

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2017050795

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

ANTIOCH UNIFIED SCHOOL DISTRICT.

DECISION

Student's Educational Rights Holder filed a request for due process hearing on Student's behalf on May 16, 2017, naming the Antioch Unified School District. Administrative Law Judge Rita Defilippis heard the matter in Antioch, California, on December 19, 20, 21, 27, 28, 29, 2017, and January 19, 2018.

Nicole Hodge Amey, Attorney at Law, represented Student throughout the hearing. Also present during the hearing from Ms. Amey's law firm were Ty Amey, Director of Operations, Shanelle Snipes, Parent Advocate, and Marie Fajardo, Paralegal. Neither Student nor Educational Rights Holder (referred to herein as Parent) were present at hearing. At hearing, Parent was contacted by telephone on the record and verbally gave permission for the hearing to proceed in her absence.

Amy Levine, Attorney at Law, represented Antioch throughout the hearing. Dr. Ruth Rubalcava, Antioch's Director of Special Education, attended the hearing on Antioch's behalf most days. When she was not present, either Christine DiBerardino,

Program Specialist, or Carolyn Taylor, Program Specialist, attended the hearing on Antioch's behalf.

At the parties' request on January 19, 2018, the matter was continued to February 12, 2018, for the filing of written closing arguments. On that day the parties filed closing arguments, the record was closed, and the matter was submitted for decision.¹

ISSUES²

1. Are Student's claims involving facts and circumstances occurring or existing prior to May 16, 2015, barred by the two-year statute of limitations?

¹ The parties were ordered to submit their closing briefs by 5:00 p.m. on February 12, 2018. On February 12, 2018, Student timely submitted his brief at 4:50 p.m. and Antioch filed their brief at 5:07 p.m. On February 20, 2018, Student filed a motion to strike Antioch's brief as late. On February 20, 2018, Antioch filed a reply and asserted that Student should be ordered to pay sanctions for filing a frivolous motion. Student's request is denied as he suffered no prejudice due to the minimal delay in Antioch's submission. District's motion for sanctions is denied.

² The issues have been reorganized for purposes of analysis. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.) Student's original complaint named both Antioch Unified School District and San Francisco Unified School District and contained eight issues. Student dismissed San Francisco as a party on June 22, 2017. Only issues 4(a) and 6(a) and (b) of Student's original complaint, as to Antioch only, remained at the time of hearing. Issue 1, of this decision was added at the prehearing conference regarding Student's claims beyond the two year statute of limitations.

2. Did Antioch deny Student a free and appropriate public education during the 2014-2015 school year, beginning February 10, 2015, by failing to deliver and implement services according to Student's individualized education program?

3. Did Antioch deny Student a FAPE during the 2014-2015 school year, beginning February 10, 2015, by violating Parent's and Student's procedural rights, which impeded Parent's participation in Student's educational decision-making process and denied Student educational benefit, by:

- a. Holding IEP team meetings without Parent; and
- b. Holding IEP team meetings without all required IEP team members present?

SUMMARY OF DECISION

Student filed a request for a due process hearing on May 16, 2017. Student first contends that he is entitled to relief for claims concerning facts and circumstances which arose more than two years before he filed his due process complaint. This is based on Parent's claim that she was not aware of her procedural right to have a general education teacher as part of Student's IEP team meetings. He further asserts that the statute of limitations should be extended because Antioch withheld information that Student's services were not implemented and relevant information regarding an offered nonpublic school placement. This decision holds that Student did not prove facts to support a claim for relief based on facts and circumstances which arose prior to May 16, 2015, two years before Student filed his request for due process. Nor did Student prove facts to establish an exception to the two year statute of limitations. Therefore Student's claims prior to May 16, 2015, are barred.

Student's second contention is that Antioch failed to implement Student's IEP services while he attended Antioch schools during the 2014-2015 school year. Antioch contends that Student's IEP was fully implemented with the exception of speech and language services immediately following Student's second placement, which it timely

admitted were delayed, and offered Student compensation services, once the delay was discovered. Antioch asserts that any other missed IEP services were the result of Student's frequent absences and tardies for which Antioch had no obligation to compensate Student. This decision holds that Student did not sustain his burden of proof that Antioch failed to implement his IEP services between May 16, 2015, and July 7, 2015, Student's last day of attendance in Antioch.

Student's third contention is that Antioch violated Student's and Parent's procedural rights by holding IEP team meetings without Parent and without the required IEP team members present. Antioch maintains that Parent fully participated in all IEP team meetings and that a general education teacher was either present at IEP team meetings or was not necessary because Student was not eligible to participate in the general education program. Antioch asserts that a special education teacher was not required at Student's July 14, 2015, IEP meeting because mainstreaming was not anticipated to be a topic of discussion at the meeting. This decision holds that Student did not sustain his burden of proof that Antioch held any IEP team meetings without Parent's participation. Parent fully participated in person or by telephone at all IEP team meetings. Student proved by a preponderance of the evidence that Antioch failed to have a properly composed IEP team meeting on July 14, 2015, in that no general education teacher was present and Student's special education teacher was not present. This decision further holds that this procedural violation rose to the level of a substantive denial of FAPE. Student's claims regarding the IEP team composition of all other IEP meetings are barred by the statute of limitations.

FACTUAL FINDINGS

JURISDICTION AND HISTORY

1. Student is a 12-year-old male who at all times relevant to the issues in this

case resided with Parent within Antioch's boundaries. Student was in the fourth grade during the 2014-2015 school year. He had been receiving special education and related services since the age of three. At his last triennial IEP team meeting, which took place on October 21 and November 20, 2014, Student's primary special education eligibility changed from emotional disturbance to specific learning disability. At all times relevant to the issues in this case, Student was eligible for special education services in the categories of specific learning disability as his primary disability, and speech and language impairment as his secondary disability.

2. Before moving to Antioch, Student attended school in San Francisco Unified School District for four years. For all four years, Student participated in the Success, Opportunity, Achievement and Resiliency program, known as the SOAR Academy. SOAR was a program designed for students with emotional disturbance and which offered behavior and academic supports and structure and utilized restorative practices for conflict management.

OCTOBER 2014 SAN FRANCISCO TRIENNIAL IEP MEETING

3. Student's October 21, 2014 triennial IEP, developed while he attended San Francisco was the operative annual IEP at all times relevant to the issues in this case. At the October 2014 San Francisco triennial IEP team meeting, Parent consented to the following offer: 240 minutes of pull-out specialized academic instruction per week for language arts, to be delivered 60 minutes a day, four days a week in a special day classroom; 240 minutes of push-in specialized academic instruction per week for math, to be delivered 60 minutes a day, four days a week in the general education classroom; individual counseling for 45 minutes a week, to continue until May 6, 2015; 60 minutes a month of Department of Mental Health linkages to connect Student to relevant services; speech and language group therapy, 30 minutes, two times a week, at the provider location. The extended school year offer was 240 daily minutes of group specialized

academic instruction to be provided at a separate classroom in a public integrated facility; 240 daily minutes of individualized specialized academic instruction to be provided at a separate classroom in a public integrated facility³; and 45 minutes a week of individual counseling to be provided in a separate classroom in a public integrated facility.

4. San Francisco provided a copy of Student's and Parent's procedural safeguards and explained them to Parent.

5. The notes of Student's San Francisco 2014 triennial IEP contain detailed documentation of Student's progress and social emotional growth in the SOAR placement. His Parent and nine IEP team members shared compelling comments regarding Student's social emotional growth over the four years in the program.

6. Despite Student's notable social emotional growth, his triennial IEP documented significant academic delays. For example, his IEP goals and baselines indicated that he was at a pre-kindergarten reading level; he had not yet demonstrated the ability to add and subtract single digit numbers requiring regrouping; he had difficulty articulating many basic sounds; and was working toward increasing the number of his utterances by using words like "then", "next".

³ The 480 minutes daily of specialized academic instruction services contained in the October 2014 IEP for extended school year appear to be a typographical error which instead should have read weekly, not daily. This appears to be an error because 480 minutes a day plus the 45 minutes a week of counseling would require Student to attend summer school for over eight hours a day. However, no evidence of whether this was an error was presented at hearing by either party. Because neither party introduced any evidence regarding whether or not extended school year services were offered, the error, if any, is not material to this decision.

STUDENT'S MOVE FROM SAN FRANCISCO TO ANTIOCH

7. Sometime in December 2014, Student and Parent moved from San Francisco to Antioch. Parent enrolled Student in Fremont Elementary School his neighborhood school, and he began attendance on February 5, 2015.

