for clarification, was on task, and attended to her instruction. Ms. Schulz reported that Student was engaged and worked well in his lab groups, and demonstrated good time management and work completion. After two hours, the IEP team agreed to reconvene to complete the annual IEP.

25. On April 3, 2013, District again sent Parents its Criteria for Independent Educational Evaluations and asked Parents to select an independent psychoeducational evaluator because Parent's first choice, Ms. Gwaltney, was not available. On April 26, 2013, Parents again requested that District use Dr. Sporri to perform an independent

assessment. On April 29, 2013, Parents explained to District that the only District criteria Dr. Sporri did not meet was the local area criteria. Parents stated that Dr. Sporri was capable of assessing for all suspected learning disabilities including learning disorders, processing disorders related to brain structures and systems and executive function and they were not aware of any pediatric neuropsychologists in the Sacramento area that could conduct a pediatric neuropsychological assessment.

26. In several e-mails of May 2, 7, and 8, 2013, District informed Parents that a psychologist was appropriate to conduct the independent psychoeducational assessment with which Parents disagreed. District asked Parents for an explanation as to why a neuropsychologist and a neuropsychological assessment were needed, to which Parents did not provide any further explanation as to why a neuropsychological assessment, instead of the independent psychoeducational assessment, was needed.

27. On April 15, 2013, Parents obtained an independent speech and language assessment from private assessor Jane Johnson. Her assessment report concluded that Student had comprehension, word finding, memory, and linguistic difficulties, and noted that Student scored low in social cognition and social communication which impacted his reading comprehension, written expression, group work, and perspective taking abilities. She reviewed reports regarding Student, and observed and tested Student in her clinic over a three day period. She administered the Comprehensive Assessment of Spoken Language; several subtests of the Woodcock Johnson Achievement Test-Third Edition; Test of Adolescent Word Finding; Test of Auditory Processing Skills-Third Edition; and the Detroit Test of Learning Aptitude-Fourth Edition to Student. Her findings showed Student to be a much more impacted student than he presented at school, scoring in the lower 50th percentile in most tests except for one subtest of the Comprehensive Assessment of Spoken Language regarding antonyms where he scored in the 53rd percentile. She recommended that an audiologist evaluate if Student had a

central auditory processing deficit.

May 21, 2013 IEP Team Meeting

28. The triannual IEP was continued from April 5, 2013, to May 21, 2013. Parents, Student, Ms. Marjerison, Dr. Dixon, Ms. Williams, Ms. Buonauro, Ms. Jones, Mr. Lofton, Mr. Seffen, and school nurse Patti Morton attended the May 21, 2013 IEP team meeting.

29. Parents provided a Written Packet for the IEP team before the IEP team meeting. The Written Packet was reviewed and considered by the IEP team, including a parental request for one-to-one direct instruction of 20 minutes daily in each class, and suggestions for teaching materials for District to use with Student. At the IEP, Parents shared that they were concerned that Student did not understand what he read and what was taught in class, and that Student was segregated in the classroom from his classmates. District provided Parents with a college planning worksheet, a copy of Student's transcripts showing that Student had a 3.0 grade point average and was meeting eligibility requirements for admission to a four year college. At the time of the May 21, 2013 IEP team meeting, Student had an A+ in English, an A in guitar, a B+ in science, and a C in math. Parents were concerned that the grades were inflated, not reflective of Student's academic struggles, and especially not reflective of Student's history of test taking difficulties. Mr. Lofton explained that the grades were not entirely based on test scores, and considered other aspects of Student's class performance.

30. Mr. Martini, Ms. Jones, and Ms. Schulz did not attend this session of the IEP, but provided information regarding Student's performance. Mr. Martini's report was the same as for the April 5, 2013 IEP, and added that Student was moved to the front where he spent one-to-one time with Student during group time. Ms. Jones' report was the same as on April 5, 2013, and added that Student needed reminders to refrain from socializing during class, that he sat in front of the class, that notes were provided to

Student, and he was expected to interact with the notes by annotating and highlighting important information. She also reported that Student's word choice, sentence structure, and transitions continued to improve, and his class participation responses were on topic and thoughtful. Ms. Schultz reported that Student was on pace with his classmates. She also shared that Ms. Dosh, an instructional assistant, periodically checked and monitored Student's understanding in class daily, and that Student was offered the opportunity to take tests in another classroom with Ms. Dosh. Student received 86 percent on a test he took with Ms. Dosh in a separate class. He received a 50 percent and failed a test that he elected to take with the rest of the class. Mr. Seffen's report was the same as on April 5, 2013, and added that Ms. Hammer reviewed concepts with Student and that she indicated that Student needed to attend to details and accuracy on tests. For example, Student would multiply a positive number by a negative number and provided a positive number answer, which was incorrect. Mr. Seffen emphasized that Student needed to thoroughly check his work with the concepts and pace of instruction increasing in intensity. Ms. Morton reported on Student's health assessment and reported that Student passed his vision and hearing tests. Ms. Jones reviewed Ms. Johnson's April 4, 2013 speech and language report, stating that Ms. Johnson's scores for social language should be viewed with caution because they showed that Student regressed with social language skills (an area which students did not typically regress) from the October 15, 2011 speech and language assessment also performed by Ms. Johnson. Ms. Jones shared that she had requested Ms. Johnson's test protocols to examine the areas where Ms. Johnson recorded Student's areas of low scores.

31. Parents requested one-to-one in home math support for Student because Mother felt that language deficits were impacting Student's math progress. Parents also requested specific classes for Student in the 2013-2014 school year, and District

explained that changes might occur in the master schedule such that the courses could not be guaranteed. Mr. Seffen recommended a general education class with a classroom instructional assistant called "Bridge to Geometry" because it provided a review of algebra, offered more support than Geometry, and like the algebra with support class in the 2012-2013 school year, was supported by a classroom instructional assistant. District offered the following specialized academic instruction to Student as FAPE: (i) from January 18, 2013, through May 30, 2013, 83 minutes, five times weekly, of specialized academic instruction in English 9; (ii) from January 18, 2013, through May 30, 2013, 83 minutes, five times weekly, of specialized academic instruction in Algebra 1 with support; (iii) from August 12, 2013, through January 17, 2014, 83 minutes, five times weekly, of specialized academic instruction in Bridge to Geometry; (iv) from August 12, 2013, through January 17, 2014, 30 minutes, once a week, of specialized academic instruction with general education course assignments and/or tests as needed in the Learning Center, a tutoring support center available to general education students; (v) 38 sessions for 30 minutes yearly of speech and language services. The IEP team also discussed and agreed that Student did not need extended school year.

32. Parents disagreed with District's FAPE offer. Parents also disagreed with the District's psychological assessment, and asked for a neuropsychological assessment on the basis that District did not assess Student in all his areas of disability. Mr. Lofton explained that if Parents disagreed with the District's psychoeducational assessment, they were entitled to an independent psychoeducational assessment. He explained that a neuropsychological assessment was a different level of assessment.

33. Parents believed that they were denied meaningful participation because the notes of the January 18, 2013, March 1, 2013, April 5, 2013 and May 21, 2013 IEP team meetings were inaccurate to the extent that the notes stated that the teachers reported as to Student's class performance because: (i) Parents were not provided with

any copies of teachers' report at, or after, the IEPs; and (ii) a District representative summarized Student's performance in his classes without all of the teachers who purportedly "reported" being present or speaking at the IEP team meetings. District personnel explained that the IEP notes meant to convey that the teachers provided information as to Student. This information could be provided either by the teacher attending the IEP team meeting to speak to Student's performance, or by providing the information to another District representative to present at the IEP team meeting. Parents were confused that "teacher reported" meant that there was an actual report to be distributed and that District withheld those "reports" from them and misrepresented that in the IEP team meeting notes. Further, Parents complained that there was no discussion at the IEP team meetings regarding the psychoeducational report. District explained that the psychoeducational report, along with all assessment results, were given to Parents in advance of the first session of the January 18, 2013 annual IEP team meeting, and were asked at the meeting if they had any questions about the reports. Parents did not have any questions specific to the psychoeducational report and the team proceeded to discuss other assessments, reports, and issues which Parents were interested in discussing.

34. On May 29, 2013, District enclosed a list of evaluators for Parents' selection to provide an independent psychoeducational assessment because Parents had not demonstrated that Student needed a neuropsychological assessment.

35. Dr. Sporri administered the Behavior Assessment Scale for Children--Second Edition (from reviewing the questionnaires provided by teachers in District's January 2013 triennial assessment); the Beck Youth Inventories; California Verbal Learning Test; Children's Memory Scale; Conner's Continuous Performance Test-Second Edition; Delis-Kaplan Executive Function System; Expressive One Word Picture Vocabulary Test-Fourth Edition; near vision and color screen; Nelson Denny Reading

Test; Social Communication Questionnaire; Test of Word Reading Efficiency-Second Edition; Wechsler Intelligence Scale for Children-Fourth Edition; and the Woodcock Johnson Achievement Test-Third Edition. After two days of assessments, Dr. Sporri's diagnosed Student with pervasive developmental disorder not otherwise specified, on the autism spectrum, with generalized anxiety disorder. In her June 19, 2013 neuropsychological report, she noted that Student fell in the low average range based on his full scale intelligence quotient of 89, that Student performed in the average range of functioning, that his academic performance was commensurate with his cognitive ability, and found no underlying cognitive processes consistent with a learning disorder. She found that he had difficulties in attention, language and communication, and social perception, with mild deficits in verbal comprehension, and had average perceptual reasoning skills. Student reported to her elevated levels of depression or anxiety, which manifested through somatic complaints.

36. On August 7, 2013, Parents requested that District reimburse them \$2,000 for Dr. Sporri's neuropsychological assessment and \$255 for mileage expenses Parents incurred. This amount was less than District's \$2,500 cost criteria for a neuropsychological assessment. District did not reimburse Student for a neuropsychological assessment.

2013-2014 SCHOOL YEAR

37. Around August 11, 2013, Parents requested that District change Student's math class from Bridge to Geometry to a regular geometry class because the Bridge to Geometry class conflicted with Student's intermediate guitar class. Parents explained that guitar was Student's passion and not being able to take it would exasperate his fragile emotional state and heighten his anxiety disorder. District accommodated Parents' request.

October 18, 2013 IEP Team Meeting

38. On October 18, 2013, an IEP team meeting was convened at parental request. Parents, Student, family friend and advocate Linda McNulty, general education English language arts teacher Hali Boeh, general education geometry teacher Michael Hammer, special education coordinator Hunt Lin, speech therapist Christine Richardson, behaviorist Beth Costello, school counselor Kristine Kleinle, one-to-one aide Heidi Healy, Ms. Berezin, Ms. Buonauro, Dr. Dixon, Ms. Williams, and Ms. Marjerison attended the October 18, 2013 IEP team meeting. Parents prepared a Written Packet for the IEP team in advance of the meeting.

39. Mr. Hammer reported that Student was struggling in the regular geometry class because it was the wrong class for him, and that Student would benefit from the Bridge to Geometry class because it matched Student's skill level. As of October 10, 2013, Student's overall grade was an "F". District recommended that Student transfer to the Bridge to Geometry class, which was considered a supported general education class because there was a math teacher and a classroom aide present in the class. Parents did not want Student in the Bridge to Geometry class because they were under the mistaken impression that it was peer taught, involved a lot of group work and a class for Students who failed geometry. Instead, Parents requested that Student be withdrawn from the regular geometry class and placed in an independent study class where he would receive one-to-one teaching in the areas of reading comprehension and math for the entire period. District reassured Parents that their mistaken impressions regarding the Bridge to Geometry class were unfounded. District explained that Bridge to Geometry was recommended by Student's math teacher from last year. District reminded Parents that in August 2013 District accommodated Parents' request for a regular geometry class only because the Bridge to Geometry class conflicted with an intermediate guitar class preferred by Student. District did not withdraw Student from the regular geometry

class per Parents' request because all students were required to enroll in a math class in the ninth, 10th and 11th grades. Mr. Hammer shared that he was available before school every day at 7:30 and could provide additional help to Student. Parents stated that they wanted Student to receive help that was uniquely for Student only, and not what was offered to everyone.

40. Ms. Boeh shared that Student participated in class discussions and worked in groups without difficulty. Both Ms. Boeh and Ms. Healy observed that Student socialized appropriately with his peers and Ms. Boeh reported that Student appeared to understand sarcasm and was capable of communicating his intent effectively to his peers. Parents expressed concerned that Student was unable to understand passages he read. The IEP team agreed that Student still needed reading comprehension help that was provided by Ms. Healy. Ms. Boeh shared at the IEP team meeting that at times Student refused Ms. Healy's help. Ms. Healy stated that Student did not ignore her and at times accepted her help.

41. Ms. Berezin shared that Student was working on perspective taking skills from his social pragmatics goal. Dr. Dixon and Ms. Buonauro shared that they did not see Student exhibiting social awkwardness and difficulties. Ms. Buonauro shared that Student interacted with his peers in guitar appropriately, that Student was vice president of the paint ball club, and was instrumental not only in joining a school club, but starting one. Parents reported that Student learned a lot of leadership abilities and was active in Boy Scouts.

42. Ms. Richardson shared that Student was anxious about being pulled out of class for his speech therapy because he worried about missing classes and his academic progress. Parents also shared that Student's anxiety escalated and that he was having seizures at home, and undergoing medical testing to address the anxiety. Parents shared Dr. Sporri's report. The IEP team discussed Parents' request of changing Student's

special education eligibility to autism based on Dr. Sporri's findings that Student's difficulties were attributable to pervasive developmental disorder not otherwise specified, on the autism spectrum, with generalized anxiety disorder. District expressed concern with Student's anxiety and shared that it would provide an assessment plan to obtain Parents' consent to assess his eligibility for educationally related mental health services, and would have District's behaviorist observe Student at school to consider Parents' concerns and Dr. Sporri's report about autism. District was concerned that Dr. Sporri's findings of autism was inconsistent with Student's behaviors at school as reported by all his teachers. The IEP team also discussed changing Student's special education eligibility to specific learning disability in the area of attention, pursuant to Parents' and advocate's request based on District's January 11, 2013 psychoeducational assessment. The IEP team agreed that Student's primary eligibility should be specific learning disorder, and the secondary eligibility should be speech and language impairment.

43. Student shared that he was anxious because he was failing tests, did not want to attend school, had stomach aches, and wanted positive support at school. When asked what Student believed would help him learn, Student shared that it would help if someone sat and discussed reading passages with him.

44. Parents were concerned about how specialized academic instruction was implemented at school. District discussed that Student could receive one-to-one support at the Learning Center which was open during his geometry and English periods. Parents disagreed with having Student leave academic classes to receive support at the Learning Center. After two hours, the IEP team meeting concluded with an agreement by the team to reconvene.

45. On October 24, 2013, District sent an assessment plan to Parents for permission to assess Student in the areas of academic achievement, health,

language/speech communication development, social/emotional, adaptive behavior and observations in classroom and the school setting. Parents did not consent to this assessment plan.

46. Student was evaluated by an independent assessor, James McCartney, on October 24, and 31, 2013, for central auditory processing deficits. Dr. McCartney determined that Student's scores on the central auditory processing evaluation were within normal limits.

47. On November 18, 2013, Parents repeated their request from the October 18, 2013 IEP team meeting that District withdraw Student from his geometry class and place him in an independent study class for individual math remediation for 40 minutes, and for English specialized academic instruction for 50 minutes to work on reading comprehension and receive help on literature and language arts assignments.

48. On January 8, 2014, Student filled out a Student Interview for Transition Planning, and a Career Interest Survey answering questions about his interests, strengths, skills, personal qualities, and jobs. The results revealed that Student was interested in attending a two year community college after high school with the intention of transferring to a four year school, was interested in exploring various career options, but had not decided on a career path. Parents believed that the questionnaire was too short to adequately assess Student's transition needs and did not believe that Student's responses were consistent with what Parents thought were Student's interests.

January 10, 2014 IEP Team Meeting

49. District convened the annual IEP meeting on January 10, 2014. Parents, Student, general education World Culture teacher Michael Messersmith, Ms. Lin, Ms. Richardson, Ms. Costello, Ms. Kleinle, Ms. Healy, Ms. Buonauro, Dr. Dixon, Ms. Williams, and Ms. Marjerison attended. Parents were provided a draft of the proposed IEP goals before the IEP meeting. Parents provided a Written Packet to the IEP team at the

meeting. Parents shared that geometry, World Culture and biology were challenging to Student and his academic performance plummeted. Parents wanted services and accommodations which addressed his reading comprehension and vocabulary difficulties. District shared their concerns about the findings and diagnosis in Dr. Sporri's report. They shared the discrepancy between Student's Wechsler Individual Achievement Test-Third Edition and the Woodcock Johnson Achievement Test-Third Edition scores, noting that the Wechsler Individual Achievement Test-Third Edition's higher score appeared inconsistent with the much lower score found by Dr. Sporri's testing. District further shared that they were concerned with the discrepancies between Dr. Moleski's 2010 and Dr. Sporri's 2013 findings because Dr. Moleski's findings suggested that Student had attention deficit hyperactivity, reading, and learning disorders and Dr. Sporri's findings suggested that Student had pervasive developmental disorder not otherwise specified, with generalized anxiety disorder, and autism. Dr. Sporri did not find that Student had attention deficit hyperactivity disorder or specific learning disorder. Further, Ms. Costello's school observations found that Student did not exhibit any social, communication, or behavioral issues consistent with an autistic student. District explained that these discrepancies necessitated further assessments as to all of Student's suspected disabilities.

50. Although Parents shared they were seeking medical help to address Student's anxieties, they did not share any information pertaining to Student's treatment. Parents felt that Dr. Sporri's assessment results, all private evaluators' and District's assessment results, and all the information in the multiple Written Packets provided at all the IEP team meetings were sufficient for District to provide additional services to address Student's academic concerns. District offered to collect more information to determine if Student needed goals to address anxiety about testing and feeling overwhelmed at school, and explained that without current and accurate

information the IEP team would be unable to develop goals, and offer placement and services which would address Student's educational needs. Parents declined any further assessments and stated they were only interested in more accommodations and services for Student's academic needs, and did not wish Student to be assessed for autism, other health impairments, emotional disturbance, educationally related mental health services, or any other disabilities. The IEP team meeting ended before the team was able to review the transition plan, and other issues. Parents informed District that they would not be reconvening anymore IEP team meetings and asked that a draft IEP be sent to them for consideration.

February 28, 2014 IEP Team Meeting

51. District convened a continuation of the January 10, 2014 annual IEP team meeting on February 28, 2014. Parents, Student, general education biology teacher Michael Struebing, speech and language pathologist Erin Becerra, Mr. Messersmith, Ms. Lin, Ms. Richardson, Ms. Costello, Ms. Kleinle, Ms. Buonauro, Dr. Dixon, Ms. Williams, and Ms. Marjerison attended. At the meeting, Parents provided a Written Packet with updated grades, a summary of Parents' proposed goals, suggestions for a math curriculum and services, and a January 15, 2014 one page letter from Michael Chez, M.D. finding that Student had a medical diagnosis of high functioning autism. The IEP team discussed the information provided by Parents. District emphasized the need for further assessments to meet Student's needs and District's legal obligation to assess in all areas of suspected disability. Parents opposed further assessments.

52. Mr. Messersmith reported that Student was doing well in the World Culture class. Notes and study guides with learning targets were provided to Student in the World Culture class. The IEP notes stated that Ms. Buonauro was providing push-in specialized academic instructional support to Student in the World Culture class. Mr. Struebing suggested that Student spend time reviewing biology materials and that Mr.

Struebing was available to do so with Student daily before school. Parents expressed that supports that were available to other students were not a FAPE offer to Student. The IEP team discussed speech and language services and progress on goals. Parents stated that afterschool private tutoring helped Student keep up with schoolwork, and shared that Student should receive similar support from District during the school day. The IEP team discussed specialized academic support for Student in the general education environment, and in a separate class. Ms. Buonauro discussed the result of Student's career interest survey and his transition plan, and proposed a transition goal for career exploration. Student's assistive technology and extended school year needs were discussed. The IEP team discussed using a recorder in class, but upon Student sharing that he would not likely listen to the recording; the team discussed using a smart pen. The IEP team concluded that Student did not need extended school year services because he was not at risk of regression, but agreed to provide assistive technology to Student.

53. The offer of FAPE was as follows: (i) specialized academic instruction 30 minutes daily, which could be provided in the general education classroom (push-in), or provided outside the general education classroom (pull-out) with additional time to access the Learning Center 60 minutes weekly; (ii) individual speech and language services 50 minutes 38 weeks yearly; (iii) 60 minutes of college awareness yearly where Student would explore post-secondary training and/or education opportunities in his area of interest in a separate classroom in a public integrated facility; and (iv) 60 minutes of career awareness yearly where Student would explore and research career opportunities and post-secondary training in his area of interest in a separate classroom in a public integrated facility. Accommodations and modifications included note taking support, highlight textbooks/study notes, copy of power point presentations provided before a lecture, notification of upcoming course content, use of assignment notebook

planner and visual organizers, presenting one task at a time, instructions repeated and rephrased, check for understanding, extended and flexible time to complete assignments, tests and quizzes, and study guides provided in advance when available.

54. Student received A's in guitar and weight training, a C in English, and an F in Geometry during the first term of 2013-2014 school year. At the time of the February 28, 2014 IEP, Student's grades were an A in Intermediate Guitar, a B in Drawing and Painting, a B+ in World Culture, and a D in Biology. Student's 2013 California Standardized Testing and Reporting results showed that while he remained in the basic proficiency level in English language arts, his score of 302 was 15 points below his 2012 California Standardized Testing and Reporting results in the same area. His areas of weaknesses were literary response and written conventions. His overall math result put him in the below basic proficiency level. His math score of 279 was 55 points below his 2012 California Standardized Testing and Reporting results in the same area. His area of difficulty was quadratics and polynomials.

55. Parents did not agree with the January 10, 2014 IEP offer, as presented at the February 28, 2014 continuation meeting. On May 6, 2014, Parents drafted an Attachment 1 to the January 10, 2014 IEP, which stated that Parents agreed with five speech and language related goals: (i) semantics/syntax/contextual clues; (ii) semantics; (iii) comprehension; (iv) figurative language; and (v) pragmatic, and agreed with Student's primary eligibility of speech and language impairment and secondary eligibility of specific learning disability.

56. In the May 6, 2014 Attachment 1, Parents stated that they disagreed with the offer of speech and language services, and that the services in the March 14, 2012 settlement agreement remained "stay put" and "in effect". Parents also contradictorily stated both that they agreed to the implementation of the January 10, 2014 IEP, but disagreed with it. Because of Parents' statement that the settlement agreement was

“stay put”, the operative consented to IEP was May 20, 2011, as modified by the March 14, 2012 settlement agreement. The only addition to the March 14, 2012 settlement agreement on May 6, 2014 was Parents’ agreement to the five speech and language goals and the secondary eligibility of specific learning disability.

57. On April 10, 2014, District sent an assessment plan to Parents requesting permission to assess Student in the areas of academic achievement, health, language and speech communication development, social/emotional, adaptive behavior and observations in the classroom and school setting. On May 1, 2014, District sent a prior written notice to Parents explaining the reasons for the proposed assessments in the April 10, 2014 assessment plan. The summary of reasons for assessment were: (i) Dr. Sporri’s diagnosis of pervasive developmental disorder not otherwise specified, on the autism spectrum, with generalized anxiety disorder; (i) Parents’ report of anxieties about schoolwork with physical manifestations at home; and (iii) Ms. Johnson’s April 2013 report with extensive errors which Dr. Sporri and District staff could have relied on in making recommendations for Student. The notice added assessments for intellectual development, motor development, post-secondary transition, and educationally related mental health services which were omitted from the April 10, 2014 assessment plan. District also included a copy of the procedural safeguards, and the April 10, 2014 assessment plan with their May 1, 2014 letter. The May 1, 2014 letter requested permission to assess based on the same reasons discussed at the October 18, 2013, January 10, 2014 and February 28, 2014 IEP team meetings.

58. Specifically, District’s May 1, 2014 notice letter questioned Ms. Johnson’s April 2013 report because she used an outdated test, the Detroit Test of Learning Aptitude-Fourth Edition. The results purportedly measured Student’s general mental ability, and areas of strengths and weaknesses in cognitive functioning. District believed these were inaccurate because the test was being updated with new standardization,

which was not available at the time Student was assessed. District also questioned the pragmatic judgment standard score of 53 from the Comprehensive Assessment of Spoken Language, which purportedly measured language output, because it was severely low and discrepant with other tests and information District had about Student. District also questioned scoring and test administration errors that impacted the conclusion of whether Student's abilities fell in the average range or below average range. All of these considerations triggered District to request follow-up tests to measure Student's functional capacities.

2014-2015 SCHOOL YEAR

59. Because Student failed the regular geometry class in the fall of the 2013-2014 school year, he had to repeat a geometry class during the 2014-2015 school year. On August 26, 2014, pursuant to Student's request, Ms. Kleinle asked for Parents' consent to enroll Student in the Bridge to Geometry class instead of the regular geometry class. Parents consented to Student's enrollment in the Bridge to Geometry class in the 2014-2015 school year, but stated that they believed that a regular geometry class with specialized academic support and remediation was appropriate.

60. On October 20, 2014, District provided progress reports as to the following four speech and language related goals from the January 10, 2014 IEP: (i) semantics; (ii) comprehension; (iii) figurative language; and (iv) pragmatics.

61. On October 28, 2014, Parents informed District that they were unable to take off work to attend an IEP team meeting when District attempted to schedule an annual IEP team meeting for January 2015.

62. On November 14, 2014, Parents asked that Student be taken out of the Bridge to Geometry class so he could receive math help in the Learning Center because they were concerned that he was struggling with math. Ms. Buonauro suggested that Student stay in the Bridge to Geometry class so he would not miss the instruction and

that there was no math teacher in the Learning Center during Student's Bridge to Geometry class. Ms. Buonauro informed Parents that both math teachers Ms. Hammer and Mr. Sanders were in the Learning Center and available to help Student during Student's advisory class period. Parents shared that Student could not seek math help during the advisory period because it was important for Student to prepare for an upcoming concert and therefore he chose to go to guitar with Mr. Martini, but that after the concert was over Student would seek math help during the advisory period. On November 21, 2014, Ms. Buonauro requested an IEP team meeting to address Parents' concerns and proposed several times for Friday, December 12, 2014. Parents declined to meet, stating that they were unable to take time off from work.

63. On December 15, 2014, Parents stated their concerns that Student had not been receiving the 50 minutes of specialized academic instruction in his English class pursuant to his IEP at least eight weeks during the fall term of the 2013-2014 school year, and that during the time that Ms. Healy was present during English class she did nothing more than sit next to Student and did not provide any instruction because of ongoing class. Parents believed that District unilaterally determined and developed Student's January 10, 2014 annual IEP because they believed the January 10, 2014 and February 28, 2014 IEP notes were inaccurate where the IEP notes stated "teacher's report" when there were no teacher's reports presented at the meeting. At hearing, District personnel credibly attributed this to Parents' confusion or expectation that the term "teacher's report" meant a written report by teachers whereas the IEP notes used the term "teacher's report" to indicate the information provided by teachers at the IEP team meetings included verbal status reports from teachers in attendance as well as other District personnel summarizing the information provided by teachers who were not in attendance at the IEP team meetings.

64. No January 2015 annual IEP team meeting was scheduled because Parents

provided very limited times of availability during the 9:00 a.m. to 5:00 p.m. regular work hours to meet with District. District attempted to schedule an annual IEP team meeting for January 9, 2015. Parents indicated that they were available for the annual IEP team meeting on January 30, 2015, at 1:00 p.m. or any day after 5:00 p.m. with the exception of January 12, 2015, and the week of January 20, 2015. On January 12, 2015, District agreed to January 30, 2015, and proposed that the meeting start at noon and asked that Parents confirm their availability. On January 16, 2015, when Parents still had not confirmed their availability for a noon IEP team meeting for January 30, 2015, District advised Parents that several members of the IEP team were unavailable on January 30, 2015, and that the meeting needed to be rescheduled. District was unsuccessful in rescheduling the annual IEP team meeting with Parents because Parents had already filed for due process and did not want to attend an IEP team meeting. At hearing, District expressed that they valued Parents input and would continue to work with Parents to schedule an annual IEP team meeting.

65. On February 21, 2014, District provided a progress report as to the fifth speech and language related goal from the January 10, 2014 IEP, which Parents consented to on May 6, 2014, the semantics/syntax/contextual clues goal. During the 2014-2015 school year, District did not provide progress reports on the goals regarding semantics, organization and planning, auditory processing/self-advocacy, passage comprehension, vocabulary, and expressive language from the operative, May 11, 2012 IEP.

HEARING TESTIMONY

66. Ms. Healy shared that she was with Student the entire 50 minutes in Ms. Boeh's class unless the nature of the class did not require her presence, such as when the class watched a movie or worked on a group project. She worked with Student on a one-to-one basis during the beginning of the 2013-2014 school year up until the

October 18, 2013 IEP team meeting when Parents asked her to stop because Student felt singled out by her instruction. She returned to Student's English class during the second quarter but reduced her involvement with Student. During the second quarter, Ms. Healy sat next to Student and clarified instructions, redirected Student's focus, and reminded him to turn in assignments and take notes. She did not read with Student in class because there was no time for reading, but shared that sometimes the class read short stories together in the assigned literature book. Student was not enrolled in an English class during the third and fourth quarters of the 2013-2014 school year.

67. Student's English teacher for the third quarter of 2015, Tyler Fuentes, shared that Ms. Healy sat on her own, and at times worked with Student talking through the process of writing an essay, but was present approximately 45 minutes each day. Mr. Fuentes never read alone with Student and did not know if Student understood what he read. He acknowledged that Student received zeros for not answering questions correctly in reading comprehension tests, but noted that he was not certain if it was because Student did not understand what he read, or just did not read the book. He described Student as good natured, personable, not particularly motivated, an average student with a good sense of humor who struggled with assignment completion and performance.

68. Ms. Healy also shared that sometimes she did not stay in Mr. Fuentes' class for the entire 50 minutes because Student did not need her instruction, since there were many class discussions and Student did everything himself. When she was in Mr. Fuentes' class, she did not sit next to Student, and only provided assistance to Student when he responded "yes" to her inquiry of whether he needed help. Ms. Healy observed Student often doodling or with his head down playing with his phone, and not very motivated. She never read alone with Student to determine whether he understood what he was reading. The class read chapters of a book together approximately five

times during the school year. She was aware that Student failed several reading comprehension quizzes in Mr. Fuentes' class including quizzes regarding *The Great Gatsby* and *The Adventures of Huckleberry Finn*. Student failed because he did not read the books. Student told Ms. Healy that he preferred the movies instead, which was consistent with her understanding that Student disliked reading. She shared that it was not her job to ensure that Student read the books because that was part of his homework. She also shared that while it was her job to talk to Student about why he got F's on his quizzes, she did not do so. She described Student as much more disengaged in Mr. Fuentes' class than in Ms. Boeh's class in 2013-2014. Over the 2013-2014 and 2014-2015 school years, Ms. Healy only recalled providing significant support to Student on three occasions when Student requested her help in writing and revising big essay assignments. Student was not enrolled in an English class during the first and second quarters of the 2014-2015 school year.

69. Ms. Buonauro provided all of Student's teachers and instructional assistants with relevant information including his IEP for the 2012-2013, 2013-2014, and 2014-2015 school years. Student's teachers were aware that Student had an IEP. There were no facts supporting the contention that the accommodations and modifications in Student's IEP were not implemented. While Parents complained that accommodations and modifications were not implemented, they did not provide any supporting evidence.

70. Nancy Pepin was the District's speech and language pathologist and expert regarding the inadequacies of Ms. Johnson's assessments. She received a bachelor's and a master's degree in speech pathology and audiology, a multiple subject teaching credential, a handicapped credential, and a speech and language pathology credential. She maintained ongoing professional development requirements from the Speech and Hearing Association, and attended differentiated learning workshops at the

Nell Levine Summer Institute regarding language development, fluency disorders, and central auditory processing disorders. Ms. Pepin worked in speech and language pathology field for over 35 years, worked with District's special education department for 32 years, and assessed over 1000 students in the area of speech and language.

71. Ms. Pepin did not assess Student but on May 19, 2015 she reviewed protocols, assessments, and the April 15, 2013 and October 14, 2011 reports from Jane Johnson. Ms. Pepin opined that Ms. Johnson did not follow test protocols or standards, which impacted the reliability of her assessments and the resulting recommendations. Ms. Pepin concluded that Ms. Johnson's results were unreliable with too many careless errors in test administration, scoring, and conversion of raw scores to standard scores. She also indicated that Ms. Johnson did not observe Student at school, did not seek input from teachers or educational providers, and administered outdated and invalid tests - Test of Adolescent/Adult Word Finding published in 1989; the Detroit Test of Learning Aptitude-Fourth Edition published in 1998; and the Comprehensive Assessment of Spoken Language published in 1999. For example, test reliability and validity changes rendered the term "film development" outdated as opposed to a "digital camera". Use of outdated tests impacted the tests' ability to accurately measure the Student's level of development in 2014. Likewise, Ms. Johnson recommended that Student receive a central auditory processing development assessment when nothing in her assessments or reports supported that need, or that Ms. Johnson was qualified to recommend such an assessment. Ms. Johnson's failures in test administration and scoring led her to stop testing Student when she should have tested him further, giving him the opportunity to score higher by answering more questions correctly; caused her to test Student on questions he did not need to be tested on, causing testing fatigue and impacting Student's performance in other subtests; and resulted in her failing to give Student credit, or the proper number of credits, for items for which he should have

received credit for correct responses. These errors all resulted in conclusions that were not representative of Student's abilities, and inaccurately presented Student to be a much more severely impacted and disabled student than he actually was. Ms. Pepin concluded persuasively that Ms. Johnson's assessments were unreliable and District should reassess Student to determine an accurate level of Student's functional capabilities, and reconcile independent evaluators' assessments with Student's functional capabilities at school.

72. Ms. Williams did not observe Student in class as part of her assessment but consulted with Student's teachers and relied on their observations and reports regarding Student's class behavior and performance. Ms. Williams reviewed Ms. Johnson's, Dr. Sporri's and Dr. Chez's reports and opined that their findings were not reflective of Student's function at school as reported by his teachers. Ms. Williams disagreed with Ms. Johnson's findings to the extent it showed that Student had low pragmatic language skills. Ms. Williams disagreed with Dr. Sporri's diagnosis of pervasive developmental disorder not otherwise specified, on the autism spectrum, with generalized anxiety disorder. She opined that Dr. Sporri improperly extrapolated the teachers' questionnaire responses that Student's social skills were in the "at risk" range to make an out-of-context conclusion. Ms. Williams also shared that, based on her assessment of Student and all of the teachers' reports of Student, Student was socially adept and displayed no problems in pragmatic language. Further, Dr. Sporri's diagnosis of anxiety disorder was not supported by Parents' and teachers' reports of an average level of anxiety in their questionnaire responses. Ms. Williams concluded that Student's anxieties at school were mild. She opined that Dr. Chez's one page report concluding that Student had complex neurological and learning issues without any supporting assessments was unreliable and should not be given any weight. Ms. Williams also opined that based on Parents' responses to the questionnaires, further executive

function assessments were not necessary in January 2013.

73. At hearing, Ms. Williams persuasively concluded that based on Students' triennial assessment results he did not need a math, executive functioning, or anxiety goal at the January 18, 2013 annual IEP team meeting. Math was Student's area of strength. Ms. Williams concluded that executive functioning was not an area of concern for Student, and a goal was not needed in this area because Student did not have any difficulties in planning, organizing, and responding based on the responses to the questionnaires from Parents and the teachers. She opined that Student's anxieties at school were not significant, and did not require a goal.

74. With regard to attention, Ms. Williams opined that although Student needed strategies to help him sustain attention, an attention goal was not the way to address attention difficulties. She was not persuasive on this issue because District did not provide specific strategies such as redirection, reminders, or data collection by personnel to help Student with his attention deficit issues.

75. Although Parents shared that they disagreed with District's conclusions as expressed by District's witnesses at hearing, Student did not present any evidence rebutting any of Ms. Pepin's or Ms. William's testimony as to the inadequacies in Ms. Johnson's, Dr. Sporri's and Dr. Chez's reports. Ms. Johnson, Dr. Sporri and Dr. Chez did not testify at hearing, and Student presented only reports from these evaluators as evidence which District's witnesses persuasively discredited.

76. Parents' opinion that the reading comprehension goal was not measurable because Student was required to perform the highlighting was unpersuasive because teachers and staff were responsible for measuring this goal based on an 85 percent success rate. Parents' complaints at hearing that no one was checking whether Student was highlighting or using sticky notes to identify what materials were relevant and no one was checking to see if Student understood what he was reading were also

unpersuasive arguments as to the measurability of this goal.

77. At hearing, Mother acknowledged that she no longer had any objections to District assessing Student in the areas of academic achievement, health, intellectual development, language/speech communication development, motor development, social/emotional, adaptive behavior, post-secondary transition and educationally related mental health services assessments.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁸

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)⁹ 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 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 IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal.

⁸ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; 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 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].) In this case, the Student has the burden of proof with regards to his issues, Issues One through Three; and District has the burden of proof with regard to its one issue.

STUDENT’S ISSUE 1(A) AND (F) - ASSESSMENTS

5. Student contends he was denied a FAPE because District committed a procedural violation by failing to assess him in the areas of executive function and auditory processing, and failed to provide independent academic and

psychoeducational assessments that it agreed to provide. District contends that it properly assessed Student in all areas of disability, including executive function, and that Student did not exhibit any need for an auditory processing assessment. District also contends that it agreed to fund independent academic and psychoeducational assessments, but that Student obtained an independent neuropsychological assessment which had not been agreed to.

6. Assessments are required to determine eligibility for special education, and what type, frequency, and duration of specialized instruction and related services are required. In evaluating a child for special education eligibility, and prior to the development of an IEP, a district must assess him in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related service's needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

7. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).) Assessors must be

knowledgeable about the student's suspected disability and must pay attention to student's unique educational needs such as the need for specialized services, materials, and equipment. (Ed. Code, § 56320, subd. (g).)

8. A student may be entitled to an IEE¹⁰ if he or she disagrees with an evaluation obtained by the public agency and requests an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an IEE].) In response to a request for an IEE, an educational agency must, without unnecessary delay, either: (1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (2) ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

9. A parent is entitled to only one independent educational assessment at public expense each time the public education agency conducts an assessment with which the parent disagrees. (Ed. Code § 56329(b).) If an independent evaluation is at public expense, the criteria under which the assessment is obtained, including location of the evaluation and qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an assessment, to the extent those criteria

¹⁰ The Federal Code uses the term "evaluation" instead of the term "assessment" used by California law, but the two terms have the same meaning for purposes of this case. They will be used interchangeably throughout this Decision.

are consistent with the parent's right to an independent evaluation. (34 C.F.R. § 300.502(e)(1).) School districts must provide parents with information about where the independent evaluation may be obtained, as well as the school district criteria applicable for independent evaluations. (34 C.F.R. § 300.502(a)(2).) If an independent evaluation that falls outside the district's criteria is justified by the child's unique circumstances, that evaluation must be publicly funded. (*Letter to Kirby, supra*, 213 IDELR 233 (OSEP 1989).)

10. A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484, *superseded by statute on other grounds, as stated in R.B. v. Napa Valley Unified School Dist.* (9th Cir.2007) 496 F.3d 932, 939.)

11. Parents relied on Ms. Johnson's April 2013 assessments findings that Student was more severely impacted than he presented at school, Ms. Johnson's recommendation of auditory processing evaluation, and Student's scoring at below grade level for reading comprehension as support that District failed to assess in executive function and auditory processing. District assessed Student's academic, functional, behavioral, social and emotional skills in January 2013, was aware of Student's reading difficulties which had been, and continued to be, addressed with specialized academic instruction, and concluded it did not need to further assess Student's executive function because Student had no planning or organizing difficulties. Although District did not assess Student in the area of auditory processing, Student did not present any evidence that this was an area of need in January 2013. District's experts

persuasively showed that Ms. Johnson's assessments were replete with errors and unreliable, and that her recommendation for Student to be evaluated for central auditory processing deficit was unsupported by her assessments results. Student did not present any persuasive evidence contradicting District's experts' opinions that neither executive function, nor auditory processing was an area of need in January 2013.

12. Student did not present any evidence that District did not fund independent academic and psychoeducational assessments as agreed. When Parents requested an independent academic assessment, District timely agreed to provide one. When Parents added a psychoeducational assessment to their request of independent assessments, District also agreed to provide one, and agreed to pay for Parents' preferred psychoeducational assessor. However, when Ms. Gwaltney was not available for assessments, instead of selecting a psychoeducational evaluator using District's Criteria for Independent Educational Evaluations, Parents unilaterally selected a pediatric neuropsychologist to perform a totally different assessment--a neuropsychological assessment. Despite District's multiple attempts to accommodate Parents' requests for an increasing number of independent assessments, Parents never selected an independent assessor that met District's Criteria for Independent Evaluations, never provided any unique circumstances justifying their selection of an independent evaluation that fell outside District's criteria, and never provided a persuasive explanation as to why Student required a neuropsychological assessment as opposed to the independent psychoeducational and academic assessments that District agreed to provide. The fact that the reimbursement amount sought for the costs of the neuropsychological assessment was below the cost of District's cost criteria for a neuropsychological assessment was not persuasive evidence to order District to pay for an assessment it had not agreed to, and for which Student had made no persuasive

showing that it was necessary.¹¹

13. Student did not meet his burden of demonstrating that District failed to assess in the area of executive function and auditory processing, or that District failed to provide independent evaluations as agreed.

STUDENT'S ISSUES 1(B), (C), AND 2(G) - PARENTAL PARTICIPATION AT THE JANUARY 18, 2013, MARCH 1, 2013, APRIL 5, 2013, AND MAY 21, 2013 IEP TEAM MEETINGS; PRE-DETERMINATION AT THE JANUARY 18, 2013 IEP TEAM MEETING; AND UNILATERAL DETERMINATION AT THE JANUARY 10, 2014 IEP TEAM MEETING

14. In Issues 1(b), (c), and 2(g) Student contends that District denied Parents meaningful participation in all IEP team meetings, predetermined placement and services at the January 18, 2013 annual IEP team meeting, and unilaterally determined and developed Student's January 10, 2014 IEP. District contends that Parents meaningfully participated in the IEP decision making process at all IEP team meetings.

15. Legal Conclusion 10 above is incorporated by reference.

16. 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

¹¹ Although Student argued in his closing brief that District did not provide prior written notice of its denial of Parents' selection of Dr. Sporri to conduct the neuropsychological assessment, prior written notice was not an issue with respect to the 2012-2013 school year pursuant to the May 22, 2015 PHC order, and no evidence was presented as to this issue at hearing.

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].)

17. 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. (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].) Predetermination occurs when an educational agency has decided on its offer prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP meeting with a "take it or leave it" offer. (*JG v. Douglas County School Dist.*, (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.) However, a school district has the right to select a program and/or service provider for a special education student, as long as the program and/or provider is able to meet the student's needs; IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D.Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323.)

18. Student did not present any evidence establishing that Parents were denied the opportunity to meaningfully participate in any IEP team meetings and did not prove District predetermined placement and services, or ignored parental input.

Parents submitted a Written Packet at all IEP team meetings, and had an opportunity to and did discuss their concerns, requests, proposals for goals and services, Student's issues, and present levels of performance.

19. Before the January 18, 2013 annual IEP team meeting Parents were provided with assessment results. When one meeting was not enough to conclude the January 18, 2013 annual IEP team meeting, three others were convened to address all of Student's issues and needs. All members of the IEP team provided updates and their observations regarding Student's needs and performance. When Parents exercised their right not to waive the general education teacher's presence, District complied with Parents' request. Parents had the opportunity to ask questions about the appropriateness of Student's placement and services. District disagreed with Parents' recommendations and suggestions regarding the need for 20 minutes of one-to-one math support and teaching Student with a lower grade level curriculum. However, disagreement with Parents did not amount to predetermination or denial of meaningful parental participation. District responded to Parents' request for more math help by suggesting alternatives such as having the math teacher Mr. Seffen available both before school and during an advisory class period to help Student. District was also responsive to Parents' request to draft an amendment so they could agree to speech and language goals before the annual IEP was completed. District was responsive to Parents' request for independent evaluations and agreed to draft a reading comprehension goal at Parents' request, and agreed to continue providing materials to Student in advance, even though it disagreed with the practicality of providing the materials one week in advance. Student's contentions that District predetermined placement and services and ignored Parents' input at the January 18, 2013 annual IEP team meeting were not supported by any persuasive evidence.

20. Likewise, when the January 10, 2014 IEP team meeting did not conclude, a

continuation IEP team meeting was held on February 28, 2014 IEP. Parents participated in the development of Student's speech and language goals with which they agreed. District listened and discussed the results of Dr. Sporri's report and Dr. Chez's letter as presented by Parents. When District requested permission to assess Student based on the information Parents shared from Dr. Sporri's and Dr. Chez's conclusions, Parents disagreed. Parents and District meaningfully discussed Student's assistive technology needs. The evidence supported that Parents were involved in every step of the IEP decision making process, even if District did not agree to all of Parents' requests. Student's contentions that District unilaterally determined and developed the January 10, 2014 IEP were not supported by any persuasive evidence.

21. Therefore, Student did not meet his burden of demonstrating that District predetermined placement and/or services, or ignored parental input at any of the four IEP team meetings during the 2012-2013 school year, or that District unilaterally determined and developed the January 10, 2014 IEP.

STUDENT'S ISSUES 1(D) (E) (I), (II), (III) AND (IV) - APPROPRIATE GOALS

22. Student contends that the reading goal was not measurable, and District failed to provide goals to address his needs in math, executive function, attention, and anxiety. District contends that the reading goal was appropriate, and that Student did not need any goals for math, executive function, attention, or anxiety.

23. Legal Conclusion 10 above is incorporated by reference.

24. An IEP must contain a statement of measurable annual goals related to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum" and "meeting each of the child's other educational needs that result from the child's disability." (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, §

56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).) Inappropriate goals are procedural violations of the IDEA. (*Park v. Anaheim Union High School Dist.*, *supra*, 464 F.3d at p. 1031). An IEP is a “snapshot” and must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

25. There was no evidence supporting Student’s contentions that the reading comprehension goal was not measurable, or that District failed to provide appropriate goals in math, executive function, and anxiety. The reading comprehension goal had a baseline based on Student’s triannual assessment results, the California Standardized Testing and Reporting results and classroom observations. It was written to measure Student’s interaction with reading material by having him annotate and highlight important information, so he could reference them later, to answer questions with 85 percent accuracy, to be measured by teacher, staff, and test results. On its face, the goal was contrary to Student’s assertion that the goal was not measurable. While District did not provide a math, executive function, or anxiety goal, there was no evidence presented at the time of the January 18, 2013 annual IEP team meeting, and the three continuations of the annual IEP team meeting, that Student required any of those goals. Instead, the triannual assessments showed that math was Student’s area of relative strength, that Student was not experiencing significant anxieties, and that executive function was not an area of concern because Student had no planning and organizing difficulties.

26. However, at the time of the January 18, 2013 annual IEP team meeting, the IEP team knew that Student struggled with attention. Ms. Johnson reported that Student required redirection 20 times per class, and if not redirected, was a distraction to himself and others. Based on uncontradicted evidence that attention was an issue for Student at

the January 18, 2013 annual IEP, District should have provided goals in this area. District's failure to provide a goal with measurable strategies to address Student's attention difficulties impeded his right to a FAPE because, as reported by his teachers and Parents, the distractions handicapped him from accessing his education.

27. In conclusion, Student did not meet his burden of demonstrating that District committed a procedural violation by failing to provide a measurable reading comprehension goal, or by failing to provide goals in the area of math, executive function, and anxiety for the 2012-2013 school year. However, he demonstrated by the preponderance of evidence that District failed to develop an appropriate attention goal for the 2012-2013 school year at the January 18, 2013 annual IEP team meeting, and that failure substantially interfered with Student's access to a FAPE.

STUDENT'S ISSUE 2(A) - TIMELY IEP

28. In Issue 2(a), Student contends that District failed to have an updated IEP in place at the beginning of the 2013-2014 school year. District contends it timely held annual IEP team meetings, and Parents refused to consent to an IEP after four IEP team meetings -on January 18, 2013, March 1, 2013, April 5, 2013, and May 21, 2013.

29. Legal Conclusion 10 above is incorporated by reference.

30. An IEP team meeting must be held at least annually to review the pupil's progress, whether the annual goals are being achieved, and the appropriateness of placement. (Ed. Code, § 56343, subd. (d).) The meeting must be held at a mutually agreed-upon time and place. (Ed. Code, § 56341.5, subd. (c).) The Supreme Court has noted that the IDEA assumes parents, as well as school districts, will cooperate in the IEP process. (*Shaffer v. Weast, supra*, 546 U.S. at 53 [noting that "[t]he core of the [IDEA] ... is the cooperative process that it establishes between parents and schools"]; *see also, Patricia P. v. Bd. of Educ. of Oak Park* (7th Cir. 2000) 203 F.3d 462, 486; *Clyde K. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 35 F.3d 1396, 1400, fn. 5, *superseded on*

other grounds by Individuals with Disabilities in Education Act, Pub.L. No. 105–17, 111 Stat. 37 [rejecting a “my way or the highway” approach by parents' attorney].)

31. District held Student’s January 18, 2013 IEP annual team meeting and three continuations of that annual IEP team meeting in March, April, and May 2013 and discussed Student’s progress, placement, services, and parental concerns, after which District made an offer of FAPE that would have been in effect during the 2013-2014 school year if Parents provided consent. Parents withheld consent to the January 18, 2013 annual IEP offer, except for the five goals they consented to in the March 8, 2013 addendum. In the prior year, Parents drafted an August 9, 2012 Attachment 1 to District’s May 11, 2012 IEP offer specifying that the March 14, 2012 settlement agreement was “stay put” and “in effect”. Therefore, aside from the five goals that Parents agreed to in the March 8, 2013 addendum, at the beginning of the 2013-2014 school year, the effective, last consented to IEP was the May 20, 2011 IEP pursuant to the March 14, 2012 settlement agreement. An IEP was in place at the beginning of the 2013-2014 school year according to Parents’ choice of goals, services and placement. Student did not meet his burden by the preponderance of evidence that District had committed a procedural violation of not having an IEP in place at the beginning of the 2013-2014 school year.

STUDENT’S ISSUES 2(B) (I), (II), AND 3(A)(I) AND (II) - IMPLEMENTATION

32. Student contends that District failed to implement Student’s IEP in the 2013-2014 school year by not providing him with specialized academic instruction in his English and math classes, and in the 2014-2015 school year by not providing specialized academic instruction in his English class, and by not providing accommodations and modifications in Student’s math and history classes. District contends that all specialized academic instruction in the May 20, 2011 IEP and settlement agreement had been properly implemented.

33. Legal Conclusion 10 above is incorporated by reference.

34. Minor failures by a school district in implementing an IEP should not automatically be treated as violations of the IDEA. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F. 3d 811, 821.) Rather, a material failure to implement an IEP violates the IDEA. (*Id.* at p. 822.) “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” (*Id.* at p. 822.) “[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail.” (*Id.* at p. 822.) “We also emphasize that nothing in this opinion weakens schools’ obligation to provide services “in conformity with” children’s IEPs.” (*Id.* at p. 822.)

Student’s Issues 2 (b) (ii) and 3 (a)(ii) - math and history classes

35. The effective IEP during the 2013-2014 and the 2014-2015 school years was the May 20, 2011 IEP and the March 14, 2012 settlement agreement. Neither the effective IEP nor the settlement agreement required District to provide Student with specialized academic instruction in his math class. While during the 2013-2014 school year District was aware that Student’s math California Standardized Testing and Reporting results fell to below basic proficiency level and that he was failing his regular geometry class, Student did not provide any evidence supporting that specifically providing specialized academic instruction in math was required for District to implement his IEP or provide a FAPE. District responded to Student’s math needs by presenting additional math help before school from his math teacher and from other teachers in the Learning Center during his advisory period, and by requesting consent from Parents to transfer Student back to the Bridge to Geometry class, which had a teacher and an aide in the class to provide more help, and better suited to Student’s math skills. However, Parents refused consent to the Bridge to Geometry class because it conflicted with Student’s preferred guitar elective.

36. Student did not present any evidence that his accommodations and modifications in the May 20, 2011 IEP were not implemented either in his math or history class during the 2014-2015 school year. Student did not meet his burden of demonstrating that District's failure to implement his IEP by failing to provide him with specialized academic instruction in his math class in the 2013-2014 school year was a FAPE denial, or that District failed to implement his accommodations and modifications in either his math or history class in the 2014-2015 school year.

Student's Issues 2 (b) (i) and 3 (a)(i) - English

37. The March 14, 2012 settlement agreement specified that Student receive 50 minutes each school day of specialized academic instruction in English language arts. Based upon the terms of the settlement agreement, Ms. Healy would provide Student with 50 minutes of specialized academic instruction each day in his English classes, with Ms. Boeh during the first and second quarters of the 2013-2014 school year, and with Mr. Fuentes in the third quarter of the 2014-2015 school year.

38. During the beginning of the 2013-2014 school year until the October 18, 2013 IEP team meeting, Ms. Healy provided 50 minutes of specialized academic instruction to Student except when the class watched a movie or was engaged in a class project. This was a minor discrepancy and not a material failure to implement Student's IEP and terms of the settlement agreement. Ms. Healy believed the nature of these classes did not require her presence, and no evidence contradicted her belief. There was no support for Student's contention that Ms. Healy's absences during these times, when the nature of the class did not require her presence, were material.

39. However, after the October 18, 2013 IEP team meeting to the end of the second quarter of the 2013-2014 school year, Ms. Healy did not provide Student with 50 minutes of specialized academic instruction in Ms. Boeh's English class. When Ms. Healy returned to Ms. Boeh's English class during the second quarter, her assistance of

providing redirection, reminders, instruction, and clarifications to Student was not specialized academic instruction. For a period of about eight weeks after the October 18, 2013 IEP, Ms. Healy did not provide any specialized academic support to Student despite there being no change to the effective IEP or the settlement agreement requiring such support.

40. Further, Ms. Healy did not provide Student with any specialized academic instruction in Mr. Fuentes' English class. She did not sit next to Student, did not talk to Student about the F's on his quizzes, did not determine his understanding of the reading material, and only provided assistance to Student upon his request (which was no more than three times over the course of two school years). Even assuming that the three times Ms. Healy provided writing support to Student were during the 2014-2015 school year, District still did not comply with implementing Student's specialized academic instruction minutes pursuant to the settlement agreement because specialized academic instruction was to be provided every day irrespective of Student's request. While Ms. Healy was present in Mr. Fuentes' class, there was no evidence that she provided any of the 50 minutes of specialized academic instruction to Student on a consistent basis. Any specialized academic instruction Ms. Healy provided to Student in Mr. Fuentes' class was the exception rather than the rule.

41. Student met his burden of demonstrating that District did not implement his IEP pursuant to the terms of the settlement agreement and failed to provide him with 50 minutes of specialized academic instruction in his English classes for eight weeks in the 2013-2014 school year, and in the third quarter of the 2014-2015 school year.

STUDENT'S ISSUE 2(C) - FAILURE TO CHANGE MATH PLACEMENT

42. Student contends that he was denied a FAPE when District refused to withdraw him from his regular geometry class and place him in an independent study class for individual math remediation for 40 minutes. District contends that it could not

withdraw Student from the regular geometry class because all students were required to enroll in a math class in the ninth, 10th and 11th grades.

43. Other than parental preference, Student presented no evidence that withdrawing Student from the regular geometry class for individual tutoring outside of math class was required to provide Student with a FAPE. Withdrawing Student from math enrollment was contrary to the requirements of the school that all students in the 10th grade must enroll in a math class. Based on Student's struggles in the regular geometry class, California Standardized Testing and Reporting results, and the recommendations of all the District members of the IEP team, Student should have been transferred to the more appropriate Bridge to Geometry class. Because Parents refused consent for Student to take the Bridge to Geometry class, District offered Student additional help from Mr. Hammer every day before school. This would have provided individual assistance to Student and kept him enrolled in a math class pursuant to school curriculum requirements. Parents' refusal of additional help from Mr. Hammer because such help was not offered exclusively to Student was unreasonable. Student did not meet his burden of demonstrating that District's refusal to withdraw Student from the regular geometry class for individual tutoring was a FAPE denial.

STUDENT'S ISSUES 2(D) - NO PRIOR WRITTEN NOTICE

44. Student contends that District failed to provide written notice to Parents when they requested additional math support, an independent study period, or specially designed academic instruction in English for Student. District contends that Parents provided input, and their concerns were considered at the October 18, 2013 IEP team meeting when they requested math and English instruction in an independent study period, and that no written notice was required to address these same requests following the IEP team meeting.

45. Legal Conclusion 10 above is incorporated by reference.

46. A parent must be provided "written prior notice" when a school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.) The notice must include a description of the action refused by the school district, an explanation of why the district refuses to take the action, a description of each evaluation procedure, test, record, or report used as a basis for the refused action, a description of any other factors relevant to the district's refusal, a statement that the parents have protection under the procedural safeguards of IDEA, and sources for the parents to contact to obtain assistance. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b); Ed. Code, § 56500.4.)

47. Parents attended the October 18, 2013 IEP team meeting during which both Parents and their advocate voiced concerns, which were considered and discussed by the IEP team. When the meeting did not conclude, two other IEP team meetings were held--an annual IEP team meeting on January 10, 2014, and the continuation IEP team meeting which concluded on February 28, 2014. Student's contentions that Parents were entitled to written notice after the October 18, 2013 IEP team meeting was unsupported. District provided the IEP documents to Parents after the meetings. When the final IEP meeting concluded on February 28, 2014, the basis and description of the IEP offer was provided to Parents. This was all of the notice to which Parents were entitled and there was no requirement that District provide additional notice in a separate document following each IEP team meeting, or after Parents' repeated requests of the same placement and services, which had been discussed at multiple IEP team meetings. District was in compliance. Even if Student was successful in showing that this was a procedural violation, Student did not present any evidence supporting that District impeded the Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process, or caused a deprivation of educational

benefits during the 2013-2014 school year. Student did not meet his burden of persuasion on this issue.

STUDENT'S ISSUES 2(E) - NO GENERAL EDUCATION TEACHER PARTICIPATION

48. Student contends that the general education teacher did not have any input regarding Student's placement, accommodations, services, and supports during the October 18, 2013, January 10, 2014, and February 28, 2014 IEP team meetings. District contends that a general education teacher attended all of Student's IEP team meetings and the entire IEP team was consulted as to Student's special education needs.

49. Legal Conclusions 10 and 16 are incorporated by reference.

50. All the general education teachers, Ms. Boeh, Mr. Hammer, Mr. Messersmith and Mr. Struebing, shared their input regarding Student's placement, accommodations, services, and supports, and together with the other IEP team members fashioned an IEP offer to Student at the February 28, 2014 IEP team meeting. Student presented no evidence supporting his allegations that no general education teacher had input regarding his placement, accommodations, services and supports during the October 18, 2013, January 10, 2014, and February 28, 2014, IEP team meetings. Student did not meet his burden of persuasion on this issue.¹²

¹² Although Student stated in his closing brief that he was not allowed to submit audio recordings at hearing to prove this issue and Issue 2(g) above, the representation was inaccurate. When Parents requested admission of the IEP recordings as evidence of impeachment, the ALJ explained that if Parents intended to use the IEP recordings as impeachment evidence, they could do so by identifying the relevant portions of the IEP recordings which they believed supported the impeachment, then request permission from the ALJ to play the relevant portions of the IEP recording. Despite this explanation, Parents never requested any portion of the IEP recordings to be played as evidence.

STUDENT'S ISSUES 2(F) AND 3(B) - NO TRANSITION GOALS AND SERVICES

51. Student contends that District failed to provide Student with transition goals and services. District contends that it offered transition goals and services to Student, but could not implement them because Parents did not consent to the February 28, 2014 IEP offer containing those transition goals and services.

52. Legal Conclusion 10 above is incorporated by reference.

53. An IEP that will be in effect when a student turns 16 is required to contain an Individual Transition Plan (ITP). (20 U.S.C. § 1414(d)(1)(A)(i)(VIII); Ed. Code, § 56345, subd. (a)(8).) The ITP must include appropriate measurable postsecondary goals based upon transition assessments related to training, education, and employment and independent living skills if appropriate. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa); Ed. Code, § 56345, subd. (a)(8)(A).) The ITP must also list the transition services required to reach the postsecondary goals. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(bb); Ed. Code, § 56345, subd. (a)(8)(B).) "Transition services" means "a coordinated set of activities for an individual with exceptional needs" that: (1) "Is designed within an results-oriented process, that is focused on improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the pupil from school to post school activities, including postsecondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation"; (2) "Is based upon the individual needs of the pupil, taking into account the strengths, preferences, and interests of the pupil"; and (3) "Includes instruction, related services, community experiences, the development of employment and other post school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation." (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).) Transition services may consist of specially designed instruction or a designated

instruction and service. (34 C.F.R. § 300.43(b); Ed. Code, § 56345.1, subd. (b).)

54. District conducted a transition assessment of Student in January 8, 2014. Based on the transition assessment results, District proposed a transition goal and offered college and career awareness services as part of its FAPE offer at the February 28, 2014 IEP team meeting. Student did not present any persuasive evidence that either the transition assessment or the proposed transition goal was improper beyond just stating that the assessment was too short and that Student's answers did not comport with what Parents believed Student's responses should have been. Because Parents never consented to the February 28, 2014 IEP and their May 6, 2014 Attachment 1 only consented to speech and language goals and eligibility, District could not implement the transition goal and services offered at the February 28, 2014 IEP team meeting either during the 2013-2014 school year or the 2014-2015 school year. Student did not present any evidence supporting its allegation or contradicting District's evidence. Student did not meet his burden of persuasion on this issue.

STUDENT'S ISSUES 3(C) - FAILURE TO HAVE AN ANNUAL IEP TEAM MEETING

55. In Issue 3(c) Student contends that District failed to hold an annual IEP team meeting in the 2014-2015 school year. District contends it timely attempted to schedule an annual IEP team meeting, but Parents refused to attend.

56. Parents who refuse to cooperate in a district's efforts to formulate an IEP are generally not entitled to relief. (*See, e.g., Loren F. v. Atlanta Indep. Sch. Sys.* (11th Cir.2003) 349 F.3d 1309, 1312; *MM v. Sch. Dist. of Greenville Cty.* (4th Cir.2002) 303 F.3d 523, 535; *M.S. v. Mullica Tp. Bd. of Educ.* (D.N.J. 2007) 485 F.Supp.2d 555, 568 [denying reimbursement because parents failed to cooperate in completion of IEP]; *E.P. v. San Ramon Valley Unified School Dist.* (N.D.Cal., June 21, 2007, Case No. C05-01390) 2007 WL 1795747, pp. 10-11.). When parental non-cooperation obstructs the process, courts usually hold that violations do not deny the pupil a FAPE. (*See C.G. v. Five Town*

Community School Dist. (1st Cir. 2008) 513 F.3d 279.). When confronted with the situation of complying with the one year IDEA procedural requirement of annual IEPs, district must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE; a court will allow district reasonable latitude in making that determination. (*See Douglas C. v. State of Hawaii Department of Education* (9th Cir. 2013) 720 F. 3d 1038.)

57. District attempted to schedule the 2014-2015 annual IEP team meeting as early as October 28, 2014, when the annual IEP team meeting due date was January 2015. District asked Parents for available times to meet in October 2014, December 2014, and January 2015, but Parents ignored District's requests, repeatedly stated that their work schedule did not permit a meeting, and did not propose dates when they could meet with District, or otherwise indicate that they were interested in meeting with District. During this time period, Parents communicated to District the specific services they believed Student should receive in math and English, but were otherwise uninterested in meeting with District in an IEP context. By January 2015, District was unsuccessful in scheduling the annual IEP team meeting because Parents had already filed for due process. Being uninterested in making themselves reasonably available for the annual IEP team meeting (providing only one day where they were available within regular work hours), Parents could not fault District for not convening one within the one year time frame. Here, District's conclusion that having Parents participate at the annual meeting was important and continued its attempt to schedule the annual IEP with Parents instead of holding one without Parents was reasonable. Parents did not show District's actions were unreasonable, or otherwise provide evidence at hearing that they were interested in meeting with District for an annual IEP. Student did not meet his burden of demonstrating that District inappropriately failed to convene an annual IEP team meeting in the 2014-2015 school year.

STUDENT'S ISSUES 3(D) - FAILING TO PROVIDE IEP PROGRESS ON GOALS

58. Student contends that District failed to provide progress on IEP goals. District contends that it provided the progress on all IEP goals to which Parents consented.

59. Legal Conclusions 10 and 24 above are incorporated by reference.

60. District did not provide any progress reports on the May 20, 2011 IEP goals, but provided progress reports on the five speech and language related goals that Parents agreed to on May 6, 2014. District's failure to provide progress reports as to the goals in the May 20, 2011 IEP, the effective IEP during the 2014-2015 school year, was a procedural violation.

61. However, Student did not present any evidence that this procedural violation impeded his right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process (especially since Parents refused to attend an annual IEP team meeting at which these issues would be discussed), or caused a deprivation of educational benefits during the 2014-2015 school year.

62. Because Student did not show that District's procedural violation of not providing progress on the old May 20, 2011 IEP goals impeded the Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process or caused a deprivation of educational benefits during the 2014-2015 school year, Student did not meet his burden of demonstrating that District substantively denied him a FAPE.

DISTRICT'S ISSUE 1 - ASSESSMENTS WITHOUT PARENTAL CONSENT

63. District contends that it needed to reassess Student in all areas of needs pursuant to the April 10, 2014 assessment plan because of the conflicting findings as to Student's abilities, disabilities and needs from various independent evaluators' reports.

Although Parents did not previously consent to District assessing Student pursuant to the April 10, 2014 assessment plan, by the end of the hearing Mother did not object.

64. Legal Conclusions 6 and 7 above are incorporated by reference.

65. Based on the discrepant findings between Dr. Sporri's assessment results and District's 2012 assessment results, along with teachers' observations and reports of Student's performance, Dr. Chez's conclusions, and Dr. Johnson's unreliable assessment results and recommendations, District met its burden of persuasion that assessing Student pursuant to the April 10, 2014 assessment plan was necessary to provide him a FAPE. Since the April 10, 2014 assessment plan only specified academic achievement, health, language and speech communication development, social/emotional, adaptive behavior and observations in the classroom as areas for assessment, District could only assess in these areas absent parental consent. Although Mother articulated consent at hearing by her affirmative statements that she did not object to District now assessing Student in all nine areas, including intellectual development, motor development, post-secondary transition, and educationally related mental health services (the four areas left out of the April 10, 2014 assessment plan), those four areas are not part of this issue in the decision and the ALJ makes no ruling regarding these four areas. District met its burden of demonstrating that it needed to assess Student in all areas of need as set forth in the April 10, 2014 assessment plan without parental consent.

REMEDIES

1. Student prevailed on his Issues 1(e) (iii), 2(b) (i) and 3(a) (i). As a remedy, Student requests compensatory education with a non-public agency and reimbursement for costs associated with Dr. Sporri's independent evaluation. District contends no remedies are appropriate because Student did not meet his burden of persuasion on any issue. District prevailed as to Student's Issues 1(a), (b), (c), (d), (e)(i), (ii) and (iv), and (f), 2(a), (b)(ii), (c), (d), (e), (f) and (g), 3(a)(ii), (b), (c), and (d). District also

prevailed on its Issue 1. As a remedy, District requests an order that it can assess Student in the areas identified in the April 10, 2014 assessment plan without parental consent. Student did not object to District's right to assess.

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. Here, Student did not provide any evidence as to the number of compensatory education hours he could benefit from given his attention deficits. Based on District's failure to develop an appropriate attention goal for the 2012-2013 school year at the January 18, 2013 annual IEP team meeting, its failure to provide 50 minutes of specialized academic instruction in Student's English class for eight weeks from after the October 18, 2013 IEP to the end of the second quarter of the 2013-2014 school year and during the third quarter of the 2014-2015 school year until April 2, 2015 (the date of Student's amended complaint filing with OAH), Student is awarded 54 hours of one-to-one academic tutoring from District. The number of compensatory hours was calculated as follows: (a) From March 11, 2013, the date Parent agreed to the March 8, 2013 addendum to prevent goal implementation delay to June 2013, excluding spring

vacation equals 10 weeks that Student was without an attention goal in the 2012-2013 school year; (b) Eight weeks that Student went without specialized academic instruction in the 2013-2014 school year; (c) One quarter, or approximately nine weeks that Student went without specialized academic instruction in the 2014-2015 school year, taken together equal 27 weeks that Student did not receive a FAPE in the areas noted. Two hours per week for 27 weeks equal 54 hours of compensatory education hours. 54 hours of one-to-one academic instruction are reasonable because they are in addition to Student's school services.

4. Because District prevailed as to its right to assess Student in accordance with its April 10, 2014 assessment plan, it shall proceed to assess Student in the areas of academic achievement, health, language/speech communication development, social/emotional, adaptive behavior and observations in the classroom and school setting.

ORDER

1. Within 10 days of the date of this Decision, District shall inform Student by whom and when the 54 hours of one-to-one academic tutoring will be provided to Student. District shall decide whether it will provide and/or fund the 54 hours of one-to-one academic tutoring. If District decides to fund the one-to-one academic tutoring, the tutor will be selected by Student from a list provided by District.

2. Any compensatory education time awarded by this Decision must be used by June 15, 2016, or it will be forfeited.

3. District shall have the right to commence assessing Student without parental consent, in the areas of academic achievement, health, language/speech communication development, social/emotional, adaptive behavior, and observations in the classroom and school setting on the first day of school in the 2015-2016 school year. District shall convene an IEP team meeting in accordance with the IDEA after its

assessments. If Parents do not make Student available for assessments during the 2015-2016 school year, District shall not be legally required to provide Student a FAPE.

4. All other requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student was the prevailing as to his Issues 1(e)(iii), 2(b)(i) and 3(a)(i). District was the prevailing party as to Student's Issues 1(a), (b), (c), (d), (e)(i), (ii) and (iv), and (f), 2(a), (b)(ii), (c), (d), (e), (f) and (g), 3(a)(ii), (b), (c), and (d). District was also the prevailing party as to its only issue, Issue 1.

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: July 21, 2015

/s/

SABRINA KONG

Administrative Law Judge

Office of Administrative Hearings