

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

BELL FLOWER UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016090310

DECISION

Student, by and through his Parents, filed a Due Process Hearing Request on September 6, 2016, with the Office of Administrative Hearings, State of California, naming Bellflower Unified School District. On October 25, 2016, OAH granted a continuance for good cause.

Administrative Law Judge Clifford H. Woosley heard this matter in Bellflower, California, on December, 6, 7 and 8, 2016.

Attorney Frank Zankich appeared on behalf of Student. Mother and Father attended the hearing. Attorney Eric Bathen, with attorney Marcia P. Brady, represented District. Assistant Superintendent Tracy McSparren attended on behalf of District.

On the last day of hearing, a continuance was granted to January 3, 2017, for the filing of written closing arguments, at which time the record was closed and the matter submitted for decision.

ISSUES¹

1. Did District deny Student a free appropriate public education since September 4, 2014, by failing to (a) offer appropriate transition goals, and (b) implement appropriate transition and adaptive living/planning services?²

2. Did District deny Student a FAPE beginning September 4, 2014, including at the individualized education program meetings dated March 19, 2015, June 10, 2015, and January 21, 2016, by failing to offer appropriate placement and services designed to provide educational benefit because Student did not meet academic goals and regressed academically in his achievement scores?

3. Did District deny Student a FAPE by changing his placement from a special day class to a general education class for the 2016-2017 school year without first obtaining approval from Student's IEP team?³

SUMMARY OF DECISION

Student proved by a preponderance of the evidence that District denied him a FAPE by failing to provide him with a procedurally sufficient individual transition plan,

¹ The issues have been reorganized for purposes of analysis. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. ex rel. J.E.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442–443.)

² For Issue 1, the ALJ combined two issues that Student's counsel acknowledged, at hearing and in written final argument, were basically the same.

³ Student withdrew without prejudice his issue related to inappropriately being on track to graduate with a regular high school diploma at the commencement of hearing.

properly supported by IEP goals and services, that would enable him to function in the community so he could pursue his post-secondary goals. District did not further assess and determine Student's abilities despite being long-aware that Parents and Student's medical team indicated that Student would not be able to function in the community after high school graduation. Further, District did not provide needed services, contending that Student was capable of functioning in the community after graduation by relying on various public agencies and colleges to provide needed post-secondary support. District did not meet its affirmative obligation to provide adaptive and functional living skills services that would better enable Student to pursue his post-secondary goals in the community.

Student failed to demonstrate that District's educational placements and services did not provide educational benefit. Student made substantial educational progress during high school, as evidenced by his excellent grade reports and levels of performance. Further, Student did not meet his burden of proof that District improperly changed his placement from some special day classes to resource services program classes. Both classes were special education classes. The change in schedule did not affect Student's IEP specified time for specialized academic instruction. Consequently, the class change was not a change in placement requiring an IEP team's consent.

FACTUAL FINDINGS

1. Student was a 17-year-old high school senior at District's Mayfair High School, on track to graduate with a regular high school diploma in spring 2017. He was eligible for special education services with a primary eligibility of autism and a secondary eligibility of intellectual disability. Student first qualified for special education in February 2004 and, at all relevant times, attended District schools.

2012-2013: 8TH GRADE - BELLFLOWER MIDDLE SCHOOL

2. Student was in the 8th grade at District's Bellflower Middle School for the 2012-2013 school year. At the time, Student was eligible for special education as a student with autistic-like behaviors, with a secondary eligibility of speech and language impairment. Student received special education services in a special day class setting, adapted physical education, and speech and language services with a properly credentialed speech pathologist.

3. District school psychologist Sarah Biggs conducted a psycho educational assessment of Student in preparation for his triennial individualized education program team meeting in March 2013. She administered the Naglieri Nonverbal Ability Test, Second Edition, and evaluated Student's cognitive ability to be in the low average range with a cognitive ability index of 88. Teacher and Parent forms for the Gilliam Autism Rating Scale, Second Edition, confirmed Student's autism. Student's academic achievement for reading, writing, and math ranged from third to fifth grade equivalency.

4. At the March 2013 IEP team meeting, District confirmed Student's special education eligibility of autism and recommended a secondary eligibility of other health impairment, because of Student's attention deficit hyperactivity disorder. Parents did not agree to the IEP. At a second triennial IEP meeting of April 12, 2013, Parents requested that the secondary eligibility be intellectual disability because Student was unable to function on his own. District agreed to further assess Student's adaptive functioning.

5. School psychologist Ta-Taneisha R. Thames provided expert testimony at the hearing on behalf of Student. She had been a school psychologist with the Los Angeles Unified School District since 2000, had earned a bachelor's degree in psychology, a master's degree in counseling, and was finishing her doctorate in clinical psychology. She provided opinions regarding Student's academic capabilities and

academic performance. Ms. Thames noted that Student's cognitive scores were not within the range normally associated with intellectual disability, though the scores were low.

6. An intelligence quotient of 70 or below was a primary factor for intellectual disability determination, but was not the only factor. Intellectual disability also included adaptive functioning scores from adaptive behavior rating scales and the observations of the examiner. District's offer to conduct an adaptive functioning assessment was an appropriate response to Parents' request.

7. Ms. Biggs administered teacher and parent scales from the Adaptive Behavior Assessment System-II, which measured adaptive skills in ten areas that are grouped in three domains, providing an April 18, 2013 report. The conceptual domain included the skill areas of communication, functional academics, self-direction, and health and safety. The social domain included the social and leisure skill areas. The practical domain included self-care, home living, community use, health and safety, and work. Both Student's teacher and Parents rated Student in the extremely low range in all three domains, with a general adaptive composite classification of extremely low. Ms. Biggs concluded that Student required assistance to perform tasks in daily life, the community, home, and within the school setting. Overall, Student was not able to care for himself independently in and outside the home.

8. The triennial IEP meeting reconvened on April 26, 2013. Based on the adaptive behavior assessment, the IEP team concluded that Student was eligible for special education with a secondary disability of intellectual disability. Mother signed and agreed to the triennial IEP.

2013-2014: 9TH GRADE – MAYFAIR HIGH SCHOOL

9. Student attended ninth grade at Mayfair High School for the in 2013-2014 school year. Though Bellflower High School was Student's home school, District agreed

to Parents' request that Student attend Mayfair High School where Student's learning disabled younger brother would soon be attending. Student attended a mild-to-moderate special day class for all his core academic subjects and received an hour of speech and language services per week.

10. For the fall semester of 2013-2014, Student received grades of D in Earth Science and Algebra 1, C in Photo Fundamentals, C plus in English 9, B in Geography, and an A in Adaptive Physical Education.

March 12, 2014 Annual IEP

11. District convened Student's annual IEP team meeting on March 12, 2014. All requisite IEP team members attended, including Mother and Father. District indicated that Student's educational strengths continued to be in the areas of math, science, and computing. Student's ability to interact socially and intellectually improved over the year, but the transition to Mayfair posed challenges. Parents expressed concern over Student's socialization skills and his ability to acquire independent learning and interactive skills. Student reluctantly communicated his wants and feelings; when angry, Student tended to shut down and not communicate.

12. District proposed seven goals in reading, writing, math, science, social communication, abstract language/communication, and fitness (adaptive physical education). The goals were discussed and agreed to by Parents. The special day class science teacher reviewed how Student had a low science grade earlier in the fall semester because he struggled with the current event assignments; at the time of IEP team meeting, Student's grade had increased to 70 percent. The case carrier reported that Student had a low grade in math because he performs poorly on tests. Mother believed that Student had difficulty with multiple choice questions and discussed the accommodations used by Bellflower. The IEP team reviewed Student's math assignments and, at Mother's recommendation, agreed to shorten Student's

assignments in math and health.

13. Student's IEP included classroom accommodations and modifications. Student could use a computer, calculator, supplemental visuals, and manipulatives. For testing, he received extra time, a study guide, have tests read aloud, use a modified format and multiple choices, have questions and directions rephrased, have supervised breaks during tests, and retake a test if he receives an unsatisfactory grade. He would not be penalized for spelling or handwriting and would receive consideration for his effort and work. In class, he would have preferential seating and distractions minimized. Student was to be provided study outlines, posted routines and assignments, one paper at a time, worksheet formats, daily assignment list, daily homework list, and an assignment notebook. The IEP proposed the use of multiple instructional strategies, such as checking work in progress, providing lecture notes or outline, repeating instructions, use of mnemonics, immediate feedback, using cues and gestures, personalize example, have Student restate information, and display of key vocabulary.

14. District's FAPE offer was for Student to continue in a mild-to-moderate special education class for his core academic subjects because of delays in the areas of socialization/communication, adaptive behavior, and academics. He needed one-to-one instruction to address academic delays. He would attend adaptive physical education and continue to receive speech and language services for an hour per week. District agreed to curb-to-curb transportation from home to school. District also provided the placement and services for the extended school year. Student's primary eligibility was autism, with a secondary eligibility of intellectual disability.

15. Student was on a curriculum leading to a regular high school diploma. He was scheduled to graduate high school in June 2017.

16. In testimony, Mother said she believed that Student's high school grade performance was unreliable and thought his grades would not reflect his true ability and

performance because he was provided so many accommodations and modifications. Student's resource specialist program English teacher, Debra Vander Baan, testified at the hearing. She was a teacher for 19 years, had a bachelor's degree in special education, and obtained a Level II Specialist Credential in 2009, along with her master's degree in psychology. She was well acquainted with Student and demonstrated a genuine admiration for Student and his efforts in her classroom. Ms. Vander Baan reviewed Student's accommodations and modifications, noting that they were only used if necessary. Also, they enabled Student to perform closer to his capabilities, better reflecting Student's academic achievement. Accommodations and modifications did not undermine the legitimacy of Student's academic performance, as reflected in his grade reports.

April 30, 2014 Reconvened Annual IEP Meeting

17. Parents did not agree to the IEP at the March 12, 2014 meeting. Instead, the annual IEP team reconvened on April 30, 2014, to address Parents remaining questions. District agreed to Parents' request that Student attend adaptive physical education four times, instead of five, per week. District acknowledged that Student's speech services did not begin at the beginning of the school year and the IEP team agreed to scheduling 10 additional speech sessions. Mother also requested that the annual IEP's present levels of functioning reflect that Student was easily influenced by his peers and that Student struggled with recalling and discussing what occurred during his school day. The IEP team agreed to an amendment IEP team meeting before the end of the school year to discuss transition needs and services. District agreed to provide a summary of Student's IQ tests to Parents.

18. Parents did not sign and agree to the March 12, 2014 IEP until May 13, 2014.

May 7, 2014 Transition Assessment

19. Transition specialist Irene Ramirez testified at the hearing. She had a pupil personnel services credential, a bachelor's degree in Spanish language and literature, and a master's degree in education and school counseling. She held several positions at District for approximately 19 years. In September 2007, she became a college/career technician at Bellflower High School and, since 2012, was a District coordinator/transition specialist, working with Transition Partnership Program/Workability.

20. Ms. Ramirez's duties included: vocational, personal and social counseling to high school students with disabilities; attending IEP team meetings to present career assessment results and post-secondary goals; developing and maintaining internships and work experience opportunities in the community through the Workability 1 Program (a state-funded grant program); collaborate with the Department of Rehabilitation through the Transition Partnership Program and California Department of Education to provide vocational and employment training services to students with disabilities; and prepare students with disabilities for employment through resume building, job searches and applications, and interview skills. She also provided linkages to community colleges, vocational training programs, transportation, and regional centers.

21. Ms. Ramirez wrote a May 7, 2014 three-paragraph transition assessment of Student. She interviewed Student but not Parents. She did not review the prior adaptive skills assessment for her transition assessment. She typically did not review a student's psycho educational report for her transition assessments.

22. Student had just turned 15 years old and was finishing his freshman year. Student was undecided about what he wanted to do in the future. Ms. Ramirez had Student take the computerized Career Cruising Interest Survey. She described Student

as uncooperative and rude during testing. He declared the survey was “pointless,” he had no interest in working as an adult, and did not want to participate in any career exploration. She demonstrated how to use the Career Cruising program, helping him get his username and password, so he might make an informed decision about his career future. She reviewed the survey’s Personal Profile results with Student, which identified him as a 40 percent visual learner and 35 percent auditory learner. The survey identified and suggested 10 possible careers, including special effects technician, costume designer, taxidermist, and veterinary technician. Ms. Ramirez recommended that Student begin exploring college and career options so he could plan for his post-secondary goals.

May 28, 2014 Amendment IEP Meeting

23. District convened an amendment IEP meeting on May 28, 2014, to discuss Student’s transition assessment and to add a transition goal. All requisite IEP team members attended, including Mother and Father. Ms. Ramirez did not attend; she typically only attended triennial IEP team meetings. She gave a copy of her transition assessment to the attending program administrator, Antoinette Laiolo, who shared the report with the IEP team.

24. The IEP team discussed the report and a transition goal proposed by Ms Ramirez, which generally set a schedule and process for Student to investigate required education, training, and attributes for various jobs of interest. The transition goal was added to the annual IEP as Goal 8.

25. Case carrier, Craig Astor, prepared a proposed individual transition plan for Student. The plan provided a multi-year description of coursework Student needed to graduate with a high school diploma in June 2017. The team reviewed Student’s class options for the 10th grade. They agreed that Student would re-take Algebra 1. The transition plan also included two post-secondary goals, based upon a Student interview.

Student's first post-secondary goal was to apply to community college; specified supporting activities were for Student to research local community colleges and to attend a college fair. Both transition plan goals were linked to IEP Goal 8.

26. Mother asked the team about "ATC," which she understood was a class for special education students who needed to develop adaptive and functional skills in the community. Ms. Laiolo explained that "ATC" was an adult transition class, on another site, which was a program for special education students who were in a non-diploma bound program. This adult transition class was not appropriate for Student, who was working towards a high school diploma. Mother subsequently viewed the adult transition class and agreed that the students were highly impacted and that the class was unsuitable for Student.

27. Mother told the team that Student was unable to follow more than two-step directions, citing the observations of a pathologist who works with Student through the family's Kaiser-Permanente health provider. The team therefore developed a goal for Student to follow multi-step directions, which was added to the annual IEP as Goal 9. Mother signed and agreed to the amendment IEP.

28. Student's final grades for Spring 2014 were a D minus in Algebra 1, a D plus in English 9, C's in Keyboarding and Earth Science, and A in Adaptive Physical Education.

2014-2015: 10TH GRADE – MAYFAIR HIGH SCHOOL

29. Student attended 10th grade at Mayfair High School for the 2014-2015 school year. Student demonstrated greater confidence and social skills and his academic performance improved. His final grades for the fall semester were a D plus in English 10, C in Survey of Biology, B's in Modern World History and Algebra 1, B plus in his elective Art, and an A in Adaptive Physical Education.

March 9, 2015 Annual/Transition IEP Meeting

30. District convened Student's annual/transition IEP team meeting on March 9, 2015. The IEP team members included Mother and Father. Harbor Regional Center Counselor Imani Camacho also attended.

31. The team reviewed Student's present levels of academic and functional performance. District characterized Student's adaptive and daily living skills as very good and age appropriate, as indicated by Student's timely attendance and good grooming. Student was released early from class to go to lunch, to Adapted Physical Education, and to the bus at the end of the day. The present levels do not address Student's adaptive or functional skills in the community.

32. The team reviewed Student's expected classes for the 11th grade. Though Student would continue to have specialized academic instruction for his core academic classes, the team discussed the possibility of Student taking his 11th grade math class in the resource specialist program class instead of the special day class. Math was an area of strength for Student and the resource specialist program class would allow Student to learn at a pace more consistent with his capability, with other special education students. Student would take an elective in the 2015-2016 school year instead of Adaptive Physical Education.

33. Resource specialist program English teacher, Debra Vander Baan, would be Student's 11th grade English teacher. She testified at the hearing. She explained that the special day class and resource specialist classes are both special education classrooms composed of special education students who need specialized academic instruction. However, the resource specialist class was for special education students who were diploma bound and academically able to handle the curriculum at a more intense pace. Student's special day class English teacher had previously reported to Ms. Vander Baan that the resource specialist program was a more suitable academic level for Student.

Unlike other school district resource specialist program classes, District's resource specialist classes did not include participation in general education classrooms or inclusion of general education students. Student's subsequent participation in resource specialist program classes for some of his core academics was not a change of placement, requiring additional IEP team approval, because the program was a special education class and participation did not alter the IEP designated specialized academic instruction time.

34. Case carrier and special education teacher, Marie Breig, reviewed the proposed individual transition plan. The transition plan listed two goals set by Student regarding his desire to attend a local community college and to get a job, after graduation. Student's two transition plan goals were supported by other designated IEP goals, which did not address Student's adaptive skills in the community. The transition plan also reviewed the coursework needed for Student's anticipated June 2017 graduation; he had completed 90 units, with 30 units pending.

35. Mother stated that she did not believe that Student should have been on a diploma-bound curriculum but, instead be "non-diploma bound" so Student would continue to receive services until he turned 22 years old. Mother convincingly testified that she told the March 2015 IEP team that Student would not be able to function in the community. Her concerns supported her inquiries about the adult transition class at the May 2014 amendment IEP. Though Student's socialization and academic participation improved in the school, nothing was being done to prepare Student for entering the community. For example, the individual transition plan listed Student's goals of going to community college and getting a job, but nothing addressed how he was going to get to school or work, buy food at a restaurant or market, or accurately pay and count change. When Student got a diploma, District would no longer provide services and

therefore would not teach him the adaptive and functional skills necessary to live in the community.

36. Ms. Laiolo reported that Student was making good progress toward receiving his diploma and had grown socially and academically. Mr. Camacho explained that the regional center had some services for students when they turned 18, such as academic help when they go to community college. The adaptive physical education teacher Anne-Marie Sharp explained how Student had made a lot of progress with her and had become a helper with lower functioning students. The speech and language pathologist Janine Gardner said Student was learning that texting was a form of social communication and would be gearing Student's goals toward more independence. Student's science teacher reported that Student always participated in class, advocated for himself, and gave appropriate responses.

37. Generally, the District team members believed that Student could earn a diploma and were not receptive to Mother's desire to take Student off diploma track so he could continue to receive special education services. Ms. Laiolo stated that the IEP team could not decide whether Student should remain on a diploma-bound curriculum without having a school psychologist present as part of the team meeting.

38. The individual transition plan was on a form used by the Mid Cities SELPA members. The second page asked questions about Student's post-secondary goals. The first question was whether Student had post-secondary goals that covered education/training, employment and, as needed, independent living. The "yes" box was checked, but Student's post-secondary goals did not specifically address independent living. Another question inquired if the IEP included transition services that would reasonably enable Student to meet his post-secondary goals. The "yes" box was checked, but the IEP services did not address adaptive or functional skills directly related to independent living in the community.

39. The team reviewed Student's progress on his last annual IEP's goals. Because Parents did not sign the March 2014 IEP until mid-May 2014, District had less than 10 months to implement the annual goals. For Goal 1, reading comprehension, Student made good progress but needed to continue to improve on his work attack skills, expressing and understanding the text. His progress was hampered by his short attention span and distractibility, but both had improved over the year. Student steadily improved throughout the year on achieving Goal 2, for writing skills, in which he was able to write short sentences with few grammatical errors. Student partially met math Goal 3, to evaluate algebraic expressions and made steady progress to reaching Goal 4, in science, achieving 70 percent accuracy in looking up science events. Student met his social communication Goal 5, his abstract language Goal 6, and his adapted physical education Goal 7. Student made progress on transition Goal 8, investigating job options, requirements and educational background and training. Goal 9 was to increase Student's ability to follow multi-step directions in class. Student made substantial progress toward Goal 9, becoming pro-active in class and confident in his abilities to follow directions. District had about nine months to implement Goals 8 and 9, which were added at the May 28, 2014 amendment IEP.

40. The IEP team discussed Student's accommodations, which were fewer than in the prior IEP. They reviewed the new annual goals in reading comprehension, multi-paragraph essay writing, math, pragmatic skills, fitness (until June 2015), multi-step directions, and occupational (becoming proactive in career investigation).

41. District's FAPE offer was for Student to continue in a mild-to-moderate special education class for his core academic subjects. He would attend adaptive physical education until June 2015, receive speech and language services for an hour per week, and attend counseling 30 minutes per month. District agreed to curb-to-curb

transportation from home to school. Student's primary eligibility remained autism, with a secondary eligibility of intellectual disability.

42. Parents did not sign and agree to the March 9, 2015 IEP, taking the IEP document home to review.

Kaiser Permanente Letter and June 10, 2011 IEP Meeting

43. On May 21, 2015, Parents gave District an April 30, 2015 letter from Student's medical provider, Kaiser Permanente. The letter was signed by Student's psychiatrist Dr. Maureen Saunders, developmental pediatrician Dr. Marvin L. Tan, and psychologist Dr. Paula Firestone. Kaiser strongly disagreed with District's recommendation that Student be on a diploma track to graduate from high school. The doctors referred to Student's long-documented history of chronic, severe behavioral problems, and deficits in adaptive living skills. They expected these difficulties to follow Student into adulthood. They noted that District placed Student in a special day class and identified him as having an intellectual disability. The doctors said that Student required extended educational services after his 12th school year because he would not have the adaptive living skills to get a job, live on his own, or attend college, even with supports.

44. District timely provided Parents with a prior written notice letter dated June 2, 2015. District considered the Kaiser letter to be Parents' formal request to change Student's placement by moving him from diploma track to a certificate of completion. This would require an IEP meeting, at which time the team would discuss Parents' request for a change in placement.

45. District reconvened Student's annual/transition IEP with a continuation team meeting on June 10, 2015. The IEP team members included Mother and Student. Student told the team that he would like a job working in an electronic store after high school. Mother stated that she did not want Student to get a diploma because he

needed transition services after he leaves Mayfair, until he is 22 years old. She believed that Student would only receive limited services from the regional center once he received his diploma. District IEP team members said that the Department of Rehabilitation and the regional center were responsible for students after they received a diploma and leave the District. The Department of Rehabilitation worked with students until they were gainfully and competitively employed. Student could also take regional occupation classes and participate in the Workability program.

46. School psychologist Sandra Gagliardino was well-acquainted with Student, who came to her office almost every day for a lunch group. She testified at the hearing. She told the team that Student should be on track for a diploma. Student's current grades were a C or higher in every class. Ms. Gagliardino emphasized that Student's skill level was much higher than non-diploma bound students. She reviewed Student's cognitive ability, noting he scored in the low average range at the prior triennial assessment, and in the average range for math and passage comprehension. The speech pathologist said that Student had progressed throughout the year and was now the leader of the speech group. The team said District was obligated to place a student in the least restrictive environment and that the classes Student would attend on non-diploma track would be below his capabilities and too restrictive.

47. Mother thought District was pushing Student to earn his diploma. School counselor Keven Garcia said that the school's responsibility was to educate students at a level they were capable of achieving. The diploma-bound program was at the level Student was functioning. A diploma would provide more job opportunities and greater average earning potential. Mother continued to express concern as to what would happen to Student after he earned his diploma. The IEP team agreed to meet in the fall 2015 to discuss transition options.

48. The IEP team did not address or discuss the April 2015 Kaiser letter or any of the doctors' findings regarding Student's deficient adaptive living skills. Despite Mother's concerns and the Kaiser doctors' statements of functional deficits, District did not offer to assess Student's functional and adaptive skills in the community. The District restated its offer of FAPE from the March 2015 IEP meeting. Mother took the IEP home to review and discuss with her husband before signing.

49. In a July 21, 2015 letter to District, Parents requested another IEP meeting in September 2015. Parents further stated that since they never signed the March 2015 IEP, District could not change Student's schedule.

50. Student's final grades for spring 2015 were a C plus in English 10, B's in Survey of Biology, Modern World History, Algebra 1, and Art, and an A in Adaptive Physical Education.

2015-2016: 11TH GRADE – MAYFAIR HIGH SCHOOL

51. Student attended eleventh 11th grade at Mayfair High School for the 2015-2016 school year. Student continued to improve his communication and social skills and to perform well academically, on track to graduate with a diploma in June 2017.

52. Ms. Ramirez gave Student a vocational assessment on September 15, 2015. Student completed the California Career Zone Interest Profiler, which revealed three top areas of interest: artistic, social, and realistic. His favorite career was game designer. Student was taking an elective class in Java script and multi-media animation.

53. Student told Ms. Ramirez that he wanted to get a job at Target upon graduation. Ms. Ramirez told him about the importance of a resume, gave him a list of job search websites, and provided some interview tips. She explained that he would be able to get job assistance after graduation at the Department of Rehabilitation and Regional Center. Student should look at career options by using online learning resources.

54. Student was unsure about attending college. Ms. Ramirez provided the Cerritos College program listing, explained the difference between a degree and vocational training certificate, and discussed admission steps, timelines, and the Disabled Students Programs and Services department. Ms. Ramirez recommended that Student explore local community colleges and adult school prior to his senior year.

September 28, 2015 Reconvened March 2015 Annual/Transition IEP Meeting

55. District reconvened Student's March 2015 annual/transition IEP team meeting on September 28, 2015. All requisite IEP team members attended, including Mother, Father and Mr. Camacho. Program administrator Maricela Harvin attended Student's IEP team meeting for the first time, having started working at District in July 2015. The continuation meeting further discussed Student's placement options.

56. Parents repeated their concerns that Student should not be on diploma track because Student required more transition support. The remainder of the team explained to Parents that the regional center and Department of Rehabilitation would provide Student with services after high school. Ms. Ramirez shared Student's vocational assessment.

57. Parents did not sign the IEP. Parents met with Ms. Harvin two to three times after the meeting to further discuss the IEP goals. Parents signed the March 2015 IEP on October 26, 2015, and requested a psychological assessment of Student in all areas to determine if he should be diploma or certificate bound.

December 15, 2015 Psycho educational Evaluation

58. On October 28, 2015, Mother signed an assessment plan to evaluate Student in all areas of suspected disability, including: academic achievement, health, intellectual development, language and speech communication development, social and

emotional, adaptive behavior (including in the community), post-secondary transition, and visual/auditory processing. District advanced Student's triennial IEP from March to January 2016.

59. Ms. Gagliardino conducted a triennial psycho educational assessment of Student, with the assistance of the school nurse and Ms. Ramirez. She documented the results in a report dated December 15, 2015. Ms. Gagliardino testified at the hearing. Ms. Gagliardino had a pupil personnel services credential and was a fulltime psychologist with District for more than 10 years. Previously, she had been a substitute teacher and special education teacher. She had a bachelor's and master's degrees in psychology. Ms. Gagliardino's duties included conducting psycho educational evaluations, reevaluations, counseling, and attending IEP meetings. She had known Student since ninth grade when she had one-on-one counseling with Student, at Mother's request. She had seen Student since then in counseling and informal lunch gatherings. Ms. Gagliardino's education, experience, and credentials qualified her to conduct a psycho educational assessment of Student.

60. The nurse reported that Student passed vision and hearing tests. Mother thought Student struggled with vision even with his glasses. Student took Adder all for his ADHD. The Motor Free Visual Perceptual Test, 3rd Edition, measured Student's visual processing to be in the high average range. Student's visual processing score on the Beery Developmental Test of Visual-Motor Integration fell with the average range. On the Test of Auditory Processing Skills, Student's overall auditory processing score fell in the low average range.

61. Ms. Ramirez prepared the vocational section of the assessment report, which generally restated her September 2015 vocational assessment. She was not involved in the adaptive skills evaluation.

62. Ms. Gagliardino reviewed Student's records, prior assessments and IEP's, developmental history, and interviewed Parents and Student. She utilized various standardized instruments and tested Student for several hours over a few days. Student presented as respectful, shy, and well-mannered. He dressed appropriately, was well-groomed, and gave his best efforts.

63. Ms. Gagliardino used the Wechsler Abbreviated Scale of Intelligence, and the Wechsler performance subtests to evaluate Student's attention processing, finding that he was able to sustain attention to tasks without difficulty. Student scored in the low average range on the verbal and performance (nonverbal) indexes, with a full scale intelligence quotient of 86, low average. The results were consistent with teacher reports that Student was focused in class and gave close attention to detail.

64. Ms. Gagliardino administered the Woodcock-Johnson III Achievement Test to gain an overall measure of Student's skills in reading, writing, math, and language. The Woodcock achievement test was a norm-referenced instrument designed to assess academic performance of individuals. The standard scores described Student's performance relative to the average performance of the similar age comparison group.

65. During her testimony, Ms. Gagliardino compared Student's Woodcock-Johnson achievement standardized scores from his 2010 triennial psycho educational assessment with those from his December 2015 triennial. For Letter-Word identification, Student scored a 72 in 2010 and an 81 in 2015; in Reading Fluency, 74 in 2010 and 86 in 2015; Calculation, 100 in 2010 and 81 in 2015; Math Fluency, 97 in 2010 and 93 in 2015; Writing Fluency, 88 in 2010 and 75 in 2015; Passage Comprehension, 90 in 2010 and 76 in 2015; Applied Problems, 90 in 2010 and 84 in 2015; and for Writing Samples, 92 in 2010 and 92 in 2015.

66. Student's expert Ms. Thames opined that the lower 2015 scores on some of the subtests indicated that Student had "regressed." Ms. Gagliardino strongly

disagreed. Regression meant that a student had lost information. The lower scores on some of the achievement subtests did not mean that Student regressed and knew less than he did in 2010. The 2015 achievement scores were norm-referenced for students of similar age and, therefore, had acquired substantially more academic information since 2010. Though some of the 2015 scores were less than 2010, Student knew more and had academically progressed over the five-year span.

67. Ms. Thames acknowledged that the 2015 achievement tests expected Student to know more than in 2010. She also agreed that Student could have been cognitively challenged by the more demanding academics of the 2015 testing. The lower standard scores on some of the 2015 achievement subtests did not indicate regression. Student had not academically regressed from 2010.

68. Parents and Student's current classroom teacher completed Adaptive Behavior Assessment II scale forms providing information on Student's functioning within the school and home environment. Student was rated in the extremely low range in all three domains, with a general adaptive composite classification of extremely low. Ms. Gagliardino stated in her report that the scores should be viewed with caution as both Parents and teacher did not answer every question. The scores demonstrated that the teacher and Parents had different views of Student's adaptive skills.

69. Ms. Gagliardino also questioned the validity of the scores, believing the scores unfairly failed to recognize Student's adaptive and functional strengths, which she observed Student develop during high school. For example, relative to the conceptual composite, Student could communicate his needs, ask questions, and seek clarification when needed. As to the social composite, Student had good relationships with teachers, other adults in the classroom, and peers. He could express how he was feeling, was courteous, and would laugh in response to jokes.

70. Ms. Gagliardino felt the practical composite score did not reflect that Student was punctual, well-groomed and dressed for school and climate, did not require help with eating, was able to locate campus restrooms and identify community services. He obeyed authority figures, performed simple classroom chores, and usually respected classmates' rights and property. He stayed with his class during fire drills, appropriately used class materials, and consistently followed class and campus safety rules.

71. Parents' adaptive skills scores were very low, some with age equivalents of less than a year old. Mother testified that these scores reflected how she felt about Student's ability to participate in the community without further supports after he graduated. She believed District refused to recognize that Student did not have adaptive skills to safely and effectively function in the community. She testified that Student did not know how to take a bus, plan a public transit route, purchase food, pay and count change at a store, identify unsafe situations, talk to strangers, and generally navigate life outside of school and home. Parents' concern in this regard was the primary reason they opposed Student being on a diploma track. District did not provide transition services to develop Student's functional and adaptive skills, enabling him to attend community college or work a job after graduation.

72. Ms. Gagliardino, Ms. Ramirez, Ms. Vander Baan and District staff generally believed that Student had the capability to function in the community. Their belief was based upon their observations and interactions within the classroom and school setting. District did not observe or evaluate Student's adaptive and functional capabilities outside of school and in the community.

73. Ms. Gagliardino concluded Student met the eligibility requirements for autistic-like behaviors. She did not reference or discuss Student's secondary eligibility of intellectual disability.

January 21, 2016 Triennial/Transition IEP Meeting

74. District convened Student's triennial/transition IEP team meeting on January 21, 2016. All required IEP team members attended, including Mother and Father. Regional center worker Josephina Fernandez also attended.

75. Ms. Gagliardino reviewed her psycho educational evaluation. Student told her he wanted to be more social outside of school, but Parents noted he is resistant to going out. Ms. Ramirez reviewed the transition assessment, noting Student was interested in a career in the gaming industry. She suggested that Parents consider available adult school classes for computer programming. Ms. Fernandez reviewed potential regional center job assistance and said she would investigate possible social group participation. She also explained that, about six months before high school graduation, a regional center adult resource committee would identify available resources, dependent upon Student's needs, and meet with Parents and Student.

76. The team reviewed the present levels of performance for academic achievement performance, functional skills, communication, vocational, and social/emotional/behavioral. Student's adaptive and daily living skills were reported as being very good and age appropriate, noting his timeliness, good grooming, and independent navigation between classes at school. Student would be released early to go to lunch and early from his last class to go to the bus. The present levels of functional performance did not include Student's adaptive and functional skills in the community or address the Kaiser doctors' letter.

77. Ms. Breig and Mr. Garcia reviewed the proposed individual transition plan with two post-secondary goals. The first post-secondary goal stated Student wanted to attend a local community college or vocational school and was linked to IEP Goals 1, 2, 3, and 5. Student would attend the college fair, continue researching local community colleges, and participate in the college campus tours. The second post-secondary goal

stated Student wanted to get a part-time job after high school and was linked to IEP Goal 5. The transition plan also summarized the coursework needed for Student's anticipated graduation in June 2017. Student had completed 110 units, with 30 units pending.

78. Like the March 2015 IEP, the transition plan post-secondary goals addressed independent living and the IEP provided services that would reasonably enable Student to meet his post-secondary goals. However, the post-secondary goals and the IEP services did not address independent living or adaptive/functional skills directly related to independent living in the community.

79. Mr. Garcia reviewed Student's transcript and class options for the 12th grade in the 2016-2017 school year. Ms. Breig reported Student wanted to move to the higher English class, from a special day class to an resource specialist program class, for the spring 2016 semester; she told the team the move was academically appropriate. The IEP team, including Parents, agreed that Student's performance would be monitored in the resource specialist class; if he struggled, he would return to the special day class after the first quarter.

80. The IEP team reviewed Student's goal progress and the proposed IEP goals. Ms. Harvin was at the IEP meeting and testified at the hearing. District only had about two months to implement the annual IEP goals because Parents signed the March 2015 IEP in late October 2015. The IEP documents reported Student's progress on each IEP goal. Student made progress on but did not meet Goal 1, reading comprehension, which remained unchanged. Student improved his short sentence writing, with few grammatical errors, but needed to work on his prewriting skills as to Goal 2, writing multi-paragraph essay. Student made progress on his math Goal 3, which the team modified for multi-step problems because Student had progressed to an integrated math class. Student met the previous year's goal for following multi-step directions. The

team developed new vocational Goal 4 for following of multi-step directions. Student made substantial progress on his occupational requirements goal. He had been computer-trained on the Naviance career program and was actively investigating post-secondary jobs and careers. The team drafted a new transition Goal 5, related to identifying occupational requirements. Student made progress on the four prior goals on pragmatics and language/communication, especially his self-advocacy. The team reviewed four new proposed goals. Speech Goal 6 addressed semantics and pragmatics; speech Goal 7 was in syntax and morphology; speech Goal 8 was for pragmatic and appropriate responses to social problems; and speech Goal 9 was for pragmatic use of nonliteral statements. Student had met his fitness goal; he no longer took Adapted Physical Education as of 11th grade.

81. Ms. Harvin told Parents Student was on track to receive his diploma in June 2017, based on results from his assessments, class performance, and goal progress. Parents again stated they believed Student needed more guidance with transition and life skills preparation and asked the team to consider a certificate of completion. District team members reported Student had diligently worked to complete graduation requirement and that his educational team will continue to use strategies to compensate for his disabilities. Ms. Fernandez reported the regional center had resources that would support Student in the transition to adulthood and would meet with family in the future. Mr. Garcia stated that students who are not on diploma track have limited vocational career options.

82. District's FAPE offer included: continued special academic instruction for Student's core academic subjects for 84 percent of his time at school; speech and language services for an hour per week; counseling 30 minutes per month; participation two times per year for 20 minutes in career awareness; and transportation from home to

school. Student's primary eligibility remained autism, with a secondary eligibility of intellectual disability. Parents took the IEP document home to review.

83. Student's final grades for fall 2015 were an A minus in U.S. History, B's in Environmental Science, English 11, and Integrated Math, and D's in his electives of Java Script and Web Design and Animation.

Spring 2015-2016 Semester

84. Student moved to Ms. VanderBaan's resource specialist program English 11 class of about 18 special education students for the spring 2016 semester. Ms. VanderBaan opined at hearing that Student belonged in her resource specialist classroom based upon his excellent performance. Student was proficient in self-advocacy. He successfully completed assignments, participated in class, and demonstrated class leadership. His classmates regarded him highly. Based on her knowledge of Student in the school setting, Ms. VanderBaan thought Student was capable of functioning in the community.

85. On May 21, 2016, Ms. Harvin informed Parents that District had not received a response regarding the January triennial IEP. She told Parents that District could not implement the IEP without their consent. She also explained that Parents could consent to all or part of the IEP, allowing District to implement those IEP components to which they consented. Parents did not respond.

86. District wrote Parents on June 8, 2016, explaining District was obligated to provide a FAPE to Student and that District could not do so because Parents had not allowed District to implement any part of the January 2016 IEP. District therefore requested that Parents consent to some implementation of the IEP. Otherwise, District would be compelled to initiate a due process proceeding with the Office of Administrative Hearings. Parents did not respond.

2016-2017: 12TH GRADE – MAYFAIR HIGH SCHOOL

87. Student attended 12th grade at Mayfair High School for the 2016-2017 school year. In addition to Ms. VanderBaan's English class, Student was in the resource specialist program class for Business Math. Student's first quarter grades were A plus in English 12, A in Economics and Business Math, and A minus in Government. In his two electives, he earned an A minus in Ceramics and a B in 3-D Art. Student's performance in his academic classes kept him on track to graduate with a diploma in June 2017.

88. The IEP team reconvened and amended the January 2016 IEP on October 27, 2016. All required IEP team members attended, including Mother, Father and Student. Harbor Regional Center's manager Rasanda Washington and service coordinator Ashley Reese, the family's special education attorney, and District's attorney also attended. Student talked about what he wanted to do after high school. He reported that he had made progress in researching his career options, including employment in the fast food industry and attending community college.

89. The IEP team discussed and modified some of the triennial IEP goals. They also added two goals at Parents' request so Parents would give permission to implement the triennial IEP. Goal 10 was for travel training to support post-secondary transition. Student would learn how to map a route from one destination to another using public transportation. Ms. Ramirez or another District employee would then take Student into the community to guide him in using public transportation. However, the goal and IEP do not list any community experiences, including training Student how to use the bus in the community. The IEP did not contain any community experience services for Student's adaptive and functional skills. Additionally, District never assessed Student's adaptive and functional living skills in the community.

90. In fall 2016, Student participated in the Job Club, which was the first step in the Workability program, which was grant funded, and not a special education service.

LEGAL AUTHORITIES AND CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁴

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

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

⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁵ All subsequent references to the Code of Federal Regulations are to the 2006 version.

transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In 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 Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it

desired to do so.].) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. A district’s determinations regarding special education are based on what was objectively reasonable for the district to conclude given the information the district had at the time of making the determination. A district is not held to a standard based on “hindsight.” (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (l).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student carries the burden of persuasion.

6. For purposes of evaluating a child for special education eligibility, the district must ensure that “the child is assessed in all areas of suspected disability.” (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna*

Salada Union School Dist. (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157–1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) A school district is also required to ensure that the evaluation is sufficiently comprehensive to identify all the child’s needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

7. The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and District agree otherwise, but at least once every three years unless the parent and District agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child’s educational or related service needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).) A district must also convene an IEP team meeting when a parent requests a meeting to develop, review, or revise the IEP. (Ed. Code, § 56343, subd. (c).)

ISSUE 1: TRANSITION GOALS AND SERVICES FOR ADAPTIVE SKILLS

8. Student contends District denied him a FAPE by failing to provide transition goals and services which would enable him to function in the community and achieve his post-secondary goals of schooling and employment. District asserts that its transition goals and services properly supported Student’s post-secondary goals and that Student was capable of functioning in the community, with the support and directions of other available agency resources, for purposes of work and school. As discussed below, Student has demonstrated by a preponderance of the evidence that District failed to provide IEP goals and adaptive skill services to enable him to pursue his post-secondary goals in the community. This procedural failure denied Student a FAPE, as discussed below.

Legal Authority

9. Transition services are a coordinated set of activities that are (1) designed within an outcome-oriented process that is focused on improving the academic and functional achievement of the child to facilitate movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation; (2) based on the student's individual needs, taking into consideration the student's strengths, preferences and interests; and (3) include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocation evaluation. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).)

10. Individual transition plans and supporting IEP goals and services need to address a student's unique needs. Here, District did not meet its obligation to evaluate and provide appropriate services and IEP goals related to Student's adaptive skills in the community, which Student persuasively demonstrated were necessary to support Student's post-secondary transition goals. District's obligation in this regard was not met by interviewing Student about what he wanted to do after high school and having Student complete computerized Personal Profile and Career Cruising Surveys.

11. The adequacy of transition services must be viewed as an aggregate in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefit. (*Lessard v. Wilton-Lyndeborough Coop. Sch. Dist.* (1st Cir. 2008) 518 F.3d 18, 28-30.) When a transition plan fails to comply with the procedural requirements, but the individual transition plan or IEP provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural

violation is harmless. (*Virginia S. v. Dept. of Educ.* (U.S. Dist. Ct, D.Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, *10.) A transition plan that is procedurally deficient, but does not result in a loss of educational opportunity, does not result in a denial of FAPE. (*Ibid.*)

12. A procedural violation results in liability for 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); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) (*Target Range*).

Analysis and Conclusions

13. Student proved he did not have the adaptive living skills to function in the community so he could pursue his post-secondary education. District asserted that Parents were primarily concerned with Student's diploma bound status, which meant he would not have special education services and support after graduation. District referred Student to Job Club and frequently informed Parents about the services available by the Department of Rehabilitation, the regional center, and the community colleges. However, those services did not adequately address the development of Student's life skills in the past two years while he was attending a District high school, which would have enabled him to eventually function in the community and pursue his post-secondary goals.

14. Parents have long-documented concerns for Student's adaptive skills. For example, Parents disagreed with District's March 2013 triennial IEP's secondary eligibility recommendation and requested a secondary eligibility of intellectual disability because Student was unable to function on his own. Student's cognitive scores were in the low average range and not at or below an intelligence quotient of 70, which traditionally

supported an intellectual disability determination. District therefore conducted an adaptive behavior evaluation because intellectual disability includes consideration of adaptive functioning. Parents' and teacher's scale scores showed that Student required assistance to perform tasks in daily life, the community, home, and within the school setting. Overall, Student was not able to care for himself independently in and outside the home. Consequently, District agreed that Student's secondary eligibility was intellectual disability.

15. District has since included Student's secondary intellectual disability eligibility in every IEP. If District believed that Student's adaptive and functional skills were no longer deficient, as they contended during the hearing, then District should have changed the intellectual disability eligibility because Student's cognitive scores alone were insufficient. Student's continuing secondary eligibility of intellectual disability is inconsistent with District's assertion that it was unaware of Parent's concerns regarding Student's functional skills in the community.

16. At the May 2014 amendment IEP meeting, Mother asked about the ATC program, indicating that Student needed to develop adaptive and functional skills in the community. District explained that the adult transition class was for low functioning special education students, well below Student's level and unsuitable for Student. District did not otherwise address Parents' statement that Student could not function in the community. Further, District's response implied to Parents that District did not provide adaptive skills services to diploma-bound students so they could function in the community, such as riding a bus, eating at a restaurant, making store purchases, and evaluating unsafe situations. Parents' alternative was to oppose diploma bound status, believing that District's continuing special education services would then address Student's functional needs. District knew Parents wanted services to develop Student's

adaptive and functional community skills. Yet, District did not develop levels of performance and offer Student services to address adaptive skills in the community.

17. District never addressed Kaiser's unambiguously expressed determination that Student would not be able to function in the community after graduation. Student's developmental physician, psychiatrist, and psychologist had long-standing relationships with Student. The doctors stated that Student "would not have the adaptive living skills to get a job, live on his own, or attend college, even with supports" after high school. Having received the Kaiser letter, District told Parents it would convene an IEP team meeting to discuss the letter and a change of placement to a non-diploma track. However, District did not ask the doctors to participate and did not gain permission to talk to the Student's doctors. Furthermore, District did not discuss the Kaiser letter at the subsequent IEP. Instead, District restated that Student deserved to be on diploma track and that other agencies would be providing Student support in attending community college or trade school and assist in finding a job. District also did not contact Student's doctors or comment on Kaiser's position regarding Student's functional adaptive skills when evaluating Student for the January 2016 triennial IEP. Finally, District did not offer evidence refuting the doctors' professional findings.

18. Student made significant gains during high school in his academic performance, socialization, communication, and self-advocacy. Teachers and staff believed Student could function in the community, based upon their observations and interactions within the classroom and school setting. However, District did not observe or evaluate Student's adaptive and functional capabilities outside of school and in the community.

19. The testimonial and documentary evidence proved that District did not provide services for adaptive/living skills in the community for diploma-bound students. Ms. Ramirez did not review her diploma-bound students' adaptive behavior assessments

but, instead, focused on guiding and encouraging them to explore their post-secondary schooling and employment. Yet, diploma-bound students can also be deficient in adaptive, functional living skills that hamper them from pursuing a transition plan's post-secondary goals, which was the case for Student.

20. District had an affirmative legal duty to provide IEP goals and related services that supported Student's chances of attaining his transition plan's post-secondary goals. The goals and services must be based on Student's individual needs and, when appropriate, include acquisition of daily living skills. Parents consistently maintained that Student did not have basic life skills. District continued to provide a secondary eligibility of intellectual disability, when such eligibility was based upon Student's extremely low adaptive skills. Student's psychiatrist, psychologist, and developmental pediatrician strongly stated that Student was not capable of functioning in the community after high school. District never talked to Student's doctors nor assessed Student's functional abilities in the community. Instead, District cited to Student's increasing capabilities in the school setting. However, being capable is not the same as being able. District cited no direct evidence to indicate Student could function in the community after high school so he could pursue his post-secondary goals. Though District often instructed Parents about the availability of other agencies' services, no evidence indicated such services would meet Student's individual adaptive skills needs. Significantly, other agencies' post-secondary services do not relieve District of its affirmative obligations under the IDEA.

21. The preponderance of the evidence demonstrated that Student did not possess the adaptive skills that would enable him to function in the community so he could pursue his post-secondary goals. As a result, District's failure to provide a legally sufficient transition plan, with supporting IEP goals and services to appropriately address Student's adaptive and functional abilities in the community, was a procedural violation.

If Student could not function in the community, he would be unable to pursue his post-secondary goals. If he could not make purchases in a store, know how to buy a meal, evaluate unsafe situations, use public transportation, communicate with strangers, and otherwise function with a degree of independence, he could not attend community college or maintain a job. Therefore, District deprived Student of educational benefit and denied Student a FAPE. Additionally, Parents' opportunity to participate in the decision-making process was impeded because District continued to fail to address Student's adaptive and functional skills needs. District told Parents that diploma-bound students did not receive adaptive and functional skills training. Thus, Parents were concerned about Student's graduation because Student would not be able to function in the community after high school. Their concerns caused them to oppose graduation in hopes of assuring continuing special education transition services.

22. In summary, District failed its obligation to address Student's needs in life skills and transition, which deprived Student of educational benefit and significantly impeded parental participation, resulting in a denial of FAPE. Student's remedies will be discussed below.

ISSUE 2: EDUCATIONAL BENEFIT, ACADEMIC GOALS, AND ACHIEVEMENT SCORES

23. Student contends that District denied him a FAPE by failing to offer appropriate placement and services designed to provide educational benefit. Student asserts that he has not met academic goals and has academically regressed, as indicated by lower achievement test scores. District maintains that Student has consistently progressed throughout high school in his academics, socialization, communication, and self-advocacy. Student has met or made progress on all academic goals, though District was hampered from implementing the goals because Parents delayed agreeing to the IEP's. Further, though some of Student's 2015 achievement test scores were lower than those in 2010, Student did not academically regress but has instead actually grown. As

discussed below, Student failed to meet his burden of proof that District's placement and services did not provide Student with educational benefit.

24. The FAPE requirement of the IDEA is met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Rowley*, *supra*, 458 U.S. 176, 203-204.) Here, District clearly demonstrated that Student has educationally benefited and, in many areas, substantially. Student steadily improved in his communication, pragmatics, socialization, and academics since beginning high school. Ms. Gagliardino and Ms. VanderBaan recounted how Student had grown in the classroom and school setting, noting his ability to self-advocate and lead in social and classroom settings. Grade reports demonstrate how Student's academic performance improved from mediocre in 9th grade to outstanding in 12th grade, with a first quarter grade of A in all his academic classes.

25. An IEP must contain a statement of measurable annual goals related to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum" and "meeting each of the child's other educational needs that result from the child's disability." (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd.(a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(III); Ed. Code, § 56345, subd.(a)(3).) The IEP must show a direct relationship between present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).) The IDEA does not require a particular number of goals nor does it require goals for every particular manifestation of the Student's disability. Here, Student did not present persuasive evidence that the present levels of performance were inaccurate or the goals were not measurable. District has provided reliable present levels of performance and measurable IEP goals to address Student's academic needs, except as discussed in Issue 1, above.

26. Student contends that he did not meet or progress on his IEP academic goals. However, the evidence indicated Student did meet academic goals and, when he did not, he made progress. Also, Parents regularly delayed approving an IEP so District could implement IEP goals. District had a little less than 10 months to implement March 2014 annual IEP goals because Parents signed the IEP in late May 2014. Student met his goals in social communication, and abstract language. He improved on his writing skills goals, steadily progressed on his science goal, and partially met his math goal. District had two months to implement March 2015 IEP goals because Parents signed the IEP in late October 2015. Yet, Student met the goal for following multi-step directions and made progress on the other academic goals in reading comprehension, writing, and math goals. Student met or made progress on all his academic goals even though Parents' IEP approval delayed implementation. Contrary to Student's contention, Student's performance on his academic goals indicated he received educational benefit.

27. Student's expert Ms. Thames asserted that Student's lower achievement test scores on some subtests in 2015, as opposed to 2010, indicated that Student had "regressed." The Woodcock achievement test is a norm-referenced instrument designed to assess academic performance. The standard scores described Student's performance relative to the average performance of a similar age comparison group. Therefore, though some of the 2015 standard scores were less than 2010, Student progressed. Regression means that a student has lost information. The 2015 achievement scores demonstrated Student knew more at age 16 than five years earlier. The evidence did not support Student's contention that the lower standard achievement scores meant that Student regressed and did not receive educational benefit.

28. Student failed to meet his burden of proving, by a preponderance of the evidence, that District denied Student a FAPE by not offering placement and services that were reasonably calculated to provide educational benefit. The evidence

demonstrated that Student has steadily progressed academically in high school and has educationally benefited from District's placement and services.

ISSUE 3: ALLEGED UNAUTHORIZED CHANGE OF PLACEMENT TO GENERAL EDUCATION

29. Student contends that District denied Student a FAPE for the 2016-2017 school year because District improperly changed Student's placement without an IEP. Student argues that moving Student from some special day classes to resource specialist program classes was a change in placement from special education to general education; this required IEP approval. District states that both classes are special education classes, the class move was not a change in placement, and no IEP meeting was necessary. As discussed below, Student has failed to meet his burden of proof that District's change of class required IEP team approval.

30. The IDEA requires that IEP's specify the amount of time a student is outside a regular class, extracurricular activities, and nonacademic activities, as part of a IEP's description of special education placement. (20 U.S.C. § 1414(d)(1)(A)(i)(V).) Here, Student's IEP's for March 2014, March 2015, and January 2016 all specified that Student would be receiving specialized academic instruction in all of his core academic classes for 84 percent of his day. None of Student's core classes would be in the general education classroom or include mainstreaming with general education students.

31. At the March 2015 IEP, the team discussed moving Student from a special day class to a resource specialist program class for some of his specialized academic instruction. Parents discussed the opportunity with the IEP team, aware that the resource class was more academically challenging. Resource classes were also discussed at the January 2016 triennial IEP. Student started attending Ms. Vander Baan's English 11 resource specialist program class for the spring 2016 semester. Student's special day class English teacher and Ms. VanderBaan agreed that the resource specialist program

was a more suitable academic level for Student. For fall 2016 semester in 12th grade, Student attended a resource specialist program class for English 12 and Business Math, where Student was earning grades of A plus and A, respectively.

32. District's special day classes and resource specialist program classes are both special education classrooms composed of special education students who receive specialized academic instruction. Some school districts use "resource specialist program" services and classes to refer to a special education placement provided to special education students who are in the general education program. Here, District's resource specialist program classes are for diploma bound special education students who are academically able to handle the curriculum at a more intense pace. These classes do not include or involve general education students.

33. Therefore, when Student attended resource specialist program classes for English 11, English 12, and Business Math, he continued receiving specialized academic instruction with fellow special education students, like the special day class, but at a pace consistent with his capabilities. Student's IEP's designated specialized academic instruction time of 84 percent remained the same. He continued to receive special education instruction for all his core academic classes. Student's participation in resource specialist program classes for some of his core academics was therefore not a change of placement, requiring additional IEP team approval.

34. Student failed to meet his burden of proving, by a preponderance of the evidence, that District denied Student a FAPE by improperly changing Student's placement to general education without IEP team approval.

REMEDIES

1. Student prevailed as to Issue 1. He seeks an order that District fund an independent educational evaluation of Student's levels of functional skills, including living and vocational skills, in the community and off the school campus.

2. Students may be equitably entitled to publicly funded independent educational evaluations when a district was obligated to assess but failed to do so. (See, e.g., *M.S. v. Lake Elsinore Unified School Dist.* (C.D. Cal. July 24, 2015) 2015 WL 4511947, at pp. 10-11; *Los Angeles Unified Sch. Dist. v. D.L.* (C.D.Cal. 2008) 548 F.Supp.2d 815, 821-822.) This equitable remedy is available independently from a student's statutory right to an independent educational evaluation. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, § 56329, subd. (b); *Letter to Baus*, 65 IDELR 81 (OSEP 2015).)

3. An independent educational evaluation is an evaluation conducted by a qualified examiner not employed by the district. (34 C.F.R. § 300.502 (a)(1).) A district may impose criteria to ensure that publicly funded independent evaluations are not unreasonably expensive. (*Letter to Wilson*, 16 IDELR 83 (OSEP October 17, 1989).)

4. In April 2013, District assessed Student at Parents' request and agreed that Student's secondary eligibility should be intellectual disability because Student's adaptive and functional skills were extremely low, even though Student's cognitive scores would not support the eligibility. At the May 2014 IEP, Mother asked about District's adult transition class because Student needed to develop adaptive and functional skills in the community. In May 2015, District received a copy of a letter from Student's psychiatrist, psychologist, and developmental pediatrician, stating that Student would not have the adaptive living skills to get a job, live on his own, or attend college, even with supports, after he graduated high school. At a subsequent IEP team meeting, District did not discuss the doctors' opinion or otherwise consider their findings. District did not mention, in the January 2016 triennial psycho educational assessment or IEP that followed, the doctors' clear statement that Student lacked adaptive living skills. Despite Parents' concerns and the doctors' findings, District did not offer to assess Student's functional and adaptive skills in the community.

5. District failed to develop accurate present levels of performance of Student's adaptive skills and provide appropriate services to enable Student to pursue his post-secondary goals, resulting in a denial of FAPE. District could have avoided the FAPE denial by assessing Student in the community to determine Student's adaptive and functional skills, enabling the development of IEP goals and services to address deficits. This obligation to assess was especially clear following the Kaiser letter from Student's three doctors, who had extensive clinical and therapeutic relationships with Student.

6. District should have assessed, had the opportunity to assess, did not assess, and consequently failed to provide goals and services to address Student's deficits. Student is equitably entitled to a District funded independent education evaluation of Student's adaptive and functional skills in the community.

7. Student further seeks compensatory services for District's FAPE denial because it failed to provide an individual transition plan with IEP goals and services that addressed Student's adaptive and functional skill deficits. Student asks that District be ordered to fund one-on-one community based instruction, which would take place in the community and not on campus. Ms. Thames recommended 36 hours, which would be about two hours of such services for the remainder of the school year before Student's graduation. However, Student also requests that unused compensatory hours be accessible after his graduation.

8. Student needs community based instruction. A preponderance of the evidence demonstrated that Student does not possess the adaptive skills that would enable him to function in the community so he could pursue his post-secondary goals. Two hours a week of community based instruction for the remainder of the school year provides Student with a reasonable opportunity to develop the adaptive skills to function in the community and work toward his post-secondary goals of school and employment.

ORDER

1. District shall fund an independent educational evaluation of Student's adaptive and functional skills in the community, off the school campus, within 30 days of this order. The assessment shall be conducted by a nonpublic agency or other assessor, whose qualifications meet District's policies for independent assessments, chosen by Parents. District shall convene an IEP team meeting not later than 30 calendar days after receipt of the assessment report to review the evaluation

2. District shall fund 36 hours of community based instruction by a nonpublic agency, unless the parties agree in writing to a District provider. At least 10 of the instructional hours must be utilized before Student graduates from high school. Student may use any of the 20 or fewer remaining hours after graduation until June 30, 2018. Student will forfeit unused hours after that date.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Student prevailed on Issue 1; District prevailed on Issues 2 and 3.

RIGHT TO APPEAL THIS DECISION

This was a final administrative Decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

DATED: January 26, 2017

/s/

CLIFFORD H. WOOSLEY

Administrative Law Judge

Office of Administrative Hearings