FEBRUARY 10, 2015, ADDENDUM IEP MEETING

8. Parent shared Student's San Francisco triennial IEP with Antioch when she enrolled Student in the district on February 5, 2015. On February 10, 2015, Antioch held an addendum IEP team meeting to discuss an interim placement for Student. In attendance at the meeting was Parent; a district representative⁴; Paola Colosimo, school psychologist; Jennifer Corning, special education teacher; Heather Ogden, Principal; and Andrew Menegat, Student's special education teacher and case manager from San Francisco, who Parent invited to explain the program that Student had been attending. Parent was offered a copy of her procedural rights, which she declined. Parent declined procedural rights because she had received and reviewed many copies through the years since Student began special education in preschool.

9. The procedural safeguards offered or provided to Parent at Student's 2014-2015 IEP team meetings were similar in substance to the written procedural rights admitted at hearing. The procedural rights offered or provided to Parent contained an overview of the procedural safeguards under the Individuals with Disabilities Education Act and the California Education Code, and included reference to the laws containing the specific procedural safeguards. The procedural safeguards provided to Parent also

⁴ The testimony at hearing was conflicting and remains unresolved regarding who the local education agency representative was that attended the February 10, 2015 IEP team meeting and signed as the district representative.

listed resources to contact to learn about the procedural safeguards or to assist Parent to understand them, including school district staff, the California Department of Education, the Office of Administrative Hearings, and parent organizations.

10. Ms. Ogden, Principal at Fremont, testified at hearing. Ms. Ogden was the site principal at Fremont when Student was attending in 2015. Ms. Ogden had been employed by Antioch since 2002. From 2002 to 2010, Ms. Ogden taught first grade. In 2010 she taught a first-second grade combination class. She became interim principal of Fremont in 2013 and her position became permanent in 2014. Before working for Antioch, Ms. Ogden was a first and fourth grade general education teacher for Hayward Unified School District for four years. Ms. Ogden earned a Bachelor's Degree, a general education credential, an administrator's credential, and a Master's Degree in Educational Leadership, all while attending California State University, East Bay. As principal, Ms. Ogden's duties included supervising general education teachers at Fremont. She was familiar with general education resources, the general education curriculum, and instructional methods at Fremont. Ms. Ogden's testimony was direct, thoughtful and consistent. Her testimony regarding her direct contacts with Student, her involvement in Student's IEP team meetings, and her experience supervising general education instruction, established her credibility as a witness. Her testimony was given great weight.

11. Ms. Ogden attended the February 10, 2015 IEP team meeting as both the site administrator and to be available to answer any general education questions from the IEP team. Student's general education teacher was a long-term substitute teacher and knew Student only one day at the time of the meeting. Ms. Ogden did not sign as general education representative and there was no indication that Parent was informed of her role as general education representative.

12. Parent testified that it was not until she consulted with her attorney, after

Student left Antioch, that she knew that a general education teacher is required to be present at an IEP meeting. Parent's testimony denying knowledge of this procedural right is not credible in light of her testimony that she has received and reviewed many copies of procedural safeguards through the years, including at Student's October 2014 triennial IEP meeting, where Parent acknowledged that the rights were not only provided but were explained.

13. There was much more discussion regarding Student's academic and emotional needs and history than the February 10, 2015 IEP notes reflect. Student's San Francisco case manager shared at the February 10, 2015 IEP team meeting that Student received more services in the San Francisco placement than his written IEP direct services page indicated. The San Francisco SOAR program was all encompassing with academics and counseling.

14. Student's San Francisco IEP was discussed at the February 10, 2015 IEP meeting and reflected that the amount of specialized academic instruction minutes that Student needed was not typical for a general education and resource setting. The IEP indicated that Student needed more assistance than most students typically placed in a general education and resource special education placement. The San Francisco placement provided pull-out services to Student in a special day class and not a resource class. Fremont did not have an appropriate special education special day class for Student and his pull-out services were provided in a resource special education classroom.

15. The Antioch IEP team decided that to provide Student with services more reflective of the enhanced services that he was actually receiving in the San Francisco SOAR program, Parent would tour other Antioch programs that would offer increased academic and counseling support.

16. The February 10, 2015 IEP team decided that the San Francisco IEP could

be implemented at Fremont, which had a general education-resource placement; Lone Tree Elementary which had a counseling enhanced program; or Kimball, which had a therapeutic behavior support class. Parent agreed to tour the Lone Tree and Kimball programs and the IEP team agreed to meet again in 30 days to review the interim placement. In the meantime, the team agreed that Student would attend Fremont. The Lone Tree and Kimball programs were identified as providing supports more reflective of the San Francisco program in which Student had been reported to make significant social emotional progress. The Lone Tree and Kimball programs also served students with specific learning disabilities in a small special day classroom as opposed to a resource classroom.

17. The hand-written February 10, 2015 IEP did not include notes of all of the IEP team discussion testified to at hearing. It did include a written IEP offer of services which amended the October 21, 2014 IEP, and included 240 minutes a week of pull-out services in the area of language arts, in a group setting; 240 minutes a week of push-in math support; psychological services 45 minutes a week; and 60 minutes a week of language and speech, group. Although the push-in and pull-out services were not described as to subject matter, and the psychological services were not described as individual, the notes indicate that the services to be implemented were those of the prior San Francisco IEP, which included these details. Although transportation was in the San Francisco IEP, no transportation was offered due to Fremont being Student's neighborhood school. Parent signed the addendum IEP and consented to all services.

PARENT CONCERNS ABOUT NON-IMPLEMENTATION OF STUDENT'S IEP SERVICES

18. Pursuant to the February 10, 2015 IEP, Student attended Fremont with general education, resource services, speech and language, and counseling, pending Parent touring the other schools and a reconvened IEP team meeting to discuss placement. Shortly after Student started attending Fremont, Parent observed Student to

be frustrated because the work was too difficult for him and she did not believe he was getting the support he needed to be successful. Parent spoke with Student about the services that he was getting. Based on her conversations with Student, she did not think that his IEP services were being provided. Her concerns were also corroborated by February 2015 emails documenting Parent's complaints about Student's services to the general education teacher. Parent believed that Antioch had a responsibility to make-up services missed due to Student's absences. Antioch did not fail to implement the services and did not have a legal obligation to make up services missed due to Student's absences.

PARENT TOURS OF LONE TREE AND KIMBALL

19. Judith Peneyra testified at hearing. Ms. Peneyra has a pupil personnel services credential and she holds a Master's Degree in Educational Psychology and a Bachelor's Degree in Psychology. Ms. Peneyra worked for Antioch from 2006 to 2008 and from 2010 to present. During the 2014-2015 school year, Ms. Peneyra was employed by Antioch as a school psychologist. During the 2014-2015 and part of the 2015-2016 school year, Ms. Peneyra also held a district-wide position as a local educational agency representative for Antioch. In that role, she attended IEP team meetings as the local educational agency representative. As the representative, Ms. Peneyra was generally familiar with Antioch's special education resources regarding special education placements. Ms. Peneyra's testimony was patient, thoughtful and concise and indicated a sincere intent to convey an accurate account of events involved in this case. Her recollection of events during the time at issue in this case and her involvement with Student and contact with Parent was clear and detailed. Her testimony was given great weight.

20. On March 3, 2015, Ms. Peneyra met Parent and Principal Ogden for tours of the two placements at Lone Tree and Kimball. These were the two placements the

February 10, 2015 IEP team identified as appropriate to serve Student's educational needs and to provide comparable support to Student's San Francisco program described in his October 21, 2014 IEP, and by his San Francisco special education teacher and case manager.

21. The program at Kimball was a collaborative effort between Antioch and Spectrum, a non-public school. Ms. Peneyra explained to Parent on the tours that the offered placement at Lone Tree was a counseling enhanced special day class which had a special education teacher, two aides, psychological group counseling, an informal level system to manage behavior, and was located on a comprehensive public school campus. She explained to Parent that the placement at Kimball was a collaborative program which was a small special day class with Spectrum school staff. Gaby Mendez, education coordinator for Spectrum schools was also present on the tour of Kimball.⁵

22. Ms. Peneyra knew that Spectrum was a nonpublic school but she considered the offered Kimball placement to be a district program which she understood, and informed Parent, was a collaboration between Spectrum and Antioch.⁶

⁵ Student's closing brief asserts that Ms. Danielle Patterson, Director of Kimball at the time of the tour, was present at the tour of the Kimball program and testified that Parent was only at Kimball five minutes. However, Ms. Patterson did not give Parent the tour and was not present at Kimball on the day of the tour.

