

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

OAH Case No. 2017060205

v.

SOLEDAD UNIFIED SCHOOL DISTRICT.

AMENDED DECISION¹

Parents, on behalf of Student, filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on June 5, 2017, naming Soledad Unified School District.

Administrative Law Judge Rebecca Freie heard this matter in Soledad, California on July 25, and 26, 2017.

Parents represented Student and attended the entire hearing. Jordi Vidalis, a certified interpreter, interpreted the hearing for Mother.

Jennifer Baldassari, Attorney at Law, represented Soledad. She was assisted by Roxana Kahn, Attorney at Law. Lori Marones, Coordinator of Special Education for

¹ This Decision is amended to correct and change the date of an email from Soledad's Special Education Director to Parents from March 23, 2017, to March 21, 2017. This does not affect the analysis of the issues, or substantively change the Decision.

Soledad, attended the hearing on its behalf.

The parties asked to file written closing arguments, and a continuance was granted until August 14, 2017, to allow them to do so. Upon receipt of the written closing arguments, the record was closed and the matter was submitted for decision on August 14, 2017.

ISSUE

Did Soledad deny Student a free appropriate public education (FAPE) after February 15, 2017, by failing to provide him with an appropriate placement because:

- a. it misinformed Parents, explaining that it had a placement for Student at Salinas High School when it did not; and
- b. Student has not met the goals that Parents agreed to previously and which were to be worked on after February 15, 2017?²

SUMMARY OF DECISION

This Decision finds that Soledad has not provided Student with a FAPE since February 15, 2017, because Parents have been denied meaningful participation in the individualized education program development process since that time. This is because Soledad did not make a clear offer of placement for Student prior to Parents filing

² The parties entered into a settlement agreement in August 2016, after the parties had both filed requests for due process with OAH. In that settlement agreement, Student waived all claims prior to February 15, 2017. In addition, they agreed to the implementation of goals from an IEP that was finalized, but not consented to by Parents, in March 2016.

Student's request for due process.³

Soledad convened an IEP team meeting on February 13, 2017, so that Student's IEP team could discuss three independent educational evaluations that were conducted pursuant to a settlement agreement executed in August 2016. After the independent educational evaluators had presented their reports, Soledad's Director of Special Education indicated that Student might be able to be placed in a special day class in another school district. The IEP team meeting ended without a discussion of goals, accommodations and modifications, or an actual offer of placement and services being made, according to the IEP notes. Student had not had an IEP that Parents had consented to since January 2015. Student had goals that were developed in March 2016, due to the settlement agreement Parents signed in August 2016.

On March 1, 2017, Mother visited the proposed placement and notified Soledad that she wanted Student to attend the program. Soledad did not immediately take steps to secure the placement, or advise Parents about what they needed to do to have Student placed there. On March 21, 2017, Soledad provided Parents with information that led them to reasonably believe Student could be placed in the program in the other school district. On May 23, 2017, the other school district notified Parents that it was not accepting new students. The misinformation provided to Parents by Soledad created a situation where Parents were not given a clear offer, and was a procedural error that denied Parents meaningful participation in the IEP development process. This denied Student a FAPE.

Student presented no evidence about his lack of progress in meeting any goals after February 15, 2017. Parents testified, but they did not specifically address Student's

³ Soledad attempted to convene an IEP meeting in June 2017, but Parents refused to attend.

progress in meeting the goals that were being implemented after February 15, 2017, other than to state they believed Student was regressing, and there was no other evidence introduced that provided any additional information in this regard. Student did not establish that he was denied a FAPE for this reason.

FACTUAL FINDINGS

JURISDICTION

1. Student is 15 years of age, lives with Parents within the boundaries of Soledad, and has done so for all periods of time encompassed by this case. He is eligible for special education under the category of autism, and the secondary category of intellectual disability. He is nonverbal, and communicates with an iPod in the school setting, as well as a few American Sign Language signs, and other gestures at school and at home. Father described Student as “a 15-year-old toddler,” and the evidence established that many of Student’s skills were at the toddler level. Student attended middle school in a special day classroom operated by the Monterey County Office of Education. He began attending a special day classroom taught by Vance Lang at Soledad High School at the beginning of the 2015-2016 school year, his ninth grade year, and at the time of the due process hearing he continued to be placed in that classroom.

IEP OF JANUARY 10, 2015

2. Student’s IEP team developed an IEP on January 10, 2015. Parents consented to it on that date. It is the last IEP Parents have consented to. When this IEP was developed, Student was in the eighth grade of middle school in a classroom operated by the Monterey County Office of Education. Student had needs in the areas of Math (Applications), Readiness (English Language Arts), Receptive Language, Expressive Language, Vocational Skills, and Science, according to the IEP. The IEP

contains one goal in Functional Academics-Math Application, one goal in Functional Academics-Science, one goal in Functional Academics-ELA [English Language Arts], and five goals in communication. The IEP states that Student uses "Assistive/Augmentative Devices or Tools," i.e., a communication device.⁴ No accommodations were listed in the IEP, and the modifications listed reflected a likelihood that Student would not graduate with a diploma. An "Escalation Cycle Management Plan," similar to, but not the same as a behavior intervention or support plan, was attached to the IEP.

3. The offer of placement and services placed Student in a special day class, and he was to be provided with 1940 minutes of specialized academic instruction weekly, with the provider identified as "SC teacher, Autism." He was also to receive speech and language therapy, and occupational therapy weekly.

4. The IEP contained eight goals. The first goal, in Math Applications, was a continuation of the previous goal which had not been met. It required him, by January 20, 2016, to "recognize printed numbers by identifying the appropriate number when asked by the teacher to 'give me. . .', 'touch the . . .', 'where is the . . .' or 'show me. . .' for numbers 1-10, with 80% accuracy in 4/5 trials." He was to do this with "a level 2 prompt (2 + prompts)[.]"

5. Student had met his previous Science goal, to identify whether an object floated or sank, using the appropriate icon on his communication device. His new goal

⁴ The acronym AAC, as used in special education, has many definitions such as "augmentative assistive communication," or "alternative augmentative communication." In this decision, the AAC device used by Student will be referred to as a "communication device," or "the device." At one time Student used an iPad that was programmed for this use, and then he used an iPod, which was the communication device he had at all times encompassed by this Decision.

was identified as a Science goal, although it appeared to be more of a safety goal. With this goal, Student was required to sort pictures into categories of "safe to touch," or "DON'T touch" piles, with 20 pictures for each pile, with 80 percent accuracy.

6. Student's previous English Language Arts goal had been met, and was a sorting goal using a specific set of pictures. As a new English Language Arts goal, Student would now be moving on to a different set of pictures to label and sort.

7. Student's fourth goal was a communication goal. He had met his previous goal which required him to determine whether his communication device needed to be charged, and to successfully recharge it. The new goal for Student required him to remove his communication device from his backpack, put it on, and turn the speaker on. A second communication goal had only been partially met. He was to imitate 17 functional signs, such as "yes," "bathroom," and "water," but could only imitate 11 of the signs successfully. This goal was continued with 15 functional signs, including the six signs he had not mastered.

8. Student's special education teacher was responsible for implementing each of the previous five goals. The speech and language pathologist was responsible for implementing two additional communication goals, which were new goals since he had met two previous goals. Student would now be required to use his speech generating communication device to identify staff and fellow students in his classroom. The second new goal for which the speech and language pathologist was responsible, was for Student to use his device to say "Hi," to classmates and staff.

9. The eighth and final goal was based on a previous goal that Student had met, to use his device to form two-word sentences with a noun and verb, and to comment, ask, or answer questions with just one verbal or visual prompt. The new goal, which was to be implemented by both his special education teacher and the speech and language pathologist, required Student to learn and use his device to produce 12 out of

15 target words to comment, ask, or answer questions.

10. Student was to receive 900 yearly minutes of occupational therapy in a small group setting. However, there was no occupational therapy goal. Student was to receive 45 weekly minutes of speech and language therapy. During the hearing Parents testified that they had no concerns about the speech and language, and occupational therapy services Student was receiving during the time at issue, or concerns that he was not making progress on his goals in these areas.

11. The IEP team discussed the possibility of placing Student at Seaside High School, a comprehensive high school located in another school district, for his ninth grade year. Mother was encouraged to visit the classroom at Seaside and the team agreed that a transition meeting would be held in May 2015 to discuss Student's placement for high school.

12. Parents refused a subsequent offer of placement at Seaside High School, and Student was then placed in the moderate/severe special day classroom at Soledad High School, taught by Mr. Lang, for the 2015-2016 school year.

IEP TEAM MEETING DECEMBER 13, 2015, AS COMPLETED MARCH 21, 2016

13. Following early triennial assessments, Soledad set an annual IEP team meeting for December 13, 2015. Parents were unable to attend so the meeting was continued to January 2016, and when they were unable to attend that meeting, another meeting was scheduled for February 22, 2016. Mother attended that meeting and was accompanied by two advocates. The team did not complete the IEP so another meeting was held on March 21, 2016. Mother and Father attended that meeting, accompanied by their advocates. The resulting IEP is referred to as the March 21, 2016 IEP in this Decision, or the March 2016 IEP. Pursuant to the August 2016 settlement agreement, the goals in this IEP were to be implemented during the 2016-2017 school year.

14. The speech and language pathologist reported that Student was

identifying staff and peers on his communication device with 63 percent accuracy two out of three trial days. He had made progress on this goal, but had not met it. In regards to the second communication goal reported on by the speech and language pathologist, Student was achieving 73 percent accuracy using 12 out of 15 words on his communication device over three sessions. Nothing was reflected in the IEP as to Student's progress saying "Hi" to staff and peers in the classroom.

15. Although the notes from these two IEP team meetings reflect progress reports on two of the three speech and language goals for which the speech and language pathologist was responsible, no progress reports were contained in the IEP for the five goals which Mr. Lang, as the special education teacher, was responsible. Instead Mr. Lang had created five new goals for Student.

16. The first goal called for Student to "develop listening skills by following 2-3 single-step directions within 5 to 10 seconds of teacher directions, with teacher at hand in work or playful context (sorting, doing puzzles, touching a named picture, identifying numbers, imitating an action, tracing letters) daily 4 or more times." He was to do this using level two prompts.

17. The second goal developed for Student by Mr. Lang called for Student to "correctly point to certain objects and people in the classroom with 80% accuracy in 4 to five trials[,] again using level two prompts. The third goal required Student, "using level 4 prompting . . . to let the teacher know when he needs to use the bathroom after he has been asked if he needs to go, as observed by the teacher."

18. The fourth goal called for Student to "develop personal social skills by shifting or alternating eye gaze between a person's face and an object and back at least three times across two partners and 2 contexts 6x daily with 80% accuracy as measured by teacher observation." Mr. Lang's fifth goal required Student to "answer questions with a 'yes' or 'no' response hand signal with 90% accuracy in 3 of 4 trials[,] using

"slight prompting[.]"⁵

19. The speech and language pathologist added two goals to the IEP, as did the occupational therapist for a total of nine goals to be worked on in this finalized March 21, 2016 IEP. Because Parents agreed during the hearing that they had no objection to the services provided by these two related services providers during the time period in question, there is no need to describe or discuss these goals, and there was evidence that Student made significant progress in meeting these goals once they were implemented.

20. Soledad again proposed placement of Student in a special day class operated by the Monterey County Office of Education at Seaside High School, and this was the offer of placement. Student would continue to receive speech and language services and occupational therapy at the same level as in the previous IEP.

DUE PROCESS HEARING REQUESTS AND SETTLEMENT AGREEMENT

21. Parents did not consent to the proposed IEP placing Student in the special day class at Seaside because they believed he would be spending too much time being transported each day, which they believed would be detrimental to him. Therefore, on May 3, 2016, Soledad filed a request for due process hearing with OAH, requesting an order that the IEP be implemented without Parents' consent.

22. Student filed his own request for due process with OAH on May 16, 2016, asking for independent educational evaluations in the areas of speech and language, behavior, and psychoeducation. Student requested that following completion of those evaluations, placement be made in accordance with the evaluators' recommendations.

⁵ Whether the goals in the IEP were legally compliant was not raised in the complaint, or during hearing.

In addition, he also requested compensatory education in several areas.

23. OAH consolidated the two cases and the consolidated cases were set for a prehearing conference and hearing. Prior to hearing, the parties negotiated a settlement agreement. Parents signed the written settlement agreement on August 11, 2016.⁶ Soledad personnel signed it on August 12, 2016.

24. Pursuant to the settlement agreement, Student remained placed in the special day class at Soledad High School. He would now be provided with a one-to-one aide. Parents consented to the goals being implemented from the IEP finalized (but not signed) on March 21, 2016. Parents would be provided with weekly progress reports concerning Student. Soledad agreed to fund independent educational evaluations in the areas of speech and language, behavior, and psychoeducation. An IEP team meeting was to be held no later than February 15, 2017, to review the evaluations, and Parents waived all claims up to that date.

INDEPENDENT EDUCATIONAL EVALUATIONS

Speech and Language Evaluation

25. The independent speech and language evaluation was conducted by speech language pathologist Emily Pratt. She administered multiple tests directly to Student, and Mother responded to formal surveys designed to uncover Student's strengths and weaknesses in the area of speech and language, including social pragmatics. Ms. Pratt also conducted a classroom observation, interviewed Mr. Lang, and reviewed records. Parents, during the hearing, agreed that Student was accurately

⁶ Mother argued during the PHC that OAH should find the settlement agreement invalid and unenforceable, as did Father during his opening statement. However, OAH does not have jurisdiction to do this.

portrayed in the findings in Ms. Pratt's assessment report and this was undisputed.

26. Ms. Pratt observed Student in class on October 12, 2016. During the classroom observation Student was observed to be coloring at a table by himself, in the back of the classroom. Student's one-to-one aide, with hand-over-hand support, helped Student to write his name. The aide named numbers from one to 10, and asked Student to point them on a chart, which he did. Student also completed a puzzle. He worked with the aide on shape-matching, and responded to "what is this" questions using a field of two pictures. Student had no interaction with his peers, and Mr. Lang was not in the room during the observation.

27. Mr. Lang was interviewed in October 2016, and he reported that Student avoided contact with others, both adults and peers, and isolated himself. Student did not use his communication device in the classroom, according to Mr. Lang, but there was no evidence that he was encouraged to do so at that time. On the other hand, Student's speech and language therapist, Sonnabell Galisa focused on using the device during her sessions with him, and she testified at hearing that she encouraged the aide, who began working with Student in December 2016, to help Student use his device for communication with others.

28. Ms. Pratt found that Student did have the ability to communicate using his device, gestures, and ASL, based on her testing, interviews, and observation. She recommended that Student's speech and language therapist encourage staff to ensure that Student was using his device across multiple settings at school, and that there be consultation with his classroom staff to help them to do so. Ms. Pratt also recommended that Student learn to independently respond to salutations, and that staff facilitate peer interactions with Student. Based on the testimony of Ms. Galisa, it is found that Ms. Galisa had been following these recommendations during the time period at issue.

29. In terms of classroom support, Ms. Pratt recommended a visual schedule,

access to headphones only during drills (Student was reported by Mother to have an aversion to loud noises), and that Student be given advance notice of schedule changes and transitions visually. Ms. Pratt also recommended that Student's aide be trained in applied behavior analysis, and complete a communication log when Student was given the opportunity to use his device. In addition, she recommended that Student's family, school staff, and all outside professionals working with him consult with each other to ensure everyone knew what signs and gestures Student uses to communicate in all settings. Finally, Ms. Pratt also recommended that a board certified behavior analyst create an instructional program for Student to be used in his classroom.

Behavior Assessment

30. Board Certified Behavior Analyst Lisa Keslin, conducted the independent functional behavior assessment. Parents agreed, when they testified, that this assessment was an accurate portrayal of Student. Ms. Keslin reported that Student had previously received applied behavior analysis services from a private provider, but those services were reportedly terminated by that agency in August 2016, because Parents wanted Student to communicate by learning American Sign Language, and not to use his communication device.

31. Ms. Keslin observed Student at school on September 13, and 15, 2016, from 8:30 a.m. to 1:00 p.m. She also observed him on January 17, 2017, from 12:30-2:30 p.m. During each observation Student was seated at his own table at the back of the room, as far away as possible from his peers. During each observation Student would take a piece of paper from a pile beside him, pick up a marker, and color the entire sheet. He would do this again and again, each time with a different colored marker. If he ran out of paper he would walk around the room to find more paper and repeat the process. Mr. Lang told Ms. Keslin that one day Student colored 42 sheets of paper. While coloring, Student wore headphones and listened to the same four to eight

nursery rhyme songs, over and over. Occasionally his aide would engage him in other activities such as asking Student to point to pictures when given a word by his aide, or doing a puzzle. The only reported change with the January observation was a comment by Student's new aide that Student was now sitting at the table with classmates during meals in the cafeteria, although Ms. Keslin did not personally see this.

32. Ms. Keslin observed Student during one of his occupational therapy sessions. The occupational therapist kept him active and engaged in activities for 30 minutes with no coloring. Ms. Keslin then went back to the classroom with Student and was able to engage him in testing for at least 20 minutes without him coloring, by encouraging him with praise, high-fives, squeezes, or Goldfish crackers.

33. Between September and November 2015, Student engaged in aggressive behaviors such as biting, grabbing another person's body forcefully, and lunging into another. However, this behavior then ended. Ms. Keslin, a year later, did not observe any of these targeted behaviors. Mother reported that Student engaged in self-injury of biting himself, but again Ms. Keslin did not see this behavior during her observations.

34. Ms. Keslin assessed Student using the Verbal Behavior Milestones Assessment and Placement Program. He scored 13.5 points out of a possible total of 170. Student showed strength in responding after listening to someone, and in the domain of visual perception. Student's greatest need was in the area of manding, i.e., the ability to request something from others. Ms. Keslin suggested two goals to be met by mid-July 2017: 1) using his device to ask for 15 desired items or activities, with two different people in two different settings; and 2) sitting and complying with adult directions for 20 minutes, with two adults for 30 consecutive days.

35. Ms. Keslin strongly recommended that a board certified behavior analyst be used to support Student's program in school, with 10 hours per week initially to be used to train staff who worked with Student, most logically his teacher and his aide.

They would be trained to create a token board and visual schedule, design programming and data sheets for each IEP goal, and taught data collection and reinforcement techniques. The overriding goal would be to increase Student's spontaneous language using technology. The analyst's time would be decreased to two hours of monthly consultation once staff was trained.

Psychoeducational Evaluation

36. Rebecca Schilling, Ph.D., conducted the independent psychoeducational evaluation of Student, in September and October 2016. Parents agreed, when they testified, that this assessment was an accurate portrayal of Student. Dr. Schilling did a records review, and she tested Student for four hours in her office. She also conducted clinical interviews with Mother, Mr. Lang, and Student's one-to-one aide, and observed Student in his classroom. She administered the Stanford-Binet Scales of Intelligence, Fifth Edition; the Matrices Subtest of the Differential Ability Scales, Second Edition; and the Mullen Scales of Early Learning to measure Student's cognitive level.⁷ Mother and Mr. Lang completed the Vineland Adaptive Behavior Scales, Third Edition, and Dr. Schilling administered the Autism Diagnostic Observation Schedule Second Edition, Module One.

37. Student obtained a nonverbal Intelligence Quotient score of 42, and an abbreviated IQ score of 47 on the Stanford-Binet. Student tested at the level of a four to four-and-a-half year old on the Matrices Subtest, and on the Mullen Scales. Student's adaptive behavior, as measured by Mother and Mr. Lang, was very low, with all but one

⁷ Although this last instrument is used primarily with much younger children, and Student was chronologically outside the normative age range, it gave a measure of Student's skill level in age equivalents in the areas tested.

of the age equivalent scores (Mother's score in the Domestic/Numeric domain of 7:0 [seven years, zero months]) below 3:11 [three years, 11 months]. Student's score on the Autism Schedule exceeded the threshold level for a diagnosis of autism, and his autistic-type behaviors were in the moderate range.

38. When Dr. Schilling observed Student in his classroom, he was coloring with his headphones on. After several minutes his aide showed him two picture cards and asked him "forced-choice questions such as 'Which one would you eat?'" After a few minutes of questions and answers, Student then resumed coloring. Later, during the observation, he walked around the athletic track with his aide.

39. When Dr. Schilling interviewed Mr. Lang, he stated that Student was required to complete just four activities per day. Although Mr. Lang reported that Student was able to stay on task in the classroom for only five to 10 minutes before becoming frustrated, Dr. Schilling stated in her report that she conducted testing of Student in her office for two continuous hours and he remained engaged. In total, Student remained focused in her office engaged in testing for four hours. Mr. Lang, according to Dr. Schilling's report "suggested that at this point in [Student]'s education, he is unlikely to learn more and that there should be a reduced emphasis on changing him."

40. In her summary Dr. Schilling stated that Student's nonverbal abilities were that of a four-year-old child, and he met the criteria for Autism Spectrum Disorder. Dr. Schilling noted that although Student had made significant progress in his home-base applied behavior analysis program, he was not making progress in the school setting because, she believed, there was "a clear discrepancy . . . between expectations for [his] behavior and progress in the classroom setting and his true abilities."

41. Dr. Schilling made several recommendations in her written report. She found Student continued to qualify for special education under the category of autism,

and that he needed specialized academic instruction, speech and language therapy, behavioral support, and occupational therapy. She recommended that goals for him focus on improving his functional communication, socialization and self-help skills. She emphasized that goals should reflect "ambitious expectations."

42. Dr. Schilling stated that Student required placement in a program where he was with similarly functioning students, and speech and language support was embedded. If such a placement was not available she recommended the services of a full-time one-to-one aide, trained in behavior intervention, and supervised by a board certified behavior analyst, with ongoing supervision. The behavior analyst would provide additional training and support to all classroom staff working with Student, including instructional staff. She also stated that support should include visual supports, such as visual schedules, break cards, etc. Student would also benefit from a home-based applied behavior analysis program, and collaboration between everyone working with Student at school, and service providers in his home. Dr. Schilling recommended that a new "augmentative assistive communication" assessment be conducted to determine whether Student would benefit from communication tools, whether they be high tech or low tech, and that such tools be used across all settings. In addition, she recommended collaboration concerning the use of American Sign Language by and with Student. Dr. Schilling's final recommendation concerned Student's enhanced need for safety, given his disabilities, and she recommended a book that would be useful for teaching him safety skills.

IEP TEAM MEETING FEBRUARY 13, 2017

43. Soledad convened an IEP team meeting on February 13, 2017. Parents, Ms. Pratt, Ms. Keslin, Dr. Schilling, and two advocates for Student, as well as a representative from the regional center servicing Student attended the meeting. Soledad team members included Anthony Miranda, Special Education Director (Mr. Miranda is no

longer employed by Soledad); Mr. Lang; Ms. Galisa; Student's occupational therapist; the assistant principal; an assistive technology specialist; and Ms. Baldassari. The cover page of the IEP has a section labeled "Meeting Type." The box for "Reassessment" is checked, as is the box for "Other," which is followed by "Annual Review/Independent Educ. Eval." There is a page and a half of typewritten notes that summarize the meeting towards the end of the IEP. On this page the note-taker (who was not identified at the hearing) states that the purpose of the meeting was "Independent Educational Evaluation."

44. Copies of the three independent evaluations were distributed, and the meeting proceeded with Dr. Schilling presenting her report, then Ms. Pratt, and finally Ms. Keslin. The notes from the meeting reflect that after Ms. Keslin presented her report, Mr. Miranda "mentioned the Salinas High School program." He then offered Parents the opportunity to observe the program. Salinas High School is in the Salinas Unified School District.

45. Following this conversation, there was additional discussion about Student's current classroom program and supervision by his one-to-one aide, as well as a bathroom supervision issue that concerned Parents. As the meeting ended, one of Student's advocates stated that Student's annual IEP should be developed, and suggested another meeting in 30 days. However, the IEP team did not discuss a date for that meeting.

THE FEBRUARY 13, 2017 IEP DOCUMENT

46. The notes from the IEP show that Dr. Schilling presented her report first, and Parents made some comments during that presentation which are reflected in the notes. Some of what Dr. Schilling said is also recorded in the notes.

47. The notes then state that Ms. Pratt then presented her report, and Mr. Miranda is reported to have "asked how [Student] could be trained to prefer people over objects." The notes reflect Mother then saying Student had regressed and Mr.

Miranda saying "current assessment data shows" that he had not. Ms. Keslin then presented her report. Right after a four line section summarizing her recommendations, the notes refer to Mr. Miranda talking about the Salinas program.

48. There are nine pages of goals in the IEP document dated February 13, 2017. However, there is nothing in the notes that reflect a discussion of Student's present levels of academic achievement and functional performance. Nor is there any discussion in the notes from the IEP meeting that reflect any discussion at all about any of the goals.

Goals and Student's Progress

49. The first goal was drafted by Mr. Lang. It is a repeat of the second goal from the March 2016 IEP, which called for Student to "correctly point to certain objects and people in the classroom with 80% accuracy in 4 to five trials[.]" using level two prompts. This goal was being retained because Student was only able to point to persons and objects in the classroom with 15 percent accuracy in four of five trials.

50. The second goal was the same as Mr. Lang's fourth goal in the March 2016 IEP which called for Student to "develop personal social skills by shifting or alternating eye gaze between a person's face and an object and back at least three times across two partners and 2 contexts 6x daily with 80% accuracy as measured by teacher observation." Mr. Lang reported Student's progress in meeting this goal, as of the time of the IEP team meeting, was that he was shifting eye gaze as called for in the goal with 20 percent accuracy.

51. The third goal was the same goal as Mr. Lang's fifth goal in the IEP of March 2016, and called for Student to "answer questions with a 'yes' or 'no' response hand signal with 90% accuracy in 3 of 4 trials[.]" using "slight prompting[.]" The goal was being repeated because Student was only answering questions with 20 percent accuracy in three of four trials as of the date of the IEP team meeting.

52. Goals four and five were prepared by Ms. Galiso, and need not be discussed since Parents agreed during the hearing that they did not dispute the services provided by the speech and language therapist, and the goals are legally sufficient. Ms. Galiso reported Student's progress meeting the previous goal of using his device to identify people in his classroom was that he was doing so with 63 percent accuracy, two out of three trial days. In regards to the previous goal that required Student to produce 15 target words with 80 percent accuracy Student's accuracy was now 73 percent. Student's sixth goal in the February 13, 2016 IEP, was a new occupational therapy goal because the previous occupational therapy goal had been met.

53. There is no goal seven. The page containing the goal begins by stating a previous occupational therapy goal, but it appears the occupational therapist did not complete the page as typing ends without reporting progress on a previous goal, and no new goal is stated, only a baseline.

54. The eighth goal in this IEP is a new goal that addressed "Self-care." This goal appears to have been drafted by Mr. Lang. The baseline states that Student "is able to follow along with many activities involving cleaning dishes and tables and making sandwiches." The goal calls for Student to "participate in a variety of activities with appropriate responses (sitting, listening, and responding to activities), with 90 % accuracy in 4 out of 5 trials" using level two prompts. The three short-term objectives and benchmarks for this goal are identical to the final goal. The ninth and final goal is an occupational therapy goal.

55. There is a page in the IEP that states that Student will spend 15 percent of the time in general education, and 85 percent of the time in special education. It is concerning that the "no" box is checked in the section that asks "Does student require assistive/augmentative devices or tools?" There is nothing in the notes from the IEP that reflects a discussion of this page.

56. The IEP shows a placement offer of specialized academic instruction for 1660 minutes weekly, speech and language therapy for 1800 minutes yearly; and occupational therapy 900 minutes yearly. All of these are to take place in a separate classroom, not in the general education environment. Again, the notes section in the IEP document does not reflect any conversation about these offers of placement and services, other than Mr. Miranda's offer to have Parents observe the program at Salinas High School.

EVENTS AFTER THE IEP TEAM MEETING FEBRUARY 13, 2017

57. On March 1, 2017, Mother observed a special day class at Salinas High School in the Salinas Unified School District. She liked the program and on that date informed Soledad that Parents wanted Student placed there. Three weeks later she had heard nothing and emailed Mr. Miranda to ask what was happening. On March 21, 2017, Mr. Miranda advised her via email, that "it looks like things will be positive as far as sending [Student] to Salinas District." However, several days later Mother received a telephone call from the Salinas special education director and was told Salinas would not accept Student into their program. Mother at hearing did not state if Salinas gave her a reason for not accepting Student. Mother then went to see Soledad's Superintendent (who was no longer employed by Soledad at the time of hearing) to see if he could intervene. However, he told Mother she needed to see if Student could transfer into Salinas by way of an inter-district transfer, and gave her a blank form indicating Soledad's approval for an inter-district transfer. The form is dated April 3, 2017. On May 23, 2017, after Parents had applied to Salinas for an inter-district transfer of Student, Salinas advised Mother that it was not accepting students from other school districts.

58. There was no evidence presented that after the IEP team meeting of February 13, 2017, Soledad attempted to convene another IEP team meeting 30 days

later that would be an annual IEP team meeting, as mentioned by Student's advocate on that date. There was no evidence that Soledad made any attempt to convene another IEP team meeting in March, April, or May 2017. Soledad did try to have an IEP team meeting in June 2017, possibly after Student filed his complaint, but Parents refused to attend. After February 13, 2017, Student continued to be placed in Mr. Lang's special day class, with the services of a one-to-one aide.

59. After February 15, 2017, when Student came home from school, Parents would often check his device to see if the batteries needed to be recharged, but usually the device was fully charged. The evidence established that Student was using the device when he received speech and language therapy, and occupational therapy, but rarely, if ever in the classroom.

CREDIBILITY

60. Only Parents testified in Student's case in chief. Mother testified first, initially responding to questions from Father. She went through Student's evidence binder attempting to authenticate the documents. She had difficulty responding to the questions that were asked.

61. Mother requested an interpreter for the hearing during the PHC, but since she seemed to understand and speak English fluently, although the interpreter was present, Mother had a tendency to respond to the questions asked in English before the interpreter could finish (or in some cases even begin) interpreting the question. Mother seemed anxious and flustered when she testified. Ms. Baldassari asked clear and concise questions during cross-examination, but Mother repeatedly had to be admonished to answer the question asked; instead she tended to provide other non-responsive information.

62. When he testified, Father read from a statement he had written, and responded to questions from the ALJ and Ms. Baldassari. During his testimony, Father

was open and confident. If he did not know something, or did not remember something, he would say so. He responded directly to the questions that were asked. During Father's testimony, Mother was very agitated and upset. She attempted several times to signal Father, or to correct his responses. Mother became tearful and breaks had to be taken so that she could calm herself.

63. Father was a credible witness, and much weight was given to his testimony. Mother, on the other hand, based on her responses when questioned, and her demeanor throughout the hearing, was not a credible witness, and little weight was given to her testimony. No weight was given to a document that was admitted which she claimed to be a note written by Mr. Lang and sent to her in Student's backpack, since on the face of the note it appears to have been written by someone else, possibly Mother or Student's older sister. For example, it is quite unlikely that Mr. Lang, as Student's teacher, would say in a note to Parents, "There is not [sic] attempt by the instructor to engage [Student] in activities or any constructive activity. The instructor has declared [Student] can no longer learn."

64. It is clear that Parents love their son, and truly want what they believe is best for him. However, it is also clear that there are serious communication issues between Mother and Soledad personnel, and this is problematic, since most of the communication about Student is handled by Mother.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁸

1. This hearing was held under the Individuals with Disabilities Education Act,

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

its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 et seq. (2006); 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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's 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.

4. In *Endrew F. ex rel., Joseph F. v. Douglas County School Dist.* (2017) 580 U.S. ___, 137 S.Ct. 988, 996, the Supreme Court clarified that “for children receiving instruction in the regular classroom, [the IDEA’s guarantee of a substantively adequate program of education to all eligible children] would generally require an IEP ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” For a case in which the student cannot be reasonably expected to “progress[] smoothly through the regular curriculum,” the child’s educational program must be “appropriately ambitious in light of [the child’s] circumstances” (*Ibid.*) The IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at 1001.) Importantly, “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” (*Ibid.*)

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).) 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].) In this matter, Student had the burden of proof on the sole issue decided.

ISSUE 1 A: DID SOLEDAD DENY STUDENT A FAPE AFTER FEBRUARY 15, 2017,

BECAUSE IT MISINFORMED PARENTS ABOUT PLACEMENT FOR STUDENT?

6. Student contends that Soledad has not provided him with a FAPE, and is unable to do so. Student also believes that the IEP meeting of February 13, 2017, was purposely concluded prematurely by Mr. Miranda when he proposed placement at Salinas High School. After that, Student claims, Mr. Miranda then misled Parents into believing that there would be no problem moving Student from Soledad to Salinas, and this denied Student a FAPE.

7. Soledad argues that it has provided Student with a FAPE, and Parents know that since they have been provided with weekly progress reports concerning his goals. It claims that the IEP team meeting on February 13, 2017, was an annual IEP meeting, and that not only were the independent evaluations reviewed, but Student's progress was reviewed and a formal placement offer was made. It contends that it was only after this that Mr. Miranda offered an observation of the Salinas program "in the spirit of cooperation." Soledad claims that Student failed to meet his burden of proof since Parents' testimony was contradictory, and they relied on unauthenticated documents and hearsay.

General Requirements for the Analysis of IEP's

8. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*)

Parent Participation

9. Federal and State law require that parents of a child with a disability must

1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) Accordingly, at the IEP team meeting parents have the right to present information in person or through a representative. (Ed. Code, § 56341.1.)

10. A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement with the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688, 693.) A parent who has an opportunity to discuss a proposed IEP, and whose concerns are considered by the IEP team, has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.)

Contents of IEP's

11. 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); Ed. Code, §§ 56032.)

12. The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed,

reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) It is the “modus operandi” of the IDEA, “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” (*School Comm. of Town of Burlington, Mass. v. Department of Educ.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996] (*Burlington*).)

13. An IEP includes a statement of the present performance of the student, a statement of measurable annual goals designed to meet the student’s needs that result from the disability, a description of the manner in which progress of the student towards meeting the annual goals will be measured, the specific services to be provided, the extent to which the student can participate in regular educational programs, the projected initiation date and anticipated duration, and the procedures for determining whether the instructional objectives are achieved. (20 U.S.C. § 1414 (d)(1)(A)(i),(ii); 34 C.F.R. § 300.320(a)(2), (3); Ed. Code, § 56345, subds. (a)(2), (3).) Annual goals must meet “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 “[meet] each of the child’s other educational needs that result from the child's disability.” (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).)

14. The IEP shall also include a statement of the program modifications or supports for school personnel that will be provided to the student to allow the student to advance appropriately toward attaining the annual goals, to be involved and make progress in the general education curriculum, and to participate in extracurricular activities and other nonacademic activities. (34 C.F.R. § 300.320(a)(4)(i), (ii); Ed. Code, § 56345, subds. (a)(4)(A), (B).)

15. In developing an IEP, the IEP team must consider the strengths of the

child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluations of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a).) The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.

16. In *Union School Dist. v. Smith* (1994) 15 F. 3d 1519, cert. den., 513 U.S. 965 (*Union*) the Ninth Circuit held that a district is required by the IDEA to make a clear, written IEP offer that parents can understand. The Court emphasized the need for rigorous compliance with this requirement:

We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any.

(*Union, supra*, 15 F.3d at p. 1526 see also *Redding Elementary School Dist. v. Goyne* (E.D.Cal., March 6, 2001 (No. Civ. S001174)) 2001 WL 34098658, pp. 4-5.)

17. *Union* involved a district's failure to produce any formal written offer.

However, numerous judicial decisions have invalidated IEPs that, though offered, were insufficiently clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing. (See, e.g., *A.K. v. Alexandria City School Bd.* (4th Cir. 2007) 484 F.3d 672, 681; *Knable v. Bexley City School Dist.* (6th Cir. 2001) 238 F.3d 755, 769; *Bend LaPine School Dist. v. K.H.* (D.Ore., June 2, 2005, No. 04-1468) 2005 WL 1587241, p. 10; *Glendale Unified Sch. Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1108; *Mill Valley Elem. School Dist. v. Eastin* (N.D.Cal., Oct. 1, 1999, No. 98-03812) 32 IDELR 140, 32 LRP 6047; see also *Marcus I. v. Department of Education* (D. Hawai'i, May 9, 2011, No. 10-00381) 2011 WL 1833207, pp. 1, 7-8.)

Procedural Timelines

18. The IEP team shall review the pupil's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the pupil are being achieved, and revise the IEP, as appropriate, to address, among other matters, information about the pupil provided to, or by, the parents; the pupil's anticipated needs; or any other relevant matter. (Ed. Code, § 56341.1, subd. (d)(3), (4), and (5).)

Procedural Violations

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

Analysis

20. In this Decision it is found that Soledad has denied Student a FAPE since February 15, 2017, and continued to deny him a FAPE up to the date he filed his request for due process. Although the team had begun to develop an IEP at the February 13, 2017 team meeting, the process was stopped when Mr. Miranda suggested the possibility that Student could be placed in a program in Salinas, and Soledad never convened another IEP team meeting. It is true that the IEP contains several pages of goals and a page that purports to make an offer of placement and services. However, these pages were not discussed at the IEP team meeting on February 13, 2017. Soledad argues that this IEP document constitutes Student's annual IEP, offering Student placement at Soledad, but this was not Parents' understanding. Instead, they believed that Student could be placed at Salinas High School, and Mr. Miranda would work to achieve this. Failure to make a clear offer of placement and services at the February 2017 IEP team meeting is a significant procedural error that has denied Student a FAPE, and has also denied Parents the opportunity to meaningfully participate in the IEP development process for their son.

21. An IEP must be reviewed annually. There was no evidence that any annual IEP team meeting was scheduled before the February 13, 2017 meeting, was convened. Soledad claims in its closing argument that the IEP meeting on February 13, 2017, was Student's annual IEP meeting. However, the notes in the IEP document from that meeting reflect only that the independent educational evaluations were reviewed during the meeting. There is nothing in the notes about discussion of Student's academic achievement and functional performance, nor is there anything in the meeting notes about the nine proposed goals attached to the IEP. And since the goal page for one of the occupational therapy goals was never finished, this confirms a finding that the goals were never discussed at the February 13, 2017 IEP team meeting.

22. There was no offer for another IEP team meeting after the one on February 13, 2017. The IEP development process stopped when Mr. Miranda suggested a program at Salinas High School as a possible placement for Student, rather than Mr. Lang's class. It is obvious from the IEP meeting notes, as well as subsequent events, that Mr. Miranda led Parents to believe the Salinas program was appropriate for Student, and he could be placed there. After Mother observed the program on March 1, 2017, and agreed that it was appropriate for Student, Mr. Miranda then delayed taking any steps to facilitate that placement. It is possible Student could have been placed in the Salinas program as part of an inter-district agreement between the two districts, in which case an inter-district transfer would not have been required.

23. It was reasonable for Parents to believe placement in the Salinas program was likely, based on Mr. Miranda's statement in the email of March 21, 2017, in which he said, "things look positive." After all, it was already over five weeks since the IEP meeting in February when Mr. Miranda suggested the program as possible placement, and three weeks after Mother had observed the program and agreed that it would be appropriate for Student.

24. When Mr. Miranda found out that Salinas would not accept Student in their program, he did not personally notify Parents; instead he had the Salinas Director of Special Education do so. It was unclear specifically what reason the Salinas Director gave Mother for not agreeing to placement, but she was not deterred. She then approached Soledad's then-Superintendent to see if he could intervene. His response was to tell Mother to go through the inter-district transfer process which did little to diminish Parents' belief that Student still could be transferred to the Salinas program. The situation was further exacerbated because Soledad did not attempt to convene another IEP team meeting at which time the reasons for Salinas turning down Student could be discussed, and the team could focus on creating an IEP that would give

Student the placement and services he required to receive educational benefit.

25. The reality that Student would not attend the Salinas program finally hit home with Parents when they received the rejection of the inter-district transfer from Salinas on May 23, 2017. The rejection simply stated that Salinas was not accepting inter-district transfers, and there was no indication as to when Salinas initially took that position.

26. It is possible Salinas could have taken Student into their program if Mr. Miranda had acted quickly to facilitate an inter-district agreement with Salinas for Student to be placed there once Mother agreed to the program after observing it on March 1, 2017. Based on Mr. Miranda's email, he was still pursuing placement on March 21, 2017. If he had begun pursuing placement when Mother agreed to the program on March 1, 2017, and then discovered in early March that an inter-district agreement was not possible, he still could have assisted Parents in requesting an inter-district transfer, and convened an IEP team meeting. Once Soledad knew it was unlikely Student could attend the Salinas program, it should have immediately convened an IEP team meeting to finish the IEP development process begun in February.

27. Between February 15, 2017, and the date the complaint was filed, Soledad denied Student a FAPE because he did not have an IEP that contained a clear offer of placement and services that could be consented to by Parents, and implemented by Soledad. Instead his placement and services were those contained in the August 16, 2016 settlement agreement, with the goals from the March 2016 IEP being implemented. The written placement offer at Soledad in the February 13, 2017 IEP, was not discussed at the IEP meeting on this date. Instead Mr. Miranda suggested that Parents observe a classroom in another school district, and that is what is reflected in the IEP notes for this meeting. The IEP development process stopped because Mr. Miranda, and then the ex-superintendent, led Parents to believe, as late as May 23,

2017, that the Salinas placement was still possible. This procedural error of misinformation denied Parents meaningful participation in the IEP process, and violated the *Union* requirement that a clear offer be made when an IEP is developed.

28. The three independent educational evaluations were thorough and complete. The assessors used standardized test instruments for the most part, as well as other tools to accurately gauge Student's needs and abilities. They did not just rely on information provided by Parents. They reviewed records, observed Student in the classroom, interviewed Mr. Lang and Student's aide, as well as Mother, and gave survey instruments, where warranted, to Parents and Mr. Lang. Each evaluation gave a clear, accurate presentation of Student's strengths and needs, and made reasonable recommendations for meeting Student's needs.

29. Had Student's annual IEP team meeting been held in conjunction with the review of the independent educational evaluations in February 2017, it is likely the team could have created an IEP that gave an accurate picture of Student's academic achievement and functional performance, and contained goals that were legally compliant and would have allowed Student to make educational progress. Then the team could have decided what accommodations and modifications Student required, and developed an educational program for Student with an appropriate placement and services so that he could receive educational benefit. Because this did not happen, Parents were denied meaningful participation in the IEP development process for their son, a significant procedural violation.

ISSUE 1B: DID SOLEDAD DENY STUDENT A FAPE BECAUSE HE HAS FAILED TO MEET HIS IEP GOALS?

30. Student claims that he is not meeting his goals (other than speech and language, and occupational therapy), and argues that he is not using his communication device in the classroom, and he is not receiving any instruction. Soledad argues that

Parents were not credible when they testified, and did not establish that Student is not meeting his goals.

Analysis

31. The evidence established that Student's placement in Mr. Lang's class was not going well as of February 13, 2017. Although visual schedules are ubiquitous for students on the autism spectrum, Ms. Pratt, Ms. Keslin, and Dr. Schilling all recommended that Student have a visual schedule, based on their separate classroom observations which established that he did not have one in Mr. Lang's class. It also appeared, from what was written in their descriptions of their observations of Student at school, that his communication device was not being used in the classroom, and was only used in his speech and language, and occupational therapy sessions. In addition, each presented information concerning their classroom observations that made it clear that Student's days in Mr. Lang's classroom lacked rigor and structure.

32. As of the IEP team meeting on February 13, 2017, Student was making woeful progress in Mr. Lang's class. Mr. Lang reported him being from 15 to 20 percent accurate on the three goals from March 2016 which he now wanted renewed in the February 13, 2017 IEP. This is especially significant when compared to Student's progress in meeting speech and language, and occupational therapy goals, where he was considered to be meeting these goals in percentile rates in the 60's and 70's, and had already met an occupational therapy goal.

33. Mr. Lang's comment that Student "is unlikely to learn more," is remarkable and disturbing, since it comes from a teacher who is presumably properly credentialed to teach a moderate to severe special day class, with students who have moderate to severe disabilities. Dr. Schilling found Student to have the cognitive development of a four year old, which does not signify a student who "is unlikely to learn more." The fact that he was nonverbal was a complication, but both Ms. Galisa, based on her work with

Student, and Ms. Pratt, based on her evaluation, felt Student could learn to communicate his needs with the proper therapy and assistive technology. Although Mr. Lang told at least one assessor that Student became frustrated after working for only five to 10 minutes, each assessor spent significantly more time with Student engaging him in testing without him becoming frustrated; in the case of Dr. Schilling, this was several hours. In addition, Student was observed by one or more assessors in speech and language therapy with Ms. Galisa, and in occupational therapy, and in each environment he was engaged and working productively with the therapists for significantly more time than five to 10 minutes. None of these events or conversations occurred during the time at issue, the time period beginning on February 16, 2017. Nevertheless, they are instructive.

34. Parents had the burden of proof to establish that Student was not meeting his goals in Mr. Lang's class after February 15, 2017. They did not meet this burden of proof. This is because all of the events described above occurred before February 16, 2017, and Parents had waived all claims prior to that date under the terms of the August 2016 settlement agreement. After February 15, 2017, neither Parent observed Student at school. Although there were progress reports about Student provided to Parents each week, those were not introduced into evidence. Parents testified they did not believe Student made progress in Mr. Lang's class after February 15, 2017, in meeting the goals from the March 2016 IEP, but they could not give any specifics. Nor was there any other evidence to confirm their belief. However, it is not necessary to make any further findings or analysis of this alleged reason Student was denied a FAPE. This is because it has already been found that Soledad denied Student a FAPE and denied Parents meaningful participation in the IEP process by misinforming Parents about placement of Student in another district, and thus failing to make a clear IEP offer.

REMEDIES

1. Student has established that he was denied a FAPE after February 15, 2017, because Soledad misinformed Parents about possible placement of Student in another school district, and then failed to schedule a continuation of an IEP team meeting begun in February 2017, but not completed. This meant Soledad did not make a clear IEP offer of placement and services. As relief, Student has requested that Soledad be ordered to work with Parents to find a suitable placement for Student. They also ask that he be allowed to remain in school for two years longer than permitted by California law as compensatory education, to compensate him for a loss of educational benefit for the 2015-2016 school year, and the 2016-2017 school year.

2. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*Burlington, supra*, at p. 370; *Parents of Student W. v. Puyallup School Dist.*, No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Burlington, supra*, at p. 374 [the purpose of the IDEA is to provide students with disabilities "a free appropriate public education which emphasizes special education and related services to meet their unique needs."].) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d. at p. 1497.)

3. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Puyallup* at p. 1496.) The authority to order such relief extends to hearing officers. (*Forest Grove Sch. Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484].) These are equitable remedies that courts and hearing officers may employ to craft "appropriate relief" for a party. (*Puyallup* at p. 1496.) An award of compensatory education need not provide "day-for-day

compensation.” (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific. (*Ibid.*)

4. In determining the remedies in this Decision, the ALJ gave great weight to the recommendations in the reports of Ms. Pratt, Ms. Keslin, and Dr. Schilling. Each report was written after observing Student, and testing him, as well as reviewing records, interviewing at least one Parent, and interviewing school personnel, including Student’s aide and teacher. Each assessor made recommendations that were clearly based on each assessor’s independent findings, in conjunction with all of the above information. It is clear that these recommendations are not the parroting of Parents’ wishes and desires for Student, with no other basis.

5. Within 10 calendar days of this Decision, Soledad shall determine whether there are any moderate to severe special day classrooms for high school pupils, which focus on autism, and where Student could be placed. Soledad shall make arrangements for Parents to observe these classrooms. If Parents have an advocate they wish to accompany them, Soledad shall compensate the advocate at his/her usual rate.

6. If Student does not have a current, consented to IEP at the time this Decision is issued, an IEP team meeting must be convened within 20 calendar days of this Decision. Soledad shall have the meeting facilitated by a neutral person who is not its employee or attorney. For example, this could be a private mediator, or someone from its Special Education Local Area Plan. The purpose of this meeting is to establish Student’s present levels of academic achievement and functional performance, determine his needs, to create meaningful, measurable goals, and to determine what accommodations and modifications he needs. If possible, placement for Student should be determined at this meeting.

7. Soledad shall pay for Ms. Pratt, Ms. Keslin, and Dr. Schilling to attend the meeting, if it is possible for them to do so. Payment shall be at their normal rates for the time spent at the IEP team meeting and traveling to and from the IEP team meeting. They may elect to appear telephonically. Soledad shall work cooperatively with the assessors and parents to schedule the IEP team meeting. However, the meeting shall take place within the 20 day limit. In addition, should Parents wish to have an advocate or attorney attend this IEP team meeting, they shall be entitled to reimbursement at their normal rates for this service. If a second meeting is necessary, the same conditions shall apply.

8. Student's request to remain special education student two years beyond the statutory deadline as compensatory education is denied. Parents waived all claims through February 15, 2017, in the August 2016 settlement agreement. In addition, they presented no evidence or testimony as to his need for compensatory education, or the type, frequency, and duration of compensatory education.

9. Staff training is also an appropriate compensatory remedy under these facts. The IDEA does not require compensatory education services to be awarded directly to a student. Staff training can be an appropriate compensatory remedy, and is appropriate in this case. (*Park, supra*, at p. 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 considering 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.*)

10. Soledad personnel need training in the area of the importance of having timely IEP team meetings for all students, and the components of a legally compliant IEP. All Soledad personnel who are responsible as case managers for convening

meetings, and special education administrators, shall receive three hours of training regarding timely IEP meetings and developing legally compliant IEPs. This training shall be provided by a professional not employed by Soledad or its attorneys, such as a an outside attorney knowledgeable about special education law, or a person employed by a post-secondary institution who teaches a class on the IDEA and special education law. The training must be completed no later than March 15, 2018.

ORDER

1. Within 10 calendar days of this Decision, Soledad shall determine whether there are any moderate to severe special day classrooms for high school pupils, which focus on autism, and where Student could be placed. Soledad shall make arrangements for Parents to observe these classrooms. If Parents have an advocate they wish to accompany them, Soledad shall compensate the advocate at his/her usual rate.

2. If Student does not have a current, consented to IEP at the time this Decision is issued, an IEP team meeting must be convened within 20 calendar days after this Decision is issued. Soledad shall have the meeting facilitated by a neutral person who is not its employee or attorney. The purpose of this meeting is to establish Student's present levels of academic achievement and functional performance, determine his needs, to create meaningful, measurable goals, and to determine what accommodations and modifications he needs.

3. Soledad shall pay Ms. Pratt, Ms. Keslin, and Dr. Schilling their normal fees to attend the IEP meeting and travel, if they can attend the IEP team meeting. Attendance may be telephonic. However, the meeting must take place in within 20 calendar days. In addition, should Parents wish to have an advocate or attorney attend this IEP team meeting, they shall be entitled to reimbursement for reasonable fees for this service. If a second meeting is necessary, the same conditions shall apply. Soledad shall work with parents and assessors to try to find a date or dates for the IEP team

meeting within the 20 days that works with everyone's schedules.

5. All Soledad personnel who are responsible as case managers for convening meetings, and special education administrators, shall receive three hours of training regarding timely IEP meetings and developing legally compliant IEPs. This training shall be provided by professional not employed by Soledad or its attorneys. The training must be completed no later than March 15, 2018.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on Issue 1a, and Soledad prevailed on Issue 1b.

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: October 3, 2017

/s/

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings