

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CHAFFEY JOINT UNION HIGH SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2018050543

DECISION

Chaffey Joint Union High School District filed a due process hearing request with the Office of Administrative Hearings on May 11, 2018, naming Parents on Behalf of Student. On May 25, 2018, OAH granted Student's motion for continuance based on good cause shown.

Administrative Law Judge Darrell Lepkowsky heard this matter in Rancho Cucamonga, California, on July 17 and 18, 2018.

Jonathan Read, Attorney at Law, represented Chaffey. Kelly Whelan, Chaffey's Director of Special Education, and Dr. Royal Lord, Program Manager for the West End Special Education Local Plan Area, attended each day of the hearing as Chaffey's representatives.

There was no appearance for Student on either of the hearing days. An interpreter was present each day to translate from Spanish to English and English to

Spanish in the event that Parents did appear for the hearing.¹

At Chaffey's request, OAH continued this matter to July 30, 2018, for closing briefs. Student did not submit a written closing brief.² The record was closed on July 30, 2018, upon timely receipt of Chaffey's written closing brief and the matter was submitted for decision.

ISSUE

Did Chaffey's offer to implement Student's individualized education program, developed on March 13, April 6, and May 8, 2018, with placement at Bliss Academy, a non-public school, constitute a free appropriate public education in the least restrictive environment?

SUMMARY OF DECISION

Chaffey proved that its offer of placement and services in the individualized educational programs dated March 13, April 6, and as amended on May 8, 2018, met all

¹ The ALJ opened the hearing at 9:30 a.m. on July 17, 2018, and neither of Student's parents was present. The ALJ called the telephone number of record for Father twice over the next half hour, leaving voice mail messages. The ALJ also called Mother at her cellular telephone number through the interpreter. Mother answered the phone, but hung up. The ALJ attempted several more times to contact Mother by telephone, leaving messages. After approximately a half hour, when neither parent appeared or called back, the ALJ proceeded with the hearing.

² On July 19, 2018, OAH notified Parents of the timeline and requirements for submission of written closing briefs through a written order granting Chaffey's motion to continue the hearing for the filing of written closing briefs.

procedural and substantive requirements. The IEPs offered Student a FAPE in the least restrictive environment. Student's escalating behavioral needs could not be met at a comprehensive high school campus. Student required a small, structured school environment to avoid triggering Student's aggressive behaviors. Additionally, Student required more staff trained in addressing his behavior problems in the classroom setting than Chaffey could provide at a comprehensive high school campus. Chaffey met its burden of proof that its offer of placement at Bliss Academy offered Student the educational environment that he required to keep Student, his peers, and staff safe, and to permit Student to make meaningful educational progress. Chaffey may implement its IEP without parental consent should Parents wish Student to continue to receive special education and related services from Chaffey.

FACTUAL FINDINGS

1. Student was a 17-year-old young man who qualified for special education and related services under the eligibility categories of autism and speech or language impairment. Student resided with Parents within Chaffey's boundaries at all relevant times. Student had overall low to low-average intelligence. He often demonstrated behaviors stereotypical of autism, such as rocking back and forth in his chair; making noises while working on school tasks; pulling on his clothing; waving his arms; having an obsession with sameness; having a preoccupation with objects such as toys; having difficulty making eye contact, and avoiding social communication. At the time of the hearing, Student's reading ability was from the third to fifth-grade level.

2. Chaffey is a high school district. Student transferred into Chaffey from his elementary school district at the beginning of the 2015-2016 school year, when Student began ninth grade. He attended Chaffey's Los Osos High School from ninth grade to approximately May 2018, toward the end of 11th grade. Student had a behavior support plan when he was in his prior school district to address behavioral challenges that were

often the result of Student being frustrated or reacting to things he found unpleasant, such as loud noises or loud conversation. Chaffey implemented the plan while Student was in ninth grade. For ninth grade, Student was in a special education reading class for two periods; attended a resource classroom for two periods; and attended a general education physical education class. Student's IEP also provided Student with a dedicated one-on-one aide.

3. Chaffey implemented various strategies with Student starting in ninth grade to teach him self-calming techniques. These strategies included teaching Student deep breathing skills, having him use fidget implements, teaching him to ask for a break, teaching him to ask to take a walk, and teaching him to articulate how he felt.

4. Chaffey additionally taught Student to identify his mood using a five-point scale, with point five indicating that Student was totally frustrated and on the point of "losing it." Student had a board with picture cards showing five levels of moods. He learned to give the picture indicating his mood to either his aide or one of his teachers. If Student was becoming very frustrated, he could choose one of his strategies to try to calm down.

5. Student had several behavioral incidents during the first two-thirds of the 2015-2016 school year. He hit, kicked, and threw things at his peers such as lunch bags and water bottles; threw a water bottle at Kimberly Rademaker, his special education teacher for ninth grade and his case manager throughout Student's years at Chaffey; and hit a peer on the head with a stick while on the school bus. The triggers for Student's behaviors were often responses to noises and loud conversations by peers or other people around him. However, the behavior strategies Chaffey implemented with Student ultimately had a positive effect in addressing his behavior during ninth grade. Student did not have any behavior incidents in ninth grade after the end of March, 2016.

MAY 11, 2016 IEP TEAM MEETING

6. Chaffey convened an IEP team meeting on May 11, 2016, to develop Student's annual IEP and to develop a transition plan for him, because he would turn 16 years old during the following year. Parents could not attend, but gave Chaffey permission to hold the meeting without them.

7. The IEP team reviewed Student's present levels of performance. In addition to having made academic strides, Student met his behavior goal, which required him to communicate appropriately when he was frustrated, and to have no more than one episode of yelling, stomping or throwing objects in a five-month period. Student used the strategies developed in his behavior plan, such as asking for a break, taking a walk, or doing stretching exercises when he was frustrated. The interventions resulted in a significant decrease in Student's aggressive behaviors. He had only two incidents during the second semester of the 2015-2016 school year, and did not have any between March 31, 2016, and the May 11, 2016 IEP team meeting.

8. Based on Student's significant success in regulating his behavior, the IEP team determined that a behavior intervention plan was not necessary. Instead, the team developed a daily living skills behavior goal. The goal focused on Student maintaining his ability to use behavior intervention strategies, such as deep breathing or asking for a break, if he became frustrated by noise levels or other environmental triggers. The goal was for Student to refrain from any incidences of hitting, yelling, stomping, or throwing objects, over an eight-month period.

9. The IEP included several aids, services, program accommodations, and modifications in the IEP to support Student. The IEP also included several positive behavior interventions and strategies to support Student at school. These consisted of front loading (or preparing) Student before any changes to his schedule, with clear directions, instructions, and descriptions of expected behavior; prompting Student to

use self-calming and self-regulating strategies when needed; teaching Student to wait for things he wanted if necessary; provision of verbal praise; and teaching Student coping strategies, such as deep breathing, requesting a break or a walk, and asking an adult for help.

10. The May 11, 2016 IEP provided Student with 200 minutes a day of group specialized academic instruction; 50 minutes a week of group speech and language therapy; 30 minutes every other week of group occupational therapy; a full-time one-on-one aide (identified as intensive individual services on the IEP) for school, as well as, the bus ride to and from school; and transition services focusing on post-high school education, employment, and independent living. The IEP also provided for extended school year services.

JULY 18, 2016 IEP TEAM MEETING

11. After the 2015-2016 school year ended, Parents asked Chaffey to convene an amendment IEP team meeting to discuss the May 11, 2016 IEP. Chaffey convened the meeting on July 18, 2016.

12. Parents attended the IEP team meeting by telephone, as did their advocate, James D. Peters, III; Student's private psychologist, Dr. David Paltin; and Chaffey school psychologist Lorena Rodriguez. The remaining Chaffey IEP team members were present in person at the meeting. During the meeting, neither Mother nor Father participated. Rather, all communication came through Mr. Peters. This arrangement, where Parents and Mr. Peters attended IEP team meetings by telephone with Mr. Peters speaking for Parents on all aspects of Student's educational program, continued for each subsequent IEP team meeting Chaffey convened for Student.

13. Dr. Paltin and Mr. Peters wanted Student to attend more general education classes. Dr. Paltin recommended placing Student in a general education math class, although he acknowledged that Student was not ready for high school math.

Chaffey declined the request for a general education math placement because Student needed a modified curriculum and often needed to take breaks to regulate his behavior. Student had been in a general education drama classroom during the 2015-2016 school year on a modified curriculum and had difficulties. He did not socialize or interact with the other students and generally left the classroom two to three times a week, due to feeling overwhelmed by the class. Chaffey believed that these issues would make it difficult for Student to progress in a general education math classroom.

14. Chaffey agreed to Mr. Peters' request to place Student in two periods of resource class, in lieu of the two periods of special day classroom he attended in ninth grade. Chaffey would address curriculum, basic math, and social skills in the resource classes with the goal of moving Student into a general education math classroom. Chaffey also agreed that Student would attend one general education computer classroom in addition to his general education physical education class. On August 8, 2016, Parents signed consent to the May 11, 2018 IEP, as modified.

2016-2017 SCHOOL YEAR

15. In spite of the use of the behavior strategies, Student's maladaptive behaviors returned during the 2016-2017 school year after he was moved out of the special day classes and into basic math and English resource classes. Between September 2016, and January 31, 2017, Student had several behavioral incidents in which he variously threw things at peers and teachers; hit Ms. Rademaker in the shoulder; ripped his work assignments; hit his aide; flipped over a desk when frustrated that school was not closing early after a power outage; flipped over another desk, hitting an aide on the foot; hit a peer; forcefully threw a chair at his teacher over the head of peers during English class, where it then hit his teacher's table and then her trash can; and threw a broom at his bus driver while the bus was in motion, hitting the bus driver in the head.