⁶ The Spectrum/Antioch collaborative program had just begun when Student first enrolled in Antioch. The California Department of Education had not defined the school's legal status, in that Spectrum was a nonpublic school but was located on the same property of Kimball Elementary School. Furthermore, the program was designed such that students from the nonpublic school could mainstream into the Kimball Elementary School general education classes when ready. At first, the program where

She explained to Parent that the Kimball program had behaviorists and a higher level of support with embedded group counseling and specific formal level system for behavior management. Parent was informed that the speech and language services and Student's individual counseling would be provided by Antioch staff. Ms. Peneyra informed Parent that the special day class was placed on Antioch's Kimball Elementary School campus, which was a comprehensive public school site, as a way to transition students back into a general education curriculum. Ms. Peneyra explained to Parent that, at Kimball, Student would be removed from general education and would be in an all-inclusive special education special day class, where he would receive all of his academic instruction and special education services for 100 percent of his day.

23. The Kimball placement was located in a separate building from the rest of Kimball Elementary School and was separated from Kimball Elementary School by a fence. It had a separate main entrance from that of Kimball Elementary School.

24. During the tour, Parent asked Ms. Ogden whether Student would participate in regular education physical education and recess at Kimball Elementary School. Ms. Ogden explained that, as part of Kimball's formal, level behavior program, Student had to demonstrate continued success for a minimum of two months before he

Student was enrolled was called the Spectrum/Kimball Collaborative; but ultimately, the Department of Education declared it to be a nonpublic school. The evolution of the name was reflected on Student's IEP's. Student's IEP signed on May 8, 2015, referred to the placement as a collaborative between the non-public school and Antioch and described it as "a separate classroom in a public integrated facility". Student's IEP signed on July 14, 2015, referred to Student's placement as a non-public school and stated, "although the placement is located on an AUSD campus". Nothing about the program design or services changed; only the name.

would be considered for mainstreaming into Kimball Elementary School's regular education classes or activities.

25. During the tour of the Kimball placement, in addition to Ms. Peneyra and Ms. Ogden, Parent met and interacted with Ms. Mendez; the Spectrum special education staff, including the instructional aides; and the Spectrum behaviorist. Parent also briefly observed the classroom. The level system for behavior was posted in the classroom and was discussed by the behaviorist. Staff discussed the program with Parent and Parent had the opportunity to ask questions.

26. Following the tours of the two programs, Parent informed Ms. Peneyra that she preferred the Kimball placement over the Lone Tree placement. She specifically liked the positive token system because it was similar to the system in San Francisco where Student responded well to the rewards. She also liked the small academic setting because Student was struggling in the general education class at Fremont and the work was too difficult for him. On the same day of the tours, Ms. Peneyra sent an email to Dr. Rubalcava to inform her of Parent's choice of the Kimball program. Ms. Peneyra also informed Dr. Rubalcava that an IEP team meeting to confirm Student's placement was scheduled for the following Friday, March 6, 2015.

27. Parent testified by telephone. Parent's testimony conflicted with all other witnesses regarding the tour of the Kimball program. Parent recalled touring the two programs discussed at the February 10, 2015 IEP meeting and she confirmed that she chose the Kimball program over the Lone Tree program. However, Parent claimed that she did not know that the Kimball program was for students with behavior issues and had she known, she would not have agreed for Student to be placed in the program because he did not have behavior problems.

28. Parent contended in her direct testimony that she thought the classroom at Kimball was a general education classroom. Parent contradicted this assertion when

later questioned about the program's specifics. She stated that she was aware the Kimball classroom was a small group of students taught by teachers who teach children with disabilities. She also acknowledged that the Kimball program was different than the general education program that Student attended while at Fremont. Parent's answer appeared to be evasive and to be somewhat strained in her resistance to call the Kimball classroom a special education class.

29. Parent's testimony regarding her beliefs about the Kimball program at the time of the tour was not credible. The information provided to Parent on the tour as well as her observations of the classroom, made evident that the behavior level system was an integral part of the Kimball program. Parent knew that the Kimball placement had its own behaviorist and group counselor, which would indicate that students placed in the program needed such support. Similarly, Parent's claim that she was unaware that the Kimball classroom was a special education classroom was not credible due to the small size of the class, her acknowledgement that the teachers taught children who need more help due to their learning problems, and the fact that Parent acknowledged to Ms. Peneyra that Student responded well to token reward systems such as the one in place at the Kimball placement.

30. Antioch did not withhold any information that Kimball was a nonpublic school collaborative.

31. On March 2, 2015, a notice of meeting was generated for a March 6, 2015 addendum IEP meeting to discuss Student's placement. On March 4, 2015, Parent informed staff that she would try to make the meeting but she was taking Student to San Francisco to celebrate with friends at his old school. On March 6, 2015, the day of the scheduled meeting, Student was absent from school and Parent did not attend the scheduled IEP team meeting. At some point, Parent was contacted by staff by telephone and Parent agreed to attend a meeting by telephone at Fremont on March 9, 2015. On

March 9, 2015, Principal Ogden offered to pick Parent up to attend the meeting in person, but Parent declined the offer.

32. The only written evidence of the March 9, 2015 IEP team meeting⁷ stated the purpose of the meeting to be an interim 30-day meeting to review progress and placement. Under a section entitled, "Changes to the IEP dated 10/21/2014," was an added notation, "Please refer to notes." The only notes on the document admitted at hearing regarding the March 9, 2015 IEP were notes pertaining to Student's speech and language present levels, including that he was frequently absent on speech days, followed only by signatures of the participating school staff, dated March 9, 2015, and initials and signature of consent to the IEP by Parent, dated March 11, 2015. Although the stated purpose of the meeting was to review Student's progress and placement, there was no written mention of the change of placement, the change in services, or progress in the written March 9, 2015, addendum IEP admitted at hearing.

33. There was much more discussed at the March 9, 2015 IEP team meeting than the written IEP of the meeting admitted as evidence at hearing indicates. Testimony of meeting participants established that the March 9, 2015 addendum IEP meeting took place at Fremont and began with introductions. Each staff participant introduced themselves and their role in the meeting. In attendance at the March 9, 2015

⁷ The March 9, 2015 IEP meeting documentation was an addendum IEP dated March 6, 2015, the date of the originally scheduled meeting that Parent could not attend and which never was held. The date of the addendum IEP was never corrected to reflect that the meeting actually occurred on March 9, 2015.

IEP meeting was Parent by telephone⁸; Ms. Peneyra, Fremont representative; Barbara Cringle, a speech and language provider; Ms. Ogden, who was present as school principal and general education participant; and Jennifer Corning, special education resource teacher. Parent was informed that Student's general education teacher was in class but could be called to the meeting if Parent had questions that could not be answered by Ms. Ogden, who also had a general education credential. Ms. Corning had also discussed Student with Student's general education teacher to get her feedback and presented the feedback at the March 9, 2015 meeting. Ms. Peneyra spoke to Paola Colosimo, the school psychologist who provided individual counseling to Student, to get her feedback regarding her individual counseling with Student and presented the feedback at the IEP meeting. Parent had previously met all of the meeting attendees either at the February 10, 2015 IEP meeting or on the tours of the potential placements.

34. Following introductions, staff expressed their present concerns about Student and reviewed his present levels of performance. Ms. Corning shared the general education teacher's input that Student was struggling and not doing well in the general education class and that he was far below grade level in all academic areas. Ms. Cringle reported about the informal testing she conducted on March 5, 2015, and she informed Parent that Student's absences had prevented her from providing speech and language services at Fremont. Ms. Peneyra reported on feedback from Ms. Colosima, that she was not able to provide individual counseling due to Student's frequent absences. Ms. Corning also expressed concern about Student's multiple absences and how that impacted his ability to receive services.

⁸ Heather Ogden, Jennifer Corning, Judith Peneyra, and Barbara Cringle, participated in the March 9, 2015 IEP meeting and all credibly testified that Parent attended the meeting by phone.

35. The IEP team discussed the two placements Parent toured. Parent expressed her preference for the Kimball placement. The Antioch members of Student's IEP team offered and Parent verbally accepted the Kimball placement. Transportation was discussed and District offered it as a related service. Ms. Peneyra explained to Parent that transportation generally took two weeks to set up and that Parent signature on the IEP was required before the transportation department could begin to set up services. Because Parent confirmed that she did not drive or have a way to get Student to the Kimball placement, Parent agreed that Student's start date would be delayed until transportation was in place.

36. Student's IEP goals, speech and language services, individual counseling services, and extended school year services remained unchanged from the October 21, 2014 IEP. Special academic instruction was increased due to Student's being in special education for 100 percent of his school day. Transportation and embedded group counseling services were added to the IEP. Parent fully participated in the March 9, 2015 IEP meeting. All questions were answered by team members and Parent never requested to get the general education teacher from her class. Ms. Ogden signed as the general education representative. Parent verbally consented to all services.

37. The only written documentation of the March 9, 2015, addendum IEP meeting introduced at hearing did not contain any notes of the IEP team discussion. However, persuasive evidence was presented at hearing indicating that a more complete written March 9, 2015 IEP existed, was signed by Parent, and was provided to Kimball to allow Student to begin his attendance. There was no dispute at hearing that the March 9, 2015 IEP admitted at hearing, was incomplete and was missing notes. Ms. Peneyra's testimony regarding the March 9, 2015, IEP meeting was especially compelling and established that Ms. Corning took notes throughout the meeting of all that was discussed. Ms. Peneyra believed that the notes that Ms. Corning took, and the IEP she

signed, included the offer of placement at Kimball.

38. Ms. Corning could not remember if she ever took the steps necessary to upload the March 9, 2015 addendum IEP into the special education information system. She also admitted that she was a new teacher at the time and was not well versed in the special education information system, and, in particular, amendments to IEP's. Testimony established that Ms. Corning had to take hand written documents home to scan because there was no scanner at school. Ms. Corning admitted that she only discovered the handwritten page of signatures of the February 10, 2015, IEP, admitted at hearing, when she found them shortly before hearing while cleaning her office. Any hard copies of Student's records not scanned and uploaded into the special education information system would have followed Student to San Francisco when he returned there in August, 2015, and would not have been copied and retained by Antioch. The May 8, 2015 IEP reflects the services offered at the March 9, 2015 IEP meeting, which were missing from the incomplete IEP admitted at hearing. Lastly, Student would not have been able to start the Kimball placement without a signed IEP placing Student at Kimball. It is more likely than not that the complete March 9, 2015 IEP was never uploaded into the special education information system and instead was brought to Parent for signature and sent to Kimball to facilitate his enrollment.

PARENT'S MARCH 11, 2015 SIGNATURE OF CONSENT TO THE MARCH 9, 2015 ADDENDUM IEP, AND CHANGE OF PLACEMENT

39. Following the March 9, 2015 IEP meeting, Parent was asked to come to Fremont to sign the IEP. When two days passed without Parent going to the school to sign the document, Ms. Ogden and Ms. Corning took the document to Parent at her home on March 11, 2015, to get her signature on the IEP because Antioch wanted to implement the change of placement without delay.

40. When they arrived at the home, Parent answered the door. Student was

also at home. Parent signed the March 9, 2015 addendum IEP document and asked if Student could ride with Ms. Ogden and Ms. Corning back to school. Ms. Ogden agreed and transported Student to school. No witnesses, including Ms. Ogden, Ms. Corning, or Parent, could remember how many pages were in the IEP after the meeting or when taken to Parent for signature. Ms. Corning believed that Parent signed an IEP that allowed Student's placement to be changed to Kimball.

41. Parent agreed for Student to begin the program as soon as transportation was in place, which she was informed generally took two weeks.

PARENT'S TESTIMONY REGARDING THE MARCH 9, 2015 ADDENDUM IEP MEETING

42. Parent's testimony regarding the March 2015 IEP meeting was in direct conflict with all other meeting participants who testified at hearing. Parent denied that she was ever informed of a March 2015 IEP meeting. Parent denied that she ever attended or participated in any March 2015 meeting. She also denied that anyone went to her house to have her sign the March 9, 2015 IEP; although she confirmed that it was her signature on the document. Parent provided no explanation for how her signature got on the document. Parent's testimony regarding her denial of participation in the March 9, 2015 addendum IEP meeting as well as her denial that she consented to the Kimball placement was not credible in light of the overwhelming documentary and testimonial evidence set forth above.

STUDENT'S ENROLLMENT AT KIMBALL

43. Blanca Danielle Patterson, the former Director of Kimball testified at hearing. Ms. Patterson earned a Master's Degree in Special Education and a second Master's Degree in Special Education with a specialty in autism. She has a clear multiple subject teaching credential. At the time that Student attended Kimball, other students' eligibilities for special education included specific learning disabilities, other health

impairment, emotional disturbance, and autism. Class size was no more than 12 students. There were three aides in the classroom in addition to the teacher. The majority of students at Kimball had severe academic challenges and many exhibited internalizing behaviors including anxiety, depression, and "shut down" due to their academic frustrations. A handful of students also exhibited externalizing behaviors at times, including walking out of class, pushing items off desks, and aggression toward peers or staff.

44. Ms. Patterson's testimony established that every student enrolling in Kimball had to complete an enrollment packet before her or she was allowed to attend the Kimball program. The enrollment packet included several pages of information. Parents had to sign each page acknowledging components of the Kimball program including that Spectrum was a certified nonpublic special education school, separate from the public school. Parents had to sign their acknowledgement that Spectrum staff was certified in and used crisis prevention interventions. The name of the company that trained the staff and a description of the preventative as well as hands-on interventions were included in the packet. Parents had to sign their acknowledgement that the Kimball classroom had a three-to-one student-to-staff ratio. A signed IEP showing placement in the Kimball program was required before a student could begin attending Kimball.

45. At hearing Ms. Patterson reviewed Student's March 9, 2015 IEP, admitted at hearing, and established that the document would have been insufficient for Student to start the placement at Kimball because it contained no documentation of Student's placement at Kimball. Ms. Patterson trained Ms. Mendez, Spectrum's education coordinator, regarding the information that must be provided to parents on tours as well as the enrollment process. Ms. Mendez was the administrator who was present during Parent's tour of Kimball.

46. On March 27, 2015, Student attended his last day at Fremont. His enrollment paperwork was delivered to Kimball. His first day of attendance at Kimball was March 30, 2015.

BEHAVIOR INCIDENT TRIGGERING PARENT REQUEST FOR AN IEP MEETING

47. On April 27, 2015, Student became aggressive toward Kimball staff at a time he needed a break but could not access his usual break area due to police involvement in that area with another student. Staff restrained Student during the incident. Parent called a meeting upon learning of the restraint to determine what happened and why Student needed to be restrained.

48. At the time of Student's attendance at Kimball, the program had a formal level system for behavior. There were five levels: entry; one; two; three; four; and off level. The expectation for students was to maintain the highest level ("off level") for a period of 60 days before a student would be mainstreamed into the Kimball Elementary School. To maintain the "off level", students had to demonstrate appropriate behavior and earn 90 percent of their class points on a daily basis. If a student engaged in walking out of the class, physical aggression or property destruction, they would go back to the entry level and have to work their way back up. The April 27, 2015 incident resulted in Student being placed back to entry level on the behavior level system.

MAY 8, 2015 ADDENDUM IEP MEETING

49. On May 8, 2015, an addendum IEP team meeting was held at the request of Parent to discuss the incident on April 27, 2015, when Student was restrained by Kimball classroom staff. The written notes of this meeting were contained in an addendum IEP, dated May 1, 2015, prepared in anticipation of a May 1, 2015 IEP meeting which was rescheduled to and which occurred on May 8, 2015. Present at the May 8, 2015 IEP meeting were Parent; Aaron Lasley, special education teacher; Ms.

Mendez; Ms. Peneyra; and Emma Washington-Peterson, program specialist. Also discussed at this meeting was Parent's report that Student's speech and language services were never implemented at Kimball. In response, Antioch agreed to determine compensatory speech and language services owed to Student. The testimony at hearing as well as the notes of the May 8, 2015, IEP meeting documented that Parent was generally satisfied with the Kimball program and that Parent agreed, with the exception of speech services, that Student's IEP was being implemented.

50. Parent signed her consent to the May 8, 2015, IEP addendum. The May 8, 2015 IEP provided Student with 1,380 minutes a week of group specialized academic instruction stated to be offered in "a district therapeutic behavior support classroom, a collaborative between nonpublic school and District"; and psychological group counseling services 180 minutes a month, each with a start date of March 6, 2015, and an end date of October 21, 2015. The May 8, 2015 IEP also documents the offer of transportation to and from the Kimball Program. Lastly, the May 8, 2015 IEP documents that 100 percent of Student's time while in the Kimball program was outside general education and extracurricular and nonacademic activities. Speech and language, individual counseling, and extended school year services remained the same as in the October 21, 2014 triennial IEP.

IMPLEMENTATION OF STUDENT'S IEP SERVICES AT KIMBALL FROM MAY 16, 2015 TO JULY 7, 2015

Antioch's Responsibility for Make-Up Services

51. Student's IEP's state that Antioch is responsible to provide services according to when a student is in attendance and in a way consistent with Antioch's calendar and scheduled services, excluding holidays, vacations, and non-instructional days unless otherwise specified.

52. While attending Kimball from March 30, 2015, when he started the

placement, until June 4, 2015, the last day of instruction before extended school year, Student's October 21, 2014 IEP, including addendum IEP's, required the following services: 1,380 minutes a week of specialized academic instruction; two, 30-minute sessions a week of group speech and language services; 180 minutes a month of group counseling services; and 45 minutes a week of individual therapy services.

53. The last agreed-upon extended school year services were detailed in the October 21, 2014 IEP which included 240 daily minutes of group and 240 daily minutes of individual specialized academic instruction; and 45 minutes a week of individualized counseling. Group counseling and speech and language services were not offered as part of extended school year services. There was insufficient evidence introduced at hearing by either party regarding whether or not extended school year services were implemented. Only the transportation records and notes of a July IEP meeting show that Student attended the Kimball program during extended school year, beginning June 15, 2015 until Student's last day of attendance on July 7, 2015. However, there was no evidence presented at hearing regarding the length of the extended school year days, the services Student received, or who the service providers were for those services.

Implementation of Specialized Academic Instruction

54. Mr. Lasley testified at hearing. Mr. Lasley was Student's special education teacher while Student attended Kimball. Mr. Lasley worked under an interim teaching credential from 2012 to 2014. He received a preliminary mild moderate special education credential from Fortune School of Education. He received his Master's Degree in Special Education in May or June of 2015 from the University of the Pacific. Mr. Lasley received his Bachelor's Degree in History from the University of California, Los Angeles. He testified about his participation in Student's May 8, 2015 addendum IEP meeting. Mr. Lasley recalled Student's articulation and behavior challenges but had difficulty recalling Student's academic performance. Mr. Lasley testified clearly as to what he remembered

of Student and the Kimball program during the short time Student was at Kimball. His testimony was accorded great weight.

55. The 1,380 minutes of specialized instruction reflects the minutes that Student would receive at Kimball on each day that he attended school. Mr. Lasley provided Student's special academic instruction minutes which Student received on all days that Student attended school at Kimball. He worked with Student on all academic areas in small groups with the support of three classroom aides. Instruction was tailored to Student's needs. Antioch therefore implemented Student's specialized academic instruction from May 16, 2015, through June 4, 2015, the last day of instruction before the extended school year, on all days that he was in attendance.

56. According to Student's October 21, 2014, IEP, during the extended school year, Student was required to receive 240 daily minutes of group specialized academic instruction and 240 daily minutes of individual specialized academic instruction. Although attendance and transportation records indicate that Student attended extended school year between June 15, 2015, and July 7, 2015, there was insufficient evidence provided by either party as to whether or not Student received those specialized instruction services.

Implementation of Group Psychological Services

57. Ms. Peneyra, school psychologist, provided group counseling to students at Kimball. The group counseling was embedded in the Kimball program and assisted students to identify and regulate their emotions, manage frustration, and develop appropriate social skills. Pursuant to Student's IEP, Student was required to receive 180 minutes a month of group counseling. No group counseling was required during extended school year, and group counseling services ended on May 22, 2015. Ms. Peneyra's testimony and service logs establish that Student received 90 minutes of group counseling in May. In addition, on May 21, 2015, students had their last group

counseling session which lasted two hours and which included awards, games, and activities to utilize social skills learned and to celebrate the final session of counseling. Therefore Student participated in 210 minutes of group counseling in May, 2015. Antioch implemented 30 more minutes of group counseling services than Student's IEP required.

Implementation of Speech and Language Services

58. After discovering that Student had not been receiving his speech and language services at Kimball, as agreed at the May 8, 2015 addendum IEP meeting, two speech therapists were identified to provide Student's IEP speech and language services as well as to provide compensatory speech and language services owed to Student. However, the plan for ongoing services and compensatory services was haphazard and unclear. Testimony and e-mail correspondence documents that the two speech therapists assigned to Student were never clear on who was responsible for direct services and who was responsible for compensatory services.

59. The e-mail correspondence between the speech therapists, admitted at hearing, documents that speech was not offered to students the last week of school. Student's extended school year services did not require speech and language services. Therefore Student was required to receive speech and language services twice a week for 30 minutes a session. Between May 16, 2015, when the statute of limitations starts, and June 4, 2015, when the regular school year ended, Student's IEP required four, 30-minute sessions of speech.

60. Denise Olivieri, speech and language therapist, testified at hearing. Ms. Olivieri had no independent recollection of Student or any services provided to Student. Her recollection was refreshed by her reference to e-mail correspondence between her and the other speech and language therapist. Ms. Olivieri testified that her plan was to pull Student into an already existing group of students at Kimball once a week for 30

minutes. The first and only time she attempted to do that was May 20, 2015, but Student was absent. But for Student's absence, Ms. Olivieri would have provided 30 minutes of speech services on May 20, 2015.

61. Elaine Marchetti also provided speech and language services to Student. Ms. Marchetti did not testify at hearing. The only evidence regarding Ms. Marchetti's services were her service logs which she completed to document direct services to facilitate Antioch's Medi-Cal reimbursement. Between May 16, 2015, and June 4, 2015, Ms. Marchetti completed four sessions of speech therapy with Student. Three sessions were 30 minutes in length and one was 45 minutes in length.

62. Between Ms. Olivieri and Ms. Marchetti, Student was offered or received five sessions of speech and language services, one more than the four sessions that he was required to receive between May 16, and June 4, 2015.

Implementation of Individual Counseling

63. Karen Paulsson testified at hearing. Ms. Paulsson has been a school psychologist for 26 years and has been employed as a school psychologist by Antioch for the last five school years. She earned her Bachelor's Degree in Marriage and Family Therapy from Santa Clara University. She has two pupil personnel services credentials in both Counseling, from Santa Clara University and School Psychology, from Long Beach State University. Ms. Paulsson was responsible to provide 45 minutes a week of individual counseling to Student at Kimball. Ms. Paulsson maintained a service log of direct services for the purposes of Medi-Cal reimbursement. Ms. Paulsson's testimony was given great weight based on her experience and her detailed documentation of her direct services to Student.

64. Ms. Paulsson explained that counseling services were made available to Student, but if Student chose not to cooperate with counseling or refused counseling, he was not forced to participate as this would be detrimental to the counseling process.

Furthermore, there was no requirement that the service be made up if the student was either uncooperative or not available for counseling when sessions were offered. Ms. Paulsson's testimony and service log established that between May 16, 2015, and June 4, 2015, she attempted to provide individual counseling to Student once a week on Fridays. On May 22, 2015, Student participated for 15 minutes due to limited attention and poor cooperation. On May 29, 2015, Student was unavailable for counseling. On June 4, 2015, Student participated for 30 minutes. Ms. Paulsson offered make-up sessions to Student between June 8, 2015, and June 11, 2015, but neither Parent nor Student responded to the offer. But for Student's unavailability or noncooperation, he would have received all individual counseling services required by his IEP.

65. Student's October 21, 2014 IEP required Student to receive 45 minutes a week of individual counseling for the four weeks of the extended school year, which ran from June 15, 2015, through July 9, 2015. Student attended the extended school year program at Kimball from June 15, 2015 through July 7, 2015. There was no evidence presented by either party at hearing as to whether or not Antioch provided the four sessions of individual counseling services to Student during the four weeks of extended school year.

Implementation of Transportation services

66. Parent testified that Antioch's transportation was spotty and that the bus frequently passed Student by or did not come at all. No specific dates were alleged by Parent as to when problems with transportation occurred. Parent also claimed that once transportation was put in place to transport Student to Kimball, transportation never communicated that to her. Parent claimed that she and Student only found this out when they walked to Fremont and were informed that Student was no longer enrolled at Fremont and was transferred to Kimball.

67. Sue Jimenez testified at hearing. Ms. Jimenez was the Transportation

Operations Assistant. She has worked for Antioch's transportation department for 19 years. She was familiar with all components of the transportation department including routing of buses, answering phones, assisting drivers and bus assistants, and payroll. Ms. Jimenez was very knowledgeable about all aspects of the transport of students to and from school, the documentation required by drivers recording each student's daily transportation, and codes used to reflect the various situations involved in whether a student gets picked up or not. Ms. Jimenez's testimony was found to be very confident and credible and was accordingly given great weight. Antioch's transportation documentation system, staff availability for Parent communications, and phone message system was comprehensive and therefore very compelling to the determination of Antioch's transportation provision to Student in this case.

68. Ms. Jimenez referred to transportation logs which were kept on Student's bus and which contained daily documentation of each student's presence or absence on the bus. A check mark next to a student's name indicated that the student was on the bus. The letter "U" indicated that the bus went to the agreed pick up location but the student was not there but no excusal call was received from parent informing that the student would not be riding the bus. The letter "E" indicated "excused", meaning that a parent called to inform that the student would not be on the bus. When an "E" was indicated, the bus would not attempt to transport the student. The notation "will call" indicated that the driver attempted to pick the student up three times without the student being there or any call received from the parent. Once the latter happened, the bus driver would stop attempts to transport the student until a parent called to start transportation again. Parents could call anytime between 5:30 a.m. and 5:00 p.m. and speak directly with transportation staff. There was also a message machine for calls outside of those hours. A telephone log was completed for all calls; however the logs were not kept more than a couple of months.

69. There was a specific request form that the special education department filled out to make an initial request for a student's transportation. On March 18, 2015, Ms. Jimenez received an email from Ms. Peneyra requesting transportation for Student, with a start date of March 27, 2015. Once a request was received, it generally took five to 10 days to begin transportation. Student's transportation began on March 30, 2015, only eight school days after the initial request for transportation services.

70. To prepare for her testimony, Ms. Jimenez personally requested Student's transportation records from the company that archived such records. When received, she went through all the records for the time Student attended and pulled all records listing Student. The logs contained morning and afternoon recordings sheets listing all students on Student's bus, in alphabetical order, with the appropriate code for each student indicating whether they were on the bus. The transportation records received by Ms. Jimenez from the archives were incomplete. The records of transportation for weeks between March 30, 2015 and April 13, 2015, between April 20, 2015, and April 24, 2015, and between May 18, 2015, and May 22, 2015, were not located in the archives for any of the students on Student's route. Student's bus was in operation during these weeks. Ms. Jimenez did not know why the records were missing but the drivers may not have submitted them.

71. Parents were informed of the time that their child would be picked up and dropped off. Parents were told to allow a window of 10 or 15 minutes for the bus to arrive. Once the bus arrived, the bus would wait two minutes and would honk the horn. If a student did not come out, the bus left.

72. The records documented that the last day that Student was transported by bus was the morning of July 2, 2015. The following week indicated a "will call", showing that Student did not appear for the bus. At that point, Student was dropped from transportation. Ms. Jimenez had no information as to whether Student ever resumed

transportation.

73. The transportation logs received from the archives concerning Student documented 22 unexcused absences by Student when the bus attempted to pick him up, including mornings and afternoons, but not including the unexcused codes the entire week of July 6-9, 2015. On some days, Student would not be on the bus in the morning but was on the bus in the afternoon, and vice versa, which indicates that Student may have been tardy to school or picked up early. On days that Student was not transported, the logs show that other students on the route were transported and the bus was in operation.

74. Parent's testimony that Antioch frequently failed to provide transportation to Student was not credible in light of the documentary evidence of Antioch's transportation records. Those records contained convincing evidence that Antioch provided transportation but Student was often not available to access the services. Parent's claim that the bus passed Student up or never came was not persuasive, given that the other students on the same bus were transported to and from school.

JULY 14, 2015, IEP MEETING

75. On July 14, 2015, an addendum IEP team meeting was held in response to Parent's request to discuss Student's feeling that he was not safe in the Kimball program. Student reported that classroom staff put their hands on students, called Student names and told him to be quiet when he asked for help. Parent testified that she specifically requested Student's teacher and classroom staff to attend the IEP team meeting. Dr. Rubalcava testified that Parent specifically requested that the teacher and staff not attend the IEP team meeting. Other than their testimony, there was no other evidence of Parent's request for staff to be present or absent from the meeting. Present at the meeting were Parent; Student; Ms. Washington-Peterson, program specialist; and Dr. Rubalcava, coordinator. Parent did not sign any excusal form for the special

education teacher or a general education teacher to be absent from the meeting.

76. At the meeting, Parent informed the team that she did not want Student to continue extended school year at Kimball. In response to Parent's and Student's concerns, Antioch informed Parent that all of the staff at Kimball was changing and a new school, Tobinworld II, would be running a new program at the same site. Antioch offered Student placement in the new program for extended school year, with a start date of July 14, 2015, and end date of July 31, 2015. Speech and language services were offered for the first time in extended school year. The same placement was offered for the 2015-2016 school year with a start date of July 14, 2015, through October 21, 2015. Parent consented to the IEP. Student never attended the offered program and moved back to San Francisco in August, 2015.

LEGAL CONCLUSIONS

LEGAL FRAMEWORK UNDER THE IDEA⁹

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 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 higher education, employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

⁹ Unless otherwise indicated, the legal citations in this section are incorporated by reference into the analysis of each issue decided below.

2. A free and appropriate public education means special education and related services that are available to an eligible child at no charge to a parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9)(A-D); 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, subd. (a).) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].)

3. 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).)

4. 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.)

5. In *Endrew F. ex rel., Joseph F. v. Douglas County School Dist.* (2017) 580 U.S. __ [137 S.Ct. 988, 996], the Supreme Court clarified that “for children receiving instruction in the regular classroom, [the IDEA’s guarantee of a substantively adequate program of education to all eligible children] would generally require an IEP ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” 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.*)

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, 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).) As the petitioning party, Student has the burden of proof by a preponderance of the evidence on all issues in this case. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

ISSUE 1: STUDENT'S CLAIMS INVOLVING FACTS AND CIRCUMSTANCES OCCURRING OR EXISTING PRIOR TO MAY 16, 2015, ARE BARRED BY THE TWO-YEAR STATUTE OF LIMITATIONS.

7. Student contends that he is entitled to relief for claims involving facts and circumstances prior to two years before May 16, 2015, the date Student filed for due process. Specifically, Student claims that he is entitled to relief for Antioch's failure to include a general education teacher at his IEP meetings on February 10, 2015, March 9, 2015, and May 8, 2015. Student claims that the two year statute of limitations did not begin to run until Parent allegedly first learned of the procedural right to have a general education teacher at IEP meetings when she consulted with her attorney before filing for due process in 2017.

8. Antioch contends that Parent was aware of her procedural right to have a general education teacher present at IEP meetings at the time of the meetings and did not timely assert that right. In the alternative, Antioch maintains that Ms. Ogden was appropriate to fulfill the role of a general education teacher at the February 10, 2015, and March 9, 2015 IEP meetings. Antioch contends that a general education teacher was not required at the May 8, 2015 IEP meeting because Student had begun the Kimball program and Student was not participating or likely to participate in the general education program.

9. Student also claims facts to establish an exception to the two year statute of limitations based on Antioch's alleged withholding of information that it was required to provide, including: 1.) that Antioch withheld records that would have timely shown

that Student's IEP services were not being implemented, such as service logs and report cards; and 2.) that Antioch withheld information from Parent, at the time of Parent's consent to the Kimball placement, that the placement was a nonpublic school for students with behavior problems.

10. Antioch contends that Parent suspected back in March 2015 that Student's services were not being implemented and that Parent did not need further information to assert that claim in a due process complaint. Antioch contends that Parent's consent to Student's placement at Kimball was informed and knowing as she was aware, at the time of her consent, of all aspects of the placement at Kimball. Antioch asserts that no information was withheld from Parent which it was required to provide.

Statute of Limitations for Special Education Due Process Requests

11. The statute of limitations for the filing of due process requests in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) An action must be filed within two years from the date a party knew or had reason to know of the facts underlying the action. (Education Code section 56505, subdivision (l), see also title 20 United States Code section 1415(f)(3)(C) ("knew or should have known about the alleged action that forms the basis of the complaint.")) The law contains exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent. (20 U.S.C. § 1415(f)(3)(D)(i) and (ii); Ed. Code, § 56505, subd. (l)(1) and (2).) The Ninth Circuit recently reaffirmed this rule. (*Avila v. Spokane School Dist.* 81 (2017) 852 F.3d 936.) Otherwise, the statute of limitations for due process complaints in California precludes claims that occurred more than two years prior to the date of filing the request for due process. Cal. Educ.Code § 56505(l); 20

U.S.C. § 1415(f)(3)(c). (*M.M. v. Lafayette School District* (9th Cir. 2014) 767 F.3d 842, 309.)

12. Parent's contention that she was not aware of the requirement of a general education teacher at the time of Antioch's IEP meetings is rejected. Parent has attended numerous IEP meetings since Student began receiving special education services in preschool. Parent acknowledged that she reviewed and received many copies of procedural rights through the years. Parent's testimony establishes that she received a copy of her procedural safeguards at the San Francisco triennial IEP meeting in October, 2014, and that the IEP team explained those rights to her at the meeting. The evidence presented at hearing establishes that Parent was offered and declined copies of her procedural rights at three of the four Antioch IEP meetings. The reason that she declined the rights is that she has reviewed and received so many copies through the years; she did not require more information. Parent was aware, at the time of Student's IEP meetings, of her procedural rights, including the right to have a general education teacher present at IEP team meetings.

13. Absent specific evidence regarding Parent's inability to read or otherwise access the information contained in the written procedural rights, Parent cannot claim lack of knowledge of her rights while declining information about those rights. No such specific evidence was presented at hearing. Districts would be without protection if parents had no responsibility to read and understand the written procedural rights or utilize the express resources to understand those rights, presented to them at IEP meetings. Parents have a responsibility to read and understand the rights or seek guidance from resources provided if they do not understand the rights or want further information regarding the rights.

14. Because parent received and reviewed many copies of her procedural rights through the years which either expressly stated the rights or referenced the laws which set forth the rights, the statute of limitations was tolled on the particular day that

she was part of IEP meetings where a general education teacher was not present as part of the team. Therefore Parent's claim that Antioch failed to provide a general education teacher at IEP meetings before May 16, 2015, is barred by the statute of limitations.

15. Parent also claims an exception to the statute of limitations on the basis that Antioch withheld information, until the July 14, 2015 IEP meeting, that Student's services were not being implemented. Parent asserts in her complaint that Antioch's July 14, 2015, IEP "is a clear representation and acknowledgement by Antioch of services missed and failure to implement Student's IEP." This claim is without merit. No acknowledgement of missed services or failure to provide FAPE is contained in the July 14, 2015 IEP. Student's claim that Antioch withheld evidence of the non-implementation of Student's IEP including report cards and service logs is similarly rejected. A student's lack of academic progress would not necessarily reflect non-implementation of services and there was no evidence presented at hearing that service logs, completed for the purpose of documentation to facilitate Medi-Cal reimbursement to Antioch, are required to be provided to parents. There was also no evidence that Parent specifically requested such service logs.

16. The preponderance of the evidence, including Parent's testimony, presented at hearing, instead established that Parent suspected based on statements Student made to her, that Antioch was not providing any of Student's special education services from the beginning of his attendance in Antioch. Therefore Parent was aware of facts which she perceived to indicate that Student's IEP services were not being implemented. Further evidence of non-implementation was not needed before Parent could assert her claim in a due process complaint. Parent was not prevented from filing for due process because of any alleged withholding by Antioch of information. Parent failed to establish an exception to the statute of limitations and any claim regarding Antioch's alleged failure to implement services prior to May 16, 2015, is barred by the

statute of limitations.

17. Lastly, Parent's claim that Antioch withheld information at the time of her consent to placement, that Kimball was a nonpublic school for students with behavior problems, is also rejected. First, the evidence presented at hearing established that Kimball was a school designed for students with a variety of educational needs, not just for students with behavior problems. The majority of Kimball students had severe academic challenges and most, but not all, of the students showed internalizing behaviors associated with those challenges.

18. Secondly, Student in his closing brief alleges that it was not until Antioch's opening statement at hearing that Student or counsel for Student learned that Student was placed in a nonpublic school. This contention is wholly without merit. In addition to the thorough description given to Parent on the tour of the Kimball program, Student's May 1, 2015 IEP expressly states that Student's specialized academic services were offered in a therapeutic behavior support classroom, a collaborative between nonpublic school and district. Student's July 14, 2015 IEP also describes Student's offer of FAPE as a nonpublic school.

19. The preponderance of evidence presented at hearing established that Parent's consent to the placement at Kimball was knowing and informed. At the time of Parent's consent to Student's placement at Kimball, Kimball had not yet been designated a nonpublic school by the Department of Education. Parent was correctly informed that Kimball was a collaborative between Spectrum and Antioch, located on the Kimball Elementary School campus where Spectrum would provide services embedded in the program and Antioch would provide Student's other related services. Parent observed the Kimball classrooms and was specifically informed that Student would be in special education for 100 percent of his school day. Parent also completed an enrollment packet for Kimball which informed Parent that Spectrum was a non-public

school. It included a detailed description of the behavior intervention strategies, including hands on interventions when needed as a last resort. Based on this as well as the added discussion of the IEP team at the March 9, IEP meeting, Parent's consent was fully informed and Antioch did not withhold any information from Parent.

20. Parent did not prove facts to establish either a lack of knowledge about her rights or an exception to the two year statute of limitations. Having failed to establish an exception to the two year statute of limitations, Student's claims related to facts and circumstances occurring before May 16, 2015, are barred. The remaining issues have been revised to reflect the two year statute of limitations based on the date of May 16, 2017, when Student filed his due process complaint.

ISSUE 2: DENIAL OF FAPE DURING THE 2014-2015 SCHOOL YEAR, BEGINNING MAY 16, 2015, BY FAILING TO DELIVER AND IMPLEMENT SERVICES ACCORDING TO STUDENT'S IEP.

21. Student contends that Antioch failed to implement Student's IEP services while he attended Antioch schools during the 2014-2015 school year. Antioch contends that Student's IEP was fully implemented with the exception of speech and language services immediately following Student's second placement, which it timely admitted were delayed once the delay was discovered. Antioch asserts that any other missed IEP services were the result of Student's frequent absences and tardies, for which Antioch had no obligation to compensate Student. Antioch, however, asserts that Student did not timely assert the non-implementation claim within two years of knowledge of the claim. Therefore Antioch asserts that no compensation is due to Student because all services were provided under the IEP from May 16, 2015, two years prior to the filing of Student's complaint.

LEGAL AUTHORITY REGARDING IMPLEMENTATION OF IEP'S

22. A school district must implement all components of a student's IEP. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(c).) When a student alleges the denial of a FAPE based on the failure to implement an IEP, in order to prevail, the student must prove that any failure to implement the IEP was "material," which means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker Sch. Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822 (*Van Duyn*).) A minor discrepancy between the services provided and the services required in the IEP is not enough to amount to a denial of a FAPE. (*Ibid.*) "There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education." (*Ibid.*) "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*) A child's educational progress, or lack thereof, may be probative of whether there exists more than a minor shortfall in the services provided. (*Ibid.*)

23. The preponderance of the evidence presented at hearing established that from May 16, 2015, to June 4, 2015, Student's specialized academic instruction and group psychological counseling services were implemented on all school days that Student attended the Kimball program. Antioch's IEP's as well as testimony of service providers established that Antioch was responsible for providing services according to when a student was in attendance and in a way consistent with Antioch's calendar and scheduled services, excluding holidays, vacations, and non-instructional days unless otherwise specified. There was no requirement, in this case, for Antioch to make up missed services due to a student's absence. Student did not prove by a preponderance of the evidence that Antioch failed to implement Student's specialized academic instruction or his group counseling services.

24. The preponderance of evidence presented at hearing established that Antioch was ready and able to provide all individual counseling services from May 16 to June 4, 2015, but Student was unavailable for counseling due to his unwillingness to participate or cooperate in the offered sessions, which relieved Antioch of any responsibility to make up such missed time. Although Ms. Paulsson did offer to make up some sessions, Student and Parent did not respond to this offer. Therefore Student did not sustain his burden of proof to establish his claim that Antioch failed to implement Student's individual counseling services.

25. From May 16, 2015, until June 4, 2015, Antioch provided all four sessions of speech and language services required by Student's IEP. Therefore, Antioch implemented all offered speech and language services to Student from May 16, 2015 to June 4, 2015.

26. Student failed to present any evidence that Antioch failed to implement Student's extended school year specialized academic instruction and individual counseling required by his October 21, 2014, IEP. Therefore Student failed to establish Antioch's non-implementation of these services.

27. As Student never attended the July 14, 2015, offered placement at Tobinworld II, Antioch never had the opportunity to implement the services of that IEP, and Student therefore failed to so establish any such non-implementation.

28. Student failed to sustain his burden of proof to show that Antioch did not implement Student's transportation services. Parent's claims regarding transportation services prior to May 16, 2015, are barred by the statute of limitations because she was aware of transportation due process claims on any particular day that she alleges that Student was not transported and did not file for due process within two years of that knowledge. From May 16, 2015, forward, Parent's claims regarding alleged failures to pick Student up or that the bus frequently passed him up were vague as they were not

specific as to time. Compared to testimonial and documentary evidence regarding Antioch's transportation of Student, Parent failed to establish any persuasive evidence of Antioch's failure to implement Student's transportation IEP services from May 16, 2015, to July 7, 2015, his last day in Antioch.

ISSUE 3: DENIAL OF A FAPE BEGINNING MAY 16, 2015, BY VIOLATING PARENT'S AND STUDENT'S PROCEDURAL RIGHTS BY:

- a. holding IEP meetings without Parent; and
- b. holding IEP meetings without all required IEP team members present.

29. Parent contends that Antioch's failure to have Student's special education teacher, classroom staff, and a general education teacher present at the July 14, 2015 IEP meeting denied her right to participate in the IEP process and denied Student a FAPE.

30. Antioch contends that Parent specifically asked that the special education classroom staff not attend the IEP meeting. Antioch contends that a general education teacher was not required because Student's offered placement did not include general education and no mainstreaming discussion was anticipated at the July 14, 2015 IEP meeting.

Requirement of Parent Participation

31. "[T]he informed involvement of parents" is central to the IEP process. (Winkelman v. Parma City School Dist. (2007) 550 U.S. 516, 524 [167 L.Ed.2d 904].) Protection of parental participation is "[a]mong the most important procedural safeguards" in the Act. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

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

be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.)

IEP Team Members Required at an IEP meeting

33. Each meeting to develop, review or revise the IEP of an individual with exceptional needs must be conducted by an IEP team. (Ed. Code, § 56341, subd. (a).) The IEP team must include: one or both of the parents or a representative chosen by the parents; not less than one regular education teacher if the pupil is, or may be, participating in the regular education environment; not less than one special education teacher, or where appropriate, one special education provider to the student; a representative of the school district who is (a) qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of the student, (b) knowledgeable about the general education curriculum, and (c) knowledgeable about the availability of school district resources; an individual who can interpret the instructional implications of assessment results; at the discretion of the parent, guardian or school district, other individuals with knowledge or special expertise regarding the student; and, if appropriate, the student. (20 U.S.C., § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).)

34. The Ninth Circuit has held that "the plain meaning of the terms used in section 1414(d)(1)(B) compels the conclusion that the requirement that at least one regular education teacher be included on an IEP team, if the student may be participating in a regular classroom, is mandatory – not discretionary." (*M.L. v. Federal Way School Dist.* (9th Cir. 2003) 394 F.3d 634, 643 (*M.L.*) The failure to include a regular

education teacher on the IEP team deprives the team of “important expertise regarding the general curriculum and the general education environment.” (*Id.* at p. 646; see also, *W.G. v. Bd. Of Trustees of Target School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485. (*Target Range*)). Without a general education teacher, a reviewing court has no means to determine whether an IEP team would have developed a different program after considering the views of a regular education teacher, and a failure to include at least one general education teacher is a structural defect in the constitution of the IEP team. (*M.L., supra*, 394 F.3d at p. 646.)

35. A member of the IEP team is not required to attend an IEP team meeting, in whole or in part, if the parents and school district agree that the attendance of such a member is not necessary because the member’s area of the curriculum or related services is not being modified or discussed in the meeting. (20 U.S.C. § 1414(d)(1)(C)(i).) A member of the IEP team may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member’s area of the curriculum or related service if (i) the parent and the school district consent to the excusal, (ii) the member submits written input to the team prior to the meeting for development of the IEP, and (iii) the consent is in writing. (20 U.S.C. § 1414(d)(1)(C)(ii) and (iii).) An “agreement” to excuse a team member refers to an understanding between the parent and the district. (71 Fed. Reg. 46,673 (Aug. 14, 2006).) The requirements for “consent” are more stringent, requiring the school district to fully inform the parent of all information relevant to the team member’s excusal, in the parent’s native language or other mode of communication, and to ensure that the parent’s understanding that the granting of consent to the team member’s absence is voluntary and can be revoked at any time. (71 Fed. Reg. 46,674 (Aug. 14, 2006).)

36. The participants of Student’s July 14, 2015, IEP meeting included Parent; Student; Emma Washington-Peterson, program specialist; and Ruth Rubalcava,

coordinator. In the present case, Antioch was required to include both the special education teacher and a general education teacher. There was no special education teacher or general education teacher at the meeting and Parent did not sign any excusal for their absence. There was insufficient evidence to establish that Parent specifically requested that Student's special education teacher and classroom staff not attend the IEP meeting. There was also no agreement between Parent and Antioch that the special education teacher was not needed at the meeting. Therefore Antioch was legally required to include the special education teacher at the IEP meeting. The failure to do so was a procedural violation of the IDEA and state law regarding a properly composed IEP team. There was, however, no legal requirement to include the other classroom staff.

37. A procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *Target Range, supra*, 960 F.2d at p. 1484.)

38. The failure to include Student's special education teacher at the July 14, 2015 IEP meeting impeded Student's and Parent's participation in the IEP meeting and denied Student a FAPE.

39. A general education teacher was required at the July 14, 2015 IEP meeting because placement was discussed and the goal of Student's placement was to eventually mainstream him into the Kimball Elementary School with typically developing peers. Student's San Francisco triennial IEP dated October 21, 2014, documented compelling reports of Student's impressive social and emotional growth evidenced by his ability to navigate peer conflict and demonstrate safe and respectful behavior. On

the tour of the Kimball program, Parent asked questions indicating that she wanted Student to participate in the general education curriculum for physical education and extra-curricular activities. Parent was informed on the tour that once Student demonstrated consistent, appropriate behavior, Student would be given the opportunity to attend general education classes and extracurricular activities with typical peers on the Kimball Elementary School campus.

40. Given that Student's participation with typical peers in classes and activities on the Kimball Elementary School was a goal of the Kimball placement as well as of Parent, general education opportunities for Student were a proper discussion for the July 14, 2015, IEP team. Placement was discussed at the meeting and offered through October, 2015. A general education teacher was therefore required, absent a written excusal by Parent, which was not given in the present case.

41. The failure of Antioch to include a general education teacher at the July 14, 2015, IEP meeting was a procedural violation. There was no IEP participant who was directly involved with the classes, activities or particular mainstreaming opportunities of the Kimball elementary school. Therefore Parent and Student were deprived of this information which limited their ability to participate in the IEP discussion, which denied Student a FAPE because it impeded Student's and Parent's ability to fully participate in the IEP meeting.

42. There was no evidence presented or claim asserted by Student at hearing that Parent did not attend the July 14, 2015, IEP meeting.

REMEDIES

1. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. (*Ibid.*) An

award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. District of Columbia*, (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

2. Staff training can be an appropriate remedy for a student who was denied a FAPE; the IDEA does not require compensatory education services to be awarded directly to a student. (*Park v. Anaheim Union High School Dist.*, 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Ibid.*; *Student v. Reed Union School District*, (OAH 2008, No. 2008080580) 52 IDELR 240 [109 LRP 22923] [requiring training on predetermination and parental participation in IEPs].)

3. In the present case, Student requested the following remedies: Antioch's funding of a nonpublic school or private school placement and 200 hours of compensatory educational services by a nonpublic agency; reimbursement for transportation and funding of an appropriate educational program for Student; independent educational evaluations in the areas of academics, cognitive ability; speech and language; occupational therapy; behavior; social emotional; mental health; adaptive behavior; comprehensive assessments; and counseling.

4. Antioch prevailed on Issues 1, 2 and 3(a). Parent failed to establish a basis

for relief for claims occurring prior to May 16, 2015. Parent failed to prove by a preponderance of the evidence that Antioch failed to implement Student's IEP services during the 2014-2015 school year from May 16, 2015. Student's request for compensatory services, a funded placement at a nonpublic school, transportation costs, and independent educational evaluations is therefore denied.

5. Student prevailed on Issue 3(b). Parent was denied her right to meaningfully participate in the July 14, 2015 addendum IEP team meeting due to Antioch's failure to include Student's special education teacher and a general education teacher as part of the IEP team. To remedy the procedural violation concerning proper IEP team participants, Antioch shall provide all of Antioch's special education staff and administrators one hour of training on required IEP meeting procedures, pursuant to the IDEA and the California Education Code. The training shall be provided by special education attorneys or other trained individuals who are not employed by Antioch.

ORDER

Antioch shall provide a one-hour district-wide training for its entire special education staff on required IEP meeting procedures. Antioch shall fund the training by a non-public agency or by special education attorneys. Antioch is precluded from using employees to conduct the training. Antioch shall provide the training by no later than May 22, 2018, and shall maintain a sign-in log of the training participants.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on Issue 3(b). Antioch prevailed on Issues 1, 2, and 3(a).

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: February 22, 2018

/s/

RITA DEFILIPPIS

Administrative Law Judge

Office of Administrative Hearings