

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2018071095

DECISION

Parents on behalf of Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on July 26, 2018, naming Pleasanton Unified School District.¹ The matter was continued for good cause on August 10, 2018.

Administrative Law Judge Chris Butchko heard this matter in Pleasanton, California, on October 16-18 and 23-24, 2018.

Kristin Springer, Attorney at Law, represented Student, assisted by Jennifer Callahan, Attorney at Law. Student's Parent attended all days of hearing, and both parents attended the first day of hearing.

¹ Pleasanton filed its response to Student's complaint on September 20, 2018, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir.) 858 F.3d 1189, 1199-1200 (*Antelope Valley*).)

Sterling Elmore, Attorney at Law, represented Pleasanton Unified School District, assisted by Shawn Olson Brown, Attorney at Law. Mary Jude Doerpinghaus, Director of Special Education, attended all days of hearing on behalf of Pleasanton.

A continuance was granted for the parties to file written closing arguments and the record remained open until November 9, 2018. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES²

Issue: Did Pleasanton deny Student a free appropriate public education for the 2018- 2019 school year by:

- A. failing to conduct assessments or obtain information in all areas of suspected disability to make an appropriate FAPE offer for the 2018-2019 school year;
- B. predetermining Student's placement for the 2018-2019 school year;
- C. impeding Parent's participation in the individualized education program process by failing to address Parent's concerns about Student's transition from his private placement to public school;
- D. inappropriately offering Student a general education placement for 65 percent of the school day when Student required a more intensive placement to support his social, emotional, behavioral, and academic needs;
- E. inappropriately placing Student in a general education classroom without sufficient supports to address Student's anxiety, attention deficit/hyperactivity disorder, dyslexia, and dysgraphia;

² The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

- F. failing to offer appropriate behavioral supports to address Student's behaviors;
- G. failing to offer appropriate emotional supports to address Student's anxiety disorder; or
- H. failing to offer a clear plan to transition Student to public school?

SUMMARY OF DECISION

Student did not establish that Pleasanton failed to assess or obtain information about all areas of suspected disability. The evidence presented is insufficient to prove that Pleasanton predetermined Student's placement. Pleasanton did not materially impede parental participation in the IEP process. Similarly, Student did not establish that his placement was inappropriate or lacked sufficient support for his needs. Finally, Student did not demonstrate that the IEP team failed to adequately plan for his transition back to a public school placement.

FACTUAL FINDINGS

BACKGROUND

1. At the time of hearing, Student was 12 years old. He spent the majority of the 2017-2018 school year in a private placement. Parents withdrew him from public school after less than a month at middle school following a series of behavior incidents. Student was not eligible for special education services at the time he left public school.
2. Student attended schools in Pleasanton throughout elementary school. During his third grade year, he began to have difficulties with academics. Pleasanton provided him school counselling services for social difficulties. That year, he began to manifest behavior problems that continued into the next school year.

NEUROPSYCHOLOGICAL ASSESSMENT IN FOURTH GRADE

3. Parents had Student undergo a neuropsychological examination in

December 2015. Shortly afterwards, Parents provided to Pleasanton a January 12, 2016 letter from Student's pediatrician summarizing the evaluation's findings. The letter reported that Student was born prematurely and was being medicated for hypothyroidism. In addition, it disclosed that Student had the medical conditions of dyslexia, dysgraphia, and anxiety related to those conditions.

4. The letter included a selection of test results from the assessments the neuropsychologist performed. The included results reported that Student had very low processing speed, poor accuracy in oral reading, and phonemic weaknesses. Student's pediatrician reported that the testing also showed that Student was very sensitive to perceived criticism. The reported testing also showed problems with interpersonal relations and self-esteem. The neuropsychologist's actual report and full test results were not attached to the letter.

5. Student's pediatrician recommended that "at a minimum" he be provided with a 504 plan³ of accommodations. She recommended that Student be given preferential seating, extra time on testing, repetition and shortening of directions and instructions, reassurance and positive reinforcements, and division of material into smaller pieces. She also recommended that Student be excused from reading aloud in class and that his teacher work out a private signal to refocus his attention.

6. Pleasanton created a 504 plan for Student on February 10, 2016. All of the pediatrician's recommendations were made part of his plan. The plan noted that Parents

³ A 504 plan is an accommodation plan created pursuant to Section 504 of the Rehabilitation Act of 1973. (29 U.S.C. § 794; see 34 C.F.R. § 104.1 et. seq. (2000).) Generally, the law requires a district to provide program modifications and accommodations to children who have physical or mental impairments that substantially limit a major life activity, including learning.

provided Student with a private Orton-Gillingham reading program. The 504 plan was scheduled to be reviewed in February 2017.

7. Student's fourth grade year was not fully successful. Although Student was capable of at least average academic performance, he finished fourth grade slightly below grade level standards. His teacher found that he had difficulty with focus and impulsivity, both of which contributed to difficulty with peers. Despite this, both his teacher and the school counselor felt that he did not have a need for continued counselling services.

2017- 2018 SCHOOL YEAR: FIFTH GRADE

8. Student's difficulties increased in fifth grade. From the first weeks of school, Student had friction with his peers. His teacher observed him to talk negatively and dismissively to peers, and Student had incidents with peers requiring intervention by school administration from the first week of classes.

9. His teacher found that Student struggled most with writing. She was aware of his dyslexia and dysgraphia diagnoses and aware that he had a 504 plan. She found that he struggled with writing assignments and that he shut down. He was constantly in motion and would not listen or taken notes. He would refuse to do writing assignments. Pleasanton amended Student's 504 plan in November 2016 to add permission for Student to use a computer for written work. Student's difficulties persisted.

10. Midway through fifth grade, Student's teacher reached out to the school's counselor, the vice-principal, and the principal about getting additional support for him. Student had become more aggressive and externalizing. Student's teacher saw him as frequently angry in class and viewed statements he had made to other classmates as racist and sexual in nature. She also contacted the school counselor, who restarted his social skills counseling in February 2017. Student's teacher suspected that Student was hyperactive or had an attention deficit, but did not raise the issue other than with

Student's prior teacher. On March 14, 2017, Student was given a half-day in-school suspension for making an obscene gesture behind another student. Parent believed that Student was actually celebrating a good grade.

11. There were weekly meetings at the elementary school where staff would discuss students who were having issues at school. The elementary school psychologist had noted Student's struggles, and believed that he should be formally assessed before middle school. Student was referred⁴ for a psychoeducational assessment for special education services, which would include an academic assessment and health study update.

The April 2017 psychoeducational assessment

12. The school psychologist conducted the psychoeducational assessment. Parent provided her with the January 2016 letter from Student's pediatrician and a heavily redacted copy of the neuropsychological report. The provided portion of the report consisted only of two of its 14 pages, reporting the reason for referral and part of a sentence regarding Parent's pregnancy. The psychologist did not ask Parent to provide the entire report, but believed it would have been useful to have its information to get a more complete picture of Student.

13. In addition to record review, the psychologist sought input from Parents

⁴ The record conflicted as to whether Pleasanton staff referred Student or whether the assessment was at Parent's request. Parent and Student's fifth grade teacher both testified that the assessment for a specific learning disability was at Parent's request, which aligns with the charge given the assessor. Other Pleasanton personnel testified that Pleasanton initiated the assessment. The record lacks any documentation of Student's referral.

and Student's teacher, observed Student in class and in unstructured time, and conducted standardized testing. She administered the Behavioral Rating Inventory of Executive Functioning, the Wechsler Intelligence Scale for Children, 5th Edition, the Test of Auditory Processing Skills, the Comprehensive Test of Phonological Processing, the Beery-Buktenica Developmental Test of Visual Motor Integration, the Wechsler Individual Achievement Test, 3rd Edition, and the Gray Oral Reading Test.

14. The purpose of the referral was to see if Student qualified for special education services due to a specific learning disability. The psychologist's interpretation of the testing found that Student demonstrated average or above-average abilities in most areas. Student tested at high average in working memory and processing speed, although he tested in the low range in the comprehension subtest, which looked at his ability to answer "how" or "why" questions. The psychologist noted that he made off-the-cuff or silly responses in that subtest.

15. Student's auditory processing skills were average, although his phonological processing skills were generally below the median. His motor skills were also average, as were his academic achievement levels, his oral reading skills, and his spontaneous written language skills. Student's classroom performance was not up to that standard, however, as the report noted that Student's current grades indicated that he was at the lowest level in numerous areas, including writing, mathematics, and critical reasoning.

16. The striking aspect of Student's assessment was the differing responses given by Student's fifth grade teacher and by Parent. On rating scales for executive functioning, behavior, social skills, and emotional development, they gave markedly different reports for Student's performance and abilities. Parent reported that Student displayed no significant difficulties in any area.

17. According to the assessment report, Student's fifth grade teacher

reported that Student's behavior was clinically significant, suggesting a high level of maladjustment, in 22 areas of functioning and development. The teacher's scales reported, among others, that Student had severe deficits in behavioral regulation, emotional regulation, hyperactivity, attention, aggression, anger control, bullying, negative emotionality, and resiliency. However, both his teacher and his Parent reported that his anxiety levels were average.

18. The school psychologist's report found that Student did not qualify for special education services as a student with a specific learning disability because there was no severe discrepancy between his intellectual abilities and his academic achievement. She noted that Student's executive functioning, aggression, anger control, bullying, attention issues, and hyperactivity were "major behavioral areas of concern that should be addressed in the future." The school psychologist emailed a copy of her report to Parent before the IEP team meeting.

19. Student's difficulties with his peers continued through this period. Student's teacher felt she needed additional support to manage Student. For a few weeks, Parent would come to school and pick up Student during lunch and recess so that he would not get into trouble with his peers during such unstructured time. The psychoeducational assessment reported that Student had had both in-house and formal home suspensions for improper actions and for making negative and inappropriate comments to peers. Student was suspended on May 18, 2017, for one and a half days for willful defiance after a dispute with his fifth grade teacher.

May 25, 2017 IEP Team Meeting

20. An IEP team meeting was convened on April 20, 2017, but no proceedings were held. An actual meeting was held on May 25, 2017. Prior to that meeting, Parent informed Pleasanton that Student had been diagnosed with attention deficit/hyperactivity disorder, and the school psychologist received an email from

Student's private psychologist, who began working with Student in April of 2017. Student's private psychologist reported her opinion that Student had anxiety, dyslexia, hypothyroidism, and attention deficit hyperactivity disorder. She noted that his parents reported that he procrastinated and sometimes gave up if a task was difficult. She requested that the IEP team support Student's weaknesses in academic, social, and emotional functioning. The school psychologist presented her psychoeducational assessment, which was discussed by the team.

21. At the IEP team meeting, the team discussed Student's poor academic performance in reading and writing as well as his difficulties with peers. Parents requested support for Student in class because they felt his difficulties there stemmed from being overwhelmed due to not understanding what he was asked to do. The team noted that Student had a diagnosis of ADHD, but focused on supporting Student with accommodations under his 504 plan.

22. Student would transition to middle school at the end of fifth grade. The middle school vice principal noted that staff at the middle school would meet in the fall to discuss accommodations and changes to Student's 504 "behavior plan" which allowed him to go to the principal's office when upset. Parents asked if the middle school would let Student attend on a split schedule with Fusion Academy, a non-public school that offered one-to-one instruction. They proposed that Student would take language and math classes at Fusion and start his day at middle school with third period. The vice principal of the middle school was receptive to the idea.

23. The IEP team meeting was not completed in May 2017. Although the team discussed Student's possible eligibility as a student with a health impairment, Pleasanton was "not ready" to make an offer of a free appropriate public education. The meeting was adjourned without another date being set.

24. The school psychologist did not revise her report prior to the IEP team

meeting after receiving the email from Student's psychologist, but she produced an addendum report on June 2, 2017. The addendum recommended that Student should qualify for special education services due to the health impairment of ADHD. In large part, the qualification was based on the fact that Student's private psychologist had made that finding as a clinical diagnosis.

25. The addendum also considered Student's eligibility as a pupil with an emotional disturbance. Although Student's negative behaviors had escalated during fifth grade, the school psychologist did not find that he displayed the characteristics of an emotional disturbance over a long period of time and to a marked degree. She found that Student's behaviors did not significantly impact his ability to learn, that he did not have an inability to maintain satisfactory relationships, and that he did not manifest depression or physical symptoms of emotional problems.

2017- 2018 SCHOOL YEAR: SIXTH GRADE AT MIDDLE SCHOOL

26. Student began the year attending both Fusion and the middle school, pursuant to the plan proposed at the May 25, 2017 IEP team meeting. Student's behaviors persisted, however, and he was suspended at the middle school after only five days of the new school year. Pleasanton changed the suspension to Saturday school after Parent explained Student's side of the event. Because Student was moved from the physical education class where the incident occurred, Parents began to plan to move Student to Fusion full-time.

27. Student attended Pleasanton's middle school from August 14-28, 2017. On August 25, 2017, Student's case manager at the middle school proposed that the IEP team meeting be reconvened on September 7, 2017. Student served his Saturday school punishment on August 26, 2017. Parent responded to the case manager's email on August 28, 2017, reporting that she had returned the scheduling notice to the office and looked forward to meeting with the team. On August 29, 2017, Parents gave notice to

Pleasanton that they were withdrawing Student from Pleasanton and placing him full-time at Fusion.

The September 7, 2017 IEP Team Meeting

28. At the IEP team meeting, the middle school's psychologist reviewed the prior school psychologist's report and addendum and recommended that the team find Student eligible for special education due to ADHD. The team wrote goals for Student and agreed upon accommodations to help Student. The Pleasanton members of the team made an offer of services consisting of 223 minutes per week of group specialized academic instruction in English language arts in a co-taught class with resource support, 223 minutes per week of resource lab group instruction, and 30 minutes per week of individualized counseling services with the middle school psychologist.

29. Parents signed the IEP to note their attendance only and took the IEP home to review. In response to an email from Student's case carrier, Parents wrote on September 22, 2017, to inform Pleasanton that they did not agree with Pleasanton's offer of FAPE and that they had given a 10-day notice that they would be seeking reimbursement of tuition for the placement at Fusion. Parents did not agree to any part of the IEP or to Student's eligibility category for special education services.

Attendance at Fusion Academy

30. Full-time enrollment at Fusion did not immediately solve all of Student's academic and social difficulties. Classes at Fusion were conducted in one-to-one sessions with instructors, and for the remainder of the day at Fusion students would work in the Homework Cafe. Other than time spent doing parallel work in the lab, the student body at Fusion would only socialize during school outings or events.

31. Student's classwork at Fusion followed a non-traditional curriculum based upon the California state standards and his instruction was paced to his ability. The

classes were led by “teacher-mentors” and designed to be free of distractions and stressors. However, Student initially refused to attend school and classes, and he would walk out of classes. Fusion worked with Parents and Student’s therapist to set up a “dollar” reward system to give him an incentive to stay in class. Student was scheduled to receive counselling at Fusion, but it was cancelled. He attended a Community Minds elective class designed to help him with his social skills.

32. Student filed for due process against Pleasanton on December 8, 2017. The matter was resolved by a settlement agreement dated March 27, 2018. The agreement included a waiver of any claims by Student through the end of the 2018 extended school year, except for any challenge to an offer of FAPE made for the 2018-2019 school year.

33. On April 12, 2018, Fusion convened a ‘commitment exercise’ meeting with staff, Student’s Parent, and Student’s private therapy to discuss Student’s time at Fusion and whether he should continue there. Fusion staff noted that his behaviors were interfering with his learning and that he had been refusing to work over the last month. One teacher noted that Student would sing and dance in class to avoid work, and that he would show defiant behavior. Student was informed that he needed to improve his behavior to be allowed to return in the fall, and Fusion implemented changes to Student’s program. Pleasanton was not told about the meeting prior to or at the subsequent IEP team meetings.

34. Fusion gave Student a new primary teacher in April 2018. This teacher found that Student still had challenges with anxiety, eloping from instruction, negative self-image, and difficulty in maintain attention and focus. She noted that he needed redirection every seven to 10 minutes, would exhibit work refusal, and would become upset by corrective comments. In April, Fusion replaced their “dollar” system with a point system which worked better because it gave Student greater access to his earned

rewards.

35. Pleasanton contacted Parents on April 10, 2018, to provide notice of an IEP team meeting for the 2018-2019 school year to be held on April 30, 2018. Parents signed a release of pupil record information on April 11, 2018, to authorize Pleasanton to obtain Student's educational records from Fusion. The middle school psychologist contacted Fusion on April 13, 2018, forwarding the signed release form. She requested to arrange an observation of Student and a time to talk with his teachers about his progress. Pleasanton's case carrier also sent an email on April 16, 2018, with the same request.

Observations at fusion Academy

36. Pleasanton's case carrier observed Student at Fusion on April 18, 2018, in his science class. She observed Student being on task, responsive to his teacher, and generally well-behaved, although he did sing and act silly at one point. Afterwards, the teacher told her that this was the best the teacher had seen Student behave in class. The teacher stated that Student was well-aware that he was being observed. The case carrier then tried to get information from the teacher about Student's performance levels, but the teacher told her that that information had to come from Fusion's Assistant Director. The Assistant Director had told the case carrier in an April 16, 2018 email that the teachers could not "debrief" after the observations because they had back-to-back classes.

37. After observing science class, Pleasanton's case carrier followed Student to the Homework Café. Student was the only pupil there for most of the 15 minutes she observed. Fusion staff came and pulled the case carrier from the Homework Café because she was unaccompanied. When Fusion's Assistant Director arrived, they returned to the Homework Café but spent the remainder of the time talking rather than observing Student.

38. The middle school psychologist tried to schedule her observation during Student's English and math classes, but Student's schedule changed due to the completion of his English class unit. As a result, the middle school psychologist did not see academic class time and instead observed Student in his Community Minds social skills and music classes. She had hoped to see Student "under pressure," and did not have an opportunity to set a second observation prior to the IEP team meeting.

39. In her observation on April 26, 2018, the middle school psychologist noted that Student still had difficulty with restlessness and fidgeting. He did interact with his teachers and was responsive to instruction, but would also interrupt and get off-topic. The middle school psychologist described the Community Minds class as being like counseling, and noted that Student participated actively and had a good rapport with the teacher. On one activity, Student kept at work the whole time and finished all the questions. The middle school psychologist did not observe the music class for very long.

Input From Fusion Academy Teachers

40. Both the middle school psychologist and Pleasanton's case carrier requested information about Student from his teachers. Each had their own forms, which were completed by most of the teachers and returned shortly before the IEP team meeting. They sought input on Student's skills in reading, writing, and mathematics, as well as information about his executive functioning and behavior.

41. Fusion returned the teacher input forms by email, and provided information about Student's grades and his results on the standardized Measure of Academic Performance testing. Student was receiving As and Bs as grades, but his results on the standardized testing put him below average, particularly in reading. His teachers also reported difficulties with him in class, noting that he would become frustrated and refuse to do work.

42. One teacher reported that Student liked to direct himself and would work independently, but was resistant to suggestions and unwilling to edit and redraft. He found that Student got along well with other students and with adults outside of class, but could be oppositional in class. His poor behavior ranged from difficulty focusing to attempts to stall or get off focus to outright refusal to work. On another form, the teacher noted that Student sometimes had "left early" from class, and that his refusal to work worsened as the year progressed. He saw the most difficult aspect for Student was his motivation, as Student did not see a point to school.

43. Another teacher reported that Student "explodes in a rage" a third of the time when criticized and had angry outbursts when he claimed he was bored. He displayed a short attention span "only when he doesn't like what we are doing." She noted that his abilities when well-regulated were considerable, but he became angry or frustrated and would pretend to be incapable. She reported that he needed "a lot of hand-holding to keep his attention focused." Her views were echoed by another teacher, who wrote that Student did not want to be in class and "states this every day," but he was very capable when he wanted to focus. Student's Community Minds instructor reported that "[h]e has a lot of trouble being taught. It appears to be more of an emotional issue rather than a cognitive one."

The April 30, 2018 IEP Team Meeting

44. The initial IEP team meeting for planning Student's 2018- 2019 school year was held on April 30, 2018, and attended by Parent, her attorney, Pleasanton's case carrier, the middle school psychologist, Pleasanton's middle school principal, a general education teacher from the middle school, Pleasanton's attorney, and Fusion's assistant director. The meeting time for that day was limited to an hour because of time constraints.

45. The team discussed the fact that Student had been diagnosed with ADHD,

asthma, anxiety, dyslexia, and dysgraphia. Parent shared how Student had had a rough time at Fusion, but was settling in. She distributed a brief letter from Student's psychiatrist, who recommended that Student be maintained in his placement at Fusion so that he could "continue progressing while managing the challenges of anxiety and ADHD." The psychiatrist did not observe Student at Fusion.

46. Parent also provided a letter from Student's private therapist, who had formerly been the on-site therapist at Fusion. In the letter, the therapist stated that she and the family were requesting that Student stay at Fusion because he needed a small and structured school environment to succeed. The letter noted that Student had had an increase in his "behavior and anxiety" per information in his daily reports from Fusion, but attributed it to a change in Student's reward point system. She stated that she was hopeful that Student's behavior would improve at school.

47. Parent discussed with the IEP team a set of charts she had made reporting on Student's behavior at Fusion from information she had gathered from the rewards system and teacher reports. The IEP team meeting report states that Parent was unwilling to provide the data and the behavior rating forms she used to prepare the chart. Parent did not provide that information to Pleasanton for use in the IEP process. Parent was willing to let Pleasanton conduct additional assessments, as no new assessments had been done for the current IEP team meetings.

48. The concluding notes to the IEP state that Fusion would provide the IEP team with Student's work samples, testing data, and information from the standardized testing prior to the next meeting. However, shortly after the IEP team meeting Parent revoked consent for Pleasanton to contact Fusion directly.

49. A May 10, 2018 email from Parents' counsel reminded Pleasanton of that fact, and stated that Pleasanton had had the opportunity to make observations and request information from Fusion prior to the IEP team meeting. Although Fusion was

gathering work samples per the request made at the meeting, all communication with Fusion was to be done through Student's counsel. Counsel did share with the team copies of the charts Parent had discussed at the meeting and some goals and tools for Student's behavior regulation. Fusion prepared and sent home daily summaries of Student's performance and behavior, but Parent never provided them to Pleasanton for consideration by the IEP team. Introduced as an exhibit at hearing, the summaries comprised 115 single-spaced pages of class-by-class reports on Student.

The May 24, 2018 IEP Team Meeting

50. The IEP team meeting reconvened on May 24, 2018, with the same team members plus Pleasanton's special education program specialist, who had missed the first meeting. The team reviewed the work from the previous meeting and discussed Student's present performance levels and goals in academics and behavior. Parent raised concerns about Student's nervousness in class and the difficulties he faced in writing out his ideas due to dysgraphia.

51. Parent reported to the IEP team that Student had very negative memories of attending school at Pleasanton, and said he was afraid to return there. Parent reported that teachers at Pleasanton had made negative comments about Student that continued to negatively impact his social-emotional wellbeing. Parent worried that Pleasanton was planning on just "plopping" him back into public school and said Student would refuse to return to Pleasanton.

52. The IEP team discussed a continuum of possible placements for the next year, which primarily consisted of keeping Student at Fusion or returning him to Pleasanton for self-contained, co-taught, or special day classes with counseling and behavior services. Counsel for Pleasanton asked if Parent wished to consider another non-public school, as Fusion was not an accredited non-public school. Ultimately, the Pleasanton members of the IEP team decided that Pleasanton's public school could

meet Student's needs. The team saw Student's primary need as smaller classes and a low teacher-student ratio to cope with his behavior and anxiety, and Pleasanton believed it offered that in its co-taught classes.

53. The team discussed how to support Student's transition back to public school to cushion the dislocation from going from a 1:1 teaching environment to a comprehensive middle school site. The IEP notes record that the team recognized that the transition back would be "challenging." The team proposed having Student meet with his primary teacher and the middle school psychologist prior to the start of school to make him more comfortable, and discussed strategies for dealing with school refusal. The team floated the ideas of initially using a shortened day and building up Student's "stamina" for public school. The team decided to offer a self-contained class rather than a co-taught class to provide a smaller, more structured environment. The IEP team discussed offering a check-in/check-out system for Student to provide feedback and incentives for good behavior at school, although they did not finalize the system at the meeting. A proposed form for the check-in/check-out system was attached to the IEP team meeting report that was sent to Parents. Pleasanton's general education teacher remembered Parent being heartbreakingly upset about Student returning to public school and adamant that the transition plan was inadequate.

54. The offer of FAPE by Pleasanton consisted of 233 minutes per week of co-taught math with resource support, 446 minutes per week of specialized English language arts instruction, 233 minutes per week of resource lab, and 30 minutes per week of individual counseling with the school psychologist to support Student's social and behavioral needs. Student would also receive accommodations such as preferential seating, extra time on tests, breaks during assignments, verbal praise, and reduced questions to show mastery. In addition, Student would be allowed to provide responses to tests verbally.

55. Parents expressed the hope that Student would return to a public school, but felt that he would need a better transition plan. Parent felt that Student was not ready to be in a class with that many other students. The IEP team provided the IEP document to Parent via email.

56. Parent sent a response on September 21, 2018, which was attached to the IEP team meeting report. The response stated that the document reported outdated present levels of performance and baselines, despite Parent's willingness to have Student assessed. Parent noted that Student struggled with math word problems due to dyslexia and was benefitting from the services of a learning specialist on staff at Fusion. Similarly, Parent said that Fusion had a therapist on staff who helped Student with frustration issues and behavior management, and that the Community Minds class at Fusion helped him with social skills.

57. Parent noted that Student's private therapist and psychiatrist both provided letters which supported Parent's view that "the general education classroom is not an appropriate placement for [Student] right now." Although Student still struggled in the classroom, Parent felt his behaviors improved thanks to the one-on-one teaching at Fusion.

58. Parents' counsel sent another 10-day notice letter on June 14, 2018, rejecting the offer of FAPE and stating that parents would seek reimbursement from Pleasanton for the cost of attending Fusion for the 2018-2019 school year.

CREDIBILITY

59. Parent was clearly devoted to and proud of Student. To a significant degree, this tended to bring some of her testimony into question. Parent described Student as crippled by severe dyslexia which went unnoticed by his teachers. As a result of his dyslexia, she recounted, Student was mocked by his peers and learned to lash out in response. However, the record reflects that Student's dyslexia was picked up

reasonably early in his school career; not later than 2015. Further, the testing conducted on Student, including that conducted by Student's neuropsychologist and Student's work in the Orton-Gillingham system, verified that he has dyslexia but it is not as severe as Parent described. Parent's narratives were driven by concern for and identification with her son. Similarly, she mixed having told someone something with their knowledge of its truth, as when she conflated having complained to the middle school principal that Student was being bullied with the Principal knowing that Student was bullied.

60. Student presented Dr. Robert Field, a licensed psychologist who runs an outpatient program in a camp setting for children with anxiety, ADHD and other similar difficulties. Student attended Dr. Field's program in the summer of 2018, after the IEP team meetings at issue here. Student continued with an afterschool program into the 2018-2019 school year, as well. Dr. Field's opinion is that Student does not have a learning or processing disability, but that he has an emotional disturbance. Dr. Field's opinion of Student's needs and behavior was formed through his interactions with and therapeutic treatment of Student in the outpatient program. His testimony did not clearly distinguish his view of Student's needs based upon that knowledge from his opinion of Pleasanton's obligations at the time of the IEP team meetings.

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

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

U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁶ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a)) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

⁶ All subsequent references to the Code of Federal Regulations are to the 2006 version.

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.)

4. The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases were applied to define the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

5. The Supreme Court’s recent decision in *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988] reaffirmed that to meet its substantive obligation under the IDEA, a school district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. The Ninth Circuit further refined the standard in *Antelope Valley, supra*, 858 F.3d at pp. 1200-1201, stating that an IEP should be reasonably calculated to remediate and, if

appropriate, accommodate the child's disabilities so as to enable the child to make progress in the curriculum, taking into account the child's potential.

6. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56 62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Schaffer*); see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Student, as the complaining party, bears the burden of proof in this case.

ISSUE 1A:⁷ FAILURE TO ASSESS OR OBTAIN INFORMATION IN ALL AREAS OF SUSPECTED DISABILITY

7. Student contends that Pleasanton had an obligation to assess Student

⁷ In its initial briefing, Pleasanton contends that Parents' refusal to consent to eligibility for special education in response to any of its offers of FAPE relieves it of any obligation to provide FAPE to Student. The contention is unpersuasive. Ed. Code § 56346 concerns obtaining informed consent from parents before initiating special education services or filing to defend an offer of FAPE. This does not absolve a district of its responsibility to make an adequate offer of FAPE to a student not previously found eligible for special education services.

prior to the April 30, 2018 IEP team meeting. He asserts that the April 20, 2017 psychoeducational assessment was inadequate because it did not apply the response to intervention methodology to see if Student met the standard to qualify as a student with a specific learning disability. Further, Student had displayed signs of behavioral, academic, and emotional problems that should have led Pleasanton to conduct additional assessments, including a functional behavior assessment.

8. A school district has an affirmative, continuing obligation to identify, locate, and evaluate all children with disabilities residing within its boundaries. (20 U.S.C. § 1412(a)(3).) This duty is commonly known as "child find." The duty is not dependent on any action or inaction by parents. A school district must actively and systematically seek out all individuals with exceptional needs who reside in the district. (Ed. Code, § 56300.) Child find applies to those children, among others, who are suspected of being a child with a disability and in need of special education and related services, even though they are advancing from grade to grade. (34 C.F.R. 300.111(a).) Violations of the obligation to assess a student are procedural violations of the IDEA. (*Department of Educ., State of Hawaii v. Cari Rae S.* (D.Haw. 2001) 158 F.Supp. 2d 1190, 1196.) A procedural violation of the IDEA results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii).)

9. The suspicion that a student may have an impairment that is affecting the student's educational performance, and requires special education, is sufficient to trigger a need to assess. (*Park v. Anaheim Union High School Dist., et. al.* (9th Cir. 2006) 464 F.Supp. 1025, 1032, citing Ed. Code, § 56320.)

10. School districts must conduct appropriate reevaluations of a student with a disability if (1) the district determines that the educational or related services needs of

a student warrant reevaluation or (2) the student's parent or teacher requests a reevaluation. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a); Ed. Code, § 56381, subd. (a)(1).) Districts are obligated to reassess students at least once every three years but no more than once per year unless the parent and district agree otherwise. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).)

11. Student entered into a settlement agreement with Pleasanton that waived all claims through the end of the 2018 extended school year, except for any challenge to an offer of FAPE made for the 2018-2019 school year. Accordingly, any claim of inadequacy of the April 20, 2017 psychoeducational assessment was waived. No carve-out was made to the waiver regarding the use of any prior assessments in the process of making a 2018-2019 FAPE offer.

12. Student contends that Pleasanton should have conducted other assessments prior to the April 30, 2018 IEP team meeting, including a functional behavior analysis, an educationally related mental health services assessment, and a health assessment. To prevail, Student must show that he had not been so previously assessed within a reasonable time and that there existed a reason to assess him.

13. The settlement agreement is also relevant here. The agreement expressly prohibited any assessments by Pleasanton, with the exception that a functional behavior analysis could be conducted in fall 2018 if Student returned to public school in Pleasanton. By its terms, the agreement prohibited any assessments prior to the April 30, 2018 IEP team meeting.

14. However, agreement between parents and districts do not trump the requirements of the IDEA. If Student required assessment, it would have been a procedural violation of the Act if Pleasanton did not assess him.

15. Pleasanton had no knowledge that would compel it to conduct a health assessment. Although it had knowledge that Student was receiving medication for

hypothyroidism and psychotropic medication for his ADHD, Pleasanton had no indication that there were any unknown health concerns affecting his academic performance. Similarly, Pleasanton was aware of Student's emotional and behavioral lability and had evaluated that as part of the April 20, 2017 psychoeducational assessment. Since that time barely a year had passed and no significant changes to Student's mental or emotional state had occurred. Student encouraged the view that he had improved in his time at Fusion, and Pleasanton's observations in the Spring 2018 did not show any unknown behavior issues warranting a new assessment.

16. Pleasanton's knowledge was circumscribed by the fact that Student was attending Fusion during the time at issue and it was only updated about Student during the brief window prior to the April 30, 2018 IEP team meeting.

17. Student's behavioral problems were well known before he left Pleasanton's schools and continued during his time at Fusion. Student had significant conflict with his fifth grade teacher and was disciplined for improper actions with classmates. At Fusion, the reports given by his teachers disclosed defiant behavior, leaving class, hypersensitivity to criticism, and poor motivation. Student's contention that such friction and misbehavior was sufficiently serious to require a functional behavior analysis presents a colorable claim.

18. Assessing Student's behavior was clearly on the minds of the parties when they fashioned their settlement agreement, as it was the sole exception to the bar to assessments by Pleasanton. At the same time, Student faces two significant impediments to prevail on this claim.

19. First, Parents affirmatively concealed material information from Pleasanton that might have been decisive in making the call whether or not to conduct a functional behavior analysis. Pleasanton was aware that there had been problems in the past, but could believe that Student was just a bad match with his fifth grade

teacher and that the disciplinary problems were, as Parent explained, misunderstandings and jokes gone wrong.

20. However, while Student was enrolled at Fusion, Parents received daily summaries of Student's progress and behavior which they did not offer and which they refused a direct request to provide. In the 115 single-spaced pages of daily reporting, Student was noted to storm out of class, become hostile, use inappropriate language, be combative and disrespectful, yell continuously, yell or sing into the faces of adults, be personally insulting, repeatedly snap his fingers in an adult's face, and belittle his teachers. It is difficult to attribute these actions to outside influences or distractions in a one-on-one setting. These events were not disclosed to Pleasanton.

21. Additionally, Parents did not disclose to the IEP team that Fusion had to stage a commitment exercise with Student just a few weeks prior to the IEP team meeting because they were concerned that he did not want to learn and his behaviors were interfering with their ability to teach him.

22. Secondly, Student does not have any evidence or testimony in support of his contention that Pleasanton should have conducted a functional behavior analysis of Student. No educator testified that a behavior assessment should have been conducted based upon the information available to Pleasanton. Parents did not request a behavior assessment, no staff at Fusion recommended it, and none of Student's treating professionals advised it.

23. Student presented testimony from Dr. Robert Field. Student attended his camp in the summer of 2018 and an afterschool program in the following fall. Dr. Field opined that the IEP team should have arranged to give Student a functional behavior analysis to determine the underlying cause of his behaviors.

24. Dr. Field gave his opinion from his perspective and his greater knowledge of Student, which was different from that possessed by Pleasanton in April and May

2018. He reviewed information not available to Pleasanton and hosted Student for several weeks in a therapeutic camp. His opinion cannot be separated from its reliance upon information not available to Pleasanton prior to the IEP team meeting or to the IEP team at the IEP team meetings. Accordingly, his opinion cannot be given substantial weight.

25. There is no persuasive evidence that Pleasanton needed to repeat its psychoeducational assessment or conduct a health or educationally related mental health services assessment. Student's behavior was often inappropriate, but the IEP team did not have knowledge indicating that it was more severe or even as bad as they had been at Pleasanton. Given that potentially determinative information was withheld from Pleasanton and that no educator has come forth to endorse Student's position that Pleasanton had sufficient reason to suspect that Student's misbehavior indicated an impairment that was affecting his educational performance, it cannot be found that Pleasanton denied Student a FAPE by failing to conduct a behavior assessment.

ISSUE 1B: PREDETERMINING STUDENT'S PLACEMENT FOR THE 2018-2019 SCHOOL YEAR

26. Student contends that Pleasanton predetermined that it would only offer placement at a public school.

27. Predetermination of a student's placement is a procedural violation that deprives the student of a FAPE. (*Bd. of Educ. of Township High School Dist. No. 211 v. Lindsey Ross* (7th Cir. 2007) 486 F.3d 267.) Predetermination occurs when an educational agency has decided on its offer prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP meeting with a "take it or leave it" offer. (*W.G. v. Board of Trustees of Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1483-1484; *J.G. v. Douglas County*

School Dist. (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.)

28. Student argues that Pleasanton failed to consider the opinions of Student's private therapist and psychiatrist who submitted letters recommending that Student be kept in his placement at Fusion. Student acknowledges that Pleasanton did not need to follow their recommendations, but that it must consider them. Student contends that Pleasanton put the onus on Parent to suggest possible non-public school options. Most significantly, Student contends that the program specialist testified that the Pleasanton members of the IEP team decided on Student's placement before the IEP team met.

29. Pleasanton contends that it did not present its offer of placement as a take it or leave it proposition, but engaged Parent in a lengthy discussion of Student's needs, the continuum of placements and services available, and what type of setting would best meet his needs.

30. Witness testimony and the meeting notes both reflect active discussion of Student's placement. Student concedes as much when he notes that Pleasanton's counsel asked Parent for suggestions of non-public schools, other than Fusion, that were necessary to meet Student's needs. Pleasanton staff believed, based upon the information they held, that Student's educational and emotional needs could be handled in a less restrictive environment than a non-public school. They agreed with Student's private therapist insofar as she recommended that Student be educated in a small and structured environment, but felt that that could be offered within a public school.

31. From the evidence presented, Pleasanton did not predetermine Student's placement. Student asserts, however, that Pleasanton's program specialist admitted during her testimony that Pleasanton predetermined Student's placement.

32. The program specialist attended only the May 24, 2018 IEP team meeting,

and testified that she recalled 30 minutes of discussion of a continuum of placements with full participation by Parent. Review of her testimony did not uncover any statement reporting that the placement had been predetermined by Pleasanton members of the IEP team. Student does not report the exact words he believes the program specialist used in her testimony, but contends in briefing that the program specialist said “the site team discussed and decided on placement at [Pleasanton Middle School] before the IEP meeting.” That summary of her testimony is not accurate.

33. As that testimony cannot be found, Student’s assertion cannot be credited. Student has not carried his burden of proof to establish that Pleasanton predetermined its placement offer for the 2018-2019 school year.

ISSUE 1C: IMPEDING PARENT’S PARTICIPATION BY FAILING TO ADDRESS TRANSITION CONCERNS

34. Student contends in briefing that he needed a cognitive behavior therapy based-approach to transition him to non-public school because of his anxiety and school refusal.

35. If appropriate, an IEP must also include a provision for the transition of a child from a special class or nonpublic, nonsectarian school into a regular class in a public school for any part of the school day, including a description of the activities provided to transition the child into the regular program. (Ed. Code, § 56345(b)(4); *T.B. ex rel. Brennise v. San Diego Unified School District* (9th Cir. 2015) 806 F.3d 451, 462-463.) Where appropriate, an IEP shall include provision for transition into the regular classroom program if the pupil is to be transferred from a special day class or nonpublic, nonsectarian school into a regular class in a public school for any part of the school day.

36. Student is correct that the offer of FAPE did not include a transition plan based on a cognitive behavior therapy-based approach to help him return to public school. That is a question of methodology, however, and does not address the question

of whether Parent was significantly impeded in participating in the formulation of Student's educational program in regards to his transition plan.

37. There was extensive testimony about the issue of transition and the IEP team meeting report's notes includes six separate entries recounting discussion of the planning for Student's return to public school. Parent was clearly upset by the plan to return Student to public school, but it is clear that the IEP team addressed transition planning and it is clear that Parent participated in the discussion. Student has not met his burden of proof on this issue.

ISSUES 1D, E, F, & G: INAPPROPRIATE PLACEMENT / LACK OF APPROPRIATE SUPPORT

38. Student contends in issue 1D that the May 24, 2018 IEP's offer of placement was inappropriate because it put Student in a general education setting for 65 percent of the school day, and contends in issue 1E that the offer was inappropriate because it lacked sufficient supports for his anxiety, ADHD, dyslexia, and dysgraphia. Similarly, Student asserts in issue 1F that the offer lacked appropriate services to meet his behavioral needs and in issue 1G that the offer lacked appropriate services to meet his needs due to anxiety.

39. An IEP for a disabled child must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Endrew F.*, *supra.*, 137 S.Ct. at p. 993) The sufficiency of any educational plan is measured at the time that it was created. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; *Tracy N. v. Dept. of Educ., State of Hawaii* (D. Hawaii 2010) 715 F.Supp.2d 1093, 1112.) This evaluation standard is known as the "snapshot rule." (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 439.) Under the snapshot rule, the decision concerning an IEP is not evaluated retrospectively or in hindsight. (*Ibid.*; *JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801.) In reviewing the sufficiency of an IEP's offer of

FAPE, the snapshot rule looks at what is reasonable given the information available to the team at the time.

40. 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. (See *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314. For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) An IEP should remediate and, if appropriate, accommodate the child's disabilities so as to enable the child to make progress in the curriculum, taking into account the child's potential. (*Antelope Valley, supra*, 858 F.3d at p. 1201)

41. The Supreme Court has noted that, "[t]he core of the [IDEA] ... is the cooperative process that it establishes between parents and schools." (*Schaffer, supra*, 546 U.S. 56 at p. 53.) However, a school district has the right to select a program and/or service provider for a special education student, as long as the program and/or provider is able to meet the student's needs; IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D.Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323; *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 Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education . . . designed according to the parents' desires."], citing *Rowley, supra*, 458 U.S. at p. 207.)

42. Because Student has undeveloped social skills, he asserts that he cannot learn them experientially by being placed in a general education setting. He contends

that being placed in a general education environment for 65 percent of the day will require him to match a pace that he cannot manage, overwhelm him with stressors, and worsen his lack of focus and bad behaviors. As part of his argument, Student states that the IEP team relied upon the April 2017 psychoeducational assessment for their picture of Student's needs and abilities. Accordingly, they lacked sufficient or proper information to craft Student's program.

43. The IEP team's lack of full knowledge about Student's needs and abilities in April 2018 is more attributable to the information withheld from them than to their reliance on the 2017 psychoeducational assessment. Rather than sharing with and informing the team, Parents closely guarded material information. Whether this was because of a heightened sensitivity to personal privacy or to prevent disclosing that Student's time at Fusion had not been completely positive, its end result was an IEP developed with less than a complete picture of Student.

44. Student was getting good grades. Classroom observations presented him as responsive to instruction, actively participating, and interacting well. Pleasanton did get some cautionary information from Student's teachers at Fusion before Parents cut off direct communication. They noted he could be oppositional, would stall or refuse work, explode in rage, and needed a lot of management to stay focused.

45. Pleasanton had an image of a child capable of good work, perhaps rounding into maturity, who would sometimes melt down or become defiant. He was not ready to be fully mainstreamed, and, in the course of discussing his program, the IEP team changed its placement offer from a co-taught class to a self-contained class for language arts because the team decided that Student required that more restrictive environment. Applying the snapshot rule to the information available to the IEP team, the proposed program was designed to meet Student's needs, comported with his IEP, and was reasonably calculated to provide him educational benefit in the least restrictive

environment. Student would receive special education in the classes with which he had difficulty, and be in general education for electives and unstructured time. Dr. Field testified that Student should not be placed in general education for the majority of his school day, but his opinion is based on information which was not before the IEP team. Student has not provided persuasive evidence that a placement offering him mainstreaming for 65 percent of his school day was inappropriate.

46. Student contends that the program lacked sufficient supports for his anxiety, ADHD, dyslexia, and dysgraphia. Student asserts that he was only given 30 weekly minutes of counseling and some minor accommodations to address those issues, which had proven insufficient to keep him secure and out of trouble in fifth grade.

47. At the time of the April 30, 2018 IEP, Student had been at Fusion, which Pleasanton was told was a necessary placement to help Student overcome his behavior issues, for nearly a year. His bad behaviors were apparently ebbing, his engagement with his teachers was generally positive, and his academic performance was superior. Instead of the group counseling provided to him at elementary school, Student was to receive 30 minutes of individual time with a psychologist to help him with his anxiety, ADHD, and academic impairments. The co-taught, self-contained, and resource classrooms offered to Student would also provide behavioral intervention not available in general education settings. Further, Student would receive classroom accommodations and specialized academic instruction to help him cope with his dyslexia and dysgraphia. In light of the information Pleasanton had, the offer of FAPE did not fail to address Student's needs and did provide him with educational benefit in the least restrictive environment.

48. Next, Student asserts that the check-in/check-out system proposed by Pleasanton was an inadequate replacement for the points system used at Fusion to

encourage good behavior. For that reason, Student maintains that the offer of FAPE lacked appropriate services to meet his behavioral needs.

49. As noted above, the offer of FAPE had multiple components designed to help Student overcome his challenges with behavior. Given the breadth of information Pleasanton had about the exact nature of his behavioral problems, the counselling, academic support, and accommodations in the IEP were designed to meet Student's known needs and provide him with educational benefit in the least restrictive environment.

50. Student also contends that the FAPE offer lacked sufficient services to address his needs due to anxiety. As noted in paragraph 30, *supra*, Student was offered a suite of accommodations and a carefully crafted class schedule as well as individual counselling to help him manage his anxiety. Student has failed to prove that the IEP offer was inadequate to address his needs and educational entitlement, especially given the information available to the IEP team at the time the offer was made.

ISSUE 1H: FAILING TO OFFER A CLEAR TRANSITION PLAN

51. Student contends that the placement and services offered at the May 24, 2018 IEP team meeting did not constitute FAPE because although it offered a transition plan for when Student was able to return to campus, it did not address what was to be done if Student refused to attend school.

52. IEP plans are not required to address all possible contingencies. The offer of FAPE from the May 24, 2018 IEP team meeting proposed adequate supports to help Student with his transition back to public school. The team discussed having Student meet teachers and staff prior to the start of school and discussed strategies to prevent school refusal, including starting Student on a reduced schedule. If Student did refuse to attend school, the IEP team could meet to respond to his needs at that time. Failing to anticipate all foreseeable negative outcomes does not render an offer of FAPE

inadequate. Student has failed to meet his burden of proof that Pleasanton's transition plan did not meet legal standards.

53. To the extent that Student has presented a claim that the IEP failed to properly document the transition plan that was discussed at the team's meetings in the offer of FAPE, Student alleges a procedural violation. As noted above, procedural violations result in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child, or causes a deprivation of educational benefits. Student has not set out or alleged how the failure to document the transition plan in the offer of FAPE section, in addition to the notes within the IEP report, has done any of those things.

54. If Parents were unaware of how Student's return to public school was to be eased, they would be denied their ability to participate in the decision-making process. This is not the case, however, as the record is clear that the team discussed Student's transition back to Pleasanton and that Parent participated in the discussion. Further, the elements of the plan were not unknown to Parent. Although they were not set out in the offer of FAPE, the elements of the plan and the discussions of the team were described in detail in the notes to the IEP team meeting report to adequately inform Parents. Parents were aware of what Pleasanton was offering, but they did not accept what the team proposed. In briefing, Student asserts that he required a transition plan developed from cognitive behavior therapy principles. Parent's disagreement with the methodology to be used for Student's transition plan does not establish that she was not afforded meaningful opportunity to participate in the decision-making process. Student was not denied a FAPE by failure to plan for or document his transition services as IEP team meeting notes contain sufficient information as to Pleasanton's transition plan.

ORDER

All of Student's requested relief is denied

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Pleasanton prevailed on all issues heard.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: December 18, 2018

_____/s/

CHRIS BUTCHKO

Administrative Law Judge

Office of Administrative Hearings