February 1, 2017 Triennial Assessments

16. In January and February 2017, Chaffey assessed Student in preparation for his upcoming triennial IEP review. Speech and language pathologist Breanne Whalen, who provided speech and language therapy to Student during most of the time he attended school at Los Osos, assessed him in the area of speech. Her assessment determined Student continued to have significant speech and language deficits, most notably in the area of pragmatic language.

17. Occupational therapist Lisa Palmisano, who provided occupational therapy to Student throughout his years at Los Osos, conducted the occupational therapy assessment. Her assessment determined Student had fairly legible handwriting and that his fine motor skills were at age level; that his visual and perceptual processing skills functioned well; and that he could use technology well. However, Student continued to qualify for occupational therapy based on sensory needs, behavioral needs, and need to develop his typing skills.

18. Chaffey also administered a psychoeducational assessment to Student that included a social and emotional functioning component. The assessment was done by Chaffey school psychologist Marilyn Lanier. Ms. Lanier's assessment consisted of a review of Student's records, including past assessments; interviews with Student, Father, and Student's teachers; observation of Student in one of his classes; and the administration of several testing instruments.

19. Ms. Lanier assessed Student's cognitive abilities. Student's scores on the cognitive testing varied from a low of 60 in processing speed to a high of 114 on a visual-spatial index. Ms. Lanier did not calculate an overall full-scale intelligence quotient score for Student because of the wide variation in his cognitive scores.

20. Ms. Lanier assessed Student's academic achievement. Student's standard

scores ranged from a low of 41 in word reading fluency, which was in the very low range, to a high of 92, in the average range, in writing samples. Several of Student's scores in the written expression and reading components of this test were in the low average range.

21. Ms. Lanier used a test consisting of rating scales to determine if Student continued to qualify for special education under the eligibility of autism. Father completed the rating scales. His responses indicated that Student was still on the autism spectrum and required substantial support to maneuver through everyday situations.

22. Ms. Lanier assessed Student's adaptive behavior, independent living skills needs, and his behavior and self-perception, using three different testing instruments. The tests also consisted of rating scales which she gave to Father and Ms. Rademaker to complete. Both rated Student below average to significantly below average on each of the tests. The results showed that Student continued to have substantial deficits and needs in the areas tested.

23. Based on her assessment, Ms. Lanier recommended that Student continue to be found eligible for special education. She also made recommendations for his educational program for consideration by Student's IEP team.

February 1, 2017 IEP Team Meeting

24. Chaffey convened an amendment IEP team meeting for Student on February 1, 2017, to review his triennial assessment, and parent and school staff concerns about Student's increased maladaptive behaviors at school.

25. The IEP team reviewed Ms. Lanier's assessment report and Student's history of behavior issues during the school year. Based on Student's increased aggressive behavior at school, Chaffey staff did not believe Student's behavior could continue to be addressed solely through behavior goals. Chaffey offered to do a functional behavior assessment of Student. The purpose of the assessment was to

determine what was triggering Student's behaviors so that Chaffey staff could control, decrease, or extinguish the behaviors. The Chaffey IEP team believed the behavior assessment was necessary to provide Student with an appropriate education and to keep him, his peers, and staff safe at school. Chaffey staff agreed to Parents' request that they consult with Student's outside psychologist during the assessment. Parents did not consent to the functional behavior assessment.

Events After the February 1, 2017 IEP Team Meeting

26. Chaffey filed for due process in OAH case number 2017020823, after Parents declined to consent to the proposed functional behavior assessment. The parties settled Chaffey's case, as well as a due process case filed by Student, and OAH dismissed the matter in May 2017. As part of the settlement, Parents consented to the functional behavior assessment on April 7, 2017, and Chaffey conducted the assessment in an expedited manner.

27. From the date of the February 1, 2017 IEP team meeting to May 17, 2017, when Student's IEP team met to review the functional behavior assessment, Student engaged in several additional aggressive behaviors. During lunch one day, he hit a peer in the stomach when the peer was trying to help Student with a computer. The following week, as Parents were dropping Student off at school, Student walked into the school's front office and threw his backpack across the lobby toward the back wall, hitting an object on the receptionist's desk. Other students and staff were present. Student ran out of the office. Parents restrained him and brought him back to the office. One of the assistant principals tried to discuss the incident with Parents, but they refused to speak to him.

28. About 10 days after that incident, Student hit his aide on the knee during physical education class. The following month, Student knocked a tray of ice cream sandwiches, which he could not eat due to dietary restrictions, out of Ms. Rademaker's

hands. A few days later, Student threw pinecones and rocks at his school bus as it was picking him up for school one morning. Student's father ended up driving him to school that day. Another day, Student hit his aide. Finally, two days before the IEP team meeting, Student became angry when his aide told him to ask before taking food that was not his. Student slammed the food down, ran to his teacher's chair, picked it up and threw it. The aide was able to catch the chair before it flew too far.

May 17, 2017 Functional Behavior Assessment

29. Elaine Sun, a school psychologist then employed by the West End Special Education Local Plan Area, conducted Student's functional behavior assessment. Ms. Sun also conducted a prior functional behavior assessment of Student in 2014.³

30. Student's behaviors, which the behavior assessment was to address, consisted of yelling and stomping when protesting something; throwing objects such as chairs, desks, rocks, sticks, and pencils; pushing chairs; kicking trash cans; and hitting desks, peers, staff, and objects such as Student's computer.

31. As part of her assessment, Ms. Sun reviewed Student's past assessments; his report cards; his past behavior intervention plans; his past IEPs; and his disciplinary records. Student had 24 behavioral incidents during the 2016-2017 school year, through the date of Ms. Sun's assessment. Ms. Sun also observed Student at school on six days, for approximately two hours a day. Student did not engage in any of the targeted behaviors during that time.

32. Ms. Sun also obtained information by having Ms. Rademaker; Ms. Whalen; Ms. Palmisano; Student's one-on-one aide; and Student's other teachers fill out a functional assessment interview questionnaire. All indicated that Student engaged in these targeted behaviors when given non-preferred tasks; when frustrated, tense, or

³ Ms. Sun did not testify at the hearing.

sleepy; and when he simply did not want to do something. Ms. Rademaker believed that Student's maladaptive behaviors resulted from the level of difficulty of the assignments, time constraints to complete them, the fact that Student experienced sensory overload, and the fact that he did not want to do non-preferred tasks. Some of Student's teachers expressed concern of their safety and that of the other students when Student engaged in his more aggressive behaviors, such as throwing things. Ms. Sun attempted to consult with Student's private psychologists during the assessment as Parents requested, but neither provided any input.

33. Ms. Sun concluded that Student's ability to attend to instruction and participate in learning tasks was impeded by his behaviors. Although Student did not engage in any targeted behaviors during Ms. Sun's observations, she based her conclusions on a review of Student's school records, the many disciplinary reports during the school year, and input from Student's teachers, aide, related service providers, and Father.

34. Ms. Sun determined that the triggers for Student's behaviors were his being given non-preferred tasks; homework; losing a game; getting wrong answers on schoolwork; being told to do something he did not want to do at the moment; being given redirection for his behavior; having to stop preferred activities; not being able to access preferred items like cake; and being sleepy or agitated.

35. Student needed breaks during academic tasks; needed predictability, having a routine, and structure in his environment; frontloading of tasks; and supplementary supports, accommodations, and modifications to increase his access to his curriculum. Student did not have coping skills to accept losing, not getting his way, and dealing with difficult assignments. Ms. Sun hypothesized that the purpose of Student's behaviors was to avoid or escape non-preferred, long, or difficult tasks; avoid being wrong or losing at something, and to access or continue preferred activities.

36. Functionally equivalent replacement behaviors are things a person can be guided to do to replace the maladaptive behaviors in which the person engaged. Ms. Sun suggested that Student be directed to request help; request a break; request clarification; and use calming and coping strategies like asking to take a walk, using deep-breathing techniques, or using sensory equipment. She also suggested that staff offer alternative preferred activities or give him alternative times to access preferred activities.

37. Based on the assessment, and with input from Student's teachers and other Chaffey special education staff, Ms. Sun developed a proposed behavior intervention plan to be considered by Student's IEP team.

May 17, 2017 IEP Team Meeting And Development of Student's Behavior Intervention Plan

38. Student's IEP team convened on May 17, 2017, to review Ms. Sun's functional behavior assessment, finalize the proposed behavior intervention plan, review Student's annual IEP, and plan his educational program for the following school year.

39. In addition to reviewing Student's progress on his goals and his present levels of performance, the team reviewed the proposed behavior intervention plan. The plan incorporated Ms. Sun's identification of Student's behaviors, what triggered them, and what needed to be done in Student's school environment to address the behaviors and work on extinguishing them. The plan directed school staff to provide Student with a number of strategies and interventions to teach him to regulate his behavior and cope with loud noises, losing at games, not having correct answers, having to work on non-preferred activities, and not getting what he wanted, such as a treat that did not meet his dietary needs.

40. The plan's goals were to teach Student to request help; request a break; request clarification; or use his calming strategies such as the five-point scale, if he was

agitated. Additionally, the plan sought to teach Student how to negotiate or request alternative preferred items or other times to work on preferred activities when a preferred task or activity was ending. If Student did engage in any targeted behavior, the behavior plan directed school staff to prompt Student to request help, a break, clarification, or another time to work on preferred activities; and prompt Student to use one of the calming strategies. If Student did not deescalate with these interventions, the behavior plan directed school staff to move Student out of the classroom, help him calm down, and then have a positive discussion with Student about the incident and what to do in the future in similar situations.

