

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015100570

DECISION

Parent on behalf of Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on October 14, 2015, naming Torrance Unified School District. OAH continued the matter for good cause on November 18, 2015.

Administrative Law Judge Alexa J. Hohensee heard this matter in Torrance, California on February 23, 24, and 25, 2016.

Jennifer Guze Campbell and Damian R. Fragosio, Attorneys at Law, represented Student. Parent attended each day of the hearing. Student did not attend the hearing.

Sharon A. Watt, Attorney at Law, represented District. Pamela Branch, District's Director of Special Education, attended the hearing on behalf of District.

At the close of the hearing, a continuance to March 14, 2016, was granted for filing of written closing arguments. Upon timely receipt of the written closing arguments, the record was closed, and the matter was submitted for decision.

ISSUES¹

1. Did District's May 15, 2014 individualized education program, completed on June 16, 2014, deny Student a free appropriate public education, by failing to offer:
 - a. An appropriate placement in the least restrictive environment; and
 - b. Transportation services?
2. Did District deny Student a FAPE during the 2014-2015 regular school year, by:
 - a. Unilaterally failing to convene an IEP team meeting to consider Student's privately funded independent educational evaluation; and
 - b. Failing to pursue to decision a District-filed due process hearing request seeking a determination of whether the May 15, 2014 IEP, offered Student a FAPE?
3. Did District deny Student a FAPE by failing to properly respond to Parent's June 22, 2015 request for an independent educational evaluation in the area of speech and language?

SUMMARY OF DECISION

For the reasons set forth below, Student prevailed on Issues 2(a) and 2(b). District prevailed on the remaining issues.

District's May 15, 2014 IEP offered Student a FAPE in the least restrictive environment, in a functional skills program with supported opportunities to socialize with typical peers on campus, and transportation. Therefore, District prevailed on Issues

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.)

1(a) and 1(b). However, District significantly interfered with Parent's opportunity to participate in the decision making process with regard to offering her son a FAPE when it failed to convene an IEP team meeting in December 2014 to review Parent's private independent educational evaluation. Therefore, Student prevailed on Issue 2(a). District's withdrawal of its due process filing on whether the May 15, 2014 IEP offered Student a FAPE resulted in an unreasonable delay in a determination of the dispute by OAH, and denied Student a FAPE from May 19, 2015 through June 18, 2015, as Student continued to attend grade level classes that did not provide him with educational benefit. Therefore, Student prevailed on Issue 2(b). District was not required to fund a speech and language assessment of Student in June 2015, or file for due process to defend its assessments, as the 2014 psychoeducational assessment was not required to assess Student's language abilities and any claims regarding a 2013 language assessment were barred by the statute of limitations. Therefore, District prevailed on Issue 3.

As an equitable remedy for Issues 2(a) and (b), regarding District's failure to convene an IEP team meeting to review Parent's independent evaluation, and to prosecute the dispute over the May 15, 2014 IEP to a decision, District is ordered to train its staff on the proper procedure for review of private independent educational assessments and Student is awarded 23 hours of compensatory education.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Student was a 16-year old young man who resided with his mother within District's boundaries during the applicable timeframe. He was eligible for special education under the eligibility categories autism and specific learning disability.

2012-2013 SCHOOL YEAR

2. During the 2012-2013 school year, Student was in seventh grade and

attended his school of residence, Hull Middle School. Student attended general education classes, with grade-level specialized academic instruction in the Learning Center. He had a paraeducator with him throughout the day to assist with attention and focus, communication and organization, and learning strategies as directed by Student's teachers and service providers. Student also received the support of District's behavior intervention team, Autism Spectrum Services Inclusion Support Torrance Team (ASSISTT), for weekly social activities. Student received speech therapy from a District speech pathologist.

3. Academically, Student performed well on rote tasks, such as reading words and spelling, and completing one-step and or familiar two-step math problems. However, Student struggled in all other academic areas, particularly comprehension, writing composition and oral expression. Student received A's in physical education and English language arts, and B's and C's in his other classes. However, his academic levels were far below grade level, and he scored below and far below basic on statewide testing. As a result of his autism, Student had severe receptive and expressive language delays, as well as severely delayed social communication skills (pragmatics). Student spoke clearly, but did not generally initiate conversations and could not maintain them. Student was well behaved and well liked by his teachers and peers.

4. Shaun Dukes, a District behavior analyst, supervised Student's behavior intervention assistants at Hull Middle School and consulted with Student's teacher. In May 2013 he conducted a behavior and social skills assessment of Student in preparation for Student's June 2013 triennial IEP review. Student initiated and responded to greetings, and was very compliant, but had weaknesses in attention and maintaining interactions that interfered with his ability to work in large groups. Student needed paraeducator support in general education classes, which moved at speeds faster than Student could comprehend, to break down lessons and help Student to

attend during whole group lessons. Student's teachers needed strategies to present information to Student.

5. Also in May 2013, a District speech pathologist assessed Student's language and speech skills. The assessment report stated that Student had age appropriate articulation, fluency and voice, but exhibited significant delays in receptive (comprehension), expressive (responsive) and pragmatic (social communication) skills.

June 18, 2013 IEP

6. On June 18, 2013, District convened Student's triennial IEP team meeting. Student's teachers were worried that Student was not performing at grade level and needed more academic support. Parent was concerned about Student's comprehension and retention of information.

7. The June 18, 2013 IEP, offered Student placement in general education classes at Hull Middle School for 60 percent of his school day, with 40 percent of his school day in specialized academic instruction at grade level. The IEP offered paraeducator support throughout the school day for focus and attention, with behavior support in a weekly 30-minute social group and 10 minutes twice a week at recess, and an hour per month of behavior supervisor consultation with Student's teachers and paraeducator. District also offered Student three 30-minute sessions of speech therapy each week; one session to work with the speech pathologist individually on comprehension and receptive and expressive language, and two sessions in a small group to work social communication skills. District did not offer Student transportation, because he lived approximately 500 yards from Hull Middle School and walked to school each day.

8. Parent consented to implementation of the June 18, 2013 IEP.

2014-2015 SCHOOL YEAR

9. On the advice of a teacher, Parent enrolled Student at District's Calle Meior Middle School for the 2014-2015 school year, because it had smaller specialized academic instruction classes. Parent believed that the smaller classes would bring Student up to grade level.

10. Student attended Linda Cohen's TIDES classroom for three periods of specialized academic instruction each day. TIDES students received grade level academic support in whatever areas were designated on their IEP, and Student received daily instruction in math, English and study skills. Student struggled to comprehend grade level information. Concrete math was a strength, but Student had difficulty with novel two-step calculations and variables. In English, Student's receptive and expressive language delays made it difficult for him to comprehend academic assignments and engage in reflective conversation.

December 19, 2013 IEP

11. On December 19, 2013, District convened an IEP team meeting to review how Student was doing with the transition to his new middle school. The meeting was attended by Parent, Ms. Cohen, Student's ASSISTT supervisor, Student's general education social studies teacher, and a District program specialist. The general education teacher noted that Student had adapted well to his new class, but was earning very low grades because his work was below grade level standards. Ms. Cohen was also concerned that Student could not understand grade level materials. Ms. Cohen proposed an IEP amendment to allow instruction and assignments at Student's level of understanding, rather than at grade level, and modification of Student's grades to reflect his comprehension level.

12. Parent was frustrated by the recommendation, as she wanted TIDES

classes to bring Student to grade level, and not to let him fall behind. She declined consent to the proposed IEP amendment.

13. In spring 2014, Parent retained counsel to represent Student.

May 15, 2014 IEP

14. District convened Student's annual IEP team meeting on May 15, 2014, attended by Parent, Ms. Cohen, Student's general education U.S. history teacher, Student's speech pathologist, the ASSISTT supervisor, a program specialist, and attorneys for Student and District.

15. Student's speech pathologist, Maria Acosta-Snustead, reported that Student had met two of his speech goals and made progress on all of them, but still demonstrated minimal quality and depth of conversation. Ms. Acosta-Snustead worked with Student using third, fourth and fifth grade materials in an attempt to increase Student's comprehension. She identified Student's areas of need as pragmatics, semantics (meanings of words), receptive language (inferring information to answer higher-level questions, such as who, how and why), and proposed annual goals in each of these areas.

16. Ms. Acosta-Snustead was a well-qualified speech pathologist and testified at hearing. She had a bachelor's degree in psychology and a master's degree in communication disorders, and had been a credentialed speech pathologist for four years. She assessed and provided speech services to middle school students for District, and worked with Student weekly on a one-to-one basis during the 2013-2014 school year. It was her opinion that Student was one to four years below grade level. She worked on Student's goals in the context of his classwork, but Student could take an entire session to comprehend one or two sentences of grade level material. Student's social studies and science classes required a lot of comparing and contrasting, which Student found very difficult. Ms. Acosta-Snustead observed that Student demonstrated

significant difficulty in comprehension when working with grade level textbooks, which she attributed to the topics, content, complex syntax and high vocabulary level. She attempted to help Student write a brief paragraph on how stars were formed for his science class, but he did not have the background other students had and could only talk about seeing stars, and she was unable to get him to understand concepts such as nebulae. She believed that Student learned from being physically shown what to do, and that a functional academics program would teach him to learn by doing practical things, such as learning money math. Ms. Acosta-Snustead's demeanor was professional and helpful, and in light of her professional education, training and experience, and her familiarity with Student's language skills, her opinions on Student's language and communication needs and the education and services that would meet those needs was given significant weight.

17. The ASSISTT supervisor reported that Student required minimal to moderate prompts to maintain peer interaction, and showed increased peer interaction and ability to attend during group activities. However, Student continued to need prompts to follow large group instruction. Student exhibited greater attention during one-on-one instruction. The ASSISTT supervisor identified attention and organization needs for Student and proposed goals in those areas.

18. Student's teachers reported on Student's performance in the classroom. Student was well behaved, and could interact appropriately with peers, but had difficulty initiating and remaining on task. Student's attention improved significantly when the teacher provided instruction in small groups, although Student did not participate unless directly addressed. Kimberly Lee, Student's general education history teacher, told the team that Student had improved his grade to a D from an F, by turning in his homework and participating in a group project with support, but did not seem engaged when asked to think in-depth. Student struggled with class assignments involving

articles from Newsweek and Time, and looked lost. He rarely responded verbally, was off topic when prompted to ask questions, and only responded to teacher questions on a one-to-one basis. Ms. Lee testified credibly at hearing regarding Student's inability to comprehend eighth grade history concepts, such as Jacksonian democracy and the Reconstruction. Ms. Lee held a bachelor's degree in American history, a master's degree in technology-based education, a secondary social sciences credential, and had been a middle school social studies teacher for 20 years. Her opinion that Student needed more academic support than a paraeducator could provide was persuasive.

19. Ms. Cohen reported on Student's performance in her English, math and study skills TIDES classes. Student exhibited strength in rote academic tasks, like reading and simple math, but his disabilities impaired his ability to benefit from grade level education. Grade level curriculum moved too quickly, even with modifications, for Student to comprehend the materials and subject matter. Student's receptive and expressive communication delays severely restricted his ability to participate at grade level. Ms. Cohen identified reading, math, comprehension and writing as areas of need for Student and proposed goals in each of these areas.

20. Parent disagreed with the District IEP team on Student's cognitive ability, communication and social skills levels. She wanted Student to remain in general education. Due to time constraints, the IEP team meeting was adjourned, to be completed at another meeting.

District's June 2014 Psychoeducational Assessment

21. In June 2014, Susan Lee, District psychologist, performed a psychoeducational assessment of Student. In light of Student's autism and language delays, Ms. Lee chose test instruments that allowed her to make adaptations to ensure understanding. She chose tests with items that started out easy and became harder, so she could ascertain Student's correct understanding of instructions during his

performance on easy items. The tests were structured to become progressively harder and, per test standards, she stopped each section when Student began accumulating a specified number of wrong answers, or said he did not know or was guessing. These tests were challenging for any student because they were designed to determine the ceiling of a child's ability. Ms. Lee chose the Wechsler Intelligence Scale for Children, which tested intellectual functioning in specified cognitive domains (verbal comprehension, perceptual reasoning, working memory and processing speed) and, per a chart in the test manual, assigned a weight to each domain according to earned scores in order to arrive at a combined full-scale intelligence quotient. Ms. Lee also chose the Universal Nonverbal Intelligence Test, or UNIT, which was administered nonverbally and measured general intellectual ability. Student performed markedly better on tests of rote skills than in areas requiring higher-level thinking. Student obtained a 71 full-scale score on the Wechsler and a 77 full-scale score on the UNIT. These scores placed Student in the borderline and delayed range of cognitive ability, respectively.

22. Ms. Lee was a highly qualified psychoeducational assessor. She had a master's degree in special education of students with learning disabilities, special education credentials in Michigan, and California credentials in English, teaching learning handicapped, resource specialist, school counseling and school psychologist. She had been a school psychologist for 20 years and performed approximately two thousand psychoeducational assessments. The Wechsler and the UNIT were tests of intelligence specifically designed to be predictive of student performance both academically and vocationally. The UNIT tested the same things as the Wechsler, but used nonverbal language, and was designed to measure the cognitive functioning of students with speech and language impairments and autism. Ms. Lee confidently and persuasively explained that the Wechsler full-scale score took into account a wide spread of splinter skills, which manifested as widely varying composite scores used to

calculate the full-scale score, and research demonstrated that the full-scale score was valid with a spread of scores such as seen in Student's Wechsler results. Full-scale scores in the 70's on two cognitive tests, the Wechsler and the UNIT, also indicated the reliability of the scores for both tests. Except for strength in rote math reasoning, all of Student's skills for learning were significantly below average.

23. Ms. Lee's testimony was thoughtful, thorough and informative. Her demeanor was professional, and she readily provided detailed explanations and clarifications when requested. She opined that a student with Student's ability level could not access the general education curriculum sufficiently to learn, and Student's needs required a functional academics curriculum. The curriculum gets harder as students move through high school, and even with intensive specialized academic instruction in a program like TIDES and a plethora of accommodations, grade level curriculum was at a language and academic level beyond Student's ability to comprehend. In her experience, students with full-scale intelligence scores in the 70's had great difficulty accessing grade-level curriculum. In light of her education, experience and training in cognitive assessment and educational psychology, her assessments and observations of Student, and her thorough review of Student's records, Ms. Lee's opinions regarding Student's cognitive ability, learning skills, educational needs, and appropriate special education and services to meet those needs, was accorded great weight.

24. As part of the psychoeducational evaluation, Ms. Cohen administered the Woodcock Johnson III Tests of Achievement to measure Student's academic skills. Student had average basic reading and math calculation skills, but low scores on reading fluency and math reasoning, and very low scores in oral expression, listening comprehension, reading comprehension and written expression. These scores were consistent with other measures performed in the classroom, such as Student's well

below average score in reading aloud, comprehension after silent reading and solving word problems, and his below average scores in computing basic math operations. Ms. Cohen determined that Student was reading at the third grade level. In her opinion, Student's disability, with expressive and receptive communication delays, impaired his ability to access general education curriculum, which could not be modified sufficiently for him to meet grade level standards.

25. Ms. Cohen was a well-qualified credentialed special education teacher, and was familiar with Student after having taught him remedial academics for approximately three hours per day for six months at the time of the assessment. Her demeanor at hearing was professional, and she appeared to be genuinely concerned for Student. Her answers were considered, focused and enlightening. Ms. Cohen was aware that Parent wanted the small group and individualized TIDES instruction to pull Student up to grade level, but stressed that not all students would meet grade level standards. She explained that students needed to be taught at a level where they could achieve success and make progress, and for Student that was below grade level. Ms. Cohen believed that the measurement tools she used in her classroom accurately determined Student's comprehension, despite his autism and communication delays. In her opinion, Student required a functional academics and life skills program such as District's Therapeutic Education Program for Success (STEPS) program. Ms. Cohen was credible and persuasive, and her opinions regarding Student's academic skills, understanding of grade level instruction and materials, educational needs, and appropriate educational program and placement were given significant weight.

June 16, 2014 IEP

26. District convened the second half of the IEP team meeting on June 16, 2014. It was attended by the previous IEP team members, with the addition of teachers from South High School and Torrance High School, both District schools, to discuss

Student's transition to high school.

27. Ms. Lee reviewed the results of her assessment of Student's cognitive ability. Parent questioned the full-scale intelligence score, which was lower than an average full-scale score earned by Student in a psychoeducational evaluation in 2010. Ms. Lee reviewed the components of both assessments with the team, and explained to Parent why the Wechsler and UNIT scores were valid and reliable measures of Student's cognitive ability.

28. Ms. Cohen reviewed the academic achievement assessment with the team, and responded to Parent questions. Parent expressed concern with Student's reading comprehension, and District members of the team explained how, in addition to the reading goal, the proposed speech goals addressed reading comprehension, and not just language.

29. The special education teachers from the special education programs at Torrance High, student's high school of residence, and South High presented their programs. Torrance High had grade level specialized academic instruction classes similar to TIDES. South High had the STEPS program, which was a non-diploma track program with four components: functional academics; social and language; practical living; and prevocational. Functional academics taught core curriculum as practical living skills. For example, functional math might involve costing out ingredients for a meal, planning purchases with daily ads, purchasing items, and making the meal by following recipes with weights and volume measures. Functional math addressed money skills, time calculation, time management, and calendar and project management. District divided the STEPS program into six periods, like the rest of the South High campus, so STEPS students could attend general education classes in areas where they could access the curriculum. District provided STEPS classes at four levels, with Level 1 for the most involved students, and Level 4 for very independent students. The STEPS program

recommended that its students take physical education all four years, and physical education was available as a general education elective.

30. STEPS classrooms typically had 7-to-15 students, with a teacher and a paraeducator, for a small teacher-to-student ratio. The small classes and embedded curriculum taught language and social skills, and provided opportunities throughout the day for learning and practicing social communication skills. STEPS included a social component, with a Best Buddies club that paired STEPS students with general education students, to establish friendships on campus and integrate the students into the campus. STEPS staff supported students at campus clubs, and in assemblies, pep rallies and other campus activities. STEPS also provided community-based instruction, during which students were taken into the community to generalize functional academics and social communication skills learned in the classroom. For example, students visited grocery stores or nearby restaurants to practice money and social interaction skills.

31. STEPS taught practical living skills to make its students as independent as possible at school, at home and in the community. The STEP classrooms had their own kitchen, dishwasher and laundry facilities, and students learned to prepare simple meals, clean up after themselves and do laundry. Between 10th and 11th grades, STEPS students participated in a work skills program, where they were placed in businesses throughout District in groups of two-to-three students with a job coach to learn job skills. Eleventh and 12th graders could participate in a program at a local occupational center that offered vocational classes in areas such as hotel, restaurant, floral, computer design and automotive. Ninety-five percent of STEPS students went through the graduation ceremony and transitioned into District's adult transition program.

32. Although STEPS offered students the flexibility to take general education classes, the STEPS classes counted towards graduation with a certificate of completion, not a diploma. A STEPS student would not earn sufficient grade-level class credits to

receive a diploma at graduation.

33. STEPS teacher Laurie Lehmer testified concerning the STEPS program. She was familiar with Student's cognitive ability and academic performance from a review of Student's records. She persuasively opined that Student, with full-scale intelligence scores in the 70's, would make significant progress in functional academics, benefit from the social and communication curriculum embedded in the STEPS program, and have many opportunities to generalize learned skills in the small classroom, on campus, in the community during outings and at jobsites during prevocational activities.

34. Parent requested that the IEP team consider placing Student in a diploma-track program at a nonpublic school run by The Help Group. The team discussed this option, but District team members determined that Student needed a functional academics program.

35. District offered Student placement in the STEPS program at South High, with accommodations and grade modifications to a functional curriculum, with the same level of speech therapy and ASSIST support Student had been receiving. In the transportation section of the IEP, District checked a box stating "no" transportation, but also checked a box indicating that Student would be transported on a "special education" bus. The failure to check the "no" box was a typographical error. Parent participated during this IEP team meeting and understood that transportation was offered to Student.

36. Parent wanted Student to earn a regular high school diploma, and disagreed with the proposed placement on an alternate curriculum. Parent declined consent to the May 15, 2014 IEP, as completed at the June 16, 2014 IEP team meeting.

37. By letter dated September 8, 2014, Student reminded District that until and unless Parent signed the proposed IEP, Student's operative IEP was the one dated June 18, 2013, providing for 60 percent of time in a general education placement.

Student would attend Torrance High, with the combination of general education and grade-level specialized academic instruction classes called for in the 2013 IEP.

2014-2015 SCHOOL YEAR

38. Although the September 8, 2014 letter indicated, and District was under the impression, that Student would be enrolled at Torrance High, Parent actually enrolled Student at South High. District transported Student to and from South High.

39. In August 2014, Parent obtained an independent assessment of Student's cognitive abilities from Dr. Pantea Sharifi-Hannauer, a physician at Pediatric Minds. Parent told Dr. Sharifi-Hannauer that Student was high functioning with poor memory, and she hoped to have Student placed in general education.

40. The Pediatric Minds evaluation summary report, dated September 18, 2014, was unsigned. The report indicates it was completed by Dr. Sharifi-Hannauer and Jason Dorin, Psy.D. Neither Dr. Sharifi-Hannauer nor Dr. Dorin testified at hearing. No evidence was submitted regarding their education, training and experience in assessing cognitive ability, administering the assessment instruments used, assessing students with autism or assessing high school students. It is unknown whether either of these individuals had any education, training or experience in school settings, or in making recommendations for educational programs. For these reasons, and reasons discussed below, the test results, opinions and educational recommendations of Dr. Sharifi-Hannauer and Dr. Dorin were accorded little weight.

41. Dr. Sharifi-Hannauer administered the Test of Non-Verbal Intelligence, the TONI, on which Student received an index score of 91, in the average range.² Only an

² Parent spoke only with Dr. Sharifi-Hannauer, and Dr. Dorin's role in the assessment and the report, if any, is unknown. This decision will refer to Dr. Sharifi-Hannauer as the assessor and author of the report.

index score for the TONI was provided, without any information on the subcategories of cognitive functioning tested, if any. Dr. Sharifi-Hannauer reviewed Student's recent Wechsler results, and cautioned that the point differences between Student's verbal comprehension score and perceptual reasoning (nonverbal) score on the Wechsler was so large as to render the Wechsler full-scale score invalid. Dr. Sharifi-Hannauer discarded the Wechsler results, and based on her administration of the TONI, concluded that Student had average intelligence when "verbal skills were factored out of the equation." Dr. Sharifi-Hannauer did not reference Student's full-scale intelligence score of 77 on the nonverbal UNIT administered by District, or address the discrepancy between her measure of Student's nonverbal intelligence and the District's nonverbal assessment. This suggests that Dr. Sharifi-Hannauer either did not consider Student's delayed nonverbal cognitive score, or did not have complete information on District's cognitive testing, which undermined the summary report's conclusion regarding Student's cognitive abilities. At hearing, District's assessor Ms. Lee, and nonpublic school admissions director Dr. Karen Enyedy, both credentialed psychologists, explained that the point spread among Student's composite scores on the Wechsler did not render the Wechsler full-scale score invalid, contrary to Dr. Sharifi-Hannauer's statement. The evidence suggested that Dr. Sharifi-Hannauer was not familiar with the Wechsler and did not know how to interpret it. For the reasons stated, the opinions in the Pediatric Minds summary report of Student's cognitive ability, and the recommendations based on those opinions, were given little weight.

42. Dr. Sharifi-Hannauer's reported observations of Student during testing provide some insight into Student's ability to process verbal instructions. Student indicated to Dr. Sharifi-Hannauer that he understood directions for the test, but exhibited difficulty understanding what was asked of him, although he could sustain attention and appeared to put forth good effort. Dr. Sharifi-Hannauer noted that

throughout testing Student demonstrated limited shared enjoyment, minimal communicative gestures and imaginative thinking, and did not engage in reciprocal communication or engage in conversation.

43. Dr. Sharifi-Hannauer recommended that Student be placed in a school environment with: teachers experienced in working with students with autism; a low teacher to student ratio; visual schedules; checks for understanding of materials; lessons broken down into smaller segments; repetition of information; modified homework; grades for work completed in a reasonable time; extra time for tests; weekly communication between teachers and Parent; breaks throughout the day to help with attention; a social skills group; weekly meetings with a school psychologist; one hour of speech therapy per week to work on language and comprehension skills; and weekly occupational therapy for fine motor delays.³ Except for occupational therapy and weekly communication between teachers and Parent, the STEPS program and May 15, 2014 IEP, provided all of these program components, accommodations and modifications.

44. In September 2014, Student missed the after school bus, and Parent found him outside of South High, lost, afraid and attempting to walk home. Parent was very upset that Student had missed the bus and been allowed to wander off campus. Student was unfamiliar with the three-to-four mile route home, unable to navigate busy streets safely, and unable to communicate to others that he was lost or to provide Parent's telephone number and address. Within a few days, Student again missed the after school bus, and was found by Parent wandering near South High.

³ There was no evidence that Dr. Sharifi-Hannauer or Dr. Dorin were licensed speech pathologists or occupational therapists with the education, training or experience to identify Student's language or fine motor needs and to make recommendations on speech or occupational therapy.

45. On September 29, 2014, Parent made a written request for an emergency IEP team meeting to discuss transportation at South High.

46. Upon receipt of the request, District realized that Student was not attending Torrance High. On October 2, 2014, District sent a letter to Parent that beginning October 7, 2014, Student would receive transportation to and from Torrance High. In the interim, District continued to transport Student to and from South High.

47. As soon as District was notified that Student had missed the bus twice, an aide was assigned to walk Student from his last class to Laurie Lehmer's STEPS classroom, which escorted its students to the after school bus. For Student's last few days at South High, he went into the STEPS classroom at the end of the last period, functional science. Student sat at the back of the classroom, but raised his hand and participated in the few remaining minutes of the class. Student did not have any further problems with transportation, and in fact had perfect attendance, for the 2014-2015 school year.

October 7, 2014 IEP Amendment

48. On October 7, 2014, Student began attending a combination of general education and grade-level specialized academic instruction classes at Torrance High. There were no problems with transportation to and from Torrance High.

49. On October 7, 2014, District convened an IEP team meeting to address transportation and review Student's progress. The meeting was attended by Parent, advocates for Student, Student's speech pathologist, Student's ASSISTT supervisor, Student's general education teacher, an administrator, and the attorney for District.

50. The IEP team, including Parent, agreed to a bus schedule for Student to attend Torrance High. The general education teacher, who taught a computer elective, reported that Student struggled to complete independent work, and needed multiple cues and prompts to understand what to do. Student's speech pathologist, Samantha

Tang, reported that Student required prompting to answer questions with detail. The IEP team scheduled a 30-day meeting to review Student's adjustment to the new campus for November 6, 2014.

51. On October 7, 2014, Parent sent a letter to District consenting to portions of the May 15, 2014 IEP, including goals, speech therapy (individual and group), and ASSISTT services (social club, recess support and teacher consultation). Parent did not consent to placement at South High in the STEPS program. Parent reminded District that the June 18, 2013 IEP was still the operative IEP, and that Student would be attending general education for 60 percent of the school day, with 40 percent of the school day in grade level specialized academic instruction, accompanied by a paraeducator throughout the school day.

52. On October 17, 2014, District filed a due process complaint with OAH, naming Parent on behalf of Student and seeking a determination that the May 15, 2014 IEP offered Student a FAPE (District's Case).⁴

November 6, 2014 IEP Amendment

53. On November 6, 2014, District convened an IEP team meeting to review Student's adjustment to Torrance High. District continued to offer six periods of specialized academic instruction in the STEPS program at South High, and proposed an increase in ASSIST services, to 30 minutes, three times per week, and elimination of the individual session of speech and language. At the end of the meeting, Parent requested that the team review the Pediatric Minds summary report, and provided a copy. Parent wanted the team to reconsider Student's recommended placement in light of Dr. Sharifi-Hannauer's evaluation results. The team agreed to meet in approximately one month to review the report.

⁴ Torrance Unified School District v. Student, OAH case number 2014100743.

54. On November 11, 2014, Parent wrote to District and consented to the increased ASSISTT consultation, but declined the other changes proposed in the November 6, 2014 IEP amendment.

55. After the November 6, 2014 IEP team meeting was adjourned, District's program specialist Rudy DeLana distributed copies of the Pediatric Minds summary report to the members of Student's IEP team at Torrance High, including speech pathologist Sara Brown, special education English teacher Sara Marks, Student's case carrier Alison Glaser, and ASSISTT supervisor Shaun Dukes.

56. On December 2, 2014, District scheduled an IEP team meeting for December 9, 2014, to review the Pediatric Minds summary report. Written notice of the meeting was sent to Parent, and District IEP team members were notified by email. Parent and Student's counsel confirmed that they would attend.

57. On December 7, 2014, District notified Parent and other team members by email that the IEP team meeting was canceled. The email to Parent stated that instead of convening an IEP team meeting, District would send Parent a written summary of the results of its consideration of the Pediatric Minds summary report. At hearing, the District members of Student's November 2014 IEP team either could not recall speaking with anyone regarding the report, or unpersuasively testified that they had spoken to others regarding the report but could not recall to whom they had spoken or the content of the conversation.

58. On December 22, 2014, District sent Parent a letter entitled "Response after Consideration of the September 18, 2014 Pediatric Minds Evaluation Summary Report." That letter listed the documents that District had reviewed, stated that the report did not disagree with District's own measures of Student's verbal cognition and academic achievement, and that the report made recommendations already contained in the District's offer of FAPE.

59. On January 7, 2015, Student filed a due process complaint with OAH naming District, and seeking a determination that District had denied Student a FAPE by failing to convene an IEP team meeting to review the Pediatric Minds summary report (Student's prior case).⁵

60. On January 12, 2015, OAH consolidated District's case and Student's prior case. On February 5, 2015, OAH continued the consolidated hearing to May 19, 2015.

61. In April 2015, Parent took Student to a nonpublic school for students with autism, run by The Help Group, to see if they had a program suitable for Student. On April 14, 2015, The Help Group sent Parent a letter stating that Student met the admission criteria for its functional academics, or Bridge, program, but declined to make a formal offer of admission because Parent had indicated that she wanted District to fund the program. The Help Group referred Parent to Student's IEP team to determine if an IEP offer for its functional academics program would be made.

62. Dr. Karen Enyedy, chief psychologist and Director of Admissions at The Help Group, testified at hearing. She had not met Student or reviewed any records on Student, and was prepared only to answer questions about the Bridge program. The Bridge program served students, kindergarten through age 22, with autism, social deficits, communication delays and mild cognitive delays. A student with cognitive scores in the 70's was a good fit for the program. The Bridge program taught functional academics, life skills and some community-based instruction. If students in the Bridge program could demonstrate the ability, their IEP team could recommend that the student transfer to one of The Help Group programs on a diploma track. Dr. Enyedy had no personal knowledge of any student who had transferred out of the Bridge program to a program on the diploma track. The Bridge program was similar to the STEPS

⁵ Student v. Torrance Unified School District, OAH case number 2015010247.

program: the class size was 12-14 students with at least a teacher and one aide, for a one-to-six or one-to seven teacher-to-student ratio; the program had functional academic, life skills and community-based instruction; and students earned a certificate of completion. Dr. Enyedy was a licensed psychologist with 20 years of experience and was familiar with the Wechsler. She opined that the point scatter among Student's composite domain scores on the Wechsler that made up the full-scale intelligence quotient would not necessarily cause her to question the validity of the full-scale score.

63. District withdrew District's case on April 29, 2015. Student withdrew Student's prior case on May 5, 2015.

64. On June 18, 2015, Student requested an assessment of Student's language and speech skills, which had last been assessed by District in May 2013.

65. On June 22, 2015, District responded that it declined the request to assess Student's language skills, stating that a speech and language assessment would take place in spring 2016 in preparation for Student's triennial IEP review.

66. On June 22, 2015, Student requested an independent educational evaluation of Student's language and speech skills.

67. On June 25, 2015, District responded by declining to fund an independent educational evaluation of Student's language and speech skills. The letter gave the reasons for District's refusal, listed the options it had considered, delineated the relevant factors in its decision, identified the assessments, IEP's and related documents it relied upon in arriving at its decision, and offered Parent a copy of her procedural safeguards.

68. Student responded by filing for due process in the present matter on October 14, 2015.

HIGH SCHOOL TEACHERS AND SERVICE PROVIDERS

69. Several teachers and service providers from Torrance High testified about

Student's performance in high school classes. The May and June 2014 IEP teams did not have the benefit of this information, but much of the testimony corroborated the testimony of the middle school teachers and providers concerning Student's inability to benefit from general education.

70. Sara Marks was Student's special education English teacher at Torrance High during the 2014-2015 and 2015-2016 school years. Student could copy off the board with prompting, and completed assignments with much prompting and cuing from his aide, but his written work did not demonstrate an understanding of the topic. Student did not participate in class, and exhibited frustration with class materials (studies of American literature) as refusal to initiate or complete classwork. Ms. Marks opined persuasively that a functional academics program was an appropriate placement for Student.

71. Alison Glaser, a special education teacher and Student's case carrier at Torrance High, occasionally acted as a substitute teacher in Student's English class. Her observations of Student in the classroom were consistent with that of Ms. Marks, and she similarly opined that STEPS was an appropriate placement for Student.

72. Louis Vozzo, Student's general education history teacher, was in his first year of teaching as a credentialed teacher. His demeanor was serious and sincere, and he was passionate about his commitment to his students in general, and to Student in particular. Mr. Vozzo made a point of working with Student one-on-one every day. Student insisted on turning in classwork with the other Students, although Mr. Vozzo and the paraeducator reminded Student that he could have additional time, which Mr. Vozzo perceived as Student's attempt to look like the other students. Student did not understand the macro concepts they were covering in class, and gave responses that were off topic. For example, after much work and individual attention during lessons on the Industrial Revolution, Student was able to identify the picture of a cotton gin, but

did not grasp the concept of how machines made people's lives easier. Student struggled to understand the course content, understood only a small part of the vocabulary of the course and was failing the class. Mr. Vozzo was not familiar with the STEPS program, but believed that a life skills class would be beneficial for Student.

73. Sara Brown was the speech pathologist who provided Student with small group speech therapy at Torrance High. They worked on Student's pragmatics and semantics goals, but she observed that Student had very limited ability to retain information, which slowed his progress. Student exhibited increased frustration and an increased awareness of how frustrated his peers in the small groups were when Student could not participate appropriately. Student's most common responses were "don't know" or "too hard." In Ms. Brown's opinion, Student's needs would be met in a program like STEPS, where Student could acquire functional and academic skills, with instruction in social and independent living skills as well as community-based instruction. Ms. Brown recalled that nobody had asked her opinion of the Pediatric Minds report.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁶

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) et seq.;⁷ Ed. Code, § 56000, et seq.; Cal.

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

⁷ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In 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. 950, 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. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Shaffer*); 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 matter, Student had the burden of proof on all issues.

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

ISSUE 1: DISTRICT'S MAY 15, 2014 IEP OFFER OF FAPE

Issue 1(a): Placement in the Least Restrictive Environment

6. Student contends that the May 15, 2014 IEP did not offer Student placement in the least restrictive environment. Student asserts that placement in the STEPS program was too restrictive because it precluded him from earning a regular high school diploma. Student argues that his success in grade-level classes, as reflected in perfect attendance, work ethic and good behavior, warranted placement in general education courses that would earn credits towards a diploma. District disagrees, and contends that the STEPS program was the least restrictive environment in which Student's educational needs could be met.

7. In determining the educational placement of a child with a disability, a school district must ensure that, in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs, and that the child with a disability is not removed from

education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116(d) and (e).)

8. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that (1) children with disabilities are educated with non-disabled peers; and that (2) special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. § 300.114 (a).) To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect the student has on the teacher and children in the regular class; and (4) the costs of mainstreaming the student. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of general education was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's Syndrome].)

9. If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires a further determination of whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.) "Mainstreaming" is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School*

Dist. (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

10. As to the first *Rachel H.* factor, despite Student's perfect attendance, work ethic and good behavior, the weight of the evidence established that Student would not receive educational benefit from a regular education placement. Student did not comprehend grade level curriculum. Student's disabilities related to autism and receptive and expressive language delays interfered with his understanding of grade level materials to such an extent he could not access grade level curriculum. The Woodcock Johnson scores of academic achievement presented to the May and June 2014 IEP teams, showed severe delays in the academic skills needed to access grade level curriculum. Student was reading at the third grade level, and had great difficulty understanding eighth grade textbooks. Student's TIDES teacher reported to the May and June 2014 IEP teams that Student was struggling with grade level curriculum despite grade level intervention. Student's speech pathologist worked with Student using lower grade level materials, and Student still had difficulty with simple when, why and how questions. Student's middle school general education teacher reported that Student had difficulty maintaining attention to whole group instruction, focusing on classroom tasks, and was prompt dependent. Student's June 18, 2013 IEP called for Student's grades to reflect progress on annual goals, rather than academic performance, and his passing grades in eighth grade did not reflect mastery of grade level curriculum. Although not available to the team in May or June 2014, Student's high school teachers

later observed that Student did not comprehend the complex and abstract concepts in ninth and tenth grade curriculum, adding belated support to the District team member's determination that Student would not be able to succeed at grade level curriculum in high school. The May and June 2014 IEP teams were justifiably concerned that Student would fall further behind as he progressed through high school, which only became more academically rigorous as the grades advanced. Student offered no witnesses to challenge the opinions of District's witnesses regarding Student's severely delayed academic skills. Student needed more support than general education classes and grade-level specialized academic instruction could provide. Student could not receive educational benefit from regular education classes.

11. As to the second *Rachel H.* factor, the nonacademic benefits of a general education placement, the evidence did not show that Student benefitted socially from general education. High school lecture-format classes offered little opportunity for social interaction, and at the time of the IEP, Student did little more than greet classmates when prompted. On the occasions when Student did participate in class, with paraeducator prompting or in response to a teacher question, Student's responses were simplistic and often unclear or off-topic. The record showed that Student's only attempts at spontaneous classroom participation took place in the STEPS functional science class while he waited for an escort to the bus. Although Student was well liked and treated kindly by his typical classmates, the May and June IEP team members reasonably concluded that Student derived *de minimis* nonacademic benefit from placement in general education. Although not available to the IEP teams, Student did in fact begin to exhibit frustration in high school, and make unsuccessful attempts to fit, which his teachers attributed to his growing realization that he could not keep up with his classmates at grade level. The evidence suggested that placing Student in a class with typical peers and expecting him to participate in whole group instruction that he

could not attend to or understand had a detrimental nonacademic effect on Student.

12. Student also had significant pragmatic language delays and language goals that could not be addressed in general education classes. Student's comprehension deficits interfered with his ability to participate in nonacademic classes, such as a computer elective, where he struggled and could not do grade level work. Although Student was well behaved and well liked by his teachers and peers, he could not maintain a conversation with his peers and would not participate in class discussions without significant prompting, cuing and teacher encouragement. When he did participate, Student was off topic, or gave simplistic responses without detail. As poignantly demonstrated by the testimony of Ms. Tang and Mr. Vozzo, Student was becoming aware of his inability to meet the expectations of other students and pretending to keep up with classwork he did not understand.

13. The third *Rachel H.* factor also weighed against a general education placement. Although Student was well-behaved, compliant and had an aide to help him attend and stay on task, Student needed constant attention and individualized instruction, taking the general education teachers away from their work with other students in the classroom. There was no evidence that the fourth *Rachel H.* factor affected the placement decision.

14. Applying the *Rachel H.* factors to the facts, Student could not have been satisfactorily educated solely in a regular education environment. Therefore, the least restrictive environment analysis requires a determination of whether Student was to be mainstreamed to the maximum extent that is appropriate per *Daniel R.R.*

15. Student could only make meaningful academic progress in a special education classroom with a small teacher-to-student ratio and instruction at Student's comprehension level. As persuasively stated by Ms. Cohen, students can only progress forward from the level they are at currently, and the weight of the evidence established

that Student required instruction at a functional academics level. District IEP team members, high school teachers, and service providers opined unanimously that Student was not at grade level academically, and was unable to comprehend grade level academics with any amount of support and accommodations. Student required functional academics. The Help Group's admissions committee, after reviewing Student's records and interviewing Student, concurred that Student required functional academics and would place Student in a functional skills program. The STEPS program provided the instructional strategies and embedded supports identified by the May and June 2014 IEP teams and in the Pediatric Minds report as necessary for Student to learn, such as visual cues, repetition of material, and small group instruction, that general education classes did not. Therefore, it was appropriate for the May 15, 2014 IEP to offer 100 percent of Student's academics in the STEPS program, and no mainstreaming for academics was warranted.

16. The proposed STEPS placement permitted students to advance at their own level and pace. If, as Parent anticipated, Student brought his academic level up to grade level as a result of individualized instruction, STEPS offered Student the flexibility to take general education classes as he demonstrated mastery of the concepts necessary to access grade level curriculum in a particular subject. However, at the time of the May and June IEP team meetings, Student was not demonstrating a grade level understanding of the curriculum in any academic area. Similarly, physical education was available as a high school general education elective to STEPS students if Student could demonstrate the ability to participate.

17. The District members of the May and June 2014 IEP teams and the Pediatric Minds report were in agreement that Student needed a small group setting and small teacher-to-student ratio, with multiple nonverbal classroom supports such as visual schedules, visual materials, and social skills instruction to compensate for

Student's communication and social delays. The STEPS program contained embedded curriculum for communication and socialization. Therefore, it was appropriate for the May 15, 2014 IEP to offer all of Student's high school non-academic classes in the small, supportive classrooms of the STEPS program, and no mainstreaming for non-academic classes was warranted.

18. To the extent Student's communication and social needs could be addressed outside of the classroom, the May 15, 2014 IEP supplemented the STEPS program with opportunities to interact with typical peers on campus with ASSISTT services to promote socialization in a weekly lunchtime social club, during recess, and in campus activities such as assemblies and pep rallies. Student's placement in the STEPS program, in combination with ASSISTT support for social integration into the high school campus, offered Student an appropriate level of social interaction with typical peers and mainstreamed Student to the maximum extent appropriate.

19. Student was required to go to the therapy room to receive speech therapy from the speech pathologist, whether on an individual or small group basis. Student's complaint does not challenge the level of speech therapy offered in the May 15, 2014 IEP, which was appropriate for Student's language and social communication needs. Accordingly, mainstreaming was not appropriate during Student's speech therapy sessions, and the therapy room was the least restrictive environment for these services.

20. In sum, the STEPS program, speech therapy and ASSISTT staff to support Student in his interactions with typical peers during lunch, recess, assemblies and campus activities, constituted mainstreaming to the maximum extent possible. Accordingly, the May 15, 2014 IEP, as completed on June 16, 2014, offered Student an appropriate placement in the least restrictive environment.

21. Parent, in this action, seeks to have Student placed in an even more restrictive environment than offered in the May 15, 2014 IEP. The Bridge program is a

functional academics program with community-based instruction, but with no access to typical peers. Parent appears to believe that the Bridge staff will be more inclined than District staff to advance Student into grade-level classes where he could earn a regular high school diploma. This belief is speculative, however, as there was no evidence that a student had ever moved to a general education program from the Bridge program, or that a student who made such a move would earn a high school diploma. District's public school program, with access to typical peers between classes at lunch, recess and during social activities on campus, is a less restrictive environment than the Bridge program.

22. Student did not meet his burden of proving by a preponderance of the evidence that the May 15, 2014 IEP failed to offer Student an appropriate placement in the least restrictive environment.

Issue 1(b): Transportation

23. Student contends that District denied Student a FAPE by failing to offer transportation services to Student in the May 15, 2014 IEP. District does not dispute that Student was entitled to transportation to South High, and contends that the failure to check the correct box on the IEP was a typographical error that was promptly corrected without substantive harm.

24. IEP related services include transportation and developmental, corrective and other supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371, 82 L.Ed.2d. 664].) Designated instruction and services shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." (Ed. Code, § 56363, subd. (a).)

25. It was a typographical error that the "no" box of the May 15, 2014 IEP was

checked in the transportation offer section. All members of the May and June IEP teams were aware that Student would receive transportation to South High. Because an IEP is the written document that describes the related services that will be provided to the student (20 U.S.C. §§ 1401(14); Ed. Code, §§ 56032), the typographical error was, technically, a procedural error.

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

27. The failure of the May 15, 2014 IEP to document District's offer of transportation services was promptly corrected when brought to District's attention, by District's October 2, 2014 letter to Parent. District provided Student with transportation between home and school, both ways, each day of the 2014-2015 school year, whether Student was enrolled at South High or Torrance High. District was responsive to Student's transportation needs and Parent's concerns. District provided Student with an

escort to the bus as soon as it learned that Student had twice missed the bus home, and arranged transportation to Torrance High with Parent's input at the October 7, 2014 IEP team meeting. The temporary error in documentation did not affect District's implementation of transportation services, so was, per *Van Duyn*, immaterial. Parent participated in development of the May 15, 2014 IEP and understood that transportation had been offered. The typo neither impeded the Student's right to a FAPE, significantly impeded Parent's opportunity to participate in the decision-making process, nor caused a deprivation of educational benefits, and therefore did not result in a denial of FAPE.

28. Accordingly, Student failed to meet his burden of proving by a preponderance of the evidence that the May 15, 2014 IEP denied him a FAPE due to District's failure to document its transportation offer on that IEP.

ISSUE 2: FAPE DURING THE 2014-2015 SCHOOL YEAR

Issue 2(a): Lack of Review of Independent Assessment

29. Student contends that District's failure to review the Pediatric Minds summary report at an IEP team meeting significantly interfered with Parent's opportunity to participate in the decision making process regarding the provision of FAPE to her son. District contends that it was only required to consider the report, and had no obligation to convene an IEP team meeting. It also contends that Dr. Sharifi-Hannauer was not a credentialed school psychologist and therefore was not qualified to make educational recommendations.

30. Among the most important procedural safeguards are those that protect the parent's right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings

with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, at p. 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].)

31. The implementing regulations of the IDEA provide that if the parent shares with the public agency an independent educational evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. (34 C.F.R. § 300.502(c)(1).) However, California law is not so restrictive, mandating District consideration of *any* independent educational evaluation at public expense with the respect to provision of a FAPE. (Ed. Code § 56329, subd. (c)(1).)

32. District submitted no evidence of its agency criteria for independent educational evaluations. Its letter of December 22, 2014, does not refer to agency criteria for independent educational evaluations, and did not assert that the Pediatric Minds summary report failed to meet any such criteria because Dr. Sharifi-Hannauer was not a credentialed school psychologist. Even if the Pediatric Minds report did fail to meet District's criteria, California law provides broader rights to parents regarding the consideration of privately funded independent evaluations, and District was responsible for consideration of *any* privately funded independent evaluation.

33. Further, Parent presented the Pediatric Minds report at an IEP team meeting for the express purpose of reviewing it at another IEP team meeting to discuss Student's program, and the team members agreed to convene in approximately one

months' time. An IEP team must meet whenever the parent or a teacher requests a meeting to develop, review, or revise the IEP. (Ed. Code § 56343(c).)

34. Setting aside Parent's express meeting request to review the Pediatric Minds report, and that the meeting was scheduled and noticed, District contends that it was only required to "consider" Parent's independent evaluation, and had no obligation to convene an IEP team meeting for that purpose. District cites a long list of authorities that, upon consideration, either do not stand for the proposition for which they are offered, or are distinguishable from this matter.

35. For example, in *Sarah D. v. Bd. Of Educ. Of Aptakisic-Tripp Community Consol. Sch. Dist. No. 102*, 109 LRP 45050 (N.D.Ill 2009) (*Sarah D.*), the district court found that the school district IEP team members properly considered an independent educational evaluation between IEP team meetings, where one IEP team meeting was adjourned for the district team members to review and discuss the report, and another IEP team meeting was subsequently held to inform the parents that the school district "rejected" the report. The issue was whether the district IEP team members could discuss the independent evaluation and form opinions on its recommendations prior to discussing it with the parents. The court upheld the hearing officer's conclusion that the district had appropriately considered the evaluation, as required by the IDEA, but had chosen to reject its conclusions and recommendations. In *Sarah D.*, the school district's rejection was presented at an IEP team meeting, and the parents had an opportunity to discuss the school district's decision with the other team members. That case, therefore, does not support District's contention that an IEP team meeting need not be held to provide a parent with the opportunity to participate in consideration of a parentally procured independent evaluation.

36. In *G.D. v. Westmoreland Sch. Dist.*, (1st Cir. 1991) 930 F.2d 942, two private assessments were considered at an IEP team, and small changes made to the student's

IEP, but the appellants claimed that one of the evaluations was not “properly considered.” The First Circuit held the district had complied with New Hampshire law and federal regulations because the evaluation was reviewed at an IEP team meeting and incorporated into the student’s IEP. In this context, the First Circuit’s pronouncement that an independent evaluation need only “be considered, ” and not “substantively discussed,” simply puts a reasonable limitation on the team’s discussion, and does not absolve school districts of the need to convene an IEP team meeting to consider an independent evaluation with parental participation.

37. Here, Parent expressly requested that an IEP team meeting be held to discuss Dr. Sharifi-Hannauer’s report, and one of the authorities cited by District expressly mandates that an IEP team meeting be convened under such circumstances. In *San Francisco Unified Sch. Dist.* (Special Education Administrative Hearing Decisions SN-04-03035 (Feb. 26, 2005) [43 IDELR 122, 105 LRP 15015] (*San Francisco Unified*)), the issue was whether, once the school district was on notice that the student had been diagnosed with ADHD by a parent’s independent report, it was required to hold an IEP team meeting to determine if the student was eligible for special education. The hearing officer held that the district was not obligated to hold an IEP team meeting to discuss the independent evaluation because the district had reviewed the independent evaluation with parent at a mediation, and “*absent a specific request* by the parent to meet to develop an IEP, the [district] was not required to convene an IEP team meeting” for the same purpose. (*Id.* at p. 17, citing Ed. Code § 56343, subd. (c) and 56329, subd. (c) (emphasis added).)

38. Unlike the parent in *San Francisco Unified*, Parent expressly requested that Dr. Sharifi-Hannauer’s independent evaluation be reviewed at an IEP team meeting, and the team expressly agreed to meet to discuss the evaluation and set a tentative date to reconvene. Parent expressly sought to have the IEP team consider the average full-scale

intelligence score reported by Dr. Sharifi-Hannauer, and change the placement offer to diploma-track classes. An IEP team meeting must be held when the parent requests a meeting to revise the IEP, as Parent requested here. (Ed. Code § 56343(c).)

39. District was required to consider the results of an independent assessment obtained at Parent expense with respect to the provision of a FAPE to Student. (Ed. Code § 56329(c)). Parent was a vital member of the IEP team regarding the provision of FAPE to Student. Although school district team members may review a private independent evaluation, discuss it among themselves and form opinions on the independent conclusions, it is difficult to see how the impact of the independent assessment, if any, on the FAPE for a child can be determined without an IEP team meeting and the participation of the parent. In light of Parent's specific request during an IEP team meeting to reconvene to review the independent evaluation and revisit the FAPE offer, District was obligated to hold an IEP team meeting to discuss Dr. Sharifi-Hannauer's report and determine, with Parent's participation, whether the May 15, 2014 IEP should be revised in light of its results and recommendations.

40. Lastly, the evidence was conflicting on whether District considered the Pediatric Minds summary report. When questioned about review of the report, District members of Student's November 2014 IEP team became uncomfortable in demeanor, lacked recall of the substantive discussions and gave disparate accounts of who met with whom, which undermined the credibility of the witnesses on this particular point. The letter sent by District on December 22, 2014, consists of two sentences, stating that the Pediatric Minds report: (i) confirmed District's offer of FAPE, (ii) did "not disagree with measures of verbal cognition and academic achievement," and (iii) recommended placement and accommodations in line with the current FAPE offer. District's letter did not address that Dr. Sharifi-Hannauer found Student to have average intelligence in her nonverbal measure of Student's cognition, concluded that the full scale score relied

upon by District was invalid, and called into question District's conclusions regarding the reliability of the academic achievement scores. At hearing, program specialist Rudy DeLana questioned Dr. Sharifi-Hannauer's credentials and speculated that Student would not have brought Dr. Sharifi-Hannauer to the December 2014 meeting to explain the Pediatric Minds report. School psychologist Ms. Lee criticized Dr. Sharifi-Hannauer's failure to detail the components of the cognitive score obtained. If this information had been relayed to Parent, she could have arranged to have Dr. Sharifi-Hannauer provide her credentials to the team, or attend a follow-up meeting in person or by telephone or laptop video conference. District had no reasonable basis for concluding that Parent could not, given an opportunity, address District's reasons for finding Dr. Sharifi-Hannauer's report faulty. District's letter mischaracterized Dr. Sharifi-Hannauer's findings. Therefore, District's failure to convene an IEP team meeting to review the Pediatric Minds report with Parent was based on speculation and inaccuracies, and its position that the scheduled IEP team meeting could be canceled because there was nothing to discuss was unpersuasive.

41. A district's failure to consider an independent assessment is a procedural violation. (*Marc M. ex rel. Aidan M. v. Dept. of Ed.* (D. Hawaii 2011) 762 F. Supp. 1235, 1245.) However, a procedural violation does not result in a denial of a FAPE unless it (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); *Target Range, supra*, 960 F.2d at p. 1484.)

42. Here, District's cancelation of the scheduled meeting to review Dr. Sharifi-Hannauer's report deprived Parent of an opportunity to hear District's reasons for discounting Dr. Sharifi-Hannauer's opinions, and for refusal to consider a change in Student's program in light of new information that directly contradicted District's own

psychoeducational assessment. Parent was not given an opportunity to express disagreement regarding the IEP team's conclusions, or to request revisions in the IEP based on the results of Dr. Sharifi-Hannauer's assessments. Such conduct significantly interfered with Parent's opportunity to participate in the decision making process of developing a FAPE for Student.

43. Accordingly, Student met his burden of proving by a preponderance of the evidence that the District's failure to convene an IEP team meeting to discuss placement and Dr. Sharifi-Hannauer's report resulted in a denial of FAPE. The remedy for this denial is discussed below.

Issue 2(b): Withdrawal of District-filed Due Process Request

44. Student contends that he was denied a FAPE during the 2014-2015 school year by District's delay in seeking an adjudication of the dispute with Parent over the May 15, 2014 IEP offer to place Student in a functional academics program. District contends that the withdrawal allowed Student to remain in Parent's preferred, less restrictive placement, and that the complaint in the current matter timely placed the dispute before OAH.

45. The IDEA provides that if the parent refuses to consent to services offered in an IEP, other than an initial IEP, the school district may initiate a due process hearing. (20 U.S.C. § 1414(a)(1)(D)(ii)(II); 34 C.F.R. § 300.300(b)(3); *I.R. v. Los Angeles Unified Sch. Dist.* (9th Cir. 2015) 805 F.3d 1164, 1167-1168 (*I.R.*)). The California Education Code requires that "as soon as possible following development" of the IEP, "special education and related services shall be made available" to the student in accordance with the IEP. (Ed. Code § 56344(b).) If the parent consents to some, but not all, of the components of an IEP, the school district must determine whether the proposed special education program component is determined to be necessary to provide a FAPE. If the school district "determines that the proposed special education program component to which

the parent does not consent is necessary to provide" a FAPE, "a due process hearing shall be initiated." (Ed. Code. § 56346(f).) The school district cannot opt to hold additional IEP team meetings, or continue the IEP process in lieu of initiating a due process hearing; rather, the school district must initiate a due process hearing expeditiously. (*I.R., supra*, 805 F.3d at p. 1169.)

46. In evaluating how long is too long for a school district to take in determining a component's necessity and initiating a due process hearing, the school district must have some flexibility to allow for due consideration of the parent's reasons for withholding consent to an IEP component. (*I.R., supra*, at 805 F.3d 1169.) However, a school district should be able to consider the parents' position and make a determination as to the component's necessity within a reasonable period of time. (*Ibid.*) If, in the school district's judgment, the child is not receiving a FAPE, the district must act with reasonable promptness to correct that problem by adjudicating the differences with the parent. The reason for this urgency is that it is the child who suffers in the meantime. (*Id.* at 1169-170.)

47. A school district's failure to comply with a procedural requirement, such as Education Code section 56346, subdivision (f), denies a child a FAPE when the procedural inadequacy results in the loss of educational opportunity or causes a deprivation of educational benefit. (*I.R., supra*, 805 F.3d at p. 1170.) To the extent a student loses an educational opportunity and was deprived of educational benefits for an unreasonably prolonged period, the school district can be held responsible for denying the child a FAPE for that period. (*Ibid.*) In *I.R.*, the school district's delay of more than a year and a half in requesting a due process hearing following the parent's failure to consent to a provision of the IEP determined to be necessary to provide the student a FAPE was unreasonable. (*Ibid.*)

48. Here, District offered STEPS on June 16, 2014, at the end of the 2013-2014

school year. Parent disputed the placement, and was adamant that Student would succeed on a diploma track and should have an opportunity to do so. An IEP team meeting was planned 30 days into the new school, which would include Student's high school teachers, and it was reasonable for District to wait for the 30-day review of Student's high school progress to determine if a functional skills program was indeed a necessary component of a FAPE. However, even if District doubted that placement in a functional academics program was necessary in June 2014, the reports of Student's struggles at the October 7, 2014 IEP team meeting, by his South High general education elective teacher and speech pathologist, should have convinced District that Student required placement in STEPS. For these reasons, District had notice that Student required STEPS to receive a FAPE as of October 2014, and that Parent had refused to consent to that offer. District was therefore obligated to file for due process within a reasonable time.

49. District promptly filed District's case on October 17, 2014, to obtain a determination of whether the May 15, 2014 IEP offered Student a FAPE. Accordingly, District filed for due process on the dispute within a reasonable time.

50. However, District subsequently withdrew District's case on April 29, 2015, leaving the dispute over a necessary component of the provision of FAPE to Student unresolved until issuance of this decision, almost one year after the withdrawal and two years after the dispute arose. The resulting delay was unreasonable. If District had pursued District's case, the May 15, 2014 IEP would have been found to offer a FAPE, and Student would have been placed in STEPS as a result of that decision. Instead, District's inaction continued to leave Student in inappropriate general education and grade level classes, presented with course materials he could not read, concepts he could not understand, and curriculum standards he could not meet.

51. Student met his burden of establishing by a preponderance of the

evidence that he was deprived of educational benefits for an unreasonably prolonged period because District did not seek an order enforcing its placement offer, thereby denying him a FAPE.

ISSUE 3: STUDENT'S REQUEST FOR AN INDEPENDENT EDUCATIONAL EVALUATION

52. Student contends that because District's June 2014 psychoeducational evaluation failed to assess him in the area of speech and language, he was entitled to an independent speech and language evaluation at public expense. He argues that, following his June 2015 request for an independent evaluation, District was required to either (i) fund the independent speech and language evaluation or (ii) file for due process on the appropriateness of its June 2014 psychoeducational assessment and its May 2013 language and speech assessment. Student asserts that District's failure to do so significantly interfered with Parent's right to meaningfully participate in the IEP process. District contends that Student's June 2015 request for an independent educational evaluation was untimely and did not identify a speech and language assessment with which Student disagreed, and therefore failed to trigger its obligation to fund an independent evaluation or file for due process to defend a District assessment.

53. The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain an independent educational evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, §§ 56329, subd. (b) and 56506, subd. (c).) "Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question...." (34 C.F.R. § 300.502(a)(3)(i).) To obtain an independent evaluation, the student must disagree with an assessment obtained by the public agency and request an independent evaluation. (34 C.F.R. § 300.502(b)(1), (2).)

54. The provision of an independent evaluation is not automatic. The implementing regulations of the IDEA provide, in relevant part, that following the student's request for an independent evaluation, the public agency must, without unnecessary delay, either: (i) file a due process complaint to request a hearing to show that its assessment is appropriate; or (ii) ensure that an independent educational assessment is provided at public expense. (34 C.F.R. § 300.502(b)(2) [nonrelevant exceptions not referenced]; 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].)

55. Student was not entitled to request an independent assessment in the area of language and speech when his language and speech skills were not tested as a part of District's June 2014 psychoeducational evaluation. Ms. Lee's psychoeducational assessment was appropriate, thereby containing all necessary components of a psychoeducational assessment. Student presented no evidence that the psychoeducational assessment should have included a measure in the area of language skills, although two psychologists and three speech pathologists testified at hearing. Neither Parent nor any educational professional had requested that the psychoeducational assessment include measures of Student's language and speech abilities, and the evidence did not show that a language component was necessary to identify and address unknown language or communication deficits. Student's language and speech skills had been assessed within the past year, District speech pathologists were working with Student three times per week, and Student had met or made progress on all his speech goals in 2014-2015. Accordingly, Student's complaint that his language and speech skills were not tested in June 2014 did not constitute a disagreement with the psychoeducational assessment conducted at that time. The evidence did not establish that Student had a disagreement with the psychoeducational

assessment obtained by District that imposed a responsibility on District to fund an independent language and speech evaluation or file for due process. (34 C.F.R. § 300.502(b)(1); Ed. Code § 56329, subd. (b).)

56. Student's June 2015 request for an independent educational evaluation was untimely as to District's May 2013 language and speech assessment. Student requested the independent evaluation in June 2015 and filed a complaint in this matter on October 14, 2015, more than two years after District's language and speech assessment was conducted. The statute of limitations on special education claims is two years, and Student failed to allege an exception to the two-year statute of limitations for this matter. Accordingly, Student's dispute with the 2013 language and speech assessment is barred by the statute of limitations. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code § 56505, subd. (l).)

57. The United States Office of Special Education Programs (OSEP) issued guidance on whether a public agency must file or fund on a stale independent evaluation request in *Letter to Thorne*. (16 IDELR 606 (February 5, 1990) [16 LRP 838] (*Thorne*).) OSEP is the division of the United States Department of Education tasked with administering the IDEA and developing its regulations. In *Thorne*, OSEP addressed several questions regarding requests for independent evaluations under the Part B of the Education of the Handicapped Act, the predecessor to the IDEA:

The EHA-B regulations do not establish timelines regarding how long after receiving the results of a child's public agency evaluation a parent can wait to request reimbursement of an [independent evaluation]. In the situation presented by your inquiry, however, it would not seem unreasonable for the public agency to deny a parent reimbursement for an [independent evaluation] that was conducted more than two

years after the public agency's evaluation. Therefore, it would not be necessary for the public agency to initiate a hearing in this situation. (*Thorne, supra*, 16 IDELR 606, at p. 3.)

58. Application of the two-year statute of limitations to an independent evaluation request is supported by the statutory purposes for permitting independent evaluations and for implementing statutes of limitations to foreclose stale legal claims. In *Schaffer*, the United States Supreme Court found that the IDEA provision for requesting an independent evaluation at public expense ensures that parents have access:

[T]o an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the fire power to match the opposition. (*Schaffer, supra*, 546 U.S. at pp. 60-61.)

59. The right of parents to an independent evaluation is intended to equip them with a competing expert opinion to counter an assessment with which they disagree, and to ensure that both assessments are considered in crafting an IEP for their child. (*Lafayette Sch. Dist. v. Student*, Cal.Offc.Admin.Hrngs. Case No. 2008120161 (July 1, 2009) (*Lafayette*), at p. 16).

60. Per *Schaffer* and *Lafayette*, the purpose of a publicly funded independent evaluation is to provide the parent with a second opinion that may be weighed against that of the school district's assessor. An evaluation in a different professional field, by assessors with different credentials and licenses and looking at different information, is

not a second opinion. Student's contention that an incomplete psychoeducational assessment entitled him to an independent assessment in another field, whether speech and language, occupational therapy, augmentative and alternative communication, adapted physical education, functional behavior or any other category, is illogical and in disregard of the statutory purpose of independent evaluations. Student also misreads *Letter to Baus* (OSEP, February 23, 2015) 65 IDELR [115 LRP 8855] (*Baus*)), which stated that when an evaluation is conducted by the school district, and a parent disagrees with the evaluation because a child was not assessed in a particular area, the parent has a right to request an independent educational evaluation in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs. *Baus* did not expand the obligation of school districts to fund independent assessments in one or more fields beyond those assessed by the district. Rather, *Baus* clarified that a parent may seek a publicly funded independent evaluation in the same field assessed by the school district, if a particular area within that field was not appropriately included in the district's assessment. The IDEA unequivocally requires that a parent seeking an independent evaluation at public expense disagree with an assessment "obtained by the public agency." (34 C.F.R. § 300.502(b)(1).) Where no assessment was performed, or the school district refused to initiate an assessment on request, the parent's recourse is to file for due process (Ed. Code, § 56501, subd. (a)(2)), as a result of which the parent may be awarded an independent assessment as an equitable, rather than statutory, remedy. (See *Los Angeles Unified Sch. Dist. v. Student* (C.D.Cal 2008) 548 F.Supp.2d 815, 821-822.)

61. Student failed to meet his burden of proving on a preponderance of the evidence that District was required to fund an independent language and speech evaluation, or file for due process to defend its June 2014 psychoeducational assessment or its May 2013 language and speech assessment.

REMEDY

REMEDY FOR ISSUE 2(A): LACK OF REVIEW OF INDEPENDENT ASSESSMENT

62. Student met his burden of demonstrating that he was denied a FAPE by District's failure to convene an IEP meeting to review the Pediatric Minds summary report, which significantly interfered with Parent's opportunity to participate in the decision making process in the development of Student's educational program.

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

64. 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 (*Puyallup*).) 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 ex rel. Reid v. District of Columbia* (D.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.*)

65. The IDEA does not require compensatory education services to be awarded directly to a student, so staff training may be an appropriate remedy. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Ibid.*, See also, e.g., *Student v. Reed Union School Dist.*, Cal.Ofc.Admin.Hrngs. Case No. 2008080580 (Jan. 23, 2009) [52 IDELR 240; 109 LRP 22923] [requiring training on predetermination and parental participation in IEP team meetings]; *Student v. San Diego Unified School Dist.* (Dec. 13, 2004) Special Education Administrative Hearing Decisions SN 2739-04 [42 IDELR 249; 105 LRP 5069] [requiring training regarding pupil's medical condition and unique needs].)

66. Here, the District's failure to convene an IEP team meeting in December 2014 to consider the Pediatric Minds report significantly interfered with Parent's opportunity to participate in the decision making process with regard to the provision of FAPE to her son. However, the May 15, 2014 IEP did offer a FAPE, and the evidence did not show that District would have changed its offer had Parent participated in the canceled December 9, 2014 meeting. Under these circumstances, the harm was to Parent for District's disregard of her statutory rights, and not to Student. Accordingly, in order to ensure that Parent and other parents are afforded the procedural rights to which they are entitled, District shall train District personnel who are involved in special education administration regarding the requirements of Education Code sections 56329, subdivision (c)(1), and 56343, subdivision (c), for purposes of ensuring that District will convene an IEP team meeting to review parentally funded independent evaluation assessments with parental participation.

REMEDY FOR ISSUE 2(b): WITHDRAWAL OF DISTRICT-FILED DUE PROCESS REQUEST

67. An ALJ can award compensatory education as a form of equitable relief. (*Park, supra*, 464 F.3d at p. 1033.) Compensatory education is a prospective award of educational services designed to bring the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265.) Compensatory education awards depend upon the needs of the disabled child, and can take different forms. (*R.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1126.) "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d at p. 1497.)

68. District's withdrawal of District's case prior to the scheduled hearing delayed a decision on whether the May 15, 2014 IEP offered Student a FAPE. This unresolved disagreement between Parent and District left Student in grade level classes from which he derived little to no educational benefit and resulted in a substantive denial of FAPE. Although Student received appropriate speech and behavior services during the 2014-2015 school year, the academic instruction he received was of little value. Therefore, compensatory education is an appropriate remedy.

69. District's case would have resolved the disagreement between Parent and District no sooner than May 19, 2015, the date scheduled for hearing, had District followed through on its obligation to pursue the timely filed case to decision. District's May 15, 2014 IEP offered Student a FAPE, but Student did not receive the special education, services and placement offered from May 19, 2015 through the remainder of the 2014-2015 school year at issue, due to District's delay in obtaining an order allowing it to implement that IEP. Therefore, Student suffered a loss of educational benefit from May 19, 2015 through June 18, 2015, a period of 23 school days. One-on-one

instruction of an hour for each day of that period is an appropriate remedy. Student learned best with individualized instruction, and the remedy provides intensive individual academic remediation. Accordingly, Student is awarded 23 hours of compensatory education in his identified areas of academic need: math, reading and written expression.

ORDER

1. Within 90 days of this decision, District shall train all of its administrative personnel who are or may be involved with the administration of special education programs on parental rights under the IDEA as they pertain to when IEP team meetings must be convened, and IEP team review of parentally funded independent educational evaluations including parental participation. Special attention shall be given to California Education Code sections 56329, subdivision (c)(1), and 56343, subdivision (c), this decision, and the authorities cited in this decision.

2. Within 30 days of this Decision, District shall begin funding 23 hours of compensatory education for Student in the areas of math, reading and written expression, provided by qualified District staff or a nonpublic agency under contract with District, at Parent's discretion. Student has two years from the date District begins funding the compensatory education to use those services. Any unused services will expire at that time.

3. Student's remaining 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 prevailed on Issues 2(a) and 2(b). District prevailed on all other issues.

RIGHT TO APPEAL THIS DECISION

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: April 20, 2016

/s/

ALEXA J. HOHENSEE

Administrative Law Judge

Office of Administrative Hearings