41. The IEP team developed two functionally equivalent replacement behavior goals for Student to support the behavior plan and teach him to change his behavior. The goals were designed to be met in 12 months. The IEP team designed the first goal to address Student's explosive behaviors in response to not being able to access preferred activities. The goal required Student to learn to ask for another preferred activity or another time to engage in a preferred activity, instead of engaging in any of his maladaptive behaviors, nine times out of 10 instances in the school environment. The object of the second goal was for Student to request help, clarification, or to utilize self-calming and coping strategies, such as asking to take a walk or using the five-point scale, instead of engaging in any of his maladaptive behaviors. The goal was for Student to do this seven out of 10 times by the end of 12 months. Student's teachers, aide, and related service providers were all responsible for implementing the goals and charting Student's progress on them.

42. Chaffey's offer of FAPE for the 2017-2018 school year consisted of changing Student's placement from resource classes to three core academic classes in a special education classroom, for a total of 150 minutes a day. Additionally, Student would have general education classes for physical education and two electives. The

proposed IEP continued Student's one-on-one aide for the entire class day and on the school bus; continued to offer group speech and language services 30 times a year for 50 minutes a week; group occupational therapy 16 times a year for 30 minutes a session; and post-high school transition services. The offer of FAPE also proposed implementing the behavior intervention plan. Parents declined to consent to the IEP.

2017-2018 SCHOOL YEAR

October 12, 2017 IEP Team Meeting

43. Ms. Sun left her employment with the West End Special Education Local Plan Area at the end of the 2016-2017 school year, and Ms. Rodriguez took over responsibility for the functional behavior assessment and addressing Student's behaviors at school. She also continued Ms. Sun's efforts to communicate with Student's private psychologists. Ms. Rodriguez emailed Dr. Paltin the functional behavior assessment and the proposed behavior plan. However, Dr. Paltin did not respond.

44. From August 7, 2017, the first day of the 2017-2018 school year, to October 12, 2017, Student had four behavior incidents. He threw his pencil at a teacher; punched a peer in the face when the peer startled him; hugged a peer so hard he made the peer cry; and threw a water bottle at a classroom aide who was talking to another peer. The bottle did not hit the aide. Student did not seriously hurt anyone during any of the incidents.

45. Chaffey convened another IEP team meeting on October 12, 2017, to again review the functional behavior assessment, the proposed behavior intervention plan, and Student's overall education program. Parents attended the meeting, with Mr. Peters acting as their spokesperson.

46. The Chaffey IEP team members wanted to focus discussion on reviewing the functional behavior assessment and proposed behavior plan, so that a consensus

could be reached on implementing the behavior plan. The Chaffey IEP team members were concerned about Student's continued behavior challenges. Mr. Peters instead wanted to review Student's present levels of performance, although the Chaffey IEP team members assured him that review of the behavior assessment and behavior plan would encompass review of Student's present levels. Chaffey team members assured Parents that it provided Student's previous behavior goals to all of his teachers and trained all of Student's teachers on strategies to address his behaviors. However, Mr. Peters refused to discuss the behavior assessment or the behavior plan.

47. The Chaffey team members believed Student required more time in a special education classroom. Accordingly, Chaffey offered to increase Student's specialized academic instruction from three periods a day to four periods a day. In all other aspects, it offered the same programming as offered at the May 17, 2017 IEP team meeting, including implementation of the behavior plan. Parents did not consent to the IEP. Rather, they requested that Chaffey convene another IEP team meeting at a later time to continue discussion of Student's educational programming and supports.

48. Parents filed a request for due process on October 12, 2017, after the IEP team meeting ended, naming Chaffey, in OAH Case Number 2017100553. Student alleged several violations of his right to a FAPE. The parties settled the case on March 1, 2018. In the settlement, Student agreed that the IEPs to which Parents had not yet consented constituted a FAPE for Student. Parents waived all claims of any kind against Chaffey and its agents, whether known and unknown, through the effective date of the agreement. They also agreed to participate in Student's annual IEP team meeting.

EVENTS AFTER THE OCTOBER 12, 2017 IEP TEAM MEETING

49. From October 12, 2017, to January 26, 2018, Chaffey attempted to reconvene an IEP team meeting several times to conduct Student's annual IEP review. Student had several serious behavior incidents during that time. In one incident, Student

became frustrated when a teacher spoke loudly to a peer. In response, Student flipped over an empty desk. On another occasion, Student tried to throw a textbook at one of his teachers, but Student's aide was able to stop him.

Behavior Data Report

50. Ms. Rodriguez had one of Student's aides take data on Student's behavioral incidents and the types of breaks Student chose to take. The aide collected the data from August 2017 through early January 2018. The data showed Student took an average of two to three breaks a day during those months. His breaks lasted about five minutes and Student was able to choose what type of break he wanted from a choice board developed for him. Student primarily chose to take a walk or go to the sensory room. Ms. Rodriguez recommended that Student's behaviors be addressed through the proposed behavior intervention plan and behavior goals.

Attempt to Convene A Continued IEP Team Meeting

51. Chaffey attempted to convene an IEP team meeting, per Parents request. It contacted Parents several times in October, November, and December 2017, with proposed dates. Parents did not agree to meet until January 26, 2018.

52. The purpose of the meeting was to review the behavior assessment and behavior plan, and develop Student's annual IEP. Chaffey sent another draft IEP document, with another copy of the proposed behavior intervention plan and proposed goals, and a copy of Ms. Rodriguez's behavior data report to Parents and Mr. Peters, along with a meeting agenda, prior to the meeting.

53. Parents and Mr. Peters participated by telephone. At the beginning of the meeting, Mr. Peters expressed concern that the draft documents had not been prepared

in Spanish. Although Father did not have difficulties with English,⁴ Mother's primary language was Spanish. Chaffey offered to have the IEP document translated into Spanish as it was being developed during the meeting, but Mr. Peters would not proceed. Chaffey agreed to have the documents translated into Spanish and to reconvene the IEP team meeting after that had been done.

DEVELOPMENT OF STUDENT'S 2018 ANNUAL IEP

March 13, 2018 IEP Team Meeting

54. Student had one behavior incident before Chaffey reconvened his IEP team meeting. On March 2, 2016, while walking back and forth in a school hallway, Student pushed a peer in the stomach, knocking her to the ground, in response to the peer pointing her finger at him and saying "out." Student's aide quickly brought him back to Ms. Rademaker's classroom. Ms. Rademaker spoke to Student to remind him of his replacement behaviors and breathing techniques. Student's aide then took him to the office of Assistant Principal for Discipline, Cassandra Morton. Ms. Morton spoke with Student about the steps he was to take if he felt he had reached a five on the five-point scale.

55. Student's IEP team reconvened on March 13, 2018, after the parties' settled Student's due process case (OAH Case Number 2017100553). The purpose of the meeting was to jointly develop Student's annual and triennial IEP's, including a transition plan. An additional purpose was to again try to review the proposed behavior intervention plan. Prior to the meeting, Chaffey provided Parents with copies of the draft IEP in English and Spanish that included proposed goals, the proposed behavior plan,

⁴ Father represented Student at the telephonic prehearing conference in this matter and fully participated in English without the need for an interpreter.

and a proposed transition plan. Chaffey also sent Parents a copy of their procedural safeguards prior to the IEP team meeting.

56. The Chaffey IEP team included Parents; Mr. Peters; Ms. Rademaker; Ms. Palmisano; Ms. Lanier; one of Student's general education teachers; a speech and language pathologist who was substituting for Ms. Whalen, who was on leave; a Chaffey administrative representative, and a Spanish language interpreter. All required IEP team members were present.

57. The IEP team reviewed Student's present levels of performance. As to academics, Student could produce work assignments and complete tests with the help of his one-on-one aide, the provision of accommodations, and the use of modifications to the curriculum. Student required reminders to stay on task and prompts to complete his work.

58. Student communicated verbally, but had receptive and expressive language deficits. He made progress in his pragmatic language abilities but still demonstrated significant pragmatic deficits, and required substantial prompting to attend to conversations.

59. Student continued to require breaks and sensory activities to remain on task and to address his repetitive body movements and self-stimulatory behaviors. He preferred taking walks, rather than using the sensory room or using sensory fidgets, when he needed a break. Student generally took one to two such walks a day with his aide. With prompting, Student used multiple fingers on each hand to type short assignments from a hand-written draft.

60. Student continued to eschew non-preferred tasks. He often whined or complained when directed to do them. Student also continued to be very sensitive to loud noises and to dislike negative talk or comments from peers and teachers. However, he usually would let an adult know when he was overwhelmed and needed a break.

61. Mr. Peters, on Parents' behalf, fully participated in the IEP team meeting discussion. He noted that the percentage of time Student was in general education was incorrectly stated on the IEP document; Chaffey changed it based on his observation. Mr. Peters requested additional data on Student's request for breaks and on speech and language age levels; Chaffey agreed to provide that data.

62. Mr. Peters also discussed Parents' concerns for Student. Parents wanted to make sure substitute aides were appropriately trained and that Student's aide was close enough to him to intervene when he had behavior incidents; they requested that Chaffey fund additional Lindamood-Bell services, which Chaffey had previously funded; that Chaffey fund counseling with Dr. Paltin to address Student's behaviors; and that Student have an art or computer class as a means of relieving his stress. Chaffey staff addressed Parents' concerns and described how Student's aide was trained to respond to his behavioral needs.

63. Additionally, Parents requested that Student's occupational therapy be increased to an hour a week, and that his speech and language therapy be increased to one hour a week of group therapy and one hour a week of individual therapy. Parents did not give a specific basis for their requests or indicate that the requests were based on recommendations from outside therapists.

64. The IEP team reviewed Student's progress on goals. Student progressed on, but had not fully met, his math number sense goal. Although he was still far below basic in reading skills, he had met his reading comprehension goal. He had partially met his keyboarding goal and his pragmatic language goals.

65. Student met his educational transition goal by completing sample applications; business letters; and envelopes, with support and prompts. He did not meet his transition goal in the area of selecting classes to prepare for future employment. He also did not meet his transition goal of learning to regulate his

reactions to frustration without resorting to aggressive behavior.

66. The IEP team also began reviewing draft IEP goals that Chaffey staff had previously sent to Parents and Mr. Peters. However, the IEP team did not complete development of Student's annual IEP. The team agreed to reconvene.

March 23, 2018 Behavior Incident

67. On March 23, 2018, Student had a serious behavior incident that started while he was in class with a substitute teacher. Student became angry and threw a tray of cupcakes. He then threw his backpack, a plastic bag, and a water bottle. The backpack hit the teacher and the water bottle hit a peer. Ms. Rademaker came to the class and, with Student's aide, took him to Ms. Morton's office. All three initially helped calm Student down. Once he had been calm for a while, Ms. Rademaker and the aide began to walk him back to class.

68. Student then eloped and ran back to Ms. Morton's office. He ran through the office and out the back door, which opened to the school's front parking lot, and then ran out to a busy multi-lane street that bordered his school. Without stopping or looking, Student ran into on-coming traffic, and managed to weave between cars without being hit before stopping in the median in the middle of the street. Ms. Morton ran after Student trying to calm him down. She caught up with Student on the median, as did Student's aide, who also ran after him. Student threw rocks at Ms. Morton, ran to the other side of the street, and continued to move down the street. A parent of another student ran to help calm Student, as did three campus officers and two other school administrators, attempting to keep Student from harming himself or others. In response, Student picked up handfuls of rocks with both hands and threw them at the people trying to calm him. He also threw rocks at a passing car. He threw rocks four times. Student then pushed a campus officer and tried to run away. Another officer managed to calm Student down enough to walk back to campus with his aide. Student remained

in the office until he had fully deescalated, and then returned to Ms. Rademaker's classroom for the rest of the school day.

April 6, 2018 IEP Team Meeting

69. Student's IEP team reconvened on April 6, 2018. Prior to the meeting, Chaffey emailed Parents a copy of their procedural safeguards in English and Spanish. Chaffey also provided the draft IEP documents to Parents in English and Spanish.

70. The IEP team included Parents; Mr. Peters; Ms. Rademaker; Ms. Palmisano; one of Student's general education teachers; another Chaffey speech and language specialist who substituted for Ms. Whalen, who was on leave; Ms. Lanier; Dr. Michael Plew, another Chaffey school psychologist; and a Chaffey administrative representative. All required IEP team members were present.

71. The day before the IEP team meeting, Mr. Peters emailed a letter to Chaffey outlining Parents' concerns with the proposed IEP, including the proposed goals. Mr. Peters stated that Student was in a life-threatening situation because of his behaviors. He asserted that Chaffey's behavior assessment was flawed and he requested another one.

DISCUSSION OF GOALS

72. Chaffey proposed two pragmatic language goals for Student. To address Student's difficulty interpreting how his behaviors and comments affected others, the first goal proposed teaching Student to use the terms "expected and unexpected" to describe his behaviors and that of others and associate others' perspective with the behaviors. The second pragmatic goal was directed at Student working to increase his understanding and use of appropriate conversational skills during structured activities in speech therapy. Both goals required Student to meet them with 80 percent accuracy when given moderate cuing. The speech therapist and other staff were responsible for

implementing the goal and measuring Student's progress through observations and data collection.

73. Parents expressed concern that Student needed to be taught self-regulation as he was being taught to take in other people's perspectives. Although Chaffey did not change the pragmatic goals, it revised the proposed behavior goal to encompass Parents' concerns. Chaffey added information to the baseline that Student required close visual supervision to implement the behavior intervention plan. The objective of the behavior goal was for Student to indicate a need for self-calming, coping, or sensory strategies to decrease his need to engage in maladaptive behaviors, in five out of six school periods. Chaffey also added specific examples of Student's past behaviors, as requested by Parents to clarify the goal. At Parents' request, Chaffey added the occupational therapist and her assistant, in addition to teachers and staff, as the individuals responsible for implementing the goal.

74. Chaffey proposed two reading comprehension goals. The first required Student to learn to identify and/or paraphrase figurative language in reading materials that were at his reading level by highlighting words with multiple meanings, with 80 percent accuracy in four of five trials, as measured by work samples and assessments. The second reading comprehension goal required Student to learn to identify synonyms, antonyms, and homographs from word lists with 90 percent accuracy, also in four of five trials. Student's teachers and other staff were responsible for implementing the goal and measuring Student's progress. Parents did not express any concerns about the reading goals.

75. Chaffey proposed two math goals. The first, in math reasoning, sought to teach Student how to use a variety of methods to explain the mathematical reasoning necessary to find solutions to math problems. The second was a math calculation goal. Its objective was for Student to increase his ability to add, subtract, multiply, and divide

and verify the reasonableness of his results. Both math goals sought to have Student reach 80 percent accuracy in four of five trials, as measured by his work samples and teacher progress reports. Student's teachers and other support staff were charged with implementing the math goals. Parents expressed no concerns about the math goals.

76. Chaffey proposed three transition goals for Student to address what he would do after high school. One goal focused on post-high school education. Student expressed a desire to continue his education in the area of media or media arts. The objective of the goal was for Student to learn to identify the structural features of media or text, such as in magazines, and use the structure to obtain information, with 80 percent accuracy in four out of five trials. Student's progress would be measured by his work samples and a transition portfolio. His teachers and other school staff were responsible for implementing the goal.

77. A second transition goal was in the area of independent living and behavior intervention. The goal, also created to address Student's behavioral needs, sought to increase Student's ability to remain on task in class for 10 to 15 minutes while engaged in preferred activities, with minimal prompting and no behaviors. The goal was for Student to reach accuracy 90 percent of the time in four out of five occasions. Student's teachers and other staff were responsible for measuring progress on the goal through charts.

78. The third transition goal was directed at developing Student's vocational skills. The goal required Student to learn to follow multi-step instructions in applications for things such as for a library card, using sample applications. The objective was for Student to fill out applications with 90 percent accuracy in four out of five trials, with progress measured by Student's work samples and assessments. At Parents' request, Chaffey added the occupational therapist and her aide as staff responsible for implementing and measuring progress on the goal, in addition to Student's teachers

and other support staff.

79. Chaffey also proposed an occupational therapy goal directed toward increasing Student's keyboarding abilities. Based upon Parents' concerns and suggestions, Chaffey modified the goal's baseline, and adjusted the objective of the goal to focus on Student learning to type using proper finger position, rather than just a hunt and peck method, as originally contemplated in the proposed goal.

80. The 11 goals developed by the IEP team were sufficiently clear and measurable, and were reasonably calculated to address Student's unique needs in the areas of math, reading, pragmatic communication, occupational therapy, post-high school transition, and behavior.

POST-HIGH SCHOOL TRANSITION PLAN

81. The IEP team also created a post-high school transition plan for Student. The team based the plan on interviews with Student and review of interest inventories and questionnaires Student completed. Student's goal was to attend either a vocational school or community college program. Chaffey would help him reach the goal through assistance from Ms. Rademaker, who, as his case carrier was responsible for providing Student with career guidance and instruction on how to research programs; and helping Student and Parents to visit schools.

82. Student indicated he wanted to work part-time while attending school after he finished high school. To assist him with that goal, his transition plan included provisions for him to have vocational and career assessments, career counseling, and guidance. The plan provided for Student to have consultations with his case carrier; on-line secondary education and vocational training, including use of a program that would teach him different career pathways; and assistance in choosing classes in high school that would lead to his career interests. The transition plan also offered Student access to community work experiences to prepare him for employment after high school.

83. The transition plan also contained an independent living goal. Support toward that goal included participation in school clubs; teaching Student self-advocacy skills; continuing his occupational therapy and speech therapy; and teaching Student how to do household chores.

84. The transition plan incorporated the three transition goals the IEP team developed. The plan continued Student's academic program, with the goal of his attaining a certificate of completion by completing the required coursework.

85. Parents expressed no concerns about the proposed transition plan and had no suggestions or proposed modifications to it.

PARENTS' CONCERNS

86. The IEP team then addressed the remaining issues raised by Mr. Peters in his email. Chaffey team members assured Parents that Student's dietary needs would be communicated to all of his teachers. Parents were concerned about Student's weight and wanted Student placed in an adaptive physical education class to address fitness issues. However, Student's weight was not a disability issue and he did not require adaptive physical education to address any need. Chaffey IEP team members assured Parents that Student could enroll in general education physical education classes during the summer session or the fall semester to address increasing his physical fitness.

87. Parents requested that a communication log be instituted. Chaffey had already developed a log to communicate the number and duration of breaks Student took, and had started sending it home to Parents the previous month. Chaffey agreed to add to the log the food Student consumed each day.

88. Parents requested that Chaffey provide copies of IEPs and progress reports in English and Spanish. Chaffey agreed.

89. Parents wanted Student to have a one-on-one aide during the entire school day and on the school bus. Parents also wanted any substitute aides to be

trained to address Student's behaviors. Chaffey was already providing the aide and training substitute staff. Chaffey agreed to continue to do so.

90. Parents requested that Student's occupational therapy be increased to one hour a week of individual services and one hour a week of group services. Ms. Palmisano had worked with Student since he was in ninth grade. She assessed him in 2017. Student could write fairly well. His writing was legible. He was able to use technology appropriately, and had good visual perceptual processing skills. She developed an appropriate occupational therapy goal to meet the deficits he had in typing. At the IEP team meeting, Ms. Palmisano told Parents that the services Student already received of 16, 30-minute sessions a year, met his needs and were sufficient to address his occupational therapy goal. At hearing, Ms. Palmisano credibly explained that removing Student from class two hours a week for occupational therapy would overwhelm and agitate him. The more Student was removed from the routine of his classes, the more agitated he became. Given his low level of occupational therapy needs, which focused on his typing skills, much of which could be addressed in class, Student did not require two hours a week of occupational therapy.

91. Parents also requested that Student's speech and language therapy be increased from one hour a week to two hours a week, with one hour being provided to him individually and the second provided in a group. At the IEP team meeting, the speech and language pathologist attending the meeting explained that one hour a week was sufficient to work on Student's goals and his pragmatic language needs and to generalize his language skills.

92. Breanne Whalen provided speech and language therapy services to Student since he began ninth grade. She conducted his speech and language assessment in 2017. Ms. Whalen credibly testified during the hearing that Student only needed a half hour a week of individual speech and language therapy to work on his

fundamental skills and an additional half hour a week of group therapy to practice the skills. His goals could be fully addressed during those two, one-half hour weekly sessions, with additional work in the classroom. Two hours a week of therapy was not in Student's best interest. Student was not able to participate in therapy for an hour at a time in any meaningful way, particularly since he required frequent breaks. It was more appropriate for Student to learn to practice his pragmatic skills with peers in class than to be pulled out of class.

93. For these reasons, Chaffey declined the request to increase Student's occupational therapy and speech and language therapy sessions.

94. Parents renewed their request for Chaffey to fund an additional 400 hours of Lindamood-Bell services. Student received English language arts in his English resource classroom and received additional reading instruction through a program called Read 180. His reading deficits were adequately addressed through instruction at his school. Chaffey declined the request to fund the additional Lindamood-Bell hours.

95. Parents requested that Student's program be based on him spending 60 percent of his school day in general education. Chaffey declined the request. Because of Student's increased maladaptive behaviors during the 2017-2018 school year, after Chaffey had agreed to Parents' earlier request to remove Student from a special day class, general education placement for academic subjects was not appropriate to meet Student's needs. Chaffey did agree to consider enrolling Student in a general education art elective for the fall 2018 semester.

96. Finally, the IEP team discussed Student's recent behavior of eloping and running into the street. The Chaffey IEP team members added those behaviors to Student's behavior intervention plan, so the behaviors could be properly addressed at school. They also agreed to add provisions for how to address Student's behaviors when he had substitutes in class.

97. Mr. Peters did not believe Chaffey adequately addressed Student's behaviors because neither of the two psychologists present at the IEP team meeting were board certified behavior analysts. Dr. Plew, who had a doctorate in educational psychology, assured Mr. Peters and Parents that he and Ms. Lanier could answer any questions Parents had concerning Student's behaviors. Neither Parents nor Mr. Peters asked any questions.

98. Mr. Peters requested that Chaffey provide Student with two aides at all times. Mr. Peters believed that one aide could attempt to block any items that Student threw before the items could hurt anyone. The second aide would be present to restrain Student. Chaffey declined the request because it did not believe it was an appropriate response to Student's behavioral challenges. First, Student had shown he was capable of eluding strong, physically fit men such as the campus officers, when he eloped. Also, he had been able to throw things such as a chair/desk combination even with the presence of a male aide.

99. Each Chaffey school psychologist who testified at hearing, including Ms. Lanier, Ms. Rodriguez, and Monica McCort, credibly articulated that physically restraining Student was not an appropriate response to his maladaptive behavior. In addition to the ethical considerations, they also noted that having two aides accompany Student throughout his day would isolate him from his peers.

PRELIMINARY OFFER OF FAPE

100. The IEP team did not complete Student's IEP. However, Chaffey made a tentative offer of FAPE consisting of: specialized academic instruction for five, 50-minute sessions a day in a group setting; 50, 30-minute sessions of speech and language therapy sessions a year, amounting to approximately two sessions a week, with one session a week being individual therapy and the other being offered in a group; 16, 30-minute sessions a year of occupational therapy; a one-on-one aide (identified as

intensive individual services) for six, 60-minute sessions a day, including the bus ride to and from school; one, 30-minute session a year of college awareness in a group setting; one, 60-minute group session a year of vocational assessment and career guidance; one additional 30-minute session a year of group transition services; and extended school year services.

101. The IEP also offered Student the following classroom accommodations: modified curriculum, tests, and grading; small class setting; a structured environment; access to a case carrier; graph paper, highlighters and a calculator for math; a graphic organizer; access to a computer for word processing; use of computer time, free time, and requested sensory breaks as reinforcers for appropriate behavior; and notice of the accommodations to all teachers.

102. The IEP team agreed to reconvene at a later date to finalize Student's annual IEP.

Events Prior to the May 8, 2018 IEP Team Meeting

103. On April 11, 2018, Chaffey wrote to Parents to address the concerns that Mr. Peters raised at the April 6, 2018 IEP team meeting. Chaffey offered to fund a second functional behavior assessment by a non-public agency. Chaffey included a proposed assessment plan for Parents' signature with the letter. Parents did not sign the assessment plan until May 3, 2018.

104. Chaffey also informed Parents it would implement the following procedures to ensure Student's safety and address his behaviors: 1) Inform all school staff of when Student's challenging behaviors were most likely to occur; the supports needed to reduce the behaviors; and how to respond to the behaviors if they occurred; 2) Provide crisis prevention intervention training to Student's aide and back-up aide; 3) Provide a walkie-talkie to Student's aide and back-up aide in case they needed to request immediate assistance in response to Student's behavior; and 4) Amend the

proposed behavior intervention plan to address the problems discussed at the IEP team meeting and inform any substitute teacher of Student's needs and strategies to address the behaviors.

105. On April 16, 2018, Student had another behavior incident in class. He became agitated when a peer and his teacher began a loud discussion. When his aide tried walking Student out of class, Student picked up a chair and lifted it over his head. His aide was able to block the forward motion of the chair and put it down. Student then advanced toward the teacher and grabbed his arm and would not let it go. The teacher was able to calm Student down and de-escalate the situation. Student's aide then walked with him around the campus to further calm Student.

106. On May 4, 2018, Student had another severe behavioral incident. Following a game in class, in which Student won the game, he became angry for unknown reasons. He picked up a desk and threw it at a peer. The peer was not directly hit by the desk but was injured when trying to run from being hit. Student then ran out of the classroom. His aide called for help using the walkie-talkie. Student saw a campus officer and avoided him. A teacher who knew Student attempted to call him and calm him down. Instead of calming, Student ran to the teacher and threw her, with considerable force, against a wall, causing her to hit her head.

107. Student then ran toward the staff parking lot and stood on a sidewalk. Staff members, including Student's aide, were waiting for him, and able to stop him from running further to the street. They were able to get Student to return to school. However, on his way into the school, Student punched a glass window in an office door and repeatedly hit his aide. It took some time to calm Student down. To keep Student, his peers, and school staff safe, Chaffey suspended Student for five days, until Chaffey could re-convene his IEP team to address Student's escalating behaviors.

May 8, 2018 IEP Team Meeting

108. Ms. Rodriguez was on an extended leave and not able to attend the IEP team meeting to complete Student's IEP. Chaffey therefore asked school psychologist Monica McCort to attend the meeting. Ms. McCort had two master's degrees: one in school psychology and one in education, with an emphasis on special education. She had significant experience addressing the needs of autistic children and had considerable knowledge about different placement options available to students who attended Chaffey schools. To prepare for Student's IEP team meeting, Ms. McCort reviewed his school file; spoke with Ms. Rademaker about Student; and reviewed Student's behavioral incidents.

109. Student's IEP team reconvened on May 8, 2018 to review Student's suspension and to complete his annual IEP. The IEP team included Parents; Mr. Peters; Vice-Principal Morton and a second Chaffey administrator; Ms. Lanier; Ms. McCort; Dr. Plew; Ms. Rademaker; Ms. Palmisano; a Chaffey speech-language pathologist; and a Spanish translator. All required IEP team members were present.

110. Chaffey IEP team members expressed concern about Student's latest behavioral incident because it was not triggered by any expected or known factor. Rather, Student had reacted negatively after winning a game, not after losing it. Additionally, Student's teacher had prepared him before the activity for what to expect during it. Student had engaged in a series of aggressive behavior that staff had not been successful in preventing, in spite of the various interventions and strategies employed. Student's behavior had intensified, become more dangerous, and was no longer predictable. Student was a danger to himself, to staff, and to peers.

111. Based on these factors, Chaffey IEP team members suggested that the team consider different placement possibilities. The IEP team discussed what could be done to maintain Student at Los Osos. The Chaffey IEP team members believed that the

Los Osos comprehensive campus of 3200 students was not safe for Student, even in a special day class placement. Mr. Peters reiterated his belief that Chaffey should provide Student with two aides at all times. Ms. McCort agreed with the opinion expressed by her colleagues at the previous IEP team meeting, that it was inappropriate to address Student's behaviors by adding another aide. Student's one-on-one aide had been standing right next to him during the latest incident when Student threw the desk, resulting in a peer getting injured. The aide could not anticipate the incident because Student's behavior escalated at an unexpected moment. The aide could not stop the desk once Student threw it. Ms. McCort also expressed that she believed restraining Student was dangerous and not an appropriate response to his behavior.

112. The IEP team discussed the possibility of placing Student at a county-run school. However, the opinion of the Chaffey team members was that it would not be a good fit for Student because the children in the program were much lower-functioning than Student. Further, the program was also at a comprehensive school site and contained many of the distractions that had triggered some of Student's behaviors at Los Osos.

113. Ms. McCort was familiar with Chaffey's different special day class placements and with non-public school placements. Because of the concerns with Student's safety and the safety of staff and peers, she suggested the team consider placing Student at Bliss Academy, a non-public school. She had worked with other students Chaffey had placed there, and believed it would address Student's academic and behavioral needs.

114. Bliss was a small school with a total of 180 students. It had a structured environment, with no loud activities that might trigger Student's maladaptive behaviors. The environment was therefore predictable on a daily basis. The school had safety measures, such as doors that needed a code to be able to exit; students were not able

to run out of the school and into the street because of the safety measures. The staff members at Bliss were trained to introduce stimuli slowly to students so they could learn to tolerate it. Every student enrolled at the school had autism and all staff members were specifically trained to address issues attenuating to that diagnosis.

115. The classes at Bliss had no more than 12 students. The adult ratio in class was one adult for every two students. The adults consisted of a special education teacher, a registered behavior technician, and aides. The behavior technician was trained by a board certified behavior analyst who was assigned to the classroom. The school also provided occupational therapy and speech therapy to students whose IEPs contained those services.

116. Bliss could implement all of Student's goals, including his transition goals. It had a technology lab, a library, and a swimming pool. It was a much smaller version of a high school. It also had adult programs and classes for adult students who had IEPs and who had not received a high school diploma. Student would be able to remain there after turning 18. Bliss provided many community outings and opportunities for community involvement so that the students could interact with non-disabled peers and community members, and learn to generalize skills and behaviors outside of school.

117. Ms. McCort considered other non-public schools as possible placements, but ultimately did not believe they were appropriate for Student. One school she considered was much farther away from Student's home, and had only 12 students enrolled in the entire school, which would not give Student a robust educational experience. The students at another school with which Ms. McCort was familiar were very aggressive and non-verbal, and she believed Student might model their behavior. Additionally, the latter school had no greenery, pool, or cafeteria, which detracted from the school experience.

118. Ms. McCort offered to take Parents to Bliss so they could visit the campus

and talk to staff. She spoke Spanish, and could serve as a translator for Mother. Parents did not accept her offer at the May 8, 2018 IEP team meeting, or later when Ms. McCort left telephone messages for Mother.

119. Mr. Peters stated at the IEP team meeting that Parents would not consent to Bliss. Neither he nor Parents explained why they were opposed to the placement. Mr. Peters only stated that he wanted Student returned to Los Osos. Neither he nor Parents suggested any other placements they wished to discuss.

120. Chaffey IEP team members ultimately believed that Student required placement at a non-public school for his own safety and to ensure the safety of staff and other students. Chaffey therefore changed its offer of placement from the previously offered five, 50 minute sessions a day of specialized academic instruction, to full-time placement at Bliss Academy. In all other respects, its offer of FAPE remained the same as that made at the end of the April 6, 2018 IEP team meeting. The proposed IEP included a transition plan for Student. It also included the behavior intervention plan that had been developed initially in May 2017, and revised at subsequent IEP team meetings.

121. Parents did not consent to the IEP.

LEGAL CONCLUSIONS

INTRODUCTION - LEGAL FRAMEWORK UNDER THE IDEA⁵

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)⁶ et seq.; Ed. Code, § 56000, et seq.; Cal.

⁵ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁶ All references to the Code of Federal Regulations are to the 2006 edition, unless

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

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.)

"Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

3. In 1982, the United States Supreme Court rendered the seminal and guiding decision in special education law. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176 [102 S.Ct. 3034; 73 L.Ed.2d 690] (*Rowley*)). In the decision, the Supreme Court noted that the predecessor statute of the IDEA did not contain any substantive standard prescribing the level of education that a handicapped child must receive. (*Id.* at p. 189.) Instead, the Court determined that, in the Act, Congress established procedures to guarantee disabled children access and opportunities, not substantive outcomes. (*Id.* at p. 192.) If a school district acts in compliance with the procedures set forth in the IDEA, especially as regards the development of the child's IEP, then the assumption is that the child's program is

otherwise indicated.

appropriate. (*Id.* at p. 206.) Accordingly, the Court determined that an educational agency must provide the disabled child with a “basic floor of opportunity.” (*Id.* at p. 200.) The Court further noted that an appropriate education under the Act does not mean a “potential-maximizing education.” (*Id.* at p. 197, fn. 21.) Stated otherwise, the educational agency must offer a program that “confers some educational benefit upon the handicapped child.” (*Id.* at p. 200.)

4. The Supreme Court clarified its ruling in *Rowley* in the recent case of *Endrew F. ex rel., Joseph F. v. Douglas County School Dist.* (2017) 580 U.S. __ [137 S.Ct. 988, 996] (*Endrew F.*). The 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.’” Put another way, “[f]or a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” (*Id.* at 999 (citing *Rowley*, *supra*, 458 U.S. at pp. 203-04).) The Court went on to say that the *Rowley* opinion did not “need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level.” (*Id.* at 1000.) 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. If the parent or guardian of a child who is an individual with exceptional needs refuses some or all services in the IEP, and if the public agency determines that

the special education program or program component to which the parent does not consent is necessary to provide a FAPE to the child, the local educational agency shall file a request for a due process hearing. (*I.R. v. Los Angeles Unified School District* (9th Cir. 2015) 805 F.3d 1164, 1169; Ed. Code, § 56346, subd. (f).)

OVERALL REQUIREMENTS OF AN INDIVIDUALIZED EDUCATION PROGRAM

6. An IEP is a written document which details the student's current levels of academic and functional performance, provides a statement of measurable academic and functional goals, a description of the manner in which goals will be measured, a statement of the special education and related services that are to be provided to the student and the date they are to begin, an explanation of the extent to which the child will not participate with non-disabled children in a regular class or other activities, and a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. (20 U.S.C. § 1414(d); Ed. Code, § 56345, subd. (a).)

7. When developing an IEP, the team must consider the strengths of the child; the concerns of the parents for enhancing their child's education; information about the child provided by or to the parents; the results of the most recent assessments; the academic, developmental, and functional needs of the child; and any lack of expected progress toward the annual goals. (20 U.S.C. § 1414(d)(3)(A), (d)(4)(A); 34 C.F.R. § 300.324(a), (b); Ed. Code, § 56341.1, subds. (a), (d).)

8. In considering the substance of an educational plan, "(T)he test is whether the IEP, *taken in its entirety*, is reasonably calculated to enable the particular child to garner educational benefits." (*Lessard v. Wilton-Lyndeborough Cooperative School Dist.* (1st Cir. 2008) 518 F.3d 18, 30 (italics added) (*Lessard*); see also *T.Y. v. New York City Dept. of Educ.* (2nd Cir. 2009) 584 F.3d 412, 419 [judging the "IEP as a whole"].) Further, a court or tribunal must judge an IEP at the time of its development, not in hindsight.

(*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041; *JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801; *Meares v. Rim of the World Unified School District* (C.D. Cal. 2016) 269 F.Supp.3d 1041, 1052-53; *Tracy N. v. Department of Educ., Hawaii* (D.Hawaii 2010) 715 F.Supp.2d 1093, 1112.) In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the child. (*Ibid.*)

9. An educational agency's special education program is not required to furnish every special service necessary to maximize the child's potential. (*Rowley*, *supra*, 458 U.S. at p. 199.) Instead, an educational agency satisfies the FAPE standard by providing adequate related services such that the child can take advantage of educational opportunities. (*Park v. Anaheim Union High School* (9th Cir. 2006) 4654 F.3d 1025, 1033.)

10. To assist courts and administrative tribunals, the Supreme Court established a two-part test to determine whether an educational agency has provided a FAPE for a disabled child. "First, has the State complied with the procedures set forth in the Act? And, second, is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" (*Rowley*, *supra*, 458 U.S. at pp. 206-207.) "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." (*Id.* at p. 207.) (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 947.)

CHAFFEY COMPLIED WITH ALL PROCEDURAL REQUIREMENTS IN DEVELOPING ITS IEP OFFERS

11. The Supreme Court recognized the importance of adhering to the procedural requirements of the IDEA. While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School District* (9th Cir. 2001) 267 F.3d at 977, 892 (*Amanda J.*))

Required Parties For IEP Team Meetings

12. An IEP team must be composed of the following persons: 1) the parents of a child with a disability; 2) not less than one regular education teacher of the child; 3) not less than one special education teacher of the child; 4) a representative of the educational agency who is qualified to provide or supervise the provision of specially designed instruction for the child, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of resources of the agency; 5) an individual who can interpret the instructional implications of evaluation results; and 6) at the discretion of the parents or educational agency, other individuals who have knowledge or special expertise regarding the child. The determination of the knowledge or special expertise of any individual described in the last section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP team. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b).)

13. The evidence in this case established that all required IEP team members were present at the March 13, 2018, April 6, 2018, and May 8, 2018 IEP team meetings. Parents attended the meeting by telephone. One of Student's general education teachers attended each meeting. Ms. Rademaker, a credentialed special education teacher and Student's case manager, also attended each meeting. At least one and

sometimes more than one Chaffey administrative representative also attended each meeting. Although Ms. Sun's functional behavior assessment was reviewed at previous IEP team meetings, at least one school psychologist with the ability to interpret the assessment and discuss its implications and the resultant proposed behavior plan was also present at each of the three IEP team meetings.

Parental Participation in the IEP Process

14. Special education law places a premium on parental participation in the IEP process. School districts must guarantee that parents have the opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(1).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkleman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904].) Parental participation in the IEP process is also considered "(A)mong the most important procedural safeguards." (*Amanda J., supra*, 267 F.3d at p. 882.)

15. An educational agency must therefore permit a child's parents "meaningful participation" in the IEP process. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131-1132.) The standard for "meaningful participation" is an adequate opportunity to participate in the development of the IEP. Although a student's parents have a right to meaningful participation in the development of an IEP, a district "has no obligation to grant [a parent] a veto power over any individual IEP provision." (*Ibid.*)

16. Parents in this case attended the three IEP team meetings at issue by telephone. Chaffey gave notice of the IEP meetings, provided Parents with copies of their procedural safeguards, and convened the meetings when Parents were available and able to participate. Although Parents did not themselves directly participate in the

IEP team meetings, they fully participated through their advocate, Mr. Peters, who presented Parents' concerns through letters to Chaffey, as well as, through his full participation at the IEP team meetings. The record is replete with instances in which Chaffey responded to Parents' concerns by delaying IEP team meetings to ensure that Parents attended; providing them with copies of draft IEP documents in Spanish before IEP team meetings; correcting errors in the IEP documents; adding and/or modifying goals; and providing additional data Parents requested.

17. At the April 6, 2018 IEP team meeting, Chaffey modified baselines of Student's present abilities for some of the new goals proposed for him, added examples of Student's behaviors to a behavior goal at their request, and added additional staff to be responsible for implementing the goal. Chaffey agreed to modify the communication log sent home to Parents to include information about the food Student ate during the day. In addition to providing Parents with a copy in Spanish of Student's IEPs, Chaffey agreed to provide Parents with Spanish copies of his progress reports. Chaffey was only legally required to provide copies of the IEP in Spanish. (Cal. Code Regs., tit. 5, § 3040, subd. (a).)

18. Parents, through Mr. Peters, also fully participated in the May 8, 2018 IEP team meeting. Although Parents had settled all prior disputed issues between the parties through March 1, 2018, which encompassed the validity of Chaffey's May 17, 2017 functional behavior assessment, Chaffey offered to fund another behavior assessment by an independent non-public agency.

19. Chaffey also discussed several placement alternatives for Student at the May 8, 2018 IEP team meeting. The team discussed Student's present placement at Los Osos, a possible placement at a school run by the county, and placement at a non-public school. Ultimately, Chaffey offered Student placement at Bliss Academy, a non-public school. Parents were opposed to the placement.

20. However, the fact that Parents disagreed with Chaffey's offer and Chaffey did not concede to Parents' request that Student remain at Los Osos does not mean that Parents did not have an opportunity to fully participate in Student's IEP process. (*B.B. v. Hawaii Dept. of Educ.* (D.Hawaii 2006) 483 F.Supp.2d 1042, 1051.) A school district has the right to select a program for a special education student, as long as the program is able to meet the student's needs; the IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D.Cal. 2007) 2007 WL 216323; *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580* (D. Minn. 2003) 259 F. Supp.2d 880, 885.) Nor must an IEP conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F. Supp.2d 127, 139 [The IDEA does not provide for an "education...designed according to the parent's desires," citing *Rowley, supra*, 458 U.S. at p. 207]; *A.V. v. Lemon Grove School District* (S.D.Cal. Feb. 24, 2017, Case No.: 3:16-cv-0803-CAB-(BLM)) 2017 WL 733424, *7 (*A.V.*.)

21. Here, the evidence demonstrated that Parents were given an opportunity to participate at every step of the IEP process. They were present at each of the three IEP meetings at issue; they voiced their concerns through their chosen advocate; Chaffey considered their concerns and made changes, additions, and deletions based on those concerns. Parents' participation was not curtailed during the development of the IEPs at issue in this case.

22. Predetermination of a student's placement is a procedural violation that deprives a student of a FAPE in those instances where placement is determined without parental involvement in developing the IEP. (*K.D. v. Depart. Of Educ., Hawaii* (9th Cir. 2011) 665 F.3d 1110, 1123; *Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840; *Bd. of Educ. of Township High School Dist. No. 211 v. Lindsey Ross* (7th Cir. 2007) 486 F.3d 267; *A.V., supra*, 2017 WL 733424 at *7.) Predetermination happens when a

school district makes a decision about a placement for a child prior to an IEP team meeting and offers it as a “take it or leave it” proposition to the child’s parents. There is no evidence that Chaffey did so in this case.

23. At the end of the April 6, 2018 IEP team meeting, Chaffey made its offer of placement in a program focused on specialized academic instruction at Los Osos, based on discussion between the parties at the IEP meeting and review of Student’s behavioral and academic needs. It declined to adopt the placement proposed by Parents, who wanted Student to spend more time in general education, because Student’s behavior had deteriorated drastically after Chaffey earlier followed Parents’ suggestion of moving Student from special day classes to resource classes combined with general education classes. However, the decision was made after discussion among the parties and Chaffey staff did not make any final decisions until after the discussion.

24. There is also no evidence that Chaffey’s offer of placement at Bliss Academy at the May 8, 2018 IEP team meeting was predetermined. The placement suggestion came from Ms. McCort who credibly testified that she did not discuss the placement with any other staff prior to the meeting. She was familiar with the school and, after reviewing Student’s file and other records, believed that it would meet his needs. She discussed the school with all team members at the meeting, and explained why other non-public schools would not adequately meet Student’s needs. The other Chaffey IEP team members agreed with her suggestion based upon Student’s escalating behaviors at school. Parents disagreed with the placement offer, but did not give concrete reasons why they did not like the school, refused to go to the school to observe it, and failed to offer any other suggestions for Student’s placement. The fact that Chaffey offered a different program at the May 8, 2018 IEP team meeting than the one offered at the April 6, 2018 IEP team meeting is not evidence that it predetermined the offer.

Specific Written Offer Of Placement

25. A school district must make a formal written offer in the IEP that clearly identifies the proposed program. (*Union School Dist. v. Smith* (9th Cir. 1993) 15 F.3d 1519, 1526 (*Union*)). An IEP offer must be sufficiently clear that a parent can understand it and make intelligent decision based on it. (*Id.*) In *Union* the Ninth Circuit observed that the formal requirements of an IEP are not merely technical, and therefore should be enforced rigorously. The requirement of a coherent, formal, written offer creates a clear record that helps eliminate factual disputes about when placements were offered, what placements were offered, and what additional assistance was offered to supplement a placement. It also assists parents in presenting complaints with respect to any matter relating to the educational placement of the child. (*Ibid.*)

26. In the instant case, the offers in the April 6, 2018 and the May 8, 2018 IEPs were clear, concise, and explicit. The IEPs included Offer of Services pages that delineated the program accommodations, modifications, and supports Chaffey offered. The services pages listed the special education and related services as well, with specific starting and ending dates; duration and frequency of the service or program; whether the program and/or service was to be provided in an individual or group setting; and what entity would provide the service. The IEPs clearly delineated the program offered as well as related services, transition services, and the provision of a one-to-one aide for the duration of Student's school day and while he was on school-provided bus transportation. Both IEPs fully met the requirements delineated in *Union*.

Goals

27. The annual IEP for a child eligible for special education and related services must contain the present levels of the child's educational performance and measurable annual goals, including benchmarks or short-term objectives, related to the child's needs. (20 U.S.C. § 1414 (d)(1)(A)(ii); Ed. Code, § 56345, subd. (a).) The purpose of

goals and measurable objectives is to permit the IEP team to determine whether the child is making progress in an area of need. (Ed. Code, § 56345.) In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) The IEP team also must consider special factors, such as whether the child needs assistive technology devices and services. (20 U.S.C. § 1414(d)(3)(B); 34 C.F.R. § 300.324(a)(2); Ed. Code, § 56341.1, subd. (b).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344.)

28. Student's April 6 and May 8, 2018 IEPs met the legal standards for the development of annual goals. The IEP team, including Parents and their advocate, spent considerable time reviewing Student's progress on his prior goals. The IEP team reviewed his past assessments and Student's teachers and service providers discussed what each believed to be Student's continuing area of need. The Chaffey IEP team members addressed Parents' concerns regarding the goals. Although Chaffey did not adopt all of Parents' suggestions, the Chaffey IEP team members made several modifications, additions, and deletions to the goals based on Parents' input. Ultimately, the IEP team developed 11 goals directed to Student's academic needs, his speech and language deficits, his behavioral needs, his needs in occupational therapy, and goals to aid his transition when he left high school. The goals were clear and measurable, and were designed to address each of Student's areas of need.

Individual Transition Plan

29. Beginning not later than the IEP that will be in effect when a student

receiving special education reaches 16 years of age (or younger, if the IEP team deems it appropriate), an IEP must contain a transition plan that contains appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. The plan must also contain the transition services needed to assist the pupil in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8)(A).)

30. Chaffey included a full individual transition plan designed to meet Student's post-high school academic, vocational, and independent living needs as part of each of the IEPs at issue in this case. Chaffey developed the plan based on Student's individual needs. It determined those needs by interviewing Student, having him complete questionnaires and vocational assessments, and reviewing his IEPs and his school file. The plan addressed Student's post-high school educational goals, vocational goals, and independent living goals. Student's IEP team also developed three transition goals to assist in implementing the transition plan. The plan indicated the assistance Chaffey would provide through career guidance and community participation to help Student attain his goals. The transition plan met all legal requirements.

CHAFFEY'S IEP OFFERS SUBSTANTIVELY PROVIDED STUDENT WITH A FAPE

31. At the end of the IEP team meeting on April 6, 2018, Chaffey offered Student the following placement: specialized academic instruction for five, 50-minute sessions a day in a group setting; 50, 30-minute sessions of speech and language therapy a year, amounting to approximately two sessions a week, with one session a week being individual therapy and the other being offered in a group; 16, 30-minute sessions a year of occupational therapy; a one-on-one aide (identified as intensive individual services) for six, 60-minute sessions a day, including the bus ride to and from school; one, 30-minute session a year of college awareness in a group setting; one, 60-minute group session a year of vocational assessment and career guidance; one

additional 30-minute session a year of group transition services; and extended school year services.

32. The IEP also offered Student the following classroom accommodations: modified curriculum, tests, and grading; small class setting; a structured environment; access to a case carrier; graph paper, highlighters and a calculator for math; a graphic organizer; access to a computer for word processing; use of computer time, free time, and requested sensory breaks as reinforcers for appropriate behavior; and notice of the accommodations to all teachers.

33. The evidence supported Chaffey's assertion that this IEP offer was appropriate at the time it was made. Chaffey based its decision to have Student spend more time in specialized academic instruction because the move to a more inclusive program during the 2017-2018 school year was not successful. Student's maladaptive behaviors increased in spite of a full-time one-on-one aide, and in spite of the many behavioral strategies implemented and taught to Student for almost three school years that he had attended Los Osos. At the time of the April 6, 2018 IEP team meeting, Student required the small class environment and structure that a special day class program would provide.

34. Additionally, the evidence supported Chaffey's assertion that the level of related services it offered for speech and language therapy and occupational therapy were sufficient to meet Student's needs. Although Parents requested that Chaffey provide Student two hours a week of speech and language therapy and an hour a week of occupational therapy, there was no evidence in the record that Student required the additional services to make progress in each area. Ms. Whalen and Ms. Palmisano convincingly testified that Student's needs were met by the amount of time Chaffey offered. They agreed that Student did not have the ability to maintain attention for the length of time Parents wanted for each type of therapy. Additionally, both agreed that

removing Student from the classroom for additional services would not benefit him. The IEP offer Chaffey made on April 6, 2018, therefore provided Student with a FAPE at the time.

35. Student had a severe behavioral incident on March 23, 2018, when he became agitated, and ran into the busy street in front of his school after throwing things at people. He managed to avoid getting injured as he ran, weaving among moving cars, to the median in the street. When approached by school staff, his aide, campus officers, and a passing parent who all tried to help deescalate Student's agitation, Student threw rocks at some of them and at a passing car. The incident had not been triggered by anything that had bothered Student in the past, but Chaffey staff thought it an aberration.

36. However, subsequent to the April 6, 2018 IEP team meeting, Student had two other behavioral instances which also were not based on expected situations or triggers. In one incident, Student became agitated when a peer and his teacher began a loud discussion. When his aide tried walking Student out of class, Student picked up a chair and lifted it over his head. His aide blocked the forward motion of the chair and put it down. Student then advanced toward the teacher and grabbed his arm and would not let it go. Student had not been so aggressive with teachers in the past.

37. The second incident was more severe. After winning a math game, Student became angry for unknown reasons. In the past, he had become angry when he lost a game or did not get correct answers, but not when he had done well on something. Student threw a desk at a peer. The peer evaded the desk, but was injured when running from it. Student then ran out of the classroom. His aide called for help using the walkie-talkie. Student saw a campus officer and avoided him. A teacher who knew Student attempted to call him and calm him down. Instead of calming, Student ran to the teacher and threw her forcibly against a wall, causing her to hit her head. Student then

ran toward the staff parking lot and stood on a sidewalk. Staff members were able to calm him and get Student to walk back into the school. However, on his way into the school, Student punched a glass window in an office door and repeatedly hit his aide. Again, Student's behavior was not in response to known triggers. The behavior also continued the escalation of Student's becoming violent toward objects and people as a response to his feeling of agitation.

38. Student's escalating behaviors resulted in injury to peers and to staff. Student's behavior also indicated a strong possibility that he could injure himself. This was a new and unexpected pattern to Student's behavior. In response to what it saw as a need to keep Student, staff, and other children safe, Chaffey offered Student placement at Bliss Academy, a non-public school, at the May 8, 2018 IEP meeting. That meeting was held, not only to complete Student's IEP, but to also address his behavior.

39. Parents disagreed with the offer of placement at Bliss and did not consent to the IEP. Although Parents declined to participate in this hearing and did not file a written closing argument when given the opportunity to do so, they did file a written response to Chaffey's complaint. Most of the response referenced IEP team meetings and events that took place in 2017, which are not at issue in this case. However, Parents did contest the validity of Chaffey's May 8, 2018 offer of placement at Bliss, as not being Student's least restrictive environment.

40. In addition to providing a FAPE, a school district must ensure that "To the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled." (20 U.S.C. § 1412(5)(A); see also 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).) This "least restrictive environment provision reflects the preference by Congress that an educational agency educate a child with a disability in a regular classroom with his or her typically developing peers. (*Sacramento City School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403 (*Rachel H.*)).

41. When determining whether a placement is the least restrictive environment for a child with a disability, four factors must be evaluated and balanced: (1) the educational benefits of full-time placement in a regular classroom; (2) the non-academic benefits of full-time placement in a regular classroom; (3) the effects the presence of the child with a disability has on the teacher and children in a regular classroom; and (4) the cost of placing the child with a disability full-time in a regular classroom. (*Rachel H., supra*, 14 F.3d at p. 1404.)

42. Additionally, under the mandate of placing a student in the least restrictive environment, a school district must consider a continuum of alternative placements..." (34 C.F.R. § 300.115(b); Ed. Code, § 56342, subd. (b).)

43. Student's IEP team appropriately considered a continuum of placements for him at the May 8, 2018 IEP team meeting. The IEP notes indicate that the team discussed placement possibilities. At hearing, Ms. McCort testified that she proposed Bliss after the IEP team had discussed Student's present placement; continued placement in other programs at Los Osos; and a possible county placement. Chaffey team members believed that Student could not be kept safe on a large, comprehensive high school campus such as Los Osos, which had 3200 students and was open to a busy street. Chaffey team members also believed the county placement was not appropriate because the children in it were lower functioning than Student and because it too was on a comprehensive campus.

44. Although Student had made academic strides at Los Osos and had friends there, which supported his continued placement at that school, his escalating behaviors could not be safely addressed in that environment. Each of Chaffey's witnesses at hearing explained that the behaviors put Student, his peers, his teachers, and other staff at risk. Ms. McCort explained that Bliss had several aspects of a comprehensive high school campus, such as a cafeteria, swimming pool, library, and technology access, but

that it was on a much reduced scale with only approximately 180 students enrolled at the school. Additionally, students at Bliss could not elope from school because of safety precautions. Finally, although the school did not have any typically developing peers, Bliss provided community field trips so that its students would have access to non-disabled people in the community.

45. Although Parents' desire to retain Student at a comprehensive high school campus is understandable, the only evidence presented at hearing supported Chaffey's position that Student required a small, structured, and safer environment, with additional staff to address his behaviors.

46. Parents offered no other alternative to Bliss at the May 8, 2018 IEP team meeting for consideration by the IEP team, other than having Chaffey assign a second aide to Student and have two aides "double team" him. Parents believed one aide could block any object Student might throw and the other aide would then restrain Student.

47. Three of Chaffey's school psychologist testified at hearing. Ms. Lanier, Ms. Rodriguez, and Ms. McCort emphatically rejected the two-aide concept as a solution to addressing Student's behaviors. They explained that Student had already shown numerous times that he could throw objects and then evade staff and officers even with a one-to-one aide by his side. Additionally, they all rejected the concept of using an aide to restrain Student as response to behavior. Rather, all three psychologists explained that the appropriate manner of addressing the behaviors was to change Student's environment so that he was not consistently subjected to a barrage of triggers, and where he could learn to regulate his agitation. Student's present teachers, even those trained in special education and in crisis prevention, were not able to manage and respond to his behaviors and keep their other students safe.

48. In conclusion, the evidence supports Chaffey's position that its IEP offer, developed at the March 13, 2018 and April 6, 2018 IEP team meetings, and as modified

at the May 8, 2018 IEP team meeting, offered Student a FAPE in the least restrictive environment. The IEP, which included a comprehensive behavior intervention plan, addressed all of Student's academic needs; social/emotional needs; behavioral needs; speech and language deficits; and occupational therapy needs, which represented all areas of Student's suspected disabilities. Each of the IEP goals comported with these needs, and the IEP was reasonably calculated to enable Student to receive meaningful educational benefit in light of his circumstances. The IEP also included a valid individual transition plan. Student's behavioral needs required the more restricted environment of a non-public school, which had the ability to implement his goals and provide him with needed related services.

ORDER

1. Chaffey's request for relief is granted.
2. If Student is enrolled within Chaffey Joint Union High School District and Parents want Student to continue to receive special education and related services, Chaffey may implement the May 8, 2018 IEP, without Parents' consent.

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. Chaffey fully prevailed on the issue presented.

RIGHT TO APPEAL THIS DECISION

This is 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 90 days of receipt.

DATE: August 23, 2018

/s/

DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings